



LEGAL IMPLICATIONS OF HUSBAND'S MARRIAGE DURING THE IDDAH PERIOD (LEGAL STATUS AND LEGAL CONSEQUENCES)

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Abstract

This research discusses the legal implications of a husband's marriage during his wife's iddah period, which is debated in Islamic law and positive law in Indonesia. In Islam, the iddah period aims to ensure the cleanliness of a woman's womb and provide an opportunity for reconciliation for divorced couples. However, classical Islamic law does not explicitly prohibit a husband from remarrying while his ex-wife is still in the iddah period. On the other hand, Circular Letter of the Director General of Islamic Guidance of the Ministry of Religious Affairs No. P-005/DJ.III/HK.007/10/2021 stipulates that marriages performed during the iddah period cannot be registered, as an effort to prevent covert polygamy. This research uses a normative juridical method with a legislative and conceptual approach, analyzing regulations related to marriage during the iddah period from the perspective of the Qur'an, Hadith, Compilation of Islamic Law (KHI), and Marriage Law No.1 of 1974. The results show a gap between classical Islamic law and state regulations, where positive law sets administrative restrictions on the husband's marriage during the wife's iddah period to provide legal certainty. This policy has consequences for the legal status of the marriage and the rights of the couple, including the status of the children in the marriage. This research provides insight into the differences between Islamic law and state regulations in the context of iddah marriages and their juridical implications, which are important for academics, legal practitioners and the public

Keywords: *Marriage During The Iddah Period, Islamic Law, Positive Law, Juridical Consequences.*

INTRODUCTION

In Islam, divorce can occur either unilaterally (talak) or bilaterally (khuluk). Marriages that break up due to divorce are divided into several types. The types of talak in question are first talaq and triple talaq. The meaning of talak raj'i is that the husband can still refer to the wife he divorced before the iddah period ends. Meanwhile, talak ba'in is a divorce in which the husband does not have the right to return (reconcile) to the wife whom he divorced (Wahbah, 1989).

In a divorce caused by talak raj'I, the wife has an iddah period or a

temporary waiting period not to accept proposals from other men or before starting a new life without a husband or remarrying. The iddah period aims to give divorcing couples time to think again and reconsider their decisions. Apart from that, the iddah period also provides the husband with the opportunity to invite his wife to reconcile in marriage, if that is their wish (Keddie, 1982).

About iddah is explained in the Qur'an, fiqh books, Marriage Law No. 1 of 1974 and the Compilation of Islamic Law. If the purpose and idea of iddah is only to determine how clean a woman's womb is, then it makes sense that the idea of iddah only applies to women because only women can get pregnant and have a womb. In this case, the concept of iddah is only related to sex. However, iddah in Islam is more than just sex. Sayyid Sabiq said that iddah is not only about finding out what is in the womb but also giving the husband and wife the opportunity to rebuild their home (reconciliation) if they think it is best. Thus marriage is more than just a contract, as mentioned in the Qur'an. The purpose of iddah is not only to find out the contents of the woman's womb but also to reconcile and give time for the husband and wife to think about reconciling because marriage is not just an agreement but a strong bond as *mitsaqan gholidhan* (Sabiq, 2018). However, a husband who has divorced his wife is not simply given the freedom to remarry (Ainiyah & Muslih, 2020). The provision that a husband who will remarry must wait until his wife's iddah period is over is regulated in the Circular of the Director General of Islamic Community Guidance, Ministry of Religion of the Republic of Indonesia, Number: P-005 / DJ. III / HK. 007/10/2021 concerning the husband's marriage during the iddah period. Every marriage of a husband that is carried out during his wife's iddah period, his marriage cannot be registered.

The provisions in the circular are as follows: first, marriage registration for men and women who are widowers/divorced widows can only be done if the person concerned has officially divorced as evidenced by a divorce certificate from a religious court that has been declared final. Second, the provisions on the wife's iddah period due to divorce are an opportunity for both husband and wife to be able to think again about rebuilding a household that was separated due to divorce. Third, a man who is an ex-husband can marry another woman if his ex-wife's iddah period has ended. Fourth, if a man who is an ex-husband marries another woman during the iddah period, while he still has the opportunity to refer his ex-wife, then this has the potential for covert polygamy. Fifth, if the ex-husband has married another woman during his ex-wife's iddah period, he can only refer his ex-wife after obtaining permission for polygamy from the court.

The purpose and objectives of the above Circular, as stated in its considerations, are: first, to be a guideline and guideline regarding the registration of marriages of men who will marry another woman while the iddah period of their ex-wife has not yet ended. Second, to provide certainty regarding the procedures and procedures for men who will marry another woman while the iddah period of their divorced ex-wife has not yet ended. Third, to revoke the validity of the Circular Letter of the Director General of Islamic Religious Institutions Number: DIV/Ed/17/1979 dated February 10, 1979 concerning the Problem of Polygamy during the Iddah Period because it is considered no longer effective and needs to be reviewed. The provisions in the Circular Letter of the Director General of Islamic Religious Institutions Number: DIV/Ed/17/1979 dated February 10, 1979 concerning the Problem of Polygamy.

The phenomenon of hidden polygamy is quite common. There are many factors that cause it (Jannatur Rahmah et al., 2020; Ruhamah et al., 2022). In this case, the woman is the one who is harmed. Based on this background, there is an

explicit gap between the rules in the concept of fiqh and the circular. In principle, classical Islamic law does not regulate the prohibition of a husband from remarrying during the wife's iddah period. Therefore, the author is interested in examining the regulation regarding the legal status and legal consequences that arise from marriages carried out during the iddah period.

METHOD

This study uses a normative legal method with a statute approach and a conceptual approach (Yanova et al., 2023). The normative legal method was chosen because this study focuses on the analysis of legal norms governing husband's marriage during the iddah period in the Islamic legal system and positive law in Indonesia. The legal sources used include the Qur'an, Hadith, Compilation of Islamic Law (KHI), Marriage Law No. 1 of 1974, and relevant court decisions. Data collection was carried out through a literature study (Abdhul, 2021) by examining legal documents, journals, and literature that discuss marriage during the iddah period. The data obtained were analyzed qualitatively using a descriptive-analytical method, namely describing and analyzing applicable legal regulations and examining the legal consequences arising from violations of these norms.

In addition, this study also uses a case approach by examining the regulations issued by the Director General of Islamic Community Guidance, Ministry of Religion of the Republic of Indonesia, Number: P-005 / DJ. III / HK. 007/10/2021 regarding husband's marriage during the iddah period. The analysis of the Circular Letter aims to see how the SE is implemented in practice and to what extent legal sanctions are given for violations of related regulations. With this method, the study is expected to provide a comprehensive understanding of the legal status of marriage carried out by a husband during the wife's iddah period and the legal consequences that arise. The results of this study are also expected to be a reference for academics, legal practitioners, and the public in understanding the legal aspects of husband's marriage in the context of Islamic law and national law in Indonesia.

RESULTS AND DISCUSSION

The term iddah has been known since the time of ignorance. The people of ignorance never abandoned the habit of carrying out 'iddah. When Islam came, the habit was legitimized and carried out as a form of Islamic culture because there were several goodness and wisdom in it. Scholars agree that 'iddah is obligatory (Slamet, 1999).

Linguistically, the word iddah is a mashdar form of the verb adda-ya'uddu which means to count. So the word 'iddah means calculation, calculation, or something that must be calculated (Rahmat, 2000). It means counting the days and menstrual periods that are calculated by women. According to the majority opinion, 'iddah is a waiting period that is experienced by a woman to find out the cleanliness of her womb, for worship or to go through her grief over the departure of her husband (Wahbah, 2011).

According to some scholars, iddah is a time to wait for the purity of a wife who is divorced or left by her husband. Before the end of the iddah period, it is forbidden for a wife to marry another person (Amiur, 2004). Iddah is specifically

for a woman. For men, a certain waiting period also applies, during which it becomes unlawful to marry until the divorced woman's iddah period (Azzam, 2009).

In the book of Mughni al-Muhtaj, iddah is defined as:

الْعِدَّةُ جَمْعُ عِدَّةٍ مَأْخُوذَةٌ مِنَ الْعِدَّةِ لِاسْتِمَالِهَا عَلَى الْعِدَّةِ مِنَ الْأَقْرَاءِ أَوْ الْأَشْهُرِ غَالِبًا وَهِيَ فِي الشَّرْعِ : اسْمٌ لِمُدَّةٍ تَنْتَرَبَّصُ فِيهَا الْمَرْأَةُ لِمَعْرِفَةِ بَرَاءَةِ رَجْمِهَا أَوْ لِلتَّعْبُدِ أَوْ لِتَفْجُوعِهَا عَلَى زَوْجِهَا كَمَا سَيَأْتِي

"al-Iddad is the plural of the word 'iddah, formed from the word idadun because it includes 'iddah using the holy period or the usual month. While iddah according to sharia is the name for the waiting period for women to find out whether the womb is empty or simply because of taabbudi or the mourning period for the death of the husband."

Meanwhile, Muhammad Abu Zahra provides the following definition of iddah:

اجل ضرب للنقض ما بقي من اثر النكاح

"Iddah is a period determined to end the effects of marriage" (Agama, 1985a).

In the Marriage Law No. 1 of 1974 concerning marriage, it is stated in article 11 concerning the iddah period for women who have been divorced by their husbands, it is stated that the iddah period for a woman who has been divorced by her husband is for 3 months or as long as she is pregnant if she is pregnant at the time of the divorce. This iddah period begins at the time of the divorce and ends at the end of the iddah period. If the woman wants to remarry, her iddah period must be at the end and she can start her new life again (Safi, 2011). Meanwhile, the iddah period for women whose husbands have left them due to divorce is contained in Chapter XVII articles 153 to 155 of the KHI and is stated in PP No. 9/75 concerning the Implementation of Law No. 1/74 regulated in article 39. All of these provisions only regulate the iddah period for women, while there is none for men. Islamic jurists are of the opinion that a man can remarry without an iddah period after divorcing his wife, especially if his wife has died. However, the husband's "waiting" period is mentioned in the books of mu'tabarah scholars. According to sharia, this waiting period is referred to as mani` syar`i or hindrance, and is metaphorically referred to as "iddah" (majaz).

However, a husband who has divorced his wife is not simply given the freedom to remarry. The provision that a husband who will remarry must wait until his wife's iddah period is over is regulated in a circular from the Director General of Islamic Community Guidance. Every marriage of a husband that is carried out during his wife's iddah period cannot be registered. This is based on the regulations that have been set by the Director General of Islamic Community Guidance, which include a man being able to hold a wedding with another woman, if the woman who is his ex-wife has finished her iddah period. If the marriage of the man with another woman has occurred, while his ex-wife has not

finished her iddah period, the man can return to harmony or reconcile with his ex-wife, but must first obtain permission for polygamy from the Court (SE. No. P-005/DJ/.III/Hk.00.7/10/2021).

In fact, as is common knowledge in classical Islamic jurisprudence, a husband who divorces his wife can immediately refer his ex-wife during the iddah period or marry another woman (QS at-Talaq 65/2). In addition, Islamic law in Indonesia, either through the UUP or KHI, does not prohibit a man who wants to marry another woman even though his ex-wife has not completed her iddah period. Indeed, marriage law in Indonesia adheres to an open monogamy system, namely if a man wants to have more than one wife (polygamy), he must first be given permission by the Court (Pua et al., 2022). The 2021 Circular Letter also explains in one of its points that if the man marries another woman, even though the ex-wife has not completed her iddah period, it will create the potential for hidden polygamy because the man also has the opportunity to refer his ex-wife. One of the implications of the iddah period for women by Islamic law is so that divorced husbands and wives can think and have the opportunity to rebuild their household (Sabiq, 2004). However, it is different for the husband because he is not given an iddah or waiting period. If we refer to classical fiqh, then for men there is no iddah, so that a divorced man can freely marry another woman, even though his ex-wife who has been divorced is still in the iddah period.

The consideration of this Circular Letter is based on: the results of the discussion in the discussion forum between the Director General of Islamic Community Guidance of the Indonesian Ministry of Religious Affairs and the Director General of BPA MA RI on September 30, 2021 that the Circular of Islamic Community Guidance Number: DIV/Ed/17/1979 dated February 10, 1979 concerning the Problem of Polygamy During Iddah is not running effectively so that a review needs to be carried out. The considerations as referred to in number 1, it is necessary to stipulate a Circular Letter of the Director General of Islamic Community Guidance concerning Marriage during the Wife's Iddah Period. The intent and purpose of this Circular Letter are: instructions for implementing marriage registration for male ex-husbands who will marry another woman during their wife's iddah period. The purpose of this Circular Letter is to provide certainty about the procedures and procedures for registering marriages for ex-husbands who will marry another woman during their wife's iddah period.

The time interval that a man undergoes during the waiting period is in accordance with the proportion of the iddah undergone by the divorced wife, where a wife who is divorced after the iddah period for 3 times pure or 3 months and is pregnant, then her iddah is until the wife gives birth. In order to anticipate unwanted things such as hidden polygamy or "wild" polygamy, the Director General of Islamic Community Guidance of the Indonesian Ministry of Religion, on October 29, 2021 issued a Circular (SE. Dirjen Bimas Islam Kemenag RI., Number: P-005 / DJ. III / HK. 007/10/2021, concerning Marriage During the Wife's Iddah Period) which is addressed to the heads of regional offices

(kakanwil) throughout Indonesia, especially Marriage Registrars (PPN), containing 5 (five) provisions regarding marriage during the wife's iddah period, as follows:

Marriage registration for men and women who have the status of widower/divorcee can only be done if the person concerned has officially divorced as evidenced by a divorce certificate from a religious court that has been declared final;

The provisions of the wife's iddah period due to divorce are an opportunity for both husband and wife to be able to think again about rebuilding a household that was separated due to divorce;

A man who is an ex-husband can marry another woman if the iddah period of his ex-wife has finished;

If a man who is an ex-husband marries another woman during the iddah period, while he still has the opportunity to refer his ex-wife, then this can potentially lead to covert polygamy;

If the ex-husband has married another woman during the iddah period of his ex-wife, he can only refer his ex-wife after obtaining permission for polygamy from the court.

In terms of the implementation of the latest circular issued by the Director General of Islamic Community Guidance No. P.005/DJ.III/HK.00.7/10/2021 concerning Husband's Marriage During the Wife's Iddah Period, it is stated in special provisions Numbers 1 and 3 which state that every man or woman who has the status of a widower or divorcee when registering a marriage registration must include a divorce certificate with permanent legal force issued by the Religious Court and every man can register his marriage if his ex-wife's iddah has finished.

In its implementation, the 2021 Circular at the KUA Sambit Ponorogo District, the circular was carried out consistently and orderly. Namely, when a widower/divorced widow wants to register a marriage registration, they must include a divorce certificate in the marriage registration requirements file. This aims to prevent hidden polygamy in accordance with the purpose of the circular (C. Huda, Penghulu of Sambit District, March 18, 2025).

The Sambit District KUA is one of the KUA in Ponorogo Regency that represents the implementation of the orderly implementation of the circular letter from the Director General of Islamic Community Guidance No. P.005/DJ.III/HK.00.7/10/2021 in this case providing direction to prospective brides and grooms who do not understand this circular. The rejection procedure is as follows:

The marriage requirement files are submitted to the Marriage Registration Officer.

The files are checked by the Marriage Registration Officer. If the registration files do not meet the requirements or do not include a divorce certificate, the files are rejected with a Model N7 rejection letter. If the divorce certificate is already listed in the registration files, the marriage registration officer will calculate the divorce

date on the divorce certificate with the planned remarriage date. If the ex-wife's iddah period has not finished, the marriage registration is rejected.

All files are returned to the registrant and given a Model N7 marriage registration rejection letter.

The marriage registration officer will provide an explanation of the latest circular issued by the Director General of Islamic Community Guidance No. P.005/DJ.III/HK.00.7/10/2021 Concerning Husband's Marriage During the Wife's Iddah Period. That every marriage registration must include a divorce certificate for prospective brides and grooms with the status of widowers/divorced widows and must have completed the iddah of the ex-wife (C. Huda, Penghulu Kec. Sambit, March 18, 2025).

Legal Status of Marriage during Iddah Period

Marriage performed by a husband while his wife is still in the iddah period is an important legal issue from the perspective of Islamic law and positive law in Indonesia. The iddah period is the period that a woman must undergo after a divorce or death of her husband before she is allowed to remarry. The purpose of the iddah period is to ensure that there is no pregnancy from a previous marriage and to give women time to resolve the legal and emotional aspects of the ended marriage. If a husband marries another woman while his wife is still in the iddah period, this can have various legal implications both in terms of the validity of the marriage and its legal consequences for the parties involved.

In Islamic law, a marriage performed by a husband while his wife is still in the iddah period has a different legal status depending on the type of iddah that the wife is undergoing. If the iddah that is being undergone is iddah raj'iyah (iddah due to talaq raj'i), then the husband's new marriage is considered invalid because during the iddah raj'iyah period, the previous marital relationship between husband and wife is still recognized (Wahbah, 2002). In this context, a husband's marriage to another woman can be considered an act of polygamy, which in Islamic law still requires permission and must meet certain conditions. However, if the iddah that the wife is undergoing is iddah bain (due to triple talaq) or iddah wafat (due to the death of the husband), then the husband's new marriage is in principle permitted because the previous marital relationship has been completely severed. The Shafi'i and Hanbali schools of thought emphasize that the husband's marriage in this condition is valid as long as there are no other obstacles that prohibit the marriage (Ibn Qudamah, 1997).

In positive law in Indonesia, marriage conducted by a husband while his wife is still in the iddah period is not explicitly prohibited, but must still comply with applicable regulations, especially if the marriage is a polygamous marriage. Based on Article 3 paragraph (2) and Article 4 of Law Number 1 of 1974 concerning Marriage, a husband who wants to remarry must obtain permission from his first wife and approval from the religious court (Marriage Law 1974, articles 3 and 4). If a husband marries without court permission while his wife is still in the iddah raj'iyah period, then the marriage can be considered invalid because there is still a valid marriage relationship with the previous wife. The Compilation of Islamic Law (KHI) also regulates that a husband who wants to practice polygamy must meet certain requirements as stipulated in Article 55 (KHI Article 55).

The legal consequences of a marriage performed by a husband while his wife is still in the iddah period can affect the validity of the marriage itself and the legal status of the children born from the marriage. If the husband's marriage to

another woman is carried out without fulfilling the applicable legal procedures, then the marriage can be considered invalid by the state and has no legal force. In the context of Islamic law, if the husband's marriage occurs while his wife is still in the iddah raj'iyah, then the marriage can be annulled and the couple must separate. Conversely, if the marriage occurs in the iddah bain or iddah wafat condition, then the marriage is still considered valid (Sayyid, 1999). In national law, if the marriage is not officially registered, then the second wife and children born from the marriage can lose their civil rights, including inheritance rights and maintenance rights (Marriage Law 1974, article 43).

Thus, the legal status of a husband's marriage during his wife's iddah depends on the type of iddah the wife is undergoing and the regulations applicable in the Islamic legal system and national law. In iddah raj'iyah, the husband's new marriage is considered invalid because the previous marriage relationship is still valid, while in iddah bain or iddah wafat, a new marriage can be considered valid as long as it meets the applicable legal provisions. Therefore, it is important for a husband who wants to remarry to understand the legal status of his previous marriage and ensure that all legal provisions, both in Islamic law and positive Indonesian law, have been complied with in order to avoid adverse legal consequences.

Legal Consequences of Marriage During the Iddah Period

Circular Letter Number: P-005/DJ/.III/Hk.00.7/10/2021 concerning Marriage During the Wife's Iddah Period as a follow-up effort to the results of the discussion in the discussion forum on September 30, 2021 between the Director General of Islamic Community Guidance of the Ministry of Religion and the Directorate General of the Religious Courts of the Supreme Court of the Republic of Indonesia which resulted in a discussion point that the Circular Letter of the Director General of Islamic Religious Institutional Development Number: DIV/Ed/17/1979 dated February 10, 1979 concerning the Problem of Polygamy During Iddah (hereinafter referred to as SE 1979) was not effectively implemented and needed to be reviewed.

The essence of SE No: DIV/Ed/17/1979 states that for a man who is an ex-husband who has divorced his wife with talaq raj'i and wants to remarry another woman, while the ex-wife has not completed her iddah, then he must obtain permission to practice polygamy by filing a case with the Religious Court (SE No: DIV/Ed/17/1979) these provisions are seen from the perspective of positive marriage law in Indonesia as follows:

Marriage Registration

The 2021 Circular Letter policy regarding marriage registration reviewed based on marriage law in Indonesia is in accordance with the UUP article 2 paragraph (1) and paragraph (2) which stipulates that a marriage is valid if it is carried out according to the laws of each religion and belief and is recorded according to applicable laws and regulations. This is also reinforced by the provisions in the KHI articles 5 and 6 which provide the authority for registration to the Marriage Registrar (PPN) at the KUA District where the marriage is held.

The provisions for marriage registration are administrative obligations, not included in the pillars and validity of marriage in Indonesia. However, in essence, marriage registration which is an administrative obligation can be seen from two perspectives, namely:

- a. The state's view is that marriage registration is mandatory so that state law can function in providing guarantees for the enforcement,

advancement, protection, and fulfillment of human rights as regulated in laws and regulations.

- b. Marriage registration is an administrative activity organized by the state and is intended so that marriage as a vital legal event in the lives of citizens, has an impact on the occurrence of very broad legal consequences, has a perfect and binding authentic deed, so that the state can protect and serve the rights arising from a marriage event of the two brides and grooms can be organized properly, effectively, and efficiently (MK Decision Number 46/PUU-VIII/2010).

Islamic law in Indonesia, both through the UUP and KHI, basically does not prohibit a man who is an ex-husband from holding a marriage with another woman, even though the woman who was previously his ex-wife has not completed her *iddah*. Article 3 of the UUP stipulates that in essence in a marriage a man or woman may only have one wife. The general explanation of the UUP states that marriage law in Indonesia adheres to an open monogamy system, namely only if the person concerned wishes, and because it is also permitted by the relevant religious law to have more than one wife. Marriage for a husband with more than one wife can only be held if certain requirements have been met and permission has been granted by the Religious Court.

The provisions for registering a marriage are an act that can lead to a recommended act and even an administrative obligation. The act of registering a marriage is *al-wasīlah* or an intermediary act that can lead to another law. As for the marriage that is carried out between a man and a woman, whether they are single/virgin or widower/widow as evidenced by a divorce certificate, this is *al-ifḍā'* which raises a strong suspicion that the act will bring benefits/goodness.

The intended benefit is so that the parties who are carrying out the marriage can know with certainty the status of each before the marriage is carried out. If it turns out that the man and woman are both widowers/widows, it must be proven with a divorce certificate, so that the prospective bride and groom do not violate the provisions of marriage law in Indonesia, and the prospective bride and groom know each other's status as their prospective partner. Furthermore, if the marriage is registered, the state can be present to provide legal protection guarantees and the parties involved in the marriage receive legal certainty (*al-mutawassil ilaih*).

The act of marriage that is not registered actually raises strong suspicions that this act will lead to *mafsadah*/badness, such as the risk of legal smuggling related to the status of the prospective bride and groom, the absence of legal certainty and the rights of the husband and wife over their marriage because there is no authentic evidence of their marriage, so that the state cannot provide protection guarantees, fulfillment of advancement, and also enforcement of rights arising from the legal event of the marriage.

This is in accordance with the results of the Fatwa of the Indonesian Ulema Council (MUI) which states that in principle, underhand (unregistered) marriages are legally valid, but can become haram if there is harm (MUI, No. 10 of 2008).

The Process of Self-Introspection (Reflection) to Rebuild Relationships

SE 2021 menyatakan bahwa ketentuan istri harus menjalani *iddah* yang arises because a marriage breaking up with divorce is an opportunity for both husband and wife to rethink rebuilding their household. This is in accordance with the evidence in QS Al-Baqarah/2:228 and QS Al-Ṭalāq/65: 2. The wisdom

of the iddah law for women is that it opens up the possibility or opportunity for husbands to reconcile with their wives who have previously been divorced (Al-Zuhailly, volume 9). If the wife who has been divorced by her husband has almost reached the end of her iddah period, the husband can refer his wife, so that they can resume the marriage bond in a ma'ruf manner as long as the divorce is not the third time (talak bā'in kubrā).

Marriage is also a close bond between husband and wife to live together so closely (mīsâqon galizā). In fact, if the wife has been divorced by her husband, but the man who pronounced the divorce, they are still the husband of the divorced wife because in essence they still have a marriage bond and the obligations of each husband and wife are also attached. The ex-wife who was given a divorce is obliged to wait for her ex-husband during his iddah period, while the ex-husband is still obliged to provide maintenance to his wife (Quraish, 2002). Therefore, the couple should be able to repair their marriage. If the husband and wife have returned to building a household or reconciled, then each couple is prohibited from bringing up past mistakes.

1. The Purpose of a Husband Marrying Another Woman During His Ex-Wife's 'Iddah Period

The policy of SE 2021 is related to the husband's waiting period for the wife's iddah period, namely that a man who is an ex-husband can hold a marriage with another woman if his ex-wife has completed her iddah period. If this policy is interpreted in an opposite or contra legem manner, it can be interpreted that a man who is an ex-husband cannot hold a marriage with another woman, unless his ex-wife has completed her iddah period, then the man who is an ex-husband is required to wait for his ex-wife's iddah period. This is very different from the concept of munakahat fiqh.

Men in the study of Islamic jurisprudence do not have an iddah period. Therefore, a man can marry another woman directly or immediately after the divorce from his former wife as long as there is no obstacle according to Islamic law (mani' syara'). For example, marrying a woman who is forbidden to be polygamous at the same time, namely between his first wife and his female relatives, such as his sister, his aunt from the side and mother, nieces who are the children of his brother and sister, even though this is a fasid marriage or a contract that contains syubhat (legal doubt). Another example is the existence of Islamic law obstacles for a man to marry a woman up to the fifth in the 'iddah of the fourth wife whom he divorced until the end of her 'iddah period. Men are also forbidden to marry a wife who has been divorced up to the third time before she marries another man (Al-Zuhailly, volume 9).

Islamic law in Indonesia through the KHI also provides recommendations for husbands who have lost their wives to hold a mourning period according to propriety. Although the mourning period referred to in the provision is different from the concept of ihdād in fiqh and is a recommendation, it is one of the updates to Islamic marriage law in Indonesia. Wahyudi offered a similar concept that there needs to be a renewal of the law related to iddah which can also be applied to ex-husbands or men.

This concept was issued after the provisions of iddah were reviewed through a socio-historical perspective where the wisdom of its prescription was to elevate the status of women in pre-Islamic Arab society which was patriarchal or androcentric (men as the center of society), even women were only considered as objects of ownership until they could be sold. Therefore, 'iddah was prescribed with the following objectives:

- a. Knowing the cleanliness of the uterus and maintaining the male lineage.
- b. Ease the economic situation of the divorced woman.
- c. Ease the burden on women whose husbands have died by reducing the mourning period to 4 (four) months and 10 (ten) days (the mourning period for women in pre-Islamic or jahiliyyah times was one year).
- d. Mourning the death of a husband in order to pay respects to the deceased husband and the husband's extended family (Wahyudi, 2009).

Because currently with the advancement of technology that allows to know pregnancy and even the biological relationship of the child with both parents briefly. Another factor is the existence of gender justice that is currently demanded with the criteria of equal or equal justice between men and women, then iddah should not only apply to women, but also to men with the following objectives:

- a. To avoid slander and maintain health from infectious diseases, especially sexually transmitted diseases.
- b. To glorify the institution of marriage as a solid agreement, so that if a husband and wife separate because their household conditions have cracked and broken, then reconciliation needs to be realized so that the divorced husband and wife can unite again to build a household and recreate a conducive atmosphere and relationship.
- c. The creation of gender equality between men and women in society (Wahyudi, 2009).

Hamzanwadi explains the concept of male iddah using the theory of utilitarianism (good and beneficial actions) which is then reviewed from the perspective of mubadalah (mutuality), so men undergo an iddah period with a period of time adjusted to the circumstances of the iddah period that must be undergone by the woman, both those who are divorced by talak raj'i or because they have died (Hamzanwadi, 2021).

One of the main purposes of marriage is so that human sexual instincts can be channeled and fulfilled and to avoid the slander of zina. The law of marriage for a person can be obligatory, sunnah, permissible, makruh, and even haram. However, in general the law of marriage is permissible, so this is included in tertiary benefit actions, or may be ruled as sunnah, so it is included in actions that bring secondary benefits. The reasonable limit for men or women not to have husband and wife relations is around 4 (four) months (Rizal, 2006) or a maximum of 6 (six) months (Al-Zuhaili, volume 9).

2. Potential for Hidden Polygamy

The 2021 Circular Letter policy states that if a man's ex-husband marries another woman during the iddah period, while he still has the opportunity to reconcile with his ex-wife, then this could potentially lead to covert polygamy. This is categorized as a consequence that leads to secondary, even primary, harm if the covert polygamy actually occurs. In fact, Article 3 paragraph (2) and Article 4 of the UUP in conjunction with Article 40 of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage in conjunction with Article 56 of the KHI state that a husband's marriage with more than one wife can only be held if the husband has received permission for polygamy from the Religious Court.

If a man's ex-husband marries another woman during the iddah period, then refers to his ex-wife, then the husband is committing covert polygamy because the husband has more than one wife without asking and being granted

permission by the Religious Court. This is a form of legal smuggling, so this path must be closed (sadd al-ẓarī'ah).

3. Forming New Laws Due to Al-Wasilah

The 2021 Circular Letter policy states that if an ex-husband has married another woman during his ex-wife's iddah period, he can only refer his ex-wife after obtaining permission for polygamy from the Religious Court. The husband's actions in wanting to refer his wife are secondary *maslahah* actions. The husband's actions are *al-wasilah* or intermediary actions that can lead to another law. As for a husband, if he has married another woman during his ex-wife's iddah period and then the husband wants to refer his ex-wife, then the husband is required to obtain permission for polygamy from the Religious Court.

This is *al-ifda'* which raises a strong suspicion that this action will lead to other laws. Although Allah SWT's recommendation is for the husband to refer his wife during her iddah period, there is another main goal for the husband, namely to practice polygamy which is a tertiary *maslahah* (MS, Hidayat, 2024)

CONCLUSION

This study examines the legal implications of a husband's marriage during the wife's iddah period from the perspective of Islamic law and positive law in Indonesia. In Islam, the iddah period is a period that women must undergo after a divorce or death of their husband to ensure the cleanliness of the womb and provide an opportunity for reconciliation. Classical Islamic law does not prohibit a husband from remarrying during his ex-wife's iddah period. However, in the context of national law, state policy through the Circular of the Director General of Islamic Community Guidance No. P-005/DJ.III/HK.007/10/2021 limits marriage during the iddah period to prevent the potential for hidden polygamy and provide legal certainty in registering marriages.

The normative legal method used in this study shows significant differences between Islamic law and state regulations in regulating marriage during the iddah period. In classical *fiqh*, a husband has the right to marry another woman even though his ex-wife is still in the iddah period, especially if her iddah is *iddah bain* or *iddah wafat*. However, Indonesian national law requires legal registration of marriages, and stipulates that marriages conducted during the iddah period cannot be registered, so they do not have legal force in the eyes of the state. The legal consequences of this policy have an impact on the validity of marriages and the rights of couples and children born from the marriage. If a marriage is conducted during the iddah period without registration, the wife and children from the marriage can lose legal rights such as inheritance rights and maintenance. In addition, if a husband marries during his wife's iddah period and then wants to reconcile, he is required to obtain permission for polygamy from the court, which can complicate his legal status.

Thus, this study concludes that state regulations on marriage during the iddah period emphasize more on administrative aspects and legal protection compared to the more flexible classical Islamic legal approach to husband's marriage during the iddah period. Further studies are needed to adjust state policies to remain in line with Islamic legal values without ignoring legal protection for women and children.

REFERENCES

- Azzam, A.A.M. (2009). *Fiqh Munakahat II*. Amzah.
- Agama, D. (1985a). *Ilmu Fiqh*, jilid II. Proyek Pembinaan Prasarana Dan Sarana Perguruan Tinggi Agama
- Abdhul, Y. (2021). *Studi Pustaka: Pengertian, Tujuan dan Metode - Deepublish Store*. In *Deepublish*.
- Ainiyah, Q., & Muslih, I. (2020). Dilema Hukum Keluarga Di Indonesia (Studi Analisis Kasus Perceraian di Indonesia). *Jurnal Istiqro*, 6(1). <https://doi.org/10.30739/istiqro.v6i1.560>
- Amiur, N. (2004). *Hukum Perdata Islam di Indonesia*. Kencana Prenada Media Group.
- Direktur Jenderal Pembinaan Kelembagaan Agama Islam, Surat Edaran Nomor: DIV/Ed/17/1979 tanggal 10 Februari 1979 tentang Masalah Poligami Dalam Iddah.
- Fikri and others, 'Kontekstualisasi Cerai Talak Dalam Fikih Dan Hukum Nasional Di Indonesia', *Al-Ulum*, Vol 19, No 1 (2019).
- Hamzanwadi, "Konsep 'Iddah Laki-Laki Perspektif Mubadalah Faqihuddin Abdul Qadir," Tesis, (Malang: Pascasarjana Universitas Islam Negeri Maulana Malik Ibrahim, 2021).
- Ibn Qudamah, *Al-Mughni* (Beirut: Dar al-Kutub al-Ilmiyyah, 1997), Jilid 6.
- Jannatur Rahmah, P., Pradima Sari, I., & Roy Purwanto, M. (2020). Praktik Poligami Dalam Komunitas Poligami Indonesia Perspektif CEDAW. *At-Thullab : Jurnal Mahasiswa Studi Islam*, 2(1). <https://doi.org/10.20885/tullab.vol2.iss1.art7>
- Keddie, N. R. (1982). *Women in the Middle East: Past and Present*. Princeton University Press.
- Mahmud Yunus, *Kamus Arab Indonesia* (Jakarta: Hidakarya Agung, 1990).
- Mahkamah Konstitusi, Putusan Nomor 46/PUU-VIII/2010 tentang Pengujian Undang-Undang Nomor 1 Tahun 1974.
- Majelis Ulama Indonesia, Fatwa Majelis Ulama Indonesia Nomor 10 Tahun 2008 tentang Nikah di Bawah Tangan.
- M. Quraish Shihab, *Tafsir Al Mishbah: Pesan, Kesan dan Keserasian Al-Qur'an*, Jil. 1 (Jakarta: Lentera Hati, 2002).
- Pua, B., Karamoy, D. N., & M.Setlight, M. M. (2022). Kedudukan Asas Monogami Dalam Pengaturan Hukum Perkawinan Di Indonesia. *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial*, 9(6).
- Rahmat, H. (2000). *Hukum Perkawinan Islam*. CV Pustaka Setia.
- Ruhamah, R., Milhan, M., & Purba, Z. A. (2022). Praktik Qadhi Liar Perspektif Majelis Permusyawaratan Ulama (Studi Kasus di Desa Bintang Berangun Kecamatan Pintu Rime Gayo Kabupaten Bener Meriah). *Al-Usrah : Jurnal Al Ahwal As Syakhsiyah*, 10(2). <https://doi.org/10.30821/al-usrah.v10i2.13950>.
- Rizal Darwis, "Hak Nafkah Batin Suami Istri dalam Perkawinan: Telaah Fikih dan Hukum Nasional Perspektif Jender," Disertasi (Makassar: Pascasarjana Universitas Islam Negeri Alauddin, 2016).
- Surat_Edaran_Dirjen_Bimas_Islam No. P.005/DJ.III/HK.00.7/10/2021 Tentang *Pernikahan Suami Dalam Masa Iddah Istri*
- Sayid Sabiq, *Fiqh Sunnah, Ter, Abu Aulia Dan Abu Syauqina, Jilid III* (Jakarta: PT Pustaka Abdi Bangsa, 2018)
- Sayyid Sabiq, *Fiqh Sunnah*, (Kairo: Dar Al-Fatah, 1999)

- Surat Edaran yang dikeluarkan Dirjen Bimas Islam No. P.005/DJ.III/HK.00.7/10/2021 Tentang Pernikahan Suami Dalam Masa Iddah Istri
- Safi, L. (2011). *Progressive Muslims: On Justice, Gender, and Pluralism*. Onew Slamet, A. & A. (1999). *Fiqh Munakahat II*. CV Pustaka Setia.
- Al-Syarbini, *Mughni Al-Muhtaj* (Beirut: Dar Al-Kutub Al-Ilmiyyah, 1997), Jilid 4.
- Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.
- Wahbah Al-Zuhaili, *Al-Fiqh Al-Islami wa Adillatuhu* (Damaskus: Dar Al-Fikr, 2002), Jilid 7
- Wahbah al - Zuhaili, *Al- Fiqhu al- Islami Wa Adillatuhu* (Damaskus: Dar al Fikr, 1989), IX
- Wahbah az-Zuhaili, *Fiqih Islam Wa Adillatuhu, Jilid 9*, terj. Abdul Hayyie al-Kattani (Jakarta: Gema Insan, 2011).
- Yanova, M. hendri, Komarudin, P., & Hadi, H. (2023). Metode Penelitian Hukum: Analisis Problematika Hukum Dengan Metode Penelitian Normatif Dan Empiris. *Badamai Law Journal Magister Hukum Universitas Lambung Mangkurat*, 8(2).
- Al-Zuhaili, *Fiqh al-Islam wa Adillatuhu*, terj. Abdul Hayyie al-Kattani, *Fiqih Islam wa Adillatuhu*, Jil. 9.