

i-GUIDE DIVORCE: AN EASY-TO-USE APPLICATION SOFTWARE FOR NON-MUSLIM DIVORCE CASES IN MALAYSIA

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ABSTRACT

Recent trend sees the increase of divorce cases in Malaysia. Couples facing divorce need to deal with many issues that include financial and emotional problems. Not many couples are equipped with sufficient knowledge dealing with their marital issues. This is due to their condition at the time, facing dispute and the usage of complicated legal terms and procedure throughout the process. This may jeopardise the couple' rights associated with their marriage. Lack of knowledge would usually increase the emotional burden of parties to the divorce case. Thus, it is the intention of this device application to assist and educate the society on the proper divorce procedures. Malaysia is unique as it has dual system of law which are the Civil and Syariah legal systems. Divorce takes place in Syariah courts for Muslim couple and in Civil High courts for non-Muslim couple. This device is developed to assist the non-Muslim couple. The Law Reform (Marriage and Divorce) Act 1976 regulates marriage relations for persons who do not profess the Islamic faith whereas the procedures of marriage and divorce are governed by the Law Reform (Marriage and Divorce) Rules 1982 and Divorce and Matrimonial Proceedings Rules 1980. In many situations, the divorce process is complicated and parties do not know their rights, hence, we develop an application device which is user friendly as a tool as well as to be a guidance for the non-Muslim parties who intend to petition for divorce. This application device is easy, efficient and informative to be used by the public. The overall finding of this research is based on interviews with those in the authority who are directly involved in handling the non-Muslim divorce cases in the Civil High Court and also observation at the distinctive administrative bodies namely the Marriage Tribunal and the High Court. The data obtained is valuable in assessing and evaluating the existing law and procedures governing the non-Muslim divorce cases in Malaysia.

Key words: divorce cases, non-Muslim marriage, application software

INTRODUCTION

Although the widespread belief regarding the family life that the marriage should be a lifetime commitment, the divorce rate in the world is growing (Motti Haimi & Aaron Lerner, 2016). The divorce rates throughout East and South-East Asia appear to have been generally on the rise since the 1980s, partly because the stigma attached to divorce appears to have faded (Gavin Jones, 2015). Divorce is usually associated with negative remarks. Generally, there is possibility of divorce to every married couple. However, the range differs from one couple to another depending on the perseverance level of couple to the marriage. Anticipating this possibility, the law governing the marriage of Muslim and non-Muslim couple provides guideline in the settlement of a broken marriage, so that the dispute between couple may be resolved in the utmost harmonious way. As known to many, the ending of a marriage relationship is usually the starting of suffering for the children to the marriage and in some cases, affects the parent's emotion. In societies with the high rate of divorce cases, one might expect that families perform their functions poorly and that many parents and children suffer (Andrew J. Cherlin, 2017). Families encounter a diversity of experiences in achieving satisfactory post-divorce arrangements. Marital separation, which can include divorce, correlates with pain and suffering. Easily characterized as one of life's most stressful experiences, marital separation puts people at risk for poor outcomes in their mental and physical health (Dan Defoe, 2013).

From the above, it can be deduced that the introduction of a device that may assist the couple facing divorce is timely and appropriate with the ultimate aim that is to reduce the stress that they are already dealing with throughout the process. In Malaysia, divorce of non-Muslim is governed by the Law Reform (Marriage and Divorce) Act 1976 (LRA 1976). Prior to the filing of the petition, the petitioner must initiate the process of attempt to reconcile the marriage by filing an application to Marriage Tribunal at the National Registration Department (NRD) (Jaime Koh & Stephanie Ho, 2009). After few attempts have been made by the tribunal to reconcile the marriage, and if the attempts failed then the petitioner may file the petition in court. The LRA 1976 states that a Malaysian High Court can only grant a decree nisi or decree of judicial separation if the marriage is registered or deemed to be registered under the LRA 1976, or the marriage is contracted under a law that the

marriage is monogamous. The LRA 1976 divorce proceedings can only be exercised if at the time of divorce, the parties to the marriage domicile in Malaysia. The filing of petition for divorce is to be filed in the High Court.

There are three types of divorce petitions in Malaysia, firstly, conversion to Islam, which means one of the parties has converted to Islam, secondly, mutual consent (joint petition), which the husband and wife mutually agree that their marriage should be dissolved and thirdly, breakdown of marriage, which is a divorce petitioned by one party (single petition) on the ground that the marriage has been irretrievably broken down (Daleeler Kaur Randawar, et al, 2018). Recent trend sees the increase of divorce cases in Malaysia. Couples facing divorce need to deal with many issues that includes financial and emotional. Not many couples are equipped with sufficient knowledge dealing with their marital issues. This is due to their condition at the time, facing dispute and the usage of complicated legal terms and procedure throughout the process. This may jeopardise the couple' rights associated with their marriage. The lack of knowledge would usually increase the emotional burden of parties to the divorce case. Thus, it is the intention of this device application to assist and educate the society on the proper divorce procedures. This paper highlights the problem faced by the disputing parties to divorce in term of understanding the procedure and how this problem is overcomed.

PROBLEM STATEMENT

In this worrying trend of divorce, there is an increase of suffering in human being namely couple to divorce and their children. Many studies of the recent years disclosed that the increase of cases on mental depression among people in the society are the pre and post-divorce experience (Kiecolt-Glaser, J. K., 2018). In the world where traditional processes of how things are attended to have been expedited, resorting to an easy application device may in a way aid the people affected by divorce. Insufficient knowledge on what are the appropriate steps and processes to settle matter of divorce may intensify the emotional distress suffered by the divorcing couple. To date, there is no study conducted on the usability of a device in assisting the non-Muslim married couple. This study is significant in supplying the data to the workable device that may be a mechanism to assist a long and stressful event.

LITERATURE REVIEW

Study on divorce has gained its place in the research world long before research has became the core factor to elevate an academician's level (Tan Poo Chang and Gavin W. Jones; 1990). It is among the conventional topic that has been evergreen throughout many years as a marriage institution is affected and transformed through the development of the modern world. In the past decade, the centre of study on the area of divorce basically discussed on the reasons that had became the grounds for divorce (Hashim, N. M and et.al, 2019, Norizan Abdul Ghani and et. al, 2017; Azmawaty Mohd Nor and et al., 2013; Yih, Yap Han and et.al, 2017; Tan Poo Chang and Gavin W. Jones; 1990), the religious teaching and rulings (Azmawaty Mohd Nor and et al., 2013), the aftermath of the divorce (Paul R. Amato, 2014), the efffect of the children to divorce (Yih Yap Han et.al, 2017; Paul R. Amato, 2014) and many other similar areas. Most of the study on divorce couple in Malaysia agreed that intolerable emotional depression is the utmost reason for divorce (Rahman et.al, 2017). The trend is also diverting where a study by Norizan et. al (2017) disclosed that most young generation couples agree to divorce due to modern lifestyle that is very much shaped by working environment (Rozmi Ismail et. al, 2015) and social media leading to lack of communication between husband and wife. In the study by Norizan Abdul Ghani et. al (2017) that centered on the main factors that contribute to divorce cases in Perlis, the researchers had comprehensively discuss the social factors to each of the identified reasons. This study had also suggested the role of the government and non-governmental organisations (NGOs) in nurturing sense of responsibility between couple to marriage. This study focuses around the reasons of divorce without discussing the alternative mechanism to aid couple who need to go trough stressful experience of divorce such as the usage of technology innovation.

A similar study conducted by Azmawaty Mohd Nor et. al (2013) quoted the statistic of divorce in many countries including Malaysia that had showed a worrying trends. The divorce rate escalated in this decade. Diverting from the common remarks attached to usual divorce experience this paper advocated for the twist of psychological acceptance that will affect the attitude towards divorce from negative to positive. This study had proposed a Marriage Family Therapy (MFT) model for working effectively with Malay-Muslim clients in Malaysia that is based on the counselling and religious approaches. Although this study had proposed a workable mechanism to aid couple to divorce, yet it has not put forward any discussion on the possibility of having new technology in assisting couple to divorce. The research carried out by Yih Yap Han et.al (2017) focused on a Malaysian Chinese female divorcee discloses the factors that led to divorce and how children to such unpleasant event became the strength to the Chinese female divorcee tolerated the emotional torture in defending the marriage until external marital affairs of the husband loosen the endurance. This study spares the knowledge on psychological area relating to divorce couple. The study is absent in discussing the aid of new invention in providing information on divorce to the couple who faces marital disruption aiming at reducing the psychological impact to the suffering spouse.

On research that looks to the modern lifestyle, the increase of dual working-couple culture (Boo Su Lynn, 2014) has significantly changes the traditional family definition. This later contributed to the loosen husband and wife as well as the children relationship that finally led to divorce. Rozmi Ismail and et. al (2015) relates the decrease in couple marital satisfaction over their quality of family lifestyle to the increase of living expenses of the current world. The advanced global economic development forces both husband and wife to earn a living. This contributed to the decrease of marital index happiness. To this same area, Paul R Amato (2014) highlighted these changes of lifestyle to the effect on the married couple linking it to the hierarchy of psychological needs by Maslow's theory. Maslow believed that economic development results in a shift from concerns about material needs such as food, shelter, and safety to higher-order concerns about non-material needs such as fashion, cosmetic and

luxuries. Although these studies elaborated on the changes of modern lifestyle that very much impacted on the newly invented necessities, these studies were not aimed to highlight the usage on the modern invention to aid the divorcing couple.

In other jurisdiction, Paul R Amato (2014) provided input on how government of the United States of America is playing an effective role to assist adults and children to divorce in dealing with their mental and physical health during the post-divorce duration. He agreed that divorce introduces a great deal of stress into the lives of adults and children. The grieving can be worsening by not having any assistance in resorting to the appropriate solution to the marital breakdown.

The attempt to search for literatures on the study in the innovation of software application or device that can assist divorcing couple unveiled that there is lack of studies conducted on this area. The preceding studies were confined to the increase of divorce cases in Malaysia and the emotional torture to the parties involved that become the foundation to the introduction of device that may aid the bitter experience. As we are living in the world where the rapid dissemination of information and processes are expedited by the introduction of new devices, this research suits the current development.

METHODOLOGY

The methodology of the research is based on qualitative research method as it enables us to have interaction with the samples and involve in the actual experiences of the samples (Cresswell, 2017). This is a socio-legal research to analyse and discuss the use of the application software to assist the divorcing couple. For that purpose, this research was designed based on the primary and secondary data as well as investigation of some social problems or questions which are essential in providing solution to the issue.

This research employed semi structured interviews and is based on result of interviews with those in the authority who are directly or indirectly involved in handling the non-Muslim divorce cases in the Civil High court and the officers of Marriage Tribunal of the NRD. The data obtained is valuable in assessing and evaluating the existing law and procedures governing the non-Muslim divorce cases in Malaysia. Among others, is the demand for articulation of ideas which will assist the targeted communities in determining the appropriate process and procedure. In addition to that, the secondary data were collected to provide a better analysis and comprehensive discussion of this research. On this point, the Law Reform (Marriage and Divorce) Act 1976, the Law Reform (Marriage and Divorce) Rules 1982 and Divorce and Matrimonial Proceedings Rules 1980 have been examined. Other secondary data were from books, published articles, online information and relevant copies of documents.

FINDINGS AND DISCUSSION

The law and procedure of divorce in Malaysia can be divided into three stages namely the pre-divorce requirement, the divorce process and the post-divorce claims. The pre-divorce requirement involves a reconciliation process at the Marriage Tribunal upon which the parties will be assisted by a conciliator and some officers in charged. Failure of reconciliation results in parties filing for divorce at the High Court. As an effort to encourage reconciliation, the LRA 1976 has designed a provision for this purpose. The petitioner shall have recourse to the assistance and advice of such persons or bodies as may be made available for the purpose of affecting reconciliation. Section 55(1) of the LRA 1976 allows the petitioner to refer the matrimonial problems to persons or bodies for the assistance and advice before petition for divorce can be made to the court. Shanker J., in the case of *Re Divorce Petitions*¹ agreed that:

“As to the steps to be taken to effect a reconciliation referred to by section 57(2) surely reference to a conciliatory body is not the only way to affect reconciliation. The in-laws and near relatives, dependents, friends and solicitors themselves could have tried to affect a rapprochement.”

This case shows that besides the conciliatory body, the court recognises that family and relatives can also be involved to affect the reconciliation. In Malaysian society, matrimonial problems have always been referred to family members rather than strangers. Matrimonial problems can be regarded as private to most people in the society (Daleleer Kaur Randawar et al., 2018).

There is a proviso to section 106(1) of the LRA 1976 which provides exceptional circumstances where reference to the conciliatory body shall not applicable. The circumstances are:

- i. where the petitioner alleges that he or she has been deserted by and does not know the whereabouts of his or her spouse;
- ii. where the respondent is residing abroad and it is unlikely that he or she will enter the jurisdiction within six months next ensuing after the date of the petition;
- iii. where the respondent has been required to appear before a conciliatory body and has wilfully failed to attend;
- iv. where the respondent is imprisoned for a term of five years or more;
- v. where the petitioner alleges that the respondent is suffering from incurable mental illness; or
- vi. where the court is satisfied that there are exceptional circumstances which make reference to a conciliatory body impracticable.

¹ [1984] 2 MLJ 158

The application of proviso (vi) of section 106 can be seen in the case of *Kiranjit Kaur Kalwant Singh v Chandok Narinderpal Singh*,² where the court held that reference to a conciliatory body was not practical as the parties had been separated since July 2007 and the defendant was a resident of France.

The general rule is that no petition for divorce may be presented to the court unless at the date of the presentation of the petition, two years has expired since the date of the marriage. However, the married couples are allowed to petition for divorce within two years of marriage in certain exceptional circumstances and hardship is proven. The LRA 1976 provides for grounds to petition for a divorce by way of conversion, mutual consent and irretrievable breakdown of marriage. The procedure and process of divorce petition can be summarised from the application software as follows:

Table 1: Summary of the Process from the Software

| Pre-requisite of divorce application (reconciliation process at the Marriage Tribunal of NRD)- section 106 of LRA 1976 | | |
|---|---|--|
| The matrimonial difficulty shall be resolved within 6 months from the date of reference to the Marriage Tribunal | Attendance of the parties is compulsory | Issuance of a certificate of non-reconciliation |
| Jurisdiction of the Court: High Court of Malaya/ Sabah and Sarawak | | |
| Grounds for Divorce: (solicitor is required) | | |
| Conversion to Islam (section 51 of the LRA 1976) | Form 2- General Form of Petition | |
| Mutual Consent (section 52 of the LRA 1976) -The parties agree to petition for divorce after 2 years of marriage | Form 3- Joint Petition Form 4- Statement as to Arrangement of Children Form 7- Affidavit of the Petitioner in Support of Petition | a) Decree nisi granted- after 3 months, parties are legally divorce or b) Decree nisi not granted-parties are not legally divorce |
| Breakdown of Marriage: (section 54 of the LRA 1976) a) The respondent has committed adultery b) The respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent c) The respondent has deserted the petitioner for continuous period of at least 2 years d) The parties have lived apart for a continuous period of 2 years | Form 2- General Form of Petition Form 6- Acknowledgement of Service Form 7- Affidavit by the Petitioner in Support of Petition | |

The complicated divorce process and lack of knowledge is burdensome to person facing marital dispute. In such cases, offer of assistance would be a great contribution that will ease the burden. Thus, the creation of this invention i.e. divorce application software will go a long way to assist and expedite the process of divorce for non-Muslim in Malaysia. It may assist to increase efficiency, certainty and ensure compliance with law and procedure in settling the marital dispute. As of today, we found nothing similar to invention of ours, either online or offline, as to the method of determining the appropriate divorce procedure in tandem with the current needs and modern resources. It is a user-friendly interface which makes it easy, efficient and enjoyable to operate as it is designed by using, among others, clear and simple language, patterns in layout and design, colour, light, contrast and texture in software features, and legibility in typography. The user can also print the end results as the software provides print release which integrates directly with printer devices. Although this software is only at the initial stage, and yet to be commercialized, it is hoped that further discussion with the National Registration Department may upgrade this application software for public usage.

CONCLUSION

Divorce which is often associated with negative remarks due to the emotional rupture, tarnished of reputation and financial implication it magnetised. For parties in such situation, the ability to make a stable and right decision would usually be affected.

² [2010] 4 CLJ 724

Thus, there is a dire need to adopt more effective method for determining the appropriate process in settling the divorce cases. Hence, easy-to-use application software for divorce is a guideline and very useful to educate, assist and enhance public awareness on the process of divorce in Malaysia. The target users are the community at large and the couples facing marital dispute specifically. The invention will be very significant in ensuring the public awareness on the compliance of the procedure and law for the non-Muslim divorce cases. Further, it is very convenient for the community to use as it is readily accessible. This software has the benefits, namely, to assist the person without legal background and unfamiliar with the available forum or avenue in the pre-divorce process; to identify the existing procedural framework for divorce in court; to dispose and reduce the number of inadequacy of divorce related rights; to help the community and the couple to marital dispute specifically, to determine the exact and appropriate divorce process; and to guide the authorities in ensuring the smooth running of non-Muslim divorce process.

Since the usage of this software is only at the initial stage, there is an intention to extend its application to include ancillary claims, namely custody of the children, maintenance of wife and children and jointly acquired property. It is hoped that the collaboration made by the researchers and the NRD could produce a better result as to its application in the future.

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