

Determination of the value of talak redemption by the ḥakam in divorce cases at the Shariah court

Nur Dini Amran ^{1*}, Azman Ab. Rahman ², Muhammad Azhad Al-Bohari ³, Habib Ismail ⁴

^{1*}(Corresponding Author) Faculty of Syariah and Law, Universiti Sains Islam Malaysia, Bandar Baru Nilai 78100, Nilai Negeri Sembilan, Malaysia.

E-mail: nuradinie1206@gmail.com

² Institute of Fatwa and Halal (IFFAH) and Faculty of Syariah and Law, Universiti Sains Islam Malaysia, Bandar Baru Nilai 78100, Nilai Negeri Sembilan, Malaysia.

E-mail: azman@usim.edu.my

³ Faculty of Syariah and Law, Universiti Sains Islam Malaysia, Bandar Baru Nilai 78100, Nilai Negeri Sembilan, Malaysia.

E-mail: azhadsampi@gmail.com

⁴ Faculty of Sharia, Law, Islamic Economics and Business (FSHEBI), Ma'arif University Lampung (UMALA), Metro City, Lampung, Indonesia.

E-mail: habibismail@umala.ac.id

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ABSTRACT

The determination of the value of talak redemption by the Ḥakam in divorce cases in Malaysia is an important issue that requires greater clarity, particularly in the context of Shariah Court practice. This study examines the determination of the value of talak redemption by the Ḥakam in divorce proceedings before Malaysian Shariah Courts. The determination of the talak redemption amount by the Ḥakam raises practical concerns due to the lack of clear and consistent guidelines, potentially leading to uncertainty and inconsistency in implementation. Accordingly, this study aims to examine the concept of talak redemption in Islam, analyse the role of the Ḥakam in determining its value, and propose an appropriate approach to its determination. This study adopts a qualitative, library-based research design using document analysis. Relevant sources include the Qur'an, Prophetic traditions, classical *fiqh* literature, contemporary juristic writings, Malaysian Islamic family law enactments, relevant Shariah Court cases, practice directions, and peer-reviewed articles. The findings indicate that the determination of the value of talak redemption by the Ḥakam should be conducted fairly and with due consideration of the circumstances of each case, taking into account relevant considerations such as the original dowry as a reference point, the financial circumstances of the parties, the circumstances of the marital dispute, and the need to avoid unfairly burdening either party. The study therefore proposes the development of clearer and more consistent guidelines for determining the value of talak redemption to promote greater transparency, consistency, and fairness in its implementation across Malaysian Shariah Courts.

Keywords: talak redemption, Ḥakam, divorce, Shariah Court, dowry, Malaysia

INTRODUCTION

Marriage in Islam is a sacred bond based on the principles of love, responsibility, and justice between husband and wife. Marriage is also an act of worship and a fundamental institution that contributes to the formation of families, societies, and nations (Wan Ismail et al., 2022). However, marital relationships may encounter conflicts that can ultimately lead to divorce. In Islam, divorce is generally regarded as a measure to be considered when marital conflict causes harm and the relationship can no longer be sustained. Islamic law also provides several mechanisms for the dissolution of marriage, reflecting the different legal avenues available to spouses in resolving irreconcilable marital disputes (Jusoh et al., 2022). Accordingly, divorce may become a necessary solution when the marital relationship can no longer be preserved.

In Malaysia, divorce between Muslim spouses falls under the jurisdiction and supervision of the Shariah courts. Contemporary family disputes may also involve changing family circumstances and legal issues within the Malaysian context (Al-Bohari, 2025). Among the mechanisms established to address serious marital disputes is the *tahkīm* process, which involves the appointment of a *hakam* (Jusoh et al., 2022). The appointed *hakam* functions as a third party responsible for assisting the spouses in resolving the dispute and, where reconciliation is no longer possible, assisting in the resolution of the marital dispute in accordance with the applicable legal framework. This mechanism is particularly relevant in cases involving persistent marital discord (*shiqāq*), where intervention is required to address the breakdown of the marital relationship (Dimon et al., 2023; Narowi et al., 2021).

In Islam, talak redemption is recognised as a permissible form of marital dissolution and is closely associated in Islamic jurisprudence with the concept of *khulu'*. *Khulu'* generally refers to the dissolution of marriage involving compensation or consideration in exchange for release from the marital bond (Kusmidi, 2018; Harun, 2019). However, the determination of the value of talak redemption by the *hakam* raises practical concerns, particularly regarding the basis and considerations used in assessing an appropriate amount. Where clear and consistent guidelines are lacking, the amount may vary according to the circumstances of individual cases, potentially creating uncertainty and concerns regarding consistency in implementation.

The concept of talak redemption has a recognised basis in Islamic jurisprudence, particularly through discussions of *khulu'* in classical and contemporary *fiqh*. However, its implementation in the Malaysian Shariah judicial system raises important questions concerning the determination of the value of talak redemption by the *hakam*. The lack of clear and consistent guidelines may lead to variation in the amount determined across different cases and circumstances, raising concerns regarding consistency and fairness in implementation. Therefore, this study examines the appropriate considerations for determining the value of talak redemption by the *hakam* in divorce cases at Malaysian Shariah courts and proposes clearer considerations to support greater consistency, transparency, and fairness in its determination.

LITERATURE REVIEW

The Concept of *Hakam* and *Tahkīm* in Marital Dispute Resolution

Marital disputes may be addressed through a *tahkīm* session. *Tahkīm* in terms of language means giving authority to another person to adjudicate a dispute. In terminological terms, *tahkīm* refers to a process in which the disputing parties appoint someone to be a *hakam* to resolve disputes that arise between husband and wife based on Islamic law. *Tahkīm* in the Shariah Court occurs when an individual is entrusted by the parties or appointed through the court process to assist in resolving disputes between husband and wife through a *tahkīm* session. The process may lead to reconciliation or, where reconciliation fails, divorce. The individual appointed to address the dispute is generally known as a *hakam* or *muḥakkam* (Zam, 2023).

A *hakam* is defined as a person appointed or a third party to assist in resolving disputes between a husband and wife. A *hakam* is also known as an arbitrator who is authorised by the Court to resolve a serious marital dispute (*shiqāq*) between a husband and wife (Narowi et al., 2021). The appointed *hakam* is responsible for assisting in the resolution of disputes between the parties in accordance with Islamic law. The concept of *hakam* provides a mechanism for addressing marital disputes and creating an opportunity for reconciliation before the dissolution of the marriage. The concept of *hakam* has a clear basis in the Qur'an. In verse 35 of Surah al-Nisā', Allah SWT states:

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا

“And if you fear a breach between them, then appoint a mediator, one from his family and one from her family. If the two mediators (sincerely) intend to reconcile, Allah will make a good agreement between them. Indeed, Allah is Knowing, All-Knowing.”

Verse 35 of Surah al-Nisā' provides a Qur'anic basis for the appointment of a *hakam* in addressing marital disputes and pursuing reconciliation between spouses. The *hakam* can be appointed from among the family members of the husband and wife or individuals who have knowledge and experience in family affairs.

Thus, the Shariah Court is given the power to appoint a *hakam* when *shiqāq* occurs. *Shiqāq* refers to a serious marital dispute between a husband and wife. Within this dispute resolution framework, the *hakam* plays an important role and may act as a representative of the husband or wife (Narowi et al., 2021). The *hakam* also acts as an intermediary in addressing the dispute between the spouses. However, in certain cases, the *hakam* may be authorised within the applicable legal framework to make decisions related to divorce. The role may also extend to matters concerning the value of talak redemption where such authority is recognised under the applicable legal and procedural framework. Such decisions remain subject to the applicable Shariah Court framework and supervision. This demonstrates that the role of the *hakam* may have significant implications for the rights and interests of both spouses.

The Concept and Jurisprudential Basis of Talak Redemption in Islam

Talak redemption is a method of dissolution of marriage recognised within the framework of Islamic law. In Islamic jurisprudence, talak redemption is closely associated with the concept of *khulu'*. *Khulu'* is grounded in the Qur'an and Prophetic tradition and has been recognised in Islamic jurisprudence. It generally refers to a dissolution of marriage sought by the wife involving compensation to the husband (Harun, 2019; Kusmidi, 2018). Accordingly, the jurisprudential concept of *khulu'* provides an important basis for understanding talak redemption and its compensatory element in Islamic law.

The Qur'anic basis of *khulu'* is found in verse 229 of Surah al-Baqarah, in which Allah SWT states:

الطَّلَاقُ مَرَّتَانٍ ۖ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ ۗ وَلَا يَحِلُّ لَكُمُ أَنْ تَأْخُذُوا بِمَا آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ ۗ تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا ۚ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ

“Divorce is twice. Then, either retain [her] in an acceptable manner or release [her] with good treatment. And it is not lawful for you to take anything of what you have given them unless both fear that they will not be able to keep [within] the limits of Allah. But if you fear that they will not keep [within] the limits of Allah, then there is no blame upon either of them concerning that by which she ransoms herself. These are the limits of Allah, so do not transgress them. And whoever transgresses the limits of Allah—it is those who are the wrongdoers.”

This verse provides an important foundation for the permissibility of marital dissolution involving compensation where the spouses fear that they will be unable to observe the limits prescribed by Allah. In particular, the expression concerning that by which the wife “ransoms herself” (*iftadat bihi*) has been associated with the jurisprudential basis of *khulu'* and the provision of compensation in connection with marital dissolution (Harun, 2019). The verse therefore establishes a relevant foundation for understanding the compensatory element of *khulu'* and its relevance to talak redemption within Islamic law.

The Prophetic tradition further provides a direct basis for the concept and implementation of *khulu'*. Among the hadiths frequently cited in this context is the hadith concerning the wife of Thābit ibn Qays. It is narrated that the wife of Thābit ibn Qays came to the Prophet Muhammad SAW and expressed concern regarding the continuation of her marriage despite raising no objection to her husband's character or religion. The Prophet Muhammad SAW asked whether she was willing to return the garden that was given to her, and she agreed. The Prophet Muhammad SAW then instructed Thābit:

اقْبَلِ الْحَدِيقَةَ وَطَلِّقْهَا تَطْلِيقَةً

“Accept the garden and divorce her once.”

(Al-Bukhārī, 2001, Hadith no. 5273)

The hadith of the wife of Thābit ibn Qays constitutes an important basis for the permissibility of *khulu'* and illustrates the role of compensation in its implementation (Ramle, 2021). This hadith shows that the value of compensation in a *khulu'* case may be connected to property previously given by the husband, as illustrated by the return of the garden in this particular case. Therefore, this hadith provides an important basis for examining the relationship between compensation in *khulu'* and the determination of the value of talak redemption, particularly where reference is made to property previously transferred within the marriage.

Classical Islamic jurisprudence further recognises *khulu'* as a valid form of marital dissolution. Juristic discussions across the Sunni schools address the permissibility and legal consequences of *khulu'*, although differences arise concerning particular conditions and the determination of compensation. Classical works such as *Al-Umm* by al-Shāfi'ī and *Al-Mughnī* by

Ibn Qudāmah discuss *khulu'* as a recognised form of dissolution involving compensation provided in exchange for release from the marital relationship (Al-Shāfi'i, n.d.; Ibn Qudāmah, n.d.). The treatment of *khulu'* in these classical sources demonstrates its established position within Islamic jurisprudence while also providing a foundation for later juristic discussions concerning the amount of compensation.

More specifically, within the Shāfi'i school, the *mu'tamad* position permits *khulu'* in return for compensation that is mutually agreed upon by the spouses, whether the amount is less than or greater than the *mahr*. The amount of compensation is therefore not restricted to the value of the *mahr*, provided that it is based on mutual agreement between the parties (Al-Zuhayli, 2011). This position is particularly relevant to the present discussion because it demonstrates that the determination of compensation in *khulu'* is not necessarily confined to the return of property previously given by the husband, but may extend to another agreed amount. This juristic position provides a relevant basis for examining the value of talak redemption, particularly in relation to whether such value must correspond to the original *mahr*.

In short, talak redemption is closely associated with the concept of *khulu'* in Islamic jurisprudence. *Khulu'* is grounded in the Qur'an and Prophetic tradition and further developed through classical Islamic jurisprudence. These foundations establish the permissibility of *khulu'* as a form of marital dissolution involving compensation, while questions concerning the appropriate amount and limits of such compensation remain subject to juristic discussion. The *mu'tamad* position within the Shāfi'i school further indicates that the amount of compensation may be determined by mutual agreement and is not necessarily limited to the value of the *mahr* (Al-Zuhayli, 2011). These juristic foundations are therefore relevant to the present study's examination of the determination of the value of talak redemption by the *hakam*.

Juristic Perspectives on the Determination of the Value of Talak Redemption

In divorce through talak redemption, the determination of its value constitutes an important aspect of the dissolution process. Classical juristic discussions concerning *khulu'* provide relevant foundations for examining the amount and limits of compensation associated with talak redemption. Although the permissibility of *khulu'* is grounded in the Qur'an and hadith, jurists differ regarding the appropriate amount of compensation that may be provided in exchange for marital dissolution.

In the Hanafi school, the determination of *khulu'* compensation is discussed in relation to the circumstances surrounding the marital breakdown and the amount of *mahr* previously given to the wife. Al-Kāsānī discusses distinctions concerning the amount that may appropriately be taken from the wife, particularly by reference to responsibility for the marital discord and the value of the *mahr*. Accordingly, the Hanafi position reflects concern that the determination of compensation should not become a means of unjustly burdening the wife (al-Kāsānī, n.d.).

Furthermore, the Shāfi'i school allows the amount of *khulu'* compensation to be determined based on the agreement made by both parties. The determination of the amount of compensation is also not necessarily tied to the amount of dowry received during the marriage. Within the Shāfi'i school, if the husband and wife agree on a certain amount, the compensation may be more or less than the *mahr*, subject to the applicable conditions governing *khulu'* (al-Nawawī, n.d.). This position demonstrates greater flexibility in determining compensation according to the agreement reached between the spouses rather than imposing a fixed amount based exclusively on the original *mahr*.

The opinions of the Hanbali and Maliki schools also discuss the determination of *khulu'* compensation with reference to the circumstances of the parties and the nature of the exchange involved in the dissolution (Ibn Qudāmah, n.d.; Ibn Rushd, n.d.). Their juristic discussions indicate that the amount of compensation may vary according to the applicable juristic conditions and circumstances of the *khulu'* arrangement. These discussions further illustrate the broader juristic concern with preventing injustice and avoiding the use of compensation as a means of unfairly burdening either spouse.

Overall, the juristic perspectives demonstrate that there is no single uniform approach to determining the amount of *khulu'* compensation. While the *mahr* serves as an important reference point in some juristic discussions, other approaches recognise greater flexibility based on agreement and the circumstances surrounding the marital dissolution. These differences provide an important jurisprudential foundation for examining the determination of the value of talak redemption in contemporary Shariah Court proceedings, particularly in relation to the role of the *ḥakam*.

METHODOLOGY

This study adopted a qualitative, library-based research design, with document analysis as the primary method of analysis. Relevant textual sources were purposively selected and critically reviewed, including the Qur'an, Prophetic traditions, classical *fiqh* literature, contemporary juristic writings, Malaysian Islamic family law enactments, relevant Shariah Court cases, practice directions, and peer-reviewed articles addressing talak redemption, *khulu'*, *ḥakam*, *taḥkīm*, and marital dispute resolution.

Particular emphasis was placed on examining classical juristic perspectives and contemporary Malaysian legal and institutional sources to capture both the jurisprudential foundations and practical dimensions of determining the value of talak redemption by the *ḥakam*. The collected data were analysed using content analysis and comparative analysis, focusing on key aspects such as the concept and legal basis of talak redemption and its relationship with *khulu'* in Islamic jurisprudence, the role and authority of the *ḥakam*, juristic perspectives on the determination of the value of talak redemption, and the relevant Malaysian legal framework governing marital dissolution. The analysis compared interpretations across classical juristic sources and examined their relationship with Malaysian statutory provisions, relevant court decisions, and contemporary Shariah Court practice to identify similarities, differences, and practical implications.

To ensure rigour and transparency, the provenance and relevance of the selected sources were carefully considered, while differing juristic opinions and legal approaches were comparatively examined where applicable. The conclusions were derived from the synthesis of the jurisprudential and legal materials, with emphasis on Shariah-based justifications and the development of practical considerations for a fairer and more consistent determination of the value of talak redemption by the *ḥakam* in Malaysian Shariah Courts.

RESULT AND DISCUSSION

MALAYSIAN LEGAL FRAMEWORK GOVERNING THE APPOINTMENT OF *ḤAKAM* AND THE DETERMINATION OF TALAK REDEMPTION

In Malaysia, the legal provisions for the appointment of *hakam* and the determination of the value of talak redemption are situated within the Islamic family law framework. Islamic family law falls within the legislative jurisdiction of the states under Malaysia's constitutional framework, resulting in the enactment of separate Islamic family law legislation across the states. Although the relevant statutory provisions may differ in their numbering and formulation, the provisions generally regulate matters relating to marital disputes, divorce proceedings, and the appointment of *hakam*. The Shariah Court is given authority under the applicable legal framework to handle Muslim divorce cases, including matters involving the appointment of *hakam* when there is a serious dispute (*shiqāq*) between husband and wife. The authority given to the Shariah Court reflects the legal recognition of Shariah-based mechanisms for marital dispute resolution, particularly those directed towards reconciliation and the resolution of persistent marital conflict.

Legal Provisions Relating to the Appointment of *Hakam*

Section 48 of the Islamic Family Law Enactment (State of Selangor) 2003 provides a statutory framework for arbitration by *hakam*. Based on the enactment, where the Court is satisfied that persistent quarrelling (*shiqāq*) exists between the parties to a marriage, the Court may appoint two arbitrators or *hakam* to act for the husband and wife respectively. Comparable provisions concerning arbitration by *hakam* also appear in the Islamic family law frameworks of other Malaysian states, although their precise wording and procedural operation should be understood according to the applicable state legislation.

The appointed *hakam* is responsible for undertaking efforts to reconcile the dispute between the husband and wife. The *hakam* must also act within the statutory and procedural framework governing the arbitration process. If efforts to reconcile fail, further action concerning the dissolution of the marriage remains subject to the powers conferred under the applicable enactment and the supervision of the Shariah Court. Accordingly, the role of the *hakam* may extend beyond reconciliation in circumstances recognised by the relevant legal framework.

The statutory framework also provides mechanisms for the Court to address situations in which the appointed *hakam* are unable to agree or where the Court considers further intervention necessary, including the appointment of other *hakam* in accordance with the applicable provision. This demonstrates that the *tahkīm* process operates within judicial supervision rather than as an entirely independent mechanism outside the Shariah court system. The conduct of the arbitration process is likewise governed by specific procedural requirements concerning participation and representation, reflecting the distinctive nature of *tahkīm* in marital disputes.

The Position of Talak Redemption under Islamic Family Law

The Islamic Family Law Enactment (State of Melaka) 2002 contains a specific provision concerning divorce by redemption or *khulu'*. Under the relevant statutory framework, where the parties agree to a divorce by redemption, the dissolution involves payment of an amount of redemption money agreed upon between the spouses. Where disagreement arises concerning the amount, the Court may assess the amount in accordance with the applicable statutory considerations. This legal arrangement demonstrates that the determination of the value of talak redemption may involve both party agreement and judicial assessment, depending on the circumstances of the case.

Divorce through talak redemption or *khulu'* is generally treated as an irrevocable divorce (*ṭalāq bā'in sughrā*) within the applicable legal framework. More importantly for the present study, the statutory treatment of talak redemption does not establish a single fixed monetary

amount applicable to every case. Instead, the determination may require consideration of the circumstances recognised under the relevant legal provision.

Although the Islamic family law enactments provide legal mechanisms for the Court and, in relevant proceedings, the *hakam* to address marital disputes and dissolution, the enactments do not necessarily prescribe clear and consistent criteria for determining the value of talak redemption across different cases and jurisdictions. This allows the amount to be considered in light of the circumstances of the parties and the applicable statutory framework. However, the absence of sufficiently clear criteria may raise concerns regarding consistency in the determination of the value across different cases.

Islamic family law enactments in Malaysia are therefore significant in establishing the legal basis for marital dissolution and the relevant institutional roles of the Shariah Court and *hakam*. However, the statutory framework does not appear to provide detailed and consistent guidance on the considerations relevant to determining the value of talak redemption. This can affect the consistency and transparency of the determination process where the basis for assessing the amount is not clearly articulated. Although the *hakam* may perform important functions within the dispute resolution process, any role concerning marital dissolution and related determinations must be understood within the applicable statutory framework and the supervisory authority of the Shariah Court.

Implications of the Legal Framework for the Determination of Talak Redemption

The implications of the legal provisions relating to the determination of the value of talak redemption are closely connected to the manner in which statutory discretion and the *hakam* process are implemented in practice. Where clear and consistent criteria are lacking, the quality of the determination may depend on the proper assessment of the circumstances of the case and the application of relevant Shariah and legal considerations. If the appointed *hakam* does not have sufficient knowledge and understanding, it can result in concerns regarding fairness and dissatisfaction in the resolution of marital disputes. This highlights the importance of appropriate competence, procedural clarity, and judicial supervision in matters that may affect the rights and interests of both spouses.

The Shariah Court therefore plays an important role in supervising the operation of the *hakam* mechanism within the applicable legal framework. Legal provisions alone may not ensure consistent outcomes where the considerations relevant to the assessment of the value of talak redemption are insufficiently articulated or applied inconsistently. Clearer administrative and procedural guidance may therefore assist in identifying the relevant considerations for determining an appropriate value of talak redemption while allowing the circumstances of individual cases to be taken into account.

Therefore, the Islamic family law framework in Malaysia provides a legal basis for the appointment of *hakam* and the handling of marital disputes and divorce proceedings, including divorce by talak redemption. However, the legal provisions relating to the determination of the value of talak redemption remain an area requiring further clarification, particularly regarding the considerations that should guide the assessment of an appropriate amount. Greater consistency in procedural guidance across relevant jurisdictions may assist decision-makers while preserving sufficient flexibility to account for the circumstances of each case. Strengthening the role of the Shariah Court in supervising the *hakam* process and relevant decisions within the applicable legal framework is important to ensure fairness and consistency in the determination of the value of talak redemption.

DETERMINATION OF THE VALUE OF TALAK REDEMPTION BY THE *HAKAM*

The regulations relating to the appointment and duties of *hakam* in Malaysia are governed by state Islamic family law enactments, as well as relevant procedural and practice directions within the Malaysian Shariah judicial framework. Within this framework, the *hakam* performs a significant role in addressing disputes between spouses and facilitating the resolution of persistent marital conflict (Hashim et al., 2024). The *hakam* must carry out the assigned duties with due regard to fairness and the facts and circumstances of the dispute before reaching any recommendation or decision within the scope of the applicable legal framework. Where the dispute involves the dissolution of marriage and questions concerning the value of talak redemption, the determination of an appropriate value requires careful consideration of the relevant circumstances rather than the automatic application of a fixed amount.

Factors Relevant to the Determination of the Value of Talak Redemption

Based on the jurisprudential and legal materials examined in this study, several factors may be relevant to determining the value of talak redemption. One relevant consideration is the financial circumstances of the parties. An assessment of income, financial commitments, and current economic circumstances may assist in preventing the redemption amount from operating in an oppressive or unreasonably burdensome manner. However, such financial considerations should be assessed according to the applicable legal framework and the particular facts of each case rather than treated as binding criteria in every case.

The next factor is the value of the dowry. The value of the dowry given during the marriage contract may serve as a relevant reference point in determining the value of talak redemption. This reference is supported by the hadith of the Prophet Muhammad SAW about the story of the wife of Thābit ibn Qays, in which the return of the garden previously given to her formed part of the *khulu'* arrangement (Kusmidi, 2018). However, the value of the dowry is not necessarily a fixed measure applicable to every case, as the juristic perspectives examined earlier demonstrate differences concerning the permissible amount and basis of compensation.

Determining the value of talak redemption may also require consideration of the circumstances of the wife and the consequences of the proposed amount. This may include relevant financial dependence, existing family responsibilities, and other circumstances affecting her position following the dissolution of marriage. Such considerations are relevant to ensuring that the determination does not operate in a manner that unfairly prejudices the rights and interests of either party. Nevertheless, these factors should not be presented as automatically binding criteria unless expressly recognised by the applicable statutory or procedural framework.

The *hakam* may also need to consider the duration and circumstances of the marriage and the causes underlying the marital conflict, where these matters are legally and factually relevant to the determination. Where the husband's conduct, including a failure to fulfil marital responsibilities, is relevant to the circumstances of the marital breakdown, particular care may be required to avoid imposing a redemption amount that unfairly burdens the wife. This consideration is consistent with the broader juristic concern, identified in the literature review, that the compensatory element associated with talak redemption should not become an instrument of injustice or exploitation.

Taken together, these considerations indicate that the determination of the value of talak redemption should not be based on a single fixed approach. The *mahr* may provide an important reference point, while the financial circumstances of the parties, the causes and context of the marital breakdown, and other legally relevant circumstances may also require consideration. The

appropriate weight given to each factor should depend on the applicable legal framework and the facts of the individual case.

Divorce Cases Involving Talak Redemption in Malaysia

The case of *Ervin Ahbabovic v. Amalya Evelyn Abdullah* provides a relevant example of a marital dissolution involving talak redemption and an agreed redemption amount. The parties married on 30 November 2002 and subsequently experienced marital conflict. Following the breakdown of the marriage, they divorced on 6 January 2010 through talak redemption proceedings. The materials referred to in this study indicate that the parties agreed to a redemption payment of RM10,000.

The significance of the case for the present study lies in the fact that the amount of RM10,000 arose from an agreement between the parties rather than from a fixed amount prescribed for all talak redemption cases. The case therefore illustrates the practical role of party agreement in determining the redemption amount. At the same time, it should not be treated as establishing RM10,000, or any proportion derived from that figure, as a general benchmark for other cases. Each determination remains dependent on its own factual and legal circumstances.

PROPOSED CONSIDERATIONS FOR DETERMINING AN APPROPRIATE VALUE OF TALAK REDEMPTION

The proposed approach to determining the value of talak redemption is based on the juristic views, existing Malaysian legal framework, and relevant considerations identified through the preceding analysis. This suggestion is made to create a more structured approach to determining the value of talak redemption in cases involving a *hakam* in the Shariah Court in a manner that is fair, reasonable, and consistent with Islamic law. In addition, a clearer framework may strengthen the role of the *hakam* and enhance consistency in resolving disputes between spouses.

One relevant reference point for determining the value of talak redemption is the original *mahr*. The original property or consideration given within the marriage may serve as an initial reference rather than a fixed minimum amount applicable to every case. The suggestion to consider the original *mahr* as a reference point is supported by the hadith of the wife of Thābit ibn Qays, where the garden previously given to her was returned as part of the *khulu'* arrangement. However, the facts of this hadith should not be interpreted as establishing that 100 percent of the original *mahr* must constitute the minimum amount in every case of talak redemption. Instead, the *mahr* may function as a relevant reference point to be considered alongside other legally and factually relevant circumstances.

In addition, the appropriate value of talak redemption may also be determined according to the financial circumstances of the parties. The *hakam* appointed to address the dispute and, where legally authorised, participate in matters relating to the determination of the value of talak redemption may examine relevant financial circumstances, including income and existing financial commitments. This may assist in making adjustments according to the actual circumstances of the case. Such an assessment should be directed towards preventing the redemption amount from unfairly burdening either party.

The wife's financial circumstances and relevant welfare considerations may also require attention in determining the value of talak redemption. The *hakam* may need to consider the wife's circumstances, particularly where the proposed amount may significantly affect her financial position. If the wife is financially vulnerable, the value of talak redemption should be assessed reasonably and with due regard to the applicable legal and Shariah considerations. This

is to protect the rights and welfare of the wife, especially where relevant family responsibilities and financial obligations exist.

Finally, the determination of the value of talak redemption may also take into account the duration and circumstances of the marriage where these factors are relevant to the case. For example, the *hakam* may consider whether the length of the marriage, the circumstances of the marital breakdown, and the respective positions of the spouses provide relevant context for assessing an appropriate amount. However, the duration of marriage should not automatically increase or decrease the value of talak redemption without a clear connection to the facts and applicable legal considerations.

Based on these findings, this study proposes a structured but flexible approach for determining the value of talak redemption. The proposed approach consists of four principal considerations: (i) the original *mahr* as a reference point rather than a mandatory minimum; (ii) the financial circumstances of the parties where legally relevant; (iii) the causes and circumstances of the marital breakdown; and (iv) the need to avoid injustice, exploitation, or unreasonable hardship. Such an approach allows appropriate discretion while providing clearer considerations to support greater consistency and transparency in the determination of the value of talak redemption in Malaysian Shariah Court practice.

CONCLUSION

In conclusion, this article discusses the concept of talak redemption and its jurisprudential relationship with *khulu'* in Islam, as well as the role of *hakam* in matrimonial dispute resolution, particularly in relation to the determination of the value of talak redemption in divorce cases before the Shariah Court. Analysis of the evidence from the Qur'an and hadith, classical juristic perspectives, and relevant Malaysian Islamic family law provisions demonstrates that talak redemption is recognised within the framework of Shariah, with the jurisprudential concept of *khulu'* providing an important basis for understanding its compensatory element. The role of *hakam* is also important within the applicable legal and procedural framework, particularly in addressing persistent marital disputes and facilitating an appropriate resolution where reconciliation is no longer achievable.

The findings of this study show that the absence of clear and consistent considerations for determining the value of talak redemption may raise concerns regarding consistency and transparency across different cases and jurisdictions. Although flexibility allows the circumstances of individual cases to be considered, the lack of sufficiently clear guidance may lead to uncertainty in the determination process. As an improvement from a legal and administrative perspective, appropriate training for *hakam* and clearer procedural guidance on the considerations relevant to determining the value of talak redemption may strengthen the role of *hakam* and increase consistency and transparency in handling relevant divorce cases.

The study further proposes a structured but flexible approach to determining the value of talak redemption. Relevant considerations may include the original *mahr* as a reference point rather than a mandatory minimum, the financial circumstances of the parties where legally relevant, the causes and circumstances of the marital breakdown, and the need to avoid injustice, exploitation, or unreasonable hardship. Such an approach recognises the juristic differences concerning *khulu'* compensation while preserving sufficient flexibility to account for the facts of individual cases within the applicable legal framework.

Ultimately, the determination of the value of talak redemption must be carried out fairly, reasonably, and in accordance with Shariah principles to protect the welfare and dignity of the

parties involved. Clearer and more consistent considerations may assist the ḥakam and the Shariah Court in ensuring that the amount determined does not unfairly burden either spouse.

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