

## Issues and Challenges in the Enforcement of Third-Person Interference in Marriage in the State of Kedah

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### Abstract

Divorce due to the interference of a third person in a marriage in Malaysia based on statistics is increasing and this issue is seen as more relevant to be discussed. The existence of a third person is of course the cause of domestic conflict that sometimes ends in divorce. In Kedah, the offense of interfering with a third party in a marriage has been provided for in the Syariah Criminal Offenses Enactment (Kedah Darul Aman) 2014. Despite this, until now, no third party has been dragged and charged in the Syariah Court in Kedah for this offense. One of the causes of this situation is the ignorance of the public about the law and weak evidence that causes the prosecution to be unable to continue. This study was conducted to identify the issues and challenges of enforcing the offense of third-party interference in marriage in the state of Kedah. These issues and challenges that exist need to be addressed by the authorities because they have interfered with the process of intervention and enforcement of third-party interference in marriage in the state of Kedah. The results of the study are expected to produce a solution to improve the enforcement of the offense of third-party interference in marriage in the state of Kedah. This study is expected to help the parties involved, especially religious enforcement officers, officers at the Kedah State Syariah Justice Department, share lawyers and Syariah Court judges to plan effective solutions towards empowering the intervention and enforcement of the offense of third-party interference in marriages in the state of Kedah.

**Keywords:** Issues, Challenges, Enforcement, Third Party Interference, Marriage.

### **Introduction**

Marriage is a pure bond between a man and a woman to live happily in a household. Marriage is required by Syarak not only for the enjoyment of sexual relations but many other functions that should be taken into account by every married couple. However, married couples cannot escape from various household conflicts. Many factors are the cause of conflict in the household either involving internal factors or external factors. The existence of a third person can also be the cause of domestic conflict. (Jusoh, Rahman & Dimon, 2020).

### **Issue**

Married couples cannot escape from various conflicts and disagreements while running a household. Conflicts that occur in marriage are caused by internal or external factors and this includes issues related to third parties. There is no clear definition of a third person in Malaysian law. The third person can be anyone from one's own family, be it parents, in-laws, siblings, brothers-in-law, cousins, and so on. The Shariah Criminal Enactment of the States in Malaysia provides for criminal offenses involving third parties. However, if viewed from the prosecution aspect of Sharia crimes, usually the focus of enforcement and prosecution only involves cases of Sharia crimes related to faith and moral offenses such as chastity. In addition, the third person can also consist of people outside the marriage such as ex-lovers of the husband or wife, secret lovers of the husband or wife, neighbors, colleagues, school alumni, employers, and so on. The existence of a third person can interfere with the relationship between husband and wife in marriage. Usually, they are the cause and cause of the seeds of disharmony in the household.

The definition of a middleman in the dictionary is an intermediary, a link, a hen's mother, a mediator, and a divider. Second, people who do not side with any of the conflicting parties, people who try to resolve a fight between two parties, peacemakers, referees, referees, and judges (Safarwan, 1995). While academics define the third person in the household as meaning that those who are categorized as the third person can refer between a male and female lover, a woman with a lesbian woman (same-sex relationships that are meant as musahaqah and fornication) (Al-Zuhaili, 1991), men with gay men (anal intercourse between men or women except the wife's anus), family members, relatives, siblings, parents or grandparents (Bakar, 2013). According to Musa Awang (Metro Daily, 2013), the third person in the household can be anyone. It could be a known outsider and it could be an unknown person. This means that anyone can be categorized as a third person, whether it is a close relative or a close relative, not to mention someone who has never been known. Noor Aziah (Utusan Malaysia, 2010) categorizes this third person as a lover, parents, in-laws, family, and the public are also categorized as a third person. The definition of 'third person' according to Section 37 of the Syariah Criminal Offenses Act Federal Territories (1997) refers to "any person who prevents a married couple from living as husband and wife, while section 38 of the same act states any person who incites, forces or persuades men or women to divorce or neglect their duties and responsibilities as husband or wife is an offense." In Selangor, there are three provisions involving third parties, which are Sections 32, 33, and 34 of the Syariah Criminal Enactment (State of Selangor 1995). Any party that persuades a husband or wife to run away, any party that prevents a husband and wife from fulfilling their responsibilities, and any party that incites to persuade husband and wife to divorce or neglect responsibilities in

the household can be fined up to RM5,000 or imprisoned for up to three years if convicted. The interpretation of the third person can also involve family members in one's own family such as mother-in-law and so on.

Divorce cases are increasing especially among young couples. A study conducted by the National Population and Family Development Board, the Fifth Population and Family Study, has identified some of the main causes of divorce or separation among young people throughout Malaysia. For female respondents, one-third of them stated that the main reason for their divorce was because of a lack of understanding, followed by cheating husbands and irresponsible husbands. For male respondents, more than half of them stated that the main reason for their divorce was a lack of understanding, followed by the intervention of in-laws and cheating wives. , a statistic of tribunal applications from the National Registration Department from 2013 to 31 May 2019 has shown three main categories of problems that have been recorded, namely financial problems recording a total of 17,359 cases while for cases of third party interference recording a total of 6,574 cases while for cases of abusive behavior both physically and mentally recorded as many as 4,884 cases. The statistics mentioned above show that divorce by the interference of a third person occupied the second step and this needs to be taken seriously even though the law to deal with third-party interference exists in the State Sharia Criminal Enactment its enforcement is still seen as vague and fragile without the existence of a standard operating procedure to prosecute the party who is alleged to be a third party who interferes someone else's wedding.

**Legal Provisions Dealing with Third Persons in the Household According to State Sharia Criminal Enactments** In general, crime refers to evil acts that are strictly prohibited, either doing anything that is prohibited or leaving something that is ordered. Therefore, punishment can be imposed on people who leave the responsibility that must be carried out or do something that is prohibited by the syara'. So the scholars agreed to divide Islamic crimes into three parts, namely hudud, qisas, and ta'azir because the forms of crime differ from each other and take into account the question of God's rights or human rights. According to the President of the Syarie Lawyers Association, Tuan Musa Awang, this law already exists in Malaysia but is not enforced. It may be that the public does not know about the law or the weak evidence makes the prosecution unable to proceed, (Metro Daily, 2017). A total of 12 percent of divorces in this country are due to third-party factors. Most of the reported cases involve physical or even spiritual acts (witchcraft). Disturbance in a physical form usually involves a love triangle or the couple playing three sticks. (Daily News, 2012). JKSM Director-General Tan Sri Ibrahim Lembut said the action against the third person will be enforced more firmly and widely in the Federal Territory by the Shariah Criminal Offenses Act 1997 (Metro Daily, 2013).

The legal provision used to deal with the issue of the third person in the household is according to the Selangor State Syariah Criminal Enactment (1995) (EJSS) under section 32, section 33, and section 34 of part V of miscellaneous offenses. Section 32 provides for persuading a woman who has a husband to run away in any way that influences her to leave her husband. "Any person who persuades a married woman to run away or takes her away or in any other way influences her to leave the household determined by her husband is committing an offense and upon conviction may be fined not exceeding five thousand ringgit or imprisoned for a period not exceeding three years or both and the court shall order that

the married woman returns to her husband". Based on the provisions, anyone who persuades them to run away or takes her away or influences another person's wife to leave the house and her husband, then he has committed an offense and may be subject to legal action which is a fine not exceeding five thousand ringgit or imprisonment not exceeding three years or both. In addition, Section 33 of the EJSS provides for a person who prevents a married couple from living as husband and wife. "Any person who prevents a legally married couple from living as husband and wife commits an offense and upon conviction may be fined not exceeding three thousand ringgit or imprisoned for a period not exceeding two years or both and the court shall order the couple that is to live as a legally married couple." Based on the provision, anyone who prevents a married couple from living as husband and wife is committing an offense and may be subject to legal action with a sentence of five years in prison and a fine not exceeding.

There is also a specific curse on a person who incites, or forces a husband or wife to divorce or neglect obligations. The relevant section is section 34 EJSS. This section provides as follows which is "Any person who incites, forces or persuades any husband or wife to divorce or neglects his duties or responsibilities to his wife or husband or his family commits an offense and upon conviction can be fined not more than five thousand ringgit or imprisoned for a period not exceeding three years or both". This section provides that anyone, whether male or female, who incites, forces, or persuades any husband or wife to divorce or neglects his duties or responsibilities to his wife or her husband or his family is committing an offense. (Jusoh & Dimon, 2014).

Procedures for Dealing with Criminal Offenses of Third Parties in the Household. In the context of Sharia criminal law, enforcement is limited. The application of the law is usually carried out by a Religious Enforcement Officer (PPA) appointed by the State Islamic Religious Council (MAIN) from among members of the Federal public service or joint service, to conduct investigations of offenses under the said enactment or under any other written laws that establish offenses against the pillars of Islam (Ismail, 2008). The role played by the PPA is so important because it is an implementer in terms of the enforcement of sharia law or sharia crime enforcement. Sharia crime enforcement refers to implementing the rules provided under any Islamic law that is currently in force such as the provisions found under the enactment of sharia criminal offenses of the states. The enforcement of Sharia criminal law in Islam is more aimed at encouraging people to do good and prevent evil from happening. It is also known as Misbah.

This third party can make a complaint to the Enforcement Division of the Department of Islamic Religion, so that this third party can be investigated, and subsequently prosecuted by the Syariah Prosecutor. These offenses are classified as arrestable offenses, which means that usually, the Religious Enforcement Officer (PPA) can arrest without a warrant. If it is found that the complaint needs to be investigated, PPA will take further action on the complaint or information received. The offenses mentioned above, mostly occur indirectly and are difficult to prove. For example, when the in-law's family does not like the son-in-law, it will certainly slander the son-in-law or cause conflict in the marriage, until eventually divorce occurs. For this reason, the complaint to be made needs to be submitted with solid evidence, not just talk, hear, or just out of spite. Complaints without strong evidence will make it difficult for the prosecution to bring the case to court. (Awang, 2013). Once an investigation by the religious

enforcement officer has been completed and successfully collected evidence that is strong enough to link the accused to the charges, the investigation paper must be forwarded to the state Syariah prosecutor. The chief Syariah prosecutor will then examine the investigation papers from all angles before deciding whether a charge and prosecution will be made or otherwise. If the Syariah prosecutor is still not satisfied with the evidence presented, he can order the religious enforcement officer to continue the investigation to collect more evidence to further strengthen the existing evidence. But if the chief syariah prosecutor is satisfied with the investigation papers and the strength of the evidence gathered in the investigation, then the chief syariah prosecutor will begin the duties of prosecuting the accused. (Azam Mohd, 1997). In addition to conducting investigations, the PPA also has the power to order the presence of witnesses to obtain more in-depth information on the complaints made. Refusal of a witness to appear before the PPA conducting an investigation is an offense and can be reported to the Syarie Judge where the judge can issue a warrant to ensure the presence of the witness as required. (Aziz, 2007).

A study by Nur Muhamad & Ismail (2019), states that divorce is a universal issue that often occurs in today's society as well as destroying harmony in a family institution. Among the factors that cause divorce is the existence of a third person in the household. When a third party intervenes, some conflicts and problems cannot be resolved, and finally divorce as the last resort. However, the Syariah Criminal Enactment (Selangor State) 1995 provides for a third person who disturbs the harmony of another person's household until a divorce occurs, which can be prosecuted in the Sharia court if convicted. According to the enactment, disturbing the domestic harmony of others is a criminal offense. The study looked at the implementation of the 1995 Syariah Criminal Enactment Law (Selangor State) carried out in Sharia courts under the provision. The study uses qualitative methodology by analyzing documents to obtain cases of divorce related to the intervention of third parties and literature review by referring to scientific books. The results of the study found that there is no implementation of the law and prosecution of offenses under the provisions of the enactment. This is based on the fact that no case has been recorded in the Sharia court. The implications of the study give awareness to the third person or the husband and wife themselves that there is perunda only related to the third person.

A study by Zaini Yusnita Mat Jusoh, Sharifah Hana Abdul Rahman & Zanariah Dimon (2020), discusses the offense of harassment of third parties according to the provisions of the State Sharia criminal law in Malaysia. This study looks at the conflicts that occur in marriage caused by internal and external factors including issues related to third parties. The third person can be anyone from one's own family, be it parents, in-laws, siblings, brothers-in-law, cousins, and so on. The Shariah Criminal Enactment of the States in Malaysia provides for criminal offenses involving third parties. The findings of the research that has been done, no third person has been dragged and charged in the Syariah Court even though the relevant legal provisions have been in place for a long time. The research review also found that there are not many past studies in scientific journals, proceedings articles, or in the mass media that discuss this issue.

**Challenge**

Many people still do not know and are aware of the existence of legal provisions that can protect households. The State Syariah Criminal Enactment has appropriate legal provisions to deal with the issue of third parties in the household. Even the punishment for the offense has also been enshrined in the enactment. Only a small number took action to oppose this third person while the rest took the easy way by divorcing. In the end, the third party is not subject to any action and is free just like that, even those who are married to a divorced husband or wife. This causes the issue of this third person to continue because they always survive even though there are laws regarding the offenses committed by them and there are prison sentences and fines if they are convicted.

Following the divorce statistics in Malaysia which are still at an alarming level. The Judicial Department of the Syariah Court has released a record that shows that the average divorce for the year 2018 is as many as 156 couples per day. Initiatives such as pre-marriage courses, counseling mediation, SMARTSTART 2nd Honeymoon conducted by various parties including the Social Welfare Department, Religious Affairs Office, Legal Aid Department, and NonGovernment Organizations (NGOs) such as Women's Aid Organization (WAO), All Women Action Society (AWAM), Women Crisis Center (WCC), BEFRIENDERS are still not able to stop this problem from happening. Thus, every initiative and policy that is prepared must be focused and aimed at solving the main cause of divorce. (Syafiyah Iqlima Mohd Nadzri, 2020). A study by Jusoh, Dimon & Rahman (2021), related to the Offense of Third Party Interference in Marriage: Challenges and Enforcement Issues. The offense of interfering with a third party in a marriage is a Syariah criminal offense that can be prosecuted according to sections 32, 33, and 34 of the Shariah Criminal Enactment (Selangor) 1995. This study has identified the challenges faced by the religious authorities in enforcing these offenses and suggested steps-relevant solutions steps. This study was conducted qualitatively using the approach of document analysis and interviews in data collection. A total of three informants were selected for the interview, namely the Religious Enforcement Officer at the Enforcement Division, Hulu Langat District Islamic Religious Office. Syarie Prosecutor at the Selangor Syariah Prosecution Department and Syarie Lawyer. The results of the study found that there are some implementation challenges to existing provisions. This study has also revealed the factors that are a constraint to the enforcement of the offense of third-party interference in marriage even though the provisions of the law have been in existence for a long time. The main challenge for the enforcement of the provision is related to the investigation process which cannot lead to prosecution even though there are complaints made by related parties. Among them are related to different interpretations of offenses, incomplete investigation papers, unclear burden of proof, and so on.

**Conclusion**

This issue should be given critical attention by the Government and NGOs. The government should establish a special committee like the Special Committee on Human Rights and Gender Equality. This is to ensure that every transaction and proposal submitted is given full attention so that its implementation does not take a long time to move. Moreover, every initiative carried out should focus on solving the main problem of divorce. It should be announced on a larger scale so that this initiative can be used by a large part of the community as well as being able to be used as a platform as a savior to the serious problem of divorce. Therefore, appropriate counseling interventions can be done to help married couples who are facing cases of third-party harassment so that they get early help to take appropriate action.

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