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## THE IMPLEMENTATION OF HAKAM IN SHARIAH JUDICIAL SYSTEM: A CASE STUDY IN SELANGOR

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### ABSTRACT

The practice of Hakam serves as a reconciliation process conducted in collaboration with appointed family panels and parties involved in divorce. Hakam also plays a role in obtaining the authority to pronounce talak (divorce) from the husband in the event of failed reconciliation. The issue is the abilities of the party's representative to resolve disputes on behalf the disputant parties that deals with matrimonial cases. Therefore, the objective of this study focuses on the to identify Hakam from Islamic perspective, the implementation of Hakam in accordance with Shariah principles. The third objective is to examine the effective role of Hakam in resolving cases against disputing parties. The final objective of this study is to analyse the challenges of Hakam in Shariah Judicial System in Selangor and suggesting the resolutions. The methodology employed by the researcher is qualitative research method such as referring to books, journals, case study and interview session with the officer in charge for Hakam in Selangor. The study identifies existing gaps in the implementation of Hakam that can be clarified and refined. Based on these findings, the study proposes recommendations for refining and clarifying the implementation of Hakam in Shariah courts.

**Keywords:** *Hakam, Implementation, Selangor, Challenges, Resolution*

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## 1. INTRODUCTION

Marriage has been established for various reasons throughout history, and its purpose can vary depending on cultural, social, and religious contexts. For instance, companionship, Procreation and Family, Legal and Inheritance Rights, Social Recognition and Legal Protections. This matters also included in the teaching of Islam whereby marriage was the one of the practices by the Prophet SAW upon his life. Therefore, it clearly illustrates the beneficial of marriage was acknowledge by Islam.

Despite the happiness during marriage, it is undeniable to arise an argument between the spouses. It is originated from vary issues such as misunderstanding and lack of communication by the spouses occasionally affecting their relationship. If the argument may not be able to resolve between the spouse, hence it may be settled through different settlement. In the teaching of Islam, there is a solution to clear the argument between spouses which is appoint the arbitrator known as Hakam.

According to an etymological perspective, *Tahkim* means to empower someone to impose a punishment on someone or to make (delegate) the imposition of a punishment to something that belongs to you, to someone else or "the selection of an individual by two disputing parties with their mutual consent to settle their dispute and claims. Meanwhile, from another terminology, it means a process in which disputing parties appoint someone to be an arbitrator to resolve their disputes according to Shariah Law.

According to Kaedah-kaedah Hakam (State of Selangor) 2014, Part 1, Section 2, Hakam can be defined as an arbitrator which someone appointed by the parties or by the court to settle constant quarrels (*syiqaq*) between husband and wife. Hakam also is a peacemaker empowered by the disputing parties, husband, and wife, or by the court to settle disputes (*syiqaq*) between husband and wife that arise in order to achieve peace. (Muslem & Abd Samat, 2020)

On top of that, Hakam will conduct the session known as Majlis Tahkim. Majlis Tahkim can be defined as the Arbitration Tribunal is a session of dispute resolution (*syiqaq*) involving a meeting between the husband and wife along with the arbitrator for the purpose of reconciliation or divorce through the pronouncement of talak or through khuluk. (Kaedah-kaedah Hakam (State of Selangor) 2014).

There is definition of Hakam in the Qur'an:

□ وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمَا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا  
خَبِيرًا ۝ ٣٥ □

If you [believers] fear that a couple may break up, appoint one arbitrator from his family and one from hers. Then, if the couple want to put things right, God will bring about a reconciliation between them: He is all knowing, all aware.

An-Nisa', verse 35

The Quran recognises the right to appoint arbitrator (Hakam) in the context of a household on the verge of collapse. Therefore, Islam provides an opportunity to mend the marriage. This can be done by seeking a Hakam or judge who can serve as a peacemaker between the husband and wife.

Moreover, this verse is a recommendation from the Quran regarding conflicts occur within a household and the last option if the wife continues to be disobedient after being advised, separated, and even disciplined. This verse also highlighting the explicit endorsement of amicable conflict resolution within the Islamic context. It emphasizes that, in the event of a dispute between a husband and wife, there is a strong encouragement to seek an amicable resolution through a method recognized in Islam known as *Tahkim*.

The verse further clarifies that *Tahkim* involves settling a dispute by appointing a Hakam with the authority to render a judgment on the matter. The crucial aspect here is the judgment issued by the Hakam holds legal significance and is binding on the involved parties. In essence, this means that the disputing parties are obliged to abide by the decision made through the arbitration process.

The appropriate step to be taken by the husband or the parties involved, who are capable, is to appoint a Hakam play a role as a peacemaker between them. The Hakams can be appointed from the wife's and the husband's side or through the involvement of one of their families. The primary Hakam should ideally be the parents or another respected individual, and in this case, the peacemaker can also serve as a counsellor. If this effort fails, then the marriage can be dissolved according to the judgment fairly.

The method of Hakam or "*Tahkim*" is one of the alternative dispute resolution methods, alongside mediation and conciliation. The Hakam, on the other hand, is an extension of the Council of Reconciliation, which prioritizes resolving divorce cases initiated by the wife. The provisions of Practice Directive No. 1 of 2006 allow for the resolution of cases through the Hakam method. The Shariah Judiciary Department (JKSM) issues Practice Direction after discussions in the Meeting of the Shariah Court Practice Directive Main Committee. The aim is to standardize the management and administration and serve as a reference for judges and Shariah officers.

There are a few methods of resolution for these disputes apart from Majlis Tahkim but involving Alternative Dispute Resolution such as mediation, arbitration, and sulh. The main difference between them is that arbitration is a conflict resolution process between two parties who mutually decide to refer their claims to an impartial third party, ensuring an unbiased and fair decision. The appointed arbitrator acts as a neutral mediator responsible for overseeing the procedure and making necessary decisions to resolve the dispute and the arbitrator chosen privately necessary decisions to resolve the dispute. (Omar & Markom, 2007)

Meanwhile mediation serves as an alternative approach involving a third party to facilitate dispute resolution. However, unlike an arbitrator or a judge, a mediator lacks the authority to impose a resolution on any specific party. Typically, mediation is a voluntary process, allowing the involved parties to select an external facilitator's representative. The proceedings are kept confidential, maintaining privacy, and excluding the public. (Omar & Markom, 2007)

On the other hand, the role of a Hakam in Islam, is to establish harmony and maintain good relations between conflicting parties, especially spouses, to achieve peace. This is because a hakam is not necessarily appointed in all family conflict cases but specifically in cases where there is evident constant quarrel (*shiqaq*) with an unknown cause of the dispute (Nurul Syafini Abdul Rahman, 2020).

In Malaysia, Hakam governed by jurisdiction from 14 states which made by each 14 State Legislative Assembly. The reason is the jurisdiction of religious matters falls under State Legislatures. It is stated in Schedule 9, List II of Federal Constitution which State Legislatures have the power to administer and in control of Islamic Law in their own state, respectively.

Hence, each states have different implementation governing Hakam. Nevertheless, all the jurisdictions were parallel according to teaching of Islam.

## 2. LITERATURE REVIEW

(Noor, et al, 2023). in their article title "Effectiveness of Tahkim in Selangor Shariah Courts" explored the effectiveness of Tahkim based on organizational effectiveness goal approach. This article uses method qualitative approach that is based on library research and interviews. The researchers conducted a comprehensive investigation into the application of Tahkim as dispute resolution mechanism within the Shariah Courts of Selangor. Their findings revealed the effectiveness of tahkim cannot be concluded due to the effectiveness of tahkim was perceived differently among the interviewees. The result of this study may contribute to provide alternatives to Islamic law scholars in interpreting organizational effectiveness within Syariah courts as well as providing alternative paradigms in perceiving effectiveness of a marital dispute resolution.

The next article title "Mekanisme Majelis Tahkim Dalam Penyelesaian Sengketa Rumah Tangga" (Muslem & Abd Samat, 2020). focusing on the analysis of Section 48 of the Islamic Family Law (Selangor) Enactment No. 2 of 2003 regarding the addition of the arbitration methods in the Shariah Lower Courts of Shah Alam, Selangor, Malaysia. The researchers employ a descriptive method of analysis. Their findings acknowledge the mechanism of the Majlis Tahkim in the settlement of household disputes in Shah Alam Shariah lower court using the essential methods and they reveal there are several advantages between explaining Hakam and the process of Majlis Tahkim in detail as a guide to Hakam. The result of this study may contribute to Shariah Court in resolving many cases at the Court table by the implementation of Hakam.

(Jusoh, et al,2022) in their article title "The Practice and Implementation of *Tahkim* in Cases of Unilateral Divorce Petitions" focusing on the Shariah Courts of Selangor and Sarawak. The authors employ a comparative research method to investigate the practices and implementation of *Tahkim* which is an Islamic arbitration process, specifically in cases of divorce petitions where one party does not consent. This study applies qualitative study that employs a document analysis approach and semi-structured interview methods in data collection. The results of the study found that there are several issues related to the practice and implementation of *Tahkim* in the State of Selangor and Sarawak such as non-compliance by the legal system with legal ethics and the procedures of the Majlis Tahkim and most divorce cases do not reach the Majlis Tahkim due to the logistical problems of the parties. The result of this study potentially leads to enhanced efficiency of Majlis Tahkim in Selangor and Sarawak.

Moreover, in the article title "Perceraian yang Dilakukan oleh Hakam di Mahkamah Rendah Syariah Petaling Jaya Selangor, Malaysia" (Nadzirah, 2022), this article highlighted execution by the Hakam, factors that cause justice can divorce and studied the Imam Syafi'i view of the divorce in lower syariah court of Petaling Jaya Selangor. This research uses data collection techniques with library and field studies. The findings of this study showed that the inauguration of hakam was made after the court agreed to the dispute (*shiqaq*) that is always

in effect in the period of marriage after the completion of peace affairs at the level of the peacemaker committee failed or did not find a way out. The result of this study may contribute to reveal the factors which cause hakam to divorce and the view from Syafi'i's school of thought in implementing Hakam.

Besides that, the article title "Penglibatan Jawatankuasa Pendamai dan Hakam dalam Penyelesaian Tuntutan Perceraian" (Salam & Mat Nayan, 2021). This study focuses on the history of functions, sources of authority, and methods of execution of conciliation committee proceedings and arbitration by hakam in carrying out their duties. The study adopts a qualitative method through interviews and analysis from scholarly papers, journals, and related books. The finding shows that the practice of appointing the Conciliatory Committee and Hakam is grounded and being as consultants of the parties to determine "*masalah*" if the marriage is continued or terminated due to talak. The result of this study may lead to enhance the measurement the appointment of Hakam respectively with the ability that equivalent to the burden of responsibility carry out by Hakam.

Other than that, in the article "Hakam Sebagai Medium Penyelesaian Alternatif Bagi Shiqaq Dalam Perkahwinan: Tinjauan Ringkas Terhadap Kaedah-Kaedah Hakam (Negeri Selangor) 2014," (Dimon, et al, 2014). The objective of this research is to provide a clear overview of the provisions and procedures for the implementation of Hakam in the state of Selangor based on the relevant laws. According to the article's findings, the Kaedah-kaedah Hakam (State of Selangor) 2014 have incorporated specific and detailed elements regarding the implementation of the Hakam process through provisions that cover the appointment of Hakam, their functions, the procedures of the Majlis Tahkim, the Hakam committee, Hakam ethics, and complaints against the panel of Hakam. This study may contribute to provide benefits to the implementation of Hakam in other states.

Last article is "Hakam and Its Application in Divorce Cases in Selangor Syariah Courts" (Narowi, et al, 2021) in their article explain about the application of hakam as one of the marital dispute resolution mechanisms and analyse the implications of hakam towards marital disputes. This study found that the application of hakam in the courts as a dispute resolution mechanism was only restricted to divorce cases where mutual agreement between the litigants could not be achieved. This study is exploratory research whereby it employs an inductive approach to analyse the qualitative data. The result of this study may contribute to improvements particularly on substantive and procedural laws governing the hakam.

### 3. RESEARCH METHODOLOGY

This research apply qualitative research is a type of research that explores and provides deeper insights into real-world problems. It focuses on understanding participants' experiences, perceptions, and behaviours, addressing the "how's" and "whys" rather than quantitative measures. (Tenny, S, 2017) For this research, the method that been used is case study consist of analysis from related studies and published materials and field study which is interview.

Moreover, a case study is an in-depth study of one person, group, or event. In a case study, nearly every aspect of the subject's life and history is analysed to seek patterns and causes of behaviour. Case studies can be used in various fields, including psychology, medicine, education, anthropology, political science, and social work. (Kendra Cherry, 2022). For the case study, this research only focuses on the state of Selangor.

Briefly, the structured interview is based on a questionnaire with a sequence of questions, asked in the same order and the same way of all subjects of the research, with little

flexibility available to the researcher. The major objective is for neutral interviewers to obtain comparable information from a potentially large number of subjects. (Edwards, R, 2013). The researcher makes an interview with the Hakam' panel in Shariah court of Selangor.

#### 4. RESEARCH OBJECTIVE

1. To identify Hakam from Islamic perspective.
2. To discuss the implementation of Hakam in Shariah Judicial System in Selangor.
3. To examine the effective role of Hakam in resolving cases against disputing parties.
4. To analyse the challenges of Hakam in Shariah Judicial System in Selangor and suggesting the resolutions.

#### 5. HAKAM IN ISLAMIC PERSPECTIVE

##### 5.1. HAKAM IN AL-QURAN

In the concept of resolving cases through mediation or arbitration, it can eliminate the feelings of resentment between the disputing parties and strengthen the bonds of brotherhood among them (Najibah Mohd Zin, 2007).

Generally, Hakam was introduced in Al-Quran as the solution for the argument between the spouses. The practice of Hakam mentioned in Al-Quran in surah Al-Nisa' verse 35.

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا  
خَبِيرًا ۝ ٣٥ □

If you [believers] fear that a couple may break up, appoint one arbitrator from his family and one from hers. Then, if the couple want to put things right, God will bring about a reconciliation between them: He is all knowing, all aware.

An-Nisa', verse 35

In this verse, it is interpreted that Allah, the Almighty, mentions the first situation, which is when there is disobedience (*nusyuz*) from the wife. Then Allah mentions the second situation, which is when discord comes from both of them. The jurists say that if there is a disagreement between the husband and wife, the judge entrusts their affairs to a trusted person to resolve the issues between the conflicting parties. If their disagreement persists and escalates, the judge sends a trustworthy representative from the wife's family and a trustworthy representative from the husband's family to meet and examine their issues, either separating or maintaining their union. The lawmaker tends to favour reconciliation (Hamka, 2007).

This verse explaining the encouragement from Allah S.W.T to appoint Hakam as a third party which play role as an arbitrator in resolving disputes (*shiqaq*) between the spouses. Their quarrels are sometimes caused by their wives, and sometimes by their iniquities from husband's side. Hence, the appointment of Hakam is crucial to work as peacemaker between the disputants.

In the settlement of a dispute between a husband and a wife, it is necessary to prioritize the discussion and to find a solution as a means of neutralizing the crumbling circumstances. It is an attempt to restore the disputed husband and wife to the unity of the household.

A good Muslim is trying to reconcile two people who are argued and leads them to the doors of good to them, as Allah says in the Qur'an:

□ ﴿ لَا خَيْرَ فِي كَثِيرٍ مِّن نَّجْوَاهُمْ إِلَّا مَنْ أَمَرَ بِصَدَقَةٍ أَوْ مَعْرُوفٍ أَوْ إِصْلَاحٍ بَيْنَ النَّاسِ وَمَن يَفْعَلْ ذَلِكَ ابْتِغَاءَ مَرْضَاتِ اللَّهِ فَسَوْفَ نُؤْتِيهِ أَجْرًا عَظِيمًا ۝ ١١٤ ﴾ □

There is no good in most of their secret talk, only in commanding charity, or good, or reconciliation between people. To anyone who does these things, seeking to please God, we shall give a rich reward.

An-Nisa', verse 114

## 5.2 HAKAM IN SUNNAH

In teaching of Islam, it is recommended to speak with good news (even if it is a lie) when we find two of our relatives were argued together. It is supported by the hadith of Rasulullah S.A.W.

حدثنا عبد العزيز بن عبد الله حدثنا إبراهيم بن سعد عن صالح عن ابن شهاب أن حميد بن عبد الرحمن أخبره أن أمه أم كلثوم بنت عقبة أخبرته أنها سمعت رسول الله صلى الله عليه وسلم يقول : (ليس الكذاب الذي يصلح بين الناس فيمني خيرا أو يقول خيرا).

(رواه مسلم)

This Hadith clearly shows us It is not a sin, as hadith by Imam Bukhari, that the Prophet (peace and blessings be upon him) had been. This hadith was narrated by Abdul Abdul Aziz bin Abdullah, The Prophet (peace and blessings of Allah be upon him) said: "It is not a liar who makes peace between men, then exaggerates good or speaks good."

The purpose of the sign above is then these two Hakam (peacemakers). It is the obligation of the hakam to redress a spouse who is in a state of disagreement. It is compulsory to investigate who has committed disasters and misdeeds between husbands and wives, so that the two hakam may apply justice to the opposing parties, in order to restore peace to the household of this husband and wife back into the peace and harmony life.

## 5.3 HAKAM IN SIRAH PROPHET MUHAMMAD SAW

The Prophet Muhammad (peace be upon him) also appointed and acknowledged Sa'ad bin Muaz as an arbitrator to pass judgment on the Bani Quraizah, and they agreed to accept the appointed arbitrator's ruling. During the distribution of zakat funds among the Bani al-Anbar, the Prophet Muhammad also acknowledged the judgment made by al-A'war bin Bashamah.

In historical records, the practice of arbitration (*tahkim*) was carried out by the companions during the Battle of Siffin between Ali bin Abi Talib and Mu'awiyah bin Abi Sufyan. The conflict at that time sparked warfare among Muslims and left a negative impact within the Muslim community itself. Some opinions even suggest that the conflict led to the emergence of factions or groups within Islam. The method proposed by the companion of Prophet Muhammad, Amru Bin As, to end the dispute between the conflicting parties is one of the peaceful methods in Islam. Amru Bin As expressed in his slogan (Rasyad Hasan Khalil, 2009):

"الحكم للقرآن لا للسيف "

"Judging by the Qur'an, not by the sword."

"The meaning of judging by the Qur'an is to return to the book of Allah, and the meaning of not using the sword is not engaging in war among fellow Muslims." In the negotiation led by Amru bin As, the Qur'an served as the arbitrator because the issue at that time could not be resolved independently by the parties involved. They saw the Qur'an as a book capable of reconciling them. From one perspective, Amru bin As's actions can be considered as arbitration because he acted as a third-party establishing rule to bind both parties by referring to the Qur'an. Although the conflict resolution through the arbitration method offered by Amru bin As did not completely resolve the dispute, the method was used to address conflicts within Islam. The approach pioneered by Amru bin As serves as a scholarly reference in Islam and can be further developed for peaceful conflict resolution in the future.

## 6. THE IMPLEMENTATION OF HAKAM IN SELANGOR

The implementation of Hakam in the Shariah Court occurs after the court confirms the persistence of ongoing conflicts (*syiqaq*) between the parties during the marriage, following unsuccessful reconciliation attempts at the Committee for Reconciliation or encountering an impasse. Hakam may include close relatives, specifically two impartial individuals (Hakam), well-informed about the family issues of the conflicting parties, acting on behalf of the husband and wife. The person appointed by the parties to adjudicate these disputes is called the Hakam or Muhakam.

The council or meeting held for this purpose is called the *Majlis Tahkim*. One of the purposes of appointment of Hakams is Hakam must actively seek full authority from the principals. Additionally, the husband's Hakam may be authorized to pronounce *talak* on behalf of the husband. The session through these Hakam is governed by court directives and must adhere to Shariah Law. If the Hakams deem divorce appropriate but are unable to order it for other reasons, the court may appoint another Hakam for the same process.

In cases where the husband's Hakam refuses to pronounce divorce but requests a redemption *talak* divorce, and the wife's arbitrator agrees, the court may direct the divorce to be executed through redemption *talak*. The entire process, encompassing all proceedings, including Hakam, typically takes six months to a year to conclude, contingent upon the cooperation of the parties and the husband's presence in court. However, if the husband is absent and fails to appoint a Hakam, the proceedings cannot move forward. In such instances, the wife's recourse is to seek the dissolution of the marriage through alternative methods outlined in the Islamic Family Law Act or Enactment in Malaysia, such as through the *Fasakh* or *Taklik* processes.

Furthermore, regarding the issue of the binding effects of Hakam power, (Nur Khalidah Dahlan, et al, 2017), state that if both parties agree to a decision, then that decision will bind the parties, be final, and cannot be appealed unless any party can identify any defects in the overall procedure. The pronounced divorce (*talak*) is also considered *Ba'in* divorce. (Mumtazah Narowi, et al, 2020).

Consequently, its implications are that reconciliation is not applicable to the husband and wife. (Alyasak Berhan, et al, 2016). This is supported by Section 18, *Kaedah-kaedah Hakam* (State of Selangor) 2014, which stipulates that the divorce decided in the *Majlis Hakim* is final, and no appeal is allowed.

Apart from the legal implications, the procedural implications of *Majlis Tahkim* are that the divorce decision made by the Hakam cannot be appealed, is final, and binds the



disputing parties. An appeal can only be made if there is a procedural defect, meaning the disputing parties can review it as deemed necessary.

From a social perspective, Hakam is an alternative divorce method that can alleviate the burden borne by the wife to free them from an unresolved and tenuous situation. This method is particularly helpful for those in difficult circumstances, especially those who are unfamiliar with lengthy legal procedures and high legal costs. The Hakam method also helps reduce the risk of technical errors in the proceedings. Although this method expedites the divorce process, there are some weaknesses. This leads to delays in the divorce process when one or both Hakams withdraw or when the court dismisses and cancels their appointment, which slows down the divorce process. Therefore, the Hakam method as one of the alternative divorce methods conducted in the Shariah Court is still relatively new and requires improvement, particularly in terms of substantive legal and procedural aspects related to arbitrators.

## **6.1 JURISDICTION OF SHARIAH COURT IN HANDLING HAKAM**

Hakam plays a role in helping and advice regarding the matters at hand in accordance with the existing law. They do not create or establish laws for issues that do not yet have legal provisions (Supriadi, 2008). Thus, the jurisdiction of Hakam derived by Practice Directive No. 1 of 2006 allows for the resolution of cases through the Majlis Tahkim. The Shariah Judiciary Department (JKSM) issues Practice Direction after discussions in the Meeting of the Shariah Court Practice Directive Main Committee. The aim is to standardize the management and administration and serve as a reference for judges and Shariah officers.

The Practice Directive of Shariah Courts 2006 was established to facilitate the appointment and engagement of Hakam. Issued by the Department of Shariah Judiciary Malaysia Department (JKSM), this directive delineates specific scenarios where the Hakam approach can be employed. These scenarios encompass:

- (a) Disputes between spouses arise from the wife's disobedience (nusyuz) or due to the husband's oppression, or when there is uncertainty about the truth in the ongoing dispute.
- (b) Disputes and mutual accusations of both parties failing to fulfill their roles as husband or wife.
- (c) Both parties accusing each other of inappropriate relationships with individuals of the opposite gender beyond Shariah limits.
- (d) Accusations related to negligence in fulfilling responsibilities toward the children in the marriage.
- (e) Unsubstantiated complaints by the wife were dismissed by the Sharia Court due to a lack of evidence, and the court observes that conflicts persist.
- (f) Any actions causing harm to the wife.

In Selangor, Kaedah-kaedah Hakam (State of Selangor) 2014 were instituted to ensure the effective implementation of the Hakam approach. These rules were formulated to utilize the authority granted by Section 48 of the Islamic Family Law Enactment (State of Selangor) 2003. Essentially, Section 48 delineates the responsibilities of the Hakam in handling ongoing conflicts between spouses and alleviating enduring tensions. This necessity stems from Section 47, wherein the parties involved do not mutually agree on divorce through talak or a court order.

## **6.2 HAKAM RULES (SELANGOR STATE) 2014**

The Hakam Rules 2014, introduced by the Selangor State Shariah Judiciary Department (JAKESS), are additional regulations to the provisions of arbitration in Section 48 of the

Islamic Family Law Enactment (State of Selangor) 2003. It consists of 34 provisions covering parts I to VII, which include Preliminary, Appointment of Hakams, Functions, Procedures of the Majlis Tahkim, Tahkim's Committee, Hakam's Ethics, Complaints Against the Majlis Tahkim Panel, and General Matters. Schedule 1 below provides a detailed breakdown of the contents of these Rules.

Bil	Perkara	Peruntukan
I	Permulaan	Kaedah 1. Nama dan permulaan Kaedah 2. Tafsiran
II	Pelantikan Hakam	Kaedah 3. Kuasa Mahkamah Kaedah 4. Pelantikan Hakam Kaedah 5. Tatacara pelantikan Hakam Kaedah 6. Pelantikan anggota Panel Hakam Kaedah 7. Penamatan pelantikan anggota Panel Hakam Kaedah 8. Kelayakan seorang Hakam
III	Fungsi	Kaedah 9. Fungsi Hakam Kaedah 10. Tanggungjawab Hakam
IV	Tatacara Majlis Tahkim	Kaedah 11. Tatacara Majlis Tahkim Kaedah 12. Penentuan jenis perceraian oleh Hakam Kaedah 13. Keengganan suami atau isteri hadir dalam prosiding Majlis Tahkim Kaedah 14. Laporan Majlis Tahkim Kaedah 15. Sighah talak dan khuluk Kaedah 16. Tempoh pelaksanaan Majlis Tahkim Kaedah 17. Pemberhentian prosiding Majlis Tahkim Kaedah 18. Keputusan Majlis Tahkim Kaedah 19. Merekod lafaz talak dan mendaftar perceraian Kaedah 20. Kehadiran Peguam Syarie dan pihak lain
V	Jawatankuasa Hakam	Kaedah 21. Penubuhan Jawatankuasa Kaedah 22. Keanggotaan Jawatankuasa Kaedah 23. Mesyuarat Jawatankuasa Kaedah 24. Fungsi Jawatankuasa
VI	Etika Hakam	Kaedah 25. Etika Hakam
VII	Aduan Terhadap Panel Hakam	Kaedah 26. Kawalan Panel Hakam Kaedah 27. Aduan terhadap Panel Hakam Kaedah 28. Siasatan Jawatankuasa Kaedah 29. Pembatalan pelantikan
VIII	Am	Kaedah 30. Tempat Majlis Tahkim Kaedah 31. Daftar Panel Hakam Kaedah 32. Bayaran elaun Hakam Kaedah 33. Rujukan kepada Hukum Syarak Kaedah 34. Sekatan

Table 1: Provisions of the Hakam Rules (State of Selangor) 2014.

Table 1 shows that the provisions in the Kaedah-kaedah Hakam 2014 are very clear and detailed in relation to the guidelines for the enforcement of matrimonial matters in the state of

Selangor. This is because the Hakam's provision in Section 48, Enactment of the Islamic Family Act (State of Selangor) 2003, is basic and general only concerning the appointment and handling of Hakam's processes for cases involving shiqaq, Section 47 divorce applications (divorce by pronouncement) that did not get the consent of the husband and wife. The provisions contained in the Kaedah-kaedah Hakam 2014 (State of Selangor) can help the parties concerned understand the actual process of abuse as an alternative means of settlement in cases involving shiqaq between spouses.

### **6.3 ETHICS OF HAKAM**

Generally, the ethics of Hakam were described in Kaedah-kaedah Hakam 2014 2014 in section Part VI, Section 25. This Section highlights the ethics must followed by Hakams during carrying out their duties. The ethics mentioned in Section 25 of Kaedah-kaedah Hakam 2014 2014 were separate into 5 subsections of ethics begin with main purpose the appointment of Hakam till to emphasize the obligations, procedure in conducting Majlis Tahkim, and the dos and don'ts in their work.

The guidelines for Hakams, as mentioned above, begins with Section 25 (1) of Hakam Rules 2014 with emphasize the earnest effort required to efficiently resolve Hakam sessions, adhering to procedures and timeframes.

The Section 25 (2) of Hakam Rules 2014 mentioned Hakams are expected to uphold justice in line with Shariah Law.

Moreover, Section 25 (3) of Hakam Rules 2014 indicates the Hakam in avoiding engagement in Majlis Tahkim when not in a composed state and ensuring they remain open, fair, and unbiased throughout the proceedings. It emphasizes that Hakam must align their actions with the principles of justice in accordance with Shariah Law. This involves refraining from participating in Majlis Tahkim when not in a composed state and ensuring an ongoing commitment to openness, fairness, and impartiality throughout the entire arbitration process.

Additionally, Section 25 (4) of Hakam Rules 2014 highlighting the Hakam must refrain from favoritism, always maintain impartiality, preserve the confidentiality of Hakam matters unless directed otherwise by the relevant court, avoid conflicts of interest, possess expertise in the disputed matter, and reject requests to serve as witnesses or advisors for parties involved in Majlis Tahkim they have conducted.

Lastly, Section 25 (5) of Hakam Rules 2014 emphasizing the Hakams are prohibited from engaging in behaviors that may reasonably arouse suspicion of personal bias, misuse of position, dishonesty, or neglect of duties to safeguard their own interests, the court's reputation, and the integrity of the arbitration process.

## 6.4 JUDICIAL PROCESS FLOW CHART



Figure 1: Judicial Process Flow Chart for Hakam in Selangor

(Sources: Jabatan Kehakiman Syariah Negeri Selangor)

A judicial process flow chart is above outlining the sequential steps and procedures involved in the legal resolution of a case within the judicial system. It portrays a comprehensive roadmap, illustrating the journey of a case from its initiation to its conclusion. Typically, the flow chart begins with the conviction of shiqaq, followed by the assignment of Hakam and the proceeding within Majlis Tahkim. The chart may detail the possible outcomes, such as settlements, judgments, or appeals, and it often incorporates decision points that guide the case's progression.

## 6.5 STATISTIC OF HAKAM CASES IN SELANGOR FROM JAKESS

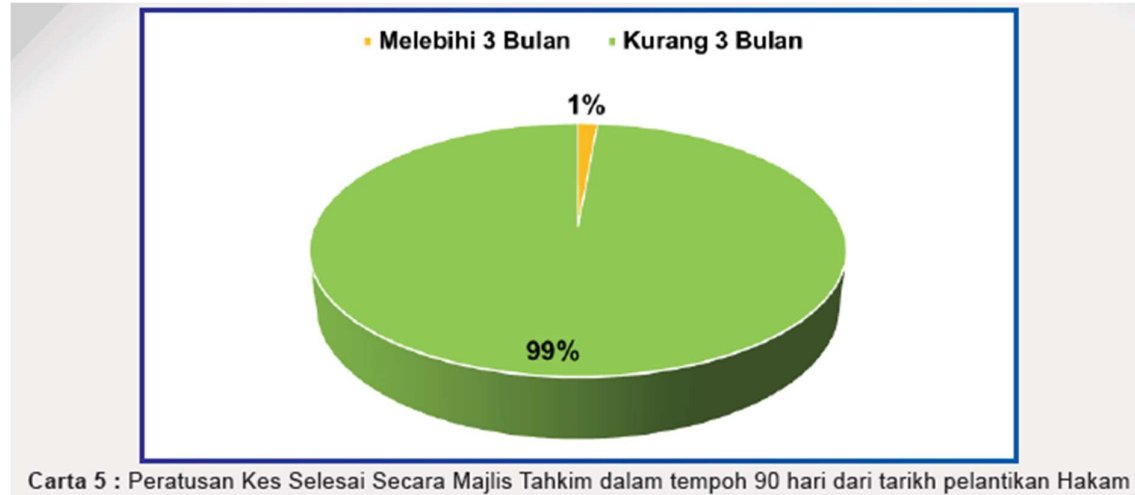


Figure 2

Sources: Jabatan Kehakiman Syariah State of Selangor, 2020

Figure 2 shows that from the cases that register, there are 99% cases recorded were succes with Hakam session during 90 days after the appointment of Hakam meanwhile only 1% cases that success after 90 days after the appointment of Hakam.

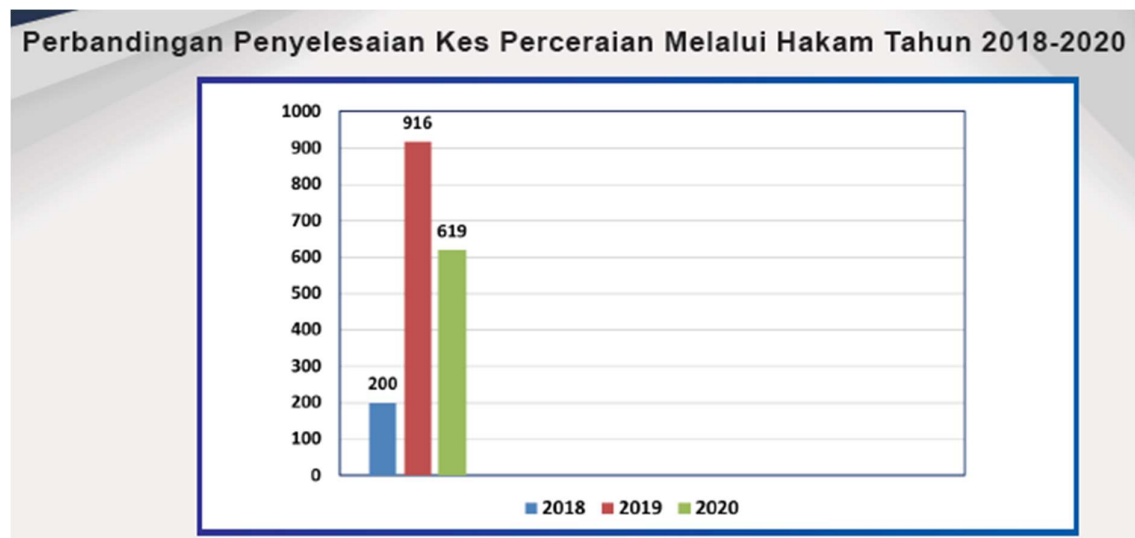


Figure 3

Sources: Jabatan Kehakiman Syariah State of Selangor, 2020

Figure 3 shows that the highest succes cases were recorded in 2019 which is 916 cases. This indicates the improvement of resolution divorce cases by Hakam in 2019 compared to 2018 as much 200 cases only. However, the succes cases recorded in 2020 decreased which is 619 cases only. Despite the decreasing of succes cases resolved by Hakam in 2020, the researcher believes Hakam is the best method to resolving disputes in matrimonial issues as the cases recorded in 2020 is above cases recorded in 2018 and the decreasing cases resolved in 2019 still remain unnotable.

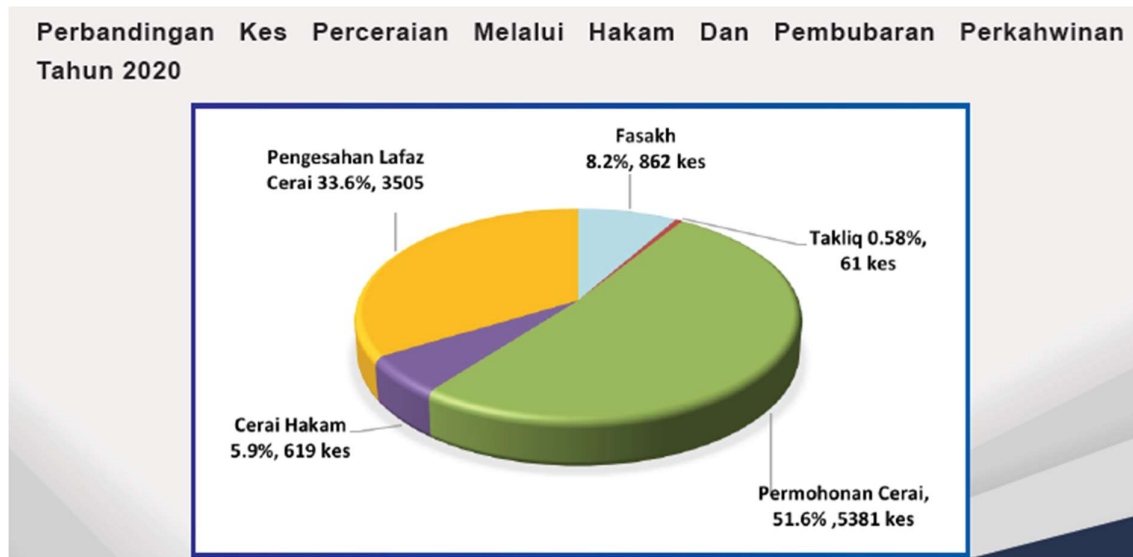


Figure 4

Sources: Jabatan Kehakiman Syariah State of Selangor, 2020

Figure 4 shows that the statistic of the comparison between divorce cases through Hakam and dissolution of marriage in 2020. Total cases application for divorce recorded 5381 cases equals to 51.6%. Then, the results for this application were separated into 4 methods of resolution which is Takliq, Fasakh, verification of divorce's pronounciation and divorce by Hakam.

The highest success cases resolved is verification of divorce's pronounciation recorded 3505 cases equals to 33.6%. Meanwhile, fasakh were in second place recorded 862 cases equals to 8.2%. Hakams were the third highest place success cases resolved reported by JAKESS which recorded 619 cases and equals to 5.9%. Divorce by Takliq recorded 61 cases and equals to 0.58%. The researcher may conclude Hakams still relevant as a method of divorce to resolve disputes between the spouses.

## 6.5 CASES OF HAKAM

In case of **Rosilah bt Abu Kasim lwn Abd Rahman bin Ibrahim**, the plaintiff has filed for fasakh (dissolution of marriage) against the defendant (her husband) on the grounds of the husband's failure to provide maintenance, constant quarrels, threats, and intimidation. The husband has denied these allegations. After hearing the testimony of both parties, the Honorable Judge believes that this case requires a thorough investigation for the benefit and welfare of both parties. The judge then ordered the appointment of a Hakam under section 47(5) of the Islamic Family Law (State of Selangor) Enactment 1984. This committee is chaired by the Chief Prosecutor of the State Shariah Court, with each party represented by one person.

The committee has carried out its duties and subsequently concluded that:

- (a) The marriage of both parties has lost its welfare.
- (b) The wife requests dissolution, but the husband is still affectionate.
- (c) The children remain in the custody of the wife.
- (d) Peace is unlikely to be achieved if both continue to live together because the wife remains adamant.

Based on this case, the Hakam has recommended expediting and deciding whether it should be a regular divorce or redemption of divorce (talak) since both parties are still not living together. The study found that the court allows divorce under the Hakam after finding the occurrence of constant quarrel (*shiqaq*). The study also found that in this case, the implementation of Majlis Tahkim was done after the parties failed in the reconciliation process under section 47 of the Islamic Family Law Enactment 1984.

Next, in the case of **Hamimah v. Irdy** at the Lower Shariah Court in Sabak Bernam, the plaintiff filed for divorce under section 47 of the Islamic Family Law (Federal Territories) Act 2003 due to the defendant neglecting his responsibilities as a husband and being involved in drug addiction.

In this case, the defendant did not agree to divorce the plaintiff because he still had affection for her. The court directed both parties to appoint a Hakam from among their family members. The decision obtained in the Majlis Tahkim was that both parties agreed to reconcile by entering into a written agreement.

In this agreement, the defendant agreed to change his attitude and take responsibility as a husband once again.

## 7. ANALYSIS

Based on the discussion above, the implementation of Hakam faces several challenges in handling the session. It is important for Hakam either from family or appointed by court named as Hakam Panel to perform their obligations according to the rules granted by the jurisdiction.

Based on the interview session with Hakam Panel, Mr Firdaus Azman currently works as panel for Hakam at Shariah Court Klang, He states several challenges faced by the panels.

First and foremost, Hakam encountered various safety risks in conducting Majlis Tahkim. This matter commonly occurred when one of the parties, especially on behalf of the husband, was dissatisfied with the result from Majlis Tahkim. He believes the power to pronounce divorce must belong to the husband. However, the procedure of Majlis Tahkim was contrary with his understanding.

In Majlis Tahkim, the jurisdiction to pronounce divorce was given to the Hakam as it was granted by the jurisdiction stated in Kaedah-kaedah Hakam Selangor 2014. The consequences from the misunderstanding by the husband leads to threatening the safety of the Hakam. For example, one of the Hakam was followed by the husband after the Majlis Tahkim finished. His reason is to express his dissatisfaction and anger with the decisions by the Hakam. Hence, the Hakam must protect himself from the threatened by and attack the party to certain his safety. This matter is tough for Hakam as it is related to his safety.

The next challenge is the procedure by Hakam in conducting Majlis Tahkim can be challenged. If one of the parties were dissatisfied with the decision from previous Majlis Tahkim, the party may appeal to the higher court to review the procedure of Majlis Tahkim. Generally, the jurisdiction of Hakam falls under Shariah Subordinate Court as stated in Enactment of Islamic Family Law of Selangor 2003. The enactment stated that divorce matter may held at Shariah Subordinate Court. However, the decision from Shariah Subordinate Court can appeal.

This matter occurs due to the hierarchy of the court. This is because Shariah High Court is more superior than Shariah Subordinate Court. Hence, it allowed Shariah High Court to

review the procedure of Majlis Tahkim held at Shariah Subordinate Court. The outcome from the appeal by the Shariah High Court will affecting the procedure of Majlis Tahkim held at Shariah Subordinate Court. If Shariah High Court identified the mistakes from the previous Majlis Tahkim, hence the new procedure or Majlis Tahkim must be conducted again.

However, if the Shariah High Court validate the previous procedure was right according to the Kaedah-kaedah Hakam Selangor 2014, thus the new procedure was not required. The result from this challenge may delay the result for the parties especially respondent to get out from their argument.

Moreover, Hakam also may be sued by the party. This is the toughest challenge for Hakam as they are not protected by any laws and regulations from being sued by the party. This issue was recorded in the case **Tan Sri Rozali Ismail v Abdul Hadi Hamad & ANOR**. In this case, the appellant, and his wife named as ('Justynn') were parties in a divorce proceeding conducted by Hakam in Shariah Subordinate Court. The appellant was dissatisfied with the divorce order by the Hakam and appealed to the Shariah High Court and the appeal was not have been judge yet. Meanwhile, the appellant filed two suits in Sessions Court against the two Hakams which have been appointed by Shariah Subordinate Court to conduct Majlis Tahkim sessions during their previous judgment. The court held a hakam, serving as an official of the Shariah Court responsible for carrying out the legal directives of the Syariah Court Judge, holds the right to judicial immunity in accordance with sections 14(1) and (2) of the Courts of Judicature Act 1964.

Based on the discussion above, the researcher believes each problem comes with a solution. Hence, the authoritative body governing Hakam always concerns them by conducting a meeting and discussion between administrative bodies and Hakams regarding all the challenges faced by them.

Every year, there will be a meeting of the Hakams to declare problems of them conduct by Shariah judiciary department of the state of Selangor (JAKESS). The purpose of this meeting is to assist JAKESS's employees resolve the obstacles faced by them during conducting Majlis Tahkim. Based on the problems stated by Hakam, JAKESS came up with a few solutions.

First and foremost, JAKESS provides a particular path for Hakams to avoid them from being followed by the dissatisfied party. Moreover, a certain room was also provided for Hakam to wait for a few moments while the dissatisfied party left the court. This effort is able to solve the problem involving the safety of the Hakam. Besides, it may ensure the argument between the Hakam and the party does not occur.

Next, the sued Hakams will be assisted by the authoritative bodies governing the institution of judiciary especially in hakam. According to the interview session, the Hakam Panel emphasized that there will be assistance by authoritative bodies in supporting and defending the Hakam. For example, Majlis Agama Islam Selangor (MAIS) and Majlis Agama Islam Wilayah Persekutuan (MAIWP) may interfere the proceeding as intervener in the proceeding relating sued Hakam cases. This will ensure the welfare of the Hakam will be preserved. This is because the decision executed by Hakams was in line with and accordance with the regulations and provisions by the judicial authorities. Hakam does not act as a family (household) disruptor but rather goes through the legal process provided within their capacity and the decision were certain to prevail justice accordance to the cases. Hence, the interference by the authorities were to support and uphold justice towards Hakam sued by plaintiff.



## 8. CONCLUSION

In conclusion, the implementation of the Hakam Method in the Islamic Marital legal system in Selangor is relatively new and it is supposed to be improved. However, this research shows that the implementation of hakam may give a lot of benefits to vary sides neither the disputants nor the Shariah Judicial System.

The solution offered by implementation of Hakam clearly benefited the disputants in resolving the dispute (*shiqaq*) occurs between them as the failure to reach an agreement during the appointment of peacemaker committee.

For the recommendation, there are several aspects that may be emphasized by JAKESS concerning the improvement service of the hakam. JAKESS underscores the importance of enhancing hakam services by focusing on specific criteria for hakam appointments. This includes testing candidates in the administration of Majlis Tahkim, emphasizing their communication skills, particularly in the context of Islamic Marital Jurisprudence. The organization advocates for a stricter screening process, prioritizing candidates with relevant Shariah education, recognized qualifications, and strong communication and counselling skills for effective performance as a Hakam.

Lastly, the recommendation for Hakam is to establish a specific law protecting the safety of Hakams, asserting that existing laws for ordinary individuals, particularly under criminal law, are deemed insufficient. The reason to emphasizes that the risks in Hakams are likened to those faced by professions like the police, who have specific legal protections. The researcher suggests a need to consider legal safeguards for Hakams, like those in place for the police, due to potential risks encountered during the resolution process, such as conflicts or disputes. The overall implication is that while arbitrators are Hakams covered by general legal frameworks, there may be a future need for more specific laws addressing their safety concerns.

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