

THE IMPACT OF MATRIMONIAL ISSUE TOWARDS THE FAMILY INSTITUTION

Nur Sarah Tajul Urus

Kulliyah of Syariah & Laws, International Islamic University Sultan Abdul Halim Mu'adzam Shah (UniSHAMS), 09300 Kuala Ketil, Kedah Darul Aman, Malaysia. Universiti Utara Malaysia.

nursarah.tajulurus@gmail.com/nursarah@unishams.edu.my

Abstract:

This paper debates the impact of matrimonial issues on the family institution. The issue is an offence of pronouncing talaq (divorce utterance) outside the court and has chosen instead of the other two matrimonial offences, which are underage marriage and polygamy without consent. The choice is due to the practice of pronouncing talaq outside the court being an infringement of the existing legal procedure. This issue is raised when the divorce application procedure, which requires talaq to be pronounced in court, continues to be questioned by religious groups and society who are sceptical of the Islamic family law currently in force in the country. The objectives of this article are first, to identify the legal provisions related to divorce application procedure according to its application in Malaysia as well as the role of the Advisory Unit under the Administration of Family Law Division, Kelantan Islamic Affairs Department at Lundang, Kota Bharu, Kelantan. Second, this paper aims to analyse the implications that can be expected if talaq is not pronounced in court and the catalyst for the occurrence of this phenomenon. Third, the paper suggests that religious groups and society be more open in the era of globalisation by considering the maslahah and public interest in general. This study used qualitative data that were gathered through document analysis and interviews. Data analysis was performed by adopting a descriptive approach using content analysis. The finding of the study showed the existence of global impacts on the family institution arising from the offence of pronouncing talaq outside the court. Thus, it is hoped that religious groups and legal experts can work together to create elements of innovation and reduce misunderstandings between the shariah law and legislation that is in force. Awareness and empowerment of law compliance should be implemented collectively so that compliance of the existing law is achieved with deep understanding and awareness. Furthermore, messages conveyed by the religious groups should be consistent and not in conflict with the law that is currently in force.

Keywords: *talaq* outside the court offence, Islamic family law.

Introduction:

The pronouncement of *talaq* outside the court and without the court's permission is an offence under Section 125¹. If convicted, the offender may be punished with a fine not exceeding RM1,000 or imprisonment not exceeding six months or both. Even though the penalty imposed is low, the impact in terms of marital status is alarming, especially to the wife. This paper discusses the implications of not understanding the matter thus the prolonged suffering for the victims, namely the wife and the children. To avoid a vague marital status, every married couple should be aware of and understand the existing legal provisions in ensuring that any action taken within the marriage is in accordance with the law.

The issue of pronouncement *talaq* outside the court is raised as the divorce application procedure, which requires the *talaq* pronouncement to be made in court, continues to be questioned by religious groups and society who argue that such a process is not in accordance with the law of God (Allah SWT) as stated in the Quran and *sunnah*. The practice of pronouncing the *talaq* outside the court by some married couples contravenes the law that is in force in the country. Accordingly, this paper will highlight the matters that should be considered by the society so that the implications of divorce can be controlled with wisdom hence facilitating divorce victims to get their rights in a fair manner.

The objectives of this paper are as follows: (1) to identify the legal provisions related to the divorce application procedure according to its application in Malaysia as well as the role of the Advisory Unit under the Administration of Family Law Division, Kelantan Islamic Affairs Department at Lundang, Kota Bharu, Kelantan; (2) to analyse the implications of pronouncing *talaq* outside the court and the catalyst for the occurrence of such a situation; and (3) to suggest that religious groups and society be more open in the era of globalisation by considering the public interest in general.

Research Methodology:

This study adopted a socio legal method to merge the two key areas of social science and law. The law is established as a mechanism for managing the affairs and conflicts arising in social societies; therefore, it has a close yet challenging relationship with the community (Rohani Abdul Rahim, 2002).

¹ Islamic Family Law (Kedah Darul Aman) Enactment 2008.

A systematic research was conducted on the current legal issues with the use of authenticity and high creativity through conventional legal methods. This method incorporates the process of stating, interpreting, and explaining the existing laws (clarifying the existing law) in a legal field (Mahdi Zahraa, 1998).

A documentation method involves collecting data by studying documents related to the problem being studied (Abdul Halim bin Mat Diah: 1987). Among those included in the document category are photographs, portraits, results, courts, laws and regulations (Imam Barnadib: 1982), autobiography, personal papers, diaries, and newspapers (Koentjaraningrat: 1986).

Content analysis was adopted to examine the fatwa research methodology for science and technology-based laws. This method requires a specific theme setting to prevent the deviation of a text analysis process (Muhammad Haji Yusuf, 1993). In this study, the theme is related to the fatwa research methodology for the current legal issues. This method involves selecting appropriate texts based on the objective of the study. The sample used included the fatwas considered legal in the impact of science and technology. The sampling strategy involved (i) identifying the problem, (ii) choosing the sample, (iii) reading and recording the content according to the objective rules, and (iv) interpreting the results of the study (Syed Arabi Idid, 1999).

A field research that is based on interviews is a form of social research (Anwarul Yaqin, 2007), which is a social interaction aimed at gathering information for research purposes. This study focuses on gathering information and researchers about the categories of evidence based on the Syariah Court Evidence Enactment (Perlis) 2006. The study is based both primary data and secondary data. Structured and unstructured interviews were conducted with experts in the relevant field to obtain the required information (Anwarul Yaqin, 2007). Books and articles were also referred to as information materials.

The observation method is a means of collecting data by directly observing the object being studied (Samarudin Rejab & Nazri Abdullah: 1982). Observations are effective for determining the procedures and realities of execution that take place on the subject matter. Direct observations by means of a face-to-face encounter with a respondent or target object can be conducted towards drawing conclusions of a study.

Divorce Application Procedure:

A marriage contract is sacred: it binds the husband and wife until the end of their lives. In Islam, marriage is a bond that brings together a man and a woman by virtue of the teachings of the Quran and sunnah. Each partner is expected to treat the other beautifully and properly. Elsewhere, divorce is described as the most aversive permissible act in the sight of Allah. It was narrated from ‘Abdullah bin ‘Umar that the Messenger of Allah said: “The most hated of permissible things to Allah is divorce” (Sunan Ibn Majah, hadith no. 2018). Therefore, before an actual dissolution of a marriage, a final effort for reconciliation is always to be made to rectify any differences between the spouses and to try to bring about a settlement between the disputing parties. However, Islam does not rule out the possibility of incompatibility; the chance of dissolution, as the final resort, is given as a blessing to the involved man and woman, allowing them to have their way to find a more compatible mate.

The alarming rate of divorce occurrences among Malaysian Muslims calls for an inevitable inquiry into the factors causing such dissolution in the shariah courts. This inquiry becomes necessary because of the social stigmatization it causes to both parties. Therefore, this article seeks to examine the following aspects: (i) the number of divorce occurrences among Muslim couples in Malaysia, (ii) *ṣulh* as one of the dispute resolutions in Islam, and (iii) the practices of the instrument in shariah courts in Malaysia. The instrument in shariah court differs from that of a civil contract, which is in effect only until both the contracting parties complete the performance of its obligations (Lee Mei Peng, (2011) *Business Law*, Oxford University Press, Selangor, 48). If the marriage ends after all efforts have been exhausted to the best of the couple’s ability, then the husband and wife must accept their fate. Therefore, when a married couple has reached the end of their marriage, they should dissolve the marriage in accordance with the law.

Section 47 (Islamic Family Law (Kedah Darul Aman) Enactment 2008) provides that a husband or wife who desires divorce should make an application for divorce to the court in the prescribed form accompanied by a declaration containing the particulars of the marriage, the court that has the jurisdiction, any previous matrimonial proceedings if applicable, the reasons for desiring divorce, the efforts taken to reach a reconciliation, any agreement concerning the rights and benefits for the wife and children after the divorce, and the order sought.

The discussion so far has suggested that before the *talaq* pronouncement is made by the husband, one of the spouses must apply for a

talaq order from the court. After the court has received the application, the other party will be called to appear before the court to inquire whether that other party consents to the divorce application. Suppose that other party consents to the divorce and the court is satisfied after conducting due inquiry and investigation that the marriage has irretrievably broken down. In that case, the court shall advise the husband to pronounce one *talaq* before the court.

This method depicts that *talaq* will be pronounced in a controlled, calm, and sane condition and not in a hostile and chaotic atmosphere. Both parties agree with the *talaq* that will be pronounced, and the court or judge becomes the most authoritative witness of the *talaq* pronouncement.

This law provision is in fact in line with the following Quranic verse 2 of Surah at-Talaq:

(فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ وَأَشْهِدُوا ذَوَيْ عَدْلٍ
مِنْكُمْ وَأَقِيمُوا الشَّهَادَةَ لِلَّهِ)

Then when they have (nearly) fulfilled their term, either retain them in a good manner or part with them in a good manner. And bring to witness two just men from among you (Muslims) and establish the testimony for (the acceptance of) Allah.” (Al-Quran al-Karim).

The pronouncement of divorce with the word *talaq* is in accordance to the command of Allah in *Surah al-Baqarah*, verse 229:

(الطَّلَاقُ مَرَّتَانِ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ وَلَا يَجِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ
شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا
افْتَدَتْ بِهِ تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ)

Talaq (divorce) is twice. Either keep (her) in an acceptable manner or release her with kindness.

Meanwhile, the pronouncement of divorce with the word *saraah* (release) is as Allah’s decree in *Surah al-Ahzab*, verse 49:

.....and release them in an honourable manner.

The Understanding of the Dissolution of Marriage (Talaq):

The English-Malay Dictionary of Dewan Bahasa dan Pustaka defines *divorce* as *perceraian*, which means the dissolution of marriage from a legal perspective (civil or shariah law) (Azmawaty Mohamad Nor, Rafidah Aga Mohd Jaladin, Dharatun Nissa Fuad Mohd Karim, and Norazani Ahmad, 2013). Divorce or the dissolution of marriage is defined as an ultimate legal separation of married couples under the civil or religious court. It gives the right to the spouse to remarry after the divorce case has been settled (United Nation, 2011). *Talaq* is an Arabic word which means “to release” or “to divorce” (Azmawaty Mohamad Nor et al., 2013). Under the shariah law, *talaq* means to untie the matrimonial knot by articulating a word denoting divorce. According to the Prophet (SAW), the law of divorce is *makruh* (disapproved), in line with his hadith: “The most hated of permissible things to Allah is divorce” (Sunan Ibn Majah, hadith no. 2018). It is clear that Islam strongly discourages divorce because the adverse effects would outweigh the gains on the affected couple, their children, families, and the community in large. Family disputes, particularly divorce, have a traumatic effect; they would inflict emotions that range from disappointment and anxiety to depression, sadness, grief, and anger (Sa’odah Ahmad and Nora Abdul Hak, 2010). When the dissolution of marriage materializes, it is often associated with emotional trauma, reduced resources, damaged self-esteem, and feelings of failure. The trauma and depression may lead to other social problems (Hamidah Ab. Rahman and Hamdan Ab. Kadir, n. d; Samuel Chan Hsin Chlen and Mohamed Sarif Mustaffa, 2008; Azmawaty Mohamad Nor et al., 2013).

The Concept of Divorce According to Islamic Law:

Two perspectives, namely the Islamic law and legislation in Malaysia, can be divided Islamic law divorce in Malaysia. According to the Islamic law, divorce is a lawful action but is despised by Allah S.W.T. In other words, while divorce is allowed by religion, it is the last resort when all the means to reconcile have failed. Thus, divorce has to be done for the betterment of those involved. From the legal point of *syarak*, divorce is commonly known as *talak*.

There are two types of divorce, namely *sorih* and *kinayah*. *Sorih* happened when a divorce is clearly described in the message uttered with no other underlying meaning behind the proclaim. The three commonly used terms are *talak* or divorce, “free” or “past”, and “separate.” On the contrary,

kinayah can be interpreted with various terms, such as “free,” “split,” “go back to your family,” “you are haram on me,” among others. These words can be either interpreted as *talak* or not as one. If the husband deliberately pronounces such terms, then only the husband knows what he means, and he needs to be responsible for his utterance. If the husband pronounces it with any other purpose other than giving *talak* or does not intend to do so, then the *talak* does not befall (Muhd Fauzi Muhamad, 2003).

Besides *talak*, the wife can also dissolve the marriage by applying for *fasakh* and *khuluk*. Other types of divorce include *taklik*, *li'an*, spouse leaving Islam, and the assumption of death (Mustafa Al-Khin (Terj.), 2016.).

Concept of Divorce According to Law:

The history of Islamic law in Malaya can be traced to the Malacca Code of Law which subsequently influenced the laws in other states. The laws adopted before the arrival of the British were a mix of Islamic law and customary law. Some of the civil court decisions made during the colonization indicated that the Islamic law was not a foreign but a local law.

When Malaya gained independence from the British in 1957, the Reid Commission under Article 3, which gave position and privilege to Islam, included a special provision. However, Article 160 of the Federal Constitution itself abrogated the law of Islam in the definition of law (Ahmad Mohamed Ibrahim, 1997). The jurisdiction of the *syariah* court was as provided in the Ninth Schedule, List II (State List), and the *syariah* court (Criminal Jurisdiction) Act 1965 (Amendment 1984) specially assigned to *syariah* court. In enforcing the Islamic law, each state has its own enactment of Islamic Religious Administration, but the administration of the *syariah* courts was not satisfied as compared to the Civil Courts. As a result, a committee was established to determine the positions, power, and status of each *syariah* court and the *syariah* court judge (Ahmad Ibrahim, 1999).

A dissolution of marriage would certainly affect the husband and wife, beginning from the procedure of dispersing marriage and the type of divorce, until the completion of the divorce registration. Often the husband can apply for a divorce, while the wife can use the method of *khuluk*, *taklik*, or *fasakh* to dissolve a marriage. All of these methods are stated in specific provisions in the Act or the Islamic Family Law Enactment of the States. To date, many divorce cases reported on the dissolution of this marriage. In the case one

party disagrees with the dissolution, a judge may be appointed for the divorce application.

The problems that arise in divorce cases are when the husband ignores the wife either by abandoning her or failing to provide a living, the presence of a husband or a wife's absence during a trial, torture and assault by a husband to his wife who allows the wife to claim divorce through *taklik* or *fasakh*. Meanwhile, the wife can claim for *fasakh* on certain circumstances, such as a husband's inability to provide livelihood or shelter, insanity, harmful illnesses (like leprosy and lymph nodes), or obstruction of sexual intercourse due to her husband's disability (such as his genital mutilation or impotence). The wife can also claim for *fasakh* in the case of a missing husband who cannot be contacted by any means.

Another problem that exists within the context of dissolution of marriage is *li'an*, which refers to the loss of trust within the husband and wife. In this case, *Li'an* is either husband or wife is willing to swear *li'an* where a statement that one of the parties has been cheating, or the husband has denied his wife is made.

A dissolution of marriage can also occur when one party leaves Islam or embraces Islam. Two important issues concern the conversion of religion. First, when a non-Muslim husband or wife embraces Islam, the other party is allowed in the Law Reform (Marriage and Divorce) Act 1976 to file for a divorce. In this case, as long as this party does not petition the marriage, the Muslim cannot petition his marriage in the *Syariah* Court.

Secondly, when one party leaves Islam, the application for the dissolution of marriage must be made in accordance with the provisions of the law of the state Islamic family. However, the *syariah* court must first confirm the outsider of Islam. Apart from all the issues mentioned on Islamic law jurisdiction, issues also arose in this regard. Whether a *syariah* court or a civil court has the jurisdiction to certify a person's decisions to leave Islam has been answered in the case of *Soon Sing vs Perim case and another* [1999] 1 MLJ 489. In these cases, the federal court ruled that only a *syariah* court has jurisdiction in confirming the status of a person leaving Islam in order to embrace another religion, particularly by taking into account the provisions stated in Article 121 (1A) of the Federal Constitution.

Talak Outside the Court:

A *talak* pronounced outside the court and without the court's consent is an offense pursuant to Section 125. If convicted, the doer will be liable to a fine of not more than one thousand ringgits or imprisonment not exceeding six months or to both. Although the value of the penalty is low, the impact of *talak* on marital status can be intense, especially to the wife. On this basis, this paper attempts to discuss the implications should the matter is taken frivolously, which will prolong the suffering experienced by the victims, namely the wife and the children. Thus, to avoid the occurrence of marital status in marriage, each married couple needs to understand and familiarize themselves with the provisions of the law so that any action in marriage is in accordance with the appropriate legal structure.

The issue of *talak* pronounced outside the court is raised when skeptical religionists and society continue to question the *talak* application procedure pronounced in the court, contending that the process does not follow the law of Allah stated in the Qur'an and sunnah. The practice of divorcing couples by pronouncing divorce is not in court; it is a contradiction with the law in force in this country. Accordingly, this paper will highlight the matter that should be elaborated and understood by the public so that the implications of divorce can be controlled and disconnected wisely. In this way, the divorcee gets their rights equally.

The objective of this paper is to identify the legal provisions relating to *talak* application procedures in accordance with their application in Malaysia. The ramification of a divorce being pronounced outside the court and the catalyst factor of the existence of this symptom were analyzed. It is advocated that the religious groups and communities be more open to the current globalization by considering the interests of the society in general.

Global Reform of the Islamic Family Law:

The first Islamic law recognised in the Philippines legislative system was the "Code of Muslim Personal Law 1977", which covered family and inheritance law. The law was enforced effective from October 1985 (Azizan Abdul Razak, Syariah, (1991) *Adat and Common Law Amongst The Maranaos of Southern Philippines- An Exploratory and Comparative Study*, Singapore: Asia Foundation, 5).

Through a modern legislative process, Muslim countries have reformed their Islamic family law to correspond with their local situations, either by adopting the opinions of different *madhhabs* or through administrative regulations. Those countries that fall within this category were Turkey (since 1917), Egypt (1920–1946), Sudan, Jordan, Syria, Tunisia, Morocco, Algeria, Iraq, Iran, and Pakistan. The family law reforms were substantive or administrative or both, either by combining one or more *fuqaha* opinions or by incorporating two or more perceptions as provided in Islam.

Also included in this category are the Muslim countries in Southeast Asia such as Brunei, Malaysia, Indonesia, Singapore, and Sri Lanka. Each of these countries has enacted a distinctive and comprehensive Islamic Family Administration Enactment that includes controlling the abuse of polygamy and divorce (Tahir Mahmood, *Family Law Reform In The Muslim World*, Bombay: N. M. Tripathi, 2-8).

Divorce Implications and its Factors:

Divorce affects the lives of everyone in a family institution, including the spouses, children, and families on both sides. The prevalence of divorce cases involving both young and old couples is increasing in Malaysia. Elsewhere, the world has witnessed high-profile cases, including the filing for divorce by Hollywood couple Brad Pitt and Angelina Jolie, despite their having six children. Within five years, divorce cases among Muslim couples are significant; the number of cases in 2011 (43,749) increased to 53,870 in 2014—a marked increase of 10,121 number of cases.

Children who are growing up are the most affected. They might be unable to deal with a dysfunctional family as they have yet to understand the meaning of life. Various negative effects might afflict a young child who is facing divorcing parents because of the child's emotional instability. Adult or teenaged children, who are more mature, might be able to cope better with their parents' separation.

The adverse effects of divorce on children include low self-esteem and feeling depressed, becoming temperamental and developing the tendency to bully, losing focus in their studies, becoming less religious, and being easily influenced by detrimental elements.

First, the child will grow up with low self-esteem and feeling depressed because he/she thinks he/she is the cause of the divorce between his/her parents. If the divorce was caused by financial problems, then the child might think that he/she is a burden to his/her parents, especially the father who has to provide maintenance for him/her every month. The child might grow up with low self-confidence, depression, and suppressed emotions as he/she has no one to turn to.

Second, the child will become temperamental and develop a tendency to be a bully. The child who suppresses his emotions might tend to unload his anger towards others through his/her actions. He/she might tend to bully his/her friends at school who are weak and easily trodden down. Otherwise, he/she would express his/her feelings through other acts, including vandalism.

Third, children who grow in a painful situation tend to lose focus in their studies. They are always oppressed by emotional parents and will lose the motivation and enthusiasm to learn, even though they have the potential to succeed. Uncomfortable and turbulent home environment would destroy their enthusiasm to do revisions, leading to a decline in their performance at school.

Fourth, those children might also tend to have a weak religious belief. A neglected child who does not receive attention might not attain adequate religious education. Parents have full responsibility in their children's upbringing, both physically and spiritually. When the parents face divorce problems, they tend to neglect their children's education as their attention is shifted to their marriage problems. Often, they have to be present at the court to settle various claims made during the divorce. Therefore, they might neglect providing religious education to their children.

Fifth, the affected children may also be influenced by detrimental elements. Because of a weak religious belief, they can be easily drawn towards unhealthy activities, including smoking, loitering, and truancy. Indiscriminate mingling can occur if the children feel lonely without love and affection from their parents, which can lead to other problems such as sexual promiscuity, rape, illegitimate children, and baby dumping cases.

Also, single parents are usually busy earning for the maintenance of their children to the extent of neglecting the children and their welfare. The children would feel bored and restless at home if their parent always pressures them and finds fault with them as a result of the parent's emotional

instability. These children might prefer to seek pleasure outside their home and go out with friends who are in a similar predicament.

However, if the affected child is a teen who is strong and stoic in dealing with the ordeal, he/she would grow up to become even stronger and more detached. He/she would be more independent and not expect help from others. Such acceptance nevertheless depends on the child's acceptance of the problem; if he/she remains stoic and positive, he/she would grow up in a challenging surrounding to be courageous, which can strengthen his/her self-identity.

As for the wives, they will be affected in terms of their rights after the divorce. If the divorce occurs without compliance with the legal procedure, including the pronouncement of *talaq* outside the court, their rights will be compromised because of the long time required to verify the divorce. Among a wife's rights are to determine the date of *'iddah* (the waiting period), maintenance during *'iddah, ruju'* (reconciliation), *mut'ah* (consolatory gift), *hadhanah* (custody of the children), matrimonial property, owed dowry, and outstanding alimony throughout the marriage duration (Islamic Family Law (Kedah Darul Aman) Enactment 2008).

Meanwhile, the factor that compels a husband to breach the country's law is his ignorance of the legal procedure but awareness of the *hukum syarak* (shariah law). This situation is alarming because when *talaq* is pronounced outside the court, many adverse possibilities might inflict the wife. The husband might refuse to admit that he has pronounced the *talaq* either in the presence of his wife or without her knowledge. It is more grievous when the *talaq* is pronounced in the absence of a witness. The act will be distressing to the wife if the *talaq* is pronounced during menstruation or *nifas* (postpartum bleeding), in a pure state but just after the intercourse, or when the wife is pregnant. This matter should be taken seriously in ensuring the accurate calculation of the *'iddah* (waiting period) beginning from the date that *talaq* is pronounced. In the case of conjugal intercourse taking place after the pronouncement of *talaq*, it raises the concern on the status of the marriage, and if the wife becomes pregnant during that period, question would arise as to the status of the offspring.

Kota Bharu Syariah High Court, Kelantan Darul Naim:

An interview was conducted with the *syarie* judge of the Syariah High Court in Kota Bharu, Kelantan. According to him, the court adheres to the *fiqh* method in making decisions, which are based on the visible matters only as submitted when the parties testify in court and the court has no knowledge of

the underlying matters, for only Allah knows best. Among the initiatives implemented were the “Fast Track Divorce” in Selangor and the “I-post” in Terengganu, which mainly aim to accelerate the process of divorce verification. These steps may be followed by other states to streamline the management of *talaq* verification. The *syariah* court in Kelantan also provides special forms for *taklik* divorce and *talaq* verification that are more systematic and comprehensive. The aim of these measures is to facilitate the public to make the application without involving lawyers that hence increasing the cost of the case.

Advisory Unit of the Administration of Family Law Division, Kelantan Islamic Affairs Department:

Before submitting a divorce application, the husband and wife are required to make a complaint to the Advisory or Consultation Division at the District Islamic Religious Office for a preliminary consultation.

An interview was conducted with an expert who is directly involved in the advisory and consultation process at the Advisory Unit, Administration of Family Law Division, Kelantan Islamic Affairs Department at Lundang, Kota Bharu, Kelantan. The state Kelantan Darul Naim was chosen randomly because the state is proactive and progressive in administering matters related to the advisory and consultation process. In addition, the state has the latest and more systematic online access system. Other states like Terengganu and Pulau Pinang have yet to adopt a similar procedure.

The interviewee was Puan Rohani Binti Mohd Noor, Senior Assistant Director (Advisory), Administration of Family Law Division, Kelantan Islamic Affairs Department at Lundang, Kota Bharu, Kelantan. It was learned from the interview that many community-friendly activities are often held in Kelantan to bring the community closer to the Kelantan religious office. Among the programmes held are monthly lectures focusing on topics of interest to the community, including *Maal Hijrah*, the beginning of *Muharram*, and matters related to domestic harmony. This move has turned the consultancy and advisory unit into a one-stop reference centre for the local community. The people no longer feel awkward or have nowhere to go when they have marital problems. First, the visitors are given a specific, detailed form to be completed. Next, their cases are filtered according to the stage of their problem. This step allows cases to be resolved faster, more efficiently, and in a friendlier manner.

Findings of the Study and Analysis:

The offence of pronouncing *talaq* outside the court has severe implications on a family institution, particularly the children and wife. Such plight should be appropriately controlled so that the society can live in a more harmonious and tolerant environment. The adverse effects of a divorce may cause the attitude of those affected to change towards a negative direction as they have to bear the burden alone even though they were not the cause of the problem. Therefore, it is hoped that religious groups and legal experts can work together to extricate those affected out of their endless problems. Such collaboration may steer transposition between the shariah law and legislation currently in force. Awareness and empowerment of law compliance should be harnessed collectively. It is also hoped that the messages conveyed by the religious groups are consistent and not in conflict with the law that is currently in force.

Recommendations

First, this paper suggests that the governance of the divorce process be managed properly. Cooperation between the religion office and the shariah court is essential in ensuring the proper preservation of the family institution.

Second, officials at the religious office should be provided with adequate training so that they will become trained officers. For example, they can attend the counselling and mediation courses of a recognised standard.

Third, counselling should be made compulsory before couples are allowed to make a divorce application to the court. This process could be done through a directive by the *syarie* chief judge.

Fourth, the pre-marriage course module should be streamlined to (i) increase the depth of the existing contents, (ii) enhance the knowledge of family management in the event of divorce and how to keep the situation under control, and (iii) provide adequate information.

In conclusion, the religious office and shariah court should work as a team in preserving the integrity of the family institution. It is their role to create awareness and educate the society so that they will live in a harmonious and peaceful atmosphere. The religious groups could include accurate knowledge of legal procedures when discussing the religious rulings related to the legal aspect. The aim is to relay messages that do not disgrace the knowledgeable *fiqh* group.

Summary:

In conclusion, close cooperation between the religious groups and legal experts is needed. It should be given a priority so that the element of innovation between shariah law and legislation that is in force can be realised, consistent and not in conflict with each other. This collaboration will surely make a significant impact on the legislative institution, especially under the jurisdiction of the syariah court, the purpose being to avoid confusion and reduce misunderstandings among the parties involved in particular and the Muslim society in general. Collaboration and empowerment are essential so that the creativity of every group in the society can be prioritised and adapted with the tidal change of time and situation.

References

Al-Quran Al-Karim.

Rohani Abdul Rahim, Metodologi Penyelidikan Undang-undang: Satu Tinjauan Kepada Kajian

Sosio- Perundangan. Seminar Kemantapan Akademik UKM, 2002.

Mahdi Zahraa, Research methods for law postgraduates' overseas students. Univision: Glasgow,

1998.

Abdul Halim bin Mat Diah, Suatu Contoh Tentang Huraian Metodologi, Kuala Lumpur:

Universiti Malaya, 1987.

Imam Barnadib, Arti Dan Metode Sejarah Pendidikan, Yogyakarta: Yayasan Penerbitan FIP-

IKIP, 1982.

Koentjaraningrat, (ed.), Metode-metode Penelitian Masyarakat, Jakarta: Penerbit P.T. Gramedia,

1986.

Muhammad Haji Yusuf, “Hubungan antara Kelompok”, dalam Abdul Halim Othman (eds),

Psikologi Melayu. Kuala Lumpur: Dewan Bahasa dan Pustaka, Kementerian Pendidikan Malaysia, 1993.

Syed Arabi Idid, Analisa Kandungan. Bangi: Jabatan Komunikasi UKM, 1999.

Anwarul Yaqin, Legal research writing. Malaysia: LexisNexis, 2007.

Samarudin Rejab & Nazri Abdullah, Panduan Menulis Tesis, Kuala Lumpur: Dewan Bahasa dan

Pustaka, 1982.

Lee Mei Peng, Business Law, Oxford University Press, Selangor, 2011.

Azizan Abdul Razak, Syariah, Adat and Common Law Amongst The Maranaos of Southern

Philippines- An Exploratory and Comparative Study, Singapore: Asia Foundation, 1991.

Tahir Mahmood, Family Law Reform In The Muslim World, Bombay: N. M. Tripathi.

Islamic Family Law Enactment (Kedah Darul Aman) 2008.

Syariah Court Evidence Enactment (Kedah Darul Aman) 2014.

The interview was conducted with Puan Rohani binti Mohd Noor as Senior Assistant Director

(Advisory Service), Family Law Administration Division, Kelantan Islamic Religious Affairs Department at Lundang, Kota Bharu, Kelantan.

Syariah Judge Syariah High Court II: Y. A. Norhasney Ridhwan bin Hassan.