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Exploring the Social and Economic Implications of Talaq in Islamic Law

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ABSTRACT

This literature research aims to conduct an in-depth review of the literature and academic studies that discuss aspects of talaq in Sharia law, particularly emphasizing the phenomenological understanding of the social implications of worship involved in the talaq process. This research adopts a descriptive-analytical approach to literary sources, including scientific journals, books, articles, and related publications covering various viewpoints on talaq in the context of sharia law. Critical analysis identifies and analyzes views, viewpoints, and emerging issues concerning women's rights in the talaq process. The results of this study outline the diverse perspectives, approaches, and controversies that exist in talaq-related literature while highlighting the need for further emphasis on aspects of women's rights protection, empowerment, and efforts to achieve social justice in the context of sharia law.

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1. INTRODUCTION

Talaq, or divorce in Sharia law, is a complex and sensitive aspect, especially regarding women's rights (Darmawan et al., 2023; Wahyuddin & Kusuma, 2023). Talaq is not only a legal process but also reflects social, cultural, and humanitarian dynamics involving women's rights in the context of divorce (Jalaludin, 2015). Phenomenology, as a philosophical approach that focuses on a deep understanding of individual experiences, can be a relevant method for understanding the implications and impact of talaq on women's rights in Sharia law (Narayana

The phenomenological approach offers an analytical framework that allows for the holistic exploration of the experiences, thoughts, and feelings of women involved in divorce proceedings according to Sharia law. In this context, this study aims to trace the reality of women's experiences facing talaq and understand the changes that occur after divorce. The main focus of the study is to analyze how women's rights in Sharia law are reflected in the context of talaq, as well as to understand the social, psychological, and economic impacts they may experience post-divorce.

Literature and academic studies that discuss talaq in Sharia law with a phenomenological approach to women's rights include works such as "An Islamic Feminist Critique of the Work of Nawal El Saadawi" by Shehata (2021), "Muslim women's activism: A comparative study of the educated female perceptions in Malaysia and Pakistan/Aurangzaib Alamgir" by Aurangzaib (2015), and "Believing Women" in Islam: Unreading Patriarchal Interpretations of the Qur'an" by Barlas (2019). These three works have different focuses on explaining talaq in Sharia law, considering feminist perspectives and interpretations of Qur'anic texts. Shehata discusses the concept of talaq, emphasizing Islamic feminism, while Aurangzaib conducts comparative studies of divorce law in Malaysia and Pakistan. Meanwhile, Barlas took note of patriarchal interpretations of Qur'anic texts and proposed alternative, more inclusive approaches to women's rights. Through a phenomenological approach, these three works provide a deeper understanding of women's experiences in the context of divorce in sharia law.

This study explores the subjective perspectives of women involved in the divorce process. The study aimed to infer the social and economic implications of divorce for women, which manifest as significant changes in social status that can give rise to stigma and social discrimination, as well as affect social relations and the maintenance of their social circle. This research can contribute more comprehensively to understanding the protection and fulfillment of women's rights in the context of talaq in Sharia law. This research also intends to provide in-depth insights for policymakers, legal practitioners, and the broader community on aspects that need to be considered in improving the protection and welfare of women in divorce situations according to Sharia law principles.

2. METHODS

This research adopts a qualitative approach with a phenomenological study design to explore women's experiences in the context of talaq in Sharia law. Researchers will use participatory observation techniques and analyze relevant literature sources to collect data. A phenomenological approach will analyze the data to identify patterns, themes, and meanings related to women's rights and social, psychological, and economic impacts post-talaq. The main objective of this study is to provide a deeper understanding of women's perspectives in talaq situations and provide insights on how to improve women's protection and well-being in the context of Sharia law. Through this approach, the research is expected to make a significant contribution to the development of policies that are more pro-women and increase understanding of the challenges faced by women in the context of divorce according to Sharia law.

3. RESULTS AND DISCUSSION

Epistemologists Phenomenologists

Phenomenological epistemology is an approach to the philosophy of knowledge that emphasizes the importance of subjective interpretation in understanding human experience. The focus is on how we acquire knowledge about the world through direct experience, perception, and subjective interpretation of the phenomena we experience (Zaprul Khan, 2016). This approach rejects the view of objectivism, which views knowledge as an objective reflection of external reality and recognizes that knowledge is influenced by subjective interpretations of experience (Rorong, 2020). Phenomenological epistemology expands understanding of the world by incorporating subjective dimensions associated with individual experience. Direct experience, perception, and subjective interpretation form the foundation of a person's knowledge. In addition, phenomenological epistemology also recognizes that our experiences and understanding are influenced by social, cultural, and historical contexts, so considering relevant situations and contexts is essential in understanding phenomena (Adian, 2016). In research and study, phenomenological epistemology is used as a conceptual framework for understanding the subjective perspectives involved in a particular phenomenon.

In phenomenological epistemology, knowledge is considered the result of the interaction of the subject with the surrounding world. Knowledge is acquired through objective observation or analysis, direct experience, and the subject's reflection on the experience. The subject is an essential center in phenomenological epistemology, as the understanding and interpretation of the subject form the basis of acquired knowledge (Zaprul Khan, 2016).

Phenomenological epistemology also emphasizes the importance of context and situation in understanding experience. Each experience is considered unique and related to the social, cultural, and historical context that influences it. Therefore, in phenomenological epistemology, knowledge cannot be separated from its context, and a deep understanding of phenomena can only be achieved through research involving the subject's active participation and knowledge of the relevant context (Rorong, 2020).

In social research and the humanities, phenomenological epistemology is used as a conceptual framework for understanding the experiences and perspectives of subjects involved in specific phenomena. This approach allows researchers to gain a more profound and detailed understanding of complex social realities and pay attention to the role of individual interpretation, meaning, and experience in understanding the phenomenon.

Talaq

Talaq is a term in Islamic law that refers to divorce or dissolution of marriage in the context of Islamic family law (Darmawijaya & Nordin, 2018). Talaq is a recognized way in Islamic law to end the marriage bond between a husband and wife. In Islamic law, talaq has procedures and provisions to be followed. Conventionally, the husband can perform talaq by giving a talaq statement to the wife orally or in writing and in the presence of witnesses or competent religious authorities (Farid et al., 2023). However, the talaq process can be done through courts or sharia law institutions (Azizah, 2017).

Talaq has significant implications for the social life and law of Muslim families. In some cases, talaq can be unilaterally enforced by the husband without the wife's consent or involvement. However, there are variations in the interpretation and practice of talaq in different countries and Islamic legal traditions. Some countries have implemented stricter restrictions and provisions regarding talaq, while others still maintain more traditional practices (Darmawan et al., 2023).

The regulation of talaq plays a crucial role in addressing women's rights within Islamic family law. In the context of talaq, concerns such as inheritance rights, financial support (bread), child custody, and property rights often come to the forefront. Interpretations and implementations of talaq-related laws can vary significantly, leading to disparities in how women's rights are upheld during the divorce process. However, ongoing efforts are aimed at advocating for the protection

and justice of women within the talaq process. These efforts involve initiatives to reform existing laws, promote gender-sensitive interpretations of religious texts, and enhance legal frameworks to ensure women's rights are safeguarded and respected throughout the talaq process.

In Indonesia, talaq is regulated in Law Number 1 of 1974 concerning Marriage (Marriage Law) (Rodliyah, 2014). Talaq in Indonesian law refers to divorce in the context of Islamic family law. According to the Marriage Law, talaq can be done either orally or in writing by the husband. Talaq applications must be submitted to a religious court or institution with authority in divorce cases. Talaq must also be done with *ijab qabul*, the husband's statement to divorce the wife (Azizah, 2017; Darmawan et al., 2023), before a judge or authorized official. In addition, the marriage law stipulates the obligation of the husband to give written notice to the wife and present witnesses during the talaq process. During the talaq process, religious courts usually mediate to find the best solution for both parties.

In 2019, Indonesia enacted Government Regulation instead of Law (Perppu) Number 1 of 2019, which pertains to the Second Amendment to the Marriage Law. This regulatory measure signifies a significant legal development aimed at addressing and amending certain aspects of the country's existing marriage law. The issuance of Perppu Number 1 of 2019 reflects the government's commitment to enhancing and modernizing the legal framework governing marriage in Indonesia. By introducing amendments to the Marriage Law, Indonesia seeks to adapt to evolving societal norms, promote gender equality, and protect individuals' rights within the institution of marriage. This Perppu regulates the prohibition of unilateral talaq, which means that husbands cannot divorce their wives without going through the judicial process (Tondang, 2020).

Women's Rights

Women's rights about talaq can vary depending on the family and religious laws in force in a country. In some legal systems, talaq can provide certain rights to women, such as the right to bread, the right to child custody, and the right to compensation or compensation after divorce (Irianto, 2016). However, in some cases, talaq can also be a tool of oppression or provide inadequate protection for women (Mulyanti et al., 2023).

Talaq, within the framework of Islamic law, can serve as a mechanism to safeguard and uphold women's rights under certain circumstances, mainly when family law includes provisions specifically designed to protect women's interests. In such cases, talaq can offer women a form of legal recourse and protection in situations where they may face injustice or hardship within the marital relationship. These provisions may include requirements for fair distribution of assets, provisions for financial support, and safeguards against arbitrary or unilateral divorce. Some examples of protection that can be provided through talaq are (Darmawan et al., 2023):

1. **Right to bread:** Talaq can ensure that a divorced woman receives enough for herself and her children. This can include financial support, housing, and access to other resources necessary for a decent life.
2. **Child custody:** In some legal systems, talaq may grant child custody to women after divorce. This allows women to stay involved in their children's lives and make important decisions about their well-being.
3. **Rights of joint property:** If the joint property is acquired during the marriage, the talaq can arrange a fair division between husband and wife.
4. **Right to indemnity or compensation:** In some cases, talaq may give a woman the right to receive compensation or indemnity after a divorce, especially if she has suffered financial loss or hardship due to the divorce.

Women's rights are founded upon universal human rights principles. They are codified in numerous international instruments, including the Convention on the Elimination of All Forms

of Discrimination against Women (CEDAW) and the Universal Declaration of Human Rights. These instruments serve as crucial frameworks for promoting gender equality and combating discrimination against women in all spheres of life. By recognizing women's rights as fundamental human rights, these international agreements underscore the importance of ensuring equal opportunities, freedoms, and protections for women worldwide. They provide a legal and moral foundation for advocating gender equality, challenging discriminatory practices, and advancing women's societal empowerment.

The ability of Islamic law to adapt to this contemporary context encourages the importance of a comprehensive interpretation of religious texts and the use of appropriate methodologies in dealing with complex and new legal issues. Thus, these findings provide insight into the dynamic nature of Islamic law that can adapt to social change, therefore remaining relevant and giving relevant guidelines for Muslims in various times.

Interpretation of Law and Social Norms

Interpreting laws and social norms is crucial to a society's legal system and social life. Legal interpretation refers to understanding and interpreting existing legal texts, constitutions, laws, regulations, or court decisions. In legal interpretation, judges, jurists, and other legal institutions play essential roles in interpreting and applying these legal texts to concrete cases. Legal interpretation is also influenced by legal principles, approaches, and norms prevailing in a legal system. In addition, social norms also play a role in legal interpretation because social norms that exist in society can affect the understanding and application of law by legal actors.

Social norms refer to the unwritten rules that govern behavior and social interaction in a society. Social norms develop from the values, customs, and traditions society holds. Individuals and groups interpret social norms, which may vary depending on the context of the cultural, religious, and social environment. In the interpretation of social norms, there is an influence from the process of socialization, education, and individual life experiences that shape the understanding and application of social norms. Social norms can also affect legal interpretation because social norms held by society can be a foundation or reference in the formation and implementation of law (Darmawan et al., 2023).

Overall, the interpretation of laws and social norms are interrelated and influence each other in shaping a society's behavior and social life. Legal interpretation is based on legal texts and is influenced by legal principles, legal approaches, and social norms that exist in society. Meanwhile, the understanding of social norms is influenced by the values, customs, and traditions held by society and can affect the interpretation of law by legal actors.

The interpretation of Sharia law is based on primary sources such as the Quran, Hadith, and Islamic law principles. Islamic jurists and scholars have a crucial role in interpreting such texts to determine the procedures and requirements associated with talaq. The interpretation of this law may vary depending on the school or approach followed by the society or individual.

In addition to legal interpretation, social norms influence the understanding and practice of talaq in societies that apply Sharia Law. Social norms in societies that adopt Sharia Law can provide additional guidance and limitations in the context of talaq. For example, social norms can influence perceptions and judgments regarding legitimate reasons for talaq, procedures to be followed, and rights and protections afforded to women in divorce.

The interaction between legal interpretation and social norms about talaq in Sharia Law can influence how talaq is implemented in daily practice. Different interpretations of the law and diverse social norms between different societies or groups can result in diverse approaches to dealing with talaq. Therefore, a comprehensive understanding of legal interpretations and social

norms in the context of talaq in Sharia Law is essential to ensure protection and justice for all parties involved in these divorce proceedings.

Social and Economic Implications

The social and economic implications for women going through divorce include far-reaching impacts on their social, economic, and psychological lives. Not only does divorce impact significant social status changes for women, but it also poses challenges in obtaining financial support and accessing resources after divorce. Socially, divorce can lead to changes in women's interpersonal relationships and social environment and may increase the risk of stigmatization and discrimination. Economically, divorce often results in loss of source of income, difficulty finding work, and struggle for equitable economic rights, such as joint property or financial support from an ex-spouse. In addition, in the psychological dimension, divorce can create stress, anxiety, and depression, as well as difficulties in rebuilding self-confidence and emotional stability.

Access to resources is also essential after divorce, especially for women undergoing a new life transition. After divorce, women often face difficulties in accessing safe and affordable housing, mainly if they previously lived with their partners. In addition, access to education can be essential for acquiring new skills or increasing employment opportunities. Similarly, women going through divorce may need good access to health services to look after their physical and mental well-being during this transition. Social support is also crucial in helping women overcome their difficulties, both in the form of emotional and practical support.

Psychologically, divorce can also have a significant impact on women. The divorce process can be a great source of stress, as it involves adjusting to substantial changes in their lives. Women going through divorce may experience deep feelings of loss, not only related to the end of the marriage relationship but also related to shattered hopes and dreams of the future. They may feel traumatized by the failure of their relationships and have difficulty understanding and accepting the change. In addition, feelings of anxiety about their future and how they will cope with new challenges can also be a heavy burden. Depression can also be a severe impact of divorce, with women possibly experiencing deep feelings of sadness, lack of interest in daily activities, and possibly even experiencing feelings of hopelessness.

Studies in different countries show that the psychological impact of divorce can vary depending on the cultural, social, and economic context of each country. For example, a study conducted in the United States found that women who experience divorce often experience higher rates of depression than men who experience divorce and that these levels of depression can persist for an extended period after divorce. In countries in Asia, such as Japan or South Korea, divorce is still considered a social stigma, which can exacerbate the psychological impact for women who experience it, including feelings of shame, isolation, and difficulty in rebuilding their lives. In countries with high poverty rates, such as some countries in Sub-Saharan Africa, divorced women may face extra challenges in seeking psychological support and access to resources necessary for recovery due to the lack of accessibility and availability of adequate mental health services.

For example, after a divorce, a housewife finds herself having to readjust her social status, which was previously closely related to roles in marriage. Economic hardship is also common, especially for those who depend on their husbands for family income. In some cases, seeking fair financial support from an ex-spouse can be a formidable challenge, often associated with complicated and expensive legal proceedings. Not only that, psychologically, divorce can cause stress, anxiety, and depression, especially for single mothers who feel alone in parenting children and feel failed in the marriage relationship.

In the face of these social and economic implications, communities and governments need to provide support and protection for women going through divorce. This includes providing social support, access to fair legal services, job training, and financial assistance. These efforts should

help women recover their lives, build economic independence, and support healthy social and psychological lives after divorce.

4. CONCLUSION

The social and economic implications of divorce for women manifest as significant changes in social status that can lead to stigma and social discrimination, as well as affect social relations and the maintenance of their social circles. From an economic perspective, divorce can result in loss of income sources, difficulty finding work, and struggle to obtain fair economic rights. Access to resources such as housing, education, health care, and social support also becomes difficult after divorce. In the psychological dimension, divorce can create stress, anxiety, and depression, as well as difficulty in rebuilding self-confidence. Therefore, protection, social support, fair legal services, job training, and financial assistance are essential for women going through divorce. These efforts aim to support the recovery process, strengthen the economy, and promote social and psychological well-being for women after divorce, according to a phenomenological view that emphasizes a deep understanding of individual experiences in the context of divorce.

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