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Warta Kerajaan

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ENAKMEN UNDANG-UNDANG KELUARGA ISLAM
(NEGERI SELANGOR) 2003

KAEDAH-KAEDAH HAKAM (NEGERI SELANGOR) 2014

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ENAKMEN UNDANG-UNDANG KELUARGA ISLAM
(NEGERI SELANGOR) 2003

KAEDAH-KAEDAH HAKAM (NEGERI SELANGOR) 2014

PADA menjalankan kuasa yang diberikan oleh seksyen 48 dan perenggan 135(3)(i), Enakmen Undang-Undang Keluarga Islam (Negeri Selangor) 2003 [*Enakmen No. 2/2003*], Duli Yang Maha Mulia Sultan, atas nasihat Majlis, membuat kaedah-kaedah yang berikut:

BAHAGIAN I

PERMULAAN

Nama dan permulaan kuat kuasa

1. (1) Kaedah-kaedah ini bolehlah dinamakan **Kaedah-Kaedah Hakam (Negeri Selangor) 2014**.

(2) Kaedah-Kaedah ini disifatkan telah mula berkuat kuasa pada 1 Julai 2013.

Tafsiran

2. Dalam Kaedah-Kaedah ini, melainkan jika konteksnya menghendaki makna yang lain—

“Daftar Panel Hakam” ertinya suatu bentuk daftar bagi merekodkan senarai anggota Panel Hakam sebagaimana yang disebut di bawah kaedah 31;

“*darar syarie*” ertinya bahaya yang menyentuh isteri mengenai agama, nyawa, tubuh badan, akal fikiran, maruah atau harta benda mengikut kebiasaan yang diakui oleh Hukum Syarak;

“Enakmen Pentadbiran” ertinya Enakmen Pentadbiran Agama Islam (Negeri Selangor) 2003 [*Enakmen No. 1/2003*];

“Enakmen Undang-Undang Keluarga Islam” ertinya Enakmen Undang-Undang Keluarga Islam (Negeri Selangor) 2003 [*Enakmen No. 2/2003*];

“Hakam” ertinya seseorang penimbang tara yang diberi kuasa oleh pihak-pihak atau oleh Mahkamah untuk menyelesaikan perkelahian (*shiqaq*) antara suami dan isteri;

“Hukum Syarak” ertinya Hukum Syarak mengikut Mazhab Shafie atau mengikut mana-mana satu Mazhab Maliki, Hanafi, atau Hanbali;

“*iwadh*” ertinya apa-apa bayaran atau nilai yang digunakan sebagai tebus talak oleh isteri kepada suami bagi perceraian secara khuluk;

“Jawatankuasa” ertinya Jawatankuasa Hakam yang ditubuhkan di bawah kaedah 21;

“Ketua Pendaftar” ertinya Ketua Pendaftar Perkahwinan, Perceraian dan Rujuk Orang Islam yang dilantik di bawah seksyen 28 Enakmen Undang-Undang Keluarga Islam dan termasuklah Pendaftar dan Penolong Pendaftar;

“khuluk” ertinya perceraian antara suami dan isteri dengan *‘iwadh*;

“Mahkamah” ertinya Mahkamah Rendah Syariah atau Mahkamah Tinggi Syariah, mengikut mana-mana yang berkenaan, yang ditubuhkan di bawah subseksyen 55(1) atau 55(2) Enakmen Pentadbiran;

“Majlis” ertinya Majlis Agama Islam Selangor yang ditubuhkan di bawah subseksyen 4(1) Enakmen Pentadbiran;

“Majlis Tahkim” ertinya sesi timbang tara atau proses penyelesaian perkelahian (*shiqaq*) yang melibatkan pertemuan suami dan isteri bersama dengan Hakam untuk tujuan perdamaian atau perceraian dengan lafaz talak atau dengan khuluk;

“Panel Hakam” ertinya suatu panel Hakam yang dilantik oleh Jawatankuasa di bawah kaedah 6;

“Peguam Syarie” ertinya seseorang yang diterima sebagai Peguam Syarie di bawah seksyen 80 Enakmen Pentadbiran;

“Pendaftar” ertinya Ketua Pendaftar, Pendaftar Kanan Perkahwinan, Perceraian dan Rujuk Orang Islam yang dilantik di bawah seksyen 28 Enakmen Undang-Undang Keluarga Islam dan termasuklah Penolong Pendaftar;

“Pengerusi” ertinya Pengerusi Jawatankuasa Hakam di bawah perenggan 22(1)(a);

“prinsipal” ertinya suami atau isteri yang melantik Hakam masing-masing di bawah Kaedah-Kaedah ini;

“Setiausaha” ertinya Setiausaha Jawatankuasa Hakam di bawah subkaedah 22(5);

“*shiqaq*” ertinya perkelahian antara suami dan isteri yang berlarutan yang menjejaskan kerukunan rumah tangga.

BAHAGIAN II

PELANTIKAN HAKAM

Kuasa Mahkamah

3. (1) Jika Mahkamah berpuas hati bahawa *shiqaq* sentiasa berlaku antara pihak-pihak kepada suatu perkahwinan, Mahkamah hendaklah dengan seberapa segera yang mungkin mengarahkan suami dan isteri melantik Hakam dari kalangan saudara karib masing-masing.

(2) Jika suami dan isteri atau salah satu pihak gagal mengemukakan Hakam masing-masing, Mahkamah hendaklah dengan seberapa segera yang mungkin melantik seorang Hakam dari kalangan anggota Panel Hakam atau mana-mana orang yang disebut dalam perenggan 4(1)(c) bagi pihak-pihak itu.

(3) Sebelum melantik Hakam, Mahkamah hendaklah memutuskan bahawa *shiqaq* telah berlaku antara suami dan isteri setelah Mahkamah menjalankan siasatan.

(4) Mahkamah hendaklah memutuskan bahawa *shiqaq* sentiasa berlaku dalam keadaan tertentu termasuklah—

- (a) perkelahian yang kerap antara suami dan isteri itu sama ada oleh sebab—
 - (i) *nusyuz* isteri;
 - (ii) kezaliman suami;
 - (iii) ketidaktentuan siapa yang benar antara kedua-duanya; atau
 - (iv) salah satu pihak atau kedua-dua pihak berdusta atau menuntut yang bukan hak.
- (b) perkelahian yang kerap antara suami dan isteri sehingga menimbulkan kesukaran menjalankan tanggungjawab masing-masing dan saling tuduh menuduh tidak melaksanakan hak sebagai suami dan isteri;
- (c) suami atau isteri saling tuduh-menuduh antara keduanya mempunyai hubungan yang melampaui Hukum Syarak dengan perempuan atau lelaki lain;
- (d) perkelahian yang kerap hingga menyebabkan pukul-memukul;
- (e) salah seorang meninggalkan rumah kediaman, tidak tinggal bersama sedangkan punca sebenar tidak dapat dibuktikan oleh kedua-dua pihak di hadapan Mahkamah;
- (f) suami atau isteri saling tuduh-menuduh antara keduanya mengenai tanggungjawab masing-masing terhadap anak-anak sehingga berlaku pertikaian dan perkelahian yang kerap;
- (g) jika didapati bahawa sebarang tuntutan oleh isteri untuk mendapatkan pembubaran perkahwinan tidak sabit dan ditolak oleh Mahkamah atas alasan dia tidak dapat membuktikan kebenarannya dan Mahkamah mendapati pertikaian itu masih lagi berterusan atau berulang antara suami isteri tersebut; atau
- (h) apa-apa tindakan yang menyebabkan *darar* syarie ke atas isteri atau suami.

Pelantikan Hakam

4. (1) Hakam boleh dilantik dari kalangan—

- (a) saudara karib suami dan isteri yang memenuhi kelayakan di bawah subkaedah 8(1) dan (2);

- (b) anggota Panel Hakam yang dilantik di bawah kaedah 6; atau
- (c) mana-mana Pegawai Syariah atau Pegawai Hal Ehwal Islam dalam Perkhidmatan Awam Am Persekutuan atau Negeri atau mana-mana Pegawai Majlis yang mahir dalam bidang kekeluargaan dan Hukum Syarak.

(2) Bagi maksud perenggan (1)(a), ungkapan “saudara karib” ertinya mana-mana orang lelaki yang mempunyai pertalian nasab, persemendaan atau susuan yang tahu akan hal keadaan kes itu.

Tatacara pelantikan Hakam

5. (1) Bagi maksud subkaedah 3(1), Mahkamah hendaklah mengarahkan suami dan isteri melantik Hakam bagi pihak masing-masing dari kalangan saudara karib suami dan isteri sebagaimana yang diperuntukkan di bawah perenggan 4(1)(a) dalam tempoh empat belas hari dari tarikh *shiqaq* diputuskan oleh Mahkamah dengan menggunakan Borang 1 Jadual Pertama.

(2) Setelah suami dan isteri melantik Hakam masing-masing, Mahkamah hendaklah merekodkan dan mengisytiharkan pelantikan itu melalui suatu perintah.

(3) Bagi maksud subkaedah 3(2), pelantikan Hakam oleh Mahkamah menurut perenggan 4(1)(b) dan (c) hendaklah dibuat dengan menggunakan Borang 2 Jadual Pertama.

Pelantikan anggota Panel Hakam

6. (1) Tertakluk kepada syarat-syarat kelayakan di bawah subkaedah 8(3), Majlis boleh, atas cadangan Jawatankuasa, melantik mana-mana orang sebagai anggota Panel Hakam.

(2) Mana-mana orang yang dilantik sebagai anggota Panel Hakam hendaklah didaftarkan dalam Daftar Panel Hakam.

Penamatan pelantikan anggota Panel Hakam

7. Pelantikan seseorang anggota Panel Hakam hendaklah tamat dan dikeluarkan daripada Daftar Panel Hakam jika dia—

- (a) mati;
- (b) meletakkan jawatan melalui surat yang dialamatkan kepada Pengerusi Majlis, melalui Pengerusi; atau
- (c) hilang upaya untuk melaksanakan tugasnya sebagai seorang Hakam.

Kelayakan seorang Hakam

8. (1) Tertakluk kepada subkaedah (2), mana-mana saudara karib suami dan isteri layak dilantik sebagai Hakam jika dia—

- (a) beragama Islam;
- (b) lelaki;
- (c) berakal dan baligh (mukalaf);
- (d) adil dan amanah; dan
- (e) mempunyai pengetahuan asas dalam hal kekeluargaan dan Hukum Syarak.

(2) Mana-mana Peguam Syarie yang mewakili suami atau isteri dalam sesuatu prosiding lain di Mahkamah tidak boleh dilantik sebagai Hakam bagi suami atau isteri itu kecuali diperintahkan oleh Mahkamah.

(3) Seseorang yang hendak dilantik dan didaftarkan sebagai anggota Panel Hakam hendaklah—

- (a) beragama Islam;
- (b) warganegara Malaysia;
- (c) lelaki;
- (d) berakal dan baligh (mukalaf);
- (e) adil dan amanah;
- (f) berkelakuan baik dan tidak pernah disabitkan atas apa-apa kesalahan jenayah sama ada di Malaysia atau di mana-mana tempat lain;
- (g) kompeten dalam hal-hal kekeluargaan dan Hukum Syarak;
- (h) tidak pernah dibatalkan pelantikannya di bawah kaedah 29;
- (i) bukan seorang yang bankrap;
- (j) memiliki kelulusan akademik sekurang-kurangnya di peringkat Sijil *Thanawi* atau yang setaraf dengannya atau yang lebih tinggi daripada mana-mana institusi pendidikan atau mana-mana institusi pengajian tinggi yang diiktiraf oleh Kerajaan Malaysia dalam bidang pengajian Islam; dan
- (k) lulus dalam apa-apa proses penilaian yang ditetapkan oleh Jawatankuasa.

BAHAGIAN III**FUNGSI HAKAM****Fungsi Hakam**

9. Hakam hendaklah menamatkan *shiqaq* antara suami dan isteri dengan cara mendamaikan atau memisahkan kedua-duanya dengan talak atau khuluk.

Tanggungjawab Hakam

10. Semasa menjalankan Majlis Tahkim, Hakam hendaklah—
- (a) menerima dan melaksanakan arahan Mahkamah dari semasa ke semasa; dan
 - (b) menjelaskan tentang peraturan umum yang perlu dipatuhi oleh semua pihak sepanjang Majlis Tahkim.

BAHAGIAN IV

TATACARA MAJLIS TAHKIM

Tatacara Majlis Tahkim

11. (1) Prosiding Majlis Tahkim hendaklah bermula selepas pelantikan Hakam dibuat.

(2) Sebelum sesuatu prosiding Majlis Tahkim bermula—

- (a) Mahkamah boleh memberi arahan mengenai tatacara perjalanan Majlis Tahkim kepada Hakam dan Hakam hendaklah mematuhi arahan itu dan Hukum Syarak; dan
- (b) tertakluk kepada subkaedah (3), Hakam hendaklah berusaha untuk mendapatkan kuasa penuh daripada prinsipal mereka masing-masing dengan menggunakan Borang 3 atau Borang 4 Jadual Pertama, mengikut mana-mana yang sesuai.

(3) Kuasa penuh daripada prinsipal kepada Hakam masing-masing adalah seperti yang berikut:

- (a) bagi suami, dia boleh membenarkan Hakamnya untuk melafazkan satu talak atau khuluk di hadapan Mahkamah; dan
- (b) bagi isteri, dia boleh membenarkan Hakamnya menerima lafaz khuluk di hadapan Mahkamah.

(4) Jika—

- (a) Hakam berpendapat bahawa pihak-pihak itu patut bercerai tetapi tidak dapat memerintahkan perceraian oleh sebab Hakam tidak mendapat kuasa penuh daripada prinsipal atau sesuatu sebab yang lain;
- (b) Hakam tidak mencapai persetujuan dalam mana-mana peringkat Majlis Tahkim;
- (c) Mahkamah tidak berpuas hati dengan cara mereka menjalankan Majlis Tahkim; atau
- (d) mana-mana Hakam menarik diri atau enggan meneruskan tugasnya sebagai Hakam,

Mahkamah boleh memecat dan membatalkan pelantikan mereka dengan menggunakan Borang 5 Jadual Pertama dan melantik Hakam lain dari kalangan anggota Panel Hakam atau mana-mana orang yang disebut dalam perenggan 4(1)(c) dan hendaklah memberikan kuasa penuh sebagaimana yang diperuntukkan di bawah subkaedah 11(2) 11(2)(b) kepada mereka dengan menggunakan Borang 6 atau Borang 7 Jadual Pertama, mengikut mana-mana yang sesuai.

Penentuan jenis-jenis perceraian oleh Hakam

12. (1) Dalam melaksanakan Majlis Tahkim di bawah Kaedah-Kaedah ini, jika kedua-dua Hakam berpuas hati bahawa perdamaian gagal dicapai oleh kedua-dua pihak, mereka hendaklah menentukan pihak yang menjadi punca kepada berlakunya *shiqaq* itu.

(2) Jika *shiqaq* itu—

- (a) didapati berpunca daripada suami atau kedua-dua suami dan isteri, kedua-dua Hakam hendaklah mencadangkan perceraian secara talak;
- (b) didapati berpunca daripada isteri, kedua-dua Hakam hendaklah mencadangkan perceraian secara khuluk dan kadar *'iwadh* hendaklah diputuskan oleh Hakam;
- (c) tidak dapat ditentukan puncanya dan tuntutan perceraian dibuat oleh suami, maka kedua-dua Hakam hendaklah mencadangkan perceraian secara talak; atau
- (d) tidak dapat ditentukan puncanya dan tuntutan perceraian dibuat oleh isteri, maka kedua-dua Hakam hendaklah mencadangkan perceraian secara khuluk dan kadar *'iwadh* hendaklah diputuskan oleh Hakam.

Keengganan suami atau isteri hadir dalam prosiding Majlis Tahkim

13. Sekiranya suami atau isteri atau kedua-dua pihak itu enggan hadir dalam mana-mana prosiding Majlis Tahkim, keengganan itu tidaklah menyebabkan prosiding itu terhenti dan Hakam boleh membuat keputusannya.

Laporan Majlis Tahkim

14. Hakam hendaklah menyediakan laporan dengan menggunakan Borang 8 Jadual Pertama di akhir setiap Majlis Tahkim dan laporan itu hendaklah dibentangkan di hadapan Mahkamah.

Sighah talak dan khuluk

15. (1) Jika kedua-dua Hakam dalam Majlis Tahkim memutuskan supaya perkahwinan itu dibubarkan, maka talak hendaklah dilafazkan oleh Hakam suami di hadapan dan dengan kebenaran Mahkamah sebagaimana yang dinyatakan dalam Jadual Kedua.

(2) Jika kedua-dua Hakam dalam Majlis Tahkim memutuskan supaya perkahwinan itu dibubarkan secara khuluk dan *'iwadh* telah disempurnakan oleh isteri dalam Majlis Tahkim, maka khuluk hendaklah dilafazkan di hadapan dan dengan kebenaran Mahkamah.

(3) Lafaz ijab dan *qabul* bagi khuluk adalah sebagaimana yang dinyatakan dalam Jadual Kedua.

(4) Lafaz talak Hakam ialah talak *ba-in*.

Tempoh pelaksanaan Majlis Tahkim

16. (1) Tempoh pelaksanaan Majlis Tahkim hendaklah tidak melebihi tiga puluh hari dari tarikh perintah pelantikan dan perisytiharan Hakam yang dikeluarkan oleh Mahkamah.

(2) Mahkamah boleh melanjutkan tempoh pelaksanaan Majlis Tahkim jika difikirkan patut, tetapi pelanjutan tersebut hendaklah tidak melebihi tempoh enam puluh hari dari tarikh pelanjutan diberi.

Pemberhentian prosiding Majlis Tahkim

17. Mana-mana prosiding Majlis Tahkim hendaklah terhenti, jika—

- (a) suami atau isteri itu mati;
- (b) suami atau isteri tidak sempurna akal;
- (c) Hakam menarik diri sebagai Hakam dengan menggunakan Borang 9 Jadual Pertama; atau
- (d) wujud sebab lain yang diiktiraf oleh Hukum Syarak.

Keputusan Majlis Tahkim

18. Perceraian yang diputuskan dalam Majlis Tahkim adalah muktamad dan tiada rayuan dibenarkan.

Merekod lafaz talak dan mendaftar perceraian

19. Mahkamah setelah membenarkan satu talak dilafazkan di hadapannya hendaklah merekodkan lafaz satu talak itu, dan menghantar satu salinan rekod itu yang diperakui kepada Pendaftar yang berkenaan dan kepada Ketua Pendaftar untuk didaftarkan.

Kehadiran Peguam Syarie dan pihak lain

20. Melainkan jika dia adalah anggota keluarga terdekat pihak itu, maka tiada pihak lain atau Peguam Syarie boleh dibenarkan hadir atau mewakili mana-mana pihak di hadapan Hakam.

BAHAGIAN V
JAWATANKUASA HAKAM

Penubuhan Jawatankuasa

21. Majlis hendaklah menubuhkan suatu jawatankuasa yang dikenali Jawatankuasa Hakam.

Keanggotaan Jawatankuasa

22. (1) Jawatankuasa hendaklah terdiri daripada—

- (a) Ketua Hakim Syarie, sebagai Pengerusi;
- (b) seorang Hakim Mahkamah Tinggi Syariah, sebagai Timbalan Pengerusi;
- (c) Penasihat Undang-Undang Negeri atau wakilnya;
- (d) Penasihat Undang-Undang Majlis atau wakilnya;
- (e) seorang Hakim Mahkamah Rendah Syariah;
- (f) Ketua Pendaftar, Nikah, Cerai Dan Rujuk Negeri atau wakilnya; dan
- (g) tiga orang yang berkemahiran dalam Hukum Syarak yang dilantik oleh Majlis.

(2) Anggota-anggota Jawatankuasa di bawah perenggan (1)(b) dan (e) hendaklah dilantik oleh Ketua Hakim Syarie.

(3) Anggota yang dilantik di bawah perenggan 1(g) hendaklah memegang jawatan selama tempoh dua tahun dan layak dilantik semula.

(4) Semua anggota Jawatankuasa yang disebut di bawah subkaedah (1) hendaklah beragama Islam.

(5) Ketua Pendaftar Mahkamah Rayuan Syariah hendaklah menjadi Setiausaha Jawatankuasa.

Mesyuarat Jawatankuasa

23. (1) Pengerusi Jawatankuasa hendaklah mempengerusikan mesyuarat Jawatankuasa dan jika Pengerusi tidak hadir, Timbalan Pengerusi hendaklah mempengerusikan mesyuarat itu.

(2) Lima orang anggota Jawatankuasa hendaklah membentuk kuorum mesyuarat.

(3) Keputusan mesyuarat Jawatankuasa hendaklah dibuat secara bermesyuarat dan hendaklah secara sebulat suara atau mengikut majoriti ahli yang hadir.

(4) Tertakluk kepada Kaedah-Kaedah ini, Jawatankuasa boleh menetapkan tataranya sendiri.

Fungsi Jawatankuasa

24. Jawatankuasa hendaklah mempunyai fungsi-fungsi yang berikut:
- (a) mencadangkan kepada Majlis pelantikan mana-mana orang yang berkelayakan sebagai anggota Panel Hakim;
 - (b) menyediakan dan menyelenggara Daftar Panel Hakim;
 - (c) menyiasat sebarang aduan terhadap mana-mana anggota Panel Hakim;
 - (d) menetapkan bentuk latihan yang perlu dihadiri oleh anggota Panel Hakim; dan
 - (e) melaksanakan apa-apa perkara lain yang difikirkan sesuai dan perlu dari semasa ke semasa bagi maksud melaksanakan peruntukan Kaedah-Kaedah ini.

BAHAGIAN VI

ETIKA HAKAM

Etika Hakim

25. (1) Hakim hendaklah berusaha bersungguh-sungguh untuk menyelesaikan Majlis Tahkim dan tidak melengah-lengahkan tanpa alasan yang munasabah serta mematuhi tatacara dan tempoh perjalanan Majlis Tahkim.

(2) Hakim hendaklah dalam menjalankan tugasnya, melaksanakan keadilan sebagaimana yang dikehendaki oleh Hukum Syarak.

(3) Hakim yang mengendalikan Majlis Tahkim hendaklah—

- (a) tidak mengendalikan Majlis Tahkim apabila dia berada dalam keadaan tidak tenang, marah, lapar, haus, mengantuk, letih atau tidak sihat;
- (b) tidak boleh meninggalkan Majlis Tahkim tanpa alasan yang munasabah;
- (c) bertindak tegas, adil dan tidak dipengaruhi oleh keadaan atau orang yang hadir di hadapannya;
- (d) bersifat terbuka, mesra dan sabar semasa mengendalikan Majlis Tahkim;
- (e) menggalakkan pihak-pihak menyelesaikan pertelingkahan mereka dan mencapai persetujuan secara sukarela; dan
- (f) memberi layanan yang sama rata kepada pihak-pihak.

- (4) Hakam hendaklah—
- (a) tidak bersifat berat sebelah;
 - (b) sentiasa berkecuali;
 - (c) merahsiakan segala perkara yang didedahkan dalam Majlis Tahkim kecuali apabila diarahkan oleh Mahkamah yang membicarakan kes tersebut;
 - (d) mengelakkan berlaku konflik kepentingan;
 - (e) memastikan bahawa dia mempunyai kemahiran atau kepakaran dalam perkara yang menjadi pertikaian; dan
 - (f) menolak permohonan menjadi saksi atau penasihat kepada pihak-pihak dalam Majlis Tahkim yang pernah dikendalikannya.
- (5) Hakam tidak boleh—
- (a) berkelakuan dengan sedemikian cara yang mungkin menyebabkan syak yang munasabah bahawa dia telah—
 - (i) membiarkan kepentingan persendiriannya bercanggah dengan tugasnya sebagai Hakam;
 - (ii) menggunakan kedudukannya bagi faedahnya sendiri;
 - (b) berkelakuan dengan cara yang tidak jujur atau dengan sedemikian cara hingga memburukkan atau mencemarkan nama Mahkamah dan menjejaskan Majlis Tahkim yang dikendalikannya;
 - (c) membelakangkan tugas dan tanggungjawab demi kepentingan dirinya; dan
 - (d) melakukan apa-apa perbuatan yang boleh menimbulkan syak tentang keupayaannya untuk berlaku adil dalam menjalankan tugas.

BAHAGIAN VII

ADUAN DAN SIASATAN TERHADAP PANEL HAKAM

Kawalan Panel Hakam

26. Jawatankuasa hendaklah mempunyai kawalan terhadap Panel Hakam yang dilantik di bawah kaedah 6.

Aduan terhadap Panel Hakam

27. (1) Apa-apa aduan mengenai kelakuan mana-mana anggota Panel Hakam hendaklah dibuat secara bertulis kepada Pengerusi.

(2) Mahkamah boleh, pada bila-bila masa, merujuk kepada Pengerusi apa-apa maklumat yang menyentuh kelakuan seseorang Panel Hakam.

(3) Tiada apa-apa jua dalam Kaedah-Kaedah ini boleh dikira sebagai menghalang Jawatankuasa daripada membuat apa-apa aduan, atas usulnya sendiri, yang menyentuh kelakuan seseorang Panel Hakim.

Siasatan Jawatankuasa

28. (1) Setelah Pengerusi menerima sesuatu aduan, dia hendaklah mengarahkan Setiausaha untuk—

- (a) memastikan bahawa dokumen yang berikut disampaikan kepada anggota Panel Hakim yang berkenaan secara penyampaian ke diri:
 - (i) sesalinan aduan itu; dan
 - (ii) suatu notis yang meminta anggota Panel Hakim yang berkenaan, dalam tempoh empat belas hari dari tarikh penerimaan, memberi suatu penjelasan bertulis kepada Jawatankuasa; dan
- (b) setelah tamat tempoh empat belas hari, memaklumkan kepada Jawatankuasa berhubung dengan status aduan itu.

(2) Setelah menerima aduan terhadap mana-mana Panel Hakim di bawah subkaedah 28(1) dan penjelasan bertulis, jika ada, di bawah subperenggan 28(1)(a)(ii), Jawatankuasa hendaklah menyiasat aduan itu.

(3) Jika—

- (a) aduan itu berasas dan benar, Jawatankuasa hendaklah membuat syor mengenai pembatalan pelantikan kepada Majlis sebagaimana yang diperuntukkan di bawah kaedah 29; atau
- (b) aduan itu didapati tidak berasas Jawatankuasa boleh menolak aduan itu.

Pembatalan pelantikan

29. Majlis atas syor Jawatankuasa, boleh membatalkan pelantikan mana-mana anggota Panel Hakim dan mengeluarkan nama Hakim tersebut daripada Daftar Panel Hakim di bawah kaedah 31 jika—

- (a) kelakuan anggota Panel Hakim tersebut, sama ada yang berkaitan dengan tugas-tugasnya sebagai anggota atau selainnya, merupakan kelakuan yang memburukkan nama Majlis atau Mahkamah;
- (b) dia telah menjadi tidak berupaya untuk menjalankan tugas-tugasnya dengan sempurna sebagai anggota;
- (c) pada pendapat Jawatankuasa, dia tidak menghadiri tiga Majlis Tahkim yang dijadualkan secara berturut-turut tanpa apa-apa alasan yang munasabah;

- (d) dia bertindak bertentangan dengan Etika Hakam; atau
- (e) dia seorang bankrap.

BAHAGIAN VIII

AM

Tempat Majlis Tahkim

30. (1) Majlis Tahkim hendaklah dilaksanakan di Mahkamah.

(2) Majlis Tahkim boleh dibuat di tempat lain sebagaimana yang difikirkan sesuai oleh Hakam.

Daftar Panel Hakam

31. Setiausaha hendaklah menyenggarakan suatu rekod pendaftaran anggota Panel Hakam yang dilantik oleh Majlis dalam Daftar Panel Hakam.

Bayaran elaun Hakam

32. Majlis boleh membayar elaun kepada Panel Hakam yang dilantik di bawah kaedah 6 dan perenggan 4(1)(c) mengikut kadar sebagaimana yang ditetapkan dalam Jadual Ketiga.

Rujukan kepada Hukum Syarak

33. (1) Mana-mana peruntukan atau tafsiran mana-mana peruntukan di bawah Kaedah-Kaedah ini yang berlawanan dengan Hukum Syarak adalah terbatal setakat yang ia berlawanan.

(2) Jika terdapat lakuna atau jika apa-apa perkara yang berkaitan dengan pelaksanaan Majlis Tahkim dan Hakam tidak diperuntukkan dengan nyata oleh Kaedah-Kaedah ini, Mahkamah hendaklah mengikut Hukum Syarak.

Sekatan

34. Mana-mana Peguam Syarie yang bertindak sebagai Hakam bagi mana-mana pihak suami atau isteri yang terlibat dalam Majlis Tahkim, tidak boleh mewakili pihak suami atau isteri itu dalam kes-kes lain yang bersangkutan dengannya di mana-mana Mahkamah.

JADUAL PERTAMA

ENAKMEN UNDANG-UNDANG KELUARGA ISLAM (NEGERI SELANGOR) 2003

KAEDAH-KAEDAH HAKAM (NEGERI SELANGOR) 2013

BORANG 1

(Subkaedah 5(1))

WAKALAH DAN PENERIMAAN HAKAM

(Tajuk Am)

Saya (Nama, No. Kad Pengenalan Suami atau Isteri) dengan ini melantik dan mewakilkan kepada (Nama, No. Kad Pengenalan Hakam) sebagai Hakam bagi pihak saya dalam Saman No. di Mahkamah mulai (tarikh) hingga dibatalkan oleh saya atau Mahkamah.

Bertarikh pada hari bulan 20

.....
Suami atau isteri

Saya (Nama, No. Kad Pengenalan Hakam) dengan ini menerima pelantikan yang tersebut di atas.

Bertarikh pada hari bulan 20

.....
Hakam

Di hadapan saya,

(Meterai)

.....
Hakim

ENAKMEN UNDANG-UNDANG KELUARGA ISLAM (NEGERI SELANGOR) 2003

KAEDAH-KAEDAH HAKAM (NEGERI SELANGOR) 2013

BORANG 2

(Subkaedah 5(3))

PELANTIKAN HAKAM SUAMI/ISTERI OLEH HAKIM

(Tajuk Am)

Ambil perhatian bahawa Mahkamah dengan ini melantik (Nama, No. Kad Pengenalan Hakam) sebagai Hakam bagi pihak suami/isteri (Nama Suami/Isteri, No. Kad Pengenalan) dalam Saman No.di Mahkamah mulai (tarikh) hingga dibatalkan oleh Mahkamah kemudiannya.

Bertarikh pada hari bulan 20

(Meterai)

.....
Hakim

ENAKMEN UNDANG-UNDANG KELUARGA ISLAM (NEGERI SELANGOR) 2003

KAEDAH-KAEDAH HAKAM (NEGERI SELANGOR) 2013

BORANG 3

(Perenggan 11(2)(b))

NOTIS PEWAKILAN KUASA PENUH OLEH SUAMI

(Tajuk Am)

Saya (Nama, No. Kad Pengenalan Suami) dengan ini mewakilkan dengan kuasa penuh kepada (Nama, No. Kad Pengenalan Hakam) sebagai Hakam bagi pihak saya dalam Saman No. untuk melafazkan satu talak atau khuluk terhadap isteri saya (Nama, No. Kad Pengenalan Isteri) di hadapan Mahkamah mulai (tarikh) hingga dibatalkan oleh saya atau Mahkamah.

Bertarikh pada hari bulan 20

.....
Suami

Saya (Nama, No. Kad Pengenalan Hakam) dengan ini menerima perwakilan kuasa penuh oleh suami yang tersebut di atas.

Bertarikh pada hari bulan 20

.....
Hakam

Di hadapan saya,

(Meterai)

.....
Hakim

ENAKMEN UNDANG-UNDANG KELUARGA ISLAM (NEGERI SELANGOR) 2003

KAEDAH-KAEDAH HAKAM (NEGERI SELANGOR) 2013

BORANG 4

(Perenggan 11(2)(b))

NOTIS PEWAKILAN KUASA PENUH OLEH ISTERI

(Tajuk Am)

Saya(Nama, No. Kad Pengenalan Isteri) dengan ini mewakilkan dengan kuasa penuh kepada (Nama, No. Kad Pengenalan Hakam) sebagai Hakam bagi pihak saya dalam Saman No. untuk menerima lafaz khuluk daripada Hakam suami saya (Nama, No. Kad Pengenalan Hakam Suami) di hadapan Mahkamah mulai (tarikh) hingga dibatalkan oleh saya atau Mahkamah.

Bertarikh pada hari bulan 20

.....
Isteri

Saya (Nama, No. Kad Pengenalan Hakam) dengan ini menerima perwakilan kuasa penuh oleh isteri yang tersebut di atas.

Bertarikh pada hari bulan 20

.....
Hakam

Di hadapan saya,

(Meterai)

.....
Hakim

ENAKMEN UNDANG-UNDANG KELUARGA ISLAM (NEGERI SELANGOR) 2003

KAEDAH-KAEDAH HAKAM (NEGERI SELANGOR) 2013

BORANG 5

(Subkaedah 11(4))

NOTIS PEMECATAN HAKAM

(Tajuk Am)

Ambil perhatian bahawa Mahkamah dengan ini memecat dan membatalkan pelantikan Hakam seperti yang berikut:

- | | | |
|-----|--|--------------|
| (1) |
(Nama, No. Kad Pengenalan Hakam Suami) | Hakam Suami |
| (2) |
(Nama, No. Kad Pengenalan Hakam Isteri) | Hakam Isteri |

Bertarikh pada hari bulan 20

(Meterai)

.....
Hakim

ENAKMEN UNDANG-UNDANG KELUARGA ISLAM (NEGERI SELANGOR) 2003

KAEDAH-KAEDAH HAKAM (NEGERI SELANGOR) 2013

BORANG 6

(Subkaedah 11(4))

PELANTIKAN HAKAM SUAMI OLEH HAKIM DENGAN KUASA PENUH

(Tajuk Am)

Ambil perhatian bahawa Mahkamah dengan ini melantik (Nama, No. Kad Pengenalan Hakam) sebagai Hakam bagi pihak suami (Nama Suami, No. Kad Pengenalan) dalam Saman No.di Mahkamah mulai (tarikh) hingga dibatalkan oleh Mahkamah kemudiannya dengan kuasa yang penuh untuk mendamaikan dan melafazkan satu talak/khuluk di hadapan Mahkamah.

Bertarikh pada hari bulan 20

(Meterai)

.....
Hakim

ENAKMEN UNDANG-UNDANG KELUARGA ISLAM (NEGERI SELANGOR) 2003

KAEDAH-KAEDAH HAKAM (NEGERI SELANGOR) 2013

BORANG 7

(Subkaedah 11(4))

PELANTIKAN HAKAM ISTERI OLEH HAKIM DENGAN KUASA PENUH

(Tajuk Am)

Ambil perhatian bahawa Mahkamah dengan ini melantik (Nama, No. Kad Pengenalan Hakam) sebagai Hakam bagi pihak isteri (Nama Isteri, No. Kad Pengenalan) dalam Saman No.di Mahkamah mulai (tarikh) hingga dibatalkan oleh Mahkamah kemudiannya dengan kuasa yang penuh untuk mendamaikan dan menerima lafaz khuluk di hadapan Mahkamah.

Bertarikh pada hari bulan 20

(Meterai)

.....
Hakim

ENAKMEN UNDANG-UNDANG KELUARGA ISLAM (NEGERI SELANGOR) 2003

KAEDAH-KAEDAH HAKAM (NEGERI SELANGOR) 2013

BORANG 8

(Kaedah 14)

LAPORAN MAJLIS TAHKIM

(Tajuk Am)

Bahawa kami (Nama Hakam Suami) dan
..... (Nama Hakam Isteri) pada akhir Majlis
Tahkim yang diadakan pada (tarikh) di (Nama tempat)
dengan ini melaporkan kepada Mahkamah seperti yang berikut:

- (1)
- (2)
- (3)
- (4)
- (5) Kami—
 - (a) *dapat/tidak dapat mencapai persetujuan dalam Majlis Tahkim ini.
 - (b) berpendapat punca shiqaq adalah daripada *suami/isteri/suami isteri/tidak dapat ditentukan;
 - (c) berpendapat suami isteri patut *berdamai/bercerai secara *talak/khuluk.

.....
Hakam Suami

.....
Hakam Isteri

Bertarikh pada hari bulan 20

* potong mana yang tidak berkenaan

ENAKMEN UNDANG-UNDANG KELUARGA ISLAM (NEGERI SELANGOR) 2003

KAEDAH-KAEDAH HAKAM (NEGERI SELANGOR) 2013

BORANG 9

(Perenggan 17(c))

NOTIS PENARIKAN DIRI HAKAM

(Tajuk Am)

Kepada Hakim,

Ambil perhatian bahawa saya (Nama, No. Kad Pengenalan Hakam) dengan ini menarik diri dan terhenti menjadi Hakam yang mewakili *suami/isteri (Nama, No. Kad Pengenalan Suami atau Isteri) yang tersebut dalam prosiding yang tersebut di atas, berkuat kuasa pada tarikh notis ini.

Bertarikh pada hari bulan 20

.....
Hakam

Di hadapan saya,

(Meterai)

.....
Hakim

* Potong jika tidak berkenaan

JADUAL KEDUA

ENAKMEN UNDANG-UNDANG KELUARGA ISLAM (NEGERI SELANGOR) 2003

KAEDAH-KAEDAH HAKAM (NEGERI SELANGOR) 2013

SIGHAH TALAK DAN KHULUK

(Kaedah 15)

- (1) Sighah talak bagi Hakam yang mendapat kuasa penuh daripada prinsipal.

Lafaz Hakam suami:

“Saya dengan kuasa yang diberi oleh (Nama Suami), menceraikan (Nama Isteri) dengan talak satu”.

- (2) Sighah talak bagi Hakam yang diberi kuasa penuh oleh Mahkamah.

Lafaz Hakam suami:

“Saya dengan kuasa penuh yang diberi oleh Mahkamah, bagi pihak suami (Nama Suami), menceraikan (Nama Isteri) dengan talak satu”.

- (3) Sighah khuluk bagi Hakam yang mendapat kuasa penuh daripada prinsipal.

(a) Lafaz Ijab Hakam suami:

“Saya dengan kuasa yang diberi oleh (Nama Suami), menceraikan (Nama Isteri) dengan khuluk sebanyak Ringgit Malaysia (jumlah) atau (harta lain atau manfaat yang bernilai) yang tersebut”.

(b) Lafaz tersebut hendaklah diterima (qabul) dengan serta-merta oleh Hakam isteri seperti yang berikut:

“Saya terima khuluk bagi pihak (Nama Isteri) atas persetujuannya sebanyak Ringgit Malaysia (jumlah) atau (harta lain atau manfaat yang bernilai) yang tersebut”.

- (4) Sighah khuluk bagi Hakam yang diberi kuasa penuh oleh Mahkamah.

(a) Lafaz Hakam Suami:

“Saya dengan kuasa penuh yang diberi oleh Mahkamah, bagi pihak (Nama Suami) menceraikan (Nama isteri) dengan khuluk sebanyak Ringgit Malaysia..... (nilai ringgit) atau harta lain atau manfaat yang bernilai yang tersebut”.

(b) Lafaz Hakam Bagi Pihak Isteri:

“Saya sebagai Hakam bagi pihak (Nama Isteri), menerima khuluk sebanyak Ringgit Malaysia (jumlah) atau..... (harta lain atau manfaat yang bernilai) yang tersebut”.

JADUAL KETIGA

ENAKMEN UNDANG-UNDANG KELUARGA ISLAM (NEGERI SELANGOR) 2003

KAEDAH-KAEDAH HAKAM (NEGERI SELANGOR) 2013

SKALA ELAUN

(Kaedah 32)

Bil.	Butiran	Kadar Elaun (RM)
(a)	Elaun pelantikan sebagai Hakam bagi setiap kes	200.00
(b)	Elaun kehadiran dan pengendalian setiap Majlis Tahkim	100.00

Dibuat 21 April 2014

[MAIS/SU/BUU/01-001/13(1); P.U. Sel. Am 030/14 (NAN)]

Dengan Titah Perintah,

DATO' SETIA HAJI MOHAMAD ADZIB BIN MOHD ISA
Pengerusi
Majlis Agama Islam Selangor

ISLAMIC FAMILY LAW (STATE OF SELANGOR)
ENACTMENT 2003

HAKAM (STATE OF SELANGOR) RULES 2014

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ISLAMIC FAMILY LAW (STATE OF SELANGOR) ENACTMENT 2003

HAKAM (STATE OF SELANGOR) RULES 2014

IN exercise of the powers conferred by section 48 and paragraph 135(3)(i) of the Islamic Family Law (State of Selangor) Enactment 2003 [*Enactment No. 2/2003*], His Royal Highness the Sultan, on the advice of the Majlis, makes the following rules:

PART I

PRELIMINARY

Citation and commencement

1. (1) These rules may be cited as the *Hakam* (State of Selangor) Rules 2014.
- (2) These Rules are deemed to have come into operation on 1 July 2013.

Interpretation

2. In these Rules, unless the context otherwise requires—

“Register of Panel *Hakam*” means a form of register to record the list of members of Panel *Hakam* as referred to under rule 31;

“*darar syarie*” means harm, according to what is normally recognized by *Hukum Syarak*, affecting a wife in respect of religion, life, body, mind, dignity, or property;

“Administration Enactment” means the Administration of the Religion of Islam (State of Selangor) Enactment 2003 [*Enactment No. 1/2003*];

“Islamic Family Law Enactment” means the Islamic Family Law (State of Selangor) Enactment 2003 [*Enactment No. 2/2003*];

“*Hakam*” means an arbitrator authorized by the parties or by the Court to resolve quarrels (*shiqaq*) between husband and wife;

“*Hukum Syarak*” means Islamic Law according to Mazhab Shafie or according to one of the Mazhab Maliki, Hanafi or Hanbali;

“*iwadh*” means any payment or value used as *tebus talak* by the wife to the husband for divorce by *khuluk*;

“Committee” means the Committee of *Hakam* established under rule 21;

“Chief Registrar” means a Chief Registrar of Muslim Marriages, Divorces and *Rujuk* appointed under section 28 of the Islamic Family Law Enactment and includes the Registrar and Assistant Registrar;

“*khuluk*” means the divorce between husband and wife by *‘iwadh*;

“Court” means the Syariah Subordinate Court or Syariah High Court, as the case may be, established under subsection 55(1) or 55(2) of the Administration Enactment;

“*Majlis*” means the Majlis Agama Islam Selangor established under subsection 4(1) of the Administration of the Religion of Islam;

“*Majlis Tahkim*” means the arbitration session or the process to resolve quarrels (*shiqaq*) involving meeting between husband and wife, and the *Hakam* for the purpose of reconciliation or divorce by pronouncement of *talak* or by *khuluk*;

“Panel *Hakam*” means a panel of *Hakam* appointed by the Committee under rule 6;

“*Peguam Syarie*” means a person admitted as *Peguam Syarie* under section 80 of the Administration Enactment;

“Registrar” means the Chief Registrar, Senior Registrar of Muslim Marriages, Divorces and *Rujuk* appointed under section 28 of the Islamic Family Law Enactment and includes the Assistant Registrar;

“Chairman” means the Chairman for Committee of *Hakam* under paragraph 22(1)(a);

“principal” means husband or wife who appoints *Hakim* respectively under these Rules;

“Secretary” means the Secretary for Committee of *Hakam* under subrule 22(5);

“*shiqaq*” means constant quarrels between husband and wife which affect the marital harmony.

PART II

APPOINTMENT OF *HAKAM*

Power of the Court

3. (1) If the Court is satisfied that there are constant *shiqaq* between the parties to a marriage, the Court shall as soon as possible direct the husband and wife to appoint *Hakam* from amongst their respective close relatives.

(2) If the husband and wife or either one of the parties fails to produce their respective *Hakam*, the Court shall as soon as possible appoint a *Hakam* from amongst the members of Panel *Hakam* or any person referred to in paragraph 4(1)(c) for the parties.

(3) Before appointing *Hakam*, the Court shall decide that *shiqaq* has occurred between husband and wife upon investigation conducted by the Court.

(4) The Court shall decide that there are constant *shiqaq* in certain situation including—

(a) constant quarrels between husband and wife whether by reason of—

(i) *nusyuz* by wife;

(ii) cruelty of husband;

(iii) uncertainty of who is telling the truth between both of them;
or

(iv) one of the parties is or both parties are not telling the truth or making claim on matters in which he or she has no right.

(b) constant quarrels between husband and wife to the extent of causing difficulties in carrying out their respective responsibilities and accusing each other of not performing the rights as husband and wife;

(c) husband or wife accuses each other of having a relationship beyond the *Hukum Syarak* with another woman or man;

(d) constant quarrels resulting to beating;

(e) one of them leaves the dwelling house, ceases to cohabit although both parties fail to prove the actual reason before the Court;

(f) husband or wife accuses each other of their respective responsibilities towards the children to the extent of causing constant dispute and quarrels;

(g) if it appears that any claim made by the wife to dissolve the marriage is not granted and dismissed by the Court on the ground that she fails to prove the truth and the Court finds that such dispute still continues or recurs between the said husband and wife; or

(h) any action which causes *darar syarie* on the wife or husband.

Appointment of *Hakam*

4. (1) *Hakam* may be appointed from amongst—

(a) close relatives of husband and wife who fulfil the qualifications under subrules 8(1) and (2);

(b) members of Panel *Hakam* appointed under rule 6; or

(c) any Syariah Officers or Islamic Affairs Officers in the General Public Service of the Federation or State or any Majlis Officers who is proficient in family matters and *Hukum Syarak*.

(2) For the purpose of paragraph (1)(a), the expression “close relatives” means any man who is related by consanguinity, affinity or fosterage and having knowledge of the circumstances of the case.

Procedure on appointment of *Hakam*

5. (1) For the purpose of subrule 3(1), the Court shall direct the husband and wife to appoint *Hakam* on their behalf from amongst close relatives of the husband and wife as provided under paragraph 4(1)(a) within fourteen days from the date on which *shiqaq* is decided by the Court by using Form 1 of the First Schedule.

(2) After the husband and wife appoint their *Hakam*, the Court shall record and declare such appointment by an order.

(3) For the purpose of subrule 3(2), appointment of *Hakam* by the Court pursuant to paragraphs 4(1)(b) and (c) shall be made by using Form 2 of the First Schedule.

Appointment of the member of Panel *Hakam*

6. (1) Subject to the qualifications under subrule 8(3), the Majlis may, on the proposal of the Committee, appoint any person as member of the Panel *Hakam*.

(2) Any person appointed as member of the Panel *Hakam* shall be registered in the Register of Panel *Hakam*.

Termination of appointment of member of Panel *Hakam*

7. The appointment of a member of Panel *Hakam* shall terminate and be removed from the Register of Panel *Hakam* if he—

- (a) dies;
- (b) resigns by a letter addressed to the Chairman of the Majlis, through the Chairman; or
- (c) becomes incapable of performing his duty as a *Hakam*.

Qualifications of a *Hakam*

8. (1) Subject to subrule (2), any close relatives of husband and wife is qualified to be appointed as *Hakam* if he—

- (a) is a Muslim;
- (b) is a male;
- (c) is of sound mind and *baligh* (*mukalaf*);
- (d) is fair and honest; and
- (e) has basic knowledge in family matters and *Hukum Syarak*.

(2) Any *Peguam Syarie* who represents the husband or wife in other proceedings in Court shall not be appointed as *Hakam* for that husband or wife unless ordered by the Court.

(3) A person to be appointed and registered as member of the Panel *Hakam* shall be—

- (a) Muslim;
- (b) Malaysian citizen;
- (c) male;
- (d) of sound mind and *baligh (mukalaf)*;
- (e) fair and honest;
- (f) of good behaviour and has not been convicted on any criminal offence whether in Malaysia or in any other places;
- (g) competent in family matters and *Hukum Syarak*;
- (h) a person whose appointment has not been revoked under rule 29;
- (i) a person who is not a bankrupt;
- (j) a person who possesses academic qualification at least at *Thanawi* Certificate level or equivalent thereto or higher from any educational institution or any institution of higher learning recognised by the Government of Malaysia in the area of Islamic studies; and
- (k) a person who passed in any evaluation process prescribed by the Committee.

PART III

FUNCTION OF *HAKAM*

Function of *Hakam*

9. *Hakam* shall terminate the *shiqaq* between husband and wife by way of reconciliation or by separating both of them by *talak* or *khuluk*.

Responsibilities of *Hakam*

10. During the conduct of *Majlis Tahkim*, *Hakam* shall—

- (a) accept and perform directions of the Court from time to time; and
- (b) explain the general regulations to be complied with by all parties during *Majlis Tahkim*.

PART IV

PROCEDURE OF *MAJLIS TAHKIM*

Procedure of *Majlis Tahkim*

11. (1) The proceeding of *Majlis Tahkim* shall commence after the appointment of *Hakam* is made.

- (2) Before the proceeding of *Majlis Tahkim* commences—
- (a) the Court may give directions on the procedure to conduct *Majlis Tahkim* to *Hakam* and *Hakam* shall comply with the directions and *Hukum Syarak*;
 - (b) subject to subrule (3), *Hakam* shall endeavour to obtain full authority from their respective principals by using Form 3 or Form 4 of the First Schedule, as may be appropriate.
- (3) The full authority from principals to their *Hakam* is as follows:
- (a) for the husband, he may allow his *Hakam* to pronounce one *talak* or *khuluk* before the Court;
 - (b) for the wife, she may allow her *Hakam* to accept the pronouncement of *khuluk* before the Court.
- (4) If—
- (a) the *Hakam* are of the opinion that the parties should be divorced but are unable to order a divorce due to the failure of *Hakam* to obtain full authority from the principals or due to other reasons;
 - (b) the *Hakam* fail to reach an agreement at any stage of the *Majlis Tahkim*;
 - (c) the Court is not satisfied with their conduct of *Majlis Tahkim*; or
 - (d) any *Hakam* withdraws himself or refuses to proceed with his duty as a *Hakam*,

the Court may remove and revoke their appointment by using Form 5 of the First Schedule and appoint other *Hakam* from amongst members of the Panel *Hakam* or any person referred to in paragraph 4(1)(c) and shall give full authority as provided under subrule 11(2) to them by using Form 6 or Form 7 of the First Schedule, as may be appropriate.

Determination on types of divorce by *Hakam*

12. (1) In conducting *Majlis Tahkim* under these Rules, if both *Hakam* are satisfied that both parties fail to reach reconciliation, they shall determine the party who causes the *shiqaq*.

- (2) If the *shiqaq*—
- (a) appears to be caused by the husband or both husband and wife, both *Hakam* shall propose divorce by *talak*;
 - (b) appears to be caused by the wife, both *Hakam* shall propose divorce by *khuluk* and the rate of *'iwadh* shall be determined by *Hakam*;
 - (c) cannot be determined in terms of its cause and the husband claims divorce, both *Hakam* shall propose divorce by *talak*; or
 - (d) cannot be determined in terms of its cause and the wife claims divorce, both *Hakam* shall propose divorce by *khuluk* and the rate of *'iwadh* shall be determined by *Hakam*.

Refusal of husband or wife to attend proceeding of *Majlis Tahkim*

13. If the husband or wife or both parties refuses to attend any proceeding of *Majlis Tahkim*, such refusal shall not cause the proceeding to cease and the *Hakam* may make his decision.

Report of *Majlis Tahkim*

14. The *Hakam* shall prepare a report by using Form 8 of the First Schedule at the end of each *Majlis Tahkim* and the report shall be laid before the Court.

Sighah talak and khuluk

15. (1) If both *Hakam* in *Majlis Tahkim* decide that the marriage is to be dissolved, the *talak* shall be pronounced by the *Hakam* for husband before and with the permission of the Court as specified in the Second Schedule.

(2) If both *Hakam* in *Majlis Tahkim* decide that marriage is to be dissolved by *khuluk* and *'iwadh* has been made by the wife in *Majlis Tahkim*, the *khuluk* shall be pronounced before and with the permission of the Court.

(3) The pronouncement of *ijab* and *qabul* for *khuluk* is as specified in the Second Schedule.

(4) The pronouncement of *talak Hakam* is *talak ba-in*.

Duration of *Majlis Tahkim*

16. (1) The duration of *Majlis Tahkim* shall not exceed thirty days from the date of the order of appointment and declaration of *Hakam* issued by the Court.

(2) The Court may extend the duration of *Majlis Tahkim* if it thinks proper, but such extension shall not exceed the period of sixty days from the date the extension is granted.

Cessation of proceeding of *Majlis Tahkim*

17. Any proceeding of *Majlis Tahkim* shall cease, if—

- (a) the husband or wife dies;
- (b) the husband or wife is of unsound mind;
- (c) the *Hakam* withdraws himself as a *Hakam* by using Form 9 of the First Schedule; or
- (d) there exists other reasons recognised by *Hukum Syarak*.

Decision of *Majlis Tahkim*

18. The divorce determined in *Majlis Tahkim* is final and no appeal is allowed.

Recording of pronouncement of *talak* and registration of divorce

19. The Court upon allowing pronouncement of one *talak* before it shall record the pronouncement of one *talak*, and send a copy of the certified record to the relevant Registrar and to the Chief Registrar for registration.

Attendance of *Peguam Syarie* and other parties

20. Unless a person is the immediate family member of the party, no other parties or *Peguam Syarie* shall be allowed to appear or represent any party before the *Hakam*.

PART V

COMMITTEE OF *HAKAM***Establishment of Committee**

21. The *Majlis* shall establish a committee known as Committee of *Hakam*.

Membership of Committee

22. (1) The Committee shall consist of—

- (a) Chief *Syarie* Judge, as Chairman;
- (b) a *Syariah* High Court Judge, as Deputy Chairman;
- (c) State Legal Adviser or his representative;
- (d) Legal Adviser of the *Majlis* or his representative;
- (e) a *Syariah* Subordinate Court Judge;
- (f) State Chief Registrar, Marriages, Divorces and *Rujuk* or his representative;
and
- (g) three persons who are proficient in *Hukum Syarak* appointed by the *Majlis*.

(2) The members of the Committee under paragraphs (1)(b) and (e) shall be appointed by the Chief *Syarie* Judge.

(3) The members appointed under paragraph 1(g) shall hold office for a period of two years and shall be eligible for reappointment.

(4) All members of the Committee referred to under subrule (1) shall be Muslim.

(5) The Chief Registrar of Syariah Appeal Court shall be the Secretary to the Committee.

Meetings of Committee

23. (1) The Chairman of the Committee shall preside at a meeting of the Committee and if the Chairman is absent, the Deputy Chairman shall preside at the meeting.

(2) Five members of the Committee shall constitute a quorum of the meeting.

(3) The decision of the meeting of Committee shall be made by way of meeting and shall be unanimous or according to the majority members who present.

(4) Subject to these Rules, the Committee may determine its own procedure.

Functions of Committee

24. The Committee shall have the following functions:

- (a) to propose to the Majlis the appointment of any qualified person as member of the Panel *Hakam*;
- (b) to prepare and maintain the Register of Panel *Hakam*;
- (c) to investigate any complaint against any member of the Panel *Hakam*;
- (d) to prescribe the forms of training to be attended by member of the Panel *Hakam*; and
- (e) to perform any other matters as may be proper and necessary from time to time for the purpose of enforcing the provisions of these Rules.

PART VI

ETHICS OF *HAKAM*

Ethics of *Hakam*

25. (1) The *Hakam* shall make every effort to complete the *Majlis Tahkim* and shall not delay without reasonable ground and shall comply with the procedure and duration of the *Majlis Tahkim*.

(2) The *Hakam* shall in carrying out his duty, exercise fairness as required by *Hukum Syarak*.

(3) The *Hakam* who conducts *Majlis Tahkim* shall—

- (a) not conduct *Majlis Tahkim* when he is not calm, angry, hungry, thirsty, sleepy, tired and not well;
- (b) not leave the *Majlis Tahkim* without reasonable ground;
- (c) be strict, be fair and not be influenced by surroundings or person who is present before it;
- (d) open, friendly and patient when conducting *Majlis Tahkim*;
- (e) encourage the parties to settle their disputes and reach an agreement voluntarily; and
- (f) provide equal treatment to parties.

(4) The *Hakam* shall—

- (a) not be arbitrary;
- (b) remain neutral;
- (c) maintain the secrecy of all matters disclosed in *Majlis Tahkim* unless when directed by the Court which hears the said case.
- (d) avoid conflict of interest;
- (e) make sure that he possesses skills or expertise on matters in dispute; and
- (f) reject the application to become witness or adviser to parties in the *Majlis Tahkim* which has been conducted by him.

(5) The *Hakam* shall not—

- (a) behave in such a way which may cause reasonable suspicion that he—
 - (i) allows his personal interest to contradict with his duty as a *Hakam*;
 - (ii) uses his position for his own benefit;
- (b) behave in a dishonest manner or in such a way that caused damage or tarnished the name of the Court and is detrimental to the *Majlis Tahkim* conducted by him;
- (c) ignore the duty and responsibility for his own interest; and
- (d) commit any act which may cause suspicion on his ability to act fairly in carrying out duty.

PART VII

COMPLAINT AND INVESTIGATION ON PANEL *HAKAM***Control of Panel *Hakam***

26. The Committee shall have control on the Panel *Hakam* appointed under rule 6.

Complaint against Panel *Hakam*

27. (1) Any complaint on the behaviour of any member of the Panel *Hakam* shall be made in writing to the Chairman.

(2) The Court may, at any time, refer to the Chairman any information affecting the behaviour of the Panel *Hakam*.

(3) Nothing in these Rules may be taken as preventing the Committee from making any complaint, on its own motion, affecting the behaviour of the Panel *Hakam*.

Investigation by Committee

28. (1) Upon receipt of a complaint by the Chairman, he shall direct the Secretary to—

(a) ensure that the following documents are delivered to the relevant member of the Panel *Hakam* by way of personal service:

(i) a copy of the complaint; and

(ii) a notice requiring the relevant member of the Panel *Hakam*, within the period of fourteen days from the date of receipt, to provide a written explanation to the Committee; and

(b) upon expiry of the fourteen day period, inform the Committee on the status of such complaint.

(2) Upon receipt of the complaint against any Panel *Hakam* under subrule 28(1) and written explanation, if any, under subparagraph 28(1)(a)(ii), the Committee shall investigate such complaint.

(3) If—

(a) the complaint is reasonable and true, the Committee shall make recommendation on revocation of appointment to the Majlis as provided under rule 29; or

(b) the complaint appears to be groundless, the Committee may reject the complaint.

Revocation of appointment

29. The Majlis, on recommendation of the Committee, may revoke the appointment of any member of the Panel *Hakam* and remove the name of the said *Hakam* from the Register of Panel *Hakam* under rule 31 if—

- (a) the behaviour of the said member of the Panel *Hakam*, whether in connection with his duties as a member or otherwise, is a behaviour that caused damage to the name of the Majlis or Court;
- (b) he becomes incapable to carry out his duties properly as a member;
- (c) in the opinion of the Committee, he fails to attend three scheduled *Majlis Tahkim* consecutively without any reasonable ground;
- (d) his action is inconsistent with the Ethics of *Hakam*; or
- (e) he is a bankrupt.

PART VIII

GENERAL

Venue of *Majlis Tahkim*

30. (1) The *Majlis Tahkim* shall be conducted in the Court.

(2) The *Majlis Tahkim* may be conducted in other places as the *Hakam* thinks fit.

Register of Panel *Hakam*

31. The Secretary shall maintain a record on registration of member of the Panel *Hakam* appointed by the Majlis in the Register of Panel *Hakam*.

Payment of allowance to *Hakam*

32. The Majlis may pay allowance to the Panel *Hakam* appointed under rule 6 and paragraphs 4(1)(c) according to the rate as prescribed in the Third Schedule.

Reference to *Hukum Syarak*

33. (1) Any provision or interpretation of any provision under these Rules which is inconsistent with *Hukum Syarak* shall be void to the extent of its inconsistency.

(2) If there is lacuna or if any matter in respect of the conduct of *Majlis Tahkim* and *Hakam* is not expressly provided in these Rules, the Court shall follow *Hukum Syarak*.

Restriction

34. Any *Peguam Syarie* who acts as *Hakam* for any husband or wife who is involved in *Majlis Tahkim*, shall not represent the husband or wife in other cases in connection therewith in any Court.

FIRST SCHEDULE

ISLAMIC FAMILY LAW (STATE OF SELANGOR) ENACTMENT 2003

HAKAM (STATE OF SELANGOR) RULES 2013**FORM 1**

(Subrule 5(1))

WAKALAH AND ACCEPTANCE BY *HAKAM**(General Title)*

I (Name, Identity Card No. of Husband or Wife) hereby appoint and authorize (Name, Identity Card No. of *Hakam*) as *Hakam* on my behalf in the Summons No. in the Court from (date) until being revoked by myself or the Court.

Dated day of 20

.....
Husband or wife

I (Name, Identity Card No. of *Hakam*) hereby accept the appointment as stated above.

Dated day of 20

.....
Hakam

In my presence,

(Seal)

.....
Judge

ISLAMIC FAMILY LAW (STATE OF SELANGOR) ENACTMENT 2003

HAKAM (STATE OF SELANGOR) RULES 2013

FORM 2
(Subrules 5(3))

APPOINTMENT OF *HAKAM* FOR HUSBAND/WIFE BY JUDGE

(General Title)

Take note that the Court hereby appoints (Name, Identity Card No. of *Hakam*) as *Hakam* on behalf of the husband/wife (Name of Husband/Wife, Identity Card No.) in the Summons No.in the Court from (date) until being revoked by the Court later.

Dated day of 20

(Seal)

.....
Judge

ISLAMIC FAMILY LAW (STATE OF SELANGOR) ENACTMENT 2003

HAKAM (STATE OF SELANGOR) RULES 2013**FORM 3**
(Paragraph 11(2)(b))

NOTICE OF FULL AUTHORIZATION BY HUSBAND

(General Title)

I (Name, Identity Card No. of Husband) hereby give full authority to (Name, Identity Card No. of *Hakam*) as *Hakam* on my behalf in the Summons No. to pronounce one *talak* or *khuluk* against my wife (Name, Identity Card No. of Wife) before the Court from (date) until being revoked by myself or the Court.

Dated day of 20

.....
Husband

I (Name, Identity Card No. of *Hakam*) hereby accept the full authorization by husband as stated above.

Dated day of 20

.....
Hakam

In my presence,

(Seal)

.....
Judge

ISLAMIC FAMILY LAW (STATE OF SELANGOR) ENACTMENT 2003

HAKAM (STATE OF SELANGOR) RULES 2013

FORM 4
(Paragraph 11(2)(b))

NOTICE OF FULL AUTHORIZATION BY WIFE

(General Title)

I(Name, Identity Card No. of Wife) hereby give full authority to (Name, Identity Card No. of *Hakam*) as *Hakam* on my behalf in the Summons No. to accept the pronouncement of *khuluk* from *Hakam* for husband (Name, Identity Card No. of *Hakam* for husband) before the Court from (date) until being revoked by myself or the Court.

Dated day of 20

.....
Wife

I (Name, Identity Card No. of *Hakam*) hereby accept the full authorization by wife as stated above.

Dated day of 20

.....
Hakam

In my presence,

(Seal)

.....
Judge

ISLAMIC FAMILY LAW (STATE OF SELANGOR) ENACTMENT 2003

HAKAM (STATE OF SELANGOR) RULES 2013**FORM 5**
(Subrule 11(4))NOTICE OF REMOVAL OF *HAKAM**(General Title)*

Take note that the Court hereby removes and revokes the appointment of *Hakam* as follows:

- | | | |
|-----|--|--------------------------|
| (1) |
(Name, Identity Card No. of <i>Hakam</i> for Husband) | <i>Hakam</i> for Husband |
| (2) |
(Name, Identity Card No. of <i>Hakam</i> for Wife) | <i>Hakam</i> for Wife |

Dated day of 20

(Seal)

.....
Judge

ISLAMIC FAMILY LAW (STATE OF SELANGOR) ENACTMENT 2003

HAKAM (STATE OF SELANGOR) RULES 2013

FORM 6
(Subrule 11(4))

APPOINTMENT OF *HAKAM* FOR HUSBAND BY JUDGE WITH FULL AUTHORITY

(General Title)

Take note that the Court hereby appoints (Name, Identity Card No. of *Hakam*) as *Hakam* on behalf of the husband (Name of Husband, Identity Card No.) in the Summons No.in the Court from (date) until being revoked by the Court later, having full authority for reconciliation and pronouncement of one *talak/khuluk* before the Court.

Dated day of 20

(Seal)

.....
Judge

ISLAMIC FAMILY LAW (STATE OF SELANGOR) ENACTMENT 2003

HAKAM (STATE OF SELANGOR) RULES 2013

FORM 7
(Subrule 11(4))

APPOINTMENT OF HAKAM FOR WIFE BY JUDGE WITH FULL AUTHORITY

(General Title)

Take note that the Court hereby appoints (Name, Identity Card No. of *Hakam*) as *Hakam* on behalf of the wife (Name of Wife, Identity Card No.) in the Summons No.in the Court from (date) until being revoked by the Court later, having full authority for reconciliation and acceptance of one *khuluk* before the Court.

Dated day of 20

(Seal)

.....
Judge

ISLAMIC FAMILY LAW (STATE OF SELANGOR) ENACTMENT 2003

HAKAM (STATE OF SELANGOR) RULES 2013

FORM 8
(Rule 14)

REPORT OF MAJLIS TAHKIM

(General Title)

Whereas we..... (Name of Hakam for Husband)
and (Name of Hakam for Wife)
at the end of the *Majlis Tahkim* conducted on (date) in
(Name of place) hereby report to the Court as follows:

(1)
.....

(2)
.....

(3)
.....

(4)
.....

(5) We are—

(a) *able/not able to reach an agreement in this *Majlis Tahkim*.

(b) of the opinion that the *shiqaq* is caused by the *husband/wife/husband and wife/
cannot be determined;

(c) of the opinion that the husband and wife should *reconciliate/be divorced by
**talak/khuluk*.

.....
Hakam for Husband

.....
Hakam for Wife

Dated day of 20

* delete where appropriate

 ISLAMIC FAMILY LAW (STATE OF SELANGOR) ENACTMENT 2003

HAKAM (STATE OF SELANGOR) RULES 2013

FORM 9
 (Paragraph 17(c))

NOTICE OF WITHDRAWAL AS HAKAM

(General Title)

To the Judge,

Take note that I (Name, Identity Card No. of *Hakam*) hereby withdraw myself and cease from being *Hakam* who represents the said *husband/wife (Name, Identity Card No. of Husband or Wife) in the proceeding stated above, effective on the date of this notice.

Dated day of 20

Hakam

In my presence,

(Seal)

Judge

 * Delete where appropriate

SECOND SCHEDULE

ISLAMIC FAMILY LAW (STATE OF SELANGOR) ENACTMENT 2003

HAKAM (STATE OF SELANGOR) RULES 2013*SIGHAH TALAK AND KHULUK*
(Rule 15)

- (1) The *Sighah talak* for *Hakam* who obtains full authority from the principal.
Pronouncement by *Hakam* for husband:
“I having authorized by (Name of Husband), divorce (Name of Wife) with one *talak*.”
- (2) The *Sighah talak* for *Hakam* who is granted full authority by the Court.
Pronouncement by *Hakam* for husband:
“I having the full authority granted by the Court, on behalf of the husband..... (Name of Husband), divorce (Name of Wife) with one *talak*.”
- (3) The *Sighah khuluk* for *Hakam* who obtains full authority from the principal.
- (a) Pronouncement of *Ijab* by *Hakam* for husband:
“I having the authority granted by..... (Name of Husband), divorce (Name of Wife) by *khuluk* of the said Ringgit Malaysia (amount) or (other property or benefit with value)”.
- (b) The said pronouncement shall be accepted (*qabul*) immediately by *Hakam* for the wife as follows:
“I accept the *khuluk* on behalf of (Name of Wife) upon her agreement of the said Ringgit Malaysia (amount) or (other property or benefit with value)”.
- (4) The *Sighah khuluk* for *Hakam* who is granted full authority by the Court.
- (a) Pronouncement by *Hakam* for Husband:
“I having the full authority granted by the Court, on behalf of (Name of Husband) divorce (Name of Wife) by *khuluk* of the said Ringgit Malaysia..... (ringgit value) or other property or benefit with value”.
- (b) Pronouncement by *Hakam* for Wife:
“I being the *Hakam* on behalf of (Name of Wife), accept the *khuluk* of the said Ringgit Malaysia (amount) or..... (other property or benefit with value)”.

THIRD SCHEDULE

ISLAMIC FAMILY LAW (STATE OF SELANGOR) ENACTMENT 2003

HAKAM (STATE OF SELANGOR) RULES 2013SCALE FOR ALLOWANCE
(Rule 32)

<i>No.</i>	<i>Item</i>	<i>Rate of Allowance (RM)</i>
(a)	Allowance for appointment as <i>Hakam</i> for each case	200.00
(b)	Allowance for appearing in and conducting each <i>Majlis Tahkim</i>	100.00

Made 21 April 2014

[MAIS/SU/BUU/01-001/13(1); P.U. Sel. Am. 030/14 (NAN)]

By Command,

DATO' SETIA HAJI MOHAMAD ADZIB BIN MOHD ISA
Chairman
of the Majlis Agama Islam Selangor

Hakcipta Pencetak (H)

PERCETAKAN NASIONAL MALAYSIA BERHAD

Semua Hak Terpelihara. Tiada mana-mana bahagian jua daripada penerbitan ini boleh diterbitkan semula atau disimpan di dalam bentuk yang boleh diperolehi semula atau disiarkan dalam sebarang bentuk dengan apa jua cara elektronik, mekanikal, fotokopi, rakaman dan/atau sebaliknya tanpa mendapat izin daripada Percetakan Nasional Malaysia Berhad (Pencetak kepada Kerajaan Malaysia yang dilantik).



DICETAK OLEH
PERCETAKAN NASIONAL MALAYSIA BERHAD,
KUALA LUMPUR
BAGI PIHAK DAN DENGAN PERINTAH KERAJAAN MALAYSIA