

## **A Qualitative Study on Marriage Reconciliation Process Under Marriage Tribunal in Malaysia**

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**Abstract:** Statistic from National Registration Department of Malaysia shows that the divorce rate compared to the rate of marriage for non-Muslim and Muslim couples has increased steadily especially beginning the year 2001. Divorce rate in Malaysia for both Muslims and non-Muslims had increased from 11.24% in 2001 to 18.67% in the year of 2010. This indicates that the rate of divorce among the married couples is on rise every year in Malaysia. Divorce should be the last option resorted to by a marriage couple in solving marital dispute and it should be chosen when there is a necessity for such. Divorce may negatively affect the life of the couple and the children. To avoid from unnecessary divorce, relevant authorities have implemented reconciliation process where effort is taken to reconcile the married couples and to amicably settle their dispute without going for divorce. However, the number of successful reconciliation between discorded estranged married couple is relevantly small. Hence, through series of interviews, this study is conducted with the aims to explore the issues during the reconciliation sessions and the perception of the couple on the reconciliation sessions which may lead to the understanding why the reconciliation process is a failure. It is hoped that this study and those earlier literatures on marriage reconciliation could shed lights to the question of effectiveness of current marriage reconciliation process and how it can be revamped for further improvement.

**Key words:** Family law • Divorce • Reconciliation

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### **INTRODUCTION**

In Malaysia, the Law Reform (Marriage and Divorce) Act 1976 requires that the non-Muslim divorce couple to undergo marriage reconciliation sessions before they can proceed for divorce hearing in court. The objective of the marriage reconciliation process is to reconcile the discorded couple and hence it is hoped that it will be able to avoid from unnecessary divorce. However, the number of success rate in reconciling the married couple through marriage reconciliation as provided in the Law Reform (Marriage and Divorce) Act 1976 (hereinafter refer to as the “Law Reform Act”) is unfortunately low. According to statistical data from the Data and Statistics Administration Unit, Palace of Justice Malaysia, the number of divorces granted between 2011 until 2015 has been showing average increment of 11% per year. From this percentage, average number of divorce granted to couple after going through reconciliation process by the marriage tribunal are 2,890 cases per year. Based on this statistical number, it shows that there has been no significant success in reconciling marriage couple. In this respect, the study

aims is to analyse the experiences of the couple that have undergone marriage reconciliation processes under the marriage tribunal as required by the Law Reform (Marriage and Divorce) Act 1976. Experiences of the couple could shed light to factors which lead to the failure of the reconciliation between the couple.

**Background of Study and Literature Review:** Reconciliation means “the renewal of amicable relations between two persons who had been at enmity” [1]. For the purpose of this research, reconciliation process is referred to as series of actions or steps taken in order to restore the amicable relations of the marrying couple who are facing marital discord. Reconciliation of non-Muslim marital discord, in Malaysia, is governed by the Law Reform (Marriage and Divorce) Act 1976. Under this law, any non-Muslim divorce application must be referred to a conciliatory body, unless otherwise stated by the law, for conciliating process. This is stated in section 106 of the Law Reform (Marriage and Divorce) Act 1976 (hereinafter refer to as the “Law Reform Act 1976”).

Reconciliation provision has been included since the enactment of the Act itself. The then Royal Commission on Non-Muslim Marriage and Divorce Laws 1970, adopting the spirit from the English Divorce Reform Act 1969, believe that similar safeguards to marriage adopted in England should be implemented in Malaysia. The High Court in the case of *P v S* (2015) 9 MLJ 400 stated that, in support of such view, section 106 of the Law Reform Act was constructed to provide a platform for the marrying couple to restore their marriage and to avoid hasty resort by spouses to end their marriage. The law provides the mandatory reference of a matrimonial difficulty to a conciliatory body before the presentation of a divorce petition is made to the High Court [2]. The law provides exception for identified cases that fall under the sections 51 and 52 of the Law Reform Act 1976 and the exceptions listed under section 106 (1) of the Law Reform Act 1976.

A conciliatory body under the Section 106(3) of the Law Reform Act 1976 refers to a body from either (1) a marriage tribunal, (2) a council set up for the purposes of reconciliation by any appropriate religion, community, clan or association or (3) any other body approved as such by the Minister of Home Affairs. To implement this provision, marriage tribunal has been set up under the National Registration Department, which is under the jurisdiction of the Minister of Home Affairs. There are designated conciliatory officers in charge of managing marriage tribunal in NRD's office branch located in all states in Malaysia. Upon receiving the reconciliation application, the marriage tribunal shall fix a series of meeting with the couple to discuss and review the problems faced by the couple, with the objective of looking for hope to restore the marriage. The marriage tribunal shall be required to resolve the matrimonial difficulty within the period of six (6) months as stated in the Section 106(5)(a) of the Law Reform Act 1976. If the marriage tribunal, after the series of meetings, satisfied that the couple could not be reconciled, a certificate will be issued stating that the marriage has irretrievably broken down and this is stated in Section 106(5)(b) of the Law Reform Act 1976. Once the irretrievable certificate issued, only then the couple can file for a divorce petition in the court.

There have been few literatures criticising on the current Malaysian marriage reconciliation process and program conducted under the marriage tribunal. Among the criticism made is by Mimi Kamariah in her book *Family Law in Malaysia*. She stated that, although the intention behind the reconciliation requirement in the Law

Reform Act 1976 is noble and worthy, there are issues related to this requirement that caused the failure for reconciliation [3]. Firstly, she observed that when a couple resorted to court for divorce, the decision is already made after going through several steps [3]. In Malaysian society, where familial ties are strong, parties whose marriages are facing difficulties would invariably seek help from members within the family circle to preserve their marriages. They would not go directly to the court to seek help. According to Mimi Kamariah, court will only be resorted if the family members fail to support and guide the couple towards preserving the marriages [3].

Nora Abdul Hak further explained in her writing that it is the practice of traditional Malay, Chinese and Indian societies to refer to family members or elderly within their extended families if there are any marital disputes occur [4]. The couple and the family members will undergo discussions and negotiations to look for options in solving the couple marital problems. Mimi Kamariah claimed that as the couple already referred their marital dispute to their family members, if the party filed petition for divorce it usually signals the absence of any likelihood of reconciliation. It is therefore argued that a reference to a marriage tribunal is a waste of time and resources [3]. On top of that Mimi Kamariah and Nora Abdul Hak claimed that there are frequent delays to the conciliatory hearings due to difficulties in securing attendance of all the parties involved [3, 4]. The attendance issues have been claimed to cause marriage tribunal was not able to perform their duties in assisting to guide the couple in solving their marital disputes.

Mimi Kamariah also stated that the marriage tribunal consists of strangers to the couples and might be judgemental, prejudiced, biased or hostile [3]. Furthermore, as stated by Zaleha Kamaruddin in her writing, that the conciliatory members are laymen who are not trained in reconciling marriage couples [5]. Members of the marriage tribunal should guide the couples in solving their marital problems and to find an amicable solution to continue with the marriage. Unfortunately, the members are untrained personal in marital disputes, hence they could not professionally perform their duty to reconcile the couple. Furthermore, the conciliatory officers attending to the reconciliation sessions have been regularly changing during the conciliatory sessions which caused the clients to repeat their cases to different officers. This has caused time to be wasted to repeat the background of the case and to re-explain the situations [5].

Table 1:

States	Number of Respondents
Pulau Pinang	3
Perak	1
Melaka	3
Johor	4
Sabah	4
Sarawak	4

**Methodology:** This study is a qualitative study conducted through interview. The method adopted in this study is analytical and phenomenological by nature which extract majority of the data through selected interviews conducted. This study intends to look into the experience of the married couple who has undergone marriage reconciliation under marriage tribunal. As previously stated this study is intended to obtain, through the couple's experiences, identified issues in the reconciliation sessions that could impeded the reconciliation effort and the couple perceptions towards the reconciliation process. Nineteen respondents agreed to be interviewed and they came from various states in East and West Malaysia. All respondents have undergone marriage reconciliation sessions conducted by marriage tribunal under National Registration Department (NRD) and have received non-reconcilable certificate issued by the marriage tribunal. All respondents are in the process of obtaining divorce decree from the high court. Only one respondent interviewed from the state of Melaka revoked the divorce petition even though non-reconcilable certificate has been issued. The respondents in this research have undergone reconciliation sessions in different states in Malaysia based on the respondents' residency. The NRD states branch where the respondents have undergone the marriage reconciliation sessions are listed in Table 1. The experiences extracted from the respondents undergone the reconciliation sessions at different marriage tribunal around Malaysia would assist in identifying issues in reconciliation sessions conducted in Malaysia. There have already been studies conducted on the experience of the couple in the states of Kuala Lumpur and Selangor. Therefore, to further strengthen the finding from previous studies and to be able to generalise the issues under marriage tribunal in Malaysia, respondents were selected from other various states in Malaysia. The interview involved discussions about the experience of the respondents undergone the reconciliation sessions and their perception on marital reconciliation. The feedback was transcribed into narrative verbatim and further coded to look for significant themes reflecting the respondents' experiences.

Table 2:

Main Themes	Sub-Themes
Commitment of the couple	<ul style="list-style-type: none"> <li>• Non-attendance of one of the couple</li> <li>• Cooperation of the spouses during the session</li> </ul>
Reconciliation sessions	<ul style="list-style-type: none"> <li>• Numbers of sessions</li> <li>• Period of each session</li> </ul>
Conciliatory officer	<ul style="list-style-type: none"> <li>• Treatment given</li> <li>• Attendance of the members</li> </ul>

**Findings:** In addressing the objective of this research, which is to identify significant issues relating to marital reconciliation, three themes and several sub-themes were identified. The identified themes and sub-themes are listed in Table 2.

Under the theme of commitment in attending the reconciliation sessions, 10 respondents stated that their couple did not attend any of the reconciliation sessions. Meanwhile, the balance of the respondents stated that their spouses attended only once or twice of the sessions but not all the reconciliation sessions. This finding supported the statement by Mimi Kamariah and Nora Abdul Hak in their literatures on the issue of non-attendance of spouses which make the reconciliation sessions fruitless [3, 4]. The respondents stated that the invitation to the reconciliation sessions by the NRD was made through letters. The invitation letter to attend the reconciliation sessions is issued to the last address known by the attended spouse or as per the data available in NRD. Respondents informed that NRD officer had made effort through other channel of communication such as phone calls to invite the other spouse to attend the reconciliation sessions. However, they failed to obtain cooperation from the other spouse to attend the reconciliation sessions.

This inferred that the invitation letter and call made by the NRD officer seems to be of no weight to "force" or persuade the couples to attend the reconciliation session. The respondents did not state clearly the probable reason why the other spouse did not attend the reconciliation sessions. However, background of each respondents shows that the spouse who partially attended or did not attend the reconciliation sessions were either those who contended to the divorce application or those who have disserted their couple and could not be contacted. This is interesting to note because presumable that those who contended to the divorce should use this opportunity to restore their relationship since they did not agree to the divorce. Nonetheless, this study shows otherwise where the spouse who contended to the divorce were the one who did not attend the reconciliations sessions. It may be

presumed that the non-attended spouses may believe that the reconciliation process is part of the divorce process instead of a separate process with the objective of promoting the continuance of their marriages. This second presumption is supported with the statement made by the ten respondents whom stated that they have undergone the reconciliation process merely to abide by the law in obtaining divorce. These respondents do not appreciate that the reconciliation sessions as means to reconcile the marriages. Unfortunately, they view the sessions as merely part of the process to obtain a divorce under the law.

Under the sub-theme of cooperation from the spouses during the reconciliation sessions, the nine respondents whom their spouses attended some of the sessions asserted that their spouses did not show full commitment towards re-building their marriages life. From the explanation given by the respondents, on the nature of discussions during the reconciliation sessions, it was found out that the discussion focusing more on issues in the past and there were continuance of “blaming” issue between the couple. The respondents claimed that the breakdown of their marital relationship was caused by their spouses and hence, their spouses should change their negative behaviour to save their marriages. At the same time, their spouses did not admit his or her mistakes that lead to the broken down of their marital relationship. Meanwhile, they blamed the respondents who were causing problems in their marital relationship. As neither one is willingly to forgive, cooperation from both of the couple towards reconciliation will continue to be difficult to attain. For reconciliation to work, it generally requires the involvement and cooperation from both spouses [6]. If either of the spouse lack of motivation to undergo the reconciliation sessions due to the “blaming” issue, the reconciliation effort may end with a failure as they will not focus and cooperate towards reconciling.

This is where the role of the conciliatory officer is important as to ensure that the couples are persuaded to look at their future relationship instead of what is in the past and persuade the couple to continue attending the sessions. Careful constructed plan by the conciliatory officer that guide the couples through the reconciliation process is important to motivate the couple to continue with the sessions and to stop the “blaming” issues. Respondents did informed that the conciliatory officer did advised the respondents to forgive their spouses and look for a second chance to their marriages. However, this was only done during the session with the attended party

and not to the other party. What is further noted from this study is that there was no initial discussion, between the conciliatory officer and each of the couple personally before the official sessions to discuss the objectives and requirements from all parties during the reconciliation sessions. As stated earlier, initial communication with the couples were only done through the invitation letter to attend the reconciliation session. Study has shown that initial discussion or known as intake process in mediation type of ADR is beneficial among others to build trust between the client and the tribunal officer, promote better participation from the clients during the conciliation sessions and to gather relevant information or part of screening process to see whether the reconciliation sessions should continue [7]. Intake process also important as a screening stage to determine whether the conciliation sessions should continue or not.

Under the theme of reconciliation sessions, the finding from the interviews further shows that, although there is only one spouse attended, the reconciliation sessions were still continued and recorded. Seventeen respondents stated that they were required to attend all the three sessions regardless of the non-attendance of the other spouse before non-reconcilable certificate can be issued by NRD. Only two respondents who stated that their sessions were held less than three. However, these two cases involved clear case of mental illness on the part of the other spouse. This finding shows that it seems to be a practice that before issuing non-reconcilable certificate under non-attendance of the parties, NRD will recorded minimum of three sessions. Once the third session is recorded and there is still non-attendance of all the parties or there is no sign of reconcilable marriages, the marriage tribunal will issue the non-reconcilable certificate. Thirteen respondents reported that their sessions ended between one to three months and only six respondents reported that their sessions completed more than three months but not more than six months as required by the law. Thus, statement made in the literature that there was a delay on the reconciliation sessions due to non-attendance might not be accurate as this study shows that there were no delays due to non-attendance. The marriage tribunal will work within the period stated by law i.e. six months for the reconciliation effort. Notwithstanding that the reconciliation sessions are conducted within the period of time stated by law, the question raised is why the conciliation sessions are still continued even if it is known that the other spouse will not be attending the sessions.

Respondents were further asked whether, from their personal opinion, it is necessary to have the reconciliation process. Ten respondents stated that for their cases, it is not necessary to undergo the reconciliation process. These ten respondents further explained that it is because they have made their mind to go for divorce when they petitioned for divorce. Attending the reconciliation process is merely to abide by the law. Through the discussion with these respondents, it was found that the decision to divorce was not made in a fortnight but it was made after years of thinking. These ten respondents mentioned that they have given chances to themselves and their couple to reconcile the marriages but to no avail. This supports the claim by Mimi Kamariah in her literature where once the couple filed for divorce, it is the final decision after long time of thinking and efforts personally taken to repair their marital relationship and end up with no positive result [3].

However, six of the respondents including the one who retracted the divorce application in court after receiving non-reconcilable certificate from NRD, replied that the reconciliation process is necessary. Although they were the one initiating the divorce application and failed to have their marriages to be reconciled, they still believed that the reconciliation sessions are needed. When they were asked why, the reply given was focused on the importance of giving time to re-think and to give their marriages the second chance. Five of the respondents who positively replied the need to have the reconciliation process failed to reconcile their marriages due to lack or none commitment from the other spouse during the reconciliation sessions. This shows that there is a possible success of reconciliation if the other couple attended fully and cooperate during the sessions. To have such, there is a need to review the method of conducting the reconciliation process by the NRD.

Under the theme of conciliatory officer, all members stated that they were treated well by the officers. All respondents stated that they do not have a problem on the treatment and advice given by the conciliatory officer. This finding seems contradicting with the statement made by Mimi Kamariah on the officer to be hostile and bias [3]. One respondent from Penang mentioned that she prefers if the conciliatory officer could communicate in the Chinese language which is the main language of the respondent. Language issue was not raised by other respondents. In Sabah and Sarawak, we were informed that there were conciliatory officers who are local and able to speak few tribal language which assisted the

communication with the client. As non-Muslim couple in West Malaysia mostly consist of Chinese and Indians, it would be in great advantage if the conciliatory officer able to communicate in Chinese or Indian languages. Under the sub-theme of attendance of the conciliatory officer, it was identified that there were instances where the officer managing each sessions were different officers. Three respondents mentioned this issue where their sessions were conducted by different officers in each session. This caused the respondent to repeat the background of the divorce application in each session when there is a different officer from the previous session. This finding support the earlier study on the issue of different officer managing the session [5]. This caused time to be wasted because time was spent on repeating the background of the divorce and marital problems [5]. Notwithstanding this, information obtained shows that there is a procedure where conciliatory officers are required to record their findings in writing so that any new officer managing the next session can obtain the background of the case from the previous report. However, this seems not to be the case as mentioned by the some of the respondents as stated hereinabove where they were required to repeat in brief the background of their divorce case. Changing of officers for a reconciliation session will negatively impacting the effectiveness of the session as not only that it is time consuming to repeat the background of the case but it also requires time for the clients to adjust their trust on the new officer.

## **CONCLUSION & RECOMMENDATION**

It is agreed that not all broken marriages are reconcilable [7]. For cases that is reconcilable, proper planning and strategies are required to ensure the success of the marriage reconciliations efforts. Under the three main themes categorised under this study, it is found that there are issues under the marriage tribunal that need to be reviewed and revisited to increase the success factor for marriage reconciliation. Three main issues that worth of highlighted and where immediate reform can be made are non-attendance or lack of cooperation from the couple, conciliatory method applied by the conciliatory officer and the attendance of the conciliatory officer. A couple whom their spouse could not be contacted should not be penalised by attending all three reconciliation sessions. There is no point of conducting sessions with only one spouse. Those spouses who all are contactable, there should be some measure to persuade them to attend

and to participate in the session. Especially if the divorce involves children where there is dire needs to protect their marital relationship. Interference from the court might be needed to ensure the attendance of the couple which cases are evaluated as reconcilable. Function of the court as persuading factor should be considered in ensuring the participation of the couple in cases which show sign of reconcilable.

This is where the second issue of conciliatory method is important. Further study requires to suggest for improvement on the conciliatory method. Initial discussion and assessment with each of the spouse personally is among the important stage where the conciliatory officer can identify the level of motivation on the part of the couples to attend the reconciliation sessions and to ensure that the couples are clear on the objective and benefits of the reconciliation sessions. How the sessions are conducted is also important as it may determine whether the couple able to appreciate the benefit of attending the reconciliation session. Marriage Tribunal should consider the Intake process where initial communication with the parties involved is made before arranging for reconciliation sessions. This process is important to assist the conciliatory officer in making the appropriate strategies in obtaining participation from the couple. As for the attendance of the officer, it is recommended that the same officer should be managing all the sessions. It is important to manage the relationship and trust between the couple and the officer. Among important success factor for reconciliation is a professional relationship created on the basis of trust on the reconciliatory officer. As marriage reconciliation processes involve private affairs, trust play important role in a professional relationship. It will be difficult to develop the trust if the officers managing the case are different in each session.

## REFERENCES

1. Black, H.C., 1968. Black's Law Dictionary, pp: 1437.
2. Hashim, N.M., N.A. Hak and N.E. Rahmat, 2012. Section 106 of the Law Reform (Marriage and Divorce) Act 1976 of Malaysia: Issues and Suggestions. *Australian Journal of Basic and Applied Sciences*, 6(11): 281-285.
3. Kamariah, M., 1999. Family Law in Malaysia. Kuala Lumpur, pp: 186-188.
4. Nora Abdul Hak, 2008. Reconciliation Provision Under English and Malaysian Famil Law: A Comparative Overview. *The Law Review*, pp: 104-118.
5. Kamaruddin, Z., 2005. Divorce Laws in Malaysia: Civil and Shariah, pp: 112-114.
6. Solangel, M., 2013. Facilitating Forgiveness and Reconciliation in 'Good Enough' Marriages, *Pepperdine Dispute Resolution Law Journal*, pp: 105-130.
7. Spencer, D. and M. Brogan, 2006. *Mediation Law and Practice*, pp: 42-48.