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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

AN ANALYSIS OF THE CURRENT LEGAL
MECHANISM IN CURBING ABUSE OF
POLYGAMY IN MALAYSIA: A SOCIO-
LEGAL PERSPECTIVE

BY

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INTERNATIONAL ISLAMIC UNIVERSITY
MALAYSIA

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ABSTRACT

The objective of this thesis is to analyse the relationship between the law and the practical implementation by the *Shari`ah* courts in relation to polygamy in Malaysia. This study examines the current legal mechanism in curbing abuse of polygamy in Malaysia. In this respect, this study details many cases where Muslim husbands did not follow the law when contracting a polygamous union.

In order to analyse the current legal mechanism in curbing abuse of polygamy in Malaysia, this study has employed a content analysis technique. This technique provides insight on how the provisions in relation to polygamy have been implemented by the *Shari`ah* courts. A total of 974 polygamy application files and 433 files on offences for polygamy without the consent from the court from thirteen (13) selected *Shari`ah* courts were analysed. All the information within these two sample files proved very revealing because it provided valuable information as to how the law was being implemented. Two types of structured survey forms have been used in order to make optimum analysis of this valuable information. Data from both types of court files were analysed in the form of percentages by way of frequency table and cross-tabulation.

This study shows that the provisions in relation to polygamy and its implementation are inadequate in curbing abuse in polygamy. Besides that, this study also identifies measures in terms of positive efforts in legal reform to improve the current situation. The results of this study show the importance of the court's role in determining who may practice polygamy, while at the same time, the court needs to become more active in preventing abuse in polygamous marriages.

ملخص البحث

تهدف هذه الدراسة إلى تحليل العلاقة بين قانون الأحوال الشخصية وتطبيقه في المحاكم الشرعية وعلاقتها بقضية تعدد الزوجات في ماليزيا. تفحص هذه الدراسة الوسائل القانونية المعاصرة في دفع التعسف (سوء المعاملة) لتعدد الزوجات في ماليزيا. والدافع لإجراء هذه الدراسة يقوم على أساس أن طلب الإذن في تطبيق تعدد الزوجات قد أدى إلى التعسف لدى كثير من الأزواج. وقد استخدمت الباحثة منهج تحليل المحتوى لتحليل الوسيلة القانونية المعاصرة لدفع التعسف في قضية تعدد الزوجات. هذا المنهج يعطى فهماً عميقاً عن كيفية تطبيق النصوص القانونية المتعلقة بتعدد الزوجات في المحاكم الشرعية. وتشمل عينة هذه الدراسة 974 ملفاً من الملفات التي لها علاقة بطلب الإذن لتعدد الزوجات 433 ملفاً من هذه الملفات لم يكن التعدد بعد أخذ الإذن من المحكمة. وقد أخذت هذه الملفات من ثلاثة عشر محكمة شرعية. أن كل المعلومات الموجودة في كل من الملفات المذكورة لها أهميتها الخاصة. وذلك لأنها تشير إلى كيفية تطبيق القانون. استخدمت الباحثة في تصميم الدراسة على أداتين يجمع المعلومات بصورة مسحية من الملفات المذكورة. وقامت الباحثة بتحليل محتوى لكل نوع من الملفات لإيجاد النسبة المثوية والتوزيع التكراري وارتباط التقاطع. وكشفت الدراسة عن أن النصوص القانونية لتعدد الزوجات وتطبيقها لا تكفي لدفع التعسف في قضية تعدد الزوجات. إضافة إلى ذلك، اتضح من الدراسة وجود جهد إيجابي نحو تطبيق أفضل للوضع الحالي، ودلت الدراسة على أهمية ودور المحكمة في تحديد الأزواج الذين تتوافر فيهم شروط تعدد الزوجات. وفي نفس الوقت لا بد للمحكمة أن تلعب دورها الإيجابي لدفع التعسف في هذه القضية.

APPROVAL PAGE

The thesis of Raihanah binti Abdullah has been examined and approved by the following:

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Chairman

DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

Raihanah Binti Abdullah

Signature

Date.....

INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA

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PERSPECTIVE**

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MSGB 9/99
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MSGB 6/00
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Ipoh Shari`ah Court (MSI)

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MSI 005/99
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Year 2001

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MSKM 94/01
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Year 2002

MSKM 19/02
MSKM 65/02
MSKM 66/02
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Kota Bharu *Shari`ah* Court (MSKB)

Year 1998

MSKB 10/98
MSKB 11/98
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MSKB 17/98
MSKB 18/98
MSKB 33/98

Year 2000

MSKB 8/00

Year 2001

MSKB 31/01
MSKB 41/01
MSKB 38/02

Pasir Mas *Shari`ah* Court (MSPM)

Year 1998

JMSPM 190/98
JMSPM 202/98
JMSPM 222/98

Year 1999

MSPM 13/99
MSPM 67/99
MSPM 71/99

Year 2000

MSPM 11/00
JMSPM 29/00

Kuala Terengganu *Shari`ah* Court (MSKT)

Year 1998

MSKT 3/98
MSKT 62/98
MSKT 72/98

Year 1999

MSKT 12/99

Year 2000

MSKT 4/00
MSKT 15/00
MSKT 83/00
MSKT 84/00

Year 2001

MSKT 15/01
MSKT 31/01
MSKT 33/01

Year 2002

MSKT 6/02
MSKT 21/02
MSKT 22/02

Marang *Shari`ah* Court (MSM)

Year 1998

MSM 91-015-1-98
MSM 2/98
MSM 91-015-3-98
MSM 5/98
MSM 4/98
MSM 6/98
MSM 9/98

Year 1999

MSM 2/99
MSM 3/99
MSM 4/99

MSM 9/99

Year 2000

MSM 2/00
MSM 3/00
MSM 4/00
MSM 5/00
MSM 4/00
MSM 7/00
MSM 12/00
MSM 15/00
MSM 21/00
MSM 15/00
MSM 16/00
MSM 19/00
MSM 20/00
MSM 22/00
MSM 23/00
MSM 24/00
MSM 26/00
MSM 27/00
MSM 28/00
MSM 29/00
MSM 30/00
MSM 31/00
MSM 71/00

Year 2001

MSM 1/01
MSM 2/01
MSM 3/01
MSM 7/01
MSM 8/01
MSM 11/01

Year 2002

MSM 5/02
MSM 12/02
MSM 13/02
MSM 11/02
MSM 14/02
MSM 19/02
MSM 20/02
MSM 22/02