



## **The Perspectives of Legal Practitioners on the Concept and Categories of Third Parties in the Household under Islamic Family Law in Malaysia**

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### **Abstract**

Islamic Family Law in Malaysia provides an interpretation for divorce including punishment for factors that cause divorce, especially for certain groups. However, the factor discussed in this study is the involvement of a third party in the household. Questions arise regarding the term ‘third party in the household’ and how to categorise this third party. Therefore, this study aims to clarify the definition and categorisation of the third party in the household. This study uses a qualitative approach that collects data using document analysis methods and semi-structured interviews taken in three Syariah Courts located in the states of Selangor, Kelantan, and Terengganu. The results of the study are analysed using descriptive and thematic methods. Based on the interview findings, this study reveals that there is no specific interpretation of the term ‘third party in the household.’ A third party in a household is defined by the role they play in association with the household. As for the categorisation of the third party, two categories are identified: parents/in-laws/siblings and society/strangers/outside. This study provides significant implications to legal practitioners and researchers regarding the term ‘third party in the household’ that can be used to uphold justice in cases involving divorce.

**Keywords:** Third Party, Household, Syariah Judge, Malaysia, Divorce Factor

### **Abstrak**

*Hukum Keluarga Islam di Malaysia memberikan penafsiran tentang perceraian termasuk hukuman bagi faktor-faktor yang menyebabkan perceraian, khususnya bagi kelompok tertentu. Namun, faktor yang dibahas dalam penelitian ini adalah keterlibatan pihak ketiga dalam rumah tangga. Muncul pertanyaan mengenai istilah 'pihak ketiga dalam rumah tangga' dan bagaimana mengkategorikan pihak ketiga ini. Oleh karena itu, penelitian ini bertujuan untuk memperjelas definisi dan kategorisasi pihak ketiga dalam rumah tangga. Penelitian ini menggunakan pendekatan kualitatif yang mengumpulkan data menggunakan metode analisis dokumen dan wawancara semi terstruktur yang diambil di tiga Pengadilan Syariah yang terletak di negara bagian Selangor, Kelantan, dan Terengganu. Hasil penelitian dianalisis menggunakan metode deskriptif dan tematik. Berdasarkan temuan wawancara, penelitian ini mengungkapkan bahwa tidak ada interpretasi khusus tentang istilah 'pihak ketiga dalam rumah tangga.' Pihak ketiga dalam rumah tangga didefinisikan oleh peran yang mereka mainkan dalam hubungannya dengan rumah tangga. Mengenai kategorisasi pihak ketiga, dua kategori diidentifikasi: orang tua/mertua/saudara kandung dan masyarakat/orang asing/orang luar. Penelitian ini memberikan implikasi yang signifikan bagi praktisi hukum dan peneliti mengenai istilah 'pihak ketiga dalam rumah tangga' yang dapat digunakan untuk menegakkan keadilan dalam kasus perceraian.*

**Kata Kunci:** Pihak Ketiga, Rumah Tangga, Hakim Syariah, Malaysia, Faktor Perceraian

### **Introduction**

Divorce is a household problem that often occurs in society. The problem of divorce should be taken seriously and not treated lightly. Considering the effects of divorce extend beyond just husbands and wives, various factors of divorce must be identified to overcome this problem.<sup>1</sup> However, the factor discussed in this study is the involvement of a third party in the household. The presence of a third party in a household can trigger fights and arguments, posing a significant threat to the harmony of a household.<sup>2</sup> When such arguments and fights escalate, they often lead to divorce. One of the great challenges in the household is the test of honesty and loyalty between partners. While cheating is often associated with secret relationships involving a third party, this domestic issue is rarely discussed scientifically.<sup>3</sup>

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<sup>1</sup> Choirunnisa Nur Novitasari, Dian Latifiani, Ridwan Arifin, "Analisis Hukum Islam terhadap Faktor Putusnya Tali Perkawinan (Analysis of Islamic Law on Factor of Marriage Divorce)", *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 3, no. 2 (2019), p. 322-341.

<sup>2</sup> Asrizal Saiin, Firdaus Firdaus, Maulana Yusuf, Supani Supani, Muchimah Muchimah, Anwar M. Radiamoda, "Walking Together: Dynamics of Muslim Wives Dual Role in Rural Areas Pursuing Career and Household Responsibilities", *El-Mashlahah* 14, no. 1 (2024), p. 127-148.

<sup>3</sup> Mustafa Kamal Rokan, Imam Yazid, Ahmad Makky, "Reconstruction of the Concept of Nushuz of the Wife in the Digital Era", *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 4, no. 2 (2020), p. 568-585.

Thus, questions arise regarding the term ‘third party in the household’ and categorizing this third party. There is no clear definition of a third party in Malaysian law. In the provisions of Section 37 of the Syariah Criminal Offences Act (Federal Territories) 1997, the third party refers to any party who prevents a married couple from living as husband and wife. While in Section 38 of the same act, it states that any party who incites, forces or persuades a man or a woman to divorce or neglect their duties and responsibilities as a husband or wife is an offence. Therefore, the use of the term third party in an independent household is interpreted from the point of view of legal practitioners. This study aims to explain the definition and category of the third party in the household according to the perspective of legal practitioners.

### **The Definition of Third Party in Household**

The discussion begins with a description related to the meaning of the third party according to the views of previous scholars and contemporary academic scholars. Next, arguments from verses of the Qur'an and hadith related to the involvement of third parties in the affairs of a household are mentioned. In addition, this study also explains the debate among scholars related to marriage based on the actions of the third party. According to *Kamus Besar Bahasa Melayu*,<sup>4</sup> The third party has two meanings. The first is an intermediary, a connector, a mouthpiece, a mother hen, a mediator, and a separator. Second, people who do not side with any of the conflicting parties, people who try to resolve a conflict between parties, peacemakers, referees, referees, and judges.

In the discussions of previous scholars, the term third party in the household was not specifically mentioned. However, it has been discussed in a book on domestic problems, using Arabic term *takhhbib*, which refers to the act of destroying the relationship between husband and wife. Acts that damage relationships are usually influenced by third parties.

According to its linguistic and terminological meaning, the word *takhhbib* is an Arabic term that refers to a man who destroys the relationship between another party and their slave or wife. While the meaning of *al-khabb* means the destruction of abomination and deception. The word *takhhbib* refers to deceitful and destructive acts by telling the bad things about the husband in front of his wife or the good things about other men in front of women. In addition to that, *takhhbib* also refers to something that destroys a woman's heart towards her husband. In addition, *namman* (slanderer) is also from the syllable of an Arabic word that means a party who brings news to others to hurt some of them or make, intending to hurt some of them or make his heart hate someone.

Contemporary academic scholars also defined the third party in the household as referring to both male and female lovers and lesbian women<sup>5</sup> (same-

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<sup>4</sup> Zainal Abidin Safarwan, *Kamus Besar Bahasa Melayu*, Kuala Lumpur: Utusan Publication & Distributors, 1995.

<sup>5</sup> Warda Silwana Hikmah, Hasnan Bachtiar, Kuku Dwi Kurniawan, “Bisexual Orientation, Divorce and Islamic Law in Indonesia: Legal Standing and Arguments”, *AHKAM: Jurnal Ilmu Syariah* 22, no. 1 (2022), p. 137-160.

sex relationships that are meant as *musahaqah* or fornication), men and gay men (anal intercourse between men or women except the wife's anal), family members brothers, sisters, parents or grandparents.

In conclusion, the third party is better known as the mediator who acts as an intermediary between two people (husband or wife) facing a certain situation. Whether the middleman plays a role in the direction of good (conciliatory or righteous) or in the direction of evil (oppressive). From the point of view of marriage, this third party can be seen as a party who acts as a mediator between people or parties who have a dispute or a party who acts as an intermediary between the parties in marriage negotiations and so on.

### **Family Members of the Husband or Wife**

Family is the smallest unit of society consisting of the head of the family and several people who are grouped and live somewhere under one roof in a state of interdependence.<sup>6</sup> The basis of priority in family formation includes the mother, father, grandfather, grandmother, husband, wife, and children. Nowadays, there are many cases of disputes that occur in a household as a result of parental interference.<sup>7</sup> Because mothers and fathers only want the best for their children so that their lives will be easier and happier, they rebuke their children's or son-in-law's mistakes. Unknowingly, the remark may cause a rift in the household.

The attitude of the mother-in-law, who sometimes reprimands and is unhappy with the behavior and actions of the son-in-law, can lead to feelings of animosity between the two parties. Instead, the mother-in-law should offer useful advice and good guidance so as not to cause arguments between children and their spouses.

There is a case called M/11/KTR/00033/2013 which tells the story of a mother-in-law who disapproved of her daughter-in-law and made a complaint to the religious office, claiming that her son was incited to marry a partner in southern Thailand. However, this case was investigated by the enforcement department and successfully brought to the prosecution department. As a result of the investigation, the prosecutor confirmed that a valid marriage contract had been established between the couple according to Shariah, and they were directed to confirm the marriage at the district religious office.<sup>8</sup> This case was successfully resolved with a fine, and the in-laws were able to accept their daughter-in-law.

In addition, there is a case involving the plaintiff's mother in the household, namely the case of Maiza bt. Jalil vs. Sweeping b. Munir (10005-014-2381-2012).

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<sup>6</sup> Arifki Budia Warman, Elimartati, Dodon Alfiander, Ashabul Fadhli, Wardatun Nabilah, "From Communal to Individual: Shifting Authorities of Family Dispute Resolution in Minangkabau Society", *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 23, no. 2 (2023), p. 161-183.

<sup>7</sup> Asman, Resali bin Muda, "Social Dynamics on the Increasing Divorce of Malay Communities during COVID-19 in Sambas West Kalimantan, Indonesia Perspective of Islamic Family Law", *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no.2 (2023), p. 153-166.

<sup>8</sup> A. Kumedi Ja'far, Agus Hermanto, "Reinterpretation of the Rights and Duties of Contemporary Husbands and Wives", *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, no. 2 (2021), p. 648-667.

In this case, the defendant stated that the plaintiff's mother had instigated the plaintiff to apply for a divorce, which caused the defendant considerable distress. Despite the defendant's efforts to persuade the plaintiff not to proceed with the divorce, the plaintiff ultimately chose to follow her mother's advice.

Cases like this often arise involving parents in household matters. As parents or in-laws, there is no need to interfere in the household affairs of children who have established a household. If the child complains about a problem, then it is sufficient to simply advise the child and son-in-law. If the interference continues, it can shake the integrity of the marriage and possibly end in divorce.

### **Boyfriend or Girlfriend**

The level of social media use among users has become increasingly uncontrolled nowadays. This excessive engagement can trigger conflicts in the household, affecting both social relationships and interactions with others. Relationships involving other individuals often occur when the husband or wife engages in external affairs in secret.<sup>9</sup> This situation is even made worse when one partner exhibits a social attitude that encourages such behavior.<sup>10</sup> Today's world is no stranger to male-male or female-female relationships known as lesbians or gays. The definition of lesbian is sexual intercourse between women and women while the definition of gay is having sex between men and men or fornication. This matter is contradictory in the Islamic religion, and it is illegal and forbidden to do so.<sup>11</sup>

In a case in Selangor, *Khairul Rahimi v. Raihanah Baharom* (10001-055-2513-2016), the existence of a third party in the household caused constant arguments between the couple. Based on the facts of the case, the defendant complained that there was cohabitation between the plaintiff and his non-mahram partner. With the plaintiff's actions, the defendant's feelings of love for the plaintiff are diminished and he ultimately applied for a divorce.

Additionally, in the case of *Amrul Nazwan v. Siti Aisyah Mat Husin* (10001-058-0252-2017), the husband claimed that his wife had left the house without her husband's permission three times. The first time was at the end of October 2016, while the second time was at the beginning of December in the same year 2016 and the third time was on 15 January 2017. The husband also claimed that his wife had changed her attitude, in terms of speech towards her husband, often using abusive language and frequently requesting a divorce from her husband. His wife also admitted that she had had a relationship with another man behind her husband's back. Therefore, the husband filed for divorce in court because his wife had an affair with another man outside of marriage.

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<sup>9</sup> Jumni Nelli, Afrizal Mansur, Zulkifli Zulkifli, Maghfirah Maghfirah, Sofia Hardani, Izzah Nur Aida, "The Immorality of a Husband as the Cause of a Working Wife to File for Divorce Lawsuit in Indonesia", *Juris: Jurnal Ilmiah Syariah* 22, no. 1 (2023), p. 119-132.

<sup>10</sup> Siti Zalikha Md Nor, *Marriage counseling from an Islamic perspective*, Petaling Jaya: Budaya Ilmu Sdn Bhd, 1992.

<sup>11</sup> Muhammad Mustafa Al-Zuhaily, *Al-Mu'tamad in the Shafie Mazhab of Fiqh*, Kuala Lumpur: Persekutuan Seruan Islam Selangor, 2012.

Based on the discussion of the cases, it can be concluded that there are two primary categories of third party, namely parents or in-laws and lovers, whether male or female. This group has contributed to a rift in the relationship between husband and wife, leading to instances of divorce within households.

According to the Islamic perspective, there are two categories of third parties in the household, namely the judge, peacemaker, or referee, and also the breaker of the household. Details of these categories are discussed in subsequent subtopics.

### **Third Party as Hakam, Conciliator or Arbitrator**

The term '*hakamu*' originates from the root words '*hakama*', '*yahkumu*', and '*hukman*', signifying law, and '*al-hakamu*' refers to one of Allah S.W.T.'s attributes. The definition of Hakam mentioned in the fiqh dictionary means a party who is given the task of resolving disputes or disputes that occur between husband and wife or a party who has been chosen to reconcile conflicts that occur between two or more husbands and wives.<sup>12</sup>

Islam establishes a guideline for resolving disputes between husband and wife, which involves appointing a judge who can provide an opinion or advice to adjudicate the dispute. As referred to in Surah An-Nisa', verse 35 which means:

“And if you are worried that there will be a split between the two of them (husband and wife) then appoint a 'middleman' (to reconcile them, that is), a woman from the family. If the two 'middlemen' (sincerely) aim to reconcile, surely God will make the two (husband and wife) reconcile. Indeed, Allah always knows, and His knowledge is very deep.”

The jurisprudence scholars examined Ibnu Kathir's interpretation and concluded: “If a dispute arises between a husband and wife, it should be reconciled by appointing a third party, a judge, as an intermediary”. The judge assumed the responsibility of scrutinising both parties' cases and safeguarding them from any wrongdoing. If the fight persists and the dispute intensifies, the judge has the authority to designate a trustworthy individual from both the woman's and the man's families to discuss and scrutinize the issue, ultimately leading to either a divorce or reconciliation. However, Islam strongly encourages the pursuit of peace. Indeed, God gives *taufiq* to husbands and wives who choose to make peace by solving the problems they face.

Therefore, Allah commands the appointment of a Hakam among the families of the husband and wife in the event of a dispute between the two to overcome the *syiqaq* between the husband and the wife. It can be concluded that the principle of legal foundation has the teaching to resolve disputes through reconciliation. This judicial appointment presents two potential outcomes. First, the positive alternative

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<sup>12</sup> Mursyid Djawas, Sri Astuti Abdul Samad, “Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehese Community According to Islamic Law”. *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 4, no. 1 (2020), p. 65-84.

is to restore harmonious relations between husband and wife in the household. Second, the negative alternative is to advise the married couple to end their marriage because there is no possibility of reconciliation.<sup>13</sup>

In conclusion, the hakam is a mediator appointed by the kadi and is responsible for investigating the cause of *syiqaq* or disputes between husband and wife. Hakam can decide whether to reconcile or separate them both. Therefore, Hakam falls into the category of the third party in the household.

### **The Third Party as a Home Breaker**

Any individual who incites two descendants of Adam by uttering words that harm one of them is considered a brawler. He belongs to the devil's army and is the most evil human being. Pitting the sheep against each other allows people to often face conflicts with each other and is likely to cause the severance of friendships between people.

Breaking family ties is part of an act of sin. Allah has firmly reminded us, as recorded in the surah an-Nisa, verse 1, which means:

“O people! Have faith in your God who made you (starting) from one party (Adam) and his partner (his wife-Eve) and also who procreated from both of them - numerous male and female descendants. And fear God whom you always ask for and mention His name, as well as preserve the relationship (silat ur-rahim) of people to relatives; because verily Allah is always watching (supervising) you.”

The act of severing the cordial relationship between a husband and wife is not only punishable in the world based on the laws of the world; it is even considered to be committing a great sin and thus receiving a curse from Allah S.W.T. As the Word of God affirms in Surah Muhammad verses 22-23:

“(If you don't obey the order) then shouldn't you be worried and worried - if you can hold power- you will do damage on the face of the earth, and break friendly relations with your relatives? (Those who do those things) they are the ones cursed by God and their hearing is deafened, and their sight is blinded.”

As referred to in Tafsir al-Thabari, the verse above explains the reward promised by Allah s.w.t., who cursed the act of doing damage to the face of the earth and severing the relationship between husband and wife. The answer is not derived from a physical form, and it is not impossible if God desires it. Therefore, the phrase “divulged by Him” in the verse above implies that God uprooted the understanding they heard in the form of His book's guidance. Meanwhile, the phrase “And He blinded their sight” implies that God uprooted their minds preventing them from

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<sup>13</sup> Raihanah Azahari, *Sulh in Islamic family cases*, Kuala Lumpur: Universiti Malaya, 2008.

heeding His arguments and from learning from His examples and arguments. Allah s.w.t confirms again in surah al-Baqarah, verse 27, which means:

“(That is) Those who change (violate) the covenant of God after it has been confirmed and decide the things that God has ordered to be connected, and in turn, cause damage and disaster on the face of the earth. They are the real losers.”

A hadith narrated by Jubair bin Muth'im mentions that Prophet s.a.w. emphasised on:

( قاطع رحم ) لا يدخل الجنة قاطع

Which means:

“People who break friendships will not enter heaven. (Muslim, Sahih Muslim, *Kitab al-Bir silah wa al-Adab*, Chapter *silahutrahim wa tahrim qat'iatih*, Bukhari, *Kitab jami' musnad sahih muktasar*, Chapter *Man jaa aa ismu al-qati'*. Vol.8 No.5984)”

Referring to the above hadith, a party who acts to break the relationship of friendship between anyone will not enter heaven because of his actions, let alone break the relationship between husband and wife. Islam places a significant emphasis on friendly relations, as these relationships foster the birth of feelings of love and affection from a pure soul, free from feelings of revenge.

Abu Bakar al-Siddiq r.a. narrated the words of the Prophet s.a.w

لا يدخل الجنة جب ولا مانن ولا بجيل

Which means:

“People who do *takhib* (deceit), *mannan* (followers of charity or giving), and *bakhil* (stingy people) will not enter heaven (Sunan Tarmizi, *Kitab Jaami' al-Kabiir*, Chapter *Maa Ja aa fii al-Bakhil*, Vol. 8, No: 1963).”

According to Imam Abu al-Ala Mubarakfuri (Muhammad Abdurrahman t.th.), in his lecture on the aforementioned hadith, the phrase “not entering heaven” refers to delaying entry into heaven for a *Khibbun*, or *Khabbun*, who is a liar and causes damage in human relationships through deception.

According to the hadith narrated by Abu Daud from Abu Hurairah r.a., the Messenger of Allah s.a.w. said the following:

من خبب عبد على أهله فليس منا

Which means:

“Whoever deceives and destroys (the relationship of) a slave from his master, then he is not from our group (Abu Daud, *Kitab Sunan Abu Daud*, Chapter *Fii Man Khabbaba al-Mar'ah ala Zaujiha*, Jil.2. No:2175).”



ومن أفسد امرأة على زوجها فليس منه

Which means:

“And whoever destroys (the relationship) between a woman from her husband, then he is not from our group (Hadith Narrated by Abu Dawud).”

Through the hadith above, the scholars think that this practice of *takhbib* is haram. They believe that if a party damages the relationship between a married couple by deceiving or causing the wife to demand a divorce, then the man has committed a great sin. This also includes the act of presenting the divorce as good so that he can marry her.

Meanwhile, Imam al-Haithami categorized this act as a major sin, and he listed this act in the 257th and 258th major sins in his book *al-Zawajir an Iqtiraf al-Kabair* which is destroying the relationship between the wife and the husband. The reason is that the Prophet s.a.w supports this hadith and condemns the act of damaging this relationship on the part of his people and it is considered as severe threat. The previous scholars also categorized this matter clearly as a major sinful act.

Islam establishes rewards for those who obey the commandments of Allah and His Messenger and toughens the punishment for those who intentionally violate them. Punishment is in two forms, namely in this world and in the hereafter. Punishment in the world is carried out to preserve peace and order in life and human life. In conclusion, the third category of people in this second household is a problematic group because this group divides the household between husband and wife.

### **Third-Party According to the Law in Malaysia**

Next, the category of the third party in the household according to the law in Malaysia was discussed. The legal provisions concerning the third party in the household are derived from Section 2 of the Syariah Criminal Offences (Selangor) Enactment 1995 (Selangor Enactment No. 9 of 1995) specifically in the interpretation section:

“*muncikari*” means someone who acts as a middleman between a woman and a man for any purpose that violates Sharia Law.

The third party can be interpreted as a middleman better known as *muncikari*. *Muncikari* means a party who acts as an intermediary between a woman and a man for any purpose that violates the Sharia Law. However, based on the legal context in the Selangor State, the third party in the context of a marriage is a party who is not specifically targeted, whether it is an illicit lover, an ex-lover, siblings, relatives, or so on. Therefore, in general, the meaning of the third party in a real household is all individuals, namely family, friends, and the surrounding community. Usually, these people incite, prevent, and persuade them to leave the household and neglect their responsibilities as a husband or wife.

After examining some legal provisions that can be related to third parties, it can be linked to some legal provisions. Among them is the Syariah Criminal Enactment for each state that is used by Muslims, and it tries the case in any Shariah Court. However, the Penal Code (Act 574) also includes a section that can be linked to the involvement of a third party in the household. The High Court implements this provision.

The next discussion will focus on the group that can be linked to the third party category in the household which is provided based on only two laws in Malaysia, namely the Syariah Criminal Enactment and the Penal Code.

### **Syariah Criminal Enactment**

Each state in Malaysia possesses its own jurisdiction and distinct enactment provisions, albeit with slight variations. Every state's Syariah Enactment/Criminal Code contains legal provisions that pertain to third parties. Based on the provisions of the Syariah Criminal Enactment, the category of third parties in the household can be divided into three different components, namely persuading a married woman to run away, inciting a husband or wife to divorce, and neglecting responsibilities, as well as preventing a married couple from continuing to live as husband and wife.

### **Persuading Married Women to Run Away**

The first component that indicates the involvement of a third party is the persuasion of a married woman to flee from her husband. Usually, the group involved in persuading or influencing a wife other than her husband are either lovers or ex-lovers who come back to get back. They typically perform this act by uttering tender words, seemingly imploring the woman to abandon her husband. When sweet words or promises are successfully sprinkled, it makes the other person's woman or wife happy with him and eliminates the feeling of love for her husband.

Section 39 of the Syariah Criminal Offences Act (Federal Territories) 1997 (Act 559) provides:

“Any party who persuades to run away or induces or persuades any female to run away from the custody of her parents or guardian commits an offence 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 may make such order as it thinks fit in respect of the woman.”

While in section 36 of the same act (Act 559), it is specific to married wives only, whether influencing in various ways to persuade the married women to run away. For the offence of persuading the wife to run away, this party is subject to a

fine not exceeding five thousand ringgit or three years in prison, and the court can order the wife to return to her husband's arms.<sup>14</sup>

Meanwhile, Section 32 of the Syariah Criminal Offences (Selangor) Enactment 1995 (Selangor Enactment No. 9 of 1995) provides for an offence only for persuading a party's wife to run away and, when convicted, can be fined not more than five thousand ringgit or imprisoned for a period not exceeding three years or both. The penalty is equivalent to the fine in the Federal Territory, and the court has the power to order the woman to return to her husband.

Next, Section 43 of the Syariah Criminal Offences (Takzir) (Terengganu) Enactment 2001 (Terengganu Enactment No. 7 Year 2001) provides for the same offence of persuading a married woman to run away by any, even if it is done just once. However, it is lighter as compared to the Federal Territories and Selangor. The court may impose a fine of up to three thousand ringgit, imprison the woman for up to two years, or both.

In the state of Negeri Sembilan, Section 76 of the Syariah Criminal Offences (Negeri Sembilan) Enactment 1992 (Negeri Sembilan Enactment No. 4 the Year 1992) provides for the offence of "luring and carrying away a married woman or virgin" and Section 77 of the same enactment provides for the offence of "luring or carrying away or detaining with malicious intent a married woman or virgin". The only difference between these two provisions is carrying away or carrying away with malice. The terms of punishment are also different, for the offence of running away only, a fine of not more than one thousand ringgit or imprisonment of not more than one year is imposed. Meanwhile, if it is carried away with intent, then the punishment is a fine of not more than three thousand ringgit or imprisonment of not more than two years. The court can order the wife or virgin child to return to the husband or family.

While in the state of Melaka, Section 73 of the Syariah Criminal Offences (Negeri Melaka) Enactment 1991 (Melaka Enactment No. 6 Year 1991) provides for the offence of bringing away a wife from her husband or a virgin from her parents or guardians. The punishment for this offence is, if convicted, a fine not exceeding three thousand ringgit or imprisonment not exceeding two years or both. The court also ordered the wife or virgin daughter to return to her husband or parents. The states of Kelantan and Kedah provide for the same punishment which is a fine not exceeding two thousand ringgit or imprisonment not exceeding one year or both.

In the Syariah Criminal Enactment 1992 (Perak Enactment No. 3 Year 1992), section 30 (1) criminalizes the act of enticing a married woman or leading her to run away, by any means, with the intention of influencing her to leave the household determined by her husband. The punishment for this offence is, if convicted, a fine not exceeding five thousand ringgit or imprisonment for a period not exceeding three years or both and the court may order the woman to return to her husband.

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<sup>14</sup> Zainal Azwar, Firdaus Firdaus, Muhammad Nafis, "The Role of the Malay Customary Institution in Off-Court Divorce Mediation: A Case Study in Rantau Pandan, Jambi", *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 20, no. 1 (2020), p. 59-73.

All the states mentioned above mostly provide for the offence of carrying away a married woman. However, in some states, the law is not limited to only married women, but to unmarried women and virgins as well. In terms of punishment, the state with the highest punishment is the state of Perak, with a fine of five thousand ringgit and three years in prison or both if convicted.

### **Inciting Husband or Wife to Divorce and Neglect Responsibilities**

The second component is inciting the husband or wife to divorce and neglect their responsibilities as husband or wife. This matter usually involves a lover or ex-lover who tries to persuade or influence the other party's wife to divorce and not carry out the trust as a wife to her husband or a husband to his wife.

Section 34 of the Selangor Enactment No. 9 of 1995 provides:

“Any party who incites, forces, or persuades any husband or wife to divorce or ignores the duty or responsibility to the wife or husband or his family commits an offence and upon conviction may be fined not exceeding five thousand ringgit or imprisoned for a period not exceeding three years or both.”

In Section 31 of the Perak Enactment No. 3 of 1992, Section 34 of the Syariah Criminal Offences (Kedah Darul Aman) Enactment 2014 (Kedah Enactment No. 18 of 2014), Section 26 of the Syariah Criminal Offences (Kelantan) Enactment (I) 2019 (Kelantan Enactment No. 14 of 2019), Section 38 of the Syariah Criminal Offences (Johor) Enactment 1997 (Johor Enactment No. 4 of 1997), and Section 38 of the Act 559 Federal Territories provide for similar offences and fines as outlined in section 34 of the Selangor Enactment No. 9 of 1995. In contrast, Section 74 of the Negeri Sembilan Enactment No. 4 of 1992 imposes lighter punishments and fines compared to the aforementioned states. The fine imposed is not more than one thousand ringgit or imprisonment of not more than 6 months. However, for the state of Malacca, this offence is not provided for in the Malacca Enactment No. 6 of 1991.

### **Preventing Married Couples from Continuing to Live as Husband and Wife**

The third component is the offence of preventing a married couple from continuing to live as husband and wife. This case usually involves parents, in-laws, family members, or even outsiders who try to prevent married couples from living as husband and wife. This matter is also an offence, and if found guilty, can result in a fine.

Section 33 of the Selangor Enactment No. 9 of 1995 provides:

“Any party who prevents a legally married couple from living as husband and wife commits an offence and upon conviction may be fined not exceeding three thousand or imprisoned for a period not exceeding two years or both and the court shall order the couple to live as a legally married couple.”

States that provide for the same enactment are Section 30 (2) of the Perak Enactment No. 3 of 1992, Section 33 of the Kedah Enactment No. 18 of 2014, Section 37 of the Act 559 Federal Territories, and Section 44 of the Terengganu Enactment No. 7 of 2001. However, the fine imposed is lighter for these enactments compared to Selangor, with a penalty of two thousand ringgit or imprisonment for a period not exceeding one year, or both. The court must also order the married couple to live together as legal husband and wife. The states that do not provide such provisions are the states of Kelantan, Melaka and Negeri Sembilan.

This study found that the offences outlined in the provisions above are both serious and widespread within the Muslim community today. The act of tearing down people's households is not considered taboo, but has, unfortunately, become a concerning trend nowadays. It is now seen as a matter of pride to be able to break the bond between a married couple. In terms of the penalties provided, the punishment imposed is commensurate with the act committed.

### **Penal Code (Act 574)**

The Malaysian Penal Code (Act 574) was enacted to hold individuals accountable for their crimes, whether committed within Malaysia or abroad. This act allows for legal consequences to be imposed on those who commit offences. Act 574 is divided into 23 chapters, comprising of 511 sections that cover various aspects of criminal law.

Relevant to the discussion of third parties in marriage, Chapter 20, which addresses offences relating to marriage, includes Section 498 of Act 574 as follows:

“Whoever carries away or entices away a woman who is and whom he knows, or has reason to believe, to be the wife of another man, from that man, or on the part of that man, with the intention that the woman may have intercourse prohibited with any party, or whoever hides, or detains with that intention such a woman, shall be punished with imprisonment for a term which may extend to two years, or with a fine, or with both.”

In conclusion, there are legal provisions that can be linked to the category of third parties in the household who disrupt domestic harmony. These include the relevant sections in the Syariah Criminal Enactments and the Malaysian Penal Code (Act 574), which outline specific offences and penalties.

This study utilises a qualitative approach, collecting data using document analysis and semi-structured interviews. The documents analysed include journal articles and case reports taken from three state Syariah Courts in Selangor, Kelantan and Terengganu. Additionally, interviews were conducted with 12 Shariah officials from the judicial department, the Shariah Lower Court, and the religious department across the three states. The results of the study were analysed using both descriptive and thematic methods.

## **Perspectives of Legal Practitioners on the Concept of a Third Party in the Household**

Based on the analysed findings, it is found that there is no specific definition or interpretation for the third party in a household from any legal provision or academic aspect.<sup>15</sup> According to Zaini and Zanariah<sup>16</sup>, the definition of the third party is not clearly and explicitly explained. In addition, Informant 4 (I4) and Informant 3 (I3) stated that the third party is subjective in a relationship. They said:

I4: "...There is no specific definition.. because if there is a third party in a marriage, we can't be specific about him, right? The meaning is that in today's age, we can say that the third party is a boyfriend or girlfriend, but there is also a divorce. The third is the family, the parents-in-law, that's why we don't have a specific definition for the third party..."

I3: "...The third party doesn't have a specific interpretation."

Therefore, third person refers to anyone who is not bound by the marital bond between husband and wife. The findings of this study indicate that the concept of a third person in the household lacks a specific definition and can be understood in a broad sense. It encompasses individuals who have a connection with one or both parties involved, extending beyond just the married couple. Thus, in the context of marriage, this study clarifies that a third person is anyone other than the husband and wife.

From the perspective of defining a third party, the results of this study show that Informants 2 (I2) and Informant 3 (I3) stated that the term comprises of various categories that can be associated with household dynamics. The third party can be either male or female. As stated by the informants:

I2: "The third party can be anyone..."

I3: "The third party is anyone...maybe it can be someone we know or maybe someone we don't know."

Nevertheless, Informant 5 (I5) stated that this third party can be linked to the act of persuasion that aims to disrupt the household. He said:

I5: "...he can be a third party who is categorized as someone who tries to disrupt the household. Maybe that's what we call a third party..."

Based on the results of the interview above, the informants labelled the third party according to their roles and actions within the household. For example,

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<sup>15</sup> Siti Aminah, Arif Sugitanata, "Genealogy and Reform of Islamic Family Law: Study of Islamic Marriage Law Products in Malaysia", *Journal of Islamic Law* 3, no. 1 (2022), p. 94-110.

<sup>16</sup> Zaini Yusnita Mat Jusoh & Zanariah Dimon, Laws Dealing with Third Parties in the Household: A Highlight in Selangor State Syariah Criminal Law and Civil Family Law, *International Research Management And Innovation Conference*, 220-234. Kuala Lumpur, 2014.

Informant 5 noted that the third party's actions often disturb the couple's harmony, leading to fights and potential divorce.

### **Perspectives of Legal Practitioners on the Category of Third Parties in the Household According to Islam and Law**

In the context of marriage according to Abe Sohpihan et. al,<sup>17</sup> a third party can also refer to the family itself. According to him, the parties involved are parents or in-laws. Furthermore, Musa Awang also categorized this third party as anyone including his own parents.

#### **Parents/In-laws/Siblings**

According to Informant 1 (I1), usually, this third party appears among family members. Next, Informant 3 (I3) stated that the closest people in the family such as siblings, brothers-in-law and relatives can also be categorised as the third party in the household. Informant 2 (I2) classified parents and in-laws as potential third parties that can negatively influence household dynamics. This is also agreed by Informant 4 (I4) and Informant 5 (I5):

I1: "...it's common for families to happen..."

I2: "...parents can be the middle party....if the in-laws can also be the cause for the third party..."

I3: "...can be our parents, our in-laws, our siblings, our brothers-in-law, our fourth cousins, ex-husbands, ex-wives..."

I4: "...Which is family, siblings..."

I5: "...people in their own family ..."

The findings of the study indicate that Informants 1, 2, 3, 4 and 5 view family members as significant third parties within a household context. This category includes parents, in-laws, siblings, or relatives who are related by blood to the husband and wife. All of them can be categorised as the third party in the household following their influence.

#### **Society or Foreigners**

Next, several informants indicated that the community can also be categorised as the third party in the household. The community does not have to consist of individuals who are known or unknown, and it does not specify gender, whether male or female. They said:

I2: "...whether male or female..."

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<sup>17</sup> Abe Sohpihan Abdul Rahman, Zuliza Mohd Kusrin, Anwar Fahri Omar, *Divorce Factors in the Syariah Court of Mukah Division, Sarawak from 2000 to 2010*, Selangor: UKM Bangi, 2014.

I3: "...maybe it could be someone we know and maybe someone we don't know..."

I5: "...how do we know whether this third party is an outsider..."

In addition, there are also other views regarding the meaning of a third party, specifically as a foreigner. The meaning of a stranger is a party who has no connection at all, whether it is an ex-lover or a well-known party. However, Informant 1 (I1) stated that cases involving foreigners as the third party in the household are very rare.

From a legal point of view, according to Informant 1 (I1) and Informant 2 (I2), the legal provisions that can be attributed to third parties for the state of Kelantan are in the Enactment of the Syariah Criminal Code 1985 (Kelantan Enactment No. 2 of 1985)<sup>18</sup>. Informant 1 stated the sections related to domestic disturbances which are:

I1: "...in the criminal code there is.. section 8 and 17... domestic disturbance..."

The offence for Section 8 of this enactment is to incite a married woman or married man to divorce or disobey duties and responsibilities. Next, Section 17 of the same enactment provides for the offence of running away from a party's wife. Meanwhile, Informant 3 (I3) stated that the law related to third parties in the state of Terengganu is under enactment 7 of the Syariah Criminal Offences Enactment (Taazir) (Terengganu) 2001.

I3: "...This provision already exists... which we have under enactment 7 for takzir offences Section 5, for offences related to justice and public order. .. namely Section 43, Section 44 and Section 45..."

The offence for Section 43 of the Terengganu Enactment No. 7 of 2001 provides for the offence of persuading a married woman to run away. As for Section 44 of the same enactment, it provides for the offence of preventing a married couple from conjugal relations. Section 45 of the enactment is for the offence of inciting, forcing, or persuading husband and wife to divorce and neglecting their obligations as husband and wife.<sup>19</sup>

In Malaysia, each state has provisions for the enactment of sharia criminal offences. It has several sections that can be related to the involvement of domestic

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<sup>18</sup> This enactment had been abolished and had been replaced by the Kelantan Enactment No. 14 the Year 2019. This interview was conducted before the new enactment took place.

<sup>19</sup> Norcahyono, Muhammad Arni, "Strategies of Career Women at Islamic Universities in Kalimantan in Carrying Out Household Obligations from the Perspective of Maqashid as-Syari'ah", *Syariah: Jurnal Hukum dan Pemikiran* 21, no. 1 (2021), p. 88-102.



violence.<sup>20</sup> This policy was introduced to preserve the harmony of a household in addition to reducing the division of the institution of marriage.<sup>21</sup> Furthermore, based on this law, anyone who becomes an obstacle to a happy relationship between a party and his partner can be prosecuted. Therefore, based on the results of the informant who had been interviewed, this third-party issue can be referred to under the Syariah Criminal Offences Act based on the sections related to the offence committed.

## Conclusion

This study has discussed in detail the definition and categorisation of the third party in the household from the perspectives of legal cases, law, Islamic views, and legal practitioners. The findings reveal that there is no specific definition pertaining to the third party in the household. Hence, anyone related to the marriage can be considered a third party, whether the relationship is positive or negative. Therefore, it is essential that this term is formalised in the law to ensure clarity and facilitate prosecution, especially since relevant penalties and case precedents already exist concerning third-party involvement in marital matters. This approach aims to preserve the relationship between husband and wife and avoid divorce instigated by third parties.

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## **Interview**

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