

# 'Iddah in the View of Islam and Feminists

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**Abstract:** *'Iddah in the View of Islam and Feminists.* This study examines Islamic concepts of *'iddah* (waiting period for a divorced wife) and how the Feminists view it. The aim is to comprehend the different perspectives and try to put the problem in the right position. This research is purely library research using a socio-philosophical approach. Data were obtained from literature, books, and available documents. Based on the results of the study, it can be concluded that in Islamic teachings *'iddah* is intended to determine the status of the womb, whether pregnant or not, to avoid mixing the lineage of the expecting baby. This is different from the view of the feminists who think that the provision regarding *'iddah* is a product of a patriarchal culture that marginalizes women as it only applies to women, and not to men. This feminist view is based on the spirit of equality before the law which demands equal rights and obligations. The view, however, needs to be reviewed as the provision of *'iddah* does not necessarily mean ignoring the principle of equality between men and women. Men and women by nature are created with different physical and emotional characters according to their respective roles. Even if such a view is applied, new problems will arise and damage the order of human culture universally.

**Keywords:** *'iddah*, feminism, Islam, humanization, legal justice

**Abstrak:** *'Iddah dalam Pandangan Islam dan Kaum Feminis.* Studi ini menelaah konsep Islam dan kaum feminis tentang *'iddah* (masa tunggu bagi seorang istri yang bercerai sebelum melakukan pernikahan). Tujuannya untuk membandingkan bagaimana konsep Islam tentang *'iddah* dan bagaimana pula pandangan kaum feminis tentang itu. Penelitian ini murni penelitian kepustakaan. Data diperoleh dari literatur dan dokumen yang tersedia kemudian dianalisis dengan menggunakan pendekatan sosio filosofis. Berdasarkan hasil telaahan dapat disimpulkan bahwa dalam ajaran Islam, *'iddah* dimaksudkan untuk mengetahui status rahim seorang wanita yang bercerai, apakah sedang hamil atau tidak, sehingga terhindar dari bercampurnya nasab pada anak yang sedang dikandung. Hal ini berbeda dengan pandangan kaum feminis yang menganggap bahwa ketentuan tentang *'iddah* merupakan produk budaya patriarki yang memarginalisasikan kaum wanita, karena hanya berlaku pada kaum wanita, dan tidak pada kaum pria. Pandangan kaum feminis ini dilandasi semangat *equality before the law* yang menuntut persamaan hak dan kewajiban di mata hukum. Pandangan ini perlu dikaji ulang karena masalah *'iddah* tidak sertamerta bermakna pengabaian terhadap prinsip persamaan kedudukan antara pria dan wanita, karena secara kodrati mereka diciptakan dengan karakter tubuh dan emosional yang berbeda sesuai dengan perannya masing-masing. Justru jika hal itu dipaksakan akan muncul persoalan baru yang merusak tatanan budaya manusia secara universal.

**Kata kunci:** *'iddah*, feminisme, Islam, humanisasi, keadilan hukum

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## Introduction

*Iddah* (waiting period for divorced women) in Islam is the time given to women whose marriage ties end, either because of divorce by her husband in revocable or irrevocable divorce (*ṭalāq raj'ī*, *ṭalāq bāin*), or because her husband died, or because the marriage was broken (*fasakh*) as her husband apostatized, etc. The provisions regarding *'iddah* only apply to women and not to men.

There is controversy among Islamic historians about the existence of the practice of *'iddah* in pre-Islamic Arab society. Some writers argue that *'iddah* did not exist in the Jahiliyah era. They base their opinion on an *atsar* narrated by Abū Dawud and Ibn Hatim from a prophet's friend named Asma' bint Yazīd. In the *atsar* it is stated that Asma' had been divorced by her husband and at that time there was no *'iddah* provision for divorced women. Then Allah sent down the verses about *'iddah* and since then *'iddah* has come into effect. It was also added in another source that during the Jahiliyyah period a pregnant widow could immediately marry another man, and give birth at her new husband's house. The status of the child born later is considered as the child of her new husband even though she is pregnant because of her previous husband.<sup>1</sup>

Some other scholars argue that the *'iddah* was known by the Arabs before the coming of Islam. They refer to books written by 'ulama in classical times, including the book "*al-Um*" by Imam Shāfi'i and the book "*Al-Jāmi' Li Ahkām Al-Qur'ān*" by al-Qurtubi.<sup>2</sup> Based on the descriptions written in these books, the practice of *'iddah* in the Jahiliyyah era was very inhumane and degraded the dignity of women.<sup>3</sup> At this time, a woman who had just lost her husband had to isolate herself in a place separated from her family for a whole year. During the period of exile, the woman was not allowed to wear perfume, cut her nails, comb her

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<sup>1</sup> Henderi Kusmidi, 'Reaktualisasi Konsep Iddah dalam Pernikahan', *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi dan Keagamaan*, Vol 4. No. 1 (2017), p. 38.

<sup>2</sup> Asghar Ali Engineer, *Hak-Hak Perempuan dalam Islam, Terjemahan Farid Wajidi dan Cici Farcha Assegaf* (Yogyakarta: LSPPA, 2007), p. 12.

<sup>3</sup> Syah Waliyullah al-Dahlawi, *Hujjah Allah al-Balighah* (Beirut: Dār Ihyā al-'Ulum, 2002), p. 377.

hair, and change clothes. She will be given an animal such as a donkey, goat, or bird to rub against his skin. The ostracism was so inhumane that when the exile ended the woman's appearance resembled the appearance of an insane person with a thin, dirty body, stout, and matted hair. It is also illustrated that the smell of the woman who is performing 'iddah is so foul, that no one dares to approach her, and if she leaves her place of exile immediately the crows will ambush her, because of the stench it gives off.<sup>4</sup> After the coming of Islam, however, such tradition was changed and replaced with more humane rules, at the same time, elevating the dignity of women. They are no longer considered "treasures" that can be passed on to their heirs and are allowed to remarry after the waiting period expires.<sup>5</sup>

Although the concept of 'iddah in Islam is very different from the traditions of pre-Islamic Arab society, the provision of 'iddah, which only apply to women and not to men, is seen by Indonesian feminists as a form of discrimination against women and marginalizes them at the level of equality before the law. Their views are in line with what was written by Kate Millett in her book entitled "sexual politics", where she shows how the position of men is more dominant than women in a patriarchal society. The demonstration of the supremacy of men over women, families, and society, which started in the private sphere and then has an impact on the public sphere, has created structured power relations in which one group controls another group and breeds racial, political, and economic inequality.<sup>6</sup> Men are seen as strong masculine and leader figures, while women are oppressed, feminine people. In the institution of marriage, which is a financial union and the highest institution of the patriarchal system, women-only act as complements. Therefore, Kate Millett argues, that gender must be removed, including status, roles, and sexual temperament.<sup>7</sup> If the acceptance of male supremacy as a birthright is not eliminated,

<sup>4</sup> Muhammad bin Idris al-Syāfi'i, *al-Umm* (Beirut: Dār al-Fikr, 2003), p. 247.

<sup>5</sup> Al-Qurthubi, *al-Jāmi' Li Abkām al-Qur'ān* (Beirut: Dār al-Fikr, 2003), p. 194.

<sup>6</sup> Kate Millett, *Sexual Politics* (New York: Doubleday, 1970), p. 23

<sup>7</sup> Rosemarie Putnam Tong, *Feminist Thought: Pengantar Paling Komprehensif kepada Aliran Utama Pemikiran Feminisme* (Yogyakarta: Jalasutra, 2009), p. 73.

all systems of oppression will continue to operate only by logical and emotional mandate in the primary human situation.<sup>8</sup>

This article tries to provide a detailed description of how the concept of *'iddah* in Islam is, and, at the same time, presents arguments for why *'iddah* is established in Islam. With this explanation, it is hoped that the misunderstanding of *'iddah* can be straightened out while opening the possibility of developing legal products that are in line with the development of modern technology.

### **'Iddah in Islamic Law and Positive Law**

Terminologically, *'iddah*, according to Wahbah az-Zuhaili, is a waiting period for a woman after separating from her husband in which she is not allowed to marry until that period is over.<sup>9</sup> The waiting period applies to all women whose marital ties are broken, either because they are divorced, or because their husband dies or disappears, or because of something that causes their marriage to be null and void.<sup>10</sup>

The legal basis for the provisions of *'iddah* in the Qur'an is contained in a number of verses, particularly in: QS. Al-Baqarah [2]: 228-232, QS. al-Talāq [65]:4. Translated as follow:

*Women who have been divorced should hold back (wait) for three quru's. They should not hide what Allah has created in their wombs if they believe in Allah and the hereafter. And her husbands have the right to refer to her in the waiting period if they (husbands) want ishlah. And women have rights that are balanced with their obligations according to the right way. However, husbands have one level of advantage over their wives. And Allah is Mighty, Most. (QS. Al-Baqarah [2]: 228)*

<sup>8</sup> Nurwani Idris, "Fenomena, Feminisme dan Political Self Selection Bagi Perempuan," *Wacana*, 1(Januari, 2010), p. 124.

<sup>9</sup> Wahbah al-Zuhaili, *al-Fiqh al-Islāmi Wa Adillatuhu* (Beirut: Dār al-Fikr, 2007), p. 625.

<sup>10</sup> Abdurrahman al-Jāziri, *al-Fiqh 'Alā al-Mazāhib al-Arba'ah* (Kairo: Dār al-Hadis, 2004), p.3 93. Al-Kharsī, *Syarh al-Kharsī 'Alā Mukhtasar al-Khalil al-Kharsī* (Beirut: Dār al-Kutub al-Alamiyah, 2005), p. 12. Wazarat al-Awqāf Wa al-Syuūn al-Islāmiyah, *al-Mausū'ah al-Fiqhiyah* (Kuwait: Matābi' Dār al-Şafwah Li al-Nasyr Wa al-Tauzī', 2003), p. 304. Muhammad Amin bin Umar bin Abdul Aziz Ibnu Al-Ābidin, *Radd al-Mukhtar 'Ala al-Durar al-Mukhtar Fi Syarh Tanwir al-Absār; Hāsyiah Ibnu Abidin* (Beirut: Dār Al-Fikr, 2012), p. 520.

*Divorce (which can be referenced) twice. After that, you can refer again in a good way or divorce in a good way. It is not lawful for you to take back anything from what you have given them unless they fear that they will not be able to keep Allah's laws. if you are worried that both (husband and wife) cannot keep Allah's laws, then there is no sin on either of them regarding the payment given by the wife to redeem herself. These are the laws of Allah, so do not transgress them. Whoever transgresses the laws of Allah are the wrongdoers. QS. Al-Baqarah [2]: 229*

*Then if the husband divorces her (after the second divorce), the woman is no longer lawful for him until she marries another husband. then if the other husband divorces her, there is no sin for both (the former husband and wife) to remarry if both think they will be able to carry out the laws of Allah. These are the laws of Allah, He will explain to a people who (want to) know. (QS. Al-Baqarah [2]: 230)*

*If you divorce your wives, and they are nearing the end of their iddah, then either acceptably refer to them or divorce them in an acceptable way (too). do not refer to them to cause harm, for by doing so you persecute them. Whoever does this, then indeed he has wronged himself. Do not make the laws of Allah a game, and remember Allah's favor on you and what Allah has revealed to you, namely the Book and Al-Hikmah (As Sunnah). Allah teaches you by what He has sent down. and fear Allah and know that Allah knows all things. (QS. Al-Baqarah [2]: 231)*

*If you divorce your wives and their iddah expires, then do not prevent them (the guardians) from marrying again with their future husbands when there is a willingness between them in an acceptable way. That is what is advised to those who believe among you in Allah and the Last Day. it is better for you and purer. Allah knows you don't know. (QS. Al-Baqarah [2]: 232)*

*And women who do not menstruate again (menopause) among your women if you have doubts (about the period of iddah), then their iddah period is three months; and so (also) women who do not menstruate. and pregnant women, their iddah is until they give birth to their wombs. And whoever fears Allah, Allah will make it easy for him in his affairs. (QS. al-Talāq [65]:4.*

According to some commentators, the revelation of God's Word about 'iddah was to respond to contemporary social phenomena. At that time, many widows were dishonest and covered up their pregnancy status so as to remarry to another man, and, not long after that, she gave birth. This woman's dishonesty can eventually lead to a dispute between herself and her new husband, as well as give a negative impact

on the status of the newly born child. Another case is where the wife lied that her 'iddah time had not yet expired with the aim of making her husband continue to give her sustenance while she was in the *iddah* period. Under such a situation the revelation came down to forbade a divorced wife to hide what was happening in her womb.<sup>11</sup>

The *mufasssirūn* (the Qur'anic interpreters) in understanding the QS. Al-Baqarah [2]: 228 argue that women whose marriage bonds end are obliged to carry out 'iddah for three *quru'* (period). The obligation is based on the meaning of the word "يتربصن" which is the *khabariyah* (affirmative) but also *insyāiyah* (command) which means "ليتربصن". With the understanding of the command, the verse becomes *dilālah al-āyah lil wujūb* (the obligatory proposition) on the 'iddah for all women whose marriage ties end.<sup>12</sup> Although the *Mufasssirūn* agrees on the obligation of 'iddah, they have various opinions on understanding the meaning of the word "قرء" as the word contains multiple meanings (*musytarak*) which can be interpreted as the period of menstruation or out of the period.

The jurists also agree that 'iddah is an obligation for women whose marital ties are broken and they are not justified in neglecting it.<sup>13</sup> The length of the 'iddah period in Islamic law can be divided into three types: (i) *Iddah* with the measure of menstruation or clean "قرء"; (ii) 'Iddah with the measure of months; and (iii) *Iddah* with a count to giving birth. The grouping of this 'iddah period is adjusted to the condition of the divorced woman with the following provisions:<sup>14</sup>

<sup>11</sup> Henderi Kusmidi, 'Reaktualisasi Konsep Iddah dalam Pernikahan', *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi dan Keagamaan*, Vol 4.No 1 (2017), p. 38.

<sup>12</sup> Ahmad al-Hāsyimiy, *Jawāhir al-Balāghah Fī al-Ma'ānī Wa al-Bayān Wa al-Badī'* (Damaskus: Maktabah Dār al-Ihyā' al-Kutub al-Arabiyah, 2011). See also Muhammad Ali Sayis, *Tafsīr al-Āyāt al-Abkām* (Beirut: Dār al-Fikr, 2010) p. 138.

<sup>13</sup> Syamsuddin Muhammad bin al-Khatīb al-Syarbini, *Mughni al-Muhtāj, Tabḥīq: Muḥammad Khalīl Aitani* (Beirut: Dār al-Ma'rifah, 1418), p. 448. Muhammad bin Husain bin Ali al-Turi al-Hanafī bin al- Nujaim, *al-Bahr al-Rāiq Syarḥ Kanz al-Raqāiq* (Beirut: Dār al-Ma'rifah, 2007), h.384. Al-Syarbini, *Mughni al-Muhtāj* (Kairo: Dār al-Kurub al-Misriyah, 2001), p. 129.

<sup>14</sup> Mustara Razali, 'Analysis of Islamic Legal Rulings Relating to Women Activities during Waiting Period (*Iddah*) of Revocable Divorce (Talaq Raj'ie) According to Muslim Jurists', *Jurnal Islam dan Masyarakat Kontemporeri Universiti Sultan Zainal Abidin*, 2020, p. 280–81 <https://doi.org/https://doi.org/10.37231/jimk.2020.21.1.478>.

1. Women whose marital ties end due to *ṭalāk* (divorce) or *fasakh* (null and void) and have not had sexual intercourse with their husbands (*qabla al-dukhūl*), then there is no obligation to carry out 'iddah (QS. al-Ahzāb [33]: 4).
2. A woman whose marriage bond has ended and has had sexual intercourse with her husband (*ba'da al-dukhūl*), is obligatory to carry out 'iddah, (QS. Al-Baqarah [2]: 228). The length of the 'iddah period is as follows.
3. A woman whose marriage bond ends because of *ṭalāk* or *fasakh* (*al-muthallaqah*) while she is still menstruating, is required to complete the 'iddah for three *quru'* (QS. Al-Baqarah [2]: 228). As for women who have not menstruated or are in menopause period, the 'iddah duration is three months (QS. al-Ṭalāq [65]: 4).
4. A woman whose marriage bond ends because of *ṭalāk* or *fasakh* (*al-muthallaqah*) or because her husband died (*al-mabtūtah*) while she is pregnant, then her 'iddah period is until she gives birth (QS. al-Ṭalāq [65]: 4).
5. A woman whose marriage bond ends due to the death of her husband (*al-mabtūtah*), while she is not pregnant, her 'iddah period is four months and ten days (QS. Al-Baqarah [2]: 234).

In Indonesian Civil Law<sup>15</sup> and Islamic Civil Law<sup>16</sup> applicable in Indonesia, the issue of 'iddah is also regulated in several provisions as follows:

1. In the Indonesian Civil Code Articles 33 and 34 it is stipulated that “*Between persons whose marriage has been dissolved following*

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<sup>15</sup> Indonesian Civil Law (Burgerlijk Wetboek voor Indonesie), also known as the Civil Code (BW), is actually a rule of law made by the Dutch East Indies government aimed at groups of non-native citizens, namely from Europe, China, and the foreign east. This law was promulgated on April 30, 1847, through Staatsblad No. 23 and entered into force in January 1848. After Indonesia's independence, based on the provisions of Article 2 of the transitional rules of the 1945 Constitution, the Civil code is still declared valid before being replaced by a new law (concordance principle).

<sup>16</sup> Legal norms related to Islamic family law, such as the law of marriage, divorce, inheritance, wills, and endowments Yulia, *Hukum Perdata* (Lhokseumawe: CV. BieNa Edukasi, 2015), p. 2.

*the provisions of Article 199 number 3 or 4, it is not permissible for a second marriage to be carried out except after one year has passed since the dissolution their marriage registered in the Civil Registry. Further marriages between the same people are prohibited. Meanwhile, Article 34 it is stated that "A woman is not allowed to have a new marriage, except after a period of three hundred days has passed since the dissolution of the last marriage.*

2. In the Marriage Law Number 1 of 1974 concerning Marriage, hereinafter referred to as the Marriage Law, Article 11 informs about the provision of a waiting period for women after the end of the marriage bond, the details of which are explained through implementing regulations (PP No. 9 of 1975, chapter VII, article 39), which determines:
  - a. *'Iddah* for a divorced woman is 130 days or four months and ten days.
  - b. *'Iddah* for a divorced woman either menstruating or not is 90 days (3 times *quru'*).
  - c. *'Iddah* for a divorced pregnant woman is until she gives birth to her child.
  - d. There is no *'iddah* for the divorced never having sexual intercourse with her ex-husband.
  - e. Stipulation of the time for the *'iddah* is from the time the Religious Courts declare the divorce or from the day of the death of the late husband.
3. In the Compilation of Islamic Law (KHI), Book I Chapter XVII under the title Due to Dissolution of Marriage, Part Two: Waiting Time articles 153-155, it is stated that:
  - a. *'Iddah* for a divorced woman either *ba'da al-dukhūl* or *qabla al-dukhūl* is 130 days
  - b. A woman who breaks up her marriage due to divorce, whether she is still menstruating or has entered the menopause phase, her *'iddah* period is 90 days.
  - c. A woman who is pregnant while a divorce occurs, either by



means of *talāk* or with the death of her husband, or after the *talāk* occurs her husband dies, then the period of her '*iddah*' is until she gives birth to her child.

- d. A woman who breaks up her marriage because of divorce and *qabla al-dukhūl*, then there is no '*iddah*' for her.
- e. The period of '*iddah*' is calculated from the time Religious Courts declares for the divorce, either *talāk* or *khulū'*, and from the death of the husband for *al-mabtūtah*.
- f. '*Iddah*' for women who experience menstruation and when they do not menstruate because of breastfeeding, then the period of '*iddah*' is three times of menstruation.
- g. '*Iddah*' for women who have menstruation and they do not menstruate because of menopause, then the '*iddah*' is one year.

From the various provisions above, it can be understood that the issue of '*iddah*' is also known in the legal regulations that apply in Indonesia; however, it's just in the Civil Code that the waiting period applies to both men and women, while in the UUP and KHI the waiting period only applies for women.

### **Attitudes of Indonesian Feminists Towards Marriage Law and the Issue of '*Iddah*'**

Feminists argue that Islamic family law in Indonesia (UUP No. 1 of 1974 and KHI) is still full of discrimination against women. According to their opinion, Islamic law, which is understood, believed, and practiced every day, is born in a patriarchal society and culture where men are always the center of power.<sup>17</sup> They also assert that several weaknesses in the KHI material should be corrected which include. *First*, the formulation of the vision and mission, along with several articles of KHI that contradict the basic principles of universal Islam such as *al-musawwah*, *al-ukhuwah*, *al-'adālah*, and others. *Second*, articles that are not in accordance with the prevailing laws, regulations, and international conventions that have been

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<sup>17</sup> Cholis Akbar, 'Kerancuan Metodologi Draft Kompilasi Hukum Islam' [http:// www.hidayatullah.com](http://www.hidayatullah.com) [accessed 14 February 2021].

ratified such as Amendments to the 1945 Constitution, Law No. 7/1984 on the Elimination of All Forms of Discrimination Against Women, Law No. 39/1999 on Human Rights, Law no. 23/2002 on Child Protection. *Third*, in the methodological aspect, there are still replicas of classical fiqh *fuqahā* laws that not reflecting the construction framework of Islamic law in the context of Indonesian society.<sup>18</sup>

As a manifestation of their seriousness in fighting for their ideals, Indonesian Feminists compiled a draft law which they called the Counter Legal Draft Compilation of Islamic Law (CLD-KHI). The draft was prepared by the Gender Mainstreaming Working Group (POKJA PUG) of the Ministry of Religion of the Republic of Indonesia which they then submitted to the House of Representatives (DPR) on October 4, 2004, a year after the Ministry of Religion submitted a proposal to increase the legal status of KHI to the Draft Law on Applied Law for Religious Courts (HTPA Bill). This draft offers some updates on Islamic Family Law, the Islamic Inheritance Law Bill, and the Islamic Endowment Law Bill that accommodates the values of democracy, pluralism, human rights, and gender equality in the context of Indonesia.<sup>19</sup>

Feminists in Indonesia view that *al-Ahwāl al-Syakhṣiyah*, UUUP, and KHI are products of a patriarchal culture that permanently marginalizes and subordinates women in various public roles so they need to be harmonized with the spirit of equality before the law. For this reason, the steps that need to be taken are to reinterpret arguments both sourced from the Qur'an and Sunnah that are not in harmony with the spirit of feminism. Regarding *'iddah*, they want a revision of the law so that the provisions for the waiting period for women are at least the same as those in the Civil Code.<sup>20</sup>

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<sup>18</sup> Cholis Akbar, 'Kerancuan Metodologi Draft Kompilasi Hukum Islam', p. 29.

<sup>19</sup> Marzuki Wahid, *Pembaruan Hukum Keluarga Islam Pasca Orde Baru dalam Pendekatan Fiqih Studi Kasus CLD-KHI dalam Generasi Baru Peneliti Muslim di Indonesia Kajian Islam dalam Ragam Pendekatan Program PIES 2008-2009* (Purwokorto: Australia - Indonesia Institut, 2010), p. 4-7. Compare Dewani Romli & Abdul Qodir Zaelani, 'Counter Legal Drafting of the Islamic Law Compilation, A Gender Perspective', *Advances in Social Science, Education and Humanities Research*, Volume 49 (2019), p. 331-337.

<sup>20</sup> Abu Rokhmat and Sulistiono Susilo, 'Conceptualizing Authority of the Legalization of Indonesian Women's Rights in Islamic Family Law', *Journal of Indonesian Islam*, Volume 11 Number 02 (2017), p. 489.

The following table shows the difference in content between KHI and CLD-KHI which also shows points they want to change:

**Table 1. The Difference Between KHI and CLD KHI**

NO	Topic	KHI	CLD KHI
1	Marriage	Marriage is considered a form of worship (Article 2)	Marriage is not seen as worship but as a civil action. As a contract, it must be based on the agreement of both parties (Article 2)
2	The guardian of marriage	It is a pillar of marriage (Article 7)	It is not a pillar of marriage. It is required for those who are not yet capable of taking legal action (Articles 6-7)
3	Marriage registration	It is not a pillar of marriage	It is a pillar of marriage and obliges the government to invalidate marriages (Article 6)
4	Female witnesses	Women are not allowed to be witnesses of marriages.	Women may become marriages witnesses as men do (Article 11)
5	Minimum age limit for marriage	The minimum age limit for prospective husbands is 19 years old and for prospective wives is 16 years (Article 15)	The minimum limit is 19 years and does not distinguish between prospective husbands and wives (Article 7)
6	Unmarried girl	Regardless of her age, a girl is married off by a guardian or by a party representing him (Article 14)	When she attains 21 years old, she can marry herself (without a guardian) (Article 7)
7	Dowry	Given by the prospective husband to the prospective wife (Article 30)	Can be given by the prospective wife to the husband or vice versa according to custom (Article 16)
8	Position of husband and wife in a household	The husband is head of household while the wife is housewife (Article 80 paragraph 4)	The rights and obligations of husband and wife are equal (Article 49), They may become head of household or housewife in accordance with mutual needs and agreements
9	The breadwinner	Obligations of husband (Article 60 paragraph 4)	Obligations of both husband and wife (Article 51)
10	Marriage period agreement	Not regulated	Regulated, so the marriage is declared to be terminated with the end of the agreed marriage period (Articles 22, 28, and 56 points a)

NO	Topic	KHI	CLD KHI
11	Interfaith marriages	Absolutely unallowed	Permitted as long as it is to realize the purpose of marriage
12	Polygamy	Allowed under some conditions (Article 5-59)	not allowed, <i>harām lighairihi</i> (Article 3)
13	<i>'Iddah</i>	Only applies to the wife (Article 153)	Applies to both husband and wife (Article 88)
14	<i>'Iddah</i> due to divorce	Based on the occurrence of sexual intercourse (Article 153)	Based on the occurrence of the contract not on the occurrence of sexual intercourse (Article 88)
15	<i>Ihdād</i> (mourning)	Only applies to the wife (Article 170)	Applies to both husband and wife (Article 112)
16	<i>Nusūz</i> /disobedient	Only possible for the wife (Article 84)	possible for both husband and wife (Article 53 paragraph 1)
17	<i>Khulū</i> /ransomed divorce	<i>Khulū'</i> is as <i>talak bain sughrā</i> , So the couple may return to marriage ( <i>rujū'</i> ) with a new contract (Article 119)	<i>Khulū'</i> and divorce are the same So the couple may return to marriage ( <i>rujū'</i> ) without a new contract (Articles 1 and 59)
18	The right to <i>rujū'</i> /return to marriage	only owned by the husband (Article 163)	Husband and wife have the same right to return to marriage ( <i>rujū'</i> ) (Article 105)

## Refutation of the Feminist View on the '*Iddah*'

### a. '*Iddah* as a form of dehumanization of women

Feminists point out that '*iddah* is a form of dehumanization in the name of a tradition, religion, or the superiority of certain groups. This view needs to be clarified by referring to the meaning contained in the term humanization/dehumanization. Humanization means humanizing humans, eliminating material dependence, violence, and hatred from other humans by fighting three things. *First*, bad treatment of human entities due to technological, economic, cultural, or state factors. *Second*, aggressiveness and criminality due to collective factors. *Third*, marginalization or losing of one's rights. The opposite of humanization is dehumanization which is the potential to not treat humans as humans by abandoning moral values, kindness, tolerance, or demeaning others without any sense of care, sympathy, or even empathy.<sup>21</sup>

<sup>21</sup> Evelyn Ochi, 'Mengenal Dehumanisasi, Kemampuan Tidak Memanusiakan Manusia yang Perlu Diwaspadai', 2018 <https://journal.sociolla.com/lifestyle/mengenal-dehumanisasi/> [accessed 16 February 2021].

If the two definitions above are related to the phenomenon of *'iddah*, the claim of dehumanization is only suitable to be applied to the traditions of Arab society during the Jahiliyah period. This is because at that time women were considered goods that could be transacted, inherited, and even given away. Therefore, when her husband dies, the widow will be exiled from her husband's family to a place for one year and receive very inhumane treatment. But if it is associated with the phenomenon of *'iddah* in Islam, the claim of dehumanization is not at all correct. This is due to several arguments as follows:

- 1) The rules of *'iddah* in Islam are completely different from pre-Islamic Arab tradition. With the coming of Islam, women are no longer considered "treasures" that can be passed on to their heirs. Islam elevates the dignity of women by abolishing all inhumane treatments suffering them during the Jahiliyyah era.
- 2) The rules regarding *'iddah* are not to discriminate against women. This is evidenced by the fact that not all women whose marriages break up must perform *'iddah*. Only married couples who have had sexual intercourse before the divorce is subject to this rule. For those who have not, they are not required to perform *'iddah*.
- 2) The main purpose of determining the *'iddah* in Islamic Law is to know whether the woman is pregnant or not, and, at the same time, to prevent the lineage obscurity of the to-be-born child as it can be determined based on valid and convincing evidence.
- 3) *'Iddah* is also intended to provide an opportunity for divorced married couples to reflect and review the decisions they made. It is very often that divorced couples decide to divorce spontaneously and under emotional influences, away from clear, rational, and wise considerations. With the opportunity time to think again, it is very possible that they regret the decision and finally decide to re-knit their marriage which had been cut off (*rujū'*).
- 4) *'Iddah*, for a wife who has been abandoned by her deceased husband, can also be viewed as a period of mourning. In this world, there is hardly anyone who does not grieve when their loved ones leave them forever. The feeling of mourning then can be expressed in the

form of delaying the desire to remarry for some time until the end of the *'iddah* period because it is culturally unethical for a woman whose husband has just died too suddenly marries another man. Besides, the attitude of the wife not remarrying immediately also shows respect for relatives of the deceased.

- 5) The rule regarding *'iddah* is also a form of respect for the institution of marriage. Marriage, in the view of Islam, is not simply an agreement between a man and a woman to live together in a family or merely a means to legalize the husband and wife relationship. More than that, it is a sacred covenant and a means of worshiping Allah. In addition, the institution of marriage can also be seen as part of human society's identity that can elevate their dignity, and, at the same time, differentiate them from animal society. Such is the importance and sacredness of the marriage institution that every married couple must do all efforts to maintain its continuity throughout their life. For this reason, married couples who have already separated due to a divorce are still encouraged to return to marriage; This effort will certainly be easier to realize if both parties, especially the wife, have not married someone else.

#### **b. Feminists Offer to Reinterpret the Islamic Marriage Law**

Indonesian Feminists propose that Islamic jurists carry out *ijtihād* to formulate new Islamic marriage rules, which are free from the confines of classical *fiqh* which they view as very patriarchal. The proposal is worth considering. However, making changes to religious law is not as easy as changing a man-made law. There are several requirements that must be met so that the changes made do not go out of the corridor of religion and fall into the abyss of fatal mistakes.

One of the requirements that must be met by someone to carry out *ijtihād* is related to *ṭuruq al- istinbāṭ al-Abkām* (law-making methodology). The Fiqh scholars always stick firmly to a principle: *there is no gap in ijtihad against the law of worship, muāmalah, and i'tiqādiyah based on the qaṭ'i argument*. This principle refers to a *fiqh qāidah* which reads:

لَا مَسَاقَافَ لِلْإِجْتِهَادِ فِيهِ نَصٌّ صَرِيحٌ قَطْعِيٌّ.

"There is no place for *ijtihad* on clear and definite texts."<sup>22</sup>

The above rule explicitly states that *ijtihad* can only be done in two circumstances, namely when there are no *naş* at all or there is a *naş* but the meaning is obscure.<sup>23</sup> This is in line with what was stated by al-Syātībī that the area of *ijtihad* is only in matters that have not been explained by the *qaṭ'i naş*.<sup>24</sup>

*Qaṭ'i naş*, is a legal basis having seven criteria, as follows:

- a. The text in question has not had multiple meanings (*musytarak*).
- b. The text is also not a metaphorical sentence (*majāz*).
- c. The text does not contain a transition of meaning (*ta'wīl*).
- d. The text does not contain special meaning (*takhṣīṣ*).
- e. The text does not contain abrogation (*nāsikh* and *mansūkh*).
- f. The text does not contain elements of connection with certain conditions in its application (*taqyīd*).
- g. The text does not contradict logic or *manthiq*.<sup>25</sup>

In the science of *uṣhūl fiqh*, there are two kinds of *Qaṭ'i* (legal certainty) namely *Qaṭ'i al-Wurūd* or *al-ṣubūt*, and *Qaṭ'i dilālāh*. *Qaṭ'i al-Wurūd* or *al-ṣubūt* are *naş* (legal basis) that reach us with certainty, no doubt because they are accepted *mutawātir* (valid/free from mistakes or lies). The Qur'an, in terms of its existence, is included in the category of *qaṭ'i al-wurūd* or *al-ṣubūt* because the Qur'an reaches us in a way that cannot be doubted.<sup>26</sup> What is meant by *Qaṭ'i dilālāh* is lafaz *naş* (legal text) which contains a clear, firm understanding, and no *ta'wīl* (possibility to change in meaning), and there is no other way to understand its meaning except that way. For example QS. Al-Ikhlāş [112]: 1, about

<sup>22</sup> Abdul Wahhab Khallaf, *Ilmu Uṣūl al-Fiqh* (Kairo: Dār al-Qalam, 2008), p. 201.

<sup>23</sup> *Ibid.*

<sup>24</sup> Imam al-Syātībī, *al-Muwāfaqāt Fī Uṣūl al-Abkām* (Beirut: Dār al-Fikr, 2007), pp. 86-89.

<sup>25</sup> *Ibid.*, p. 13-16.

<sup>26</sup> Safi Hasan Abū Ṭālib, *Taṭbīq al-Syarī'ah al-Islāmiyah Fī al-Bilād al-'Arabiyyah* (Kairo: Dār al-Nahḍah al-Arabiyyah, 1990), p. 62.

the oneness of Allah, QS. al-Nisa' [4]: 1, regarding the share of the heirs, other Qur'anic verses that explain the level of punishment had or criminal offenses both in terms of quantity and quality.

Another criterion of *qaṭ'i al-dilālah* includes two things, namely:

- 1) The text contains Islamic *aqidah* values, such as: Believing in God in His Oneness, believing in His angels, believing in His books, believing in His Apostles, believing in the afterlife, and believing that fate/destiny has been determined by Allah.
- 2) The text contains universal values and does not conflict with the main moral principles or *al-Akhlāq al-Karimah* such as: upholding justice, doing good to both parents, maintaining a friendship, and keeping promises. Concerning legal issues governed by legal basis with the status of *qaṭ'i dilālah*, then there is no room at all for the use of reason and, thus, does not become the area of *ijtihād*.<sup>27</sup>

Mahmūd Shalṭūt has the same thought as other *uṣūliyyūn* that the Qur'anic texts stated in the text have a definite and definite meaning, and there is no other meaning, then *ijtihād* is not applied there, such as the verses of the Qur'an which contain the commandment to pray, paying zakat, prohibiting adultery and prohibiting enjoying wealth unlawfully, etc. He also emphasized that anyone who denies or refutes the status of the *qaṭ'iyah* verses, then his actions can lead to disbelief or apostasy.<sup>28</sup>

Turning to the issue of *'iddah*, the three verses that become the legal basis for *'iddah*, (QS. Al-Baqarah [2]: 228-234, QS. Al-Ahzāb [33]: 49) meets the seven criteria as a *Qaṭ'i dilālah* proposition, except for a small part of the QS. Al-Baqarah [2]: 228 concerning the word "قروء" which has multiple meanings (*musytarak*) between menstruation and purity. This fact shows that *ijtihād* cannot be carried out in the case of *'iddah* because the arguments are so unequivocal. This means that the reform of the *'iddah* law as proposed by Indonesian feminists cannot be carried out including the idea of imposing *'iddah* on husbands for

<sup>27</sup> Muhammad Adib Salih, *Tafsīr al-Nuṣūṣ Fī al-Fiqh al-Islāmi* (Beirut: al-Maktab al-Islāmi, 2009), p. 171.

<sup>28</sup> Mahmud Syaṭut, *al-Islām Aqidah Wa Syarī'ah* (Beirut: Dār al-Qalam, 1996), p. 240.



reasons of equality, which violates the basic principles of legal norms, as it is tantamount to forbidding something permissible or allowing something that is prohibited.

## Conclusion

The provisions regarding *'iddah* for widows in Islam cannot be seen as a form of discrimination, or marginalization, let alone dehumanization of women. Because the main purpose of establishing *'iddah* for widows is to find out the status of a divorced woman's womb, whether she is pregnant or not. This method is chosen to prevent the mixing of lineages of the being conceived baby, if any, that will lead to unclear genealogical status. Apart from that, *'iddah* also has a mission to reunite something that has been separated while at the same time supporting the continuity of the household. Islam highly values the institution of marriage because this institution is one of the characteristics distinguishing human society from animal society. This is different from the view of the feminists who consider that the provision regarding *'iddah* is a form of discrimination because it only applies to women, and not to men. This view needs to be reviewed because the issue of *'iddah* does not necessarily mean ignoring the principle of equality between men and women, because by nature they are created with different physical and emotional characters according to their respective roles. Precisely if it is forced, new problems will arise that undermine the universal order of human culture.

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