

DIALECTICS OF LEGISLATION AND MAQASID SYARI'AH IN THE NARRATIVE OF IDDAH AND IHDAD FOR CAREER WOMEN

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Abstract

This paper discusses the concepts of ihdad and iddah for career women from the perspective of well-known scholars through the teachings of ijihad which are manifested in fiqh. The meaning of iddah and ihdad which emphasizes refraining during the idah period from decorating and wearing perfumes for wives who are divorced due to death or divorce which has been carried out since pre-Islamic times. The times and technological sophistication have opened new horizons, marked by corrections and formulations of applicable, adaptive, and humanist conceptions of fiqh for the present. The conceptions of ihdad and iddah for self-restraint, isolation and contemplation generally clash with current facts concerning the position of career women who demand extra work to meet the necessities of life. This demand requires women to always look attractive and maintain interactions with anyone, including the opposite sex and must be active outside the home to support finances and careers. Through the maqasid ash-shari'ah approach the author tries to unravel the two poles above so that the concept of fiqh can still be applied in the present era without negating individual and social rights. The results of this study indicate that ornamentation is considered an intermediary that can lead to an encouragement in the form of a marriage goal during the iddah period, which if the main purpose of ihdad can be eliminated by reasoning and emergency arguments, then the law of intermediary follows.

Keywords: *Ihdad, Iddah, Career Women, Preening, Divorce*

Abstrak

Tulisan ini membahas tentang konsep ihdad dan iddah bagi wanita karier dalam kacamata ulama masyhur melalui ajaran ijihadnya yang termanifestasikan dalam fikih. Makna iddah dan ihdad yang menekankan pada menahan diri selama masa idah dari berhias dan memakai wangi-wangian bagi istri yang dicerai karena kematian atau ditalak yang telah dijalankan sejak masa sebelum Islam. Perkembangan zaman dan kecanggihan teknologi telah membuka cakrawala baru, ditandai dengan adanya koreksi serta perumusan konsepsi fikih yang aplikatif, adaptif, dan humanis untuk masa sekarang. Konsepsi ihdad dan iddah untuk menahan diri, isolasi dan berkontemplasi secara umum berbenturan dengan fakta kekinian menyoal posisi wanita karir yang menuntut bekerja ekstra untuk memenuhi kebutuhan hidup. Tuntutan ini mengharuskan wanita selalu berpenampilan menarik serta menjaga interaksi dengan siapapun, termasuk lawan jenis serta harus beraktifitas di luar rumah untuk menunjang finansial dan karirnya. Melalui pendekatan maqasid ash-shari'ah penulis mencoba

mengurai dua kutub di atas sehingga konsep fiqh masih dapat diaplikasikan di era kekinian tanpa meniadakan hak-hak individu dan sosial. Adapun hasil dari penelitian ini menunjukkan bahwa berhias dianggap perantara yang dapat menimbulkan dorongan berupa tujuan pernikahan pada masa iddah, yang jika tujuan utama ihdad dapat dieliminir dengan argumentasi hajat dan darurat, maka hukum perantara mengikuti.

Kata Kunci: Ihdad, Iddah, Wanita Karier, Bersolek, Talak

Introduction

Pre-Islamic Arab society had implemented legal practices known as iddah and ihdad which meant refraining during the iddah period from adorning and wearing perfume for wives who were divorced due to death or divorce. In practice, women who have just died from their husbands or even other family members must isolate themselves in a separate room for a whole year. During this period of exile, women are not allowed to wear perfume, cut their nails, comb their hair and change clothes. If illustrated in a hadith, the body odor of the woman who had ihdad was so bad that no one dared to approach her. If he leaves the room, the crows will immediately attack him because of the stench he emits (Susilo, 2016).

In this regard, Islam is present in an effort to regulate this practice fairly by determining and reducing the periods of iddah and ihdad which have been carried out since pre-Islamic times. However, as times have developed which have resulted in differences in the social conditions of society between the past and the present, with the future with technological sophistication opening new horizons, there are corrections and formulation of applicable, adaptive and humanistic conceptions of jurisprudence for the present. Iddah and ihdad in practice require women to avoid social interactions and activities that can attract the attention of men, such as dressing up, making decorations, and so on because they are considered to be an intermediary for marriage during the iddah period, which is prohibited by law. This is in direct conflict with the current facts about career women which require women to work extra to make ends meet.

This demand requires women to always look attractive and maintain interactions with anyone, including the opposite sex, and must carry out activities outside the home to support their finances and career. Two facts regarding the clash of classical fiqh concepts with contemporary conditions, which in this case are career women, are the object of interesting discussion to find a solution through the lens of maqasid ash-shari'ah so that the concept of fiqh can still be applied in the contemporary era without eliminating individual rights and social.

METHODOLOGY

This research was conducted using a legal research research approach. The object of the research is the enactment or implementation of the law studied in this research, which is related to the extent to which legislation and maqasid shari'ah are implemented in the narrative of iddah and ihdad for career women. This research will examine the challenges and opportunities for implementing this policy well. The problem approach used by the author is an exploratory approach. The exploratory approach aims to deepen knowledge about a particular phenomenon, or to get new ideas about that phenomenon. An exploratory approach is generally carried out on knowledge that is still new, there is not much information about the problem being studied, or even none at all (Amirudin and Zainal Asikin, 2012: 25). Exploratory qualitative research is generally qualitative research that tends to be more open to using various types of evidence and discovering new problems.

DISCUSSION

Iddah and its Scope

According to language, the word Iddah comes from the word al-'adad. Meanwhile, the word al-'adad is the masdar form of the verb 'adda-yauddu which means to count. The word al-'adad means the measure of something that is counted and the amount. The plural form of the word al-'adad is ala'dad as well as the plural form of the word Iddah is al-'idad. Etymologically, it means: "to count" or "calculation". This word is used to mean Iddah because during that period the woman who is performing Iddah is waiting for the time to come into effect (Amir, 2006)

The definition of Iddah in terms, many scholars give various meanings, such as Muhammad al-Jaziri gives the understanding that iddah is a woman's waiting period which is not only based on her menstrual period or purity but sometimes also based on the number of months or by giving birth and during During this period, a woman was prohibited from marrying a man (Rahman, 1969). A not too different understanding was also expressed by Sayyid Sabiq that Iddah is a name for the period of time a woman (wife) waits and is not allowed to marry after the death of her husband or after being separated from her husband. These two ulama's understandings slightly coincide in emphasizing the waiting period and the provisions for marriage during this waiting period (Sabiq, 1969). Apart from the two opinions above, there is also an opinion that Iddah is Abu Yahya Zakariyya al-Ansari giving the definition of Iddah as the waiting period for a woman to know the purity of the womb or for ta'abbud (worship) or for tafajju' (condolences) towards her husband (Abu Yahya, 1998).

Based on the definition above, it can be concluded that the waiting period set for women after the death of their husband or the dissolution of their marriage is either based on their menstrual or holy periods, the number of months or by giving birth to determine the purity of the womb, worship (ta'abbud) and condolences for husband, During this period women (wives) are prohibited from marrying other men. Meanwhile, according to the Big Indonesian Dictionary, there is a waiting period (not yet allowed to marry) for women

who are separated from their husbands, either due to divorce or divorce (Persero, 2018). Iddah from the perspective of Salaf Jurisprudence, the word Iddah is a derivation of the word al-'adad which comes from the verb "adda-ya'uddu" which means more or less (calculation, calculation or something that is calculated) (Zayn, 1996). The use of this word in fiqh is because the meaning of this word contains the meaning of count or sacred number or menstruation. Meanwhile, there are several different editorial definitions of shara'. According to the ulama' Shafi'iyah: "The waiting period is used by women (widows) to find out the emptiness of the uterus, devotion to Allah and condolences for the death of the husband." Meanwhile, according to the Hanafiyyah ulama: "The waiting that women (widows) must do when a marriage breaks up or the like" According to another Hanafiyyah ulama: "The name for a period used to spend whatever remains as a result of marriage." According to the Malikiyyah ulama' as expressed by Ibn ar-Rif'ah: "The period that prevents marriage is due to the breakdown of the marriage, the death of the husband or the husband's divorce" (Edy, 2016).

Iddah in Legal Aspects and Its Types

Iddah dalam Sistem Hukum Indonesia

1. Compilation of Islamic Law

The Compilation of Islamic Law regulates iddah issues, including Articles 153, 154 and 155, namely:

- a. For a wife whose marriage breaks up, a waiting period or iddah applies, except qobla al dukhul and the marriage breaks up not because of the husband's death.
- b. The waiting time for a widow is determined as follows:
 - If the marriage is dissolved due to death, even if qobla al dukhul, the waiting period is set at 130 (one hundred and thirty) days:
 - If the marriage is broken up due to divorce, the waiting time for those who are still menstruating is set at 3 (three) sacred times with at least 90 (ninety) days, and for those who are not menstruating it is set at 90 (ninety) days;
 - c. If the marriage breaks up due to divorce and the widow is pregnant, the waiting period is determined until the birth;
 - d. If the marriage is dissolved due to death, and the widow is pregnant, the waiting period is determined until the birth.
- c. here is no waiting time for those who break up their marriage due to a divorce between the widow and her ex-husband qobla al dukhul.
- d. For marriages that are dissolved due to divorce, the waiting period is calculated from the date of the decision of the Religious Court which has permanent legal force, while for marriages that are dissolved due to death, the waiting period is calculated from the death of the husband.
- e. Waiting time for wives who have menstruated and are not menstruating during their iddah due to breastfeeding, so their iddah is three times their menstrual period.
- f. In the event that the situation in paragraph (5) is not due to breast-feeding, then the iddah is for one year, but if within one year she menstruates again, then the iddah

becomes three holy times.

2. Iddah According to the Law

Iddah period or waiting period or mourning period in the law. No. 1 of 1974 is outlined in article 11, and then further regulated in Government Regulation no. 9 of 1975. (1) the waiting time for a widow as intended in article 11 paragraph (2) of the Law is determined as follows:

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 3 (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.*

2. Consequences of Iddah Law

Women who are divorced or abandoned by their husbands are subject to the law of iddah, namely: The prohibition on being divorced or proposed to, is contained in Surah al-Baqarah verse 235:

“And there is no sin in you courting these women [148] with innuendo or you hide (the desire to marry them) in your heart. Allah knows that you will mention them, so do not make a promise to marry them in secret, except just saying (to them) good words.

This is prohibited because it can arouse hostility with the husband (or husband's family) in the first place. Prohibition on marrying or being married, according to Surah al-Baqarah verse 235

meaning: *"And do not make 'azam (resolve) to enter into marriage, before the end of his 'iddah. and know that Allah knows what is in your heart; So fear Him, and know that Allah is Forgiving, Most Forgiving."*

This is prohibited because a woman who is 'iddah talak raj' still has the right to reconcile with that woman. Apart from that, the aim of a woman's 'iddah talak bain' or death is also to avoid confusion in her lineage. According to Ulama' Hanafiyyah, women 'iddah because of divorce is haram to leave the house both day and night.

Evening. This is based on surah al-Talaq verse 1

meaning: *"Do not put them out of their homes and do not they are (allowed) to go out unless they commit an abominable act bright"*

Apart from this, surah al-Talaq verse 6 states that:

“Place them (the wives) where you live according to your abilities and do not make it difficult for them to narrow them down

their (hearts).”

The verse's command to keep women at home means a prohibition on taking or inviting the woman out (Wahbab, 1969). Thus, women who are divorced or left by their husbands die are required to perform 'iddah with the consequence of being prohibited from accepting proposals, entering into new marriages and leaving the house.

The Relevance of Iddah to Modern Science and Technology

Iddah remains relevant with the existence of modern knowledge and technology, because establishing the iddah does not consist of just one aspect, but is based on various things:

Uterine Cleansing

The assignment of heredity is a very important thing in Islamic teachings, therefore, women are prohibited from polyandry, that is, marrying several men at the same time, because the creation of babies only occurs in the womb of a woman, not a man. The seeds that men plant in women are unknown directly but can be known within a certain distance. This method is a natural method that can be done by anyone without the need for equipment that has been sought, because Islam is intended for all levels of society until the end of time. That is why the iddah of a divorced woman who is pregnant is only to give birth to the baby she is carrying.

Even though modern research shows that there will not be two fertilizations in one uterus in one pregnancy, Islam is wise enough to forbid women who are nurturing a man's seed from mixing it with the process of nurturing and growing the baby to be born, perhaps medically a woman who is sexually intimate. Some men can know for certain the owner of the seed they are carrying, but in other ways it can influence the child who will be born. For example, from an educational and psychological perspective, it will damage and disrupt the child which will ultimately cause chaos and moral damage in society.

Opportunity to Grieve and Think

In the case of divorce, iddah is a period of mourning and condolences for someone whose husband has died. Divorce due to death is a disaster that is beyond human power to resist, in this case those who divorce are still in a very close inner relationship, in an atmosphere of affection and love. Then, a woman who is in iddah raj'i may reconcile with her husband as long as the iddah period has not ended. So the iddah talak raj'i is a period of time that allows divorced husbands and wives to think and reflect on their relationship. Each of them introspects themselves in order to create a better relationship.

Based on the explanation above, it can be concluded that the development of modern science and technology cannot change the provisions on the length and shortness of the iddah period which have been determined and explained in the Al-Quran and as-Sunnah. Although there is a belief that the womb of a divorced woman is clean and reconciliation is impossible between husband and wife. Thus, iddah in Islamic teachings is ta'abbudi,

not ta'aqul (Huzaimah, 2005).

Ihdad and the Laws That Accompany It

Ihdad etymologically means to hold back or stay away. Definitively, as stated in several books of jurisprudence, it is "to stay away from anything that could tempt a man to him during the iddah period" (Amir, 2006). According to Abu Yahya Zakaria al Anshary, ihdad comes from the words ahadda, and

Sometimes it can also be called al hidad which is taken from the word hadda. Etymologically (lighawi) ihdad means L-man'u (prevention or prohibition).

Meanwhile, according to Abdul Mujeib, ihdad is a period of mourning for a wife whose husband has died. So that is 4 months and 10 days accompanied by prohibitions, including: covering your eyes, adorning yourself, leaving the house, except when forced (Tihami, 2009). The scholars provide many explanations about ihdad. With different expressions, Wahbah al Zuhaili gives a definition of Ihdad, namely leaving behind perfumes, jewellery, eye shadow and oils that smell good or not. However, it is not forbidden to beautify the bed, carpet, curtains and household utensils. He is also not prohibited from sitting on silk (Tihami, 2009). Regarding who she performs ihdad for, almost all scholars are of the opinion that ihdad is only performed for husbands who marry her in a valid marriage and who die during their marriage and does not apply to others.

Why he had to mourn has become a topic of discussion among the ulama. This applies to women who are divorced from their husbands because of his death. This is the original purpose of the stipulation of mourning in Islam. the goal is to honor and remember her deceased husband. The basis for the obligation to mourn a deceased husband is the words of the Prophet which read:

"It is not permissible for a woman who believes in Allah and the Last Day to mourn for the dead except for her husband for four months and ten days."

As for husbands who divorce them in the form of talaq bain, scholars have different opinions.

a. Imam Malik is not obliged to mourn for anyone other than his dead husband.

b. Abu Hanifah believes that it is obligatory to mourn a husband who mourns him in the form of bain, allusion to the dead husband.

c. Imam Syafi'i said that mourning is for a husband who is divorced it's just sunnah.

d. Imami Shiite clerics also do not require divorced husbands to mourn in the form of bain. According to the consensus of the ulama, women who undergo the iddah of talaq raj'i do not have to undergo a period of mourning, in fact it is better for them to do something that can attract their ex-husband to reconcile. According to most scholars, there are four things that women who are mourning should avoid:

1. Wearing perfume, except just to get rid of body odor, either in the form of

toiletries or perfume. This is based on the words of the Prophet muttafaq alaih, which read: She should not touch perfume except when bathing from a small amount of menstruation or the tip of a fingernail.

2. Wear jewelry, except as strictly necessary.
3. Decorate yourself, either on your body, face or colored clothes.
4. Spend the night outside the house where he lives. This is based on the opinion of the majority of ulama who require women who die of their husband to perform iddah at their husband's house.

Some scholars, including Jabir binn Zaid, Al Hasan and Atha, are of the opinion that she does not have to live in her husband's house, so she can leave the house where she is praying. The basis of this opinion is the word Allah in surah al Baqarah (2) verse 240: So if you leave, it has nothing to do with what you do for his ma'ruf self. The purpose of enshrining iddah seen from the analysis of several definitions and legal bases above can be formulated:

- a. So that men do not approach and be tempted by women who are in 'iddah.
- b. So that women who are in 'iddah do not approach and be tempted by men.

Ibnu Rushd called these two things *sad aldzari'ah* (Susilo, 2016). This means closing the path of evil. The path in question is the interaction of women' iddah with men (the two goals above) and dressing up or preening. Meanwhile, what is prohibited is proposals (*khitbah*) and marriage while the woman is in the 'iddah period. Therefore, it can be said that the legal law of enforcing iddah is to protect the attitude of women from falling into marriage during the prohibited iddah period. Due to the objectives of iddah as mentioned above, it is very natural that the emphasis of ulama in writing iddah fiqh is on two things:

- a. Take off jewelry or preen.
- b. Avoiding social interactions.

Therefore, everything that leads to these two things is prohibited during iddah. According to ulama', clothes and jewelry that should not be worn during the period of iddah and iddah are clothes that can beautify oneself (*zinah*) and encourage the acceleration of new marriages.

Compilation of Islamic Law (KHI) regarding iddah

Ihdad (mourning) for women whose husbands have died has been regulated in the Compilation of Islamic Law (KHI) regarding the period of mourning for a person, article 170. Chapter XIX of the Compilation of Islamic Law (KHI) regarding the "period of mourning" is as follows: A wife whose husband has died is obliged to carry out a period of mourning during the iddah period as a sign of condolences and at the same time to guard against the emergence of slander. a. Husbands whose wives leave them carry out a period of mourning according to their decision.

From this it can be illustrated that a woman (wife) has the obligation to carry out iddah and iddah, because her husband left her dead for four months and ten days. This is a condition where the wife must refrain or mourn for four months and ten days. During that time, the wife should express her sorrow by not wearing any decorations, not wearing bright eyes and not leaving the house. This method aims only to honor the

husband's death. Once the iddah period has expired, there is no prohibition on decorating oneself, making proposals, or even holding a marriage contract.

Ihdad for Career Women

The position of women in the views of pre-Islamic communities. Very low and despicable, they do not regard him as a human being with a spirit, or only consider him to be of a lowly spirit. For them, women are the source of evil and the source of disaster. 121 At that time, Islam came as a guide to good news and a warning for humans. Views towards women changed and became a matter of happiness for the ummah at that time so that the position of women was elevated and all forms of injustice and arbitrariness were eliminated (Ihwan, 2002).

The concept of ihdad is to forbid iddah women from adorning themselves, which has been discussed in the purpose of ihdad in the Shari'a. Likewise with career women who work outside the home, because the position of men and women are the same, how will the career woman face ihdad while she also has to work outside the home? Therefore, the author tries to analyze the application of ihdad for career women and compare it with the views of Islamic law. The first is the ihdad application for career women who must look attractive. In reality, there are career women who really need to appear in beautiful, good and attractive clothes, so that they can build lots of relationships and improve their careers. Women like this, for example, women who are leaders in companies, women who are in charge of promotions and marketing, women who are in charge of public relations and protocol, or women who rely on appearance for their careers such as models, dancers and singers. There are also career women who in an effort to improve their careers do not need to look attractive, do not need to wear beautiful and good clothes, such as doctors, lawyers, judges, government employees, lecturers, consultants, scientists and laboratory workers. For this kind of woman it doesn't matter whether she dresses well with jewelry on her body or not. It won't affect his career. If a woman like the one mentioned above performs ihdad because her husband died, then in principle the woman must carry out ihdad, because this is a religious requirement. However, the woman should try as much as possible to leave behind jewelry and clothes that are prohibited from wearing during the 'iddah of her husband's death. He must make this effort to the fullest, especially if he is pursuing a singer, model or something similar (Adnan, 2015). However, on the other hand, career women are required by circumstances to maintain social relations by always looking attractive and adorning themselves so that they can complete their work without having to be shunned by co-workers or many even avoid working with them due to their unattractive (embarrassing) appearance. This may have an impact on destroying the woman's work and personal career as well as the stability of the workplace because the career woman cannot complete her work well and on time. Especially if this type

of work or career for women has implications for the benefit or public welfare, such as the President, members of the legislature (DPR/MPR), and others. This will have a dangerous impact on the public.

Therefore, looking attractive for career women is important to maintain their career and work. It can be formulated that the goal of an attractive career woman is to maintain her career and work so that it remains a source of fulfilling life's needs. So looking attractive is a key to career and employment. If we look at the substance of having an attractive appearance, the goal is to maintain a career and job so that it remains a source of fulfilling life's needs, then dressing up is classified as an urgent need to fulfill life's needs, which if not fulfilled will lead to the destruction of career and work which has implications for economic collapse. Therefore, it is appropriate that *hajat* glasses which occupy an emergency position are used to establish the law, that career women are allowed to dress up (*leave ihdad*) when carrying out their career or work activities (Edi, 2016). In relation to women who are forced to do something forbidden during *ihdad*

However, the woman must try first so that she does not do anything that is haram, because if a woman has lost her husband's death, if she does not have *ihdad* it means she is disobedient to Allah SWT if she knows that abandoning *ihdad* is haram (Wahbah, 1969). If he has tried hard to be able to perform *ihdad* and turns out he can't, then he must first see whether his condition has reached the emergency level or not. What is meant by emergency is something that threatens the safety of religion, life, reason, offspring and property. If according to his estimates or research it falls into the emergency category, then he may not perform *ihdad*. If it turns out that it is not considered an emergency, especially if it is just for prestige, or the career she is fighting for is just for a good name and to be admired and respected by people, or just to seek additional wealth, then in any case *ihdad* is still obligatory for the woman.

Second, in developing and improving careers, there are women who have to have direct contact with other people, some who don't. Career women who are not directly involved in developing their careers, for example book writers, novelists, lab researchers, designers, caricaturists and painters. For this kind of woman, *ihdad* is certainly not a problem. In other words, giving *ihdad* will not destroy his career. Meanwhile, career women who have to deal directly with other people, such as lecturers, doctors, field researchers, entrepreneurs, lawyers, singers, government officials, members of parliament, etc., clearly have an attachment to the issue of *ihdad*, whether they have to *ihdad* or can leave. *ihdad* for the sake of his career. In this case there are several notes, including: If a woman who has to deal directly with other people in developing her career and work can carry out her duties without having to dress beautifully or be made up, then she is obliged to have *ihdad*. If the woman cannot avoid wearing good clothes, adorning herself, wearing perfume or other things that are prohibited in *ihdad*, she may leave *ihdad* as long as her situation has reached the emergency

level as stated previously, but she must first try to maximum to be able to do ihdad.

CONCLUSION

Considerations that can change the laws of iddah and ihdad when they collide with career women's problems are considerations of necessity and emergency considering the effectiveness of hajat and emergency so that the legal resolution of iddah and ihdad for career women can be said to be more applicable, effective and humane for the current era with consideration of hajat and emergency.

Iddah for career women must still be carried out considering that the legal illat of iddah is more ta'abbudi in nature. However, in terms of the legal consequences of iddah, in the form of a prohibition on leaving the house, this cannot be applied to career women considering that career women's careers and work are necessary, because they are a source of fulfilling life's needs which are classified as urgent needs to preserve life which if not fulfilled will fall into destruction. economy (poverty). Considering that ihdad for women who are in iddah is limited to sad aldzara'i, meaning that dressing up is considered an intermediary that can give rise to encouragement in the form of the goal of marriage during the iddah period, which if the main goal of ihdad can be eliminated with the argument of necessity and emergency, then the law of intermediary follows.

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