

***Forum Non Conveniens* in the *Syariah* Court of Malaysia**

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ABSTRACT

Syariah Court is territorial in nature. Matters that are heard in the *Syariah* Court are mostly matrimonial-related issues, albeit there are also property issues that have nothing to do with matrimonial claims for example *hibah*, *waqaf* and *faraid*. Incoming international parental child abduction is not considered within the *Syariah* Court purview. Nevertheless, there is a provision in the Islamic family law for instance under section 105 of the Islamic Family Law (Federal Territory) Act 1984 (Act 303) which gives power to the *Syariah* Court to restrain the taking of a child who is under the lawful custody of a person out of Malaysia, failure of which shall be punishable and subject to contempt of court but this provision would not be applicable to children abducted from abroad to Malaysia by their own parent (incoming abduction). Since parental child abduction is initiated from disputes arising out of matrimonial matters, it is suggested that the *Syariah* Court be at liberty to hear matters related to international parental child abduction. This paper examines the application of *forum non conveniens* in disputes concerning the international parental child abduction if occurs within the *Syariah* Court's jurisdiction. This paper proposed that the *Syariah* Court should take a step forward to adopt the doctrine of *forum non conveniens* in deciding child custody disputes that involve foreign elements.

Keywords: International Parental Child Abduction, *Syariah* Court, Malaysia, *Forum Non- Conveniens*, Foreign Custody Order

INTRODUCTION

Malaysia has two parallel legal systems to govern matrimonial matters, namely, the Civil and the *Syariah* Courts. Generally, jurisdiction on child custody applications for civil marriages lies within the Civil High Courts and for Muslims within the *Syariah* Courts. The *Syariah* Court is territorial in nature as its jurisdiction is within the powers of the states, not the Federal Government. As a result, the *Syariah* Court decision in one state is not enforceable in another unless an application for a reciprocal order is made to the court. This has caused problem to the enforcement of custody orders obtained from the *Syariah* Court. In lieu of this, the government has set up the Family Support Division to help

enforce *Syariah* Court orders and judgments related to family matters including maintenance and child custody at any proceeding stages. The Division was launched on the 30th October 2008 by the then Minister in the Prime Minister's Department, Datuk Seri Dr Ahmad Zahid Hamidi who said that Malaysia was the first Islamic country to make such a move. *Syariah* Court has also initiated alternative dispute resolution (ADR) by introducing '*sulh*' (mediation) for matrimonial disputes including custody (Abdul Hak, 2008). The provisions on *sulh* can be found in the *Syariah* Court Civil Procedure for example the Federal Territories *Syariah* Court Civil Procedure (*Sulh*) Rules 2004. However, as mediation is voluntary, parties may forward actions further to court for determination.

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Mediation particularly involving the international parental child abduction cases should be encouraged. However if the disputes could not be resolved and proceeded in court, the jurisdiction of the court may be challenged by one party, refusing jurisdiction of the court thus '*forum non conveniens*' may apply if the court accepted the argument tendered on such ground.

'*Forum Non Conveniens*' is a doctrine where the basic principle states that it is applicable if 'the court is satisfied that there is some other forum, having competent jurisdiction, which is the appropriate forum for the trial of the action...' (*Spiliada Maritime Corporation v Cansulex Limited* [1987] AC 460, per Lord Goff of Chieveley, 476). It is 'to identify the court in which the case can be most suitably tried for the interests of the parties and the ends of justice' (Clarkson & Hill, 2005). *Forum non conveniens* is derived from commercial disputes and equally applicable in family cases as held by the House of Lords in *De Dampierre v De Dampierre* [1987] 2 WLR 1006 and in Malaysia is applied in the case of *Herbert Thomas Small v Elizabeth Mary Small (Kerajaan Malaysia & Anor, interveners)*, [2004] 2 CLJ 541. In *Herbert Thomas Small v Elizabeth Mary Small (Kerajaan Malaysia & Anor, interveners)* the court held that Australia is the forum with the most real and substantial connections involving Australian citizens and an Australian child who has no real and substantial connection with Malaysia, and that accordingly the Australian court would be the more appropriate or natural forum to hear the matter, being distinctly more suitable for the ends of justice than the Malaysian court.

The determining factors for applying *forum non conveniens* 'is described as legion' (Lowe *et al.*, 2004) and includes 'the child's welfare, habitual residence of the child, efficiency, expedition and economy of the proceedings, availability and cost of legal representation and legal aid, availability of witnesses and cost of travel, ability of court to ascertain wishes and feelings of the child and independent reporting facilities' (Lowe *et al.*, 2004).

Essentially, the doctrine involves a two-stage test. The burden of proof is on the defendant to

show that there is another forum which is clearly or distinctly more appropriate. Regard must be had to the connecting factors which point to one forum that has the most real and substantial connections. If this is established, jurisdiction will stay or be declined unless (and this is the second stage) the plaintiff can demonstrate that justice could not be obtained in another jurisdiction (Clarkson & Hill, 2005).

OBJECTIVE

The objective of this study was to examine the application of the doctrine of *forum non conveniens* in the *Syariah* Court particularly in cases of incoming international parental child abductions to ensure swift return of the abducted children to the other foreign countries. Incoming abduction in this paper refers to the abduction of a child from abroad to Malaysia. For ease of reference, this article will look at the legal provisions applicable in the Federal Territories of Malaysia.

BEST INTERESTS OF THE CHILD IN THE SYARIAH COURT

In any matters pertaining to children, the best interests of the child is of paramount consideration. Best interests of the child is the doctrine used by most courts to determine a wide range of issues related to the general well-being of children and all aspects of his upbringing, religious, moral as well as physical, and is not to be measured in monetary terms (*In Re McGrath* [1893] 1 Ch 143 per Lindley LJ, 148). As to what is in the best interests of the child, Justice Lord Mac Dermott in *J & Anor. v. C & Ors* [1970] AC 668 at pages 710-711 held that:

We think that it connotes a process whereby, when all the relevant facts, relationships, claims and wishes of the parents, risks, choices and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the interests of the children's welfare as that term

has now to be understood. That is the first consideration because it is of first importance and the paramount consideration because it rules upon or determines the course to be followed.

In *Mahabir Prasad v Mahabir Prasad* [1982] 24 MLJ 283, the Federal Court held that the welfare of the child concerned as the first and paramount consideration. The court further held that in order to decide on the question of the welfare of an infant as of paramount importance it is necessary to take into account such matter as the conduct of the parties, their financial and social status, the sex and age of the child, his wishes as far as they can be ascertained depending on the age of the child, the confidential reports which a social welfare officer may put up and whether in the long run it would be in the greater interest, welfare and happiness of the child to be with one parent rather than with the other. In short, there are various relevant factors taken into consideration before the court decides on any child-custody issue but most importantly the best interests of the child will be the paramount consideration.

According to Ahmad Ibrahim (1977), "Under the Mohammedan law certain rules have been laid down regarding the custody of infants...it would be seen that even under the Muslim Law the general principle that governs the custody of infants is the welfare of the infants." Thus, the principle of the best interests of the child is equally applicable in the *Syariah* Court.

The *Syariah* Court is also bound by statute to apply the best interests of the child in custody disputes (Mohd Zin, 2005). The family provisions pertaining to custody, applicable to Muslims as in the Federal Territories is the Islamic Family Law Act (Federal Territory) 1984 (Act 303) and the provision that *Syariah* Court must apply the best interests of the child is section 86 of Act 303. This provision is *pari materia* (similar) to the Law Reform (Marriage and Divorce) Act 1976 (Act 164) for custody applications in the Civil Courts. Notwithstanding the rebuttable presumption that a child is best to

be with the mother, the court nevertheless may at any time make an order of custody to a more qualified person with the objects which include child welfare. The court while having the power to decide the change of custody, shall regard the undesirability of disturbing the life of the child and where there are more than one child of the marriage, the court shall consider the welfare of the child independently. The court may also if necessary make an interim order to place the child in the custody of any person or institution or association enforceable until it makes an order of custody. The court may also impose conditions to the custody order which shall entitle the custodian to decide on matters related to the upbringing and education of the child. Accordingly an order for custody may include the child living place, education, temporary care and control of the child by those other than the person given the custody, provide for the child to visit a parent deprived of custody, access rights and prohibition to take the child out of Malaysia.

FOREIGN CUSTODY ORDER IN THE SYARIAH COURT

There is no specific statutory provision related to jurisdiction of the *Syariah* Courts in matters concerning Muslims from abroad for recognition of foreign custody orders except for section 108 of Act 303, which deals with recognition of marriages from abroad. There is also no express provision in the *Syariah* Court Civil Procedure (Federal Territories) Act 1998 (Act 585) related to foreign orders obtained from abroad and vice versa.

As there is no case-law or legal provision on recognition of foreign custody orders in the *Syariah* Court, the analogy that could be drawn is by looking at a closely related case of a custody dispute involving foreign elements. The only relevant reported case is the case of *Norlela Mohamad Habibullah v Yusuf Maldoner* [2004] 2 CLJ 541. In this case, the court decided that Muslims marriages in foreign countries that are not registered in Malaysia do not fall under the *Syariah* Court jurisdiction. The court in *Norlela* was of the view that there was no express

provision and relied on section 6(2)(b)(x) of the Administration of Islamic Law (Federal Territories) Act 1993 (Act 505). In this case, the father, a foreigner, kidnapped the child and took her out of Malaysia. In a desperate effort, the mother applied for a custody order from the Civil High Court and obtained a custody order of the child. The father applied to set aside the order. The issue raised by the father was whether the Civil High Court had jurisdiction to hear the application for guardianship of the child since both parties professed the religion of Islam.

The court applied the 'remedy approach' and granted legal guardianship, custody, care and control of the child to the mother. The father was ordered to return the child to the mother. The court further said that since the *Syariah* Court does not have inherent jurisdiction on the issue, there was no specific section which the applicant could resort to in the *Syariah* Court to get the child back.

One of the reasons the court has decided that the *Syariah* Court will not have jurisdiction is because the issue is not merely on custody or guardianship, but also the abduction of the child from her residence, which may be one that 'hinged on criminal actions.' The court opined that the *Syariah* Court had no jurisdiction to hear a criminal matter of this sort. This contention is open for debate as to the nature of parental child abduction: is it a criminal offence or a civil liability? Looking at the Child Act and Penal Code of Malaysia, parental child abduction is also an offence chargeable in court. Therefore the judgment in *Norlela* does have some basis. The criminal jurisdiction of the *Syariah* Court is limited. A parental child abduction is a case related to custody which issues are within the jurisdiction of the *Syariah* Court.

The case of *Norlela* decided that jurisdiction in custody matters related to parental child abduction, lies within the Civil Court even when the parties were Muslims. The court in *Norlela* was of the view that there was no express provision in the *Syariah* legislation and relied on section 6(2)(b)(x) Act 505. On this point, it is submitted that the court was wrong to rely on that section as it was only a general

provision. A more related and specific provision is section 46(2) (b) (iii) of Act 505 on custody applications, read together with section 4 of Act 303 and not section 46(2) (b) (x) of Act 505. Section 46(2)(b)(x) of Act 505 states that the *Syariah* Court shall have jurisdiction in other matters conferred by any written law whereas section 46(2)(b)(iii) of Act 505 deals with guardianship or custody of infants.

One of the requirements to have a *locus* in the *Syariah* Court is that one of the parties must be a resident within the locality of that *Syariah* Court. If the applicant is a resident of Penang, within the meaning of the provision, only then the *Syariah* Court in Penang has the jurisdiction to determine the issue of custody. The word 'resident' is defined in section 2 of Act 303 as 'permanently or ordinarily living in a particular area'.

In *Azizah Bte Shaik Ismail & Anor v Fatimah Bte Shaik Ismail & Anor* [2004] 2 MLJ 529 and *Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor* [2007] 5 MLJ 101, the Federal Court held that the jurisdiction on custody disputes where both parties are Muslims lies within the *Syariah* Court even when there is no statutory provision based on Article 121(1A) of the Federal Constitution. These decisions of the Federal Court affirmed that the 'subject matter approach' is to be applied when questioning the conflict of jurisdiction between the *Syariah* Court and the Civil Court when there is no express statutory provision related to the jurisdiction of the *Syariah* Court. It was therefore established by the civil apex court that the *Syariah* Court shall have jurisdiction on any matters within its jurisdiction even when there is no express provision in the statute provided that the parties are Muslims.

Norlela has added confusion to the conflict issue in the *Syariah* Court jurisdiction. However, this could be resolved as the current approach adopted by the apex court in matters concerning jurisdiction of the *Syariah* Court is to apply the 'subject matter approach'. *Norlela* is only persuasive. The decision is not binding as the High Court is the court of first instance. Considering the decision in the apex court, it

is suggested that matters concerning the issue of custody including foreign custody orders are within the jurisdiction of the *Syariah* Courts provided the parties are Muslims. This means the general rule is that when the parties are Muslims, the *Syariah* Court shall have the jurisdiction but not if one of the parties is a non-Muslim, even if the subject matter falls within its jurisdiction as decided in the Federal Court decisions of *Azizah Bte Shaik Ismail & Anor v Fatimah Bte Shaik Ismail & Anor* [2004] 2 MLJ 529 and *Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor* [2007] 5 MLJ 101, as mentioned above.

Based on the above discussion and by acknowledging the fact that parental child abduction arises from a custody dispute, the *Syariah* Court should have jurisdiction if the 'subject matter' approach is to be followed to hear foreign custody applications where the parties are Muslims.

INTERNATIONAL PARENTAL CHILD ABDUCTION AND THE SYARIAH COURT

Having discussed the issue of which court shall have jurisdiction, it is therefore relevant to visualize how the *Syariah* Court would handle foreign custody orders and parental child abduction cases. Since *Syariah* Court is parallel to the civil Courts, its decisions are independent and the decisions of the Civil Court are not binding in the *Syariah* Courts. As such, the approach in the *Syariah* Court may be different from that adopted in the Civil Court as the issue is always about conformity of Islamic law.

As *Syariah* Court is territorial in nature, there is a provision in the states' legislation that the jurisdiction of the *Syariah* Court is only applicable to persons 'resident' in the respective state. For example Act 303 provides that the *Syariah* statute is applicable "to all Muslims living in the Federal Territory and to all Muslims resident in the Federal Territory who are living outside the Federal Territory." This means the *Syariah* Court will refuse jurisdiction on any dispute concerning a person not a resident

within its local jurisdiction. The 'resident' provision gives *Syariah* Court the power to refuse jurisdiction. One of the parents must be a resident within a particular state to enable jurisdiction in the custody dispute of that state. Habitual residence of the child or the question of the most real and substantial connections to the child is not the basis for refusal of jurisdiction as applied in the Civil Court. However the end result is similar to that of the Civil Courts as the *Syariah* courts will not determine the issue of custody for lack of jurisdiction.

There may be a possibility for the *Syariah* Courts to handle international parental child abduction cases in the future, based on various efforts including harmonization of the law and upgrading of infrastructure and resources. The question then arises whether the *Syariah* Court in Malaysia would apply *forum non conveniens* and order a swift return of the child. The answer to this question would well depend on which country the child would be returned to and how the courts of that country would apply the best interests of the child test.

Islamic law determines the best interests of a child rather differently from the non-Islamic Western countries. The differences include the upbringing of a child which is divided into 3 categories: the guardianship of the infant, the education and wealth of the child and the upbringing of the infant by the mother subject to some exceptions (Arshad, 2007). There are instances that custody is given to another qualified person as the welfare of the child is always the paramount consideration in child custody disputes in the *Syariah* Courts of Malaysia. In the cases of *Nooranita bt Kamaruddin v Faeiz b Yeop Ahmad*, [1990] 7 Jurnal Hukum (JH) (1) 52 and *Wan Abdul Aziz v Siti Aishah* [1975] 1 JH 47, [1977] 1 JH 50, the *Syariah* Court granted custody to the father. These exceptions were made with the best interests of the child in mind. In most Western countries there is no presumption as to custody based on the gender of the custodian and the age of the child. In predicting the response of the *Syariah* Courts, it might be helpful to consider a hypothetical case of an incoming abduction of

a child habitually resident in England. A strong factor that could persuade the *Syariah* Court to send the child back to England could be a determination of how the English courts would resolve custody disputes involving Muslims.

The general principles in the child law in the United Kingdom are provided under the Child Act 1989 (UK). The cardinal principle is that the child's welfare shall be the court's paramount consideration to determine any question related to the upbringing of the child. The checklist of what is 'welfare of the child' includes 'any characteristics of the child which the court considers relevant'. Accordingly, the child's background 'could include the religious upbringing of the child' (White *et al.*, 2008).

In the case of *B v El-B (Abduction: Syaria Law: Welfare of Child)* [2003] 1 FLR 811, FD: the court in England decided that *Syariah* law is not incompatible with the welfare of the child. The main issue in the case was whether the *Syariah* law on custody was to be respected by English courts in the international child abduction cases. The court decided that it would be wrong to suggest that the application of Muslim law was inappropriate as the parents were Muslims and this was the cultural background of the children. The case distinguished *Re JA (Child Abduction: Non-Convention Country)* [1998] 1 FLR 231 because in the later case the family had lived in England for a substantial period. The child in *Re JA (Child Abduction: Non-Convention Country)* had been living in England while in *B v El-B*, the children were previously living in Lebanon before being brought to England. In the case of *Re E (Abduction: Non-Convention Country)* [1999] 2 FLR 642, the Court of Appeal held that 'the application of Muslim law to Muslim family was appropriate and acceptable and a solution in accordance with local law was capable of being in the best interests of the child.' The case of *Re S (Change of Names) (Cultural Factor)* [2001] 3 FCR 648 further illustrates the willingness of the courts in England to accept Islamic law which, in this case, the court allowed both the application of the mother to bring up the child in the Muslim religion and the circumcision of her son under the Islamic law. The child in this case

was born to a Muslim mother and a Sikh father.

Prior to *B v El-B (Abduction: Syaria Law: Welfare of Child)*, in the case of *Osman v Elasha* [2000] Fam 62, Thorpe LJ commented that "the further development of international collaboration to combat child abduction may well depend upon the capacity of states to respect a variety of concepts of child welfare derived from differing cultures and traditions." This case shows how a court in England is receptive to other concepts of child welfare. All the cases discussed above recognized that Islamic law is not incompatible with the principles of the best interests of the child. However, the House of Lords in *Re J (A Child) (FC)* [2005] UKHL 40 preferred the case of *Re JA (Child Abduction: Non-Convention Country)* to that of *Osman v Elasha*.

It is interesting to note that in *Re J (A Child) (FC)* the English court agreed that "It would be wrong to say that the future of every child who is within the jurisdiction of our courts should be decided according to a conception of child welfare which exactly corresponds to that which is current here. In a world which values difference, one culture is not inevitably to be preferred to another. Indeed, we do not have any fixed concept of what will be in the best interests of the individual child." The court further stated that, "Our concept of child welfare is quite capable of taking cultural and religious factors into account in deciding how a child should be brought up. It also gives great weight to the child's need for a meaningful relationship with both his parents." Baroness Hale of Richmond further stated that 'where the connection of the child and all the family with the other country is so strong that any difference between the legal systems here and there should carry little weight'. This is a very promising judicial approach which shows that the court in England is not arrogant to accept differences in conflict of cultures and religion. This also enhanced the current suggestion to the possible application of religious law in the UK (Williams, 2008). Therefore, there is a need for 'greater knowledge and greater recognition of Islamic personal law' in the English courts (Morris, 2005).

APPLICATION OF THE DOCTRINE OF *FORUM NON CONVENIENS* IN THE *SYARIAH* COURT

Forum Non Conveniens refers to a discretionary power of the courts to refuse jurisdiction over matters where there is a more appropriate forum available to the parties (Muhamad Said and Suhor, 2009). It allows the court discretion to decline or stay jurisdiction when the forum selected by the plaintiff is clearly inappropriate (Hickling and Wu, 1994). In Malaysia, *Forum Non Conveniens* is accepted in a custody dispute in the case of *Herbert Thomas Small v Elizabeth Mary Small (Kerajaan Malaysia & Anor, interveners)*, [2004] 2 CLJ 541, [2004] 2 MLJ 629. The doctrine is applicable especially when it involves foreign nationals who are not substantially connected to Malaysia.

If the *Syariah* Courts were to apply *forum non conveniens* in cases involving foreign elements, it would abdicate to determine custody disputes. This creates an issue if a child is to return to a non-Islamic country where the Islamic law is not applicable. The assurance given by the House of Lords in *Re J (A Child) (FC)* that the courts in England is capable of giving due consideration to the upbringing of the child by taking cultural and religious factors into account, should bestow confidence at the approach to be adopted in England, in future custody cases that relates to religion and culture and whether the courts in England would apply the best interests of the child from the *Syariah* perspective.

It is important to note that in terms of custody, the *Syariah* Courts of Malaysia, despite the presumption that mother is the best custodian for an infant child, have the statutory duty to apply the best interests of the child as the paramount consideration. This means that even though there is a rebuttable presumption that a mother is the best person as custodian of an infant child and the question of age and gender of the child are matters taken into consideration, the principle of the best interests of the child is always the paramount consideration.

The statutory provision to apply the best interests of the child as paramount consideration

in the *Syariah* Court regardless to the rights of the parents, indicates presumably that the *Syariah* Court will also decide to return an abducted child if it is in the best interests of that child. This includes the contention that it is for the best interests of the child to return to his or her familiar surroundings in cases involving parental child abduction and foreign nationals. In other words, a decision to return a child does not involve a judge in choosing between the different conceptions of a child's interests adhered to in different jurisdiction. Based on the above English cases, the *Syariah* Court should have confidence to accept other jurisdiction. Even though it may be the best available alternative, difficulties may exist for both systems if this is compromised.

While the adoption of this approach by the English courts makes it easier to return a child to England, other countries might not be so "enlightened" to do so as this is a matter of policy and discretion of the courts in each respective country. In this regard, there is a probability that the *Syariah* Courts may feel hesitant to order swift return of the child if it appears that the other country disregards the Islamic law. This requires the *Syariah* Court to hear the merits of the case and therefore defeat the purpose of a summary return of the abducted child. However, it is suggested that if a swift return of a child is in the best interests of him/her, the *Syariah* Court may give due consideration.

The difficulty to strike a balance of accepting differences between countries with *Syariah* based and non-Islamic countries requires much needed effort and understanding of these differences. The problem makes it more appealable to have a global solution. Perhaps, in the context of the *Syariah* Courts of Malaysia, a bilateral agreement could help overcome the ambiguous outcome of assumption whether or not the other courts would comply/conform to the Islamic law when the issue of the return of an abducted child arises for example the UK-Pakistan Judicial Protocol on Children Matters which was agreed between the United Kingdom and Pakistan on children matters.

CONCLUSION

Based on the above discussions, it is proposed that the *Syariah* Court considers adopting *forum non conveniens* in the incoming international parental child abduction cases as this is in the best interests of the child. The *Forum non conveniens* abdicates the court from deciding on issues related to custody disputes where the child has no real and substantial connection with Malaysia. By applying *forum non conveniens*, the court could ensure swift return of the abducted child to his/her normal surroundings (habitual residence), thus minimize the trauma of the child being in a strange land with strange people and facing the language barrier. Perhaps the suggestion in this article that the *Syariah* Court applies *forum non conveniens* in the incoming international parental child abduction would also encourage other countries as a reciprocal initiative between nations. This is to ensure swift return of the abducted children in cases involving Muslims children abducted from Malaysia to other foreign countries. It is acknowledged that there is difficulty when it comes to the implementation. However, for the best interests of the child, this seems to be the best available method thus far. This could also promote *Syariah* Courts in the international arena.

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REFERENCES

- Abdul Hak, Nora (2008). Family Mediation: Its Characteristics and Process. *Malayan Law Journal*, 4, xxxviii.
- Administration of Islamic Law (Federal Territories) Act 1993 (Act 505).
- Ahmad Ibrahim (1977). Custody of Muslim Infants. *Journal of Malaysian and Comparative Law*, 19.
- Arshad, Raffia (2007). Children: An Islamic Law Perspective. *Solicitor's Journal*, 151(35), 1187-1188.
- Azizah Bte Shaik Ismail & Anor v Fatimah Bte Shaik Ismail & Anor [2004] 2 MLJ 529.
- B v El-B (Abduction: Syaria Law: Welfare of Child) [2003] 1 FLR 811, FD.
- Herbert Thomas Small v Elizabeth Mary Small (Kerajaan Malaysia & Anor, interveners), [2004] 2 CLJ 541, [2004] 2 MLJ 629.
- Hickling, R. H., & Wu, M. A. (1994). Stay of Actions and Forum Non Conveniens, *Malayan Law Journal*, 3, xcvi.
- In Re McGrath [1893] 1 Ch 143.
- Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor [2007] 5 MLJ 101.
- Islamic Family Law (Federal Territory) Act 1984 (Act 303).
- Law Reform (Marriage And Divorce) Act 1976 (Act 164).
- Lowe, N. V., White, R. A. H., & Carr, A. P.(2008). *The Children Act in Practice* (4th ed.). London: Lexis Nexis.
- Mohd Zin, Najibah (2005). How The Best Interest of the Child Is Best Served In Islamic Law With Special Reference To Its Application In The Malaysian Shariah Court. Retrieved on December 3, 2007, from www.childjustice.org/docs/zin2005.pdf.
- Mohd Zin, Najibah (2003). For the Best Interest of the Child: The Impact of the New Approach of Custody Order in Malaysian Legislation. *International Islamic University Malaysia Law Journal*, 63.
- Muhamad Said, Suzana, & Suhor, Shamsuddin. (2009). Forum Non Conveniens in Child Custody Disputes in Malaysia, the *Law Review* (p.537-552). Thomson Reuters, Sweet & Maxwell Asia.
- Morris, C. (2005). In Practice: Divorce in a Multi-Faith Society. *Family Law Reports*, 35, 727-731.
- Nooranita bt Kamaruddin v Faeiz b Yeop Ahmad, [1990] 7 *Jurnal Hukum* (JH) (1) 52.
- Osman v Elasha [2000] Fam 62.
- Re E (Abduction: Non-Convention Country) [1999] 2 FLR 642.
- Re J (A Child) (FC) [2005] UKHL 40.

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- Re JA (Child Abduction: Non-Convention Country)* [1998] 1 FLR 231. United Kingdom-Pakistan Judicial Protocol on Children Matters.
- Re S (Change of Names) (Cultural Factor)* [2001] 3 FCR 648. Wan Abdul Aziz v Siti Aishah [1975] 1 JH 47, [1977] 1 JH 50.
- Syariah Court Civil Procedure (Federal Territories) Act 1998. Williams, R. (2008). Civil and Religious Law in England: A Religious Perspective, *Ecclesiastical Law Journal*, 10, 262-282.
- The Federal Territories/States Syariah Court Civil Procedure (Sulh) Rules 2004.

