



A LEGAL GUIDEBOOK

Your Legal Rights

The rights of wives, husbands and children under Islamic family law in Malaysia — before marriage, within marriage, polygyny, divorce, children, protection from violence and after death, and how to claim them

*يَا أَيُّهَا الَّذِينَ ءَامَنُوا كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ ...

How to use this book

This book explains your rights under Islamic family law in Malaysia, chapter by chapter, following the course of a household: the legal basics, before and at the time of marriage, a wife's rights within marriage, polygyny, divorce, children, protection from violence, after death, and finally how to claim those rights in court.

Each chapter states the right in plain language, the relevant sections of the law, and the steps to claim it. Each chapter opens with a verse of the Qur'an, includes a **Do & Avoid** page as a quick guide, and ends with **Frequently asked questions**. The verse meanings in this edition are from the English translation of Abdullah Yusuf Ali.

Islamic family law is state law. This book cites the Islamic Family Law (Federal Territories) Act 1984 [Act 303] as its reference, and points out state differences where the text has been checked. **The section numbers in your state may differ**; check your state enactment before making a decision. A list of all fourteen laws is in the Appendix.

Every legal fact in this book is taken from a text that has been checked. Where a point cannot be confirmed from a primary source, please check the latest rules with the Syariah Court or your state Islamic religious office. This book does not state nafkah (maintenance) rates, court fees or form numbers, because there is no statutory maintenance rate in Malaysia, and fees and forms differ between states and change from time to time.

Knowing your rights does not mean looking for a fight. These laws protect wives, husbands and children, and most family disputes can be settled through discussion, counselling or sulh (mediation) before they reach a trial.

This book is a general reference, not a fatwa and not legal advice. For your own situation, consult the advisory counter of the Syariah Court (Mahkamah Syariah), your state Islamic religious department, the Legal Aid Department or a registered Syariah lawyer.

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Each chapter explains your rights, the relevant sections of the law, and how to claim them.
Further reference at mypolygyny.com.

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CHAPTER 1

The basics: Islamic family law in Malaysia

Who makes these laws, which court hears them, and which state's law applies to you.

﴿ إِنَّا نَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ ... ﴾ ٥٨ ﴿

"Allah doth command you to render back your Trusts to those to whom they are due; And when ye judge between man and man, that ye judge with justice..."

Surah an-Nisa' 4:58 · tr. Abdullah Yusuf Ali

One country, fourteen laws

Islamic family law in Malaysia is **state law**. Each state has its own enactment (Sarawak: an ordinance), and the Federal Territories have an Act of Parliament. So there are fourteen instruments: the Islamic Family Law (Federal Territories) Act 1984 [Act 303] and thirteen state enactments or ordinances. The full list is in the Appendix.

Act 303 applies to the Federal Territories of Kuala Lumpur and Labuan (s.1), and was extended to Putrajaya by an order in 2002. Under s.4, the Act applies “to all Muslims living in the Federal Territory and to all Muslims resident in the Federal Territory who are living outside the Federal Territory”.

Most state enactments follow the model of Act 303, so their content is almost the same. But **the section numbers, the order and some of the details differ**. For example, the polygyny provision is s.23 in Act 303 and eleven state enactments, s.21 in the Sarawak Ordinance, and s.22 in the Terengganu Enactment 2017. That is why this book cites Act 303 as its reference, and mentions state differences where the text has been checked.

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- The law that applies depends on where you reside, not where you were born.
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- Act 303 s.134A: a provision that is inconsistent with Hukum Syarak (Islamic law) is void to the extent of the inconsistency; where the Act does not provide for a matter, the court applies Hukum Syarak.

Who is involved



Syariah Court (Mahkamah Syariah)

Hears claims on marriage, divorce, nafkah (maintenance), hadhanah (custody of a young child) and harta sepencarian (jointly acquired matrimonial property). Each state has a Syariah Subordinate Court and a Syariah High Court.



State Islamic religious department

Registration of marriage, divorce and ruju', permission to marry, pre-marriage courses and family counselling.



Registrar

The officer who registers marriages and divorces and issues marriage certificates and taklik certificates (Act 303 s.26).



JKSM

The Syariah Judiciary Department Malaysia coordinates the Syariah Courts and the e-Syariah system, including the Family Support Division (BSK).



Syarie lawyer

An accredited lawyer who can represent you. You are not required to have a lawyer; many people represent themselves.



Sulh officer

Conducts sulh sessions (mediation) so that the parties can agree without a full trial.

Which court hears your case

For divorce and orders relating to it, Act 303 s.45 sets two conditions: the marriage has been registered or is deemed to be registered under the Act (or was contracted in accordance with Hukum Syarak), **and** one of the parties resides in the Federal Territory at the time the application is presented. State enactments have matching conditions for their own state.

In practice, file your case in the Syariah Court of the state where you reside. If you and your spouse live in different states, ask the court's advisory counter in your state first; they will tell you whether the case can be registered there.

How cases are divided between the Syariah Subordinate Court and the Syariah High Court is set by each state's law on the administration of Islamic law and depends on the type of claim. The court counter will decide where your case is registered. This book does not list it because it differs between states. Please check the latest rules with the Syariah Court or your state Islamic religious office.

Terms you will hear in court



Plaintiff / applicant

The party who starts a claim or an application.



Defendant / respondent

The party against whom the claim is made, or who must answer the application.



Summons (saman)

A court document that calls the other party to appear on a given date.



Affidavit / iqrar

A written statement affirmed as true. Act 303 calls it an iqrar in applications for divorce and polygyny.



Mention (sebutan)

A short court date to check the progress of a case, not a full trial.



Sulh

Mediation before a sulh officer; an agreement can be recorded as a court order.

Where to read the text of the law

The text of Act 303 cited in this book is the reprint as at 1 January 2014, published by the Attorney General's Chambers. A summary of Act 303 and each state's polygyny section can be read at mypolygyny.com/akta-303 and mypolygyny.com/enakmen-negeri.

There are three limits you should know about. First, the state texts checked for this book were mostly taken from archived copies of the e-Syariah portal; more recent amendments may not be included. Second, for most states only the parts on marriage, polygyny, registration, harta sepencarian and penalties were checked; section numbers for other parts are given only for the states whose text was read in full (Kedah, Terengganu and Sarawak). Third, Kelantan passed a new Islamic family law in November 2025, but its commencement date has not been found; this book uses the 2002 Enactment. Please check the latest rules with the Syariah Court or your state Islamic religious office before relying on it.

Do & avoid: understanding your law

Do

- ✓ Find out the state where you reside and the enactment that applies
- ✓ Keep copies of your marriage certificate, taklik certificate and identity card in a safe place
- ✓ Ask the Syariah Court's advisory counter before filing anything
- ✓ Note the section numbers an officer mentions, and which law they are from
- ✓ Double-check information taken from old sources

Avoid

- ✗ Applying Act 303 section numbers wholesale to another state
- ✗ Relying on social media advice about rights and procedure
- ✗ Assuming civil law and Syariah law are the same in every matter
- ✗ Waiting until things reach a crisis before looking for information
- ✗ Signing documents you do not understand

Frequently asked questions

I married in Selangor but now live in Kuala Lumpur. Which law applies?

For divorce and related orders, the test is where you reside at the time the application is made (Act 303 s.45). If either of you resides in the Federal Territory, the Federal Territory Syariah Court can hear it. Confirm at the court counter before filing.

Do I need to appoint a Syarie lawyer?

It is not required. Many people represent themselves with help from the court's advisory counter. If your case involves property, disputed hadhanah or violence, a lawyer's advice helps a great deal. If your income is low, see the Legal Aid Department (Chapter 9).

Can state law conflict with Hukum Syarak?

Act 303 s.134A states that a provision inconsistent with Hukum Syarak is void to the extent of the inconsistency, and where the Act does not provide for a matter, the court applies Hukum Syarak. For the equivalent provision in the state enactments, check the latest rules with the Syariah Court in your state.

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CHAPTER 2

Rights before and at marriage

Consent, wali, age, registration — and what is lost if a marriage is not registered.

وَأَتُوا النِّسَاءَ صَدُقَتِهِنَّ نِحْلَةً ۚ فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِّنْهُ نَفْسًا فَكُلُوهُ
هَنِيئًا مَّرِيئًا ﴿٤﴾

"And give the women (on marriage) their dower as a free gift; but if they, of their own good pleasure, remit any part of it to you, Take it and enjoy it with right good cheer."

Surah an-Nisa' 4:4 · tr. Abdullah Yusuf Ali

Consent and the wali

The first right in marriage is the right to **consent**. Act 303 s.13: “A marriage shall not be recognized and shall not be registered under this Act unless **both parties** to the marriage have consented thereto”, and either the wali (the bride’s guardian) of the woman has consented in accordance with Hukum Syarak, or the Syariah Judge has granted his consent to the wali Raja (the guardian appointed by the Ruler) to solemnize the marriage.

The Syariah Judge’s consent may be given where there is no wali by nasab (by blood), the wali cannot be found, or “**the wali refuses his consent without sufficient reason**”. It is given after due inquiry in the presence of all parties concerned. This is the route for a woman whose wali refuses without reasonable grounds.

If the woman did not consent, or her consent was not valid because of duress, mistake or another circumstance recognised by Hukum Syarak, this is one of the grounds for fasakh (dissolution of marriage by the court) in Act 303 s.52(1) (j).

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- Act 303 s.7: the akad (marriage contract) is solemnized by the wali in the presence of the Registrar, by the wali’s representative with the Registrar’s permission, or by the Registrar as the wali’s representative. A woman with no wali by nasab is married only by the wali Raja.

Minimum age and permission to marry

Act 303 s.8: “No marriage may be solemnized under this Act where either the man is under the age of **eighteen** or the woman is under the age of **sixteen** except where the Syariah Judge has granted his permission in writing in certain circumstances.” The Kedah (s.8), Terengganu (s.8) and Sarawak (s.7) texts that were checked contain the same limits. For any more recent state amendment on the age limit, please check the latest rules with the Syariah Court in your state.

Before the akad, each party applies for permission to marry to the Registrar for the kariah masjid (mosque district) where the woman resides, at least seven days before the date of the akad, although the Registrar may allow a shorter period (s.16). No marriage may be solemnized without that permission (s.19).

Solemnizing a marriage without permission, or without at least two credible witnesses, is an offence (s.40(1)). Marrying contrary to any provision of Part II is also an offence (s.40(2)). For both, the maximum penalty is a fine not exceeding RM1,000 or imprisonment not exceeding six months or both.

Mas kahwin, pemberian and taklik

Mas kahwin (the obligatory marriage payment) is the wife's right, not her family's. Act 303 s.21 requires the Registrar to record the value and particulars of the mas kahwin and of any pemberian (marriage gift), **any part that was promised but not paid** together with the promised date of payment, and any security given for its payment. If the mas kahwin is deferred, make sure the amount and the date are recorded; that record is your evidence later.

Immediately after the akad, the Registrar enters the particulars of the marriage and the **taklik** into the Marriage Register, attested by the couple, the wali and two witnesses (s.22). Both parties are entitled to receive a marriage certificate and a taklik certificate (s.26).

Taklik is a pledge, made by the husband after the akad, that makes a divorce depend on a stated condition, for example the husband leaving his wife or not providing maintenance for a certain period. If the condition occurs, the wife may apply to the court to confirm that divorce (s.50). **Read the taklik wording on your own certificate:** its conditions and periods differ between states. Additional conditions in the akad and how they are recorded also differ between states; check the latest rules with the Syariah Court in your state.

Registration: compulsory, and what is lost if it is neglected

Act 303 s.25: the marriage of every person resident in the Federal Territory, including those living abroad, **“shall be registered”**. In Terengganu, s.24 requires registration within 21 days. In the other eleven state enactments, the registration provision is s.25; in Sarawak, s.23.

Registration does not make an invalid marriage valid, and the absence of registration does not make invalid a marriage that is valid under Hukum Syarak (s.34). But without registration, every right must **first be proved** before it can be claimed: maintenance, the child's nasab (paternity) and birth registration, harta sepencarian and shares under faraid (Islamic inheritance). The court can also make an order of divorce for a marriage that has been registered or that was contracted in accordance with Hukum Syarak (s.45), so proof of the akad becomes the first question.

A marriage that breaches Part II but is otherwise valid under Hukum Syarak may be registered with a court order (s.12(2)). A valid marriage that has not been registered may be registered voluntarily at any time (s.33).

Marrying abroad: registration steps

1

At a Malaysian Embassy or Consulate

The akad may be solemnized by a Registrar appointed at a Malaysian embassy, high commission or consulate (Act 303 s.24). Such a marriage is registered directly.

2

Outside an embassy: register within six months

A Federal Territory resident who has validly married abroad must appear before a Registrar abroad within six months after the date of the marriage (s.31(1)).

3

Returning before registration

Register within six months of the first arrival of either party in the Federal Territory, with the marriage certificate or other evidence that the akad took place (s.31(2)).

4

If you are late

Registration can still be made on payment of the prescribed penalty (s.31(5)). Failing to appear within the time is an offence: a fine not exceeding RM1,000 or imprisonment not exceeding six months or both (s.35).

5

If the husband is already married

Permission for polygyny is still required even if the akad is abroad (s.23(2)). See Chapter 4.

Do & avoid: before and at marriage

Do

- ✓ Apply for permission to marry through the religious office before fixing the date of the akad
- ✓ Make sure the mas kahwin, pemberian and any deferred part are recorded
- ✓ Read and keep your own taklik certificate
- ✓ Register the marriage, including one solemnized abroad, within the time allowed
- ✓ If the wali refuses without reason, go to the Syariah Court about the wali Raja

Avoid

- ✗ Marrying through unofficial agents or without permission to marry
- ✗ Accepting a promise of deferred mas kahwin without a record of the amount and date
- ✗ Signing the register without reading the particulars
- ✗ Thinking a valid akad is enough without registration
- ✗ Forcing a child or relative to marry without their consent

Frequently asked questions

My wali refuses to marry me off without a clear reason. What are my options?

Act 303 s.13(b) allows the Syariah Judge, after an inquiry in the presence of all parties, to give consent to the wali Raja to solemnize your marriage if the wali refuses without sufficient reason. Start at the Syariah Court or the Islamic religious office where you reside.

We married validly abroad but have not registered. Is our marriage invalid?

Registration does not decide whether a marriage is valid (s.34), but registration is compulsory and being late is an offence (s.35). Register at once under s.31 with the marriage certificate and supporting documents; without registration, your rights and your child's are harder to prove.

Can deferred mas kahwin be claimed later?

Yes. It is a debt that remains even after divorce; Act 303 s.57 preserves the wife's right to her mas kahwin and pemberian on the dissolution of the marriage. The entry in the Marriage Register under s.21 is the main evidence.

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CHAPTER 3

A wife's rights within marriage

Maintenance, mas kahwin, a home and good treatment — rights, not favours.

... وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ^ج فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَى أَنْ تَكْرَهُوا شَيْئًا
وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا ﴿١٩﴾

"...live with them on a footing of kindness and equity. If ye take a dislike to them it may be that ye dislike a thing, and Allah brings about through it a great deal of good."

Surah an-Nisa' 4:19 · tr. Abdullah Yusuf Ali

Nafkah: the husband's duty, the wife's right

A wife's nafkah (maintenance) is the husband's duty under Hukum Syarak, and the Syariah Court can order it. Act 303 s.59(1): "The Court may, subject to Hukum Syarak, order a man to pay maintenance to his **wife or former wife.**" Under fiqh, a wife's maintenance usually covers food, clothing, a home and other basic needs, according to the husband's means and in a reasonable way (ma'ruf).

There is no statutory maintenance rate in Malaysia. Act 303 s.61 sets only how it is assessed: the court bases its assessment "**primarily on the means and needs of the parties**", having regard to the proportion the maintenance bears to the income of the person ordered to pay. So evidence of the husband's income and of the wife's needs is the core of every claim.

A wife's income, salary, business and property are her own. A wife's contribution to household expenses does not cancel the husband's duty of maintenance.

-
- Maintenance that has been ordered but not paid is a **debt** (s.69); it can be claimed from the husband's estate if he dies.

Nusyuz: when maintenance can lapse, and its limits

Act 303 s.59(2): “Subject to Hukum Syarak **and confirmation by the Court**, a wife shall not be entitled to maintenance when she is nusyuz, or unreasonably refuses to obey the lawful wishes or commands of her husband”, among others when she withholds her association with her husband, leaves her husband's home against his will, or refuses to move with him to another home or place, without any valid reason according to Hukum Syarak.

Note three limits in that section. First, nusyuz (unreasonable refusal of marital obligations) must be **confirmed by the court**; a husband cannot declare it himself and then cut off maintenance. Second, the refusal must be **unreasonable** and the husband's command must be **lawful**. Third, s.59(3): “As soon as the wife repents and obeys the lawful wishes and commands of her husband, she ceases to be nusyuz.”

Leaving home out of fear of being harmed is not an unreasonable refusal. If there is violence, see Chapter 7.

A wife's rights protected by Act 303



Maintenance

s.59: the court may order maintenance for a wife or former wife; s.61: assessed by means and needs.



Interim maintenance

s.70: an order that takes effect at once while a maintenance claim is heard.



Mas kahwin

s.21 records the mas kahwin and any deferred part; s.57 preserves the wife's right to it on dissolution of the marriage.



Living together

s.120: a deserted wife may apply for an order that the husband resume cohabitation with her.



The wife's property

s.127: ill-treating a spouse or cheating them of their property is an offence; the court may order compensation.



Justice

s.128: failing to give proper justice to a wife according to Hukum Syarak is an offence.

When rights are neglected: offences and remedies

Act 303 makes several acts of a husband offences, each with a maximum penalty of a fine not exceeding RM1,000 or imprisonment not exceeding six months or both: **failing to comply with an order** to resume cohabitation with his wife (s.126), **ill-treating** his wife or cheating her of her property (s.127), and **failing to give proper justice** to his wife according to Hukum Syarak (s.128). The same Act also makes a wife's wilful disobedience of a lawful order of her husband according to Hukum Syarak an offence (s.129); the law places duties on both parties.

In the states, the penalty for ill-treating a spouse can differ. Kedah s.128 and Sarawak s.131 contain the same limits as Act 303. Terengganu s.130 is far heavier: a fine not exceeding RM5,000 or imprisonment not exceeding three years or whipping not exceeding six strokes, or a combination of these.

Failure to provide maintenance for three months, and cruelty including disposing of the wife's property or preventing her from exercising her rights over it, are also grounds for fasakh (s.52(1)(b) and (h)). See Chapter 5.

How to claim maintenance during the marriage

1

Start recording today

The date maintenance was last received, the amount each month, and the household expenses you bear yourself.

2

Gather evidence

Marriage certificate, evidence of the husband's income if any, bills, receipts, rent or home loan instalments, and messages that mention maintenance.

3

Go to the Syariah Court counter

Ask for the wife's maintenance claim form, the fee, and whether interim maintenance (s.70) can be applied for at the same time.

4

Attend sulh and mentions

An agreement in sulh can be recorded as an order. If it fails, the case goes to trial.

5

After the order

Keep a copy of the order. If it is not obeyed, use the enforcement steps in Chapter 9.

Do & avoid: rights within marriage

Do

- ✓ Pay and receive maintenance through a channel that leaves a record
- ✓ Discuss changes in means openly and in writing
- ✓ Keep evidence of ownership of your own property
- ✓ Seek counselling at the religious office before a conflict grows
- ✓ Take a nusyuz dispute to the court, not decide it yourself

Avoid

- ✗ Withholding maintenance as punishment or pressure
- ✗ Declaring a wife nusyuz without confirmation by the court
- ✗ Taking or selling a spouse's property without their permission
- ✗ Quoting any figure as an official "maintenance rate"
- ✗ Keeping silent until arrears pile up

Frequently asked questions

I work and earn a salary. Is my husband still obliged to provide maintenance?

Yes. The duty of maintenance does not lapse because the wife earns an income. The wife's income is her own; the court assesses maintenance by the means and needs of the parties (s.61).

My husband says I am nusyuz and has stopped providing maintenance. Is that lawful?

Act 303 s.59(2) makes the loss of maintenance for nusyuz subject to confirmation by the court. Without that confirmation, you may claim maintenance, and the husband must prove nusyuz in court.

My husband has left home for months. What can I apply for?

You can claim maintenance and interim maintenance, apply for an order that he resume cohabitation (s.120), or, if the conditions are met, apply for a taklik divorce or fasakh. See Chapter 5 and Chapter 9.

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CHAPTER 4

Polygyny and the rights of the existing wife

The court's permission, the conditions it tests, the wife's right to be heard, and the penalty for marrying without permission.

... فَأَنْكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلَاثَ وَرُبْعَ^ط فَإِنْ خِفْتُمْ^ط
أَلَّا تَعْدِلُوا فَوَاحِدَةً ... ﴿٣﴾

"...Marry women of your choice, Two or three or four; but if ye fear that ye shall not be able to deal justly (with them), then only one..."

Surah an-Nisa' 4:3 · tr. Abdullah Yusuf Ali

The court's written permission, before the akad

Act 303 s.23(1): “No man during the subsistence of a marriage shall, **except with the prior permission in writing of the Court**, contract another marriage with another woman.” That permission is required whether the akad takes place inside or outside the Federal Territory, for a man resident there (s.23(2)).

This provision is in all fourteen laws, but not under the same number: s.23 in Act 303 and eleven state enactments, **s.21** in the Sarawak Ordinance, and **s.22** in the Terengganu Enactment 2017. In Terengganu, the permission is given by a Syariah Judge.

This book explains the rights of each party when polygyny is applied for or takes place. It neither encourages nor rejects polygyny; that decision belongs to the parties, and the law only sets the conditions and protects the rights of those affected.

What must be stated, and the four conditions tested

The application is accompanied by an **iqrar** stating the grounds on which the proposed marriage is alleged to be just or necessary, the applicant's present income, his commitments and financial obligations and liabilities, the number of his dependants including new dependants, and **“whether the consent or views of the existing wife or wives on the proposed marriage have been obtained”** (Act 303 s.23(3)). The wife's consent is not one of the conditions, but it must be stated.

The court may grant permission if satisfied: (a) that the proposed marriage is **“just or necessary”**, having regard to, among others, sterility, physical infirmity, physical unfitness for conjugal relations, wilful avoidance of an order for restitution of conjugal rights, or insanity on the part of the existing wife; (b) that the applicant **has such means** as to enable him to support as required by Hukum Syarak all his wives and dependants; (c) that the applicant would be able to accord **“equal treatment”** to all his wives as required by Hukum Syarak; and (d) that the proposed marriage **would not cause darar syarie** (harm recognised by Hukum Syarak) to the existing wife (s.23(4)).

The four conditions are joined by “and”: all of them must be met. The state enactments word condition (c) as “fair treatment” (in their Malay text, layanan adil).

The existing wife's right to be summoned and heard

Act 303 s.23(4): the court shall summon the applicant, **his existing wife or wives**, the woman to be wedded, her wali and any other person who may provide information, to be present at the hearing, which shall be **in camera** (in private). A copy of the application and of the iqrar must be served together with the summons on each existing wife (s.23(5)).

This is your right to know your husband's reasons, check his income figures, and give evidence about maintenance, dependants and the effect on the household. A party who is dissatisfied with the decision may appeal (s.23(6)).

The court that grants permission also has the power, on the application of any party, to order **maintenance for the existing wife** and **the division of assets acquired jointly** during the marriage (s.23(9)). The court may also order child maintenance when permitting polygyny (s.73(1)(e)). Apply for these orders at the permission stage; it is easier than claiming them later.

Important state differences

Following the Act 303 model

- Selangor, Johor, Kedah, Kelantan, Melaka, Negeri Sembilan, Pahang, Perak, Penang, Sabah: s.23
- Iqar and grounds in s.23(4); four conditions in s.23(5)(a)–(d)
- The application is served on each existing wife **and the woman to be wedded** (s.23(6))
- Maintenance and division of property at the permission stage: s.23(10)

Different from the model

- **Perlis** s.23: the four conditions are there, but the court summons only the applicant; there is no provision for service on the wife; ancillary orders in s.23(9)
- **Sarawak** s.21: conditions in s.21(5); s.21(10) allows maintenance for the wife and dependants, but no power to divide property
- **Terengganu** s.22: a single sentence — no listed conditions, no summons to the wife and no ancillary orders in the text (text from an unofficial copy; refer to the official gazette for the latest text)

Marrying without permission: the offence and its consequences

Marrying again without the court's written permission, in any place, is an offence. The maximum penalty: Act 303 s.123 and s.124 in eleven state enactments — a fine not exceeding RM1,000 or imprisonment not exceeding six months or both; Terengganu s.126 — a fine not exceeding RM2,000 or imprisonment not exceeding one year or both; Sarawak s.127 — a fine not exceeding RM3,000 or imprisonment not exceeding two years or both. All these figures are **maximum limits**, not fixed amounts.

The marriage is not registered unless the court is satisfied that it is valid according to Hukum Syarak and orders it to be registered, subject to s.123 (s.23(1A)). A man who marries without permission must also **“pay immediately the entire amount of the mas kahwin and the pemberian due to the existing wife or wives”**; if not paid, it is recoverable as a debt (s.23(7)). For the state equivalent of s.23(7), please check the latest rules with the Syariah Court in your state.

For the existing wife, not being treated equitably in polygyny in accordance with the requirements of Hukum Syarak is one form of cruelty that is a ground for fasakh (s.52(1)(h)(vi)).

Do & avoid: polygyny and the wife's rights

Do

- ✓ Existing wife: attend when summoned and bring evidence of maintenance and expenses
- ✓ Check the income and commitment figures in your husband's iqrar
- ✓ Apply for maintenance and property-division orders at the permission stage
- ✓ Woman to be wedded: ask to see the court's permission order before the akad
- ✓ Keep copies of all documents served on you

Avoid

- ✗ Marrying in another state or abroad to avoid needing permission
- ✗ Hiding a new marriage from the existing wife
- ✗ Declaring untrue income or dependants in the iqrar
- ✗ Assuming the wife's consent alone is enough without the court
- ✗ Ignoring a court summons out of anger or disappointment

Frequently asked questions

Can I stop my husband from taking another wife by refusing my consent?

The wife's consent is not one of the conditions in s.23(4), so the absence of consent does not by itself prevent permission. But you have the right to be heard, and your evidence on means, treatment and darar syarie can decide whether the conditions are met.

My husband has married again abroad without permission. What are my rights?

That marriage still required permission (s.23(2)) and it is an offence (s.123). You can claim the entire mas kahwin and pemberian due to you (s.23(7)), claim maintenance, and weigh the options of fasakh or taklik. A report can be made to the state Islamic religious department.

I am to be a second wife. What should I check?

Make sure there is a written permission order from the court before the akad. In most states, the application is also served on the woman to be wedded, and you are called to the hearing. Without permission, the registration of your marriage is held up and your rights are harder to prove.

05

CHAPTER 5

Rights on divorce

Talak, fasakh, khuluk and taklik — and mut'ah, nafkah idah and harta sepencarian.

الطَّلَاقُ مَرَّتَانِ ۖ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَنٍ ... ﴿٢٢٩﴾

"A divorce is only permissible twice: after that, the parties should either hold Together on equitable terms, or separate with kindness..."

Surah al-Baqarah 2:229 · tr. Abdullah Yusuf Ali

Divorce through the court

Act 303 s.47: “A husband **or a wife** who desires divorce shall present an application for divorce to the Court”, accompanied by an iqrar stating the particulars of the marriage and the children, the reasons for desiring divorce, the steps taken towards reconciliation, and the agreement or proposals on maintenance, accommodation, care of the children and division of harta sepencarian.

If the other party consents and the court is satisfied that the marriage has irretrievably broken down, the court advises the husband to pronounce one talak (divorce) before the court (s.47(3)). If the other party does not consent, or reconciliation is reasonably possible, the court appoints a **conciliatory committee** chaired by a Religious Officer with one person acting for each party, close relatives preferred, which has six months to try to reconcile them (s.47(5)–(9)). No Syarie lawyer may appear before that committee (s.47(12)).

If reconciliation fails and the husband refuses or does not attend to pronounce talak, the case is referred to **hakam** (arbitrators) (s.47(14), s.48). The hakam may be given authority to pronounce or to order a divorce (s.48(5)–(6)).

-
- A talak raj'i (revocable divorce) does not dissolve the marriage until the idah (waiting period) ends, unless revoked earlier (s.47(16)). If the wife is pregnant, the divorce takes effect when the pregnancy ends (s.47(17)).

Four routes to divorce in Act 303



Talak (s.47)

Applied for by the husband or the wife; talak is pronounced before the court after an inquiry.



Khuluk / tebus talak (s.49)

Where the husband will not pronounce talak but both parties agree to a divorce by redemption. If the amount is not agreed, the court assesses it having regard to the status and means of the parties.



Taklik (s.50)

The wife applies to the court to confirm a divorce that has taken place under the conditions in the taklik certificate. Terengganu: s.47.



Fasakh (s.52)

Dissolution by the court on the listed grounds. Kedah s.53, Terengganu s.50, Sarawak s.51; for other states, please check the latest rules with the Syariah Court in your state.

The most common grounds for fasakh

Act 303 s.52(1) lists the grounds for fasakh, among them: the whereabouts of the husband or wife not known for **more than one year**; **failure to provide maintenance for three months**; imprisonment for three years or more (and one year of the sentence served, s.52(2)); failure without reasonable cause to perform marital obligations (nafkah batin) for one year; impotence since the marriage without the wife's knowledge; certain diseases; consent that was not valid; and **cruelty**.

Cruelty in s.52(1)(h) includes: habitually assaulting the spouse or making their life miserable; associating with people of evil repute; attempting to force the spouse to lead an immoral life; disposing of the spouse's property or preventing them from exercising their rights over it; obstructing the spouse in their religious obligations; and, if the husband has more than one wife, **not treating her equitably** in accordance with Hukum Syarak.

The list is not closed: s.52(1)(l) allows "any other ground that is recognized as valid for dissolution of marriages or fasakh under Hukum Syarak". Fasakh needs evidence; prepare witnesses, records and documents.

Financial rights after divorce

Nafkah idah (maintenance during the waiting period). The court may order maintenance for a former wife (s.59(1)). The right of a divorced wife to maintenance under a court order ends when the idah expires or if she is nusyuz (s.65(1)).

Mut'ah (consolatory gift). A woman divorced without just cause may apply for mut'ah or a consolatory gift, in addition to her right to maintenance; the court orders such sum as may be fair and just according to Hukum Syarak (s.56). Kedah s.58, Terengganu s.57, Sarawak s.56.

Mas kahwin. The wife's right to her mas kahwin and pemberian, including any deferred part, is not affected by divorce (s.57).

Accommodation. A divorced woman is entitled to stay in the home where she used to live when she was married, for so long as the husband is not able to get other suitable accommodation for her (s.71(1)). This right ends when the idah expires, when the period of guardianship of the children expires, if she remarries, or if she has been guilty of open lewdness (s.71(2)).

Harta sepencarian

When permitting talak or making an order of divorce, the court has power to divide the assets acquired during the marriage (Act 303 s.122). For assets acquired by **joint efforts**, the court considers each party's contributions in money, property or labour, debts contracted for their joint benefit, and the needs of the minor children, and subject to those considerations “**shall incline towards equality of division**” (s.122(2)).

For assets acquired by the **sole efforts of one party**, the court considers the other party's contribution to the welfare of the family by looking after the home or caring for the family, and the needs of the children; the party by whose efforts the assets were acquired receives a greater proportion (s.122(3)–(4)). Assets owned before the marriage but substantially improved during it are also included (s.122(5)).

This provision is s.122 in most states, s.59 in Terengganu and s.58 in Sarawak. The Malay text of most states says “pembahagian yang sama banyak” (equal division); the Kedah text that was checked does not contain that phrase. While a case is pending, the court can prohibit the disposal of assets acquired during the marriage (s.107A).

Talak outside the court

A husband who pronounces talak outside the court without the court's permission must **report it to the court within seven days** (Act 303 s.55A(1)). The court will inquire whether the talak is valid according to Hukum Syarak; if it is, the court approves and records it for registration (s.55A(2)–(3)).

Pronouncing talak outside the court without permission is an offence, with a maximum penalty of a fine not exceeding RM1,000 or imprisonment not exceeding six months or both (s.124). A divorce is not registered unless the court has made a final order relating to it (s.55).

For the wife, a pronouncement outside the court creates uncertainty about her status, the date the idah begins and nafkah idah. If the husband does not report it, ask the court counter how the wife can bring the matter before the court for confirmation (please check the latest procedure with the Syariah Court in your state); do not leave your status hanging.

Do & avoid: during and after divorce

Do

- ✓ Consider reconciliation seriously before and during the process
- ✓ List each party's assets, debts and contributions since the marriage
- ✓ Claim nafkah idah, mut'ah and harta sepencarian with evidence
- ✓ Apply for a prohibitory order if property may be sold
- ✓ Make sure the divorce is registered and keep its certificate

Avoid

- ✗ Pronouncing talak in anger, by message or outside the court
- ✗ Transferring or selling joint property while a case is pending
- ✗ Giving up rights verbally without understanding the consequences
- ✗ Using children as a bargaining tool
- ✗ Relying on verbal promises about maintenance after divorce

Frequently asked questions

Can a wife start a divorce?

Yes. Act 303 s.47(1) allows a husband or a wife to apply for divorce. A wife may also seek khuluk (s.49), have a taklik divorce confirmed (s.50), or apply for fasakh (s.52).

I am a full-time homemaker. Am I entitled to harta sepencarian?

Yes. For assets acquired by the husband's sole efforts, s.122(4)(a) requires the court to consider your contribution to the welfare of the family by looking after the home or caring for the family. Your share is assessed on the facts; the husband by whose efforts the assets were acquired receives a greater proportion.

My husband divorced me by WhatsApp. Is it valid?

Whether that pronouncement is valid is decided by the court according to Hukum Syarak after an inquiry (s.55A). The husband must report it within seven days. If he does not, ask the court counter how you can bring the matter so that your status and the date of your idah are settled.

06

CHAPTER 6

Children's rights

Maintenance, custody, paternity and documents — a child's rights do not lapse because the parents separate.

... وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ ... ﴿٢٣٣﴾

"...But he shall bear the cost of their food and clothing on equitable terms..."

Surah al-Baqarah 2:233 · tr. Abdullah Yusuf Ali

Child maintenance: the father's duty

Act 303 s.72(1): "Except where an agreement or order of Court otherwise provides, **it shall be the duty of a man to maintain his children**, whether they are in his custody or the custody of any other person, either by providing them with such accommodation, clothing, food, medical attention, and education as are reasonable having regard to his means and station in life or by paying the cost thereof."

If the father is dead, his whereabouts are unknown, or he is unable to maintain them, the duty passes to the person liable under Hukum Syarak (s.72(2)).

The court may order a father to pay maintenance for his child if he has refused or neglected to provide for the child, has deserted his wife and the child is in her charge, during matrimonial proceedings, when custody is given to another person, or **when permitting him to practise polygamy** (s.73(1)). Payment may be directed to the person who has custody of the child (s.73(3)).

-
- Child maintenance is the child's right. It is separate from any dispute between the mother and father, and cannot be withheld over visiting arrangements.

Child maintenance provisions in Act 303



Until 18 (s.79)

The order expires when the child reaches 18; the court may extend it for further or higher education or training.



Daughters (s.79)

For a daughter who has not been married, the order does not expire at 18.



Children with disabilities (s.79)

For a child who cannot maintain themselves because of a mental or physical disability, the order does not expire at 18.



Security (s.74)

The court may order maintenance to be secured by vesting property in trustees.



Arrears (s.77)

s.69 applies: arrears of child maintenance can be claimed as a debt, including from the estate.



Variation (s.75)

An order for a child's custody or maintenance can be varied when circumstances change.

Hadhanah: who has the right to custody

Act 303 s.81(1): “Subject to section 82, **the mother shall be of all persons the best entitled** to the custody of her infant children during the connubial relationship as well as after its dissolution.” If the mother is disqualified under Hukum Syarak, the right passes in the order set out in s.81(2), starting with the maternal grandmother, then the father, then the paternal grandmother, followed by sisters and aunts, and finally male relatives who could be heirs as 'asabah (residuaries).

The custodian must be a Muslim, of sound mind, of an age that allows her to give the child the care and affection it needs, of good conduct from the standpoint of Islamic morality, and living in a place where the child is not exposed to moral or physical risk (s.82). A woman's right of hadhanah can be lost, among other things, if she marries a man not related to the child within the prohibited degrees and her custody affects the child's welfare (the right reverts if that marriage is dissolved), moves home so as to prevent the father's supervision, or neglects or is cruel to the child (s.83).

Above all: in deciding custody, **“the paramount consideration shall be the welfare of the child”**. The court also has regard to the wishes of the parents and the wishes of a child old enough to express an independent opinion, and may make an interim custody order (s.86).

How long, and what comes after

Act 303 s.84(1): the right of the hadhinah (the woman with custody) ends when a boy reaches **seven** and a girl **nine**, but the court may, on the hadhinah's application, allow her to retain custody until **nine** for a boy and **eleven** for a girl. The Kedah (s.85), Terengganu (s.87) and Sarawak (s.88) texts contain the same ages.

After that, custody passes to the father, and if the child has reached the age of discernment (mumaiyiz), he or she may choose to live with either parent, unless the court orders otherwise (s.84(2)). These ages do not prevent the court from making another order for the child's welfare under s.86.

The court may also, on the application of the father or mother, issue an injunction to stop a child being taken out of Malaysia while proceedings are pending, or where one parent has sole custody (s.105). Disobeying that order is punishable as contempt of court.

Paternity, documents and children in a polygynous household

Act 303 s.110: where a child is born to a married woman **more than six qamariah (lunar) months** from the date of the marriage, or within four qamariah years after the marriage is dissolved by death or divorce (the woman not having remarried), the nasab (paternity) of the child is established in the husband; he may disclaim the child only by li'an (imprecation) before the court. This is why a registered marriage certificate matters for registering a birth in the father's name.

Register your child's birth with the National Registration Department (JPN) as soon as possible, and keep a copy of the parents' marriage certificate. If the marriage has not yet been registered, settle the marriage registration first (Chapter 2).

In a polygynous household, the s.72 duty applies to **every child** of the man, whoever the mother is. Children of different wives have the same rights to maintenance and inheritance under Hukum Syarak.

Do & avoid: children's rights

Do

- ✓ Pay child maintenance regularly and on record, separately from a wife's maintenance
- ✓ Record each child's expenses separately: school, health, food
- ✓ Register births and keep original documents in a safe place
- ✓ Apply to extend maintenance before the child turns 18 if they will continue studying
- ✓ Put the child's welfare first in every discussion of custody

Avoid

- ✗ Withholding maintenance because you are not allowed to see the child
- ✗ Stopping a child from seeing a parent without a court order
- ✗ Quietly taking a child abroad while a case is pending
- ✗ Making a child a messenger or witness in the parents' quarrels
- ✗ Treating the children of different wives differently

Frequently asked questions

My ex-husband says he need not pay maintenance because I look after the children. Is that right?

No. Act 303 s.72(1) obliges a father to maintain his children even when they are in another person's custody. Custody and maintenance are two separate matters.

My child will go to university after turning 18. Does maintenance end?

The order usually expires at 18, but the court may extend it for further or higher education or training on the application of the child or another person (s.79). For a daughter who has not been married, the order does not expire at 18.

If I remarry, do I lose the right to look after my child?

Not automatically. Under s.83(a), the right is lost if the new husband is not related to the child within the prohibited degrees
and

your custody in that situation affects the child's welfare; the right reverts if that marriage is dissolved. The court assesses each case by the child's welfare (s.86).

07

CHAPTER 7

Protection from violence

Domestic violence is an offence; civil law protects Muslim wives too.

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا كُونُوا قَوِّمِينَ بِالْقِسْطِ شُهَدَاءَ لِلّٰهِ وَلَوْ عَلَىٰ أَنْفُسِكُمْ﴾

﴿١٣٥﴾ ...

"O ye who believe! stand out firmly for justice, as witnesses to Allah, even as against yourselves..."

Surah an-Nisa' 4:135 · tr. Abdullah Yusuf Ali

Safety first

If you are in danger now, **call 999**. You do not need anyone's permission to save yourself and your children. Leaving home out of fear of being harmed is not an unreasonable refusal and is not nusyuz.

Domestic violence is not only hitting. It can take the form of threats, controlling money, confinement, cutting off contact with family, coercion and emotional abuse. Islam forbids harming a spouse, and Malaysian law provides two routes of protection that can be used at the same time: civil law and the Syariah Court.

This chapter explains those routes in general terms. Section numbers of the Domestic Violence Act 1994 [Act 521] are not cited here because its text has not yet been checked for this book; ask a police officer or social welfare officer about the right order for you, and check the latest rules with the relevant authority.

Where to go



999

Police and ambulance emergency line.



Talian Kasih 15999

A 24-hour helpline for advice, support and referral to a social welfare officer.



Hospital OSCC

One Stop Crisis Centre at the Emergency Department of government hospitals: treatment, a medical report and referral to the police and JKM in one place.



Police station

Make a police report. You may bring a friend or family member.



Department of Social Welfare

Social welfare officers help with protection orders and temporary shelter.



Syariah Court

Restraining orders, complaints of ill-treatment of a spouse, and fasakh on the ground of cruelty.

The civil route: the Domestic Violence Act 1994

The Domestic Violence Act 1994 [Act 521] is a Federal law that applies to everyone, **including Muslims**. The Act has been amended, among others by the Domestic Violence (Amendment) Act 2017 [Act A1538].

Protection under Act 521 covers three kinds of order: an **Emergency Protection Order (EPO)** that can be issued quickly by a social welfare officer, an **Interim Protection Order (IPO)** during an investigation, and a **Protection Order (PO)** made by a court. For the conditions, duration and section of each order, refer to the latest text of Act 521 and check with a police officer or social welfare officer before you rely on them.

Practical steps: make a police report, get treatment and a medical report, and ask a police officer or social welfare officer to explain the orders you can apply for in your situation.

The Syariah Court route

Restraining order. Act 303 s.107: during matrimonial proceedings, or on or after an order of divorce, fasakh or annulment, the court has power “to order any person to refrain from forcing his or her society on his or her spouse or former spouse and from other acts of molestation”. Disobeying that order is punishable as contempt of court. Terengganu: s.109.

The offence of ill-treating a spouse. Act 303 s.127: a husband who ill-treats his wife or cheats her of her property (and a wife who does so to her husband) commits an offence; the maximum penalty is a fine not exceeding RM1,000 or imprisonment not exceeding six months or both, and the court may order compensation for property cheated. Terengganu s.130 is far heavier: a fine not exceeding RM5,000 or imprisonment not exceeding three years or whipping not exceeding six strokes, or a combination. Kedah s.128; Sarawak s.131.

Fasakh on the ground of cruelty. Habitually assaulting a spouse or making their life miserable by cruelty of conduct is a ground for fasakh (s.52(1)(h)(i)). Syariah criminal offences and civil protection orders can run alongside a fasakh claim.

Evidence and a safety plan

- ✓ Police report: keep the report number and a copy
- ✓ A medical report from a hospital or clinic, and dated photos of injuries
- ✓ Messages, voice recordings or emails containing threats, kept where the abuser cannot reach them
- ✓ Names of witnesses: neighbours, family or friends who saw or heard
- ✓ Copies of important documents in a safe place: identity card, marriage certificate, children's birth certificates, bank cards
- ✓ An emergency bag and some cash, and the numbers 999 and 15999 in your phone
- ✓ One trusted person who knows your plan and a code word if you need help

Do & avoid: when there is violence

Do

- ✓ Put your own and your children's safety first; call 999 in an emergency
- ✓ Get treatment and a medical report even if an injury looks minor
- ✓ Make a police report and keep its number
- ✓ Ask Talian Kasih 15999 or a social welfare officer for help
- ✓ Keep evidence safe and dated

Avoid

- ✗ Treating violence as a private matter that must be kept secret
- ✗ Trying to "win over" the abuser as a solution to violence
- ✗ Deleting messages or evidence out of shame
- ✗ Waiting until injuries become serious before getting help
- ✗ Blaming the victim or advising her to stay patient while in danger

Frequently asked questions

I am a Muslim. Can I apply for protection under Act 521?

Yes. The Domestic Violence Act 1994 is a Federal law that applies to everyone, including Muslims. It can be used at the same time as the Syariah Court route.

If I leave home because I am afraid, will I be counted as nusyuz?

Nusyuz under Act 303 s.59(2) requires an unreasonable refusal without any valid reason according to Hukum Syarak, and it must be confirmed by the court. Fear of being harmed is a serious reason; keep a police report or medical report as evidence.

My husband does not hit me, but he controls all my money and stops me from seeing my family. Is that violence?

Control and restrictions like these can amount to domestic violence. Cheating a wife of her property is also an offence under s.127, and preventing a wife from exercising her rights over her property is a ground for fasakh (s.52(1)(h)(iv)). Get advice from Talian Kasih 15999 or a social welfare officer.

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CHAPTER 8

Rights after death

Faraid, harta sepencarian, hibah and a widow's rights — planned during one's lifetime.

وَلَا تَتَمَنَّوْا مَا فَضَّلَ اللَّهُ بِهِ بَعْضُكُمْ عَلَى بَعْضٍ ۚ لِلرِّجَالِ نَصِيبٌ مِّمَّا
اَكْتَسَبُوا وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا اَكْتَسَبْنَ ... ﴿٣٢﴾

*"And in no wise covet those things in which Allah Hath bestowed His gifts More
freely on some of you than on others: To men is allotted what they earn, and to
women what they earn..."*

Surah an-Nisa' 4:32 · tr. Abdullah Yusuf Ali

The order of things before an estate is divided by faraid

1

Separate the harta sepencarian

The surviving spouse's share in property acquired during the marriage is not part of the deceased's estate. It is claimed first.

2

Funeral expenses

The reasonable cost of the funeral is taken from the deceased's property.

3

The deceased's debts

Including deferred mas kahwin and arrears of maintenance that accrued before death (Act 303 s.69(1)).

4

Wasiat (bequest)

Carried out in favour of non-heirs, not exceeding one third of the remaining estate according to the majority of jurists.

5

Faraid

Only then is the remainder divided among the heirs in their fixed shares.

Harta sepencarian after death

Many widows assume that all property in the husband's name becomes part of his estate straight away. In fact, the wife's share in property acquired jointly during the marriage can be **claimed first as harta sepencarian**, before the remainder is divided by faraid. A widower has the same right over property registered in the name of a wife who has died.

Act 303 s.122 sets out the court's power to divide harta sepencarian on divorce. A claim for harta sepencarian after death is also made in the Syariah Court, but the basis and the section used for that claim differ between states, so please check the latest rules at your state's court counter.

In a polygynous household, each wife may claim her share in the property acquired during her marriage to the deceased, according to her own contribution. Records of who paid for what, and when, are very important.

The shares of wife, husband and children in faraid

The spouses' shares are fixed in Surah an-Nisa' 4:12. A **wife** receives **1/4** if the deceased left no child, or **1/8** if there is a child. A **husband** receives 1/2 if the deceased wife left no child, or 1/4 if there is a child.

If the deceased left more than one wife, the 1/4 or 1/8 share is **shared equally** among all the wives. It is not multiplied by the number of wives.

If there is a son, the sons and daughters inherit the remainder together, a son's share being equal to that of two daughters. If there are only daughters, one daughter receives 1/2, and two or more share 2/3 (4:11). All the deceased's children, from whichever wife, inherit in the same way. The full calculation depends on the other heirs present; obtain a faraid certificate or faraid order from the Syariah Court.

-
- A wife divorced by talak raj'i who is still in her idah when the husband dies still counts as a wife for faraid according to fiqh; once the idah has ended, she no longer does. Have her status confirmed by the court if there is any doubt.

Planning during your lifetime



Hibah (lifetime gift)

A gift made during one's lifetime. Make sure ownership really passes and is recorded; confirmation of a hibah can be applied for in the Syariah Court.



Wasiat (bequest)

For non-heirs, not exceeding one third of the property according to the majority of jurists. A bequest to an heir requires the consent of the other heirs.



EPF and takaful nominees

The position of a nominee, whether as owner or as administrator for the heirs, differs by institution and state fatwa; consult the mufti's office or your state Islamic religious office. Check and update your nominees.



A list of assets and debts

List your assets, debts, accounts and policies, and where the documents are kept, and tell someone you trust.



Deferred mas kahwin

Make sure it is recorded in the marriage register; it is a debt settled before faraid.



Estate administration channels

Small estates containing land: the Small Estates (Distribution) Act 1955 [Act 98]; Amanah Raya Berhad: Act 532; others: the Probate and Administration Act 1959 [Act 97].

A widow's rights during the idah and after

The idah of a widow is **four months and ten days** (Surah al-Baqarah 2:234), counted from the date of death; for a pregnant widow, her idah lasts until she gives birth (Surah at-Talaq 65:4). During the idah a widow observes ihdad, that is, she refrains from adornment, but she may still work and go out when needed.

An order for maintenance expires on the death of either party (Act 303 s.64), but **arrears of maintenance that accrued before the husband's death are a debt due from his estate** (s.69(1)). The same applies to arrears of child maintenance (s.77). These debts are paid before faraid.

After the idah, a widow is free to remarry on producing her late husband's death certificate or other proof of his death (s.14(4)). The orphaned children's right to maintenance passes to the person liable under Hukum Syarak (s.72(2)).

Do & avoid: property and death

Do

- ✓ Keep evidence of contributions to property bought during the marriage
- ✓ Claim harta sepencarian before the faraid division
- ✓ Check and update your EPF, takaful and savings account nominees
- ✓ Record a hibah with clear transfer documents
- ✓ Obtain a faraid certificate from the Syariah Court before dividing

Avoid

- ✗ Dividing property by “custom” before debts and harta sepencarian are settled
- ✗ Assuming an EPF or takaful nominee is always the absolute owner
- ✗ Hiding another wife or child from the other heirs
- ✗ Multiplying the wife's share by the number of wives
- ✗ Putting off estate matters for years

Frequently asked questions

My husband has died and the house is in his name. Does it go straight into the faraid estate?

Not necessarily. If the house was acquired during the marriage with your contribution, you can claim your share as harta sepencarian first. The remainder, after debts and any bequest, is then divided by faraid.

My husband had two wives. What is each wife's share?

The wives' share is $\frac{1}{8}$ if the husband left a child, or $\frac{1}{4}$ if there is no child, and that share is divided equally. With two wives and children, each wife receives $\frac{1}{16}$ of the estate, in addition to her own claim to harta sepencarian.

My husband died owing years of child maintenance. Can I claim it?

Yes. Arrears of maintenance that accrued before his death are a debt due from his estate (s.69(1); for children, s.77). Bring the maintenance order and your record of payments received to the Syariah Court or the estate administrator.

09

CHAPTER 9

How to claim your rights

From the court counter to an order that is enforced — step by step.

يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ وَلْيَكْتُبَ
بَيْنَكُمْ كَاتِبٌ بِالْعَدْلِ ... ﴿٢٨٢﴾

"O ye who believe! When ye deal with each other, in transactions involving future obligations in a fixed period of time, reduce them to writing Let a scribe write down faithfully as between the parties..."

Surah al-Baqarah 2:282 · tr. Abdullah Yusuf Ali

Filing a claim in the Syariah Court

1

Go to the advisory counter

At the Syariah Court of the state where you reside. Ask about the type of claim, the forms, the fee and the documents needed, and whether filing through e-Syariah is available.

2

Prepare your documents

Identity card, marriage or divorce certificate, children's birth certificates, earlier orders, and evidence supporting your claim.

3

Fill in the forms and affidavit

State the facts honestly, briefly and with dates. The affidavit is affirmed before an authorised officer.

4

Register and serve

The case is registered and given a number. The summons or notice must be served on the other party.

5

Mention, sulh, trial

Attend every date. Many cases are settled in sulh; those that are not go to trial.

6

Order and appeal

Obtain a copy of the order. The appeal period runs from the date of the decision and it is short; ask what it is straight away.

Sulh: negotiating before trial

Sulh is a mediation session conducted by a sulh officer at the Syariah Court. Both parties sit together to reach agreement on maintenance, hadhanah, visits, property and other matters. If agreement is reached, it can be recorded as a **consent order**, which has the force of a court order.

Sulh saves time, cost and emotion, but it is not compulsion. Do not agree to anything you do not understand; ask for time to think or to get advice. If sulh fails, the case goes on to trial.

In divorce, Act 303 itself provides for a conciliatory committee and hakam (s.47–48; see Chapter 5). The rules on sulh are in each state's Syariah court civil procedure law; for the Federal Territories, the Syariah Court Civil Procedure (Federal Territories) Act 1998 [Act 585]. For the sections and rules, please check the latest rules with the Syariah Court in your state.

Legal aid and support

The **Legal Aid Department (JBG)**, formerly known as the Legal Aid Bureau, provides advice and representation in Syariah cases to applicants who pass the income eligibility test under the Legal Aid Act 1971 [Act 26]. The income limits and contributions are revised from time to time; check with JBG. Contact JBG early, before the first mention date.

Some state Islamic religious councils also have their own Syarie legal aid bureau, and the Syariah Court has an advisory counter. State Islamic religious departments provide family counselling.

For temporary financial help, wives without maintenance, single mothers and widows may apply for aid from the **state zakat institution** and the **Department of Social Welfare (JKM)**. This aid does not replace maintenance; the right to maintenance can still be claimed. A list of institutions and how to apply is at mypolygyny.com/bantuan-zakat-kebajikan.

When an order is not obeyed

Act 303 s.132: where a person **wilfully** fails to comply with an order requiring payment, the court that made the order may direct the amount due to be levied in the manner provided for levying fines, or may sentence the person to imprisonment. For monthly payments, imprisonment not exceeding one month for each month's payment remaining unpaid; in any other case, not exceeding one year (s.132(2)).

Arrears of maintenance are a debt that can be claimed, can be proved in bankruptcy, and become a debt due from the estate (s.69). Other methods such as attachment of earnings, judgment debtor summons, and seizure and sale are in the state's Syariah court civil procedure law; ask the court counter about the methods and their sections (check the latest rules).

The **Family Support Division (BSK)** of the Syariah Judiciary Department Malaysia helps former wives and children who do not receive maintenance as ordered, including help to enforce the order. The form of help and the eligibility conditions should be checked with BSK for the latest rules.

Orders that protect your claim



Interim maintenance (s.70)

Takes effect at once while a maintenance claim is heard.



Variation (s.66)

A maintenance order can be varied or rescinded if circumstances change materially, or if it was based on a misrepresentation or mistake of fact.



Setting aside dispositions (s.106)

The court can set aside a disposition of property made in the preceding three years to avoid maintenance or mut'ah, and prevent a planned disposition.



Prohibition on disposal (s.107A)

Prohibits the husband or wife from disposing of assets acquired during the marriage while a harta sepencarian claim is pending.



Security (s.62, s.74)

Maintenance for a wife or child is secured by vesting property in trustees.



Child injunction (s.105)

Stops a child being taken out of Malaysia while proceedings are pending or where there is a custody order.

The document file you should have

- ✓ Your identity card and a copy of the other party's identity card if you have one
- ✓ Marriage certificate, taklik certificate, and divorce certificate if relevant
- ✓ Each child's birth certificate
- ✓ All earlier court orders, with dates and case numbers
- ✓ Maintenance records: date, amount, channel and the month paid for
- ✓ Evidence of the other party's income, and evidence of your expenses
- ✓ A list of assets and debts, and evidence of your contributions to them
- ✓ Police report or medical report if there has been violence

Do & avoid: claiming your rights

Do

- ✓ Claim early; what is lost through delay is evidence
- ✓ Attend every court and sulh date, or give the reason why you cannot
- ✓ Keep a copy of every document filed and received
- ✓ Apply for interim maintenance and a prohibitory order if needed
- ✓ Contact the Legal Aid Department if your income is low

Avoid

- ✗ Making untrue statements in an affidavit
- ✗ Ignoring a summons because you feel the claim is unfair
- ✗ Agreeing in sulh without understanding the terms
- ✗ Quietly stopping payment while waiting for a decision
- ✗ Spreading details of the case on social media

Frequently asked questions

How much does it cost to file a claim?

Court fees differ by state and type of claim, and this book does not give figures because they change. Ask at the court counter. Cases handled by the Legal Aid Department may qualify for exemption from fees under the state fee rules; please check the latest rules with the Syariah Court in your state.

My ex-husband has moved to another state. Can the maintenance order be enforced?

A valid order is not cancelled because a party moves. How it is enforced in another state depends on that state's civil procedure law; ask the court counter or BSK for the latest rules.

The other party is selling property while the case is pending. What can I do?

Apply at once for an order under s.107A prohibiting the disposal of assets acquired during the marriage, or under s.106 to set aside a disposition intended to avoid maintenance or mut'ah. Disobeying that order is punishable as contempt of court.

A. Islamic family law in the 14 jurisdictions (1)

Federal Territories and states

- **Federal Territories** — Islamic Family Law (Federal Territories) Act 1984 [Act 303]. Polygyny s.23; offence s.123.
- **Selangor** — Islamic Family Law (State of Selangor) Enactment 2003 [Enactment 2 of 2003]. Polygyny s.23; offence s.124.
- **Johor** — Islamic Family Law (State of Johor) Enactment 2003 [Enactment No. 17 of 2003]. Polygyny s.23; offence s.124.
- **Kedah** — Islamic Family Law (Kedah Darul Aman) Enactment 2008 [Enactment No. 11 of 2008]. Polygyny s.23; offence s.124.

States

- **Kelantan** — Islamic Family Law Enactment 2002 [Enactment 6 of 2002]. Polygyny s.23; offence s.124. A new law was passed by the State Legislative Assembly on 11 November 2025; its commencement date has not been found.
- **Melaka** — Islamic Family Law (State of Malacca) Enactment 2002 [Enactment No. 12 of 2002]. Polygyny s.23; offence s.124.
- **Negeri Sembilan** — Islamic Family Law (Negeri Sembilan) Enactment 2003 [Enactment 11 of 2003]. Polygyny s.23; offence s.124.

A. Islamic family law in the 14 jurisdictions (2)

States

- **Pahang** — Islamic Family Law Enactment 2005 [Enactment No. 3 of 2005]; please check the current Malay title with your state Islamic religious office. Polygyny s.23; offence s.124.
- **Perak** — Islamic Family Law (Perak) Enactment 2004 [Enactment No. 6 of 2004]; please check the current Malay title with your state Islamic religious office. Polygyny s.23; offence s.124.
- **Perlis** — Islamic Family Law Enactment 2006 [Enactment 7 of 2006]. Polygyny s.23; offence s.124.
- **Penang** — Islamic Family Law (State of Penang) Enactment 2004 [Enactment 5 of 2004]. Polygyny s.23; offence s.124.

States and Borneo

- **Terengganu** — Islamic Family Law (Terengganu) Enactment 2017 [Enactment 1 of 2017]. Polygyny s.22; offence s.126.
- **Sabah** — Islamic Family Law Enactment 2004 [Enactment 8 of 2004]. Polygyny s.23; offence s.124.
- **Sarawak** — Islamic Family Law Ordinance, 2001 [Chapter 43]. Polygyny s.21; offence s.127.
- Full text and a summary for each state:
mypolygyny.com/enakmen-negeri.

B. Sections of Act 303 cited in this book

Marriage and divorce

- s.8 minimum age · s.13 consent and wali · s.16, s.19 permission to marry
- s.21 mas kahwin · s.22 register and taklik · s.23 polygyny
- s.25 registration · s.31 marriage abroad · s.34 effect of registration
- s.47 talak · s.48 hakam · s.49 khuluk · s.50 taklik · s.52 fasakh
- s.55A talak outside court · s.56 mut'ah · s.57 mas kahwin

Maintenance, children, property and offences

- s.59 maintenance and nusyuz · s.61 assessment · s.66 variation · s.69 arrears · s.70 interim · s.71 accommodation
- s.72–s.79 child maintenance · s.81–s.86 hadhanah · s.105 child injunction · s.110 paternity (nasab)
- s.106 dispositions of property · s.107 restraining order · s.107A prohibition on disposal · s.122 harta sepencarian
- s.123 polygyny without permission · s.124 divorce outside court · s.126–s.129 · s.132 wilful neglect of an order

C. Directory of agencies



State Syariah Court

Advisory counter, filing of cases and sulh. Through the e-Syariah portal (esyariah.gov.my) or the state portal.



Syariah Judiciary Department Malaysia (JKSM)

Coordinates the Syariah Courts and the Family Support Division (BSK).
jksm.gov.my



State Islamic religious department

Registration of marriage, divorce and ruju' (return in marriage); family counselling. For example: JAWI (jawi.gov.my), JAIS (jais.gov.my).



Legal Aid Department (JBG)

Legal aid for those who qualify under the Legal Aid Act 1971 [Act 26].



Department of Social Welfare (JKM)

Financial aid, protection and protection orders. jkm.gov.my · Talian Kasih 15999



State zakat institutions

Aid for those eligible for zakat (asnaf) through the state Islamic religious council. List and links: mypolygyny.com/bantuan-zakat-kebakikan



National Registration Department (JPN)

Registration of a child's birth.
jpn.gov.my



Police and emergencies

999 in an emergency; OSCC at the Emergency Department of government hospitals.

D. Glossary



Darar syarie

“harm, according to what is normally recognized by Islamic Law, affecting a wife in respect of religion, life, body, mind, dignity or property” (Act 303 s.2).



Fasakh

Dissolution of a marriage by the court on a recognised ground (Act 303 s.52).



Hadhanah

The right to look after a young child — who looks after the child, not who pays.



Harta sepencarian

“property jointly acquired by husband and wife during the subsistence of marriage in accordance with the conditions stipulated by Hukum Syarak” (s.2); the power to divide it is in s.122.

D. Glossary (continued)



Iqrar

A written admission submitted with an application for divorce or polygyny.



Khuluk

Divorce in return for a payment from the wife (cerai tebus talak, divorce by redemption; Act 303 s.49).



Mut'ah

"a consolatory gift that is reasonable according to Hukum Syarak, given to a divorced wife" (s.2); claimed under s.56.



Nusyuz

Unreasonable refusal of marital obligations; it ends maintenance only with confirmation by the court.



Taklik

"a promise expressed by the husband after solemnization of marriage in accordance with Hukum Syarak and the provisions of this Act" (s.2, where it is spelt tal'liq); recorded in the taklik certificate.

E. Summary of Do & Avoid

Do

- ✓ Find out the law of the state where you reside
- ✓ Register marriages, births and divorces within the time allowed
- ✓ Keep your marriage certificate, taklik certificate and every court order
- ✓ Keep written records of maintenance and of contributions to property
- ✓ Put safety first: 999 and Talian Kasih 15999
- ✓ Ask the court counter or the Legal Aid Department when in doubt

Avoid

- ✗ Marrying, taking another wife or divorcing outside the court and registration channels
- ✗ Applying Act 303 section numbers wholesale to another state
- ✗ Withholding a wife's or child's maintenance as a means of pressure
- ✗ Selling or transferring joint property while a case is pending
- ✗ Signing or agreeing to what you do not understand
- ✗ Letting a claim wait until the evidence is lost

Closing

Knowing your rights is not for the sake of hostility, but so that everyone in the household is protected and treated justly. Islamic family law in Malaysia is designed to safeguard wives, husbands and children: it requires consent in marriage, the court's permission before polygyny, an inquiry before divorce, and justice in maintenance, child custody and property.

Most of the rights in this book depend on two simple things: **registration** and **records**. A registered marriage, a recorded mas kahwin, maintenance paid through a channel that leaves a record, and kept evidence of contributions to property — all of these protect you long before you need a court.

And when rights are neglected, the way out is not silence. Ask at the Syariah Court counter, get advice, and make your claim honestly and with evidence. May Allah make our homes places of peace and justice.

وَالَّذِينَ يَقُولُونَ رَبَّنَا هَبْ لَنَا مِنْ أَزْوَاجِنَا وَذُرِّيَّاتِنَا قُرَّةَ أَعْيُنٍ وَاجْعَلْنَا
لِلْمُتَّقِينَ إِمَامًا ﴿٧٤﴾

"And those who pray, "Our Lord! Grant unto us wives and offspring who will be the comfort of our eyes, and give us (the grace) to lead the righteous.""

Surah al-Furqan 25:74 · tr. Abdullah Yusuf Ali

mypolygyny.com · A general reference, not legal advice. Section numbers refer to the Islamic Family Law (Federal Territories) Act 1984 [Act 303]; each state has its own enactment and section numbers may differ. For your own situation, consult the Syariah Court (Mahkamah Syariah), your state Islamic religious department or a Syarie lawyer.