

## Application of JKSM's Practice Directions in Matrimonial Property Claim Proceedings: Towards Law Reform

<sup>1</sup>Jamal Mohd Lokman Sulaiman, <sup>2</sup>Mohd Al Adib Samuri, <sup>3</sup>Mohd Nasran Mohamad & <sup>4</sup>Noor Lizza Mohamed Said

<sup>1</sup>Institut Islam Hadhari, Universiti Kebangsaan Malaysia, <sup>2,3,4</sup>Research Centre For Sharia, Faculty of Islamic Studies, Universiti Kebangsaan Malaysia.  
Corresponding Author's Email: gudegi777@gmail.com

### Abstract

The Practice Direction issued by the Department of Syariah Judiciary Malaysia (JKSM) has helped fill the loopholes in the Islamic law provisions related to matrimonial property claims due to divorce, death or polygamy. However, to date, there has been no mapping made to match the Practice Directions with the loopholes in the statutes. Therefore, this study aims to analyse the position of Practice Directions in matrimonial property proceedings using a document analysis approach based on cases found in Jurnal Hukum, grounds of judgment, reported cases, and interviews with seven study participants who are directly involved with matrimonial property case proceedings in Syariah Courts. The findings of the study found that three reforms should be done on the statute of Islamic law in Malaysia starting from the legal reform related to the place of registration of case claims, the position of matrimonial property claims due to death and also the procedure of giving testimony in court, which can also be done in writing. This study is important to assist researchers and experts in understanding the efforts and the process of standardisation of Islamic law in Malaysia.

**Keywords:** Practice Direction, Matrimonial Property, Islamic Family Law, Syariah Court Civil Procedure, Syariah Court.

### Introduction

A matrimonial property claim is a claim that is permitted by law and falls under the jurisdiction of the Syariah courts in Malaysia. The claim process can be carried out by the parties based on the statutes of Islamic family law, the civil procedures of the Syariah courts, and the state Islamic administration. However, there is a legislative loophole in the relevant statutes that raise many procedural issues relating to the claims of matrimonial properties in Syariah courts. In order to fill the loophole, the Department of Syariah Judiciary Malaysia (JKSM) has issued Practice Directions from time to time to be a guideline, explanation, and elaboration of the statutory loopholes to smooth the application process of matrimonial property claims.

Practice directions have actually been practised by the Civil Court for a long time, whereby its legal interpretation means additional procedures to the existing court procedure

rules (Abdul Rahman, 2020). This civil court practice has inspired the Islamic judicial administration in Malaysia to ensure that the issue of procedural dissent does not affect the enforcement of justice. Since 2000, JKSM has issued many Practice Directions, including several Practice Directions specifically related to claims of matrimonial assets either at pre-trial, trial, or post-trial levels. The focus of the discussion in this article is specifically on Practice Directions that are closely related to claims of matrimonial property.

Before the introduction of the JKSM Practice Directions in 2000, the trial proceedings for matrimonial property claims in Malaysian Syariah courts depended entirely on the respective states' Islamic family law statutes, civil procedures, and the state administration of the Islamic religion. In the early stages, to rectify the loopholes at that time, states such as Selangor had issued circulars at the administrative level of their respective courts known as the Syariah Chief Justice Circular. The loopholes and ambiguity of the statute are in terms of its content and usage, resulting in the need for another mechanism to clarify its contents in detail. In this regard, the issuance of practice directives is a type of mechanism that has been identified to resolve procedural issues in Syariah courts.

However, there is a major problem in enforcing the JKSM Practice Direction at the state level. This is because JKSM as a central agency cannot force the states to adopt the JKSM Practice Directions as long as the state legislation does not explicitly state the acceptance of adopting practice directions. There may be instances of court judges in a particular state not following the state chief justice's instructions so as to comply with the JKSM Practice Directions. This will result in the Islamic law coordination agenda being compromised. As of 2021, only the state of Perak has amended its Syariah Court Enactment 2018; Pahang has also amended its Islamic Religious Administration Enactment in 2020 to enable the State Syariah Chief Justice's Direction on the acceptance of Practice Directions as law. In these two states, with the amendment and the Syariah Chief Justice's endorsement of the JKSM Practice Directions, they must consequently be adhered to, respected, and undisputed by all judges under it. However, this situation has not occurred in any of the other Malaysian states to the point of impacting court proceedings, especially in matrimonial property cases.

The importance of using Practice Directions was decided in the case of *Hj. Ibrahim & Ors v. Ghazi* [2009] JH 29/1, 195. The Pulau Pinang Syariah High Court stated:

*“The practice directions are not the law, but they do not at all contradict the provisions of the existing law as these directions are a guide to the Court and legal practitioners in determining jurisdiction relating to this application. These practice directions have been made by those who are truly familiar with the current rulings and legislation in assisting the courts to uphold justice.”*

Although the applied Practice Directions apply to all types of claims contained in the statute, there are several Practice Directions that have played an important role and have also had a significant impact in driving the Syariah Court for matrimonial property claims, which include pre-trial, trial procedures, and post-trial. In this regard, this article will discuss the use of Practice Directions in matrimonial property claims in the Syariah Court. From a search of existing academic data, there is yet to be any specific studies on the application of practice directions to matrimonial property claims. Previous studies were general in nature; this study is therefore important to analyse the loopholes in the statutes for civil procedure,

Islamic family law, and Islamic administrative law that has caused the application of Practice Directions in the proceedings for matrimonial property cases in the Syariah courts. Therefore, this study aims to analyse the position of Practice Directions in matrimonial property proceedings using a document analysis approach based on cases found in *Jurnal Hukum*, grounds of judgment, reported cases, and interviews with seven study participants who are directly involved with matrimonial property case proceedings in Syariah Courts.

### **Practice Directions in The Syariah Court**

The JKSM Practice Directions is a written document issued by the Director-General of JKSM or chief Syariah judge in relation to the procedures or policies to be followed and complied with despite its status as not being statutory law (Abdul Wahab, 2014). The JKSM Practice Directions were first introduced on 18 December 2000 through the introduction of Practice Direction No. 1 of 2000 after JKSM's establishment in 1998, with the participation of the highest levels of Syariah Judicial Departments throughout Malaysia, such as the Chief Syariah Judges of the states chaired by the Director-General of JKSM. The Practice Directions are also intended to ensure the smooth running and transparency of the trial proceedings (Abdul Rahman, 2020). Practice Directions are the result of the adaptation of practices in the Civil Court (Sulaiman & Buang, 2021).

The purpose of the Practice Directive is to expedite the resolution of a case to standardise the administration of the Syariah Court as well as to facilitate judges in making references (Abdul Wahab, 2014). This proves that the practice directions are well-intended and are in line with the requirements of Maqasid al-Syariah (Abdul Wahab, 2014). The JKSM Practice Directions were finally adopted by most of the Syariah Courts in Malaysia. For example, the Selangor Syariah Judiciary Department (JAKESS) through its circular dated 1/10/2015 adopted all Practice Directives issued by JKSM. As of January 2020, a total of 208 JKSM Practice Directives have been issued (Abdul Rahman, 2020) which demonstrates the seriousness of JKSM to strengthen procedural laws and evidence in the Syariah Courts in Malaysia.

Practice Directions are more flexible in terms of amendment and repeal compared to Islamic legal statutes in accordance with the coordination, suitability, or wishes of certain parties. However, the matter has to go through a panel that gives reasons and justifications for that purpose (Abdul Rahman, 2020). The application of Practice Directions is not mandatory or automatic because the Syariah Courts in Malaysia through the respective Chief Syariah Judges have the power to accept in full or in part or amend any contents of the Practice Directions in accordance with the rules and jurisdiction of their respective states. As such, compliance with the Practice Directions has not yet reached satisfactory levels (Sulaiman & Buang, 2021). Therefore, in empowering and improving the JKSM Practice Directions, a benchmark KPI was established with 85% compliance with the Practice Directions, which also enhanced the establishment of Practice Directions for coordination of practices and legal principles as well as judicial administration (Handsard, 2014).

However, there has been criticism of the application of Practice Directions as there is no clear provision regarding its source of power (Sulaiman & Buang, 2021). The question is, do the Practice Directions meet the requirements of the law or can their application be refused? It is also argued that the use of the Practice Directions is appropriate in fulfilling the

requirements of section 135(2) of the state Islamic Family Laws, which is the power to make rules (Sulaiman & Buang, 2021).

The JKSM Practice Directions covers all branches of the law, whether related to the Islamic Family Law statutes, Civil Procedure of the Syariah Court, Evidence and also Islamic Administration. JKSM's Practice Directions may be broken down into several key areas, namely pre-trial, trial and procedure, judgement, order, appeal and review, post-trial, management and administration of the Syariah Court and others (Abdul Rahman, 2020). The JKSM Practice Directions are also argued as having no legal implications compared to statutes because the Practice Directions are only available in terms of administration (Hasbullah & Ahmad, 2015). Its position only supports the provisions of statutes in all forms of proceedings, including matrimonial property claims, from the determination of jurisdiction, cause paper, trial proceedings to post-judgement such as the enforcement of orders that clearly demonstrate the effectiveness and importance of the proceedings in the Syariah Court.

The emphasis on the application of practice directions can be seen in the cases of *Abdullah v Najib* (2012) JH 34(1), *Smith v Ali* (2014) JH 39(1), and *Mustafa v Amin* (2013) JH 37(1), which affirms the importance of the Practice Directions in each Syariah Court proceeding. This proves that although the Practice Directions have no legal implications, their application is based on provisions of the law (Sulaiman & Buang, 2021). Failure to comply with them to the extent where the trial proceedings are jeopardised may allow the court to cancel the said proceedings (Abdul Rahman, 2021).

### **Methodology**

This study uses a qualitative method by analysing the Practice Directions documents issued by JKSM, relevant statutes, cases found in Law Journals, grounds of judgment, and unreported cases. This study applied a document analysis because cases, grounds of judgment, and statutes are documents relating to court proceedings that can be analysed (Long, 2014; Jasmi, 2012).

In addition, the study conducted a semi-structural and in-depth interview with 7 study participants who are directly involved in Syariah court proceedings such as the Chief Syariah Judge, Judge of the Syariah Appeal Court, Syariah High Court Judge, senior Syariah Counsel and junior Syariah Counsel to obtain their perspective on the application of Practice Directions in cases of matrimonial property. The interview involved the study participants, where it was appropriate for the researchers themselves to engage with a group of people who can provide sufficient data, especially in a case study (Omar, 2015). The participants were selected based on several criteria such as all of them being directly involved with Syariah Court proceedings such as as judges or Syariah Counsel as well as having more than 20 years' experience in handling matrimonial property cases. The list of study participants is as per Table 1.

Table 1

*Background of Study Participants in The Judicial and Legal Sector*

Study Participant	Name	Position	Experience	Sector
State Chief Syarie Judge 1	The Honourable Datuk Mohd Nadzri bin Abdul Rahman	Syarie Chief Judge, Syariah Court Melaka.	>20 Years	Public
State Chief Syarie Judge 2	The Honourable Abdul Rahman Thobrani bin Mansor	Syarie Chief Judge, Syariah Court Perak	>20 Years	Public
Former Syariah High Court Judge 3	Tuan Zaim bin Md. Yudin	Asst. Director, Legal Aid Department (Ex-Judge in the Syariah High Court)	>20 Years	Public
Syarie Counsel 4	Dato Shamsuriah binti Sulaiman	Senior Syarie Counsel	>20 Years	Private
Syarie Counsel 5	Dr. Zulqarnain bin Lukman	Senior Syarie Counsel	>20 Years	Private
Syarie Counsel 6	Tuan Moeis bin Basri	Senior Syarie Counsel	>20 Years	Private
Syarie Counsel 7	Nur Faizah binti Sazali	Syarie Counsel	<20 Years	Private

**Research Findings**

This research found that the Practice Directions play two important roles, which are to explain the contents of the statutory provisions, and to fill in the existing statutory gaps.

**Pre-trial Stage**

Based on the analysis of documents on Practice Directions at the pre-trial level, there are seven Practice Directions that have been created, which include those that explain the contents of the statute or the establishment of the Practice Directions because the relevant provisions are not found in the statute. Table 2 shows that there are four Practice Directions that explain the contents of the statute and a total of three new Practice Directions that complement the statutory loopholes to ease the pre-trial proceedings for matrimonial property cases.

Table 2

*Practice Directions Related to Matrimonial Property proceedings at the Pre-Trial Stage*

Subject	Act/Enactment Provisions	Practice Directions	Analysis
Registration Code	None	Practice Directions No.1 of Year 2000  (Case registration code)	Not in the statute
Syariah High Court jurisdiction	None	Practice Directions No.2 Years 2002  "Cases involving custody claims (hadhanah), immovable matrimonial property, and ex-parte applications must begin proceedings in the Syariah High Court."	Not in the statute
Court with the right to register matrimonial property claims	Section 122(1) Islamic Family Law Enactment, Selangor:  The Court has authority when allowing the pronouncement of talaq or when issuing a decree for a divorce to order that the assets acquired by the parties were done so during the time of marriage	Practice Directions No.6 Years 2003 "Matrimonial property claims <b>must be filed in a Court with the relevant jurisdiction in the state where the divorce decree or divorce authentication is issued.</b> "	Explanation of statutory content
Court entitled to receive matrimonial registration property claims	Section 2 & Section 4 EUKIS 2003  <i>Section 2: "domiciled"</i>  <i>Section 4: This enactment applies to all Muslims living in the State of Selangor and for all Muslims domiciled in the State of Selangor but living outside the state.</i>	Practice Direction No. 4, Year 2016 "matrimonial property claims can be heard and decided <b>when the claiming party fulfils the requirements of sections 2 and 4 of the Islamic Family Law Act/Enactment/Ordinance.</b> "	Explanation of statutory content
Time to make claim	None	Practice Direction No.5, Year 2003	Not in the statute

		“time to make matrimonial property claims is allowed <b>whether it is a claim for divorce or after divorce or after the death of any of the parties.</b> ”	
Claims because of polygamy	Section 23(10)(b) EUKIS 2003  <i>to order that any assets that have been acquired by the parties at the time of marriage with their Joint Efforts be divided between them or for any of the assets to be sold and the proceeds of the sale to be divided. a</i>	Practice Direction No. 14, Year 2006  “Jurisdiction to try polygamy cases, declaration of provisions, <b>division of matrimonial property</b> , and other matters under section 23 shall be tried in the Syariah High Court”	Explanation of statutory content
Sulh Council	Section 99 ETMMSS 2003  <i>The Parties to any proceedings may, at any stage of the proceedings, hold Sulh to resolve their disputes in accordance with such rules as may be prescribed or, in the absence of such rules, in accordance with Islamic law</i>	Practice Directions No.3 year 2002  ““all cases after registration, <b>shall, as soon as possible, and not exceeding 21 days, be referred to the Chairman of the Sulh Council</b> by calling the parties involved for the Sulh council, any agreement reached shall be recorded and re-read before the parties and forwarded to the Judge to record a Joint Consent Order.”	Explanation of statutory content

Practice Directions for the pre-trial stage has introduced a special code for matrimonial property, code 017, which is uniformly applied in each state, thus ending the previous use of different codes in each state. Prior to the introduction of this code, the registration of matrimonial property claims between states was inconsistent and irregular. For example, the code used in the Syariah Court of Terengganu is 001 as in the cases of *Embong v Muda* (2005) JH XX/II and *Che Mas binti Abdullah v. Mat Sharie bin Yaakub* [2005] JH XIX/ I. The Federal Territory and Selangor Syariah High Courts however used code 111 as in the case of *Mahmud v Muhamad* (2007) JH XXIII/II. However, after Practice Direction No.1, Year 2000 was introduced, all states used the registration code 017 for matrimonial property claims.

The most important aspect of this reform is the Practice Directions’ emphasis on matters related to the jurisdiction of the Syariah High Court to hear matrimonial property

cases in the state where the divorce occurs (Practice Direction No. 6, Year 2003). The Practice Directions were introduced by referring to the appeal decision in the case of *Noh bin Atan v Shakila bt Mohamed* [1998] JH XII/I Part I as a guide to the courts having jurisdiction in respect of matrimonial property claims due to divorce. These practice directions are in line with the provisions of section 122 of the Islamic Family law of the states. The implementation of the Practice Directions can be seen in the case of *Noridah Ab. Talib v Hishamudin Jamaludin* [2009] JH 29/2, whereby the Syariah High Court in Shah Alam allowed the claims to be made due to the parties being divorced in the state of Selangor Darul Ehsan. Due to the non-compliance with the Practice Directions, the Syariah Appeal Court overturned the Syariah High Court's decision because the claim was made at a location which was not where the divorce was decided. In the case of *Zainuddin v Abdul Rashid* [2008] JH 25/2, the Perak Syariah Appeal Court in Ipoh overturned the decision of the matrimonial property case issued by the Syariah High Court of Perak due to the divorce of the parties occurring in Kuala Lumpur, and the court with the jurisdiction to hear matrimonial property claims was the Syariah High Court, Federal Territory Kuala Lumpur. This was similar to the case of *Rosmizai bt. Muhamad Noor v. Nik Sen bin Mat Rifin*, Summons No. 03200-017-0101-2015, which was tried in the Kelantan Syariah High Court. The plaintiff, who lived in Selangor, had to travel to Kelantan to file the matrimonial property claims tersebut after being prohibited from filing the case in the Shah Alam Syariah High Court, even though the plaintiff had lived in Selangor for several decades, on the grounds that the divorce of the parties would take place in Kelantan.

After seeing the various difficulties faced by applicants and other parties, JKSM introduced Practice Direction No.4, Year 2016 to resolve the complexity that occurs with respect to the courts' jurisdiction to determine the filing of cases. The acceptance of the application of Practice Directions can be seen in the appeal decision made by the Selangor Syariah Appeal Court in Shah Alam in the case of *Abdul Aziz v Md. Salleh* [2016] JH 43/1. The Court of Appeal summed up the difference between this case and the case of *Noh bin Atan v Shakila bt Mohamed*, where although both cases are different, the wisdom of the appeal panel managed to establish an excellent solution. In the case of *Noh v Shakila*, the divorce occurred in Selangor, the Plaintiff (wife) lived in Selangor, and the claimed property was in Selangor; thus, there was no difficulty in submitting a claim in Selangor. Conversely, in the case of *Zaleha v Kaharudin*, the divorce took place in Malacca, but the parties lived in Selangor, and all their property was also located in Selangor. This situation made it difficult for the parties to file a claim in Melaka, therefore, on the grounds of this difficulty, the matrimonial property claim was allowed to be filed in Selangor.

Furthermore, Practice Direction No. 5, Year 2003 has expanded the factors that can lead to matrimonial property claims being submitted in court, such as claims due to death, which have never been provided for in any statute. In the case of *Kadir v. Zakaria & Five others* [2006] 2 JH XXII, the Court allowed the widow's matrimonial property claims due to death. The impact of these Practice Directions was to enable the parties to make a claim (Mudran & Kusrin, 2016). These Practice Directions opened up space, especially for women, to claim their rights compared to before. However, the Practice Directions are still general in nature, and do not clearly state which parties can make a claim; does it only involve couples in which one spouse dies, or does it involve the deceased's heirs? Incidentally, there is an opinion that the deceased's heirs are also entitled to a claim over the property (Mudran & Kusrin, 2016).



For matrimonial property claims due to polygamy, Practice Direction No. 14 Year 2006 merely clarifies the jurisdiction of the court that will hear the application. Although it has helped in terms of judicial administration, claims due to polygamy are not mentioned in detail, especially since there are two different situations. First, a polygamous marriage follows section 23 of the Islamic Family law, in which a husband who wishes to enter into polygamy shall submit the application in court and settle the division of matrimonial property. Second, are polygamous marriages solemnised outside of the jurisdiction and without the permission of the court, but are later confirmed and registered in the country. Neither the law nor the Practice Directions clearly state the position of the existing wife or wives who discover the husband's polygamy so as to claim the matrimonial property.

Practice Directions also act as an explanation for the contents of a statute relating to the Sulh Council (Practice Direction No.3, Year 2002), as the statute does not provide further detail in respect of the council's procedures. Among the cases which have been successfully resolved at the Sulh Council level is the case of Wan Fatimah binti Wan A.Rahman v. Nurul Ain binti Mohamad Kamal and others (summons no: 10300-017-0550 Years 2014) at the Shah Alam Syariah High Court. The plaintiffs claimed matrimonial property by reason of death, naming the biological children as defendants, with all defendants agreeing to the plaintiff's claims. The Sulh Council has proven to be successful in resolving several matrimonial property claims cases without having to go to trial. Sulh settlement is also one of the main approaches besides mutual consent and trial in Court (Mudran & Kusrin, 2016).

### The Trial Proceedings Stage and its Procedure

At the trial proceedings stage and its procedure, 3 Practice Directions have been established to act as either an explanation for the content of the statute or created with characteristics of matters that are not in the statute.

Table 3

#### *The Trial Proceedings and its Procedure*

<b>Subject</b>	<b>According to Enactment Provisions</b>	<b>According to Practice Directions</b>	<b>Classification</b>
Method in which evidence is given during trial	None	Practice Directions No.3 Years 2019 Guidelines and format for preparation of <b>plaintiff's statement of evidence, the defendant, and witnesses in written form</b>	Not in statute
Important details of order contents	None	Practice Direction No.6, Year 2007 <b>"Matrimonial property order in the form of real estate must contain:-</b> Title/strata/parcel number, Encumbrance and restriction of interest, Lot/PT Number, Mukim,	Not in statute

		District, Landowner Division, Registered landowner, Declaration as matrimonial property, Division declared as matrimonial property.	
Prohibition of matrimonial property disposal due to urgency	Section 200 (3) ETMMSS 2003 <i>If the applicant is the plaintiff and the case is an urgent case, the application may be made ex parte supported by the affidavit, and the affidavit shall contain a clear and concise yet comprehensive statement—</i>	Practice Directions No. 5 Year 2016 ( <b>Guidelines for Injunction Proceedings</b> )	Explanation of statutory content

According to Schedule 3, there are two Practice Directions that are not in the statute and one Practice Direction that acts as an explanation of the contents of the statute. The Practice Directions have introduced reforms related to how to give evidence during a trial, which may be done in writing (Practice Directions No. 3 Year 2019) to expedite the proceedings of the trial. With this amendment, there is also an option for the disputing parties to have the trial conducted orally or in writing. In the context of matrimonial property cases, these Practice Directions speed up the court proceedings, save time, and the labelling of the relevant documents can be submitted to the other party before the proceedings begin.

Practice Directions also coordinate the format of the contents of the order relating to properties adopted in the Syariah Court (Practice Direction No. 6 Year 2007). Before these Practice Directions were issued, orders concerning matrimonial property in the form of immovable property did not disclose the details relating to the property in full. The order would only state the address of the property, resulting in enforcement difficulties in government agencies such as the Land and Mines Office. For example, in the case of *Habsah Bt Saad v Surianata Bt Baharom and Shaari Bin A. Samad* [2004] JH XVII/1, the court ordered 1/3 of the property to be given to each plaintiff. However, the material details of the property were not stated in detail. In the case of *Wan Chik bin Wan Kadir v. Esah binti Zakaria dan 5 Yang Lain* [2006] JH XXII/II, the Court had ordered the division of the property to the respective parties, but did not mention any of the material details in the grant such as village, district, landowner's division, registered landowner and so on. The Practice Directions have facilitated any process of transfer, sale and action from the Land Office in enforcing court orders. For example, the contents of the order are similar to the content associated with real estate that is in the register of titles. With this coordination, there is no longer any problem of discrepancy between the contents of the court order and the register of titles in the case of dealing with the Land Office. Following this, cross-state orders can be completed without any problems.

The Practice Directions have also completed injunction proceedings for applications to be heard with immediate effect. The application for the injunction should be accompanied by

an 'immediate acknowledgement' by the counsel for immediate hearing (Practice Direction No. 5 Year 2016). With this immediate acknowledgement, the application can be heard before the court within 24 hours.

### Post-Judgment

At the post-judgment stage, there are two Practice Directions that are applied in matrimonial property claims, which were created to explain the contents of the statute.

Table 4

#### Practice Directions Related to Post-Judgment

Subject	Provisions of Enactment	Practice Directions	Classification
Procedure for a stay of execution of a court order	Section 144 ETMMSS 2003 <i>The filing of a notice of appeal shall not be effective as a stay of execution, but the court may, on application and when sufficient reason is shown, stay execution on such terms as it deems fit.</i>	Practice Directions No.10 Years 2004 <b>"Prevention of Judge from immediately staying the execution of an order in a civil case pending appeal</b> without any application from the parties"	Explains statutory content
Allowing for committal proceedings	Section 151 (1) (b) (aa) ETCMMSS 2003 <i>(1) If- (b) a person disobeys a judgment or order requiring him to refrain from doing an act,  (aa) with the permission of the Court, the committal proceedings</i>	Practice Directions No.5 Years 2017 <b>"Permission for committal proceedings</b> must first be obtained from the court	Explains statutory content

According to Table 4, there are two Practice Directions that act as explanation of the contents of the statute to smooth the proceedings at the post-judgment stage. All Practice Directions contained in Table 4 only relate to appeals (Practice Direction No. 10, Year 2004) as well as the failure of the parties to implement the order (Practice Direction No.5, Year 2017). The application for committal proceedings must first obtain the permission of the Court before the proceedings can commence. Practice Direction No. 10, Year 2004 stresses that the Court does not stay orders on the grounds that the parties had appealed. The appealing parties shall submit an application for stay of execution of the order in advance so that the court can examine whether the stay of the order should be allowed or not.

Practice Direction No. 5, Year 2017 on the other hand provides guidance to the court as well as the Syarie counsel on the procedure of application for committal proceedings, which must be initiated with an application for permission from the court to begin the said proceedings. Without such permission, the committal proceedings cannot be carried out.

**Practice Directions Expedite the Justice Process**

From the interview data, the study found that the application of Practice Directions has had a significant impact on Sharia courts as well as Sharia counsel when conducting matrimonial property claims at all stages of the proceedings. Analysis of this study's data found several themes related to the agreement on the use of Practice Directions in proceedings such as being used as guidance, as an explanation, for coordination, and efficiency.

Based on the input of two of the research participants, Chief Syariah Judge 1 and Chief Syariah Judge 2 confirmed that the Practice Directions act as a guide for the course of proceedings in the Syariah Court and also play a role in filling vacancies not found in any legal provisions, especially in relation to the methods of handling or procedure. Chief Syariah Judge 1 stated, "... Although the Practice Directions are not a law, the Administration Act empowers the Chief Syariah Judge to establish any rules or directions to ease the administration of the court; it also looks at the development of the Syariah Court and the suitability of newly issued Practice Directions to replace old Practice Directions which are no longer suitable to be implemented. In addition, if a state has adopted the said Practice Directions, then it can be implemented, and violation of the Practice Directions may affect the smoothness of a proceeding."

This is in line with what was voiced by Chief Syariah Judge 2, who said, "... the application of Practice Directions is in line with the requirements of the law." The opinion of these two Chief Justices is in line with previous studies based on the opinion of the trial judge in the case of Jaafar Hj. Ibrahim & Ors. v Yazelin Mohd Ghazi [2009] JH 29/1, 195. The Syariah High Court, Penang held that the Practice Directions were a guide for the courts as well as lawyers who practice in court (Sulaiman & Buang, 2021).

Practice Directions also explain unclear procedures and standardise them. A good example of this is Practice Directions No. 5, Year 2016, which serves to explain the rather unclear court procedure under section 200(3) of the ETMMSS 2003 relating to the injunction (prohibition) of the transfer of property and the procedures that should have been carried out in each application for such reprimand. Chief Syariah Judge 2 state, "Although the Practice Directions are not a form of law, they are a legally established guideline." The former Syariah High Court Judge 3 on the other hand stated that "The Practice Directions is a written document issued by the Director General of JKSM which explains the procedures or policies that must be followed and complied with, even if it does not have legal status".

This is also in line with the statement in Abdul Wahab's study (2014), which stated that although it is not legal, Practice Directions are related to policies and procedures that need to be followed. Syarie counsel 6 added, "Practice Directions are enforceable when adopted by the Chief Justice and enforced in case proceedings to the extent that it does not conflict with the provisions of the Act or Enactment and is in accordance with the development of the law, procedure, and administration of the court." This was also emphasized by Abdul Rahman, (2020) who saw the importance of Practice Directions in the task of clarifying the ambiguity of the law as well as the court's procedures.

Practice Directions also act to coordinate and standardise proceedings as well as ambiguous laws. This has helped in terms of administration regarding the location of matrimonial property claims filings and so on. Chief Syariah Judge 1 stated, "Practice Directions are made at the federal level for coordination purposes, the state adopts Practice Directions by endorsement at the state level as if it were enacted at the state level". For the purpose of such coordination, an endorsement should be made. This was agreed to by former Syariah High Court Judge 3, who stated, "If the state Syariah Judge endorses the application

of such Practice Directions in the state, then it becomes a source of authority from the Act and Enactment and ensures that the implementation of the administration and case management runs smoothly in line with current developments and laws." For Syarie counsel 5, among the functions of the Practice Directions is to prevent judges from making different interpretations from one another, where he stated, "If there is a recent development decided by the Syariah Appeal Court to avoid confusion that causes an issue to be reopened for trial, although the Practice Directions are not a law, compliance with them must be followed by the institutions of the Court, Syarie counsel and all who are involved. This can also avoid the attitude of some judges who interpret the law's provisions differently to other judges." This is in line with previous studies which stated that among the functions of the Practice Directions is to standardise the administration of the Syariah Court besides making it easier for judges to make references (Abdul Wahab, 2014).

The existence of Practice Directions has proven to be efficient in ensuring that case management and administration function properly and systematically while also facilitating trial proceedings. This was agreed upon by two of the Study Participants. Syarie counsel 4 stated that "Practice Directions are indeed effective in facilitating court proceedings." Meanwhile, Syarie counsel 7 stated, "Practice Directions are very helpful and changes need to be made continuously, especially on current issues relating to modern property claims such as claims on shares taking place in the Syariah Court."

It can be concluded that the application of Practice Directions in matrimonial property claims is of paramount importance in proceedings, especially for matrimonial property claims in Syariah Court. This is because the existence of Practice Directions can help the courts as well as Syarie counsel so that cases can be run smoothly, efficiently, and systematically. In addition, the application of Practice Directions in Syariah Court has also been implemented in most states according to the level of suitability.

### **Discussion: Updating Islamic Law on Matrimonial Property**

Based on the findings, there are several clear functions played by the JKSM Practice Directions JKSM in matrimonial property claims proceedings in Syariah Courts in Malaysia. The JKSM Practice Directions have no legal effect and are not mandatory for the Syariah courts and Syariah law practitioners to follow. Several actions must be taken to make the matters enshrined in the Practice Directions enforceable in legislative provisions.

The findings showed that Practice Directions have been effective in ensuring that court proceedings are conducted smoothly. Nevertheless, Practice Directions are still not legal and open to challenge. Therefore, to ensure that these Practice Directions have a legal effect, the provisions of Practice Directions should be included in the statute either in the form of amendments or by adding new provisions, especially in Islamic family law statutes, Islamic Religion Administration, and Syariah Court Civil Procedure.

Amendments need to be made to the specific provision relating to matrimonial property i.e. section 122 of the Islamic Family statutes in all states in Malaysia to enable submission of matrimonial property claims either in the state where the divorce took place or at the place of residence of the person who wishes to submit the claim. As long as the provisions of this section are not amended, a void will continue to exist because the provision clearly indicates that only the court that issues the divorce has the jurisdiction to hear

matrimonial property claims. It is proposed that Section 122 of the Selangor State Islamic Family Law Enactment is amended, taking into account Practice Direction No.4, Year 2016:

*(1) The Court shall have jurisdiction to rule that any assets acquired by the parties during the time of marriage with their joint efforts be divided between them or for any such assets to be sold and the proceeds of such sale be divided between the parties.*

It is proposed for the provision "when allowing the pronouncement of talaq or when making a divorce order" to be discarded to enable claims to be submitted in any Syariah Court in Malaysia according to the domicile of the parties. The purpose of domicile is specified in sections 2 and 4 of the Islamic Family law enactment:

*Section 2(1): In this Enactment, unless the context otherwise requires - "domicile" means permanent residence or by its common occurrence in a particular area;*

*Section 4: Except as otherwise expressly provided, this Enactment applies to all Muslims residing in the State of Selangor and to all Muslims domiciled in the State of Selangor but living outside the State.*

The effect of these amendments is that they will enable all stakeholders to make matrimonial property claims in any Syariah Court near their residence, which is clearly more convenient to the parties. This amendment also allows claims to be made without looking at the whereabouts of the assets to be claimed.

The second law reform that needs to be made is the creation of a new subsection for section 122 for matrimonial property claims due to death. This is due to the lack of specific provisions in respect of this claim in Islamic family law. The proposed new provision, section 122(6) is as follows:

*"The Court is authorised to decide on matrimonial property claims due to death for all assets acquired jointly or through the sole effort of the parties throughout the marriage."*

The provisions of matrimonial property claims due to death should be established in The Islamic Family law enactment as before this it was based only on the general provisions in the statute of the Islamic Religious Administration and Practice Directions. The amendment should also clearly state the interested parties to the claim, and whether they are limited to a spouse or other heirs, since Practice Direction No. 5, Year 2003 is too general.

Amendments should also be made to the matrimonial property claims provisions due to polygamy by creating subsections aimed at enabling existing wives to make matrimonial property claims due to polygamy after the existing wife learns her partner has entered into a polygamous marriage without her knowledge, whether abroad or otherwise, and the polygamous marriage has been registered in the country.

The third suggested law reform is to create a new section of the Syariah court civil procedure enactment with respect to enabling the parties to give evidence in writing. This provision is an addition to the previous provision which only allows evidence to be given orally. Section 100 of the Syariah Court Civil Procedure Enactment should therefore be amended as follows:

*"Subject to this Enactment and the Evidence enactment of the Syariah Court (State of Selangor) 2003 [Enactment 5/2003], any fact required to be proven during the trial or any proceedings by evidence of the parties or witnesses shall be proven by examining the parties or witnesses orally or in writing in open Court."*

Key evidence given in writing has been proven to be faster than giving oral evidence as the parties will obtain all evidence ahead of the date of the hearing. Next, on that date, the parties will initiate the exchange of questions. This is in contrast to verbal evidence that needs to be started according to the stage preceded by the main question and followed by a question- and answers session. The law reform via the JKSM Practice Directions should also be a provision in the Syariah Court's statute of Civil Procedure to avoid different interpretations by the Court and also to standardise judicial practice in interpreting the relevant laws.

### **Conclusion**

In conclusion, the application of Practice Directions in Syariah Court has filled the void in terms of procedures and legal processes for matrimonial property cases. Based on the analysis of documents and interviews, Practice Directions have effectively facilitated the course of case proceedings as well as Syariah court administration in relation to matrimonial property. The Practice Directions have also provided a guide to the courts and Syarie counsel to adopt them as a mechanism to clarify the contents of statutory provisions relating to matrimonial property claims. However, the Practice Directions have some drawbacks when there are states and courts that may not adopt them due to their non-binding and amendable nature at the state level.

Although it is acknowledged that Practice Directions are effective, it can be seen as merely a temporary approach, and statutory reform should be implemented such as amendments to ambiguous and general provisions related to matrimonial property claims. Amendments to the law sometimes take a long time depending on each state in Malaysia, and these Practice Directions can solve the problem quickly since they are only issued at the administrative level. However, the application of Practice Directions will not be fully adopted by all judges in the different states until the respective states include a provision on compulsory compliance with the Chief Syariah Judge's Order.

Amendments and additions to statutes relating to matrimonial property claims will affect all levels of Syariah Court proceedings. All parties involved will benefit from the law's reforms. There are three law reforms that can be implemented. Firstly, the right of the parties to file matrimonial property claims based on the residence of the parties. Second, reforms to specific provisions with respect to matrimonial property claims due to death and polygamy. Third, having the option of giving evidence in court either orally or in writing.

Amendments must be made in the Islamic Family law statute relating to section 122 to enable matrimonial property claims to be submitted wherever the resident parties are to avoid difficulties faced by the parties to submit a claim.

Next, for matrimonial property claims due to death, a proposal is submitted which is to make an additional, specific provision in the Islamic Family law statute by inserting phrases related to the claim and the parties that can make a claim. Such claims should not continuously depend on Practice Direction No.5, Year 2003, but instead require a specific provision, such as matrimonial property claims, due to divorce. Similarly, amendments to the claims' provisions were caused by polygamy by creating a provision that allows existing wives to make matrimonial property claims after learning their spouses have been polygamous. Section 23 of the existing Islamic family law statute is only applicable for couples who wish to be polygamous, and not for those who are already polygamous. Amendments to the Syariah Court procedures in relation to the way evidence is given in court must also be made. Providing written evidence can be seen as a good approach, which is intended to speed up the process of court proceedings.

Therefore, this study is crucial to illustrate the importance of JKSM's Practice Directions application in matrimonial property cases as well as the important steps that should be taken to make the contents of the Practice Directions can be legally enforced, either by amending the statute or adding new provisions to the existing statute. Future studies for consideration include assessing the latest Practice Directions issued by JKSM according to the current situation in issues related to matrimonial property.



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