

PROVISIONS ON THE RIGHT OF REFERENCE AND THE MEANING OF IDDAH FROM A JUSTICE PERSPECTIVE USING A COMPREHENSIVE APPROACH

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Abstract

Women's attitudes when negotiating for safe sex in marital relationships can be influenced by their level of empowerment at home. The purpose of these negotiation skills is to maintain reproductive health. In Islam, the Quran highlights that during sexual interactions, husbands and wives must defend each other, uphold their honor, and provide each other with comfort, beauty, and pleasure. From a fiqh and health perspective, this study investigates the opinions of women in Mataram who are married to high-risk partners regarding safer sex negotiations. To maintain their health and safety, women have the right to regulate, choose, and direct everything in their bodies according to their wishes, free from interference, pressure, or even interference from outside. This is demonstrated by the theory of bodily autonomy. This study took a qualitative phenomenological approach. Purposive sampling was used to select five women married to high-risk partners. The study findings indicate that women's attitudes in negotiating safe sex with their partners to maintain their reproductive health are strongly influenced by their socioeconomic status, level of knowledge, and involvement in family decision-making.

Perkawinan menurut hukum Islam adalah pernikahan, yaitu akad yang sangat kuat atau misa'iq galilan untuk mentaati perintah Allah dan melaksanakannya merupakan ibadah. Seperti juga perkawinan, perceraian (talaq) bukanlah tindakan yang dianggap ringan. Akan tetapi Islam mendorong suami dan istri untuk menjaga pernikahan mereka dan memberikan ruang untuk saling memperbaiki hubungan. Namun, ketika perceraian tidak terhindarkan, ada ketentuan yang mengatur hak-hak kedua belah pihak, terutama perempuan, dengan tujuan menjaga keadilan, kehormatan, dan kedamaian. Ketentuan hak rujuk dan iddah adalah dua konsep penting yang berhubungan erat dengan keadilan dalam hukum perceraian Islam. Setelah suami menjatuhkan talak, seorang istri wajib menjalani masa iddah, yaitu periode waktu tertentu yang dimaksudkan untuk memastikan bahwa tidak ada kehamilan dari suami yang lama. Selama masa iddah ini, suami masih memiliki hak untuk merujuk istrinya, yaitu mengembalikan istrinya ke dalam ikatan pernikahan tanpa perlu melangsungkan pernikahan baru. Penulisan ini menggunakan metode kualitatif, yang jenis penelitiannya berupa penelitian kepustakaan (library research), dengan menggunakan pendekatan deskriptif analisis. Islam memiliki pengaruh yang berbeda terhadap hak rujuk antara suami dan istri. Talak rai'i memungkinkan rujuk selama masa iddah, sementara talak bain mengakhiri hubungan pernikahan secara permanen dan tidak

memungkinkan adanya rujuk kecuali setelah menikah dengan orang lain. Talak sair memiliki kesamaan dengan talak raj'i dalam hal rujuk selama iddah, sedangkan talak fasakh adalah talak yang diambil karena alasan mendesak yang menyebabkan pernikahan tidak dapat dipertahankan, yang menghilangkan hak rujuk antara pasangan tersebut.

Keywords: *Comprehensive Approach, Marriage, Divorce and Reconciliation*



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A. INTRODUCTION

According to Islamic law, marriage is a marriage, a very strong contract or misa'iq galilan to obey Allah's command and carrying it out is an act of worship. According to the majority of jurists, the legal basis for marriage is mubah or ibahah (permissible or permissible). The legal basis for performing a marriage (marriage) that is permissible (ibahah) can change based on its causes ('illahnya) and can change to makruh, sunnah, wajib, or haram.¹

Like marriage, divorce (talaq) is not something to be taken lightly. However, Islam encourages husbands and wives to maintain their marriage and provide space for mutual improvement. However, when divorce is unavoidable, there are provisions governing the rights of both parties, especially women, with the aim of maintaining justice, honor, and peace. Provisions on the right to reconciliation² and iddah³ are two important concepts closely related to justice in Islamic divorce law. After a husband pronounces a divorce, a wife is required to observe the iddah period, a specific period of time intended to ensure that no pregnancy occurs from the previous husband. During this iddah period, the husband still has the right to reconcile his wife, that is, to bring her back into the marriage without the need for a new marriage. Reconciliation provides an opportunity for couples who may regret their divorce to repair their relationship, reminding them that divorce is not the first solution to marital problems.

The reconciliation process also serves to ensure the protection of the wife's rights during the iddah period. During this period, the husband remains responsible for providing support and protection to his wife, even though they have formally

¹Mohd. Idris Ramulyo, *Hukum Perkawinan Islam*, (Jakarta: Bumi Aksara, 1999), 21

²Rujuk adalah hak suami untuk kembali kepada istri yang diceraikan (talak raj'i) selama masa iddah berlangsung

³Tujuan utamanya adalah untuk memastikan bahwa seorang wanita tidak hamil dari suami yang sebelumnya, sehingga dapat memastikan status keturunan yang jelas. Jika seorang wanita hamil selama masa iddah, anak yang dilahirkan akan diakui sebagai keturunan suaminya, meskipun mereka sudah bercerai. Iddah adalah masa tunggu yang wajib dijalani seorang perempuan setelah perceraian atau kematian suami. Periode ini memiliki beberapa tujuan mendasar. Ada beberapa aspek yang dijaga dalam hal iddah yaitu : aspek biologis (Memastikan tidak adanya kehamilan dari pernikahan sebelumnya, memberikan waktu untuk mengetahui status kandungan), Aspek Psikologis (memberikan ruang pemulihan emosional menciptakan periode kontemplasi dan refleksi), Aspek Hukum (melindungi hak-hak reproduktif perempuan dan menjamin kepastian nasab (keturunan)).

separated. This demonstrates that even when the household is experiencing temporary tension or divorce, the wife's rights, particularly those related to support and care, cannot be neglected. Furthermore, these rights also provide space for the wife to undergo a process of reflection and introspection when facing important decisions, such as whether to continue living with her ex-husband or choose to remarry after the iddah period is over.

The iddah period in Islamic law serves several important purposes related to family harmony and the protection of individual rights. Furthermore, the iddah period provides time for newly divorced couples to reflect, reconsider their relationship, or, if possible, improve the situation. This waiting period gives both parties the opportunity to assess whether divorce is the best course of action, or whether they can reconcile and continue their married life.

Furthermore, the iddah period also plays a crucial role in protecting inheritance rights and the legal status of the family. Under Islamic law, a woman undergoing the iddah period has the right to receive maintenance from her husband and can act as an heir if her husband dies before completing the iddah period. Without a clear understanding of the iddah period, confusion can arise regarding a woman's legal status, especially if she decides to remarry. This can potentially lead to problems with inheritance rights and the recognition of descendants, which in turn can undermine social order and family stability. Therefore, a proper understanding of the iddah period is crucial for women, husbands, and society to ensure the rights of all parties are properly protected.

Overall, understanding these two issues is crucial to ensuring that divorce and remarriage proceed according to the just and dignified principles of Islamic law. Without adequate knowledge regarding reconciliation and the iddah period, legal uncertainty can arise, potentially harming all parties involved, especially women and children. Therefore, both the general public and those involved in a marriage need to understand the applicable legal provisions to protect their rights and maintain family relationships within the framework of proper Islamic law. In this article, the author will outline the provisions regarding the right to reconciliation and the meaning of the iddah period from a justice perspective, using a comprehensive approach.

B. METHODS

This research uses a qualitative method, which is library research, using a descriptive analytical approach. The analysis uses the Miles and Huberman method, which is divided into three simultaneous activity streams. is(1) data reduction; (2) data display; and (3) drawing conclusions.⁴ Data sources are obtained from documents or document studies. Document studies involve searching for data

⁴Hardani, *Metode Penelitian Kualitatif & Kuantitatif* (Yogyakarta: CV. Pustaka Ilmu Group, 2020), hlm.163

based on variables in the form of journal articles, books, and other information from the internet.

C. THEORY

1. Understanding Reconciliation and Iddah

Definition of Reconciliation: Reconciliation is the act of a husband returning his wife to the marriage bond after a divorce, as long as the iddah period has not yet expired. This reconciliation can occur after one or two divorces, and it is the husband's right to return his wife without the need for a new marriage contract, as long as the husband is still in the iddah period. However, if the divorce has occurred three times, reconciliation is not permitted, and the wife must first undergo the iddah period before remarrying.

Referral is explained in several verses of the Qur'an, including Surah Al-Baqarah (2:228) which reads: "And divorced wives should wait for three times of quru' (menstruation or purity). And it is not halal for them to hide what Allah created in their wombs, if they believe in Allah and the Last Day. And their husbands have the right to refer to them during the period of iddah, if they want improvement. And they (women) have rights that are balanced with their obligations according to that. ma'ruf. And husbands have a higher rank than them, and Allah is All-Mighty, All-Wise." (QS. Al-Baqarah: 228)

This verse explains that a husband has the right to return his divorced wife during the iddah period if he still wishes to repair the relationship. In this case, reconciliation can be achieved without a new marriage; simply the intention and action of returning the wife home is sufficient.

Refer to the Hadith: Hadith-The hadith also explains about reconciliation. One of them is a hadith from Aisyah which was narrated by Muslim and Bukhari: "Indeed, a man had divorced his wife three times, then he wanted to reconcile with her. Then, the Prophet Muhammad ﷺ said: 'No, until she marries another husband (after the iddah period) then it is permissible to reconcile.'" (HR. Bukhari and Muslim)

This hadith shows that reconciliation is only valid within the limits of first and second talaq. If talaq has occurred three times, then reconciliation cannot be carried out unless the wife marries someone else after completing the iddah period. The scholars agree that reconciliation is the husband's right under certain circumstances. Hanafiyah scholars, for example, emphasize that during the iddah period, a husband may refer to his wife without the need for a new marriage contract. Meanwhile, according to Shafi'iyyah scholars, reconciliation is only valid as long as the wife is still in the iddah period and has not completed the third divorce. If divorce has occurred three times, then there is no reconciliation except by a new marriage with certain conditions.

2. Iddah in Islam

Definition of Iddah: Iddah is a waiting period that a woman must observe after a divorce or the death of her husband. The primary purpose of iddah is to ensure that the woman is not pregnant by her previous husband and to allow both parties time for reflection or to repair the relationship. Iddah also serves to maintain the integrity of family relationships and inheritance issues within the family.

Iddah in the Qur'an: Iddah is also explained in the Qur'an very clearly in several verses, such as in Surah Al-Baqarah (2:234) which reads: "And divorced women should wait (iddah) for three quru'... And it is not lawful for you to marry them until they complete their iddah." (QS. Al-Baqarah: 234)

This verse emphasizes the obligation of divorced women to wait three menstrual periods (quru') before they can remarry, and during the iddah, they remain in waiting status without a new marriage. Apart from that, in Surah At-Talaq (65:4), Allah also provides instructions regarding the iddah period for women who experience divorce who are not pregnant: "And women whose menstruation stops, their iddah is three months. And women who do not menstruate, their iddah is three months." (QS. At-Talaq: 4)

Iddah in Hadith: Hadith-hadith also explains various provisions regarding iddah. For example, a hadith from Umm Salamah narrated by Bukhari and Muslim, states: "A woman who is divorced by her husband should wait for three menstruation if she is still of childbearing age. If she does not menstruate due to age or other reasons, then her iddah is three months." (HR. Bukhari)

This hadith strengthens the explanation in the Qur'an regarding the iddah period for women who do not menstruate or under certain conditions. The scholars agree that the iddah period is mandatory for every woman who is divorced or left behind by her husband, with certain provisions based on the woman's condition. Hanafiyah and Shaf'iyyah scholars emphasize that the iddah for women who have not menstruated due to age or other conditions is three months. Meanwhile, Maliki ulama are of the opinion that the iddah period for women who have not menstruated or cannot menstruate is up to three full months. However, for women who are pregnant, their iddah period ends when they give birth to their child, in accordance with the word of Allah in Surah At-Talaq (65:4): "And women who are pregnant, their iddah is until they give birth to the child they are carrying." (QS. At-Talaq: 4).

3. Law of Reference

In Islamic law, reconciliation refers to a husband's remarriage of his divorced wife (either through one or two divorces) during the iddah period, without the need for a new marriage contract. Reconciliation is a husband's right during the iddah period and can be exercised if the divorce has not reached three times. Reconciliation during the iddah period aims to give the couple an opportunity to repair their relationship and avoid a potentially temporary divorce.

In order for reconciliation to be valid and in accordance with Islamic law, there are several conditions that must be met, including:

- a. Still Within the Iddah Period: One of the main conditions for reconciliation is that the divorce must occur within the iddah period. If the iddah period has expired, reconciliation cannot occur. The iddah period is calculated from the date of divorce (talaq) and lasts for three menstrual periods for women who are still menstruating, or three months for women who are not menstruating. For pregnant women, the iddah period ends after childbirth (QS. At-Talaq: 4).⁵
- b. Husband Who Offers Reconciliation: Reconciliation can only be initiated by the husband, not the wife or a third party. The husband has the right to reconcile with his wife during the iddah period, unless a triple divorce has already occurred, in which case reconciliation is no longer possible.
- c. Not in Triple Divorce: If the divorce has reached the triple level, reconciliation is no longer possible. In this case, the wife must first marry another person (with a valid marriage bond) before returning to her first husband, in accordance with the principles taught in the hadith of the Prophet Muhammad (peace be upon him) (Narrated by Bukhari and Muslim).⁶.
- d. Voluntary: Reconciliation must be done with the willingness of both parties, both husband and wife. If one party does not want to return, then the reconciliation is invalid. Reconciliation carried out through coercion or pressure is not considered valid under Islamic law.
- e. There are no other obstacles: Reconciliation may not be carried out if there are other obstacles, such as the wife having married someone else after the divorce, or if there are other sharia reasons that cancel the husband's right to refer his wife.

The pillars of reconciliation are elements that must be present for reconciliation to be considered valid according to Islamic law. The pillars of reconciliation consist of the following:

- a. Referring Husband: The husband who refers his wife is the first party involved in the reconciliation process. This first pillar emphasizes that reconciliation must be carried out by the husband, as explained in the word of Allah in Surah Al-Baqarah (2:228) which gives the husband the right to refer to his wife during the iddah period.
- b. The Reconciled Wife: The wife to be reconciled is also part of the pillars of reconciliation. A wife who is divorced during the iddah period must accept the reconciliation, although she is not obligated to agree as long as she is within the iddah period and is not prevented by other sharia-compliant reasons.

⁵Al-Qur'an, Surah At-Talaq (65:4), yang menjelaskan bahwa masa iddah bagi wanita yang hamil adalah hingga melahirkan anak, sedangkan bagi wanita yang tidak hamil, iddahnya adalah tiga kali haid atau tiga bulan

⁶Hadis dari Aisyah yang diriwayatkan oleh Bukhari dan Muslim, yang menyatakan bahwa rujuk hanya berlaku selama talak satu atau dua dan tidak sah lagi setelah talak tiga

- c. Intention to Reconcile: The intention to reconcile is crucial in Islamic law. Reconciliation must be based on the husband's clear and sincere intention to return his wife to the marriage, not merely as a formality or for any other purpose. This intention demonstrates a seriousness in repairing the marriage, not simply to secure certain rights or benefits.
- d. Clear Words or Actions: Reconciliation can be achieved through clear words from the husband, such as "I reconcile with you" or "I return you to me as my wife." These words demonstrate the husband's intention to reconcile with his wife and bring her back into the marriage. Physical actions, such as inviting the wife back to her husband's home and resuming their lives as a couple, can also be considered evidence of reconciliation.

4. Types of Divorce and Their Effect on Reconciliation.

Divorce is a divorce decreed by a husband against his wife. In Islamic law, there are several types of divorce, each with different consequences for the marital status and the rights of the wife. Understanding the meaning of divorce and its impact on reconciliation is crucial, particularly the differences between single, double, and triple divorces. The following are the types of divorce and their impact on reconciliation.

a. Divorce(Referable Divorce)

Raj'i divorce is a type of divorce imposed by a husband on his wife who is still in the iddah period and allows the husband to refer to the wife during the iddah period. This divorce can be imposed in the form of one or two divorces.

A raj'i divorce allows a husband to take his wife back without the need for a new marriage contract, as long as the iddah period is still valid. Reconciliation can occur at any time during the iddah period, which is calculated from the first or second divorce, as long as the wife has not yet married another person. This reconciliation can be done verbally, such as "I take you back," or physically, such as inviting the wife back home.

Al-Qur'an, Surah Al-Baqarah (2:229)⁷stated: "Divorce twice. After that, either you restrain well or you let go well. And do not restrain them to cause trouble to them, lest you violate Allah's limits. Whoever does that, then he has wronged himself."

This verse shows that a single or double divorce by the husband provides an opportunity for the couple to get back together through reconciliation during the iddah period.

b. Divorce Bain(Irreconcilable Talaq)

A divorce that permanently ends a marriage and makes reconciliation impossible, unless the wife marries another person and separates (in fiqh terms,

⁷Al-Qur'an, Surah Al-Baqarah (2:229): Menyatakan bahwa talak dua kali memberi kesempatan bagi suami untuk rujuk selama masa iddah.

married another person and divorced previously). This type of divorce occurs after the husband has divorced his wife three times (triple divorce) or if one divorce is followed by an irreparable separation.

A third divorce terminates a husband's right to seek reconciliation with his wife during the iddah period. After a third divorce, the wife cannot be reconciling with her husband, even if the iddah period has not yet expired. She must marry another man and undergo another divorce before remarrying her first husband. This is in accordance with the hadith of the Prophet Muhammad (peace be upon him) narrated by Bukhari and Muslim, which states that after a third divorce, reconciliation cannot occur except after remarriage.⁸

The Qur'an, Surah At-Talaq (65:1) teaches: "Talaq is done twice. After that, you may hold them well or let them go well. And do not hold them back to cause them trouble, lest you violate Allah's limits. Whoever does that, he has wronged himself."

This verse confirms that triple divorce or divorce that occurs after the reconciliation period cannot be continued, because the marriage relationship has ended permanently.

c. Divorce(Temporary Divorce)

Talak sair is a type of divorce that is done with temporary intentions, usually done to give the couple time to deal with their marital problems. In practice, this talak is almost similar to talak raj'i, but often involves the intention to repair the relationship in a shorter time.

A divorce (divorce) allows for reconciliation, just like a raj'i divorce, provided that during the iddah period, the husband can take his wife back without the need for a new marriage contract. However, a divorce (divorce) is often used to give a couple time to reflect or improve themselves, and can result in reconciliation if the issues are resolved.

Talaq sair is not found in the text of the Qur'an explicitly, but in practice, many scholars consider it a lighter form of talaq and can be referred to during the iddah period, even though there is no specific discussion.

d. Divorce with Fasakh(Marriage Annulment)

A non-reciprocal divorce is a divorce that occurs when a marriage is annulled due to certain urgent reasons, such as physical disability, sexual incompetence, or irreparable betrayal. A non-reciprocal divorce also occurs when a wife seeks to end a marriage due to her husband's mistreatment.

A fasakh divorce has a more permanent effect than a raj'i divorce, as it is usually decided through a court or the intervention of authorities. Reconciliation cannot occur after a fasakh divorce, as the marriage is considered terminated for

⁸Hadis Bukhari dan Muslim: Rasulullah ﷺ menyatakan bahwa setelah talak tiga, rujuk tidak bisa dilakukan kecuali setelah istri menikah dengan pria lain dan bercera

good reason. A wife cannot return to her husband unless she remarries and undergoes a divorce.

e. Comparison of Referral Laws in Various Schools

In Islamic family law, reconciliation is a process that allows a husband to return his wife after a divorce, during the iddah (waiting period). Although the basic principles of reconciliation are found in the Quran and Hadith, each school of Islamic jurisprudence (Hanafi, Maliki, Shafi'i, and Hanbali) has a different understanding and rules regarding how reconciliation can be implemented. These differences usually relate to the iddah period, the conditions for reconciliation, and the methods used in reconciliation.

1) Hanafi school of thought

The Hanafi school of thought views reconciliation as a husband's right during the iddah period, whether after a single or double divorce. According to this school, reconciliation can occur during the iddah period, even without the wife's consent. The husband's intention and word alone are sufficient for reconciliation to be valid. However, a triple divorce permanently ends the marriage, and the wife must first remarry if she wishes to return to her first husband.⁹

2) Maliki school of thought

The Maliki school of thought requires the wife's consent for reconciliation. Reconciliation must be carried out with the consent of both parties, not just the husband. If reconciliation occurs without the wife's consent, it is considered invalid. Furthermore, in this school of thought, the iddah period is also calculated based on the woman's condition, such as whether she is still menstruating, or if she is in a specific condition (such as pregnancy), in which case the iddah period is calculated differently.¹⁰

⁹Syarat dan Rukun Rujuk dalam Mazhab Hanafi

Masih dalam masa iddah: Rujuk hanya sah dilakukan selama masa iddah setelah talak satu atau talak dua.

Niat dan Ucapan: Suami dapat merujuk istrinya dengan niat dan ucapan seperti "Saya rujuk kamu".

Tanpa Persetujuan Istri: Rujuk bisa dilakukan tanpa persetujuan istri selama masa iddah, meskipun lebih dianjurkan untuk melibatkan istri dalam proses ini.

Dasar Hukum Mazhab Hanafi:

Al-Qur'an, Surah Al-Baqarah (2:229) menyebutkan bahwa rujuk bisa dilakukan dua kali selama masa iddah, yang memberikan kesempatan bagi pasangan untuk kembali bersama tanpa akad nikah baru.

Hadis: Rasulullah ﷺ memberikan contoh bahwa suami yang menceraikan istrinya dengan talak satu atau dua bisa kembali mengajak istrinya berhubungan tanpa akad nikah baru selama masa iddah (HR. Bukhari dan Muslim).

¹⁰Syarat dan Rukun Rujuk dalam Mazhab Maliki

Masih dalam masa iddah: Rujuk hanya sah selama masa iddah.

Persetujuan Istri: Rujuk harus dilakukan dengan persetujuan istri, dan tidak boleh dipaksakan oleh suami.

Tidak Ada Talak Tiga: Setelah talak tiga, tidak ada kemungkinan rujuk, dan pernikahan dianggap selesai secara permanen.

Dasar Hukum Mazhab Maliki:

3) Shafi'i school of thought

According to the Shafi'i school of thought, reconciliation is the husband's right, but it must occur during the iddah period for one or two divorces. Reconciliation can occur simply through the husband's words or actions, and does not require the wife's consent. However, the Shafi'i school also emphasizes that reconciliation cannot occur after three divorces, as the marriage is considered complete and there is no possibility of reconciliation.¹¹.

4) Hanbali school of thought

The Hanbali school also views reconciliation as a husband's right during the iddah period, whether after one or two divorces. Reconciliation is considered valid if it occurs during the iddah period, although this school also recognizes that the husband must include both intention and word in the reconciliation process. In the Hanbali school, triple divorce permanently ends the marriage, and reconciliation is not possible after three divorces.¹².

D. Analysis and Discussion

In Islamic law, the iddah period is the period of time a woman must observe after her husband's divorce or death before she can remarry. The purpose of the iddah period is to ensure clarity of the marital status, ensure there are no pregnancies from previous marriages, and allow the woman time to absorb this significant change in her life. The iddah period varies depending on several

Al-Qur'an, Surah Al-Baqarah (2:229) menyatakan bahwa rujuk bisa dilakukan selama dua kali talak dalam masa iddah. Namun, persetujuan istri diperlukan untuk rujuk yang sah Hadis: Dalam hadis Rasulullah ﷺ, beliau bersabda: "Janganlah kamu menjadikan mereka (istri) merasa tertekan dengan perceraian, agar kamu bisa kembali dengan mereka" (HR. Muslim). Hadis ini mengindikasikan bahwa rujuk harus dilakukan dengan penuh pertimbangan dan persetujuan kedua belah pihak.

¹¹Syarat dan Rukun Rujuk dalam Mazhab Syafi'i

Masih dalam masa iddah: Rujuk hanya sah selama masa iddah setelah talak satu atau dua.

Niat dan Ucapan: Suami dapat merujuk istri hanya dengan niat dan ucapan, seperti "Saya rujuk kamu".

Tidak Ada Talak Tiga: Jika talak sudah mencapai tiga, maka tidak ada lagi kesempatan untuk rujuk, dan hubungan dianggap berakhir secara permanen.

Dasar Hukum Mazhab Syafi'i:

Al-Qur'an, Surah Al-Baqarah (2:229) dan Surah At-Talaq (65:1) menjelaskan bahwa suami masih memiliki hak untuk merujuk istri selama masa iddah jika talak belum mencapai tiga.

Hadis: Dalam sebuah hadis, Rasulullah ﷺ bersabda: "Talak itu dua kali, setelah itu boleh rujuk atau melepaskan dengan baik" (HR. Bukhari dan Muslim)

¹²Syarat dan Rukun Rujuk dalam Mazhab Hanbali

Masih dalam masa iddah: Rujuk hanya sah dilakukan selama masa iddah.

Niat dan Ucapan: Suami dapat merujuk istri dengan niat dan ucapan seperti "Saya rujuk kamu".

Tidak Ada Talak Tiga: Jika talak telah jatuh tiga kali, maka hubungan dianggap berakhir dan tidak ada lagi kesempatan untuk rujuk.

Dasar Hukum Mazhab Hanbali:

Al-Qur'an, Surah Al-Baqarah (2:229) dan Surah At-Talaq (65:1) menyebutkan bahwa suami masih memiliki hak untuk merujuk istri selama masa iddah talak satu atau dua.

Hadis: Rasulullah ﷺ bersabda: "Talak dua kali, setelah itu boleh rujuk atau melepaskan dengan baik" (HR. Bukhari dan Muslim)

circumstances, reflecting the principles of justice and the protection of women's rights in Islamic law.

Iddah Period after Divorce; In the case of divorce, the iddah period is generally three menstrual cycles or three months, according to the provisions in the Qur'an (QS. Al-Baqarah: 228)¹³ However, for women who do not menstruate (for example, due to age or a medical condition), the iddah period is calculated as three calendar months. This difference in iddah periods reflects fairness for women with different physical conditions, ensuring that the iddah period remains constant to avoid confusion regarding marital status and pregnancy.

Iddah period after husband's death; For women whose husbands have died, the iddah period is longer, namely four months and ten days (QS. Al-Baqarah: 234)¹⁴. This period provides time to grieve and honor the deceased husband, while waiting to see whether the woman became pregnant from her husband or not. From a justice perspective, this longer iddah period also gives women more time to adjust to the loss of their husband and reflect on the future of their lives.

Iddah Period for Pregnant Women; If a woman is pregnant, her iddah period lasts until she gives birth to the child, no matter how long after the divorce or death of the husband. This is based on the principle of justice, where the status of the pregnancy and the child being born must be clear, both in terms of inheritance rights and protection of the child who will be born.¹⁵

From a justice perspective, these differences in the iddah period reflect a concern for the woman's physical and emotional well-being. On the one hand, the iddah period provides time to avoid confusion related to potential pregnancy and marriage. On the other hand, the iddah period also serves to ensure that women do not rush into a new marriage without considering potential ties to their previous husband. In the context of gender justice, although the iddah period primarily concerns women, Islamic law also considers the rights and protection of children who may be born from a discontinued marriage, and provides sufficient time for women to grieve the loss of a husband.

From the perspective of Islamic family law reform, opinions vary as to whether the iddah period should be extended or adjusted to reflect social and cultural developments. Some reformers argue that a shorter or no iddah period

¹³QS. Al-Baqarah (2:228): "Dan para wanita yang ditalak harus menunggu tiga kali masa iddah. Dan tidaklah halal bagi mereka menyembunyikan apa yang diciptakan Allah dalam rahim mereka jika mereka beriman kepada Allah dan hari akhir. Dan suami mereka berhak merujuk mereka selama masa iddah itu, jika mereka menginginkan perbaikan

¹⁴QS. Al-Baqarah (2:234): "Dan orang-orang yang meninggal dunia di antara kalian dan meninggalkan istri-istri, hendaklah mereka (istri-istri) menunggu selama empat bulan sepuluh hari. Kemudian apabila mereka telah sampai pada batas waktu yang ditentukan, maka tidak ada dosa bagi kalian dalam apa yang mereka lakukan terhadap diri mereka dengan cara yang baik. Dan Allah Maha Mengetahui apa yang kalian kerjakan."

¹⁵Al-Muwatta' (Hadis Sahih): Hadis yang mengindikasikan bahwa masa iddah wanita hamil berakhir dengan kelahiran anak

would provide greater justice for women in the modern context, especially when other means exist to ensure clarity about marital status and pregnancy.

1. The Development of Reference in a Modern Context

In the modern context, issues of gender equality, women's human rights, and social change have influenced views on reconciliation laws. Many Muslim countries have begun to review reconciliation mechanisms to ensure fairness and balance between husband and wife. Some of the emerging reforms include:

a. Mutual Consent

Some countries, such as Indonesia¹⁶ and Tunisia¹⁷, require mutual consent between husband and wife for reconciliation. This better reflects the principle of equality and gives women the right to choose whether or not to return to their husbands. In this case, state law or the courts play a role in overseeing the reconciliation process to ensure it does not disadvantage women.

b. Court Process

In some countries with more progressive legal systems, such as Turkey, reconciliation is not as straightforward as in classical traditions. Some states stipulate that for reconciliation involving multiple divorces (talaq ba'in), a husband cannot simply refer his wife without a court evaluation or decision, which takes into account the emotional and physical conditions of both parties.

c. Refer as an Option, Not an Obligation

In some contemporary legal interpretations, reconciliation is no longer considered an undeniable right of the husband, but rather a choice that must be made with careful consideration, taking into account the psychological well-being of both parties. Some countries, such as Indonesia, recognize that reconciliation must consider the continuity of the relationship and the emotional well-being of the wife, particularly in cases where the divorce is due to domestic violence or serious incompatibility.

d. The Influence of Reformation and Social Movements

Changes in the interpretation of Islamic jurisprudence and the influence of women's rights movements in the Muslim world have also played a significant role in the development of reconciliation laws. For example, many contemporary Muslim scholars and scholars argue that the right to reconciliation should be regulated more transparently and fairly, particularly with regard to protecting vulnerable women in patriarchal relationships. Some reformers argue that too easy reconciliation can leave women in a less empowered position, as they may be forced to return to husbands who do not treat them fairly.

¹⁶**Kompilasi Hukum Islam (KHI):** Di Indonesia, rujuk diatur dalam Kompilasi Hukum Islam (KHI), yang memungkinkan suami untuk merujuk istri selama masa iddah dengan syarat dan ketentuan tertentu.

¹⁷**Undang-Undang Keluarga Tunisia:** Undang-Undang Keluarga Tunisia, yang mulai diberlakukan sejak 1956, mengatur hak perempuan dalam perceraian dan rujuk dengan lebih tegas, memberikan perempuan hak untuk menolak rujuk tanpa tekanan dari suami

e. The Concept of Reference in the State Legal System

In some countries with more progressive Islamic family law systems, such as Tunisia, reconciliation is not regulated as an automatic measure during the iddah period, but rather is regulated by the courts. The family court can decide whether reconciliation is appropriate, taking into account the circumstances of both parties. This protects women's rights, as it gives the wife a voice in deciding whether or not she wants to continue the relationship.

Overall, the development of reconciliation laws in the modern context tends to prioritize the principles of justice and equality, by giving women a say in the decision to return to their husbands. More advanced countries in Islamic family law reform, such as Tunisia and Turkey, focus on balancing the rights and obligations of husbands and wives, and ensuring that the divorce and reconciliation process does not disadvantage women or place them in a weaker position.

2. Implications of the Implementation of the Law of Reconciliation and Iddah on the Status of Women from the Perspective of Justice Through a Comprehensive Approach

The application of the laws of reconciliation and iddah within the context of Islamic family law has the potential to transform the status of women, particularly in terms of gender equality and justice. The law of reconciliation, which grants a husband the right to return his wife after a divorce during the iddah (waiting period), often results in injustice for women, particularly in terms of control over the decision to continue the marriage. In this analysis, we will examine how the application of this law can be understood through a comprehensive approach that embraces substantive justice and considers human rights. Several points must be considered to ensure a sense of justice, namely:

a. Justice in the Application of Referral Law

Traditionally, reconciliation laws grant a husband the right to reconcile his wife after a divorce, without requiring her consent during the iddah (waiting period). Under these laws, the husband retains full authority over the decision to reconcile, while women often lack the same rights. This has the potential to create gender inequality and injustice, as women lack control over these decisions and are often trapped in undesirable situations, particularly if the marriage involved infidelity or violence. In this context, reconciliation laws do not fully accommodate substantial justice for women who may not wish to return to their husbands.

A comprehensive approach to justice in reconciliation laws should consider not only the formal legal aspects but also the social and emotional well-being of women. For example, if a woman is forced back into an unhealthy or dangerous marriage, this can be considered a form of substantial injustice, even if she is "allowed" to reconcile formally. Therefore, the application of reconciliation laws must consider the emotional well-being and security of women in the decision,

involving the consent of both parties and providing space for women to choose without pressure.

b. The Role of Iddah in Protecting Women's Rights

Iddah is a waiting period that women must undergo after divorce or the death of their husband, which functions to ensure that there is no doubt regarding the child's parentage and provides time for introspection for women. However, in some cases, implementing iddah can have negative implications for the status of women. For example, during the iddah period, women may feel socially and emotionally isolated, especially if the divorce is caused by reasons that are detrimental to them, such as domestic violence or husband's infidelity. Limitations on women's rights during the iddah period, including the prohibition on remarriage, can be seen as a form of restriction of women's freedom in determining their future.

From a justice perspective, the iddah period can be seen as an instrument to protect women's rights, but it can also be a social constraint that affects women's freedom after divorce. Therefore, a comprehensive approach to assessing iddah must include an analysis of the prevailing social and cultural context. For example, in societies that remain deeply patriarchal, the iddah period can exacerbate women's social dependence on their ex-husbands or family. Therefore, it is important to consider legal changes that would allow women to continue their lives without restricting their rights.

c. A Comprehensive Approach to the Implementation of the Law of Referral and Iddah

A comprehensive approach to justice in reconciliation and iddah laws must incorporate a more inclusive gender perspective, taking into account women's rights in divorce and reconciliation. In this regard, reconciliation laws should not only focus on technical procedures but also on the principle of equal justice between both parties. In some more progressive countries, such as Tunisia and Turkey, family law mechanisms have been reformed to give women greater say in reconciliation decisions. For example, in Tunisia, family law requires the consent of both parties to reconciliation, substantially changing the power dynamics within the family.

In discussing the iddah period, several countries have also considered more progressive legal changes. In Indonesia, although iddah remains part of Islamic family law practice, efforts are being made to better address women's social and emotional well-being during the iddah period. For example, this could include providing women with easier access to work or further education, without having to rely entirely on their husbands or families. This approach aims to prevent women from becoming trapped in detrimental social dependencies during the iddah period.

d. Social and Cultural Implications

Despite efforts to reform reconciliation and iddah laws in some countries, their implementation remains influenced by patriarchal social and cultural structures. In many societies, deeply rooted social norms regarding women's roles in the family and marriage can influence how these laws are perceived and implemented. Therefore, while more progressive legal reforms are needed, social change within society is also needed to ensure that women truly receive substantive justice in the application of Islamic family law.

E. CONCLUSION

Reconciliation and iddah are two very important concepts in Islamic family law which are regulated in the Koran and hadith. Reconciliation provides an opportunity for husbands to return to their wives during the iddah period, while iddah aims to ensure legitimate offspring and provides time for introspection for divorced couples. Both are clearly regulated in religious texts and explained further by Islamic scholars, who provide guidelines for Muslims in living a domestic life in accordance with Islamic teachings.

Reconciliation in Islamic law is a process that has conditions and pillars that must be met to be valid according to Islamic law. Islamic law stipulates reconciliation as a step to provide an opportunity for divorced couples to repair their relationship during the iddah period, provided that divorces have not been pronounced three times and are entered into voluntarily by both parties. A proper understanding of the conditions and pillars of reconciliation is crucial for maintaining family harmony and preventing abuse of rights during the divorce process.

Different types of divorce in Islam have different impacts on the right of reconciliation between husband and wife. A *raj'i* divorce allows for reconciliation during the iddah period, while a *bain* divorce permanently ends the marriage and does not allow for reconciliation until after marriage. A *sayr* divorce is similar to a *raj'i* divorce in that it allows for reconciliation during the iddah period, while a *fasakh* divorce is a divorce taken for urgent reasons that render the marriage untenable, eliminating the right of reconciliation between the spouses.

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