

## **The Implementation of the Iddah Period for Men: A Mediation Mechanism to Prevent Divorce**

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### **Abstract**

*This study aim to analyze the implementation of a waiting period (iddah) for men as mechanism for preventing divorce in Indonesia, in line with Circular Letter of the Director general of Islamic Community Guidance No. P-005/DJ.III/Hk.00.7/10/2021. The research employs a normative legal method by examining regulations related to the waiting period as stipulated in the Compilation of Islamic Law (KHI), the Marriage Law, and classical fiqh. It applies a comprehensive approach combining Islamic legal sources, the statute approach, the conceptual approach, and the social approach. The findings indicate that, functionally, the proposed idea aligns with the concept of Syibh al-Iddah (waiting period), which is derived from the principles of maslahah mursalah (public benefit) and maqāṣid al-sharī'ah (objectives of Islamic law). This concept also resonates with the practice of mandatory mediation already regulated under Indonesian positive law. The study concludes that although the idea lacks a normative basis in classical fiqh, its application represents a progressive and effective step. The waiting period provides space for both parties to reflect, manage emotions, and potentially achieve reconciliation. This is reinforced by recent regulations issued by the Supreme Court and the Directorate General of Islamic Community Guidance, which de facto have already implemented such a waiting period for men. Therefore, the formal application of this mechanism, even without employing the terminology of iddah, serves as a strong instrument to preserve family integrity and reduce divorce rates.*

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## **1. INTRODUCTION**

The high divorce rate in Indonesia is a phenomenon and has become a crucial social issue in recent decades. Throughout 2024, data showed that the divorce rate in Indonesia remained at a significant level. One source stated a total of 408,347 cases, while another recorded 399,921 cases. Data from the Central Statistics Agency (BPS) indicated a downward trend, from 516,344 cases in 2022 to 463,654 cases in 2023, and then to 399,921 cases in 2024. However, data from the Religious Courts Agency (Badilag) of the Supreme Court showed the opposite trend, with the number increasing from 408,347 cases in 2023 to 446,359 cases in 2024.

The contradiction between the BPS (BPS) and the Supreme Court's Law Enforcement Agency (Badilag MA) data highlights the complexity of mapping national divorce trends. BPS data, which tends to cover divorce in general, may provide a more macro-level picture, while the Badilag MA data more specifically reflects divorce among Muslims, who dominate Indonesia's population. The increase in divorce cases recorded by the Badilag MA indicates that this problem, particularly in the context of Islamic family law, is not a

declining issue but rather an increasingly crucial one requiring urgent attention. This pressing social, legal, and humanitarian issue impacts not only the separated couples but also extends to children, families, and social networks that depend on household stability.

In classical Islamic legal literature, divorce is viewed as permissible but deeply hated by God. This means that, although permitted, divorce is not an ideal solution to marital problems. The existence of divorce has led Islam to regulate a waiting period for a wife (woman) known as the *iddah* period.[1] Therefore, various sharia mechanisms have been designed to delay or even prevent divorce, one of which is the institution of the *iddah* period.

The *iddah* period is traditionally understood as an obligation imposed only on women after separation from their husbands, either through divorce or death. The primary purpose of *iddah* is to ensure the certainty of lineage,[2] provide time for the reconciliation process, and maintain the woman's honor. In other words, *iddah* is both a form of legal protection and a social mechanism.

However, the emphasis on *iddah* solely for women raises critical questions in the context of modern society. If one of the purposes of *iddah* is to provide space for reconciliation, then why doesn't a similar mechanism apply to men? This question is crucial considering that in many cases, the divorce initiative often comes from the husband.

This gap becomes even more apparent when linked to the principle of equality in modern law. If women are required to exercise restraint during the *iddah* period, while men are free to make decisions or even remarry, the expected benefits of mediation and reconciliation from the *iddah* institution become unequal. This situation has the potential to reduce the effectiveness of *iddah* as a divorce prevention instrument.

From the perspective of *maqasid al-syari'ah*, Islamic law is always directed toward achieving public welfare and preventing harm. Therefore, relevant legal mechanisms should involve both parties, both husband and wife. The introduction of the *iddah* period for men, although not yet recognized in classical Islamic jurisprudence, can be seen as a legal innovation aligned with the objectives of sharia.

The idea of the *iddah* period for men is not to exactly copy the provisions that apply to women, but rather to serve as a form of mediation. This means that men are given a certain amount of time before their decision to divorce their wives is final. During this time, it is hoped that there will be room for reflection, deliberation, and even reconciliation efforts.

From a social perspective, implementing a waiting period for men could help reduce the high divorce rate. This is because decisions to divorce are often driven by fleeting emotions. With a waiting period that also binds the husband, divorce cannot be rushed, but rather requires more careful consideration.[3]

Furthermore, enforcing the *iddah* period for men can be a form of gender equity in family law. If women are obligated to observe the *iddah* period to provide space for reconciliation, then logically, men should also refrain for the same purpose. This way, the burden of maintaining the integrity of the household does not fall entirely on the wife.

Based on this background, the idea of enforcing the *iddah* period for men as a mediation mechanism to prevent divorce deserves further study. This discussion will not only address aspects of classical Islamic law but also its relevance in the contemporary context that demands justice, equality, and welfare. This study is expected to contribute to reforming family law that is more responsive to the needs of modern society.

## 2. RESEARCH METHOD

This research is a normative study that aims to analyze the implementation of the *iddah* period for men as a divorce prevention mechanism in Indonesia in line with the Circular Letter of the Director General of Islamic Community Guidance Number P-

005/DJ.III/Hk.00.7/10/2021. Regulations related to the iddah period Iddah regulated in the Compilation of Islamic Law (KHI), the Marriage Law, and Classical Jurisprudence. Furthermore, this study uses a comprehensive approach that combines Islamic legal sources, a statutory approach, a conceptual approach, and a social approach. This research is designed to provide a comprehensive and nuanced understanding, providing a strong basis for relevant and practical policy recommendations.

### 3. RESEARCH RESULTS AND DISCUSSION

Etymologically, the word iddah comes from the words al- 'dd and al-ihsha' which mean "number". In the context of Islamic jurisprudence, iddah is defined as a "waiting period" that a woman must undergo after her marriage ends, either due to divorce by her husband or due to his death. This period is the period during which she is not allowed to marry another man. The law of iddah is obligatory based on the consensus of scholars and the evidence of the Qur'an, one of which is from Surah Al-Baqarah verse 228 which states, "Women who are divorced should restrain themselves (wait) three times quru'.[4]" The institution of iddah is not uniform and is classified into several categories, depending on the condition of the woman concerned:

- a. Iddah talaq: Waiting time for divorced women. If the woman is menstruating, her iddah period is three times holy (three times quru'). However, there is a difference of opinion among scholars regarding the meaning of quru', whether it is menstruation or sacred time. However, the common practice is sacred time. If the woman does not menstruate, her period of iddah is three months.
- b. Pregnancy iddah: The iddah period for a woman who is divorced or whose husband dies while she is pregnant. The waiting period lasts until she gives birth, regardless of whether it is shortly or long after the marriage ends.
- c. Iddah after death: The iddah period for a woman whose husband has died is 4 months and 10 days.
- d. Iddah for Women Who Lose Their Husbands: Although rare, there is also an iddah period for women who lose their husbands without any clarity of status, namely a waiting period of 4 years, followed by an iddah period for death.

The implementation of iddah is not merely a formal regulation, but also contains profound and multidimensional wisdom, from a biological, emotional, and social perspective. One of the primary purposes of iddah is to ensure the emptiness of a woman's womb from pregnancy, a concept known as *istibra' al-rahim*. Its purpose is to maintain the clarity of lineage (*hifdz al-nasab*). If a woman marries immediately after a divorce and discovers she is pregnant, there will be uncertainty as to who the father is. The biological consequences of the child. This physical reason implicitly explains why iddah does not apply to men in classical Islamic jurisprudence, as men lack a uterus and do not face these biological risks. However, this emphasis on wisdom often overshadows broader dimensions that are relevant to both genders.

Beyond its biological purpose, the iddah also serves as a period of reflection and reconciliation for both parties. It is a "break time" that gives both husband and wife the opportunity to deeply reconsider their decision. This period *de facto* forces both parties into a legal "limbo," where they are still bound by several obligations, especially the husband, who still has the right to reconcile. Although only the husband has the right to reconcile, this waiting period gives him time to reconsider his decision, whether to continue the separation or reunite. This is the essence of the idea that the waiting period for men can serve as a mediation mechanism, as it indirectly provides both parties with the opportunity to manage their emotions and clear their minds, a fundamental prerequisite for any successful reconciliation effort.

The iddah also serves as a legal protection instrument for the wife and the unborn child. During the iddah period, the husband is obligated to provide maintenance and shelter to his ex-wife, particularly in cases of a *raj'i* divorce. This ensures that the wife, and if there is a fetus, receive the necessary support during this vulnerable transition. This obligation also fosters ongoing interaction between the ex-husband and wife, which can reopen the door to dialogue and reconciliation. The table below summarizes the main classifications of iddah and their durations, providing a foundation for further understanding the role of the waiting period in divorce dynamics.

### 3.1 Iddah Time in Islamic Jurisprudence and the Concept of Syibhul Iddah for Men

In the classical fiqh tradition, there is a strong consensus that iddah does not apply to men. After divorcing his wife, a man is basically allowed to immediately remarry another woman. The main reason behind this view is the absence of biological urgency (*istibra' al-rahim*), which is the main wisdom of the Islamic law for women. Men do not need to ensure that the uterus is empty, so the waiting period such as iddah is considered irrelevant for them. In addition, the husband's prerogative right to refer (return) to his wife during iddah is also an important consideration.

Regarding the length of syibhul 'iddah for men is the same as the length of iddah for women. The reason for the syibhul 'iddah for men is because of the *syar'i* semen which causes him to perform the syibhul 'iddah which depends on the woman's iddah.[5]

This inequality in rights and obligations, which classical jurisprudence viewed as a natural and reasonable difference, has become a starting point for debate in contemporary family law discourse. This difference raises questions about gender justice and the relevance of law amidst social change. This view, while normatively sound, does not fully address the practical and social needs of the modern context, where divorce is not only a biological issue but also an emotional and social one.

In response to needs not explicitly stipulated by the *nash* (sacred texts), contemporary scholars developed the concept of Syibhul Iddah, which literally means "resembling iddah" or "waiting period" for men. This concept was put forward by scholars such as Wahbah Zuhaili, who argued that even though there is no iddah in terms of terminology, men have a normal waiting period (ordinary waiting period) if there are "*shar'i* obstacles" (*mani' syar'i*) preventing them from marrying.[6] These obstacles include:

1. The husband's desire to marry a *mahram* of his ex-wife who is still in the iddah period, such as his sister, aunt, or niece.
2. When a man has four wives, divorces one of them, and wants to immediately marry a fifth wife.

The concept of Syibhul Iddah is a manifestation of *ijtihad*, the attempt to find legal solutions not explicitly stipulated in the Qur'an or hadith. Logically, if Syibhul Iddah is recognized for avoiding specific *mani' syar'i*, then it can also be adapted for broader purposes. Its purpose is to achieve *maqasid al-syari'ah*, namely maintaining family integrity (*hifdz al-nasab* and *hifdz al-nafs*), which is a higher goal of sharia than mere formal rules.

Criticism of the iddah provision, which applies only to women, often comes from a feminist perspective in Islamic law, which views this asymmetry as a form of gender inequality. They argue that this provision can restrict women's freedom of movement, while men do not have similar obligations.

Family law reform in the modern context uses a more flexible theological framework, such as *maqashid al-shari'ah* and *maslahah mursalah*. *Maqashid al-shari'ah* are the purposes of Sharia, such as preserving religion, soul, intellect, lineage, and

property. Meanwhile, *maslahah mursalah* is a principle that allows the establishment of law based on public benefit or good, even though it is not explicitly regulated in the text.

The researcher's argument is that the idea of "iddah for men" is a form of contemporary *ijtihad* that tries to apply the principles of justice and *maslahah mursalah* to the problem of divorce. This is not the creation of a new law, but an adaptation of the interpretation of the old law to achieve a higher goal of Sharia. In other words, if the waiting period for men can reduce divorce, provide space for reconciliation, and protect the family, then that is in line with the spirit and purpose of Shariat itself.

### 3.2 Reconciliation Mechanisms from Reconciliation to Mediation

The period of *iddah* is not just a period of passive waiting for the wife. In the case of *raj'i* divorce (one or two divorces), the *iddah* time serves as an opportunity for the husband to return (refer)[7] to his wife without the need for a new marriage contract and dowry. During this period, the marriage bond is not completely severed.

During the *iddah* period, the husband is legally obligated to provide for his wife's maintenance and shelter. This obligation indirectly encourages interaction and communication between the two parties, which can trigger reconsideration and reconciliation. Interestingly, although classical Islamic jurisprudence grants the husband the absolute right to reconciliation, Indonesian positive law, specifically the Compilation of Islamic Law (KHI), stipulates that the wife has the right to refuse reconciliation if she can prove that the reconciliation will cause her *mafsadah* (harm or loss). This right, which does not exist in classical Islamic jurisprudence, represents a legal innovation that provides greater protection for women. It also strengthens the argument that the waiting period should be used for mediation, not as a unilateral tool by the husband. The wife's right to refuse reconciliation represents a paradigm shift from the husband's absolute right to a more balanced consideration of the common good.

Indonesian positive law has integrated mediation as a mandatory step in all divorce cases. According to Supreme Court Regulation (PERMA) No. 1 of 2016, mediation must be undertaken by couples filing for divorce before the case proceeds to trial. This process is led by a judge or a neutral non-judgmental mediator.

The purpose of mediation is to find a middle ground, facilitate communication, and strive for peace.[8] Although the presence of the disputing parties is mandatory, they are also permitted to be accompanied by legal counsel. However, the effectiveness of mediation varies. Research shows that its success rate, although statistically low, is considered functionally effective. Factors that support the success of mediation include the cooperation of the parties and the competence of the mediator. Conversely, inhibiting factors include the absence of one of the parties, unwillingness to compromise, and a strong determination to divorce that already exists before the process begins.

Conceptually, the *iddah* period and court mediation share the same goal: to provide time and space for couples to reconsider their decisions and consider reconciliation. Court mediation merely formalizes the long-standing goal of reconciliation within the *iddah* period. Thus, the post-divorce waiting period, traditionally referred to only as *iddah* for women, serves as a *de facto* mediation space for both parties, providing empirical evidence that the proposed concept is functionally valid.

The implementation of the idea of "waiting time for men" is not without its challenges. Normatively, this can face resistance from the view of conservative jurisprudence that insists that *iddah* only applies to women based on classical texts. To overcome this, it is important to use the correct terminology, such as "waiting time" or *Syibhul Iddah*, rather than the term *iddah* itself, which has specific biological and legal

connotations. This approach avoids the effect of creating a new law and instead, places it as an effort to apply *maqashid al-shari'ah* and *maslahah mursalah*.

Legally, the Supreme Court (MA) and the Directorate General of Islamic Community Guidance have de facto implemented this "waiting period" through Circular Letter Number: P-005/DJ.III/Hk.00.7/10/2021. This circular emphasizes that divorced men must wait for their ex-wife's *iddah* period before remarrying.[9] The main reason for this policy is to prevent covert polygamy and hasty marriages, and to give men time to reconsider their decisions.[10]

This regulation directly validates the user's hypothesis, showing that the idea has been considered and started to be implemented at the highest policy level, albeit with different justifications and terminology.

Sociologically, the biggest challenge is overcoming public perception, which often views divorce as a final decision and mediation as a mere formality. A shift in mindset is needed, one that views the waiting period not as a burden, but as a valuable opportunity for reconciliation and emotional healing.[11]

The most functional implementation of a waiting period for men would be to integrate it more deeply into the existing religious justice system. The recently issued Supreme Court circular is an excellent first step. The dual purpose of this regulation is significant. First, it prevents violations of laws and norms, such as illegal polygamy and hasty marriages. Second, and more importantly in the context of this report, it implicitly provides men with time to reflect. This period, which can be called "psychological mediation," allows both parties to manage their emotions and move from "hot heads" to "cool heads," which is a crucial prerequisite for any conflict resolution effort.[12] Real-life stories of successful reconciliation during the waiting period published by religious justice institutions demonstrate that this waiting period, even if not accompanied by formal mediation, can lead to reconciliation.

Based on the previous analysis, divorce prevention efforts require a holistic approach, positioning the waiting period as a strategic tool for strengthening marital ties. First, the effectiveness of mediation in Religious Courts needs to be improved by strengthening the capacity of mediators who not only understand the legal aspects but also possess psychological skills and religious understanding. This way, mediators are able to manage the emotional dynamics of couples and explore the root of the problem, rather than simply seeking a formal resolution. Second, more intensive premarital education programs and widespread public outreach are needed regarding the essence of the waiting period and the mediation process, so that people view it not merely as an administrative obligation but as a real opportunity to improve relationships. Third, the success of divorce prevention is also crucially determined by the institutional synergy established between Religious Courts, the Office of Religious Affairs (KUA), religious leaders, and professionals such as psychologists and marriage counselors. This collaboration can provide comprehensive support for couples experiencing conflict, both in the initial stages of the problem and after the divorce.

#### 4. CONCLUSION

The idea that "the imposition of an *iddah* period for men" is a concrete form of mediation to prevent divorce is a functionally valid and progressive proposition. While it lacks a normative basis in classical Islamic jurisprudence, its spirit is reflected in the concept of *Syibhul Iddah* and, more importantly, has been implemented in Indonesian positive law through regulations requiring men to wait for their ex-wives' *iddah* period before remarrying. The post-divorce waiting period, for both women and men, is a crucial period for reflection, emotional healing, and reconciliation. It provides a valuable opportunity for

couples to manage emotions and conflicts, clear their minds, and, if possible, return to a stronger marital bond. By optimizing the role of mediation, increasing public education, and strengthening institutional synergy, the religious justice system can become a more effective instrument in maintaining family unity and building a more stable society.

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