

**Proposals by Sisters in Islam (SIS) Pertaining To *Ṭalāq* Issues: An  
Analysis from an Islamic Perspective**

**Cadangan Oleh Sisters in Islam (SIS) Mengenai Isu-Isu *Ṭalāq*;  
Satu Analisis Dari Perspektif Islam**

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**Abstract**

Sisters in Islam (SIS) is a Non-Governmental Organization in Malaysia. The group suggested that some existing laws in the Sharī'ah court be reformed to ensure that the Muslim women's rights are protected under the law. Thus, the objective of this study is to analyze the proposed solutions by SIS on the selected issues related to the provisions of *ṭalāq* in the Islamic Family law that are implemented in the Sharī'ah court in Malaysia. Then, the paper gives clarification in relation to it from an Islamic perspective. In the selected issues pertaining to *ṭalāq*, the research found that SIS often comes up with their solutions without referring to any Qur'anic verses or the Hadith of the Prophet. Therefore, the researchers are in opinion that an analysis of SIS's views on these selected issues should be done from an Islamic perspective. It is hoped that this study will provide an objective understanding on the issues of *ṭalāq* from a correct perspective. In providing solutions and suggestions, SIS must refer to *Maqāṣid al-Sharī'ah*. All solutions and recommendations must be parallel with the Qur'an and Hadith.

**Keywords:** Sisters in Islam (SIS); analysis, *ṭalāq*, divorce, *Maqāṣid al-Sharī'ah*, Islamic perspective.

**Abstrak**

Sisters in Islam (SIS) adalah sebuah Pertubuhan Bukan Kerajaan di Malaysia. Kumpulan itu mencadangkan beberapa undang-undang yang ada di mahkamah Syariah diubah untuk memastikan hak-hak wanita Islam dilindungi di bawah undang-undang. Oleh itu, objektif kajian ini adalah untuk menganalisis cadangan yang dicadangkan oleh SIS mengenai isu-isu terpilih yang berkaitan dengan peruntukan-peruntukan undang-undang keluarga Islam yang dilaksanakan di mahkamah Syariah di Malaysia. Kemudian, kajian ini memberikan penjelasan berhubung dengannya dari perspektif Islam. Dalam isu-isu terpilih yang berkaitan dengan *ṭalāq*, kajian ini mendapati bahawa SIS sering

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memberi penyelesaian tanpa merujuk kepada ayat-ayat Al-Quran atau Hadis Nabi. Oleh itu, para penyelidik berpendapat bahawa analisis pandangan SIS mengenai isu-isu terpilih ini harus dilakukan dari perspektif Islam. Diharapkan kajian ini akan memberikan pemahaman yang objektif mengenai isu-isu *ṭalāq* dari perspektif yang betul. Dalam menyediakan penyelesaian dan cadangan, SIS mesti merujuk kepada maqāṣid Sharī'ah. Semua penyelesaian dan cadangan mestilah selari dengan Al-Qur'an dan Hadis.

**Kata Kunci:** Sisters in Islam (SIS), analisis, *ṭalāq*, talak, maqāṣid Sharī'ah, perspektif Islam.

### Introduction

Feminism is not only confined to the Middle-east countries, but also spread to the other parts of the Muslim regions including the South-east Asia. They claim that they seek to apply the teachings of the al-Qur'an to the present-day context. This application they claim is grounded on the idea of the universal equality of human beings in Islam.<sup>1</sup>

One of the South-east Asia countries we mentioned earlier is Malaysia. A prominent women's group in Malaysia claim to struggle for the equality between genders. This group is known as the Sisters in Islam (SIS). They are active in publishing their writings and organizing seminars on this matter.<sup>2</sup>

The establishment of SIS is traced to a certain law they were dissatisfied with when there was an implementation of new Islamic Family Laws that had been legislated in 1984. In 1987, a group of women were not satisfied with certain law of this new Islamic Law when it was enforced in *Sharī'ah* courts. They claimed that some existing laws which are implemented in the *Sharī'ah* court in Malaysia are biased and discriminatory against Muslim women. It seemed to them that Muslim women are oppressed by men or their husbands. They then suggested that some existing law in the *Sharī'ah* court be reformed to ensure that the rights of Muslim women are protected under the law.<sup>3</sup>

Since SIS focuses on matters related to Islamic Family Law, a few issues connected to *ṭalāq* are chosen as the subject of analysis. This paper explains several issues raised by SIS relating to *ṭalāq*. SIS's comments and recommendations related to these issues are discussed, and their solutions are analysed from an Islamic perspective.

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<sup>1</sup> Rashida Khanam, *Muslim Feminism and Feminist movement: South-East Asia* (Delhi: Global Vision Publishing House, 2002), 7.

<sup>2</sup> *Ibid.*

<sup>3</sup> Zainah Anwar, and Shanon Shah Mohd Sidik, *Sisters in Islam, Empowering Voices for Change, Annual Review 2006*, ed. Rose Ismail (n.p.: n.d.), 2.

### Issues Relating to *Talāq*: An Analysis from an Islamic Perspective

Literally, *talāq* means “taking off any tie or restraint” and “in law it signifies the dissolution of marriage.”<sup>4</sup>

In Shari‘ah, repudiation (*talāq*) is defined as “the dissolution of a valid marriage contract forthwith or at a later date by the husband, his agent or his wife duly authorized by him to do so, using the word *talāq*, a derivative or a synonym thereof.”<sup>5</sup>

In Malaysia, the Act and the enactment of Islamic Family Law provides stipulations of divorce among married Muslim couples. Section 47 is the provision for divorce through *talāq* or by order, while section 48 is the provision of arbitration by *hakam*.<sup>6</sup>

SIS has submitted several recommendations for the amendment of section 47 and 48. They claim that their recommendations are aimed to help with the implementation of the provisions and avoid unnecessary delays and unwarranted incidents. SIS believes these kinds of problems bring unavoidable hardship and injustice to the parties involved specifically the wives and children.

### *Talāq* at the Declaration of the Husband is Said to be Too Easy

According to SIS, the pronouncement of *talāq* without the court’s approval should not be recognised.<sup>7</sup> SIS mentions that there are many adverse effects relating to the case of immediate *talāq* upon its declaration by the husband. According to SIS, the divorce is said to be too easy:<sup>8</sup>

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<sup>4</sup> Syed Khalid Rashid, *Muslim Law* (Lucknow: Eastern Book Company, 1979), 89.

<sup>5</sup> Jamal J. Nasir, Nasir, Jamal J. (Jamal Jamil), ed., *The Islamic Law of Personal Status* (London: Brill Archive, 1990), 113-114.

<sup>6</sup> “The author is unknown”, *Laws of Malaysia, Act 303, Islamic Family Law (Federal Territories) Act 1984, Incorporating All Amendments up to 1 January 2006* (Malaysia: The Commissioner of Law Revision, 2006), 30-34, last modified November 7, 2014, <http://www.agc.gov.my/Akta/Vol.%207/Act%20303.pdf>.

<sup>7</sup> Sisters in Islam, “Letter to the Editor: Rang Undang-undang Keluarga Islam: Ulasan dan Syor”, last modified February 13, 2015, <http://www.sistersinislam.org.my/news.php?item.978.42>.

<sup>8</sup> Sisters in Islam, “Pembaharuan Proses Perceraian dan Tuntutan Sampingan Dalam Prosiding Mahkamah Syariah”, last modified October 23, 2014, <http://www.sistersinislam.org.my/news.php?item.1066.8>.

### The Issue of Ṭalāq (Divorce) Without a Witness

SIS states that there is the case of *ṭalāq* where the husband divorces the wife without a witness.<sup>9</sup> In the opinion of SIS, divorce is too easily granted.

#### Analysis

According to Imam al-Shāfi'ī, it is not a requirement to having witness for the validation of a divorce.<sup>10</sup> And, *Jumhūr fiqh* scholars of the *Salaf* and *Khalaf* have also conceded that *ṭalāq* is valid even if it is declared by the husband without any witnesses as *ṭalāq* is one of the rights of men. With regards to having a witness, there is no hadith of the Prophet or verbal records of the companions of the Prophet stating that having a witness is a requirement for the validation of a divorce.<sup>11</sup> Thus, the consensus (*ijmā'*) of the Muslim scholars concludes that having witnesses is not a requirement of *ṭalāq*.<sup>12</sup>

*Ṭalāq* without the requirement of having witnesses does not necessarily make divorce easier. As the right to the declaration of *ṭalāq* is given to men, it is not compulsory to obtain any witnesses. This coincides with the obligation of the husband to provide dowry upon marriage as well as sustenance in the form of *naḥqah* to the wife and the family during the entire course of the marriage. In addition to this, the husband must also continue to provide sustenance in the form of *naḥqah 'iddah* and *mut'ah* should the divorce be granted.

On the other hand, *Ahl al-Bayt Imāms* and *Shī'ah Imāmiyyah* fiqh scholars are of the opinion that *ṭalāq* is only valid if there are witnesses.<sup>13</sup> Athā', Ibn Jurayj, and Ibn Sīrīn are among the *Sunnī* scholars who also share this opinion.<sup>14</sup>

### The Issue of Ṭalāq (Divorce) without the Knowledge of The Wife

As claimed by SIS, there are also cases of *ṭalāq* that is declared without the knowledge of the wife. They further highlighted that this is

<sup>9</sup> *Ibid.*

<sup>10</sup> Al-Shāfi'ī Abū 'Abdullāh Muḥammad bin Idrīs, *Al-Umm, Bāb al-Shahādah Fi al-Ṭalāq* (Bayrūt: Dār al-Ma'rifah, n.d.), 7:88

<sup>11</sup> Al-Sayyid Sābiq, *Fiqh al-Sunnah* (Bayrūt: Dār al-Kitāb al-'Arabī, 1985), 2: 257.

<sup>12</sup> Wahbah al-Zuhaili, Prof. Dr., *Fiqh Islam wa Adillatuhu: Al-Fiqh Al-Islāmī wa Adillatuh*, translated by Abdul ayyie al-Kattani (Jakarta: Gema Insani, 2011), 9: 409.

<sup>13</sup> Muhammad Bagir, *Fiqh Praktis Ii* (t.t.p:PT Mizan Publika, t.t.), 188

<sup>14</sup> Al-Sayyid Sābiq, *Fiqh al-Sunnah*, 258.

an act of persecution towards the wife who is unbeknownst of the situation.<sup>15</sup>

### Analysis

Imam Shāfi‘ī does not mention that *ṭalāq* is invalid without the presence of the wife. Similarly, to Mālikī, Ḥanbalī and Ḥanafī scholars, they also never said that the declaration of *ṭalāq* is invalid without the knowledge of the wife.

*Talāq* is regarded as valid whether it is declared with or without the presence of the wife.<sup>16</sup> The declaration of *ṭalāq* by the husband in the presence of or with the knowledge of the wife is not a requirement of divorce. In other words, the divorce is still valid when the husband pronounces a divorce from his wife without her knowledge.<sup>17</sup>

As an example, if a man declares, "I am divorcing my wife", the divorce is technically valid even if the wife is unbeknownst of it. Following the period of three menstrual cycles from the time of declaration, the *‘iddah*-period would be considered complete, even if she was still unaware of the divorce, her husband declared.<sup>18</sup>

### The Issue of *Ṭalāq* through Text Messages

SIS highlights that the current practice in Malaysia is that the husband will be fined if he declares *ṭalāq* through a phone text message. Even so, the divorce is still considered valid.<sup>19</sup>

### Analysis

According to Imam Shāfi‘ī, other than the form of a verbal declaration, *ṭalāq* can also be communicated through writing.<sup>20</sup> The proclamation of *ṭalāq* by the husband through writing is valid as long as its conditions are fulfilled.<sup>21</sup> According to *Jumhūr Fuqahā’*, the declaration of

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<sup>15</sup> Sisters In Islam, "Pembaharuan Proses Perceraian dan Tuntutan Sampingan Dalam Prosiding Mahkamah Syariah", last modified October 23, 2014, <http://www.sistersinislam.org.my/news.php?item.1066.8>.

<sup>16</sup> Haron Din, Abu Hassan Din al-Hafiz, Ishak Din, *Dato' Dr. Haron Din Menjawab Persoalan Fikah Harian* (Kuala Lumpur: PTS Millennia Sdn. Bhd., 2007), 249.

<sup>17</sup> Muhammad Saed, *Islam: Questions and Answers* (London: MSA Publication Limited, 2007), 5:30.

<sup>18</sup> *Ibid.*

<sup>19</sup> Sisters In Islam, "Best Practices on Muslim Family Law Issues", last modified November 9, 2014, <http://www.sistersinislam.org.my/news.php?item.1050.8>.

<sup>20</sup> Al-Shāfi‘ī, *Al-Umm*, 5: 262.

<sup>21</sup> Al-Sayyid Sābiq, *Fiqh al-Sunnah*, 256-257.

*ṭalāq* through a written statement is valid when the husband has the intention to divorce his wife.<sup>22</sup>

As the proclamation of *ṭalāq* in writing is recognised and valid, an e-mail communication also falls under this category provided that it is verified by the husband that it was he, or a person he had specifically appointed, was the author of the said e-mail containing the declaration. However, the commencement of the *ṭalāq* only begins upon the acknowledgement of the husband. The e-mail message is not considered valid without necessary proof.<sup>23</sup>

In the case of the communication of *ṭalāq* through a phone text message, the same principles would apply. The *ṭalāq* is valid as long as the conditions are similar to that of the written statement and that the husband verifies that it was he, or his appointment that had written and sent the text.

### **The Issue of Ṭalāq with Regards to the Wife Who is Divorced from Her Husband Even When She is Not Agreeable to It**

Such cases may occur where a husband requests to divorce the wife even when the wife has agreed to him practising polygamy and does not agree to a divorce.<sup>24</sup>

#### **Analysis**

In the case where the wife provides consent to her husband to practice polygamy and does not agree to the divorce, Dr. Azizah mentions that the husband must provide *mut'ah* as a form of compensation. *Mut'ah* is given to protect the welfare of the wife and is compulsory in Malaysia, unlike in other countries. The Shafi'i mazhab stipulates the *mut'ah* as compulsory, while it is not so in the Hanafi mazhab. Based on this, the court does look into the interest of the wife.<sup>25</sup>

As she further explains, the provisions of section 47 gives equal rights to both husband and wife to request for a divorce under a mutual agreement. In the case where the wife does not agree to a divorce re-

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<sup>22</sup> Wahbah az-Zuhaili, *Fiqh Islam*, 341.

<sup>23</sup> Muhammad Saed, *Islam: Questions and Answers*, 14-15.

<sup>24</sup> Sisters In Islam, "Pembaharuan Proses Perceraian dan Tuntutan Sampingan Dalam Prosiding Mahkamah Syariah", last modified October 23, 2014, <http://www.sistersinislam.org.my/news.php?item.1066.8>.

<sup>25</sup> Azizah Mohammad (Associate Professor Dr.), in an interview with the writer, April 16, 2014.

requested by the husband, a divorce will not be granted by the court. Under such circumstances, the court will appoint the *ḥakam* or conciliatory committee. If the committee grants the divorce, it will be categorised as a divorce approved outside of the court.<sup>26</sup>

Under section 56, she stipulates that if the requested divorce is without a just cause, the husband must provide *mut'ah*. The wife can request for a higher price in *mut'ah* if the divorce is without a reasonable cause. However, the court will make a decision based on the husband's current solvency.<sup>27</sup>

Based on the existing provisions outlined above, there are no gender discriminations of the court in a divorce case where the wife is not agreeable to it. In Malaysia, the *Shari'ah* court will not grant a divorce without a mutual agreement and would appoint the *ḥakam* or conciliatory committee (refer section 47). However, if the husband divorces his wife outside the decision of the court, he must recompense with *mut'ah* as a form of penalty.

### Recommended solution by SIS

SIS suggests a solution for the issues where they claim divorce is easily granted in favour of the husband. They recommend that a declaration of *ṭalāq* should only be recognised once it is approved by the court. According to SIS, this concept is consistent with a verse from the Qur'an in *Sūrah Al-Nisā'* 4:35 where it outlines the procedures of having *ḥakam* and discourages arbitrary divorce.<sup>28</sup>

### Analysis

It is important to understand the pillars (*arkān*) of *ṭalāq* in the discussion of issues regarding *ṭalāq* without a witness; *ṭalāq* without the knowledge of the wife; *ṭalāq* declaration through text messages; and *ṭalāq* against the women's will.

According to the Shāfi'ī and Ḥanbalī schools of thought, there are five pillars of *ṭalāq*: 1) *Al-Muṭalliq*, the man who declares *ṭalāq*; 2) *Al-Sīghah*, the words proclaiming *ṭalāq*; 3) *Maḥal*, the marriage; 4) *Al-Wilāyah*, guardianship; and 5) *Qaṣd*.<sup>29</sup>

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<sup>26</sup> *Ibid.*

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

<sup>28</sup> Sisters In Islam, "Letter to the Editor: Rang Undang-undang Keluarga Islam: Ulasan dan Syor", last modified February 13, 2015, <http://www.sistersinislam.org.my/news.php?item.978.42>.

<sup>29</sup> Wahbah az-Zuhaili, *Fiqh Islam*, 322.

According to the Ḥanafī school of thought, the pillar of *ṭalāq* is *lafz* or the pronouncement indicating the intention of *ṭalāq*.<sup>30</sup>

Whereas according to the Maliki school of thought, the pillars of *ṭalāq* are: 1) The *ahl* or the person who declares *ṭalāq* must be capable of declaring it; 2) *Qaṣd* or the words expressed clearly indicates the husband's resolve to dissolve the marriage even if unintentionally; 3) *Mahal* or the marriage itself; and 4) *Lafz* or the pronouncement of *ṭalāq* whether clear pronouncement (*ṣarīḥ*), indirect (*kinayāh*).<sup>31</sup>

The valid conditions of a husband who pronounces *ṭalāq* are: he is at the age of puberty, he declares at his own free will and was not forced into it.<sup>32</sup>

While the valid conditions of the wife are: she is the legal wife of the husband proclaiming *ṭalāq*; and still under the care of the husband, which includes being within the period of *'iddah raj'ī*.<sup>33</sup>

The valid conditions of the pronouncement of *ṭalāq* are: clear pronouncement (*ṣarīḥ*), indirect (*kinayāh*) or through an indication.<sup>34</sup>

*“Besides that, it is well known in Sharī'ah that divorce takes place when the words are uttered, written or indicated by a gesture that takes the place of speaking. This is something that is between the husband and his Lord if no one hears him say that.”*<sup>35</sup>

The jurists concede that a divorce is valid when the words (either in Arabic or any other language that indicates the meaning of divorce) are uttered, written or indicated by a gesture that takes place of speaking.<sup>36</sup>

The above pillars as outlined by the four Imams (Shāfi'ī, Mālikī, Ḥanbalī and Ḥanafī) do not mention the requirement of witnesses or having the wife be aware of the declaration. Thus, the divorce is valid according to these four imams as long as the communication used clearly indicates the husband's intent of a divorce. The conditions above also do not state a prerequisite of a mutual agreement between the husband and the wife. This means that *ṭalāq* is still viable once the husband proclaims

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<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> Mohamad Rifai, (Dr.), *Ilmu Fiqih Islam Lengkap* (Singapore: Pustaka Nasional PTE LTD, 1988), 443.

<sup>33</sup> Mustafa Hj. Daud, *Perkahwinan menurut Islam* (Utusan Publications, 1991), 197.

<sup>34</sup> Mohamad Rifai, *Ilmu Fiqih*, 443-444.

<sup>35</sup> Muhammad Saed Abdul-Rahman, *Islam: Questions and Answers - Jurisprudence and Islamic Rulings*, Part 5, (London: MSA Publication Limited, 2007), 14-15.

<sup>36</sup> Wahbah al-Zuhaili, *Fiqih Islam*, 336.



it, even if it is against the will of the wife, without a witness or even without the wife's knowledge. This also includes *ṭalāq* communicated via a text message should it fulfil the conditions and is proven valid.

However, Imamiyyah *fiqh* scholars disagree with the opinion of the four Legal Schools mentioned above when it comes to matters pertaining to witnesses and divorce through SMS. The Imamiyyah scholars claim that witnesses are required for the declaration of *ṭalāq*.

In this issue, SIS make recommendations and suggestions that they believe it can give justice to the women involved. The group does not mention which Muslim scholar's opinions they refer to, nor do they refer to any evidence from the Qur'an and Hadith when commenting on these issues.

However, in their recommendation regarding these issues, SIS has mentioned Sūrah *Al-Nisā'* 4:35. The group recommends that the declaration of *ṭalāq* should only be recognised once it is approved by the court. According to SIS, this concept is consistent with verse 35 of Sūrah *Al-Nisā'*, which outlines the procedures of appointing a *ḥakam* and discourages arbitrary divorce.

Allah (s.w.t.) says:

*If ye fear a breach between them twain, appoint (two) arbiters, one from his family, and the other from hers; if they wish for peace, Allah will cause their reconciliation: For Allah hath full knowledge, and is acquainted with all things.*  
(Al-Nisā' 4:35)

According to Dr. Azizah, verse 2:229 must be taken into consideration, particularly the meaning of "*al-ṭalāq marratayn*". She claims that there is no mention that the declaration of divorce must take place within the court. While in verse 4:35, the *ḥakam* should be appointed, but only before a divorce is declared and not after it. A married couple can appoint a *ḥakam* to help them reconcile their differences in their resolve to avoid a divorce. However, in verse 2:229, *ṭalāq* can still ensue (when the husband declares *ṭalāq* upon his wife).<sup>37</sup>

Dr. Azizah further highlights another aspect that must be looked into, which is the responsibility of the husband to not declare a divorce arbitrarily. If the law requires the couple to undergo a court proceeding before a divorce is granted, the husband may declare *ṭalāq* more than

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<sup>37</sup> Azizah Mohammad (Associate Professor, (Dr.), in an interview with the writer, April 16, 2014.

once and this may further complicate the matter. Therefore, the validation of *ṭalāq* without the court's approval is a precautionary measure. During the reign of 'Umar al-Khaṭṭāb, if a man declares *ṭalāq* three consecutive times, the divorce will be valid as the third *ṭalāq*. This law was put in place to mitigate the issue of men declaring *ṭalāq* arbitrarily. She stresses that Allah gives the right of the declaration of *ṭalāq* to the husband; therefore he must be cautious and vigilant in exercising this right. In addition to this, the practice of other Muslim societies must also be reviewed and looked into.<sup>38</sup>

Dr. Azizah questions whether the recommendation made by SIS is pervasive in other Muslim countries. The fatwas must be taken into consideration and till today the literal meanings of the verses indicate divorce as a matter that should not be taken lightly by the husband. In addition to this, both the Qur'an and Hadith do not mention that a court proceeding is required for a divorce. However, the responsible authorities must monitor cases where *ṭalāq* is proclaimed outside of court. If the pronouncement of *ṭalāq* is not valid outside of court, there is a concern that *ṭalāq* will be freely declared and widespread among society.<sup>39</sup>

From the Islamic perspective or *ḥukm*, she states that the pronouncement of *ṭalāq* outside the court is considered valid. She makes reference to verse 2:229 – is the declaration of *ṭalāq* as mentioned in this verse to be done in court? Based on the opinions of jurists, there are no references claiming that the pronouncement of *ṭalāq* must be done in court.<sup>40</sup>

Dr. Azizah disagrees with the suggestion that the declaration of *ṭalāq* without the approval of the court is invalid as she is concerned with the circumstances that may ensue. Divorce is not a small matter and cannot be uttered at one's whim. If *ṭalāq* only be recognised in court, the declaration of *ṭalāq* outside of court will be taken lightly and arbitrarily. This is even more of an issue for those living outside of urban areas with inadequate access to court. Should the husband proclaim *ṭalāq* outside of court and it is not considered valid, would it be lawful for him to continue living with the wife within the perspective of Islamic law? These are issues that remain unclear and doubtful (*shubuhāt*).<sup>41</sup>

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<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

### The Issue of the Court's Technical Problems Relating To *Talāq*

SIS has highlighted the impact of existing provisions from section 47 and 48 as follows:<sup>42</sup>

(i) The wife has to go through several stages and a conciliatory committee as well as *hakam* if the husband does not agree to divorce her;

(ii) Subsection (4):<sup>43</sup> can add to the delay of the removal of a *hakam* and the appointment of another;

(iii) Subsection (5):<sup>44</sup> to obtain full power from their principal can burden the *hakam*; and

(iv) Subsection (6):<sup>45</sup> there are multiple procedures to go through before the stage that allows the court to appoint another *hakam* to give them the power to order a divorce. According to SIS, the husband does not have to go through such stages even if his wife does not agree with the divorce. However such procedures are put in place when the situation is the other way around.

SIS claims that in the case of *talāq* through mutual consent, the wife is told to be patient through counselling and is not given a complete explanation of the rights of both husband and wife with regards to divorce. According to SIS, this counselling process is irrelevant because it is much in favour of the husband.<sup>46</sup>

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<sup>42</sup> Sisters In Islam, "Memorandum Perbandingan Rang Undang-Undang Keluarga Islam Dengan Akta Undang-Undang Keluarga Islam 1984 (Januari 2002)", last modified October 22, 2014, <http://www.sistersinislam.org.my/news.php?item.29.8>.

<sup>43</sup> Section 48, Subsection (4): If the Hakam are unable to agree, or if the Court is not satisfied with their conduct of the arbitration, the Court may remove them and appoint other Hakam in their place.

<sup>44</sup> Section 48, Subsection (5): The Hakam shall endeavour to obtain from their respective principals full authority, and may, if their authority extends so far, pronounce one talaq before the Court if so permitted by the Court, and in that event the Court shall record that pronouncement of one talaq, and send a certified copy of the record to the appropriate Registrar and to the Chief Registrar for registration.

<sup>45</sup> Section 48, Subsection (6): If the Hakam are of the opinion that the parties should be divorced but are unable for any reason to order a divorce, the Court shall appoint other Hakam and shall confer on them authority to order a divorce and shall, if they do so, record the order and send a certified copy of the record to the appropriate Registrar and to the Chief Registrar for registration. 34 Laws of Malaysia ACT 303.

<sup>46</sup> Sisters In Islam, "Pembaharuan Proses Perceraian dan Tuntutan Sampingan Dalam Prosiding Mahkamah Syariah", last modified October 23, 2014, <http://www.sistersinislam.org.my/news.php?item.1066.8>.

SIS highlights that there are cases where the court does not take into consideration the women's issues. For example, one case states that a wife was forced under duress to agree to a condition where financial claims were dropped as imposed by the husband. SIS claims that the court takes no interest to intervene in order to safeguard the welfare and rights of the wife. Rather, SIS says that the court insists the husband and wife to discuss and convene outside of the court before the trial commences. SIS highlights that this is cumbersome to the wife, especially to those who do not know their rights in divorce.<sup>47</sup>

SIS also claims that a divorce is difficult when the woman requests for it, but it comes easily for when it is requested by the man. According to SIS, even when all circumstances show that the marriage cannot be saved and enough witnesses testified to support the divorce, the court would take unnecessary steps in extending the divorce procedure if the husband is not agreeable to it.<sup>48</sup>

### Analysis

The above issues highlighted by SIS are references to technical problems. If the claims of SIS are true, the court or the relevant authorities should take action to solve the problems that are faced by women in the process of divorce especially for those whose husbands are not agreeable to it. A proper study should also be conducted to investigate the claims made with regards to inequality faced by women in counselling and divorce procedures.

Besides that, SIS must also take into consideration of the fact that Islam does not encourage arbitrary divorce. Therefore, any blame on the court in this matter is unjust as the decision-making process is a time consuming affair due to the numerous considerations that must be accounted for. However, the court must also be aware of the claims made against them in handling divorce cases. The court must take the necessary steps to further improve their efficiency as unnecessary delay and lengthened periods of divorce procedures will burden both the husband and the wife.

When any form of reconciliation cannot be achieved between the husband and the wife, the last option is divorce.<sup>49</sup> If the court proceed-

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<sup>47</sup> *Ibid.*

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

<sup>49</sup> Al-Tuwajjiry , Muhammad bin Ibrahim, *The Book of Nikah* (Riyadh: Cooperative Office for Call & Guidance, 2000), 24;  
Muhammad Saed Abdul-Rahman, *Islam: Questions and Answers*, 28-29.

ings consume extended lengths of time in solving the problems of a divorce as claimed by SIS, the positive angle is possibly due to the court having the opinion that the marriage can still be saved. Thus, the court proceedings require more time to prevent unnecessary divorce. However, the negative side of this issue is that it will burden the parties involved.

### **Recommended solution by SIS**

SIS offers their solutions to overcome the problem of what they claim as unreasonably lengthy and unnecessary delay. The group recommends that the various levels of the committee and *hakam* should be consolidated into one group that has the authority to grant the divorce. SIS also suggests that the full power of *hakam* should be standardised when it is appointed.<sup>50</sup>

### **Analysis**

According to Dr. Raihanah, the above recommendation has been brought up by various parties, and not just by SIS. If the claim that there are unnecessary hurdles in obtaining the approval for a divorce is true, then this is an implementation issue. It does not only happen in the Shari'ah court, but it is also apparent in the civil court.<sup>51</sup>

Dr. Azizah agrees with the suggestion of SIS that various stages of the committee and *hakam* should be consolidated into one group of *hakam*. She also agrees that many steps to the procedure will further extend the length of the divorce proceeding. However, the court has already stipulated that the time frame for any divorce case must not exceed one year.<sup>52</sup>

### **Recommended solution by SIS**

Another solution that is offered by SIS is that the provisions in subsection (4), (5) and (6) should be replaced with the provision that gives full power to the *hakam* initially appointed. SIS recommends that the *hakam* that is appointed by the court should have full power, includ-

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<sup>50</sup> Sisters In Islam, "Memorandum Perbandingan Rang Undang-Undang Keluarga Islam Dengan Akta Undang-Undang Keluarga Islam 1984 (Januari 2002)", last modified October 22, 2014, <http://www.sistersinislam.org.my/news.php?item.29.8>.

<sup>51</sup> Raihanah Binti Haji Abdullah, (Associate Professor Dr.), Department of Syariah and Law, Academy of Islamic Studies, Malaya University), in an interview with the writer, April 8, 2014.

<sup>52</sup> Azizah Mohammad (Associate Professor Dr.), in an interview with the writer, April 16, 2014.

ing the power to grant the divorce if they are of the opinion that the divorce is necessary and both parties are unable to reconcile within six months of its appointment.<sup>53</sup>

### Analysis

According to Dr. Raihanah, this suggestion will shorten the length of the divorce procedure as the counselling committee will only stretch it longer, and most of the women who go to court for divorce have actually already made their decision to divorce after much consideration and counselling sessions. Making the decision to enter court for a divorce is arguably not an easy task for any woman, and when they do, their decision of a divorce is usually final. Therefore this recommendation will shorten the divorce proceeding.<sup>54</sup>

Whereas according to Dr. Azizah, conclusive research should be done before making any recommendation. Apparently, it looks easy, but the bureaucratic issues faced are unpredictable and unique to every situation. She mentions that in providing a suggestion, SIS should consider *maqāsid* Sharī‘ah. If the recommendation is in accordance with the *maqāsid* Sharī‘ah, it should not be a problem.<sup>55</sup>

As a conclusion, the problem solving offered by SIS on the court’s technical problems can be considered as long as it does not contradict with Islamic teachings. And, any problem solving from their recommendations and solutions that contradict the Qur’an and Hadith must be rejected.

### Conclusion

Based on the analysis of these selected issues, the study found that SIS often comes up with the views without referring to any Qur’anic verses or the Hadith of the Prophet. In addition, SIS does not mention which Muslim scholar’s opinions that it refers to when commenting on these issues. The study also found that SIS has misunderstood certain Qur’anic verses in giving its views. Thus, in providing solutions and views, SIS has to apply the proper method of *tafsīr* in order to obtain the accurate meanings of the Qur’anic verses. SIS is supposed to give em-

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<sup>53</sup> Sisters In Islam, “Memorandum Perbandingan Rang Undang-Undang Keluarga Islam Dengan Akta Undang-Undang Keluarga Islam 1984 (Januari 2002)”, last modified October 22, 2014, <http://www.sistersinislam.org.my/news.php?item.29.8>.

<sup>54</sup> Raihanah Binti Haji Abdullah, (Associate Professor Dr.), in an interview with the writer, April 8, 2014.

<sup>55</sup> *Ibid.*

phasis on the opinions of *Ahl al-Sunnah wa al-Jamā'ah* and should be equipped with adequate knowledge in highlighting the relevant issues particularly related to matters of jurisprudence in Islam. In addition, SIS must also take into consideration the issues of *maqāṣid Shari'ah* in providing the relevant solutions and suggestions. All views and solutions must be parallel with the injunctions of the Qur'an and Hadith. Meanwhile the recommendations and solutions offered by SIS on the court's technical problems can be considered as long as it does not contradict with *Shari'ah* or Islamic teachings. Any SIS views that contradict to the Qur'an and Hadith must not be acceptable, and the society must not be confused with the liberal interpretation in certain issues advocated by SIS. Therefore, it is important to study the issues pertaining to *ṭalāq* from the correct sources of knowledge. It is hoped that the finding of this study will contribute and benefit the Muslim society because it will reveal the true understanding on the issues related to *ṭalāq* from an Islamic perspective.

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