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FIQH MUQARAN IN MUNAKAHAT MATTERS

ISSUE 1: UTTERANCE THREE TALAQ IN ONE LAFZ

ISSUE 2: FASAKH DUE TO DARAR

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ISSUE 1:

UTTERANCE THREE
TALAQ IN ONE LAFZ





Introduction

Divorce (ṭalāq) in Islam is a last-resort solution permitted when reconciliation between spouses is no longer possible. While Islam outlines a structured and gradual divorce process that prioritizes reflection and possible reunion, certain practices have emerged that contradict these principles. One of the most debated is the utterance of three divorces in one statement referred to as ṭalāq thalātha fī lafẓ wāḥid such as when a husband says, “I divorce you three times” in a single breath, with the intention of ending the marriage immediately.

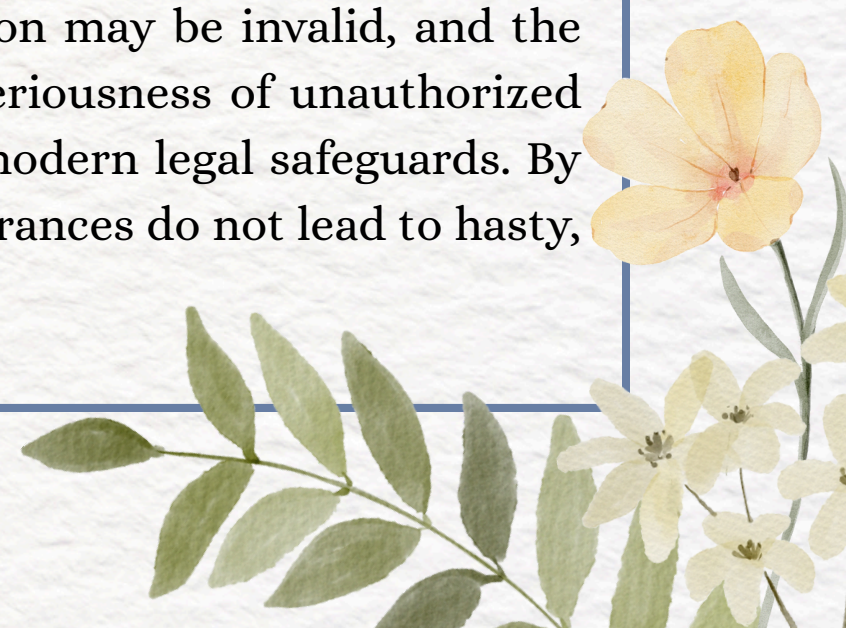
Traditional Islamic jurisprudence, particularly from the Shāfiʿī, Ḥanafī, and Mālikī schools, generally considers this utterance as resulting in an immediate and irrevocable divorce (ṭalāq bāʿin kubrā), meaning the couple cannot reconcile unless the wife marries and separates from another man. However, scholars like Ibn Taymiyyah and Ibn al-Qayyim opposed this view, emphasizing that such an utterance should only be counted as one revocable divorce, citing practices from the time of the Prophet Muhammad (PBUH), who disapproved of issuing three divorces at once (Ismail, 2022).

In Malaysia, this issue is carefully regulated under the Islamic Family Law Enactments of each state, and is subject to confirmation by the Syariah Court. The utterance of three divorces in one statement is not automatically recognized as three valid divorces. Instead, the court considers:

- The intention of the husband,
- The form and clarity of the utterance, and
- The context in which the statement was made.

According to (Ismail, 2022), this cautious approach is aligned with the objectives of Islamic law (maqāṣid al-sharīʿah), which seek to preserve the family institution, avoid injustice, and protect the rights of women and children.

Furthermore, a study by (Mohamad et al., 2021) affirms that any divorce uttered outside of court without legal confirmation may be invalid, and the husband can face legal penalties under state Syariah criminal laws. This includes fines or imprisonment, reinforcing the seriousness of unauthorized divorce pronouncements. Malaysia’s legal approach demonstrates a balance between traditional Islamic jurisprudence and modern legal safeguards. By subjecting every divorce especially those pronounced in anger or ignorance to judicial review, Malaysia ensures that such utterances do not lead to hasty, unjust, or unverified termination of marriage.





Concept

The utterance of three ṭalāqs in one lafẓ, known as ṭalāq thalātha fī lafẓ wāḥid, refers to a situation where a husband pronounces divorce three times in a single statement, such as saying, “I divorce you three times.” This type of divorce is generally considered a clear (ṣarīḥ) expression and carries serious implications as it affects the validity and finality of a marriage. In traditional Islamic jurisprudence, particularly the Shāfiʿī school followed in Malaysia, this utterance is typically regarded as resulting in three valid divorces, thus creating an irrevocable divorce (ṭalāq bāʿin kubrā), which prevents reconciliation unless the woman marries and later separates from another husband. However, other scholars such as Ibn Taymiyyah and Ibn al-Qayyim argue that this act should only count as a single divorce, referencing incidents during the Prophet Muhammad’s time where triple divorces in one session were rejected as excessive and invalid (Abdul Rahman, 2020). In the Malaysian legal framework, the pronouncement of three divorces in one lafẓ is not considered automatically valid; instead, it must be brought before the Syariah Court for confirmation. The court will assess the husband’s intention, the context of the statement, and whether it fulfills legal requirements as outlined in the Islamic Family Law Enactments. This approach reflects the objectives of Islamic law (maqāṣid al-sharīʿah), which aim to uphold justice, protect the family, and avoid harm caused by impulsive or unclear divorce declarations (Ismail, 2022; Mohamad et al., 2021).

