

Unregistered Marriages of Indonesian Migrant Workers in Malaysia

Contrasting Positions of State Agents

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Abstract

Indonesia is known in Malaysia as the main supplier of migrant workers. Under the Immigration Act and based on their working contracts, Indonesian migrant workers cannot marry in Malaysia during their contract period. Hence, unregistered marriages are common among Indonesian migrant workers in Malaysia. This article investigates both the perspectives of migrant workers who have entered into non-state-registered marriages and the strategies of Indonesian diplomatic representatives in dealing with unregistered marriages of Indonesian migrant workers. Observing a growing trend of both unregistered marriages and of the recognition of such marriages by state agents, this article emphasizes the importance of taking into account the social, political, and religious context to understand how the law operates and how these workers navigate the constraints they are facing.

Keywords

Islamic marriages – marriage registration – unregistered marriages – Indonesian migrant workers – Malaysia

Introduction

Many Indonesian low-skilled and semi-skilled workers migrate to other countries in order to seek economic opportunities toward a better life. Malaysia has been one of their most popular destinations (bnp2tki 2017; Wong 2006). Labor shortages in many sectors in Malaysia, such as construction, agriculture, and the service sector, have led Malaysian companies to depend on workers from neighboring countries. About half of the total number of foreign workers in Malaysia are from Indonesia (Malaysian Employers Federation 2014).

The presence of Indonesian workers to cover labor shortages in Malaysia can be seen throughout the country's history (see Kaur 2005, 2014). Due to the economic growth in Malaysia, especially since the 1970s, the number of Indonesian workers has rapidly increased (Gurowitz 2000; Unicef 2015). According to the Embassy of the Republic of Indonesia in Kuala Lumpur, in late 2016 there were 1.3 million Indonesian workers registered at the Embassy.¹

Malaysia is a preferred destination for these migrant workers for a number of reasons. It is close to Indonesia (Ford 2006) and Indonesians do not need to apply for a visa for short-term visits (Leng and Yeoh 2012). Many migrant workers experience a sense of cultural proximity (Devadason and Meng 2014). Moreover, irregular migrant workers consider Malaysia as relatively safe, as the Malaysian government is rather half-heartedly enforcing their policies regarding irregular migrant workers. As Gurowitz points out, 'Like any other countries with labour shortages, Malaysia needs these workers, but does not want them' (2000: 863). Local workers remain unwilling to take on the 3-D (dirty, difficult, and dangerous) jobs with their low pay and low status. Therefore, these sectors are usually dominated by low-skilled and semi-skilled temporary migrant workers (Hugo 2009).

Studies about Indonesian migrant workers in Malaysia have mostly focused on the problems these workers face and how they act upon these (Wong, Afrizal, and Anwar 2003; Jones 2000; Kaur 2005, 2014). Scholars have also discussed how receiving and sending countries deal with the complex problems regarding labor migration from Indonesia (see Devadason and Meng 2014; Elias 2013; Ford 2006; Hugo 1995; Killias 2010). Those who pay attention to marriage tend to focus on how migrant workers deal with the separation from their spouses and children who remain in the home country, especially in the case of women's transnational migration (see Hugo 1995; Silvey 2006). Little attention has been paid to issues related to marriage and sexuality in the country of residence, such as in the case of Indonesian migrant workers residing in Malaysia.² Leng and Yeoh (2012) did research about marriages between Indonesian migrant workers and Malaysian citizens in Malaysia. They discuss how these marriages can be a pathway toward (il)legality of residence and how these migrant workers may become the foreign spouses of citizens (2012).

¹ Interview with Judha Nugraha, First Secretary (Consular Affairs), Embassy of the Republic of Indonesia, Kuala Lumpur 9 July 2016.

² Lasimbang et al. (2016), who focus on the sexual and reproductive health and rights of migrant workers in Sabah, East Malaysia, is an exception.

This article discusses marriage from a different angle. It discusses unregistered marriages among Indonesian migrant workers who live in Malaysia. The migrant workers in this study belong to the category of low-skilled and semi-skilled workers who are only allowed to work temporarily in Malaysia. For this study I conducted intermittent ethnographic fieldwork in July 2016, August 2017, and November 2017 in Malaysia and Indonesia. During fieldwork, I interviewed both regular male and female migrant workers holding a temporary employment pass and those who are irregular.³ I also interviewed the Indonesian representatives in Peninsular Malaysia, in Sabah and Sarawak, and the government officials in Jakarta who have been active in validating the unregistered marriages (*itsbat nikah*) of Indonesian migrant workers in Malaysia.

The first part of this article provides insight into the motivations for these migrant workers to opt for unregistered marriages. The legal prohibition to marry or to bring a spouse to the host country has motivated these lowskilled and semi-skilled migrant workers to conduct unregistered marriages in order to be able to have a licit sexual relation and to build a family. As marriage is highly valued in Islam and the only legitimate framework for sexuality (see Mernissi 1987; Zuhur 2009), opting for unregistered marriage is a way to conclude such a marriage and simultaneously a means to avoid shame, which refers here to disgraceful acts, particularly extramarital sexual relations (Wikan 1984).⁴

The second part then discusses how various state actors and religious authorities position themselves vis-à-vis these marriages and attempt to legalize them. Concluding an unregistered marriage can be considered as a means for these migrants to negotiate the legal constraints they are facing. The fact that unregistered marriages are considered religiously sanctioned marriages and are considered licit among Malaysians and Indonesians yet prohibited by state policy has led to considerable debate among the various parties concerned.

They not only draw on notions common among state bureaucracies but also on religious understandings and humanitarian considerations.

³ Following the human rights advocates who argue that ‘no human being is illegal’ (see also Duvell et al. 2008: 3), this article uses the terms regular and irregular instead of legal and illegal. During the interviews, however, many migrant workers used the term ‘legal’ and ‘illegal’ instead of ‘regular’ and ‘irregular.’ Therefore, the use of the terms ‘legal’ and ‘illegal’ in direct quotes from the informants will not be changed.

⁴ Shame, as understood by these migrant workers, also refers to an act which does not fit with Islamic and cultural morality, rather than the statement about the whole person. Collins and Bahar, in their study of *malu* (shame) in Malay societies, also argue that ‘*malu* is closely associated with sexuality’ (2000: 42).

Unregistered Marriages: Illegal But Licit

Policies issued by the Malaysian Immigration Department for migrant workers holding plks (Pemegang Lawatan Kerja Sementara or Temporary Work Visit Pass) relating to marriage and family include: ‘The foreign worker is not allowed to bring in his or her family to live in the country’ and ‘the foreign worker is not allowed to marry any local resident or migrant worker who works in the country’ (Malaysian Employers Federation 2014: 12). The consequence of breaching the rule of marrying a fellow migrant worker is that both of them must give up their jobs.⁵

These restrictions related to marriage and family life have been difficult to face by migrant workers, who often arrive in Malaysia at an age where most are sexually active. The age group for working in Malaysia is between 18 to 45 years (for foreign domestic helpers the minimum age is 21 years). The Indonesian embassy recorded that those who are working in Malaysia are mostly between 21 and 40 years of age. Many of these workers stay in Malaysia for an extended period, even if, under government policy, the contract for a foreign worker is 5 years with the possibility of an extension of 10 years of employment (Malaysian Employers Federation 2014: 12). *Siri* marriage (lit. secret marriage),⁶ or *nikah di bawah tangan* (smuggled or undeclared marriage),⁷ has consequently become a solution for both irregular and regular workers. The secrecy of unregistered marriages refers to the way the marriages are hidden from government control, especially the Malaysian government, although, in reality, the Malaysian government in many states often knows about this practice.

The status of religious marriages in Malaysia has led migrant workers to be rather confident in taking this pathway. As Malik, a 29-year-old construction worker who has been married with Zainab, an Indonesian migrant worker, for 5 years, says:

Muslims in this country understand the validity of *nikah kampung* (lit. village marriage) or *nikah siri*. Therefore, people in the village where I stay know when we have had *nikah siri*. They will not report

⁵ See <http://www.imi.gov.my/index.php/en/foreign-worker.html>. This policy implies that they cannot register their marriage and that their religious marriages are not recognized by the Malaysian government.

⁶ The term *siri* originates from the Arabic term *sirr*, meaning secret.

⁷ Although the term *siri* marriage covers broader practices of unregistered marriages and not all unregistered marriages are considered *siri* marriages, the migrant workers in Malaysia use this term to refer to unregistered marriages.

us to the police or immigration officers because it is valid in the eyes of God.⁸

The notion of validity from a religious perspective, as mentioned by Malik, resonates with Muslim marriage legislation in Malaysia. The Islamic Family Law statutes in Malaysia mention that unregistered marriages are not necessarily invalid. The Islamic Family Law (Federal Territory) act 1984 Section 34 on Legal Effects of Registration states:

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.

ifla 2006: 26

Therefore, these immigrant workers understand that the practice of *nikah siri* does not violate the Islamic family law statutes in Malaysia.

While non-registration does not make a marriage invalid, there are legal consequences for the person solemnizing such a marriage. Article 39 of ifla states:

Any person who, not being authorized thereto under this Act, solemnizes or purports to solemnize any marriage, commits an offence and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment.

ifla 2006: 28

How then are these marriages concluded? The *nikah siri* of these migrant workers is usually solemnized by their Indonesian peers (see also Lasimbang et al. 2016), especially those who are called *ustadz* (lit. male religious teacher) or who are known as religious preachers among their peers.⁹ Many Madurese¹⁰ working in Kuala Lumpur, for example, are graduates of Islamic boarding schools in their hometowns, which means that they are eligible to solemnize their peers' *siri* marriages. In addition,

⁸ Interview with Malik, Kuala Lumpur 9 July 2016.

⁹ The presence of someone who is known as having good religious knowledge to solemnize a religious marriage reflects Indonesian practices with religious marriage usually conducted by this type of person. *Ustadz* is an Arabic term of address referring to a person who has thorough religious knowledge. Among Indonesians, this term is sometimes used loosely to refer to those who have better religious knowledge than others.

¹⁰ Madura is an island which is part of East Java in Indonesia.

these workers often ask religious scholars coming to Malaysia to solemnize *siri* marriages. From 2000 onwards, migrant workers in Malaysia often invite Indonesian religious preachers to celebrate special Islamic festivals, such as the festival of the birth of the Prophet Muhammad (*mawlid*) (see also Wong and Aziz 2011). During the fasting month of Ramadan, a religious preacher is usually invited to stay in Malaysia for one month and will move from one place to another to deliver religious sermons to different Indonesian religious circles. Migrant workers often use such opportunities to ask a preacher to solemnize their *nikah siri*.

Motivations to Enter into *nikah siri*

What motivates these migrant workers to enter into unregistered marriages? Many workers who end up in *siri* marriages believe that *nikah siri* is the only way to channel their sexual desire in a *halal* (religiously lawful) way and not be despised by the Malaysian Muslim community. Migrant workers often referred to human sexual needs when they explained their motivation to conclude an unregistered marriage, using a moral, religious language. They believe that marriage is not only a religiously sanctioned way to enter into sexual relations, but also a form of *ibadah* (act of devotion),¹¹ which allows Muslims to complete half of their religion.¹² Such a motivation is very different from marriage migration, where migrant workers marry citizens in order to improve their position in the host country (see, for example, Leng and Yeoh 2012; McKay 2003; Mix and Piper 2003; Piper and Roces 2003).

Migrant workers may also opt for a *siri* marriage due to peer pressure within the community. Couples who are developing a close relationship are often encouraged by their peers to marry quickly. The latter argue that they do this to protect their friends from having illicit relationships outside of marriage. They do not want their peers to commit *zina* (the sin of entering into a sexual relationship out of wedlock). In addition, the

¹¹ There are many religious doctrines used by Muslims in regards to the teaching of marriage. A Hadith (Prophet Muhammad's saying) often quoted to emphasize the position of marriage as a door to prevent immoral sins mentions: 'O young people! Whoever among you is able to marry should marry, for that will help him lower his gaze and guard his modesty (from committing illegal sexual intercourse), and whoever is not able to marry should fast, as fasting diminishes his sexual power.'

¹² This doctrine of marriage and the completion of half of one's religion is often mentioned by Indonesian Muslims during marriage celebrations. It refers to a Hadith narrated by Anas b. Malik, mentioning, 'When someone marries he or she has fulfilled half of the religion; so fear God regarding the remaining half.'

pressure is also aimed to protect the couple from social sanctions, which are especially strong in the case of women. Mahfudz Tejani, a migrant-worker-cum-activist, says:

This is because of the culture too. Among Madurese women, for example, it will be a shame (*malu*), to go out with a man at night. They will be ashamed if people see them.¹³

Usually, those who are dating are heavily criticized as shameless and conducting immoral sins. Mahfudz's statement, which emphasises the link between the notion of shame and culture, was also echoed by other migrant workers from Madura.¹⁴

Whereas migrant workers argue that both men and women are supposed to feel shame if they commit sexual acts outside of marriage, the pressure of guarding one's shame is more prevalent among women than men (see also Wikan 1984; Collins & Bahar 2000). Therefore, women usually face more pressure to make the decision to have an unregistered marriage. In some cases, male workers who already have wives in Indonesia marry secretly a second time with fellow workers in Malaysia. Hafсах, a 37-year-old regular migrant worker, says:

For men especially, Mbak (Sister) Eva, they have to be far away from their wives. This is a huge problem. Women too actually (while giggling). Here, they meet others; they might fall in love. So, the easiest way is to have a *siri* marriage with others here.¹⁵

Hafсах's friend Dewi, a 29-year-old worker, working as a cleaner, says:

Some of our friends also married men who have wives in Indonesia. They knew about these men's status, but you know Mbak (Sister), for them it is better becoming the second wife then continuously being the object of rumours.¹⁶

Next to becoming the object of rumors in their Indonesian social circle, female migrant workers also often become suspect in the eyes of

¹³ Interview with Mahfudz Tejani, Kuala Lumpur 11 July 2016.

¹⁴ Malaysian policy makers also explicitly refer to the importance of culture in the case of those working as domestic workers: "Foreign domestic workers should always watch their conduct at all times and should not be involved with activities that go against the ethics/ culture of the host area". See <https://www.hrw.org/reports/2004/indonesia0704/appendixc.pdf>.

¹⁵ Interview with Hafсах, Kuala Lumpur 23 December 2016.

¹⁶ Interview with Dewi, Kuala Lumpur 19 December 2016.

Malaysian society. Elias, for example, mentions that a non-governmental organization (ngo) called Women's Aid Organization or wao argue,¹⁷ '(...) it is such discourses of domestic workers as untrustworthy, "husband stealers" and "sexually promiscuous" that render them particularly stigmatized within Malaysian society' (2008: 292).

Societal pressures accompanied by religious rhetoric have then resulted in the workers believing that religious marriage, which is legally prohibited but culturally licit, is a legitimate way to solve their problems relating to their basic human needs. Concluding an unregistered marriage allows them to enter into a sexual relationship in a religiously approved manner.

For some migrant workers, concluding such a marriage is part of a long-term strategy. They consider Malaysia as their final hope in improving their lives. They believe that working in Malaysia has enabled them to face the future optimistically. They do not only manage relatively well in Malaysia, but many are even able to afford to financially support their families in Indonesia from their wages. Therefore, the most sensible way to plan ahead is to have a spouse, who is also a worker and can contribute to the economic well-being of the family. Hafsa, who had been working for 7 years, recounted her story:

When I first came to Malaysia, I did not have the intention to find a husband here. I was a divorcee at that time. When someone asked me to be his wife I had to think deeply. Then, I finally decided to accept his proposal, because what else will I look for in life? I cannot get a job in Indonesia. It will be an ideal life for me to work here and be accompanied by a husband who also has his own income. So, we both can help each other and even help our families back in Indonesia.¹⁸

Opting for a religiously valid yet non-state-registered marriage is perceived by the parties involved as a way to ease the tension between individual and societal pressure, and between mind and body. Unfortunately, it has also led to tensions, especially with respect to children born from these *siri* marriages. These children, born to migrant workers who cannot marry and have children in Malaysia, are considered at risk of being stateless (Amnesty International 2010).¹⁹ Malaysia's

¹⁷ wao is an ngo founded in Malaysia in the early 1980s which focuses on helping women experiencing domestic violence, including migrant domestic workers (Elias 2008: 289).

¹⁸ Interview with Hafsa, Kuala Lumpur 24 December 2016.

¹⁹ unhcr (2012) defines 'stateless person' in article 1(1) of the 1954 Convention as 'a person who is not considered as a national by any State under the operation of its law.' 20 Interview with Soeharyo Tri Sasongko, Kuala Lumpur 9 November 2017.

National Registration Department mentions that one of the documents to obtain a birth registration (*sijil kelahiran*) is a marriage certificate of the parents. However, in reality, this practice can vary. According to Soeharyo Tri Sasongko, First Secretary (Consular Affairs), Embassy of the Republic of Indonesia, 'For those having unregistered marriages, we often found only the name of the mother in the *sijil kelahiran* of their children.'²⁰

According to Soeharyo, the National Registration Department issues the *sijil kelahiran* for children of both regular and irregular migrant workers. The Indonesian Embassy in Kuala Lumpur does not issue birth certificates for children of the Indonesian parents working in Malaysia, but if they encounter problems, the embassy will help them to obtain these birth certificates from Malaysia's National Registration Department. Holding birth certificates does not mean that they are granted citizenship; they retain their Indonesian citizenship. Those who do not have a valid permit to stay in Malaysia usually, however, opt for not obtaining the birth certificate for their children because they are afraid that this may put their presence in Malaysia at risk. If they are stateless, they do not have access to education and health services in Malaysia.

The Indonesian representatives in East Malaysia strive to help these children by establishing educational centers. In September 2015, there was one school in Kota Kinabalu (Sekolah Indonesia Kota Kinabalu) catering to 927 students; 69 Community Learning Centers (clc) at the primary level catering to 8,122 students; 140 clc at the secondary level catering to 3,224 students; and 134 Learning Centres (Humana)²⁰ catering to 12,583 students (Kemdikbud 2016). The presence of these schools and learning centers is related to the issue of marriage registration. These children were born from parents without marriage certificates (Ind. *buku nikah*) and hence, many of them have not been able to receive birth certificates.

Itsbat Nikah as a Remedy?

The problem of unregistered marriages has drawn the attention of the governments of both Indonesia and Malaysia as well as of employers. In some places in Malaysia, employers of Indonesian migrant workers are well aware of the popularity of unregistered marriage among their workers. Labor shortages have caused them to be permissive in responding to this phenomenon, which violates state policy. They usually prefer to have workers stay over the long term; this also pushes companies to be permissive. As the Vice Consular of the Consulate General of the Republic of Indonesia in Kota Kinabalu (Sabah), Rizali Noor, says:

²⁰ Humana Child Aid Society Sabah (hcss) is a Sabah-based ngo focusing their work on running learning centers for children living in plantations.

The needs of the companies here towards Indonesian migrant workers have made the enforcement of rules regarding marriage loose (...)

From the perspective of companies, they want to have workers who can stay here because they lack human resources. If the workers return to their home country, the companies will need to find new workers. This will be risky because from the point of view of the companies they face costs for hiring new workers.²¹

These conditions have encouraged companies to make their workers feel at home. This includes a permissive attitude toward unregistered marriage, as this is assumed a way to help their employees cope with psychological stress from their working environments. Yet, these workers also face the long-term problem of unregistered marriage, which affects the status of their family and children. In order to ease their situation, the Indonesian government has proposed offering a service of validating unregistered marriages (*itsbat nikah*).

Itsbat nikah refers to the legalisation of unregistered marriages that have been concluded at some time in the past. The Indonesian Compilation of Islamic Law Art 7 No 2 mentions that ‘In a case where marriage cannot be proved by marriage document, the “*itsbat of the nikah*” (a substitute document of marriage) can be claimed from the *Pengadilan Agama* (Islamic Court).’ There are some conditions that a couple needs to fulfill in order to be able to do so. These conditions are mentioned in Art 7 No 3:

The ‘*Itsbat Nikah*’ which can be claimed to the Islamic Court is restricted to the case of; a. a marital status for the purpose of divorce; b. loss of the marriage document; c. an ambiguity about the validation of one of the conditions in marriage; d. a marriage concluded before the issuance of Law No 1 of 1974 and; e. a marriage concluded by those who have no impediment to marriage according to Law No 1 of 1974.²²see salim and azra 2003: 281

Point “e” is quite general. Therefore, the Indonesian government categorizes the *nikah siri* of these Indonesian migrant workers under the scope of this law.²³

Still, the Indonesian government is rather ambiguous in dealing with the issue of legalizing unregistered marriages in the three Malaysian political

²¹ Telephone Interview with Rizali Noor, 4 January 2017.

²² This includes that both parties must hold the same religion. The Law No 1 of 1994 also does not recognize same-sex marriages.

²³ Interview with Anwar Saadi, Jakarta 29 June 2018.

entities—Peninsular Malaysia, Sabah, and Sarawak. There has not been a uniform policy with respect to the issue of unregistered marriages. Difficulties in dealing with Indonesian migrant workers sometimes are the result of the different status of each entity; Sabah and Sarawak already have autonomy. The next section will discuss how marital status, family, and migration have been subject to state regulations in both Indonesia and Malaysia.

Sabah and Sarawak

On 11–14 May 2011, the Consulate General of Indonesia in Kota Kinabalu held a workshop on the confirmation of marriages of Indonesian migrant workers in Sabah. This workshop aimed to provide more protection to Indonesian migrant workers. The speakers at the workshop—representatives from the Indonesian Ministry of Religious Affairs, the Indonesian Islamic Court, the Sabah Religious Department, the Sabah National Registration Department, and the Consulate General of the Republic of Indonesia in Kota Kinabalu—focused on unregistered marriages and the consequences of such marriages for women and children. This workshop was then followed up by the issuance of a decree from the Indonesian Supreme Court No.08-kma/sk/v 2011 that allowed for having a trial for marriage confirmation of unregistered marriages (*itsbat nikah*) of Indonesian migrant workers in the offices of Indonesian representations.

In 2011, the Indonesian government appointed the Islamic Court in Central Jakarta to conduct trials for *itsbat nikah* in Sabah and Sarawak. The Consulate General of Indonesia in Kota Kinabalu was the first Indonesian representation to hold *itsbat nikah*. A total of 635 couples participated in the initiative.

From 2011 to 2016, the Consulate General of Indonesia in Kota Kinabalu had organized *itsbat nikah* five times.²⁴ Following Kota Kinabalu, Indonesian representation in Tawau have also been active in organizing *itsbat nikah*. To date, Tawau have organized four *itsbat nikah*. In Sarawak, Indonesian representation in the state's capital, Kuching, have also been active in organizing *itsbat nikah*.

In each state the proceedings took place in the offices of the Indonesian representation. Many supporting local parties were present. Local

²⁴ According to the Indonesian representation in Sabah, in 2016 the number of Indonesian migrant workers staying in Sabah was approximately five thousand. The actual number could be higher because of the existence of undocumented workers (see also Allerton 2014: 3).

employers of migrant workers offered full support as part of their effort to provide workers with suitable living conditions. As Aminah, a 33-year-old worker, says, ‘We can concentrate better when we work, when we know that our marriage is registered by the government.’²⁵

Local authorities also supported the program. This is evidenced by the presence of representatives of local government during celebratory receptions after the granting of marriage certificates. For example, in September 2016, the Minister of Welfare, Women and Community Wellbeing, YB Dato Sri Fatimah Abdullah, attended a reception in Sarawak. During her speech, the minister mentioned the dilemma in dealing with *itsbat nikah* because according to the Ordinan Buruh (Ordinance of Workers) 119, these migrant workers are not allowed to marry. However, the minister stated that she considers it a humanitarian issue to provide legal protection to women and children (Kemlu 2016). The support of *itsbat nikah* from the Sabah and Sarawak government can be partially attributed to their higher degree of autonomy in comparison to other

Malaysian states, especially those in Peninsular Malaysia.²⁶

Indonesian representatives in Sabah and Sarawak also referred to humanitarian arguments to support *itsbat nikah*. Rizali, for example, explains how the Indonesian government collaborated with local authorities to facilitate the process in the name of humanitarian aid:

We often make contact with the local police department to get support from them and the immigration department, so they will not imprison immigrants without a passport on their way to *itsbat nikah*. There were many who were illegal. The response from the police and the immigration department has been positive because we emphasised that this as a humanitarian matter.²⁷

Referring to humanitarian aid, the Indonesian government does not control the legal status of participants in *itsbat nikah*, i.e., whether they are regular or irregular. The government also ensures that the procedure is straightforward in order to encourage couples to get their marriage certificates. Rizali explained the procedure for those who are interested in participating:

²⁵ Interview with Aminah, 18 December 2016.

²⁶ Their autonomy can be seen in the fact that Malaysian citizens living in West Malaysia have to carry their passport or identity card to enter East Malaysia, because they have their own immigration controls separate from West Malaysia.

²⁷ Telephone interview with Rizali Noor, 4 January 2017.

The procedure is that they need to bring their Indonesian documents, a passport, even an expired passport, Indonesian identity card, driving license, or any Indonesian legal documents they have....Again, there were actually many of them who were illegal, but we helped them.²⁸

In addition to obtaining a marriage certificate, the Indonesian representatives also issued birth certificates for the couples who have children (Lasimbang et al. 2016). By doing so, the Indonesian representatives have protected the children against the risk of being stateless.²⁹ They provided a ‘one roof’ service during the procession of *itsbat nikah*. This included reception, food catering, wedding decorations, and photography.

Many of those who opted for *itsbat nikah* had been married for many years. Hasan and Siti, for example, mentioned that they have been married since 1985. They were very positive about the role played by Indonesian representation. As Hasan said, ‘Through this whole *itsbat nikah* procession we could feel the presence of the Indonesian representation in this country.’³⁰ Unfortunately, the situation for migrant workers in Peninsular Malaysia is more difficult.

Peninsular Malaysia

According to the Indonesian representation, the enforcement of rules in Peninsular Malaysia, which consists of 11 states, is stricter than in Sabah and Sarawak. In Peninsular Malaysia there are no Community Learning Centers to educate the children of Indonesian migrant workers, and the Indonesian representations—including the Indonesian Embassy in Kuala Lumpur, the Consulate General of the Republic of Indonesia in Johor Bahru, and in Penang—are not able to organize *itsbat nikah*, as the policy of prohibiting migrant workers to marry is implemented.

This does not mean, however, that there had been no efforts made to organize *itsbat nikah*. In October 2016, for example, Indonesian representatives invited representatives of the Malaysian government, including immigration officers and the representatives of *ulama* (Muslim scholars) from Jabatan Kemajuan Islam Malaysia or jakim (Malaysia’s Department of Islamic Development) for a meeting. Unfortunately, no

²⁸ Telephone interview with Rizali Noor, 4 January 2017.

²⁹ Although, some parents living far from the city may be unable to obtain the documents (Allerton 2014: 30).

³⁰ Interview with Hasan, 21 December 2016.

consensus was reached. The *ulama* from jakim supported the Indonesian government's proposal to hold *itsbat nikah* for Indonesian migrant workers in order to prevent them from committing *zina*. However, Malaysian immigration officials did not agree.

The response from the *ulama* of jakim, which is the authority responsible for regulating, reforming, and standardizing Muslim religious affairs in Malaysia (Riddell 2001; Zook 2010), shows that there is ambiguity in dealing with unregistered marriages. Established in 1968 by the Council of Rulers as the Malaysian National Council for Islamic Affairs, jakim, as known since 1997, was meant to be a key player in the progress of Muslims and the advancement of Islamic affairs. Liow argues that jakim 'has also been relied upon to enact and standardize laws and procedures and to coordinate their implementation with the respective state religious authorities in all states across Malaysia' (2009: 49). Liow adds that jakim 'remains a vital institutional pillar of umno's³¹ objective of defining and safeguarding the parameters of Islam while strengthening the party's and the government's Islamic credentials' (2009: 52).

The support from jakim and conservative *ulama* in Malaysia reflects the position of conservative Muslims regarding religious marriages. In 2006, for example, Malaysia witnessed a lengthy discussion regarding the proposal of *perkahwinan misyar* (lit. travel marriage) by Datok Nik Abdul Aziz Nik Mat, one of the well-known *ulama* who, at the time, was also the Prime Minister of the Shariah-regulated State of Kelantan (Vignato 2012). The reason behind this proposal was the belief by some conservative *ulama* that *misyar* marriage, which exempts a husband from financial responsibility to his *misyar* wife and children, can play a significant role as 'a "solution" to the problem of the sexual urgency of unmarried adult women, as well as a cheaper way for a young working class men to get married' (Vignato 2012: 246). The opposition from many progressive Muslims, however, resulted in the proposal being dropped and, to date, *misyar* marriage in Malaysia is not allowed (Vignato 2012).

As the pressure by Indonesian migrant workers has intensified, asking for the same treatment as their peers living in Sabah and Sarawak who can conduct *itsbat nikah*, the Indonesian embassy tries to take this into consideration. Judha says:

³¹ umno or United Malays National Organisation is the largest nationalist political party in Malaysia, which leads the Barisan Nasional, the ruling coalition that has dominated Malaysian politics since independence.

We could try to ignore the rule here because this happens in our ‘territory’, and *itsbat nikah* is also legal under our national law. But, one thing, our relationship with Malaysia is not only for one day.³²

Judha also emphasized that organizing *itsbat nikah* can send the wrong signal to Indonesian migrant workers. He adds:

If we have *itsbat nikah* every year, this is a deviation from the main law. Every policy has its consequences. Therefore, we need to weight its consequences. If we have *itsbat nikah* every year, then we are sending a wrong signal. As if we tell them ‘you can have *siri* marriages in Malaysia, because then you can always have *itsbat nikah*.’ This is dangerous!³³

Hence, facing the demands for *itsbat nikah* in Peninsular Malaysia, the Indonesian embassy uses the language of education. They try to educate migrant workers to respect local policies and highlight that Indonesian law also requires the registration of marriage. The embassy wants to emphasize that *itsbat nikah* is only an ‘emergency way out’ for those facing the conditions mentioned in Art 7 No 3 of The Compilation of Islamic Law.

In the meantime, the inability to have a marriage certificate and hence a birth certificate for their children has not resulted in a reduction in the number of those practicing unregistered marriage. The historical presence of migrant workers in Malaysia has led workers to become more ‘creative’ when trying to negotiate their needs. Fuadz, who has been living in Malaysia since 1998, recounted his story:

I had a *nikah siri* in 2004. My wife is also from Indonesia, working as a cleaner here. I have a marriage certificate. Our friends here are very good at making fake marriage certificates.³⁴

Fuadz’s story is shared by other migrant workers, who usually have to experience a time lapse between their *nikah siri*, their ability to register their marriage in Indonesia, and getting birth certificates for their children. Many workers are aware of the existence of an underground business for the production of fake marriage certificates. These fake marriage certificates are part of a well-established business of fake document production that permeates the life of Indonesian migrant workers in Malaysia (see Sadiq 2009). In addition, the workers also believe that no

³² Interview with Judha Nugraha, Kuala Lumpur 9 July 2016.

³³ Interview with Judha Nugraha, Kuala Lumpur 9 July 2016.

³⁴ Interview with Fuadz, 17 December 2016.

matter what happens in Malaysia, a solution can be found in Indonesia. Mahfudz says:

Those who have *siri* marriages, if their wives are pregnant, usually the wives will go home. If the wives cannot go home, then they will give birth here, and usually when the children reach the age of 3 or 4, they will bring them back to Indonesia.³⁵

This kind of trajectory can commonly be found in the life arrangements of migrant workers staying in Peninsular Malaysia, as they cannot send their children to normal schools nor cles. Workers who send their children to Indonesia are generally able to obtain birth certificates for their children, which they can then use to enroll their children in schools in Indonesia. The weak bureaucratic apparatus, including the high level of corruption at the local level in some Indonesian villages, has allowed migrant workers to believe that there will always be a way to solve the problems relating to unregistered marriage, in particular through bribery. Some workers who do not want to follow the procedure of *itsbat nikah* through the Islamic court simply marry again in Indonesia to obtain a marriage certificate, while others use fake marriage certificates to obtain birth certificates for their children.

To End With

Whereas the presence of Indonesian migrant workers has been central to the development of the Malaysian economy, these migrants face major constraints due to the prohibition of marriage and family reunification. In order to solve the tensions between their desire to engage in intimate sexual relations, to stay within the limits of what is religiously licit, and to avoid the censure of their social environment, they opt for concluding a non-state-registered marriage, a *nikah sirri*. As both local Malaysian and Indonesian migrant workers consider these marriages as religiously sanctioned, this enables them to navigate the constraints imposed on a migrant worker community that is expected to stay only temporarily in Malaysia.

In their study on marriage migration in Malaysia, Leng and Yeoh (2012) point to the gap between state ideology and the practices of migrants who opt for non-state-registered marriages with Malaysian nationals. Turning to unregistered marriage among Indonesian migrant workers, there is another gap evident, that is within state bodies and religious and political

³⁵ Interview with Mahfudz Tejani, Kuala Lumpur 11 July 2016.

elites. Those who oppose this practice use various lines of argumentation. The Indonesian representations in Peninsular Malaysia highlight the importance of educating migrant workers about the need to respect Malaysian policies. The Malaysian immigration regime uses the language of preventing the permanent settlement of these unskilled and semi-skilled migrant workers. Those who condone the conclusion of unregistered marriages, that is, the Malaysian national and local *ulama* councils as well as Indonesian representations in Sabah and Sarawak—have been using religious arguments and a humanitarian rhetoric. In other words, discussions about unregistered marriage among migrant workers go beyond questions about their legality and Islamic validity.

The couples concerned often use the language of religion to express their motivation to enter into an unregistered marriage, as by doing so they avoid committing the sin of *zina*, while they also point to the need to avoid shame. This tends to be more strongly felt by women than men, as in particular for women, shame is related to ‘sexual immorality.’ In spite of the fact that women are often considered more vulnerable in unregistered marriages, their opting for such marriages and having children within such a framework points to how they themselves attempt to navigate the constraints imposed upon them.

One main risk involved in unregistered marriages is that of the statelessness of the children. Indonesian representatives in Sabah and Sarawak have attempted to prevent the children from being stateless, have enabled access to birth certificates for those whose parents have registered unregistered marriage through *itsbat nikah*, and have tried to mitigate the effects by providing education. The Indonesian Embassy in Kuala Lumpur, however, approaches this problem differently. They do not issue birth certificates, but they help Indonesian migrant workers to obtain birth certificates for their children from Malaysia’s National Registration Department. However, some irregular migrant workers in Peninsular Malaysia, who are afraid of dealing with any kind of paperwork and are usually well aware of the risk of statelessness, try to find a remedy by sending their children to Indonesia to gain rights as citizens—including the right to hold birth certificates and receive a proper education, or they attempt to acquire fake documents.

The occurrence of unregistered marriages among Indonesian migrant workers in Malaysia points to the continuing presence of religiously valid marriages that are not registered by state authorities in Muslim majority countries. Whereas these may cause serious problems for those involved, at the same time, the ambiguous position of religious-only marriages in Malaysian Islamic Family law statutes, the pressure from conservative *ulama* to validate such marriages, and humanitarian concerns among ngos

and Indonesian representatives point to attempts to find practical solutions to these problems.

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References

- Allerton, Catherine (2014). Stateless and the lives of the children of migrants in Sabah, East Malaysia. *Tilburg Law Review: Journal of International and European Law*, 19(12): 26–34. doi:10.1163/22112596-01902004.
- Amnesty International (2010). *Trapped: The Exploitation of Migrant Workers in Malaysia*. London: Amnesty International Publications.
- bnp2tki (2017). *Data Penempatan dan Perlindungan tki: Periode Bulan Februari Tahun 2017*. Jakarta Selatan: Pusat Penelitian Pengembangan dan Informasi. Available at: [http://www.bnp2tki.go.id/uploads/data/data_10-03-2017_092059_Laporan_Pengolahan_Data_BNP2TKI_2017_\(FEBRUARI\)_1.pdf](http://www.bnp2tki.go.id/uploads/data/data_10-03-2017_092059_Laporan_Pengolahan_Data_BNP2TKI_2017_(FEBRUARI)_1.pdf).
- Collins, Elizabeth and Ernaldi Bahar (2000). To know shame: *Malu* and its uses in Malay society. *Crossroads: An Interdisciplinary Journal of Southeast Asian Studies*, 14(1): 35–69.
- Devadason, Evelyn Shyamala and Chan Wai Meng (2014). Policies and laws regulating migrant workers in Malaysia: A critical appraisal. *Journal of Contemporary Asia*, 44(1): 19–35. doi:10.1080/00472336.2013.826420.
- Duvell, Franck, Anna Triandafyllidou, and Bastian Vollmer (2008). *Ethical Issues in Irregular Migration Research*. Available at: http://irregular-migration.net/typo3_upload/groups/31/4.Background_Information/4.1.Methodology/EthicalIssuesIrregularMigration_Clandestino_Report_Nov09.pdf.
- Elias, Juanita (2008). Struggles over the rights of foreign domestic workers in Malaysia: The possibilities and limitations of “rights talk.” *Economy and Society*, 37(2): 282–303.
- Elias, Juanita (2013). Foreign policy and the domestic worker. *International Feminist Journal of Politics*, 15(3): 391–410. doi:10.1080/03085140801933330.

- Ford, Michele (2006). After Nunukan: The regulation of Indonesian migration to Malaysia. In Kaur, A. and I. Metcalfe (eds.), *Mobility, Labour Migration and Border Controls in Asia*, pp. 228–247. New York: Palgrave Macmillan.
- Gurowitz, Amy (2000). Migrant rights and activism in Malaysia: Opportunities and constraints. *Journal of Asian Studies*, 59(4): 863–888. doi:10.2307/2659215.
- Hugo, Graeme (1995). International labor migration and the family: Some observations from Indonesia. *Asian and Pacific Migration Journal*, 4(2-3): 273–301.
- Hugo, Graeme (2009). Best practice in temporary labour migration for development: A perspective from Asia and the Pacific. *International Migration*, 47(5): 23–74. doi:10.1111/j.1468-2435.2009.00576.x.
- ifla (2006). *Islamic Family Law (Federal Territories) act 1984: Incorporating all Amendments up to 1 January 2006*. Kuala Lumpur: The Commissioner of Law Revision in Collaboration with Percetakan Nasional Malaysia Bhd.
- Jones, Sidney (2000). *Making Money off Migrants: The Indonesian Exodus to Malaysia*. Hong Kong: Asia and the Centre for Asia Pacific Transformation Studies, University of Wollongong.
- Kaur, Amarjit (2005). Indonesian migrant labour in Malaysia: From preferred migrants to “last to be hired” workers. *Review of Indonesian and Malaysian Affairs*, 39(2): 3–30.
- Kaur, Amarjit (2014). Managing labour migration in Malaysia: Guest worker programs and the regularisation of irregular labour migrants as a policy instrument. *Asian Studies Review*, 38(3): 345–366. doi:10.1080/10357823.2014.934659.
- Kemdikbud (2016). Tuntaskan pendidikan bagi anak tki, 115 guru Indonesia dikirimkan. *Kementerian Pendidikan dan Kebudayaan*, September 26. Available at: <https://www.kemdikbud.go.id/main/blog/2016/09/tuntaskan-pendidikan-bagi-anak-tki-115-guru-indonesia-dikirimkan>.
- Kemlu (2016). 191 pasangan wni sertai sidang itsbat nikah di kjri Kuching. *Konsulat Jenderal Republik Indonesia*, October 12. Available at: <http://www.kemlu.go.id/kuching/id/berita-agenda/berita-perwakilan/Pages/191-pasangan-WNI-sertai-Sidang-Itsbat-Nikah-di-KJRI-Kuching.aspx>.
- Killias, Olivia (2010). “Illegal” migration as resistance: Legality, morality and coercion in Indonesian domestic worker migration to Malaysia. *Asian Journal of Social Science*, 38(6): 897–914. doi:10.1163/156853110X53079.
- Lasimbang, Helen Benedict, Wen Ting Tong, and Wah Yun Low (2016). Migrant workers in Sabah, East Malaysia: The importance of legislation and policy to upheld equity on sexual and reproductive health and rights (srhr). *Best Practice & Research Clinical Obstetrics & Gynaecology*, 32: 113–123. doi:10.1016/j.bpobgyn.2015.08.015.

- Leng, Chee Heng and Brenda S.A. Yeoh (2012). Circuitous pathways: Marriage as a route toward (il)legality for Indonesian migrant workers in Malaysia. *Asian and Pacific Migration Journal*, 21(3): 317–344.
- Liow, Joseph Chinyong (2009). *Piety and Politics: Islamism in Contemporary Malaysia*. Oxford: Oxford University Press.
- Malaysian Employers Federation (2014). Practical Guidelines for Employers on the Recruitment, Placement, Employment and Repatriation of Foreign Workers in Malaysia. Available at: http://www.mef.org.my/Attachments/MEFReport_PGER PERFWM.pdf.
- McKay, Deidre (2003). Filipinas in Canada: De-skilling as a push toward marriage. In Piper, Nicola and Mina Roces (eds.), *Wife or Worker? Asian Women and Migration*, pp. 23–51. Lanham, MD: Rowman and Littlefield Publishers.
- Mernissi, Fatima (1987). *Beyond the Veil: Male-Female Dynamics in Modern Muslim Society*. Bloomington and Indianapolis, IN: Indiana University Press.
- Mix, Prapairat R. and Nicola Piper (2003). Does marriage “liberate” women from sex work? Thai women in Germany. In Piper, Nicola and Mina Roces (eds.), *Wife or Worker? Asian Women and Migration*, pp. 53–71. Lanham, MD: Rowman and Littlefield Publishers.
- Piper, Nicola and Mina Roces (Eds.) (2003). *Wife or Worker? Asian Women and Migration*. Lanham, MD: Rowman and Littlefield Publishers.
- Riddell, Peter G. (2001). *Islam and the Malay-Indonesian World: Transmission and Responses*. Honolulu: University of Hawai’i Press.
- Sadiq, Kamal (2009). *Paper Citizens: How Illegal Immigrants Acquire Citizenship in Developing Countries*. Oxford: Oxford University Press.
- Salim, Arskal and Azyumardi Azra (Eds.) (2003). *Shari’ah and Politics in Modern Indonesia*. Singapore: ISEAS.
- Silvey, Rachel (2006). Consuming the transnational family: Indonesian migrant domestic workers to Saudi Arabia. *Global Networks*, 6(1): 23–40. doi:10.1111/j.1471-0374.2006.00131.x.
- un High Commissioner for Refugees (unhcr) (2012). Guidelines on Statelessness No. 1: The definition of “Stateless Person” in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons, 20 February 2012, hcr/gs/12/01. Available at: <http://www.refworld.org/docid/4f4371b82.html> [accessed 2 October 2017].
- Unicef (2015). *Mapping Alternative Learning Approaches, Programmes and Stakeholders in Malaysia*. Kuala Lumpur: UNICEF Malaysia.
- Vignato, Silvia (2012). “Men come in, men go out”: Single Muslim women in Malaysia and Aceh. *Journal for the Study of Race, Nation and Culture*, 18(2): 239–257. doi: 10.1080/13504630.2012.652847.
- Wikan, Unni (1984). Shame and honour: A contestable pair. *Man: New Series*, 19(4): 635–652. doi:10.2307/2802330.
- Wong, Diana (2006). The recruitment of foreign labour in Malaysia: From migration system to guest worker regime. In Kaur, Amarjit and Ian Metcalfe

- (eds.), *Mobility, Labour Migration and Border Controls in Asia*, pp. 213–227. New York: Palgrave Macmillan.
- Wong, Diana and Arfan Aziz (2011). Dwelling in transience: *Kyai, pesantren*, and the circulation of piety among Indonesian migrants in Malaysia. *Kontekstualita*, 26(1): 21–38.
- Wong, Diana, T. Afrizal, and Teuku Anwar (2003). Migran gelap: Irregular migrants in Malaysia's shadow economy. In Batistella, G. and M.B. Asis (eds.), *Unauthorized Migration in Southeast Asia*, pp. 169–227. Manila: Scalabrini Migration Center.
- Zook, Darren C. (2010). Making space for Islam: Religion, science, and politics in contemporary Malaysia. *The Journal of Asian Studies*, 69(4): 1143–1166. doi:10.1017/S0021911810002925.
- Zuhur, Sherifa (2009). Sexuality. In Esposito, John L. (ed.), *Oxford Islamic Studies Online*. Available at: http://www.oxfordislamicstudies.com/article/opr/t236MIW/e0718?_hi=1&_pos=2 [accessed 4 October 2017].