

ANALYSIS OF SIGLI SYARIAH COURT JUDGES' OPINION ON EX-HUSBAND'S MARRIAGE DURING THEIR EX-WIFE'S IDDAH PERIOD



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Abstract

This research aims to answer the analysis of the Sigli Syariah Court Judge's views on Circular Letter of BIMAS Ministry of Religious Affairs of Indonesia (*Surat Edaran BIMAS Islam Kementerian Agama RI*) on Marriage During the Wife's Iddah Period. In 2021, the Islamic Community Guidance of the Indonesian Ministry of Religion issued Circular Letter Number: P – 005/DJ.III/Hk.00.7/10/2021 concerning Marriage During the Wife's Iddah Period. In the provisions of letter E number 3 of the Circular Letter, it is stipulated that a man's ex – husband can marry another woman after his ex – wife's *iddah* period has been completed because it is feared that covert polygamy will occur. Interestingly, in the statutory provisions, there are no provisions relating to the prohibition on a man's ex – husband marrying another woman while he is still in his ex – wife's *iddah* period. This research is empirical legal research with a qualitative approach, and data collection in this research uses observation, interview techniques, and then analysis. This research found that, in Islamic law, there is no provision for an iddah period for men, and a man does not have to wait for the end of his ex – wife's iddah period if he wants to marry another woman. Sigli Syariah Court Judge argued that the Circular Letter No. P – 005/DJ.III/Hk.00.7/10/2021 is in line with the *al – masalah al-ammah* theory because it contains beneficial values and aims to avoid hidden polygamy. The value of the benefits contained in the circular letter will be properly realized if formal laws are followed.

Penelitian ini bertujuan menjawab bagaimana analisa pandangan Hakim Mahkamah Syariah Sigli terhadap S.E. BIMAS Islam KEMENAG tentang Pernikahan Dalam Masa Iddah Istri. Pada tahun 2021, Bimbingan Masyarakat Islam Kementerian Agama RI mengeluarkan Surat Edaran Nomor: P-005/DJ.III/Hk.00.7/10/2021 tentang Pernikahan Dalam Masa Iddah Istri. Pada ketentuan huruf E angka 3 Surat Edaran tersebut diatur bahwa laki-laki bekas suami dapat melakukan pernikahan dengan perempuan lain apabila telah selesai masa iddah bekas istrinya karena dikhawatirkan akan terjadi poligami terselubung. Menariknya, dalam ketentuan perundang-undangan tidak ada ketentuan terkait larangan bagi laki-laki bekas suami menikah dengan perempuan lain ketika masih dalam masa iddah bekas istri. Penelitian ini merupakan penelitian hukum empiris dengan pendekatan kualitatif, dan pengumpulan data dalam penelitian ini menggunakan teknik observasi, wawancara, dan selanjutnya dianalisis. Penelitian ini menemukan bahwa, dalam hukum Islam tidak ada ketentuan masa iddah bagi laki-laki dan seorang laki-laki tidak harus menunggu selesai masa iddah mantan istrinya jika ingin menikah dengan perempuan lain. Hakim Mahkamah Syariah Sigli berpandangan bahwa Surat Edaran Bimas Islam Kemenag RI No. P-005/DJ.III/Hk.00.7/10/2021 sejalan dengan teori al-maslahah al-ammah karena mengandung nilai manfaat dan bertujuan menghindari terjadinya poligami terselubung. Nilai manfaat yang terkandung dalam surat edaran tersebut akan terealisasi secara baik jika diikuti dengan hukum formil.



INTRODUCTION

Marriage is part of human nature and promises to live together in joy and sorrow. Every human wants to have harmonious family, *sakinah*, *mawaddah*, and *rahmah*. This marriage objective is in line with the definition of marriage according to Law of the Republic of Indonesia Number 1 of 1974 concerning marriage, namely the spiritual and physical bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the belief in the Almighty God.¹ The purpose of marriage is strengthened by Article 3 of the Compilation of Islamic Law, which reads, "Marriage aims to create a domestic life with the value of *sakinah*, *mawaddah*, and *rahmah*." Even though marriage's objectives is to form an eternally happy family, travel and historical facts show that not all marriages appropriate with the goals they want to achieve, considering that reality shows that there are very many married couples whose marriages are forced to end midway.² Divorce is an act that is permitted in Islam but Allah hate divorce, as the Prophet Muhammad SAW said:

عَنْ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا قَالَ : قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَبْعَضُ الْخَلَالِ عِنْدَ اللَّهِ الطَّلَاقُ (رَوَاهُ أَبُو دَاوُدَ, وَابْنُ مَاجَهَ)³

"From Ibn Umar Radliyallaahu 'anhu, Rasulullah Sallallaahu 'alaihi wa Sallam said: "The lawful act that Allah hates most is divorce." (History of Abu Dawud and Ibn Majah).

One of the legal consequences of divorce is the existence of an *iddah* period for divorced women. The *iddah* period is the waiting period for a woman (wife) to remarry after a divorce from her husband, whether a live divorce or a dead divorce. The aim is to find out the condition of her uterus or to think about it for her husband.⁴ The legal basis for *iddah* is the word of Allah in the Al – Qur'an surah al – Baqarah verse 228:

وَالْمُطَلَّاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ ۚ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنُنَّ بِاللَّهِ وَالْيَوْمِ
الْآخِرِ ۚ وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا ۚ وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ ۚ وَلِلرِّجَالِ عَلَيْهِنَّ
دَرَجَةٌ ۗ وَاللَّهُ عَزِيزٌ حَكِيمٌ

"Divorced women should refrain (wait) three times of quru'. They should not hide what Allah created in their wombs if they believe in Allah and the Hereafter. Her husbands also have the right to refer her during the waiting period if they want Ishlah. And women have rights that are balanced with their obligations in a ma'ruf manner. However, husbands have one level of advantage over their wives. And Allah is All – Mighty, All – Wise."

A woman who is undergoing a period of *iddah*, whether in the form of *iddah* divorce or due to the death of her husband, is prohibited from remarrying another man. This prohibition is explained in Surah al – Baqarah, Verse 235:

¹ Muhammad Amin Summa, *Hukum Keluarga Islam di Dunia Islam* (Jakarta: PT Rajagrafindo Persada, 2004), 46.

² Muhammad Amin Summa, *Hukum Keluarga Islam di Dunia Islam*, 101.

³ al Hafidz Ibnu Hajar al Asqolani, *Bulughul Maram min Adillatil Ahkam* (Makkah: al Haramain, tt.), 231.

⁴ Abdul Aziz Dahlan, *Ensiklopedia Hukum Islam 2 Cet Ke-VII* (Jakarta: Ichtiar Baru Van Hoeve, 2006), 637.

وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا عَرَّضْتُمْ بِهِ مِنْ خِطْبَةِ النِّسَاءِ أَوْ أَكْنَنْتُمْ فِي أَنْفُسِكُمْ ۖ عَلِمَ اللَّهُ أَنَّكُمْ سَتَذْكُرُونَهُنَّ وَلَكِنْ لَا تُؤَاعِدُوهُنَّ سِرًّا إِلَّا أَنْ تَقُولُوا قَوْلًا مَعْرُوفًا ۖ وَلَا تَعْزِمُوا عُقْدَةَ النِّكَاحِ حَتَّى يَبْلُغَ الْكِتَابُ أَجَلَهُ ۚ وَاعْلَمُوا أَنَّ اللَّهَ يَعْلَمُ مَا فِي أَنْفُسِكُمْ فَاحْذَرُوهُ ۚ وَاعْلَمُوا أَنَّ اللَّهَ عَفُورٌ حَلِيمٌ

"And there is no sin for you in proposing to these women with innuendo or hiding (the desire to marry them) in your heart. Allah knows that you will mention them, so do not make promises of marriage to them in secret, except to say good words to them. And do not make azam (resolve) to enter into marriage before the end of the 'iddah. And know that Allah knows what is in your heart; so fear Him, and know that Allah is Forgiving, Most Forgiving."

If a wife is divorced by a divorced husband and the husband still has the right to reconcile with his ex – wife, then the iddah period is for the husband to think again about whether he will return as husband and wife. If the ex – husband believes that he is able to face or reunite his married again, then he is allowed to refer his wife back during the iddah period. On the other hand, if a husband thinks that it is impossible to continue married life again, he must let go of his ex – wife well and not prevent his ex – wife from marrying another man.⁵ The concept of iddah in the Compilation of Islamic Law is contained in Article 153, paragraph (1), namely, "For a wife whose marriage breaks up (divorce), a waiting period (iddah) applies to her except qabla al – dukhul (before sexual intercourse), and her marriage breaks up not because of the husband's death." The meaning of qabla al dukhul is a wife who is divorced, either divorced by death or divorced by divorce, and had not sexual intercourse yet, so she doesn't need to observe the iddah period. The provisions for the iddah period are also explained in Article 11 of Law No. 1 of 1974 concerning marriage, which is further regulated in Article 39 of Government Regulation No. 9 of 1975. (1) The waiting time for a widow, as intended in Article 11 paragraph (2) of Law No. 1 of 1974 concerning marriage, is determined as follows:⁶

1. If the marriage is dissolved due to death, the waiting period is set at 130 (one hundred and thirty) days.
2. If the marriage is broken up due to divorce, the waiting time for those who still have their period is set at three (three) sacred times with at least 90 (ninety) days, and for those who do not have their period, it is set at 90 (ninety) days.
3. If the marriage breaks up and the widow is pregnant, a waiting period is set until she gives birth.
4. When the iddah period has ended, there is no prohibition on decorating oneself, making proposals, or even holding a marriage contract.

The *iddah* period is only intended for women whose marriage ends either due to divorce or the death of their husband, and for men, there is no iddah period after divorcing their wife. One of the lessons of the iddah period for post – divorce women is to ascertain their *nasab* (family lineage) if there is a fetus in their womb. The strictness of family lineage order in Islam is the most important thing. Therefore, all provisions to avoid chaos in the lineage of human descendants are strictly stipulated in the Al – Qur'an and Sunnah; among these provisions is a prohibition on women marrying several men at close quarters or at the same time.⁷

⁵ Chuzaiman T. Yanggo, *Problematika Hukum Islam Kontemporer Cet I* (Jakarta: PT. Pustaka Firdaus, 1994), 230.

⁶ Peraturan Pemerintah Republik Indonesia Nomor 9 Tahun 1975 tentang pelaksanaan UU No 1 Tahun 1974 tentang Perkawinan.

⁷ Kamal Muhtar, *Azaz-azaz Hukum Islam Tentang Perkawinan* (Yogyakarta: Bulan Bintang, 1993), 230.

Islamic Community Guidance In 2021, the Ministry of Religion of the Republic of Indonesia issued Circular Letter Number P–005/DJ.III/Hk.00.7/10/2021 concerning Marriage During the Wife's Iddah Period. In the provisions of letter E number 3 of the Circular Letter, it is stipulated that a man who is a former husband can marry another woman if his ex–wife's iddah period has finished. Furthermore, in the provisions of letter E number 5, it is stipulated that a man who is an ex–husband who has married another woman while still in his ex–wife's iddah period and wants to reconcile with his ex–wife must obtain permission for polygamy from the Court. Interestingly, Law No. 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI, *Kompilasi Hukum Islam*) does not contain any provisions regarding the prohibition on a man's ex–husband marrying another woman while still in his ex–wife's iddah period. The *iddah* period is regulated by the marriage law. The iddah period for women who terminate their marriage also written in KHI.

METHOD

This research uses a qualitative research approach. Qualitative research aims to explore, build propositions, or explain reality. This type of research includes empirical juridical research, namely case study legal research because the problems studied are in a particular area and time. This research was conducted at the Sigli Syariah Court, class I–B, Pidie Regency, Nanggroeh Aceh Darussalam Province. The source of information determined in this research is Adeka Candra, Lc, M.H. (Sigli Sharia Court Judge), Drs. Adam Muis (Judge of the Sigli Sharia Court), Dra. Hj. Zuhrah, M.H. (Sigli Sharia Court Judge), and Dra. Rubaiyah (Judge of the Sigli Sharia Court). Data collection techniques were carried out using observation, interviews, and document studies. The stages of data processing and analysis are editing, classification, verification, and analysis.

RESULTS AND DISCUSSION

Men's Marriages During the Wife's Iddah Period, According to Islamic Law

Iddah is an Arabic word; it is derived from the root '*adda-ya'uddu-'iddatan*, and the plural form of this word is '*idad*, which in its etymology means "*to count*" and "*calculation*". This word is used to mean *iddah* because, during that period, the woman who is iddah waits for the passage of time.⁸ Arso Sastroadmojo, in his book "Indonesian Marriage Law," explains the meaning of iddah as follows: "iddah is a period during which the widow concerned is not allowed to marry and is even prohibited from accepting proposals or proposals to determine the fate of the widow's womb if she becomes pregnant. And also as a mourning period if the husband dies and to determine the reconciliation period for the husband if the divorce is in the form of a talak raj'i."⁹ According to Basyir, '*iddah* is the waiting period for women who have died or divorced from their husbands to allow them to remarry with another man.¹⁰ Meanwhile, according to Azzam, '*iddah* means the days of a woman's purity towards her husband.¹¹ Another opinion says that iddah, in terms

⁸ Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia Antara Fiqh Munakahat Dan Undang Undang Perkawinan* (Jakarta: Kencana, 2007), 303

⁹ Arso Sastroadmojo, *Hukum Perkawinan Islam di Indonesia*, Cet. III (Jakarta: Bulan Bintang, 1981), 70

¹⁰ Ahmad Azhar Basyir, *Hukum Perkawinan Islam* (Yogyakarta: UII Press, 2007), 9

¹¹ Abdul Aziz Muhammad Azzam dan Abdul Wahhab Sayyed Haawwas, *Fiqh Munkahat Khitbah Nikah dan Talak* (Jakarta: Amzah, 2009), 318

of terminology, is a waiting period for women to marry after a divorce from their husband, whether a live divorce or a death divorce, with the aim of finding out the condition of her womb or thinking about her husband.¹² There are three types of *iddah*: *iddah* period by considering its *quru`* or *iddah* using a month count, and *iddah* by the condition of pregnancy.¹³ First: *iddah* period by considering its *quru`*. There are several reasons for this *iddah*, but the most important are three, namely:

1. Divorce in a marriage law is the same as being caused by divorce or without divorce. *Iddah* in this condition is required because it ensures that the woman's womb is clean from fetus.
2. Divorce: in a marriage that is considered broken, the marriage is considered according to the judge's decision. The condition is that there is sexual intercourse; this opinion is argued by a number of muslims scholars except Malikiyah.
3. *Wathi`* with *syubhat*: the meaning of *syubhat* is sexual relations that take place between a man and a woman who are not bound by marriage, but at the time of the sexual relations, each person believes that the person they are having sex with is their legitimate partner. This incident does not destroy a marriage with a legal husband; it's just that women who have performed *wathi`* *subhat* must do their *iddah*. Each of them believes that the person they are dating is their legitimate partner. This incident does not destroy a marriage with a legal husband; it's just that women who have performed *wathi`* *syubhat* must undergo *iddah*.

Second: *iddah* period by counting month; this has two parts. It is mandatory in place of menstruation., while the other parts are mandatory because of the month count itself. The *Iddah* that is obligatory instead of menstruation by counting months is the *Iddah* of young children and older women, as well as women who do not menstruate at all after *talaq*. The third is the *iddah* period by considering pregnancy, the calculation is the period of pregnancy. The reasons why *iddah* is obligatory are divorce and death. This aims to prevent people from mixing; in more subtle words, a man cannot water other people's plants. Regarding the obligatory conditions, pregnancy is the result of a valid or broken marriage because a broken marriage causes *iddah*. The provisions for the *iddah* period are regulated in Article 11, paragraph 1 of Marriage Law Number 1 of 1974, which states that "for a woman who terminates her marriage, a waiting period is applied." In Government's Regulation No. 9 of 1975, the waiting period is explained in Article 39:

1. The waiting time for a widow, as intended in Article 11 paragraph (2) of Marriage Law Number 1 of 1974, is determined as follows:
 - a. If the marriage is dissolved due to death, the waiting period is set at 130 (one hundred and thirty) days.
 - b. If the marriage is broken up due to divorce, the waiting time for those who still have their periods is set at 3 (three) sacred times with at least 90 (ninety) days, and for those who do not have their periods, it is set at 90 (ninety) days.
 - c. If the marriage breaks up and the widow is pregnant, a waiting period is set until she gives birth.
2. There is no waiting time for widows who break up their marriage due to divorce, while the widow and her ex – husband have never had sexual intercourse.

¹² Harun Nasution, *Ensiklopedia Islam* (Jakarta: letar Van Hoeve, 1999), 144.

¹³ Sayyid Sabiq, *Fikih Sunnah*, terj. Muhyiddin Syah (Bandung: PT. al – Ma'arif, t.t), 421 – 422

3. For marriages that are dissolved due to divorce, the waiting period is calculated from the date of the Court's decision, which has permanent legal force. For marriages that are dissolved due to death, the waiting period is calculated from the death of the husband.

During the *iddah* period, it is permissible for the husband to return to his wife; this is explained in the Compilation of Islamic Law Articles 163 and 164, namely:

Article 163:

1. A husband can refer to his wife in the 'iddah period.
2. Referrals can be made in cases of:
3. Dissolution of marriage due to divorce, except for those that have occurred three times or divorce imposed by *Qabla al-Dukhul* (before sexual intercourse).
4. Dissolution of a marriage based on a court decision for reasons of zina and khulu.

Article 164:

A woman in *Iddah* period because of *Talak Raj'i*, has the right to submit an objection to her ex-husband's wishes for reconciliation before a marriage registrar officer, witnessed by two witnesses.

The purpose of the *Iddah* period is as follows:

1. For divorce between husband and wife who have mixed up, *iddah* is held to know the emptiness of the womb. Knowing the emptiness of the uterus is very important to ensure that the ex-husband does not leave seed. This aims to ensure that there is no mix-up or chaos at the birth of children.
2. Marriage is a very strong bond or *mistaqan ghalizhan*; therefore, efforts must be made to prevent this marriage from breaking up. In this part of the *iddah*, the aim is for the husband and wife to think about continuing their marriage (reconciliation).
3. In a divorce, *iddah* is a period of mourning for the death of the husband.
4. To show how important the issue of marriage is in Islamic teachings. Marriage is a very important event in human life and is a valid way to fulfill life's instinctive desires. At the same time, it is a type of worship for Allah that should not be easily decided. Therefore, marriage is an event in human life that must be carried out maturely; think about it before implementing it, and think about it carefully if you have to divorce.

According to Ibnu Abidin, *iddah* is a specialty among women. Although there are certain conditions, a man also has a waiting period; it is not halal to marry unless the *iddah* period of the woman he divorces has expired. A man has a waiting period if he has four wives, and one of them is divorced through *talak raj'i*. The man cannot marry until the *iddah* period of the wife who was divorced by *talak raj'i* is over. This is because he can carry out polygamy beyond the limits stipulated in Islam, namely four women (including women who have been divorced through *talak Raj'i*) plus women who he married before the *iddah* period of the woman who was divorced through *talak raj'i* expires. Likewise, if someone divorces a wife through *talak raj'i*, then he wants to marry her sister or his wife's aunt.¹⁴ Previous scholars made it mandatory for women to carry out *iddah*, whether their husbands had died due to divorce, *fasakh* (annulment of marriage), separation after a broken marriage, or after dubious sexual relations. There is no significant difference in the determination regarding the implementation of *iddah*; the majority of scholars

¹⁴ Abdul Aziz Muhammad Azzam, dan Abdul Wahhab Sayyed Hawwas. *Fiqh Munakahat (Khitbah, Nikah Dan Talak)*, 318.

determine it for women.¹⁵ As the Messenger of Allah said, "Talak is a man's right, while iddah is imposed on a woman."

Iddah for men exists in two conditions: first, if a man divorces his wife and he wants to marry someone who is not allowed to have polygamy between the first wife and her female relatives, such as sisters. In this case, he is not allowed until the iddah of the first wife, whose mahram ties with the second wife – to – be, is completed. Second, he married his fifth wife during the iddah period of his fourth wife, whom he divorced. So, he is not allowed to marry a fifth wife until the iddah period of the divorced wife is over.¹⁶ Wahbah Zuhaili adds one condition: a man cannot immediately marry a woman who has been divorced three times (irrevocable married) before *tahlil* or before another man marries her, known as *muhallil*. A man does not have Iddah in terms of terms, so they can marry immediately after a divorce, as long as there are no Sharia – based obstacles, such as marrying someone who is not allowed to be together, such as an aunt, sibling, etc.¹⁷ The time limit that men must undergo in these iddah activities is the same as the proportion of iddah undertaken by women. Because of the iddah that men undertake because of the *mani' syar'i*, which causes them to have to carry out iddah activities that depend on the iddah of women, *Mani' syar'i*, which is the reason why iddah is mandatory for men, is: Firstly, in Islam, it is not permissible to marry two mahram women in one marriage, as was the case before Islam (an – Nisa 22 – 23). Second, Islam limits the polygamous marriage model to four women, as written in the Quran Surah An – Nisa.¹⁸

Analysis of Sigli Syariah Court Judges' Opinions Regarding Men's Marriages During the Wife's Iddah Period

In 2021, the Directorate General of Islamic Community Guidance Number: P005/DJ.III/Hk.00.7/10/2021 issued a circular letter containing the issue of marriage during the wife's Iddah period. This circular letter is addressed to the heads of the Ministry of Religious Affairs in regional offices throughout Indonesia. In Circular Letter Number: P005/DJ.III/Hk.00.7/10/2021 concerning Marriage During the Wife's Iddah Period, there are 5 points in the provisions section as follows:

1. For men and women who are widowed or divorced, if they want to remarry, they must include an extract from the divorce certificate from the Court that has been declared *inkrah*. The marriage cannot be registered if there is no divorce certificate.
2. The wisdom of *iddah* period in divorce is to give the married couple time to think clearly. Hopefully, they will find peace and rethink the opportunity to return. Allah hates divorce, so it is hoped that the iddah can be used as a time to think again because, during the iddah period, husband and wife can still reconcile without a new contract.
3. The ex – husband is permitted to remarry another woman after his ex – wife's *iddah* period has ended. Men do not have an iddah period, but it would be better if he waited for his wife while rethinking his decision so that the separation was truly based on the best decision.

¹⁵ Abd al – Qadir Manshur, *Buku Pintar Fikih Wanita* (Jakarta: Zaman, 2009), 126.

¹⁶ Abu Bakar bin Muhammad al – Dimyati, *I'arah al-Talibin, juz 4* (Libanon: Dar al – Ihya al Turas al – Arabi), 59

¹⁷ Wahbah Zuhaili, *Al-Fiqh al-Islam Wa Adillatuhu* (Damaskus: Dar al – Fikr, 1996), 536.

¹⁸ Candra Sabtia Irawan, *Monogami atau Poligami?* (Yogyakarta: An Naba', 2007), 65

4. If a former husband marries another woman during his ex – wife's iddah period, then this could potentially lead to hidden polygamy because the ex – husband could refer to his ex – wife. Covert polygamy is a person's second marriage, where he covers up the event so as not to be discovered. Therefore, the husband should wait for his wife's iddah to be completed first.
5. If an ex – husband has cheated on another woman during his ex – wife's iddah period, if he wants to return to his ex – wife, he must apply for a polygamy permit from the PA.

Based on the Circular Letter of the Director General of Islamic Guidance of the Ministry of Religious Affairs Number: P005/DJ.III/Hk.00.7/10/2021 concerning Marriage During the Wife's *Iddah* Period above, the judges of the Sigli Sharia Court have opinions which are generally divided into 2 opinions, namely accepting the circular letter and disagreeing the circular letter. The judge who agreed the circular letter was based on the beneficial values contained in the provisions regarding a man's marriage during the wife's *iddah* period. The benefit in question is to prevent hidden polygamy from occurring, which could be detrimental to women. Indonesian legal provisions regarding marriage adhere to the principle of monogamy, as stated in Article 3, paragraph 1 of Law No. 1 of 1974 concerning Marriage. Through the provisions that regulate the reasons for men who wish to submit polygamy to the Court as contained in Articles 3, 4, and 5 of the Marriage Law, it can be concluded that the legal provisions in Indonesia make it difficult for the practice of polygamy for its citizens. One of the administrative requirements for marriage registration for prospective brides and grooms who are widowers is a divorce certificate or a quote from the divorce registration book. This administrative requirement is regulated in Article 4 Paragraph (1) Letter (m) of Minister of Religious Affairs Regulation Number 20 of 2019, which regulates that: "Divorce certificate or quote divorce registration book or divorce registration book for those whose divorce occurred before the enactment of Law No. 7/1989 concerning Religious Courts". In this article, there is no explanation regarding the divorce certificate, which must be given to have permanent legal force (*Inkracht*) or have legal force after the wife's *iddah* period is ended, so the circular provides an explanation and fills the legal vacuum regarding its use.

In Islamic law, the theory of *al-maslahah al-ammah* is related to the concept of Sharia objectives.¹⁹ This concept is aimed looking at the public's interests of society and functions to provide benefits and prevent evil.²⁰ In the understanding of Islamic law,²¹ the presence of law is an effort to enforce benefits and eliminate evil, which is better known as the expression "لجلب المصالح و لدفع المفاسد," and at the same time, the presence of law is to usher in happiness in this world and the hereafter. Circular Letter of the Director General of Islamic Guidance at the Ministry of Religious Affairs Number: P005/DJ.III/Hk.00.7/10/2021 concerning Marriage During the Wife's *Iddah* Period is in line with the *al-maslahah al-ammah* theory because it contains beneficial values and aims to avoid the occurrence of

¹⁹ Syukriya Husni et al., "Determination of Nasab of Children Outside of Marriage in the Islamic Legal System: The Role and Decisions of Religious Courts in Indonesia," *Hakamain: Journal of Sharia and Law Studies* 3, no. 1 (October 2024): 26 – 36, <https://doi.org/10.57255/hakamain.v3i1.332>.

²⁰ Muhammad Muslehuddin, *Filsafat Hukum Islam dan Pemikiran Orientalis* (Yogyakarta: Tiara Wacana Yogya, 1991), 127.

²¹ Salman Alfarisi and M Khairul Arwani, "A Critical Analysis of the Inconsistencies in Amina Wadud Gender Equality Movement in the Islamic World," *Hakamain: Journal of Sharia and Law Studies* 3, no. 1 (October 2024): 37 – 47, <https://doi.org/10.57255/hakamain.v3i1.323>.

evil, namely hidden polygamy. The covert polygamy referred to above will certainly damage administrative order in registering marriages in Indonesia.

Meanwhile, the judge's view was that he disagree with the substantiation of the Circular Letter above based on the fact that, in the provisions of point 5 of the Circular Letter of the Director General of Islamic Guidance, Ministry of Religious Affairs Number: P005/DJ.III/Hk.00.7/10/2021 concerning Marriage During the Wife's *Iddah* Period, it regulates the permission of polygamy to the Religious Court for ex – husbands who have married other women during their ex – wife's iddah period and want to return to their ex – wife. Such provisions should be followed by the issuance of a formal law for the Religious Courts regarding the issue of polygamy permits for ex – husbands who have married other women during their ex – wife's iddah period and wish to return to their ex – wife. In carrying out their competence, the Religious Courts are, of course, based on formal and material legal sources in providing justice values in every case resolution, including polygamy permits. With the formal law not yet being issued for the Religious Courts regarding the issue of polygamy permits for ex – husbands who have married other women during their ex – wife's iddah period and wish to return to their ex – wife, the provisions of point 5 of the Circular Letter of the Director General of Islamic Guidance of the Ministry of Religious Affairs Number: P005/DJ.III/Hk.00.7/10/2021 concerning Marriage During the Wife's *Iddah* Period has not yet been implemented in the Religious Courts. Therefore, Religious Courts might realize the value of the benefits contained in the circular letter properly by implementing formal laws such as the Law or the Supreme Court Circular regarding polygamy permits as referred to in the provisions of point 5 of the Circular Letter of the Director General of Islamic Guidance, Ministry of Religious Affairs Number: P005/DJ. III/Hk.00.7/10/2021.

CONCLUSION

In Islamic law, the provision of Iddah period only intended for women who have terminated their marriage. However, there are also iddah provisions for men in two conditions. First, if a man divorces his wife and he wants to marry someone who is not allowed to have polygamy between the first wife and her female relatives, such as sisters. So he is not permitted until the iddah period of the first wife and the mahram ties with the second wife are finished. Second, he married his fifth wife during the iddah period of his fourth wife, whom he divorced. In this condition, he is not allowed to marry a fifth wife until the iddah period of the divorced wife is over. Circular Letter of the Director General of Islamic Guidance at the Ministry of Religious Affairs Number: P005/DJ.III/Hk.00.7/10/2021 concerning Marriage During the Wife's Iddah Period is in line with the al – masalah al – ammah theory because it contains beneficial values and aims to avoid the occurrence of evil, namely hidden polygamy. The existence of hidden or covert polygamy will certainly damage administrative order in registering marriages in Indonesia. The value of the benefits contained in the circular letter will be well realized if it is followed by formal law such as the Law or the Supreme Court Circular regarding polygamy permits for ex – husbands who have married other women during their ex – wife's iddah period and want to return to their ex – wife as stated in provisions of point 5 of the Circular Letter of the Director General of Islamic Guidance of the Ministry of Religious Affairs Number: P005/DJ.III/Hk.00.7/10/2021.

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