

A Maqasid al-Shariah Approach to Divorce Due to a Spouse's Mental Illness: Legal and Rights-Based Insights from Islamic Family Law

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ABSTRACT

This study examines the issue of divorce arising from a spouse's mental illness through the lens of Maqasid al-Shariah within the framework of Islamic Family Law in Malaysia. Recognising that mental health disorders can seriously disrupt marital harmony and family welfare, this research explores the extent to which Islamic law accommodates the rights and well-being of both spouses in such circumstances. The study uses a qualitative methodology to analyse primary sources, including the Qur'an, Hadith, classical fiqh literature, and relevant Malaysian statutes. The findings demonstrate that Islamic law permits divorce on the grounds of harm (*darar*), which encompasses severe mental illness, provided that established legal and ethical conditions are satisfied. By situating this ruling within Shariah's higher objectives, notably the preservation of life, dignity, and family stability, this paper highlights how Maqasid al-Shariah ensures a balanced and compassionate approach. Furthermore, the study discusses related rights such as maintenance (*nafaqah*), child custody, and the 'iddah (waiting period), underscoring Islam's commitment to justice and social welfare. The insights contribute to greater awareness of how Islamic Family Law can address contemporary mental health challenges while upholding its foundational values.

Keywords: Maqasid al-Shariah, Islamic Family Law, Mental Illness, Divorce

INTRODUCTION

In today's increasingly complex world, mental health issues can no longer be regarded as secondary concerns. Instead, they have become a pressing public health matter, particularly within family institutions. According to the Ministry of Health Malaysia (2012), mental health refers to a condition in which an individual realises their potential, can cope with the everyday stresses of life, work productively, and contribute to the community. It also involves how we think, feel, and behave, how we handle problems, and how we interact with others. When these functions are disrupted, be it through depression, generalised anxiety disorder, post-traumatic stress disorder (PTSD), sleep disturbances, or other conditions, it not only affects the individual but also directly impacts their spouse, children, and the overall well-being of the family.

Local and international studies have shown that spousal mental illness is often an overlooked factor contributing to domestic conflict, neglect of responsibilities, emotional abuse, and ultimately, divorce. In Malaysia, the Department of Social Welfare and the Syariah Courts are seeing an increasing number of cases involving divorce or annulment (*fasakh*) applications on the grounds of prolonged and harmful mental illness in a spouse. According to the Department of Syariah Judiciary Malaysia (2020), *fasakh* refers to the dissolution or cancellation of the marital bond between husband and wife, or the annulment of the marriage contract due to defects present at the time of marriage or emerging reasons that prevent the continuation of the marriage. This dissolution form is final and cannot be reversed except through a new marriage contract (Admin, 2023). However, this process is not as straightforward as it may seem, as it involves questions of rights, medical evidence, and interpretations of one's capacity to fulfil marital responsibilities.

From the Islamic legal perspective, marriage is founded on responsibility, compassion, and protection. According to the Syariah Judiciary Department of Pahang (2025), marriage is a contract that permits a man and a woman to live together lawfully and establishes mutual rights and responsibilities. When one spouse is no longer able

to fulfil these roles due to a severe mental disorder, Islamic law provides mechanisms such as *fasakh*, *ta'liq*, and *talaq* (divorce) as possible solutions. However, the implementation of such measures must be approached with care to ensure justice and avoid harming either party, especially considering the emotional instability and difficulty in obtaining treatment or social support often associated with mental illness.

Therefore, this study aims to examine how a spouse's mental illness can place severe strain on a marital relationship and potentially lead to divorce. It also seeks to explore the rights of both parties involved and how Islamic Family Law in Malaysia provides a fair resolution for such cases. The research adopts a multidisciplinary approach, incorporating perspectives from medical and sociological fields, alongside Islamic legal and Syariah law analysis, hoping to offer a more holistic understanding of this increasingly critical issue in contemporary society.

LITERATURE REVIEW

Mental Illness from the Islamic Perspective

Mental illness is acknowledged in Islam as long as its understanding and treatment do not contradict the principles of Shariah. According to Musa (2015), psychiatric disorders identified through modern scientific methods are compatible with Islam's holistic approach to knowledge. In this context, mental illness is defined as a weakness of the mind compared to a healthy individual, typically observable through changes in behaviour, thinking, emotions, and perception (Dimon, 2018).

Nasri et al. (n.d.) and Razif (2019) concur that Islamic jurists and scholars of *usul al-fiqh* have defined mental illness or insanity (*junūn*) as a disruption of cognitive function that prevents an individual from thinking and acting rationally. This explanation reflects that mental illness is not a foreign concept in Islamic scholarly discourse, but instead is accepted as a legitimate health condition.

At the policy level, the National Mental Health Policy (2012) defines mental health as the ability of individuals, groups, and their environments to communicate and interact effectively in order to achieve subjective wellbeing, optimal functioning, and the balanced use of cognitive and emotional potential to live a just and harmonious life.

In the Islamic framework, various factors are identified as contributors to mental illness, including hereditary (genetic) factors, parenting style, individual personality, weak faith (*iman*), lack of religious practice, and life pressures or afflictions (Musa, 2015). This holistic perspective demonstrates the compatibility between the Islamic worldview and the biopsychosocial model in understanding the aetiology of mental disorders.

Divorce in Islam Due to Mental Illness

The increasing trend of divorce among Muslim couples in Malaysia has raised serious concerns among the public and policymakers. For marriages that have undergone various attempts at reconciliation but remain disharmonious, Islam, as a comprehensive religion, offers an ethical solution through the dissolution of marriage. This mechanism aims to prevent prolonged harm within the household and aligns with the principles of justice and welfare promoted by Islamic teachings (Mansor & Mat Hussin, 2023).

Within the Malaysian Islamic legal framework, only the Syariah Court holds the jurisdiction to determine the validity and implications of a divorce pronouncement, whether expressed explicitly (*sareeh*) or implicitly (*kinayah*) (Legal Aid Department, n.d.).

According to Mansor and Mat Hussin (2023), a *fasakh* order cannot be granted arbitrarily unless the parties involved fulfil the conditions set forth by Islamic law and statutory provisions. *Fasakh* is defined as the annulment of a marriage by the Syariah Court, usually initiated by the wife based on specific grounds, which vary depending on each state's enactments (Legal Aid Department, n.d.).

Grounds for *fasakh* include instances where the husband causes physical, mental, or emotional harm to the wife, resulting in suffering within the marital relationship. Suppose the husband is afflicted with a serious, untreatable mental illness that poses harm to the wife or children. In that case, the application for *Fasakh* is permissible in

Islam to preserve life and family welfare. In such cases, it may be appropriate for the husband to be placed in a mental health institution to avoid further harm (Noor, 2017). The psychological distress experienced by the wife may serve as a legitimate basis for seeking annulment, either as a standalone reason or in combination with other legal justifications, reflecting Islam's sensitivity to emotional and psychological suffering within marriage (Mansor & Mat Hussin, 2023).

Islamic law also provides the wife with the right to request the dissolution of marriage if the husband is afflicted with a defect or *'ayb*, including mental illness such as insanity that affects brain function. Given the evident harm already present, *Fasakh* may be granted without requiring extensive medical evaluation (*istihkam*) (Admin, 2022). Regarding legal procedures, Md Zain and Hj. Abdullah (2018) in their study on the *Fasakh* application process in the Syariah Court found that such applications require strong evidence and confirmation of *darar* (harm). However, they recommend that the courts adopt a more open stance in accepting psychological or emotional evidence, particularly in cases involving mental abuse, to ensure justice for the wife. They also propose that the legal system provide more space for mental health considerations when evaluating *Fasakh* petitions.

In line with this, Section 52(1)(h)(i) of the Islamic Family Law Act provides that a man or woman married under Islamic law may apply for a divorce through *fasakh* if their spouse habitually causes harm or suffering through abusive behaviour (Islamic Family Law Act, 1984).

RESEARCH METHODOLOGY

This study adopts a qualitative approach by analysing documents derived from primary sources, including statutes and legal provisions relevant to the presentation of evidence in the Syariah Court, particularly in cases where the mental illness of a spouse serves as grounds for divorce.

In order to gain a comprehensive understanding of the issues, challenges, and potential for improvement in current legal practices, this research also examines court cases, case reports, journal articles, books, and previous scholarly works. A library-based study explored the legal and social background influencing judicial decisions. To determine how courts evaluate evidence relating to a spouse's mental health and the role of psychological or psychiatric experts in divorce rulings, the case analysis involved a thorough review of selected Syariah Court cases across Malaysia.

RESEARCH FINDINGS

The Health Education Division of the Ministry of Health Malaysia (n.d.) states that mental illness can be categorised into two main groups based on severity: psychotic and non-psychotic (neurotic) disorders. The first category, psychosis, refers to severe mental disorders where the patient may lose the ability to perceive reality correctly. These individuals may experience delusions, hallucinations, and significant behavioural changes that appear odd or cause concern to others. Examples include schizophrenia and manic-depressive psychosis. For instance, a delusional patient may believe they are being watched, targeted for assassination, or possess special powers (Hospital Permai, 2025). The second category, neurosis, involves less severe disorders that still affect daily functioning. It is normal for individuals to feel emotions like anxiety, sadness, or stress. However, when these feelings are prolonged, overwhelming, and difficult to control to the point of disrupting daily life, work, or the ability to enjoy life, they may indicate a neurotic mental disorder (Ministry of Health Malaysia, 2023). Examples include anxiety disorders, phobias, depression, and obsessive-compulsive disorder (OCD) (Psychology Management Division, JPAM, 2018). If left untreated, these conditions may worsen over time.

From the perspective of Islamic jurisprudence (*fiqh*), scholars agree that mental illness, such as insanity (*junūn*), is considered a defect (*'ayb*) that justifies a request for annulment (*fasakh*) of marriage. In *Kifāyah al-Akhyār*, al-Hisnī (n.d.) listed insanity, vitiligo (*al-baras*), leprosy (*al-judhām*), and cognitive impairment (*zawāl al-'aql*) as defects that allow for the dissolution of marriage because they undermine the key objectives of marriage—emotional wellbeing and mutual enjoyment (*istimtā'*). This view is supported by contemporary Shāfi'ī scholars, such as Sheikh Muhammad al-Zuhaylī, who stated that if a husband suffers from insanity that impairs cognitive function, the wife has the right to seek annulment through *fasakh*. Furthermore, detailed medical diagnosis

(*istihkām*) is not required when the harm is obvious and endangers the safety and stability of the marriage (al-Zuhaylī, 2013). The *Shāfiʿī* position is reinforced in *Fath al-Qarīb*, where it is mentioned that a spouse who has a mental illness entitles the other to seek annulment in order to prevent prolonged harm to the marriage (al-Ghāzī, 2021). These positions reflect that severe mental illness is not only a marital defect but also a valid reason for separation to protect both personal welfare and religious obligations.

In the context of Islamic family law in Malaysia, chronic and persistent mental illness is recognised as a valid ground for the dissolution of marriage via *fasakh*. Section 52(1)(f) of the Islamic Family Law (Federal Territories) Act 1984 grants a wife married under *Sharīʿah* the right to seek *fasakh* if the husband is confirmed to be suffering from mental illness, such as insanity, for two years or more (Laws of Malaysia, 2006). This provision illustrates the law's concern for the wife's well-being when the husband's condition disrupts the emotional or physical functioning of the household. For non-Muslim couples, mental illness such as insanity is not explicitly listed as a ground for divorce under the Law Reform (Marriage and Divorce) Act 1976 [Act 164] (Ministry of Women, Family and Community Development, 2025). However, Section 106(1)(v) allows exemption from counselling if a spouse has an incurable mental disorder, while Section 54(1)(b) states that conduct making marital life unreasonable may serve as a ground for divorce. Thus, prolonged and severe mental illness can be implicitly accepted as a valid reason for divorce under civil law (Laws of Malaysia, 2006; MahWengKwai & Associates, n.d.; Ying & Partners Advocates & Solicitors, 2023).

In Syariah Courts, the evidentiary method still largely follows traditional approaches such as confessions and witness testimony (Saifuddin et al., 2019). However, in cases involving mental or psychological issues, a more scientific approach is essential to ensure comprehensive justice (Ahmad et al., 2020). Therefore, the acceptance of psychiatric or psychological expert testimony as *qarīnah* (supporting evidence) is provided for under the law. Section 33(1) of the Syariah Court Evidence (Federal Territories) Act allows the court to admit expert opinions in scientific fields like psychology when the matter is beyond the judge's expertise (Yusoff, 2004). Section 39 permits the rationale behind the expert opinion to be admitted as evidence. In contrast, Section 47(1)(d) requires the expert to be physically present in court to provide direct testimony, allowing the judge to understand the scientific reasoning more clearly (Salim & Cheong, 2016). Similarly, medical evidence is essential in civil courts for mental incapacity cases. Courts generally require a psychiatric report from a registered specialist, hospital treatment records, and, if necessary, direct testimony from an expert to substantiate the claim. This aligns with the provisions of the Evidence Act 1950, which permits expert scientific opinions to be considered by the court (Rajamanickam & Abdul Rahim, 2014).

DISCUSSIONS

The Element of Justice in Annulment (*Fasakh*) Due to a Mentally Ill Husband

Within the framework of Islamic Family Law in Malaysia, *Fasakh* is one of the legal means by which a wife may obtain a dissolution of marriage through the Syariah Court when specific circumstances adversely affect the continuity of the marital relationship. One such circumstance is when the husband suffers from insanity or a chronic mental disorder that undermines the viability of married life.

However, although this right is granted to the wife, it is not absolute. The application must comply with legal procedures and specific conditions prescribed by law. The court will not approve a *fasakh* petition based solely on allegations or oral testimony; it requires confirmation from a psychiatric specialist and strong medical evidence. Furthermore, the law stipulates that mental illness can only be considered a valid ground for dissolution if it has persisted for at least two years. This time frame allows the patient to seek treatment and determine whether the condition is curable (Nur Farah Al Hanani, 2020; Rosidi et al., 2025).

According to Sheikh Abdul Wahab bin Ismail, Judge of the Syariah Court of Appeal in Kedah, the two-year period stated in the enactment is a mandatory legal requirement and cannot be waived. Suppose a wife is unwilling to wait until this period elapses and wishes to end the marriage. In that case, she is advised not to pursue *fasakh* but to consider other legal avenues such as maintenance claims (*nafkah*), which do not require such a lengthy process (Nur Farah Al Hanani, 2020). This highlights that although *Fasakh* is a legitimate legal recourse, its implementation is highly dependent on the progression of the husband's health condition and the

findings of periodic medical reports.

From the perspective of *fiqh*, the stipulation of this period can also be understood through the principle of *istihsān*, which is a juristic method in Islamic legal theory that allows legal rulings to be made based on considerations of justice and public interest, even if it slightly diverges from strict literal interpretation. Kamali (2008) states that *istihsān* permits legal development more flexibly, especially when addressing contemporary and complex issues. In this context, the imposition of a two-year condition illustrates how Islamic legal principles may be applied by considering current realities and the necessity of balancing the rights and welfare of both parties.

The Husband's Responsibility and the Impact of Mental Disorders on the Family

In Islam, the husband holds a crucial role as the head of the family. He is entrusted with the responsibility of leading, protecting, and providing for his wife and children, both materially and emotionally. This responsibility is explicitly stated in the Qur'an, as found in Surah al-Nisā':

"Men are the protectors and maintainers of women, because Allah has given one more (strength) than the other, and because they support them from their means..." (Qur'an, 4:34).

This verse affirms the husband's position as the family's leader and his accountability for the well-being of his household. However, when the husband suffers from mental health issues such as depression, bipolar disorder, or anxiety disorders, his ability to fulfil these responsibilities can be significantly impaired. Untreated mental health issues may lead to behavioural changes such as increased irritability, difficulty concentrating, sleep disturbances, and loss of appetite (Mirowsky & Ross, 2003). These symptoms directly affect interpersonal relationships within the family, particularly the marital bond between husband and wife.

The World Health Organisation (WHO) has also affirmed that mental health disorders can impact nearly every aspect of an individual's life, including social and familial relationships (WHO, n.d.). When such issues disrupt the marital relationship, it may diminish the overall quality of the marriage and contribute to emotional strain within the household. Moreover, marital satisfaction is a crucial component in sustaining family well-being. Studies show that couples experiencing low marital satisfaction are more prone to emotional stress, prolonged conflicts, and ultimately, face a higher risk of divorce (Ahmad Hariri Mohd Saat & Raihanah Azahari, 2021). Therefore, providing adequate social support and access to mental health treatment is essential in helping families achieve stability and in preventing marriages from ending in divorce.

Application in the Malaysian Islamic Family Law

According to Shariah law, marriage is the continuation of life between two individuals bound in a lawful union. This is because it enables a man and a woman to live together in harmony and tranquillity. Islam has prescribed marriage for various wisdoms and purposes, including the fulfilment of human nature and the enjoyment of marital relations. Nevertheless, the reality of married life is not always filled with happiness. Managing a household is a significant responsibility and is inevitably accompanied by challenges, disagreements, and conflicts that may arise between husband and wife throughout their union.

Shukor et al. (2012) define domestic crisis or conflict as an unstable condition arising within the family due to certain factors, potentially leading to issues such as domestic violence, abuse, and ultimately, divorce. According to Mohd Saad & Hj Azahari (2014), household disputes, neglect of responsibilities, abuse, and mistreatment are among the primary causes of divorce. While divorce is often used as a resolution to marital disputes, it is considered a last resort when all other options have failed, and it is strongly discouraged.

A wife who is unwilling to continue the marriage and suffers from ongoing mental distress may file for *fasakh* (judicial dissolution). Under Section 53(1)(h) of the Selangor Islamic Family Law Enactment 2003, a wife may seek a divorce if the husband has mistreated her in a habitual manner, such as by harming her or causing her to live in distress due to such abuse. This aligns with the *shar'ī* concept of *darar* (harm), which refers to acts of abuse or violence against the wife, including slapping, throwing objects, or hitting parts of her body, among others. The Kamus Dewan (2007) states that *darar* is "an adversary to any good and beneficial conduct."

In examining actual *fasakh* claims under this clause, wives have typically cited general grounds of harm and supporting arguments. For example, in the case of *Ali bin Hashim v. Aminah bt Raub* (Civil Case No: 10005-014-0189-2018, Syariah Court Hulu Langat), the wife filed for *fasakh* by claiming the husband had failed to fulfil his obligation to provide financial support, forcing her to bear the cost of food, clothing, and daily needs for herself and their children since 2014. Furthermore, the husband had made unfounded accusations of adultery without any legitimate proof or evidence.

In another case, *Zubaidah bt Ali v. Harun bin Hamid* (Civil Case No: 10005-014-1203-2017, Syariah Court Hulu Langat), the wife filed for *fasakh* because the husband failed to show affection and attention to her and their children and had committed physical abuse that caused injuries such as bruises. He also failed to provide a comfortable residence and had no stable job.

These cases demonstrate that acts of harm and abuse against the wife fall within the meaning of habitual cruelty as defined in Section 53(1)(h) of the Islamic Family Law Enactment 2003. Therefore, the court may grant a *fasakh* order if it is proven that the husband's actions endanger the wife's life, intellect, religion, or property.

Maqasid Shariah and Justice Towards Women

Generally, classical Islamic scholars did not provide in-depth and detailed definitions of *Maqasid Shariah* (the objectives of Islamic law). Commonly used terms include *maqasid al-shar'* and *al-maqasid al-shar'iyah*. According to al-Shatibi, *Maqasid Shariah* consists of five main elements in Islam: the preservation of religion, life, intellect, lineage, and property. These five elements are classified under necessities (*al-daruriyyat*). Every Islamic ruling is linked to one of these objectives, which are further categorised into three levels of priority: *daruriyyat* (essentials), *hajiyyat* (complementary needs), and *tahsiniyyat* (embellishments) (Al-Zuhaili, 2002; Sa'adat, 2011).

The *daruriyyat* level refers to fundamental human needs essential for religious and worldly affairs. If these necessities are not fulfilled, it may lead to destruction, disruption of life, or even death. According to Zin and Aziz (2020), mental illness is one of the forms of *dharar* (harm) that contradicts the *maqasid shariah* and is commonly known as a psychological disorder. Therefore, the five key elements—religion, life, intellect, lineage, and property—are closely linked to individual well-being, and the dissolution of a marriage is permissible to prevent harm and achieve benefit (*maslahah*).

The five *daruriyyat* elements are:

a) Preservation of Religion (Hifz al-Din)

Both husband and wife must fulfil their respective duties and rights, such as raising their children with proper education and protecting them from harm and threats (Husna & Muhtadin, 2023; Hafis & Johari, 2022). If the husband fails to fulfil his duties due to mental illness, the wife has the right to seek justice through the court to attain both worldly welfare and success in the hereafter.

b) Preservation of Life (Hifz al-Nafs)

Al-Raysuni (2006) explains that the preservation of life can be achieved through three means: forming family institutions through legitimate marriage, ensuring survival through lawful and clean food and drink, and securing proper clothing and shelter, in addition to life protection itself. This applies to cases where a mentally ill husband harms the wife physically—by slapping, hitting, or punching—which could potentially escalate into more serious harm or even murder if the conflict continues (Husna & Muhtadin, 2023).

c) Preservation of Lineage (Hifz al-Nasl)

This principle refers to an individual's responsibility to protect and preserve their lineage. It is significant in Islam for establishing a progressive and productive society. The strong prohibition against adultery serves to protect lineage, and valid marriage is strongly encouraged to prevent immoral acts. Hifz al-Nasl is realised through lawful marriage contracts and the birth of children within those unions (Rosidi et al., 2022).

Dysfunctional or illegitimate marriages not only affect lineage status but also increase the risk of mental disturbance among spouses and children—for instance, prolonged conflict between husband and wife may obstruct the purpose of marriage in securing progeny (Husna & Muhtadin, 2023).

d) Preservation of Wealth (Hifz al-Mal)

According to Ibn ‘Ashur (1998), preserving wealth means protecting assets from destruction and prohibiting the unlawful transfer of ownership. Al-Ghazali (2019) highlights that wealth preservation includes protecting public property, while al-Shatibi (2004) emphasises that this includes prohibiting injustice, denying others’ rights (such as orphans), wastage, envy, and manipulation in financial transactions. If a husband has severe mental illness and fails to support his wife and children financially, this does not excuse him from his responsibilities. Consequently, the wife has the right to claim her entitlements in the Syariah court to protect her and her family's welfare.

e) Preservation of Intellect (Hifz al-‘Aql)

This principle aims to prevent damage to the human mind, as harm to the intellect can lead to corruption and destruction (Mohamed El-Tahir El-Mesawi, 2018). Sound intellect is essential for knowledge development and a country’s advancement. The absence of sound knowledge can result in national decline and difficulties in recovery (Mat Saad & Rajamanickam, 2021). Therefore, preserving intellect is highly emphasised in Islam. In this context, a mentally ill husband may pose a risk if he fathers children who could potentially inherit mental disorders or intellectual disabilities (Husna & Muhtadin, 2023).

In conclusion, *Maqasid Shariah* belongs to the category of *daruriyyat* or essential human interests, which are critical for the survival and well-being of humanity. These needs encompass five core areas: religion, life, intellect, lineage, and wealth. In such cases, the wife's dissolution of marriage (*fasakh*) is permissible to prevent greater harm and safeguard herself from long-term negative consequences.

CONCLUSION

In conclusion, the issue of divorce due to a spouse's mental disorder is a serious matter that must be addressed with caution and by the provisions of Islamic law. Islam permits divorce in situations where harm (*darar*) cannot be remedied, provided that justice and the rights of both parties are safeguarded. From a legal perspective, the Islamic Family Law in Malaysia provides a legitimate framework for managing such situations. Hopefully, this study will raise public awareness and offer a clearer understanding of addressing this issue based on Islamic principles and humanitarian values.

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