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**FARAQ MARRIAGE, ITS CAUSES AND IMPLICATION :  
A CASE STUDY IN THE SYARIAH COURT OF FEDERAL  
TERRITORIES**

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والسلام

## ABSTRAK

Penyelidikan ini membincangkan perihal perceraian melalui Faraq perkahwinan samada daripada isteri ataupun pendakwaan daripada penguatkuasa Majlis Agama Islam Negeri, di mana ia berlandaskan prinsip-prinsip Islam dan Statut seperti yang di peruntukan di dalam Undang-Undang Keluarga Islam (Wilayah-Wilayah Persekutuan) Akta 1984 (Akta 303). Selain itu metod kajian yang digunakan di dalam kajian ini ialah kaedah penyelidikan melalui perpustakaan dan juga kaedah penelitian melalui kes-kes yang telah didaftarkan di Mahkamah Syariah Wilayah Persekutuan Kuala Lumpur. Turut dikaji ialah pembahagian Faraq perkahwinan serta pembubaran perkahwinan yang lain, sebab Faraq dan kesannya terhadap anak, isteri dan juga suami. Di samping itu, mengenalpasti bidangkuasa Mahkamah Syariah Wilayah Persekutuan mengenai faraq serta contoh-contoh kes yang melibatkan perceraian melalui Faraq perkahwinan.

## ABSTRACT

This study focuses on divorce by the ground of *Faraq* whether by the wife or prosecution by the Religious Council of the State, whereas according to Islamic principles and statutory provisions in Islamic Family Law of Federal Territories Act 1984 (Act 303). Furthermore, the methodology of research that is used in this study is through library research and observation on cases which conducted in the Syariah Court of Federal Territory of Kuala Lumpur. Besides that, the study is also related to the divisions of other types of dissolution of marriage or *Faraq*, its causes and the implications to the children, wife and husband after *Faraq*. It is also to identify the jurisdictions of the Syariah Court of Federal Territories and the example besides of cases that involved in *Faraq* marriage.

## ملخص البحث

يهدف هذا البحث إلى مناقشة القضية التي تتعلق بفرق النكاح. وهذا البحث تقوم دراسة بولاية كوالا لمبور. وقد خلال دراسته قدمت الباحثة العوامل التي تؤدي إلى فرق النكاح وأثاره على الأطفال وكذلك على الزوج والزوجة. والمنهج الذي تطرقت الباحثة في هذا البحث هو المنهج المكتبي الاستقرائي بحيث درست الباحثة مسائله من خلال قراءة الكتب والملاحظة على المسائل المجلة في المحكمة الشرعية بكوالا لمبور. ثم أسرورت الباحثة شيئاً من أقسام امتناع النكاح وأسبابه كما أضافت إليه شيئاً الحديث من المسائل الواقعة بسبب فرق النكاح.

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## GLOSSARY

<i>'Aqil:</i>	of sound mind
<i>Baligh:</i>	the age of puberty
<i>Dalil:</i>	proof
<i>Hadith:</i>	the tradition of Prophet Muhammad SAW
<i>Hukm:</i>	ruling of Syariah
<i>Hukum Shara'/ Fiqh/ Islamic Law</i>	practical law of Islam
<i>'Ibadah:</i>	devotional matters
Islamic Law:	the laws of Islam as provided for, administered and applied in Malaysia
<i>Jumhur:</i>	dominant majority of jurist
<i>Li'an:</i>	imprecation
<i>Mazhab(s):</i>	refers to one of the four recognized Islamic Schools of jurisprudence namely Hanafi, Syafie and Hanbali
<i>Murtad:</i>	a person who renounce the faith of Islam
<i>Nasab:</i>	family, race, lineage
<i>Qadi:</i>	judge
<i>Riddah:</i>	offence of apostasy
<i>Shubhah:</i>	doubt
<i>Talaq:</i>	the sentence of divorce
<i>Ta'zir:</i>	discretionary penalty determined by Qadi
<i>Wali:</i>	helper, supporter, patron, protector or guardian

## TRANSLITERATION TABLE

### ARABIC WORDS TRANSLITERATION SYSTEM

#### 1. ALPHABET

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

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

## 2. Short Vowel

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

## 3. Long Vowel

<u>Arabic</u>	<u>Latin</u>	<u>Example</u>	<u>Transliteration</u>
ا ، ي	ā	عالم، فتى	<i>ʿālim, fatā</i>
ي	ī	عليم، داعي	<i>ʿalīm, dāʿī</i>
و	ū	علوم، أدعو	<i>ʿulūm, Adʿū</i>

## 4. Diphthong

<u>Arabic</u>	<u>Latin</u>	<u>Example</u>	<u>Transliteration</u>
و	aw	نوم	<i>nawn</i>
ي	ay	ليل	<i>layl</i>
يّ	iyy	شافعي	<i>shāfiʿiyy (ending)</i>

و

uww

علو

uluww (ending)

## 5. Exemptions

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

Example: *akbar* (not *akbar*). أكبر . Example:

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 transliterated to: *al maktabah al-ahliyyah*

قلعة

*qal'ah*

دار وهبة

*dār wahbah*

## ABBREVIATIONS

AS	<i>‘alayh al-salām</i>
Comp.	compiler/ compiled by
Def	definition
DBP	Dewan Bahasa dan Pustaka
ed	editor/ edition/ edited by
H	<i>hijriyyah</i>
M	<i>milādiyyah</i>
n.a.	no author/ no artist
narr.	narrated by
n.d.	no date/ no year
n.pl.	no place
n.pb.	no publisher
p.	page
pp.	pages
perf.	performers
trans.	translator/ translated by
R.A.	<i>radiya Allah ‘anhu / ‘anhā / ‘anhum</i>
rev.	review/ revision of
SAW	<i>Salla Allah ‘alayh wa sallam</i>
S.W.T	<i>subhānahu wa ta‘ālā</i>
vers.	version
vol.	volume
writ.	written by

# INTRODUCTION

## INTRODUCTION

### Research Background

This research will discuss *Faraq* marriage, its causes and implications. The case study is carried out in the Syariah Court of Federal Territories.

In marriage, the word "divorce" is one of the last solutions to end or dissolve their marriage. Actually, *talaq* or divorce is the most detestable of lawful things by Allah S.W.T. as narrated by Abu Dawud:

عن ابن عمر أن النبي (ص) قال : أبعض الحلال إلى الله الطلاق.

Ibnu Umar reported that the Apostle of Allah said that the most detestable of lawful things by Allah is divorce.

Furthermore, there are various ways in which a marriage becomes terminated in Islamic law either automatically or on the initiative of the husband, the wife or a judge. On the other hand, *faraq* method is also a part of divorce that can be used by the wife to end their marriage other than *Fasakh*, *khulu'* and *ta'liq*.

*Faraq* literally means "separate" that brings divorce for spouses through application, an order or legal power of the (syariah judge). Whereas, in syara' and law the term is mostly known as *Tafriq al Qadhaie'*. The law provision is based on the Family Law Enactment of Federal Territories, section 52(1) states that *faraq* is a dissolution of marriage.

Besides that, through *faraq* the marriage can be terminated due to several specific causes based on *Hukum Syara'*, even though there is no divorce claims from the wife.

Besides request from the wife and then followed by authority of law to terminate her marriage, the marriage can also be terminated when it comes from legal action and legal enforcement from the Islamic council department of the state. Besides that, the Syariah Court also has the power to make such order to separate (*Faraq*) the spouses temporarily while awaiting an investigation, examination and decision of terminating their marriage or vice versa.

### **Research Aim**

The main aim of the research is to know what is really meant by *faraq marriage* and its procedure in depth where it can help the abused wife to dissolve her marriage by the authority of law.

### **Objectives of the Research**

- 1) To explore why *faraq* is essential to an abused wife who wants to terminate or dissolve her marriage.
- 2) To study the causes and implications of *faraq* cases.
- 3) To understand the *faraq* procedure that can be used in Syariah Court.

### **Problem Statement**

Even though the term of *faraq* is not really foreign in our country, most people in the society do not know very clearly of this procedure that can give benefit to all parties or people especially wives who are abused by their husbands.

Besides that, most of the wives only know that *faraq* is only for the apostate spouses or void marriage while it is actually one of the methods that can be applied by them to put an end to their marriage.

Instead, there are also other causes that an order of *faraq* can be given upon such marriage apart from apostasy and void marriage. It can also be correlated with other dissolutions of marriage such as *fasakh*, *khulu'* and others.

### **Scope of Research**

This research will focus at the Syariah Court of Federal Territories in Kuala Lumpur that covers all cases based on this research, *faraq marriage*.

Furthermore, it also involves respondents from Jabatan Agama Islam Wilayah Persekutuan (JAWI) to find some information about *faraq* whereby it is known that this department also conducts this matter.

### **Research Methodology**

In conducting this research, there are several methods that can be used:

#### 1) Library research

Through this method, the researcher can find information from reference books and other relevant references based on this study (*faraq marriage*). Besides making library research in KUIM's library, other libraries are also used and it involves five libraries (National Library, Islamic Centre Library and libraries of IIUM, UM and UKM).

#### 2) Survey

In this method, the survey will be carried out in the Syariah Court of Federal Territory which is based on cases relating to *faraq marriage*.

#### 3) Interview

Besides survey, interview will also be used in this research. Persons who will be interviewed are Islamic Religious officer, Court officer in the Syariah Court of Federal Territory in Kuala Lumpur

## Literature Review

**Hasniza Marsidi** (1993) in her research about the dissolution of marriage under judicial power stated that there are several causes that give right to women to dissolve their marriage that most of them are from abused women. She can claim for such divorce in the court such as through *fasakh*, *ta'liq*, *khul'* and others. From this matter, even though the research includes all types of divorce that can be applied in court, the researcher will be focusing on *faraq* matters which is also a type of divorce and this matter is also based on dissolving marriages in specific circumstances. This research will also be a study case in the Syariah Court of Federal Territories while Hasniza focuses in the Syariah Court of Seremban.

Whilst, **Mohd Hashim Kamali** in his book *Islamic Law in Malaysia Issues and Development* under divorce issues stated that the Maliki, Shafi'e and Hanbali schools permit the wife to demand a judicial separation (*tafriq*) in the event of the husband's affliction with: a serious disease, failure to maintain his wife, injurious treatment (*darar*) and prolonged desertion. From this matter, he is only focusing on these four causes but the researcher will discuss all possible causes regarding this matter (*faraq*) and the researcher will also discuss the implications of *faraq* divorce in a marriage.

# CHAPTER ONE

## CHAPTER 1

### 1.0 DEFINITION OF DIVORCE AND DISSOLUTION OF MARRIAGE

#### 1.1 Definition of Divorce

The word *Divorce* is actually not alien among society nowadays especially Muslims. Nevertheless, there are also societies that know about the meaning of *Divorce* but do not really understand this word deeply.

"*Al-talaq*" In the literal sense means discharge or discharge the tie<sup>1</sup>. Divorce or *talaq* is also known as "*al-hallu*" (الحل) or "*al-inhilall*" (الإنحلال) that brings the meaning of break<sup>2</sup>. Furthermore, in its primitive sense the word *talaq* or in Arabic طلاق means dismissal, but in law it signifies a release from the marriage tie<sup>3</sup>.

In the legal terms, it means the legal dissolution to a marriage or a severance or separation<sup>4</sup>.

Whilst, in the technical sense *talaq* or divorce means discharge the marriage with the specific words. In other words, it means dissolve the marriage with the words of *talaq* such as "*I divorce you with one talaq*".

In response to the bitter realities of life, some difficulties cannot be resolved except through the separation of the provision of divorce. Islam has reluctantly, neither liking nor commending it. A *Hadith* found in the book *The Lawful and Prohibited in Islam* written by Dr. Yusuf al-Qardawi says that:

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<sup>1</sup>Muhammad Idris Abd. Raof al-Marbawi. *Idris al-Marbawi Dictionary*. Fourth Edition. Mesir. p 364.

<sup>2</sup>Mustafa Al-Khan Et Al. 2000. *Al-Fiqh Al-Minhaaji*. Damsyik. Darul Al-Falah. Vol.II.p.113

<sup>3</sup>Thomas Patrick Hughes. N.D. *A Dictionary of Islam*. Lahore. Kazi Publications.p.86.

<sup>4</sup>Dorling Kindersley. 1998. *Oxford Dictionary*. University Press. p.236.

أبغض الحلال إلى الله تعالى الطلاق

"Among lawful things, divorce is most hated by Allah"

(Reported by Abu Dawud)<sup>5</sup>.

In such a situation separation is better, Allah Ta'ala says in the effect:

وَإِنْ يَتَفَرَّقَا يُغْنِ اللَّهُ كُلًّا مِّنْ سَعَتِهِ وَكَانَ اللَّهُ وَاسِعًا حَكِيمًا

"But if they separate, Allah will provide for each of them out of His abundance... (An-Nisa'3:130)<sup>6</sup>

## 1.2 Definition of Dissolution of Marriage

The word dissolution literally means the breaking up or dissolving<sup>7</sup>. In the legal terms, dissolution is stated as the annulment of a previously valid marriage by decree or judgment of a court. The decree generally declares that the marriage shall be valid ab initio and it is also applied to a divorce.

Besides that, Harith Suleiman Faruqi defines that dissolution means to release the tie of marriage which separates or dissolves the marriage in accordance to the legal ruling of Islam (*Hukm Syara'*) or *Fiqh Islamiah*. (Also means of *Fasakh*)<sup>8</sup>.

Prof. Dr. Ahmad Ibrahim in his book, *Family Law in Malaysia*, states that dissolution also includes *talaq* that the husband is permitted to divorce his wife by pronouncing a *talaq* or repudiation against her. Besides that it also includes that the married Muslim woman may also apply for divorce like *cerai ta'liq*, *khulu'* and *fasakh*<sup>9</sup>.

<sup>5</sup>Muhammad Abd Aziz al-Khaaladi. 1996. *Sunan Abu Daud*. Lebanon. Darul Kutub Al-Il'miah. al-Kotob al-Ilmiyah. Kitab al-Tafsir. Bab Ma Karahahu al-Talaq. Juz' 2.p.120. #2176

<sup>6</sup> Al-Quran.An-Nisa' 3:130

<sup>7</sup>*Oxford Advanced Learner's Dictionary* .1995. "Dissolution". Oxford University Press. Fifth Edition.p.364.

<sup>8</sup>Harith Suleiman Faruqi. 2000. *Faruqi's Law Dictionary*. Beirut. Riad Solh Square. Third Revision Edition.p.123.

<sup>9</sup> Ahmad Ibrahim Prof. Dr.. 1997. *Family Law in Malaysia*. Malayan Law Journal Sdn Bhd. Third Edition.p.226

However, the dissolution of marriage is also known as divorce and the sole ground for divorce is that the marriage has broken down irretrievably<sup>10</sup>.

Hence, the dissolution of marriage is also a divorce either the husband can be permitted to divorce his wife or the married Muslim wife can also apply for divorce to the court.

### 1.3 Definition of *Faraq* Based of Fiqh Munakahat and Legal Term

Literally, *faraq* or in Arabic words ( فرق ) means separation<sup>11</sup>. Furthermore, *faraq* is also most known as "*Tafriq al-Qadhaie*" in the legal and technical sense. In other words, it is divorce between married Muslim spouse (husband and wife) through desire or order from Syariah Court<sup>12</sup>. Besides that, *faraq* takes on another word that is used as a substitute for *talaq* which means separation.

Through *faraq*, the married Muslim wife can also apply for divorce and the Court has the right to declare the divorce if there are no final solutions regarding their marriage.

In *Fiqh Munakahat*, the meanings of *faraq* are divided into three<sup>13</sup>:

1) فرقة هي طلاق (*Talaq* or divorce).

It is known as *talaq* which includes *Tafriq al-Qada'ie* or by the court (judge), *Khulu'*, *Ila'* and *Li'an*.

2) فرقة هي فسخ (*Fasakh*)

It is also known as *fasakh* such as *fasakh* because of defect by husband or wife.

<sup>10</sup>Sherman. 1998. *Dictionary of Law*. Kuala Lumpur. Golden Books Centre Sdn.Bhd.p.104

<sup>11</sup>Thomas Patrick Hughes. N.D. *A Dictionary of Islam*. Lahore. Kazi Publications.p.86.

<sup>12</sup>n.a. 1998. "Bubar Perkahwinan Lewat Faraq". *Al-Islam*. Kuala Lumpur. April.p.26.

<sup>13</sup>.muhammad Rous Qal'adji Dr. 2000. *Mausu'atul al-Fiqhiyyah al-Muyassaratusun*. Darul Nafais. Vol. II.pp.1516-1517.

3) فرقة هي تفريق، من غير طلاق و لا فسخ (Tafriq other talaq and not fasakh)

*Faraq* also means separation other than the meaning of *Talaq* and also *Fasakh*. For example invalid marriage, apostasy and others.

Whilst, in section 52 (1), Islamic Family Law (Federal Territories) Act 1984 (Act 303) also defines *faraq* as "dissolution". This is where the Court has the power to dissolve the marriage. Continuously, it also states that a woman married in accordance with *Hukum Syara'*, shall be entitled to obtain an order for the dissolution of marriage or *fasakh* on any one or more of the following grounds, that is stated at this enactment<sup>14</sup>.

Furthermore, *faraq* is also adopted from the Arabic word which stands for "*faraqa*" meaning "separate". In legal terms, it means of one court or judge's order to the husband and wife to be separated and live apart after both of them take an oath by the way of *li'an* based on *Hukum Syara'* to dissolve the marriage. This term is used in the Islamic Family Law such as section 50A act 303 which provides, Where the parties to a marriage have taken oath by way of *li'an* according to *Hukum Syara'* before a Syariah Judge, upon judgment, the Syariah Judge shall order them to be *farak* and be separated and to live apart forever<sup>15</sup>.

#### 1.4 *Faraq* in the al-Quran and as-Sunnah

All humans know that much information can be found in the al-Quran an *as-Sunnah*. Besides that, in the al-Quran, Allah S.W.T also explains relating to *faraq* there are:

Al-Quran:

وَإِنْ يَتَفَرَّقَا يُغْنِ اللَّهُ كُلاًّ مِّنْ سَعَتِهِ وَكَانَ اللَّهُ وَاسِعًا حَكِيمًا

<sup>14</sup>Federal Territories. 1984. *Islamic Family Law Enactment (Federal Territories)*. Section 52 (1).

<sup>15</sup>Zaleha Kamaruddin Dr & Raihana Abdullah. 2002. *Kamus Istilah Undang-undang Keluarga Islam*. Kuala Lumpur: Zebra Editions Sdn Bhd.pp.27-28.

*But if they disagree (and must part), Allah will provide abundance for all from His all-reaching bounty: For Allah is He who cares for all and is wise<sup>16</sup>.*

The verse above explains regarding inevitably generous of incapable persons and ways to solve a marriage crisis and it is also clear that if the spouses are apart from each other, Allah S.A.W will give them such rewards. This is because when the spouses are incapable to save their marriage from shattering, Allah will give the rewards to them.

Hadith:

*Faraq* has also been practiced since the year of Prophet of Rasulullah S.A.W. as such narrated by Hashim in Tabiin period (Islam followers at that time met the companion of Rasulullah S.A.W.)

وروى سعيد بن سفيان، عن ابن أبي الزناد، قال: سألت سعيد بن المسيب عن الرجل لا يجد ما ينفق على امرأته أيفرق بينهما؟ قال: نعم، قال: سنه؟ قال: سنة، وهذا ينصرف إلى

سنة رسول الله (ص)

*Abu Zinad asked to Said bin Mussayab, if the husband is unable to pay maintenance to his wife, has the faraq of the marriage is taken place? Said answers: Yes! Abu Zinad asks again: is this Sunnah? Said answers again: Yes!<sup>17</sup>.*

In the Hadith above, it is clear that *faraq* is implemented since in period of Rasulullah S.A.W which is supported that when the girl dislikes the marriage, so when she comes to the Rasulullah, the messenger declared the marriage as invalid.

Besides that, the other Hadith can also be found in Hadith of *li'an*:

<sup>16</sup>Al-Quran.An-Nisa' 3:130

<sup>17</sup> Saifuddin bin Abu Bakar.1988.*Hulliyatul Ulama' fi Ma'rifatu Mazaahib Fuqaha'*.Oman:Maktabah Al-Risalah Al-Hadithah.Vol:7.p.405.

عن مالك، عن نافع، عن عبدالله بن عمر أن رجلا لاعن امرأته في زمان رسول الله (ص) وانتقل من ولدها، ففرق رسول الله (ص) بينهما، والحق الولد بالمرأة.

In this Hadith, it is narrated by Malik that the husband had made a mutual imprecation (*lian*) to his former wife and separating his child from his wife. Then, Rasullullah S.A.W ordered them to be separated (*faraq*) and the child is given back to his wife<sup>18</sup>.

The other Hadith also found in Sahih Bukhari which says:

وقال أهل العلم: إذا طلق ثلاثا فقد حرمت عايه فسموه حراما بالطلاق والفراق.

Meaning: *And Religious learned man said: if somebody divorces (his wife) thrice then she becomes unlawful for him. So it is called "haram" (unlawful) by virtue of divorce and separation*<sup>19</sup>.

### 1.5 The Legal Ruling (Hukm) of *Faraq*

*Faraq* is actually a new-fangled situation in our country nowadays. *Faraq* also means as a judicial separation or *Tafriq al-Qada'ie*. In Arabic term is separation due to legal authority. It is also depends on the court or judge to decide whether *faraq* has taken place.

The general rule in Islamic law of *faraq* marriage is that the marriage is considered dissolved<sup>20</sup>. Whilst, before the judge orders *faraq* to take place, he must show careful attention of the statements and evidence of claims from the assert parties and must ensure the type of *talaq* either there *talaq raj'ie* or *talaq bain* has taken place<sup>21</sup>. Then, if *talaq raj'ie* takes place, the former husband can desert his former wife but he can *ruju'* or return to her *iddah* without having to go through a marriage ceremony.

<sup>18</sup>Muhammad bin Abdul Baaqi bin Yusuf al-Zarkani

<sup>19</sup>.Muhammad Muhsin Khan Dr.1987.*The Transalation of The Meanings of Sahih Al-Bukhari*.New Delhi: Kitab Bhavan.Vol 7.Fifth Revised Edition.p.138.

<sup>20</sup>n.a. 1998. "Bubar Perkahwinan Lewat Faraq". *Al-Islam*. Kuala Lumpur. April.p.27

<sup>21</sup> *ibid*.p.29

However, *talaq bain* is also divided into two types, namely *bain sughra* and *bain kubra*. *Talaq bain sughra* refers to dissolving a marriage instantly at the time of pronouncement. If the former husband wishes to reconcile with his former wife, he has to marry her again with a new dowry. In *Talaq bain kubra*, the former husband cannot remarry his former wife unless the wife has married other man and is divorced then observed during her waiting period of *iddah*<sup>22</sup>.

Besides that, in other cases where the marriage was found invalid and the husband was apostate from Islam, the judge will order the spouses to be separated and to be apart from each other. However, in the situation that the husband is apostate from Islam, it is compulsory for the judge to separate the spouses or order them to be *faraq* with his wife. In this situation, *talaq bain* takes place. Then, if the husband reaffirms back his of the faith (*taubat*), the husband can remarry his wife with new a *mahr*<sup>23</sup>.

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<sup>22</sup>Mimi Kamariah. 1999. *Islamic Family Law in Malaysia*. Kuala Lumpur: Butterworths. Malayan Law Journal. p.131.

<sup>23</sup>Jasri Jamal.n.d.2001/2002.Jenayah Murtad Dan Kebebasan Beragama Kesan Undang-Undang Terhadap Masyarakat Islam Di Malaysia. *Tasawwur Islam*. Melaka:Jabatan Agama Islam Melaka dan Majlis Agama Islam Melaka. Vol 7.p.78.

## CHAPTER 1

### 1.1 THE CONCEPT OF CONTRACT

There is a variety of ways in which a contract might be defined. It is a promise or set of promises which the law will enforce. It is an agreement which the law will enforce. It is a promise or set of promises which the law will enforce. It is an agreement which the law will enforce.

## CHAPTER TWO

### 2.1 THE CONCEPT OF CONTRACT

The contract is a legal agreement between two or more parties which is enforceable by law. It is a promise or set of promises which the law will enforce. It is an agreement which the law will enforce.

### 2.2

The contract is a legal agreement between two or more parties which is enforceable by law. It is a promise or set of promises which the law will enforce. It is an agreement which the law will enforce.

1. The contract is a legal agreement between two or more parties which is enforceable by law. It is a promise or set of promises which the law will enforce. It is an agreement which the law will enforce.

## CHAPTER 2

### 2.0 THE CONCEPT OF *FARAQ* MARRIAGE

There is a variety of ways in which a marriage becomes terminated in Islamic law either automatically or on the initiative of the husband, wife or judge. The power of divorce is actually in the hands of the husband and not the wife. However, the wife can also ask for her husband by the court through *Faraq* method, excluding any other dissolutions of marriage.

Furthermore, the *faraq* will not take place without an order from the judge. An investigation must be in progress to ensure that such *faraq* takes place. Normally, the investigation is done by enforcement officers in the Religious enforcement of the state. For example an invalid marriage and others.

#### 2.1 Division of Judicial Separation in Marriage

There are several ways in judicial separation that can be ordered by the judge or court. From this matter, it will be divided into four divisions of judicial separation in marriage. There are *Fasakh*, *Khulu'*, *Ta'liq* and also *Lian*.

##### ***Fasakh***

*Fasakh* literally means cancellation, abolishment, recession, revocation, abrogation or annulment<sup>24</sup>. It also means to annul a deed or to rescind a bargain. Therefore, in the context of marriage, it means the annulment of marriage is contract by the court after the wife has made an application to the court. Hence, whilst the husband has the *Talaq*, the wife has the *Fasakh* to dissolve their marriage. Thus, in the act

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<sup>24</sup>Azita Bt.Ahmad.2000."Grounds for Fasakh: Comparative Perspective". (Paper). *Islamic Family Law Issues 2000*.Kuala Lumpur:. International Islamic University Malaysia.p.245.

interpretation act of Islamic Family Law (Federal Territories) Act 1984 (Act 303) states that *fasakh* means the annulment of a marriage by reason of any circumstances permitted by Islamic Law in accordance with section 52 of this act<sup>25</sup>.

The juristic basis for *Fasakh* has been deduced from the Holy Quran where it is stated to the effect:

الطَّلُقُ مَرَّتَانِ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحٍ بِإِحْسَانٍ.....<sup>26</sup>

*"The parties should either hold together on equitable terms (bi-ma'ruf) or separate with kindness (bil-Ihsan)... (Part of verse 229: Al-Baqarah: 2)*

Furthermore, it can also be found in the Hadith that states to the effect:

Abu Hurairah said to the effect:

لما روى أبو هريرة: (أن النبي (ص) قال في الرجل لا يجد ما ينفق على امرأته، قال: يفرق

بينهما)

*"The Prophet (peace be upon him) said regarding a person who does not possess anything to enable him to give maintenance to his wife, they can both dissolve their marriage<sup>27</sup>"*

Besides that, *fasakh* can also take place on the following grounds<sup>28</sup>:

- 1) separation due to disease or defect
- 2) separation due to non-providing maintenance
- 3) separation on account of cruelty
- 4) divorce because the husband has deserted the wife or been imprisoned and others

<sup>25</sup> Federal Territories. 1984. *Islamic Family Law Enactment (Federal Territories)*. Interpretation of *fasakh*

<sup>26</sup> Al-Baqarah:2:229

<sup>27</sup> Saifuddin bin Abu Bakar.1988.*Hulliyatul Ulama' fi Ma'rifatu Mazaahib Fuqaha'*.Oman:Maktabah Al-Risalah Al-Hadithah.Vol:7.p.404.

<sup>28</sup> Ahmad Ibrahim Prof. Dr.. 1997. *Family Law in Malaysia*. Malayan Law Journal Sdn Bhd. Third Edition.pp. 261-267

### ***Khulu'* or Divorce by Redemption**

Divorce by redemption or *khulu'* is where the wife requests his husband to divorce her by offering him money or gifts as a ransom.

In literal sense, *khulu'* means ransom demands by the wife and naturally, *khulu'* is the wife releasing herself from the husband by paying something as ransom for her freedom<sup>29</sup>. Technically, *khulu'* is dissolution of marriage by an agreement made between husband and wife on giving some consideration to the husband to release his wife from marriage with the words *khulu'*<sup>30</sup>.

Besides that, the provision of *khulu'* can be seen at section 49 of Islamic Family Law (Federal Territories) Act 1984 that when the husband does not agree voluntarily to pronounce *talaq* against his wife, but the parties agree to divorce by redemption or *khulu'*, the court shall after payment is agreed by both parties, cause the husband to pronounce a divorce by redemption, such divorce irrevocable has taken place<sup>31</sup>.

The Holy Quran also states to the effect:

الطَّلُقُ مَرَّتَانٍ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ....

*"It is not lawful for you to take back any of your wives except when by both parties fear that they would be unable to keep the limits ordained by Allah. If you (judge) indeed fear that they would be unable to keep the limits ordained by Allah, there is no blame on either of them if she gives something for her freedom...<sup>32</sup>"(part of verse 229: Al-Baqarah: 2)*

Furthermore, hadith also states related about *Khulu'* that says to the effect:

<sup>29</sup> Nurhayati Hj Hamzah. 2000. *Crucial Matters Pertaining To Khul'*. Islamic Family Law Issues 2000. IIUM. p. 206.

<sup>30</sup> *Ibid*

<sup>31</sup> Federal Territories. 1984. *Islamic Family Law Enactment (Federal Territories)*. Section 49 (1)

<sup>32</sup> Al-Baqarah:2:229

أن امرأة ثابت بن قيس أتت النبي صلى الله عليه وسلم فقالت: يا رسول الله، ثابت بن قيس ما أعتب عليه في خلق ولا دين، ولكني أكره الكفر في الإسلام، فقال رسول الله (ص): أتردين عليه حديقته؟ قالت: نعم، قال رسول الله (ص): اقبل الحديقة وطلقها تطليقة. قال أبو عبد الله: لا يتابع فيه عن ابن عباس.

"The wife of Thabit in Qais came to the Holy Prophet (peace be upon him) and said: 'O Allah's Messenger! I do not blame Thabit for his defects in his character or his religion but I, being a Muslim, dislike to behave in an unIslamic manner (if I remain with him).' On that Allah's Messenger said to her" 'will you give back the garden which your husband has given you?' she said: 'Yes'. Then the Prophet (peace be upon him) said to Thabit: 'O Thabit! Accept your garden and divorce her once'<sup>33</sup>.

### **Ta'liq**

*Taklik* or *ta'liq* means suspended or attached<sup>34</sup>. It also means divorce by breaking a condition and is also solemnized during *akad nikah*<sup>35</sup>. The divorce by *ta'liq* will be affected where the husband does not fulfill one of the conditions in the agreement or *ta'liq* which is lasted in a specified form. The *ta'liq* is also agreed by both parties. Thus, after the solemnization the *ta'liq*, a husband will bind himself to divorce his wife and if he fails to fulfill the conditions, the *ta'liq* divorce will take place.

Furthermore, in the Federal Territories, the Islamic Family Law (Federal Territories) Act 1984 (Act 303) defines *ta'liq* as a promise expressed by the husband after solemnization of marriage in accordance with *Hukum Syara'* and the provision of this

<sup>33</sup>. Muhammad Muhsin Khan Dr. 1987. *The Translation of The Meanings of Sahih Al-Bukhari*. New Delhi : Kitab Bhavan. Vol 7. Fifth Revised Edition. p.150

<sup>34</sup> Mimi Kamariah. 1999. *Islamic Family Law in Malaysia*. Kuala Lumpur : Butterworths. Malayan Law Journal. p.135

<sup>35</sup> *Ibid*

act<sup>36</sup>. Then, the provision of this act is also stipulated in section 50 states that a married woman may, if entitled to a divorce in pursuance of the terms of a *ta'liq* certificate made upon marriage, she may apply to the court to declare that such divorce has taken place and after the court examines and is satisfied that the application is valid according to *Hukum Syara*<sup>37</sup>.

*Ta'liq* can also be said as a promise and declaration or affirmation made by the husband after the solemnization of marriage which is can done verbally or in writing. Then, the husband who makes the declaration (*lafaz ta'liq*) is bound to his wife<sup>38</sup>. Thus, it is important because Muslims are also obliged to fulfill their promises as stated in the Holy Qur'an:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا أَوْفُوا بِالْعُقُودِ...

"O ye who believe! Fulfill (all) obligations...<sup>39</sup>"

With regards to the conditions and promises in a marriage agreement, there is also Hadith said relating *ta'liq*:

*"The condition worthier to be fulfilled by you is the one by which you made the private parts (of your wives) lawful (for you)"<sup>40</sup>*

However, *ta'liq* is also not necessary because of the breach of the promise or one of the conditions in the agreement that is entered by both parties. But it also can mean that divorce of which is threatened by the husband if his wife does or omits to do something such as the husband said to his wife, "If you go out to your parent's house,

<sup>36</sup>Federal Territories. 1984. *Islamic Family Law Enactment (Federal Territories)*. Interpretation.

<sup>37</sup>*Ibid*. Section 50 (1)

<sup>38</sup>Suzaini Mohd Saufi. 2000. "Ta'liq: Practice and Procedure in Malaysia". (Paper). *Islamic Family Law Issues 2000*. IIUM.p.228.

<sup>39</sup>Al-Maidah 5:1

<sup>40</sup>Muhammad Abd Aziz al-Khaaladi. 1996. *Sunan Abu Daud*. Lebanon. Darul Kutub Al-Il'miah. Hadith 2134.

then will be a divorce on you with one *talaq*<sup>41</sup>. This means that if the wife goes out to her parent's house then one *talaq* will take place.

### ***Lian***

The other division of judicial separation in marriage is *li'an*. *Li'an* refers to divorce by mutual imprecation<sup>42</sup>. It occurs when the husband accuses his wife for adultery and there are no witnesses other than him to support his allegation. Then, he must testify to God four times that he is truthful and for the fifth time that the curse of God shall be upon him if he lies.

Furthermore, the process of *li'an* is laid down in the Holy Quran verse an-Nur (24): 4-9 that said to the effect:

وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَنِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ (4)....

*And those who launch a charge against their spouses and have in support no evidence but their own-their solitary evidence can be received if they bear witness four times with an oath by Allah that they are solemnly telling that truth. And that fifth oath should be that they solemnly invoke the curse of Allah on themselves if they tell a lie. But it would avert the punishment from the wife if she bears witness four times with an oath by Allah that her husband is telling lie. And the fifth oath should be that she solemnly invokes the wrath of Allah on herself if her accuser is telling the truth<sup>43</sup>.*

Then, it is also provided in the Islamic Family Law (Federal Territories) Act 1984 that where the parties to a marriage have taken oath by way of *li'an* according to *Hukum*

<sup>41</sup> Suzaini Mohd Saufi. 2000. "Ta'liq: Practice and Procedure in Malaysia". (Paper). *Islamic Family Law Issues 2000*. IIUM.p.231

<sup>42</sup> Mimi Kamariah. 1999. *Islamic Family Law in Malaysia*. Kuala Lumpur : Butterworths. Malayan Law Journal. p.136

<sup>43</sup> An-Nur (24) : 4-9

*Syarak*, and upon judgment, the judge should order them to be *farak* and to be separated from life forever<sup>44</sup>.

## 2.2 Division of *Faraq* Marriage

Like other dissolutions of marriage, the division of *faraq* can also be divided into three. There are *talaq*, *fasakh* and other *talaq* and not *fasakh*. All of these divisions are also decided by the court or judge whether the marriage is considered *faraq* or vice versa. Furthermore, as mentioned before, *faraq* also means separate which is ordered by the judge to separate the marriage and the spouse will be live apart from each other. From this matter, there are divisions of *faraq* that are as guidelines to know what actually is the division of *faraq* that is applied in this Federal Territory.

### *Talaq*

*Faraq* can also be a *talaq* that is either *talaq ba'in* or *talaq raj'ie*<sup>45</sup>, which *talaq ba'in* is also known as irrevocable divorce where the former husband returns to his former wife or known as *ru'ju*, unless his former wife marries him again with a new *mahr*. Whilst, the *talaq raj'ie* or revocable divorce refers to the situation where the husband repudiates his wife but he can *ru'ju* or return to her during her *iddah* without entering a marriage ceremony<sup>46</sup>.

In *talaq*, it contains *khulu'*, *ila'* and *lian*. Besides that, it is also alterable when the married spouses disputes (*shiqaq*) or in technical language of Islam and then the judge orders them to be *faraq* which is *talaq bain* has taken place<sup>47</sup>.

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<sup>44</sup>Federal Territories. 1984. *Islamic Family Law Enactment (Federal Territories)*. Section 50A(1).

<sup>45</sup>Dr.muhammad Rous Qal'adji. 2000. *Mausu'atul al-Fiqhiyyah al-Muyassaraton*. Darul Nafais. Vol. II.p. 1516.

<sup>46</sup>Mimi Kamariah. 1999. *Islamic Family Law in Malaysia*. Kuala Lumpur : Butterworths. Malayan Law Journal. p.131

<sup>47</sup>Dr.muhammad Rous Qal'adji. 2000. *Mausu'atul al-Fiqhiyyah al-Muyassaraton*. Darul Nafais. Vol. II.p. 1516.

## ***Fasakh***

*Fasakh* will take place when the married spouse, either the former husband or wife suffers due from disease and physical defects<sup>48</sup>. Furthermore, it is also for the reason that when the husband and wife have embraced Islam while the other remains in the former faith or apostate from Islam<sup>49</sup>. Thus, when the husband or wife who apostate from Islam, then an immediate dissolution (*fasakh*) of the marriage takes place<sup>50</sup>.

Besides that, *fasakh* also takes place when the married spouses are highly infectious and problems to having sexual intercourse such as impotence or absence of the sexual organ. A wife also may also request *fasakh* based the husband being non-*kufu* to her. Thus, it also takes place when the husband neglects or fails to provide maintenance to his wife<sup>51</sup>.

## ***Tafriq Other Than Talaq and Not Fasakh***

It is considered as *tafriq* where the causes are mentioned below situation:

- 1) **Difference of country** such as if a husband flees from a *daru'l-harb* (دار الحرب) or land of enmity or a non-Muslim country to a *darul'-Islam* or Islamic country, and she refuses to perform *hijrah* (flight) and to accompany him, *tafriq* takes place.
- 2) **Refusal of Islam** is if one of the parties embraces Islam, the judge must offer it to the other three distinct times and if the he or she refuses to embrace the faith, *faraq* takes place.
- 3) **Apostasy from Islam** is when a husband or wife apostate from Islam, then the *faraq* takes place whether the apostasy is of the husband or wife.

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<sup>48</sup>*Ibid*.p.1517

<sup>49</sup>*Ibid*

<sup>50</sup>Thomas Patrick Hughes. N.D. *A Dictionary of Islam*. Lahore. Kazi Publications.p.88

<sup>51</sup>Mimi Kamariah. 1999. *Islamic Family Law in Malaysia*. Kuala Lumpur : Butterworths. Malayan Law Journal. p.137

- 4) **An invalid marriage** of any kind, arising from incomplete *nikah* or marriage ceremony or by affinity or from consanguinity. In Arabic term, it also means as *nikah fasid* (نكاح الفاسد).
- 5) **Zihar** is that the husband equalizes back his wife with his mother. From this, *tafriq* takes place until the husband pays the *kaffarah* (fine) of *zihar*<sup>52</sup>.

### 2.3 The Method of *Faraq*

There is variety in which a marriage becomes terminated in Islamic law either automatically or on the initiative of the husband, the wife or a judge. Even though in *faraq* the marriage will be dissolved with the initiative of the wife or by the Religious Enforcement of the state.

#### Wife

Islam gives much right to the wife to discharge her from the bind of the marriage with her husband which causes the wife suffering. Besides the other methods of divorce like the other kinds of dissolution of marriage, *faraq* also takes place due to the request or application from the wife<sup>53</sup>. The court also has the legal authority to declare that such divorce takes place when there are no ways left to save the marriage. This is because when the husband does not want to end the marriage with *khul'* and then finally uses through the court service to dissolve the marriage<sup>54</sup>.

Besides that, the consent of the woman is necessary to expediate the marriage to be dissolved. It is proven when there are sound reports that which show the Prophet Rasullullah S.A.W annulled marriages in cases where a woman had been forced to marry a partner she disliked. This is explained through Hadith:

<sup>52</sup>.muhammad Rous Qal'adji Dr. 2000. *Mausu'atul al-Fiqhiyyah al-Muyassaratum*. Darul Nafais. Vol. II, p. 1517

<sup>53</sup>n.a. 1998. "Bubar Perkahwinan Lewat Faraq". *Al-Islam*. Kuala Lumpur. April.

<sup>54</sup>*Ibid*

عن خنساء بنت خدام الأنصارية : أن أباهَا زوجها وهي ثيب فكرهت ذلك، فأتت رسول الله صلى الله عليه وسلم فرد نكاحه.

*It is narrated by Khansa' bint Khidam Al-Ansariya that her father gave her in marriage when she was a matron and she disliked that marriage. So she when to Allah's Messenger S.A.W and he declared that marriage invalid<sup>55</sup>.*

### **Religious Enforcement**

Besides the request of the wife and the legal authority to declare that *talaq* has taken place, the marriage can also be dissolved when it comes from legal action and law enforcement of the Religious Enforcement of the state<sup>56</sup>.

In this matter, legal enforcement of Religious Enforcement of the state also has the authority to make a litigation regarding *faraq* cases either involvement of public figures or vice versa. It usually involves:

- 1) The apostate of married spouses either husband or wife
- 2) Invalid marriage such as married without a *wali*, practicing against the teaching of Islam and others.

Nevertheless, the Religious Enforcement of the state is only able to give an advice to the spouses to dissolve (*faraq*) their marriage for their advantage and it is up to them either to *faraq* or live together in legal marriage like the other spouses and however some spouses do not take great initiative to file the case in court<sup>57</sup>.

<sup>55</sup>.Muhammad Muhsin Khan Dr.1987.*The Transalation of The Meanings of Sahih Al-Bukhari*.Kitab Bhavan.Vol 7.Fifth Revised Edition.p.52.

<sup>56</sup>n.a. 1998. "Bubar Perkahwinan Lewat Faraq". *Al-Islam*. Kuala Lumpur. April.p.28

<sup>57</sup>*ibid*

Besides that, even though the Religious Enforcement of the state still takes legal proceedings against those to the court but it will spend a lot of times for the procedure and bureaucracy to solve this case.

Furthermore, the Religious bureau of the state does not have any authority to dissolve (*faraq*) any marriage except the court has the legal authority to determine that either the marriage is dissolved (*faraq*) with consolidate evidence.

## 2.4 Legal Provisions in Syariah Law in Malaysia

In fact, there are no specific provisions relating to *faraq* marriage, instead it is contained in other dissolutions of marriage. In Islamic Family Law (Federal Territories) Act 1984 (Act 303) provide that *faraq* can also be seen as *fasakh* with the provision which is stated in section 52 of this enactment provides:

- (1) A woman married in accordance with *Hukum Syara'*, shall be entitled to obtain an order for the dissolution of marriage or *fasakh* on any one or more of the following grounds, namely-
  - (a) That the whereabouts of the husband has not been known for a period of more than one year;
  - (b) That the husband has neglected or failed to provide for her maintenance for a period of three months;
  - (c) That the husband has been sentenced to imprisonment for a period of three years or more;
  - (d) That the husband has failed to perform, without reasonable cause, his marital obligations (*nafkah batin*) for a period of one year;
  - (e) That the husband was impotent at the time of marriage and remains so and she was not aware at the time of the marriage that she was impotent;
  - (f) That the husband has been insane for a period of two years or is suffering from leprosy or vitilago or is suffering from a venereal diseases in a communicable form;

- (g) That she, having been given in marriage by her *wali mujbir* before she attained the age of *baligh*, repudiate the marriage before attaining the age of eighteen years, the marriage has not having been consummated;
- (h) That the husband treats her with cruelty, that is to say, inter alia-
  - (i) Habitually assaults her or makes her life miserable by cruelty or conduct; or
  - (ii) Associates with women of evil repute or leads what, according to *Hukum Syara'*, is an infamous life; or
  - (iii) Attempts to force her to lead an immoral life; or
  - (iv) Disposes of her property or prevents her from exercising her legal rights over it; or
  - (v) Obstructs her in the observance of her religious obligations or practice; or
  - (vi) If he has more wives than one, does not treat her equitably in accordance with the requirements of *Hukum Syara'*;
- (i) That even after the lapse of four months, the marriage still has not been consummated owing to the willful refusal of the husband to consummate it;
- (j) That she did not consent to the marriage or her consent was not valid, whether in consequence of duress, mistake, unsoundness of mind, or any other circumstances recognized by *Hukum Syara'*;
- (k) That at the time of the marriage she, though capable of giving a valid consent, was, whether continuously or intermittently, a mentally disordered person within the meaning of the Mental Disorder Ordinance 1952 in the case of the Federal Territory of Kuala Lumpur, or the Lunatics Ordinance in the case of the Federal Territory of Labuan, and her mental disorder was of such extent as to render her unfit for marriage;
- (l) Any other ground that is recognized as valid for dissolution of marriages of *fasakh* under *Hukum Syara'*.

Besides that in the section 50A that relates about Divorce by *li'an* also provides that after the oath of *li'an* has taken place, and then he judge shall order them to be farak and be separated and to live apart from each other forever. It was also stipulated which provides:

- (1) Where the parties to a marriage have taken oath by way of *li'an* according to *Hukum Syara'* before a Syariah Judge, upon judgment, the Syariah Judge shall order them to be *farak* and be separated and to live apart forever.
- (2) The Court shall record the divorce by *li'an* accordingly and send a certified copy of the record to the appropriate Registrar and to the Chief Registrar for registration<sup>58</sup>.

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<sup>58</sup>Federal Territories. 1984. *Islamic Family Law Enactment (Federal Territories)*. Section 50A(1)

# CHAPTER THREE

## CHAPTER 3

### 3.0 *FARAQ* MARRIAGE IN SYARIAH COURT OF FEDERAL TERRITORIES

#### Introduction

#### Syariah High Court of Federal Territories

##### i) Establishment

The establishment of Syariah High Court of Federal Territories is based on the provisions under section 40 (2) Administration of Islamic Law Act (Federal Territories) 1993 provides "Yang di-Pertuan Agong with an advice of the minister, through the gazette in establishment of Syariah High Court of Federal Territories".

#### 3.1 The Jurisdiction of Syariah Court of Federal Territories

##### ii) Jurisdiction

The jurisdiction of Syariah High Court of Federal Territories is to hear and decide cases on the first instance with the provisions of section 46 (1) of the same Act which provides that "the jurisdiction of Syariah High Court of Federal Territories is in the whole part of Federal Territories and leads by Syariah Judge".

##### iii) Criminal Jurisdiction

Hearing of any offences that committed by Muslims and punishable under the Enactment or Islamic Family Law (Federal Territories) Act or any other written law that allocates any penalty against the enforcement of the commandments of Islam and punishable in which it is provided.

#### iv) Mal Jurisdiction

In its civil jurisdiction, it hears and decides all actions and proceeding involving any Muslim parties which related to:

- i. Betrothal, marriage, *ruju'*, divorce, dissolution of marriage (*fasakh*), *nusyuz*, or judicial separation (*faraq*) or any matters which related to husband and wife relationship.
- ii. Any banishment or property claims that arise from any matters that mentioned above
- iii. Maintenance for dependent, legitimacy, or custody (*hadhanah*) of children.
- iv. Dividing of matrimonial property claims.
- v. Wills or gifts during death-illness (*marad-al-maut*) for death Muslims.
- vi. Gifts (*hibah*) or solving without reciprocation money or valued that sufficient with Muslims.
- vii. Wakaf or nazr
- viii. Dividing of inheritance property, testate or intestate
- ix. Matters about someone who have a rights for property left by Muslims deceased or parts that the people have a rights for such properties
- x. Other matters whereas the jurisdiction given by any written law<sup>59</sup>.

### 3.2 Cases Related To *Faraq* Marriage

#### 1) Ismail Abdul Majid v. Aris Fadilah and Insun bt Abdul Majid<sup>60</sup>

The plaintiff asked the Court to annul the marriage between the first defendant and his sister the second defendant. The plaintiff stated that he had acted as *wali* when his sister was married to the first defendant but since then he had learned that there was at the time a nearer *wali*, that is, the paternal grandfather of himself and his sister. The learned Kadi held that it was clear that at the time of the marriage the grandfather was living and able to be a *wali*. He therefore annulled the marriage.

<sup>59</sup>En. Yusof Musa et al. 2000. *Mahkamah Syariah Wilayah Persekutuan Sebelum dan Selepas 25 Tahun*. N.pl: npb. p.13.

<sup>60</sup> *Ismail v Aris Fadilah & Anor* [1980] 5 JH 326

## Claim List:

- 1) I am Ismail bin Abd. Majid 23 years, live at Police Station of Kuala Kangsar declared that acted as a *wali* to the parties on 6.5.1974 that entrust in their marriage by Abdul Ghani bin Talib who acted as *kadi* and live at Kampung Kandang Hilir, Kota Lama Kanan and the marriage had registered on no. 33/74 through deputy *Kadi* lama Kiri.
- 2) A week ago, I had received a letter which by my uncle, Mohd Rais bin Abd Karim that live at Kampung Batu Laut, Kuala Langat Selangor who said that the marriage of Insun bt Abd Majid is invalid, by the reason that there is the nearer *wali* (*wali aqrab*), my paternal grandfather Abd Karim bin Samah who live at at Batu 8, Batu Laut, Kuala Langat Selangor.
- 3) Therefore, I asked this Court to annul the marriage between Insun bt Abd Majid with Aris Fadilah bin Pandak Harun by the reason that the marriage is invalid by *Hukum Syarak*.

Court held: the marriage between Aris Fadilah bin Pandak with Insun binti Abdul Majid official No.33/74 in Deputy Registrar Kota Lama Kiri, Kuala Kangsar on 6.5.1974 is annulled (invalid) and the declaration of *Nikah* No.282416 is annulled.

## 2) Siti Rohani v Md Sazali

In the Federal Territory, the wife applied for *Fasakh* on the ground that her husband had not given her any maintenance for over three months. The Judge of the Syariah Subordinate Court found that on the facts of the case the husband had not paid maintenance to the for over three months and the wife had ever been adjudged to be *nusyuz* by any Court. Nevertheless, he held that following the Shafie School of law it is necessary to prove that the husband is not able to pay the maintenance. He therefore adjourned the case for a month to enable the husband to pay one month's maintenance to the wife. Subsequently, the husband paid the sum of RM200 as maintenance and the judge then dismissed the application of the wife as he held that the husband was able to pay the maintenance. The wife appealed. It was held on appeal that under

section 52(1)(b) of the Islamic Family Law (Federal Territories) Act 1984 a wife entitled to obtain *fasakh* on the ground that the husband has neglected or failed to provide for the maintenance of the wife for a period of three months. In this case the judge had found that the husband had failed to pay the maintenance to his wife for a period exceeding three months and she had not been adjudged as *nusyuz* by any Court. The wife had therefore proved her claim and she was entitled to a decree of *fasakh* for the dissolution of the marriage.<sup>61</sup>

3) Hafsah bt Hashim v Muhamad Yatim b. Abdullah (Case. No: 290/99).

Claim Category: Confirmation on the Registration of Marriage

Case Fact: the spouses had married on 19 October 1993 in 9.00 pm at Kampar, Perak Darul Ridzuan. The witnesses who witnessed the marriage are Waris bin Hj Osman and the other one is cannot be determined. So, it brings difficulty to the registered marriage.

Held: the marriage between Plaintiff I and Plaintiff II, Hafsah bt Hashim and Muhamad Yatim Abdullah is void and the marriage is annulled by the reason that the marriage is not witnessed by 2 witnesses. Therefore, the *faraq* should take place.<sup>62</sup>

4) Rohana Jaafar v Abdul Rahman Ali (Case No.: 631/2000).

Claim Category: Same as above

Case Fact: plaintiff I and plaintiff II were married on 26.9.1996 at Kampung Pasir, Jalan Genting Klang, Kuala Lumpur. The marriage was conducted by the brother of the plaintiff I who acted as a *wali* to his sister, Jamaludin bin Jaafar. The spouses also found difficulty for registering their first-born child because the Register Department claims that the marriage certificate is invalid.

Held: the marriage is found invalid and void in Hukum Syara'. Therefore faraq should take place for the spouses that by the reason that the marriage is insufficient witnesses.<sup>63</sup>

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<sup>61</sup> *Siti Rohani v Md Sazali* [1993] 9 JH 30

<sup>62</sup> *Hafsah bt Hashim v Muhamad Yatim b Abdullah* [1999]. Case No.290. Mahkamah Syariah Wilayah Persekutuan

<sup>63</sup> *Rohana Jaafar v Abdul Rahman Ali* [2000]. Case No.631.Mahkamah Syariah Wilayah Persekutuan

### 3.3 Statistic of *Faraq* Marriage

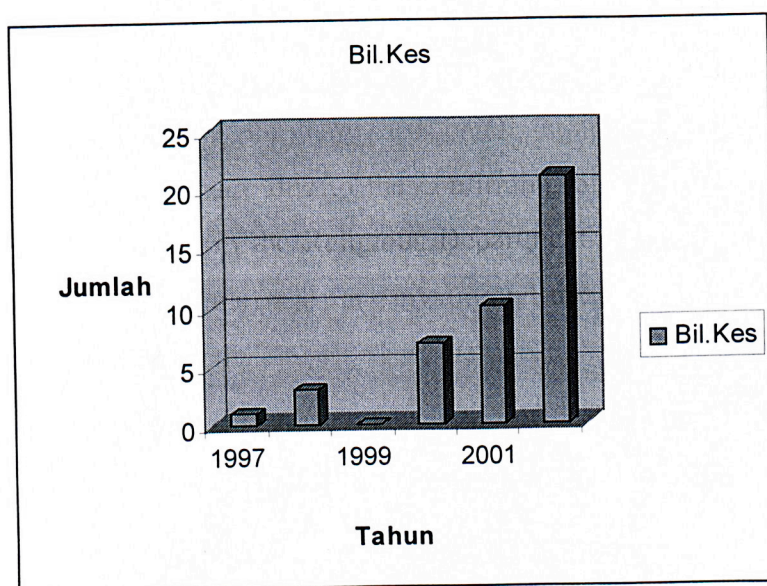
Table 1: Total number for *faraq* marriage

1997	1998	1999	2000	2001
1	7	-	3	10

Source: Syariah Court of Federal Territories

From this schedule<sup>64</sup>, it shows the total number of the *faraq* cases which had been filed in the Syariah Court of Federal Territories and had been completed in this court. However, there is not many cases pertaining to *faraq* were filed in this Court. Most of the *faraq* cases are due to the confirming of marriage where the marriages are not been registered in the Religious Department of Federal Territories (JAWI) and it is found that the marriages are invalid and the Court will annul the marriage. Instead, there are cases that involved in the apostasy of spouse and the Court dissolves the marriage.

Figure 1: Statistic of *Faraq* Marriage in Syariah Court of Federal Territories



Source: Registration Casebook, Syariah Court of Federal Territories

<sup>64</sup>Daftar kes Mahkamah Syariah Wilayah Persekutuan

# CHAPTER FOUR

## CHAPTER 4

### 4.0 THE CAUSES OF *FARAQ* MARRIAGE

Each situation or event does not happen without the causes. The same situation also can be found in *faraq* cases of the marriage. In this matter, the cause that will arise of *faraq* is divided into several categories whether it comes from the desire of the wife or through litigation from the law enforcement of the Religious Affairs Department of the state. Even though, *faraq* cases are still decided by the court or judge, there are those who try the case where the marriage is to be *faraq* or through statement of the witnesses and through concrete evidence.

#### 4.1 Abused Wife

In the Islamic concept of marriage, marriage is peace, amicable and loving. Besides that, each humankind that breathes in this world is also created from a single (pair) of female and male. It can also be proven by the Holy Quran in Al-Hujuraat verse 13, which means:

*"O mankind! We created you from a single (pair) of male and female, and made you into nations and tribes, that you may know each other (not that you may hate each other). Surely, the most honored of you, in the sight of Allah is (He who is) the most righteous of you. And Allah has full knowledge and is well acquainted (with all things) ...<sup>65</sup>"*

Furthermore, Allah S.W.T also created woman to become a wife for man, such that explained in Holy Quran in An-Nisa' verse one which means:

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<sup>65</sup>Al-Qur'an.Al-Hujurat 49:13. (All Quranic translation in this writing are based on Professor (Dr.) Syed Vickar Ahamed.n.d.*Interpretation Of The Meaning of The Glorious Qur'an*.Holmdel: New Jersey.

"O mankind! Respect (and fear) your Guardian-Lord, who created you, from single person (Adam), created his male of similar nature, and from the two of them spread (like seed) countless man and woman-Respect and fear Allah, through whom you demand your mutual (rights), and (respect) the wombs (that bore you): for Allah always watches over you ...<sup>66</sup>"

In this verse, Allah S.W.T also encourages people to care about the relationship between one another and to not be cruel to other people. Because of that, if a husband ill-treats or assaults his wife, the Court or judge has the authority to separate that marriage.

In fact, there are also law provisions relating to abusing of wives, such as a provision that is contain in section 52(1)(h) subsection (i) of the Islamic Family Law Act (Federal Territories) Act 1984 which states:

In section 52 (1) a woman married in accordance with *Hukum Syara'*, shall be entitled to obtain an order for the dissolution of marriage or *fasakh* on any one or more of the following grounds, namely –

- (h) That the husband treats her with cruelty, that is to say, inter alia-
  - (i) Habitually assaults her or makes her life miserable by cruelty or conduct; or
  - (ii) Associates with women of evil repute or leads what, is according to *Hukum Syara'*, is an infamous life; or
  - (iii) Attempts to force her to lead an immoral life; or
  - (iv) Disposes of her property or prevents her from exercising her legal rights over it; or
  - (v) Obstructs her in the observance of her religious obligations or practice; or
  - (vi) If he has more wives than one, does not treat her equally in accordance with the requirement of *Hukum Syara'* ...<sup>67</sup>

<sup>66</sup>Al-Qur'an.An-Nisa 4:1. (All Quranic translation in this writing are based on Professor (Dr.) Syed Vickar Ahamed.n.d.*Interpretation Of The Meaning of The Glorious Qur'an*.Holmdel: New Jersey.

<sup>67</sup>Federal Territories. 1984. *Islamic Family Law Enactment (Federal Territories)*. Section 52(1).

Therefore, if there is cruelty or ill-treatment to the wife, the wife can also file or request for divorce through *fasakh* in the court by the reason of cruelty of her husband. Besides that, special protection to the wife is also provided in Islamic family law when the husband shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment if a husband who ill-treats his wife or cheats his wife of her property claims<sup>68</sup>.

Hence, a husband who ill-treats his wife whether mentally, or especially in physically is really strictly prohibited in Islam. In addition, the prohibition is not only towards the wife but also towards the child in the marriage.

In this context, the remedy for the wife who is being ill-treated by the husband, Islamic family law in Malaysia protects any wife (or also to the husband) by giving an authority to the Syariah Court to give an interim order, which orders any person to refrain from forcing his or her society on his or her spouse or former spouse and from other acts of molestation. Failure to comply with an order made under this section shall be punishable as a contempt of Court<sup>69</sup>.

Allah S.W.T also does not allow the husband to ill-treat his wife as long as the wife is loyal and obedient to him except when the wife is being *nusyuz* or disloyal. When these matters happen, Allah gives the rights to the husband with "*Ta'dib* power" which is to improve his wife's behaviour. However, all Syariah jurists had concluded that it is unnecessary to the husband to beat his wife such as beating her face, and it is unnecessary to ill-treat or decrease her permitted rights such as maintenance, turns (for a husband who practices polygamy) and excellent relationship. Then, if the husband practices such behaviour, the husband is considered as inhuman<sup>70</sup>.

However, *ulama'* are unanimous in their view that when a husband ill-treats his wife without permission, the wife have the rights to claim for divorce from her husband to

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<sup>68</sup>Federal Territories. 1984. *Islamic Family Law Enactment (Federal Territories)*. Section 127.

<sup>69</sup>*Ibid.* Section 107(1).

<sup>70</sup>Nik Noriani Nik Badli Shah. 1998. *Perkahwinan Dan Perceraian Di Bawah Undang-Undang Islam*.

the Court (*kadi*)<sup>71</sup>

1) Hanafi School views that a wife who is ill-treated by her husband in turn matters (by the husband who practices polygamy), does not have any rights to claim for divorce into Syariah Court. However, she has the rights to ask to the Court to stop her husband from any inhuman behaviour and gives notice to him in order not to ill-treat her anymore. If the husband is still doing the same offence, hence the *ta'zir* has taken place. However, the judge has no authority to sentence imprisonment as for the reason of being unfair in turn matters.

2) Syafi'i School: the breach of marriage is sometimes supplied from the disobedience of the wife or ill-treatment by the husband to his wife or both have the same guilt. If the problem arises because of the disobedience of the wife, the husband has the right the *ta'dib* authority that includes three steps. If the quarrel has arisen from the ill-treatment of the husband to his wife without any exact reason, the wife can raise it to the Court (*kadi*), then when the litigation takes place, the judge shall forbid it but no any *ta'zir* punishment in first steps. If the wife raised this matter once again, for the reason that the husband ill-treats her, then the judge can punish a suit *ta'zir* punishment to him.

3) Maliki School. A husband who ill-treats his wife such assault or force her to lead an immoral life, then the wife has the authority to raise it regarding that such matter to the Court (*kadi*) ask the judge to stop the husband and punish him with *ta'zir* punishment and also claim for divorce. However, if the wife rises that such ill-treatment does not happen to her, hence, the judge must give advice to the husband. If the wife comes for the second time, the Court may appoint two hakams to get justice.

In this matter, there is a *fatwa* which is issued by Brunei Darussalam government that states as follows:<sup>72</sup>

<sup>71</sup> Hassan Salleh. 1989. *Asas Kekeluargaan Islam Bahasan Empat Mazhab: Syafi'i, Hanafi, Maliki dan Hanbali*. Kuala Lumpur: Dewan Bahasa dan Pustaka.p.206.

<sup>72</sup> Awang Abdul Aziz Ustaz Haji Bin Juned. 1998. *Fatwa Mufti Kerajaan*. Brunei Darussalam: Jabatan Perdana Menteri.p. 216

"When a husband has ill-treated his wife or assault or causes any harm to her body, respect or deed and the wife is unwilling to live together and to interminable the marriage relationship, the wife can raise a claim for divorce which one *talaq ba'in* has taken place".

#### 4.2 Apostasy of Spouses

The term "*Murtad*" or apostasy is an immense criminal that is the most despicable in Islamic views. Hence, in a Hadith that is reported by Ibnu Umar, Az-Zuhri and Ibrahim, the Prophet (peace upon him) said to the effect: "A female apostate (who reverts from Islam), should be killed."<sup>73</sup>

Besides that, the usage of apostasy term in the Arabs is *Riddah*. In the Oxford Advanced Learners dictionary also defines "apostasy" as a person who has rejected their religion or political beliefs.<sup>74</sup> Besides that, apostasy in Islamic term means an action by a person who renounces Islam. A person is said as an apostate and *kufir* are defined through one of these three methods, as follows<sup>75</sup>:

1. *I'tikad*. Such as a person had intended to be an apostate or doubts with the truthfulness of Holy al-Quran.
2. Through expressions and words. For example an act of the person which is belittling and insulting of Prophet Muhammad S.A.W
3. Deeds. Such a person who literally steps on the al-Quran with insulting motives.

<sup>73</sup>.Muhammad Muhsin Khan Dr.1987.*The Transalation of The Meanings of Sahih Al-Bukhari*.New Delhi: Kitab Bhavan.Vol 7.Fifth Revised Edition.p.42.

<sup>74</sup>Sally Wehmeier. 1995. *Oxford Advanced Learner's Dictionary*. "Apostasy". Oxford University Press. Fifth Edition.p.44

<sup>11</sup>Abd.Latif Muda & Rosmawati Ali@Mat Zin. 1997. *Pengantar Fiqh*. Kuala Lumpur: Pustaka Salam Sdn Bhd. p.300.

Nevertheless, relating with a marriage between a Muslim and *musyrik* people, it is stated in Surah al-Baqarah 2:221 which says that

*"Do not marry unbelieving women (idolaters), until they believe; a slave woman who believes is better than an unbelieving woman, even though she (may) allure you. And do not marry (your girls) to non-believers until they believe..."<sup>76</sup>*

Nevertheless, in the provision of section 46 (1), Islamic Family Law (Federal Territories) Act 1984 states that the renunciation of Islam by either party to a marriage or his or her conversion to a faith other than Islam shall not by itself operate to dissolve the marriage unless and until so confirmed by the Court. Then, in section 46(2), also provides that the conversion to Islam by either party to a non-Muslim marriage shall not by itself operate to dissolve the marriage unless and until so confirmed by the Court<sup>77</sup>.

If the apostasy takes place between husband and wife or both of them or one of them, therefore, it will affect their marriage. Thus, in this matter the Syafi'e school views that:

When the apostasy of the spouses, both or one of them, hence, this matters will be affected:

- a. When the apostasy is before *dukhul* (sexual intercourse), then the marriage will be considered as dissolved between them because the marriage is still not firm with *dukhul*.
- b. If the apostasy is after *dukhul*, then the marriage will not be disrupted, but the separation between them will be delayed. When both parties embrace Islam before the completion of *iddah*, hence the marriage is still lasting, if not the marriage is disrupted between both parties since the apostate takes place,

<sup>76</sup> Al-Qur'an. Al-Baqarah 2:221. (All Quranic translation in this writing are based on Professor (Dr.) Syed Vickar Ahamed. n.d. *Interpretation Of The Meaning of The Glorious Qur'an*. Holmdel: New Jersey.

<sup>77</sup> Federal Territories. 1984. *Islamic Family Law Enactment (Federal Territories)*. Section 46(2).

whether both parties embrace Islam back after the completion of *iddah* or in the end partly of the *iddah*. In this matter, it is of no difference between the apostate husband and wife.

- c. If sexual intercourse (*dukhul*) happens between spouses during the marriage is suspended, hence there is no punishment but *takzir* only.
- d. A wife has no rights to get maintenance during *iddah* if she apostates even though she returns to embrace Islam in the middle of the *iddah*. However, if the husband is apostate, then the husband still has the responsibility to maintain his wife.
- e. If the husband divorced his wife before *dukhul* and the wife is apostate, then the wife shall not be entitled to maintenance, but if the husband apostates, then the wife has the rights to get part of the maintenance. If apostasy occurs after *dukhul*, then the husband still has the responsibility to give dowry to his wife.
- f. The divorce that is because of apostasy is considered as a *fasakh* divorce, not *talaq*. No person can marry an apostate person, Muslims or non-Muslims because the new religion for an apostate person is unqualified, instead it is immediate to the death punishment because of the apostasy.<sup>78</sup>

Besides that, any Muslim who renounces from Islam (*murtad*) will give effect to their responsibilities. This is because the apostate person is not Muslim anymore (*kufur*) and he does not have any authority on himself and other legatees. The effect of the person who is apostate is as follows:

If a husband or wife who is considered as an apostate, then the Court may declared that the marriage is dissolved because an apostate person does not have any religious beliefs, even though they renounce Islam and then embrace other *samawi* religion.

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<sup>78</sup> Abdul Ghani Azmi Bin Haji Idris. 1994. *Hukum-Hukum Perkahwinan & Kekeluargaan Dalam Islam Pandangan Daripada Pelbagai Mazhab*. Cetakan Pertama. Kuala Lumpur: Dinie Publisher.

Besides that, the legal rule to marry an apostate person, a Muslim man who is apostate, the marriage will dissolve it from his wife, because marriage is actually based on religious beliefs. An apostate person does not have any beliefs relating to religion. In this position, an apostate person may give a repentance period in three days. If he is unrepented, he may be killed.

In the case of the woman being apostate, a Muslim man cannot marry her until she repents. This is because the institution of marriage is based on of any particular advantages. A contradiction in religion beliefs in apostasy cannot bring any advantages of the marriage<sup>79</sup>.

*Jumhur fuqaha'* views that divorce that is because of apostasy may be assumed as *fasakh* because the divorce is based on *hukum syara'* and not based on the husband. If the husband apostates, it is obligatory to be *fira'* (judicial separation) with his wife with *talaq bain* takes place. If the husband repents, then he shall remarry with a new *akad* and *mahr*. Instead, if the wife the apostate, the divorce is considered as *fasakh* and if she intends to return to her husband then, she shall remarry with a new *akad* and *mahr* without decreasing the number of *talaq* of her husband because of the late *fasakh*<sup>80</sup>.

#### 4.3 Void Marriage

The case of *faraq* in Islam is as a basis and Islamic justice is a basis for Muslims advantages, which they may live in a peaceful and harmonious family, with no stress or disturbance to their feelings.

In relationships between a non-muhrim man and non- muhrim woman is better if it is ended with a sacred bound namely marriage. However, it shall be carried out in the right way because it is necessary to ensure that it is a valid marriage.

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<sup>79</sup>*Ibid*

<sup>80</sup> Jasri Jamal. 2002. *Jenayah Murtad Dan Kebebasan Beragama Kesan Undang-Undang Terhadap Masyarakat Islam Di Malaysia*. Tasawwur Islam. Jurnal Perspektif Islam. Melaka: Jabatan Agama Islam Melaka & Majlis Agama Islam Melaka.p.78

Nevertheless, void marriage can be divided into two types; they are invalid marriage and void marriage. Thus, an invalid marriage means one which is false in doctrine. In this matter, an invalid marriage will take place whereas:

- 1- Marriage between Muslim women with a non-Muslim. Islamic *Fuqaha'* is animous that it is inevitably that a Muslim woman marries a non-Muslim man whether that man is *Ahlil Kitab* or non-*Ahlil Kitab*. If the marriage is between Muslim women a non-Muslim, then the marriage is dissolve and void. The legal rule is obligation to separate (*faraq*). This rule is based on the Holy al-Quran where Allah says:

"...ولا تنكحوا المشركين حتى يؤمنوا..."

*"Do not marry unbelieving women (idolaters), until they believe; a slave woman who believes is better than an unbelieving woman..."<sup>81</sup>*

Therefore, a Muslim woman is only allowed to marry a Muslim man who is of Muslim religion, with the animous of the *fuqaha'*. This has also been explained the cause or compensation that can be understood why a Muslim man should marry with a woman who is from *Ahlil Kitab* because it is an opinion of most *fuqaha'*. Thus, it is better if it is explained why Muslim women are prohibited by *syara'* to marry with a non-Muslim man, even if he is an *Ahlil Kitab*.

Islam actually puts responsibility as the leader in a family on the man who becomes a husband. Therefore, that is advisable if *syara'* Islam forbids Muslim woman to marry a non-Muslim man as protector for her. It is in view of those Muslim women will be libel of her religion and it is unguaranteed that the Holy and the honour of al-Quran and Prophet Muhammad (peace upon him) is unpolluted with dishonourability and others, especially when a family problem occurs between spouses. Moreover, when

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<sup>81</sup>Al-Qur'an.Al-Baqarah 2:221. (All Quranic translation in this writing are based on Professor (Dr.) Syed Vickar Ahamed.n.d.*Interpretation Of The Meaning of The Glorious Qur'an*.Holmdel: New Jersey.

there are children who are born there are given names of his or her father, as religion is also based on the father.

- 2- Marriage between a Muslim with a woman who is not from *Ahlil kitabiyyah*. In this matter, *kitabiyyah* means a woman from *ahli kitab*. Imam Nawawi says in his book namely as "*Minhaj al-Talibin*", a Jewish woman can become a Muslim woman, even if they are not from the Israel society, but with the condition that they accept Jewish religion before the *wahyu* had been replaced with the al-Quran and before the texts of Moses law had been changed by their priests. However, there are opinions of *Ulama'* that the first condition is needed. Ibnu Hajar, in his book namely as "*Tuhfah*" says that the meaning is them (Jewish and Nasrani women). Whereas their ancestry and it is clear that they embrace the religion after the coming of Jesus, or where the embracement is unclear and suspected that whether after the coming of the Prophet Muhammad (peace upon him) or Jesus or others is prohibited to be married by Muslim<sup>82</sup>.

The legal rule of invalid marriage:

It happens whether after *dukhul* (sexual intercourse) or not and the marriage is not considered as a valid marriage between the spouses. Besides that, it is unlawful by both husband and wife to be together or have sexual intercourse between them. And the judge must separate them through the Court.<sup>83</sup>

Instead, a *fasid* marriage carries the meaning as a seditious or rebellious person. In this matter, a *fasid* marriage will be affected when:

- 1) A marriage that is non-*kufu* between spouses. According to Muslim law in order that a marriage may bear the character of a suitable union in law, the husband must be the equal of the woman in social status. There is no corresponding provision that the wife should be of equal status with the husband, for by marriage he is regarded as having raised her to his position

<sup>82</sup> Uthman Al-Takruurii Dr.. 1998. *Syarah Qanun Al-Ahwal Al-Syakhsiyyah*. Amman: Maktabat Darul Thaqafah.p.103.

<sup>83</sup> *Ibid*.p.105

Where a woman who has attained majority contracts herself with a man who is not of her equal without the consent of any of those male relations who would be entitled to be her guardians for marriage if she were a minor, the Court on the application of such relations has the power to abolish the marriage.

According to the Shafi'i school of law, a guardian cannot give a woman in marriage to a man of inferior condition except with her consent. According to most authorities, such a marriage is void, even if it is the father who gives the woman in marriage to her inferior without her consent. Where there are several guardians of equal competence, a misalliance requires the consent of all such guardians as well as the woman herself. Neither the Sultan nor the judge *Kadi* can legally give a woman in marriage to a man of inferior status, even though she may desire it. The factors to be taken into consideration in determining whether the husband is of equal status are birth, character, profession and absence of defects of the body.

- 2) When the marriage is without any witnesses<sup>84</sup>. The *akad* of marriage is a bound process between man and woman who are valid to be married through *akad* marriage to live together. In this matter, the attendance of witnesses is very necessary in *akad* marriage. This is because in *akad* marriage concept, it should fulfill rules and conditions that have been determined in the *akad* of marriage. Without the witnesses, then, the *akad* is invalid and the *akad* can be *fasid* (damage).
- 3) *Akad* marriage with force<sup>85</sup>. Consent refers to that of the girl to be married and that of the *wali*<sup>86</sup>. Nevertheless, in the marriage process it must be through consent between parties, whether by the woman party herself or by the *wali* of the woman. But, arranged marriage however, does not mean forced. The prospective partner, especially the girl, has the right to say "NO", and this is to be respected by the parents or guardians. It is her right to refuse. There are

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<sup>84</sup> Uthman Al-Takruurii Dr.. 1998. *Syarah Qanun Al-Ahwal Al-Syakhsiyyah*. Amman: Maktabat Darul Thaqaafah.p.103.

<sup>85</sup> *ibid*.

<sup>86</sup> Mimi Kamariah. 1999. *Islamic Family Law in Malaysia*. Kuala Lumpur : Butterworths. Malayan Law Journal. p.53.

sound reports which show the Prophet S.A.W annulled marriages in cases where a girl or woman had been forced to marry a partner she disliked:

عن خنساء بنت خدام الأنصارية : أن أباهَا زوجها وهى ثيب فكرهت ذلك، فأنت رسول الله صلى الله عليه وسلم فرد نكاحه.

*It is narrated by Khansa' bint Khidam Al-Ansariya that her father gave her in marriage when she was a matron and she disliked that marriage. So she when to Allah's Messenger S.A.W and he declared that marriage invalid<sup>87</sup>.*

4) If the witnesses is does not fulfill the conditions that is to be a witness that is determine by *syara*<sup>88</sup>. Thus, the witness must not be less than two persons, it must be seen as *ibadat*, and it is given only because of Allah S.W.T. as an essential part of this responsibility to society. Nevertheless, the condition to be a witness is similar to the condition to be a *wali* as follows<sup>89</sup>:

- a) Muslim
- b) *Baligh* (past the age of puberty)
- c) Sound mind
- d) Just
- e) Free
- f) A person who can hear, see and speak
- g) Have pride
- h) Not a *wali*
- i) Understand the requirements of *sighah ijab* and *qabul*

<sup>87</sup>Muhammad Muhsin Khan Dr..1987.*The Transalation of The Meanings of Sahih Al-Bukhari*.Kitab Bhavan.Vol 7.Fifth Revised Edition.p.52.

<sup>88</sup> Uthman Al-Takruurii Dr.. 1998. *Syarah Qanun Al-Ahwal Al-Syakhsiyyah*. Amman: Maktabat Darul Thaqaafah.p.103.

<sup>89</sup>Abdul Ghani Azmi Bin Haji Idris. 1994. *Hukum-Hukum Perkahwinan & Kekeluargaan Dalam Islam Pandangan Daripada Pelbagai Mazhab*. Cetakan Pertama. Kuala Lumpur: Dinie Publisher.

- 5) By fosterage. A boy who is breast-fed with a woman who is not its natural mother for at least five times during the first two years of his life who is known as his foster-mother and the woman is prohibited in marriage, it is the same as prohibiting marriage with a person who has the relations with his foster-mother<sup>90</sup>. *Jumhur ulama'* views that, it is forbidden for a marriage by the reason of fosterage on the same grounds of consanguinity.

Beside that, Allah S.W.T says in Surah an-Nisa' verse 23 that means:

"...وأمهتكم التي أرضعنكم وأخوتكم من الرضعة..."

"... Foster mothers (who breast fed you), foster sisters..."<sup>91</sup>

- 6) *Mut'ah* marriage. *Mut'ah* literally means delight and a little of cater or things that be used with enjoyment. In term, *mut'ah* marriage means that a contract of marriage that is by the reason of fun for limited period of time and after the adequate of time they will be separated without *talaq*. Besides, it is most known as temporally marriage, whether the lapse of time is known or unknown.

The legal ruling of *nikah mut'ah*: *Jumhur Ulama* also agree on the issue that the legal rule of *mut'ah* marriage is strictly prohibited. The *Ulama'* opinions have decided with the concrete evidence which says:

عن علي رضي الله عنه أن رسول الله (ص) نهى عن متعة النساء يوم خيبر وعن لحوم

الحمير الأنسية.

Translation: *Narrated Ali: I said to Ibn Abbas, "during the battle of khaibar the Prophet SAW forbade (nikah) Al-Mut'a and the eating of donkey's meat"*<sup>92</sup>.

<sup>90</sup> Abd.Latif Muda & Rosmawati Ali@Mat Zin. 1997. *Pengantar Fiqh*. Kuala Lumpur: Pustaka Salam Sdn Bhd. p.181.

<sup>91</sup> Al-Qur'an.An-Nisa 4:23. (All Quranic translation in this writing are based on Professor (Dr.) Syed Vickar Ahamed.n.d.*Interpretation Of The Meaning of The Glorious Qur'an*.Holmdel: New Jersey.

<sup>92</sup> Muhammad Muhsin Khan Dr..1987.*The Transalation of The Meanings of Sahih Al-Bukhari*.New Delhi: Kitab Bhavan.Vol 7.Fifth Revised Edition.p.24.

Besides that, the consensus of *ulama'* also agree that *mut'ah* marriage is void and prohibited forever<sup>93</sup>.

Thus, each marriage that is deemed as void shall fulfill the particular requirement. Such in section 11 in Islamic family law (Federal Territories) Act 1984 provides that:

"A marriage shall be void unless all conditions necessary, according to *Hukum Syara'*, for the validity thereof are satisfied".<sup>94</sup>

In this matter, a society has the responsibility to report any marriage that in its opinion is void to avoid any terrible circumstances. Besides that, law is also provided relating to this matter in Islamic family law (Federal Territories) Act 1984 which provides that:

"It shall be the duty of every person to report to the Registrar the circumstances of any cases in which it appears to him that any alleged marriage was void or that any registrable marriage was solemnized in contravention of this Act"<sup>95</sup>.

#### 4.4 Other Causes

Other than causes that have been mentioned before, there are other causes where the marriage shall be *faraq*. There are:

##### A. Failure to pay maintenance.

Muslim jurists differ as to whether the husband's failure to maintain his wife provides a valid ground for divorce. The three Imams, Maliki, Syafi'i and Hanbali allow a divorce at the request of the wife on the ground of the husband's failure to maintain his wife and quoted to this effect in the Quran:

<sup>93</sup> Abd.Latif Muda & Rosmawati Ali@Mat Zin. 1997. *Pengantar Fiqh*. Kuala Lumpur: Pustaka Salam Sdn Bhd. p.249.

<sup>94</sup> Federal Territories. 1984. *Islamic Family Law Enactment (Federal Territories)*. Section 11.

<sup>95</sup> *Ibid*. Section 27.

...فإمساك. معروف أو تسريح بإحسان

Translation: "... (The wife) must be retained in honour or released in kindness...<sup>96</sup>"

In this matter, it is said that the failure to maintain does not conform to "retention with honour". They also hold that failure to maintain amounts to *darar*, which is proscribed by "*la darara wa la dirara fi'l Islam*".

The Hanafi refuses to recognize this as a ground altogether and they quote to this effect of the al-Quran:

...زَلَيْفِقْ ذُو سَعَةٍ مِّن سَعَتِهِ وَمَن قَدَرَ عَلَيْهِ رِزْقَهُ فَلِيَنْفِقْ مِمَّا آتَاهُ اللَّهُ...

Translation: "Let him who has means spend of his means; as for him whose provision is measured, let him spend of that which God has given him...<sup>97</sup>"

As for the rich husband who willfully refuses to support his wife, the court may sell his property or punish him until he complies<sup>98</sup>.

#### B. Illness and defect.

The leading schools of Islamic law hold different positions with regards to the validity or otherwise of judicial divorce (*tafriq*) on the basis of illness or defect on the part of the husband. The Zahiris do not consider illness of any kind as a valid ground for divorce. The Hanafi and the Shi'a Ithna 'Ashari schools allow *tafriq* only in the event of the husband's impotency, provided that the wife applies to the court for divorce, and that she did not know about it at the time of marriage, and also that she applies for divorce immediately after she knows of her husband's impotence.

<sup>96</sup>Al-Qur'an. Al-Baqarah 2:229. (All Quranic translation in this writing are based on Professor (Dr.) Syed Vickar Ahamed.n.d. *Interpretation Of The Meaning of The Glorious Qur'an*. Holmdel: New Jersey.

<sup>97</sup>*Ibid.* Al-Talaq 65:7

<sup>98</sup> Mohammad Hashim Kamali.n.d. *Islamic Law In Malaysia: Issues and Development*. Kuala Lumpur: Ilmiah Publisher.p.83

Moreover, the Hanafis maintain that dissolution of marriage is the exclusive right of the husband, with the court having the right to intervene in the event only of a serious genital defect such as impotence or castration. Imam Abu Hanifa's disciple, al-Shaybani has added madness, leprosy and elephantiasis as valid grounds for the judicial dissolution of marriage. The Shafi'is, Malikis and Hanbalis have on the whole concurred with al-Shaybani and granted the wife the right to apply to the court for divorce on specific grounds; they have entitled either of the spouses to do so in the event of serious illness and defect on the part of the other<sup>99</sup>.

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<sup>99</sup> *Ibid.*

# CHAPTER FIVE

## CHAPTER 5

### 5.0 THE IMPLICATION OF *FARAQ* MARRIAGE

The relationship between husband and wife is a sacred one. It demands continuity and permanence based on mutual co-operation, love and affection. Islam basically desires giving permanence to this relationship. Furthermore, divorce is the most feared by spouses in marriage. However, if the marriage has no other alternative to save their marriage, it will affect in their rights such the rights of wife after divorce. However, in this chapter it will discuss relating to the implications of *faraq* marriage.

In this matter, the implication after *faraq* cases can be divided into three implications. There is the status of the child of the spouses after *faraq*, the rights of the wife after *faraq* and finally is the right of the husband after *faraq*.

Beside that, a divorce is surely given such implications relating with wife or the rights of wife, children and other matters which are related in marriage. Instead, the cause of the implication with the child, wife and husband is because in each is bound to marriage that has content in family elements whereas its contents of mother, father and child. Besides that, each party in this family has their own rights and responsibility whether the marriage is ended with a divorce or not, its still bound of their responsibilities.

#### 5.1 The Status of Child after *Faraq*

To have children in marriage is really anticipated by husband and wife. Instead, children are as a special reward from Allah S.W.T. as continuous heir in life. Then Allah S.W.T. says in Holy al-Quran Surah as-Syuura verse 49-50 whereas its clarify that children is Allah rewards in this world:

"To Allah belongs the kingdom of the Heavens and the earth. He creates what He wants (and what He plans). He gives (children) male or female according to His Will (and His Plan), or He gives both males and females, and he leaves some whomever He wills, Barren (without any children): because He full of knowledge and power...".<sup>100</sup>

After divorce between spouses, the judge who tries this case should consider all matters that involve the children, wife and husband after divorce such as regarding maintenance, *iddah* and others.

Nevertheless, in certain case which involves the marriage that is *faraq*, such marriages are found as invalid, and sometimes involve spouses who have children. Hence, what can be questioned here is what the status of the child is after the *faraq* takes place in their marriage.

In this matter, an invalid marriage, the *nasab* is considered as valid in that marriage, such as valid marriage, even the married wife with an invalid *akad* of marriage and have divorce immediately.<sup>101</sup>

Therefore, it is clear that in a marriage case that involves in invalidity of *akad* marriage, then, when after the sexual intercourse between spouses, the *nasab* is considered as valid such valid marriage.

However, in certain cases which involve *wati' syubhah* or known as *syubhah* sexual intercourse, then when a woman delivers a child between the periods of six *qamariah* months until four *qamariah* years after the intercourse, then, the man who intercourse shall be attributed him. Besides that, its provided in section 113 Islamic Family Law (Federal Territories) Act 1984 which states that:

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<sup>100</sup> Al-Qur'an.As-Syuura 42:49-50. (All Quranic translation in this writing are based on Professor (Dr.) Syed Vickar Ahamed.n.d.*Interpretation Of The Meaning of The Glorious Qur'an*.Holmdel: New Jersey.

<sup>101</sup> Mahmood Zuhdi Prof Madya & Raihanah Hj Azahari. 1989. *Undang-Undang Keluarga Islam Konsep Dan Perlaksanaannya Di Malaysia*. Kuala Lumpur: Karya Abazie. p.87

"Where a man has *syubhah* sexual intercourse with a woman, and she subsequently delivers of a child between the periods of six *qamariah* months to four *qamariah* years after the intercourse, the paternity of the child shall be ascribed to the man ".<sup>102</sup>

Furthermore, the legitimacy of a child is very important to the spouses who had been *faraq* in their marriage. Therefore, the issue of who will be attributed as father after the dissolution of marriage is when the child is born more than six *qamariah* months from the date of the marriage, or in period four *qamariah* years after the marriage. Whether it is dissolved by the cause of death or by divorce and the wife unremarried, hence, the child shall be ascribed to the man.<sup>103</sup> In this matter, it also explains such had provided in section 110 Islamic Family Law (Federal Territories) Act 1984 which states that:

"Where a child is born to a woman who is married to a man more than six *qamariah* months from the date of the marriage or within four *qamariah* years after dissolution of the marriage either by the death of the man or by divorce, the woman not having remarried, the *nasab* or paternity of the child is established in the man, but the man may, by way of *li'an* or imprecation, disavow or disclaim the child before the Court".<sup>104</sup>

However, in the same enactment, in section 111 provides that: "where the child is born more than four *qamariah* years after the dissolution of the marriage either by the death of the man or by divorce, the paternity of the child shall not be established in the man unless he or any of his heirs assert that the child in his issue".<sup>105</sup>

## 5.2 The Rights of Wife after *Faraq*

When a man had pronounced a contract of marriage in front a *kadi*, then, it constructs a promise between husband and also wife to obtain their own responsibilities. However,

<sup>102</sup>Federal Territories. 1984. *Islamic Family Law Enactment (Federal Territories)*. Section 113.

<sup>103</sup>*ibid*

<sup>104</sup>*ibid*. Section 110.

<sup>105</sup><sup>105</sup>Federal Territories. 1984. *Islamic Family Law Enactment (Federal Territories)*. Section 111.

when a marriage which is built for a long time starts to and is crumble hard to keep, then, the best way to them is through separation or divorce or impose to divorce such cases which involves an invalid marriage or for couples who committed apostasy (*murtad*). Besides that, in this case, when the wife is divorced or imposed to divorce, then, the wife has the right to claim the right as divorced wife. Furthermore, the rights of wife as maintenance during *iddah* period, custody (*hadhanah*), matrimonial property and others.

### 5.2.1 'Iddah Maintenance

Relating to food and materials, as does, not only confine the term of maintenance that is understood by our society, hence it involves in other aspects. '*Ulama fiqh* usually divided the maintenance into main necessities such food, clothes, home, medical, education, service and others.<sup>106</sup>

After the wife had been divorced, the wife has the rights to acquire an '*iddah* maintenance if she still in '*iddah raj'i*'. This is based on the Holy al-Quran that wants the divorce is in superior conditions which the wives can practice '*iddah*'. The term of '*iddah*' is a period to a wife who had been divorced until she remarries with other man. The word of *iddah* is derived from the root *adda* meaning to count; in this case, it is a waiting period, a period of abstinence, or a specified term during which the wife shall remain unmarried after the dissolution of marriage by divorce, death, or any other form of separation under certain conditions.<sup>107</sup>

In this matter, it is usual for the Syariah Court in Malaysia to order payment of maintenance for the period of *iddah* by the husband to the wife and if the husband does not make such payment, or if she is not satisfied with the amount awarded, the wife can apply to the Court for an order of maintenance. Moreover, if the wife proves

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<sup>106</sup>Suwaid Tapah.2000. *Kedudukan Isteri Dari Perspektif Hukum Syara' Dan Undang-Undang Keluarga Islam Di Malaysia*. Jurnal Syariah. Kuala Lumpur: Universiti Malaya.

<sup>107</sup>Akhbal Begum Binti Usmalson. 2000. "Rights and Obligations of the Spouses During Iddah". (Paper). *Islamic Family Law Issues 2000*.Kuala Lumpur:.International Islamic University Malaysia.p301.

than the husband has failed to pay her maintenance during the period of the marriage, the Syariah Court can make an order for the payment of the past maintenance.<sup>108</sup>

In the provisions of Islamic Family Law in Malaysia, a wife who has been divorced can claim for *'iddah* maintenance in Court if the husband fails to pay the maintenance and the Court will make an order to pay the maintenance until the termination of *'iddah* period according to the *Hukum Syarak*.<sup>109</sup> The order shall also cease if the wife is *nusyuz* at that period.<sup>110</sup> In other circumstances, the right of the divorced wife is to receive a gift from her former husband under an agreement that shall cease when she remarries.<sup>111</sup>

### 5.2.2 *Mutaah*

Marriage is an important institution in the life of man. Women who are independent may just look at what happens as a hiccup in their lives and carry on but dependent women who look upon their husbands as their source of love and life may treat it as a major disaster and suffer emotionally for an indefinite period. *Mutaah* is from an Arabic word, meaning something given for the benefit of it or an act that brings pleasure or a gift from the husband to his wife upon divorcing her<sup>112</sup>.

In addition to her rights to apply for maintenance, the Islamic Family Law (Federal Territories) Act 1984 provides that a woman who has been divorced without just cause by her husband may apply to the Court for *mutaah* or a consolatory gift, and the Court may, after hearing the parties and upon being satisfied that the woman has been divorced without just cause, order the husband to pay such sum as may be fair and just according to the Holy Quran, Surah al-Baqarah verse 241 to the effect:

<sup>108</sup> Ahmad Ibrahim Prof. 1997. *Family Law in Malaysia*. Malayan Law Journal Sdn Bhd. Third Edition.p.295.

<sup>109</sup>Suwaid Tapah.2000. *Kedudukan Isteri Dari Perspektif Hukum Syara' Dan Undang-Undang Keluarga Islam Di Malaysia*. Jurnal Syariah. Kuala Lumpur: Universiti Malaya.

<sup>110</sup>Federal Territories. 1984. *Islamic Family Law Enactment (Federal Territories)*. sec 65 (1)

<sup>111</sup> *ibid.* s.65 (2)

<sup>112</sup>Munawiza Juliana Binti Mohd Jasin. 2000. "Mut'ah: Compensation For The Divorced Wife". (Paper). *Islamic Family Law Issues 2000*.Kuala Lumpur: International Islamic University Malaysia.p333.

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وللمطلقت متع بالمعروف حقا على المتقين (241)

Meaning: "For the divorced women the maintenance (should be provided) on a reasonable (scale). This is a duty of the righteous ".<sup>113</sup>

The above verse describes *mutaah* as an obligatory duty upon the righteous. This manifest is important since giving *mutaah* is considered as an act of piety, as the basis of *taqwa*. It must, as demanded by its nature and purpose, be presented to the wife with humility and kindness to remove any cause for accusation or shame that may arise from a divorce.<sup>114</sup>

According to Islam, the payment of *mutaah* is advocated as it helps to lessen the burden on the woman who has to begin a new life after the divorce. *Mutaah* can also be regarded as compensation and recognition of the benefits obtained by the husband from the love and attention given by the wife during the marriage.

### 5.2.3 Matrimonial Property

Perpustakaan  
Kolej Universiti Islam Malaysia

Matrimonial property is one of the rights claimed by a divorced wife upon dissolution of marriage. It refers to the property acquired by the joint efforts of the parties during the marriage.<sup>115</sup> In the State Enactment, *Harta sepencarian* is defined as "property jointly acquired by husband and wife during the subsistence of marriage in accordance with the conditions stipulated by *Hukum Syara'* ".<sup>116</sup>

From this definition, it is clear that *harta sepencarian* evolves around the property jointly acquired by the husband and wife during the subsistence of marriage and it has nothing to do with the property acquired by the sole effort of the spouses. In fact,

<sup>113</sup> Al-Qur'an. As-Baqarah 2:241. (All Quranic translation in this writing are based on Professor (Dr.) Syed Vickar Ahamed. n.d. *Interpretation Of The Meaning of The Glorious Qur'an*. Holmdel: New Jersey.

<sup>114</sup> Munawiza Juliana Binti Mohd Jasin. 2000. "Mut'ah: Compensation For The Divorced Wife". (Paper). *Islamic Family Law Issues 2000*. Kuala Lumpur: International Islamic University Malaysia. p354.

<sup>115</sup> Nuhayati bt Hamzah. 2000. "Harta Sepencarian: A matter of Malay Adat?". (Paper). *Islamic Family Law Issues 2000*. Kuala Lumpur: International Islamic University Malaysia. p.355.

<sup>116</sup> Federal Territories. 1984. *Islamic Family Law Enactment (Federal Territories)*.

*harta sepencarian* is the source of income for the divorced wife to begin afresh with her new life.<sup>117</sup>

#### 5.2.4 *Hadhanah* (the rights of custody)

*Hadhanah* means to care and protect the child who is unable and unwilling to care for himself,<sup>118</sup> that to care and upbringing the child who is still an infant or child that has not reached the age of puberty either men or women. Based on *Jumhur 'Ulama's* opinion, the child shall be deemed as *mumayyiz* when the child reaches the age that of at least seven years. Thus, the child who has reached the age of puberty or discernment and the parents are divorced, he has the choice of living with either one of the parents, the father or the mother.

*Hadhanah* is a wide context as it involves in safe security, food, clothes, education and perfect love before the puberty of the child until he is able to manage himself in fundamental necessities such as food, drink and clothes. Besides that, the rights of *hadhanah* are prior to the child and it becomes a responsibility or it is obligatory to a person who has the rights. Such is the rights of a mother until the child reaches the age of puberty.

In Islam, the rule (*hukm*) of taking care of the children is the responsibility between parents because children need upbringing and love in their growing years. Therefore, Islamic law has given priority to the mother through *hadhanah* and protection of children. Hence, because of natural tendencies and instinct from the children themselves which always need a mother as a place of indulgent, suckling and amicable.<sup>119</sup>

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<sup>117</sup> Nuhayati bt Hamzah. 2000. "Harta Sepencarian: A matter of Malay Adat?". (Paper). *Islamic Family Law Issues 2000*. Kuala Lumpur: International Islamic University Malaysia.p.357.

<sup>118</sup> Abd.Latif Muda & Rosmawati Ali@Mat Zin. 1997. *Pengantar Fiqh*. Kuala Lumpur: Pustaka Salam Sdn Bhd. p.224

<sup>119</sup> *ibid*

Therefore, in Syariah Court of Federal Territories, Islamic Family Law (Federal Territories) Act 1984<sup>120</sup> has provided the exact provision regarding the rights of children. This can be found in section 81 whereas it has the mother who shall be the best entitled to the custody of the children:

In section 81 (1) provides that: "Subject to section 82, the mother shall be all persons the best entitled to the custody of her infant children during the connubial relationship as well as its dissolution."<sup>121</sup> Besides that, one of the following persons in the following order of preference is that to say:

1. The maternal grandmother, how-high-soever
2. The father
3. The paternal grandmother, how-high-soever
4. The full sister
5. The uterine sister
6. The sanguine sister
7. The full sister's daughter
8. The uterine sister's daughter
9. The sanguine sister's daughter
10. The maternal daughter
11. The paternal aunt
12. The male relatives who could be their heirs as '*asabah* or residuaries

However, the right of *hadhanah* or custody of a woman is lost when:<sup>122</sup>

- (a) By her marriage with a person not related to the child within the prohibited degrees if her custody in such case will affect the welfare of the child but her right to custody will revert if the marriage is dissolved;
- (b) By her gross and open immorality;

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<sup>120</sup>Federal Territories. 1984. *Islamic Family Law Enactment (Federal Territories)*. Section 81.

<sup>121</sup>*Ibid.* Sec 81(1)

<sup>122</sup>Federal Territories. 1984. *Islamic Family Law Enactment (Federal Territories)*. Section 83.

- (c) By changing her residence so as to prevent the father from exercising the necessary supervision over the child, except that a divorced wife may take her own child to her birth-place;
- (d) By her abjuration of Islam;
- (e) By her neglect of or cruelty to the child.

### 5.2.5 Maintenance of the children

As a claim for maintenance during *'iddah* to the wife, the maintenance to the children shall be given to them because in matters which regarding with child it is a responsibility by spouses in marriage. Besides that, in Islam the rights in life to the child are the rights that cannot be disturbed and be ignored. The right of life also means that it becomes a responsibility of the parents to care and give knowledge to the children until they can be independent such in the Holy Quran that Allah S.W.T. says:

*"Let the women live (during waiting) in the same style as you live, according to your means: do not annoy them, so as to restrict them... "*<sup>123</sup>

Beside that, it is obligatory to the father to maintain his children with particular requirements:

1. The child cannot stand with his own feet. For a daughter until her marriage or when they get their jobs.
2. The child is poor and does not have any property to maintain himself.
3. The father is able to give maintenance.

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<sup>123</sup> Al-Qur'an.Al-Talaq 65:6. (All Quranic translation in this writing are based on Professor (Dr.) Syed Vickar Ahamed.n.d.*Interpretation Of The Meaning of The Glorious Qur'an*.Holmdel: New Jersey.

Because of that, when the child is in the age of puberty and can stand with his own feet, hence, a father is unobligated to give maintenance to his children. Furthermore, if the child has his own property even if the child is still small.

### 5.3 The Rights of Husband after *Faraq*

In marriage life, husbands are likening to a captain who leads a sail in the blue ocean. In fact, husbands are also given by Allah S.A.W an authority to pronounce *talaq* except for particular circumstances such as invalid marriage, divorce that involves on the application by the wife such divorce by the way of *fasakh*, *ta'liq* and *faraq* or through assertion by Religious Enforcement officer in Islamic Department of the state. However, besides of the rights of the wife, the rights of the husband shall also be considered. Nevertheless, it also shows that how hard it is to keep trust and responsibilities that husbands bear and challenge his judicious relating to knowledge in Islamic matters, when facing hundred-thousand problems in marriage situations.

Furthermore, a man or a husband will be seen as dishonourable with his ignorance, when uphold by theory or practical as mentioned in Holy Quran:

*"...After that the parties should either stay together on just term, or separate with kindness..."<sup>124</sup>*

#### 5.3.1 *Ruju'*

In Islam, marriage is a sacred institution. Every married Muslim should protect his or her marital life as long as the parties can live together harmoniously and peacefully. However, in certain circumstances divorce, which is the most detestable act, is allowed in Islam. Even though Islam permits divorce, the husband who pronounce the *talaq* is still encouraged to save his marital tie by the way of *ruju'* whereby the

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<sup>124</sup>Al-Qur'an.Al-Baqarah 2:229. (All Quranic translation in this writing are based on Professor (Dr.) Syed Vickar Ahamed.n.d.*Interpretation Of The Meaning of The Glorious Qur'an*.Holmdel: New Jersey.

husband may return to his wife during her period of *'iddah* provided the divorce (*talaq*) is a revocable one.<sup>125</sup>

A husband who has repudiated his wife in revocable manner has the right to take her back as long as she is still in her period of legal retirement (observing of *'iddah*). The husband in this situation may retract his words and take his wife back without affecting a new *akad* provided only that in the meantime the marriage has not become illicit for any other reason.

In this matter, *ruju'* means to return, that is the husband returns to his wife during her *'iddah* period<sup>126</sup>. It is his right. The Holy Quran also says:

*"And the husband has the better right to take them back in that period if they wish for reconciliation".*<sup>127</sup>

Furthermore, in section (2) of the Islamic Family Law (Federal Territories) Act 1984 defines *ruju'* as "a return to the original married state".<sup>128</sup> Moreover, the definition of *ruju'* according to the Shafi'i schools of law defines *ruju'* as signifies a husband returning to his wife who has been divorced by *talaq raj'i* during her period of *'iddah* to her former situation.

In the purpose of *ruju'*, with an opportunity to any of the divorced parties that who feels sorry or regrets the divorce and whereby they choose to live together again as a husband and wife. This usually happens when people are emotionally unstable and fail to think clearly before making any decision. After that, when they tend to regret what

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<sup>125</sup>Fatimah Abdul Wahab. 2000. "Ruju': The Concept and Practice in Malaysia". (Paper). *Islamic Family Law Issues 2000*. Kuala Lumpur: International Islamic University Malaysia.p.187.

<sup>126</sup>*ibid*.

<sup>127</sup>Al-Qur'an. Al-Baqarah 2:228. (All Quranic translation in this writing are based on Professor (Dr.) Syed Vickar Ahamed.n.d.*Interpretation Of The Meaning of The Glorious Qur'an*.Holmdel: New Jersey.

<sup>128</sup>Federal Territories. 1984. *Islamic Family Law Enactment (Federal Territories)* Section 2 (Interpretation).

had happened, (divorce), therefore, *ruju'* enables both parties to save their marital tie which may otherwise be severed.<sup>129</sup>

Besides the pillars of *ruju'*, according to the Shafi'i, Hanafis and Malikis, the husband must be sane and have attained the age of puberty before his revocation can be effective. The Shafi'i schools law adds another condition, the husband should make the revocation of divorce voluntarily. Revocation of divorce is invalid if others are forcing it and of the contrary; the Hanbali schools of law only emphasizes the condition of sanity as the main condition for a husband to return to his wife.<sup>130</sup>

So, as a conclusion, such rights of the wife after divorce, the husband has the rights to *ruju'* to his wife except for the spouses who is to be *faraq*, that have no *ruju'* for them if the divorce which is involved in invalid marriages such as they realize that they are *mahram* that is prohibited to be married under *syara'*.

### 5.3.2 Matrimonial Property (*Harta Sepencarian*)

Matrimonial property or more known as *harta sepencarian* refers to property acquired by the joint efforts of the parties during the marriage. Claims for *harta sepencarian* normally arise upon a divorce or death of parties, but may cover claims brought during the subsistence of a marriage. *Harta sepencarian* takes the form of land, matrimonial homes, and animals used to work the land. As the Malays become more urbanized, and possess greater purchasing power, *harta sepencarian* includes movables such as household goods and furnishing.<sup>131</sup>

As a wife, to have the rights of her matrimonial property, the husband can also claim the property through the Court. This is because the property is acquired by joint efforts during the marriage. This matter can also be proven with the provision which is provided in the Islamic Family Law (Federal Territories) Act 1984 defines *harta*

<sup>129</sup>Fatimah Abdul Wahab. 2000. "Ruju': The Concept and Practice in Malaysia". (Paper). *Islamic Family Law Issues 2000*. Kuala Lumpur: International Islamic University Malaysia. p.189.

<sup>130</sup>*ibid.* p.192

<sup>131</sup>Mimi kamariah. 1999. *Islamic Family Law in Malaysia*. Kuala Lumpur : Butterworths. Malayan Law Journal. p.366.

*sepenacarian* as a property jointly acquired by husband and wife during the subsistence of marriage in accordance with the condition stipulated by *Hukum Syara'*.<sup>132</sup>

Therefore, from this definition, it is clear that either husband can also claim *harta sepenacarian* or matrimonial property or wife that is acquired with joint efforts except for the property that is acquired with exclusive efforts such a property where the husband affords with his own money. In Islam, either a property that is acquired by husband or wife still owns either before, current, or after marriage.<sup>133</sup>

Besides that, in marriage, either the husband or the wife will acquire property at least with two ways. Firstly, through acquired property during subsistence of their marriage of a husband and wife out of their resources or by their joint effort. Secondly, through "*pemberian*" or gifts from other people, including from husband or parents and particularly persons.<sup>134</sup>

### 5.3.3 *Hadhanah* (rights of custody)

Besides of the wife, the husband also has the rights of custody for his children even if the right is prior to the wife with exact reason:

- 1) As advantages for the children for care and protection as the fundamental rights of the children such child who is taken care by the father and the mother claim for custody from her former husband. Therefore, from that situation, as advantages to the children and as to avoid from seriously affecting his or her feelings if the children were separated from his or her father, the custody will be given to him (husband).

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<sup>132</sup>Federal Territories. 1984. *Islamic Family Law Enactment (Federal Territories)*. Section 2 (interpretation).

<sup>133</sup>Suwaid Tapah.2000. *Kedudukan Isteri Dari Perspektif Hukum Syara' Dan Undang-Undang Keluarga Islam Di Malaysia*. Jurnal Syariah. Kuala Lumpur: Universiti Malaya.p.128

<sup>134</sup>*Ibid.*

- 2) After the termination of the rights of the *hadinah*, the custody devolves upon the father, and if the child has reached the age of discernment (*mumaiyyiz*), he or she shall have the choice of living with either of the parents, unless the Court orders otherwise.<sup>135</sup> Besides that, it is also stipulated from the provisions of section 84(2) of the Islamic Family Law (Federal Territories) Act 1984.

## CONCLUSION

Besides that, *faraq* is adopted from the Arabic language namely "*faraqa*" that which means, "separated". In law usage, it is an order from judge or *kadi* to dissolve the marriage and being separated or being apart from each other. However, *faraq* marriage will take place with the assertion of the Religious Enforcement Officer of the state. In *faraq*, it is considered as divorce either *talaq bain* or *talaq raj'ie*. Even though, through *faraq* a marriage will be dissolved with particular reason in *Hukum Syara'*, without any divorce claim. In fact, a *faraq* marriage shall takes place by Court or judge in any Syariah Court.

In fact, the concept of *faraq* marriage is similar with other dissolution of marriage, except *faraq* as already mentioned before *faraq* can be dissolved even if there are claims for divorce but it will be take place with the satisfaction of the Court or by judge who tries the case through concrete evidence.

Besides that, after *faraq* takes place, the right which is related to the wife and child will not be ignored that as in each bound of marriage shall be guaranteed even to the husband. Even though *faraq* is uncomplicated to discuss, the implementation and method that is used is quite confusing. In reality, not only the Syariah Court judge that has the authority to order that *faraq*, such a case that happened in Kelantan that before the Court decides the position of the marriage, *Kadi Besar* of the state also had the

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<sup>135</sup>Federal Territories. 1984. *Islamic Family Law Enactment (Federal Territories)*. Section 84 (2).

authority to *faraq* the marriage of the spouse. Instead, it suits to the uniqueness in Kelantan that the *Kadi Besar* is also similar as the Syariah Court in that state.

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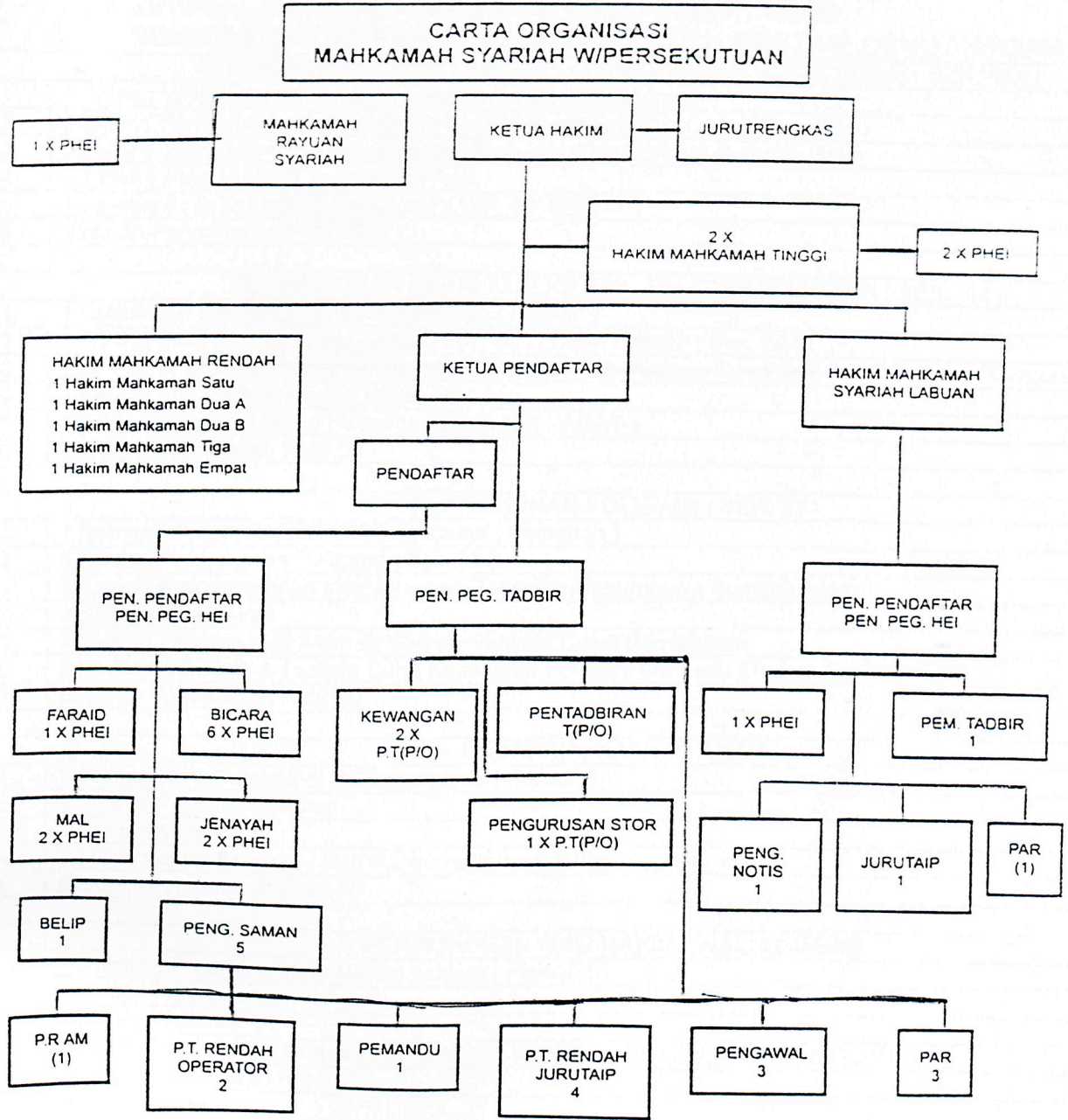
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<http://www.jamaat.org/islam/divorce.html>

# APPENDICES

Appendix A: Organization Chart of Syariah Court of Federal Territories



- PENUNJUK**
- P.S. - Pegawai Syariah
  - PEN. PHEI - Penolong Hal Ehwal Ugama Islam
  - PEM. PHEI - Pembantu Hal Ehwal Ugama Islam
  - PT/P/O - Pem. Tadbir ( Pengkeranian/Operasi)
  - PAR - Pembantu Am Rendah
  - PR. AM - Pekerja Rendah Am

# SYARAT-SYARAT PERMOHONAN

65

Appendix B: Application Requirements Form

1. PLAINTIF@DEFENDAN MESTILAH BERMASTAUTIN DI W/PERSEKUTUAN
2. SURAT PENGESAHAN TEMPAT TINGGAL DARIPADA MAJIKAN PERLU DISERTAKAN SEKIRANYA ALAMAT DI DALAM K/P DI LUAR W/P
3. BAGI ANGGOTA POLIS/TENTERA SURAT PENGESAHAN TEMPAT TINGGAL DARIPADA MAJIKAN PERLU DISERTAKAN
4. SEMUA BORANG PERMOHONAN MESTILAH BERTAIP DENGAN KEMAS

## PERMOHONAN CERAI ( SEK. 47 ) / PENGESAHAN LAFAZ CERAI ( SEK. 55A )

- |    |   |
|----|---|
| 1. | 1 Salinan KP beralamat di W/Persekutuan ( Plaintiff@Defendan )              |
| 2. | 3 Borang Permohonan Cerai ( Sek. 47 ) / Pengesahan Lafaz Cerai ( Sek. 55A ) |
| 3. | 3 Borang Ikrar yang telah disahkan oleh Pendaftar/Pesuruhjaya Sumpah Islam  |
| 4. | 3 Salinan surat Nikah & surat Nikah Asal                                    |
| 5. | 1 Salinan surat perunding Keluarga ( JAWI )@( KAGAT )                       |
| 6. | Bayaran Pendaftaran RM9.00  |

## PERMOHONAN CERAI TAKLIQ( SEK. 50 ) / CERAI FASAKH ( SEK. 52 )

- |    |   |
|----|---|
| 1. | 1 Salinan KP beralamat di W/Persekutuan ( Plaintiff )   |
| 2. | 3 Borang Permohonan Cerai Takliq ( Sek. 50 ) / Cerai Fasakh ( Sek. 52 )                             |
| 3. | 3 Borang Ikrar yang telah disahkan oleh Pendaftar/Pesuruhjaya Sumpah Islam <i>Penyata Tuntutan.</i> |
| 4. | 3 Salinan surat Nikah & surat Nikah Asal  |
| 5. | 1 Salinan surat perunding Keluarga ( JAWI )@( KAGAT )   |
| 6. | Bayaran Pendaftaran RM9.00  |

## PERMOHONAN POLIGAMI ( SEK. 23 )

- |    |   |
|----|---|
| 1. | 1 Salinan KP beralamat di W/Persekutuan ( Pemohon )                               |
| 2. | 3 Borang Permohonan Poligami ( Sek. 23 )  |
| 3. | 3 Borang Ikrar yang telah disahkan oleh Pendaftar/Pesuruhjaya Sumpah Islam        |
| 4. | 3 Salinan surat Nikah   |
| 5. | 3 Salinan Penyata Gaji Akhir @ Salinan Penyata Cukai Pendapatan                   |
| 6. | Bagi Anggota Polis & Tentera Surat Kebenaran Poligami Daripada Majikan Diperlukan |
| 7. | Bayaran Pendaftaran RM9.00  |

## HADANAH / NAFKAH ANAK

- |    |   |
|----|---|
| 1. | 1 Salinan KP beralamat di W/Persekutuan ( Plaintiff )             |
| 2. | 3 Borang Penyata Tuntutan   |
| 3. | 3 Salinan surat Cerai   |
| 4. | 3 Salinan surat Beranak / Kad Pengenalan bagi Setiap Seorang Anak |
| 5. | Bayaran Pendaftaran RM9.00  |

## PERMOHONAN WALI HAKIM / WALI ENGGAN

- |    |   |
|----|---|
| 1. | 1 Salinan KP beralamat di W/Persekutuan ( Plaintiff )                         |
| 2. | 3 Borang Permohonan   |
| 3. | 3 Borang Affidavit  |
| 4. | Laporan Permohonan Bernikah Secara Wali Hakim / Wali Enggan daripada ( JAWI ) |
| 5. | Bayaran Pendaftaran RM9.00  |

## PENGESAHAN / PENDAFTARAN NIKAH

- |    |   |
|----|---|
| 1. | 1 Salinan KP beralamat di W/Persekutuan ( Plaintiff ) |
| 2. | 3 Borang Penyata Tuntutan / 3 Borang Affidavit        |
| 3. | 3 Salinan surat Nikah ( Luar )                        |
| 4. | 3 Borang Permohonan                                   |
| 5. | Bayaran Pendaftaran RM9.00                            |

## PERUBAHAN / PEMBATALAN PERINTAH

- |    |   |
|----|---|
| 1. | 1 Salinan KP beralamat di W/Persekutuan ( Plaintiff ) |
| 2. | 3 Borang Penyata Tuntutan                             |
| 3. | 3 Salinan Perintah                                    |
| 4. | 3 Salinan surat Cerai                                 |
| 5. | Bayaran Pendaftaran RM9.00                            |

**BUTIR-BUTIR PERIBADI PLAINTIF/PEMOHON**

NAMA : .....

NO. K/P : .....(Baru).....(Lama)

ALAMAT RUMAH:.....

.....

.....

ALAMAT PEJABAT:.....

.....

.....

NO. TEL RUMAH : .....

H/P : .....

PEJABAT:.....

**BUTIR-BUTIR PERIBADI DEFENDAN/RESPONDEN**

NAMA : .....

NO. K/P : .....(Baru).....(Lama)

ALAMAT RUMAH:.....

.....

.....

ALAMAT PEJABAT:.....

.....

.....

NO. TEL RUMAH : .....

H/P : .....

PEJABAT:.....

NO.KES	14 - - - 200
T. DAFTAR	
T. SEBUTAN	
BAYARAN	
NO. RESIT	
T. RESIT	
Catatan:	

**UNTUK  
KEGUNAAN  
PEJABAT**

(JAWI 6)

## Appendix C: Divorce Application Form

AKTA UNDANG-UNDANG KELUARGA ISLAM  
(WILAYAH PERSEKUTUAN) 1984  
(Seksyen 47)

PERMOHONAN UNTUK PERCERAIAN

Bii. ....

Kepada Pendaftar Mahkamah Syariah.

1. Saya, .....  
 No. Kad Pengenalan..... Umur.....  
 Alamat .....  
 Pekerjaan..... Pendapatan sebulan.....  
 memohon bercerai dengan isteri/suami\* saya yang bernama.....  
 .....  
 No. Kad Pengenalan..... Umur.....  
 Alamat.....  
 Pekerjaan..... Pendapatan sebulan.....
2. Tarikh kahwin  $\frac{H}{M}$  ..... bilangan daftar (jika ada).....  
 Tempat kahwin.....  
 Cara perkahwinan.....
3. Kami mempunyai anak seramai.....  
 (1) ..... Umur..... lelaki/perempuan.\*  
 (2) ..... Umur..... lelaki/perempuan.\*  
 (3) ..... Umur..... lelaki/perempuan.\*  
 (4) ..... Umur..... lelaki/perempuan.\*  
 (5) ..... Umur..... lelaki/perempuan.\*
4. Kami pernah/belum pernah bercerai/ruju' pada.....  
 Talaq kali.....
5. Dia adalah isteri/suami\* saya yang.....
6. Prosiding sedang berterusan di mana-mana tempat berkaitan dengan perkahwinan dan permohonan yang sama (jika ada).....

Mahkamah .....

Tarikh bermula.....

Nama pihak-pihak.....

.....

Tarikh bicara.....

Kedudukan prosiding.....

7. Sebab-sebab bercerai.....

8. Langkah-langkah yang telah diambil untuk mencapai perdamaian (jika ada) .....

.....

9. Perjanjian (jika ada) .....

.....

10. Jika berlaku perceraian saya sanggup membayar/menuntut\* bayaran seperti di bawah ini:

(1) nafkah 'iddah sebulan RM.....( ) bulan; jumlah RM.....

(2) nafkah anak seorang sebulan RM.....( ) orang; jumlah RM.....

(3) Mut'ah RM..... RM.....

(4) Mas kahwin tunai/hutang sebulan RM..... RM.....

(5) lain-lain bayaran jika ada RM..... RM.....

Jumlah . . . RM

11. Nyatakan harta benda sepencarian yang akan diserahkan kepada/dituntut oleh isteri/suami\*

.....

.....

12. Peruntukan bagi pemeliharaan dan penjagaan anak-anak.....

.....

13. Butir-butir perintah yang diminta.....

.....

.....  
*Tandatangan pemohon*

\*Potong mana yang tidak berkenaan.

## Appendix D: Fasakh Application Form

(JAWI 5B)

AKTA UNDANG-UNDANG KELUARGA ISLAM  
(WILAYAH PERSEKUTUAN) 1984

(Seksyen 52)

## PERMOHONAN UNTUK FASAKH

Bil. ....

Kepada Pendaftar Mahkamah Syariah.

1. Saya. ....

No. Kad Pengenalan..... Umur .....

Alamat .....

Pekerjaan.....Pendapatan sebulan .....

memohon perintah untuk membubarkan perkahwinan (fasakh) dengan suami saya yang  
bernama .....

No. Kad Pengenalan..... Umur .....

Alamat .....

Pekerjaan.....Pendapatan sebulan .....

2. Tarikh kahwin  $\frac{H}{M}$  ..... Bilangan Pendaftaran.....

Tempat kahwin .....

Cara berkahwin .....

3. Kami mempunyai anak seramai..... orang

(1) ..... Umur ..... lelaki/perempuan.\*

(2) ..... Umur ..... lelaki/perempuan.\*

(3) ..... Umur ..... lelaki/perempuan.\*

(4) ..... Umur ..... lelaki/perempuan.\*

(5) ..... Umur ..... lelaki/perempuan.\*

4. Kami pernah bercerai/belum pernah bercerai/ruju\*\* pada .....

Talaq kali.....



## Appendix E: Tal'iq Application Form

(JAWI 6A)

AKTA UNDANG-UNDANG KELUARGA ISLAM  
(WILAYAH PERSEKUTUAN) 1984  
(Seksyen 50)

PERMOHONAN UNTUK CERAI DI BAWAH TA'LIQ

Bil. ....

Kepada Pendaftar Mahkamah Syariah.

1. Saya, .....

No. Kad Pengenalan..... Umur .....

Alamat .....

Pekerjaan.....Pendapatan sebulan .....

memohon kepada Mahkamah untuk mengisytiharkan cerai di bawah ta'liq telah berlaku  
antara suami saya yang bernama .....

No. Kad Pengenalan..... Umur .....

Alamat .....

Pekerjaan.....Pendapatan sebulan .....

2. Tarikh kahwin  $\frac{H}{M}$  ..... Bilangan Pendaftaran.....

Tempat berkahwin .....

Cara berkahwin .....

3. Kami mempunyai anak seramai..... orang

(1) ..... Umur ..... lelaki/perempuan.\*

(2) ..... Umur ..... lelaki/perempuan.\*

(3) ..... Umur ..... lelaki/perempuan.\*

(4) ..... Umur ..... lelaki/perempuan.\*

(5) ..... Umur ..... lelaki/perempuan.\*

4. Kami pernah bercerai/belum pernah bercerai/ruju\*\* pada .....

Talaq kali .....

BUKANG MS 3 APPLICATION FORM  
AKTA TATACARA MAL MAHKAMAH SYARIAH  
( WILAYAH-WILAYAH PERSEKUTUAN ) 1998  
( Subseksyen 13(1) )

PERMOHONAN

DI DALAM MAHKAMAH RENDAH / TINGGI SYARIAH DI MALAYSIA  
DI WILAYAH PERSEKUTUAN KUALA LUMPUR

PERMOHONAN NO :

ANTARA

... PEMOHON

DENGAN

... RESPONDEN

Kepada ..... ( Responden yang dinamakan  
di atas ) yang beralamat .....  
.....

AMBIL PERHATIAN bahawa ..... Pemohon  
yang dinamakan di atas akan memohon kepada Mahkamah..... Syariah  
di ..... pada hari .....haribulan ..... 200....  
jam ..... pagi / petang untuk mendapatkan suatu perintah bahawa.....  
.....atas alasan yang dinyatakan dalam affidavit yang dilampirkan .

( METERAI )

.....  
Pemohon  
( atau Peguam Syarie Pemohon )

Permohonan ini difailkan oleh .....  
Alamat penyampaian baginya ialah .....  
.....

Appendix G: Documents Copy Application Form

Nama: .....

Alamat: .....

.....

.....

No Tel: .....

Tarikh:.....

PENDAFTAR  
MAHKAMAH SYARIAH WILAYAH PERSEKUTUAN,  
TKT. 1, BANGUNAN SULAIMAN,  
JALAN DAMANSARA,  
50676 KUALA LUMPUR.

Tuan,

Per: Kes Mal/Jenayah No:..... Dewan Mahkamah:.....

Antara:.....Plaintif

Dengan:.....Defendan

Adalah saya seperti nama di atas ingin memohon satu salinan dokumen-dokumen berikut:

- Keputusan Mahkamah.
- .....
- .....
- .....
- .....

Sekian Terima Kasih,

.....

Pemohon/Plaintif/  
Defendan/Responden.

\*Dokumen tersebut akan dikeluarkan dalam masa seminggu dari tarikh permohonan ini dibuat.