



**TOWARDS THE ESTABLISHMENT OF  
FAMILY COURTS IN MALAYSIA**

**BY**

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**A thesis submitted in fulfillment of the requirement  
for the degree of Doctor of Philosophy**

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## **ABSTRACT**

The objective of this thesis is to propose for the establishment of family courts in Malaysia. The thesis analyses how family disputes are dealt with in the Malaysian courts and other institutions. This includes studies on the administration of family law and mechanisms of dispute resolution that are available in the Syariah courts and civil courts; and also studies on the non-judicial institutions that provide family services and mechanisms to settle family disputes. These mechanisms include litigation, mediation, arbitration and family counselling. This research is undertaken on the ground that the present court system is not effective enough in dealing with family problems. The research involves qualitative methods where interviews and study visits were conducted for specific purposes. Library research was conducted intensively to gather all the information that is essential to this research. Subsequently, comparative studies are made with three countries. These are Singapore, Australia and Morocco. The purpose of studying these countries is to find a suitable model of family court as a benchmark for Malaysia. The family court structures of these countries are also examined to see where their family courts are placed in the judicial hierarchy. It is found that amicable dispute resolutions are very much encouraged by the family courts in those countries. The family courts also establish a strong networking with the institutions that can help the families to cope with their conflicts. Therefore, this research emphasizes that family disputes must not only be heard in a specialized court dedicated to deal with family cases only, but these courts, apart from determining legal issues, can also provide holistic resolutions to the family conflicts. This can be done either by establishing support units within the court itself, or by establishing a networking with the external institutions. The ideal solution is to establish a single family court for both Muslims and non-Muslims. However, due to certain limitations, the most practical recommendation for the time being is to establish family courts within the streamline of the existing civil and Syariah court structure. For the civil system, it is suggested that a specialized family court be established within the civil court of every states in Malaysia. Whereas, for the Syariah courts, the elements that make up a family court must be incorporated into the Syariah courts, to strengthen its role in dealing with family cases. The research suggested that both civil courts and Syariah courts need to have a counselling unit set up within the courts, with their own qualified counsellors. Mediation must be the essential tool in dispensing justice in family disputes. At the same time, the family courts and the Syariah courts must have a networking with the external family service providers that can assist the family to resolve their personal and interpersonal conflicts through many ways. Through this cooperation, it is expected that family disputes can be handled in a more holistic approach.

## ملخص البحث

يقوم هذا البحث بفحص الكيفية التي تعامل بها النزاعات الأسرية في المحاكم الماليزية والمؤسسات الأسرية الأخرى. إذ يتضمن دراسة آليات حل النزاعات الأسرية وكذا إدارة القوانين الأسرية في المحاكم الشرعية والمحاكم المدنية كما يتناول الهيئات غير القضائية التي تقدم خدمات عائلية وآليات حل النزاعات الأسرية مثل إجراءات الدعوى والصلح والتحكيم والاستشارات العائلية. ويفترض هذا البحث بأن نظام المحاكم الحالية قد ضعفت فعاليته في التعامل مع الشؤون الأسرية. وقد اعتمد هذا البحث على البحوث المكتبية لجمع كل المعلومات الضرورية وعلى المقابلات. وقد أجريت في هذا البحث مقارنة بين ثلاث الدول وهي سنغافوره وأستراليا والمغرب لبيان كيفية تعامل المحاكم في هذه الدول مع قضايا الأحوال الشخصية. وقد تبين من خلال الدراسة بأن المحاكم في تلك الدول تشجع حل النزاعات بأساليب غير التنازعية ومنسجمة إلى حد كبير. وكما أنشأت هذه المحاكم شبكة قوية مع المؤسسات غير القضائية التي تقدم خدمات لحل المشاكل الأسرية. لذلك يؤكد هذا البحث على أن المحاكم الخاصة بالأسرة لا ينبغي أن تقوم بحل النزاعات الأسرية من الناحية القانونية فقط وإنما ينبغي كذلك أن تساعد الأسر المحتاجة بتقديم خدمات معينة داخل المحكمة أو بطريق إنشاء شبكات تعاونية مع مؤسسات غير قضائية خارج المحكمة. وتبين من خلال البحث بأن دور محكمة الأسرة ضروري بالنسبة لغير المسلمين في ماليزيا. أما المحكمة الشرعية التي تعتبر محكمة الأسرة للمسلمين فينبغي إصلاحها من حيث السلطة والولاية القضائية والتوظيف. ويقترح هذا البحث إنشاء مركز استشاري داخل المحكمة بإشراف مستشارين مؤهلين. وفي نفس الوقت يوصى بأن تنشئ محكمة الأسرة والمحكمة الشرعية شبكة تعاونية مع مقدمي خدمات أسرية خارج المحكمة التي تساعد الأسرة في حل النزاعات الشخصية والأسرية بطرق شتى. ومن خلال هذا التعاون يتوقع أن يتم إدارة النزاعات الأسرية بشكل شمولي يمكن من معالجة الأسباب الجذرية للنزاعات بحلول أكثر فاعلية.

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## DECLARATION

I hereby declare that this thesis is the result of my own investigation, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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*I dedicate this work to the memory of my beloved  
mother, Bonda Fauziah Sani.*

*“O Allah, elevate her rank amongst those Thou  
had brought near to Thy Presence. Amin.”*

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Distribution Act 1958 (Act 300)  
Domestic Violence Act 1994 (Act 521)  
Federal Constitution (Malaysia)  
Guardianship of Infants Act 1961 (Act 351)  
Law Reform (Marriage and Divorce) Act 1976 (Act 164)  
Legal Aid Act 1971 (Act 26)  
Legitimacy Act 1961 (Act 60)  
Maintenance Orders (Facilities for Enforcement) Act 1949 (Act 34)  
Maintenance Ordinance 1959 (Sabah No. 7 of 1959)  
Malaysian Rules of Court 2012  
Married Women and Children (Maintenance) Act 1950 (Act 263)  
Married Women and Children (Enforcement of Maintenance) Act 1968 (Act 356)  
Marriage Reform Ordinance 1950 (Hong Kong)  
Mediation Act 2012 (Act 749)  
Rules of the High Court 1980 (Malaysia)  
Sarawak Customary Marriages (Maintenance) Ordinance 2003 (Cap. 55)  
Subordinate Courts Rules 1980 (Malaysia)  
Women's Charter (Singapore)  
Family Law Act 1975 (Australia)  
Federal Circuit Court of Australia Act 1999  
Family Court Act 1997 (Western Australia)  
Family Code of Morocco (Mudawwanah Al-Ussrah)  
Law No. 73.03 (Morocco)  
Law No. 41.10 (Morocco)

## LIST OF ABBREVIATIONS

AMLA	Administration of Muslim Law Act 1966 (Singapore)
BSK	Bahagian Sokongan Keluarga
CAPS	Counselling and Psychological Services
FDR	Family Dispute Resolution
FJC	Family Justice Courts
FRCs	Family Relationship Centres
FSC	Family Service Centre
FLA	Family Law Act 1975 (Australia)
IFLA	Islamic Family Law (Federal Territories) Act 1984
ILIM	Institut Latihan Islam Malaysia.
JAKIM	Jabatan Kemajuan Islam Malaysia
JKSM	Jabatan Kehakiman Syariah Malaysia
LAT	Less Adversarial Trial
LRA	Law Reform (Marriage and Divorce) Act 1976
MMC	Malaysian Mediation Centre
NPFDB	National Population and Family Development Board
PBUH	Peace be upon him
PPKI	Program Pembangunan Keluarga Islam
PPS	Program Pembangunan Sosial
SMC	Singapore Mediation Centre
SWT	Subhānahu wa Ta'āla

## TRANSLITERATION

b = ب	z = ز	f = ف
t = ت	s = س	q = ق
th = ث	sh = ش	k = ك
j = ج	ṣ = ص	l = ل
ḥ = ح	ḍ = ض	m = م
kh = خ	ṭ = ط	n = ن
d = د	ẓ = ظ	h = ه
dh = ذ	‘ = ع	w = و
r = ر	gh = غ	y = ي

Short Vowels		Long Vowels	
اَ-	a	اَ+ اَ-	ā
اِ-	i	اِ+ اِ-	ī
اُ-	u	اُ+ اُ-	ū

# CHAPTER 1

## STATEMENT OF INTENT AND METHODOLOGY

### 1.0 INTRODUCTION

Family, even though it is the smallest unit of society, is the most important and fundamental unit which determines social stability. In almost every religion or system of belief, the family unit is given the utmost consideration because the stability of this unit ensures the stability of the whole state. A civilized state is usually characterized by the existence of laws that govern the society, including family law.

The notion of family as a fundamental social unit is not only recognized by religion and culture, but it has been given official recognition and codified under several international declarations and conventions. This can be seen in Article 16(3) of the Universal Declaration of Human Rights, Article 23(1) of the International Covenant on Civil and Political Rights; and Article 17(1) of the American Convention on Human Rights which provide that “the family is the natural and fundamental group unit of society and is entitled to protection by society and the state”.<sup>1</sup>

In Malaysia, the National Family Policy acts as a catalyst in urging all stakeholders to focus on family perspectives in plans, strategies and developments to be implemented. One of the fundamental strategies under the National Family Policy is to ensure laws, policies, procedures and enforcement of laws and regulations prioritize the family perspectives.<sup>2</sup>

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<sup>1</sup> Other provisions that mention to the same effect are Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article VI of the American Declaration of the Rights and Duties of Man, Article 15 of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador); and African Charter on Human and People’s Rights (Banjul Charter).

<sup>2</sup> “National Family Policy”, Lembaga Penduduk dan Pembangunan Keluarga Negara, <<http://www.lppkn.gov.my>> viewed on 10 September 2012.



Family courts have been established in several countries across the world. The countries include United States of America, United Kingdom, New Zealand, Canada, Japan, Zimbabwe, Australia and Singapore. In Malaysia, the recommendation to establish a family court began in early 1980's.<sup>3</sup> It was initially propounded in 1983 during the Seminar on Women and The Law, organized by LAWASIA Standing Committee on human rights in association with the Bar Council of Malaysia.<sup>4</sup>

In 2000, Dato' Seri Shahrizat Abdul Jalil, who was holding the office of Minister of Women, Family and Community Development also proposed the establishment of the family court in Malaysia to deal with matrimonial and family matters.<sup>5</sup> Subsequently, while launching the National Family Policy, the proposal was again mentioned with an emphasis that the law enforcement should be more sensitive to the family perspective.<sup>6</sup> In fact, this recommendation has also been made by the former Supreme Court Judge, Tan Sri Dato' Harun Mahmud Hashim.<sup>7</sup>

The idea of the family court is raised due to the principle that family related disputes are different from other civil disputes, thus deserve to get special attention and procedures different from the one that are carried out under the conventional system of litigation.

Therefore, the present research suggests that a specialized family court should be establish in Malaysia to provide a more holistic approach and concentration to the resolution of family related disputes. In order to design the appropriate family court

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<sup>3</sup> Shamsuddin Suhor, "Mahkamah Keluarga" in *Undang-undang Keluarga (Sivil)*, Shamsuddin Suhor & Noor Aziah Mohd Awal, Dewan Bahasa dan Pustaka, 2007 at 227.

<sup>4</sup> Muhammad Nizam Awang@Ali, "Mahkamah Keluarga Di Malaysia: Suatu Pandangan" [2004] I *KANUN* 20 at 34.

<sup>5</sup> "Speech by the Minister of Women and Family Development at the Legal Aid Conference, Bar Council of Malaysia, in Kuantan on 19 January 2002," Kementerian Pembangunan Wanita, Keluarga dan Masyarakat, <<http://www.kpwkm.gov.my>> viewed on 17 March 2012.

<sup>6</sup> "Cabinet Gives Nod to National Family Policy" The Malaysian Bar, <<http://www.malaysianbar.org.my>> viewed on 17 March 2012.

<sup>7</sup> Harun Mahmud Hashim, "Time Has Come to Establish Family Courts" in *The Benchmark*, edited by Zuraidah Omar, Peninsula Digital Sdn Bhd, 2007 at 52-55.

framework for Malaysia, it is important to study a few models of family courts in other countries. Three countries have been chosen for learning purposes. These are Singapore, Australia and Morocco. At the same time, it is pertinent to examine the structure of courts that are administering the family law in Malaysia.

## **1.1 BACKGROUND OF STUDY**

This study is based on two previous researches conducted by the thesis writer. In the first research,<sup>8</sup> a specific chapter is provided to discuss the relation between family and the family court. It was found that this basic unit, i.e. family, has its own significant functions in the social setting, whereby, if the stability of this unit is shaken, the whole society might be affected. Due to the special characteristics of the family, the disputes or differences that occur between family members, especially spouses, have distinctive features that distinguished them from other civil disputes that may involve contract, negligence and so on. Therefore, family disputes must be treated differently and the courts administering family law must be equipped with all the essential needs that will promote the holistic approach of family dispute resolution.

However, in the above research, it was found that one of the issues that needs to be tackled is whether the family court which is intended to be established in Malaysia is relevant to the civil court only or both, civil and Syariah courts. In other words, the research did not study in detail about the structure of the family court that is suitable for the dual system of family law in Malaysia. Therefore, in the second

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<sup>8</sup> 'Ain Husna Mohd. Arshad, "A Study on the Socio-Legal Needs for the Establishment of Family Court in Malaysia" MCL Dissertation, International Islamic University Malaysia, 2010.

research,<sup>9</sup> suggestion was made to establish a family court within the streamline of the existing civil and Syariah courts' jurisdiction. The research also found that the success of family courts depends very much on the efficiency of supporting systems, with mediation and counselling as its backbone.

Pursuant to that, this research is extended further to examine the effectiveness of the present family adjudication system in Malaysia and some comparison is made with the family courts in other countries. Subsequently, this research is able to identify the strengths and weaknesses of the system and to design a structure of the family court which is able to provide a more effective and holistic approach to the resolution of family disputes.

There are many recommendations and efforts that have been put forward by various individuals and also stakeholders to overcome the weaknesses, for instance, by introducing delay reduction program to deal with backlog of cases. However, there is a severe lack of strategic planning that addresses the specific needs and welfare of families in distress. Hence, recommendation to establish family court in Malaysia comes into the picture. Nevertheless, most of the recommendations are made in general. Therefore, this research tries to fill in the gaps in the area of family court research, particularly by studying a few models of family courts as a learning process to develop the framework. Subsequently, recommendations are made as to the structure, components and as well as the steps that should be taken by the administrative bodies.

Due to the fact that Malaysia operates a dual system of family law, namely: Syariah and civil, this factor must be taken into consideration while conducting the

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<sup>9</sup> Fundamental Research Grant Scheme (FRGS0510-136) "Formulation of a Comprehensive Model of Family Court System in Malaysia: Towards an Effective Family Dispute Resolution" in which thesis writer was the Research Assistant.

research. This is because there might be several possibilities or alternatives with regard to the structure of the family court that would be proposed. Some features or functions of the family court might already exist in the present structure of the civil and the Syariah court, hence the recommendations must be practical to both civil and Syariah systems.

## **1.2 AIMS AND OBJECTIVES OF THE STUDY**

- i. To identify the strengths and weaknesses of family dispute resolution mechanisms and family adjudication system in Malaysia.
- ii. To study the administration of family court in other countries particularly Singapore, Australia and Morocco.
- iii. To identify the most appropriate family court system to be adopted in Malaysia.
- iv. To come out with a practical recommendation based on the outcome of the conducted research for the establishment of a suitable, competent and effective family court in Malaysia.
- v. To propose to the Government for the establishment of family courts in Malaysia for both Muslims and non-Muslims.

## **1.3 STATEMENT OF PROBLEM**

Under the present court system, there is no single court which dedicated to deal with all types of family disputes. There is no clear structure of family court that can be easily understood by the litigating parties. Adjudication of family disputes under the present court system is less effective to provide a comprehensive approach to the resolution of family disputes. This is particularly due to lack of specialized courts and

officers, less given emphasis to holistic approach of dispute resolution, quite strong adherence to the traditional adversarial system and procedures; and lack of supporting system.

These situations cause hardship and difficulties to the family members as it would involve prolonged proceedings, high legal fees, time consuming, and lack of appreciation given by legal personnel who have to handle many types of cases at one time. Family cases are usually being adjudicated in a manner similar to the other civil cases in which the parties can settle claims of right and wrong. As a consequence, family members affected may suffer from psychological, emotional, social and also financial impact. On the other part, the same judges and court officers have to deal with various types of disputes on a daily basis, which have caused them stress. This situation does not support the development of skills in a particular area of expertise. Besides, most of the courts are not assisted by any supporting unit that may provide help for the wife, children and family members in need. Another issue is relating to the Syariah court, whether it is a form of family court, and if yes, whether it should be merged together with the family court.

Therefore, this research is undertaken to find a suitable model of family court as a benchmark for Malaysia. It is also important to consider that the proposed structural framework of family court can fit into the existing legal system and at the same time can be developed for the future establishment of a single family court in Malaysia.

#### **1.4 SCOPE OF THE STUDY AND LIMITATION**

This research conducted a study about the existing courts that are dealing with family matters in Malaysia. This includes the courts for Muslims, namely the Syariah courts,

as well as for the non-Muslims, namely, the civil courts. There are many foreign countries that have established a family court. However, for the purpose of this writing, only three countries are selected. These are Singapore, Australia and Morocco. Singapore is chosen because the judicial system in the country is almost similar to Malaysia, particularly in the area of family law, where family matters are heard at the family court for the non-Muslims and at the Syariah court for the Muslims. Australia is one of the earliest countries that established family court. It has undergone a lot of experiences in the development of family court, therefore this can be learnt by Malaysia. Whereas, Morocco is one of Muslim countries that has established family courts for Muslims, therefore the experience and practice can be learnt and adopted by the Syariah courts in Malaysia. The study on these countries covers the historical background and justifications that led to the creation of the family court; the place of the family court in the judicial setting; the legislations and jurisdiction of the family court; the components that make up the family court, such as mediation and counselling; as well as the availability of family support services.

## **1.5 CHAPTERIZATION**

This thesis is divided into six chapters. The first chapter introduces the background and significance of this study. It also clarifies the objectives, statements of problem and the methodology. Review of literatures is made on the literatures on family court available in Malaysia and outside Malaysia to examine what have been studied in the past and how this research can contribute.

This is followed by the discussion on Malaysian civil courts structure and Syariah court structure which are provided under Chapter 2 and 3 respectively. These chapters begin with a general overview of family law for Muslim and non-Muslims in

Malaysia. This includes the historical aspect and the sources of family laws. These chapters examine the jurisdictions of each court that hear and decide on family matters. It also lists down all the mechanisms of dispute settlement available inside and outside of the court.

Based on the discussion under Chapter 2 and 3, Chapter 4 analyses the effectiveness of family adjudication in Malaysia. Statistics are given when necessary, to support certain presumptions. This includes the statistics of marriage and divorce, statistics of family cases at the court, and cases resolved through mediation and counselling. This chapter also discusses the nature and effects of the adversarial trial. It also examines whether Malaysian courts have their own support unit that work hand in hand with the court in helping family members. Subsequently, all the relevant recommendations and previous study relating to the proposal to establish family courts in Malaysia is presented under this chapter to see the possibility or relevancy of these recommendations to be included as a part of the proposed framework of the family court.

The discussions about Family Court in Singapore, Australia and Morocco are provided under Chapter 5. The final chapter provides recommendations for the setting up of the family court which is suitable and practical to be adopted in Malaysia at the initial stage. It also sums up all the important outcomes of this study and points out the possible obstacles and challenges in the process of setting up the family court. In short, this chapter provides all the important findings learnt from this research.

## **1.6 LITERATURE REVIEW**

This section provides a review on the establishment and administration of the family court based on various writings and studies on this subject matter. This is followed by

review of literatures that are specifically discuss about the relevancy of having a family court in Malaysia and the suggestions that have been given by previous authors.

### **1.6.1. Previous Studies on the Establishment of Family Court**

Among the earliest forms of family court was the one established in Toledo in 1925, as discussed by Brown (1966).<sup>10</sup> Accordingly, the Family Court of Toledo is indicated by a court that has an integrated and unified jurisdiction in a single court with competence over all aspects of family stress. It includes juvenile delinquency, divorce, nullity and separation, guardianship and custody disputes, maintenance, matrimonial property disputes, domestic assaults, child neglect and cruelty; and adoption. Instead of jurisdiction over such matters being fragmented between several courts, it is consolidated in a single court, although there may need to be specialized divisions or sections within that one court.<sup>11</sup>

In another report, the Report of the Committee on One-Parent Families (1974)<sup>12</sup>, six major criteria were set out to suit a family court. Among others, the family court must be an impartial judicial institution; the family court will be a unified institution in a system of family law which applies a uniform set of legal rules, derived from a single moral standard and applicable to all citizens; the family court will organize its work in such a way as to provide the best possible facilities for conciliation between parties in matrimonial disputes; the family court will have professionally trained staff to assist both the court and the parties appearing before it

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<sup>10</sup> L. Neville Brown, "The Legal Background to the Family Court" vol. 6 (1966) *The British Journal of Criminology* 139.

<sup>11</sup> *Ibid.*, 140.

<sup>12</sup> Brenda M. Hogget et.al., *The Family, Law and Society Cases and Materials*, Butterworths London, 1996