

Research Article

Modernization of Shibhul Iddah for Men Perspective Compilation of Islamic Law

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ORCIDSisca Novalia: <https://orcid.org/0009-0007-5625-9109>**Abstract.**

Iddah is the mass or waiting time for an ex-wife who has been divorced by her ex-husband. Mass iddah applies to women who have been divorced or because her husband died at which time the ex-wife has not been allowed to remarry with another man. Masa Iddah here is meant as a form of respect, mourning, and tolerance to the deceased and family. Honouring someone who has contributed to his life is a good thing and is encouraged in Islam. In this ever-evolving age, the author sees how the implementation of 'iddah is also directed at men. Then it would be more beautiful if the law applied to both. This study will examine how the regulations on the mass of iddah for men that have been listed in the compilation of Islamic law are then connected to the point of view of Islamic jurisprudence. How the role of fiqh law delivers these regulations so that these regulations are considered applicable in Indonesia. The analysis method used is in the form of descriptive analysis by explaining what is meant by the theory of 'iddah, the compilation of Islamic law and Islamic jurisprudence. Furthermore, from this presentation, an analysis of the postulates that explain 'iddah is carried out. The analysis in question is to analyze the verse about 'iddah to be made into law and applied to men using the theory of compilation of Islamic law.

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1. Introduction

The period of 'iddah is the waiting period required for a woman (married) who is divorced by her husband either dead divorce or live divorce, with the intention of ascertaining whether there is a fetus in the woman's womb or not. If there is a fetus in the woman's womb, it is mandatory to carry out the period of 'iddah[3]. The waiting period from pregnancy to childbirth is called the 'iddah period. During the period of 'iddah women are prohibited from leaving the house without a clear purpose or not because of something emergency. In addition, which later became a prohibition for women when undergoing the period of 'iddah (*IHDAD*) is excessive makeup, perfumery, and embellishment that will invite other men (not muhrim) to approach her.[4]



The ban is certainly not without reason, 'iddah carried out by women has noble wisdom, especially for women. In addition to knowing the state of the uterus, it is also an allocation of time to restore the state of birth or mind after mourning. 'Iddah is also intended as a way to prevent slander.[5] The compilation of Islamic Law article 170 states that: "a wife who is left behind by her husband, is obliged to observe a period of mourning during the period of 'iddah as a sign of condolences and at the same time to guard against the emergence of slander".

Iddah is a word that is often heard among the Islamic community, especially for couples who are about to divorce. As it is well known that 'iddah only applies to women and does not apply to men, carrying out the provisions in the period of 'iddah for women is a worship ordered by Islamic law.[6] The understanding that 'iddah only applies to women is Surah At-Thalaq verse 4 and Surah Al-Ahzab verse 49.

Meaning: Women who are rejected should refrain (wait) three times quru'. they must not hide what Allah created in their womb, if they have faith in Allah and the Hereafter. And her husbands have the right to refer to her in that waiting period, if they (husbands) desire islah. and Women have rights in balance with their obligations in a ma'ruf manner. but husbands, has one degree of advantage over his wife. and Allah is mighty, wise. (QS. Al-Baqarah: 228)

Meaning: Those who die among you leaving wives (let the wives) suspend themselves (ber'iddah) four months and ten days. Then when the 'iddah has finished, then there is no sin for you (the saints) to let them do to themselves according to what is right. God knows what you do. (QS. Al-Baqarah: 234).

This verse is then confirmed with verse 228 which is the time of the 'iddah period for women about three times quru (three times the holy period). In addition, the place where performing 'iddah which used to be allowed only in the husband's house,[7] Also abolished (naskh). A wife who has iddah can determine the place she wants and is not obliged to provide her own residence.

Meaning: And those women who do not menstruate anymore (monopause) among your women if you are in doubt (about the period of his iddah), Then their iddah period is three months; and so (also) women who do not menstruate. and women who are pregnant, the time of their iddah is until they give birth to their womb. and whoever fears Allah, Allah will make for him ease in his affairs. (QS. At-Thalaq:4)

According to him, if viewed from the ethics of fiqh, then men who are left behind by their wives should also be determined morally religiously at least a waiting time gap to approach and remarry other women).[8] The Qur'an also discusses how the 'iddah of a woman who is divorced before being interfered with by her husband. It is explained

in Sura al-Azab verse 49, if a wife is divorced by her uninterfered husband then there is no obligation of 'iddah on her, and if the dowry has been determined, then pay the dowry in half. While the dowry has not been determined, the woman is entitled to a gift according to the breadth of her husband.[9]

As one of the figures of feminism, Faqihuddin Abdul Kodir voiced that men need to be given time 'iddah (waiting period) is also like women. According to him, if viewed from the ethics of fiqh, then men who are left behind by their wives should also be determined morally religiously at least a waiting time gap to approach and remarry other women. Pause here is intended as a form of respect, mourning, tolerance, to the deceased and family. Honoring someone who has contributed in his life is a good thing and is encouraged in Islam.[10] This is done by a woman to her husband and family with the 'iddah she does, so it will be more beautiful if the law applies to both.

Similarly, with the laws and regulations in Indonesia, all support and mention that the period of 'iddah only applies to women as mentioned in the Compilation of Islamic Law Articles 153, 154 and 155. In its development, there are some parties who feel the need to impose the period of 'iddah for men as it has been applied to women. An interesting thing to discuss is that when women observe 'iddah, we (society) are too comfortable with the rules. The question arises as to why 'iddah is compulsory for women and not recommended for men.[11]

If 'iddah as a form of reflection and thinking in order to get a self-evaluation of each partner, then at least men are also seen in the same side of fiqh law, so it can be with fiqh ethics. That is, men can also be morally encouraged to have a time lag and not approach other women, and vice versa.[12] The goal is that when the wife wants to return (rujū') with her husband, or the husband wants to return (rujū') then the process will be easier. As for the prohibition of women who observe the period of 'iddah, it is forbidden to make up or beautify themselves that can fascinate other men. So divorced men are also prohibited from normally doing things that can fascinate other women with an active or overt approach to other women.[13]

The discussion of 'iddah has existed and been known since pre-Islamic times. Then after the advent of Islam, 'iddah was continued because it was beneficial for the survival between wife and husband. Then slowly the teachings of Islam came to make quite fundamental changes, Islam came by seeking women's rights about 'iddah.[14] So a provision of 'iddah was made that regulates women's rights during post-divorce to ensure her condition whether she is pregnant or not or there is a waiting time to think and communicate again between husband and wife to remain separated or reconcile, as well as in terms of other benefits to be able to communicate to be able to resolve family

problems related to the divorce that have not been resolved such as housing problems, Parenting problems, joint property issues and other important matters that have not been resolved, so that after divorce there are no other problems in the family.[15]

Iddah for men (*Shibhul Iddah*) is the main focus in the discussion of this paper which the author discusses again more clearly about *Shibhul Iddah* For men who divorce both by talaq raj'i and talaq bain shugra which is now a controversy over its enactment, because in society it is known that the application of 'iddah is only for women.[16] As for men, there is none, while the fact is that now there is a man after divorcing his wife does not apply 'iddah to him and then the man remarries another woman, but again reconciles during 'iddah with his first wife so that polygamy occurs without the permission of polygamy from the court and this according to the author's thoughts can result in legal smuggling which can result in harm to women.

2. Methods

The research method is basically how a researcher reveals a systematic, logical, rational, and purposeful way of working before conducting research. When you have collected data, this method can answer scientifically from the formulation of problems (academic problems). The method in question is intended to achieve the objectives of the research results optimally. This method includes the type of approach taken in carrying out research. Meanwhile, the steps used by researchers in this paper are as follows: First, the data to be used in this study are all in the form of literature references.[17]

As for the main reference or primary source used is the compilation of Islamic law such as, Islamic books and modernity. Next, the Qur'anic verse that explains 'iddah especially in sura al-Baqarah verse 228. To help this research, sources in the form of skunder sources are also needed. Additional supporting sources to help this research are writings that do discuss 'iddah, the compilation of Islamic law and Islamic jurisprudence. The analysis method used is in the form of descriptive analysis. Descriptive-analysis is an explanation of what is meant by the theory of 'iddah, the compilation of Islamic law and Islamic jurisprudence. Furthermore, from this presentation, an analysis of the postulates that explain 'iddah is carried out. The analysis in question is to analyze the verse about 'iddah to be made into law and applied to men using the theory of compilation of Islamic law.

3. Results and Discussion

3.1. Vice Minister, Bureaucracy, and Hegemony

In every decision chosen by a married couple who are about to divorce certainly has consequences for the decision, and the result of talaq or divorce itself is in the form of a law namely 'iddah to wait for the ex-husband or ex-wife to remarry, but the 'iddah only applies to women to know their situation by calculating the time of quru' for the divorced life, until giving birth for those who are pregnant and counting the months for those who are divorced die or who no longer menstruate.[18] In positive law in Indonesia, the period of 'iddah for women who divorce or separate from their husbands has been formulated as in Article 153 of the Compilation of Islamic Law which reads:

1. For a wife who breaks up her marriage there is a waiting period or 'iddah, except *qobla al dukhul* and the marriage is broken not because of the death of the husband. The waiting time for a widow is determined as follows:
2. If the marriage breaks up due to death, even though *qobla al dukhul*, the waiting period is set at 130 (one hundred and thirty) days:
3. If the marriage breaks up due to divorce, the waiting time for those who are still menstruating is set at 3 (three) holy times with at least 90 (ninety) days, and for those who do not menstruate is set at 90 (ninety) days;
4. If the marriage breaks up due to divorce while the widow is pregnant, the waiting period is fixed until delivery;
5. If the marriage breaks up due to death, while the widow is pregnant, the waiting period is fixed until delivery.
6. There is no waiting time for those who break up their marriage due to divorce between the widow and her ex-husband *qobla al dukhul*.
7. For marriages that break up due to divorce, the waiting period is calculated from the fall, the decision of the religious court which has permanent legal force, while for marriages that break up due to death, the waiting period is calculated from the death of the husband.
8. The waiting time for wives who have menstruated while at the time of undergoing 'iddah does not menstruate because of breastfeeding, then the 'iddah is three times the time of menstruation.

9. In case the situation in paragraph (5) is not due to breastfeeding, then his 'iddah is for one year, but if within that year he menstruates again, then his 'iddah becomes three times the holy time.[19]

In the discussion of classic fiqh books, 'iddah connotes only women, so for men our understanding so far is that there is no period of 'iddahnya with the meaning that when he is divorced, either with talaq raj'i, or talaq bain. This means that the day after receiving the divorce certificate from the Religious Court, even though he was decided by divorce talaq raj'i and still has the right to reconcile with his wife, he can immediately remarry another woman he likes. Strictly speaking, the male side does not violate a Sharia prohibition or existing legal provisions, but upon careful examination it can lead to illegal polygamy or legal smuggling if the man reconciles during his 'iddah and remarries another woman during the 'iddah period with the first wife, even though both obtain legality in the form of their respective marriage certificates as proof of valid marriage which is contrary to Article 3 Law No. 1 of 1974 on Marriage jo Article 56 of the Compilation of Islamic Law which basically states that our country adheres to monogamous marriage, men who want to be polygamous must obtain permission from the court and with certain procedures.[20]

The fukaha are unanimous in the opinion that a wife who is still in 'iddah talaq raj'i haram is begged either clearly or by means of satire, because her marriage bond has not been broken during her 'iddah period[21], so that the wife is still legally his wife. Then in Law No. 1 of 1974 Article 3 Paragraph (1) clearly states that basically in marriage a man can only have one wife and a woman can only have one husband or based on monogamy[22], but in principle it is permissible for men to practice polygamy as long as they can meet certain conditions and must also be able to act fairly, this is in line with the Word of Allah SWT in the Qur'an in surah an-Nisaa' verse 3 which reads:

Meaning: And if you fear that you will not be able to Do justice to the orphaned woman (if you marry her), Then marry the (other) women you like: two, three or four. then if you fear that you will not be able to Do justice, Then (marry) only one, or the slaves you have. Such is closer to not persecuting.

The above verse explains that doing justice is the fair treatment of wives such as clothing, place, turn, etc. of an outward nature. Islam allows polygamy under certain conditions. before this verse came down polygamy already existed, and had also been practiced by the Prophets before the Prophet Muhammad s.a.w. this verse limited polygamy to four people only.

As for Wa'bah Zuhaili argues that there is *Shibhul Iddah* or 'iddah for men is due to the presence of *Mani Shar'i* i.e. that *first*, if a man divorces his wife with talak raj'i and he wants to marry a woman who is in the same way as his wife, such as the wife's sister, then the man cannot marry the woman until the period of 'iddah of the divorced wife is over. *second*, if a man has four wives, then he divorces one of his wives and wants to remarry the fifth woman then he must wait for the period of 'iddah of the divorced wife to finish.[23]

The author argues about the enactment *Shibhul Iddah* for divorced men it must be performed not only in the state of talaq raj'i, but also applied to talaq bain sughra which is now widely valid in religious courts, talaq filed by the wife (divorce) on the grounds that there have been continuous disputes and quarrels (*Shiqaaq*) or other reasons which, if granted, shall apply to the woman from the moment the judgment has permanent legal force (*Inkrach*),[24] i.e. 14 days after the judgment is read if each party is present and or 14 days after the notice of the judgment has been received by the defendant if the award is decided by cuttings or *contradictioer*. Why does the author argue that it does not only apply in the context of talaq raj'i, but also applies to bain sughra divorce, this is expected to provide justice, legal certainty and benefits or benefits for women as the theory of legal objectives in general according to Gustav Radbruch uses the principle of priority.[25] The principle of priority is used as three basic values of legal objectives, namely: justice, expediency and legal certainty.

In talaq bain sughra is enough to provide a sense of justice for women. In the author's opinion if the male side is also applied *Shibhul Iddah* aforementioned[26] Because in the case of talaq bain sughra, it does not rule out the possibility that husband and wife can reconcile during 'iddah even with a new aqad, but also to maintain the spirit of each spouse not to rush to marry as long as there is still time for 'iddah bain sughra, because of the application of obligations *Shibhul Iddah* For men, it will make a man think more about doing something that causes divorce. Because most divorce cases that occur today are divorce lawsuits.[27] Then, the period of 'iddah can be used as a time to delay a man from marrying again, because during the period of 'iddah men are not allowed to marry other women.

In the presence of *Shibhul Iddah* For men, it can provide many benefits for men themselves, including in terms of economy, because of the existence of *Shibhul Iddah* This will hinder for a man to easily perform marriage. From the psychological side, it also affects men so that it makes men think again if they want to do an act that can cause divorce, because after divorce he has to undergo *Shibhul Iddah*. [28]

In the concept of maqashid sharia, the author argues that the application of *Shibhul Iddah* It is an obligation that must be maintained, based on the benefits behind its determination in the concept of gender equality and protecting women's rights. Because it means eliminating discrimination and dehumanization (treating someone not as a whole person) against women. This can be explained in the case of 'iddah talaq raj'i and iddah due to death. In 'iddah talaq raj'i, imagine how a woman who has just been divorced by her husband feels, and then she has to undergo iddah with all its rules that may be burdensome for her, while at the same time, the ex-husband who has just divorced her marries another woman.[27]

The imposition of 'iddah for men does not mean violating and creating a new Islamic law. Precisely the enactment of 'iddah for men aims to lead to the spirit of the enactment of Islamic law that considers aspects of maslahah. As the purpose of mukallaf in accepting Islamic law, one must bring benefits and reject mudharat, both for oneself and for others. Existence *Maqasid Shari'ah* on each provision of shari'ah law including the field of *Ahwal Al Shahsiyyah* This has become indisputable. If it is a mandatory act then there must be benefits contained in it. Conversely, if it is a prohibited act, then there is definitely harm that must be avoided. Because as the basic purpose of establishing a sharia is for the benefit of humans both in the life of the world and the hereafter. Because all maslahah contains justice, mercy, benefit, and wisdom.[29]

Women can provide justice, benefits and legal certainty for themselves. In the presence of *Shibhul Iddah* Of course, it can close the crime for women, in Islamic shari'a is a spirit that must be carried out in law enforcement. There are three conditions that must be considered when using *Mashlahah Mursalah* in establishing laws, namely *first*, the benefit should be for which there is no evidence against it. *second*, *maslahah mursalah should be maslahah* What can be ascertained, is not a vague thing. *third*, *Maslahah* It should be general.[30] So if you want to use *Maslahah Mursalah* In determining the law, the necessary conditions include: a) *Maslahah mursalah* which is essential and general in the sense that it is acceptable to common sense and actually brings benefits to man; b) Strictly in line with the aims and objectives of the Sharia law in establishing every law, which is to bring about the benefit of mankind; c) Strictly in line with the purpose of the law of sharia in establishing the law does not conflict with the existing propositions of shari'a, either in the form of nationalities of the Qur'an, hadith or ijma' (agreement of the scholars) before; d) *Maslahah Mursalah* It is practiced in conditions that will be in the narrowness of life, with the meaning that it must be taken to avoid people from difficulties[31]

Contextualization of the verse From the verse it is said that a normal woman who is not menopausal, pregnant or left dead by her husband should perform 'iddah for 3 quru' or three times of purity. At the appointed time of the Qur'an it can be said that to determine the period of 'iddah requires the natural activity experienced by the organs of the body, namely the discharge of menstruation. It is only owned by women while for men it does not have it. As for 'ilat the enactment of iddah, it is for the reason of examining the woman's uterus is still kosoh or already contained and gives time for the husband to rethink whether to reconnect with his wife or remain steady with his decision to divorce his wife.

Although the 'ilat is the most widely used basis for seeing the law of enactment of 'iddah for women who have separated from their husbands, it is still a possibility not a certainty. Because, the sentence "Women who are rejected should refrain (wait) three times quru'." It is a rumored sentence with the meaning of command. Further to see whether men should perform 'iddah here the author explains what is the purpose of the implementation of the period of 'iddah for women who have separated from their husbands at the time of the Prophet: 1. To know the cleanliness of a woman, so that one person's offspring is mixed with others and to make it easier to determine the fate between the old and new husbands. 2. Ease the economic burden of divorced women (through the income provided by the husband during the period of 'iddah). 3. Reduce the burden of women whose husbands die by reducing the burden of the 'iddah period to four months and ten days. 4. Mourning the death of the husband to honor the husband who died, maintain the rights of the husband, and respect the feelings of the family. Furthermore, the wisdom of the implementation of 'iddah, in addition to seeing the emptiness of the womb, is to give the couple the opportunity to rethink the relationship that has been broken, uphold the height of marriage and respect the couple.[32] Everything can be classified as aimed at men and women except for the emptiness of the uterus which is specifically for women. The wisdom when juxtaposed with 'ilat which aims to provide opportunities for relationships with wives will be in line and can be used as the basis for the implementation of 'iddah. Such a statement could make a new statement that men should also perform 'iddah on the grounds that, after separating from the husband, the wife should have 'iddah so that the husband has the opportunity to discontinue his intention to divorce the wife. After seeing 'ilat and the purpose and wisdom of the enactment of 'iddah for women who have separated from their husbands.[33]

It can be said that 'iddah only applies to women, by looking at the most prominent thing which is the emptiness of the female uterus. This information is in line with Allah's

words: “If you marry women of faith, and divorce them before you interfere with them, it is not at all obligatory upon them ‘iddah for you that you ask to consummate.” (Q.S alAhzab: 49). This verse explains that if a husband and wife have not had intercourse at all when the wife is divorced then there is no period of ‘iddah for the woman. This indicates that a woman who has not had intercourse, then the woman’s uterus is still empty. There is also a hadith of the Prophet that explains about the respective parts between husband and wife in the matter of divorce. Basically the specification of ‘iddah for Karen women there is a *maqasid* over the verse that explains ‘iddah. Meanwhile, the *maqasid* is to see the emptiness of the uterus in women and give time to the husband to think again about the divorce case he has experienced.[34]

Based on contextualization and *masid* in the verse that applies ‘iddah, men still cannot perform ‘iddah. This is because a man cannot give birth or does not have a uterus which is one of the *maqasids* of the enactment of ‘iddah for women. It is not limited to this problem that is the reason men do not do ‘iddah. When the woman is undergoing ‘iddah, the ex-husband also has to provide for the wife. Although, this can be refuted with the existence of career women in this modern era.[35] ‘iddah is only applied to women, indeed it is a law that has been established by Allah and ‘iddah is categorized as a matter whose law is *mahdhoh*. This is the same as the law against pork. If in modern times there are already tools that can eliminate tapeworms in pork. The presence of tapeworms is one of the *maqasids* found to be the reason for eating pork. Alsan is still punished haram even though tapeworms in pork can be removed with advanced technology is because, eating pork is an act that is *mahdhoh*.[36]

As for the form that resembles ‘iddah can be done by men. As explained to us by the *wahbah* Zuhaili: “Does a man have ‘iddah?, for a man there is no ‘iddah in the sense of the term, so after separation (with his wife) may immediately marry another woman, as long as there are no prohibitions of a *shari’i* nature, such as marrying a woman who is not lawful to interfere with while still having a relationship with the first wife, and relatives who are still *mahram* such as sisters, Aunt of father, aunt of mother, daughter of brother, daughter of sister, even through *façade* marriage or *subhat* marriage. Marrying the fifth woman in the middle of the fourth wife’s ‘iddah period, until the end of the fourth wife’s ‘iddah period in *talaq* is over. Marrying a woman who has been triple rejected before performing a *tahlil* marriage”.[37]

From the explanation above, although it is said that men do not do ‘iddah, but, there are several reasons that make men have to do things that resemble ‘iddah or *ulama’* classically call it *syibhul ‘iddah*. Between the waiting periods men have to remarry. First, if a man divorces his wife with *talak raj’i*, and then he wants to marry a woman who is

in the same way as his divorced wife, such as the wife's sister, then the man may not marry the woman's sister before the period of 'iddah performed by the divorced wife is over. Secondly, if a man has four wives, then he divorces one of his wives and he wants to marry another woman or a fifth woman, then he must wait for the period of 'iddah of his divorced wife to finish. Only after the 'iddah period is the divorced wife finished, then, is it allowed to remarry.

4. Conclusion

There are two conditions under which a man must wait not to remarry another person after divorcing his wife, the condition being First, if a man mentalizes his wife with talaq raj'i. Then he wants to marry someone he cannot collect, such as a sister, so he is not allowed until the iddah of the first wife who is included in the mahram bond with the future wife of the second is completed. The second condition is that if a husband has four wives, and he mentalak raj'i one of them to marry the fifth, then he is not allowed to marry the fifth until the 'iddah of the rejected wife is completed. Enforcement *Shibhul Iddah* For men who divorce must be carried out with the intention of providing justice, legal certainty and benefits or benefits for women. In the presence of *Shibhul Iddah* For men, it can provide many benefits for men themselves, including in terms of economy, because of the existence of *Shibhul Iddah* This will hinder for a man to easily perform marriage. From the psychological side, it also affects men so that it makes men think again if they want to do an act that can cause divorce, because after divorce he has to undergo *Shibhul Iddah*.

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- [31] See Zaky ad-Din Sha'ban in his book Ushul al-Fiqh al-Islami Mathba'ah Dar al-Ta'lif, Egypt, 1965, p. 173 n.d.
- [32] Muhammad Abu Zahrah, Al Ahwal Al Shakhsiyyah, cet II, Berut. Dar Al-Fikri Al Araby, 1957. H.55 n.d.
- [33] Nurhadi, Nurhadi. "Law No. 1 of 1974 on Marriage (Marriage) is reviewed from Maqashid Sharia." UIR Law Review (2018). Saputera, Abd. rahman Adi. "The concept of justice in divorce cases for civil servants." Istinbath: Journal of Law (2018). H.67. n.d.
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