

**THE FAST TRACK PROJECT:
THE FIRST STEP TOWARDS IMPROVING DIVORCE CASES
IN SHARIAH COURT, MALAYSIA**

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Abstract

Shariah Court is an institution that plays an important role in governing divorces in Malaysia. The increase of divorce cases that occur in Malaysia pressurizes the Shariah Court in some ways. The administration of these divorce cases needs to be administered more effectively to ensure the smoothness of each case. This study was done to investigate and identify the most registered cases in the Shariah Court in Malaysia. In addition, this study serves to identify the workflow for the newly introduced project concerning divorce cases called “the fast track”. This will help to overcome the divorce case backlogs that will happen in the future. To ensure the success of this study, a number of employees has been interviewed, ranging from the judges, attorneys and assistant registrars for the Shariah Court. The results of the study showed that enactment section 47, Islamic Family Law is among the most registered cases and constantly increasing every year. The fast track is seen as a good method, but some things need to be taken care of to ensure its effectiveness. Consistent work force is also required to ensure this fast project achieves its potential in administering divorce cases in the Shariah courts.

Keywords: *Islamic Family Law, fast track, Shariah Law, Shariah Court, governing divorce administration in Malaysia*

1.0 INTRODUCTION

In Malaysia, cases for dissolution of marriage have increased at a very alarming rate. This situation has a major impact on the social culture of Malaysians. Not only that, the increased in cases affects the administering system in the Shariah Court. According to the statistics, cases involving marriage dissolution in Selangor Shariah Judiciary Department increased in 2012 with the total of 14,314, in 2013 with the total of 19,932 and in 2014 with the total of 22,230 (Selangor Shariah Judicial Department, 2012). These statistics clearly show that the dissolution of marriage is at a very alarming rate and begs a stronger effort from the Shariah Court to govern better. The increasing of divorce cases is also recognized by the assistant registrar for Court Langat's Shariah Subordinate:

From what we can see, what is happening in Selangor, in the region of Hulu Langat is actually the top rank amongst the Lower Courts of Shariah in Selangor, even in Malaysia. This is my experience whenever I received a response, when we contacted other courts they were quite surprised with the situation in Hulu Langat. It is not the same with other regions except in

Wilayah Persekutuan, so cases are indeed increasing. In my past experience in Banting, even if the region is in the category which implies that it's not very busy, it still increases from year to year by 100 cases. In Kajang the situation is pretty much the same but in Hulu Langat, the increase is a bit more.

This pressure has emphatically urged the Selangor Shariah Judiciary Department to implement the fast track approach which could solve the case of 90 hours to 6 hours only. However, this process is only open for the cases under Section 47 of the Islamic Family Law (Berita Harian 4 Julai 2015). This approach is undoubtedly a good step forward, but it should be reinforced more because according to the statistics released by the Selangor Shariah Judiciary Department (JAKESS), cases that are often delayed is fasakh cases with as many of 876 in 2010, 1075 in 2011 and 1715 in 2012. The number of cases delayed for divorce pronouncement is 955 in 2010, 1228 in 2011 and in 2012, there were as many as 1515 cases (Selangor Shariah Judicial Department, 2012). This situation surely pressurizes the administration department of Shariah Courts in administering Enactment Family Islamic Law Negeri Selangor.

2.0 LITERATURE REVIEW

According to the provisions of Part V of the Selangor State Islamic Family Law Enactment (2013) the application for a divorce in this clause is a divorce by the pronouncement of talaq before a judge or by the order of a judge (EUUKI Selangor, 2013). This means that talaq pronounced not before a judge or pronounced outside a court is excluded under this provision. Any spouse who wishes to seek a divorce under this provision must submit an application in the prescribed form and accompanied with a declaration containing details of the facts of the application. If the application is approved by the husband and the wife then the court will advise to recite the talaq before the judge. However, if the application is not approved by the parties, then the court will appoint a peace committee (Suwaid Tapah, 2007)

2.1 Administrative Issues in Shariah Courts

The Shariah Court today faces social challenges and the current trend of modernity. As with other organizations, the transition and development of the Shariah Court will certainly involve some difficulties in the newly introduced administrative adjustments. Some of the issues involved in the administration of divorce cases in the Shariah Court are:

a) Uniform laws

Prior to the arrival of the British colonizers, the Islamic judiciary system was in full swing without their intervention. Islamic law is adopted in accordance with the local law. Through this occupation, the jurisdiction of the Shariah Courts began to be limited and had an effect to this day. These factors have also led to differences in the state administrative law. This distinction is a challenge today because of the simple state-of-the-art relations and the unavailability of laws that can easily cause civil strife (Ahmad Hidayat Buang, 2006).

b) Delayed Case

The Shariah Court has previously received criticism from the mass media and several non-government organizations (NGOs). At that time, the Shariah court was open to debate on the administration of the case. Some of the criticisms received were delayed cases and poor case management. This challenges the credibility of the Shariah civil administration. Although the criticism was not as great as before, the pressure on the administration of the court is still felt. Ongoing improvement and monitoring should be

carried out so that the Shariah court is in a satisfactory position in line with current needs (Raihanah Abdullah, 2009)

Addressing the issue of pending litigation in the Shariah court before the terms of the tough case should be clearly understood. According to Black's Law Dictionary, delay refers to the act of postponing or slowing and also the period during which something is postponed or slowed. (Black Law Dictionary, 1999). The same meaning can also be learned from the Collins English Dictionary, which means to put off to the later time, to defer or to slow up, to hinder or cause to be late. The provisions of section 129 of the Selangor State Procedure 2013 prescribing the adjournment of a case to another period are part of the court procedures and are only allowed if there is a basis for such adjournment (Selangor State Procedure Enactment, 2013). However, the problem is that the postponement interrupts the smooth process of justice and sometimes affects the parties involved. The most negative side effect of this case is women who are involved in divorce cases that require a heavy burden of proof as in the case of fasakh. (Maznah Mohamad, 2000)

Women are seen as those who are forced to bear emotional, financial and other hardship as a result of delays that take years to resolve especially in divorce cases such as fasakh. This of course brings them difficulties and hinders the Shariah Court's justice process. (Sharifah Zaleha, 1986)

2.2 Objectives

The objective of this research is to identify the workflow for the project Fast-Track and to investigate the challenges in administering cases in Shariah Courts. The focal points for this research are:

- i. to identify the most divorce cases registered.
- ii. to investigate the challenges in administering cases in Shariah Courts.
- iii. to develop research materials to further improve the administration of cases Shariah Courts through the Fast Track.

3.0 METHODOLOGY

This research used the qualitative method and the interview data, as the main data and document analysis as supportive data. I used the interview method to obtain new intricate information relevant to this research. The interview was done on shariah officers such as the Syarie Judge, the Assistant Registrar for the Shariah Courts and Shariah Lawyers. Supportive data such as document analysis involving sections of newspaper relevant to the Fast-Track project which was recently introduced. (Welman, et al. 2005). The interview was set as the main data which involves a systematic process such as the preparation of transcript, coding, theme identification and theme construction, and the construction of sub-themes, theme analysis and the presentation (Welman, 2005).

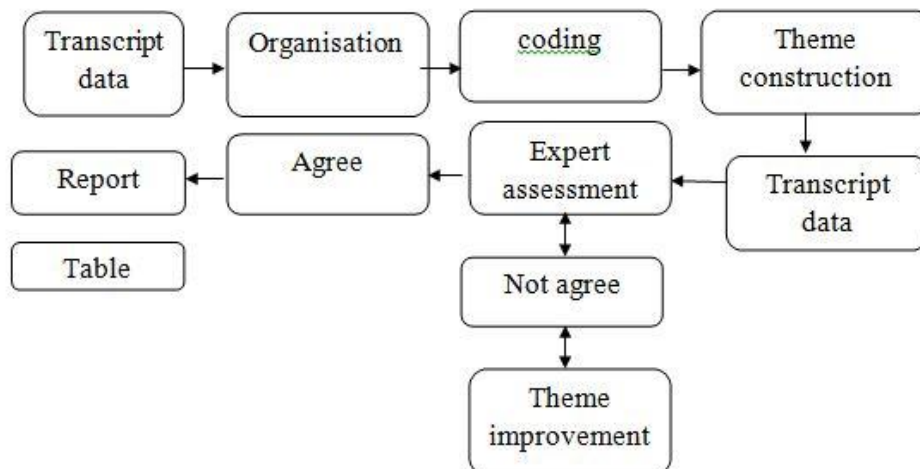


Figure 1: Interviews Data Analysis Process (Welman, et al., 2004)

Using the data collected from interviews, a transcript will be shaped, which will then be constructed to a verbatim data using the Nvivo software to shape the main data and to identify sub-themes involved. To produce research themes, this research used the software Nvivo as the software is easy to use and relevant to the workflow in shaping the model.

4.0 RESULT AND DISCUSSION

Research on this theme will help us to understand more on the issue of divorce cases in a wider scope. This research focused on the most registered cases in Shariah Courts. Upon reviewing the interviews conducted, fasakh is the most registered cases. This is because most of the Fasakh cases require a Shariah Lawyer to act as an intermediate party as these cases ask for more evidences as compared to other cases for dissolution of marriage. As quoted by the respondent UMS/SM/R5 which said:

As for now the most are two categories, divorce with Mutual Consent and Fasakh.

The same goes to respondent UMS/M&M/R6 with his quote:

Usually the most is fasakh and secondly, divorce with mutual consent. Khulu' is lesser because usually in khulu', the wife has to pay to the husband where'd you find a woman willing to pay his husband. Thirdly it could be ta'lik as for Khulu, could be the wife wanted a divorce but there is no reason for it.

As for the respondent UMS/MRSPJ/R1, who is the Shariah Judge, also shares the same view that Fasakh is seen as an alternative to a normal divorce. The respondent said that not only fasakh is the most registered case but also the longest one to solve. His quote is as follows:

Cases that are most registered are fasakh because the wife views this as a way out for husband who is unable to pronounce the divorce. If she asks for a divorce and the husband refuses, but there's an evidence, there's a reason that is why fasakh is a bit difficult but the way out is to ask for a divorce and if the husband refuses to divorce it's better to ask for fasakh if there's a reasonable explanation. That is why there are a lot of fasakh cases along with the divorce

confirmation cases where the husband pronounces the divorce away from the court where she originally filed for fasakh. And we have to delay first to solve the confirmation case before the fasakh. This is one of the reasons why it takes so long for fasakh cases.

However, other respondents viewed that cases involving divorce pronouncement confirmation under section 57 and application for a divorce under section 47 Islamic Family Law Enactment are the most cases registered under Shariah Courts. This situation is supported by a statistic which a respondent UMS/MRSHL/R9 quoted:

According to the case statistics in courts, confirmation for a divorce pronouncement and a divorce application leads in the most category registered and followed by fasakh. Those are the three most cases registered.

The above statement is also supported by the respondent UMS/MRSHL/R8 which quoted:

It is true what Ustaz Pai (UMS/MRSHL/R9) said. It is just the factor concerning knowledge and the information obtained and I also agree that those three cases are the most registered mainly the application for a divorce and the confirmation for a divorce pronouncement.

These two cases are not just the most cases registered in a city, they are also recorded a lot in rural areas such as the Kuala Selangor, Lower Shariah Courts and Sabak Bernam's Lower Shariah Court. This is proven by the statement made by the respondent UMS/MRSKS/R10:

In my experience as the Shariah Judge in Kuala Selangor, it does not matter whether it's confirmation for a divorce pronouncement under section 57 or a divorce application under section 47. They are really a lot. I found them everyday.

That is also a statement of the respondent UMS/MRSSB/R4 who represents the Lower Shariah Courts of Sabak Bernam. An example of his statement is:

Alright, I could focus to two cases, the application for a divorce and the confirmation for a divorce pronouncement. Other than that, there are fasakh and ta'lik.

Table 1: Case Statistics for the Dissolution of Marriage (Source: Shariah Judiciary Department Selangor, JAKESS 2012)

Num.	Cases	R1	R2	R3	R4	R5	R6	R7	R8	R9	R10
1	Talaq		x		x	X	x		x	x	x
2	Outside the court	x			x		x		x	x	x
3	Fasakh	x	x			X	x	x			
4	Ta'lik						x				
5	Khulu'							x			

According to the table above, the application for a divorce (talaq) and the confirmation for a divorce pronouncement (outside the court) are recorded as the most registered cases in Shariah Courts. This is followed by Fasakh, ta'lik and Khulu. Most of the respondents, who are lawyers, give the opinion that fasakh is the most often cases registered involving the application for a divorce and the confirmation for pronouncement of a divorce. The findings of the interviews are on par with the findings of the Selangor Shariah Judiciary Department statistics.

4.1 Discussion

Based on the findings of the research above, this proves that a divorce application under section 47 Enactment Islamic Family Law (2003) is the most case registered. According to Raihanah Azhari (2004), a divorce application does not require evidence as compared to fasakh, ta'liq and other divorce cases. The procedure is much simpler if the two sides agree to divorce. If an agreement is not found between the two sides, the case will be prolonged to appoint a judge, etc. (Raihanah Azri, 2004). This statement is also agreed by Suwaid Tapah (2007); the procedure for a divorce application should be much simpler if both agree to divorce. A divorce application can be considered simpler as compared to other cases. Based on my experience in Shariah Courts, if it is appropriate for both clients, a divorce is suggested as it is much simpler, and it does not require procedures such as in fasakh. Fasakh requires the existence of a witness, evidence, statements from both sides and a couple of other procedures which would take a longer time. As to avoid prolonged cases, a divorce application under section 47 Enactment Islamic Family Law is much simpler and recommended. As for that, it comes as no surprise to see this registered as the most cases (Suwaid Tapah, 2007).

What is more worrying, is the increase in divorce applications, even if it is easy, it will still pressurize the Administration System in Shariah Courts. Shariah courts would not want to face their deficiencies and weakness like the media depicted in the administration of Shariah Court (Utusan Malaysia, 2002). To overcome the prolong cases, Fast Track was introduced by the Selangor's Shariah Judiciary Department (JAKESS) in June 2015, where the process was recently introduced. As for that, this research has difficulties in acquiring academic sources except from the JAKESS Bulletin or sections from newspaper. As for the increasing of divorce cases in an alarming rate, which is 19932 cases recorded and in the year 2014 as many as 22,230 cases, the Sultan of Selangor has decreed the Shariah Court to hasten the resolve of the cases. (Berita JAKESS, 2015). Based on the divorce statistics which is worrying the Shariah Judiciary Department (JAKESS), they have come out with a new innovation that would bring a major impact to the Islamic legislative and judicial, especially to the community in Selangor, to ensure a better service, faster, much more effective and efficient. The Fast Track is one of the processes in solving divorce cases which only takes 6 hours from the registration process up until the process of judgement (New Straits Times: Utusan Malaysia, 2015).

According to Dato Dr. Mohd Naim, who is the Chief Judge for the State of Selangor, even though the process of the fast track only takes 6 hours, the process also requires a couple of other requirements:

- i. complete documents
- ii. the presence of husband and wife
- iii. the agreement to divorce

- iv. the wife in a pure condition, not pregnant, not in a menapausal state
- v. the court satisfied with the reason given (Harian Metro,2015).

However, the Fast track is only eligible for divorce cases under section 47 Islamic Family Law Enactment. Other than that, it is also implemented to help in overcoming the delay of cases faced by the Shariah Court. In addition, the objective of launching the fast track also focuses on improving the quality of the Shariah Court for Muslims in Selangor (Berita Harian, Kosmo 2015). The implementation of the fast track is expected to elevate the Shariah Court to a new level in the administrative system. The fast track is also carried out on the chance to tackle the problem of prolonged cases and to help both sides involved to build a new life.

5.0 CONCLUSION

Malaysia is known as an Islamic country which is rising in administrative, economics and social development. Because of that, the Shariah Court needs to do more to enhance their performance in the administration of cases. However, the Shariah Court is faced with a challenge in the face of backlogs which is worsening every day. Hence, the new fast track process launched viewed as a new paradigm and introduced to overcome the problem of dumping cases in the Shariah Court. The fast track is rumored to be able to solve the case of divorce from 90 days to 6 hours with certain conditions, such as the couple agree to divorce and attended counseling sessions. Of course, the shorten period is seen as a good thing, but the quality of the administration needs to be consistent to all parties. This research urged the administration to implement the fast track to all types of divorce cases, not only to the case of divorce under section 47 of the Islamic Family Law.

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