



Legal Implications of Marriage During the 'Iddah Period: Analytical Study of the Opinions of Fiqh Scholars

Oyoh Bariah^{1*}, Ferianto Ferianto²

^{1,2} Universitas Singaperbangsa Karawang, Indonesia

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Abstract: Divorce between a man and a woman, whether due to death, divorce, or a court decision, results in the application of the law of 'iddah (a waiting period) in Islam. Compilation of Indonesian Islamic Law (KHI) Chapter VI Article 40 letter b concerning the Prohibition of Marriage, that it is prohibited to enter into a marriage if a woman is still in the 'iddah period with another man. This marriage prohibition applies to both men and women simultaneously. 'Iddah is a stipulation of Allah's Shari'a for women who have broken up with their marital relationship to carry out the waiting not to get married at a certain time to hifdz an-nail that guarantees the honor of the child's lineage in the family so that by 'iddah the woman's womb is clean from pregnancy and the most basic goal of 'iddah is for ta'abbudi. So, based on ta'abbudi, the law of carrying out 'iddah is obligatory and sinful for those who break it, both men and women. So, The legal implications for those who marry during the 'iddah period, either iddah due to death or divorce for both men and women who have or have not had sexual intercourse, are that marriage is broken (faced) and must be annulled, and if they have had sexual relation, both of them' you have committed adultery and sinned, even according to Imam Malik because of sexual intercourse, it is haram for a husband who marries a woman during 'iddah to remarry that woman forever. Juhur ulama allows both men, whether the first husband who divorced her or the second husband who marries a woman during the 'iddah period, to remarry her on condition that the woman has carried out her two periods of 'iddah perfectly, furthermore allowed to marry the man she chose.

Keywords: Divorce, 'Iddah, Legal Implication, Cancelled

Abstrak: Perceraian antara laki-laki dan perempuan baik itu disebabkan kematian, perceraian atau atas putusan pengadilan mengakibatkan berlakunya hukum 'iddah dalam Islam. Kompilasi hukum Islam Bab VI Pasal 40 ayat b tentang larangan Nikah menyatakan: dilarang menikah seorang wanita yang masih berada dalam masa iddah dengan pria lain. Larangan tersebut berlaku bagi wanita dan pria lain secara bersamaan. 'Iddah

*Corresponding Author: Oyoh Bariah (oyoh.bariah@staff.unsika.ac.id), Universitas Singaperbangsa Karawang, Indonesia.

merupakan ketentuan Syariat Allah bagi wanita yang telah putus hubungan perkawinannya untuk melaksanakan penantian untuk tidak menikah dulu pada masa tertentu bertujuan untuk *hifdz an-nasl* yakni menjamin kehormatan nasab anak dalam keluarga, sehingga dengan *'iddah* rahim wanita bersih dari kehamilan dan tujuan yang paling mendasar adalah *ta'abbudy*. Atas dasar tujuan *ta'abbudy* inilah, maka hukum melaksanakan *'iddah* adalah wajib dan berdosa bagi yang melanggarnya baik perempuan maupun laki-laki. Sebab akibat hukum menikah dalam masa *'iddah* bagi laki-laki maupun perempuan yang telah atau belum melakukan persetubuhan bahwa pernikahan tersebut rusak (*fasid*) dan harus dibatalkan dan jika telah melakukan *jima'* keduanya telah berzina dan berdosa, bahkan menurut Imam Malik karena persetubuhan haram bagi suami yang menikahi wanita dalam *'iddah* untuk menikahi kembali wanita tersebut selama-lamanya. Jumhur ulama membolehkan bagi kedua laki-laki baik suami pertama yang mentalaknya atau suami kedua yang menikahi wanita dalam masa *'iddah* untuk menikahinya kembali dengan syarat bahwa wanita tersebut telah menjalankan dua masa *'iddahnya* dengan sempurna, kemudian diperbolehkan menikah dengan laki-laki pilihannya.

Kata Kunci: Perceraian, *'Iddah*, Akibat Hukum, Batal

Introduction

Marriage in Islam is a strong bond (*mītsaqan ghālīzan*) carried out through a marriage contract following the provisions that have been regulated. As a strong bond (*mītsaqan ghālīzan*), marriage must benefit both the perpetrators of the marriage, offspring, relatives, and the community. The principle of marriage in Islam is to strengthen the marriage bond forever. Therefore, all efforts and efforts must continue to be made by all parties in perpetuating the institution.his family. However, not a few marriages that have been built firmly become a disaster and disaster for husband and wife.

When the marriage bond is endangered and cannot be maintained, if maintaining it will cause prolonged suffering for the husband and wife and can exceed the limits of Allah SWT's provisions, Islam opens up the possibility of divorce, either by *talak*, *Kazakh*, or *khulu'* way to uphold the principles human freedom and independence. Even so, divorce should not be used arbitrarily without any acceptable reasons because even if it is lawful, Allah SWT hates it. The Marriage Law No. 1 of 1974 uses the term dissolution of marriage to describe divorce or the end of a marriage relationship between a man and a woman living as husband and wife. For divorce, *fiqh* uses the term *furqah*.

Dissolution of marriage, in this case, means the end of the husband and wife relationship. The dissolution of a marriage takes several forms, depending on who wants to break up the marriage. In this case, there are 4 (four) possibilities:

1. Dissolution of marriage at the will of God Himself through the death of one of the husband and wife. Death automatically ends the marriage relationship.
2. Dissolution of marriage at the husband's will for specific reasons and expressed his will with certain words. Divorce in this form is called *thalaq*.
3. The marriage is broken up at the wife's will because the wife sees something that requires the marriage to be broken, while the husband does not want it to be. The will to break up the

marriage conveyed by the wife in a certain way is accepted by the husband, who continues with his words to break up the marriage. Breaking up a marriage in this way is called khulu'.

4. Dissolution of marriage at the judge's will as a third party after seeing something in the husband and wife indicating that the marital relationship cannot be continued. Dissolution of marriage in this form is called fasakh. (Amir Syarifudin, 2014)

For a woman whose marriage is broken up with her husband, a waiting period ('iddah) applies to her, whether due to death, divorce, or a court decision. Article 153, paragraph 1 of the Compilation of Islamic Law states: For a wife who disbands her marriage, a waiting period or 'iddah applies except for qabla ad-dukhl, and the marriage is broken up not because of the death of her husband. In the letter al-Ahزاب verse 49.

Meaning: O you who believe, if you marry a believing woman, then you divorce them before you interfere with them, then there is no iddah period for them that you need to take into account, but give them mut'ah and let them go in the best way. (Qs. Al-Ahزاب/33;49)

The provisions and rules for the obligation of 'iddah for divorced women are also explained in the letter al-Baqarah verse 228:

وَالْمَطْلُوقَاتُ إِذَا طَلَّقَهُنَّ فَهُنَّ لَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنْنَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَلَهُنَّ أَجْرٌ كَمَا لِلرِّجَالِ وَلَٰكِنْ كُنَّ فِي ضَلَالٍ مُّبِينَةٍ فَلَهُنَّ مَا كَسَبْنَ بِغَيْرِ ظُلْمٍ لَّيْسَ عَلَيْهِنَ لَبْسٌ بِمَا كَسَبَتْ إِذِ انْتَبَهَتْ أَرْحَامُهُنَّ وَأَلْفَاقُهُنَّ وَكُلٌّ مِمَّا رَزَقَنَا اللَّهُ يُرِيدُ بِهِ الْيُسْرَ وَالرِّحْمَةَ لِلرِّجَالِ وَاللِّسَانِ وَاللِّسَانُ لِلرِّجَالِ عَلَيْهِمْ دَرَجَةٌ وَاللَّهُ عَزِيزٌ حَكِيمٌ

Based on the provisions and arguments in the verses of the Koran above, it is obligatory for a wife or woman who has divorced her husband to carry out the 'iddah period of her divorce before re-marrying another man. Meanwhile, the phenomenon and facts of women's marriages during the iddah period occur in South Kalimantan and Banjar district of West Java, that women who register for marriage when their 'iddah period has not yet ended can be certain to have violated Islamic law regarding the prohibition of being proposed to and accepting marriage proposals. (accessed, Thursday, August 12, 2021)

The practice of marrying during the 'iddah period, one of the causal factors is low people's knowledge of Islamic law, especially regarding marriage and divorce laws. Economic factors also contribute to this marriage practice.

Results and Discussion

Terminology of 'Iddah in Islamic Law

The concept of 'iddah from the historical aspect was known before Islam came and was a culture that was practiced in the life of the ignorant community as a form of torturing women whom their husbands divorced, where women had to restrain themselves and their lust for men for quite a long time. Comes to eliminate all acts of injustice and oppression against women and regulates the provisions of "iddah, which upholds benefit and justice.

Iddah is a legal consequence of the dissolution of a marriage caused by divorce, whether talak divorce, khulu, faskh, li'an or death divorce. For divorced women, it is obligatory for her to carry out iddah except for women with ex-husbands who have never had sexual intercourse (qabla ad-dukhl), said Allah SWT in Qs. Al-Ahزاب/33: 49:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُونَهَا فَمِنْ تَعَوُّهُنَّ وَسَرَخُوهُنَّ سَرَاحًا جَمِيلًا

49. Who believes if you marry believing women, then you divorce them before you interfere with them, then they do not need to fulfill the 'iddah for you whom you ask to complete it. So, give them mut'ah and release them in the best way.

The word 'iddah comes from the Arabic masdar form of 'adda-yadda which means to count, so iddah means to count, count, or something that must be counted (Hidayat, 2018). In language, it means menstrual days or holy days for women. Meanwhile, in terms of iddah, it means a waiting period for a woman to marry after a divorce from her husband, whether divorced or divorced, to know the condition of her womb or think for her husband (Dahlan, 2015).

Ahmad al-Ghundur explains the meaning of iddah in a pretty long sense; according to him, iddah is a specified time step to wait for purity (cleanliness of the womb) from the influence of the husband and wife relationship after the wife is divorced or left by her husband, namely the time that the wife bears after breaking up the marriage because it is feared that there will be shamanism in the influence of sexual relations or the like, such as making out, (with other men if you get married soon). (al-Ghundur, 2016)

Iddah is also interpreted as a waiting period (not to marry first) for a wife in a time determined by religion, which aims to find out if the uterus is empty, a wife (for a wife who is still potentially pregnant) or because ta'abbudi (taken for granted) (for wives who are still small or who are already menopause), which was initially prescribed by the iddah to protect offspring from mixing sperm. (asSegaf, 2016) Iddah is also interpreted as the name for a predetermined period for women to wait because of worship to Allah azza wajalla, mourning for their husbands, or ensuring the cleanliness of the uterus during pregnancy. (Mustafa Al-khin, 1992)

Based on the definition of iddah expressed by the scholars above, it can be concluded that iddah is an obligation for a wife who is divorced by her husband, both divorced and alive, to wait until a specific time limit so that she can re-marry with another man or reconcile with her husband.

The legal basis for iddah for women refers to the Qur'an arguments and the hadith of Rasulullah SAW. Word of Allah SWT in the letter at-talaq verse 1:

يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لَا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ يَأْتِيَنَّ بِفُحْشَةٍ مُّبِينَةٍ
وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ لَا تَتْرَى لَعَلَّ اللَّهَ يُحْدِثَ بَعْدَ ذَلِكَ أَمْرًا

In another verse, Allah says in Surat al-Baqarah/2: 228 as follows:

وَالْمَطْلُوقَاتُ يُتْرَبْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنُنَّ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَتُعْوَظُهُنَّ أَحْقُ
بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ وَاللَّهُ عَزِيزٌ حَكِيمٌ

228. Divorced women should hold back (wait) three times quru'. It is not permissible for them to hide what Allah created in their wombs, if they believe in Allah and the Hereafter. And her husbands have the right to refer to her during that waiting period, if they (husbands) wish to make peace. And women have equal rights with their obligations in a way that is ma'ruf. However, husbands have one degree of superiority over their wives. And Allah is Mighty, Most Wise.

The two verses above show that the law of iddah for women is obligatory. Her husband lives the iddah for a divorced woman; the waiting period for her is three times the purity of menstruation.

The iddah period for divorced women differs from one another according to the condition of the divorced woman based on the arguments of the Koran and hadith. In the Qur'an Surah al-Thalaq / 65 verse 4 Allah says:

وَأَلْيَ بَيْتِنَ مِنَ الْمَجِيضِ مِنْ نِسَائِكُمْ إِنْ أَرْتَبْتُمْ فَعِدَّتُهُنَّ ثَلَاثَةُ أَشْهُرٍ وَالَّتِي لَمْ يَحْضَنْ وَأُولَاتِ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعَنَّ حَمْلَهُنَّ وَمَنْ يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مِنْ أَمْرِهِ يُسْرًا

4. And women who are not menstruating anymore (menopausal) among your women, if you are in doubt (about their iddah period), then their iddah period is three months; and so (also) women who do not menstruate. And for pregnant women, their iddah period is until they give birth to their wombs. And whoever fears Allah, Allah will make it easy for him in his affairs.

The waiting period for a widow who has not menstruated or has not menstruated and is no longer menstruating due to menopause is three months, while for a pregnant widow, the iddah period is until her child is born. The iddah period is calculated from when the divorce occurs, which has permanent legal force from the Religious Courts. As for the iddah period of a woman whose husband has died, it is four months and ten days, based on Al-Qur'an Surah al-Baqarah verse 234:

وَالَّذِينَ يَتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَلَا جُنَاحَ عَلَيْكُمْ فِيمَا فَعَلْنَ فِي أَنْفُسِهِنَّ بِالْمَعْرُوفِ وَاللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ

The iddah period is 4 months and ten days for a woman whose husband has died, both ba'da dukhul and qabla dukhul. Hadith Rasulullah SAW narrated from Ibn Mas'ud:

عن ابراهيم عن علقمة عن ابن مسعود انه سئل عن رجل تزوج امرأة ولم يفرض لها صداقا ولم يدخل بها حتى مات قال ابن مسعود لها مثل صداق نسانها لاوكس ولا شطط وعليها العدة ولها الميراث فقام معقل بن سنان الاشجعي فقال قضى فينا رسول الله ص م في بروع بنت واشق امرأة مئا مثل ما قضيت فرح ابن مسعود رضى الله عنه

Ibrahim from Alqamah said: "When Ibn Mas'ud was asked about someone who married a woman, he died before giving his wife a dowry and had not had intercourse with her. Ibn Mas'ud replied: His wife still has the right to a dowry; it cannot be less or more, and an iddah applies to her, and she has the right to inherit. So Ma'qil ibn Sinan Al Asyja'i stood up and said: "The Messenger of Allah has decided the issue of Barwa' bint Wasyq, as decided. She is a woman of our people." Because of that, Ibn Mas'ud became happy (HR. Tirmidzi) (al-Tirmidzi, 2014).

And if the widow whose husband dies is pregnant, her iddah until giving birth to her child is based on the letter at-talaq verse 4. Also, the following hadith of umm Salamah:

عن سبيعة الاسلمية ولدت بعد وفاة زوجها بنصف شهر وفيه فجاءت رسول الله ص م فقال لها قد حلت فانكحيني من شئت

Subai'ah al-aslamiyah gave birth to her baby after being left by her husband half a month later; she asked Rasulullah SAW about her experience. He told him that you have been lawful and to marry the man you wanted (Abdul Karim bin Muhammad ibn Abdul Karim, 2017) (HR. Bukhari) (Al-dimasyq, 2013).

Referring to the descriptions above, the distribution and types of iddah periods are based on the guidelines of the Qur'an and hadith as well as the rules of the Compilation of Islamic Law, which vary, each having different legal consequences, namely as follows:

1. Women's iddah due to talak (divorce)
 - a. When she is pregnant, her iddah is until she gives birth (Qs.at-talaq/65:4, PP No.9 of 1975 Article 39 paragraph (1) letter c jo. KHI article 351)
 - b. In a non-pregnant state

- 1) The wife divorces her husband qabla ad-dukhul (sexual relations have not occurred), then the iddah does not apply to her, and the marriage is broken up not because of the husband's death (Qs. Al-Ahzab / 33:29) jo. KHI Article 153, paragraph 3
- 2) The wife divorces her husband ba'da dukhul (sexual relations have occurred)
 - a) Menstruating women's iddah is purified at least 90 days (Qs.al-Baqarah/2:228) jo PP thrice. No.9/1975 article 39 paragraph (1) b, in conjunction with KHI article 153 paragraph (1) letter b.
 - b) For women who have not or have not menstruated (menopausal), their iddah is for three months (Qs.at-talaq/65:4, jo PP. No.9/1975 article 39 paragraph (1) b, jo KHI article 153 paragraph (1) letter b.
2. The iddah of a woman is because her husband has died, and she is pregnant; her iddah is until she gives birth (Qs.at-talaq/65:4, PP No.9 of 1975 Article 39 paragraph (1) letter c jo. KHI article 351 paragraph (2) letter d)
 - a. In a non-pregnant state, the iddah period is four months and ten days or 130 days, whether the woman is in a state of qabla dukhul or ba'da dukhul. (Qs. Al-Baqarah/2:234, jo KHI article 153 paragraph (2) letter a

As for the iddah period for women because of khulu' (contestable divorce), fasakh, and li'an, the waiting time applies according to the provisions of iddah talak.

Based on the description above, the division of 'iddah is divided into three, namely first, iddah due to pregnancy ending the iddah period by giving birth either because of divorce, life or death, second, iddah for women who are not menstruating with a period of three months, third, iddah. 'Aqra' women who are still menstruating with an iddah period of three sacred times of at least 90 days.

Prohibition in 'Iddah

The obligation of Iddah for women, according to syar'i, refers to the arguments of the Qur'an, hadith, and ijma' described above. The syariat aims to realize the benefit of the public and individuals.

In connection with the obligations of the 'iddah period, a woman whose husband has died is obliged to carry out ahead, not dress up and put up during the iddah period, if breaking it is a sin. Ihdad is done by avoiding the following:

1. Wearing jewelry, even if it is just a ring of gold or silver
2. Wear perfume, except to get rid of foul odor on specific body parts, and wear clothes with striking colors
3. Use hair oil, whether it contains perfume or not
4. Using kohl, but according to fiqh experts, it is permissible in an emergency for treatment, for example
5. Using Henna and all kinds of paint and gilding
6. Wearing aromatic clothes with bright colors like red or yellow. (Mustafa al-Khin, 1992)

These prohibitions refer to the argument in the hadith narrated by Umm Salmah from the Prophet, that he said:

المتوفي عنها زوجها لا تلبس المعصر من الثياب ولا المعشقة ولا الحلي ولا تختصب ولا تكتحل

"Women whose husbands have died should not wear yellow clothes, nor should clothes that are gilded with red soil, nor jewelry, nor use of gilding, nor kohl. (HR. Ahmad, Abu Dawud and an-Nasa'i). (al-Syaikhani, 1994).

In addition to the ihdad orders above, there are several restrictions for women who are undergoing the 'iddah period, including:

1. It is forbidden for a wife who is undergoing her 'iddah period to accept a proposal (khitbah) from a man openly; this applies to wives who are divorced or those whom their husbands have abandoned if an application with innuendo is allowed a death iddah
2. Prohibition of marrying another man: if the woman is married during the period of 'iddah, then the marriage is null and void because women are not allowed to marry to maintain the first husband's rights.
3. Prohibition from leaving the house. (Az-Zuhaili, 2018)

Fiqh experts differ on the prohibition of leaving the house. However, if the condition is in an emergency, women during the iddah period are allowed to leave the house. The words of Rasulullah SAW;

عن جابر - رضي الله عنه - قال: طَلَّقَتْ خالتي، فأرادت أن تُجِدَّ نخلها، فزجرها رجل أن تخرج، فأنت النبي - رضي الله عنه - قال: " بلى اخرجي، فجدني نخلك، فإنك عسى أن تصدقي، أو تفعلي معروفًا"

Jabir bin Abdullah said; "My aunt was divorced by her husband, then she wanted to pick dates, but she was forbidden by a man to leave the house." After that, my wife came to the Prophet Sallallaahu 'alaihi wasallam to ask about it, so the Prophet Sallallaahu 'alaihi wasallam replied, "Yes, you may! Pick your dates; hopefully, you can give alms or do good. (HR. Muslim No. 1483, chapter: jawaz khuruj a-mu'taddah al-branch) (an-Naisaburi, 1955).

Some of these prohibitions are to maintain self-respect and benefit women during the iddah period as individuals while protecting the welfare of Islamic society.

Law of Marriage During the Period of 'Iddah

Every stipulation and rule prescribed contains the goals and wisdom contained therein, including the goals and wisdom of the stipulation of 'iddah for women. Among the wisdom of 'iddah include:

1. To find out the cleanliness of the uterus so that two seeds do not unite in one uterus it will, resulting in chaotic offspring
2. Appreciate the importance of marriage, elevate its degree, and show its glory
3. Giving time and opportunity for reconciliation for the husband who dropped divorce if he regrets his actions so that he can reconcile with his wife again
4. Complete the husband's rights and show a sense of mourning for the husband's death. This is reflected in the prohibition of the head, namely decorating and dressing up during the iddah period
5. Prudence for fulfilling the husband's rights, the benefit of his wife and children, and Allah's rights. So, in iddah four parties get rights (Salim, 2017).

Referring to the description of the wisdom of iddah above it shows that Islam glorifies the institution of marriage in bringing about benefits for humans involved in this institution. So that Muslims' knowledge of the wisdom of 'iddah becomes the basic basis for obeying Islamic law so that they do not try to violate it.

'Iddah violations occur in society due to low knowledge of marriage and divorce laws and economic factors. The results of Abdur Rahman's research in the *El-usrah* journal show that women's marriage during the 'iddah period in North Bolaang Mongondow Regency was carried out involving elder figures, religious leaders, and local traditional leaders that the causal factors were due to the lack of public knowledge about 'iddah laws, economic factors, and avoiding slander because there has been a biological relationship. (Saputra, 2015)

Facts and phenomena of violations of iddah for women's marriages occur in South Kalimantan and Banjar districts. Information is quoted through the official web page of the South Kalimantan Ministry of Religion office. There is a phenomenon of iddah violations for women's marriages in South Kalimantan. (H. Saubari, 2020)

One more fact that is quite troubling is the number of prospective brides who register for marriage when the 'iddah period has yet to end. The Monthly Discussion of the Indonesian Penghulu Association (APRI) of Banjar Regency, Monday (30/11), raised this odd phenomenon, where almost all Penghulu in Banjar Regency claimed to have received marriage registrars like this. This means that the violations during the iddah period are no longer casuistic but have expanded and reflect the low level of public knowledge and understanding of munakahat law. Prohibition of being proposed to and or accepting proposals. (accessed, Thursday, August 12, 2021)

The purpose of Iddah includes *bara'ah al-rahim* and *ta'abbudi*. *Ta'abbudi* is the most basic basis of the command in carrying out 'iddah. The first objective of *bara'ah al-Rahim* is to find out how clean the womb of a divorced woman is from the fetus of her ex-husband because the seeds left by her ex-husband in his wife's womb will mix with the man who will marry her so that it will raise doubts about the child to be born. This also ensures that the honor of lineage is maintained for the family. The second objective of *ta'abbudi* is to obey and comply with Allah's commands.

In several studies of classical fiqh, the majority of scholars think that the obligation of iddah for divorced women is *ta'abbudi*; therefore, there is no 'illat law' in the legal provisions of iddah; there is only purpose and wisdom for its *syari'atan*. Another opinion states that the obligation of iddah is caused by the occurrence of *wathi'* (intercourse between a man and a woman) (al-Jaziri, 2018).

Meanwhile, Ibn Qayyim al-Jauziyah stated that the purpose of the obligation of iddah is not merely *tab buddy* for the following reasons: first, every law in Islam must have an *illat* and wisdom, while it cannot be found due to the limitations of the human mind to express it. Second, iddah is not a type of *mahdlah* worship, indicated by the obligation of iddah without intention, and is imposed on all human beings, whether intelligent or not, such as children and crazy people. Third, the rights of husband and wife and children are still valid. And can be used during the iddah period. According to him, the obligation of iddah is also based on the cause of *wathi'* (Syuhud, 2017).

The argument for the obligation of iddah because of *wathi'* is also supported by the guidance of the Qur'an surah *al-ahzab/33* verse 49 that the iddah of a woman who is divorced and has never been *dukhol* (*jima'*) with her husband and is divorced is alive and not dead, there is no iddah for her.

Meanwhile, if her husband dies even though she has not been dukhul, the iddah is obligatory for the woman. An iddah obligation like this is meant as a form of women's ta'abbudi towards the rules and provisions of Allah SWT. (Mustafa Al-khin, 1992). The obligation of iddah because of wathi' with the aim of bara'ah uterus can be refuted by technological advances in the medical and medical fields. Thus, the iddah obligation for women can be caused by wathi' as well as ta'abbudi at the command of Allah SWT, so there is no reason to break the iddah obligation for women.

Imam al-Razi, in his commentary book Mafatih al-ghaib, quotes the words of Imam al-Zamakhsary in al-Kasysaf, saying that the editorial of the verses of the Koran as the arguments for the obligation of iddah both life and death divorces uses khabar khabar (news sentences) and numbers (' adad) which is fixed and detailed so that there is no room for interpretation in other words, thus showing an extreme iddah obligation (Al-Razi, 2019). The editorial style of the Qur'an by using news sentences is considered to be stronger than imperative sentences. This is also shown in the use of continuous verbs in the verses of 'iddah, according to Quraish Shihab, which gives the impression that what has been reported has been carried out correctly and adequately from time to time (Shihab, 2009).

The obligation to carry out 'iddah for women refers to Qs.al-baqarah/2;228 that women during the 'iddah period are not just waiting to spend their iddah according to the type of divorce, but that waiting is done based on full awareness not because of coercion because that awareness will lead her to be honest and open about what is in her womb or menstruation and the purity she experiences. Provisions and regulations in the iddah can be appropriately implemented and emphasized in the following ayat:

إِنْ كُنْ يَوْمَئِذٍ بِإِلَهِهِ وَالْيَوْمِ الْآخِرِ

If indeed they believe in Allah and the hereafter. This sentence is not a requirement, but it shows a threat and an encouragement for those who are divorced, both divorced and dead, to comply with these rules because faith can lead humans to be honest and not betray and lie, or even violate them. If so, it can be judged by people who do not believe in true faith (Muhammad ibn Jarir al-Thabary, 2009).

In this regard, there are laws and consequences of a woman's marriage during the 'iddah period. Word of Allah SWT in Qs.al-baqarah/2 verse 235:

وَلَا تَعْزِمُوا عُقْدَةَ النِّكَاحِ حَتَّى يَبْلُغَ الْكِتَابُ أَجَلَهُ وَاعْلَمُوا أَنَّ اللَّهَ يَعْلَمُ مَا فِي أَنْفُسِكُمْ فَاحْذَرُوهُ وَأَعْلَمُوا أَنَّ اللَّهَ غَفُورٌ حَلِيمٌ

235. And do not be determined to marry before the end of the iddah. And know that Allah knows what is in your heart; so fear Him, and know that Allah is Forgiving, Most Forbearing.

In the verse above, two words emphasize the prohibition of marrying women during the 'iddah period. The first word, ta'zimu, means to be determined and have a strong will; the implication is that there are two actions. The firm determination to marry a woman during the iddah period is only a wish that has not been fulfilled. This action is still allowed.

وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا عَرَّضْتُمْ بِهِ مِنْ خِطْبَةِ النِّسَاءِ أَوْ أَكْتَمْتُمْ فِي أَنْفُسِكُمْ عَلِمَ اللَّهُ أَنَّكُمْ سَتَذْكُرُونَهُنَّ وَلَكِنْ لَا تُوَاعِدُوهُنَّ سِرًّا إِلَّا أَنْ تَقُولُوا قَوْلًا مَعْرُوفًا

235. And there is no sin for you to propose to these women by innuendo or hide (the desire to marry them) in your heart. Allah knows that you will mention them. In the meantime, do not secretly make marriage vows with them, except to say (to them) ma'ruf words.

The second act, intention and determination, is practiced by marrying a woman during the iddah period and is prohibited. The second word, hatta yablugh al-kitab ajalaha, means before the end of the

iddah period. (Al-Razi, 2019) Referring to the second word above, carrying out the marriage contract during the iddah period is unlawful and prohibited before the iddah period expires. Based on the textual argument above, the scholars agree that marriage during the iddah period is a broken marriage (fasid) and must be annulled (fasakh).

Legal Consequences of Marriage During the Period of 'Iddah

If a woman marries during the iddah period, what are the marriage's legal consequences? Suppose a woman's marriage occurs during the iddah period, of course. In that case, her marriage must be annulled, based on Qs.al-Baqarah/2:235 above and the provisions and examples of law (jurisprudence) that Umar ibn Khattab has carried out. An atsar narrated by Imam Malik in his al-Muwatta states:

عَنْ ابْنِ شِهَابٍ ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ وَعَنْ سُلَيْمَانَ بْنِ يَسَارٍ ، أَنَّ طَلِيحَةَ الْأَسَدِيَّةَ، كَانَتْ تَحْتَ رُشَيْدِ النَّفْعِيِّ، فَطَلَّقَهَا، فَكَحَّتْ فِي عَدَّتِهَا؛ فَضَرَبَهَا عُمَرُ بْنُ الْخَطَّابِ ، وَضَرَبَ زَوْجَهَا بِالْمُحَقَّقَةِ ضَرْبَاتٍ، وَفَرَّقَ بَيْنَهُمَا، ثُمَّ قَالَ عُمَرُ بْنُ الْخَطَّابِ: أَيُّمَا امْرَأَةٍ نَكَحْتَ فِي عَدَّتِهَا. فَإِنْ كَانَ زَوْجُهَا الَّذِي تَزَوَّجَهَا لَمْ يَخُلْ بِهَا، فُورِقَ بَيْنَهُمَا، ثُمَّ اعْتَدَتْ بِنَيْتِهَا مِنْ زَوْجِهَا الْأَوَّلِ. ثُمَّ كَانَ الْآخَرَ خَاطِبًا مِنَ الْخَطَّابِ. وَإِنْ كَانَ خَلَّ بِهَا، فُورِقَ بَيْنَهُمَا، ثُمَّ اعْتَدَتْ بِنَيْتِهَا مِنْ زَوْجِهَا الْأَوَّلِ، ثُمَّ اعْتَدَتْ مِنَ الْآخَرِ، ثُمَّ لَا يَجْتَمِعَانِ أَبَدًا. قَالَ: وَقَالَ سَعِيدُ بْنُ الْمُسَيَّبِ: وَلَهَا مَهْرُهَا، بِمَا اسْتَحَلَّ مِنْهُ

From ibn Syihab, from sa'id ibn al-musayyab, from Sulaiman ibn Yasar that Thulaihah al-Asriyah was divorced by her husband Rashid as-tsaqafi, then tulaihah married a man during her iddah period. So Umar ibn al-Khatab beat her, hit her husband with several blows, and separated and divorced them—her first husband. Then (after the end of the iddah period), the man may propose and marry her if he wishes. However, if there has been intercourse between the two, it must be separated. The woman must complete the remainder of her first iddah with the first man; Malik said, "Sa'id Ibnul Musayyab said, "The woman is entitled to a dowry (from her second husband) because she has had intercourse with him." (HR. Malik, hadith no. 1961) (Anas, 1961).

Based on the above argument, the legal consequences of a woman's marriage during the iddah period are in two conditions (al-Syairazy, 1991).

First, the marriage contract has been carried out, and intercourse has not occurred between the two; the legal consequences are:

1. The marriage must be annulled
2. Women must complete the rest of the iddah period for the first divorce with the first man. When the iddah period is over, it is permissible for the second man to marry her with a new marriage contract.

Second, the marriage ceremony has been carried out, and intercourse has occurred between the two. Then, the legal consequences of this second type of marriage (Abdullah ibn Ahmad ibn Muhammad ibn Qudamah, 1998)

1. Their second marriage had to be separated and annulled
2. It is an act of adultery and sin
3. For women must complete the first iddah with the first divorce with the first man
4. Women are also required to complete the second iddah upon their second divorce from the second man

Meanwhile, the second law for men to marry women after carrying out their two iddah periods, for scholars, namely Imams Malik, al-Auza-i, and al-Laits and Imam Shafi'i in their qaul qadim, it is forbidden for men to marry women it is forever based on Umar ibn Khattab's jurisprudence above (Maulida & Busyro, 2018).

Meanwhile, according to the majority of scholars from the Imam Hanafi school of thought, Shafi'i, Hambali and Imam al-Tsauri are of the opinion that it is permissible for the man to marry a woman after his 'iddah is finalized and carried out. This opinion refers to the following legal examples originating from Ali ibn Abi Talib:

وعن ابن جُرَيْجٍ قَالَ أَخْبَرَنِي عَطَاءٌ أَنَّ عَلِيًّا أْتِيَ بِامْرَأَةٍ نُكِحَتْ فِي عِدَّتِهَا وَنُحِلَّ بِهَا فَهَرَّقَ بَيْنَهُمَا وَأَمَرَهَا أَنْ تَعْتَدَّ مَا بَقِيَ مِنْ عِدَّتِهَا الْأُولَى ثُمَّ تَعْتَدَّ مِنْ هَذِهِ عِدَّةً مُسْتَقْبَلَةً فَإِذَا انْقَضَتْ عِدَّتُهَا فَهِيَ بِالْأَجْبَارِ إِنْ شَاعَتْ نَكَحَتْهُ وَإِنْ شَاعَتْ فَلَا

From Ibn Juraij said Atha narrated to me that Ali ra came to him a woman who was married during the iddah period and had had intercourse in her marriage, then separated the two and told her to carry out the rest of her first iddah with the first man then carry out the next iddah from the man The second. And if the woman has completed her second iddah period, she may choose to marry the second man or not (al-Qurtuby, 2014).

Jumhur's opinion also refers to the general argument of the Qur'an in Surah An-Nisa verse 24:

"And it is lawful for you other than that (namely) to seek wives with your wealth to marry, not to commit adultery (Qs.an-Nisa/4: 24).

Whereas the verse above applies in general without any notable presence, the majority of scholars believe that the law of the permissibility of marrying a woman during the 'iddah period who has carried out her two iddah periods applies to the first man as well as the second man who has married her (Al-Jaziri, 2003).

The legal basis and consequences of marriage during the 'iddah period based on the description above are very clear, so the fact that the practice of this type of marriage occurs in communities such as in Bolaang Mongondow, South Kalimantan and Banjar districts is due to the lack of public knowledge of Islamic law; therefore educational activities and assistance in efforts to increase knowledge of marriage law in Islam for the community must be continuously encouraged both by the government through the Office of Religious Affairs in each city, and also by public Figure and religious figures at Islamic studies places in the community (Alfiyatul Rizqiyah, 2022).

'Iddah for divorced women, whether divorced by life or death, is a necessity and an obligation that is certain and legally strong. So marriage during the 'iddah period can have an impact on individuals and also socially (Mu'alimah, 2015). Perpetrators of marriage during the 'iddah period, both men and women are considered not to have true faith and have disobeyed Allah's rules and have legal consequences for their marriages to be annulled and for women to complete the 'iddah period of their two marriages, even if they have committed adultery and sin had Jima' in his marriage. The social impact is that the public considers the perpetrators to have sinned against Islamic law and the culture of Indonesian society (Jauharatun, 2017).

Conclusion

The purpose of 'iddah for women is *hifdz an-nasl*, guaranteeing the honor of the lineage of children in the family so that with 'iddah, the woman's womb is clean from pregnancy. Besides that, it also aims to be *ta'abbudi*, a form of obeying and obeying women to the provisions of Islamic Shari'ah. Therefore, carrying out the 'iddah for every divorced woman, whether divorced, living, or dead, is a necessity and an obligation, so for those who violate it is a sin.

Marriages during the 'iddah period must be annulled whether sexual intercourse has occurred or not. Even if he has had sexual intercourse, he has committed adultery and sinned. According to Imam Malik, for a husband who marries a woman in 'iddah, it is haram to remarry that woman forever. *Jumhur ulama* allows both men, whether the first husband who divorced or the second husband who marries a woman during the 'iddah period, to remarry her on condition that the woman has carried out her two periods of 'iddah perfectly.

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