



The Impact of Illegal Divorce on Women's Rights According to the Compilation of Islamic Law

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Abstract

Divorce can be legally obtained through religious courts. However, many married couples still choose to divorce outside of court, a practice known as “illegal divorce.” As a result, the husband fails to fulfill his obligation to provide *iddah* and *mut'ab* maintenance to his wife. This study aims to investigate the impact of women's rights on *iddah* and *mut'ab* maintenance following illegal divorce in the village of Koto Panai. The research method employed is qualitative, utilizing a legal-empirical approach in the form of field research. The research informants include 5 families (husband and wife) post-illegal divorce, community leaders, and the Religious Affairs Office. Data collection methods include observation, interviews, and documentation. Data analysis was conducted through data reduction, data presentation, and conclusion drawing using triangulation techniques. The research results indicate that the impact of women's rights on *iddah* maintenance after illegal divorce is significant, both economically, psychologically, and socially. Illegal divorce can also have various negative impacts on women, men, and children. Illegal divorce can also have various negative impacts, not only on women and men, but also on children in families after illegal divorce. The causes are diverse, such as economic and communication factors. Meanwhile, the social impact of illegal divorce has negative consequences for women, such as loss of economic rights, child custody rights, and social stigma. Based on the results of this study, we identified the social impact of illegal divorce on women's rights, as well as an analysis of the factors that influence the social impact of illegal divorce on women's rights.

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INTRODUCTION

This phenomenon of illegal divorce also occurs among communities where women's rights are not fulfilled or neglected when divorce occurs (Pitria et al., 2023). The causes of society engaging in unregulated divorce include economic factors and infidelity, as well as an imbalance or mismatch between rights and obligations, which can trigger disputes and conflicts, ultimately leading to the dissolution of the marriage.

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There are still people who believe that divorce proceedings in court take a long time, and they do not want to go through the hassle of dealing with the court, due to a lack of legal awareness. Illegal divorce has negative and unexpected consequences that can harm various parties, as is the case with divorce (Maryati, 2022). The Hadith of the Prophet Muhammad states that divorce is permissible but disliked by Allah, as in the following Hadith:

عَنِ ابْنِ عُمَرَ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: أَبْغَضُ أَحْلَالَ إِلَى اللَّهِ عَزَّ وَجَلَّ الطَّلَاقَ. أَبُو دَاوُدَ وَابْنُ مَاجَه

Meaning: *From Ibn Umar, that the Prophet said, "The most hated thing to Allah 'Azza wa Jalla is divorce."* (HR. *Abu Dawud and Ibn Majah*).

Indirectly, Islam permits divorce, but on the other hand, it also expects that the divorce process should not be initiated by the married couple. An unregistered marriage cannot be registered with the Religious Court because it lacks legal validity from the outset (Mutiarany & Putri Ramadhani, 2023). In reality, society prefers to resolve personal issues quickly and without the hassle of handling them themselves (Sugiarto et al., 2023). Therefore, to resolve divorce issues, they entrust the matter to others deemed capable of handling it, such as community leaders or religious figures, as there is a perception that handling divorce is shameful, as it is a disgrace to oneself, without considering the validity of the divorce process they desire.

For most people, this method is considered to be in accordance with the proper procedure, because they lack knowledge and understanding of the correct divorce procedure (Engkizar et al., 2021). In addition to marriage being accompanied by evidence that the marriage has been solemnized, divorce must also be accompanied by a divorce certificate officially issued by the competent authority. This is because many divorces are still carried out informally or without following the official procedures of the competent authority, namely the Religious Court, resulting in divorce certificates that are suspected to be fake or not officially issued by the Religious Court.

There are many consequences of divorce outside of court. In this study, one of the consequences of illegal divorce is legal consequences, namely, according to the Marriage Law, divorce can only be carried out in court after the court has attempted and failed to reconcile the two parties (Bukido et al., 2023). Based on these provisions, since the Marriage Law came into effect on October 1, 1975, divorce outside of court procedures has not been possible. For a divorce to occur, there must be sufficient grounds that the husband and wife cannot live harmoniously as husband and wife (Habib, 2020; Ajisaputri, 2021). However, it appears that the enactment of the Marriage Law has not significantly impacted certain segments of society who are accustomed to obtaining divorces outside of court procedures, despite the fact that such divorces can have negative consequences (Syaifuddin et al., 2021).

Women's rights after divorce according to Article 149 of the Compilation of Islamic Law on Divorce that occurs due to a request for divorce from the husband to the wife (Engkizar et al., 2022; Nasriah et al., 2020). If the court grants the husband's request for divorce, the wife is entitled to: i) *mut'ab* or a reasonable gift from the former husband, either in the form of money or property to the former wife, ii) maintenance, maskan (housing) and kiswah (clothing) to the former wife during the *iddah* period or as decided by the court. iii) payment of the outstanding marriage dowry, iv) expenses for children under the age of 21, v) women are entitled to joint property, divided according to the provisions of Articles 96 and 97 of the Compilation of Islamic Law, and vi) women are also entitled to custody of children under the age of 12. Illegal divorce, or divorce that does not go through a valid legal process, is a fairly common social phenomenon in Indonesia. This practice, although not recognized by law, has significant social impacts, especially for women.

Based on the above provisions, the obligation of the former husband to provide adequate *mut'ab* to his former wife is imperative and inalienable, whether in the form of financial (money) or non-financial (tangible property) compensation, except in cases where, during their marriage, the wife was never consummated by her husband (*qabla al-dukhl*) (Amelia et al., 2024; Hamim, 2025). However, if the husband is unaware of his obligation or knows but is unwilling to fulfill it, it becomes extremely difficult for the wife to obtain her financial rights, as there is no legally binding authority that can compel the former husband to fulfill his obligation. There may be ways such as marriage validation, but this is certainly not easy, especially if the requirements cannot be met, and the parties do not support it, then marriage validation can be rejected. However, in reality, divorces still occur without going through the court process. Such circumstances inevitably lead to differing perceptions between religious law and the Marriage Law, particularly among those of the Islamic faith (Januartika et al., 2022; Rusydi, 2020). Therefore, this study aims to reduce the practice of "wild divorce" (divorce without legal proceedings) and ensure the fulfillment of women's rights after divorce or "*thalak*."

METHODS

The type of research used is qualitative with an empirical legal approach. Empirical legal is a legal research method that examines law not only from a normative or regulatory perspective, but also based on reality in the field, namely how the law is applied and functions in society (Sumarna & Kadriah, 2023). Data collection was conducted through observation and interviews with former wives and husbands to examine in depth the actual phenomena occurring and the conditions and rights of women post-divorce. The study utilized primary legal materials such as the Compilation of Islamic Law, Law No. 1 of 1974, and relevant government regulations related to the research subject, as well as secondary materials such as encyclopedias and dictionaries providing definitions within the scope of the research problem (Engkizar et al., 2024). Data analysis techniques were conducted using the Miles and Huberman analysis model, which consists of three main stages that occur simultaneously: data reduction, data presentation, and drawing and verifying conclusions (Thalib, 2022).

RESULT AND DISCUSSION

The Impact of Women's Rights on *Iddah* Maintenance After Illegal Divorce

Based on the author's findings on the impact of women's rights on *iddah* maintenance after illegal divorce based on the results of interviews with married couples, it is known that a wife is entitled to receive *iddah* maintenance from her husband. The majority of married couples interviewed answered this question positively. They stated that they were aware of *iddah* maintenance. They also understood that *iddah* maintenance is the right of a wife who has been divorced by her husband. Based on the interviews, it can be concluded that the majority of married couples are aware that a wife is entitled to receive *iddah* maintenance from her husband (Amal & Zulaicha, 2023; Faizah, 2021).

Iddah maintenance is the right of a wife who has been divorced by her husband. This maintenance is provided during the *iddah* period, which is three menstrual cycles or three months if the wife does not menstruate. *Iddah* maintenance aims to meet the wife's needs during the *iddah* period, such as food, drink, clothing, and shelter (Hasan, 2021). However, there are still some married couples who are unaware of *iddah* maintenance. This may be due to a lack of awareness about *iddah*

maintenance. Therefore, it is necessary to raise awareness about *iddah* maintenance among the general public, especially married couples

Women who are divorced without proper legal procedures are more likely to not receive *iddah* maintenance from their husbands (Rahman & Lubis, 2023; Sulalah & Halida, 2023). This is due to several factors, including women's lack of knowledge and understanding of their rights regarding *iddah* maintenance, limited access to legal and social institutions for assistance and support, and social pressure on women to accept divorce and not demand their rights (Mentari, 2024). The impact of not receiving *iddah* maintenance after an unlawful divorce can be felt by women economically, psychologically, and socially. According to the Compilation of Islamic Law, *iddah* maintenance is a right of women who have been legally divorced. The Compilation of Islamic Law stipulates that a husband is obligated to provide *iddah* maintenance to his divorced wife, whether the divorce is *talak raj'i* or *talak ba'in* (Heniyatun et al., 2020).

In cases of unlawful divorce, the husband does not fulfill his obligation to provide *iddah* and *mut'ah* maintenance to his wife. This is because unlawful divorce is an act that violates the law and is not recognized by the state (Nuroniayah, 2020; Suaidi, 2024). To improve the protection of women's rights to *iddah* maintenance after an unlawful divorce, several efforts need to be made, including increasing awareness about women's rights to *iddah* and *mut'ah* maintenance. Awareness can be raised on a large scale and continuously through various media, such as mass media, social media, and religious counseling, as well as improving women's access to legal and social institutions. Legal and social institutions need to provide assistance and support to women who wish to claim their rights regarding *iddah* maintenance, and raise public awareness about the importance of protecting women's right. Society needs to be made aware that divorce is not a disgrace and that divorced women have rights that must be protected. Based on the research underlying these findings, it supports the view that unlawful divorce is an act that violates the law and religious norms. Unlawful divorce can have various negative impacts on women, men, and children. One of the negative impacts of unlawful divorce on women is that they do not receive *iddah* and *mut'ah* maintenance from their husbands.

The Impact of Women's Rights on *Mut'ah* Maintenance After Illegal Divorce

Based on the author's findings on the impact of women's rights on *mut'ah* maintenance after illegal divorce, it is known that a wife is entitled to receive *mut'ah* maintenance from her husband. Based on interviews, it can be concluded that the majority of married couples are aware that a wife is entitled to receive *mut'ah* from her husband. *Mut'ah* is the right of a wife who has been divorced by her husband. This *mut'ah* is given as a form of appreciation, assistance, responsibility, affection, or compensation to the wife (Muhajir & Kamil, 2021). However, there are still some married couples who are unaware of *mut'ah*. This may be due to a lack of awareness about *mut'ah*. Therefore, it is necessary to raise awareness about *mut'ah* among the general public, especially among married couples.

Several things can be done to improve public understanding of *mut'ah*. First, the government needs to establish regulations governing *mut'ah*. These regulations need to be disseminated to the wider community. Second, religious and social institutions need to provide education about *mut'ah* to the community. This education can be done through lectures, seminars, or the mass media. Third, the public needs to increase their awareness of the importance of understanding a wife's rights, including the right to receive *mut'ah*. The public can learn about *mut'ah* through books, articles, or the internet. By improving public understanding of *mut'ah*, it can protect the rights of divorced wives (Muzemmil & Khatimah, 2024).

Similarly, the provision of *mut'ab* maintenance following an unlawful divorce has a significant impact on economic, psychological, and social aspects. The consequences of an unlawful divorce can also lead to various negative effects, not only for women and men but also for children within the family following an unlawful divorce. According to the Compilation of Islamic Law, a husband is obligated to provide *iddah* and *mut'ab* maintenance to his wife who has been lawfully divorced. However, since an unlawful divorce is a violation of the law and not recognized by the state, the husband fails to fulfill his obligation to provide *mut'ab* maintenance to his wife. The consequences of not receiving *mut'ab* maintenance after an unlawful divorce can be experienced by women in the form of economic difficulties (Durand, 2023). This is due to several factors, including the fact that women who are divorced through unlawful means typically do not have their own income and often lack housing and family support (Auliani & Haiyun Nisa, 2024; Robiatussoleha et al., 2024). Women who do not receive *mut'ab* maintenance may experience feelings of sadness, disappointment, and humiliation. This is because women who are divorced without proper procedures often feel unvalued and unrecognized as human beings with rights, and feel they have no place to turn to (Arifin, 2023; Putri, 2023). Based on the results of the research conducted, it can be concluded that illegal divorce can have a negative impact on women, both economically, psychologically, and socially. To improve the protection of women's rights to *mut'ab* alimony after illegal divorce, various efforts need to be made, including socialization, increasing access to legal and social institutions, and raising public awareness.

The Social Impact of Illegal Divorce on Women's Rights

Illegal divorce, a phenomenon of divorce that is not legally recognized, is still quite common. This practice, although not legally recognized, has significant social impacts, particularly for women. An interview with the Head of the Religious Affairs Office regarding the social impacts of informal divorce on women's rights in. According to the Head of the Religious Affairs Office, the phenomenon of informal divorce has various underlying causes, such as economic issues, communication problems, and infidelity. Meanwhile, the social impact of illegal divorce has negative consequences for women, such as loss of economic rights, custody rights, and social stigma (Latassaqia, 2025). Efforts to Address the Issue the Head of the Religious Affairs Office is striving to provide education about marriage and premarital counseling to prevent illegal divorce.

Based on interviews, the public views divorce as shameful and detrimental to families and society. Women who experience divorce often face difficulties in their social and economic lives. Therefore, it is necessary to educate the public about the negative impacts of divorce and the importance of respecting women's rights. Divorce has a significant social impact on women. Collective efforts from various parties are needed to address this issue, such as education, counseling, and the enforcement of women's rights. The phenomenon of unregistered divorce has various causes, such as economic factors and communication issues. The social impact of unregistered divorce has negative consequences for women, such as the loss of economic rights, custody rights, and social stigma. Based on the results of this study, the social impacts of unregistered divorce on women's rights were identified, along with an analysis of the factors influencing the social impacts of unregistered divorce on women's rights.

This study found that illegal divorce has a significant social impact on women's rights, including: i) loss of economic rights. Women lose their right to financial support from their husbands, making it difficult for them to meet their own and their

children's needs. Women also face difficulties in gaining access to shared assets; ii) stigma and discrimination, with women being labeled as “illegal divorcees.” Women experience social stigma and are ostracized by the community. Women face discrimination in various aspects of life, such as employment, marriage, and education; iii) loss of child custody rights, women often lose custody of their children. Children from unregistered divorces are vulnerable to psychological and social problems. Limited access to legal services, women are unaware of their rights, women are unable to legally claim their rights, women lack access to legal services (Engkizar et al., 2023).

This study uses several theories to analyze the social impact of illegal divorce on women's rights, including the theory of patriarchy, which explains how patriarchal culture gives men greater control and places women in a subordinate position. The theory of stigma explains how social stigma can lead to discrimination and exclusion of individuals. Human rights theory. This theory explains that all humans have basic rights that must be protected, including women's rights. The results of this study show that divorce has a significant social impact on women's rights. This is exacerbated by patriarchal culture and social stigma attached to women who experience divorce.

CONCLUSION

The impact of women's rights on *iddah* maintenance after an unlawful divorce is significant, both economically, psychologically, and socially. Unlawful divorce can have various negative impacts on women, men, and children. Similarly, the impact of women's rights on *mut'ah* maintenance after an unlawful divorce is significant in terms of economic, psychological, and social aspects. The impact of divorce can also lead to various negative consequences, not only for women and men but also for children in the family after divorce. The causes are diverse, such as economic factors and communication issues. Meanwhile, the social impact of divorce has negative consequences for women, such as the loss of economic rights, custody rights, and social stigma.

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