

## **Timing Review *Iddah* Men Based on Reasoning on a *Contrario* in Positive Law in Indonesia**

**Ayang Afira Anugerahayu<sup>1</sup>, Muhammad Rifaldi Setiawan<sup>2</sup>**

<sup>1,2</sup> Fakultas Hukum, Ilmu Sosial, dan Ilmu Politik Universitas Mataram

---

### **Article Info**

#### **Article history:**

Accepted: 24 March 2025

Publish: 30 March 2025

---

#### **Keywords:**

Masa Iddah;

Perkawinan;

Argumentum A Contrario.

---

---

### **Abstrak**

*This study explores the legal provisions concerning the waiting period (iddah) for men using A Contrario reasoning within Indonesia's positive law framework. Adopting a normative legal research approach, the study finds that Indonesian positive law, particularly Law Number 1 of 1974 on Marriage and Law Number 16 of 2019 and Government Regulation Number 9 of 1975, explicitly regulates iddah only for women following divorce or the death of a spouse. In contrast, no legal requirement mandates men to undergo a waiting period before remarrying. Applying the Argumentum A Contrario method, which derives legal interpretation by considering the inverse of existing provisions, the study concludes that since the law exclusively prescribes iddah for women, men are not legally required to observe a waiting period.*

*This is an open access article under the [Lisensi Creative Commons Atribusi-BerbagiSerupa 4.0 Internasional](#)*



---

### **Corresponding Author:**

Ayang Afira Anugerahayu

Fakultas Hukum, Ilmu Sosial, dan Ilmu Politik Universitas Mataram

Email: [Ayangafira@staff.unram.ac.id](mailto:Ayangafira@staff.unram.ac.id)

---

## **1. INTRODUCTION**

Marriage is an essential issue for human life, because apart from marriage as a means of forming a family, marriage not only contains elements of human relationships with humans but also concerns civil relationships, marriage also contains elements of sacredness, namely the relationship between humans and their God.[1, p. 29] Marriage according to Islam is seen as something sacred because it makes a sacred agreement before Allah SWT. As stated in article 1 of Law Number 1 of 1974 concerning Marriage, namely: "Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the belief in the Almighty God" According to K Wantjik Saleh,[2, p. 4] marriage is an agreement entered into by two people, in this case the agreement between a man and a woman with the material goal, namely forming a happy and eternal family (household), must be based on the belief in the Almighty God, as the first principle in Pancasila.[3, p. 6]

A marriage can break up and end due to various reasons.[4, p. 229] Breaking of ties can mean that one of the two of them has died, the man and the woman have divorced, and one of the two has gone to a far away place and then there is no news so that the court assumes that the person concerned has died. Based on all of this, the husband and wife bond can mean that it has been broken and/or divorced between a man and a woman who are bound by marriage ties, this is also as regulated in article 38 of Law Number 1 of 1974 concerning marriage.

The dissolution of a marriage creates legal consequences where most couples are afraid to face the problems that arise because it will impact the parties. One of the impacts of the breakdown of a marriage is time *Iddah*. This is one of the consequences that women must accept and live with after a separation occurs, be it divorce due to divorce or divorce due to death. Period *Iddah* can be interpreted in other words as a waiting period, where this

waiting period is defined as a period or period that must be lived before someone can remarry after a divorce or death of a partner.

In civil law, a waiting period is generally imposed on women with the aim of avoiding uncertainty in marital status and ensuring clarity on the legal status of children. However, there are certain situations where men may also be required to undergo a waiting period. Debate arose regarding the application of this provision to men.

Provisions regarding time *Iddah* in the Qur'an are rules that must be carried out, because of the times *Iddah* is part of the Shari'a which is established for the benefit of humans, both in this world and in the afterlife. These rules are permanent and cannot be changed. However, the question is the reason behind determining *iddah* for women, because the Koran does not explicitly explain it. The absence of this explanation is not a provision in the Koran, but rather a form of God's wisdom which provides space for humans to interpret His revelation. Therefore, scholars try to understand and formulate the reasons behind the implementation of *iddah* for women through various studies and interpretations.

Definition of time *Iddah* in Law Number 1 of 1974, namely: For a woman whose marriage to her husband breaks up, a waiting period (period) applies to her. *Iddah*), except if a wife is divorced by her husband before having a relationship (*midwife al-dukhul*), either due to death, divorce, or by court decision. In Law Number 1 of 1974 concerning Marriage, it is stated in Article 11:

- a. For a woman whose marriage breaks up, a waiting period applies;
- b. The waiting period contained in paragraph (1) of the Government will be further regulated in Government Regulation Number 9 of 1975

The government regulations referred to in paragraph (2) above are Government Regulation Number 9 of 1975 concerning the implementation of Law Number 1 of 1974 concerning Marriage. An explanation of the waiting time is regulated in CHAPTER VII Article 39, the waiting period for a widow is as follows:

- a. if the marriage is dissolved due to death, the waiting period is set at 130 (one hundred and thirty) days;
- b. If the marriage breaks up due to divorce, the waiting time for those who still have their period is set at 3 (three) holy times with at least 90 (ninety) days and for those who do not have their period it is set at 90 (ninety) days;
- c. if the marriage breaks up while the widow is pregnant, the waiting time is fixed until she gives birth;
- d. There is no waiting time for widows who break up their marriage due to divorce, while the widow and her ex-husband have never had sexual relations.

For marriages that are dissolved due to divorce, the *iddah* grace period is calculated from the date of the court decision which has permanent legal force, whereas for marriages that are dissolved due to death, the grace period is calculated from the death of the husband.

Article 38 of the Civil Code states: "a woman is not permitted to enter into a new marriage unless a period of three hundred days has elapsed since the dissolution of the last marriage." Meanwhile, for men, there is not a single rule that clearly regulates the waiting period or *iddah* period after divorce. So there needs to be legal discovery carried out to obtain definite rules for the waiting period for men before carrying out their next marriage.

Legislative regulations that are unclear, incomplete, static, and unable to keep up with developments in society, create empty spaces that must be filled by judges by finding the law, which is done by explaining, interpreting or completing statutory regulations. The discovery of law by judges does not merely involve the application of statutory regulations to concrete events, but also creates law and forms the law at the same time.[5, p. 58] Legal discovery is an activity of searching various relevant legal sources, through interpretation,

construction, analogy, etc. The aim is to find legal rules or norms that are appropriate and relevant to the problems faced or used to explain or solve the problems faced.

Based on existing regulations, it is known that the period of Iddah It is regulated only for women and there is no explanation regarding the iddah period or waiting period for men. Does a man who wants to marry a second time go through a waiting period or not? In the author's view, there is a legal vacuum regarding the iddah period for a man, so the author is interested in researching and studying the legal findings regarding the iddah period or waiting period for men. The author raises the problem formulation, namely the discovery of the law on men's iddah periods through the argumentum a contrario construction method, with the title "Review of Period Settings. *Iddah Men Based on Reasoning on A Contrario* in Positive Law in Indonesia".

## 2. RESEARCH METHOD

This research is normative research which aims to analyze the regulation of a man's iddah period based on positive law. There is a legal vacuum regarding regulation time iddah for men according to positive law. Next, use a statutory approach (*statute approach*) and conceptual approaches (*conceptual approach*) in this article. A statutory approach will be used in reviewing and analyzing regulations including Law No.1 of 1974, Law no. 16 of 2019. A conceptual approach is used to examine legal issues with views and thoughts as well as doctrines that already exist and continue to develop in legal science, especially marriage law.

## 3. DISCUSSION

### 3.1.Marital Arrangements and Marital Dissolution.

The basics of marriage law are found in article 28 b paragraph (1) of the 1945 basic law which reads "everyone has the right to form a family and continue descendants through marriage legitimate. "Based on this statement, it can be seen that the goals and ideals of the Indonesian state are to advance the welfare of its people by giving them the right to defend their lives, which means having the right to a family. This is a human right that cannot be negotiated. Apart from that, the legal basis for marriage is also contained in Law No. 1 of 1974 concerning marriage which is regulated in chapter I concerning the basis of marriage which consists of five articles, namely from article 1 to article 5. [6, pp. 73-75]

In Law Number 1 of 1974 concerning Marriage, it is stated: "The inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the belief in the Almighty God." The definition of marriage according to the Marriage Law contains several elements of marriage, namely: [7, pp. 74–75]

- a. Inner and outer ties A physical bond is a formal relationship that can be seen because it is formed according to law, where this relationship takes into account both parties in society. Inner ties are informal relationships formed with genuine mutual will, and these inner ties only bind the prospective groom and the prospective bride who are about to get married;
- b. Between a man and a woman, this element shows that during this period, physical and spiritual bonding only occurs in between one man and one woman only;
- c. As husband and wife This means that a man and a woman who are bound in an inner and outer bond function as a husband (for men) and a wife (for women).

The conditions that must be met to carry out a marriage according to Law Number 1 of 1974 are as stated in Articles 6 to 12 as follows:

- a. There is consent of both prospective bride and groom. (Article 6 paragraph (1)) These marriage requirements provide a guarantee that forced marriages will not occur again in our society;
- b. There is permission from both parents/guardians for prospective brides and grooms who are not yet 21 year (Article 6 sentence (2) – (6));
- c. The age of the prospective groom has reached 19 years and the age of the prospective bride has reached 16 years (Article 7 paragraph (1)). This provision is to prevent the marriage of underage children;
- d. The prospective groom and the prospective bride are not related by blood/family and cannot marry (Article 8);
- e. Not being in a marital relationship with another party (Article 9);
- f. For husband and wife who have divorced and then remarried each other and divorced again for the second time, their religion and beliefs do not prohibit them from remarrying for the third time (Article 10);
- g. There is no waiting time for prospective brides who are widows. In Article 11 of Law Number 1 of 1974 it is stipulated that a woman whose marriage breaks up cannot simply remarry another man, but must wait until the waiting time is up.

A husband and wife relationship that has been established by a sacred agreement, sometimes does not rule out the possibility of experiencing disputes that lead to divorce in a household. In article 38 of law no. 1 of 1974 concerning marriage which states that "Marriage can be dissolved due to death, divorce, and a court decision." Divorce is one form of cause for the dissolution of a marriage. [8, p. 125]

Marriage Breakup is the end the relationship between a man (husband) and a woman (wife) for several reasons, as regulated in article 38 of Law Number 1 of 1974 concerning marriage which contains provisions that marriage can be broken up because:

- a. **Dissolution of Marriage due to Death**, occurs because one of the parties to the marriage dies, where this event is beyond the will or power of the parties to the marriage. There is no interference from the surviving spouse or court intervention in this matter. The dissolution of a marriage due to death is entirely the will or power of Almighty God. Dissolution of a marriage due to death is commonly referred to in our society as divorce.
- b. **Dissolution of marriage due to divorce**, is the dissolution of a marriage due to the declaration of divorce by a husband against his wife whose marriage was carried out according to the Islamic religion. The dissolution of a marriage due to a divorce like this can also be called divorce talak. The term talak divorce is contained in the explanation of article 14 of Government Regulation Number 9 of 1975 concerning the implementation of Law Number 1 of 1974 concerning marriage, which states that article 14 along with article 15, article 16, article 17 and article 18 regulate divorce talak. Article 14 itself reads: "A husband who has entered into a marriage according to the Islamic religion, who wishes to divorce his wife, submits a letter to the Court at his place of residence, containing notification that he intends to divorce his wife along with the reasons and requests the Court to hold a hearing for that purpose."
- c. **Dissolution of marriage due to court decision**, is the dissolution of a marriage due to a divorce lawsuit wife against her husband who entered into a marriage according to the Islamic religion or because of a lawsuit for divorce between a husband and wife who entered into a marriage according to the religion and trust, where the divorce suit was granted with a decision. The termination of a marriage due to a court decision is also called divorce.

### 3.2. Time *Iddah* along with the provisions and obligations imposed by the parties

*Iddah* comes from the word “*al-add*” which means number. This means the number of months that must pass for a woman who has been divorced or abandoned by her husband. As for meaning, *Iddah* in terms is the waiting time of a woman after being told or left for dead by her husband. End of time *Iddah* is sometimes determined by the process of giving birth, menstruation or sacred time or by the number of months. [9, p. 124]

Muhammad Zaid al-Ibyani explained [10, p. 426] that '*iddah* has three meanings, namely linguistically, verbally *syar'i*, and in the terms of the jurists. According to language, '*iddah* means counting. By *syar'i*, '*iddah* is a mandatory waiting period for women and men when there is a reason. In terms of jurisprudence experts, this is the waiting period required for women when their marriage breaks up or because of their marriage *suspicious*

Meanwhile, according to the Shafi'iyah school of thought, *iddah* is a period of waiting for a woman to find out whether there is a fetus in her womb from her husband or not. *Iddah* can be symbolized as a form of sadness over the death of a husband, or *iddah* is a religious construction that better describes the nuances of worship which is usually referred to by the term *ta'abbudi*.

*Ta'abbudi* This applies to a wife who was still a child and was divorced or abandoned by her husband, for this reason *I'm sorry* because small children don't yet have the time to be invited to have sexual intercourse, it is impossible for her womb to be filled with seed. Obligation *Iddah* For young women, this is nothing more than a form of respect for the marriage bond. Apart from that, it is possible that after a divorce occurs, feelings of regret will arise from the divorced couple. So there is an opportunity to knit ties of love again according to the time available. [11, p. 26]

Understanding *Iddah* in Law Number 1 of 1974, namely, for a woman who breaks up his marriage from her husband, there is a waiting period for her (time *Iddah*), unless a wife is divorced by her husband's previous relationship, either due to death, divorce, or by court decision.

From several meanings *Iddah*, it can be simply concluded that *Iddah* is the waiting period set for women after the death of her husband or the breakup of marriage either based on menstruation or sacred time, the number of months or by giving birth either for the purpose of knowing the purity of the Womb, worshiping (*worship*), as well as during a period of condolence for the death of her husband. During this period, women as wives were prohibited from marrying other men.

In Law Number 1 of 1974 concerning Marriage, it is stated in Article 11:

- a. For a woman whose marriage breaks up, a waiting period applies;
- b. The grace period for the waiting period contained in paragraph (1) of the Government will be further regulated in Government Regulation Number 9 of 1975.

The government regulations referred to in paragraph (2) above are Government Regulation Number 9 of 1975 concerning the implementation of Law Number 1 of 1974 concerning Marriage. An explanation of the waiting time is regulated in CHAPTER VII Article 39. The waiting period for a widow is as follows:

- a. if the marriage is dissolved due to death, the waiting period is set at 130 (one hundred and thirty) days;
- b. if the marriage is broken up due to divorce, the waiting time for those who still have their period is set at 3 (three) sacred times with at least 90 (ninety) days and for those who do not have their period it is set at 90 (ninety) days;
- c. if the marriage breaks up while the widow is pregnant, the waiting period is fixed until she gives birth.

d. There is no waiting time for widows who break up their marriage due to divorce, while the widow and her ex-husband have never had sexual relations.

For marriages that are dissolved due to divorce, the *iddah* grace period is calculated from the date of the court decision which has permanent legal force, whereas for marriages that are dissolved due to death, the grace period is calculated from the death of the husband.

Article 38 of the Civil Code states: "A woman is not permitted to enter into a new marriage except after a period of three hundred days has elapsed since the dissolution of the last marriage." Meanwhile, article 39 paragraphs 1-3 of the Law. No. 1 of 1974 concerning marriage determines the length of the *iddah* period, namely 130 days for marriages that are broken up due to death, 90 days for marriages that are broken up because of divorce, and for marriages that are broken up when the wife is pregnant, the period *the iddah* until giving birth. Time *Iddah* begins when the divorce is declared in front of the divorce witness court even though the Court has not yet issued a certificate regarding the occurrence of the divorce. So, a wife who has been divorced must serve time *the iddah* calculated when the divorce filed by the husband is stated at the divorce witnessing session.

Time *Iddah* This is required to be carried out to determine whether the woman's uterus is pregnant or not, this is the reason why a woman has to wait the specified period. If he gets married within the period of *Iddah*, while it is not known whether the woman is pregnant or not and it turns out she is pregnant then the question will arise "Who is the father of this child?" and when the child is born it is called "child." *suspicious*", that is, a child whose father is not clear and if the child is a girl then she is not legitimate, because she was not married by her guardian. [12, p. 84]

Medically, the *iddah* period of three months is the average incubation period needed to find out whether someone affected by a sexually transmitted disease is infectious or not, before remarrying. If it turns out that someone has a sexually transmitted disease, it is best to immediately undergo an examination and it is recommended that the marriage that is about to take place be postponed, because if the marriage takes place there is a possibility that he or she will bring the disease to his or her partner or future children. With this way, *Iddah* can provide protection from sexually transmitted diseases.[13]

### 3.3. Time Enactment Analysis *Iddah* in men through the Construction Method *Argument to the contrary*

Legal discovery is an activity of searching various relevant legal sources, through interpretation, construction, analogy, etc. Aims to find legal rules or norms that are appropriate and relevant to the problem faced or used to explain or solve the problem faced. Legal discovery is carried out because the law is incomplete or unclear, the judge must look for the law and must find the law (*finding of law*). This theory of legal discovery answers questions regarding the interpretation or interpretation of laws.

Construction The law is carried out if there are no statutory provisions that can be directly applied to the case at hand, or in the rules it doesn't exist, or there is a legal vacuum (*straight vacuum*), or legal void (*wet vacuum*). In the event of a legal vacuum or vacancy law this is where the judge uses his logical reasoning to further develop the text of the law. This method is what is meant by construction law.[14, p. 241]

This legal construction can be done by using logical thinking by:

a. *Argument by analogy* or often called an analogy. In analogy, events that are different but similar, the same or similar as regulated in law are treated the same;

- b. Narrowing of the law. In legal narrowing, general regulations are applied to specific legal events or relationships with explanations or constructions by providing characteristics;
- c. *Argument on A Contrario* or often called *to the contrary*, namely interpreting or explaining the law based on the conflict of understanding between the concrete events encountered and the events regulated in the law.

Method of Argument from the Opposite,

This method represents an event not specifically regulated by law, but the opposite of the event regulated by law. The way to find the law is by considering that if the law stipulates certain things, then the regulations are limited to that particular event and to the event outside it the opposite applies. A way of interpreting or explaining a law that is based on the opposite understanding of concrete events that are faced with events regulated in the law.

This method gives judges the opportunity to make legal discoveries with the consideration that if the law stipulates certain things for certain events, it means that the regulations are limited to that particular event and for events outside of it the opposite applies. Because there are times when an event is not specifically regulated by law, but the opposite of the event is regulated by law. So this method puts forward a way of interpreting the opposite meaning between the concrete events encountered and the events regulated in law.

Example: According to Article 39 PP No. 9 of 1975, a widow must pass a minimum iddah period of 130 days before being able to remarry, so what about the application to widowers or men where in Law number 1 of 1974 concerning marriage it does not explicitly regulate the iddah period for widowers, therefore using logic *on the contrary*, namely treating the opposite and with the comparison of judges from government regulation number 9 of 1975, so that a widower does not need to wait for a certain time or iddah period if he wants to remarry.

#### 4. CONCLUSION

Based on this research, it can be concluded that positive law in Indonesia, especially in Law Number 1 of 1974 concerning Marriage and Government Regulation Number 9 of 1975, only regulates the period of *Iddah* for women after divorce or the death of their husband, while for men there is no rule that requires them to wait before remarrying. By using the method *argument on the contrary*, which is a method of legal discovery based on the opposite of existing rules, therefore because the law only regulates the period *Iddah* for women, it can be concluded that men have no period obligations *Iddah*. This shows that there is a legal vacuum in regulating the waiting period for men after divorce.

#### 5. ACKNOWLEDGEMENT

Out of humility, the author takes this opportunity to express his gratitude for the sincere prayers from family, relatives and friends, so that writing this research can be completed.

#### 6. BIBLIOGRAPHY

- [1] A. D. S. Wasman, Wardah Nuroniyah, *Hukum perkawinan Islam di Indonesia perbandingan fiqih dan hukum positif*. Yogyakarta: Citra Utama, 2011.
- [2] K. Wantjik Saleh, *Hukum Perkawinan Indonesia*. Bogor: Ghalia Indonesia, 1987.
- [3] S. Soimin, *Hukum Orang dan Keluarga*. Jakarta: Sinar Grafika, 2010.
- [4] Tihami dan sohari sahrani, *fikih munakahat*, Cet. 3. Rajawali Press, 2010.
- [5] A. Rifai, *Penemuan Hukum Oleh Hakim dalam Perspektif Hukum Progresif*. Jakarta: Sinar Grafika, 2010.

- [6] Tim Redaksi Nuansa Aulia, *Kompilasi Hukum Islam (Edisi Lengkap)*, Cet. 10. Bandung: Redaksi Nuansa Aulia, 2022.
- [7] A. Muhammad, *Hukum Perdata Indonesia*. Bandung: Citra Aditya Bakti, 2014.
- [8] Nunung Rodliyah, “Akibat Hukum Perceraian Berdasarkan Undang-undang Nomor 1 Tahun 1974 Tentang Perkawinan,” *Keadilan Progresif*, vol. Volume 5 N, no. 1, p. h. 12, 2014.
- [9] A. Q. Mansyur, *Fiqh al-Mar’ah al-Muslimah min al-Kitab wa al-Sunnah; Buku Pintar Fiqih Wanita: Segala Hal yang Ingin Anda Ketahui tentang Perempuan dalam Hukum Islam*, Terj. Muhammad Zaenal Arifin. Jakarta: Zaman, 2012.
- [10] Muhammad Zaid al-Ibyani, *Syarh al-ahkam al-sar’iyyah fi al-ahwal al-syahsiyyah*. Beirut: Maktabah an-Nahdah.
- [11] A. Yasid, *Fiqh Today 2: Fatwa Tradisional untuk Orang Modern*. Jakarta: Erlangga, 2007.
- [12] M. I. Wahyudi, *Fiqh ’iddah Klasik dan Kontemporer*. Yogyakarta: LKis, 2009.
- [13] T. Kurniawan, “PEMBERIAN HAK GUNA BANGUNAN DI ATAS BAGIAN TANAH HAK PENGELOLAAN Granting The Buiding Rights Title Over A Part Of The Land Management Rights,” *J. Fak. Huk. Univ. Tulang Bawang*, vol. 18, no. 1, pp. 70–84, 2020.
- [14] M. -, “Metode Penemuan Hukum (rechtsvinding) oleh Hakim,” *Al-Hukama’*, vol. 7, no. 1, pp. 224–248, 2017, doi: 10.15642/alhukama.2017.7.1.224-248.