

Can you afford to untie the knot?

In this final part on divorce, *Sunday Star* looks at the price of consciously uncoupling.

By HARIATI AZIZAN
sunday@thestar.com.my

AFTER six long years, Pial Khalida Abdullah finally got her wish last May: the judge granted her a divorce.

Her sweet victory, however, lasted only for 14 days – her supposed-to-be-ex-husband filed an appeal against the judge's decision, preventing the Syariah Court from releasing her divorce letter and closing her case.

"I am financially drained and emotionally exhausted. Yet again to fight for the appeal, I need to hire a lawyer and fork out thousands of ringgit," Pial lamented on Facebook.

Worse, she added, in Syariah Court, you have to open a separate file for every different petition, such as custody for children, child maintenance and others, each one costing a separate fee.

"Today, I have four cases: appeal for the divorce, custody of my kids, child maintenance, and visitation rights. All cases (are) treated separately and each costing a separate amount of money," she shared her frustration.

For many Muslim women contesting for divorce, this is the fear: that their case will drag on for years due to the bureaucracy of the Syariah Court, which is said to favour men.

And with the escalating cost of living forecasted to continue this year, lengthy divorce proceedings and endless delays in court are something that not many can afford to endure.

So much so that many are choosing to forgo legal counsel, like Sarina (not her real name).

"At first I wanted to get a lawyer from the Government's Legal Aid Department but after reading up on it I feel that I don't really need to get a lawyer to file for a divorce," she says.

However, the forms are not free and cost from RM3 to RM25. And as she later discov-



Costly split: The legal fees for challenging divorce cases can range from RM25,000 to RM50,000.

ered, the process is not as simple as she had expected.

"I still ended up going up and down the courts, and that cost money – with transport and time off work," says the entrepreneur.

For a manager who only wants to be known as Noor, getting a good lawyer at whatever cost is a must to ensure she stop her husband – who took another wife without her consent – from getting custody of her two sons.

"He is making it difficult for me by not turning up in court, though, and the post-

ponements are causing me money," grumbles Noor, who says she has racked up more than RM20,000 in legal fees, and her case seems nowhere near closure.

Syariah lawyer Muhammad Nur Hafiz Roslan thinks there is a prevailing misconception that legal fees will burn a hole in one's pocket when filing for divorce.

"Many are scared to go see a lawyer because of this misleading belief. What many don't realise, for example, is that not all lawyers charge fees for the initial consultation, which is important for you to plan your course of action when getting a divorce.

"If after consulting the lawyer you feel that you can do it on your own, you always can. We have had many such cases at our firm and we didn't charge them for that consultation."

He points out that many cases are delayed because the parties involved did not follow court procedures and lacked understanding of the court's requirements.

Nur Hafiz, who is also the managing director of Nur Hafiz & Associates, says lawyers' consultation fees depend on the "seniority" of the lawyer.

Like in any field, you have the high-end players, he quips. "If you go to the 'Datuk-Datuk' lawyers, of course you would expect to pay more."

But, as he stresses, it is important to go to a qualified lawyer who has a strong knowledge of not only Malaysian Islamic family law but also a deep understanding of Islamic jurisprudence.

At the end of the day, he says, it is all about a person's priority. "Many people won't even bat an eyelid over how much they have to fork out for a smartphone, but when it comes to legal advice for their and their children's survival and future, they are not willing to

spend a sen."

Another Syariah lawyer, Saadiah Din, agrees that getting a qualified legal counsel is important.

"Many cases get stuck because the pleading was badly or wrongly drafted by the parties themselves or the lawyers or the defendant filed other applications that delayed the proceedings," she says.

Other reasons why cases take a longer time to be resolved include parties changing lawyers, incomplete court documents, or one of the parties is not Malaysian or residing out of jurisdiction and gives all sorts of excuses to postpone the matter.

And naturally, she adds, if the matters are heavily contested, they will take a longer time to be heard by the court.

Another (cheaper) option for couples to resolve their marital issues, she opines, is getting marriage counselling.

"Instead of filing for the divorce, she or he may report to the marriage division at the religious office nearest to their house. The counselling unit will arrange for single and double counselling sessions to enable the parties to give their marriage a second chance."

Still, Saadiah strongly believes there is room for improvement to expedite court proceedings and the religious bodies have set up committees to review the written laws/enactments/regulations/*arahan amalan* (practice directions) to enable a better administration of justice in the Syariah Court.

While non-Muslim divorces rarely get dragged out as long as some Muslim divorce cases do, some cases can take time to get resolved – contested divorces can take up to three years.

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Mediation a less costly alternative

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The cost for a joint petition – where both parties agree to divorce – is between RM3,000 and RM6,000 and usually takes three to six months. Contested petitions, however, vary in costs from one firm to another, depending on the level of conflict and complexity of issues, says lawyer Datuk Andy Low Hann Yong whose firm has handled many contentious divorce cases.

A quick check on the fees around the Klang Valley for these challenging cases shows they can range from RM25,000 to RM50,000. A highly contentious divorce can even incur RM75,000 in legal fees.

Those looking for "savings" in their divorce case can try mediation, which is faster and can cost less, from RM5,000 to RM 15,000, to be resolved.

And like in the Syariah law fraternity, legal fees for civil family lawyers at the higher end of the market are reportedly steeper – it can cost up to RM10,000 for uncontested divorce petitions.

While a Malaysian Bar Council source says there are no plans to hike legal fees, many feel that legal costs are generally rising. Says Low, this is mainly due to the hike in court filing fees a few years ago.

Still, for divorce cases in Syariah Courts, the cost cannot be capped until the law addresses the issue of absent and noncompliant husbands who do not turn up in court or ignore court orders to pay mainte-

nance to their children and ex-wife.

Former Chief Syariah Judge Datuk Ismail Yahya, who was also a former mufti in Terengganu, believes many divorce cases can be expedited if they are converted to *fasakh*, that is, for the court or the judge to declare the dissolution.

"I've handled a divorce case that took as long as 12 years to be resolved because the husband never turned up for the hearings. But this was because he was a petty thief and drug addict, so he kept going in and out of jail.

"So what her legal team should have done was to convert the case to a *fasakh* case so that the court would have the authority to dissolve the marriage," he says.

As he sees it, many have the misconception that *fasakh* is a difficult process.

"What they don't realise is that for *fasakh*, the husband's appearance in court – the main reason why many divorce cases drag on – is not needed. The wives just need strong evidence."

Denying that he is blaming Syariah lawyers for the delays in divorce cases in court, Ismail says many do not advise their clients to change to *fasakh* because we practise an adversarial system here where the court does not take an active role in the case.

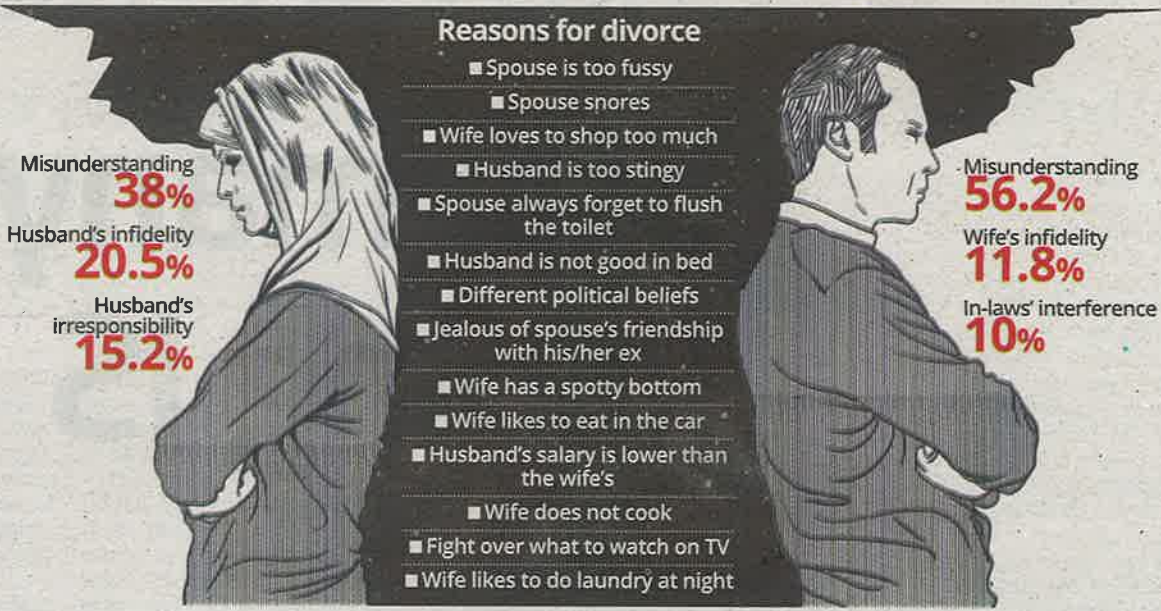
"In an inquisitorial system, like that practised in France and Saudi Arabia, the court will take a more active role and the judge can steer the case to what is best and advise

Rising tide

Divorce cases in Malaysia remain high in spite the high cost

Divorce cases among non-Muslim couples
 9,029 in 2014
 9,326 in 2015
 4,939 as of September 2016

Divorce cases among Muslim couples
 59,712 in 2014
 63,463 in 2015
 48,077 as of July 10, 2016



Sources: Women, Family and Community Development Ministry, Jabatan Kehakiman Syariah and others

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the petitioner likewise."

Saadiah, however, disagrees. "Although we are practising the adversarial system, the Syariah Courts usually welcome evidence that will assist the judge in making his/her decision," she says.

Norhayati Kaprawi, a former programme director at Sisters In Islam, believes strongly that women can avoid protracted cases if they get more information on their rights as a wife in Islam and the Islamic Family Law, as well as the Syariah Court system and its procedures.

As accessibility to the information is lacking, she says, it has prompted her to team up with Ismail to publish a handbook on Malaysian Islamic Family Law.

"I find that there are not many books that are available in the market that can help to explain very clearly how women can access justice in the Syariah court system, about the court procedures, what are the wives' rights in Islam and in the Islamic Family Law.

"There are still many women who don't even know what the first step they should take is when they

want to get a divorce. They don't even know the basic things, such as whether they need to go to the Jabatan Agama or Syariah Court. They don't even know what forms to fill," she says, citing the example of an abused or neglected wife.

"Many do not know they can actually apply under *fasakh*," she notes.

"So now, they can get Datuk Ismail, who knows the law in depth and has vast experience in dealing with divorce cases, to explain very clearly how women can get their rights in Syariah Court."