

Women Protection Policy in the Concept of Syibhul ‘iddah in Indonesian Marriage Law

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ABSTRACT

In general, the idah period is an obligation for women, not men. However, the Circular Letter of the Director General of Islamic Community Guidance Number P-005/DJ. III/HK.00.7/10/2021 concerning Marriage in the Period of Wife Idah contains a signal that men must also wait until the end of their ex-wife's Idah period, as if they are also subject to the same waiting period as women. This research aims to analyze the legal basis of these provisions through the perspective of the Compilation of Islamic Law (KHI) and the concept of man'i syar'i according to Wahbah Al-Zuhaili.

This research is a type of normative legal research with a juridical approach. Legal materials are collected through the study of documents or literature, which are then analyzed in a qualitative descriptive manner. The most important legal material analyzed is the SE Director General of Islamic Guidance No. P-005/DJ. III/HK.00.7/10/2021, KHI, and Kitab Al-Fiqh al-Islami wa Adillatuhu.

This research produced two main findings. First, the third point in the Circular Letter of the Director General of Islamic Guidance contains the concept of Syibhul ‘iddah (similar to idah) which is rooted in the Compilation of Islamic Law (KHI), especially Articles 41 and 42. These articles regulate the prohibition of marrying a woman who has a marriage cord during the idah period, including the obligation to wait for a husband who has divorced his fourth wife. This concept is also in line with Wahbah al-Zuhaili's view on man'i syar'i (syar'i obstacle). However, in contrast to KHI and the opinion of Wahbah al-Zuhaili which only limits marriage to certain women, this Circular Letter prohibits the ex-husband from marrying any woman during the period of idah of his ex-wife. Second, this Circular Letter fills the void of administrative law, because previously there was no rule limiting the registration of marriages during the wife's idah period. Thus, this Circular Letter becomes a bridge between the provisions of classical fiqh and modern administrative needs, and can be understood as a form of administrative ijtihad in responding to contemporary legal needs.

Keywords: *Syibhul Iddah, Compilation of Islamic Law, Man'i Syar'i*

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INTRODUCTION

The meaning of *'iddah* is viewed in terms of language, in the language *'iddah* is the plural of *'idd* which means a sum or *'idd* amount[1]. Thus, if viewed in terms of language, the word *'iddah* is used to indicate the meaning of menstruation or holy days in women[2]. Meanwhile, terminologically, there are several definitions of *'iddah* put forward by the fuqaha. Although in different editorials, these various definitions have similarities in general. According to al-Jaziri, *'iddah* in shari'i means the waiting period of a woman before remarrying, which is determined by menstruation, number of months, or childbirth, during which time a woman is forbidden to marry another man'. [3] Also Sayyid Sabiq explains that *'iddah* is a name for the length of time a woman (wife) waits and should not marry after the death of her husband or after separation from her husband. [4] Another opinion also says that *'iddah* is a waiting period for a woman to marry after a divorce from her husband, either a living divorce or a dead divorce, with the aim of knowing the state of her womb or to think for her husband. [5] Maliki scholars say *'iddah* is a time when it is forbidden to marry. This is due to the rejection of a woman or the death of her husband or the breakdown of a marriage.

Shafi'iyah people interpret *'iddah* as waiting for a woman to find out the cleanliness of her uterus, or because of worship or because of mourning for her husband. Meanwhile, the hanabilah group defines it simply, namely the waiting period determined by sharia. And Wahbah al-Zuhaili has an argument that *'iddah* can be defined more clearly, i.e. the period that has been determined by the shari'i after divorce, where this kind of thing a woman is obliged to wait during this period without remarrying until her waiting period is completely over. [6]

However, along with the development of science, a spirit of equality and justice emerged in the mindset and behavior of marriage that was rampant in society, namely during the *'iddah* period that must be lived by the ex-wife while men can get married immediately after divorce. [9] In response to such problems, the Ministry of Religious Affairs of the Republic of Indonesia has issued the Circular Letter of the Director General of Islamic Guidance Number P-005/DJ. III/HK.00.7/10/2021 Regarding Marriage During the Period of *'iddah* The Wife discusses the need to apply *'iddah* on behalf of men.

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The word *shibbul* in this term is derived from the root word شَبَّهَ - يُشَبِّهُ which means "to resemble" or "to be equal"[12] In Articles 42 and 70 of the Compilation of Islamic Law (KHI), there is actually an article explaining the existence of shaykh 'iddah, although it does not directly state that it is 'iddah for men.

Based on the above, it can actually be understood that there is an implicit meaning of the enactment of iddah for the husband. Indeed, in nature, a husband does not violate the existing legal provisions but, if left unchecked, it will result in illegal marriage and does not rule out the possibility of clandestine polygamy if he marries another woman as long as his wife's iddah has not ended. Therefore, the author feels that *Shabbul Iddah*, if studied with several relevant theories, will provide its own benefits and wisdom for men or women. (Psalm 13)

In addition to the rules from the KHI above, *Shibbul Iddah* has also been discussed by the scholar Sheikh Wahbah al-Zuhaili. Although he did not use the phrase *syibhul iddah* in the book *al-Fiqh al-Islami wa Adillatuhu*, he discussed the same concept, he said with the term *mani' syar'i* or the obligatory waiting period. This shows that the essence of this discussion is the same, which is about the waiting period for men after divorce with a specific purpose. "From a quick comparison between the three legal opinions above, it can be concluded that the first two opinions (the opinion of Wahbah al-Zuhaili and the provisions of KHI) are different from the reading of the Circular Letter of the Director General of Islamic Guidance. The opinions of Sheikh Wahbah and KHI are only aimed at two contexts, while the SE Director General of Islamic Guidance does not specify restrictions at all. Based on this background, the author intends to carry out research with the formulation of the problem as follows:

1. What is the background of the emergence of the Circular Letter of the Director General of Islamic Guidance Number P-005/DJ. III/HK.00.7/10/2021 concerning Marriage in the Period of 'iddah of the Wife
2. What is the perspective of the Compilation of Islamic Law and Wahbah Zuhaili on the policy contained in the circular?

METHODS

The purpose of this research is to find out the answer to the formulation of the existing problem, namely to find out more details about the background of the emergence of the Circular Letter of the Director General of Islamic Guidance Number P-005/DJ. III/HK.00.7/10/2021 concerning Marriage in the Period of 'iddah Wife, as well as to assess the extent to which the policies taken by the Ministry of Religion of the Republic of Indonesia have gone further than the direction of the previous scholars' thinking.

The method used by *library research* in legal research is included in the type of normative legal research. Literature research is a research that involves the process of collecting and analyzing data sourced from library or library sources, either in the form of books, articles, documents, descriptive research results and other library materials that can be used as a reference source to compile a scientific research result. Also known as legal research, it is a legal research that is applied by examining literature materials (secondary data)[26]. In this study, the collection, processing, and analysis of data related to the objectives of a research,[24] is guided by scientific pillars based on data and facts in order to obtain concrete research results that are relevant to certain goals and benefits[25]

The data sources in this study include primary legal materials, secondary legal materials, and tertiary legal materials. [27] The primary legal material in this study is the Circular Letter of the Director General of Islamic Guidance Number P-005/DJ. III/HK.00.7/10/2021, and the Compilation of Islamic Law, especially articles 41-42 and 70. The secondary legal materials used in this study can be in the form of doctrines, research results, theses, theses, papers and journal articles as well as web articles relevant to the research. These secondary legal materials include:

- 1) Abd ar-Rahmān al-Jāziri, *Kitāb al-Fiqh ala al-madhahib al-arbaa*;
- 2) Wahbah al-Zuhaili, *Al-Fiqh al-Islami Wa Adillatuhu*

Tertiary legal materials, namely legal materials that provide explanations and instructions for primary legal materials and secondary legal materials[29] which in this study use tertiary legal materials in the form of legal dictionaries, Arabic dictionaries, large dictionaries of the Indonesian language, books, books. related to writing in normative legal research.

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The normative juridical approach is literature law research that is carried out by examining literature materials or secondary data. This research is carried out to obtain materials in the form of: theories, concepts, legal principles and legal regulations related to the subject. By using the deductive thinking method (a way of thinking in drawing conclusions drawn from something of a general nature that has been proven to be true and the conclusion is aimed at something of a particular nature).

IDDAH PROVISIONS IN INDONESIAN LAWS AND REGULATIONS

The provisions of iddah in Indonesian laws and regulations are regulated in the Marriage Law Number 1 of 1974. Overview of the Issuance of Circular Letter Number: P 005/Dj.Iii/Hk.00.7/10/2021. The provisions of *'iddah* in Indonesian laws and regulations regulated in Law Number 1 of 1974 concerning Marriage are the main legal basis that regulates matters related to marriage in Indonesia. Although the term iddah is not explicitly mentioned in this law, the substance and principle regarding the existence of a waiting period after divorce or the death of the husband are still explained in several provisions. *'iddah* in the legal context is a waiting period for a woman before being allowed to remarry after her marriage has broken down. This waiting period aims to provide legal certainty on the personal status and legal status of children who may be conceived, as well as to be part of the protection of women's rights. [1]

One of the articles that indirectly refers to the *'iddah* period is Article 11 paragraph (2) of the Marriage Law, which states that a husband who has divorced his wife can refer her back during the waiting period, with the consent of both parties. This provision shows that the law recognizes the existence of *the 'iddah* period as part of the legal consequences of divorce, although it does not specify technically its length or form.

Then to emphasize the policies taken by the Indonesian government related to the intention of the above rules, the Ministry of Religion issued a circular. The first circular was issued in 1979, while the second was issued in 2021. The background of the issuance of the 2021 Circular Letter which discusses marriage in the *'iddah period of the wife* is due to the existence of a Circular Letter in 1979 which was less effective. The Circular Letter of the Director General of Community Development of Islamic Religious

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Institutions Number: DIV/Ed/17/1979 concerning the Problem of Polygamy in *Iddah* was issued based on consideration by considering the number of marriages carried out by husbands during the wife's *iddah period* . In addition, it was also found that there were many illegal polygamy as a result of the referral of an ex-wife by the husband who had divorced him and then remarried another woman during the previous wife's *iddah period*.

There is a factor of the lack of firmness of the KUA in terms of enforcing the rules in the circular on the pretext that marriage during the wife's *iddah period* is not prohibited. Therefore, the decision to conduct a review and issue a Circular Letter Number: P-005/DJ. III/Hk.00.7/10/2021 The Directorate General of Islamic Community Guidance on Marriage During the Period of '*iddah* Wives is a decision that can be considered appropriate. It is hoped that this new circular can clarify the regulations regarding marriage during the wife's '*iddah* period.

Circular Letter Number: DIV/Ed/17/1979 which was stipulated on February 10, 1979 in Jakarta by the Director General of Islamic Religious Institutional Development regulates the Problem of Polygamy in '*iddah*. This circular is addressed to the chairmen of the first level and the appellate level throughout Indonesia. The background of the issuance of the circular is because there are no written regulations to deal with the problem of polygamy during the '*iddah* period. To fill this legal gap, the Director General of Islamic Religious Institutional Development of the Ministry of Religion of the Republic of Indonesia as an institution that has the authority to regulate that marriage during the wife's '*iddah* period must first obtain permission from the religious court.

Circular Letter Number: P-005/DJ. III/Hk.00.7/10/2021 concerning Marriage in the Period of '*iddah* of Wives which was stipulated on October 29, 2021 in Jakarta by the Directorate General of Islamic Community Guidance is addressed to the Heads of Regional Offices of the Ministry of Religion of Provinces throughout Indonesia. In this Circular, there are 5 points of provisions as follows:

1. For men and women who carry the status of widower/widow or divorced living if they are going to remarry, they must include a citation of the divorce certificate from the Court that has been declared inkrah. If you have not obtained a divorce certificate, the marriage cannot be recorded.

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2. The provision of the wife's *'iddah* period due to divorce is an opportunity for both husband and wife to be able to rethink to rebuild a household that is separated due to divorce
3. Ex-husbands are allowed to remarry another woman after the end of the term *'iddah* his ex-wife. A man does not have a period of *'iddah*, but it would be better if he waited for his wife while rethinking his decision so that the separation made was really the best decision.
4. When an ex-husband marries another woman in time *'iddah* his ex-wife, then this can potentially occur in veiled polygamy because the ex-husband can refer to his ex-wife. Covert polygamy is a second marriage for a person in which he tries to cover up the event so that it is not known. Therefore, that it is better for the husband to wait *'iddah* his wife finished first.
5. In the event that the ex-husband has edited another woman during the *'iddah* period of the ex-wife, then if he wants to return to his ex-wife, it must be by applying for a polygamy permit to the Religious Court.

Closing in Circular Letter Number: P-005/DJ. III/Hk.00.7/10/2021 The Directorate General of Islamic Community Guidance on Marriage During the Period of *'iddah* Wives and this circular comes into effect, namely October 29, 2021, also instructs that the circular letter of the Director General of Islamic Religious Institutional Development Number: DIV/Ed/17/1979 issued on February 10, 1979 concerning the Issue of Polygamy in *'iddah* is revoked and declared no longer valid. Thus, this circular was issued to be of concern and implemented as it should. May Allah SWT, God Almighty, always protect us all.

CASES OF POLYGAMY DURING *THE 'iddah PERIOD*

Polygamy during *'iddah* is the behavior of marriage when the *'iddah* period of the ex-wife is still not completed or is still valid, this can occur when the husband gives *talaq raj'i* to his wife or also often referred to as wild polygamy as an example of the case, that is, when a husband has imposed *talaq* of one *raj'i* on his wife, then the *period of 'iddah* applies to the wife. During *the period of 'iddah*, a wife is forbidden to accept a proposal

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and marry another man, while for a husband the *period of 'iddah* does not apply. Therefore, there is no obstacle for the husband to marry another woman.

If during the *'iddah* period of the divorced wife, the ex-husband remarries another woman, then before the end of the *'iddah* period of his ex-wife, an agreement is reached between the two of them to refer back to building a household, then automatically the husband has two wives or is polygamous. Namely the newly married wife and the ex-wife he just referred.

The laws and regulations that regulate the existence of polygamy are contained in the Criminal Code, Law No. 1 of 1974 concerning Marriage and the Compilation of Islamic Law. The provisions in article 9 of Law No. 1 of 1974 concerning Marriage state that: "A person who is still bound by the marriage bond with another person cannot marry again, except in the case mentioned in Article 3 paragraph (2) and Article 4 of this Law." In article 4 paragraph (2) of the Marriage Law, several reasons are stated for a person who is allowed to practice polygamy, namely:

- a. The wife does not carry out her duties as a wife;
- b. The wife has a physical disability or disease that cannot be cured;
- c. The wife cannot bear children

In article 41 paragraph (2) of Government Regulation No. 9 of 1979, it is stated that the wife's consent can be in writing or oral.

In terms of polygamy permits, judges are relatively rare to find cases of polygamy permits during *the 'iddah' period*, the judges consider that actually the circular is addressed to the Marriage Registrar or KUA, because the substance regulates marriage problems, and the PA is only a copy. Regarding the position of the circular, the judge is not obliged to be bound by the circular, which means that the judge can use or annul the case with other regulations, because the form is only a circular letter and does not include legislation. But the majority of judges agreed with the existence and enactment of the circular, in anticipation of legal smuggling such as covert polygamy, as well as to respect or protect the rights of a woman.

Then for the case of polygamy during *the 'iddah* period as follows:

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1. There is an example of polygamy during *the 'iddah* period at the Lowokwaru District Religious Affairs Office. Quoting from Researcher Dewi Roma Maghviroh with the title *IMPLEMENTATION OF THE SE DIRECTOR GENERAL OF ISLAMIC RELIGIOUS INSTITUTIONAL DEVELOPMENT ON POLYGAMY IN THE 'iddah PERIOD (Case Study at the Office of Religious Affairs of Lowokwaru District and Malang Religious Court)*. Research on the implementation of Circular No. D.IV/E.d/17/1979 with data on husband marriage during *the 'iddah* period , which was recorded from 2017 to August 2018 there were 22 cases of marriage of a husband who was still in the *'iddah* period of his wife. One example is the wedding carried out by Arif Sentosa with Riza Firdiana on April 12, 2017. [9]

In this case, Arif has just divorced his longtime wife, Sumarsih binti Sutopo, with divorce certificate number 183/AC/2017/PA. BGL on January 26, 2017. Thus, the wife of Arif is still undergoing the *'iddah* period with talaq raj'i while Arif has married another woman. The way the KUA did it was initially only to inform that his divorced wife was still in *the 'iddah* period, also to give an offer to the husband to postpone his marriage with his new candidate until the *'iddah* period of his old wife was over. Because I can't wait to wait for some more time to get married. Then the person concerned still wants to carry out the marriage with another woman when the *'iddah* period of his ex-wife has not been completed.

Thus, to find a solution to a case like this, the KUA ordered the husband to make a statement that he would not return to his old wife accompanied by a stamp of Rp.6000. This is an anticipatory attitude from the KUA to avoid legal deviations from the purpose of marriage, such as the existence of veiled polygamy. But it all depends on who is concerned. The reason for the stipulation of making the declaration letter is that it seems that the circular letter about polygamy during *the 'iddah* period is contrary to the law of fiqh, because in the fiqh law there is no mention of *the period of 'iddah* for the husband, thus the KUA takes the middle way, namely with the statement letter. And the affidavit is binding on the person who made it. From the anticipatory efforts made by the KUA to provide a briefing, namely, if there is a widower who wants to remarry, then the original divorce certificate is requested by

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the KUA, then if the widower wants to refer to his wife who has been divorced, he must attach the original divorce certificate as well[10]

2. An example of marriage during *the 'iddah* period is also found in a study conducted by Bobby Nurjadi with the title *MARRIAGE OF EX-HUSBAND IN THE ISAH PERIOD OF EX-WIFE ACCORDING TO ISLAMIC LAW (STUDY OF THE CIRCULAR LETTER OF THE DIRECTOR GENERAL OF ISLAMIC GUIDANCE NUMBER: P-005/DJ. III/HK.007/10/2021* with the case at KUA Cilandak that occurred between MH and AR, they already have a divorce certificate at PA Tigaraksa with the status of a talaq divorce letter with a statement on Wednesday, October 19, 2022 so that AR must carry out *the 'iddah* period for three months (90 days). However, on Wednesday, December 14, 2022, MH registered a marriage with ZNS. If calculated by the time *the 'iddah* period of the ex-wife is completed on Thursday, January 19, 2023, then the marriage occurs during *the 'iddah* period.

The KUA Cilandak still does not hold a marriage between MH and ZNS, also the KUA advises the prospective husband to refer back to the first wife and suggests to the prospective wife to do polygamy permits according to *the sharia*. As a result, the prospective wife does not want to be polygamous while the prospective husband refers to the first wife here apparently applies the implementation related to the Circular Letter of the Directorate General of Islamic Community Guidance Number P-005/DJ. III/Hk.00.7/10/2021. About marriage during *the 'iddah* period of the wife. The KUA apparently already knows and applies from the circular, most importantly in the marriage and referral services section. By one way of socializing to the party concerned with the existence of a circular that regulates marriage during *the wife's 'iddah* period . [11]

***'iddah* PROVISIONS POLICY IN 1979**

The Circular Letter of the Directorate General of Islamic Community Guidance Number D.IV/E.d/17/1979 is a legal instrument that specifically regulates the implementation of *the 'iddah* period in the context of Islamic family law in Indonesia in 1979.[12] This circular was issued as a further elaboration of the provisions contained in

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Law Number 1 of 1974 concerning Marriage, especially related to the waiting period for women who have experienced divorce.

This circular will affirm the provisions regarding the duration of *the 'iddah* period as stipulated in Islamic law, which is for three times the holy (*quru'*) for a woman who is divorced in a state of non-pregnancy, and until she gives birth for a woman who is pregnant for the period of *her 'iddah*. 13] *This provision is in line with article 11 of the Marriage Law and refers to the provisions of the fiqh of the Shafi'i school that is commonly adopted in Indonesia.*

In 1979, this circular expressly prohibited new marriages during the *'iddah* period. This prohibition applies to both ex-husbands and ex-wives, with special emphasis on the prohibition for ex-husbands to engage in polygamy while the ex-wife is still in *the 'iddah* period. This circular contains the implementation of polygamy during the *wife's 'iddah* period where the condition for practicing polygamy during the *wife's 'iddah* period is to obtain permission at the Religious Court.

If polygamy is practiced but without asking for polygamy permission to the Religious Court, then the marriage does not have legal force, because the marriage is not recorded, therefore if there is a dispute in her marriage she cannot get legal protection this provision is intended for the purpose of providing legal protection for women who are undergoing *the 'iddah* period, as well as preventing the practice of marriage which is considered hasty because during the *'iddah talaq raj'i* period the husband can still refer back to his wife, if the husband holds a marriage with another woman while the ex-wife is still in *a state of 'iddah*, then it has the potential to cause legal problems in the future

The consequences that will arise for violations of the provisions during *this period of 'iddah*. It is emphasized that marriages carried out during the *'iddah* period are considered invalid and cannot be recorded by the religious affairs office in this circular also instructs all Religious Affairs Offices (KUA) throughout Indonesia to strictly ensure the marital status of couples who want to get married or register marriages, this circular also provides technical guidance on proving the completion of the *'iddah* period. It was explained that for administrative purposes, the completion of *the 'iddah* period can be

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proven by a certificate from the head or authorized official within the Office of Religious Affairs.

***'iddah* PROVISIONS POLICY IN 2021**

The Circular Letter of the Directorate General of Islamic Community Guidance Number P-005/Dj.III/Hk.007/10/2021 is the latest policy that specifically regulates marriage during *the 'iddah* period, as well as revoking the previous Circular Letter Number DIV/Ed/17/1979. This policy was born in response to the ineffectiveness of previous rules in preventing the practice of covert polygamy during *the 'iddah* period of the ex-wife.

This circular emphasizes that marriage registration for a man who has widower status can only be done after the *'iddah period* of his ex-wife is completed and is evidenced by a divorce certificate that has been inkrah from the Religious Court. This provision aims to provide legal certainty as well as protect women's rights during *the 'iddah* period, especially as a time for reflection or rethinking for couples to consider the decision to refer back.

In this circular, it is regulated as a mandatory waiting period for the parties who have been instructed by this circular, where the ex-husband is prohibited from marrying another woman before the *'iddah period* of his ex-wife's *'iddah* ends. This prohibition also includes the practice of marriage that has the potential to become veiled polygamy if it is done while there is still a possibility that they will return for reference. In the event that the ex-husband remains married during *the 'iddah period*, the marriage is not necessarily annulled, but the ex-husband can only refer his ex-wife after obtaining a polygamy license from the Religious Court. This provision is a refinement of the previous regulation by strengthening the preventive aspect through administrative supervision by the Office of Religious Affairs (KUA) and the Religious Court.

The circular emphasizes three main aspects: document verification, procedural oversight, and administrative sanctions. KUA is obliged to verify the validity of the divorce certificate and the certainty of the end of *the 'iddah* period before registering a new marriage. This circular also regulates the legal consequences for violations, where marriages that do not meet the requirements of *the 'iddah* period cannot be

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administratively recorded. This policy not only focuses on the legal-formal aspects that emphasize the form of procedure, and the legal rule that is written in a formal (formal) manner[14] but also contains religious values by making the *'iddah* period a period of reflection or rethinking and an attempt to give couples time to mend their marriage.[15] Thus, this circular is an important tool in harmonizing Islamic law with the national legal system related to the protection of women's rights after divorce. [16]

ANALYSIS OF GOVERNMENT POLICIES RELATED TO *SYIBHUL 'iddah* ON EQUALITY AND JUSTICE FOR THE PARTIES

Philosophical Analysis

The concept *of Shibhul 'iddah* was first introduced by the scholar, namely Wahbah Zuhaili in the book *Fiqh Islam wa Adillatuhu*, he said that *'iddah* does not only apply to women, but also applies to men. According to him, the application of *Shibhul 'iddah* is due to the existence of *man'i syar'i*, namely: *First*, if a man mentally affects his wife and wants to remarry a woman who is mahram with him, then the man should not marry her before *the period of 'iddah* of the wife he rejects, this is done so that there is no jealousy from the divorced wife. The verse that is the basis for the restriction of men in having wives is explained in Q.S. An-Nisa verse 23. *Second*, if a man has four wives and divorces one of them, then when the man wants to marry a fifth woman, he has to wait for *the time when the 'Iddah* of his divorced wife is over." This is based on the words of Allah in Surah An-Nisa verse 3.[1]

Wahbah Zuhaili argues that a man does not have *"Iddah* in terms, so he can immediately remarry another woman as long as there are no obstacles of a shari'a nature, such as marrying women who are not allowed to be gathered such as aunts, biological sisters and others.

The application of *Shaykh 'iddah* to men in two different contexts has caused differences of opinion among scholars. Some scholars of the Hanafiyah madhhab, as quoted by Abdurrahman al-Jaziri in *al-Fiqh 'alā al-Madhāhib al-Arba'ah*, are of the opinion that this condition cannot be categorized as *'iddah* for men. On the contrary, the

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waiting period is still considered as *"Iddah* which only applies to women.^[2] According to Abū Bakr al-Dimyāṭī, he explicitly asserts that men have no *obligation of 'iddah*, except in these two special conditions.^[3]

If we look at the book, Abu Bakr bin Muhammad al-Dimyati for the length of *the period of Shaykh 'iddah* for men is equal to the length of the period of *'iddah* for women, this is because because of the man's *syar'i* which requires men to also undergo the *period of 'iddah*^[4] according to the length of *the 'iddah* period of women, then the length of *'iddah* for men is also the same as *'iddah* that women do.

This explanation prohibits the occurrence of male marriage during *the period of his wife's 'iddah*, the thing that distinguishes between the two concepts lies in the limitation of the prohibition for a man to marry during *the period of his wife's 'iddah*, in the concept of *Syibhul 'iddah* in Indonesia contained in the Circular Letter of the Director General of Islamic Guidance of the Ministry of Religion No. P-005/DJ. III/HK.007/10/2021 concerning the period of *'iddah* wife.

This difference of opinion arises because there is a regulatory vacuum regarding the procedure *for the implementation of 'iddah* for women. If we look at some of the opinions of scholars who define *Shibhul 'iddah*, it is the forerunner or beginning of the birth of male *'iddah* which initially implicitly or indirectly only applies in the 2 conditions that have been defined above. Then the concept of *Syibhul 'iddah* changes in an explicit form or the form of prohibition is absolute in the administration of marriage registration.

This is a solution to the lack of a legal formulation regarding new marriage for the husband during *the 'iddah* period of the wife. As mentioned in the circular, ex-husbands who want to marry another woman are obliged to wait until *the 'iddah* period of the ex-wife's *'iddah* ends. This policy is once again proof of the right *ijtihad* of the Ministry of Religion. The reason is, if a man (ex-husband) marries another woman while the ex-wife's *'iddah* period is still ongoing, even though he still has the right of reference, it has the potential to cause covert polygamy. In this context, the husband is treated like *Shubhul 'iddah* (resembling *'iddah*), although he does not fully have *the period of 'iddah* like the former wife.

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Circular Letter of the Director General of Islamic Guidance of the Ministry of Religion No. P-005/DJ. III/HK.007/10/2021 concerning the regulations of *the 'iddah* period of the wife' contains constructive values as a strategic effort to maintain human dignity and strengthen the equality of relations between men and women in bearing the burden of post-divorce. Through the implementation of *'iddah* for women and *Syibhul 'iddah* for men, this policy serves as a control mechanism to prevent the practice of new marriages that have the potential to harm both parties. By requiring the waiting period until the end of *'iddah*, a balance of responsibilities is created after divorce, while affirming the commitment to upholding human values and gender justice in marriage law.

The case of *male 'iddah* is not a new problem faced by the systematics of marriage law that needs to be solved and given a solution that can be accepted by all parties both men and women, in the explanation of classical fiqh this concept is indeed somewhat less popular because there are very few cases that occur. However, Islamic law is not a law that will ignore such a situation.

With the marriage law in Indonesia which has adopted various laws to solve one of the legal problems like this, from the many differences of opinion regarding *Syibhul 'iddah*, the Directorate General of Islamic Community Guidance in this circular provides a regulation in the circular that states that men should also perform Iddah during *the 'iddah* period his wife was completed because there was a circular letter of the Director General of Islamic Guidance of the Ministry of Religion No. P-005/DJ. III/HK.007/10/2021 concerning the period of *'iddah* wife.

If we look at the position of the circular letter here has a role in filling the void of the law and harmonizing your classical fiqh and laws and regulations in the context of marriage registration.

Sociological Analysis

This circular is a product of complex social, cultural, and religious dynamics in Indonesian society. The obligation of *'iddah* that is only imposed on women is clearly a form of double burden. The double burden includes the burden of divorce itself and the burden of waiting during *the period of 'iddah*. Meanwhile, men are not required to undergo

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'*iddah* and are free to marry whenever they want. Inequality like this has the potential to increase violence against women, especially psychological and emotional violence. [5]

The implementation of this *sharia seminal* law is more social and psychological, from the parties. The reason men have to undergo the '*iddah* period if they want to marry the sister of a divorced wife is to resist the jealous turmoil that the divorced wife may feel. It will be a heavy burden for a divorced wife when after the divorce the husband immediately marries his own brother, especially the mental and psychological burden. The law in which *Mani syar'i* is applied is not only psychological but also social.

The application of the "*Iddah*" law which is only imposed on women while men are free from this obligation creates a systemic imbalance in the marriage law. If we look deeper, the philosophy of '*iddah* should serve as a time of mutual reflection for both parties, both husband and wife, to evaluate the divorce decision and consider the possibility of reconciliation. But in practice, when only women are bound by '*iddah* while men can remarry immediately, it actually raises various complex social and psychological problems.[6]

One of the most obvious impacts of this inequality is the emergence of a phenomenon that we can call "veiled polygamy". This situation occurs when a husband marries another woman during the *period of his ex-wife's 'iddah*. Formally, the husband is not in polygamous status because his first marriage has ended, but substantially, it is a form of polygamy that is hidden through legal loopholes. This kind of practice is actually contrary to the justice and wisdom behind the narration of '*iddah*. [7]

Veiled polygamy has layered adverse effects. *First*, from the psychological aspect, ex-wives who are still in the '*iddah* period' will experience double trauma. On the one hand, she has to go through the process of accepting a divorce, on the other hand she has to watch her ex-husband soon build a new household. *Second*, from an economic perspective, this practice often results in the neglect of the rights of ex-wives and children from the first marriage. *Third*, from a social point of view, this reinforces the patriarchal culture that positions men as having absolute rights in marriage.

Furthermore, the absence of the *period of 'iddah* for men creates space for various forms of covert violence. Structural violence occurs when the legal system actually

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facilitates gender injustice. Psychological violence appears in the form of emotional pressure that women have to bear. Meanwhile, symbolic violence is manifested through cultural justification that considers it natural for men to remarry quickly after divorce.

Because in the implementation of polygamy, not just anyone can do polygamy, there are certain rules and conditions that must be done if someone wants to have more than one wife (polygamy). Actually, these conditions are quite heavy, especially in terms of providing justice to his wives and economic factors.

If the law '*iddah* Also applied to men, it can create a period of calm and space for reflection for both parties. Thus, they have the opportunity to reflect on whether the divorce decision is really the best one. Such a mechanism also opens up opportunities for reconciliation if both parties wish to refer.^[8]

Another sociological factor that plays an important role in the birth of this circular is the transformation of family structure and gender relations in contemporary Indonesian society. Modernization, urbanization, and globalization have significantly changed traditional family structures and society's understanding of gender roles that initially seemed to dehumanize women.

If we discuss it in a traditional context, the concept of '*iddah* is understood in the framework of a patriarchal society where women have economic dependence on men. The obligation of '*iddah maintenance* is explicitly regulated in the Compilation of Islamic Law (KHI) article 149 letter b, which affirms that the husband is obliged to provide maintenance, maskan (residence), and kiswah (clothing) to the ex-wife during *the 'iddah* period, unless the wife has been sentenced to talaq ba'in or nusyuz. A problem that often arises in the reality of Indonesian society is the high case of neglect of this obligation by husbands.

Prof. Euis Nurlaelawati in his research found that around 60% of divorce cases in Indonesia face the problem of not fulfilling *the 'iddah* alimony, on the grounds of economic inability or intentional evasion of responsibility.^[9] This creates systemic gender injustices in the practice of Islamic family law in Indonesia.

Then with the issuance of the circular letter of the Director General of Islamic Community Guidance Number P-005/DJ. III/HK.00.7/10/2021 has brought a number of

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significant positive impacts in the context of the implementation of Islamic family law in Indonesia, especially related to the protection of women's rights in the divorce process. Be a breath of fresh air to women.

Juridical Analysis

Circular Letter of the Director General of Islamic Guidance Number P-005/DJ. III/HK.00.7/10/2021 is a form of response from the Directorate General of Islamic Community Guidance to the social and legal realities that are developing in the midst of the Indonesian Muslim community. One of the issues that is of concern is the status of a man who has imposed talaq on his wife, but the divorce decision from the religious court has not been inkrah (with permanent legal force). In practice, the man is considered not to have been officially divorced according to positive law, and therefore cannot legally carry out a new marriage contract in front of the Religious Affairs Office (KUA) officer. This condition is called the term *Shabhul 'iddah*, which is the state of a man who "resembles" the period of *'iddah* Perempuan, in the sense that he is still in a waiting period before being allowed to remarry legally and in accordance with the administration in the valid positive law.

The issuance of this Circular Letter aims to fill the legal gap in the practice of marriage registration at the Office of Religious Affairs (KUA) and will also provide operational clarity for the heads and officers at the KUA to respond to this. Where a man cannot remarry another woman before the end of his ex-wife's *'iddah* period, the aim is to prevent legal problems, namely the occurrence of covert polygamy because the divorced ex-wife is in the *'iddah* period, to prevent problems in the future, men here also have a waiting period to get married.

In the divorce process, the existence of a divorce certificate is a formal requirement that must be completed, even though talaq has been imposed religiously. Thus the marital status is still not completely terminated before the divorce certificate is issued by the religious court, in fiqh there is no prohibition that directly regulates men in *Iddah*. explanations and regulations about *male 'iddah* are indeed rarely discussed exclusively by scholars, because the case in this case is relatively less popular.

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The application for men is understood as a positive legal mechanism, not part of Islamic law which is tauqifi. Let's take for example in the case of marriage registration or polygamy requirements, this waiting period serves as a bridge between the provisions of sharia and the demands of state administration. Although there is no shari'i basis for '*iddah* for men', this concept still has a foothold in the framework of maqashid shari'ah

We can position that *Syibhul 'iddah* is a middle ground between the regulations in the classical fiqh tradition and the demands of adaptation to modernity and to ensure the orderliness of marriage administration in accordance with positive laws that require all people to register marriages that are legal according to the law, as well as to prevent legal conflicts in the future.

The application of *Syibhul 'iddah* shows a way of thinking forward in today's Islamic law that is able to meet the administrative needs of the modern state without abandoning the basic principles of Islamic law. The Circular Letter of the Director General of Islamic Guidance is proof of how religious authorities adapt the rules of classical fiqh to the needs of the current population administration system.

The Compilation of Islamic Law was ratified through Presidential Instruction No. 1 of 1991 dated June 10, 1991, and its implementation was regulated through the Decree of the Minister of Religion No. 154 of 1991 dated July 22, 1991, and disseminated through the Circular Letter of the Director of Development of the Islamic Religious Judiciary Agency No. 3694/EV/HK.003/AZ/91 dated July 25, 1991[11]

The compilation of Islamic Law is not produced through the legislative process of the House of Representatives as other regulations and laws are used as positive laws, but is the result of discussions by scholars initiated by the Supreme Court and the Ministry of Religion involving various Islamic universities in Indonesia and other components of society[12]

The enactment of Islamic law as a positive law for Indonesian Muslims who are the majority in this country is based on the philosophical, juridical and sociological values of the Indonesian nation. Therefore, the state is obliged to make Islamic law a positive law for Indonesian Muslims. Because basically the way of thinking, outlook on life, and character of all nations is reflected in their culture and laws.[13]

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What is considered by the scholars in giving a waiting period to the husband is only limited to two conditions, namely when he thinks of his wife and then wants to interfere with his wife, the husband is required to wait for his wife's *'iddah* period to be over, and the second condition is when a man has four wives and wants to marry for the fifth by divorcing one of his wives. then he has to wait like the *'iddah* period of the divorced wife.

The concept of *Syibhul 'iddah* began with the circulation of a circular that had been issued by the Ministry of Religion through the directorate general of Islamic community guidance Number D.IV/E.d/17/1979. It is an instrument or legal tool that specifically regulates the implementation of *the period of 'iddah* in the context of Islamic family law in Indonesia in 1979. This circular was issued as a further elaboration of the provisions contained in Law Number 1 of 1974 concerning Marriage, especially related to polygamy during *the 'iddah* period of wives and the waiting period for women who are experiencing divorce. After this circular was circulated for 41 years and it turned out that there was ineffectiveness in terms of the regulation of polygamy during *the 'iddah* period, this wife was addressed to the Office of Religious Affairs (KUA).

To overcome this matter, the Ministry of Religious Affairs through the Directorate General of Islamic Community Guidance issued a new circular and replaced the previous circular, namely. Circular Letter Number P-005/DJ. III/Hk.00.7/10/2021 regarding the husband's arrangement of the *'iddah* Wife's period, the more the concept of *Syibhul 'iddah* is strengthened with the circulation of this new circular, the position of the two circulars that the author has explained generally contain notices, appeals, or technical instructions regarding the procedures for the implementation of certain things that are considered important can also be in urgent circumstances, it can be said that the nature of the circular letter is a notification, explanations or instructions, not the regulations of the Law.[14]

Circulars are basically issued to clarify and clarify the legal norms that have been established in articles and paragraphs in a type of legislation. The content of this circular letter is only a notification and technical instructions for internal in an organization, not the content in general and can then provide sanctions. Although the SE is not directly binding, its practice can have a major effect on the actions and policies of the parties involved, and the relevant parties also often contain interpretations or explanations of existing laws, and

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the relevant parties tend to follow or take the guidelines from the Circular Letter to avoid consequences or sanctions that may arise in the future.

Ultimately, the legal force of a Circular depends on how the circular is recognized or adopted by the relevant institution or individual. If the relevant parties consider the Circular to be an important authority or guideline, then they may follow it in earnest, even though it does not have direct binding legal force.

This Circular Letter contains very important constructive values as a strategic step to strengthen the spirit of maintaining human dignity, while affirming equality between men and women in carrying out responsibilities after divorce. Although the text does not explicitly mention the period of *'iddah* for men, this circular indirectly indicates that the Ministry of Religious Affairs recognizes and provides instructions for the application of *'iddah* for men.

CONCLUSION

Based on the results of the research that has been carried out, it can be concluded that the circular letter of the Director General of Islamic Guidance of the Ministry of Religion No. P-005/DJ. III/HK.007/10/2021 which regulates the *'iddah* period, the wife contains very constructive values as a strategic effort to maintain human dignity and strengthen the equality of relations between men and women in bearing the burden that arises immediately after divorce. Through the implementation of *'iddah* for women and *Syibhul 'iddah* for men, this policy functions as a control mechanism to prevent the practice of new marriages that have the potential to harm the parties, especially the wife. By requiring a waiting period for the husband until the end of *the wife's 'iddah*, a balance of responsibilities after divorce is created, while affirming the commitment to upholding human values and gender justice in marriage law.

This circular is also a product of complex social, cultural, and religious dynamics in Indonesian society. The obligation of *'iddah* which is only imposed on women is clearly a form of double burden. The double burden includes the burden of divorce itself and the burden of waiting during *the period of 'iddah*. Meanwhile, men are not required to undergo *'iddah* and are free to marry whenever they want. Inequality like this has the potential to

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increase violence against women, especially psychological and emotional violence. Another sociological factor that plays an important role in the birth of this circular is the transformation of family structure and gender relations in contemporary Indonesian society. Modernization, urbanization, and globalization have significantly changed traditional family structures and society's understanding of gender roles that initially seemed to dehumanize women.

The issuance of this Circular Letter also aims to fill the legal void in the practice of marriage registration at the Office of Religious Affairs (KUA). in order to provide operational clarity for the heads and officers at the KUA in responding to the issue of marriage registration for a man who is in a state of waiting for his wife's iddah period. In addition to filling the legal void in the practice of marriage registration at the Office of Religious Affairs (KUA), the Circular Letter of the Director General of Islamic Guidance of the Ministry of Religion No. P-005/DJ. III/HK.007/10/2021 is an effort to bridge the provisions of classical fiqh with the needs of modern administration. Then we can position that *Syibhul 'iddah* is a middle ground between the regulations in the classical fiqh tradition and the demands of adaptation to modernity and to ensure the orderliness of marriage administration in accordance with positive laws that require all people to register marriages.

Some of the suggestions that the author wants to convey related to the research that the author has done are:

- 1) With this research, it is hoped that it can open and add insight for readers to answer problems related to the concept of *Syibhul 'iddah* in the Circular Letter of the Director General of Islamic Guidance of the Ministry of Religion No. P-005/DJ. III/HK.007/10/2021.
- 2) In terms of the concept of *Syibhul 'iddah* experienced by men, the author's suggestion is to provide socialization carried out by the KUA to provide understanding in the regulations of the Circular Letter of the Director General of Islamic Guidance of the Ministry of Religion No. P-005/DJ. III/HK.007/10/2021 regarding the regulations of this wife's *'iddah* period.

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- 3) If we look at the circular letter of the Director General of Islamic Guidance of the Ministry of Religion No. P-005/DJ. III/HK.007/10/2021 concerning the regulations of the *'iddah* period of wife. It is a product of the settlement of the legal dynamics issued by the Ministry of Religion. It is also necessary to provide socialization and in-depth understanding to KUA officials or within the scope of the general public
- 4) In this study, the author is aware that the research conducted by the author is certainly not free from errors and shortcomings, therefore the author is willing to accept suggestions or criticisms of the research that the author conducts.

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