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## **Reformulation of the Concept of *Iddah* in The Compilation of Islamic Law Perspective of Negotiative Hermeneutics**

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### **Abstract:**

Iddah is a rule that must be implemented by a woman after divorce from her husband, either due to death or divorce. This is stated in the compilation of Islamic law as one of the regulations in Indonesia. Reformulating of iddah aims to enable Islamic law to address issues in daily life brought about by a variety of changes. For this reason, the author uses a negotiating hermeneutic approach initiated by Khaled M. Abou El Fadl. This research uses a type of literature research (*Library research*) with qualitative methods. The result of this study finds that iddah obligation is the "responsibility" of both husband and wife after divorce. Just as the wife must ensure the cleanliness of her uterus, the husband must provide iddah for the fulfilment of iddah obligations. So, the reformulation related to the concept of iddah in the compilation of Islamic law is the period of payment of iddah after the court decision and the provision of sanctions for ex-husbands who do not fulfil their obligations by court decisions.

**Keywords:** iddah; divorce; hermeneutics.

### **Introduction**

Islamic law regulates various aspects of human life. The aspects of worship and *mua'malah* involve man's relationship with God and man's relationship with fellow humans. As in marriage, which is an act of worship, it also describes the relationship between humans and fellow humans. The occurrence of marriage will give rise to rights and obligations for husband and wife, in which, under certain conditions, a wife must carry out obligations—*iddah*—when a husband leaves her either because

of death or talaq (divorce).<sup>1</sup> The obligation of iddah in Islam has been lucidly and unequivocally regulated regarding the procedures for exercising it. Iddah comes from the word *'ada* (number) or count i.e. a woman who calculates the time of menstruation and the holy period while according to the term, iddah is a waiting period or suspension period for a wife who has been abandoned by her husband due to divorce or death,<sup>2</sup> by carrying out the provisions of the expiration of some *quru'* or until the delivery of the baby.<sup>3</sup>

The rules in the compilation of Islamic law come from the formulation of Indonesian thinkers, where the rules for carrying out *iddah* for a woman certainly contain their purpose or the purpose of executing Allah's commandments, knowing the cleanliness of the uterus,<sup>4</sup> safeguarding women's honour for the benefit,<sup>5</sup> and provide opportunities for husbands or wives to think or reflect again in terms of improving family status (*rujuk*).<sup>6</sup> When viewed from the purpose of *iddah* in Islam, the obligation of *iddah* in Islam is very concerned about women both from physical and psychological aspects. However, the goals arising from the obligation of *iddah* have been refuted by technological sophistication that affects the mindset and behaviour of the Indonesian Islamic community. In the compilation of Islamic law, there is no provision for whether or not women who are in the period of *iddah* can leave the house. It only explains the limits of the month women perform *iddah*, thereby providing an opportunity for women who are burdened by the iddah law after divorce to not perform *iddah* in the sense of staying in the house.<sup>7</sup>

Indeed, the rules on *iddah* in Islam have long existed, even before the advent of Islam, although in practice they were not the same after the advent of Islam. The concept of *iddah* after the arrival of Islam is more concerned with benefit. Nevertheless, the practice of *iddah* in the time of the Prophet was still influenced by the socio-cultural conditions of Arab society at that time. The formation of sociocultural conditions of Arab society is certainly inseparable from the culture of pre-Islamic Arabs who considered the position of women inferior to men. *Iddah*, at the time of the Holy Prophets, was a law that must be exercised by a woman who is divorced from her husband, either dead divorce or talaq divorce as a form of devotion

<sup>1</sup> Ainun Arsjad, Rasyida Barakah, "Iddah Wafat, Antara Agama Dan Budaya," *Jurnal Lentera: Kajian Keagamaan, Keilmuan dan Teknologi* 3, no. 1 (2017): 123–24.

<sup>2</sup> Ria Rezky Amir, "Iddah (Tinjauan Fiqih Keluarga Muslim)," *Jurnal Al-Mau'izhah* 1, no. 1 (2018): 13–20.

<sup>3</sup> Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia* (Jakarta: Kencana, 2009), 303.

<sup>4</sup> Mar'atun Nabila Misbahul Amin, "Iddah bagi Wanita Hamil yang ditinggal Mati," *Jas Merah: Jurnal Hukum dan Ahwal Syakhsiyyah* 1, no. 1 (2021): 102–8.

<sup>5</sup> Khairul Muttakin, "Tafsir Misoginis Ayat-ayat Iddah: Analisis Sosiologis Ayat-Ayat Iddah Menurut Mufassir dan Ahli Fiqh," *Islamuna: Jurnal Studi Islam* 4, no. 1 (2017): 62, <https://doi.org/10.19105/islamuna.v4i1.1351>.

<sup>6</sup> M. Abdul Aziz Kholid, "Problematika Iddah dan Ihdad (Menurut Madzhab Syafi'i Dan Hanafi)," *Al-Insyiroh: Jurnal Studi Keislaman* 1, no. 1 (2015): 117–33, <https://doi.org/10.35309/alinsyiroh.v1i1.3344>.

<sup>7</sup> Sumiati, "Pandangan Iddah bagi Perempuan Pasal 170 bab xix dalam Kompilasi Hukum Islam," *Tausiah* 9, no. 2 (2019): 42–49.



to Allah Almighty.<sup>8</sup> The obligation of *iddah* at present does not need to be questioned or even challenged in terms of the concept of *iddah* because in the past, the obligation of *iddah* was a direct command from Allah Almighty and there was no challenge in performing *iddah*.

The command to carry out Iddah after divorce will certainly be different in application to different conditions because in the context of Arab society women can carry out *Iddah* by Shari'a as Arab women receive full income from their husbands. On the contrary, in Indonesia, women do not fully receive income from a husband; some even help meet the family's livelihood and become the backbone of the family. This means that women in Indonesia do the same things as men in social and economic aspects. That is, in terms of the implementation of *iddah*, Indonesian women experience issues in fully performing their obligations of shari'a *iddah*.<sup>9</sup>

The problem of implementing *iddah* does not stop at economic factors, but the unstoppable development of information technology seems to be another problem. The ease of access to social media is an addiction. So, humans tend to always capture and post every single activity on social media. In the *iddah* period, physically women separated from their husbands should stay at home, but uploading photos or videos of their daily life which will certainly display something interesting may be inappropriate.<sup>10</sup> The rules of *iddah* in Islam, however, forbid women during *the iddah* period to leave the house and put makeup on their faces. That is, the use of social media for women who are still in the *iddah* period contravenes Islamic law.<sup>11</sup> In addition to social media, the implementation of *iddah* also clashes with a particular condition where women are no longer *menstruating* (menopause). When this is the case, is it still obligatory for women to perform *iddah* in this situation? With a medical approach, study results find that *iddah* for women who have *gone through* menopause must take place because the phrase "*in irtabtum*" (if you are in doubt) in the Qur'an surah at-Talaq verse 4 in women who have menopause can be interpreted in the medical world that represents the condition where the woman before *menopause* experiences irregular menstruation. This indicates that a woman is in *menopause* as long as she has stopped menstruating for one year. So, women who have *gone through* menopause should do *iddah* for 3 months to make sure doubts are still in the fertile period or menopause.<sup>12</sup>

The problems in the practice of *iddah* above show obstacles inseparable from various factors such as education, economy, technological development, and the

<sup>8</sup> Nurnazli Nurnazli, "Relevansi Penerapan 'Iddah di Era Teknologi Modern,'" *Ijtima'iyya: Jurnal Pengembangan Masyarakat Islam* 10, no. 1 (2018): 121–42, <https://doi.org/10.24042/ijpmi.v10i1.2358>.

<sup>9</sup> Hasan Baharun dan Syafiqiyah Adhimiy, "Limitasi Keluar Rumah Bagi Perempuan 'Iddah Wafat dalam Perspektif Masalah Mursalah,'" *Al-Adalah* 15, no. 1 (2018): 151–80, <https://doi.org/10.24042/adalah.v15i1.2161>.

<sup>10</sup> Affan Hatim, "Hukum Penggunaan Media Sosial Bagi Wanita Dalam Masa 'Iddah Dan Ihdâd (Perspektif Qiyâs)," *Al-Banjari: Jurnal Ilmiah Ilmu-Ilmu Keislaman* 17, no. 1 (2018): 13–40, <https://doi.org/10.18592/al-banjari.v17i1.1567>.

<sup>11</sup> Muhammad Zainuddin Sunarto dan Karmilah Liana, "Interaksi Wanita *Iddah* Melalui Media Sosial," *Jurnal Islam Nusantara* 4, no. 2 (2021): 160–71, <https://doi.org/10.33852/jurnal.in.v4i2.220>.

<sup>12</sup> Nur Lailatul Musyafa'ah, "Interpretasi Ayat *Iddah* Bagi Wanita Menopause, Amenorea, Dan Hamil Dengan Pendekatan Medis," *Al-Daulah: Jurnal Hukum dan Perundangan Islam* 8, no. 1 (2018): 103–30, <https://doi.org/10.15642/ad.2018.8.1.103-130>.



behaviour of modern society. The concept of *iddah* has been firmly built by Indonesian thinkers in the compilation of Islamic law and has encountered obstacles because the compilation of Islamic law (CIL) as Islamic law that has been legalized as a reference for judges in deciding cases in the Religious Court refers to classical *fiqh* books.<sup>13</sup> The preparation of classical *fiqh* including the concept of *iddah* conforms to its age. In other words, when the current concept is experiencing obstacles due to the change of time, this concept still has to be responded to with legal solutions.

Departing from this issue, this research seeks to reassess the concept of *iddah* in the compilation of Islamic law because the concept is compiled based on the concepts written in classical *fiqh* books whose compilation adjusted to the social conditions at that time. The concept of *iddah* contained in the compilation of Islamic law seemingly needs to be rearranged, taking into account the current social conditions of society. For this reason, this research refers to a hermeneutic approach introduced by Khaled M. Abou El Fadl. Because the implementation of the concept of *iddah* in the compilation of Islamic law remains rigid and has not considered the socio-cultural conditions of the Indonesian Muslim community, this research is expected to be able to provide legal solutions in answering the problems of the people, especially about the implementation of *iddah* and finding the essence of the law because it is shari'ah *iddah* in Islam.

This research employed a type of normative legal research commonly referred to as literature study by examining secondary materials,<sup>14</sup> presenting a variety of data on the research topic, namely the concept of *iddah* in the compilation of Islamic law in the view of negotiating hermeneutics, both in the form of books and supporting data derived from online news, magazines, and newspapers that have a direct or indirect relationship. The approach in this study referred to a qualitative approach to delve into the problems that arise with certain symptoms, facts, or realities related to community behaviour, by observing the concept of *iddah* in the compilation of Islamic law and the practice of implementing *iddah* exercised by women following the death of their husbands or divorce *talaq* in various regions in the modern era. Furthermore, the collected data will be analyzed using data reduction steps, presentation or display of data, and conclusion or verification. The selected data related to the results of research on the practice of *iddah* in various regions in Indonesia as well as cases from social media, books, and scientific papers were analyzed using hermeneutic theory.<sup>15</sup> The analysis was followed by the conclusion of the concept of *iddah* in the compilation of Islamic law given the negotiating hermeneutics offered by Khaled Abou El Fadl.<sup>16</sup> The conclusion of the study is a reformulation that will be an alternative in the preparation of Islamic law in Indonesia.

<sup>13</sup> Novita Dwi Lestari, "Kompilasi Hukum Islam (KHI) Dan Pendapat Madzhab Syafi'I Tentang Batasan Masa Tunggu Suami/Isteri Mafqud," *Jurnal Islam Nusantara* 2, no. 1 (2018): 129–47, <https://doi.org/10.33852/jurnalin.v2i1.76>.

<sup>14</sup> Sri Mamudji Soerjono Soekanto, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Depok: Raja Grafindo Persada, 2019), 13.

<sup>15</sup> J.R Raco, *Qualitative Research Methods Types, Characters and Advantages* (Jakarta: PT Gramedia Widiasarana Indonesia, 2010), 70.

<sup>16</sup> Lexy Moleng, *Qualitative Research Methodology*, I (Bandung: Remaja Rosda Karya, 2005), 235.





## Result and Discussion

### Getting to Know Khaled Abou El Fadl and His Anxiety in Islamic Legal Thought

Khalid M. Abou El-Fadl is one of the Islamic law professors born in Kuwait in 1963. He was in an Islamic environment, educated in Islamic teachings such as Arabic, the Qur'an and tafsir, hadith, and Sufism in his elementary education.<sup>17</sup> At the age of 12, he could memorize the Quran and also actively participated in sharia studies at the al-Azhar mosque from several sheiks, one of whom was Muhammad al-Gazali. His father was a legal advisor, allowing Khalid to have many opportunities to study his father's books.<sup>18</sup> Khalid's adolescence was part of the growing Wahhabi movement in his country. The strength of the Puritan Wahhabi movement gives a sense that Wahhabi is the truest basis of Islam. Therefore, it is used as a reference to solving religious problems in Kuwait. Khalid's influence on Wahhabi thought turned him into a moderate thinker after his move to Egypt, so he began to understand the Islamic tradition from a broader perspective and opposed the puritanical Wahhabi ideology. This has happened since Khalid moved to America. The reason is that Wahhabi, according to Khalid's view, implements a very hostile understanding of the development of social knowledge and criticism of intellectualism such as social theory, politics, Islamic sciences, legal debates, and Sufism theology.<sup>19</sup>

In America, in 1982 Khalid began his education at *Yale University* in the field of political science and received a *Bachelor of Art (B.A)* in 1985 with high distinction and was awarded as a talented student. In 1986 he continued his study majoring in law at the Law School of the University of *Pennsylvania* for his doctorate until 1989 and earned his *jurist Doctor (J.D.)* degree. In 1998 Khaled completed a doctoral program in Islamic legal thought and earned a *Doctor of Philosophy* degree at *Princeton University*. At the same time, Khaled also studied law at the *University of California, Los Angeles (UCLA)*.<sup>20</sup>

After completing his studies at the *University of Pennsylvania Law School* in legal studies, Khalid also worked in the Arizona Superior Court and handled immigration and commercial law cases. It was from that moment that Khalid was naturalized as an American citizen. In addition, Khalid has also been a lecturer in Islamic law at the *University of Texas*. Irene Bierman, at UCLA's Center for Middle Eastern Studies, began to see Khalid's abilities and proposed him to become the new administrator of Islamic law. This position led Khalid to his grand career, namely becoming a professor of Islamic law at the *University of California Los Angeles (UCLA)*. In addition to being a university professor, Khalid also has many other activities, serving as an

<sup>17</sup> Syarifuddin, "Hermeneutika Khaled Abou El-Fadl," *Jurnal Substantia* 17, no. 2 (2015): 231–44.

<sup>18</sup> Muhammad Lutfi Hakim, "Hermeneutik-Negosiasi Dalam Studi Fatwa-Fatwa Keagamaan: Analisis Kritik Terhadap Pemikiran Khaled M. Abou El Fadl," *Istinbath: Jurnal Hukum dan Ekonomi* 19, no. 1 (2020): 27–52, <https://doi.org/10.20414/ijhi.v19i1.204>.

<sup>19</sup> Nur Ikhsan Shaleh Moh. Muhtador, "Otoritas Tafsir Agama dalam Pemikiran Khaled Abou El Fadl," *Hermeneutik; Jurnal Ilmu Al-Qur'an dan Tafsir* 11, no. 2 (2017): 236–51.

<sup>20</sup> Mohammad Ridwan, "Konstruksi otoritarianisme hukum islam menurut khaled m. abou el-fadl," *Jurnal Fenomena* 9, no. 1 (2017): 187–96, <https://journal.iain-samarinda.ac.id/index.php/fenomena/article/view/1296/695>.



American lawyer, a member of a human rights watch board, and a member of the International Religious Freedom Commission appointed directly by President Bush.<sup>21</sup> Amidst his restless life, Khalid gives fatwas related to the issue of Islamic law and human rights. This is because Khalid's mastery of classical Islamic scholarship was obtained while studying in Kuwait and Egypt and brought him together with the intellectual science he studied in America, thereby giving him the qualifications to become a legal practitioner, writer, and thinker.<sup>22</sup> Since 1975, Khalid began to observe the behavior of modern society as seen from the interpretation of the text of the Qur'an and hadith carried out by the interpreters of Islamic law. In Khalid's view, the interpreters no longer question divinity but speak "in the name of God" or can be said to be an intermediary to convey God's wishes. Thus, absolute character, when met with an authoritarian nature, will cause religious infidelity that is dangerous to his power. Therefore, for Khalid, Islam as a rule in the contemporary era is not limited to *fiqh* only, but more than that, the study of Islam must be by the development of science in the modern century.<sup>23</sup>

Contemporary problems arise because of several factors, including, among others, pluralism, gender, human rights, and social justice. This is not only the case in countries with Muslim communities but also in Muslim communities residing in non-Muslim countries such as the United States. Khalid found several fatwas related to contemporary issues, especially fatwas from the *Institute for Scientific Research and Legal Opinions* (CRLO)—an institution established in Saudi Arabia and authorized to issue fatwas. When viewed from the position of the institution, according to Khalid, the fatwas issued by CRLO received a great influence from Wahhabi puritanism. The fatwas should also be applied to Muslim minorities in America. This then led Khalid to the argument that the majority of Muslims in Saudi Arabia and the Muslim minority in America certainly have differences in their implementation, such as culture, social structure, and aspects of the government systems.<sup>24</sup> For this reason, Khalid considers that drafting a fatwa requires careful law enforcement because CLRO fatwas tend to demean and even insult women. This is obvious in the fatwas on women, particularly in the matters of women wearing bras, women driving cars, marriage, education for women, and many others. These fatwas represent Khalid M. Abou El Fadl's anxiety about Islamic law.<sup>25</sup> What worries Khalid can also be applied

<sup>21</sup> Anis Tilawati, "Mahar Perkawinan Dengan Hafalan Al-Qur'an: Analisis Hermeneutika Hadis Khaled M. Abou El-Fadl," *Indonesian Journal of Islamic Literature and Muslim Society* 4, no. 1 (2019): 19–40, <https://doi.org/10.22515/islimus.v4i1.1518>.

<sup>22</sup> Muhammad Fahmi Hidayatullah dan Firmada Taufiq, "Teks Dan Diskursus Otoritas Menurut Khaled M. Abou El-Fadl," *Risalah, Jurnal Pendidikan dan Studi Islam* 7, no. 1 (2021): 133–46, [https://doi.org/10.31943/jurnal\\_risalah.v7i1.170](https://doi.org/10.31943/jurnal_risalah.v7i1.170).

<sup>23</sup> Hanik Rosyida, "Kritik Interpretasi Otoritatif: Studi Hermeneutika Khaled M. Abou El-Fadl," *Syariat: jurnal studi ql-Qur'an dan Hukum* 07, no. 01 (2021): 16–32.

<sup>24</sup> M Taufiq dan M Ilham, "Pemikiran Hermeneutika Khaled M. Abou El Fadl: Dari Fikih Otoriter Ke Fikih Otoritatif," *Taqnin: Jurnal Syariah dan Hukum* 03, no. 01 (2021): 66–79, <http://jurnal.uinsu.ac.id/index.php/taqnin/article/view/9514>.

<sup>25</sup> Iman Fadhilah, "Aplikasi Hermeneutika dalam Fiqih Perempuan (Studi Pemikiran Khaled Abou el Fadl tentang fiqh Perempuan dalam Fatwa CRLO)," *Iqtisad* 3, no. 1 (2016): 22, <https://doi.org/10.31942/iq.v3i1.2459>.



to the compilation of Islamic law as one of the judges' bases in deciding cases in religious courts.

### **The Application of the Hermeneutic Methodology of Negotiation Khalid M. Abou El Fadl on the Concept of Iddah in the Compilation of Islamic Law**

Khalid's hermeneutic theory in his work entitled "*Speaking in God's Name*" provides an analytical knife in response to gender bias in the interpretation of several Islamic religious fatwas issued by legal professionals at CRLO (*Council for Scientific Research and Legal Opinion*), which Khalid considered trapped in an authoritarian mindset.<sup>26</sup> Therefore, the author in this case tries to use Khalid's theory of negotiation hermeneutics to examine the compilation of Islamic law, especially in part two about the waiting period (*iddah*) in articles 153, 154, and 155. The selection of Khalid's hermeneutics is based on several reasons; *first*, negotiating hermeneutics helps discover the method of establishing law in the compilation of Islamic law, whether there is a negotiation between the compilation of Islamic law (CIL), social facts, initiators, and readers; *second*, negotiation hermeneutics is also used to determine whether there are signs of authoritarianism entrenched in the process of drafting the compilation of Islamic law. *Third*, negotiating hermeneutics also provides strategic steps by establishing five moral criteria, such as the condition that one's orders or duties should not be trapped in an authoritarian regime.

Khalid devised a style of interpretation called dynamic interpretation, which involves examining the contemporary context of the original meaning of a text or, in other words, talking about the significance and impact of that meaning. Since the text of the Qur'an was revealed in a socio-historical context, the interpreters in this case did not simply understand its original meaning. But interpreters have transcended this scope, in which they also view the text from the perspective of the current situation. Thus, according to the author, interpreters go through two stages: *first*, they recognize the original text, and *second*, they use it as a reference point for interpreting the text in the current context. To find out the meaning of *iddah* contained in the compilation of Islamic law, it is important to understand the legal basis used in establishing the verses in the compilation of Islamic law; therefore, in the process of analysis of each concept of *iddah*, the matters related to the basis for the establishment of the law of *iddah* will also be considered.

The Compilation of Islamic Law (CIL) can be understood as the process of changing Islamic law from an unwritten form to statutory law. In the first stage, raw materials are sourced from various written and oral sources. The second stage, the formulation, is based on the relevant statutes, rules, and sources of Islamic law (the Qur'an and Sunnah), particularly the verses that speak directly to the content of the Compilation of Islamic Law (CIL).<sup>27</sup> Technically, the preparation of the Compilation of Islamic Law (CIL) consists of various stages, each of which involves the collection of raw materials. The first stage examines *fiqh* books from various *madhhabs* (schools of thought) covering 160 family law topics. The works of jurisprudence are studied

<sup>26</sup> Muzayyin Muzayyin, "Hermeneutika Hukum Islam Khaleed Abou El Fadl: Sebuah Tawaran Dalam Membendung Otoritarianisme Fatwa MUI," *Potret Pemikiran* 20, no. 1 (2018), <https://doi.org/10.30984/pp.v20i1.749>.

<sup>27</sup> Abdurrahman, *Kompilasi Hukum Islam di Indonesia*, 2018, 11.



by experts in seven IAINs. The second phase involved interviews with 181 scholars from 10 High Religious Courts (Aceh, Medan, Padang, Palembang, Bandung, Surakarta, Surabaya, Banjarmasin, Ujung Pandang, and Mataram). The third stage examines the legal product of religious courts consisting of 16 books. The book consists of 4 types, namely the decision of the high religious court, the set of court fatwas, the set of jurisprudence of religious courts, and *the law report* from 1977 to 1984. The fourth stage examines and compares family law from other countries, namely Morocco, Egypt, and Turkey. In addition, it also considers historical elements and the diversity of Indonesian society both on a vertical and horizontal scale.

The results of the study of *fiqh* books, research, interviews with experts, comparative studies, and jurisprudence were then reviewed and formulated by a large team, the results of which were then analyzed by the core team before entering the workshop forum as an activity to form a compilation of Islamic law held for 2 days on February 2 and 6, 1988 at the Kartika Candra Hotel Jakarta. The workshop was attended by 124 participants from all over Indonesia, producing a legal product called the compilation of Islamic law. Compilation of Islamic Law (CIL) complies with the Presidential Instruction No. 1 of 1991 and Decree of the Minister of Religious Affairs No. 154 of 1991. As shown in the chart above, the Compilation of Islamic Law (CIL) is based on Law No. 22 of 1946, Law No. 32 of 1954, and Law No. 1 of 1974 concerning Marriage. There are no laws and regulations used as references in the field of inheritance, but this matter can be found in jurisprudence which includes several aspects of inheritance law. This shows that the Compilation of Islamic Law (CIL) is useful for implementing relevant laws or rules and is higher than the previously mentioned laws.<sup>28</sup>

The compilation of Islamic Law (CIL) as Islamic positive law is an effective way to implement legislation. The compilation of Islamic Law has consistency with higher laws and rules and is used as a guideline. In addition, the compilation of Islamic law was made to fill a significant legal vacuum for Muslims, particularly concerning dispute resolution in religious courts. The preparation of the compilation of Islamic law also accommodated various results of different interpretations of the *fuqaha* as well as rules based on Islamic teachings that live in people's lives. The Book of *al-Fiqh 'ala al-Madzahib al-Arba'ah* is one of the books serving as a reference for the preparation of the compilation of Islamic law, explaining the count of *iddah* from the opinions of 4 madhhabs namely Hanafi, Maliki, Shafi'i, and Hanbali. The four madhhabs differ on the count of *iddah*.<sup>29</sup>

The calculation of the period of *iddah* for women, according to the view of ulama regarding 4 madhhabs on the calculation of the period of *iddah* has relevance to the provisions of *iddah* in the compilation of Islamic law Article 153. That is, the core team or committee for the compilation of Islamic law in the preparation process has conducted a study to produce a law that can resolve Islamic legal disputes in Indonesian society. However, a comparison between the opinions of the four imams

<sup>28</sup> Abdul Gani Abdullah, *Pengantar Kompilasi Hukum Islam dalam Tata Hukum Indonesia* (Jakarta: Gema Insani, 1994), 63.

<sup>29</sup> Al-Juzairi, *Fiqh Four Madhhab Volume 5*, 1001-1063.





of the madhhab and the compilation of Islamic law on the provisions of the period of *iddah* reveals a significant similarity. This means that the compilation of Islamic law when quoting the term al-Jabiri is a form of *ijtihad-taqlid*.<sup>30</sup> In other words, the reforms carried out by scholars and academics still cannot leave the influence of the thoughts of classical *fiqh* scholars, meaning that the compilation of Islamic law is the result of *ijtihad* which has not been able to adjust to the current conditions.

In addition, the amendment to the compilation of Islamic law in the field of marriage, especially regarding *iddah*, is considered less effective in its implementation. For example, the provision of *iddah*, *mut'ah*, and child support is often neglected. This case may occur when the ex-husband is not willing to provide for the ex-wife after the divorce. Not providing allowance in such a case is linked to the absence of clear and firm sanctions in the provisions, thus providing opportunities for the community not to implement court decisions holding permanent legal force. In addition, the basis for the preparation of *iddah* provisions in the compilation of Islamic law is considered not to contain urgent urgency because it has no sanctions and is only recommended.<sup>31</sup>

After discovering the history of the compilation of Islamic law, the next step is to link the implementation of the provisions of *iddah* in the compilation of Islamic law with the current context, namely by analyzing the provisions of *iddah* in the compilation of laws articles 153, 154 and 155 to discover whether these articles are still relevant to people's lives today or need changes to set a more conducive and accommodating Islamic law. *Iddah* law that applies in Indonesia contains substance about the calculation of *iddah* that must be done by women after separation from their husbands due to either divorce or the death of the husband. However, many of the provisions mentioned above are overlooked by some women in Indonesia because women in modern life in Indonesia no longer depend on their husbands who should be the breadwinner in the family.

In addition, after divorce, the majority of ex-husbands in Indonesia stop providing for divorced wives, paying for expenses during the *iddah* period, and paying for the *expenses* of their children, including children who live with their mothers until the age of 21, as referred to in article 149 concerning the husband's obligations to wives after the divorce. Another provision contained in Article 81 paragraph 1 of the compilation of Islamic law explains the obligation of the husband to continue to provide proper residence to the wife who is still in the *iddah* period. This provision is only recommendatory, so, naturally, the phenomenon that occurs in society is not recommended in the policy that has been set out in the compilation of Islamic law. Providing income after divorce is a problem in Indonesia. Divorce that occurs is influenced by several factors, including adultery, drunkenness, drugs, gambling, death, imprisonment, polygamy, domestic violence, disability, continuous disputes and quarrels, forced marriage, apostasy, and economic problems which may affect

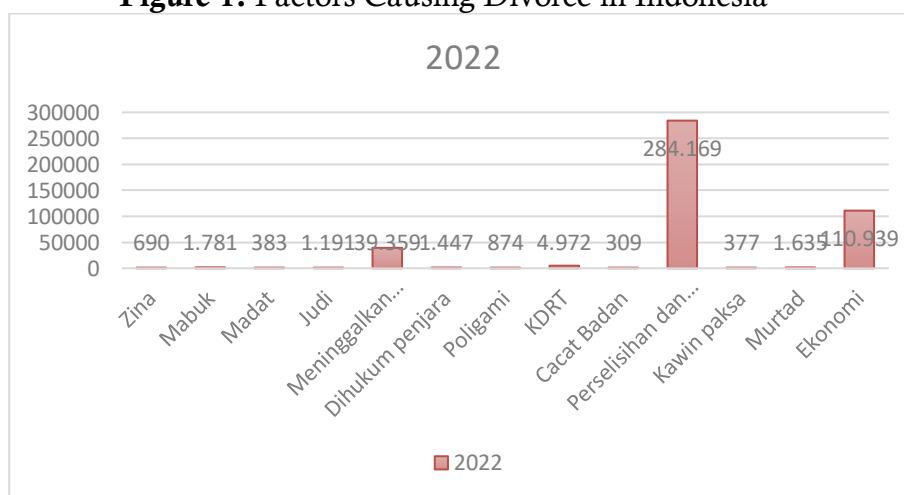
<sup>30</sup> Muhammad Abid Al-Jabiri, *ad-Din wa al-Dawlah wa Tathbiq ash-Shari'ah* (Beirut: Markaz Dirasat al-Wahdah al-'Arabiyah, 1996).

<sup>31</sup> Mahkamah Agung, *Himpunan Peraturan Perundang-undangan yang Berkaitan dengan Kompilasi Hukum Islam serta Pengertian dalam Pembahasannya* (Jakarta: Perpunas RI, 2011), 54.



people's psychology and mental health.<sup>32</sup> Continuous disputes and quarrels were reported to be the highest, hitting 284,169 cases, followed by the economic factor with 110,939 cases in 2022.<sup>33</sup> The elaborate figures are shown in the chart below.

**Figure 1. Factors Causing Divorce in Indonesia**



The factors of continuous disputes and quarrels, as the highest, and the economic factors are the two factors having a relationship with the conditions where a husband cannot provide for his ex-wife and children. Continuous disputes and quarrels make husbands or wives reluctant to build good communication. In the second factor, the economic issues, the ex-husband will also find it difficult to provide for the ex-wife. So, in this situation, women have to meet their own necessities and their children's without the help of a husband. There are rights and obligations after divorce. In some divorce cases, there are often rulings that allow claimants to take the talaq pledge by imposing a fine that requires the claimants to pay the respondents a certain amount of property in the form of *mut'ah*, *iddah* allowance, and other living expenses related to the husband's obligations to the divorced wife.

In general, judgments in some divorce cases in religious courts only mention a few components, such as the principal paid, the objects paid, the amount and nature of the property that must be paid, and the type of payment, but the judgment does not specify a deadline for payment. On the contrary, the period based on which the talaq pledge is declared must not exceed 6 (six) months from the date set for the talaq pledge session. On the day of the hearing of the recitation of the prescribed talaq pledge, the claimant and the respondent were present at the hearing, but the claimant

<sup>32</sup> Ya Hui Huang dan Yan Ma, "Climate change and divorce behavior: Implication for family education," *Innovation and Green Development* 3, no. 1 (2024): 100115, <https://doi.org/10.1016/j.igd.2023.100115>.

<sup>33</sup> Badan Pusat Statistik, *Statistik Indonesia, Stastical Yearbook of Indonesia* (Jakarta: Badan Pusat Statistik, 2023), 252-254.



was not prepared with the amount of money or property charged to him to be handed over to the respondent (ex-wife). Such a situation is not unusual for a panel of judges who want to see the pronouncement of the talaq pledge to try and propose, persuade, and even seem to pressure the claimant to postpone the pronouncement of the talaq pledge until the claimant declares that he can bear the burden given to him.<sup>34</sup>

The provision for *iddah* is regulated in Article 152 which reads "The former wife is entitled to receive *iddah* from her ex-husband unless she is *nusyuz*". In Article 152 no word mentions obliging the ex-husband to provide *iddah* to the ex-wife. This is more like a statement of advice without sanctions on the ex-husband who does not do the order of the court decision or does not provide *iddah* allowance. In addition, Article 153 concerning the waiting period contained in the compilation of Islamic law is as tenuous as the above Article, mentioning *iddah* without sanctions for women who cannot perform *iddah*. Women may feel that skipping *iddah* is not an issue, as they see it as only a moral recommendation. That is, these two articles can lead to religious court rulings that are not implemented effectively.

The existence of sanctions is based on the method of *al-ishtislah* also commonly referred to as *mas}lahah mursalah*. In general, *maslahah* is defined as something that brings benefits to humans and rejects the existence of *mafsadah*. On the contrary, the definition of *mursalah* is loose in the sense of not being bound or detached from something that shows whether or not something can be done.<sup>35</sup> Quoting Abdul Wahab Khallaf's opinion, in terminology, the definition of *maslahah mursalah* is a *mashlahah* that is not prescribed by the Shari'a, and no sharia proposition recognizes or rejects it.<sup>36</sup> This method is used to improve the functioning of regulations and protect the rights of each family member. With sanctions as a prerequisite for the implementation of existing regulations, their existence has the same important position as these regulations. The following are the rules of jurisprudence:

مَا لَا يَيْمُّ الْوَاجِبُ إِلَّا بِهِ فَهُوَ وَاجِبٌ

"Something that is a condition for an obligation, then the law also becomes obligatory"<sup>37</sup>

That is, the determination of the existence of sanctions as compensation for violations through *ijtihad* and government stipulations in Islamic criminal law is called *ta'zir* punishment. This punishment of *ta'zir* applies for retaliation in Islamic non-criminal cases (*Jamirah*) in which case no type is found in the punishment in the Qur'an and hadiths. In its implementation, the government has the authority to provide punishment in the form of corporal punishment or fines for people who violate the rules.<sup>38</sup> For this reason, the imposition of punishment or sanctions in the provision of *iddah* in particular and the field of marriage in the compilation of Islamic

<sup>34</sup> Syaiful Annas, "Masa Pembayaran Beban Nafkah Iddah Dan Mut'ah Dalam Perkara Cerai Talak (Sebuah Implementasi Hukum Acara di Pengadilan Agama)," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 10, no. 1 (2017): 1, <https://doi.org/10.14421/ahwal.2017.10101>.

<sup>35</sup> Amir Syarifuddin, *Ushul Fiqh II* (Jakarta: Logos Wacana Ilmu, 1999), 322.

<sup>36</sup> Abd. Wahab Khallaf, *Ilmu Ushul Fiqh* (Jakarta: Rineka Cipta, 1993), 98.

<sup>37</sup> Ali Ahmad An-Nawawi, *al-Qawaid al-Fiqhiyyah* (Damaskus: Dar al-Qalam, 1986), 159.

<sup>38</sup> Wael B. Hallaq, *Sharia: Theory, Practice, Transformations* (New York: Cambridge University Press, 2009), 308-323.



law, in general, is intended to render the compilation of Islamic law the power that forces the community to obey the rules. The aspect underlying the period of determining the payment of *iddah* is the practice that occurs in religious courts, namely the difference in the period of payment of *iddah* and *mut'ah* by the panel of judges. To date, there is no provision (regulation) that guarantees that the husband (the claimant) will pay the wife (the respondent). This condition often triggers divorced women to raise complaints to the religious court about their right to allowance, considering that this irresponsible act by divorced men is against the decision of the Religious Court ordering their ex-husbands to pay the agreed *iddah* and *mu'tah* bread.<sup>39</sup>

Although this fact is casuistic, it does not rule out the possibility that religious courts in certain locations are sometimes or may often be encountered in the field, causing problems for law enforcement officials who are at the bottom of the line dealing directly with justice seekers. Many issues can be aligned with the case mentioned above, so legal reasoning is needed as part of legal breakthroughs or to offer legal remedies for these problems.

After discovering the history of the compilation of Islamic law and connecting the concept of *iddah* with the context of people's lives today, the next stage is to determine its meaning. At this stage, the author reads and analyzes the history of the compilation of Islamic law implemented with several paths and contexts of the implementation of *iddah* in Indonesian society and the existence of legal loopholes related to the period of determining the payment of *iddah* allowance, where the provision of *iddah* income is closely related to the implementation of the *iddah* period, considering that a woman will not be able to perform *iddah* in the sense of having to stay at home without the necessities of life for herself and her children. For this reason, the author concludes that the meaning of *iddah* obligation is "**responsibility**" for both husband and wife where after divorce the ex-husband is still entitled to the responsibility of providing for the ex-wife in compliance with the court decision, while the ex-wife must ensure that she is not pregnant. This dormancy can be proven by medical technology like ultrasound. It is important to underline that the certainty of pregnancy of a divorced woman is to ensure that there is no mixing of children.

For this reason, the author offers 2 reformulations related to the concept of *iddah* in the compilation of Islamic law: 1) The period of payment of allowance after the divorce verdict in the Religious Court; 2) Sanctions for ex-husbands who do not provide support after divorce following the decision of the court. Both of the above reformulations aim to provide justice for those who seek it, but it is not enough by itself because a judgment must also contain elements of clarity and legal benefits. Even if the desire for justice cannot always be fulfilled, a decision does not provide a sense of legal certainty if it turns out to cause new problems, let alone not provide benefits for both parties. Society only expects laws to be implemented in a way that benefits society. Since the law is implemented for the benefit of man, it must be done without causing social unrest. In addition, because the law is implemented to achieve

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<sup>39</sup> Muhammad Fauzan, "Maqashid Nafkah Iddah dan Perlindungan Perempuan," *Jurnal Hukum Islam* XVI, no. 1 (2016): 71–82.





justice, its enforcement is expected to provide a sense of justice for the community even though justice is a subjective and individual concept.

### Conclusion

In terms of the concept of *iddah* in the Compilation of Islamic Law (CIL), in its preparation, the government does not seem to use its power in compiling the articles contained in the compilation of Islamic law, so that non-authoritarian legal products can be made. This can be proven by the existence of several stages in the process of compiling the compilation of Islamic law. The stage of process of compilation of Islamic law is at least carried out in several stages: (1) Reviewing *fiqh* books from various *madhabs*, (2) conducting interviews, (3) Reviewing the legal products of religious courts, and (4) Reviewing and comparing family law from Morocco, Egypt and Turkey. After discovering the history of the compilation of Islamic law and relating the concept of *iddah* to the current context of people's lives, the author determines the meaning after reading and analyzing the history of the compilation of Islamic law which is carried out in several channels as mentioned above. In the context of the implementation of *iddah* in the Indonesian Islamic community and the existence of a legal vacuum related to the period of determining the payment of *iddah* allowance, the provision of *iddah* allowance certainly has a close relationship with the implementation of the *iddah* period because a woman will not be able to perform *iddah* in the sense of having to stay at home without the necessities of life for herself and her children. For this reason, this research concludes that *iddah* obligation can be defined as "responsibility" for both husband and wife after divorce. For this reason, the author recommends 2 (two) reformulations related to the concept of *iddah* in the compilation of Islamic law: (a) The period of payment of allowance after the divorce decision in the Religious Court and (b) Sanctions for ex-husbands who do not provide allowance after divorce by the provisions of the court decision. These two reformulations are important to be used as rules in the compilation of Islamic law as guidelines for the Indonesian Muslim community so that *iddah* can be carried out by Islamic law without compromising the current context of life.

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