



SYIBHUL IDDAH AS A FORM OF JUSTICE FOR WOMEN MUBADALAH PERSPECTIVE

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Abstract: Iddah is one of the consequences that women must undergo after a divorce, whether in divorce due to divorce, or divorce due to death. The Quranic provision on iddah is an absolute provision that must be followed. The legal basis for iddah is found in the Qur'an letter Al-Baqarah verse 228, letter Al-Ahzab verse 49. Iddah obligations are also regulated in the Compilation of Islamic Law (KHI) in article 170 paragraph 1 the wife is obliged to observe the iddah period, while in article 170 paragraph 2 it is explained that men observe the iddah period according to propriety. Of course, this has experienced problems in terms of relations between husband, wife and children, the families concerned, and women again experience discrimination where women have to run the iddah period according to a predetermined time while men do not run this appropriate term there is no specification of the length of time that is run, it seems that it is only a formality. The purpose of this research is to find out whether syibul iddah is a form of justice for women, to find out the impact of benefits for women and men with the existence of syibhul iddah in the view of masalah mursalah and syibhul iddah as legal reform (social engineering) in Indonesia. This paper uses a library research method, using a descriptive analysis approach, namely by describing the text in KHI and other regulations in Indonesia regarding the existence of iddah then analysed using mubadalah. From this explanation, the result of the author's analysis is that syibhul iddah has a good impact on household relations because it provides justice for women and also provides benefits for the prevention of covert polygamy against women. Syibhul Iddah is needed in life as a legal reform (social engineering).

Keywords: Syibhul Iddah, Mubadalah, Masalah Mursalah, Social Engineering.

Abstrak: *Iddah* adalah salah satu konsekuensi yang harus dijalani oleh perempuan setelah terjadinya perceraian, baik pada cerai karena talak, maupun cerai akibat kematian. Ketentuan Alquran tentang *iddah* ini adalah suatu ketentuan yang mutlak yang harus diikuti. Dasar hukum *iddah* terdapat di dalam Al-qur'an surat Al-Baqarah ayat 228, surat Al-Ahzab ayat 49. Kewajiban *Iddah* juga di atur di dalam Kompilasi Hukum Islam (KHI) pada pasal 170 ayat 1 isteri wajib menjalankan masa *iddah*, sedangkan di dalam pasal 170 ayat 2 dijelaskan bahwa laki-laki menjalankan masa *iddah* menurut kepatutan. Tentu saja hal tersebut mengalami permasalahan dalam hal relasi antara suami, isteri dan juga anak, pihak keluarga yang bersangkutan, serta perempuan kembali mengalami diskriminasi yang dimana perempuan harus menjalankan *masa iddah* sesuai waktu yang telah di tentukan sedangkan laki-laki tidak menjalankan hal tersebut istilah patut tidak ada spesifikasi lama waktu yang dijalankan terkesan hanya formalitas saja. Tujuan dari penelitian ini adalah untuk mengetahui apakah *syibul iddah* sebagai bentuk keadilan pada perempuan, untuk mengetahui dampak *kemaslahatan* untuk Perempuan dan laki-laki dengan adanya *syibhul iddah* dalam pandangan *masalah mursalah* dan *syibhul iddah* sebagai pembaruan hukum (*social engineering*) di Indonesia. Tulisan ini menggunakan metode *library research*, dengan menggunakan pendekatan deskriptif analisis yaitu dengan



memaparkan teks di dalam KHI maupun regulasi lain di Indonesia mengenai adanya *iddah* tersebut kemudian di analisis menggunakan *mubadalah*. Dari pemaparan tersebut maka hasil dari analisis penulis adalah *syibhul iddah* memberikan dampak yang baik bagi relasi rumah tangga karena memberikan keadilan terhadap perempuan selain itu juga memberikan *kemaslabatan* untuk pencegahan dari poligami terselubung terhadap perempuan. *Syibhul Iddah* diperlukan dalam kehidupan sebagai pembaruan hukum (*social engineering*).

Kata Kunci: Syibhul Iddah, Mubadalah, Masalah Mursalah, Rekayasa Sosial

Introduction

Marriage is the union of two people of different genders in a sacred bond, one of the goals of which is to continue the continuity of human life. Marriage is not always smooth, of course there are many trials, obstacles and obstacles that must be faced by the husband and wife, if these cannot be overcome or overcome by the husband and wife, it will cause a rift in the household, where the marriage promises to live together forever. experiencing ups and downs together with the worst possibility, if you are unable to carry out the test in your household, you will experience separation or divorce. This of course has many consequences that must be faced by people who experience divorce in their household.

One of the consequences that must be carried out by women who experience divorce is *iddah*. The *Iddah* that women must carry out whether they are divorced due to death or divorced due to divorce. Regarding *iddah*, it has been explained in the Al-Qur'an and hadith. One of the verses about *iddah* in the Al-Qur'an as in Surah Al Baqarah verse

228. This verse explains that a wife who is divorced must observe *iddah* for three holy times (*quru*). The verse also explains that a man whose wife has rejected him can reconcile as long as the *iddah* period has not been completed. And the purpose of *iddah* according to this verse is to find out whether or not the wife's womb is clean after being divorced by her husband. Apart from the verses and hadith explained above, there are also rules governing *iddah* which are then listed in KHI (Compilation of Islamic Law) CHAPTER *iddah* as a sign of condolences and at the same time preventing the emergence of slander. (2) A husband whose wife survives his death shall observe a period of mourning according to propriety.

From the verses of the Al-Qur'an, hadiths and compilations of Islamic law regulated in Indonesia, none of them regulates men's *iddah*. Seeing from the definition of *iddah*, according to the author, it has the potential to cause injustice for women. Because, the legal consequences that occur during *iddah* only apply specifically to women. Meanwhile, for men, the specific provisions regarding *iddah* do not apply and it only seems to be a formality as stated in article 170 paragraph 2. Then the reform of Islamic family law emerged which was



published in the Circular Letter of the Minister of Religion of the Republic of Indonesia Number: P005/DJ.III/Hk .00.7/10/2021 regarding marriage during the wife's iddah period. According to the author, syibhul iddah is something that is important in society, not only by looking at the cleanliness of the uterus, but considering the many benefits that can be gained from implementing syibhul iddah. Because the legal consequences that occur during iddah only apply specifically to women. Meanwhile, for men the provisions regarding iddah do not apply, it can be said that syibhul iddah is a form of justice for women. In this case, the problem that must be answered is what the concept of syibhul iddah is for men from a mubjadi perspective, what is the meaning of syibhul iddah for men from a mubjadi perspective, and why syibul iddah is important based on the perspective of law as a tool of social engineering

So that the aim of this research can be achieved, namely knowing the concept and meaning of male syibhul iddah in a mubjadi perspective as well as the importance of syibhul iddah in a legal perspective as a tool of social engineering as a means of reform in society to lead to better laws in creating justice.

The research that was previously carried out was the first research, namely a thesis prepared by Isnan Luqman Fauzi in 2012 from IAIN Walisongo Semarang entitled Syibhul iddah for Men: An Analysis Study of Wahbah Zuhaili's Opinions. The conclusion of this thesis is that according to Wahbah Zuhaili, men have shibhul iddah, although only in two circumstances, namely: First: when a husband divorces his wife with a talak raj'i then the husband wants to marry his wife's sister. Second, when the husband is mentally raj'i to the wife of one of his four wives, then the husband wants to marry a fifth time. What is used as the legal basis by the ulama regarding syibhul iddah for men is because there is mani syar'i. The second research is a thesis prepared by Muhammad Aldisn Muzakky in 2019 from UIN Walisongo Semarang entitled Analysis of the Mafhum Mubjadi Faqihuddin Abdul Kodir Method for Iddah Problems for Husbands.

The conclusion is that Faqihuddin's view regarding the method of interpreting iddah for husbands, it can be applied in texts that contain provisions regarding iddah so as to produce iddah provisions for husbands. The impacts that arise from the meaning of mubindah on iddah for husbands are a) delay in carrying out the marriage, b) prohibition on leaving the house, and c) mourning period (ihdad). All of these impacts are aimed at social ethics. Because it feels inappropriate if a divorced husband immediately marries another



woman or the third research is a thesis written by Abdul Aziz (06210081), a student at UIN Maulana Malik Ibrahim Malang in 2010, with the title Iddah for Husbands in Islamic Fiqh Gender Analysis. This thesis discusses the obligation of iddah for women in fiqh literature due to three aspects, namely biological, gender and theological aspects. Considering that the iddah for husbands is not covered clearly in the sources of Islamic law, the normative support (al-Quran and Hadith) used is the universal aspect of the scope of meaning contained in these two sources.

Research Methods

Considering the importance of methods in this writing, ways of thinking are used in order to discuss the main issues and facilitate the collection, discussion and analysis of data. So that this research can be carried out objectively and scientifically and can achieve maximum results. For this reason, it is necessary in this writing to use qualitative research methods through library research, namely research whose data sources come from libraries, books, written works, which are relevant to the main problem being studied. Qualitative research can explain the recommendations for the implementation of syibhul iddah shown for men which are examined from two perspectives, namely mubindah and law as a social engineering tool.

This research is included in descriptive research analysis. Descriptive research is research that aims to systematically, factually and accurately describe certain facts and characteristics by trying to describe phenomena in detail as they are. This research aims to describe and analyze in order to obtain results as conclusions and studies about Syibhul iddah as a form of justice for women and the author will present the research results from a mubjadi perspective.

Discussion

In connection with this research, the authors used the theory of mubjadi, masalah murlah and the theory of law as a tool of social engineering. Using mubjadi theory to analyze justice for women by applying syibhul iddah to men so that women do not experience discrimination and using masalah murlah theory to analyze problems rather than applying syibhul iddah and social engineering theory to analyze syibhul iddah where law is a tool to



change society where society previously did not carry out iddah for men so that better legal reforms occurred.

a. Mubjadi Theory Study

Linguistically, mubjadi comes from the Arabic مَبَادِلَةٌ which is rooted in pronunciation badalā َبَدَلٌ which means to replace, change and exchange.¹ Dr. Rohi Baalbaki, in The dictionary defines the word mubjadi as muqabalah bi al-misl. That is, confronting something with another or its equivalent. Then in English it is translated as reciprocity, reciprocation.² In the Indonesian Dictionary, reciprocation or reciprocity is interpreted as reciprocating each other.³

From the meanings above, the term mubdalam will be developed as a perspective and understanding of a particular relationship between two parties, which contains the values and spirit of partnership, cooperation, mutuality, reciprocity, and the principle of reciprocity. Good relations between humans in general, state and people, employers and workers, parents and children, teachers and students, majority and minorities. Between men and men, or between women and women. Between individual and individual, or between society and society. Even between human generations in the form of commitment and action for environmental sustainability, which must be considered by people now for generations far into the future.⁴

However, this discussion of mubjadi is focused on the relations between men and women in domestic and public spaces. Relationships based on partnership and cooperation. Thus, the principle of mubjadi is of course not only for those who pair. However, this principle is also for those who have relationships with other people. Can be husband and wife, or vice versa. It could be as parent and child, or vice versa. Can be between family members, if within a family relationship. It can also be between community members, or between citizens.⁵

The term mubindah can also be used for a method of interpretation or reading method of Islamic source texts which requires men and women as equal subjects, both of whom are addressed by the text and must be included in the meaning contained in the text.⁶ This

¹ Mahmud Yunus, *Indonesian Arabic Dictionary* (Jakarta: Dzurriyyah, Mahmud Yunus Wa, 2010), 59.

² Al-Mawrid Rohi Baalbaki, *A Modern Arabic-English Dictionary* (Lebanon: Dar El-Ilm Lilmalayin, 1995), 943.

³ Language Center Dictionary, *Indonesian Dictionary* (Jakarta: Language Center, 2008), 1203.

⁴ Faqihuddin Abdul Qadir, *Qira'ah Mubjadi*, ed. Rusdianto, cet 1 (Yogyakarta: IRCisoD, 2019), 59

⁵ Faqihuddin Abdul Qadir, *Qira'ah Mubjadi*, ed. Rusdianto, cet 1 (Yogyakarta: IRCisoD, 2019), 60



method is used because in Islamic texts sometimes only men are addressed by the text. Or there are also those who only greet women. So textually, the verse only applies to the subject addressed by the text.

So in general, mubjadi is a method of how to greet, mention, invite men and women in a text that only mentions a certain gender by understanding the main idea or big meaning, which can be applied to both men and women., in a text. That way, not only men or women but both can be subjects or actors in the text.

The concept of mubjadi cannot be separated from the differences between men and women, however, not all aspects can be seen using mubjadi glasses, meaning that the concept of mubjadi has limitations because not everything can be touched with mubjadi.

The concept introduced by K.H Faqihuddin Abdul Kadir, namely mubjadi, is based on the Al-Qur'an and hadith to see gender relations. Gender relations cannot be seen through discourses but by looking at the problems that occur directly in the real life of relations between men and women during this time.

Then the question arises as to whether the issue of gender is a justification for a group to dominate other groups, or provides an offering for problems between men and women, because basically gender is an idea that is produced by society.⁶ The meaning of gender comes from society is related to gender where this is built from cultural construction and customs. Gender is the result of modern thinking where the spirit of freedom has a very important role and should be seen from various aspects.

Departing from the historical trajectory long before the Koran was revealed, the world of epistemology was influenced by cosmology, mythology and ancient civilizations which tended to be misogynistic so that the image of women at that time was very bad, limiting women's journey. Greek mythology depicts women as female demons (Female Demons) who always indulge in lust.⁷ Apart from this discussion, the concept of mutuality is highly respected in Islam. In line with this, the concept of mutuality is also said to be the concept of cooperation between people in humanitarian relations.⁸

⁶ Musdah Mulia, *the Beauty of Islam Proclaiming Gender Equality and Justice* (Yogyakarta: SM & Naufan Pustaka, 2014), 66.

⁷ Siti Ruhaini Dzuhayati, *Rekonstruksi Metodologis Wacana Kesetaraan Gender Dalam Islam* (Yogyakarta: McGill-Icihep, 2002), 107.

⁸ M. Quraish Syihab, *Tafsir Al-Mishbah; Pesan Dan Kesorasian Al-Qur'an*, Cet. V (Jakarta: Lentera Hati, 2006), 342.



يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَىٰ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ

O people, indeed We have created you from a man and a woman. Then, We made you into nations and tribes so that you might know each other. Indeed, the noblest among you in the sight of Allah is the one who is most pious. Indeed, Allah is All-Knowing, All-Compliant. (Q.S. Al-Hujarat [49]:13)

This verse explains the equality of men and women between nations, tribes and generations. This verse also explains equality between men and women or gender equality. Both men and women have the same right to attain piety and gain glory in the sight of Allah swt.⁹ The explanation of the verse is interpreted to mean that religion regulates the relationship between men and women, teaches the principle of mutuality between men and women very explicitly, firm and clear.

Furthermore, the concept of equality between men and women is also explained do something that is ma'ruf

وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ يَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَيُقِيمُونَ الصَّلَاةَ وَيُؤْتُونَ الزَّكَاةَ وَيُطِيعُونَ اللَّهَ وَرَسُولَهُ أُولَٰئِكَ سَيَرْحَمُهُمُ اللَّهُ إِنَّ اللَّهَ عَزِيزٌ حَكِيمٌ

Believers, men and women, some of them become helpers for others. They enjoin (do) good deeds and prevent (do) evil, enforce prayer, pay zakat, and obey Allah and His Messenger. They will be given mercy by Allah. Indeed, Allah is all-powerful, all-wise. (Q.S. At-Taubah [9]:71)

This verse explains that women can become leaders as long as they are able to fulfill the criteria for being a leader. because according to Tafsir al-Maraghi and Tafsir al-Manar, the word "Auliya" includes guardian in the sense of helper, solidarity and compassion.¹⁰

⁹ Siti Musda Mulia, Keadilan Dan Kesejahteraan Gender, Cet II (Jakarta: Lembaga Kajian Agama dan Gender, 2003), 75

¹⁰ Ahmad Mushthafa Al-Maraghi, Tafsir Al-Maraghi, juz 10 cet (Semarang: Toha Putra, n.d.), 159



Furthermore, this verse also discusses the concept of equality and equality between one another to improve one's quality in goodness. This means that the principles of mutuality, mutual assistance, mutual love and mutual support must exist between both sexes, both men and women.¹¹

The concept of mubdalam contains the meaning of mufa'alah, namely a form of reciprocity and cooperation between two musyarakah parties, which means mutual exchange. Apart from matters of partnership relations and cooperation, mubindah also means how a text explicitly mentions men and women, if usually texts only mention men, or only use editorials.¹³

This shows that the application of the mubjadi theory as a form of mutuality aims to achieve justice and benefit. Apart from that, the mubjadi theory provides a new way of looking at gender relations in texts and contexts. ¹⁴ However, there are several limitations that cannot be touched by the mubjadi concept. This aspect concerns natural matters such as menstruation, pregnancy, childbirth and breastfeeding which of course cannot be seen as mutually exclusive between women and men.

b. Study of the Theory of Maslahah Murlah

Etymologically, the word mashlahah has the meaning: manfa'ah, faidah, good, good (goodness), guna (usefulness).¹² According to Yusuf Hamid al-Alim, mashlahah has two meanings, namely majazi and haqiqi. What is meant by the meaning of majazi here is an action (al-fi'l) in which there is goodness (saluha) which has the meaning of benefit. ¹⁶ Ahmad ar-Raisuni explains this benefit from the expression expediency. According to him, the meaning of mashlahah is to bring benefits or avoid harm. Meanwhile, what is meant by benefit here is an expression of enjoyment or any path leading to enjoyment. What is meant by harm is an expression of pain or anything that leads to pain.¹³

The presence of the mashlahah murlah theory as a perspective aims to face new problems among society. Some fuqoha agree to offer the mashlahah murlahah method as an effort to resolve contemporary legal problems that arise today. The mashlahah murlah

¹¹ Rasyid Ridha, *Tafsir Al-Manar*, Juz 11, n.d., 626.

¹² Al-Buti, *Dawabit Al-Mashlahah Fi Asy-Syari'ah Al-Islâmiyyah* (Beirut: Muassasah al-Risalah, 2001), 27

¹³ A.Z Muhdor, *Kamus Al-Ashri* (Yogyakarta: Multi Karya Grafika, n.d.).



method, namely benefits whose existence is not supported by sharia and is not canceled, is rejected by sharia through detailed arguments.¹⁴

Mashlahah is said to be murlahah because it is independent of the arguments that validate or cancel it. It is mashlahah mutlaqah, which has no special connection or connection to the text of the Shari'ah, but is in accordance with the spirit of the Shari'ah. The theory of mashlahah murlah is something that can bring or generate benefits that are needed in human life in general, including something that can prevent or eliminate harm, including within the scope of mashlahah that is justified by the Shari'ah to be used as a consideration for ijtihad in understanding and reformulating the law fiqh that is harmonious and relevant to the needs of today's life.

The use of the mashlahah murrasa theory in applying the concept of iddah to men is not only about fighting for justice from the context of gender bias, but also to achieve benefit between both parties, aiming to adapting to the problems that exist in society, for example smuggling laws that oppose the principles of marriage.¹⁵

c. Study Of The Theory Of Law As A Tool Of Social Engineering.

Law is faced with the problem of how to create change in society. In other words, law functions to drive change in parts of society so that it can achieve conformity with other elements that have changed. In this context, the existence of law can influence social conditions and even cause social change in society

The function of law is as a means of social change, or a means of engineering society (social engineering). So, law is a tool of social engineering, a term first coined by the famous American jurist Roscou Pound. Roscoe Pound is a legal expert from the Sociological Jurisprudence school who directs his attention more to "Legal Reality" rather than the position and function of law in society. The reality of law is basically the will of the public, so it is not just law in the sense of law in books. Sociological Jurisprudence shows a careful compromise between written law as a need for the legal community for the sake of creating legal certainty (positivism law) and living law as a form of appreciation for the important role of society in the formation of law and legal orientation.¹⁶

¹⁴ Qadir, Qira'ah Mubadalah, 82.

¹⁵ Muhammad Adib Shalih, Tasyri Al-Islamiy Wa Manhâj Al-Istinbath (Damaskus: Mathba'at al-Ta'awuniyat, 1968), 469.

¹⁶ Munir Fuadi, Teori-Teori Besar (Grand Theory) Dalam Hukum, (Jakarta: Kencana Prennamdeia



Pound also admitted that another function of law is as a means of carrying out social engineering. Justice is not an ideal social relationship or some form of virtue. It is a matter of "adjusting these relationships and structuring behavior so that goodness is created, a tool that satisfies the human desire to have and do something, beyond the various possibilities of tension. The core of the theory lies in the concept of "interest". He said that the legal system achieves the goal of legal order by recognizing these interests, by determining the limits of recognition. These interests and the legal rules developed and implemented by the judicial process have a positive impact and are implemented through authoritative procedures, while also trying to respect various interests in accordance with recognized and determined boundaries.

The function of law as a means of reform in society is to direct society in a better direction in order to create order in society. Law can be a means of reform for society if the law is accepted by society and the law accepted by society is certainly a law that was born out of society's needs.

Understanding and Legal Basis of Iddah

There are many consequences that must be borne when a husband and wife decide to separate or divorce, starting from child custody rights, child support, assets, marital status, etc. In Article 1 paragraph 1 of the Marriage Law, it is explained that the purpose of marriage is to form an eternal household based on belief in the Almighty Godhead, therefore the law is committed to making divorce difficult. Therefore, to carry out a divorce, the reasons for the divorce are required to be presented at the court hearing. Divorce is a halal act, but it is most hated by Allah SWT, even though divorce is something that Allah hates, if there is more harm than good in marriage, then it is legal to do it.

The relationship between husband and wife can be terminated if the marriage breaks up, the marriage can break up due to death or divorce, for women the consequences of breaking up a marriage due to death or divorce will both have consequences, one of which is iddah. The pronunciation of iddah in the Qur'an, as explained in *Al-Mu'jam al-Mufahras li Alfaz al-Qur'an*, is mentioned 11 times. The iddah pronunciation which is mentioned separately is found in the QS. Al-Baqarah: 184, 185; QS. Al-Taubah: 36, 37; QS. Al-Ahzab: 49; QS. Al-Thalaq: 1. Meanwhile, the pronunciation of iddah which is connected with pronouns, both plural for women (*hunna*) and plural for men (*hum*) is found in the QS. Al-

Group, 2013), 248.



Taubah : 1, 4; QS. Al-Kahf: 22; QS. Al-Mudatsir: 3122. There are several meanings regarding iddah, so what is discussed in this article is the iddah in question is the iddah regarding the wife's waiting period which is the result of the dissolution of the marriage either due to divorce or death.

The pronunciation of iddah comes from the verb *adda-ya'uddu* which means to count something (*iḥṣa'u asy-syai`*). If associated with women, it means days of refraining from wearing jewelry either based on the month, menstruation or holy days, or childbirth. Iddah is an obligation that must be carried out by a wife after a divorce occurs or her husband dies by abstaining from new marriages. 23 According to Sayid Sabiq, in linguistic terms, iddah is counting the days and periods of cleanliness of a woman. 24 Meanwhile, according to Al-jaziri, it is absolutely used for mention women's menstrual days or holy days.25

Ash-Shon'ani provides the following definition of iddah: 26

إِسْمٌ لِمُدَّةٍ تَتَرَبَّصُ بِهَا الْمَرْأَةُ عَنِ التَّزْوِجِ بَعْدَ وِفَاةِ زَوْجِهَا وَفِرَاقِهِ لَهَا إِمَّا بِالْوِلَادَةِ
أَوِ الْأَقْرَاءِ أَوْ الْأَشْهُرِ

"Iddah is the name for the waiting period that a woman must undertake not to marry after the death of her husband or divorce from her husband, either by giving birth to a child, or a certain number of holy days/menstruation, or a certain number of months."

Meanwhile, Muhammad Abu Zahrah gave the following definition of iddah:

أَجَلٌ ضُرِبَ لِإِنْقِضَاءِ مَا بَقِيَ مِنَ أَثَارِ النِّكَاحِ ، فَإِذَا حَصَلَتِ الْفُرْقَةُ بَيْنَ الرَّجُلِ وَأَهْلِهِ
لَا تَنْقَضِمُ غَرَا الزَّوْجِيَّةِ مِنْ كُلِّ الْوُجُوهِ بِمَجْرَدِ وَقُوعِ الْفُرْقَةِ بَلْ تَتَرَبَّصُ الْمَرْأَةُ وَلَا
تَتَزَوَّجُ غَيْرَهُ حَتَّى تَنْتَهِيَ تِلْكَ الْمُدَّةُ الَّتِي قَدَرَهَا الشَّارِعُ

A period determined to end the effects of marriage. If it happens. A divorce between a man and his wife does not completely sever the bond between husband and wife from all aspects simply by divorce, but rather the wife is obliged to wait, not to marry another man, until the end of a certain period determined by the syara'.
”27

In the book of *fathul qorib*, Muhammad ibn Qosim Al-Ghozi provides the following definition of iddah



وَهِيَ لُغَةً الْإِسْمُ مَنْ إَعْتَدَ وَشَرَعًا تَرْتِصُ الْمَرْأَةُ مُدَّةً يُعْرَفُ فِيهَا بِرَاءَةٌ رَحِيمًا بِأَقْرَاءٍ أَوْ

أَشْهُرٍ أَوْ وَضِعَ حَمْلٍ

"Iddah linguistically is a name (term) for a person who waits, whereas according to syara' it means waiting for a woman for a period of time so that the womb is known to be clean by the count of quru', months, or until giving birth."²⁸

According to Hanafiyyah scholars, iddah is a mandatory waiting time for women because their marriage is breaking up or because their marriage is doubtful. Then the Malikiyyah Ulama defined iddah as a period when women are prohibited from marrying because of the breakdown of the marriage or the death of the husband or because of divorce. Shafi'iyah scholars interpret iddah as a woman's waiting period which aims to find out the condition of her uterus from pregnancy or for ta'abbud and a period of mourning for women for the death of their husband (tafajju). Furthermore, Hanabilah scholars define iddah as a waiting period for women which is limited by sharia due to the dissolution of the marriage between husband and wife due to the death of the husband or divorce, talak or khulu or because of fasak.

Looking at several definitions of iddah from fiqh scholars above, it can be concluded that iddah is a period for a woman who occurs when a marriage breaks up, either due to divorce or death, not to remarry until the limit determined by the syara which aims to determine the sanctity of the womb, to worship and to mourn the death of her husband. This time limit can be in the form of time or in the form of conditions such as: menstruation, purity, month or childbirth. Carrying out the iddah period for women is an obligation that has been regulated in the Al-Qur'an, Hadith and ijma, among which is the letter Al-Baqarah verse 228 which means: "Women who are divorced should refrain (wait) three quru times, they must not 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 the waiting period, if they (husbands) want ishlah. And women have rights that are balanced with their obligations in a ma'ruf manner. However, husbands have one level of superiority over their wives, and Allah is All-Mighty, All-Wise." This verse explains that a woman who is divorced must observe iddah for three holy quru times. The verse also explains that a man whose wife has rejected him can reconcile as long as the iddah period has not been completed. The purpose of iddah according to this verse is to find out whether a woman's womb is clean or not after being



divorced by her husband. Then there is a hadith which means: "It is not permissible for women who believe in Allah and on the last day to carry out hidad (mourning) because of someone's death for more than three days, except that because of the death of their husband they observe iddah for four months and ten days." (H.R. Bukhari) 29

Various Kinds of Iddah

Based on the Al-Qur'an and Hadith and through the *ijtihad* of the ulama, the various types of iddah are divided according to their respective opinions. Wahbah Zuhaili divides the types of iddah into three parts based on the completion of iddah: Iddah with quru measurements, iddah with moon measurements and iddah with childbirth."

Broadly speaking, the dissolution of a marriage is due to death and due to divorce, with these two differences, a wife observes a different iddah period in accordance with the applicable provisions. Firstly, the iddah for divorce is divided into: women who are adults (menstruating) so their iddah is three times quru or three holy times, women who have not menstruated and have menopausal then their iddah is three months, women who are pregnant then their iddah is after giving birth, women who Her husband has never had sex with her before, so there is no iddah period to allow her to remarry immediately. Second, the iddah for divorce dies iddah because her husband dies and she is not pregnant, so her iddah is for four months and ten days, whether she is an adult woman or still a child, menopausal age or not, whether she has had intercourse or not. However, if the woman is suspected of being pregnant, she must wait until she gives birth to the child. This is based on Q.S al-Baqarah verse 234 which means: "And those who die among you and leave their wives, let them (wives) wait four months and ten days.

Then when they have reached (the end of) their iddah, then there is no sin for you in what they do to themselves in an appropriate way. And Allah is All-Knowing of what you do." The three iddahs of women who commit adultery, the jurists have different opinions on the issue of iddah for women who commit adultery or *wath'i syubhat* due to an adulterous marriage. According to the *Zahiri* school of thought, there is no obligation of iddah for women who are divorced as a result of a *fasid* marriage even though there has been a relationship (*dukhul*), because there is no evidence for this in the texts of the Qur'an or hadith. According to the Hanafi school of thought and the Shafi'i school of thought, iddah is not required because the sperm of a man who commits adultery does not need to be



respected and does not cause any relationship to the baby in the womb. With this provision, a man may marry a woman who has committed adultery and may immediately have sex with her (dukhol) after the contract even if the woman is pregnant.

Meanwhile, Malikiyyah ulama require iddah for women who commit adultery and their position is the same as women who are sexually intimate with each other. Then the Hanabilah clerics sentenced women who committed adultery to have to undergo the iddah period like women who were divorced. The absence of iddah for women who are pregnant out of wedlock or in adultery, being allowed to marry immediately can actually create more benefits, namely providing protection to women who become pregnant due to adultery from psychological pressure, covering family disgrace, as well as legal protection for the child they are carrying.

Syibul Iddah

The Qur'an and Hadith as the legal basis for Muslim qath'i do not mention the provisions of iddah for husbands who separate due to divorce or the death of their wife. Likewise, there is nothing in the civil law legislation that explains the iddah for husbands, whether separated due to divorce or the death of their wife. Therefore, if seen from the perspective of legal certainty, iddah only applies to wives, while husbands do not have an iddah period³¹. Syibhul iddah is something that resembles iddah. The word ash-Syibhu is something similar, the same. The meaning of syibhul iddah (iddah for men) in this study is the waiting period for men who have divorced their wives with talak raj'i or when a man has four wives and then divorces one with talak raj'i then If he wants to remarry he has to wait for his wife's iddah period to end. ³² So if the husband has divorced his wife, it is not permissible to marry directly while the ex-wife is still in iddah. Husbands have to wait like ex-wives carrying out their iddah period, but the waiting period for husbands is explained implicitly, which is called syibhul iddah or a period that resembles a woman's iddah.

There are two articles in the Compilation of Islamic Law which discuss iddah for men, as follows:

a. Article 42 "A man is prohibited from entering into marriage with a woman if the man currently has 4 (four) wives, all four of whom are still married or still under the iddah talak raj'i or one of them is still tied by marriage while the other others during the Raj'i talak period³³



b. Article 70 letter a "The husband enters into a marriage, while he does not have the right to enter into a marriage contract because he already has four wives, even if one of the four wives is in the iddah talak raj'i³⁴

The Compilation of Islamic Law (KHI) contains the meaning of the concept of syibhul iddah which is not stated directly and clearly.

In positive legal regulations based on a circular from the Ministry of Religion, there are rules or procedures for husbands who want to marry during their wife's iddah period. The following is the explanation of the Circular Letter of the Director General of Islamic Religious Institutional Development Number: DIV/Ed/17/1979 dated 10 September 1979 which was later amended by Circular Letter Number: P- 005/DJ.III/Hk.00.7/10/2021 Concerning Marriage During Period Wife's Iddah which explains the procedure for a husband who will marry another woman during his ex-wife's iddah period. The circular explains several provisions:

1. Marriage registration for men and women who are widowers or divorcees can only be carried out if the person concerned has officially divorced as proven by a divorce certificate from the Religious Court which has been declared inkrah.
2. The provision of the wife's iddah period due to divorce is an opportunity for both husband and wife to think again about rebuilding the household that was separated due to divorce.
3. A man who is an ex-husband can marry another woman if his ex-wife's iddah period has been completed.
4. If a man's ex-husband marries another woman during the iddah period while he still has the opportunity to refer to his ex-wife, then this could potentially lead to hidden polygamy.
5. If a former husband has married another woman during his ex-wife's iddah period, he can only refer back to his ex-wife by applying for a polygamy permit to the Religious Court.
6. That in classical jurisprudence literature, iddah only applies to women, so that for men there is no iddah period, which means that if they are divorced, either talak raj'i or ba'in is the day after the divorce certificate is issued from the Religious Court, even though it was decided by talak raj'i and still has the right to reconcile with his wife. He may immediately marry another woman he likes. In the end, the man did not violate any Sharia



obstacles or existing provisions. However, this can result in hidden polygamy or legal smuggling

7. According to Wahbah Zuhaili, the existence of Syibhul Iddah is due to the existence of Mani Syar'i. Firstly, if a person divorces his wife in talak raj'i and then he wants to remarry a woman who is of the same mahram as his wife, such as the wife's sister, then the man cannot marry that woman until the divorced wife's iddah period is over. Second, if a man has four wives and then one of his wives is divorced, he cannot immediately marry another woman before the divorced ex-wife's iddah period ends³⁵

Wisdom of Iddah

The wisdom of iddah in Islam comes with its shari'ah as a solution to problems during the jahiliyyah era. This is because in the era before Islam came, many social activities were less humane and discriminatory or lacked injustice, especially for women. When Islam came as plenary religion, since then the discriminatory phenomenon has changed a lot. ³⁶ Regarding the purpose of implementing iddah, of course one of them is to achieve the benefit between husband and wife. ³⁷

The benefits of iddah wisdom are, one of the purposes of iddah is to find out whether the woman's womb is clean from the seeds left by her ex-husband. This opinion has been agreed upon by the ulama. The next aim of iddah is to give both husband and wife the opportunity to rebuild their household (reconcile), if they think that is better.

The existence of iddah has several objectives, including the following, namely: ³⁸

1. The husband has the opportunity when thinking to choose between reconciliation with his wife or continuing the divorce that has been carried out.
2. The wife has the opportunity to find out the real situation, namely whether she is pregnant or not pregnant.
3. As a transition period.

For example, in order to create harmonious relations between men and women, as well as justice, iddah must be observed for both men and women. This is especially true when viewed from the aim of iddah for reconciliation and tafajju, men and women must be involved with each other. By considering the legal principles, it is logically, scientifically and justifiably acceptable if the implementation of the waiting period is social in nature, so it is not only applied to women but also men must also carry out the iddah period.³⁹



The aim of enforcing iddah which is binding on both men and women is not only to realize gender equality and justice in relations between men and women, but also to increase the function of iddah, among others, in sexual prevention, infectious diseases and achieving reconciliation. Furthermore, the establishment of iddah for men and women means that the dehumanization of women has been eliminated. This can be explained in the case of iddah due to divorce or iddah due to death.

The iddah period applies not only to divorce during life but also to death. In essence, this iddah in death has a purpose showing feelings of condolence and mourning for the death, as well as protecting the feelings of the deceased's extended family and more than that if there are children to protect the child's psychology. In talak raj'i, the iddah period is actually an opportunity for both the wife and husband to improve themselves so that they can be reunited. On the other hand, the essence of marriage as mitsaqan ghalizhan, namely a solid and solemn agreement, is not appropriate if then with divorce, the majesty of the marriage bond is suddenly broken, therefore there must be a break in the form of an iddah period as a form of appreciation for the glory of the marriage bond.

More than that, there is an iddah period which is carried out by men (syibhul iddah) and women for the benefit and to prevent undesirable things from happening such as hidden polygamy and/or "illegal" polygamy, which is very related to the survival of life, namely marriage, so syibhul iddah needs to be regulated in clearly regulated regulations.

Syibhul Iddah became a legal reform applied to KUA in Indonesia with the publication of a Circular Letter from the Minister of Religion of the Republic of Indonesia through the Director General of Islamic Community Guidance Number: P005/DJ.III/Hk.00.7/10/2021, which regulates waiting times for men who wants to remarry when his wife is in the state of iddah talak raj'i. According to Wahbah Zuhaili, the existence of iddah in men is due to the existence of mani syar'i so that men during their wife's iddah period during talak raj'i cannot immediately remarry before their wife's iddah period ends. The articles in the KHI implicitly regulate syibhul iddah, namely in article 42 and article 70 letter a which regulate men's waiting time, then in article 170 paragraph 2 which seems to discriminate against women because of the sentence "Husbands who are left dead by their wives, carry out period mourning according to propriety" that indeed when the wife dies finally the man does not violate any sharia or existing provisions if he immediately remarries, but it is clear in the KHI that it is explained according to propriety, meaning that propriety



cannot be taken into account. in a timely manner but properly interpreted, it must be pursued proportionally for men so as not to harm the marriage that has been built and just disappear, the essence of marriage as mitsaqan ghalizhan so the need for a break is a form of appreciation for the mitsiqan ghalizhan marriage.

If we look at the wisdom and purpose of implementing the iddah period for wives, it is indeed necessary to also syibhul iddah for husbands because there are many problems for both parties, the family, and social ethics in society, so the analysis of mubindah and syibhul iddah is something important that must be applied. to prevent covert polygamy, illegal polygamy and also legal smuggling.

Syibhul Iddah is applied while still paying attention to the sharia values in it so that it does not violate the provisions of the Al Qur'an and hadith, so maslahah murlah analysis is used by looking at the maslahah values of enacting and implementing a law for the implementation of comprehensive justice. Then law as a social engineering tool is also used as a legal reform so that syibhul iddah is implemented in society.

Conclusion

Syibhul iddah for men is a new concept of thought that was born from the injustice that occurs for women. The concept of syibhul iddah in this research is the waiting period for men who have divorced their wives by talak raj'i or when a man has four wives. then divorce one of them with talak raj'i so if he wants to remarry he has to wait for his wife's iddah period to end. The meaning of Syibhul Iddah for reconciliation and tafajju, men and women must be involved with each other. By considering the legal principles, it is logically, scientifically and justifiably acceptable if the implementation of the waiting period is social in nature, so it is not only applied to women but also men must also carry out the iddah period. The function of law as a means of reform (social engineering) in society is to direct society in a better direction in order to create order in society. The aim is to prevent hidden polygamy or legal smuggling which creates new problems if this happens.

Reference

Religion, Department. Fiqh Science. Volume II,. Jakarta: Religious Higher Education Infrastructure and Facilities Development Project, n.d.



- Ahmad Mushthafa Al-Maraghi. *Tafsir Al-Maraghi*. Juz 10 cet. Semarang: Toha Putra, n.d.
- Al-Amin, M. Nur Kholis. "Iddah for Husbands Due to Divorce Death in the Study of Philosophy Islamic law." *Preamble: Journal of Islamic Studies*, 2016.
- Al-Buti. *Dawabit Al-Mashlahah Fi Ash-Syari'ah Al-Islâmiyyah*. Beirut: Muassasah al-Risala, 2001.
- Al-Ghozi, Muhammad ibn Qosim. *Book of Fathul Qorib*. Semarang: Pustaka Alawiyah, n.d.
- Al-Jaziri, Abdurrahman. *The Book of Al-Fiqh Ala Al-Madhahibul Al-Arba*. Juz 4. Lebanon: Darl Pole al-Ilmiyah, 2003.
- Ar-Raisuni, Ahmad. *Nazariyah Al-Maqasidinda Al-Imam AsySyatibi*. Herndon: ad_Dar al-Alamili al-Fikr al-Islamiy, 1995.
- Language, Central Dictionary. *Indonesian dictionary*. Jakarta: Language Center, 2008.
- Et al., Abdul Azis Muhammad Azzam. *Munakahat Fiqh*. Jakarta: Amzah, 2009.
- Et al, Achmad Sunarto. *Al Bukhari, Sahih Bukhari*, , Translated "Translation of Sahih Bukhari." Juz VII. Semarang: CV. Asy Syifa, 1993.
- Dzuhayati, Siti Ruhaini. *Methodological Reconstruction of Gender Equality Discourse in Islam*. Yogyakarta: Mcgill-Icihep, 2002.
- Hassan, Husain Hamid. *Nazariyyah Al-Mashlahah Fi Al-Fiqh AlIslmi*. Cairo: Dar al-Nahdah al-Arabiyyah., 1971.
- Hashim, Syafiq. *Unthinkable Things About Women's Issues in Islam*. Bandung: Mizan, 2001.
- Khalaf, Abdul Wahab. *Ushûl Al-Fiqh Science*. Cet. VIII. Jakarta: Majlis al-A'la al_Indonesia Li al-Dakwah al-Islamiyah, 1972.
- Republic of Indonesia Supreme Court. *Collection of Legislative Regulations Relating to the Compilation of Islamic Law and the Definitions in Their Discussion*. National Library of the Republic of Indonesia: Catalog Data in Publications. Vol. 1, 2011.
- Muhammad Fuad 'Abd al-Baqi. *Al-Mu'jam Al-Mufahras Li Alfazh Al-Qur'an*. Egypt: Dar al-Kutub al-Mishriyyah, 1943.
- Muhammad Isna Wahyudi. *Classical and Contemporary Iddah Fiqh*. Yogyakarta: Pusaka Pesantren, 2009.



Muhdor, A.Z. *Al-Ashri Dictionary*. Yogyakarta: Multi Karya Graphics, n.d.

Your Excellency, Siti Musda. *Gender Justice and Welfare*. Cet II. Jakarta: Institute for the Study of Religion and Gender, 2003.

Munir Fuadi. *Grand Theories in Law*. Jakarta: Kencana Prennamdeia Group, 2013.

Easy noble. *The Beauty of Islam Speaks for Gender Equality and Justice*. Yogyakarta: SM & Naufan Pustaka, 2014.

Qadir, Faqihuddin Abdul. *Qira'ah Mubjadi*. Edited by Rusdianto. Cet 1. Yogyakarta: IRCisoD, 2019.

Rashid Rida. *Tafsir Al-Manar*. Juz 11., n.d.

Editorial Board. *Islamic Encyclopedia*. Volume 2. Jakarta: Ihtiar Baru van Hoeve, 1993.

Rohi Baalbaki, Al-Mawrid. *A Modern Arabic-English Dictionary*. Lebanon: Dar El-Ilm

Lilmalayin, 1995.

Salah, K. Wantjik. *Indonesian Marriage Law*. Cet. 4. Jakarta: Ghalia Indonesia, 1978. Salih, Muhammad Adib. *Tasyri Al-Islamiy Wa Manhaj Al-Istinbath*. Damascus: Mathba'at al-

Ta'awuniyat, 1968.

Syata, Abi Bakri. "Tanah Al-Talibin" III (n.d.).

Shihab, M. Quraish. *Tafsir Al-Mishbah; Message and Harmony of the Qur'an*. Cet. V. Jakarta: Lentera Hati, 2006.

Yunus, Mahmud. *Indonesian Arabic Dictionary*. Jakarta: Dzurriyyah, Mahmud Yunus Wa, 2010. Yusuf al-Qardhawi. *Al-Ijtihad Al-Mu'Asir*. Beirut: Dar at-'Tauzi' wa an-Nasyr al-Islamiyah,

1994.

Zahrah, Muhammad Abu. *Al-Ahwal as-Shakhshiyah*, Darul Fikr Al-Arabi, 1957. Zuhaili, Wahbah. *Fiqhu Al-Islam*. VII: 626., n.d.