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## SHARIAH LAW

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# FROM 90 DAYS TO 6 HOURS: STREAMLINED SYARIAH DIVORCE PATH

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### INTRODUCTION

Under the authority granted by **Section 47 of the Islamic Family Law Enactment (Selangor) 2003**, the Selangor Syariah Court has introduced an alternative method to streamline divorces, known as the 'fast-track divorce counter'. Before this method was introduced, couples who had mutually agreed to an amicable divorce still had to wait up to 90 days from the date of filing, simply to get the date to pronounce first *talaq* before the Syariah Court. This delay has led to the development of the fast-track system, which shortens the process from 90 days to just six hours to obtain a court order, allowing couples to then register their divorce at their respective religious offices. Due to its effectiveness in reducing case backlogs and speeding up the process, this method has also been adopted by other states, including the Federal Territories, Perak, and Pahang.

### THE CONTROVERSY AND THE LAW

Although the fast-track divorce method effectively shortens the time and helps the parties reach a resolution, it has also sparked controversy since its establishment in 2019. This controversy began at the highest level, particularly with debates in the House of Representatives, the Parliament. The **first** key issue raised was whether this method aligns with existing laws, as the divorce process has already been well-established under each state's Islamic Family Law. **Second**, concerns have arisen over whether the fast-track divorce might lead to post-divorce issues, such as child custody disputes and the division of marital assets, potentially leaving children neglected and sparking conflicts over property. **Thirdly**, public perception has given rise to another concern, with some arguing that this method encourages divorce and contradicts Islamic teachings. These three main points of controversy have been central to discussions surrounding the implementation of the fast-track divorce method.

To answer all the questions above, **firstly**, the establishment of this method is indeed in line with legal provisions, specifically the **Islamic Family Law (Federal Territories) Act 1984, Section 48**, which mentions:

48. (1) If satisfied that there are **constant quarrels (shiqaaq)** between the parties to a marriage, the Court may appoint in accordance with *Hukum Syarak* two arbitrators or *Hakam* to act for the husband and wife respectively.

Therefore, there is no dispute that this method contradicts the law, as there is indeed a legal provision allowing for divorce if there is *shiqaq*. The fast-track divorce counter is merely an alternative method to facilitate the process for couples rather than continuously living in misery. The nature of an alternative method is not to create additional difficulties, but rather to offer an option for those in distress.

**Secondly**, it is important to note that this alternative is only available and limited to couples who have mutually agreed to divorce amicably. With that being said, both parties must also have reached an agreement on the key issues arising from the divorce, such as child custody (*hadhanah*) and the division of matrimonial property. This is because, upon reaching the fast-track counter with the necessary documents, the Syarie judge will ensure that the couple not only agrees to the divorce but also has reached a consensus on all matters related to the aftermath of the divorce. Based on practice, this situation is commonly referred to as a '*global settlement*'. Only once both parties have reached this agreement can the fast-track divorce proceed.

**Thirdly**, for those who claim that this method encourages divorce, the fact is that Islam itself permits divorce in appropriate situations. This is consistent with the Quran in **Surah Al-Baqarah, verse 299**:

الطَّلَاقُ مَرَّتَانٍ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ ۗ

*Divorce may be retracted twice, then the husband must retain his wife with honour or separate from her with grace.*

The wisdom behind this permission is also in line with the Sharia law for the husband to pronounce divorce when the wife is in a state of purity - which is one of the situations where it is considered '*separate with grace*'. The application of this can be seen a reported fast-track case divorce, **NMK v MFD [2019] 2 SHLR 84**, where the judge first confirmed that the divorce was carried out while the wife was pure from menstruation:

*"Sewaktu prosiding fast track dijalankan, plaintiff telah mengesahkan bahawa plaintiff berada di dalam **keadaan suci daripada haid, tidak mengandung.**"*

The significance of pronouncing divorce when the wife is in a state of purity is to ensure that the divorce is a *talaq sunni* (divorce during purity) and not a *talaq bid'i* (divorce during menstruation or following intercourse during purity). If a *bid'i* divorce is pronounced, it would extend the ex-wife's *iddah* (waiting period), causing additional hardship for her. Therefore, in the context of fast-track divorce, it would be ideal for the law and practice in Malaysia to reflect this principle, ensuring the *iddah* period is not unnecessarily prolonged when the divorce can be facilitated more smoothly without procedural complications.

**KEY TAKEAWAYS:**

In conclusion, two key points underscore the effectiveness of the fast-track divorce method. First, the establishment of this alternative approach is not meant to encourage divorce but to provide a solution for couples with no other viable path forward. Second, while reforms in procedures, implementation, and management within the Syariah Court are essential, any innovations must adhere to the principles of Shariah and the law, as these form the core and essence of Syariah law in Malaysia.

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