

GENDER EQUALITY IN ISLAMIC FAMILY LAW: SHOULD MEN TAKE IDDAH (WAITING PERIOD AFTER DIVORCE)?

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Abstract - In theory, the goal of marriage should be to provide a long and happy life for both the husband and the wife, but in practice, some marriages just cannot be saved and end in divorce. Iddah is one of the legal repercussions that might result from a divorce. Iddah is a requirement that must be fulfilled by the woman; nevertheless, after some time had passed, the Ministry of Religion's Director General of Islamic Guidance published a circular that indicated, as one of the rules, that the husband must wait until the wife's iddah period has passed before being entitled to remarry. This article will address gender equality in Islamic family law, including the implementation of the iddah period for men after a divorce. The goal of this article is to discuss gender equality in Islamic family law. A qualitative descriptive technique is employed as the methodology for this investigation. This research makes use of secondary data as well as primary data as its sources of information. Both the normative juridical approach and the philosophical approach are utilized in this work. Specifically, the latter is utilized. According to the findings of this study, this circular letter has been distributed at the KUA in Parepare City in order to make it clear that men are not permitted to marry during the iddah period of their wives. Iddah, which is exclusively reserved for wives, is clearly a double burden that must be borne by them, specifically the burden of divorce and the load of iddah. If the perspective of gender equality and social injustice is explored in depth, it is clear that Iddah, which is only reserved for wives, is a social injustice. In addition, if the iddah is not imposed on the husband, he is free to marry whoever he chooses. If this is the case, then the woman is subjected to a greater degree of violence, particularly psychological and mental abuse.

Keywords: circular letter; gender equality; iddah period;

INTRODUCTION

Iddah was already in existence and commonly practiced prior to the advent of Islam. After the advent of Islam, the custom of idda continued to be practiced because it was beneficial to ensuring the continuation of life between a wife and her husband. Iddah is the obligatory period of waiting that must be endured by a wife in the event that her marriage to her husband has ended, or in the event that her husband has passed away while she was divorced from him.¹ Iddah is a religious duty that must be fulfilled by women who have been left by their husbands or who have been granted a divorce.² This obligation comes from Allah and must be obeyed. The meaning of the word "iddah" encompasses both the meaning of the month and the meaning of the number (quru). The word "iddah" derives from the Arabic word "al 'adad," which can be translated as "number." At that time, she was not permitted to marry or to make herself available to other men in the hope that they would marry her. Iddah is a designation or name for a period when a woman waits for or postpones marriage after being abandoned by her husband or after being divorced.³ This can be done by waiting for the birth of her baby, or by waiting for the end of several quru, which means the end of a predetermined number of months. According to the term, iddah is a name or designation for this period.

¹ Andini Hafizhotin Nida, 'Konsep Pemikiran Iddah Bagi Laki-Laki Serta Relevansinya Dengan Perkembangan Reformasi Hukum Keluarga Di Indonesia' (UIN Jakarta, 2011), p. 14.

² Vivi Kurniawati, Kupas Habis Masa Iddah Wanita, ed. by Fatih (Jakarta: Rumah Fikih Publishing, 2019), p. 8.

³ Sayid Sabiq, Fiqih Sunnah, Ter, Abu Aulia Dan Abu Syauqina, Jilid III (Jakarta: PT Pustaka Abdi Bangsa, 2018), p. 651.



In this case, the concept of iddah only relates to sex because only women can get pregnant and have a uterus. However, the idea of iddah in Islam goes beyond sex. Sayyid Sabiq said that iddah is not only about finding out what is in the womb but it also gives husband and wife a chance to rebuild their home (reconciliation) if they have been estranged. This is because Iddah for men, also known as Syibhul Iddah, is the primary topic of discussion in this article. Jurisprudence specialists are of the opinion that a man can remarry without an iddah period after divorcing his wife, particularly if his wife has passed away. However, the period of "waiting" for the husband is mentioned in this article. According to the literature on fiqh, divorce can be categorized in a number of different ways depending on the specifics of the situation. One of these ways is called divorce raj'i, and it refers to a type of divorce in which the husband retains the right to remarry his wife (ruju) so long as his wife is still in the iddah period of her menstrual cycle. The context of divorce raj'i in fiqh has an iddah period by allowing the husband to refer to his wife. However, if the iddah period expires, then talak raj'i becomes talak bain which requires the husband to make a new contract if he wants to reconcile with his wife.⁴

Therefore, the understanding of raj'i divorce is that even though the husband has said divorce, it is permissible if he wants to reconcile with his wife before the end of the iddah period, both in the form of speech and in the form of actions. The understanding of talak divorce in fiqh is seen as valid when the pillars and conditions have been met by the husband. The problem of talak divorce is that there is no provision in classical fiqh that requires it to be carried out before the Religious Courts. However, talak divorce is considered valid and valid when the husband pronounces it to his wife either intentionally or unintentionally. The doctrine in fiqh that divorce is the absolute right of a husband to his wife. The doctrine is believed by the majority of Islamic society⁵

Ex-wives who are divorced can still live under the same roof as their ex-husband, and may adorn themselves by preening and make-up. As a legal consequence of a raj'i divorce, the husband is still burdened with the obligation to provide for his wife as long as the iddah period has not expired, because in fact the woman is still his wife. Furthermore, if the husband wishes to reconcile with his ex-wife, he still has the right

A circular letter was sent out on October 29, 2021 by the Director General of Islamic Community Guidance of the Indonesian Ministry of Religion to heads of regional offices (kakanwil) throughout Indonesia, especially Registrars Marriage (VAT), in order to anticipate the occurrence of unwanted things such as covert polygamy or "illegal" polygamy. In the letter, the Director General of Islamic Community Guidance of the Indonesian Ministry of Religion stated that the time interval spent by men during the waiting period is in accord.

1. Registration of marriages for men and women who have the status of divorced widows or widowers can only be carried out if the parties concerned have been properly divorced as demonstrated by a Divorce Certificate from the Religious Court which has been declared willing; this is the only condition under which the marriages can be registered.
2. The iddah period that must be served by the wife in the event of a divorce affords both the husband and the wife the chance to reevaluate their options with regard to reassembling the family unit that was disrupted by the breakup of their marriage;
3. If the iddah period for the former wife has passed, the ex-husband's man is free to marry another woman.
4. If a man's ex-husband marries another woman during the iddah time while he still has the option to refer his ex-wife, then this has the potential to lead to covert polygamy; if a man's ex-wife marries another man during the iddah period while he still has the opportunity to refer his ex-wife, then
5. In the event that the ex-husband married another woman during the iddah term of his ex-wife, the only way for him to refer his ex-wife to the new woman is if he first obtained approval from

⁴ Fikri and others, 'Kontekstualisasi Cerai Talak Dalam Fikih Dan Hukum Nasional Di Indonesia', *Al-Ulum*, Vol 19, No 1 (2019), p. 158-59.

⁵ "Edaran-Ttg-Pernikahan-Dlm-Masa-Idah.Pdf," n.d.



the court for polygamy pertaining to Marriage During the Wife's Iddah Period (SE. Director General of Islamic Guidance of the Ministry of Religion of the Republic of Indonesia., Number: P-005/DJ. III/HK. 007/10/2021)

In this circular letter, based on the results of consideration of the discussion forum between the Directorate General of Islamic Community Guidance, the Ministry of Religion of the Republic of Indonesia, and the regional offices of the Ministry of Religion in Provinces throughout Indonesia, there is a change regarding the marriage of husbands who divorce if they want to get married. The Circular Letter Concerning Marriage During the Wife's Idah period was issued by the Ministry of Religion to the regional offices of the Ministry of Religion in Provinces.⁶ According to KHI in fiqh books, there is no explanation about the iddah period for a husband whose wife dies in fiqh books, regarding the period of "waiting" for a husband after the death of his wife. As a result, husbands can legally marry without waiting for a predetermined time; however, this action would definitely go against the moral and ethical standards of society. As a result, this case focuses more on the moral and ethical implications of the situation. One of the many changes that have occurred over time, starting from lifestyle to the cultural level, is the gender movement, which has become a very popular study in recent years. These movements frequently bring attention to laws that discriminate against certain parties. Discrimination can take on very different forms and levels depending on the country or region. In third world countries, women have never had equal access to legal, social, and economic rights in any region.

Observers of the importance of iddah for men see this concept not only based on formal theological and juridical perspectives. In addition to this, it takes a deep philosophical approach to maqashid sharia from the existence of this iddah period. The determination of iddah for men is not explicitly explained by classical scholars. The determination of iddah for men does not have a legal basis from the texts. This application is against Islamic law because there is no iddah for men, which is clearly stated in the Qur'an, and this circular letter in law clearly violates human rights, while the circular letter cannot limit human rights, because human rights restrictions are only regulated in law. The enactment of this circular letter has caused controversy from various circles because this application is against Islamic law because there is no iddah for men which is clearly stated in the Qur'an.

The fact is that what is currently happening in Parepare City is that after a divorce from his wife, a man does not have to follow Iddah. Instead, he remarried another woman and reconciled with his first wife during Iddah. This can lead to legal smuggling that harms women. Some other facts that also occur are that a man who wants to remarry after a divorce cannot get married because he has to wait for his first wife's iddah to be completed.

METHOD

This research falls into the category of qualitative descriptive research since its primary objectives are to describe, analyze, and interpret the subjects that were investigated through the use of documentation, interviews, and observations. This research is a field research (field research). Field research is research that is conducted on an event that actually occurred. There are many applications for this qualitative approach. First, dealing with reality makes it easier to adapt qualitative methods. Second, the nature of the relationship between the researcher and the respondent is clearly demonstrated by this approach. Third, this approach is more adaptive and sensitive to various sharpenings of shared influence on the pattern.

Finding, evaluating, and compiling the data needed for this research can be done through philosophical methods. The normative juridical approach is a method used to study the human body in a certain way, such as through the process of analyzing theories, concepts, and patterns of human behavior that are relevant to this research. The philosophical approach is a method used to study the human body in a certain way, such as through the process of analyzing theories, concepts, and patterns of human behavior that are relevant to this research.

⁶ Isna Wahyudi, *Fiqh Idah Klasik Dan Kontemporer* (Yogyakarta: Lkis, 2010). p.141.

RESULT AND DISCUSSION

1. Application of the Circular Letter on Marriage during the Iddah Period for Men

This understanding is very unfair for women (wives), even though in marriage and running a household it is carried out by two parties, namely between husband and wife, without abandoning the value and purpose of the idah itself. The implementation of this idah is not based on natural considerations or one gender only, but both without abandoning the value and purpose of the idah itself. Idah is seen as a means of preserving the integrity of marriage and the household.

If the iddah is applied to the husband with the consequences of the iddah period being different from the iddah for the wife and tends to take into account the customs of the community for the mourning period, it is a form of implementation that tends to be in line with legal benefits due to divorce and death. This is because it is a way to maintain special benefits and general benefits so that there is a balance between the two types of benefits⁷.

The study began to re-question the cleanliness of the woman's uterus as 'illat, so technological advances, particularly in the field of medicine, which made it possible to find out pregnancy in a relatively short amount of time and with fairly accurate results became a stumbling block for enacting 'illat to clerical women. One that contains injustice in equality between men and women is the idda period, which so far applies only to women after the breakup of marriage⁸.

For jurists who adhere to factual empiricism, such as the methods used by empirical science, the validity of a rule of law is largely determined by facts that occur in the field by analyzing inductively. For instance, followers of Scandinavian Realism reject various validity of a law based on a priori arguments, *das sollen*, which places law higher than facts. However, they are more likely to use legal validity criteria that are based on facts that occur in society. This is the reason why fact.⁹

2. Position of Circular Letter

Circulars can be categorized as policy rules (*bleidsregel*) when viewed from the perspective of state administrative law. The existence of policy regulations is a consequence of the free authority possessed by the government (discretion). Policy regulations are discretionary use expressed in written form. Normatively speaking in the Netherlands, policy regulations are defined as a decision that is established as a general rule, but is not a binding rule in general.

Regarding the Islamic BIMAS DIRGEN Circular Number P-005/DJ.III/HK.00.7/10/2021 regarding the issue of polygamy in wife's iddah. The Circular Letter is positive law seen from the meaning of positive law, which is a collection of written and unwritten legal principles and rules that are currently in effect and generally or specifically binding and enforced by or through the government or courts in the State of Indonesia. The definition of positive law is expanded.

Kusmidi stated that the wisdom of iddah is to provide an opportunity for both husband and wife to rethink about their marriage. Provides an opportunity to see if there is a chance for them to get back together and be able to self-reflect from the parties involved. Not only for wives/women, but the law of idah was passed down to bring benefits to all parties, such as husbands, wives, families and society in general. Today, the actual iddah provisions for husband and wife are due to equality in couples and justice which must be carried out by both parties. Iddah is actually intended for men and women or husband and wife, because it is both of them who carry out the marriage. This is because: First, if the husband decides to end his household by divorcing his wife and dropping divorce *ba'in* and then the husband wants to marry someone he cannot marry because he has a relationship with his wife like his wife's sibling, then the husband must wait or move on until the term is over. Idah from his wife: secondly, if a man already has four wives, then the husband divorces one of his wives and wants to remarry, then the husband must wait or worship until the iddah period of the divorced wife is over and only then can another marriage take place. Implicit provisions of iddah

⁷ Sadhu Bagas suratno, *Pembentukan Peraturan Kebijakan Berdasarkan Asas-Asas Umum Pemerintah Yang Baik* (Lentera Hukum, 2017) p.167.

⁸ Munir Fuady, *Teori-Teori Besar (Grand Theory) Dalam Hukum* p.126.

⁹ Muhammad Isna Wahyudi, *Pembaharuan Hukum Pedata Islam, Pendekatan Dan Penerapan* (Bandung: CV Mandar Maju, 2014) p. 55.

carried out by men or husbands occur because there are conditions of iddah on wives and have an impact on them if they want to do something related to that. So, the iddah period is not necessarily carried out only by the wife. Therefore, basically, Idah is intended to give husbands and wives the opportunity to think so that they can return to their household life after introspecting each other and becoming better individuals and accepting the strengths and weaknesses of their partner. The following is a list of the considerations that need to be made before putting into action this circular letter:

The inhibiting factor in this research is the siri' culture, the Bugis Siri' culture is shame (a psychological condition) that decomposes into human dignity. It becomes a philosophy of life for the Bugis people which is embodied in pangngadereng (adat) as well as social and religious life. As a philosophy of life, Siri' has become the core value of Bugis culture until now and has experienced a dynamic that marks a shift in Siri' values. Siri' is one of the most fundamental values in Bugis culture. The values in the siri' culture for the Bugis people are guidelines or patterns of behavior that guide the individuals concerned in various daily activities. The application of this circular letter creates an inhibiting factor in the siri culture where when the marriage is held only because of the circular letter, while this has been discussed by two families where the community also supports it, but if it is canceled because they have to wait for his wife's iddah to finish, this makes the man and his family felt embarrassed because all the preparations had been fully prepared by both of them..

The application of circulars does not mean violating and creating new Islamic laws, which is one of the supporting factors in this study. Specifically, the enactment of iddah for men aims to lead to the spirit of enforcing Islamic law which considers the maslahah aspect. This is because the purpose of the mukallaf in accepting Islamic law is for one of them to bring benefits and reject harm, both for oneself and for others, based on the benefit that lies behind.

Equality in gender justice is a dynamic condition, in which men and women have rights, obligations, roles, and opportunities based on mutual respect and respect. The principle of gender equality in Islam is that men and women are equal in various ways, specifically as servants of Allah, as caliphs of Allah, actively involved, and have the potential to achieve achievements. The formation of gender differences is due to a number of factors, including being socialized, strengthened by religiosity.

3. Gender Equality Perspective on Iddah Period for Men after Divorce

Because this circular letter can raise the status of women in terms of the iddah period, men should also have an iddah period. Men should respect women so they do not get married first, so when a circular is issued a man must wait for the end of his wife's iddah period to be able to remarry to another woman. This is one of the manifestations of gender inequality. Stereotyping is another.

Gender is a concept that looks at the roles between men and women as well as social and cultural aspects. Gender differences are actually not a problem as long as they do not give rise to gender justice. Gender injustice is a system in which both men and women are victims of the system. Since the occurrence of the divorce, provisions regarding the iddah period have emerged, which is a form of gender inequality. Since the provisions of the iddah period are related to the cleanliness of the uterus, it is very logical to say that iddah is a form of gender injustice. Until today, Iddah is still considered to be discrimination against women, which then raises the opinion that Idah is a form of gender injustice.

The obligation of iddah is also meant to provide protection to women after they have divorced their husbands. This protection comes in two forms. First, Idah plays a very important role in maintaining the honor and credibility of a woman. This is related to the fact that the mu'taddah is required to carry out her idah period at the house where she lived with her husband in the past. However, the obligation of iddah must still be maintained with several considerations in mind. One of these is the fact that iddah is helpful for maintaining the honor and credibility of a woman. This is because there is an order for husbands to place a married wife in the residence of the husband, so that if she turns out to be pregnant during the waiting period, she will be protected from slander¹⁰.

¹⁰ Muhammad Isna Wahyudi, *Pembaharuan Hukum Pedata Islam, Pendekatan Dan Penerapan* p. 62.



In divorce *raj'i*, the *iddah* period is actually an opportunity for both the wife and the husband to improve themselves so that they can be reunited with one another. This is in contrast to the essence of marriage as *mits/aqan g/halizhan*, which is a firm and earnest commitment to one another. *Idah* in death aims to show feelings of condolence and mourning for the death, as well as to protect the feelings of the extended family of the deceased.¹¹

However, the goals and intentions starting from the *Idah* which are regulated in the *Shari'a*, will not be realized optimally, if they are applied only to women. For this reason, feminists with the theme of gender struggle are trying to reconstruct the validity of the *Idah* period so that it is binding on men. For this purpose, critical studies were carried out, and found the conclusion that the enactment of the *iddah* period is only for women, in fact it is closely related to the theme of gender, namely the role that is formed socially, and is more an influence of patriarchal culture which is indeed strong in the Arab nation. As for the texts of the *Al-Qur'an* or verses that seem to impose *iddah* only for women and do not order it to also apply to men, none other than because the *Al-Qur'an* came down in the cultural sphere of the Arab nation which made *Al-* The *Qur'an* also had to have a character and pattern that was in accordance with the framework of Arab culture at that time, in this case patriarchy. Therefore, it is not necessarily the narration of the *Qur'an* that determines women marry, immediately interpreted that Allah swt does not want men to marry after the breakup of a marriage¹². Regardless of the difference of opinion of the scholars in calling the waiting period an *Idah* for men in terms, or just an ordinary waiting period due to *mani` syar`i*. At least this is an initial foothold that opens the horizons of thinking about the presence of the application of *Idah* for men. *Idah* for men introduced by the *salaf* scholars is a form of progress and elasticity of Islamic law. In fact, terminologically, the definition developed by them is that *Idah* is only male for women, with the main aim to determine the cleanliness of a woman's uterus. If indeed the only purpose of *iddah* is to find out whether the uterus is clean or not, then it is appropriate that *iddah* is only for women, because only women have a uterus¹³. In this case, *iddah* only relates to natural gender issues. However, the function of *Idah* is not only to find out whether a person's uterus is clean or not. In the case of *raj`i* divorce, for example, the actual purpose of the *Qur'an* applying *iddah* of *raj`i* divorce is to encourage the two divorcing parties to reconcile and unite or separate. But it seems that this goal is difficult to achieve, because so far the *iddah* has only been obligatory for women, while men can immediately marry another woman after the pledge of divorce without having to wait for the *iddah* period. This condition is certainly not conducive for both parties to reconcile. Therefore, it should not only be women who undergo the *iddah* period, men must also undergo the *iddah* period¹⁴. Regarding the question of marriage in *iddah*, the reasons for enforcing the *iddah* period for men refer to the BIMAS DIRGEN Director of Islam Circular Letter Number P005/DJ.III/HK.00.7/10/2021. This circular letter provides instructions related to a husband who has been divorced and wants to remarry with another woman.

If studied in depth, the *iddah* which is only determined for a wife is clearly a double burden that must be carried by them. The double burden consists of the burden due to divorce and the burden of *iddah*. In addition, when *Idah* is not imposed on the husband, he can automatically divorce his wife. This creates inequality and social injustice. This is what they respond to and look for solutions to so that gender relations between husband and wife are well established.¹⁵

¹¹ Muhammad Isna Wahyudi, 'Kajian Kritis Ketentuan Waktu Tunggu (*Iddah*) Dalam RUU HMPA Bidang Perkawinan', *Jurnal Hukum Dan Peradilan*, Vol. V, No. 1 (2016), p. 26.

¹² Uzulia Febri Hidayati, 'Tinjauan Gender Terhadap Konstruksi '*iddah* Dan *Ihdad* Dalam Kompilasi Hukum Islam (KHI)' (Yogyakarta: UIN Sunan Kalijaga, 2018) h. 3.

¹³ Muhammad Isna Wahyudi, *Pembaharuan Hukum Pedata Islam, Pendekatan Dan Penerapan*. h. 59.

¹⁴ Muhammad Isna Wahyudi, *Pembaharuan Hukum Pedata Islam, Pendekatan Dan Penerapan* h. 56-57.

¹⁵ Riha Nadhifah Minnuril Jannah dan Naning Ma`rifatul Faiqoh, 'Pendekatan Keadilan Gender Pada Penerapan *Iddah* Ditinjau Dari Studi Islam', *Urwatul Wutsqo Jurnal :Studi Kependidikan Dan Keislaman*, Vol.10.No.1 (2021), p. 69.

CONCLUSION

The application of the Circular Letter of the Director General of Islamic Community Guidance was implemented in several Offices of Religious Affairs in Parepare City with several considerations to avoid unwanted things such as covert polygamy, the Office of Religious Affairs emphasized and warned men not to marry during the period the iddah of his ex-wife, in this case argues that according to religious rules it is clear that only women have an iddah period, meaning that when men have an iddah period, it violates religious law and violates human rights, where a person's rights to continue offspring and a person's right to marry are restricted. in the form of a Circular Letter while the existing rules in Indonesia to limit rights are only laws. The Gender Equality Perspective in terms of the iddah period for men raises many issues in which in the community and academic circles there are those who accept and oppose the circular letter, oppose it because one's rights are regulated by the circular letter and are accepted because this can provide benefits to both side. The application of Idah to the wife alone clearly creates inequality and social injustice. This is what they respond to and look for solutions so that gender relations between husband and wife are well established. If studied in depth, the iddah which is only determined for a wife is clearly a double burden that must be carried by them. The double burden is the burden due to divorce and the burden of having an iddah. Moreover, when the iddah is not imposed on the husband, he can automatically marry at will. If so the violence experienced by the wife increases, namely psychological mental violence.

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