

A STUDY OF MUSLIM DIVORCES AND PROCEDURES IN SYARI'AH COURT SINGAPORE
KAJIAN PROSEDUR DAN PENCERAIAN MUSLIM DI MAHKAMAH SYARIAH SINGAPURA

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Abstrak

Dalam undang-undang Syari'ah, perkahwinan (*nikāh*) bermaksud perjanjian antara dua individu. Al-Quran membenarkan dan bahkan menasihati pasangan suami isteri untuk mengakhiri perkahwinan (Qur. 2: 231) sekiranya keharmonian perkahwinan tidak dapat dicapai. Masyarakat diminta untuk campur tangan dengan melantik penimbang tara dari dua keluarga untuk mencuba perdamaian (Qur. 4:35). Undang-undang utama yang mengatur proses perceraian di Mahkamah Syari'ah adalah Undang-Undang Pentadbiran Undang-Undang Muslim (Cap. 3) (AMLA), Peraturan Perkahwinan dan Perceraian Muslim (MMDR) menetapkan pelbagai proses dan prosedur perceraian. Mahkamah Syari'ah membuat keputusannya mengenai talak, nafkah iddah, muta'ah, hak asuh anak, dan lain-lain. Ia menerapkan adat Melayu dan undang-undang Syari'ah serta (jika ada) adat istiadat Melayu. AMLA itu sendiri mengandungi beberapa peruntukan yang menangani beberapa masalah ini. Makalah ini diakhiri dengan perbincangan mengenai isu dan pengukuran yang perlu ditangani dalam penyelidikan masa depan untuk memperbaiki dan memperluas kajian sebelumnya. Peserta menyalahkan pasangan mereka kerana perceraian lebih banyak daripada mereka menyalahkan diri mereka sendiri. Kini di Singapura, wanita Muslim bercerai pada kadar yang lebih tinggi daripada lelaki Muslim. Ketidaksetiaan dilaporkan sebagai punca yang paling utama untuk perceraian oleh lelaki dan wanita Muslim di mahkamah perceraian Islam. Penemuan baru menunjukkan bahawa poligami mungkin menjadi faktor ketidaksetiaan di kalangan lelaki Muslim. Ini menunjukkan bahawa ketetapan Islam untuk berpoligami boleh menjadi salah satu sebab ketidaksetiaan. Ini mungkin telah menyebabkan kecenderungan lelaki Muslim untuk menjalin hubungan dengan wanita yang boleh menjadi bakal pasangan mereka. Kesulitan kewangan disebut sebagai alasan kedua yang paling umum untuk perceraian, diikuti dengan keganasan rumah tangga.

Kata kunci

Penceraian, Syariah, Prosedur

Abstract

In *Syari'ah* law, marriage (*nikāh*) is social contract between two individuals. The *Qur'ān* allows and even advises the spouses to bring the marriage to an end (*Qur'ān* 2:231) if marital harmony cannot be attained. The community is called upon to intervene by appointing arbiters from the two families to attempt a reconciliation (*Qur'ān* 4:35). The main statute which governs divorce proceedings in the *Syari'ah* Court is the Administration of Muslim Law Act (Cap. 3) (AMLA), the

Muslim Marriage and Divorce Rules (MMDR) prescribes the various processes and procedures for divorces. The *Syari'ah* Court makes its decision on *talak*, *nafkah iddah*, *muta'ah*, custody of children, Etc. It applies Malay custom and *Syari'ah* law as well as (where applicable) Malay customs. The AMLA itself contains several provisions dealing with some of these issues. The paper concludes with a discussion of issues and measurement that need to be addressed in future research in order to improve and expand upon previous studies. Participants blamed their partners for the divorce more than they blamed themselves. Currently in Singapore, Muslim women divorce at a higher rate than Muslim males these days. Infidelity is reported as the most common basis for divorce by Muslim men and women in Islamic divorce courts, in both males and females. New findings suggest that polygamy may be a factor in infidelity among Muslim men. It suggests that the Islamic provision for polygamy could be one of the reasons for infidelity. This may have contributed to Muslim men's tendency to engage in relationships with women who could become their future spouses. Financial difficulties were cited as the second most common reason for divorce, followed by domestic violence.

Keywords

Divorce, *Syari'ah*, Procedures.

1.0 Introductions

Islam is a centralized religion and has neutral teaching and leadership. Islam provides rules for the maintenance of stability in society; everyone is responsible for their work and behavior. Islam does not recommend that people live alone in this world, but it does stress the importance of family life. A single lifestyle always creates weakness and a barrier to a human being in doing their duties, therefore Islam highly recommends family life that would help lead a happy life in this world. *Allāhu Subhānahu Wata 'ālā* created the first man "Adam 'alay-hi Swalatu Wassalam", then for his support he created the woman, named «Adam and Hawwa» and blessed them to live as husband and wife. Historically, marriage and family life were initiated by the creator *Allāhu Subhānahu Wata 'ālā* as soon as the first human being was established.¹ Islam regards the family as a fundamental primary unit of social organization. It is the place where father, mother, children and parents live happy and peaceful, sharing and supporting one another. The family plays a very important role in complying with religious obligations. By having a good family, each person becomes safer, healthier and builds a better society. Islam is considered a family-based religion because of its importance to family life.²

From the point of view of the Islamic religion, marriage is certainly a sacred bond that unites a man and a woman through the traits of the teaching of the *Qur'ān* and the *Sunnah*. Marriage is a permanent establishment, which is prescribed by the Creator *Allāhu Subhānahu Wata 'ālā*. The marriage claimed to be permanent. But that's not to say that the marriage contract is unbreakable. Islam recognizes the need to keep the pathway open to its dissolution through divorce. Dissolution of marriage in Islam is called *Talaq* (divorce).

¹ Aroos, A. (2005). *Ilahuvالي Islam*. Colombo: Islamic Book House.

² Akram, M. (2011). *Nadaimuraiketa Islam* (Vol. ii). Colombo: Islamic Book House.

Islam stresses that men and women have equal rights and opportunities to seek for the divorce. The only difference is that a man divorces a woman while a woman demands a divorce from her husband.³ Islam does not approve of divorce in a normal way; it is accepted in some critical. The prophet said, “Of all things permitted by law,” and “divorce is the most hateful in the sight of Allah” (*Ibnu Majah, Sunan*)⁴.

عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ، قَالَ قَالَ رَسُولُ اللَّهِ — صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ — " أَبْعَضُ الْحَلَالِ إِلَى
اللَّهِ الطَّلَاقُ "

Now this condition has slowly changed towards modernization and it leads to increase the divorce rate among Muslims. It is a matter of regret that the breakdown of religious values also contributes to the marital separation among Muslim married couples. The occurrence of divorce is being increased among Muslim Community in Singapore. In the past, the grounds for the divorce among Muslims in Singapore appeared to be more limited and it led to low percentage of divorce among Muslims. But now it has been changed, the number of divorce cases has increased rapidly. There are various reasons that contribute to this divorce among couples who promised to live together until their death.

The *Syari'ah* Court (Islamic Court) data and report are constantly indicating an increase in Muslim couples seeking help for marital crises and filing for divorce. Multiple and interconnecting factors have contributed to this rapid growth of divorce. Conflict between partners, low income and poverty, drug addiction, communication breakdown, unemployment, distress and depression, extramarital affairs (EMA), secularization trends, low religiosity, liberalization of norms, individualism and drawbacks in divorce laws are the reasons behind the divorce among Muslims today ⁵. This marital dissolution between husband and wife highly impacts in every aspects of life. In the past divorce was rare and unusual among married couples. There was a considerable social pressure and obligation to stay married, even if it was not meet the requirements of marriage. But now divorce is related only with satisfaction of individuals. An increase in the incidence of divorce gives path to increase the psychological and social problems in human society. As divorce has insightful effects and it also damages the social institutions such as family, religion, school, law and government. Generally, the process of marital destruction results in psychological, social and economic crises for the family and the society.

³ Sanoos, T., Irfan, M., & Mahfool, M. (2010). Thirumanam (1 ed.). Colombo, Sri Lanka: Islam Course, Addalaichenai National College of Education.

⁴ Sunan Ibnu Majah, Sunnah.com reference: Book 10, Hadith 3, English translation: Vol. 3, Book 10, Hadith 2018, Arabic reference: Book 10, Hadith 2096

⁵ Wazeema, T., & Jayathunga, N. (2017). Impact of Divorce among Muslims in Sri Lanka. International Journal of Arts and Commerce, 6 (2), 10-20.

2.0 Problem Statement

Singapore government believes that strong families will develop people who will be productive members of especially a diverse company.⁶ As a result, the Singapore government has focused on strengthening the family unit. Intact, non-divorced families have long been associated with strong families. The researcher wishes to look at the following problem based on the study's context:

- i) What are the reasons for Muslim spouses divorcing?
- ii) What actions are being taken by relevant authorities in Singapore to minimize the divorce rate?
- iii) How effective is the *Syari'ah* Court procedure during a divorce case?

3.0 Research questions

- i) What factors are contributing to the rise in Muslim divorces in Singapore?
- ii) Are Singapore *Syari'ah's* court laws and procedures adequate for dissolving Muslim marriages?
- iii) What steps must be taken to reduce the number of Muslim divorces in Singapore?

4.0 Objective of the Study

- i) To investigate the factors that contribute to Muslim divorces in Singapore.
- ii) Examine the laws and procedures used in marriage dissolution in the *Syari'ah* Court.
- iii) To make recommendations to reduce Muslim divorces in Singapore.

5.0 Methodology

This is understandable given the topic's sensitivity. The researcher conducted the interviews entirely on his own. Prior to the start of the interview, ethical approval was obtained from the *Syari'ah* Court Singapore to ensure that ethical standards are met and that respondents are not harmed in any way. During the *Hakam* sessions, the majority of interviews took place on the *Syari'ah* Court grounds. It will be conducted in English and Malay mediums because all respondents are bilingual and feel comfortable communicating in both languages.

⁶BusinessTimes.com.sg / government-economy, by our Prime Minister Lee Hsien Loong, 17/2/2015.

This study used a qualitative approach to gather extensive information on divorce issues, such as the causes and consequences of divorce after marriage. It will be divided into two sections. First, the main part, which will involve conducting interviews with married couples who are directly involved in the divorce process in Singapore's *Syari'ah* Court.

The secondary part entails personally interviewing senior executive *Syari'ah* court officers, specifically the Senior President of *Syari'ah* Court, *Syari'ah* Court President, another *Syari'ah* Court President, and Ad-hoc President of *Syari'ah* Court Singapore, as they are the ones who ultimately decide their fate. In order to find answers to the research questions, the researchers' questions will be designed to elicit responses from a variety of perspectives. The researcher interviewed and chose 20 couples (40 participants) because the recruitment process was conducted within the *Syari'ah* Court premises due to the issue's confidentiality and sensitivity. The researcher will speak with them in the form of an interview, and the researcher will mention this project while assuring the confidentiality of the information. The primary and secondary sources would be extremely helpful in drawing the entire process at the conclusion of the search.

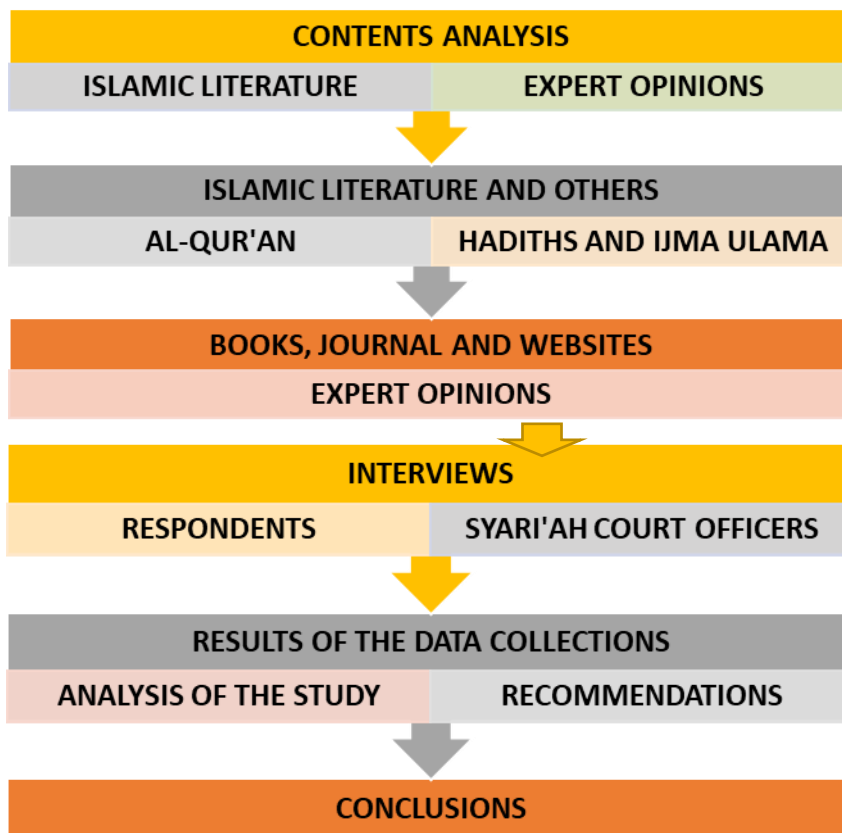
In general, under the Administration of Muslim Law Act in *Syari'ah* Court, divorce and *faraid* are officially registered, and endorsement can be done through the presentation of any instrument, document, and testimonial evidence or affidavit proving the divorce is officially declared. This study investigates how marriages and divorces occur in today's diverse Singapore society. The study also investigates how individuals feel and are affected by their divorced differ in their attitudes toward their marriage and divorce.

The following study is largely based on data collected during the researcher's appointment as *Hakam* (Arbitrator) at *Syari'ah* Court Singapore from January 2000 to the present, supplemented by the *Qur'an* and Hadiths, as well as prominent figures in *Syari'ah* Court Singapore along the *Asatizah* during the same time period.

The following are the types of data collected by the researcher during fieldwork:

- i) Singapore *Syari'ah* Court
- ii) Muslim Marriage Registry
- ii) Marriage, divorce, and reconciliation registrations in Singapore Department of Statistics,
Marriage and Divorce Statistics, 2019
- iii) Interviews with local *Syari'ah* Court officials of the *Syari'ah* Court of Singapore
- iv) Qur'an, Hadiths and *Ijma Ulama* (Consensus of Islamic Scholars).

Research Methodology Design



6.0 Literature Reviews

A local study has been made by Premchand Dommaraju and Gavin Jones, they summed up the trends in divorce for countries in Asia, highlighting both wide variations in divorce patterns and changes in divorce trends for countries in the region. Three broad regional patterns are evident: An East Asian pattern characterized by increasing divorce rates, though there are signs of stabilization in some countries in the last few years; an Islamic Southeast Asian pattern characterized by declining divorce rates until recently; and a South Asian pattern with relatively stable and low divorce rates. The paper also discusses divorce in international marriages in some East Asian countries and Singapore.⁷

Although they had the discussion on divorce amongst the Muslim couples, they had not gone in depth on issues and solutions. What is important is that the contributing effects towards Muslim divorce, it is even more necessary to analyses how and why did this

⁷ Divorce Trends in Asia Asian Journal of Social Science 39 (2011) 725–750

stratum of society came into being? What was not discuss in the earlier study were the factors contributing to the Muslim divorce and how has these factors displaced their roots in their society? Another literature review by Paulin Straughan, who made a comprehensive study of divorce in Singapore. The study sheds light on the root causes of divorce and emphasizes how changing ideologies affect spousal stability. Themes that surfaced in the appreciation of why some marriages fail include women's changing expectations and their characters in the family, courtship expectations and the role of romantic passion, parenthood demands and work stressors.⁸ What we could see in Paulin view is that, she only focuses on general divorces in Singapore, it's not highlighting explicitly on Muslim divorce alone. As a Singaporean Muslim, the researcher need to highlight to our Muslim community at large

In Malaysia, the divorce rate goes up daily. The factors that bring about higher divorce rates are individuals or couples themselves. According to Chlen and Sarif,⁹ in accordance with the laws of Malaysia, divorce is applicable to couples who have committed adultery, behave and act in an uncivilized manner, do violence towards their spouses, disturb and make things difficult for their spouses or exes when they file for a divorce. Another study by Chlen and Sarif,¹⁰ found that the multiracial Malaysian community often undergoes a divorce for three reasons. This includes religious change, more love, and emotional problems. Besides that, there are also other problem factors such as communication breakdown, problem with the in laws, sexual intercourse problems, drug addiction problems, workplace conflicts, early marriage, health problems and many more. Zaleha binti Kamarudin, a prominent Malaysian law professor did a comparative study on divorce among Muslims and non-Muslims in Malaysia with special reference to the Federal Territory of Kuala Lumpur, the theme of this paper is a comparison of the law, practice and procedure relating to divorce among Muslims and non-Muslims in Malaysia.¹¹

In Islam, marriage is a legal contract between two people. The consent of the marriage must be consent by the both bride and the groom on her own free wills. A formal, binding contract can be considered integral to a religiously valid Islamic marriage and outlines the rights and responsibilities of the groom and bride. Two Muslim witnesses should be present for the marriage contract. Marriage is a scared and is consequently a moral safeguard as well as a social necessity. Islam does not equal celibacy with high "*Taqwa*" or "*Iman*".¹² The legally or formally recognized union of two people as partners in a personal relationship historically and in some jurisdictions specifically a union between a man and a woman).¹³

The Prophet *Muhammad*, *Sall Allāhu `alay-hi Wa-Salam* has also said, "It was narrated from *Aishah Radiyallahu Anha* that: The Messenger of *Allah* said: "Marriage is part of

⁸ Paulin Tay Straughan: *Marriage Dissolution in Singapore: Revisiting Family Values and Ideology in Marriage*, 2009

⁹ Samuel, C.H.C and Mohamed, S. M. (2008). *Divorce in Malaysia*. Johor: University Technology Malaysia.

¹⁰ Ibid

¹¹ Ibid

¹²http://www.islamawareness.net/Marriage/marriage_article001.html,

¹³<https://en.oxforddictionaries.com/definition/marriage>)

my *Sunnah*, and whoever does not follow my *Sunnah* has nothing to do with me.”¹⁴ In this chapter too, the researcher will address marriage-related verses from the *Qur’ān*, offering their exegesis and contemporary responses to them and the purpose of this discussion is to explain the importance of marriage as understood through the *Qur’ān* as *Allāhu Subhānahu Wata ‘ālā* has created men and women as company for one another, and so that they can procreate and live in peace and tranquility according to the commandments of *Allāhu Subhānahu Wata ‘ālā* and the directions of His Messenger. As the *Qur’ān* says: “And among His Signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquility with them, and He has put love and mercy between your (hearts): verily in that are Signs for those who reflect. (*Qur’ān* 30: 21). In another verse *Qur’ān* says: And Allah has made for you mates (and companions) of your own nature, and made for you, out of them, sons and daughters and grandchildren, and provided for you sustenance of the best: (*Qur’ān* 16:72)¹⁵ To sum up, it is clearly understood that Islam encourages marriages and consider it as a way of life to develop a sustainable society and it is one of the *Maqasid Syari’ah* which is the protection of lineage (*nasab*). To achieve this, Islam promotes its follower to enjoin the practice of marriage and to build a strong family. Mr. Simon Neo¹⁶ says, “Nowadays there are so many open relationships.... Commitment is a big issue,” he said, “As for the increase in divorces, he said again, “Couples these days don’t know how to articulate expectations of each other. It comes out defensiveness and contempt and they are too busy fighting. The hectic schedule here contributes to it too.” The only large-scale study of divorce in Singapore was published over two decades ago by Aline Wong and Eddie Kuo¹⁷, both sociologists. Due to the difficulty of compiling a large representative sample of divorces, no further attempts to report on marriage dissolution in Singapore have been made since then. Extramarital affair (EMA) or infidelity was the top cause for breakups among Muslim marriages last year 2019.

Overall Reasons for Muslim Divorces in 2019

Main Reasons for Divorce	Total
1 Extra Marital Affairs	375
2 Financial Problems	206
3 Desertions	184
4 Domestic Violence	59
5 Others Reasons	724

6.1 The Procedure in *Syari’ah* Court: Registration and Mandatory Counselling

¹⁴ Sunnah.com, Grade Hassan, Darussalam, English references: Vol. 3, Book 9, Hadith 1846, Arabic reference: Book 9, Hadith 1919.

¹⁵ Ibid (*Qur’ān*, 16:72)

¹⁶ Mr. Simon Neo is Marriage Counsellor at the Psychotherapy Clinic.

¹⁷ Aline K. Wong, Eddie C. Y. Kuo G. Brash, 1993 – Divorce in Singapore, E- Book ISBN 9789047424932, 1st January 2009, Chapter 1, pg., 2.

The spouse wishing to apply for divorce in the *Syari'ah* Court must first submit a Registration Form. The form is downloadable from the *Syari'ah* Court's website. Once the *Syari'ah* Court has accepted and processed the Registration Form, both spouses will be contacted by one of the approved counselling agencies for them to undergo mandatory counselling. The following are a few of the approved counselling agencies: PPIS Family Service Centre (PPIS) *Jamiyah* Counselling Centre, (JCC), Association of Muslim Professionals (AMP), APKIM Resources. Reach Counselling Centre and for revert Muslims, the referral will be at Muslim Converts Association of Singapore (*Darul Arqam*). The primary objective of the mandatory counselling scheme is to assist the spouses to reconcile and to save the marriage. If the marriage cannot be saved, the mandatory counselling scheme serves also as a platform for the spouses to discuss, come to an understanding of, and (if possible) reach an agreement on the issue of the custody of the children of the marriage, if any. If the spouse who had filed the Registration Form (the Registrant) and fail to attend the mandatory counselling, his or her case may be closed and will not be able to subsequently proceed to commence divorce proceedings in the *Syari'ah* Court. The parties may be required to attend several counseling sessions.

6.1.1 Issuance of Divorce Originating Summons and Filing Relevant Forms

If the spouses cannot be reconciled, then the Registrant has 6 months from the date of the final counselling session to commence divorce proceedings in the *Syari'ah* Court. If the deadline is breached, then a fresh Registration Form must be filed. Divorce proceedings in the *Syari'ah* Court are commenced by either spouse (called the Plaintiff) filing the Case Statement (Form 7 for the Husband or Form 8 for the Wife) (CS), the Plaintiff's Proposed Parenting Plan (Form 12) (PPPP) and the Plaintiff's Proposed Matrimonial Property Plan (Form 15) (PPMPP). The PPPP need not be filed if there are no minor children (children below 21 years of age). The PPMPP need not be filed if the matrimonial home is not a Housing and Development Board (HDB) flat. Additional information on the matrimonial home must also be filed via the Particulars of Housing Arrangement (Form 14) (PHA). In the CS, the Plaintiff is required to state, amongst other things, the grounds of the application for divorce and his/her position on the issues of *nafkah iddah*, *mutaah*, division of matrimonial assets, etc. The PPPP contains the Plaintiff's proposal on the custody, care and control and access of the children of the marriage. The PPMPP sets out the Plaintiff's proposal on the disposal and division of the matrimonial home. There are several documents to be attached to the CS, PPPP and PPMPP. You are advised to refer to the *Syari'ah* Court's website and comply with the Checklist for Plaintiff. A total of 3 sets of the bundle comprising the CS, the PPPP, the PPMPP and the PHA (the original plus 2 copies) must be filed. The *Syari'ah* Court will keep the original set and return the 2 copies to the Plaintiff, one of which is to be served on the other spouse (called the Defendant). The *Syari'ah* Court will also issue a Court Attendance Notice for the Plaintiff and the Defendant to attend Mediation on a certain date and time.

6.1.2 Typical issues and claims in *Syari'ah* Court Divorce Proceedings: *Nafkah Iddah* & *Muta'ah*

In divorce proceedings in the *Syariah* Court, two recurring issues which the Court must determine are:

1. The wife's entitlement to (or the husband's obligation to pay) *Nafkah Iddah* and
2. The wife's entitlement to (or the husband's obligation to pay) *Muta'ah*.

The *Syariah* Court is empowered to order the payments of *Nafkah Iddah* and *Muta'ah* in divorce proceedings pursuant to Sections 35(2) and 52(3) of the Administration of Muslim Law Act (Cap. 3)¹⁸.

Nafkah Iddah

Nafkah Iddah is maintenance which a husband must provide for his wife over a period of three consecutive months after divorcing her. This period of three months is called the *iddah* or "waiting period". As mentioned in the *Qur'an*, "For those of your women who have lost expectation of menstruation, their waiting period is three months. The same also applies to those who don't have menstruation at all. As for pregnant women, their waiting period ends with delivery of their burden. Allah will create ease for those who fear from Him." (*Qur'an* 65:4)

During these three months, the wife is obliged under Muslim law to observe certain restrictions, one of which is that she is not permitted to remarry. Also, during this period, the husband and the wife are permitted to reconcile without the need to undergo a marriage solemnization (*nikah*). *Nafkah Iddah* is payable in all cases of divorce, except in cases where the Court is satisfied that the wife has been disobedient to the husband (*nuysuz*) or when the husband has pronounced an irrevocable divorce (*talak tiga* or *talak ba'in kubra*). Also, divorces effected by the pronouncement of *talak* by the *hakam* (*talak wajib*), or by way of *khuluk* do not give rise to the wife's entitlement to or the husband obligation to pay *Nafkah Iddah*. In other words, *Nafkah Iddah* is not payable in these instances of divorce. *Nafkah Iddah* is not to be confused with a wife's entitlement to maintenance or *Nafkah* during the subsistence of her marriage, i.e. prior to divorce. A wife is entitled to receive maintenance from her husband, and this represents one of the fundamental obligations of a Muslim man towards his wife under Muslim law. A wife who is not paid any maintenance by her husband or who does not receive enough maintenance from her husband may apply to the Family Court for a maintenance order. The *Syari'ah* Court does not make such orders. Likewise, a husband's obligation to provide regular and sufficient maintenance for his children is a distinct obligation which comes under the purview of the Family Court and not the *Syariah* Court.

Muta'ah

Muta'ah, on the other hand, is a consolatory gift from a husband to his divorced wife and is primarily intended to mitigate the sense of shame or loss that is suffered or experienced by the wife as a result of the divorce. *Muta'ah* also serves to compensate

¹⁸ Administration of Muslim Law Act. Chapter 3 (2009) AMLA

or reward the wife for her efforts and services towards the husband and the family generally throughout the course of the marriage. The total amount of *Muta'ah* to be paid to the wife is computed based on the number of days the marriage had lasted. Therefore, the longer the marriage, the higher is the amount of *Muta'ah* that is payable. *Muta'ah* is payable in all instances of divorce. However, the *Syari'ah* Court and the Appeal Board have suggested that *Muta'ah* may not be payable in cases of *fasakh* under Section 49 of AMLA. However, we are of the view that in certain cases *fasakh*, *Muta'ah* may still be ordered to be paid on compassionate grounds or on the basis of *ihsan*. As with *Nafkah Iddah*, *Muta'ah* is not to be confused with maintenance which a husband has to provide for his wife during the course of the marriage or to his children.

6.1.3 How Are the Amounts of *Nafkah Iddah* and *Muta'ah* determined?

The law is very clear. The amounts of *Nafkah Iddah* and *Muta'ah* due from a husband to his divorced wife are to be determined primarily upon the Court's assessment of the husband's means.

The term "means" does not equate to only "income" or "salary". It is broader in meaning in that it includes the husband's assets of any kind (e.g. CPF (Central Provident Funds) monies, car, stocks, bonds, investments, savings, property, and the like) as well as the husband's financial obligations, liabilities and limitations (e.g. debts, any illness which adversely affects the husband's earning capacity, any illness which attracts expenses for medication or treatment on a long term basis, the age, qualifications and general employability of the husband, and the like).

Other factors determining the amounts of *Nafkah Iddah* and *Muta'ah* include the standard of living enjoyed by the husband and the wife prior to the divorce, the needs of the wife, the contributions of the wife during the marriage, etc. The list goes on.

6.1.4 How are *Nafkah Iddah* and *Muta'ah* to be Paid?

Nafkah Iddah and *Muta'ah* may be paid in cash in one lump sum or in cash in monthly installments or from the husband's share of the proceeds of the sale of the matrimonial home or by way of a transfer of the husband's CPF monies to the wife's CPF account.

6.1.5 What are the usual amounts of *Nafkah Iddah* and *Muta'ah*?

As stated above, the amounts of *Nafkah Iddah* and *Muta'ah* in any given case are determined upon the Court's assessment of the husband's means and upon the Court's consideration of a whole host of factors. Therefore, no two cases, no matter how 'similar' they are can result in the same amounts of *Nafkah Iddah* and *Muta'ah* being ordered. Having said that, currently, the lowest rate of *Nafkah Iddah* is between \$200.00 and \$300.00 per month of *iddah*, or between \$600.00 and \$900.00 in total. An income of between \$3,000.00 and \$5,000.00 per month may attract *Nafkah Iddah* at the rate of between \$300.00 and \$500.00 per month of *iddah*, or between \$900.00 and \$1,500.00 in total. As regards *Muta'ah*, currently, the lowest rate is between \$2.50 and \$3.50 per day of marriage. An income of between \$3,000.00 and \$5,000.00 per month may attract *Muta'ah* at the rate of between \$4.00 and \$6.00 per day of marriage. It

must be stressed that the exact amounts of *Nafkah Iddah* and *Muta'ah* depend very much on the facts of each case. Therefore, it is important that all relevant evidence is presented to the Court for its consideration. The determination of these amounts is therefore an exercise of Court's discretion which may not be very easily challenged or overturned in an appeal.

6.1.6 How to Enforce Orders for *Nafkah Iddah* and *Muta'ah*?

If a husband fails or refuses or neglects to pay the *Nafkah Iddah* and/or *Muta'ah* in the amounts or in the manner ordered by the Court, the wife may seek enforcement of the relevant orders in the Family Court.

6.2 Types and Effects of Divorce in Muslim Law: Types of Divorce

Under Muslim law, a marriage may be dissolved in one of the following ways:

1. By the pronouncement of divorce (*talak*);
2. By the husband (via *khuluk* or independently of *khuluk*);
3. By the wife (*talak tafweed*); and
4. By the arbitrator (*hakam*); or
5. By the husband's breach of any written condition of marriage (*taklik*); or
6. By annulment (*fasakh*) on proof of certain facts (e.g. the husband's incarceration or the husband's impotence or the husband's cruelty, etc.); or by the reason of invalidity of the marriage, whereby the marriage is unconsummated.

6.2.1 Divorce by Pronouncement of *Talak* by The Husband or by Way of *Khuluk*

A husband may apply for divorce or consent to his wife's application for divorce and thereafter voluntarily pronounce the *talak*: Sections 46(B) and 47(3) of the Administration of Muslim Law Act (Cap. 3) (AMLA). Alternatively, the husband and the wife may agree to divorce by way of *khuluk* as provided for in Section 47(4) of AMLA. Such a divorce is effected by the husband pronouncing the *talak* upon payment of a sum of money by the wife to the husband. In Singapore, a husband may pronounce the *talak* even before commencing divorce proceedings in Court.

Talak Tafweed

Talak tafweed is not expressly provided for in AMLA but is recognized as valid under Muslim law. A *talak tafweed* is effected upon the wife pronouncing the *talak* after accepting the husband's delegation to the wife of his right to pronounce the *talak*. In such a case, the *talak* is pronounced by the wife and not by the husband.

Talak by Hakam

Section 50 of AMLA provides for the appointment of Arbitrators (*Hakams*). If a husband does not consent to the divorce applied for by his wife and/or the evidence presented does not show that the husband has breached any written condition of marriage (*taklik*) and/or the evidence presented does not establish any ground upon

which the Court could decree a *fasakh*, the Court is empowered to order the appointment of a *Hakam* each for the husband and the wife. If the *Hakams* are unable to effect a reconciliation and are of the opinion that the husband and the wife should be divorced, the *Hakams* may effect a divorce by a pronouncement of *talak* by either of them. In such a case, the *talak* is pronounced by the *Hakam* and not by the husband or the wife.

Cerai Taklik

Cerai taklik is provided for in Section 48 of AMLA. If a husband does not consent to the divorce applied for by his wife, but the evidence presented by the wife establishes that the husband has breached a written condition of marriage (*taklik*) the Court may declare that a divorce has taken place by reason of that breach. One such condition is: if at any time, the husband leaves the wife or does not provide maintenance for the wife for a continuous period of 4 months or more, the Court may decree a divorce.

Fasakh

Section 49 of AMLA sets out a non-exhaustive list of circumstances on proof of which the Court may decree a nullity (*fasakh*), for example, where the husband has been sentenced to imprisonment for a period of 3 years or upwards, or where the husband was impotent at the time of the marriage and continues to be so, or where the husband has treated the wife with cruelty. The Court may decree a *fasakh* only after it has received evidence from the wife and at least 2 witnesses.

Invalidity of Marriage

Finally, all Muslim marriages must satisfy and comply with certain rules of *munakahat* (Muslim law of marriage). The Court may annul any marriage which has been solemnized in breach of these rules and which is therefore invalid under Muslim law.

6.2.2 Effects of Divorce

Under Muslim law, the 1st divorce between a husband and his wife is referred to as "*talak raj'ie*". In a *talak raj'ie*, the husband may reconcile (*rujuk*) with the wife within the "waiting period" of 3 months after the divorce (the *iddah* period) without the need for them to undergo a marriage solemnization (*nikah*)¹⁹. In such a case, the husband is said to have "revoked" the divorce. The husband and the wife may likewise *rujuk* if they are divorced for the 2nd time. Sections 102 and 107 of AMLA provide for the registration of a *rujuk*. After the *iddah* period, the husband and the wife are not permitted to *rujuk* but may remarry by undergoing a *nikah*. If a husband and his wife are divorced for the 3rd time, that divorce is known under Muslim law as "*talak ba'in kubra*". In a *talak ba'in kubra*, the husband and the wife cannot *rujuk* or even remarry. The husband is permitted to remarry the wife only after the wife has, after the divorce,

¹⁹ Registry of Muslim Marriages (Singapore)

married another man and is subsequently divorced from that man after their marriage has been consummated. Also, a husband and his wife who have been divorced by the *Hakam*'s pronouncement of *talak* or on the ground of *fasakh* or by way of *khuluk* are not permitted to *rujuk*. They may, however, remarry by undergoing a *nikah*. A husband may also divorce his wife for the 1st time by pronouncing a three-*talak* divorce (*talak tiga*), for example, by saying: "I divorce my wife by three *talak*". In such a case, the divorce that is effected is a *talak ba'in kubra*.

Appointment of *Hakams* (Arbitrators)

The President may on his own motion or on the application of the Plaintiff and/or the Defendant order the appointment of a *Hakam* for each of the parties. The appointment of *Hakams* generally takes place when, at the hearing, the husband refuses to pronounce the *talak* and where the evidence presented does not give rise to any of the other established grounds of divorce (breach of *taklik*, *fasakh*, etc.), the Court may order the appointment of 2 Arbitrators (*Hakams*) to decide on the issue of divorce. The role of the *Hakams* is to facilitate a reconciliation between the Plaintiff and the Defendant, and if that is not possible, to facilitate a dissolution of the marriage by way of the husband's pronouncement of *talak raji'e* (revocable) divorce, or by *khuluk* or by *talak tafweed*. If the *Hakams* cannot effect a reconciliation, and the husband continues to refuse to pronounce the *talak*, or the marriage cannot be dissolved by any other means (*khuluk* or *talak tafweed*), the *Hakams* are empowered to divorce the parties by "*talak wajib*". After hearing the parties on the other issues and claims, the Court will deliver its judgment. The divorce proceedings end here. Once the marriage has been dissolved, the other ancillary matters will be dealt with and decided by the President.

Nafkah Iddah* and *Muta'ah

Upon divorce, the wife is entitled to *nafkah iddah* and *muta'ah*. *Nafkah iddah* is the wife's maintenance during the 3 months after the divorce during which she must observe certain restrictions, e.g. during this period, the wife cannot remarry. *Muta'ah* is a consolatory gift from the husband to the divorced wife. The total amount of *muta'ah* to be paid is computed based on the number of days the marriage had lasted. The amounts for both *nafkah iddah* and *muta'ah* are determined primarily upon a consideration of the husband's means.²⁰

²⁰ Ibid, AMLA

Division of Matrimonial Home

Typically, the matrimonial home will be ordered to be sold in the open market and the net proceeds of the sale are divided between the husband and the wife in such proportions as the Court thinks just and equitable. The Court may also order the sale or transfer of the matrimonial home to either the husband or the wife. In certain cases, the matrimonial home (if it is an HDB flat) may be ordered to be surrendered to the HDB. In determining the husband's and the wife's shares of the net proceeds of the sale of the matrimonial home, the Court will consider several factors, including the husband's and the wife's financial and non-financial contributions towards the purchase of the property and towards the marriage and the family, the husband's and the wife's financial means, earning capacity, etc.

Custody of Minor Children

Muslim law provides specific rules which govern the custody of a minor child (*hukum hadhanah*) upon the divorce of his or her parents, e.g. a child below the age of 7 years and who has not attained the age of maturity will generally be placed in his or her mother's care, whereas an older child will be asked with which parent he or she wishes to live with. There are many other such rules, but all these rules are subject to the predominant consideration of the child's welfare or best interest. Apart from the issue of with which parent a minor child will live with after his or her parents' divorce (care and control), the Court will also decide on the related issues of custody (the right to make decisions on the child's education (including religious education), healthcare, etc.) and access (the right of the non-custodial parent to visit or be with the child)²¹.

Division of Other Matrimonial Assets

Other matrimonial assets include savings in bank accounts, shares, insurance policies, CPF monies, motor vehicles, etc. Essentially, these are assets that had been acquired by the husband or the wife or by both of them during the marriage. An asset which is a gift, or which had been acquired by way of inheritance is excluded unless the asset is the parties' matrimonial home.

In a divorce, the Court is required to divide these other matrimonial assets between the husband and the wife in a just and equitable manner. Many factors are considered in that division, including the husband's and the wife's financial

²¹ *Syari'ah* Court of Singapore

and non-financial contributions during the marriage, their financial means, earning capacity, the needs of the children of the marriage, etc.²²

Dowry and Marriage Expenses

The wife may also claim for unpaid dowry (*maskahwin or mahr*) and unpaid marriage expenses. The relevant proof must be produced in Court.

6.3 Response by the Defendant

Upon being served with the CS and the other documents by the Plaintiff, the Defendant is required to file the Memorandum of Defense (Form 17 for the Husband or Form 18 for the Wife) (MOD), the Defendant's Proposed Parenting Plan (Form 21) (DPPP) and the Defendant's Proposed Matrimonial Property Plan (Form 23) (DPMPP). Additional information on the matrimonial home must also be filed via the PHA. If the Defendant agrees with the PPPP then he/she is required to file, the Defendant's Agreement to the Plaintiff's Parenting Plan (Form 20) (DAPPP). Likewise, if the Defendant agrees with the PPMPP then he/she files the Defendant's Agreement to the Plaintiff's Matrimonial Property Plan (Form 22) (DAPMPP). In the MOD, the Defendant is required to state, amongst other things, his response to the Plaintiff's position on the grounds of the application for divorce and the issues of *nafkah iddah*, *muta'ah*, division of matrimonial assets, etc. The DPPP contains the Defendant's proposal on the custody, care and control and access of the children of the marriage. The DPMPP sets out the Defendant's proposal on the disposal and division of the matrimonial home. A total of 3 sets of the bundle comprising the MOD, DPPP / DAPPP, DPMPP / DAPMPP and the PHA (the original and 2 copies) must be filed. The *Syari'ah* Court will keep the original set and return the 2 copies to the Defendant, one of which is to be served on the Plaintiff. The Defendant is required to file and serve on the Plaintiff these documents within 21 days of his/her receipt of the Plaintiff's documents as discussed above. If the matrimonial home is a HDB flat, for the Plaintiff, the bundle must include the Returned HDB Standard Query Form (RHSQF) and the Returned Housing Guidance Form (RHGF). The Defendant is required to file the RHGF only. However, if the spouses do not have minor children, the RHGF need not be filed by them. Both forms are downloadable from the *Syari'ah* Court's website.

6.3.1 Mediation

The role of the Mediator is to facilitate a settlement of all the issues between the Plaintiff and the Defendant. The parties may be required to attend several Mediation sessions in order to achieve full settlement. If there is a settlement, the parties will attend before the President of the *Syari'ah* Court for consent order to be recorded. The parties attend the Mediation with their lawyers (if any). If the Court approves the settlement, the divorce proceedings end there. If there is a settlement, the terms of the settlement will be recorded by the Mediator in a draft Decree of Court / Order of Court. The Plaintiff and the Defendant will then appear before a judge (called President). The

²² Ibid

husband will then pronounce the *talak* before the President if he had not already done so previously. The President will then confirm the divorce and the terms of the settlement with the Plaintiff and the Defendant and the divorce proceedings end here.²³

6.3.2 Pre-trial Conferences

if there is no settlement at mediation, the plaintiff and the defendant will be required to attend several pre-trial conferences (ptcs) over the course of the next several months. at these ptcs, the registrar of the *syari'ah* court will give instructions for affidavits and possibly other documents to be filed and for other things to be done in order to prepare the case for hearing.

6.3.3 Hearing

at the hearing, the husband will be invited to pronounce the divorce (*talak*) if he has not already done so, or the court will rule on the validity of a previously pronounced *talak*. if the wife alleges that the husband has breached any written condition of marriage (*taklik*), or claims that her marriage is to be dissolved on the ground of *fasakh*, the court will first determine whether there has been such a breach or whether the claim of *fasakh* has been made out. the court will then hear parties on the other issues and claims (*nafkah iddah*, *muta'ah*, custody of children, division of matrimonial assets, etc.) and then deliver its judgment, either immediately or on another date. the divorce proceedings end here.

6.3.4 Appeals

If the Plaintiff or the Defendant is dissatisfied with any decision of the President on any of the issues, he / she may appeal against that decision by filing a Notice of Appeal (Form 53) with the Appeal Board within 30 days of the date of the decision.²⁴ The appeal will be heard by 3 judges and the hearing of the appeal will be held at the *Majlis Ugama Islam Singapura* (MUIS). There is no right of further appeal.

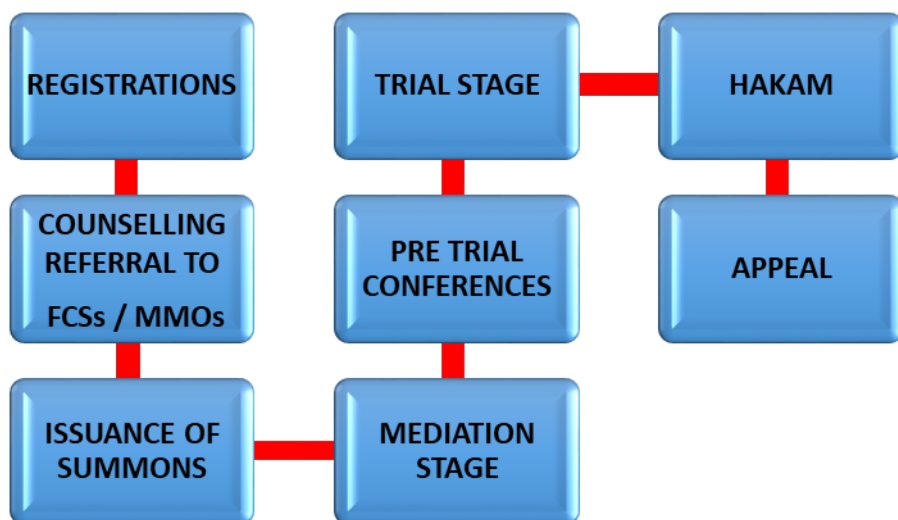
6.3.5 Collection Of Decree Of Court / Order Of Court And Divorce Certificate

At the conclusion of the divorce proceedings, the Plaintiff and the Defendant will be informed when they can collect the Decree of Court / Order of Court and the Divorce Certificate. Usually, the Decree of Court / Order of Court may be collected at the *Syari'ah* Court within 2 to 3 weeks of the hearing. The Divorce Certificate will usually be ready after 3 months from the date of hearing if the divorce is a *talak raji'e* (revocable) divorce.

²³ Ibid

²⁴ Note: Further hearing may also schedule to await receipt of a custody evaluation report or for their reasons as directed by the Court.

7.0 General Overview of Procedure in *Syari'ah* Court in Singapore



8.0 Findings

According to recent findings, the Muslim women in Singapore appear to initiate divorces at a higher rate than men. They constituted the vast majority of applicants in Islamic divorce court proceedings. In both males and females, infidelity is cited as the most common reason for divorce. We speculate that the Islamic provision for polygamy may be one of the reasons for infidelity. This may have contributed to Muslim men's tendency to engage in relationships with women who could become their future spouses. Financial difficulties were cited as the second most common reason for divorce, followed by domestic violence.

9.0 Suggestion

The Ministry of Social Affairs (1979) study says counseling services for young couples registering for marriage should be implemented and strengthened to prevent "hasty divorces" in the future.²⁵ The *Syari'ah* court should focus on cases involving in infidelity, domestic violence and children, with a particular emphasis on those involving married couples. More research can be conducted in order to get better results. This research looks into the real issues that affect Muslim married couples who are divorcing. In a nutshell, this new proposed structure is not a spur-of-the-moment idea; rather, it is critically examined while taking current issues and future possibilities into consideration. Experts have confirmed that it is viable now and in the future.

²⁵ A study of non-Muslim divorce in Singapore / by Applied Research Corporation for Ministry of Social Affairs. (1979)

10.0 Conclusion

According to the Ministry of Social Affairs (1979) study, counseling services for young couples registering for marriage, as well as counseling for married couples experiencing marital problems, should be implemented and strengthened to prevent "hasty divorces." The current findings confirm that marital counselling is regarded as a viable option for dealing with marital problems.²⁶

In conclusion, the issue of divorce is very significant and crucial which as being concerned especially with the Muslim community as a whole. This means that the users as an upper hand in counting into the cause and outcome of the dissolution of the marriages and the consequences which leads to divorce in the hereafter and see into how we could avoid it amicably. Marrying someone is easy but maintaining it, the couples have to go through a lot of challenges; it can also provide some interesting and enhancing in understanding. Hopefully, the finding of this study will yield us some insight into the general demographic and the profiles of divorcing couples who are in acrimonious situations. In accepting this knowledge, it is important that steps are taken to address these issues highlighted through the work. Some potential marital intervention points are indicated below. Other than just dealing with the problem, but when it comes up, preventive steps to target pre-marital stages and critical points are as significant. In parliamentary law to occur up to the effects of divorce and post-divorce support programs are needed to play a pertinent role.

Despite the fact that the *Syari'ah* Court has been the institution in charge of resolving disputes between divorcing parties. In this regard, it has become the *Syari'ah* Court's philosophy to strive for justice and to administer the cases before it fairly and effectively. This is consistent with the following Quranic verses:

"Oh Believers! Speak out firmly for justice, as witnesses to Allah, even if it is against yourself, your parents, or your kin, and whether it is against rich or poor, because Allah can best protect both. Follow not your hearts' lusts, lest ye swerve, and if ye distort justice or refuse to do justice, verily Allah is aware of all that ye do." (Qur'an 4:135).

"And live with them (women) honorably. If you dislike them, it may be that you dislike a thing and Allah brings through it a great deal of good." (Qur'an 4:19).

The *Syari'ah* Court could have instituted restorative practices for cases involving a number of sound issues. This includes divorce cases in which care and family violence issues are also pending. The court should also direct the underlying emotional and psychological, social and interpersonal issues confronting the family in order to settle the legal issues amicably and minimize, if not completely eliminate, the effects of these bitter conflicts. They should approach the various issues holistically, with a particular emphasis on cases involving children. More research can be conducted in order to get better results from married couples. This study is looking into the real issues that are affecting *Muslim* married couples who are going through a divorce. In a nutshell, this new proposed structure is not a spur-of-the-moment idea; rather, it is critically examined while taking into account current issues and future possibilities. It has been validated by experts to be workable now and in the future.

²⁶ Ibid, Ministry of Social Affairs. (1979)

Some of our prominent organizations, such as MUIS (*Majlis Ugama Islam Singapura*), PERGAS (*Persatuan Ulama dan Guru- Guru Agama Singapura*), *Syariah* Court, and the Registry of Muslim Marriages (ROMM), should work together to expand opportunities for young Muslim couples who are looking for ways to make their marriages work. The most effective policy will most likely result from a diverse portfolio of programs. Some programs may target youth and emerging adults, assisting them in becoming more relationship-literate and avoiding common blunders that make forming and maintaining healthy marriages more difficult in the long run. Before marriage is the best time to start thinking about divorce prevention. Couples can benefit from the research's conclusions and findings, and it is becoming clear that relationship education works. The society should now look to capitalize on its success. Hopefully, this research will inspire others, including non-Muslims, to improve and incorporate the findings into their modules to reduce divorce. This study has one important message for policymakers, divorce, and families: for life consistency, couples must recognize each other in all aspects of life, and the authorities must create such an environment.

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