# LEGAL INSIGHT

#### 14 October 2024

#### **Partners**

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Syafiqah Binti Abdul Razak

Partner

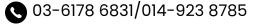
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Real Estate, Property& Finance
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### Legal Framework for Amicable Muslim Divorce in Malaysia: What You Need to Know

By Syafiqah Binti Abdul Razak

In Malaysia, the legal system recognizes both civil and Sharia (Islamic) law, with the latter specifically governing the personal matters of Muslims, including marriage, divorce, and inheritance. Muslim divorce in Malaysia is regulated by Islamic Family Law under the jurisdiction of the Syariah Courts, which are established separately in each state.

Islam permits divorce if the parties are in constant dispute and the marriage causes more harm than benefits. For example, if a husband and wife are constantly arguing and their disagreements are affecting their mental and emotional well-being, Islam allows them to seek a divorce in order to find peace and happiness apart. This ensures that both parties can move on from the toxic relationship and find a healthier environment for themselves.

There are a number of types of divorce for Muslim in Malaysia. Such as divorce by talaq or by order, divorce by khul', divorce under ta'liq or stipulation, divorce by li'an, order for dissolution of marriage or fasakh.

This article will address divorce through talaq or court order, with a focus on the Islamic Family Law (State of Selangor) Enactment 2003 and its regulations.



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Generally, Section 47 of Islamic Family Law (State of Selangor) Enactment 2003 and Rules provides the guidelines on the divorce by mutual consent or agreement between parties.

In this type of divorce, husband or a wife who desires divorce shall present an application for divorce to the court accompanied by a declaration containing this:

- a)Particular of the parties and the marriage;
- b)A statement as to reasons for desiring divorce;
- c)A statement as to whether any, and if so, what steps had been taken to effect reconciliation;
- d)Particulars of the order sought

The author's personal experience suggests that this particular form of divorce is more amicable because the people involved do not reveal the negative aspects of their partner. If both parties had agreed to the divorce, the husband could pronounce the "talaq" (pronounce of the word divorce by husband) on the same day without providing detailed information about their personal lives. The judge may allow the application if the party is able to agree that the marriage has irretrievably broken down.





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#### Conclusion

Muslim divorce in Malaysia is quided by comprehensive legal framework that blends Islamic principles with local laws. While talag remains a commonly used form of divorce, women have legal avenues such as Section 47 of Islamic Family Law (State of Selangor) Enactment 2003 and Rules to initiate divorce on justifiable grounds. The author expressed the view that when individuals enter into marriage on good terms, the process of divorce should be conducted amicably, with consideration for the emotions and wellbeing of all parties involved.

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