

***RUJU*: IT'S CONCEPT, PROCEDURES AND PRACTICE UNDER
ISLAMIC LAW IN SELANGOR**

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**RUJU': IT'S CONCEPT, PROCEDURES AND PRACTICE UNDER
ISLAMIC LAW IN SELANGOR**

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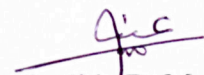
AUTHOR DECLARATION

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ وَبَرَكَاتُهُ

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

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DEDICATION

*To My Creator,
My Gratefulness And Gratitude To You,
Without Your Guidance,
I Will Fall.*

*To My Beloved Mother,
A Lot Of Thanks To You,
Without Your Actuation And Sacrifice,
I May Be Demoralized.*

*To All My Lectures,
Your Spirit, Admonition, And Teaching,
Cannot Be Dismissed From My Memory,
You Teach Me Real Life,
Without Your Instruction,
I Am Still In Bewilderment.*

*To All My Friend,
My Appreciation To You,
Without Your Support And Advice,
I Can't Complete My Work,
I Am Proud To Be Your Friend,
May Allah Bless You All.*

*To My Self,
You Should Remember,
No Success Will Come,
Without Your Effort And Forbearance.*

Thanks To All.

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An appreciation is due to our dean of Faculty Syariah of and Law, Islamic University College Of Malaysia (KUIM), also as my supervisor of this project, Prof. Dr. Abdul Samat Musa for his continuous support and guidance during this research. The writer would like to extend her appreciation to all the staff of Faculty of Syariah and Law especially Puan Rodhiyah (Kak Die), En. Rosdi (Abg Die) and the other lecturers for their advice and assistance in this research.

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My appreciation is also to Miss Qeshaira Zainuddin from the English Language Unit with her help to improve my English language, my project and your scarifies impress me.

If I have neglected to note others who have contributed, please accept my apologies.

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Thank you and Wassalam.

ABSTRAK

Ruju' atau “*kembali bersekedudukan semula*” bermaksud perkembalian kepada nikah yang asal. Ia berlaku ketika isteri masih dalam *'iddah*. Hak ini akan hilang apabila terputusnya waktu *'iddah*. Ia merupakan satu jalan yang terbaik untuk membaiki semula hubungan suami-isteri yang terputus untuk sementara waktu. Kajian ini bertujuan untuk memahami dan mengenalpasti definisi, prosedur, dan pelaksanaan *Ruju'* di bawah Undang-Undang Keluarga Islam Selangor 1984. Di samping itu, diperluaskan lagi kajian ini dengan membandingkan pendapat diantara mazhab-mazhab dalam Islam tentang masalah ini. Untuk memperolehi maklumat dan data, penulis telah menggunakan teknik perpustakaan dengan mendapatkan maklumat daripada buku, jurnal dan sebagainya. Di samping itu, teknik –teknik kajian lain juga telah digunakan iaitu pemerhatian dan temubual. Hasil kajian ini, penulis telah mengetahui peruntukan, amalan dan cara pelaksanaan *ruju'* yang telah diperuntukkan di bawah Undang-Undang Keluarga Islam Selangor. Di samping itu, penulis juga telah mengenalpasti syarat-syarat yang perlu dipenuhi oleh suami-isteri yang ingin kembali *ruju'* sebagaimana yang telah diperuntukkan di bawah undang-undang ini.

ABSTRAC

Resumption of conjugal relationship or “*Ruju*’ ”means a return to the original marriage state. It happens among women in their period of ‘*iddah*. This right will be lost after the completion of ‘*iddah*’ period. It is the last way to improve marital relationship between husband and wife who were separated for certain time. This study sought to understand and comprehend the definition of *Ruju*’, it’s procedures and practice in Selangor under the Selangor Islamic Family Law Enactment 1984. Beside that, this research will be comparing opinions between all *mazahib* in Islam. For data and information gathering purposes the author used the method of library research such as information from books, journal, magazines and others. Beside that, the other techniques used are observations and interviews. As a result, the researcher knows the provision, practice and the implementation of *ruju*’ that has been stated under Selangor Islamic Family Law Enactment 1984. Beside that, the researcher has comprehended the condition that should be fulfilled by husband and wife who desire to rehabit as stated under this law.

ملخص البحث

الرجوع أو " الإعادة إلى الحياة الزوجية " يعني الرجوع إلى الزواج السابق بعد زواله بالطلاق. وهذا يتم قبل إنتهاء مدة العدة ولا يصلح خارجها. فالرجوع طريق من طرق الإصلاح للعلاقة المنقطعة لمدة من الوقت بين الزوجين. فهذا البحث يهدف لفهم ومعرفة تعريف الرجوع, اجراءاته وتنفيذه تحت قانون الأحوال الشخصية سلعجور 1984. وإضافة إلى ذلك توسع مجال البحث بالمقارنة بين آراء المذاهب في الإسلام حول هذه القضية. والمنهج المتبع في هذا البحث هو عبارة عن دراسة مكتبية وتقوم الباحثة بجمع المعلومات من مصادرهما (الكتب , والدوريات , والمجلات وغيرها). كما إستعملت الباحثة طرقا أخرى في البحث كالملاحظات والمقابلات الشخصية والنتيجة من هذا البحث, عرفت الباحثة عن المخصصات القانونية التي تتعلق بالرجوع واجراءاتها في قانون الأحوال الشخصية سلعجور. فضلا عن ذلك, عرفت الباحثة الشروط اللازمة لابد على الزوج والزوجة إيفائها قبل أن يتم الرجوع كما نص عليه في هذا القانون.

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GLOSSORY

Akad:

Means a Marriage contract or declaration that one will give or do certain thing.

Al-Qur'an:

Means the Holy Book revealed by Allah SWT to Prophet Muhammad SAW.

'Iddah:

Means a waiting period, a period of abstinence, or a specified, which the wife shall remain unmarried after the dissolution of marriage by divorce, death, or any other form of separation under certain condition.

Ba'in:

Means in irrevocable divorce, the husband cannot take his wife back.

Fiqh:

Means Islamic Jurisprudence.

Had:

Means offences and penalty prescribed by Allah.

Hambalis

Means the disciples and followers of Imam Ahmad Bin Hanbal As-Syaibani.

Hanafis:

Means the disciples and followers of Imam Abu Hanifah An-Nu'man.

Hukm:

Means a ruling of Shariah.

Hukum Syara':

Means Islamic law according to any recognized *Mazhab*.

Ijma':

Means consensus of opinion of all jurists.

Islamic Law:

Means law of Islam as provided for, administered and applied in Malaysia.

Kariah Masjid:

Means in relation to a mosque means the area, the boundaries of which are determined under section 75 of the Administration Act.

Khiyar:

Means the right of choosing.

Khulu’:

Means it is that a woman gives a husband some amount of money to let him release or divorce her.

Kinayah:

Means words that contain more than one meaning.

Malikis:

Means the disciples and followers of Imam Malik Ibn Anas.

Mas kahwin:

Means the obligatory marriage payment due under *Hukum Syara’* by the husband to the wife at the time the marriage is solemnized, whether in the form of money actually paid or acknowledged as a debt with or without security, or in the form of something that, according to *Hukum Syara’*, is capable of being valued in terms of money.

Mufti:

Means a jurisconsult who is authorized to issue a fatwa.

Peguam Syarie:

Means is a person who is given the right by rules enacted by any state to appear and represent his client in every Syariah Court case within the confines of such state or Federal Territories.

Sarih:

Means refer to the real meaning for every word.

Sunnah:

Means all the traditions and practices of the Prophet (phub) that have become a model to be followed by Muslim.

Surah:

Means the Qur’an is divided into a hundred and fourteen chapters. Every chapter is referred to as a Surah, but it has its own name, such as Al-Fatihah and Al-Nisaa.

Syafi'ie:

Means Imam Muhammad Ibn Idris Ash-Shafi'ie.

Syariah:

Means the Islamic Law.

Syubhah Intercourse:

Means intercourse performed on erroneous impression that the marriage was valid or intercourse by mistake and includes any intercourse not punishable by Had in Islam.

Ta'liq :

Means a promise expressed by the husband after solemnized of marriage in accordance with *Hukum Syara'*.

Talaq:

Means divorce.

ARABIC SCRIPTS FOR CERTAIN WORD AND EXPRESSION

'Iddah	-	عادة
Adda	-	عدا
Ahsan	-	أحسن
Al-Quran	-	القرآن
Al-Sunnah/Sunnah	-	النسبة / سنة
Alim Ulamak	-	عالم علماء
Aqidah	-	عقيدة
Arba'ah	-	أربعة
Ba'in	-	بائن
Dakwah	-	دعوة
Faraid	-	فرائض
Faraq	-	فراق
Fasakh	-	فسخ
Fuqaha'	-	فقهاء
Hadhanah	-	حضانة
Hakam	-	حاكم
Haram	-	حرام
Harus	-	هروس

Hasan	-	حسن
Hukm	-	حكم
Hukum Syara'	-	حكوم شرع
Ijma'	-	إجماع
Ilmiah	-	علمية
Istimta'	-	إستمتاع
Kadi/Kadhi	-	قاضي
Kariah Masjid	-	قارية المسجد
Kitab	-	كتاب
Mahr Mithil	-	مهر المثل
Majlis	-	مجلس
Makruh	-	مكروه
Marad-Al-Maut	-	مرض الموت
Mazahib	-	مذاهب
Mesyuarat	-	مشورة
Mubah	-	مباح
Nazr	-	نذر
Nusyuz	-	نشوز
Qaul Jadid	-	قول الجديد

Qaul qadim	-	قول القديم
Raj'ah /Ruju'/Raja'	-	رجعة / رجوع / رجا
Raj'ie	-	رجعي
Safar	-	صفر
Subhat	-	شبهة
Sunat	-	سنة
Syariah	-	شريعة
Syarie	-	شرعي
Syi'ah	-	شيعة
Tadakhul al-Iddah	-	تداخل العدة
Talaq	-	طلاق
Ummah	-	أمة
Wajib	-	واجب
Wakaf	-	وقف
Watha	-	وطأ

ABBREVIATION

Dr.	-	Doctor
e.g	-	Example
Ibid.	-	Same references
JAIS	-	Jabatan Agama Islam Selangor
MLJ	-	Malayan Law Journal
MAIS	-	Majlis Agama Islam Selangor
n.a.	-	No author
n.d	-	No Date
n.p	-	No page
n.pb.	-	No publisher
No	-	Number
p.b.u.h	-	Peace be upon him
P	-	Page
Prof.	-	Professor
SAW	-	Sallallahu alaihu wasallam
SWT	-	Subhanahu wata 'ala
Vol	-	Volume

INTRODUCTION

INTRODUCTION

In Islam, marriage is an important institution. The family in Islam is a special unit when every married Muslim should protect his or her material life and as a unit to share life together according to the rules and regulations laid down by Syariah.

However, sometimes the relationship between husband and wife has problems that can make the family unhappy and in conflict. So, because of these reasons they prefer to pronounce the *talaq*.

Generally speaking, married couples make their best solution and effort to continue and save their marriage in cordiality and happiness. But sometimes the relationship may go sour and the couple reaches the stage where conciliations and counsel has no effect on them and the marriage becomes impossible to continue.

However, in certain circumstances divorce is inevitable which is the most detestable act, but is allowed by Islam. But Allah hates it when the couples choose it as the last result and want to pronounce the divorce.

The Prophet s.a.w says:

" أبغض الحلال عند الله الطلاق "

Meaning;

" *Of all things that Allah has permitted, divorce is the most hated by Allah* ".

However in Islam, after divorce the couples still have a way to rehabit as a family and live together again by the way of *ruju'* whereby the husband may return to his wife during her period of " *iddah* " provided the divorce (*talaq*) is a revocable one. Allah says in the *Qur'an*;

" الطلق مرتان فإمساك بمعروف أو تسريح بإحسان " .سورة البقرة: 229"

Meaning;

" *A divorce is only permitted two times: after that the parties should either stay together on just terms or separate with kindness* ".

AIM OF THE RESEARCH

The researcher tries to take in more knowledge about *Ruju'* and its concept related to the Holy *Qur'an* and *Al-Sunnah* and also based on the Selangor Family Law enactment. The researcher wants to know the rights of the husband and wife when they want to make a resumption of conjugal relationship or usually known as "*Ruju'*" and the conditions that must be followed in the process.

Besides that, the researcher wants to know the practice and procedures of *Ruju'* in the Selangor Islamic Law Enactment 1984.

OBJECTIVE OF THE RESEARCH

- 1) The research is made to add our knowledge about the concept of *ruju'* and to know how is the practice and procedure under Islamic law.
- 2) The topic is chosen because the research is related with the *Syariah* courses, which will discuss the opinions from the four jurists (*mazahib ar-ba'ah*) and Islamic family law.
- 3) To know or search how far the family relationship will be saved or repaired to prevent divorce.
- 4) To reveal to the students the rights of women during their divorce.

RESEARCH METHODOLOGY

In carrying out the research, the researcher will collect the data from the courts in Selangor, general sources, primary source, secondary sources and reading of the books, *kitab ilmiah*, magazines book's survey in libraries. It includes the journals that have been made by any person before, the books that are related to the researcher's topic and the researcher also looks for Internet sites. The researcher also uses the Selangor Islamic Law Enactment 1984 to explain its position under Islamic law. Besides that, the researcher tries to interview some officers in Selangor Syariah Court about the procedures of *Ruju'* in Selangor Islamic Family Law Enactment.

SCOPE OF RESEARCH

In this research, the researcher tries to discuss about the *Ruju'*: its concept, practice and procedure in Selangor. In this study, the researcher tries to conduct or analyze the research based on the Selangor Islamic Law Enactment as to the effects and benefits to the husband and wife in their marriage when the resumption of conjugal relationship is fulfilled.

CHAPTER ONE :

BACKGROUND OF ISLAMIC ADMINISTRATIVE ORGANIZATIONS IN SELANGOR

1.1 THE ADMINISTRATION OF SYARIAH COURT IN SELANGOR

The establishment of the Selangor court existed since the 17th century. In the year 1884, Majlis Mesyuarat Negeri recognized the appointment of Kadi and Imam, DYMM, (Yang Di-Pertuan Agong), Sultan Mahmud, the Selangor King III was appointed a *Kadi* of Selangor with a salary of RM 900.00 a year. (RM 75.00 monthly). After that, the appointment of Kadi was converted to the Chief *Kadi* (*Kadi Besar*).

Beginning the year 1900, the appointment of Kadi was increased to other districts in the state of Selangor. They were; Klang, Kuala Lumpur, Kuala Langat, Hulu Langat, Kuala Selangor, Sabak Bernam, Kuala Kubu Bharu and also Rawang.¹

The Syariah court of Selangor is a separate department from the Selangor Islamic Religious Department. The separation happened 12 years ago (since 1991). The Yang Di-Pertuan Agong, Sultan Salahuddin Abd Aziz on 25 Safar 1413H (24 august 1992) was appointed as the Head Department of Government that was governed by court.²

1 YAA Dato' Hj. Zohdi b Hj Toha. n.d “*Memahami Hak Wanita Di Dalam Undang-Undang Keluarga Islam Negeri Selangor*”. Persatuan Peguam Syarie Malaysia (PGSM). p.1

2 Abu Bakar B. Hj Mohd Daud. n.d.“ *Prosedur Pemfailan Kes Dan Perbicaraan Di Mahkamah Syariah*”. *Seminar Sehari Memahami Hak Wanita Di Dalam Undang-Undang Keluarga Islam Negeri Selangor (Pindaan Terbaru)*. p.3

Motto of Department ³

“ Justice and peace ”

{ وان حكمت فاحكم بينهم بالقسط , ان الله يحب المقسطين } " سورة المائدة : 42 "

Meaning;

“ If you judge, judge with justice between them, because Allah loves those who judge with justice ”⁴

Mission of Department ⁵

“ To prepare and perform the service of justice based on Islamic law with fairness, efficiency, and effectiveness according to *Hukum Syara'* .

Function of Department ⁶

1. To enforce and implement the Islamic law.
2. To provide the Islamic Judiciary System efficiently and effectively.
- 3.To receive, hear and decide cases, which were brought to the Syariah court fairly and equitably according to the provision determined by the state.
- 4.To hear and decide the appeal cases from the Syariah Lower Courts.

³ *Keluarga Islam Negeri Selangor*. “ Persatuan Peguam Syarie Malaysia ”(PGSM). p.2-3

⁴ Al-Qur'an. Al-Baqarah 5: 42 (All Quranic Translation in this writing are based on Professor (Dr.) Syed Vicker Ahamed. *Interpretation Of The Meaning Of The Glorious Qur'an*. The translation has been approved by *Al-Azhar University, Islamic Research Academy, and General Department for Research, Writing and Translation, Cairo, Egypt*. p.131

⁵ *Keluarga Islam Negeri Selangor*. “ Persatuan Peguam Syarie Malaysia ”(PGSM). p.3

⁶ *Ibid*.p.3

1.2 SELANGOR ADMINISTRATION OF ISLAMIC LAW

After the establishment of Majlis Agama Islam Selangor 1984, the effort to legislate the law of Selangor Administration of Islamic Law started and finally on October 11th, 1952, State Enforcement Agency amended the enactment known as “Selangor Administration of Islamic law Enactment No.3, year 1952”.

When the Selangor Syariah Court was established, the administration of law enactment was declared by the State Enforcement Agency on 19 July 1989 known as the “Selangor Administration of Islamic law Enactment No.2, year 1989. This enactment replaced or annulled the “ Selangor Administration of Islamic law Enactment No.3, year 1952.”⁷

Selangor became the first state to introduce the Administration of Islamic Law and this was followed by other states. Recently new laws for the administration of the Islamic Law have also been enacted.⁸

Although, the court was still under Chief Syarie Judge replacing the Selangor Chief Kadi, it handled the ‘Pentadbiran Pejabat Setiausaha Kerajaan Selangor’ like the other departments of the Government Department and it.

⁷ YAA Dato’ Hj. Zohdi b Hj Toha. n.d. “ *Memahami Hak Wanita Di Dalam Undang-Undang Keluarga Islam Negeri Selangor*”. Persatuan Peguam Syarie Malaysia (PGSM). p.1-2

⁸ Farid Sufian Shuaib & Tajul Aris Ahmad Bustamib & Muhd. Hisham Mohd.Kamal. 2001. *Administration Of Islamic Law In Malaysia*. Malayan Law Journal, Kuala Lumpur.p.175

The Selangor Administration of Islamic law Enactment 1989 contains nine parts.

They are;

- Part i: Preliminary
- Part ii: The Majlis Agama Islam Selangor
- Part iii: Syariah Court
- Part iv: Prosecution and Delegacy
- Part v: Mosque
- Part vi: Charitable Collection
- Part vii: Conversion To Islam
- Part viii: Religious Education
- Part ix: General

Section 38 of the Selangor Administration of Islamic law Enactment 1989 provides the “*Appointment of Syarie Judges*”. It states:⁹

- 1) *The Chief Syarie Judges and the Syariah High Court Judges shall be appointed by His Royal Highness the Sultan on the advice of the Majlis.*
- 1A) *His Royal Highness the Sultan may, on the advice of the Majlis appoint, for a period not exceeding three years, not more than seven Muslims to constitute a standing panel of Judges to the Syariah Appeal Court.*
- 2) *Before tendering its advice as to the appointment of a Syariah Appeal Court Judge or a Syarie Judge other than the Chief Syarie Judge, the Majlis shall consult the Chief Syarie Judge.*

⁹ *ibid.* p.19

- 3) *A person is qualified for appointment under subsection (1) or (1A) if–*
- a. *He is a citizen; and*
 - b. *Not less for than ten years preceding his appointment, he has been a Peguam Syarie in any of the Syariah Courts or as a member of the Syariah Courts or is learned in Islamic legislation.*
- 4) *For the purpose of subsection (3) a person who, before coming into force of this Act, has been practising, as an advocate in the Syariah Court shall be deemed to be a Peguam Syarie and a person who has served as a Kadhi or Prosecutor in the Syariah Courts shall be deemed to be a member of the Syariah Courts.*
- 5) *All appointments under this section shall be notified in the Gazette.*¹⁰

1.2.1 The Organization

The hierarchy of the Syariah courts in Selangor contains three levels;

- a) Syariah Subordinate Court
- b) Syariah High court
- c) Syariah Appeal Court

Section 37 of the Selangor Administration of Islamic Law Enactment 1989 provides the “ Constitution Of Syariah Courts ”. It states:¹¹

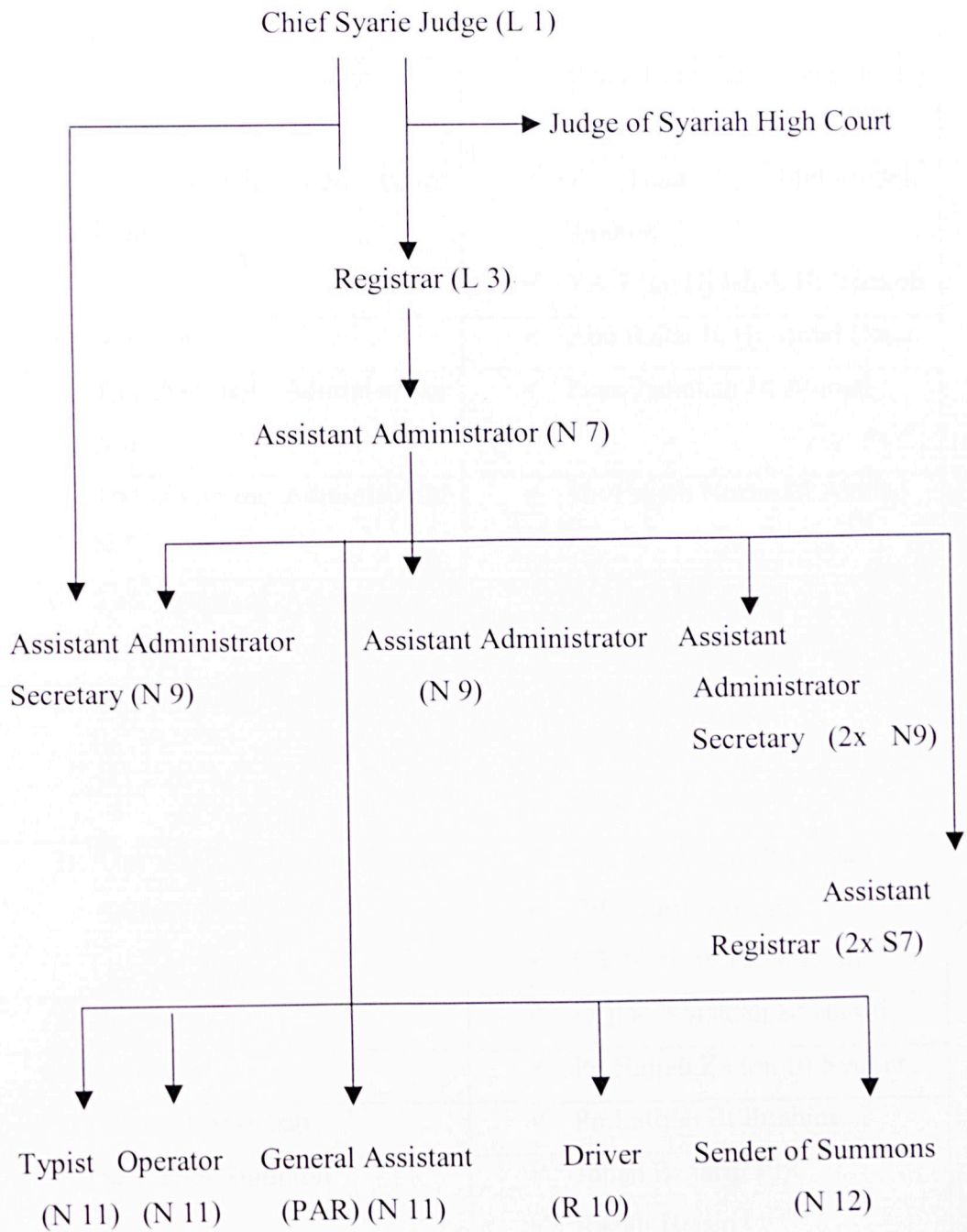
“ His Royal Highness, the Sultan may, on the advise of the Majlis by notification in the Gazette constitute Syariah Subordinate Courts, Syariah High Court and Syariah Appeal Court for the state at such places as he considers fit. ”

¹⁰ International Law Book Services .1997. *Selangor Administration of Islamic Law Enactment 1989 & Islamic Family Law Enactment 1984*. Section 38. p.19

¹¹ *ibid.* Section 37. p.18

Although the Syariah Court in Selangor consists of three different levels, each of the court has its own organization.

Figure 1: The Organization of Syariah High Court ¹²



¹² n.a.25th of August 2003. "Organization Chart Of the Syariah High Court." The Syariah Court. <Http://www.selangor.gov.my./mss>. p.1-2

The Syariah High Court is the office of administration of the Syariah Court in Selangor Darul Ehsan. Currently, this court consist 19 personnels. They are: ¹³

DUTY	NAME
1) The Chief Syarie Judge	✓ YAA Dato' Hj. Zohdi b. Hj Toha
2) The Syariah High Court Judge	✓ Ya Tuan Hj. Mukhruddin Ibrahim ✓ YA Tuan Hj Ishak Hj Yaakob
3) Registrar	✓ Abu Bakar b. Hj Mohd Daud
4) The Assistant Administrator N 6	✓ Puan Jamaliah Bt Ahmad
5) The Assistant Administrator N 7	✓ Pn. Hajjah Norlia Bt Ahmad
6) The Assistant Administrator N 9	✓ Roslin Abd Kadir ✓ Suhana Mohd Bahari
7) The Assistant Registrar	✓ Pn.Aminah Hussin ✓ Pn.Hajjah Ana Faiza Hj mohd Noor
8) The Assistant Administrator Secretary	✓ Cik Siti Azura Bt Osman ✓ Cik Murni Kusran ✓ Cik Norizan Faharuddin
9) Typist	✓ Hajjah Norsidah Bt Hamri
10) Operator	✓ Pn Hajjah Zaiton Bt Syukur
11) General Assistant	✓ Pn.Latifah Bt Ibrahim
12) Sender of Summon	✓ Johan B. surip PJK ✓ Razali Hissin
13) Driver	✓ Khalid B. Akhyar

¹³ ibid. p.1-2

1.2.2 The Jurisdictions

The courts handle three types of the cases for implementation of the Syariah administration of justice in Selangor. The types of the cases are civil, criminal and *faraid* cases. They are: ¹⁴

- 1.The civil case is the claim cases other than criminal and *faraid* cases. The claimant involves the authority of one party among other parties.
- 2.The criminal cases are the matrimonial and *Syarie* offences that were stated in the Family Law and criminal law.
- 3.While, the *Faraid* is the claimant of the property or will of those who have died.

The jurisdictions of the three courts are provided under the Selangor Administration Of Islamic Law Enactment 1989.

a. The Jurisdiction Of Syariah High Court ¹⁵

Section 42 of the Selangor Administration Of Islamic Law Enactment 1989 provides “ *The Jurisdiction Of Syariah High Court*”. It states:

- 1) *The Syariah High court shall have jurisdiction throughout Selangor and shall be presided over by the Syariah Judge.*

¹⁴ Abu Bakar B.Hj Mohd.Daud. n.d. “ Prosedur Pemfailan Kes Dan Perbicaraan Di Mahkamah Syariah”.*Seminar Sehari Memahami Hak Wanita Di dalam Undang-Undang Keluarga Islam Negeri Selangor (Pindaan Terbaru)* . p.3

¹⁵ International Law Book Services. 1997. *Selangor Administration of Islamic Law Enactment 1989 & Islamic Family Law Enactment 1984*. Section 42.

2) *A Syariah High Court shall-*

- a) *In its criminal jurisdiction, try any offences committed by a Muslim and punishable under the Enactment or the Selangor Islamic Family Law Act 1984, or under any other written law prescribing offences against precepts of the religion of Islam from the time being in force, and may impose any punishment provided therefore;*
- b) *In its civil (Mal) jurisdiction, hear and determine all actions and proceedings in which all the parties are Muslims and which are related to:*
- i. *Betrothal, marriage, ruju', divorce, nullity of marriage (fasakh), nusyuz, or judicial separation (faraq) or other matters relating to the relationship between husband and wife;*
 - ii. *Any disposition of, or claim to, property arising out of any of the matters set out in subparagraph (i);*
 - iii. *The maintenances of defendants, legitimacy, or guardianship or custody (hadhanah) of infants;*
 - iv. *The division of, or claims to, harta sepencarian;*
 - v. *Will, or death –bed gifts (marad al-maut) of a deceased Muslim;*
 - vi. *Gifts inter vivos, or settlement made without adequate consideration in money or money's worth, by a Muslim;*
 - vii. *Wakaf or nazr;*
 - viii. *Division and inheritances of interstate property;*
 - ix. *Other matters in respect of which jurisdiction is conferred by any written law.¹⁶*

¹⁶ *ibid.* Section 42

b. The Jurisdiction Of Syariah Subordinate Court ¹⁷

Section 43 provides the Jurisdiction of Syariah Subordinate Court. It states;

- 1) *The Syariah Subordinate courts shall have jurisdiction throughout the state of Selangor and shall be presided over by a judge of the Syariah Subordinate judge.*
- 2) *The Syariah Subordinate court shall;*
 - a) *In its criminal jurisdiction, try any offences committed by a Muslim and punishable under the Enactment or under any other written law prescribing offences against precepts of the religion of Islam for which the maximum punishment provided by the Enactment or such written law does not exceed two thousand ringgit or imprisonment for a term of one year or to both, and may impose any punishment provided therefore;*
 - b) *In its civil jurisdiction, hear and determine all such action and proceeding as the Syariah High Court is authorized to hear and determine in which the amount or value of the subject matters in dispute does not exceed fifty thousand ringgit or is not capable of estimation in term of money.*
- 3) *The Yang Di-Pertuan Agong may from the time to time by notification in the Gazette extend the civil jurisdiction of the Syariah Subordinate court.*

¹⁷ *ibid.* Section 43

Appeals to Syariah High Court ¹⁸

Section 44 provides about Appeal to the Syariah High Court.

1) *An appeal shall lie to the Syariah High court from any decision of a Syariah Subordinate Court:*

a) *In its criminal jurisdiction, by the prosecution or by a person convicted, and such appeal may be against an acquittal, conviction or sentences or any of them;*

b) *In its civil (Mal) jurisdiction:*

i. *By any person aggrieved by the decision, if the amount claimed is not less than one thousand ringgit;*

ii. *In all cases involving any decision as to personal status, by any person aggrieved by the decision;*

iii. *In all cases relating to maintenance of defendants, by any person aggrieved by the decision.*

Provided that no appeal shall lie against decision made by consent; and;

c) *In other cases if the Syariah High Court gives leave to appeal.*

2) *On any appeal, the Syariah High Court may:*

a) *In a criminal matter, dismiss the appeal, convict and sentences the appellant, order the trial court to call for the defense or make further inquiry, enhance or alter the nature of the sentence, order a retrial, or alter or reverse any other of the trial court;*

¹⁸ *ibid.* Section 44

- b) *In a civil matter, confirm, reverse or vary the decision of the trial court, exercise any such powers as the trial court could have exercised, make such order, as the trial court ought to have made, or order a retrial.*
- c. The jurisdiction of Syariah Appeal Court ¹⁹
- 1) *The Syariah Appeal court shall have jurisdiction to hear and determine any appeal against any decision made by the Syariah Court in the exercise of its original jurisdiction.*
 - 2) (a) *When an appeal from a decision of a Syariah Subordinate Court has been determined by the Syariah High Court, Syariah Appeal court may on the application of any party grant leave for the determination by itself of any question of law of public interest which has arisen in the course of the appeal and the determination of which by the Syariah High Court has affected the result of the appeal.*

(b) *When leave has been granted by the Syariah Appeal Court it shall hear and determine the question allowed to be referred for its determination and make such order as the Syariah High Court might have made and as it considers just for the disposal of the appeal.*

¹⁹ Ibid. Section 48

1.3 SELANGOR DEPARTMENT OF ISLAMIC RELIGION (JAIS)

Historically, the establishment of the department (JAIS) helped the government to block the development, the doctrine and the understanding of Communism in Tanah Melayu besides to improve the Malay's behavior and beliefs at that time. In year 1948, JAIS was establishment and situated in the old building of the Selangor King's Club.²⁰

Vision of JAIS²¹

- To produce the Islamic Society to become developed, successful, progressive by Allah based on Al-Qur'an and also As-Sunnah with the state of Selangor's vision to become the state's development with the coming of 2005.

*Mission of JAIS*²²

- To be the best department, an excellent example to all, to be at world's level and is blessed by God.

*The objective of JAIS*²³

- i. To provide an Islamic institution and also support service, which is efficient and effective.

²⁰ Brochure from JAIS Department

²¹ *ibid.*

²² *ibid.*

²³ *ibid.*

- ii. To give firm basic Islamic Education to all Muslim students in Selangor.
- iii. To plan and implement *dakwah* programmes to Muslim and non-Muslim society.
- iv. To enforce Islamic family laws and Syariah criminal laws based on the Selangor Administration Islamic Family Law Enactment.
- v. To make the mosque as an ideal institution and as a basic to the development of *Ummah*.
- vi. To research about the deviation of *Akidah* and Muslim beliefs and managing the activities into the purification of *Akidah* and *Syariah*.

*Customer Charter of JAIS*²⁴

We as officers of Selangor Islamic Religion Department promise to present the ideal and good Islamic service and at world level to the society based on the following reasons;

- i. Attempt to give the basic Islamic Education to all Muslim children in Selangor.
- ii. To perform the Islamic infrastructure development projects.
- iii. Ensure that a mosque is in good situation and is comfortable to carry out religious worship and prepare a variety of programmes for this reason.

²⁴ *ibid.*

- iv. To propagate an Islamic *dakwah* efficiently and effectively.
- v. To perform the scheme in exercised planning to increase the quality of officers in Selangor Islamic Religion Department (JAIS) and also to carry out the missionaries.

*The strategies of the Selangor Department Islamic Religion*²⁵

1. To prepare the re-engineering process for the organization of JAIS such as;
 - a. Provide a new image for JAIS
 - b. Arrangement of organization
 - c. Job- enrichment and job-rotation
 - d. Jawatankuasa Keutuhan Pengurusan Pentadbiran Kerajaan
 - e. Perform the research to ease the work process
 - f. Arrange the management of District Islamic Religion Office
2. To produce the sixth liable deputy director appointments for all main parts.
3. To perform the ISO programme to all members of the JAIS department.
4. To attempt for establishment and increase the number of classes and classrooms of Islamic Primary Schools in a short term and attempt the integration of curriculum with the Ministry of Education's curriculum in long term.

²⁵ *ibid.*

5. To produce certain Islamic parts and prepare the *dakwah* activities to *ummah* (Muslim) and also to non-Muslims.
6. Perform a new enforcement strategy.

*The organization of JAIS*²⁶

The organization of JAIS is handled by the Director of Islamic Religion Department and is helped by the leaders of any parts like Deputy Director of Administration, Deputy Director of Education, Deputy Director of *Dakwah* Management, Deputy Director of Mosque Management, Deputy Director of Family Law, Deputy Director of *Hukum Syara'*, Leader of Training Institution and *Dakwah* Selangor (ILDAS), Komanden Pusat Pemurnian Aqidah, Assistant Manager of *Baitulmal* Department, Assistant Research Department, Assistant Enforcement Department and Imam Besar *Masjid* Sultan Salahuddin Abdul Aziz Shah.

²⁶ *ibid.*

1.4 MAJLIS AGAMA ISLAM SELANGOR (MAIS)

1.4.1 The Establishment of MAIS ²⁷

Section 4 of the Selangor Administration of Islamic Law Enactment 1989 provides the establishment and incorporation of the Majlis Agama Islam Selangor. It states;

- 1) *The is hereby established a body corporate by the name “ the Majlis Agama Islam Selangor ” with perpetual succession and may sue and be sued in its name and subject to and for the purposes of this Enactment may enter into contracts and may acquire, purchase, take, hold and enjoy movable and immovable property of every description and to convey, assign, surrender, yield-up, charge, mortgage, demise, re-assign, transfer and otherwise dispose of or deal with any movable or immovable property or any interest therein vested in the Majlis on such term may deem fit.*

- 2) *(a) Upon the coming into force of this Part, the “Majlis Agama Islam Selangor ” that is existing by virtue of section 5 of the Enactment 1952 shall be deemed to be the body constituted in subsection (1).*
 - (b) Every right, authority, duty or liability vested in and charged to the Majlis, except where it is inconsistent with this Enactment to vest in or charge to the Majlis such right, authority, duty and liability.*
 - (c) Every property, movable or immovable of any type vested to the “ Majlis Agama Islam Selangor ” before the coming into force of this Enactment, shall, on the coming into force of this Part and without any conveyance, assignment or surrender vest in the Majlis.*

²⁷ International Law Book Services .1997.*Selangor Administration of Islamic Law Enactment 1989 & Islamic Family Law Enactment 1984*. Section 4.

1.4.2 Functions and Powers of MAIS²⁸

Section 4A provides the economic and social functions of the Majlis. It states;

“ It shall be the duty of the Majlis to encourage, stimulate, and facilitate the economic and social development of the Islamic Community in the State of Selangor ”.

Section 4B provides the additional powers of the Majlis. It stated:

- 1) *For the purpose of discharging its duties under this Enactment, particularly under section 4A, shall have power –*
 - a. *To carry out all activities, including commercial and industrial activities, which in the opinion of the Majlis are necessary, advantageous or convenient for or in connection with such duties;*
 - b. *To establish companies with such names as may be deemed suitable by the Majlis;*
 - c. *To promote the carrying on of any of such activities by any other body or person and for such purpose provide assistance to such body or person, including financial assistances by the taking up of share or loan capital or by providing loans or otherwise;*
 - d. *To carry on any such activities in association with any other body or person (including any Department or authority of the Government of the State of Selangor) or as an agent, manager or otherwise on behalf of such or person;*

²⁸ *ibid.* Section 4A

- e. *To purchase, underwrite, or otherwise acquire any stock or shares in any company, whether public or private, and dispose thereof on such terms or conditions as may be determined by the Majlis;*
- f. *To establish and maintain training institutions; and*
- g. *To do all other acts which the Majlis considers desirable or expedient.*

2) *Section 4A and this section shall be deemed to have come into force on the date of coming into force of this Enactment and shall be deemed to have been an integral part of this Enactment from that date and-*

- a. *Anything done by the Majlis before the date into force of this section shall, if it could have been lawfully done by the Majlis if this section had been in force, be deemed to have been lawfully done by the Majlis under this section; and*
- b. *Any company established by the Majlis before the date of coming into force of this section shall be deemed to have been lawfully established in accordance with this section.*

1.4.3 Appointment of Majlis ²⁹

Section 7 provides “ *The Termination Of Appointments* ”.

The appointment of an appointed member of the Majlis shall terminate;

- a. *On his death; and*
- b. *If he, by letter addresses to His Royal Highness the Sultan through the Chairman, resign his appointment; or*
- c. *If he has been absent from Malaysia, without the written permission of the Chairman, for a period exceeding three months.*

²⁹ *ibid.* Section 7

Section 8 provides “ *The Revocation Of Appointments* ”. ³⁰

His Royal Highness the Sultan may, on the advice of the Menteri Besar revoke the appointment of any appointed member of the Majlis-

- a. If his conduct, whether in conjunction with his duties as a member or otherwise, has been such as to bring discredit on the Majlis; or*
- b. If he has become incapable of carrying out his duties properly as a member; or*
- c. If he without any excuse which in the opinion of the Chairman is sufficient, has been absent from three successive meetings of the Majlis.*

Section 9 provides “ *Temporary Appointments* “. It states: ³¹

- a. In the event of temporary absence or incapability of any member of the Majlis, His Royal Highnesses the Sultan, on the advice of the Menteri Besar, may appoint another person to temporarily replace him.*
- b. The appointment under subsection (1) shall expire 7 days after the true member gives a written notice to the Chairman of his ability to perform his duties.*
- c. A copy of the notice under subsection (2) shall be served on the temporary member.*

Section 10 provides “ *Appointments to be Gazette* ”. It states: ³²

“ All appointment and revocations of appointment under sections 6,7,8,9 shall be notified in the Majlis”.

³⁰ *ibid.* Section 8

³¹ *ibid.* Section 9

³² *ibid.* Section 10

1.4.4 Membership Of MAIS ³³

- 1) *The Majlis shall consist of the following members;*
 - a. *Chairman*
 - b. *Deputy Chairman*
 - c. *The Mufti*
 - d. *The State Legal Adviser*
 - e. *The State Financial Officer*
 - f. *The State Chief Police Officers*
 - g. *10 other members of which at least 5 are alim ulamak.*

- 2) *The Chairman, Deputy Chairman, and the members appointed under paragraph (g) of subsection (1) shall be persons who are Muslims and shall be appointed by His Royal Highness the Sultan on the advice of the Menteri Besar for such term, not exceeding three years, as His Royal Highness, the Sultan may determine on the advice of the Menteri Besar.*

- 3) *A member whose term of office has expired may be reappointed.*

- 4) *If at any time the person holding the appointment mentioned in paragraph (d), (e) and (f) is not a Muslim, His Royal Highness the Sultan on the advice of the Menteri Besar shall appoint another officer who is a Muslim and next in seniority from the same Department to be a member in place of that person.*

- 5) *The person who, immediately before the coming into force of this section was the Chairman, Deputy Chairman, and members of the Majlis respectively until the expiry of their current period of appointment.*

³³ *ibid.* Section 5.

1.5 ISLAMIC FAMILY LAW ENACTMENT 1984 (SELANGOR)

Islamic family Law Enactment is provided to all Muslims and applies only in the state of Selangor. It contains 10 parts. They are;

- i. Part 1: Preliminary
- ii. Part 2: Marriage
- iii. Part 3: Registration of Marriage
- iv. Part 4: Penalties and miscellaneous provisions relating to the solemnization and Registration of Marriage
- v. Part 5: Dissolution of marriage
- vi. Part 6: Maintenance of wife, children and others
- vii. Part 7: Guardianship
- viii. Part 8: Miscellaneous
- ix. Part 9: Penalties
- x. Part 10: General

Section 28 provides “ *Appointment of Chief Registrar, Registrar, Deputy Registrar, and Assistant Registrars of Muslim Marriages, Divorce and Ruju’* ”. ³⁴

- 1) *His Royal Highness the Sultan may appoint any qualified public officer to be the Chief Registrar of Muslim Marriages, Divorce and Ruju’ for the purpose of this Enactment, who shall have general supervision and control over Registrars and the registration of marriages, divorces and ruju’ under this Enactment.*
- 2) *His Royal Highness the Sultan may appoint so many qualified persons as may be necessary to be Registrar, Deputy Registrar, and Assistant Registrars of Muslim Marriages, Divorce and Ruju’ for such kariah masjid in the State Of Selangor as may be specified in the appointment.*

³⁴ 35 International Law Book Services. 1997. *Selangor Administration of Islamic Law Enactment 1989 & Islamic Family Law Enactment 1984*. Section 28.

- 3) *His Royal Highness the Sultan may by notification in the Gazette, appoint any member of the diplomatic staff of Malaysia in the any country to be Registrar of Muslim Marriages, Divorce and Ruju' for the purpose of this Enactment in that country.*
- 4) *Every person appointed under subsection (2) who is not a public officer for the purposes of the Penal Code.*

Section 134 provides “ *The Power To Make Rules* ”. It states: ³⁵

- 1) *The Yang Di-Pertuan Agong, on the advice of the Majlis, may by notification in the Gazette, make rules regulating the practice and procedure in all matrimonial proceedings under this Act as he considers expedient and rules to fix and regulate the fees and costs payable in all such proceeding; subject thereto to all proceedings under this Act shall be regulated by the practice and procedure of the Court laid down by the Administration Enactment, to the extent that such practice and procedure are not inconsistent with this Act.*
- 2) *In matters of practice and procedure in matrimonial proceeding not expressly provided for in this Act or in any rules made under this Act in the Administration Enactment, the court may adopt such practice and procedure as may seem proper for the avoidance of injustice and the disposal of the matter in issue between the parties.*
- 3) *The Yang Di-Pertuan Agong, on the advice of the Majlis, may by notification in the Gazette, make rules for the purpose of this act and, without prejudice to the generality of the foregoing, such rules may provide for –*

³⁵ *ibid.* Section 134

- a) *The manner in which the Registrars of Muslim Marriages, Divorces, and Ruju' shall exercise the powers conferred on them by this Act;*
- b) *The forms of the Marriage, Divorces, and Ruju' Registers and of the certificates of Marriage, Divorces, and Ruju' and the mode in which they are to be kept;*
- c) *The supply and safe custody of the Marriage, Divorces, and Ruju' Registers, the Registrars' notebooks, and all declarations made for the purposes of this Act;*
- d) *The preparation and submission of return of Marriage, Divorces, and Ruju' registered under this Act;*
- e) *The form of any certificate, notice, or other document required for the purpose of implementing this Act;*
- f) *The making of searches and the giving of certified copies;*
- g) *The fees chargeable for the purposes of this Act;*
- h) *The punishment for any breach or failure to comply with any rules made under this Act; and*
- i) *Other matters for the purposes of carrying out this Act.*

CHAPTER TWO:

THE CONCEPT OF RUJU'

2.1 DEFINITION OF TERM

Section 2 of the Selangor Islamic Family Law Enactment 1984 states “ *Ruju'* is further defined as a return to the original marriage state”.³⁶

Ruju' in literal sense means “ Return”. In the legal sense means the husband returns to his wife and their marriage during the period of *'iddah* after she was divorced by the *Talaq raj'ie* (not *talaq ba'in*).³⁷ The Qur'an says:

{ وبعولتهن أحق بردهن في ذلك إن أرادوا إصلاحا } " سورة البقرة: 228 "

Meaning;

“ *And the husband has the better right to take them back in that period if they wish for reconciliation. (2:228).* ”³⁸

In the legal sense however, the various Schools of laws have formulated their own definitions of *Ruju'*. The following is a discussion of the various Schools on the definition of *Ruju'* in the Islamic perspective.³⁹

³⁶ International Law Book Services 1984. *Selangor Islamic Family Law Enactment 1984*. Section 2.

³⁷ Abdul Samat Hj. Hamzah. Pendidikan Islam. Asas-asas dan Praktikal Semester 1 & 2. Politeknik, Kota Bharu. p.110

³⁸ Al-Baqarah 2: 173. All Quranic Translation in this writing are based on Professor Dr. Syed Vicker Ahamed. *Interpretation of the meaning of The Glorious Qur'an*.

³⁹ Fatimah Abdul Wahab. *Ruju': The concept and Practice in Malaysia*. Zaleha Kamaruddin. *Islamic Family Law Issue 2000*. p.188