

LEGAL AID BUREAU IN KEDAH: ITS FUNCTION IN SOLVING  
PROBLEM OF MUSLIM WOMEN

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Academic project report submitted in partial fulfillment for the degree  
BACHELOR OF SYARIAH AND JUDICIARY

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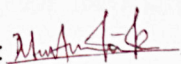
February 2004

**AUTHOR DECLARATION**

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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

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## ACKNOWLEDGEMENTS

Grateful to Allah and Prophet SAW, the only God in world, the writer has completed a project paper.

And thank you very much to Encik Arif Fahmi Md Yusof because in assisting writer to complete the project paper.

And thank you very much to workers and staffs of Legal Aids Bureau Kedah (BBGK) especially for Cik Maria Bte Jilani and Cik Rohayati Bte Sapie, for helping the writer giving information about Legal Aid Bureau Kedah.

And thank you very much to writer's parents, for their strong moral support and material for successful of this project.

And thank you very much to writer's fiancé Mohd Khairy Ahmad always helping and supplying adequate information about of Legal Aid Bureau Kedah (BBGK).

Beside that, thank you very much to best friend the writers Bashiroh, Masyitah, Maznah, Maziyana, Zah , Dah and especially students from Faculty of Syariah and Law.

Lastly for whom directly or involved in helping the writer in preparation of this project paper. Thank you very much for all.

## ABSTRAK

Kajian yang dijalankan ini merupakan kajian lapangan mengenai peranan Biro Bantuan Guaman. Kajian ini menggunakan kaedah diskriptif untuk menerangkan setiap data yang diperolehi daripada pihak Biro Bantuan Guaman. Kewujudan Biro Bantuan Guaman sebagai wadah kepada rakyat adalah bersesuaian dengan kehendak dan keperluan masyarakat yang menginginkan supaya diwujudkan satu sistem keadilan yang murah dan berpatutan, diyakini dan mampu memperjuangkan hak – hak mereka terutamanya golongan lemah seperti Wanita Islam di dalam proses perundangan. Perkhidmatan yang ditawarkan oleh pihak Biro amat bersesuaian sekali kerana murah dan berpatutan. Dengan ini secara tidak langsung ia telah merealisasikan dasar kerajaan untuk membantu golongan miskin dan melindungi mereka yang tertindas terutamanya golongan Wanita Islam yang ditindas melalui pendekatan undang-undang. Sehubungan dengan itu, diharapkan agar orang ramai dan golongan Wanita Islam khususnya, akan mendapat manfaat daripada penubuhan Biro Bantuan Guaman tersebut. Justeru, adalah menjadi satu harapan semua pihak, semoga dengan adanya Biro Bantuan Guaman ini ianya akan menjadi satu institusi keadilan yang telus yang dapat meringankan bebanan bagi golongan yang tidak berkemampuan dan juga dapat memperkukuhkan lagi prinsip-prinsip keadilan dan hak-hak kesamarataan di sisi undang-undang.

## **ABSTRACT**

The research uses field study about the functions of Legal Aid Bureau. This research also uses descriptive method to explain the data gained from Legal Aid Bureau. The existence of Legal Aid Bureau is as the medium to fulfill the society's needs. The society needs a legal system that is reliable, affordable and able to fight for their rights especially to the Muslim Women. Indirectly legal have approaches materialized the governments policy to aid the poor and protect the group oppressed. It is hoped the public will gain benefit from the establishment of Legal Aid Bureau as a transparent institute of justice. This will reduce the burden of the underprivileged and strengthen principles of justice and equal rights in law.

## ملخص البحث

هذا البحث هو دراسة حول لجنة المحامي ودورها، تم تقديم هذا البحث بطريق " دسكرفتييف" في بيان عن المعلومات الجديدة المتعلقة بهذه اللجنة. والغاية من إنشاء هذه اللجنة هي إظهار العدالة والمساواة في المجتمع. حيث هذا ماأراد به مجتمعنا يتوفر وبإنشائها. لكل أعضاء المجتمع إمكانية طلب الحقوق بالسهولة ويسر مناسب لأن الخدمات التي قدمتها اللجنة بسر معقول وهذا بالتالي قد ساعدت المستضعفات خصوصا النساء. وفي نفس الوقت أيضا هذا يتماشى مع إرادة الحكومة التي تحاول أن تقدم مساعدة خاصة للنساء. والغاية الأسمى من إنشاء هذه اللجنة أيضا ستفنع النساء كاكل. وكذلك يرجى أن هذه اللجنة ستصبح المؤسسة التي تدافع عن حقوق المستضعفين وبالتالي ستقوى العدالة والمساعدة في المجتمع.

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## GLOSARRY

- Al-Qur'an* : *The Holy Book revealed by Allah SWT to Prophet Muhammad SAW.*
- Allah* : *The Muslim term for Good, The Almighty one ,the compassionate, the merciful, the source from which all things see and unseen emanate and return.*
- Faraidh* : *Rules of inheritance, The Portions allotted to heirs the Relatives of a deceased*
- Fiqh* : *Jurisprudence*
- Hadith* : *(pl. ahadith) the verbalized form of a tradition of the Prophet Muhammad S.A.W. constitutive of his sunnah.*
- Islamic Law* : *The laws of Islam as provided for, administered and applied in Malaysia.*
- Jabatan Kehakiman*  
*Syariah Malaysia* : *Department of Syariah Judiciary*
- Khaibar* : *A rich ad populous valley eight by Jews, it is celebrated in the history of Islam as the scene of one Muhammad's expeditions.*
- Mazhab* : *Refers to one of the four recognized Islamic schools of jurisprudence namely Hanafi, Maliki, Syafie and Hambali.*
- Pegum Syarie* : *Syarie lawyer*
- SAW* : *Peach Be Upon Him*
- Shariah* : *The collective name for all the laws of Islam, including Islam whole religious and liturgical, ethical and jurisprudential system.*
- Suluh* : *Reconciliation.*

## TRANSLITERATION TABLE

### ARABIC WORDS TRANSLITERATION SYSTEM

#### 1. ALPHABET

<u>Arabic</u>	<u>Latin</u>	<u>Example</u>	<u>Transliteration</u>
ء	'	فأر	fa'r
ب	b	برد	burd
ت	t	تلّ	tall
ث	th	ثوب	thawb
ج	j	جدار	jidār
ح	h	حليب	halīb
خ	kh	خادم	khādim
د	d	ديك	dīk
ذ	dh	ذهب	dhahab
ر	r	رفيق	rafīq
ز	z	زميل	zamīl
س	s	سلام	salām
ش	sh	شعب	sha <sup>c</sup> b

ص	s	صخر	sakhr
ض	d	ضيق	dayq
ط	t.	طازخ	tālib
ظ	z	ظالم	zālim
ع	c	عقل	°aql
غ	gh	غلام	ghulām
ف	f	فيل	fil
ق	q	قلب	qalb
ك	k	كلام	kalām
ل	l	لبّ	lubb
م	m	مال	māl
ن	n	نجم	najm
ه	h	هول	hawl
و	w	ورق	waraq
ي	y	يم	yamm

## 2. Short Vowel

<u>Arabic</u>	<u>Latin</u>	<u>Example</u>	<u>Transliteration</u>
_____	a	كتب	kataba
_____	i	علم	°alima
_____	u	غلب	ghuliba

## 3. Long Vowel

<u>Arabic</u>	<u>Latin</u>	<u>Example</u>	<u>Transliteration</u>
ى , ا	ā	عالم, فتى	°ālīm, fatā
ي	ī	علیم, داعي	°alīm, dā°ī
و	ū	علوم, أدعو	°ulūm, Ad°ū

## 4. Diphthong

<u>Arabic</u>	<u>Latin</u>	<u>Example</u>	<u>Transliteration</u>
و	aw	نوم	nawn
ي	ay	ليل	layl
يّ	iyy	شافعي	shāfi°iyy (ending)
وّ	uww	علوّ	°uluww (ending)

## 5. Exemptions

5.1 Arabic letter ء (*hamzah*) found at the beginning of a word is transliterated to the letter “a” and not to ‘.

Example: أكبر transliterated to: akbar (not ‘akbar).

5.2 Arabic letter ة (*ta’ marbutah*) found in a word without ال (al) which is coupled with another word that contains ال (al) at the beginning of it is transliterated to the letter “t”

Example: مكتبة الإمام transliterated to: maktabat al-imām.

However if the Arabic letter ة (*ta’ marbutah*) found in a word with ال (al), in a single word or in the last word in a sentence, it is transliterated to the letter “h”.

Example: المكتبة الأهلية transliterasi: al maktabah al-ahliyyah

قلعة qal<sup>h</sup>ah

دار وهبة dār wahbah

### ABBREVIATION

BBG	Biro Bantuan Guaman.
BBGK	Biro Bantuan Guaman Kedah.
BBGM	Biro Bantuan Guaman Malaysia
C	Custody
CLP	Certificate Of Legal Practice
DAIJ	Diploma In Law And Administration Of Islamic Judiciary
DS	Divorce Syariah
F	female
H	Hijriyyah
Ibid	Same references
LHDN	Lembaga Hasil Dalam Negeri.
M	maintenance
Ma	male
MP	matrimonial property
N	not settles
n. d	no date
NGO	Non-governmental organizations
NO	Number
Op-Cit	In opera citato
R	registrars
S	settles
v	Against
Vol	Volume
Ed	Editor

## CHAPTER 1

### RESEARCH PROPOSAL

#### 1.1 Background Of Research

The Malaysian Legal Aid Bureau was officially established in September 1970. Long before this, an Orthopedic Almoner wrote some complaints in 1954 demanding the government to assist some of patients who are having residual liabilities, which will enable them to get their compensation if they are legally represented.

Malaysia Legal Aid Bureau (BBGM) is established based on the principle to serve justice accessible to the people. The Bureau also plays the role in giving legal assistance to the people who are in needy situation. This is due to the fact that the poor are the ones who are always legally in trouble and they usually do not know much on legal matters.

The Legal Aid Bureau Branch in Kedah (After this Known as BBGK) was established on 8<sup>th</sup> July 1972, as the Legal Aid Bureau Kedah /Perlis. Initially. The BBGK's office was situated at 60at 60 A-B Jalan Tun Ibrahim, Alor Setar. The move was made so it is more accessible to the people of Kedah and Perlis.

#### 1.2 Aim Of Research

The writer will make a through a study to know the importance of Legal Aid Bureau especially Legal Aid Bureau Kedah (BBGK) to solving the problem of Muslim Women .The writer also makes research the rights of Muslim women during the divorce, statistic of divorce, criminal cases, inheritance and others.

Besides, the writer also knows the procedure when Muslim Women to files the application into this service.

### **1.3 Objective Of Research**

The objectives of the research are as follows:

- i. To identify the Legal Aid Bureau Malaysia (BBGM), the Branches of Legal Aid Bureau in Malaysia, especially at Kedah.
- ii. To study function of Legal Aid Bureau, their organization, services, activities, and others.
- iii. To analyze the percentage of Muslim Women who go to the Bureau to get the service.
- iv. To know the approach of the Bureau, when they conducted these cases related among Muslim Women especially about divorce.
- v. To know about resolution of Legal Aid Bureau conducting women cases.

### **1.4 Scope Of Research**

The writer will focus about the rights of Muslim Women in laws and justice. After that, to explain about the function of Legal Aid Bureau in contact of Mal cases, criminal cases and faraidh cases which the cases related the Muslim women.

Although, the researcher will concentrate the study in Kedah Legal Aid Bureau and will be distributed questionnaire to the Muslim Women and interview will be conducted among lawyers in this part.

### **1.5 Research Methodology.**

To do this research, the methods that will be used are:

- i. Library research – reference to the book about BBG.
- ii. Field research – conducting interview and questionnaire. Women Muslim.

## 1. 6 Literature Review

1. According to Dato', Dr. Abdul Hamid Othman, former Minister in Prime Minister Department, since the pre- marriage courses were introduced and became necessary on each couple who planning to get married, divorce rates have been dramatically red need.

Dr, Zaleha Kamaruddin, Wanita Dan Undang –Undang. UIA. 1997.

2. Public especially among women are always confuses that to become a good or "solehah" wife is to be become a (follower), who has to unwilling bow and comply with her husband's order, and demand, and his to keep things to herself and was abused.

Dr, Mashitah Ibrahim. Pemikir 2001.

3. According to Seton Pollock.' In its original sense Legal Aid means neither more nor less than the skilled help given to a person concerned to maintain his or her rights under the law, whether or charity or under some system providing by those who could not other wise meet the cost.'

Seton Pollock, Legal Aid in 25 Year, London, Oyez Publication Limited 1975.

## CHAPTER 2

### MALAYSIAN LEGAL AID BUREAU (BBGM)

#### 2.1 Introduction

One of the most sacred principles in the administration of justice is the accused person is presumed innocent until proven guilty. What one must bear in mind is that every accused person is given the opportunity to defend himself before the court. However, not everyone has the knowledge of the procedures of the court, regardless whether the matter is civil or criminal. Some can afford to appoint lawyer of their own choice but some cannot afford to do so.

Therefore the government, especially under the Prime Minister's Department took the responsibility to establish a body to overcome this shortcoming in the legal system. Malaysia Legal Aid Bureau is formed to assist the underprivileged people who are charged committing any offence.<sup>1</sup>

Article 8 of the Federal Constitution provides,

*"All person equal before the law and entitle to the equal protection of the law".*

Access to justice is one of the fundamental principles, which underlines the administration of civil justice<sup>2</sup>. This is a concept which envisages that justice should not only be accessible to the privileged of the few but should be reachable to all citizens in the society and should be made available to all of them on the basis of equality and fairness.<sup>3</sup>

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<sup>1</sup> Biro Bantuan Guaman .1991. *Biro bantuan Guaman Malaysia*. Kuala Lumpur : Jabatan Percetakan Negara. p.24.

<sup>2</sup> Biro Bantuan Guaman Malaysia.1995. *Biro Bantuan Guaman Malaysia Selepas 25 Tahun (1970-1995)* Percetakan Nasional Berhad.p.23.

<sup>3</sup> Mohd Khairy Ahmad.1999/200.*Peranan Biro Bantuan Guaman Kedah Dalam Menangani Masalah Kekeluargaan Islam Di Mahkamah Syariah* .( Project Paper) Universiti Malaya.p.2.

Islam emphasizes upon justice and fairness in all aspects of administration of justice without difference of nation, language, gender, country, politic and culture. This can be seen in the Holy Qur'an, Allah said:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ وَلَا يَجْرِمَنَّكُمْ شَنَاٰنُ قَوْمٍ عَلَىٰ أَلَّا تَعْدِلُوا اعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ<sup>4</sup>

*"O you who believe! Stand out firmly for Allah as witness for just (and fair) dealing, and do not let net red of other to make you lean towards wrong and go away from justice. Be just: that is next to piety: and fear Allah, because Allah is well- acquainted with all that you do."*

Allah said in another verse,

إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ وَإِيتَاءِ ذِي الْقُرْبَىٰ وَيَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ وَالْبَغْيِ يَعِظُكُمْ لَعَلَّكُمْ تَذَكَّرُونَ<sup>5</sup>

*"Allah commands justice, the acts of good and generosity towards relatives, and he forbids all shameful deeds injustice and rebellion. He instructs you, that you may receive guidance."*

Therefore, the contribution of BBGM is consistent with the justice principles. It is to set up the justice in all aspects whether in law, the division of wealth sources, behaviors in the trial sessions such as the judgments, the way of giving the facts of cases, the evidence using by the lawyer to strengthen the cases and the way of giving arguments during the trial. This is some with the one Maxim, which define "justice must not only be done but must be seen to done"<sup>6</sup>

<sup>4</sup> Al-Qur'an Al- Maidah 5:8. All Quranic translations in this writing are based on Prof. Dr. Syed Vickar Ahamed. 1999. *Interpretation Of The Meaning Of The Glorious Qur'an*. Malaysia: TR Group Of Companies.

<sup>5</sup> Al- Qur'an. Al-Nahl. 16: 90.

<sup>6</sup> Ibid. p.99.

## 2.2 Background Malaysia Legal Aid Bureau (BBGM)

The Bureau was officially established in September 1970. Long before this, an Orthopedic Almoner wrote some complaints in 1954 demanding the government to assist some of patients who were having residual liabilities, which will enable them to get their compensation if they are legally represented.<sup>7</sup>

Divorced women or women who lost their husband would also need such assistances. This is especially to settle the issue of maintenance or custody<sup>8</sup> or matters relating to probate and succession. In addition non-governmental women's organizations have been pushing the government to provide such service in order to ensure the rights of the women are taken care of.<sup>9</sup>

Looking into reality, the Malaysian Legal Aid Bureau at present, only provides services to certain cases such as:

- i) Government servants in cases of legal proceedings reality to their official duty: (Public Officers (Conduct and Discipline) (General Order Chapter D) Regulating, 1969)
- ii) Poor person in forma pauperis " (Rules Supreme Court, 1975): and
- iii) Person charged with criminal offences involving capital punishment, (Criminal Procedure Code)

In October 1969, the matter was referred to the Attorney General and he supported the issue. The matter was also brought to the attention of the Ministry of Justice, which is row under the Prime Minister's Department. Based on these supports, in 1970, Malaysian Legal Aid Bureau was formed and put under the Attorney General's Chamber<sup>10</sup>. After the administration of Ministry of Laws in 1985, the Bureau was put

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<sup>7</sup> Ibid.p.25

<sup>8</sup> Zaleha Kamaruddin.1999.Wanita Keluarga Dan Undang-undang,*Wanita &Keadilan* .Chapter 4.Kuala Lumpur: ANZ Charisma p.86.

<sup>9</sup> Mahmod Zuhdi Abdul Majid.1999.*Wanita Dari Perspektif Undang –Undang Keluarga Islam Di Malaysia*..Abdul Monir Yaacob (ed).Undang –Undang Keluarga Islam Dan Wanita Di Negara ASEAN.Kuala Lumpur : Jabatan Kemajuan Islam.p.227-228.

<sup>10</sup> Biro Bantuan Guaman Malaysia.op-cit. p.25.

under the said ministry until May 1995. Subsequent to this, this Bureau is put under the Division of Laws under the Prime Minister's Department until now. <sup>11</sup>

### **2.3 Vision and Functions Of BBGM**

The vision of Malaysian Legal Aid Bureau (BBGM) is to become a leading agency, which contributes to national development and the mission of BBGM is also to give assistance, legal advice, intermediary service and legal consciousness to the society especially to the underprivileged.

Malaysian Legal Aid Bureau (BBGM) is based on the principle to serve justice to the people. The Bureau also plays the role in giving legal assistance, intermediary service and legal consciousness to those who are efficient, effective and accurate especially to poor people. This is due to the fact that the poor are the ones who are always involved in trouble and they usually do not know much on legal matters. This can be seen in the Malaysian Legal Aid Bureau's Customer's Charter:<sup>12</sup>

- i. To give legal advice on all legal matter's, and
- ii. To represent or provide legal assistance in proceedings in all courts in Malaysia in matters of jurisdiction as provided by law.
- iii. To set up the remedy or the better chosen for defendant.

The Bureau also functions as legal advisor in all matters including civil or criminal. Besides that, it disseminates information to the public on their legal rights.

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<sup>11</sup> Ibid, p. 26.

<sup>12</sup> Risalah Biro Bantuan Guaman dan Anda (n.d) *Biro Bantuan Guaman dan Anda*. Kuala Lumpur: Biro Bantuan Guaman Malaysia, Bahagian Hal Ehwal Undang –Undang Jabatan Perdana Menteri. p.13.

## 2.4 Strategies

Malaysian Legal Aid Bureau has two strategies. Firstly the short term strategies and secondly the long term strategies.

The short-term strategies are:

- i. To increase and to strengthen the methods of choosing and evaluating the panel lawyers.
- ii. To improve the case management system by having it online.
- iii. To have more Legal Clinic and distribution of pamphlets and other printed materials on the function of the Bureau.
- iv. To strengthen the inspecting programme from time to time and from branch to branch.
- v. To acquire the certification of MS ISO 9001/ 2000.

The long-term strategies are:

- i. To upgrade and increase the service of Legal Aid Clinic.
- ii. To establish a Human Resources Development Plan towards sharpening the advocacy skills and intermediary service.
- iii. To expand the witness service all over the country.
- iv. To strengthen the cooperation between government agencies and the non-governmental organizations such as the Bar Council to form National Legal Aid Policy.
- v. To expand and increase interactive legal information service.
- vi. To involve directly with programmes organized by the Civil Court and Syariah Court.
- vii. To expand research and development activities.

## **2.5 The Organization Structure**

The Malaysian Legal Aid Bureau is administered under the legal division of the Prime Minister's Department. This division is responsible on all policies, finances and services including providing infrastructure for the Bureau.

Today, the Malaysian Legal Aid Bureau is lead by a Director. The Director in BBGM is Datin Hajjah Fauziah Bte Ramly. She has experience and has been involved in justice law. The director is also a senior officer in legal service and she has two assistant directors. The first assistant director is an expert in civil and the other one is an expert in Syariah matters. There are two units under the Bureau, Administration and Legal Unit. The former has thirteen Administrative Assistants and the latter has two legal assistants.

Today, Malaysian Legal Aid Bureau (BBGM) has twenty-two branches, including four new branches. The reason to establish BBG is to easy people get the services. Previously the Headquarter of BBGM, was at, level 5, Bank Rakyat, Jalan Tangsi, Kuala Lumpur. Now, the Headquarter BBGM is shifted to Putra Jaya.

The Headquarter is responsible to all branches related in the management, administrative and activities from BBG. It is also responsible to financial matters and distribution of BBG pamphlet to people. The branches of BBG are legislative agencies to promote the mission of BBGM.

## **2.6 The Bureau's Responsibility**

The scope of the power of the bureau is provided under a few acts and ordinance, which ensures its smooth running. In the early days, the law, which relates to the bureau, was the Emergency ordinance (Necessary Powers) No.39 1970. The Ordinance was enacted in September 1970<sup>13</sup> and was abolished in 1971 and replaced by the Legal Aid Act 1971. The Legal Aid Bureau regulates the administration of the

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<sup>13</sup> Biro Bantuan Guaman Malaysia.op-cit.p.27.

Bureau as three main functions, to assist legally in criminal cases, to assist in civil and advocacy.

### **2.6.1 Legal Aid in Criminal Cases**

The procedures on how the Malaysian Legal Aid Bureau assists the parties involved in crimes are as followed:

- i. All criminal proceedings in which the accused was not being represented by counsel pleads guilty to the charges and wishes to make a plea in mitigation in respect thereof.
- ii. Criminal proceedings under the Children Protection act 1991. (Act 468).
- iii. Criminal proceedings under the Minor Offences Act 1995. (Act 336).<sup>14</sup>

### **2.6.2 Legal Aid Bureau and Civil Actions**

Legal Aid Bureau will be considered in most cases especially civil case. It was recorded in Schedule III the Legal Aid Bureau Act 1971. The cases as like:

- i. Proceedings under the Married Women and Children (Maintenance) Act 1950 (Act 263).
- ii. Proceedings under the Maintenance Orders (Facilities for Enforcement) Act, 1994 for a Provisional Order Act 34).
- iii. Proceedings under the Married Women and Children (Enforcement of Maintenance) Act, 1968. (Act 356) relating to divorce, maintenance, custody and jointly acquired property under the Married Women and Children's Act (Enforcement of Maintenance) 1968 (Act 356).
- iv. Proceedings relating to divorce, maintenance, custody and jointly acquired property under the Married Women and Children's Act (Enforcement of Maintenance) 1968 (Act 356).
- v. Proceedings relating to custody matters in divorce and jointly acquired property in Syariah courts where the parties to the case are allowed to attend
- vi. Rights and Liabilities under the Workers' Liabilities Act 1952 (Act 273)

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<sup>14</sup> Ibid .p.29.

- vii. Rights Liabilities under the Rice Planter's Act (Control of Rent and Guarantee of Holding 1967 (Act 43).
- viii. Rights and Liabilities under the Small Inheritance Act (Division) 11955 (Act 98).
- ix. Rights and Liabilities in civil act for damage caused by motorcar accidents including the meaning under the Transportation Act 1987 (Act 333).
- x. Rights and Liabilities under the Moneylender's Act 1951 (Act 400).
- xi. Rights and Liabilities under the proceedings of divorce and custody.
- xii. Rights and Liabilities relating to tenancy.
- xiii. Rights and Liabilities under the Hire Purchase Act 1967 (Act 212).
- xiv. Probate Application and Letter of Probate Administration
- xv. Rights and Liabilities under the Transportation Act 1952 (Act 257).
- xvi. Consumers' claims.

### **2.6.3 The Legal Aid Service**

The Legal Aid scheme provides help to those who requires representation in all matters – both criminal and civil. What is important is the persons may not have lost their liberty but the need for legal representation whilst the plaintiff and the defendant are in a civil case. In reality, no body loses their rights in the claim.

In Legal Advice, It is embrace procedure as stated in the second, third and four schedule of BBGM Act .It is enforce to whose resident in Malaysia only. The law advice will give by the Director or Deputy Director of BBGM. Therefore, the lawyers also can give the Legal advise to his client with condition that he is one of the Bar panel. It is according to the Section 5, the Act of Legal Aid Bureau 1970 (amendment 1995).

The Bureau should propose their Legal Aid and give some information to defendant about them. Malaysia Laws accepted this procedure. The Bureau will establish orders to give service in some matter especially banking loan, housing, loan real estate and others. To further enhance professionalism, bureau would consider that case to vice-director of Legal Aid.

However, the public must apply The Legal Aid service from their director or vice director. The person needs to consider about:

- i. To faith of the director about their inability to get a formal Legal Aid.
- ii. To consider paying the director with RM 2.00 or any amount.

## 2.7 Who Can Apply For Legal Aid

A person who wishes to obtain the Legal Aid assistance must go through what is called as 'Means Test' to see whether he is really qualified to get the required assistance. The applicant must be from the underprivileged group and states clearly his income and property by giving statutory declaration.

With reference to the Legal Aid Act 1970, there are two categories of people who are qualified to the legal assistance offered. The first category is the free Legal Aid and the second category is the client has to pay RM 300.00 after the trial. Two aspects that are taken into account to enable a person to obtain the Legal Aid's service are useable capital and useable income.

Useable capital means that the applicant's property or has the property she has a right to including:

- i. The property, which is the subject matter of the discussion.
- ii. The applicant's attire.
- iii. The applicant's instrument of work.
- iv. The applicant's house furniture, which are assessed according to its value.
- v. Any transportation which values not more than RM 3000.00<sup>15</sup>

Useable income means that applicant's income and their spouse's income within twelve months the application is made, that is after deducting:

- i. RM 20,000 annually for the applicant
- ii. RM 1,000 annually for each dependent or dependents of the spouse.
- iii. Housing rent not more than RM 1,500 a year and

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<sup>15</sup> Biro Bantuan Guaman Malaysia.op – cit p.31.

- iv. The actual amount paid by the applicant or his/ her spouse to the EPF and SOCSO.

Based on these two important aspects, there are two categories of applicant who are qualified to get the Malaysian Legal Aid service and their qualification is determined by the 'means test':

- i. First category.

An applicant is qualified for the Legal Aid under the no charge scheme. (Section 15. Legal Aid Act 1970.). The applicant need not pay anything except the registration fees on condition that he has useable capital of not more than RM 2,000 and useable income of not more than RM 3,000 a year.<sup>16</sup>

- ii. Second category.

An applicant has to ensure that he has useable capital of more than RM 2,000.00 but not more than RM 13,000.00 and useable income of more RM 3,000.00 and not more than RM 12,000<sup>17</sup> a year. The individual qualified under this category can obtain the Legal Aid service by paying RM300.00.

## 2.8 Procedures To Apply For Legal Aid

The procedures to apply for the Malaysian Legal Aid Bureau assistance are as follow:

- i. The applicant has to go the Legal Aid Office and his qualification will be determine whether he is qualified to received the assistance or not.
- ii. The applicant will undergo the 'Means Test' because if case is outside the Legal Aid Bureau's jurisdiction, The Bureau can only give legal advise case file is not going be opened. However, if the applicant is qualified to get the legal assistance, he has to pay RM 2.00 as the registration fee.
- iii. When the applicant is aid to be qualified to receive the legal assistance from the Malaysian Legal Aid Bureau, he has to fill in the necessary Form

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<sup>16</sup> Risalah Biro Bantuan Guaman Dan anda. (n.d) *Peranan Biro Dan Anda*. Kuala Lumpur: Biro Bantuan Guaman Malaysia, Bahagian Hal Ehwal Undang – Undang Jabatan Perdana Menteri. p.23

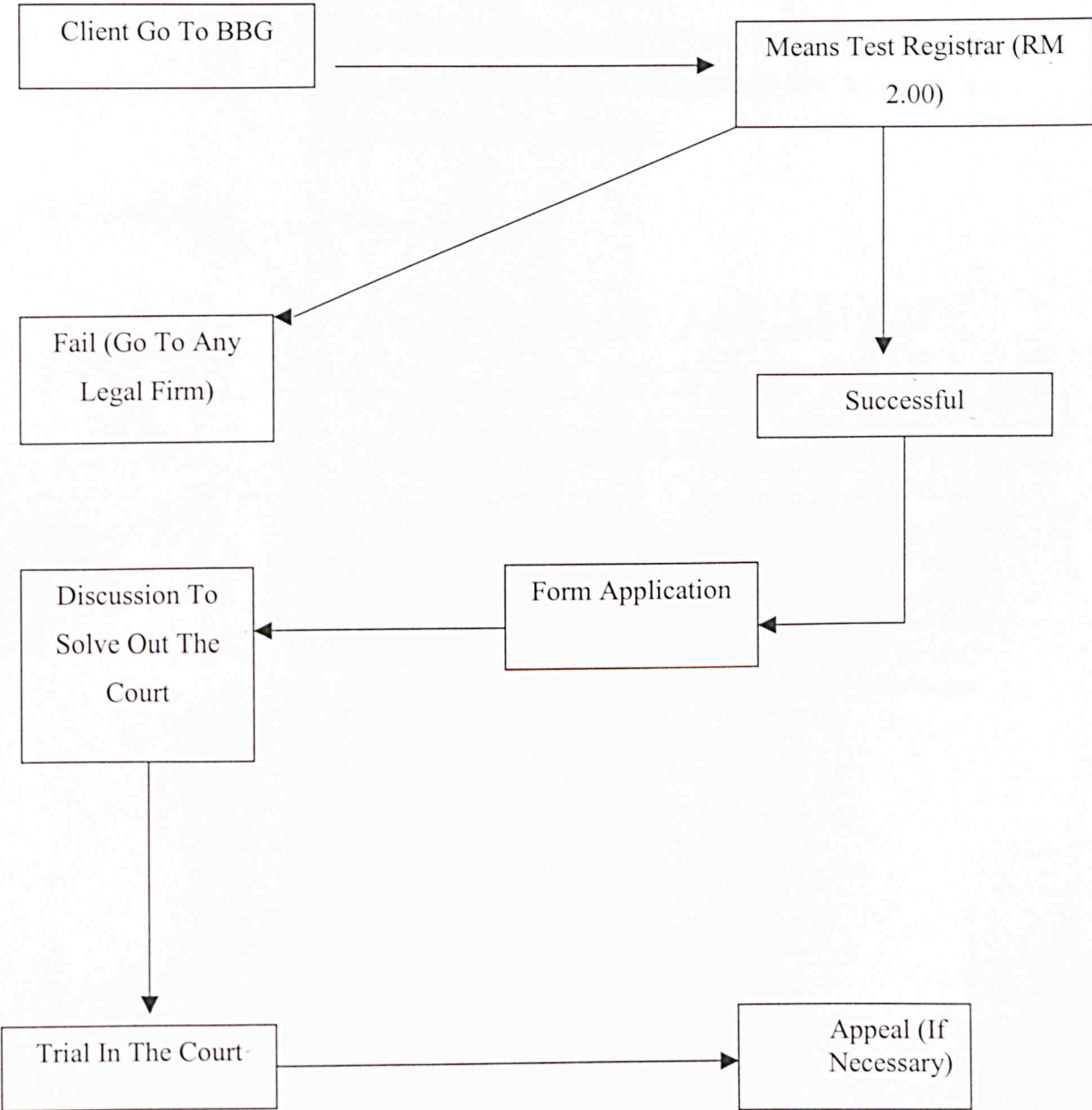
<sup>17</sup> Ibid. p.30.

I Legal Aid Bureau Act and Form II Appointment of Legal Representation. The Bureau will record all the details of the applicant.

- iv. The applicant has to verify that all the details and information given are correct by filling in the statutory declaration form.
- v. The statutory declaration form has to be signed by the applicant in front of the Commissioner of Oath. If any of the details or information given is found to be untrue, the applicant can be charged under Section 31 of the Legal Aid Act 1971 and if found guilty, can be fined not more than RM 1,000 or imprisonment not more than six months.
- vi. The applicant has to make sure that all the copies are complete and enough for all the documents required for the case, The required documents are as follow,
  - a, Copy of identification card or passport.
  - b, Copy of identification card or birth certificate of the applicant's children
  - c, Copy of the statement of income or latest pay slip, marriage certificate or divorce certificate or tribunal letter ( in related cases such as divorce application on maintenance)
  - d. Copy of police report, medical report (if necessary).
  - e. Family counselor report. (For Syariah Case).
  - f. Supporting statement or witness for the statement or fact.
  - g. Other related documents to support the applicant's cases.

After the Bureau is satisfied with all the given details, information and the documents required are complete, the action filed is registered as opening the file. After that, the registration is in format to the applicant and the file is processed. Then, Certificated of Declaration of the Legal Aid is issued to the applicant. A Legal Aid Bureau's lawyer for his trial in court will represent the Applicant.

Figure 1: Process To Apply For Legal Aid



## 2.9 Wakalah or representation

The word 'Wakalah' is an Arabic word meaning to submit to guarantee<sup>18</sup> or to take care<sup>19</sup>. Wakalah is the syara' point of view that means to teach someone again for himself with condition or without any condition<sup>20</sup>. This indicates that a lawyer is responsible in all matters related to the person represented.

Wakalah in Islam is stated in the Holy Al-Quran.

كَذَلِكَ بَعَثْنَاهُمْ لِيَتَسَاءَلُوا بَيْنَهُمْ قَالَ قَائِلٌ مِّنْهُمْ كَمْ لَبِثْتُمْ قَالُوا لَبِثْنَا يَوْمًا أَوْ بَعْضَ يَوْمٍ  
قَالُوا رَبُّكُمْ أَعْلَمُ بِمَا لَبِثْتُمْ فَابْعَثُوا أَحَدَكُمْ بِوَرِقِكُمْ هَذِهِ إِلَى الْمَدِينَةِ فَلْيَنْظُرْ أَيُّهَا أَزْكَى  
طَعَامًا فَلْيَأْتِكُمْ بِرِزْقٍ مِّنْهُ وَلْيَتَلَطَّفْ وَلَا يُشْعِرَنَّ بِكُمْ أَحَدًا

*“ Such (being their condition), We woke them up (from their sleep), that they may question each other. One of them said, ” how long have you stayed (here)? ” They said, “ We (might) have stayed a day, or part of a day. ” (At the end), they (all) said, “ Allah (alone) knows best how long you have stayed here ... Now then you send one of you with this money of Yours to the Town: Let him find out which is the best food (to eat) and bring some to you, So that (you my) satisfy your hunger with it: and let him act with care and courtesy, and let him not inform anyone about you. ”*<sup>21</sup>

<sup>18</sup> Mohd Bin Abi Bakry Al- Razy .1993. *Mkhtarul As- sahhah*. Bairut: Dar al- Fikir p.877.

<sup>19</sup> Musairi' I Bin Hasan Al – Rawy.1991. *Mukjam Al –Araby Al- Maisir*.Turnisia: Maktabah Ad –Durus p.552.

<sup>20</sup> Abdul Rahman Al-Jaziri. 1990.*Kitab Al-fiqh Ala Al- Madharib Al- Arba 'ah* Vol..III.Bairyt : Dar Al- Fikr.p.379.

<sup>21</sup> Al-Qur'an Al-Khafi18;19.

A Hadith found in the book *Subulus As Salam* written by Ibnu Hajar Al –Asqalani:

عن جابر بن عبد الله رضي الله عنهما قال أردت الخروج إلى خيبر فأتيت النبي صلى الله عليه وسلم فقال إذا أتيت الوكيلى بخيبر فنخذ منه خمسة عشر وسقا. (رواه أبو داود وصححه)

Hadith narrated by Jabir Bin Abdullah. <sup>22</sup>

*Jabir Bin Abdullah: said when I was going out to Khaibar (Name of the town in Madinah), the Holy Prophet came and said 'I represent you to the people of Khaibar. So you (are entitle) to tax them 15 wusuq.'*

Based on the verse of the Holy Al-Quran and the saying of the Holy Prophet above, we can deduced that Wakalah if a part of the trial instrument in court. But this doesn't mean that a person has to be represented by another person. Nevertheless, if a person is not well verse with the law, he can appoint someone to represent him.

When a person is appointed to represent someone in are trial either as prosecutor or as the defense lawyer, the Act is considered legal when the represented person signed and accepted a copy the Certificated of accepting the assistance from the Bureau produced by the Bureau. Please refer sample of Wakalah from BBGK in appendices D.

Some of the Islamic legal jurists are of the opinion that among the conditions qualifying a person become representative is a man with knowledge, honesty especially those who have knowledge and expert in Islamic jurisprudence<sup>23</sup>. This is to ensure that justice is upheld<sup>24</sup>. The Maliki Scholl is of the view that the conditions for a person to accept a representation are:

- a. There must be only one representative appointed

<sup>22</sup> Ibnu Hajar Al –Asqalani.1059-1882 H, *Subulus As- salam*,Vol.3. Aman Jordan: Dar Al –Furqan p. 85.

<sup>23</sup> Ibnu Abi Ad –Dam Al –Hamra As- Shafi'e .1982.*Kitab Adab Al –Qada*, Bairut: Dar Al- Fikr Al- Mua'sir. p.22.

<sup>24</sup> Ahmad Ibrahim.1997.*Al- Ahkam, Penghakiman Dan Keperguaman*.Vol.5. Kuala Lumpur: Dewan Bahasa Dan Pustaka.p.55.

- b. The representative appointed must not come from the opposing party because when found guilty, the representation is not valid, it also becomes null and void because the representative did something contrary to the interest of his client.
- c. The task of the representative has to be ascertained either by the client or the representative himself.
- d. If a person manages his own case himself more than three trials and then appoints a representative, that appointment is invalid because it is considered that the case has prolonged except due to certain reasons which allow him to appoint a representative on condition that he takes an oath.

A lawyer who represents his client cannot pull out from the case after representing his client more than three trials. This also applies to the client vice versa. In other words, the client cannot fire his appointed lawyer after three trials. Trial of a case is considered finish when the lawyer representing it closes the case or the applicant pulls out from the case.

## **2.10 End Of Declaration <sup>25</sup>**

The director of the Malaysian Legal Aid Bureau has the power in Section 19 Legal Aid Act 1971 to invalidate or cancel the applicant's statutory declaration if the applicant voluntarily wants to cancel his application or if the director is satisfied that a trial has ended.

A declaration can be nullified if the applicant passed away and his family refuses to proceed with the trial. The declaration is automatically invalid if the applicant is found making false declaration. For example, it is found that the useable capital is more than RM 13,000 or the useable income is worth more than RM12, 000.

The declaration can also be nullified if the trial is proceeded unfairly to the extent of causing unnecessary expenditure of the Malaysian Legal Aid. The director can also

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<sup>25</sup> Biro Bantuan Guaman Malaysia.Op-Cit p.33.

cancel the declaration after the applicant receives acceptant order. This is only for second categories. For example, an interim order for child custody .The applicant is also required to give some money as a donation to the Bureau once the trial ends.

## **2. 11 Conclusion**

The Bureau Legal Aid was accomplished with appropriate such as time. It's like help some people whose have a crisis about their disabilities. To suffer, their will get up their truth and claim in cases. To immediately, theirs will set up the fair in justice and laws. It's should bring the positive affect to our judgment system and sociality change.

## CHAPTER 3

### KEDAH LEGAL AID BUREAU (BBGK)

#### 3.1 Background Of Kedah Legal Aid Bureau (BBGK)

The Legal Aid Bureau Branch in Kedah (after this known as BBGK) was established on 8<sup>th</sup> July 1972, as the Legal Aid Bureau Kedah /Perlis. Initially, The BBGK's office is situated at 60 A-B Jalan Tun Ibrahim, Alor Setar. To made it more accessible to the people of Kedah and Perlis.

#### 3.2 The Structure Of The Kedah Legal Aid Bureau (BBGK)

Presently, a Deputy Director, an officer appointed from the Federal Judicial and Legal Service, heads BBGK<sup>26</sup>. He must have a law degree and three legal officers, two Syarie officers and a Legal Assistant assist him. To ensure the smooth running of the Bureau, BBGK has eight staffs that are committed to the Bureau. The Legal Aid Malaysia took steps to expose their staffs with latest information and train them professionally. These trainings are held annually to increase the level of management and administrative assistant for finance and administration, three assistants for syariah matters, an assistant for civil and criminal matters, an office boy and a junior clerk.

During the early establishment of BBGK, it was led by Encik Ridwan bin Roslan. He was the first Deputy Director of BBGK in the early days of BBGK in 1972. Now, BBGK is headed by Encik Razali bin Che Ani as the Deputy Director and he is assisted by two Syarie lawyers, Cik Maria Binti Jilani and Cik Rohayati Binti Sapie. Please refer figure 2, about the organizational chart of Legal Aid Bureau Kedah (BBGK).

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<sup>26</sup> Cik Maria Jilani Syarie Lawyer BBGK 30.December .2003.

The Syarie lawyer is appointed among the Syariah officers in the Prime Minister's Department and the Chief Director of the Syariah Judiciary Department makes his appointment. He is chosen among those who applied through the Commisooner Of Public Services. The post was introduced in 1994 and Encik Shaari Bin Ismail was the first Syarie Lawyer in the Bureau.

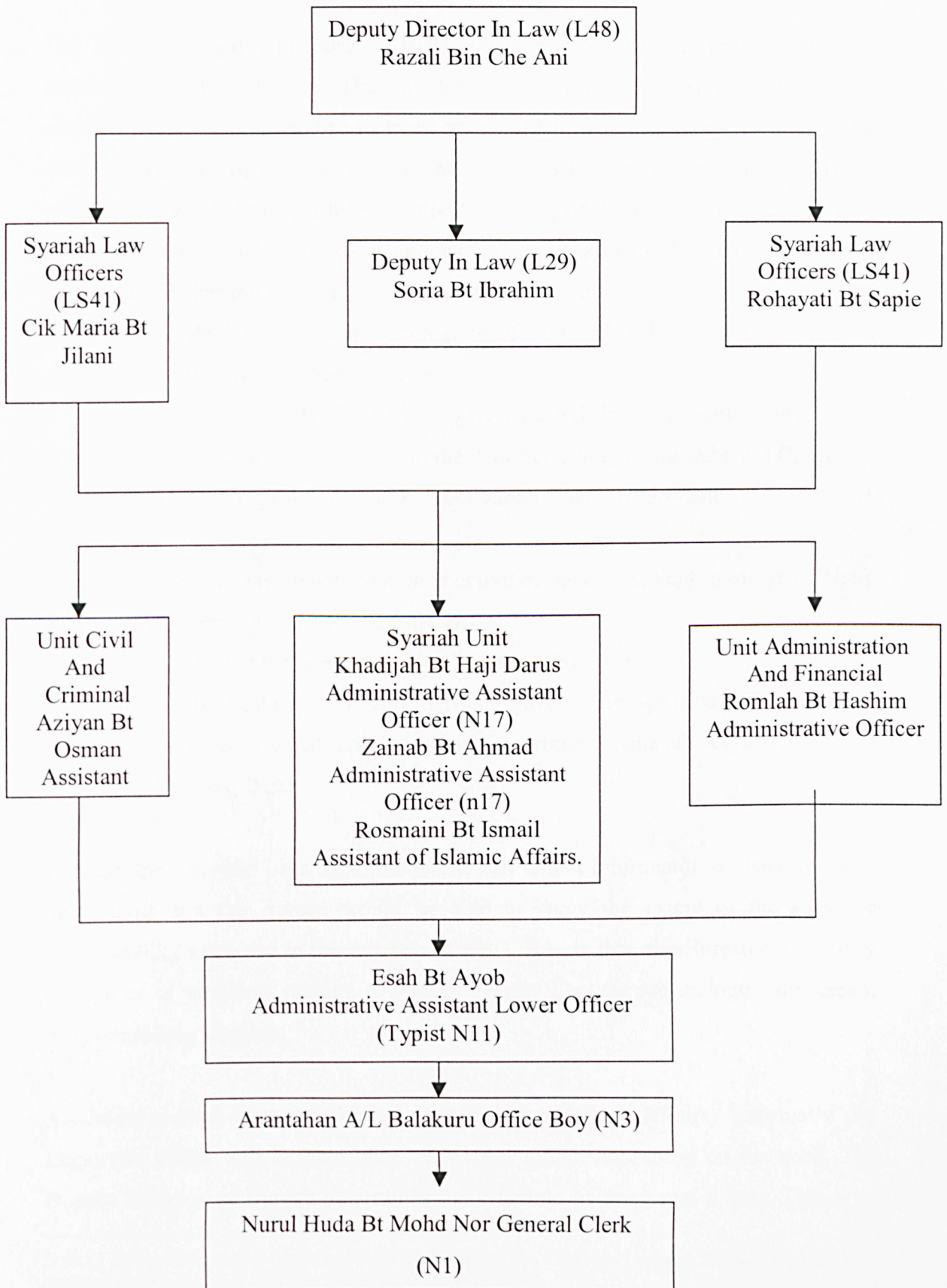
A few years ago, the Bureau, had a legal assistant but the pos has been vacant after the person went for a study leave to pursue Diploma in Law and Administration Of Islamic Judiciary (DAIJ) in the International University Malaysia, Gombak , Kuala Lumpur. The Syarie Legal Officer appointed must have legal qualification. i.e. possessing a law degree from any local universities recognized by the government or hearing Certificate Of Legal Practice (CLP).<sup>27</sup>

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<sup>27</sup> Cik Rohayati Sapie.Syarie Lawyer BBGK. Interview. 27. December.2003.

Figure 2: The Organizational Chart Of Legal Aid Bureau Kedah



### 3.3 Activities Of The Legal Aid Bureau Of Kedah (BBGK).

The Kedah's Legal Aid Bureau (BBGK) has planned several programmes and activities throughout the year. There are two types of activities, first, the programmes, which provide legal assistance to those who need it. This assistance includes legal advice to legal representation in court. The second, BBGK annual programmes. These programmes are held to ensure the smooth running of the organization and to give information to the public on the functions and services of the Bureau. For the year 1999<sup>28</sup>, BBGK has organized a few programmes such as:

- i. Public lectures on the functions of the Legal Aid Bureau to government departments and agencies.
- ii. Mitigation Walk-in Client Day (research investigation) especially for juvenile cases referred to the Alor Setar Magistrate and Civil Court.
- iii. Guest speaker for the Kedah Syariah Court Department.

Basically, nearly all the above-mentioned activities have been held in the year. There are two other events planned by the Bureau:

- i. A joint venture Legal Aid Centre of Kedah / Perlis.
- ii. To establish a network between government agencies and department such as Road Transportation Department, Amanah Raya Berhad and Land Office.

Through the activities organized, the public can obtain information on legal matters; their rights and the Bureau would be able to know the extent of the society's understanding as regard to the function of BBG. Beside that, the Bureau can identify the causes of problems relating to Islamic Family Law through dialogue, discussion and counselling sessions.

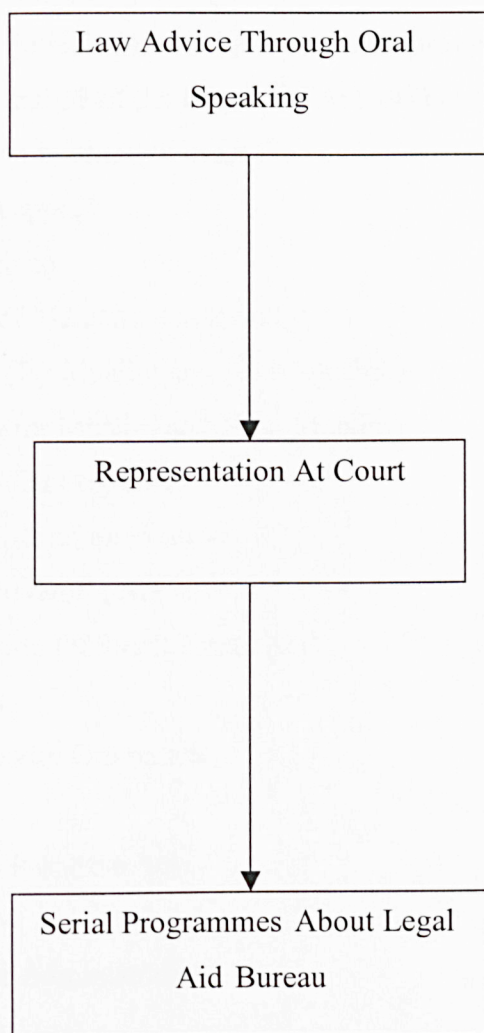
According to Puan Rosmaini Bte Ismail (Assistant of Islamic Affairs)<sup>29</sup>, normally The Legal Aid Clinic will be held once or twice a month depending on the need. The Deputy Director of Bureau determines the schedule of the Legal Clinic. This is to

<sup>28</sup> *Buku Taklimat Sempurna Lawatan Pengarah Bahagian Hal Undang- Undang. Jabatan perdana Menteri ke Biro Bantuan Guaman Kedah At 16 June 1999.p.7.*

<sup>29</sup> Puan Rosmani Ismail. Assistant Of Islamic Officer BBGK. Interview. 25 January 2003.

ensure that he can coordinate the trial dates of the cases, which he has to attend and to avoid clashes of the dates. Example of the types of activities From Legal Aid Bureau

Figure 3: Type Of Activities From Legal Aid Bureau.



### 3.4 Cases Conducted by The Legal Aid Bureau Kedah (BBGK)

The Legal Aid Bureau Kedah (BBGK) conducts Civil and Syariah cases within their jurisdiction. (Please refer the Bureau's responsibilities) If the case is outside their jurisdiction, the Bureau will just give legal advice and show the client what need to be done. Cases within the jurisdiction of the Bureau, as provided under Schedule Two and Three (Section 10 and 12 of the Legal Aid Act 1971) are:

- i. Admission in criminal cases
- ii. Criminal appeal
- iii. Maintenance
- iv. Change of Maintenance order
- v. Custody (for Muslim and Non- Muslim)
- vi. Divorce (for Muslim and Non- Muslim)
- vii. Matrimonial Properties
- viii. Workmen's compensation
- ix. Padi Cultivator's Act
- x. Distribution Of Small Estate Act
- xi. Accidents
- xii. Moneylender Ordinance
- xiii. Mut'ah
- xiv. Sale and Purchase Act
- xv. Rental
- xvi. Letter Of Administration
- xvii. Adoption
- xviii. Consumer Claims
- xix. Others

Since the establishment of the Legal Aid Bureau (BBGK) in 1972 until 2002, the Bureau has conducted about 19,454 cases and the Bureau has successfully settled 11,810. There are two methods in settling a case. Either in the court or outside the court through the method of Sulh. The Balance of the case (7,644) cases cannot be settled, as there are no responses to it.