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**THE APPOINTMENT AND FUNCTIONS OF HAKAM
(ARBITRATOR) IN ISLAMIC FAMILY LAW:
A CASE STUDY IN MALACCA**

Sharaliza binti Talim
(Matric No. P 010368)

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KOLEJ UNIVERSITI ISLAM MALAYSIA
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AUTHOR DECLARATION

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I hereby declare that the work in this academic project is my own except for quotations and summaries which have been duly acknowledged.

Date : 28th February 2004

Signature



Name

: Sharaliza Talim

Matric No.

: P 010368

Address

: No. 44 Jalan Sawi
Yap Tau Sah, 86000
Kluang Johor

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I am indebted to the Faculty of Syariah and Judiciary especially to Madam Nik Salida Suhaila bte Nik Saleh, as my supervisor of this academic project for her continued support, guidance and ideas during the research. Thanks also to the Dean of Faculty Syariah & Law and to all staffs that had given a wonderful assistance and support to my academic project report.

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ABSTRAK

Menurut kajian, manusia memang memerlukan tempat bergantung untuk mencari penyelesaian terutama sekali apabila berhadapan dengan konflik antara individu. Kajian ini merupakan satu kajian tentang perlantikan dan fungsi hakam di dalam membantu menyelesaikan konflik pasangan suami isteri. Kajian ini bertujuan antaranya untuk memberi gambaran yang jelas berkaitan konsep pelaksanaan hakam dan segala syarat yang diperlukan. Ia juga untuk mengenal pasti bagaimana langkah terbaik agar hakam ini dapat diaplikasikan dan mencapai objektif yang disasarkan. Sementara itu, kajian ini dijalankan untuk mengenal pasti pelaksanaan hakam di tempat kajian kes dan permasalahan yang timbul. Untuk memperolehi data dan maklumat, beberapa kaedah kajian telah digunakan. Diantaranya ialah melalui temuramah secara personal dengan pihak yang terlibat di dalam mengimplementasikan sistem hakam di negeri Melaka. Selain itu, melalui pemerhatian dan pemerolehan data dari pihak yang berkuasa. Hasil dari kajian mendapati bahawa peri pentingnya hakam ini wujud di dalam membantu mengurangkan kadar perceraian. Ia dapat dibuktikan bahawa pelaksanaan hakam memberi ruang kepada pasangan suami isteri untuk membuat pertimbangan dan keputusan sewajarnya. Ini dapat mengelakkan ketidakpuasan hati di belakang hari kelak. Dapatan dari hasil kajian telah menunjukkan reaksi positif ke atas penggunaan hakam ini sebagai wadah untuk membantu mengurangkan kadar kes perceraian dan mengurangkan beban kerja di mahkamah syariah.

ABSTRACT

Based on this research, it was found that all human has nature feeling that needs to drape or to be care in order to find way out or settlement especially when facing a conflict with other person. It is because during this situation, a person cannot balance with its emotional and intelligence. So, it is too hard to find the settlement even though it is just a simple problem. This research is based on the appointment and function of *hakam*. As we know, *hakam* application is one of the methods in handling marital disputes between spouses. This research is basically conducted and highlighted to give a clear view of the definition and the application of arbitrator in Islamic family law. It also elaborates all the requirements needed to be an arbitrator. Another point is to search and determine what is the best solution to upheld in order to ensure this application can be more successful and effective. Meanwhile, this research is conducted to determine the application of arbitrator in its study case that linked with the problems and ways to improve it. In order to gain the information, there are various methods have been used. One of them is by personal interview with the authorized person to get the true application that will be written in academic project report. Beside it, by observation and collecting data and statistics from the authorize body. Result from the research found that the existence of *hakam* is important that will enable to reduce divorce cases. It can be proved by go through with this system, both spouses can make a consideration and decision without any dissatisfaction. So, it can be avoided to any unexpected things to happen in future. This research also shows the positive reactions by its implementation that will help in reducing burden and duty of the judge in court.

ملخص البحث

هذا البحث يبين ان الإنسان يحتاجون الى الملجأ اثناء مواجهة المسألة في حياتهم خصوصا مثل التراع والشقاق مع انسان آخر. هذا البحث يبحث عن وظيفة الحَكَم حلّ التراع بين الزوج والزوجة. هذا البحث يعطى صورة جلية وواضحة عن الحَكَم وشروطه في حلّ المشاكل الزوجية. وفوق ذلك، يوضح هذا البحث أحسن طريق لإستعمال الحَكَم في حلّ هذه القضية. وبجانب ذلك، يحاول هذا البحث معرفة كيفية تطبيق نظام الحَكَم في موضع الدراسة والمشاكل التي ظهرت فيها ، وقد اختارة الباحثة ولاية ملاك كماكان للبحث الدراسة. وللحصول على المعلومات اعتمدت البحثية على حوار الشخص مع الجهة المعينة وعلى الملاحظة واستجواب المسؤولين في ولاية ملاك. ومن نتائج البحث وجدت ان الحَكَم مهم في حلّ المشاكل الزوجية. وانه مفيد للتقليل من قضية الفراق بين الزوجين. وانه يعطي الفرصة للزوج والزوجة في تحسين حياتهم. وانه يساعد على تخفيف عبء الأعمال في المحكمة الشرعية.

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GLOSSARY

<i>fasik</i>	: reprobate person
<i>hakim</i>	: judge
<i>hukum syara'</i>	: a legal rule in Islamic law
<i>ibadah</i>	: an act of worship
<i>li'an</i>	: divorce by imprecation
<i>qadi</i>	: judge
<i>ruju'</i>	: process to revoke the divorce by resumption of conjugal relationship
<i>sulh</i>	: reaching for a peaceful settlement between a husband and wife
<i>talaq bain</i>	: irrevocable divorce
<i>talaq raj'ie</i>	: revocable divorce
<i>ta'liq</i>	: divorce of failure of condition

**ARABIC WORDS TRANSLITERATION SYSTEM
TRANSLITERATION**

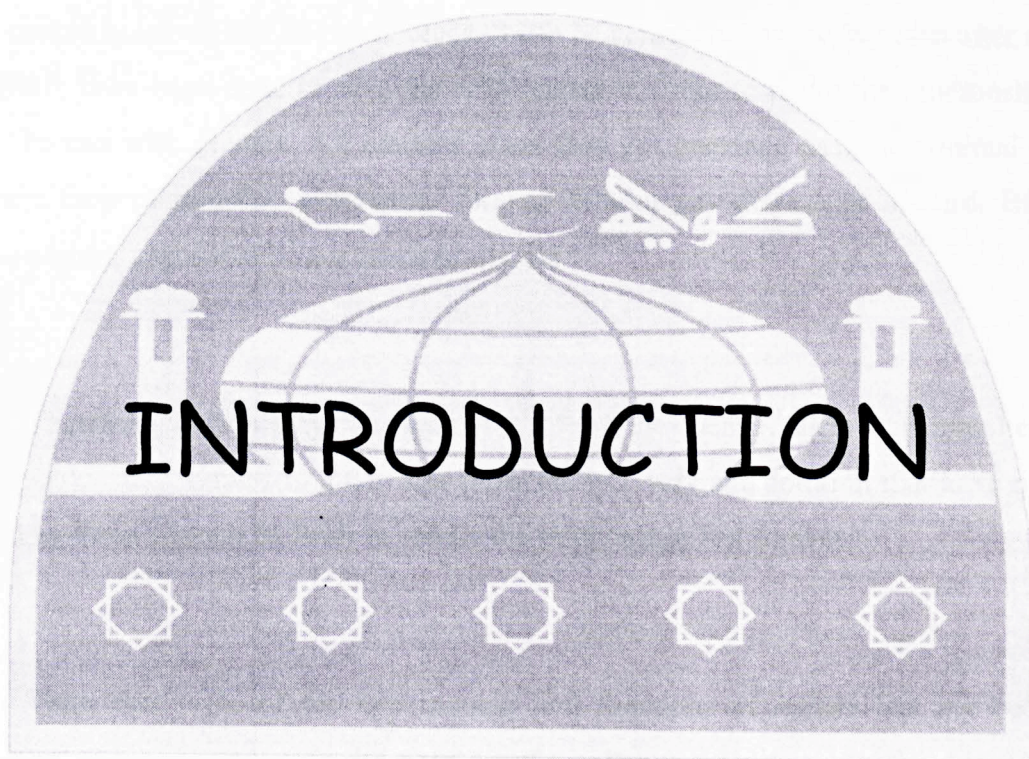
1. ALPHABET

<u>ARABIC</u>	<u>LATIN</u>	<u>EXAMPLE</u>	<u>TRANSLITERATION</u>
ا	a	فأر	fa'r
ب	b	برد	burd
ت	t	تلّ	tall
ث	th	ثوب	thawb
ج	j	جدار	jidar
ح	h	حليب	halib
خ	kh	خادم	khadim
د	d	ديك	dik
ذ	dz	ذهب	dhahab
ر	r	رفيق	rafiq
ز	z	زميل	zamil
س	s	سلام	salam
ش	sh	شعب	sha' b
ص	s	صخر	sakhr

ض	dh	ضيق	dayq
ط	th	طلاب	tullab
ظ	zh	ظالم	zalim
ع	‘	علم	‘alima
غ	gh	غلام	ghulam
ف	f	فيل	fil
ق	q	قلب	qalb
ك	k	كلام	kalam
ل	l	لبّ	lubb
م	m	من	min
ن	n	نجم	najm
و	w	ورق	waraq
ه	h	هول	hawl
ي	y	يّم	yamm

ABBREVIATIONS

bhd.	: berhad
didn't	: did not
haven't	: have not
ltd.	: limited
n.a.	: no author
n.d.	: no date
n.pl.	: no place
n.pb.	: no publisher
p.	: page
pp.	: pages
RA	: radiya Allah anhu
SAW	: saalla Allah alayhi wa sallam
Sdn.	: sendirian
SWT	: subhanahu wa taala
trans.	: translated by
vol.	: volume
vers.	: version



INTRODUCTION

INTRODUCTION TO THE RESEARCH

1. Research Background

The appointment of *hakam* or arbitrator is one of the methods or ways to help those couple to solve their domestic crisis. It can be considered as the last step after all the efforts have been done to save the relationship in order to make the relationship not to be end with divorce. All couples when they got marriage have determined to maintain their relationship everlasting forever without any dispute or discord. But, what we had planned maybe not successfully did.

Therefore, *hakam* plays an important role in the society. With it, it may help those problematic couples to guide and show the true way and solution that have not be seen by those couples in order to ensure the relationship last forever.

Thus, this topic of the appointment and functions of *hakam* has not been discussing widely by any authority party, so the writer decided to write about it. The idea came when the writer go through to the State Enactment of Family Law in Federal Territory and after read out articles in Internet. It was come from deep inside hearts that feel the importance on it. The writer prefers to write based on how the appointment of *hakam* and how it is functioned in help those disputes couples.

2. Problem Statement

The problem statement here can be divided into three points. The first point is to know how and what is the method to appoint *hakam*. It also includes the qualifications and all the requirements to be it. Secondly, is to explore on the functions and what the duty to be an arbitrator. It is just only for divorce case or related to other Islamic matters. Lastly, how does the implementation of *hakam* or arbitrator in Malacca? Is it already be implemented or just stated in the state enactment. If it exists, which category of case that needed *hakam* and the related cases on it.

3. Research Objectives

- 1.1 To observe how far the effectiveness of *hakam* in the Islamic family institutions.
- 1.2 To know what is the qualifications and requirements to appoint *hakam* or an arbitrator in Malacca.
- 1.3 To explore the implementation and functions of *hakam* in Malacca.

4. Definitions of Terms

According to *Dictionary of Islam*, *hakam* can be defined as an arbitrator that will be appointed by *qadi* to settle disputes. It is not lawful to appoint either a slave or an unbeliever or a slender, or an infant as an arbitrator. It is already mentioned in *Hidayah*, vol ii, page 638.

Beside it, according to *Kamus Istilah Undang-Undang Keluarga Islam*, Dr. Zaleha Kamaruddin and Raihanah Abdullah, stated that *hakam* is known as arbitrator, that is two person that appoint by court accordance to *hukum syara'* to act on behalf of husband and wife that having conflict and crisis in their marriage.

5.Scope of Research

In this writing, the scope is more focusing to the institution of *hakam* in Malacca in order to know how the appointment of an arbitrator and what are the functions as a conciliatory to those partners that have facing heavy crisis. When conducting the research, the writer will try to get the Islamic Religious Council and *Syariah* Court of Malacca as research area and sources.

It is also includes the analysis of several cases that have used *hakam* in order to know the effectiveness application of *hakam*. It will also explore how far the implementation of *hakam* with accordance to *hukum syara'*.

6.Research Methodology

This study will be conducted in several ways. This is to ensure a well-planned study and a systematic report so that it may avoid difficulties, redundancy and overlapping of statements.

1. Research Design

The purpose of study is descriptive. The time horizon by the way is short term that will take time duration in six months. The unit of analysis in the research is by individuals. Personal observations will be handled during the visit to the Islamic Religious Council and *Syariah* Court of Malacca.

2. Data Collection Plans

- **Personal Interviews**

The writer will make appointment and deal with the *Syariah* Court's officer and the Islamic Religious Council's officer regarding the personal interview.

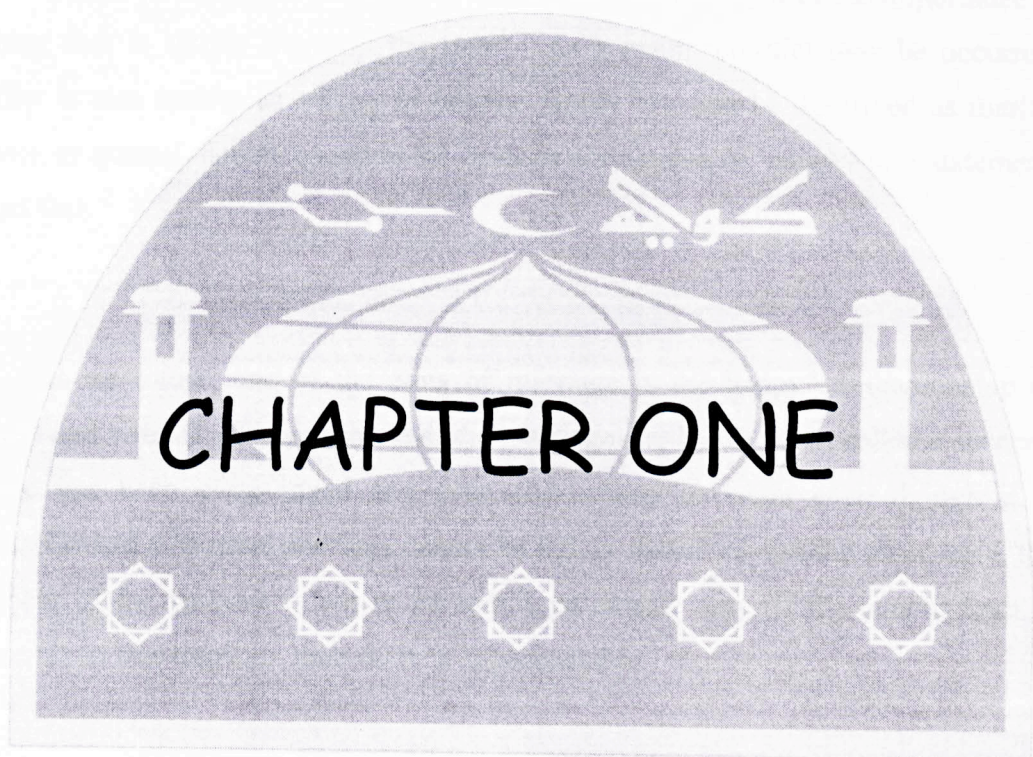
- **Secondary Data**

The write will search such data and information from the Internet, references from various books, magazines, articles and newspaper that most of the information will be get in the library. The writer will also go through to the past writers' about the related topics.

3. Proposed Analysis of the Data

The data that will be collected will be analyzed by using Microsoft Excel or SPSS to find the percentage of increasing or decreasing of user that using this application. It is better to get a number of mod, median and min. Then, all the results will be presented by using illustration (bar chart, pie chart etc.).

ISLAMIC ARBITRATION



CHAPTER ONE

CHAPTER ONE

INTRODUCTION OF *HAKAM* (ARBITRATOR)

Family can be defined as an everyday part of life for most people. According to *George Santayana* in his book, *Families Today*, he mentioned, “ *Family is one of nature's masterpieces*”. But sometimes, it is so easy to lose sight of the importance of anything that is simply there all the time¹. As a result, conflict may be occurred. Conflict is also known as *shiqaq* in Islamic family law can be described as marital disputes or quarrel, debate question the truth or correctness or validity of a statement, alleged fact.²

As we know, one of the aims of marriage is the happy companionship of husband and wife. If this not achieved, the marriage can hardly to be called a success. Divorce has been discouraged and even condemned in Islam even though it is permissible and a Muslim marriage cannot be lightly dissolved. On the other hand, the happiness of the spouses is not to be sacrificed simply easy. If the couple finds it impossible to live together, then divorce is permissible.

However, it is out from the Islamic family objective to produce happy family in all mankind. But, before the actual dissolution of marriage happen, an effort can be made by both spouses for reconciliation in order to smooth out any differences between the couples by appoint of two *hakam* or arbitrators, one representing each spouses. Commonly, *hakam* will be appointed after registered the case in court and ordered had made by judge.

1. Definition of *Hakam*, *Tahkim* and *Shiqaq*

a) *Hakam* or Arbitrator

Literally, *hakam* or arbitrator is known as appointed person to settle marital dispute. It is also can be described as process of judging a dispute between people by someone who is not involved. *Hakam* will be appointed by the mutual consent of the parties to an arbitration agreement, nomination by a third person.³

In Islamic Family Law, *hakam* can be described as the person that has the authority that has been given by court to act as the representative by each spouses that involving in marital disputes. According to section 45(1) in *Perak Islamic Family Law (1984)*, stated that *the court may appoint in accordance with hukum syara' two arbitrators or hakam to act for the husband and wife respectively*⁴.

b) *Tahkim*

Literally, *tahkim* means someone appoints somebody else to give penalization or hand over authority to give punishment or sentence.

According to *hukum syara'*, it can be defined as a process that both of spouses or the disputes party agree to appoint *hakam* in order to give judgment between them according to the *hukum syara'*. In real life, if someone facing a problem example in family marital disputes, he or she will refer to another party or the third party to get solution or any decision where by the solution or decision that not against the Islamic teaching is not necessary to be followed by the dispute party. Other wise, he or she has the right either to agree or refuse it in order to get the right decision.⁵