



A SOCIO-LEGAL STUDY ON FINANCIAL RIGHTS
OF MUSLIM DIVORCED WOMEN AND ITS EFFECTS
ON FAMILY WELFARE

BY

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the degree of Doctor of Philosophy in Law

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ABSTRACT

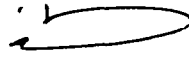
The purpose of this study is two-fold: Firstly, to examine the law relating to financial rights of the divorced Muslim women in terms of *'iddah* maintenance, arrears of maintenance, *mut'ah*, and child maintenance. Secondly, to assess the welfare of the women after divorce i.e., satisfaction with the amount of financial supports; satisfaction with the ex-husbands' compliance to court orders on financial supports; satisfaction with post-divorce welfare (level of economic strain and level of depression); relationships between satisfaction with the amount of financial supports and post-divorce welfare; and relationships between satisfaction with the ex-husbands' compliance to court orders and post-divorce welfare. This study adopts the qualitative and quantitative methods that are necessary for a socio-legal research. The qualitative method draws data from the Syariah principles, classical texts of the Muslim jurists, contemporary legal writings, the Malaysian Islamic family laws, legislations from other jurisdictions where Islamic law is applicable, and case law. The quantitative method employs the statistical tool, i.e., Statistical Package for Social Sciences (SPSS) for Windows Program Version 13.0 to collect data on the welfare of the divorced women. Two statistical procedures, i.e., descriptive and inferential statistics were used to analyze the empirical data. The findings of this study suggest that the Syariah judges should develop their judgments on financial supports' cases based on the welfare principle (*maṣlahah*) as articulated by the classical Muslim jurists. Such principle should be construed within the meaning of the current contexts of economic needs, social demands, and psychological effects of divorce on women and applied the best approach for which safeguarding human welfare is the primary aim of the *maqāṣid al-Sharī'ah*. The Pearson's Product Moment Correlation Coefficient employed for the empirical data suggests two factors that are negatively correlated with the economic welfare of the divorced women i.e., the dissatisfaction with the amount of financial supports and the dissatisfaction with the ex-husbands' compliance to court orders particularly on *'iddah* maintenance, *mut'ah*, and child maintenance. The findings indicate that the assessment of a reasonable sum of financial supports and the effective enforcement of court order are the significant factors that might augment the economic welfare of the women after divorce. Hence, the typically low amount of financial supports ordered by the Syariah court should be reviewed by providing clear guidelines on the factors that need to be considered based on the demand in the contemporary society. Besides, tougher enforcement action by prosecuting the unruly ex-husbands and the establishment of administrative machinery might assist the divorced women to effectively enforce the court order.

ملخص البحث

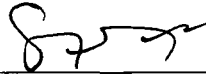
الهدف من هذه الدراسة أمرين أولهما: لفحص القانون المتعلق بالحقوق المالية للمرأة المطلقة من حيث نفقة العدة والمؤخر والمتاع ونفقة الطفل. ثانياً: لتقييم الرعاية الاجتماعية للمرأة ما بعد الطلاق ، بمعنى الرضاء من مبلغ النفقة، الرضاء من التزام الزوج السابق بدفع النفقة التي قررته المحكمة؛ الرضاء بالوضع الاجتماعي بعد الطلاق (المستوى التوتر الاقتصادي و مستوى الكساد) ، العلاقة بين الرعاية في مرحلة ما بعد الطلاق والرضاء من مبلغ النفقة، والعلاقة بين الرعاية في مرحلة ما بعد الطلاق والرضاء من زوجها السابق من امثاله لدفع النفقة التي قررته المحكمة. تتبنى هذه الدراسة الطرق النوعية الضرورية للبحوث الاجتماعية القانونية. ويتم توجيه هذه الطرق النوعية من مبادئ الشريعة الإسلامية، والنصوص الدينية، كتابة القوانين المعاصرة، وقوانين الأسرة الإسلامية في ماليزيا، وغيرها من التشريعات القانونية حيث تطبق الشريعة الإسلامية والقضايا السابقة. استخدمت أداة الأساليب النوعية الإحصائية، (SPSS) 13.0 لجمع البيانات عن الراحة الاجتماعية للمرأة المطلقة. نتائج هذه الدراسة تشير إلى أن القضاة يجب أن يطوروا الأحكام القضائية على قضية تقدير مقدار النفقة المالية مستندة على مبدأ المصلحة ويفسر ضمن المعنى المقصود في السياق الحالي للاحتياجات الاقتصادية والاجتماعية والآثار النفسية للطلاق على المرأة. استخدام منتج معامل الارتباط اللحظي لبيرسون للبيانات التحريية تشير إلى أن هناك عاملين سلبيان يرتبطان بالرفاهية الاقتصادية للمرأة المطلقة ، بمعنى عدم الاستياء بمقدار مبلغ النفقة في مرحلة ما بعد الطلاق (من حيث نفقة العدة والمتاع ونفقة الطفل) أو الاستياء من عدم التزام الزوج السابق بدفع النفقة بشكل دوري التي قررته المحكمة. تشير النتائج بأن تقييم مبلغ النفقة المعقول والتنفيذ الفعلي لأمر المحكمة هي من العوامل الهامة التي يمكن أن تزيد من الراحة الاقتصادية للمرأة بعد الطلاق. من ثم، مبلغ النفقة المنخفض الذي قرره المحكمة الشرعية ينبغي إعادة النظر في الحكم الذي أمرت به المحكمة الشرعية وتزويد التعليمات الواضحة والعوامل الضرورية التي ينبغي النظر فيها على أساس الطلب عليها في المجتمع المعاصر. وعلاوة على ذلك ، تطبيق إجراءات صارمة وملاحقة جادة للأزواج السابقين ، وإنشاء آلية إدارية يمكن أن تساعد بشكل فعال المطلقات لإنفاذ أمر المحكمة المقرر لها.

APPROVAL PAGE

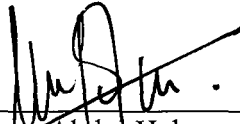
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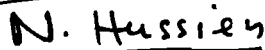


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DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degree at IIUM or other institutions.

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Arahan Amalan Mahkamah Syariah No. 5 Tahun 2006
Arahan Amalan Mahkamah Syariah No. 14 Tahun 2007

LIST OF ABBREVIATIONS

<i>a.s</i>	(<i>'alaihissalām</i>): upon him peace
AIFS	Australian Institute of Family Studies
AIR	All Indian Reports
app.	Appendix
BLD	Bangladesh Law Decisions
BNM	<i>Bank Negara Malaysia</i>
CPDS	Centre for Poverty and Development Studies
Cr. L.J.	Criminal Law Journal
DBP	<i>Dewan Bahasa dan Pustaka</i>
ed./eds.	editor/editors
edn.	Edition
EPU	Economic Planning Unit
et al.	(et alia): and others
F.M.S	Federated Malay States
FMSLR	Federated Malay States Law Reports
GH	general hypothesis
i.e.	that is
ibid	(ibidem): in the same place
id	(idem): the same below
IIDL	International Islamic Digital Library
IIT	International Institute of Islamic Thought
IKIM	<i>Institut Kefahaman Islam Malaysia</i>
JAKESS	<i>Jabatan Kehakiman Syariah Selangor</i>
JAKIM	<i>Jabatan Kemajuan Islam Malaysia</i>
JH	<i>Jurnal Hukum</i>
JKSM	<i>Jabatan Kehakiman Syariah Malaysia</i>
JMBRAS	Journal of Malayan Branch of the Royal Asiatic Society
KPWKM	<i>Kementerian Pembangunan Wanita, Keluarga & Masyarakat</i>
KWSP	<i>Kumpulan Wang Simpanan Pekerja</i>
MLJ	Malayan Law Journal
n.d.	no date
p.b.u.h	peace be upon him
PLI	Poverty Line Income
SH	sub-hypothesis
SSLR	Straits Settlements Law Reports
SUHAKAM	<i>Suruhanjaya Hak Asasi Manusia Malaysia</i>
trans.	translated by
UNDP	United Nations Development Programme
UNIFEM	United Nations Development Fund for Women
v	versus/against
vol./vols.	volume/volumes
WLUML	Women Living under Muslim World

LIST OF SYMBOLS

DF	degrees of freedom
N	number of elements in a population distribution
p	probability value
r	Pearson correlation coefficient
SD	standard deviation
α	alpha
χ^2	chi-square

TRANSLITERATION

ء	a	خ	kh	ش	sh	غ	gh	ن	n
ب	b	د	d	ص	ṣ	ف	f	ه	h
ت	t	ذ	dh	ض	ḍ	ق	q	و	w
ث	th	ر	r	ط	ṭ	ك	k	ي	y
ج	j	ز	z	ظ	ẓ	ل	l		
ح	ḥ	س	s	ع	‘	م	m		

Short Vowels		Long Vowels	
َ	a	ا + َ	ā
ِ	i	ي + ِ	ī
ُ	u	و + ُ	ū

CHAPTER ONE

INTRODUCTION

1.0 BACKGROUND OF THE STUDY

The family has always been the basic unit of a society. However, families in these days are portrayed by significant changes in terms of their composition, structure, and functions. In Malaysia, as in other countries, there has been an increase in the number of households headed by women, particularly due to separation and divorce.

The Department of Islamic Development of Malaysia reported that there are more than 10,000 divorce cases involving Muslims reported each year for the last decade.¹ Divorce statistics for Muslims from all States in Malaysia increased every year from 2002 to 2007. However, the State of Selangor still reports the highest divorce cases since 2002 compared to other States.² Furthermore, according to the mid-term review of the Eighth Malaysia Plan (2001-2005), the incidence of poverty among female-headed households in 2002 was 12.5% constituting 33,487 households.³

¹ *Statistic of Muslim divorces by States, Malaysia (1995-2007)* (JAKIM), <<http://www.islam.gov.my/informasi>> viewed on 12 February 2009.

² Ibid.

³ "Female-headed households" refers to single mothers including divorced women. See *Incidence of poverty & number of poor households 1999, 2002* (Ministry of Women, Family & Community Development), <<http://www.kpwkm.gov.my>> viewed on 12 May 2006. See also the discussion on the 2005 revised Poverty Line Income for Malaysia in which the PLI is different based on States and stratum in Sa'idah Hashim, "Defining and measuring poverty," paper presented at the International Workshop of the UNDP/EPU/CPDS on Sharing Malaysia's Best Practices in Eradicating Poverty, 5 -14 November 2007 at 2 – 25; Noriyah Ahmad et al., *Malaysia: Measuring and monitoring poverty and equality*, (EPU-UNDP, Monograph 1), 2007 at 21 – 34.

Researches by social scientists around the world for several decades have indicated the relationship between divorces and the deprived economic conditions as well as psychological distress suffered by women after separation.⁴ In this regard, the family law plays a major role not only in strengthening the family but also to provide various means in minimizing the unpleasant effects of the family break up.

Islamic law protects the rights of women and their children in the event of divorce. The decree of divorce, though, changes the status of the parties involved and carries with it certain personal rights and obligations particularly, which concerns the financial aspects. Thus, feelings of hurt and financial hardship experienced by Muslim women after divorce have been taken care of.⁵ As pointed out by one scholar, the term “family” in the Islamic context means:

A special kind of structure whose principles are related to one another through blood ties and /or marital relationships and whose relatedness is of such a nature as to entail mutual expectations that are prescribed by religion, reinforced by law and internalized by the individual.⁶

Therefore, there are certain expectations in terms of rights and obligations in every type of family system, which are usually carried out without question when a family is stable. However, the problems to fulfil these expectations often arise when a marriage has broken down. Since divorce will affect both partners as well as their children, the law has a role to play when those expectations are not properly carried out between the individuals concerned within the family.⁷

⁴ See for example, B.R. Strickland, “Women and Depression,” Vol. 1 (1992) *Curr Dir Psychol Sci* 133; Paul R. Amato, “The Consequences of Divorce for Adults and Children,” Vol. 62 No. 4 (2000) *J Marriage Fam* 1269.

⁵ Nik Noraini Nik Badli Shah, *Family law: Maintenance & other financial rights*, DBP, 1993 at 2; Asghar Ali Engineer, *The rights of women in Islam*, IBS Buku Sdn. Bhd., 1992 at 129.

⁶ Hammudah Abd al-Ati, *The family structure in Islam*, American Trust Publications, 1977 at 19.

⁷ Nik Noraini Nik Badli Shah, n. 5 at 1.