



THE CONCEPT OF IDDAH IN THE COMPILATION OF ISLAMIC LAW HERMENEUTIC PERSPECTIVES KHALID ABOU EL FADL

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Abstract

Iddah, this provision by Ulama fiqh is considered a rule that must be implemented by women after divorce from their husbands, either due to death or divorce. This is stated in the compilation of Islamic law as one of the regulations in Indonesia. In its implementation, the women must stay home because they cannot leave the house. This is irrelevant to women's situation and condition in this modern era. Thus, the concept of iddah contained in the compilation of Islamic law seems to need to be rearranged by considering the current social conditions of society. For this reason, the author uses a hermeneutic approach promoted by Khaled M. Abou El Fadl. This research uses a type of literature research (Library research) with qualitative methods. The result of this study is that the concept of iddah in the compilation of Islamic law is very much under the concept of iddah in classical Islamic law even though in its preparation it has carried out a negotiation process. In addition, to be able to carry out the iddah obligation between husband and wife must be aware of each other's responsibilities, so that the iddah period will be carried out per the provisions of the Shari'a.

Keywords: *Iddah, Compilation of Islamic Law, Hermeneutics*

INTRODUCTION

Islam has regulated all provisions of human life, including family law which includes marriage, divorce, *hadhanah*, grants, inheritance, wills, and even Islamic economic matters. Laws and regulations must actually be a guideline for implementing the wheel of life. However, the phenomenon that occurs in Indonesian society is still many do not implement or violate these regulations. One of the troubling facts is about the implementation of *iddah* or waiting time which has been prescribed in Islam and has also been stipulated in the regulations of the Compilation of Islamic Law (KHI). Violations regarding the implementation of a woman's *iddah* period, either dead divorce or talaq divorce have occurred a lot in society. For example, women perform *iddah* but still use social media and keep communicating with the opposite sex. (Hatim, 2018) Another phenomenon is career women who are carrying out *iddah*, for women who work outside the home, it will be very difficult to carry out *iddah* according to Islamic law, because company regulations are certainly not always in accordance with religious regulations, so career women need special consideration in implementing *iddah* for reasons of fulfilling household needs. (Susilo, 2016)

The concept of *iddah* in Islam has been clearly stated in both the Qur'an and Sunnah, but the implementation of the law of *iddah* remains a problem that requires solutions in modern times without having to abandon His Shari'a. unstoppable development of the times also affects the practice of *iddah* among Muslims in the world. So that the law that should be a guide for Islamic society, can no longer accommodate the increasingly complex problems of life. So it is very important that there is a new law that can provide justice and benefit in community life. Because every religion hopes for a better life for its people, the solutions offered by religion will further strengthen the faith of its adherents. (Supriyadi, 2020)

During the *iddah* period, Muslim women in Indonesia bear more of their own lives, even having to provide for their children. No one helps meet the needs of his family, the surrounding community, or even the government. The goal is none other than to maintain survival, including ensuring the education of his descendants. So in this case women cannot carry out *iddah* by not leaving the house in full according to the number of days specified in Islamic law, by not leaving the house at all to carry out *iddah* according to Islamic law.

This can be proven by several cases of *iddah* that occur in Indonesia, where a woman who has been abandoned by her husband for various reasons does not implement the provisions of *iddah* in Islam, including in the community of the Pantura area (Bojong Village, Tuban Regency, East Java). The widows in this pantura area do not observe *iddah* due to environmental, educational (ignorance), and economic factors. (Hamim, 2017) In addition, the phenomenon of *iddah* for career women, in this case, women are required to remain professional in carrying out their duties even though they are in mourning with various considerations, namely not decorating excessively. (Magfuroh, 2021) In the case of career, women do not carry out *iddah* for the benefit of the profession. The woman must make her duty to provide for her family as a form of practicing Islamic law and her qodrat as a social human being with moral ethical considerations. (Ahmad Khoiri, 2020)

The *iddah* law is a protection of Islamic family law on marriage that applies throughout the Muslim world. It's just that the enactment of Islamic family law is not only in the realm of Islamic law but has become a formal rule in the form of marriage law.

Islamic family law in Indonesia has been specifically codified in the compilation of Islamic law. Efforts to compile the compilation of Islamic law are the embodiment of Islamic law as positive law in Indonesia. In addition, the compilation of Islamic law is composed due to differences in judges in determining legal decisions on the same issue. Meanwhile, since the XX century positivist thought has also contributed to changes in Islamic law. Thus, because of these situations and conditions, Islamic law from various books was compiled with the aim of creating legal certainty and the application of the same law throughout Indonesia. Including the concept of *iddah* contained in part two about waiting time, namely in articles 153, 154, and 155.

Problems will continue to arise along with the times and technology. So Islamic law must continue to be able to respond and respond to challenges with appropriate methods.

For this reason, reformulation or rearrangement of the concept of *iddah* in the compilation of Islamic law is important to do. In this case, the author uses the theory of hermeneutics promoted by Khalid M. Abu El Fadl. Hermeneutics offered by him aims to review and reanalyze the competencies contained in a text so that the intention of the author of the text can be clearly understood. Related to the concept of *iddah*, the legal texts contained in classical books as a reference in the preparation of the compilation of Islamic law are not interpreted rigidly, but must also integrate between legal texts and the context of social life of the community. So that there is a legal dialectic and the context of society can give birth to legal products that remain dynamic and actual.

Based on this background, the author is interested in reassessing the concept of *iddah* in the compilation of Islamic law, because the concept is compiled based on the concepts found in classical fiqh books, where classical fiqh books are compiled of course because of the social conditions of society at that time. The concept of *iddah* contained in the compilation of Islamic law seems to need to be rearranged taking into account the current social conditions of society. For this reason, the author uses a hermeneutic approach promoted by Khaled M. Abou El Fadl. Because the implementation of the concept of *iddah* in the compilation of Islamic law is still rigid and has not considered the socio-cultural conditions of the Indonesian Muslim community. So that with this research, it 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 *disyari'at iddah* in Islam.

METHOD

This research is a literature research (*Library Research*) which is a study that presents a variety of data in accordance with the research topic which includes primary data, namely the concept of *iddah* in the compilation of Islamic law in the view of negotiative hermeneutics offered by Khaled Abou El Fadl, both in the form of books, books and supporting data derived from online news, magazines, newspapers and so on that have a direct or indirect relationship with The approach in this study uses a qualitative approach, which is trying to find a deep understanding of problems that arise with certain symptoms, facts or reality that have a relationship with community behavior, (Raco, 2010), namely by observing the concept of *iddah* in the compilation of Islamic law and the practice of implementing *iddah* carried out by women either the death of their husbands or due to divorce *talaq* in various regions in the era modern. Furthermore, the data that has been collected will be analyzed using data reduction steps, presentation or display of data and conclusion or verification. (Moleng, 2005) Namely selecting and presenting 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, then analyzed using hermeneutic theory. Next make a conclusion about how the concept of *iddah* in the compilation of Islamic law in view of the negotiative hermeneutics offered by Khaled Abou El Fadl.

RESULTS AND DISCUSSION

1. Khalid M. Abou El-Fadl and the Theory of Negotiative Hermeneutics

Abou El Fadl's hermeneutics is "negotiative hermeneutics" in this study, Khalid uses the normative-analytical theory of hermeneutics. Khalid defended his observations and studies of traditional Islamic practices and believed in the prophethood of Muhammad as well as the truth of the Qur'an as divine revelation. According to Abou Fadl, the integrity of Islamic literature will be compromised by an authoritarian style of interpretation of hermeneutics. In addition, excessive use or "corruption" of the integrity of Islamic literature can dull and undermine the Islamic substance contained in the Qur'an and hadith. As a result, Abou Fadl encourages readers to restrain their own authoritarianism and respect the authority of the text. (Supriatmoko, 2010)

Abou Fadl's hermeneutic method is more interdisciplinary and multidisciplinary, combining traditional Islamic *sciences such as musthalah al-hadith, rijal al-hadith, ushul, fiqh, tafsir*, and *kalam* with modern humanities. It also incorporates a variety of approaches, such as linguistics, interpretive social sciences, and literary criticism. Hermeneutics plays an important role in this situation in understanding legal writings by giving normative-formalistic religious texts relative meaning when faced with social problems. In this regard, hermeneutics can offer key insights into Islamic law. In other words, Islamic law is at the level of text and context. These two dimensions need to be considered because Islamic law seeks to encapsulate the word of God as seen in the Qur'an and Hadith. Thus, the relationship between the exoteric-inner and esoteric-outward meanings of the text will be formed. (Al-Jauhari, 1999)

In order for the Qur'an to maintain its allure of authenticity as a sacred text, it must be openly accessible. In order to avoid the tragedy of authoritarianism in the dynamics of the struggle for Islamic legal thought, Khalid tried to place the relationship between the text, author, and reader appropriately as well as the negotiation process between the three. The following is an explanation of the process of proportional relations between text, *author*, and reader (Fathony, 2019)

2. The Concept of Iddah in the Compilation of Islamic Law Negotiative Hermeneutic Perspective Khalid M. Abou El Fadl

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. author in this case tries to use Khalid's negotiation hermeneutics theory to examine the compilation of Islamic law, especially in part two about the waiting period (*iddah*), namely articles 153, 154, and 155. The author chooses to make Khalid's hermeneutics for several reasons, including *first*, negotiating hermeneutics serves to know the method of establishing law in the compilation of Islamic law, whether there is

a negotiation between the KHI, 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 mentality.

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 mufassir in this case did not simply understand its original meaning. But interpreters go further than that, they also see the interpretation of the text in the context of the current situation. Thus, according to the author, interpreters go through two stages: *first*, they recognize the original text, and *second*, use it as a reference point for interpreting the text in the current context.

The process of compiling the compilation of Islamic law, including the concept of iddah, is at least carried out in several stages, namely (1) Reviewing fiqh books from various madzhab covering 160 family law topics. These works of jurisprudence were then studied and discussed by experts in seven IAINs. (2) conducted interviews with 181 scholars from 10 High Religious Courts at that time (Aceh, Medan, Padang, Palembang, Bandung, Surakarta, Surabaya, Banjarmasin, Ujung Pandang, and Mataram). (3) Review the legal products 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. (4) Review and compare family laws 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. (Hikmatullah, 2018)

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 the formulation of the large team were then analyzed by the core team before entering the workshop forum as an activity to form a compilation of Islamic law which would be held for 2 days, namely on February 2 and 6, 1988 at the Kartika Candra Hotel Jakarta. The workshop was attended by 124 participants from all over Indonesia. Thus producing a legal product called the compilation of Islamic law.

This shows that the Compilation of Islamic Law (KHI) 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 as established. In addition, the compilation of Islamic law was made to fill a significant legal vacuum for Muslims, particularly about dispute resolution in religious courts. (Ahmad Yajid Baidowi, Agus Hermanti, 2022)

After knowing 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, whether these articles are still relevant to people's lives today or need changes with the aim that Islamic law becomes more conducive and accommodating in answering the problems of the people who are very much influenced by many things, such as the development of the times, technology and also the lifestyle of the Indonesian people. In addition, 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 does not provide benefits for both parties.

To make it easier to read, the author will explain the calculation of the iddah period in the compilation of Islamic law in the form of a table, as explained below:

Table 1. *The Concept of Iddah in the Compilation of Islamic Law*

No	Types of Iddah	Iddah Period	Information
1.	Divorce without a waiting period (<i>iddah</i>) (article 153 paragraphs 1 and 3)	Absence of iddah	
2.	Waiting Period (<i>iddah</i>) due to Death (Article 153 paragraph 2 point 1)	130 days	
3.	Waiting Period (<i>iddah</i>) due to Divorce is not pregnant (Article 153 paragraph 2 point 2)	3 holy times	Or at least 90 days
4.	Waiting Period (<i>iddah</i>) due to Divorce in pregnancy conditions	Until Childbirth	
5.	Iddah of women who are still menstruating	3 menstrual periods	
6.	Iddah of women who do not menstruate	1 year	If within a year of menstruation, then the iddah is 3 times holy

From the table data above, the author concludes that the iddah law in force in Indonesia contains substance about the calculation of iddah that must be carried out by women who have separated from their husbands. Either the separation is due to divorce or because of the death of the husband. Many of the provisions mentioned above are not carried out by some women in Indonesia because of various factors including that Indonesian women in modern times no longer depend on their husbands as people who are responsible for meeting the needs of family life.

One of the consequences of divorce is the creation of rights and obligations that must be obeyed by husband and wife. The compilation of Islamic Law mentions the husband's responsibilities in article 81 paragraph 1 "The husband *is obliged to provide residence or residence during the period of iddah*" This indicates that a husband still owes debts to his divorced ex-wife before the waiting period ends. The ex-husband is

not allowed to abandon his obligations on the grounds of difficulties stipulated in the religious court ruling. Unfortunately, the concept of providing iddah and mu'tah is only understood as a legal obligation performed as an implication of divorce and is not seen further as beneficial for the ex-wife, especially after the husband has made the divorce vow. then departed, leaving behind the burden of his obligations set by the religious court.(Khairuddin et al., 2020)

While the duty of women after a divorce is the purpose of iddah which is to determine the purity of a woman's womb based on the seed left by her ex-husband, to *ta'abbud* (follow the will of Allah), and to encourage husbands who have divorced their wives to reconsider and realize that their actions are inappropriate and repent.(Istikomah & Zubir, 2019)

Although there are rights and obligations after divorce, in practice what happens in religious courts In some divorce cases, there are often rulings that allow the applicant to take the talaq pledge by imposing a fine that requires the applicant to pay the respondent a certain amount of property in the form of mut'ah, iddah bread, and other living expenses related to the husband's obligations to the divorced wife.(Fauziah et al., 2020)

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 to be paid, and the type of payment, but the judgment does not specify a deadline for payment. On the contrary, and this is closely related, the period that can be used to declare the talaq pledge 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 petitioner and the respondent were present at the hearing, but the petitioner 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 applicant to postpone the pronouncement of the talaq pledge until the applicant declares that he can bear the burden given to him. (Annas, 2017)

The preparation of the compilation of Islamic law is carried out with several channels and contexts for the implementation of iddah in Indonesian society and the existence of a legal vacuum related to the period of determining the payment of iddah bread, where the provision of iddah income 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 are met. 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 still must provide for the ex-wife by the court decision. While the ex-wife must ensure that she is not pregnant. This of course has been proven by sophisticated tools, namely ultrasound and others, but more than that the certainty of pregnancy of a

woman who has divorced with her ex-husband is to ensure that there is no mixing of children. So that if the husband and wife realize each other's responsibilities, then the iddah period will be carried out by the provisions of the Shari'a.

CONCLUSION

The history of the compilation of Islamic law shows that the drafting committee did not use its power in producing a law, namely by carrying out deliberations on several campuses in Indonesia. The concept of iddah in the compilation of Islamic law is very much in line with the concept of iddah in classical Islamic law. In addition, to be able to carry out the obligation of iddah between husband and wife must be aware of each other's responsibilities, namely the husband provides iddah and hadhanah if he has children so that the iddah period will be carried out by the provisions of the Shari'a if between the two are aware of the rights and obligations in marriage.

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