

IDDAH OF WOMEN WHO HAD ABORTUS IN THE BOOK OF MUGHNI AL-MUHTAJ AND MUKHTASHAR KHALIL IN PERSPECTIVE OF MAQASID SHARI'AH

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Abstract: *Iddah* is a period of waiting for a woman not to carry out a marriage after the death or divorce of her husband until the time limit determined by *syara'*. As for the *iddah* period for a woman who is pregnant until she gives birth. However, the problem that arises in this life is what if the woman has an abortion. In this matter, there is a difference of opinion in the books of *Mughni al-Muhtaj* and *Mukhtashar Khalil* about the end of the *iddah* period of a woman who has an abortion. This research aims to find out how the opinions of the two books about *iddah* women who experience abortion and what causes differences of opinion, and which opinion is chosen. This research is a type of library research, which is descriptive with qualitative analysis, and the primary data source used is the book of *Mughni al-Muhtaj* and *Mukhtashar Khalil*. This study indicates that the difference in opinion is due to differences in the book's writers in interpreting the word *al-haml* and the rules of *ushul fiqh* used. Moreover, from the two opinions, Muhammad Khatib asy-Syarbaini in the book *Mughni al-Muhtaj* which was chosen because it followed the wisdom of determining *iddah*.

Keywords: Abortion; *Iddah*; *Mughni al-Muhtaj*; *Mukhtashar Khalil*; Pregnant

Abstrak: *Iddah* merupakan masa menunggu bagi wanita untuk tidak melaksanakan pernikahan setelah ditinggal mati atau dicerai oleh suaminya, sampai batas waktu yang telah ditentukan oleh *syara'*. Masa *iddah* bagi wanita yang sedang hamil sampai ia melahirkan. Namun, permasalahan muncul jika wanita tersebut mengalami abortus. Dalam masalah ini, terjadi perbedaan pendapat dalam kitab *Mughni al-Muhtaj* dan *Mukhtashar Khalil* tentang berakhirnya masa *iddah* seorang wanita yang mengalami abortus. Tujuan dari penelitian ini ialah untuk mengetahui bagaimana pendapat dari kedua kitab tersebut tentang *iddah* wanita yang mengalami abortus, apa yang menyebabkan terjadinya perbedaan pendapat, serta pendapat manakah yang terpilih. Penelitian ini merupakan penelitian kepustakaan, bersifat deskriptif dengan analisis kualitatif. Sumber data primer adalah kitab *Mughni al-Muhtaj* dan *Mukhtashar Khalil*. Hasilnya menunjukkan bahwa perbedaan pendapat tersebut disebabkan perbedaan penulis kitab dalam memaknai kata *al-haml* dan kaidah *Ushul Fiqh* yang digunakan. Dan dari kedua pendapat tersebut, pendapat Muhammad Khatib al-Syarbaini dalam kitab *Mughni al-Muhtaj* lebih kuat dan terpilih karena sesuai dengan hikmah disyariatkannya *iddah* dan mengandung lebih banyak *mashlahah*.

Kata kunci: Abortus; *Iddah*; *Mughni al-Muhtaj*; *Mukhtashar Khalil*; Hamil

Introduction

The main hope of every human being who will build a household is creating a *sakinah*, *mawaddah*, and *warahma* family. Households that are always decorated with joy and full of smiles, joys, and sorrows are faced together to increase love and gain the pleasure of Allah.

However, sometimes the reality is not as expected. Problems in the household may happen, even sometimes these problems continue without finding a bright spot as a proper solution. Such a situation makes a husband and wife feel uncomfortable so that family harmony can no longer be felt. Even mediation cannot reconcile the two parties until the divorce becomes the end of problem-solving.

After a divorce, a woman is obliged to undergo a period of *iddah*. Etymologically, *iddah* is taken from the word *adad* in the Al-Munawwir Dictionary, meaning count, number.¹ In terminology, according to al-Shan'any, that is the name for a time when a woman waits for the opportunity to remarry because of the death of her husband or divorce from her husband.²

The period of *iddah* of every woman depends on the circumstances or conditions when she is divorced or abandoned by her husband. The *iddah* of a woman whose husband divorces is three times *quru'* for those who have had husband and wife relations. However, a woman who has not had a husband and wife relationship does not have an obligation to perform *iddah*. As for the woman whose husband died, her *iddah* period is four months and ten days, whether for women who are married or not. The *iddah* of a pregnant woman is until she gives birth.

¹ Ahmad Warson Al-Munawwir, *Kamus Al-Munawwir Arab-Indonesia Terlengkap*, (Yogyakarta: Pustaka Progressif, 1997) p. 904.

² Al-San'any, *Subul al-Salam*, Juz III (Kairo: Syirkah Maktabah Mustafa al-Babi al-Halabi, 1960) p.196.

There is no difference of opinion among scholars regarding the period of *iddah* of a pregnant woman until she gives birth. Namun, yang jadi masalah adalah ketika wanita tersebut mengalami abortus. However, the problem is when the woman has an abortion. In response to this, al-Syarbaini, in his book *Mughni al-Muhtaj* said that the woman's *iddah* had not ended if what came out was *'alaqah*, and the woman was acquitted of being pregnant. However, if what comes out is *mudghab*, then the woman's *iddah* ends. In contrast to Shaykh Khalil Bin Ishaq al-Maliki, who states in the book *Mukhtashar Khalil* that the *iddah* of a woman who experiences an abortion ends even though what comes out is only *'alaqah*, because it has shown that she will become a mother.

From the differences of opinion above, three questions arise: First, what is the opinion about the *iddah* of women who experience abortion in the books of *Mughni al-Muhtaj* and *Mukhtasar Khalil*? Second, what causes differences of opinion in the books of *Mughni al-Muhtaj* and *Mukhtasar Khalil* regarding the *iddah* of women who experience abortions? Therefore, research is needed that will answer these three questions.

The purpose of this study is to provide answers to the three questions above. Although this research studies classical *ulama's* books, it does not close the relevance to the present. Because with the development of science and technology, scientists in the medical field have made the classification of abortion itself. Thus, it can be seen that the two different opinions belong to which classification.

Abortion itself is medically the cessation of pregnancy with the death and expulsion of the fetus at the age of fewer than 20 weeks with a fetal weight of fewer than 500 grams, i.e. before the fetus can live outside the womb independently.³

³ Yuli Susanti, "Perlindungan Hukum Bagi Pelaku Tindak Pidana Aborsi (Abortus provocatus) Korban

Abortion is also divided into several types, namely: complete abortion, incomplete abortion, abortion insipient, abortion imminent, missed abortion, and habitual abortion.

Iddah Paradigm

Etymologically, the word iddah comes from Arabic, عدّة which means count, while iddah is a *masdar* form of *fi'il madhi* عد which means count, while iddah is a *masdar* form of *fi'il* which means counting.⁴ As for Sayid Sabiq, the term iddah is pronounced as follows:

إِسْمٌ لِلْمُدَّةِ الَّتِي تَنْتَظِرُ فِيهَا الْمَرْأَةُ وَتَمْتَنِعُ عَنِ التَّزْوِيجِ

بعد وفاة زوجها أو فراقه لها⁵

“iddah is the name for a period, where a woman waits and prevents herself from marrying after her husband dies or after divorce.”

Besides Sayyid Sabiq, Muhammad al-Zahri al-Ghamrawi gave the term *iddah* with a different editor. According to him, *Iddah* is a *syara'* term, which is a period of waiting for a woman due to divorce to clean up the residue caused by a husband and wife relationship or the like.⁶

From the various definitions above, it can be seen that there are differences between the scholars in defining iddah. However, if the substance is understood, then each definition presented has something in common, namely, iddah is a grace period for a woman not to carry out a marriage after being left dead or divorced by her husband until the time limit determined *syara'*. This is a form of condolence for self-reflection or cleansing of a woman's womb.

Perkosaan,” *FH.UNISBA: Jurnal Ilmu Hukum*, 16, 2 (September 2010-Februari 2013): p. 10.

⁴ Mahmud Yunus, *Kamus Arab-Indonesia*, (Jakarta: Hindakarya Agung, 1989), p. 225.

⁵ Sayyid Sabiq, *Fiqh Sunah*, juz II, (Beirut: Dar al-Fikr, 1983), p. 325.

⁶ Muhammad al-Zahri al-Ghamrawi, *Al-Siraj al-Wahaj*, (Bairut, Libanon: Dar al-Kutub al-Alamiyah, t.th), p. 435.

The period of iddah that a woman must live as a result of divorce or because her husband has left her is not the same, depending on how the woman was when she died or was divorced. The provisions are based on the arguments contained in the Qur'an and hadith. A woman's iddah, in general, is three times *quru'*. Nevertheless, for a woman whose husband has died, her iddah period is four months and ten days, whether she has had marital relations or not. As Allah says:

وَالَّذِينَ يَتُوفَوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ
أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا

“Those who die among you leaving their wives (let the wives) defer themselves (*iddah*) for four months and ten days.” (Q.S. Al-Baqarah [2]: 234)

As for the woman whose husband has divorced but has not had marital relations, the woman is not obliged to undergo the iddah period as Allah says:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ
مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُونَهَا

“O you who believe, if you marry believing women, then you divorce them before you interfere, then it is not obligatory for them to make an iddah for you which you ask to complete.” (Q.S. Al-Ahdzab [33]: 49)

While the period of iddah for a woman who is no longer menstruating (*monopouse*) is three months, and the iddah of a woman who is pregnant until she gives birth. Allah says in the Qur'an:

وَالْحَيِّ يَبْسَنَ مِنَ الْمَحِيضِ مَنْ تَسَاءَلَكُمْ فِي أَرْبَابَتُمْ
فَعِدَّتُهُنَّ ثَلَاثَةُ أَشْهُرٍ وَالْحَيِّ لَمْ يَحْضَنْ وَأُولَاتُ الْأَحْمَالِ
أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ

“And women who do not menstruate again (*menopause*) among your women if you have

doubts (about the period of iddah), then their iddah period is three months; and so (also) women who do not menstruate. Moreover, pregnant women, their iddah is until they give birth to their wombs". (Q.S. Al-Thalaq [65]: 4)

In marriage law, iddah is known as waiting time. The provisions for waiting time in the Marriage Law in chapter VII article 39 states that: If the marriage breaks up due to death, the waiting time is 130 days, if the marriage breaks up due to divorce and the woman is still menstruating, the waiting time is three times sacred with at least ninety days, if the marriage breaks up while the woman is pregnant, then the waiting time is until she gives birth, and there is no waiting period for women who have not previously had a husband-wife relationship with her ex-husband.⁷

Abortion Concept

The word abortion comes from the English language, namely abortion which in the Indonesian English dictionary is translated as abortion.⁸ In Arabic terms, abortion is known as the word *al-ijhad* (الاجهاض) or commonly known as *isqat al-haml* (اسقاط الحمل) the origin of the word is سقط-يسقط-سقطا which means to drop, to prevent.⁹ As for al-Gazali termed abortion with the word (الاجهاض) as written in his book of *Ihya Ulum al-Din*¹⁰ وليس هو كاجهاض which means it is not like abortion.

Furthermore, in terminology, Holmer said abortion is the termination of pregnancy before the 16th week where placentation has not been completed.¹¹ Meanwhile, according to

Muhammad Said Rahman al-Buti, abortion is an act of separating the fetus from its mother before the birth is complete according to custom, be it the efforts of the pregnant person itself or the efforts of others, either by hitting the pregnant person's stomach, by surprising, giving medicine. Or in some other way¹².

Based on the definitions above, it can be concluded that abortion is a state of the expulsion of the products of conception from the mother's womb before the fetus is 20-28 weeks old or prematurely.

With the advancement of technology in the medical field, abortion is divided into two. First, spontaneous abortion is an abortion that occurs by itself, unintentionally or not preceded by mechanical or medical factors, solely caused by natural factors. In this case, spontaneous abortion is further divided into six types: Imminent abortion, which is vaginal bleeding in pregnancy less than 20 weeks, without any signs of increased cervical dilatation. An abortion insipient is an event of uterine bleeding in pregnancy before 20 weeks with increased uterine cervical dilatation, but the products of conception are still in the uterus. Incomplete abortion is the expulsion of part of the products of conception in pregnancy before 20 weeks with some remaining in the uterus. Complete abortion is the expulsion of all products of conception in pregnancy before 20 weeks. Missed abortion is defined as the retention of products of conception that have died in utero for several weeks. Recurrent abortion is defined according to various criteria of number and sequence, but perhaps the most widely accepted definition is three or more consecutive spontaneous abortions. A woman suffers from recurrent/habitual abortion if she

⁷ Marriage Law, full edition, (Bandung: Fokusmedia, 2005), p. 45-46.

⁸ Echols, dan Hassan Shaddily, *Kamus Inggris Indonesia*, (Gramedia:Jakarta, 1992), p. 2.

⁹ Muhammad Idris 'Abd al-Rauf al-Barbawi, *Qamus Idris al-Marbawi*, Juz I, (Jakarta: Karya Insa, t.th), p. 292.

¹⁰ Al-Gazali, *Ihya Ulum al-Din*, (Kairo: Mu'assasah, 1967), p. 53.

¹¹ Rustam Mochtar, *Sinopsis Obsetetri*, (Jakarta: EGC, 1998), p. 209.

¹² Muhammad Said Rahman al-Buti, *Tahdid al-Nasl*, (Damsyq: Maktabah al-Farabi, 2011), p.187 dikutip oleh Aripin Marpaung, *Diktat Fikih Kontemporer*, (Fakultas Syari'ah dan Hukum, Institut Agama Islam Negeri Sumatera Utara, Medan, 2014), p. 66.

has had three or more consecutive abortions.¹³

Second, abortion provocateurs, which is intentional abortion either by using drugs or tools. This abortion is also divided into two: Abortus provocateurs medicinalis, namely abortion carried out with medical indications. Furthermore, Abortus provocateurs criminalis, namely abortion that occurs because of actions that are not legal or not based on medical indications, and in general, it is said to be an early birth before the baby in time can live alone outside the womb. In general, the fetus that came out was no longer lifeless.¹⁴

According to the majority of *fuyaha*, it is unlawful to have an abortion for a fetus that is 120 days old. While the age before 120 days occurs *khilafiyah*. Some argue that it is permissible, makruh, and haram. According to Imam al-Ramli from the Imam *Shafi'i* group, it is illegal to have an abortion for a fetus that is 120 days old. Because it is estimated that the fetus is alive, for those who do, then the punishment is *ghurrah*,¹⁵ *diyat* which must be fulfilled by the person who commits the killing of the fetus, in the form of paying a male or female slave to the family of the fetus or paying *kafarat* equal to one-twentieth of the usual *diyat*, namely five camels. Meanwhile, abortion before 120 days is legal.

Ibn Hazm also argues that killing a fetus after the spirit has been breathed and its age

reaches 120 days is considered a crime of intentional murder and is punishable by *qishas* unless the victim is forgiven. This action is obligatory to *ghurrah* and is not obliged to pay *kafarat* because it is considered an intentional murder.¹⁶ Ibn Qudamah argues that if it turns out that the fetus dies as a result of a beating on the mother's abdomen, then the perpetrator is given a reward in the form of *kafarat*, in addition to *diyat* and *ghurrah*, namely freeing a believing slave. If he is unable to do so, then he must fast for two consecutive months. It is obligatory upon him whether the fetus is alive or dead.

As for the law in Indonesia, the issue of abortion that is regulated is only about abortion provocatus. In the Criminal Code (KUHP), the act of intentional abortion (abortus provocatus) is regulated in the second book of Chapter XIV concerning Moral Crimes, especially Article 229 paragraph 1, which reads, "Whoever intentionally treats a woman or orders her to be treated, by being notified or an expectation is raised that because of this treatment, her pregnancy can be aborted, she is threatened with a maximum imprisonment of four years or a maximum fine of three thousand rupiahs, is punishable by a maximum imprisonment of four years.

Iddah of Aborted Women in the Book of Mughni Al-Muhtaj and Mukhtashar Khalil

1. Iddah of Aborted Women in the Book of Mughni Al-Muhtaj

As the author has explained in the previous discussion, the iddah of a woman who is pregnant is until she gives birth as the word of God:

وَأُولَاتُ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ^ق

¹⁶ Ibn Hazm, *al-Muhalla*, jilid XI, (Kairo: al-Muniria, 1352 H), p. 234 dikutip oleh Dewani Romli, "Aborsi Dalam Perspektif Hukum Positif Dan Hukum Islam (Suatu Kajian Komparatif)," *Al-Adalah*: Vol. X, No. 2 (Juli 2011): p. 160.

¹³ Julita Anriani Lubis, "Perbedaan Kadar Glutation Peroksidase Pada Abortus Imminens Dan Hamill Normal Trimester I Di RSUP. H. Adam Malik, Dan RS. Swasta Medan", *Tesis*, Universitas Sumatera Utara, Medan, 2014), p. 11

¹⁴ Sri Setyowati, *Masalah Abortus Kriminalis Di Indonesia Dan Hubungannya Dengan Keluarga Berencana Ditinjau Dari Kitab Undang-Undang Hukum Pidana*, (Jakarta: t.p., 2002), p. 99.

¹⁵ Syihabuddin al-Ramli, *Nihayat al-Mukhtaj, Syarh al-Minhaj fi al-Fiqh' ala Madzhab al-Imam Syafi'i*, jilid VII, (al-Halabi, 1357 H), p. 416 dikutip oleh Dewani Romli, "Aborsi Dalam Perspektif Hukum Positif Dan Hukum Islam (Suatu Kajian Komparatif)," *Al-Adalah*, Vol. X, No. 2, Juli 2011, p. 160.

“...And the women who are pregnant, the time of their *iddah* is until they give birth to their wombs....” (Q.S. Al-Thalaq [65]: 4)

The above verse has clearly explained that a pregnant woman's *iddah* is until she gives birth to her womb. In this case, all scholars agree, and no one denies it. However, there is a problem when a pregnant woman is sentenced to *talaq* by her husband, and not long after that, the woman has aborted in the womb. Is it with the abortus that the woman's *iddah* is gone? This is where the scholars differ in their responses.

In the book of *Mughni al-Muhtaj*, it is written that the *iddah* of women who undergo abortion will only die if the one who comes out in the form of a lump of meat (*mudhghah*). Moreover, do not fall in the *iddah* period if all that comes out is only a lump of blood (*alaqah*). As written in the book of *Mughni al-Muhtaj*:

وَقَعَ فِي الْإِفْتَاءِ أَنَّ الْوَلَدَ لَوْ مَاتَ فِي بَطْنِ الْمَرْأَةِ وَتَعَدَّرَ
نُزُولُهُ هَلْ تَنْقِضِي عِدَّتَهَا بِالْأَقْرَاءِ إِذَا كَانَتْ مِنْ ذَوَاتِ
الْأَقْرَاءِ أَوْ بِالْأَشْهُرِ إِنْ لَمْ تَكُنْ أَوْ لَا تَنْقِضِي عِدَّتَهَا مَا
دَامَ فِي بَطْنِهَا اخْتَلَفَتْ الْعَصْرِيُّونَ فِي ذَلِكَ، وَالظَّاهِرُ
الثَّلَاثُ لِعُمُومِ قَوْلِهِ تَعَالَى: {وَأُولَاتُ الْأَحْمَالِ أَجَلُهُنَّ
أَنْ يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٤] (لَا يَوْضَعُ) (عَلَقَةٌ)
وَهِيَ مَنِيٌّ يَسْتَحِيلُ فِي الرَّحِمِ فَيَصِيرُ دَمًا غَلِيظًا، فَلَا
تَنْقِضِي الْعِدَّةَ بِهَا لِأَنَّهَا لَا تَسَى حَمْلًا، وَإِنَّمَا هِيَ
دَمٌ (وَ) تَنْقِضِي (بِضَغَّةٍ) وَهِيَ الْعَلَقَةُ الْمُسْتَحِيلَةُ
قِطْعَةً لَحْمًا¹⁷

“Stipulated in some fatwas that if there is a child who dies in the stomach of the woman and the woman experiences pain in the death of the child, is the sacredness of the woman's uterus has been completed along with the bleeding that has aged or with several months if it is still not

¹⁷ Muhammad Khatib Asy-Syarbini, *Mughni Al-Muhtaj*, Juz IV (Jakarta: Dar Al-'Ammiyah, 2018 M), p. 349.

clean the uterus or *iddahnya* not finished if the child who miscarried is still in the womb? There is a difference of opinion among the scholars” Asriyun on the matter, and according to *goul dhohir* is the third as in the word of Allah: “And the women who are pregnant when their *iddah* is until they give birth to the womb” (Al-Thalaq: 4). Not for removing *alaqah* and what is meant by *alaqah* is semen that sticks in a woman's womb and turns into a lump of blood, the woman has not punished *iddah* for him, For if it is only *'alaqah* (from the pregnant woman), it is not called pregnant, and in fact, it is still a blood clot. Furthermore, punished finished (*iddah*) with the release of *mudhghoh* that is a lump of blood that turns into a lump of meat.”

In detail explained in the book of *Mughni Al-Muhtaj* that the *iddah* of women who have abortus that is still in the form of a lump of blood (*alaqah*) does not end because women in these circumstances can not be said to be pregnant women (لاتسى حملا). Moreover, it also explained that the period of *iddah* of the woman is the same as the time of the woman's *iddah* in general.

According to the author's opinion, what is conveyed in the book of *Mughni Al-Muhtaj*, which states that the *iddah* of a woman who undergoes abortion in the form of a lump of blood (*alaqah*) has not ended, is a form of how she understands the Qur'anic verse at-Thalaq verse 4, namely in the word *ان يضعن حملن*. Furthermore, this is part of the prudence of Muhammad Khatib al-Syarbaini in interpreting the Qur'anic verse. As for his prudence in interpreting this verse is the influence of the knowledge he learned from Imam al-Shafi'i, who is his teacher in studying the science of *fiqh* and in *istinbath* (excavation and discovery) of the law on a case.

The author of the book argues that *ان يضعن حملن* is the proper interpretation of childbirth. Childbirth is when the present in a woman's stomach is already visible as a human being.

According to al-Syarbaini, the word *حملهن* is interpreted as being genuinely pregnant. The meaning is that the fetus's condition is no longer a lump of blood (*'alaqah*). So that the woman who has abortus and is still in this phase then does not immediately fall during her *iddah*, and she must replace it with an ordinary woman's *iddah*.

According to the author, al-Syarbaini's attitude makes the Qur'anic verse the only proposition to maintain validation of his opinion to avoid the placement of the law that is contrary to the law of *syara'*. In addition, al-Syarbaini also uses the *fiqh* rule as a reinforcement of his opinion. The *fiqh* rule he uses is *الاصل براء الزمة*. (The origin of something is free from dependents).

If it is associated with the case of pregnant women who have abortus with the rule *الاصل براء الزمة*, it means that basically, a woman's uterus is free from dependents or uterine voids. So if there is an abortus at the gestational age of fewer than 20 weeks and still in the form of a lump of blood (*'alaqaah*), then it can not be said a pregnant woman because it is free from pregnancy.

In addition, if analyzed with the current situation, then technology in the field of medicine is undoubtedly sophisticated to detect a woman's pregnancy. As for if it is associated with the classification of abortus, then the abortus that can abort the *iddah* time of a woman in the book of *Mughni al-Muhtaj* is incompatible abortus above four weeks.

2. Iddah of Abortus Women in the Book of Mukhtasar Khalil

In the book of *Mukhtasar Khalil*, the *iddah* of the woman who had abortus has died even though the one that came out is still in the form of a lump of blood (*'alaqah*). This can be seen in the following statement.:

وعدة الحامل مطلقا ووفاة وضع حملها كله.

وانالدماجتمعانتهي¹⁸

"And the iddah of a pregnant woman who is rejected (her husband) or left for dead until she gives birth, even though (in the form of) blood that clots out (the iddah period)."

From the above, it seems clear that a woman whom her husband rejected was pregnant, and then she had abortus, then had died during the woman's *iddah* even though that came out only in the form of a lump of blood. As for the above opinions as to the word of Allah in the Qur'an:

وَأُولَاتُ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ¹⁹

"...And the women who are pregnant, the time of their iddah is until they give birth to their wombs...." (Q.S. Al-Thalaq [65]: 4)

According to the author of *Mukhtasar Khalil* sheikh Khalil bin Ishaq al-Maliki, the pronunciation of *الحمل* covers all types of pregnancy even in the form of a lump of blood (*'alaqah*). Pregnancy in the form of a lump of blood has shown that the woman will become a mother. (تكون بها ام ولد).

According to Ibn Qasim, the characteristics of blood in question are as follows.:

وعلامة هذا الدمار ان يصب عليه الماء فلا يذوب¹⁹
"And the characteristic of this blood when watered with water then it does not melt.."

In addition, Ibn Qasim al-Kharasyi also commented on the *iddah* period of women who had abortus contained in the book of *Mukhtasar Khalil*, he said.:

وعدة الحامل في طلاق او وفاة وضع حملها كله. وان الدم اجتمع انتهي, الدم المجتمع الذي تنقضي به العدة بأن الذي لا يذوب إذ صب عليه الماء الحار.

¹⁸ Khalil Bin Ishaq al-Maliki, *Mukhtasar Khalil*, cet ke-2 (Beirut: Dar al-Madaru al-Islam, 2004), p. 137.

¹⁹ Khalil Bin Ishaq al-Jundi al-Maliki, *al-Taudih fi Syarhi Mukhtashar al-Far'iyyi li Ibni Hajib*, (Mesir: Dar Najibuih, 2008), p. 24.

“And the iddah of a pregnant woman who is rejected (her husband) or left for dead until she gives birth. Even though (in the form) of blood that clots out (the iddah period). The lump of blood that ends the iddah is the one that does not melt when watered hot water.”²⁰

From the above exposure, it can be taken the essence that according to Sheikh Khalil bin Ishaq as the author of the book *Mukhtasar Khalil*, the iddah of a woman who had abortus has ended even though the one that came out is only a lump of blood. Because according to him, a lump of blood is a sign that a woman will become a mother. According to Ibn Qasim, the lump of blood in question is a lump of blood that does not melt when watered. Then al-Kharasy explained again that a lump of blood does not melt when watered with hot water.

However, the opinion that the author has expressed above is refuted by Asyhab, he said:

لا تحل بالدم المطلقة ولا تكون به الامة امر ولد²¹
“A pregnant woman is not lawful to marry if she only bleeds, and she is not also referred to as a mother-to-be..”

Despite the differences of opinion above, if viewed in the context of the current situation, when medical technology is increasingly sophisticated to see the unseen before, then the opinions listed in the book of *Mukhtasar Khalil* are included in the classification of abortus imminent.

Causes of Differences in Opinion and Analysis of Maqasid Shari'ah

From the above explanation, it can be known that the differences of opinion contained in the book of *Mughni al-Muhtaj* and *Mukhtasar Khalil* are not based on differences

²⁰ Abu Muhammad Al-Kharasyi, *Syarah Mukhtashar Al-Khalil*, (Mesir: Al-Kubra Al-Amiri, 1317 H), Juz IV, p.143.

²¹ Khalil bin Ishaq al-Jundi al-Maliki, *al-Tauidih fi Syarhi...*, p. 24.

in propositions, but because of differences between the two authors in understanding the word *ان يرضع حملهن*.

In the book of *Mughni al-Muhtaj*, it is said that the woman who had abortus is still in the form of blood, then the iddah period does not fall because the woman is not said to be a pregnant woman. This opinion is the caution of the author of the book in interpreting the verses of the Qur'an. As in the book of *Mukhtasar Khalil*, the time of iddah, a woman who had abortus, although still in the form of a lump of blood, it has aborted the time of her iddah. This is because according to the author of the book *Mukhtasar Khalil*, the word *الحمل* includes all types of pregnancy, be it a lump of blood (*alaaqah*) or a lump of meat (*mudhghah*).

If the two opinions are classified, then the opinion in the book of *Mughni al-Muhtaj* is included in the classification of incomplete abortus above four weeks. This abortus is characterized by the discharge of dead fetal tissue from the womb and causes continuous bleeding. A woman who has this abortion, then there is no chance that her pregnancy will survive.

While the opinion in the book of *Mukhtasar Khalil* is included in the classification of abortus imminent, it is a condition of severe bleeding that allows a woman to have an abortus and lose her womb. This condition is characterized by brownish spots that are usually accompanied by blood clots from the vagina. However, this abortion can still be treated, or in other words, a woman who has abortus imminent can still try to save her womb by resting completely.

From the above explanation, it can be said that the opinion in the book of *Mughni al-Muhtaj* is stronger than the opinion in the book of *Mukhtasar Khalil* because the opinion in the book of *Mughni al-Muhtaj* is commensurate with the purpose in his shari'a iddah, which is to know the emptiness of the womb of a woman. While the opinion in the book of *Mukhtasar Khalil* still allows the woman to

be pregnant. So the chosen opinion is the opinion of Muhammad Khatib Al-Syarbaini in the book of *Mughni al-Muhtaj*. This is because his opinion is following the purpose of *iddah*. According to Totok Jumantoro, the essence of *maqasid shari'ah* is for the benefit of man. Then Muhammad Syrukri Albani added that the benefits could be well realized if the five main elements can be realized and maintained: religion, soul, descendants, reason, and treasure.²²

So in this matter, the opinion of Muhammad Khatib al-Syarbaini in the book of *Mughni al-Muhtaj* has fulfilled the element of preserving offspring because his opinion clearly shows the empty uterus of a woman. Because if the woman who has an abortion is above four weeks, it is unlikely that her pregnancy can be saved. Even the remains of the fetus that has been killed must be removed because if not removed, it will harm the mother physically.

While the opinion in the book of *Mukhtashar Khalil* is included in the classification of abortus imminent because the baby in the womb of the woman who experienced it can still survive, and if he gets married, it will cause uncertainty about the child he was born with. If the child he was born with and who married him is his stepfather and considers it his biological child, then the child's marriage is not valid because the stepfather is not his guardian. Moreover, when he has a husband and wife relationship, he actually commits adultery due to the invalidity of the marriage.

Conclusion

Iddah cover is a grace period for a woman not to carry out a marriage after being left dead or divorced by her husband until the deadline specified by the *syara'*. An abortus is a state of discharge resulting from conception from the

mother's womb before the fetus is 20 -28 weeks old or premature; in the book of *Mughni al-Muhtaj*, iddah women who undergo abortion end if the one that comes out in the form of mudghah. However, if the exit is still in the form of alaqah, it cannot end the period of his iddah, and the woman's iddah must be replaced with a woman's iddah in general, which is three times *quru'*. This is because women who experience abortion after the alaqah phase are not said to be pregnant women. While in the book of *Mukhtashar Khalil*, iddah, a pregnant woman who had abortus, has ended even though it is still in the alaqah phase. Moreover, the lump of blood in question is the blood that does not melt when watered with water.

The proposition used in the books of *Mughni al-Muhtaj* and *Mukhtasar Khalil* to determine the time of iddah of women who had abortus is Q.S at-Thalaq verse 4. The difference of opinion contained in the book of *Mughni al-Muhtaj* and *Mukhtasar Khalil* is not based on differences in arguments, but because of the differences between the two authors in understanding the word *ان يضعن حملهن*.

In this regard, the opinion in the book of *Mughni al-Muhtaj* is more chosen than the opinion in the book of *Mukhtasar Khalil* because the opinion in the book of *Mughni al-Muhtaj* is commensurate with the purpose in his *shari'a* iddah, which is to know the emptiness of the womb of a woman. While the opinion in the book of *Mukhtasar Khalil* still allows the woman to be pregnant.

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²² Muhammad Syukri Albani Nasution, *Filsafat Hukum Islam*, (Jakarta: Rajawali Pers, 2014), cet-2, p. 105.

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