



IDDAH AND ITS LEGAL IMPLICATIONS: A COMPARATIVE STUDY OF ISLAMIC JURISPRUDENCE AND POSITIVE LAW

Fadlan Harmein Harahap¹, Ramadhan Syahmedi Siregar², Fatimah³

^{1,2,3}Universitas Islam Negeri Sumatera Utara, Indonesia

Email: fadlanhrp15@gmail.com, ramadhansyahmedi@uinsu.ac.id, fatimah@uinsu.ac.id

Corresponding Author: fadlanhrp15@gmail.com

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Abstract

Iddah is a waiting period required for a woman after the dissolution of marriage due to divorce or the death of her husband. This article examines the concept of iddah in Islamic jurisprudence, its regulation under Indonesian positive law, its legal consequences, and the similarities and differences between fiqh and positive law. This study uses a literature review with a normative-doctrinal approach. The findings indicate that iddah has biological, psychological, social, and legal dimensions. Indonesian positive law accommodates the main principles of fiqh through the Compilation of Islamic Law, while its implementation may take contextual considerations into account. Both systems recognize iddah as a legal obligation aimed, among others, at maintaining lineage clarity and protecting women's dignity, although differences remain in interpretation and implementation.

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1. INTRODUCTION

Marriage in Islamic law constitutes a legal bond that carries not only religious significance but also legal consequences for both husband and wife. Although marriage is intended to establish a harmonious family life, the marital bond may end through divorce or the death of one of the spouses. The dissolution of marriage gives rise to several legal consequences, one of which is the obligation of women to observe the iddah period. In general, iddah is understood as a waiting period that a woman must observe after the termination of marriage before she is permitted to remarry. This requirement has a normative basis in the Qur'an and has been elaborated in detail in fiqh literature through discussions concerning its causes, duration, and the legal consequences attached to the waiting period (Sabiq, 1990; Az-Zuhaili, 1985).

The normative foundations of iddah are found, among others, in Q.S. Al-Baqarah [2]: 228 concerning divorced women, Q.S. Al-Baqarah [2]: 234 concerning women whose husbands have died, and Q.S. At-Talaq [65]: 4 concerning women who no longer menstruate and pregnant women (Department of Religious Affairs of the Republic of Indonesia, 2019). Based on these provisions, the duration of iddah is not uniform but depends on the cause of the dissolution of marriage and the



woman's circumstances. A divorced woman who continues to menstruate observes an iddah of three quru', a woman who no longer menstruates observes a waiting period of three months, a widow observes a waiting period of four months and ten days, while a pregnant woman observes iddah until childbirth. Differences of interpretation also arise among the schools of Islamic law, particularly in understanding the term quru', which some jurists interpret as menstruation and others as a period of purity between menstrual cycles (Mughniyah, 2001; Syarifuddin, 2006).

The obligation of iddah is not limited to determining the duration of the waiting period but also produces legal consequences for both the woman and her former husband. During this period, legal issues may arise concerning maintenance, residence, marriage proposals, the possibility of reconciliation, and the prohibition against entering into a new marriage. In the case of talaq raj'i, for example, the legal relationship between husband and wife has not been completely terminated because reconciliation remains possible during the iddah period. Consequently, the woman retains certain rights to maintenance and accommodation. However, such status and rights may differ in cases of talaq ba'in, divorce through khulu' or fasakh, and particular circumstances such as nusyuz (Manan, 2008; Syarifuddin, 2006). This complexity demonstrates that the study of iddah should not be limited to explaining the duration of the waiting period but should also examine the legal consequences arising under each specific condition.

In the Indonesian context, the principles of iddah derived from fiqh have been incorporated into positive law, particularly through the Compilation of Islamic Law (Kompilasi Hukum Islam or KHI). The KHI serves as one of the substantive legal references for resolving Islamic family law matters within the Religious Courts and regulates waiting periods as well as certain rights of women following divorce (Abdurrahman, 2010; Ministry of Religious Affairs of the Republic of Indonesia, 2018). In addition, national marriage law has developed through the Marriage Law and its amendment under Law Number 16 of 2019. The presence of these positive-law instruments reflects the transformation of fiqh norms into the national legal system, meaning that their application takes into account not only religious norms but also legal certainty, protection of women, and practical implementation within the judicial system (Ali, 2016; Anshori, 2011).

Previous literature has provided an important foundation for this discussion. Sabiq (1990), Az-Zuhaili (1985), and Mughniyah (2001) explain iddah from the perspective of fiqh and differences among schools of Islamic law, while Abdurrahman (2010), Ali (2016), and Manan (2008) focus more extensively on the implementation of Islamic family law within the Indonesian legal framework. However, based on the literature used in this study, there remains room for a more systematic integration of these two perspectives using comparable legal indicators. A comparison should not merely state that fiqh provides the normative foundation while positive law constitutes its implementation, but should concretely demonstrate how both frameworks regulate the legal basis, duration of iddah, maintenance rights, residence rights, marriage proposals, remarriage, and other legal consequences arising during the waiting period. This gap is important because differences between fiqh formulations and their implementation in positive law may affect the protection of women's rights following the dissolution of marriage.

Based on this gap, the novelty of this study lies in its comparative analysis of fiqh and Indonesian positive law through more operational legal indicators rather than merely conceptual comparison. This study aims to analyze the concept and variations of iddah in fiqh, identify its regulation under Indonesian positive law, explain the legal consequences relating to maintenance, residence, marriage proposals, and remarriage, and identify the similarities and differences between the two legal frameworks. Through this approach, the study is expected to demonstrate how fiqh norms are preserved, interpreted, and implemented within the framework of Indonesian positive law, while also clarifying the position of legal protection for women during the iddah period in contemporary society..

2. RESEARCH METHOD

This study employs normative-doctrinal legal research using library research to analyze the rules governing iddah and their legal consequences from the perspectives of fiqh and Indonesian positive law. The study applies statutory, conceptual, and comparative approaches. The statutory approach is used to identify the legal construction of iddah within the Compilation of Islamic Law (KHI) and relevant marriage regulations in Indonesia, while the conceptual approach is employed to understand the concept, objectives, and legal consequences of iddah based on the Qur'an and fiqh doctrine. The comparative approach is used to identify similarities and differences between fiqh and

positive law with respect to the duration of iddah, women's rights and obligations, maintenance, residence, marriage proposals, the possibility of reconciliation, and the prohibition against entering into a new marriage during the waiting period. This analytical framework is important because the rules of iddah in fiqh developed through differing interpretations among the schools of Islamic law, whereas Indonesian positive law incorporates these rules into legal provisions applicable within the national legal system (Mughniyah, 2001; Syarifuddin, 2006).

The legal materials used in this study are classified into primary and secondary legal materials. Primary legal materials include Qur'anic verses directly related to iddah, particularly Q.S. Al-Baqarah [2]: 228 and 234 and Q.S. At-Talaq [65]: 4, the Compilation of Islamic Law, and Law Number 16 of 2019 concerning the Amendment to Law Number 1 of 1974 on Marriage. Secondary legal materials consist of fiqh texts and literature, books on Islamic marriage law, and academic works discussing iddah and its legal consequences, particularly works representing fiqh perspectives and Indonesian Islamic family law (Az-Zuhaili, 1985; Manan, 2008; Sabiq, 1990). The legal materials were selected based on their relevance to the focus of the study, the authority of the sources in explaining the law of iddah, and their capacity to provide information concerning differences in fiqh interpretations and their regulation under positive law. The materials were collected through documentation and library research by means of inventory, selection, classification, and systematization according to the themes of the study.

The legal materials were analyzed descriptively, analytically, and comparatively through several stages. First, fiqh provisions concerning the definition, legal basis, types, and duration of iddah were identified according to the cause of marital dissolution and the circumstances of the woman concerned. Second, these provisions were compared with regulations under Indonesian positive law, particularly the KHI, to identify forms of adoption, adjustment, and differences in implementation (Abdurrahman, 2010; Ministry of Religious Affairs of the Republic of Indonesia, 2018). Third, the comparison was conducted using the same analytical indicators, namely the legal basis, duration of iddah, rights to maintenance, rights to residence, rules concerning marriage proposals, the possibility of reconciliation, the prohibition against remarriage, and legal consequences according to the form of marital dissolution. The comparative findings were then analyzed qualitatively to explain the relationship between fiqh norms as the doctrinal foundation and positive law as the instrument for their application in Indonesia. Through this procedure, the study does not merely describe the rules of iddah, but also systematically identifies points of continuity and divergence between fiqh and positive law in providing legal certainty and protection for women during the iddah period.

3. RESULT AND ANALYSIS

The findings show that iddah constitutes a legal consequence of the dissolution of marriage, supported by a strong normative foundation in fiqh and incorporated into Indonesian Islamic family law. Q.S. Al-Baqarah [2]: 228 establishes the waiting period for divorced women, Q.S. Al-Baqarah [2]: 234 regulates the waiting period for women whose husbands have died, while Q.S. At-Talaq [65]: 4 addresses women who no longer menstruate and pregnant women (Department of Religious Affairs of the Republic of Indonesia, 2019). Based on fiqh literature, a divorced woman who continues to menstruate observes an iddah of three quru', a woman who does not menstruate observes a waiting period of three months, a widow observes four months and ten days, while a pregnant woman remains in iddah until childbirth (Sabiq, 1990; Az-Zuhaili, 1985). In Indonesian positive law, these principles are primarily accommodated through the Compilation of Islamic Law (Kompilasi Hukum Islam or KHI), which regulates waiting periods by considering both the cause of marital dissolution and the biological condition of the woman. A divorce occurring before marital relations (qabla al-dukhul) generally does not give rise to an iddah obligation where the marriage ends for reasons other than the husband's death. This demonstrates that the legal obligation of iddah varies according to the concrete circumstances of the marriage (Ministry of Religious Affairs of the Republic of Indonesia, 2018).

The findings further indicate that iddah does not merely impose an obligation to wait before remarriage, but is also associated with a number of women's rights. In the case of talaq raj'i, the legal relationship between the former husband and wife continues to produce certain consequences because the husband retains the possibility of reconciliation during the iddah period. Accordingly, the woman in such circumstances is, in principle, entitled to maintenance and accommodation during the waiting period (Manan, 2008; Syarifuddin, 2006). The situation differs in cases of talaq ba'in, khulu', fasakh, or where nusyuz is established, because the basis for the dissolution of marriage determines the

consequences for maintenance and the continuing legal relationship between the parties. The KHI operationalizes these principles by regulating maintenance, residence, and clothing during iddah, subject to several exceptions depending on the form of divorce and the condition of the woman (Ministry of Religious Affairs of the Republic of Indonesia, 2018). In addition, a woman undergoing iddah may not enter into a new marriage with another man, while marriage proposals directed toward a woman in iddah are also subject to particular restrictions. These findings demonstrate that iddah is a legal institution governing not only a period of time but also the legal status of women following the dissolution of marriage.

Comparatively, the study identifies both substantial continuity and operational differences between fiqh and Indonesian positive law. With respect to legal foundations, both are grounded in principles derived from the Qur'an and Islamic law. Regarding the duration of iddah, positive law essentially adopts the principal categories recognized in fiqh, but formulates them in more operational terms so that they can be implemented in legal administration and judicial practice. With respect to maintenance and residence, fiqh provides differentiated legal constructions according to the form of divorce and the woman's status, while the KHI translates these principles into more specific legal rules for resolving family law matters. Likewise, in relation to reconciliation, marriage proposals, and remarriage, positive law does not create entirely new concepts but institutionalizes fiqh principles within a more definite legal framework (Abdurrahman, 2010; Bisri, 1999). Accordingly, the relationship between fiqh and positive law in matters of iddah is not one of replacement, but rather a process of transformation from doctrinal norms into institutionally applicable legal rules.

The discussion becomes clearer when viewed through the differing interpretations of the term *quru'* in Q.S. Al-Baqarah [2]: 228. The Hanafi school understands *quru'* as menstruation, whereas the Shafi'i school interprets it as the period of purity between menstrual cycles. This difference is not merely terminological, as it produces different determinations regarding when a woman's iddah ends (Mughniyah, 2001; Az-Zuhaili, 1985). The KHI's formulation of three periods of purity, with a minimum duration of ninety days, reflects an approach closer to the interpretation of *quru'* as a period of purity (Ministry of Religious Affairs of the Republic of Indonesia, 2018). Interpretatively, this choice illustrates the function of legal codification in reducing uncertainty arising from the plurality of fiqh opinions. Fiqh continues to provide an intellectual and normative foundation through the diversity of schools of thought; however, once such principles are incorporated into a legal system administered by state institutions, a more definite normative choice is required to establish relatively uniform standards for determining the beginning and end of the iddah period.

Special legal circumstances further demonstrate the importance of distinguishing between doctrinal formulations and implementation needs. For women who do not menstruate, the three-month period provides temporal certainty where *quru'* cannot serve as the applicable measure. For pregnant women, childbirth constitutes the principal point at which iddah ends, giving pregnancy a determinative legal role in fixing the waiting period (Sabiq, 1990; Syarifuddin, 2006). Meanwhile, *khulu'* and *fasakh* require separate consideration because the termination of marriage does not necessarily carry the same legal character as ordinary *talaq*, and fiqh literature reveals diverse views concerning their legal consequences (Az-Zuhaili, 1985; Mughniyah, 2001). Divorce before consummation also illustrates that the obligation of iddah cannot be separated from the reason for the dissolution of marriage and the prior state of the marital relationship. Therefore, applying a single form of iddah to all women would be inconsistent with both the structure of fiqh and the KHI. Legal interpretation must first identify the cause of marital dissolution, pregnancy status, whether marital relations have taken place, and the type of divorce involved.

Theoretically, these findings may be analyzed through the objectives of Islamic law, or *maqāṣid al-sharī'ah*, particularly the protection of lineage (*ḥifẓ al-nasl*) and the protection of human dignity. Clarity of lineage constitutes one of the important rationales underlying iddah, but reducing the institution solely to a biological function would narrow its legal meaning. Fiqh literature also reflects dimensions of worship, respect for the marital bond, protection of women, and the reorganization of social relationships after marriage has ended (Az-Zuhaili, 1985; Sabiq, 1990). From this perspective, the availability of technology capable of detecting pregnancy does not automatically eliminate the relevance of iddah, because the institution produces broader normative and social consequences beyond determining whether the womb is empty. Rights to maintenance and residence, the possibility of reconciliation, respect for the previous marriage, and protection of women during a transitional period demonstrate that iddah also functions as a mechanism of legal and social protection.

Accordingly, the comparative interpretation indicates that the principal difference between fiqh and positive law lies not in the fundamental purpose of iddah, but in the level of formulation and the

mechanisms of implementation. Fiqh provides a rich normative construction characterized by differences among schools of Islamic law, while the KHI selects and codifies certain principles so that they can function as legal guidance in resolving Islamic family law matters in Indonesia (Abdurrahman, 2010; Bisri, 1999). The principal contribution of positive law lies in providing more operational parameters regarding the waiting period and its legal consequences, whereas the contribution of fiqh lies in supplying the argumentative foundation through which these norms can be understood more deeply. Therefore, the integration of both frameworks should not be directed toward eliminating the plurality of fiqh, but rather toward ensuring that the implementation of iddah maintains legal certainty while also respecting justice, dignity, and the protection of women's rights. These findings affirm that iddah in the Indonesian context should be understood as a multidimensional legal institution: normatively rooted in Islamic law while simultaneously serving a protective function that must be applied contextually according to the specific character of marital dissolution.

4. CONCLUSION

This study demonstrates that iddah is a legal institution with a strong foundation in fiqh and remains recognized within Indonesian positive law. The rules governing iddah vary according to the cause of marital dissolution and the circumstances of the woman concerned, including divorce, the death of the husband, pregnancy, and particular situations such as the absence of marital consummation. In fiqh, the regulation of iddah has developed through diverse interpretations among the schools of Islamic law, particularly regarding the meaning of quru', the duration of the waiting period, and the rights and obligations of women during iddah. Indonesian positive law, through the Compilation of Islamic Law (Kompilasi Hukum Islam or KHI), incorporates these principal fiqh norms into more operational legal provisions. The legal consequences of iddah are not limited to the prohibition against remarriage, but also concern maintenance rights, residence, the possibility of reconciliation, and rules governing marriage proposals, depending on the form of marital dissolution.

A comparison between fiqh and positive law shows that both pursue similar objectives, namely preserving clarity of lineage, ensuring legal certainty regarding marital status, maintaining respect for the marital bond, and protecting the dignity and rights of women after the dissolution of marriage. Their principal differences lie in the manner of formulation and implementation. Fiqh provides the normative foundation and a plurality of interpretive approaches among the schools of Islamic law, whereas positive law codifies and adapts selected principles so that they can be applied with greater legal certainty within the Indonesian legal system. Accordingly, iddah should not be understood merely as a biologically oriented waiting period, but rather as a legal mechanism that also encompasses social, psychological, and protective dimensions for women. The integration of fiqh principles and positive law is therefore necessary to ensure that the implementation of iddah remains grounded in Islamic legal values while simultaneously providing legal certainty, justice, and protection that are responsive to the needs of contemporary society.

References

- Abdurrahman. (2010). *Kompilasi hukum Islam di Indonesia*. Akademika Pressindo.
- Ali, Z. (2016). *Hukum perdata Islam di Indonesia*. Sinar Grafika.
- Anshori, A. G. (2011). *Hukum perkawinan Islam di Indonesia*. UII Press.
- Az-Zuhaili, W. (1985). *Al-fiqh al-Islami wa adillatuhu*. Dar al-Fikr.
- Bisri, C. H. (1999). *Kompilasi hukum Islam dan peradilan agama dalam sistem hukum nasional*. Logos Wacana Ilmu.
- Departemen Agama Republik Indonesia. (2019). *Al-Qur'an dan terjemahannya*. Departemen Agama Republik Indonesia.
- Hadikusuma, H. (2007). *Hukum perkawinan Indonesia*. Mandar Maju.
- Kementerian Agama Republik Indonesia. (2018). *Kompilasi hukum Islam*. Direktorat Jenderal Bimbingan Masyarakat Islam.
- Manan, A. (2008). *Aneka masalah hukum perdata Islam di Indonesia*. Kencana.
- Mughniyah, M. J. (2001). *Fiqh lima mazhab*. Lentera.
- Nasution, K. (2004). *Hukum perkawinan I*. ACAdemia.
- Sabiq, S. (1990). *Fiqh sunnah*. Dar al-Fath.
- Soemiyati. (2007). *Hukum perkawinan Islam dan Undang-Undang Perkawinan*. Liberty.

Syarifuddin, A. (2006). Hukum perkawinan Islam di Indonesia. Kencana.
Undang-Undang Republik Indonesia Nomor 16 Tahun 2019 tentang Perubahan atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan. (2019).