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A CRITICAL ANALYSIS OF THE OFFENCES OF A THIRD PARTY IN MARRIAGE

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ABSTRACT

The stability and harmony of the marital institution are increasingly threatened by the interference of third parties. Despite its prevalence, there is no standardized legal definition of a "third party" within the Malaysian legal framework. This study aims to identify the specific legal provisions addressing third-party interference in marriage, examine the enforcement procedures involved, and analyze the challenges faced in implementing these provisions. Adopting a qualitative research design, this study utilizes a case study approach and comprehensive data collection from scholarly articles, legal texts, and statutory provisions in Selangor. The findings reveal that the Syariah Criminal Offences (State of Selangor) Enactment 1995 provides specific legal recourse under Sections 32, 33, and 34. Furthermore, the study delineates the procedural workflow for addressing these offenses, beginning with complaints lodged at the Selangor Islamic Religious Office (JAIS), followed by investigations by religious enforcement officers, and culminating in prosecution. However, the research highlights significant hurdles in enforcement, primarily due to insufficient evidence, inconsistent witness testimonies, and complexities within the investigative process. Despite the rising incidence of marital scandals, the lack of public awareness and the absence of recorded prosecutions suggest that these legal provisions remain underutilized. This study concludes that enhanced legal literacy and more robust enforcement mechanisms are essential to protecting the sanctity of the household.

Keywords: *Third party interference, muslim marriage, procedure, challenges, Selangor*

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Introduction

Marriage is one of the religious demands that celebrate the nature of human creation to live in pairs (Wan Ismail et al., 2022). It is also something that is recommended by the Quran and hadith and the relationship between husband and wife is said to be a blessing and a sign of greatness. A marriage contract that unites a man and a woman allows each couple to take advantage by making love to each other to achieve mutual pleasure. In Islam, married couples not only hold the trust of God but also the trust of the family that approves their marriage and their partner who has chosen them as a life partner (Azahari, 2014). Islamic Syariah related to the marriage system is a guide in creating a chain of family bonds in a peaceful household. Harmonious family ties are very important to ensure the continuity of efforts to produce generations of people who are educated with the spirit of Islam and can practice '*Rabbani*' values in their lives (Hudin, 2017).

However, the relationship between husband and wife in going through the domestic realm is not always beautiful. Married couples cannot escape from various conflicts and disagreements while running a household. One of the issues that is often the main cause of the collapse of a household is the presence of a third person. This is not a new phenomenon in Malay society, in fact it has existed for a long time. The happiness experienced by a married couple will begin to be fragile when there is a third person in the marriage. As in the case of divorce that often happens, the presence of a third person in a married relationship brings various conflicts that lead to arguments and separation. Likewise with the case of polygamy, the presence of a third person without the knowledge of a wife or husband eventually invites arguments. There is no specific definition of third party in relationship. According to the law, which is based on the Syariah Criminal Enactment, the third person in the household is not only intended for secret lovers or so on. Therefore, in general, the true meaning of the third person in the household is all individuals, namely family, friends, and the surrounding community. The third person is not specific to individuals only but involves known or unknown individuals. Among the groups that become third parties include family members themselves, such as parents, parents-in-law, siblings, ex-lovers. sometimes third parties can also involve outsiders such as neighbours, colleagues, school alumni, employers, cyber citizens and so on.

The fact is some take advantage by inciting their husbands or wives to separate. Acts that conflict with religious boundaries up to the level of forbidden relationships with married people's wives or husbands are also a community habit Malaysian people today commit adultery. Furthermore, there are many husbands who marry abroad because Syariah law stipulates that they need to prove their ability to engage in polygamy. Most of the husbands who want polygamy are unable to afford it, where the monthly car and house payments are paid jointly with the wife. Applications that will harm the first wife will not be approved by the court. In addition to the issue of ability which may not be a problem for some polygamy applicants, the court also looks at other criteria such as the possibility that the first wife suffers from depression or emotional stress due to the matter (Hassan, 2018). If this conflict and interference in the household continues, then it is no wonder that the divorce statistics in the society are increasing.

Background of Research

Concept of Third Party in Marriage

The definition of the third person is not clearly and explicitly explained, but implicitly the third person who can be included in the household is the middleman. In Malaysian law, there is no precise concept of a third person. The third individual can be anyone, known or unknown. The third person can be one's own family, which can include parents, in-laws, siblings, brothers-in-law, fourth cousins, biological children, stepchildren, and so on. Furthermore, the third person can include persons who are not married to the husband or wife, such as ex-lovers, secret loves, neighbours, colleagues, school alumni, employers, and so on. The presence of a third person in a marriage might disrupt the bond between husband and wife (Jusoh, 2021). But generally, the third person is the party that tries to disturb, disrupt, and destroy a family institution. Academics also give a definition of the third person in the household meaning that those who are categorized as the third person can refer to male and female lovers, lesbians, gays, family members, relatives, siblings, parents, or grandparents. Associate Professor Dr. Noraini explains that there is no specific definition of a third person in a relationship. Anyone can be the third

person in someone else's household, generally we know that the third person is the person who will disturb and destroy a household institution (Mul, 2023). The view from Juani Munir Abu Bakar, says that this third person refers to the action of anyone who is responsible for destroying a household institution (Che Man, 2014).

Concept of Third Party in Marriage in Syariah Perspective

In fact, the collapse of a married couple's life until divorce is often associated with the appearance of a third person, whether it is family intervention or a couple establishing a relationship with another individual. It is sinful to have a relationship with an individual who is already married, let alone cause a divorce. Grabbing someone else's husband or wife, especially among close friends, is the same as grabbing someone else's property, which will result in conflict. We must believe that every good deed will be rewarded well, and every bad deed will be rewarded accordingly. The law of destroying people's households is sinful because it will destroy the happiness of others for the sake of one's own happiness while others suffer. Destroying household is a big sin that is hard to forgive. Even having a love relationship with the husband or wife of another person is illegal. Islam forbids the actions of a person who destroys the relationship of a wife with her husband, from Abu Hurairah that the Prophet SAW said:

Translation: If anyone corrupts (instigates) the wife of a man or his slave (against him), he is not from us.

(Sunan Abu Daud, Hadith 5170)

According to the Mufti of the Federal Territory, the scholars think that this act of takhbib is haram. They are of the view that a person who damages the relationship between a husband and wife by deceiving or causing the wife to demand a divorce, then the man has committed a great sin. This also includes the act of presenting the divorce as good so that he can marry the woman or allow someone else to marry her (Noor, 2017). In Islam, there is a term '*takhbib*' which means a man who damages another person's slave or wife, while the meaning of '*al-khabb*' is damage, abomination, and deception (Noor, 2017). '*Takhbib*' refers to the act of a third person that will disturb the household situation of another person and to the point of causing divorce. Some jurists clearly stated that the man should be punished with a punishment that narrows and threatens him (perhaps such as prison, ostracism or boycott, banishment and so on), even some Malikiyyah scholars said with the punishment of prohibiting marriage in *ta'bid* (forever) between women who deceived and the man who deceived him. The act of a third person is the same as damaging the relationship, referring to a hadith narrated by a Muslim imam which means: "He who breaks family ties will not enter heaven." This is also mentioned by Imam Ibnu Hajar Al Haitsami in the book *Zawajjir'an Iqtiraf Al Kabir* who categorizes the act of destroying other people's households as haram and a great sin and even the angriest of the Prophet and he did not acknowledge his ummah (Al-Haitsami, 2005). As Muslims, it is very important to strengthen human relations.

Problem Statement

Marriage is also one of the acts of worship and it is the basis for the existence of a family, society and then the formation of a nation. In addition, marriage is also a religious demand for celebrating the natural nature of human creation living in pairs. In today's life, various problems faced by married couples often arise, one of which is the case of third-party interference in marriage, which is increasing especially among married couples about whether they are in love with other people's husbands and vice versa. The issue of the third person in this marriage is not an unfamiliar issue. The offense of interfering with a third person in a marriage is a syariah crime. Third parties involving lovers also contribute to divorce cases among adult couples. There are some cases where husbands who apply for divorce are because they want to marry another but do not want to go through the process of polygamy. In fact, there are cases of divorce applications also reported due to wives who cannot accept their husbands for polygamy. Syarie lawyer, Nurul Syafawani Rahim in Sinar Harian on 21 January 2021 said, the statistics of the Malaysian Sharia Justice Department recorded a total of 45,420 divorce cases among Muslims that were registered nationwide in 2021 (Roslan, 2023). If we do not prevent this offense of third-party interference, cases of third parties interfering with the household will become more common

and divorce will increase. When a divorce occurs, the children are the most affected apart from the divorced mother or father. In addition, when a child's parents divorce, it may result in the child experiencing mental health problems. Divorce may leave children feeling depressed and traumatized about the experience they faced. When divorce occurs and couples live separately, they will start arguing about their rights to children, for example, issues related to *hadhanah*. This case will have a greater impact on celebrities who have been disturbed by a third person in their marriage and caused divorce. Today's social media is still heavily criticized by the actions of some artists and preachers who divorce their wives and marry other women. As a recent example, it is hot on social media about the cheating that happened between the actress Puteri Sarah, and the film director Syamsul Yusof where their issue is the existence of a third person, Ira Kazar, who is the son of veteran actor Kazar. Subsequently, the existence of a third person in their household caused Puteri Sarah to file a divorce (Alimin, 2023). The household they built for 10 years was destroyed by the crime of third-party interference. When such issues arise, many netizens open their own stories that they have been through and have a story line that is almost the same as theirs. The saddest thing is that these divorce stories mostly happen to wives who are pregnant or have small children. When observed, most of their stories are also due to a third person who suddenly appears in the household.

Research Questions

- i. What is the content of legal provisions to deal with the issue of the third person in the marriage in Selangor?
- ii. How to enforce the procedure dealing with third person criminal offenses in the marriage?
- iii. What are the challenges of enforcing the offense of third person interference in marriage?

Research Objectives

- i. To identify the content of legal provisions with the issue of the third person in the marriage in Malaysia.
- ii. To propose the solution of the procedure dealing with third person criminal offenses in the marriage.
- iii. To identify the challenges in enforcing the offense of third party.

Literature Review

Previous studies have explored various factors contributing to divorce within the Malay community, specifically focusing on the interference of third parties. According to Mohamad (2021), the involvement of a third person—often a lover—is a primary driver of divorce among adult couples. The study reveals that husbands who apply for divorce often do so to marry another individual while avoiding the legal complexities of the polygamy process. Conversely, some divorce applications are filed by wives who refuse to accept polygamy. Mohamad (2021) also notes that some wives initiate divorce to marry men of higher social status. While this research identifies third-party interference as a critical factor, it lacks a comprehensive discussion on the strategic steps required to mitigate such interference.

Research by Mat Jusoh (2021) supports these findings by highlighting the challenges faced by religious authorities in enforcing laws related to third-party offenses. Although clear legal provisions exist to penalize third-party interference, the study found a significant lack of reported cases in court utilizing these provisions. This discrepancy is closely linked to complexities within the investigation and prosecution processes. While Mat Jusoh (2021) provides a detailed analysis of enforcement issues, the article does not sufficiently explore how this interference directly leads to the finality of divorce.

In the study titled *"Implementation of Laws in Shari'a Court Involves Third Person in Household,"* Muhammad (2019) defines the concept of a "third party" and examines the legal frameworks intended to curb behaviors that destabilize the institution of marriage. The findings indicate a lack of effective law enforcement and prosecution, evidenced by the absence of recorded cases in Sharia courts.

Although the study raises awareness among spouses and third parties regarding existing legislation, it fails to outline practical steps to overcome the issue.

Furthermore, Mat Jusoh (2014) identifies that the primary causes of divorce stem from unresolved domestic conflicts and the presence of third parties. The researcher reviewed the extent of legal implementation against such offenses under the Selangor State Sharia Criminal Law and Civil Family Law. However, this research does not address the practical challenges involved in overcoming third-party interference within a marriage.

Finally, in the article *"Literature Review's on the Causes of Early Marriage Divorce in Malaysia,"* Nasohah (2023) identifies that early-marriage divorces are often caused by the failure to provide alimony (*nafkah*), communication breakdowns, financial constraints, and third-party intervention. Despite these insights, the study lacks a precise definition of the "third party" concept and fails to provide specific case studies illustrating how such interference leads to the dissolution of marriage.

Overall, while previous literature consistently identifies third-party intervention as a catalyst for divorce, there remains a significant research gap. Existing studies do not sufficiently discuss the practical application of legal provisions and punishments, nor do they justify specific mechanisms to overcome third-party interference—a critical element in preserving the stability of the family institution.

Methodology

This study employs a qualitative research design to investigate the legal and procedural dimensions of third-party interference in marriage within the Selangor Syariah legal framework. To address the first research question regarding existing legal provisions, the researcher conducted extensive library research and content analysis. This involved examining primary legal statutes, specifically the Syariah Criminal Offences (Selangor) Enactment and the Syariah Criminal Offences (Federal Territories) Act, alongside secondary sources such as academic journals, books, and official government portals.

For the second research question concerning enforcement procedures, data were gathered through a semi-structured interview with an expert practitioner, Syarie Prosecutor Ahmad Husaini. The insights gained from this primary source were further substantiated by reviewing previous scholarly research to understand the practical application of criminal procedures in Sharia courts. Finally, to identify the challenges in enforcing these laws as per the third research question, the study utilized a systematic data analysis of existing literature, including working papers and peer-reviewed articles. By integrating doctrinal legal analysis with empirical interview data, this methodology provides a comprehensive understanding of the legal hurdles, procedural requirements, and external factors influencing the prosecution of third-party interference in Malaysia.

Results and Findings

This study aims to identify whether there is a provision on third party offenses and examine the challenges to religious enforcement in enforcing laws related to third parties as well as procedures for making complaints about these offences. Therefore, the findings from the case studies and articles show that third party interference in marriage is a syariah criminal offense under the the Syariah Criminal Offences (State of Selangor) Enactment 1995. There are no recorded cases related to the fault of a third party who is alleged to have destroyed the household. However, there are cases where third parties have caused divorce. When there is a provision of offenses related to the interference of third parties, there will necessarily be a challenge to enforce this issue. In addition, the results of the study also show that to deal with this issue, there are steps to make a complaint.

Content In Legal Provisions of Third Persons in Marriage

Under the Malaysian Syariah legal framework, interfering in another person's household is a criminal offense subject to statutory punishment. While specific provisions explicitly linking third-party involvement as a direct cause for divorce may be limited in the Islamic Family Law Enactment, the Syariah Criminal Offences Enactment provides clear avenues for prosecution. In this context, a "third

party" is not restricted to illicit lovers but encompasses any individual—including family members, friends, or the surrounding community—who disrupts the marital institution.

In Islamic jurisprudence, crimes are categorized into *hudud*, *qisas*, and *ta'zir* based on the nature of the offense and the rights involved (either the Rights of Allah or Human Rights). Although Syariah laws vary slightly across different Malaysian states, approximately 90% of the offenses and punishments are uniform. Generally, third-party interference involves acts of persuasion, prevention, or incitement that lead a spouse to neglect their marital responsibilities or desert the family home.

The Syariah Criminal Offences (State of Selangor) Enactment 1995 serves as the primary legislation governing moral and matrimonial offenses within the state. Specifically, Part V: Miscellaneous Offenses outlines three key sections—Sections 32, 33, and 34—that address the actions of third parties.

i. Enticing a Married Woman (Section 32)

Section 32 stipulates that:

Any person who entices a married woman or takes her away from or in any other manner influences her to leave the matrimonial home... shall be guilty of an offence.

Upon conviction, the offender may face a fine not exceeding RM5,000, imprisonment for up to three years, or both. The court shall also order the woman to return to her husband. In a legal sense, "enticing" refers to any act of attraction or persuasion, while the phrase "in any other manner" includes coercive methods, such as threats, used to influence a wife to leave her spouse.

ii. Preventing Cohabitation (Section 33)

Section 33 addresses the act of preventing a legally married couple from living together as husband and wife. It states:

Any person who prevents a legally married couple from cohabiting shall be guilty of an offence...

The term "any person" broadly includes parents, in-laws, or siblings who interfere by inciting the couple to live apart. Conviction under this section carries a fine of up to RM3,000, a prison sentence of up to two years, or both. Furthermore, the Court may issue an order for the couple to resume cohabitation.

iii. Instigating Divorce or Neglect of Duties (Section 34)

Finally, Section 34 pertains to the instigation of divorce or the neglect of marital obligations. It provides that:

Any person who instigates, forces or persuades any married man or woman to be divorced or to neglect his or her duties... shall be guilty of an offence.

This provision targets third parties who actively encourage the dissolution of a marriage or influence a spouse to abandon their familial responsibilities. The penalty includes a fine of up to RM5,000, imprisonment for a term not exceeding three years, or both.

In sum, both Syariah and civil legal perspectives view third-party interference as a serious threat to the harmony of the marriage institution. Despite the existence of these robust legal provisions, there remains a significant lack of public awareness regarding the criminal liability of those who disrupt the domestic happiness of others.

In the case of *Fauzy Omar Basher bin Othman v. Sarah Nur bt Shamsudin* (case number: 08001/058/0483/2007), On 2 August 2002, the plaintiff and defendant married. They had one child. In January 2006, the plaintiff, an engineer at Petronas, was assigned to Austria. The plaintiff went there with his family. The plaintiff's statement of claim states that the defendant's return to Malaysia with their son in June 2006 was due to the defendant's forthcoming medical employment. Due to their dispersed living arrangements, the plaintiff made the decision to visit Malaysia once every eight weeks, staying for two weeks each time to spend time with the defendant and their kids. After some time, the

plaintiff and the defendant lived apart, the plaintiff found out that the defendant had a relationship with another man who was also a doctor at the hospital where the defendant worked. The defendant admitted the issue when the plaintiff asked for an explanation. The plaintiff stated in the statement of claim that the defendant made a promise not to repeat the act after the plaintiff and the defendant had gotten counselling services at the Kuala Kangsar Islamic Religious Office. However, the defendant broke his promise when he continued his relationship with the male doctor. Therefore, the plaintiff has applied to the court to convict the defendant of *nusyuz* as permitted under section 60 (2) of the Islamic Family Law (State of Perak) Enactment 2004. For the defendant, after receiving a statement of claim from the plaintiff, the defendant understands it and does not intend to file a defence. The defendant understands the effects and consequences of being convicted of *nusyuz*.

In the judgment, when there was no defence made by the defendant against the plaintiff's claim, the court convicted the defendant of *nusyuz* according to Section 60 (2) of the Islamic Family (State of Perak) Enactment 2004. As a result, the court ruled that the plaintiff's maintenance rights and responsibilities towards the defendant were void.

This case has shown that the husband's accusation about his wife's *nusyuz* because the defendant. The act of a third person who had an affair with the defendant incited the defendant to not carry out her responsibilities as a wife and mother. This is as stated in section 33 and 34 Syariah Criminal Offences (State of Selangor) Enactment 1995 because it affects women to neglect their responsibilities.

While in the case of *Hairulhazi Bin Talib v. Liz Suriani Bt Abdul Jamal* (case number: 10001/058/1462/2016), the plaintiff stated that the defendant had had a relationship with another man. Defendant also misused permission to go out to work by committing immorality. The plaintiff has acted by forbidding the defendant to leave the house, but the defendant has disobeyed the plaintiff's order. The defendant has also neglected her responsibilities as a wife and mother by neglecting their children. However, the plaintiff still has a loving relationship with the defendant and the court approve the plaintiff's application.

Therefore, the court has convicted that the defendant has *nusyuz* and ordered to return to obey the plaintiff. Third parties who have had relations with the plaintiff's wife can be prosecuted under sections 32 and 34 of the Syariah Criminal Offences (State of Selangor) Enactment 1995. As referred to in section 32 'persuading a married woman to run away', the wife in this case has disobeyed the husband's order not to leave the house and section 34 'inciting the husband or wife to divorce or neglect their obligations, by the act of his wife who neglects her responsibilities as a wife and mother. A third party who has had a relationship with the plaintiff's wife can be prosecuted.

Based on this case, the third person can also cause the wife to become *nusyuz* because she has been influenced by the third person. In this case, the third person can be prosecuted under this section 32 and 34 of the Syariah Criminal Offences (State of Selangor) Enactment 1995. But most of the cases that are brought to court related to third parties often end up at the prosecution level because most of the parties who claim do not have enough evidence to claim that third parties have interfered with other people's households. So that is why there are rarely cases recorded due to third parties.

Next, in the case of *Syed Dany Faizal bin Said Md Nasir lwn. Wan Suhana binti Mior Ahmad Sabri* (case number: 08001/058/0354/2008), the plaintiff and the defendant got married on 1 May 2004 and were blessed with two children. In the statement of claim, the plaintiff stated that on May 5, 2008, he persuaded the defendant who was then at his family home to return to his lap. However, the defendant refused, and the defendant's family prevented the plaintiff from taking the defendant home. Therefore, the plaintiff has applied to the court for an order for the defendant to return and obey again. After receiving the statement of claim, the defendant filed a statement of defence stating that on 5 May 2008 the plaintiff was still in police remand prisoner. Therefore, the defendant denied receiving any phone calls or communicating with the plaintiff on that date. The defendant also stated in his defence that during the four years of their marriage, the plaintiff often lost his temper for no reason. The defendant was often beaten, kicked, and hit. The defendant also stated that the plaintiff was involved in drug abuse. After receiving the defence statement, the plaintiff also filed an amended statement of claim stating that throughout the marriage with the defendant, their household was never peaceful because the defendant's family often intervened and incited the defendant when there was a dispute between the plaintiff and

the defendant. The plaintiff stated that the defendant's parents often tried to separate the defendant from the plaintiff. According to the plaintiff, the defendant's parents once asked the plaintiff to release the defendant, but the plaintiff refused because he still loved the defendant.

After examining the evidence from both sides and upon the consent of the husband and wife to divorce, the court has decided for the plaintiff and the defendant to divorce under section 47 of Islamic Family law (State of Perak) Enactment 2004.

Based on this case, the writer found that the husband has submitted an application to the court for an order for his wife to return and obey again or to declare his wife *nusyuz* if the wife refuses to obey the order. The reason for this husband's request was that his wife had left the house without permission and refused to return even after being persuaded. The wife's parents had interfered in their household affairs by inciting their children not to return to their husbands. His parents have also incited his son to divorce. Therefore, the defendant should be able to file an application under section 34 Syariah Criminal Offenses (State of Selangor) Enactment 1995 where the defendant's parents instigate their child to divorce.

From this provision, the researcher can make a conclusion that the law relating to the third person in the household is provided for in the law under sections 32, 33 and 34 Syariah Criminal Offenses (State of Selangor) Enactment 1995. Unfortunately, this provision is not used by the community today because many people are not aware of the right of provision. This is reinforced by the fact that there are no cases recorded in the Syariah Court under sections 32, 33, and 34 of the Syariah Criminal Offenses (State of Selangor) Enactment 1995. However, there are cases where divorce is caused by the interference of a third party. This means, there is no recorded case of a third person who is alleged to have disturbed another person's household under this section. Therefore, criminal prosecution is not an easy thing because it involves commitment and seriousness in upholding justice, in addition this process involves the suspect's future. In many cases, a prosecution depends a lot on the completeness of the case file provided by the religious enforcement authorities. If the case is perfect, such as sufficient information and evidence that can link the suspect to a crime, then the prosecutor's confidence in bringing the case will also increase. (Ismail S. Z., 2008).

The Procedure to Enforce the Provisions

In fact, there are still many people who do not know that a husband or wife can sue the person who disturbs the household. The results of the study from the articles and provisions under the State of Selangor found that there are several steps to take in case of interference by a third party. In the context of Syariah criminal law, the enforcement of said law is carried out by the Religious Enforcement Officer (REO) appointed by the Selangor State Islamic Religious Council from among members of the Federal public service or joint service, to conduct investigations of offenses under the said enactment. or under any other written law. Enforcement is the activity of some members of the government who act in an organized manner to enforce the law by discovering, deterring, rehabilitating, or punishing people who violate the rules and norms that govern that society. If the community does not obey the law, it will be punished according to the act. When there is a law, there will be law enforcement. According to the Syariah Prosecutor, Ahmad Husaini in the interview said that the enforcement procedure for syariah criminal offenses is through the process of investigation by religious enforcement officers and prosecution in the syariah court.

File a complaint to Religious Enforcement Officers (REO)

Before making a complaint, there is another way that can be done, which is to warn the third person to stay away from the harassed wife or husband. If the third person is still disturbing the household, then the victims can file a complaint at the Islamic Religious Office. Based on the provisions of the law and the Syariah Criminal Procedure (State of Selangor) Enactment 2003, the husband or wife must make a complaint to the Religious Enforcement Officer (REO) regarding the matter. Based on section 54 of the Syariah Criminal Procedure Enactment (State of Selangor) 2003, every information or complaint given by the complainant verbally must be changed to written form by the Religious Enforcement Officer and the information or complaint must be recorded in Form 5 of the Second Schedule which is in the form have the date and time the complainant gave information or complaint. The complainant who makes

the complaint must provide sufficient evidence that can satisfy the elements of section 32,33 and 34 of the EJSS so that the REO can open an investigation paper. If there are witnesses related to this offence, the PPA has the authority to order the witness to appear to obtain more detailed information. This is based on section 58 of the Syariah Criminal Procedure Enactment (Selangor State) 2003, which means that religious enforcement officers have the power to summon witnesses who know about the case to appear before them through a written order. If the summoned witness refuses to appear then the court can issue a warrant to ensure that the witness appears.

Investigation by Religious Enforcement Officers

The complaint made must be presented with strong evidence to prosecute the third person before the religious enforcement officer will start investigating. The proof process is one of the most important things to determine whether the allegations in the case are true or not. Complaints without solid evidence will make it difficult for the prosecution to bring the case to court. Offenses for sections 32, 33 and 34 are classified as arrestable offences, which means religious enforcement officers can arrest third parties without a warrant. Once an investigation by the religious enforcement officer has been completed and successfully collected evidence that is strong enough to link the accused to the charges, the investigation paper must be forwarded to the state syariah prosecutor. The chief syariah prosecutor will then examine the investigation papers from all angles before deciding whether a charge and prosecution will be made or otherwise. If the syariah prosecutor is still not satisfied with the evidence presented, he can order the religious enforcement officer to continue the investigation to collect more evidence or evidence to further strengthen the existing evidence. But if the chief syariah prosecutor is satisfied with the investigation papers and the strength of the evidence gathered in the investigation, then the chief syariah prosecutor will begin the duties of prosecuting the accused (Shariff, 2011). Religious enforcement officers have the power to order the presence of witnesses to obtain more in-depth information on the complaints made. The refusal of a witness to appear is an offense and the Syarie Judge can issue a warrant to ensure the presence of the witness (Aziz, 2007).

Prosecution of third-party offences

Prosecution in syariah courts is guided by three main laws, namely the Syariah Criminal Procedure, the Syariah Court Evidence, and the Syariah Criminal Offenses. Complete investigation papers from the Religioys Enforcement Officer will be taken to the prosecution stage. The Prosecution task begins when the investigation paper completed by the enforcement department is submitted to the prosecution department for further action. The Syarie Prosecutor must examine all aspects of the investigation that has been carried out, especially those involving evidence and testimony. This is necessary before deciding whether all the necessary evidence and evidence is sufficient to establish this case. When the evidence, testimony and witnesses are sufficient, the Syariah Prosecutor can take this case to the prosecution level to file a syariah criminal case against a third-party suit. Therefore, to prove this offense to the level of prosecution, the elements required under the offense of section 32, 33 and 34 the Syariah Criminal Offenses (State of Selangor) Enactment 1995 should be sufficient. Every element that can prove the existence of interference by a third party whether in the form of persuading to run away, preventing marriage or inciting to neglect responsibility must be clearly proven either through witnesses or other evidence documents.

The Challenges in Enforcing the Offences of Third Party in Marriage

The results of the study found that there are several challenges related to enforcement in proving the offense of third-party interference in marriage. The results of the study found that there are provisions related to this offense but there are no cases recorded in court under the provisions related to this offense. There are several challenges that are obstacles in enforcing this existing provision.

Lack of evidence

The failure of the husband or wife to present solid evidence makes it difficult to prosecute in the Syariah Court the destroyer of the household or known as the 'third person' in a marriage. These offenses fail to reach the level of prosecution because the complainant does not have enough evidence to prove the offense such as photographs, recordings, conversations with third parties, and witness statements. Documentary evidence is all documents submitted for court examination (Alias et al., 2021).

Furthermore, the Minister in the Prime Minister's Department (Religious Affairs), Datuk Dr Mohd Na'im Mokhtar said in Sinar Harian that strong evidence is required to support prosecution cases against individuals who are alleged to be 'third parties' involving documentary evidence such as messages conversations, e-mails, letters including hearing witnesses (Rozlan, 2023). According to section 3 of the Selangor State Syariah Court Evidence Enactment 2003, a document is a picture or sound recording, writing, drawing and so on. Due to this issue of lack of proof, we rarely hear about third parties being prosecuted in Syariah Courts even though provisions are already in place. In any criminal charge, there are some elements that need to be proven by the prosecutor, but it is difficult to prove the existence of the elements found in the section (Omar, 2023). This also clearly shows the importance of a person bringing evidence in various forms of evidence available to strengthen his allegations and further facilitate the trial judge to make an appropriate decision.

No strong witness testimony

Evidence is something very important in the trial process. Oral evidence is any statement made by a witness that is permitted or required by the court in relation to factual matters under investigation. According to section 47 of the Selangor State Syariah Court Evidence Enactment) 2003, oral evidence must be direct. This means that if it refers to a fact that can be seen or heard then the witness' testimony must say that he has seen or heard that fact. For example, if it refers to the situation that can be seen then the witness's testimony should say that he has seen the third person together with the wife or husband of another person. As for the level of proof of evidence, it is divided into five, namely *Yakin*, *Zan Al-Ghalib*, *Zan*, *Syak*; and *Waham*. *Yakin* is proof without doubt. *Zan*, on the other hand, means a guess or in an uncertain situation but closer and like the truth. For the fourth level of proof, *Syak* is a guess or doubt or an uncertain situation. While *Waham* is the lowest level of proof because it is just a mere guess or an uncertain situation that is more likely to be wrong and cannot be used as a basis for conviction. Without evidence, punishment cannot be implemented and carried out fairly and equitably. It is the evidence that helps the judges to find the truth and pass a sentence fairly and accurately. The issue of the absence of strong witness testimony is one of the challenges to prove the third person charged in court. When there is no strong witness testimony, the complaint made regarding the act of third-party harassment becomes incomplete and cannot be continued to the prosecution stage because the investigation paper is incomplete. The witness cannot provide sufficient evidence to help the complainant prove his complaint and it can also happen when the witness retracts his testimony for a certain reason, or the witness only hears about the acts of interference by a third person in the marital relationship through another person without having solid evidence.

Problems during investigation process

Enforcement of third-party intervention in marriage faces several challenges. A major challenge is related to the investigative process, which often fails to lead to prosecution despite complaints made by relevant parties. This is due to factors such as different interpretations of offences, incomplete investigation papers, and unclear burden of proof. Due to the lack of evidence, it will cause problems during the investigation process. In addition, the weakness in the investigation procedure (IP) and the investigation paper is the failure during the investigation process to prove the elements of each offense. Syarie lawyer, Amirul Akmal Ismail said most cases end with a No Further Action (NFA) notice, which seems to show that there are still loopholes in the enforcement of the act which should have been implemented as best as possible. This is clearly due to the element of proof which is sometimes difficult for the complainant to fulfil and then after the investigation is made on the complaint of one of the spouses, due to the evidence factor or it does not meet the elements in the section, the investigation of the complaint will be amended to the prosecution of another section (Ismail A. A., 2023). For example, based on sections 32,33 and 34 of the Syariah Criminal Enactment (State of Selangor) 1995, the complainant failed to present evidence based on the element in the section, which is that a third person persuades or incites the husband or wife to divorce. The religious enforcement authorities receive many complaints related to this offense, but it cannot be continued at the prosecution level due to lack of evidence, witness statements that are not strong and so on. Ahmad Husaini also said that the prosecutor will only take the role of registering cases and charges if the investigation is complete, and the case is meritorious to continue with prosecution. Good communication and understanding between the departments involved in the enforcement process is crucial for effective enforcement.

Lack of unclear Standard Operating Procedure (SOP)

The religious enforcement officials' main responsibility is to enforce the Syariah criminal offenses enactment. A standard operating procedure (SOP) is therefore required in addition to the existing of Syariah criminal procedures enactment. Religious Enforcement Officers (REO) consist of civil service members in the Religious Officer and Islamic Affairs Officer scheme. There will be a situation where a *Zakat* or *Dakwah* officer, when there is a need for him to fill a vacant position due to a process of exchange, promotion and so on, the officer can be appointed to hold the position of REO. The newly appointed REO needs time to get used to and understand the new duties. As already understood, enforcement actions are based on complaints and operations. For the investigation process, for example, how a satisfactory investigation should be done. Officers who have not been or are not trained will be frustrated if there is no guidance or instruction about their duties. Therefore, the importance of having a standard operating procedure (SOP) that is not only consistent but clear. So, it is reasonable to pay attention to REO skills and training issues to improve the level of professionalism. With the existence of standard and fixed guidelines, of course this kind of thing can be avoided and at the same time it acts as a quick reference for officers who have just started their duties (Ismail, 2008).

Conclusion

In conclusion, the researcher has achieved the objectives of the research. The real goal in marriage is to find peace in being a couple. Each must play their respective roles of responsibility as husband and wife as outlined in Islam such as being tolerant with a partner. The involvement of a third person is a test in marriage. Third-party interference in marriage can have significant negative consequences, as it can disrupt the stability and intimacy of the marital relationship. Analysis of the entire data found that there is a Syariah Criminal Enactment has appropriate legal provisions to deal with the issue of third parties in the household as already stated in Sections 32, 33 and 34 Syariah Criminal Offences (State of Selangor) Enactment 1995 which refers to offenses that can cause divorce or disunity in the household. Many people still do not know and are aware of the existence of legal provisions that can protect households. Even the punishment for the offense has also been enshrined in the enactment. Only a small number took action to oppose this third person while the rest took the easy way by divorcing. The analysis of the interview data also found that the procedure to prosecute the third person through the process of investigating the third person and ends with the prosecution of the third person if the evidence is strong enough to prosecute the third person. In the end, the third party is not subject to any action and is free just like that, even those who are married to a divorced husband or wife. This causes the issue of this third person to continue because they always survive even though there are laws regarding the offenses committed by them and there are prison sentences and fines if they are convicted. Although in general these provisions seem difficult to implement, they are very necessary because the real function of these provisions is to complement Islamic Family Law, administrative law, and the requirements of syariah law itself so that there is a control mechanism from a legal point of view. Therefore, the existence of this enactment related to the third person needs to be extended to the community so that as a measure of caution in the relationship between husband and wife or with the community. In addition, the case's prosecution process should be loosened, allowing for the trial of such instances even in the absence of substantial evidence. Third-party interference in marriage has the potential to harm the core aspects of a relationship, including trust, communication, and emotional well-being. Spouses need to establish clear boundaries, communicate openly, and prioritize their own relationship to protect their marriage from external influences.

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