

# ANALYSIS OF WAITING PERIOD FOR MEN AFTER DIVORCE PERSPECTIVE OF JAMALUDDIN ATİYAH'S MAQASID AS-SHARIA THEORY

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**Abstract:** The Director General of Islamic Religious Institutional Development again issued Circular Number P-005 / DJ. III/Hk.00.7/10/2021 concerning marriage during the iddah period, according to the provisions of the circular "an ex-husband man can marry another woman when the iddah period of his ex-wife has ended". This article attempts to further analyze the waiting period for men due to talak raj'i divorce using Jamaluddin Atiyah's theory of *maqashid as-sharia*. This research is normative legal research. In the perspective of Maqashid As-Sharia proposed by Jamaluddin Atiyah, the regulation of waiting periods for men after divorce not only reflects aspects of Islamic law governing divorce, but also serves as a means to achieve broader goals in the lives of individuals, families, communities, and humanity by Islamic values. With this approach, the regulation has a profound impact on various aspects of life-related to divorce.

**Keywords:** waiting period for men; divorce; *maqashid as-sharia*; *Jamaluddin Athiyah*

**Abstrak:** Dirjen Pembinaan Kelembagaan Agama Islam kembali mengeluarkan surat Edaran Nomor P-005/DJ.III/Hk.00.7/10/2021 tentang pernikahan dalam masa iddah, menurut ketentuan edaran tersebut "laki-laki bekas suami dapat melakukan pernikahan dengan perempuan lain apabila telah selesai masa iddah bekas isterinya". Artikel ini mencoba menganalisis lebih jauh terkait masa tunggu bagi laki-laki akibat perceraian talak raj'i dengan menggunakan teori *maqashid as-syariah* Jamaluddin Atiyah. Penelitian ini merupakan penelitian hukum normatif. Hasil penelitian ini menunjukkan bahwa Dalam perspektif Maqashid As-Syariah yang dikemukakan oleh Jamaluddin Atiyah, regulasi masa tunggu bagi laki-laki setelah bercerai tidak hanya mencerminkan aspek hukum Islam yang mengatur peristiwa perceraian, tetapi juga berfungsi sebagai sarana untuk mencapai tujuan-tujuan yang lebih luas dalam kehidupan individu, keluarga, masyarakat, dan kemanusiaan sesuai dengan nilai-nilai Islam. Dengan pendekatan ini, regulasi tersebut memiliki dampak yang mendalam pada berbagai aspek kehidupan yang berkaitan dengan perceraian.

**Kata Kunci:** masa tunggu bagi laki-laki; perceraian; *maqashid as-syariah*; *Jamaluddin Athiyah*

## Introduction

The period of iddah has been discussed in detail in previous jurisprudence studies. However, the iddah period discussed is only the iddah period for women, while the iddah period for men has never been discussed in previous books of jurisprudence.<sup>1</sup> This is because carrying out iddah includes worship that is ta'abbudi so that it remains accepted and carried out. However, over time, legal problems arise related to the issue of iddah, one of the problems that arise is that there is a legal vacuum if a man divorces his wife with talaq raj'i, then for the wife who is rejected there must be a waiting period (iddah period), while for the husband it is not determined so, so that he can immediately remarry another woman, after legally marrying a man can reconcile with the wife who is rejected Raj'i. So in other words, the man can practice polygamy without his wife's permission.

In addition to these problems, the development of science causes many thoughts that consider discrimination against women related to the iddah period, this is considered to discredit women. After divorcing a woman, a man can directly marry another woman, regardless of the woman's feelings and psychological burdens. Meanwhile, women have to wait for the iddah period for months. So, to bring justice for men and women, it is considered necessary to have a waiting period for men after divorce.<sup>2</sup>

The word Iddah in Arabic comes from the root adda ya'uddu'-iddatan and the plural is 'idad which means: "count" and "count".<sup>3</sup> Thus the waiting period for men is something similar to iddah, which is not shari'i prescribed for men. Islam has regulated the period of iddah for women to be followed,

this is the decree of Allah Almighty to humans to be created Benefit in the world and the end.<sup>4</sup> Iddah is an obligation that must be performed as one of the legal consequences of divorce.

Legally at first, there was no regulation governing this matter, although implicitly the Islamic Law Commission (KHI) has mentioned it in Article 42 and Article 70 letter a,<sup>5</sup> But this discussion is still not spelled out. Before KHI, the Director General of Islamic Religious Institutional Development together with the Directorate General of the Religious Justice Agency of the Supreme Court of the Republic of Indonesia on September 30, 2021, that the Circular Letter of the Directorate General of Islamic Religious Institutional Development Number: DIV / Ed / 17/1979 dated February 10, 1979, concerning the problem of polygamy in iddah, but it did not work effectively in Islamic communities, so it needed to be reviewed. Because it was considered ineffective, the Director General of Islamic Religious Institutional Development again issued a Circular Number P-005 / DJ. III/Hk.00.7/10/2021 concerning marriage during the iddah period, according to the provisions of the circular "an ex-husband man can marry another woman when the iddah period of his ex-wife has ended"<sup>6</sup>. If a male ex-husband marries another woman during the iddah period, while he still has the opportunity to refer to his ex-wife, then it can potentially lead to hidden polygamy. If the ex-husband has married another woman during the period of his ex-wife's iddah, he can only refer to his ex-wife after obtaining permission for polygamy from the court.

This 2021 circular shows an update to Islamic law regarding waiting periods for men after divorce that has never been discussed in classical jurisprudence. According to Wahbah

<sup>1</sup>Mundzir An-Naisaburi, *Al-Ijma'* Terj. Darwis (Jakarta: Akbarmedia, 2012), h. 109-111.

<sup>2</sup>Muhamad Isna Wahyudi, *Fiqh Iddah Klasik dan Kontemporer*, (Yogyakarta: Pt Lkis Printing Cemerlang, 2009), h. 3.

<sup>3</sup>Wahbah az-Zuhaili, *Fiqh Islam Wa 'Adilatuhu* terj. Abul Hayyie al-Katanie, dkk cet.vi (Depok: Gema Insani, 2020), h. 534.

<sup>4</sup>Muhamad Isna Wahyudi, *Fiqh Iddah Klasik dan*

*Kontemporer*, (Yogyakarta: Pt Lkis Printing Cemerlang, 2009), h. 5.

<sup>5</sup>Abdurrahman, *Kompilasi Hukum Islam Di Indonesia*, (Cet. 4: Jakarta: Cv Akademika Pressindo, 2010), h. 122.

<sup>6</sup>Surat Edaran yang di keluarkan oleh Direktorat Jenderal Badan Peradilan Agama Mahkamah Agung pada tanggal 18 November 2021.

Zuhaili, men do not have an iddah period in the sense of the term. It is permissible for him to marry another woman immediately after separation, as long as there is no Sharia barrier. Such as marrying a woman who is not allowed to be polygamous with the wife he is refusing, such as his sister, his paternal and maternal aunts, nieces and nephews, and others. Nor can he marry his fifth wife at the time of his fourth wife's iddah, until his iddah period is over. Also married a wife who was triple-rejected before she married and divorced another man.<sup>7</sup> Al-Jaziri said that the waiting period for men is not called iddah for men, but only the time to wait for the period of iddah for women.<sup>8</sup> Although it is called the waiting period is not iddah, in essence, it is the same, which is both waiting for a certain time after falling talaq raj'i.

Despite the differences in scholars, there is at least an interesting discussion regarding the waiting period for men, which is considered a renewal of Islamic law. This shows the form of syumuliatul Islam li kulli zaman.<sup>9</sup> So far classical jurisprudence defines iddah has always been associated with women, to know whether the woman is pregnant during the iddah period or not and to ensure the cleanliness of the female uterus. If indeed the goal is to know the cleanliness of the uterus, then in modern times with sophisticated equipment, it can be done without waiting for three holy times. However, it seems that not only that, but the purpose of sharia also requires that divorced husbands and wives can reflect again on the continuation of the husband-wife relationship,<sup>10</sup> whether to reconcile and reunite or part on good terms. So what exactly is the waiting period for men from the point of view of maqasid sharia?

<sup>7</sup>Wahbah az-Zuhaili, *Fiqh Islam Wa 'Adilatuhu* terj. Abul Hayyie al-Katanie, dkk cet.vi (Depok: Gema Insani, 2020), h. 536.

<sup>8</sup>Abdurrahman al-Jaziri, *Kitab al-Fiqh ala al-Madhab al-Arba'ah*, juz 4 (Libanon: Darl Kutub al-Ilmiyah, 2003), h. 452.

<sup>9</sup>Jamal Al-Bana, *Nahwa Fiqh jadid* terj. Hasibullah dan Zuhairi Misrawi (Jakarta: Erlangga, 2008), h. 62

<sup>10</sup>Sayyid Sabiq, *Fiqh Sunnah*, ter, Abu Aulia dan

In modern times, a compromise is needed between classical fiqh and the development of science, so that changes are more useful and do not run away from the goals of sharia (maqasid sharia). Thus, we do not abandon classical fiqh but also do not ignore the development of modern issues and science. The end goal is maqashid as-shari'ah (the purpose of sharia) to become maqashid al-daulah (the goal of the state) so that the two are inseparable and together create a comprehensive benefit.<sup>11</sup>

The study of the theory of maqashid al-shari'ah in Islamic law is very important. In lughawi (language), Maqshid Sharia consists of two words, namely maqashid and shari'ah. Maqashid is the jama form of maqshud meaning intentionality, or purpose. And shari'ah is the subject form of the root word shari'a which means the way to the source of water as the source of life.<sup>12</sup> While terminologically, maqashid shari'ah is the goal of Islamic teachings or can also be understood as the goal of the makers of sharia.

One of the scholars who developed the concept of maqasid sharia was Jamaluddin Atiyah. Jamaluddin Atiyah gave some of the latest encouragement related to maqashid shari'ah, he developed maqashid shari'ah so that it can be relevant if applied to the present and future times. Jamaluddin Atiyah explains in his book *nahwa taf'il maqashid as-shari'ah* that maqashid is divided into two parts: maqashid khalqiyah and maqashid shari'ah.<sup>13</sup> From the description above, the author feels interested in further examining the waiting period for men due to divorce talaq raj'i using Jamaluddin Atiyah's theory of maqashid as-sharia.

Abu Syauqina, jilid III (Jakarta: PT Pusaka Abdi Bangsa, 2018), h. 648

<sup>11</sup>Abdul Wahab Khallaf, *Ilmu Ushul al-Fiqh*, (Beirut: Dar Al-Kutub Al-ilmiyah, 2003), h. 159.

<sup>12</sup>Busyro, *Maqashid al-Syariah (Pengetahuan Mendasar Memahami Maslahah)*, Cet- 1, (Jakarta: Premadia Group, 2019), h. 5-7.

<sup>13</sup>Jamaluddin Atiyah, *Nahwa Taf'il Maqashid al-Syari'ah* (Damaskus: Darul Fikr, 2003), h. 106-107

## Literature Review

### The Waiting Period for Men in Fiqh

In pre-Islamic Arabia, there was a social norm requiring a widow to wait and mourn for one year after her husband's death, with various inhumane prohibitions. Then Islam reduced the period of one year to three quru times and abolished various inhuman treatments.<sup>14</sup>

In addition, Islam also requires iddah for women who are rejected, which previously did not apply. This historical fact clearly shows that from the beginning iddah was related to gender in terms of the role that the couple had to play after the breakdown of the marriage bond. If so, the obligation of iddah, which only applies to women so far, is not an irreversible dead price (nature). Iddah should be binding on both women and men so that it can better realize gender equality and justice in relations between men and women.<sup>15</sup>

Islamic scholars always study and analyze existing Islamic laws to make Islamic law remain relevant to social changes and times, because the law is always changing according to the conditions and place of the law. Laws that have been running in public life are considered to discriminate against women. One of them is the iddah law which as long as it only applies to women and is perceived to discriminate against women, it never hurts to be reviewed again, as expressed by Ibn Qoyyim al-Jauziyah and re-quoted by Jamal al-Banna "Changes and differences in fatwas or legal opinions can occur due to differences in time, place, situation and, customs".<sup>16</sup>

It is agreed and it is a definite law that iddah is a consequence that must be lived by a woman due to divorce, both death and life. The

stipulation of the law of Iddah for women is clearly explained by the Qur'an, Hadith, and Ijma'. Over time, iddah, which is only performed by a woman, also in some cases applies to men. The imposition of iddah for a man is known in fiqh literature (Al-Fiqh al-Islami wa Adilltih, Ianah al-Tholibin, and Kitabu al-Fiqh ala al-Madhabul al-Arba') under two conditions.

First: if a man divorces his wife with talaq bain, and he wants to marry someone whom he is not allowed to gather such as a sister. So he was not allowed until the iddah of the first wife, which included the binding of mahram with the future wife of the second was completed.

Second: if a man has four mental wives, one of whom is to marry the fifth, then he is not allowed to marry the fifth until the iddah period lived by the rejected wife is over.<sup>17</sup>

Wahbah Zuhaili, menambah satu kondisi seorang laki-laki tidak boleh langsung menikahi pada perempuan yaitu perempuan yang tertalak tiga kali, sebelum adanya tahlil<sup>18</sup> or before another man married her, known as Muhalil.

The delivery of iddah obligations for a husband, in these two conditions or cases is different, some convey implicitly, also using a straightforward sentence style. The implied language, as Hanafiyah explained, quoted by Abdurrahman, is that a person who divorces his wife, to marry his sister, does not include iddah for the husband, the waiting period is still called iddah for a wife.<sup>19</sup>

According to Wahbah Zuhaili, a man does not have iddah in terms, so they can marry directly after divorce, as long as there are no Sharia barriers, such as marrying someone who is not allowed to be gathered, such as aunts, siblings, etc.<sup>20</sup> From this explanation, Wahbah Zuhaili and the Hanafi scholars are included in

<sup>14</sup> Muhammad Hasan Sebyar, *Hukum Perdata Islam di Indonesia* (Sumatera Barat: Mitra Cendikia Media), h. 62.

<sup>15</sup> Wahyudi, *Fiqh Iddah Klasik dan Kontemporer*, h. 150

<sup>16</sup> Jamal Al-Banna, *Nahwa Fiqih Jadid* 3, Ter. Hasibullah dan Zuhairi Misrawi, (Jakarta: Erlangga, 2008), h. 62.

<sup>17</sup> Abu Bakar bin Muhammad al-Dimyati. *I'anah al-Tholibin* juz 4. (Libanon: . Darul Ihyal al-Turas al-Arabi. Tt), 59 . Samsuddin Muhammad bin Ahmad Assarbini. *Iqna' fihalli al-fadi abiya suja'*.jUz 2 .( Libanon: Darl al-khabar. 1996). Samsuddin

Muhammad bin Ahmad Assarbini. *Mugniyul al-Muhtaj*, Juz 3. Libanon: . Darl al-Kutub al-Ilmiyah. 2006, Wahbah Zuahaili, *al-Fiqh al-Islami wa Adilltih*, (Libanon: , Darl Fikr. 2006), 7168, Dan Abdurrahman al-Jaziri, *Kitabu al-Fiqh ala al-Madhabul al-Arba'*, juz 4. (Libanon: , Darl Kutub al-Ilmiyah, 2003), h. 452.

<sup>18</sup> Wahbah Zuhaili, *Fiqh Islam Wa Adilatuhu*, h.716.

<sup>19</sup> Abdurrahman al-Jaziri, *Kitabu al-Fiqh ala al-Madhabul al-Arba'*, juz 4, h. 452.

<sup>20</sup> Wahbah Zuhaili, *Fiqh Islam Wa Adilatuhu*, h. 536.

the category of scholars who receive iddah for husbands in an implied way.

The literature written by al-Dimyati clearly states that a husband does not have iddah except in two circumstances<sup>21</sup>, These two conditions are as argued by other scholars. Here it is clear that the opinion expressed by al-Dimyati included him in the group that conveyed the obligation of iddah for husbands in fiqh explicitly.

Regarding the time interval that must be lived by men in iddah activities is as the proportion of iddah lived by these women. There is iddah lived by men because of the mani' syar'i which causes him to have to do the iddah activity which depends on the iddah of women. Mani' shari'i which is the cause of the compulsory iddah for men is, firstly in Islam it is not permissible to marry two mahram women in one sacred bond, as was the case before Islam, (al-Nisa' 22-23)<sup>22</sup>. Second, Islam limits the polygamous marriage model to four women as Q. S. al-Nisa': 3. From the mani' shari'i it gives an understanding that the talaq imposed in these two conditions is in the form of raj'i talaq because the category of talak raj'i husband and wife are still considered husband and wife who can re-knit the household before the iddah period which is the provision of sharia 'ends.

### Maqashid Sharia of Jamaluddin Atyiah

Jamaluddin Atyiah is an expert scholar of maqashid shari'ah from Egypt who gave some of the latest encouragement related to maqashid shari'ah, he developed maqashid shari'ah so that it can be relevant if applied to today's times. Jamaluddin Atyiah discusses in his book Nahwa taf'il maqashid as-shari'ah into three parts: first; (qadaya mahwariyyah) which discusses important issues related to maqashid shari'ah.<sup>23</sup> Second; (Tashawwur Jadid Li al-Maqashid) which discusses the new concept of maqaṣid sharia. In this chapter he divides the maqaṣid of sharia into four areas, he says:

<sup>21</sup> Al-Dimyati, h. 59.

<sup>22</sup> Wahbah Zuhaili, *Fiqh Islam Wa Adilatuhu*, h. 536.

<sup>23</sup> Jamaluddin Atyiah, *Nahwa Taf'il Maqâshid al-Syari'ah*, h. 13-88.

<sup>24</sup> Jamaluddin Atyiah, *Nahwa Taf'il Maqâshid al-*

وقد توسعنا في بيان المقاصد من الخمسة الحالية إلى أربعة وعشرين مقاصداً موزعة على أربعة مجالات تتناولها في أربعة مطالب هي:

المطلب الأول: بحال الفرد  
المطلب الثاني: مجال الأسرة  
المطلب الثالث: مجال الأمة  
المطلب الرابع: مجال الإنسانية  
ويسبق ذلك بيان الطريقة التي اتبعتها في معالجة الموضوع، وبيان آخر عن مصطلح النسب وما يتصل به.<sup>24</sup>

The following is a breakdown of the four fields into several more detailed parts, as follows:

- a. حفظ الفرد (Individual scope) includes حفظ النفس (Protection of the soul of a person), حفظ عقل الفرد (Protection of one's intellect), حفظ ندین الفرد (protection of one's beliefs), حفظ عرض الفرد (protection of one's honor), حفظ مال الفرد (protection of each individual's property).
- b. تنظيم الأسرة (family scope) includes: العلاقـة بين الجنسـين (regulation of relations between men and women), حفـظ النـسل (النـوع) (protection of offspring related to race), تحـقيق السـكن والمـودـة والـرحمـة (embodying sakinah, mawaddah, wa rahmah), حـفـظ التـدين فـي الأـسـرـة (protection of genealogy), تنـظـيم الـديـن فـي الـاسـرـة (religious education in the family), الجـانـب الـمـؤـسـسي لـلـأـسـرـة (strengthening of relationships between family members), تنـظـيم الـجـانـب الـمـالـي لـلـأـسـرـة (protection of family finances).
- c. يـخـص الأـمـة (The scope of society) includes: التـنظـيم المـؤـسـسي لـلـأـمـة (strengthening of community relations), حـفـظ الأمـن (maintaining security in society), إـقـامـة العـدـل (upholding justice for society), حـفـظ الدين (upholding justice for society), حـفـظ الأخـلـاق (maintenance of religion and morals in society), الـتـعـلـون وـالـتـضـامـن وـالـتـكـافـل (please help others), نـشـر الـعـلـم وـحـفـظ عـقـل الـأـمـة (dissemination of knowledge), and عـمـارـة الـأـرـض وـحـفـظ ثـرـوـة الـأـمـة (justice of public property).
- d. يـخـص الإـنـسـانـيـة (The scope of humanity) includes التـعـارـف وـالـتـعـلـون وـالـتـكـامـل (efforts to know each other and help each other),

Syari'ah, h. 139.

<sup>25</sup> Jamaluddin Atyiah, *Nahwa Taf'il Maqâshid al-Syari'ah*, h. 142-147.

<sup>26</sup> Jamaluddin Atyiah, *Nahwa Taf'il Maqâshid al-Syari'ah*, h. 148-154.

تحقيق الخلافة العامة للإنسان في الأرض (establishment of a leader or caliph on earth), تحقيق السلام العالمي القائم على العدل (peace on an international scale), الحماية الدولية لحقوق الإنسان (fulfillment of human rights), نشر دعوة الإسلام (spread of Islamic da'wah).

From the scope of maqasid sharia mentioned above, researchers will analyze problems related to the waiting period for men after divorce using **مجال الأسرة** (family scope).

## Method

This research is normative legal research. The approach used is the library research approach. The primary legal materials in this study are Law Number 1 of 1974 concerning Marriage, Circular Number: DIV/Ed/17/1979, and Circular Number P-005 / DJ. III/Hk.00.7/10/2021, KHI, and the book Nahwa Taf'il Maqashid Shari'ah by Jamaluddin Atiyah. Researchers will analyze and interpret the meaning of the data that has been collected in the form of written and spoken words, pictures, and not numbers, by interpreting and analyzing data on the concept of the waiting period for men after a divorce using the maqasid sharia analysis knife Jamaluddin Atiyah.

## Results and Discussion

### The Meaning and Purpose of the Waiting Period for Men

Iddah is a term in Islamic law that refers to the waiting period that a woman must undergo after certain events in her life, such as divorce or the death of her husband. Iddah has important social, legal, and moral purposes in maintaining justice and the welfare of individuals and society.

However, it should be pointed out that in Islamic law, the concept of iddah generally does not apply to men. Iddah is particularly concerned

with the protection of a woman's rights and also to clarify her marital status in certain situations.<sup>27</sup> Therefore, for men, there is no obligation to undergo the iddah period after the divorce or death of the wife.

However, every individual, including men, always maintains respect, responsibility, and ethics in dealing with spouses and families, especially in dealing with divorce situations or the loss of family members. Respecting and reflecting on the lessons of life experience is an important part of Islamic teachings.

On October 29, 2021, the Director General of Islamic Community Guidance issued a circular Number: P-005/DJ. III/Hk.00.7/10/2021 concerning Marriage in the Wife's Iddah Period, which explains that an ex-husband's man can marry another woman when his ex-wife's iddah period has ended. Thus, the meaning of the waiting period for men is the period when men are forbidden to marry after divorcing their wives. The waiting period for men is the same as the iddah period for women ex-wives.

The purpose of this designation may vary depending on the existing social, cultural, and legal context. However, it can be summarized some of the objectives of this kind of action, namely::

1. Gender Balance: This regulation can have the objective of creating gender balance in legal and social treatment.<sup>28</sup> If women are required to undergo iddah, the government wants to show equality by requiring men to undergo a similar process.
2. Protection of Women's and Children's Rights:<sup>29</sup> If the government believes that women are at risk or vulnerability after divorce or termination of marital relations, the policy introduces iddah for men as a

<sup>27</sup> A Miftakhrrozaq, 'Syibhul 'iddah Bagi Laki-Laki Dalam Pembaharuan Hukum Keluarga Islam Di Indonesia Perspektif Maqosid Syariah', Eprints.Walisongo.Ac.Id <https://eprints.walisongo.ac.id/id/eprint/19333/>.

<sup>28</sup> M Aziz and A H Fahruddin, 'Keadilan Gender Dalam Islam (Telaah Atas Diskursus Hak Rujuk Perempuan Dalam Hukum Keluarga Islam)', Akademika, 2021

<[http://journalfai.uniska.ac.id/index.php/akademi\\_ka/article/view/530](http://journalfai.uniska.ac.id/index.php/akademi_ka/article/view/530)>.

<sup>29</sup> Y Saputra, *Problematika Wanita Sebagai Orang Tua Tunggal Dalam Memenuhi Hak Anak Pasca Perceraian (Studi Kasus Di Kelurahan Kenanga Kecamatan ... (repository.syekhnurjati.ac.id, 2021) <<http://repository.syekhnurjati.ac.id/id/eprint/5026>>.*

measure to protect women's rights in certain contexts.

3. Population Control and Family Planning:<sup>30</sup> These policies can have the purpose of family planning or controlling the population by ensuring that individuals have sufficient time before they can remarry after a divorce.
4. Respect and Social Norms: The government wants to promote certain social norms that respect the values of marriage and reduce impulsive acts after divorce or termination.
5. Family Strengthening and Stability:<sup>31</sup> The goal can also be to strengthen the institution of the family by giving time for couples involved in a divorce to reflect on their decisions consider reconciliation and reduce the risk of rushing into decisions.
6. Social Stigma Reduction:<sup>32</sup> These regulations can aim to reduce the social stigma associated with divorce status. By allowing men to remarry after their wife's iddah, this regulation can help reduce the social pressure experienced by divorced wives.
7. Fairness in Marriage:<sup>33</sup> This regulation can aim to create a fairer view of marriage. By giving equal rights to men and women to remarry after the iddah period, the government can seek fairness in the rights and responsibilities of spouses in divorce situations.
8. Flexibility in Islamic Law: This regulation may aim to introduce flexibility in the interpretation and application of Islamic law. Governments can seek to adapt

<sup>30</sup> Rery Kurniawati Danu Iswanto, Nintinjri Husnida, and Hani Sutianingsih, 'Faktor Predisposisi, Pe Dan Pendorong Dalam Peningkatan Partisipasi Laki-Laki Pada Kegiatan Posyandu Di Kabupaten Lebak', *Jurnal Medikes (Media Informasi Kesehatan)*, 7.1 (2020), 91–100 <<https://doi.org/10.36743/medikes.v7i1.207>>.

<sup>31</sup> Cahyanti, "Kritik Sosial Melalui Penggambaran Feminis Laki-Laki Dalam Keluarga Pada Iklan YouTube."

<sup>32</sup> Franciscus Adi Prasetyo and others,

religious teachings to the current social and cultural context in appropriate ways while respecting the basic principles of Islamic law.

9. Response to social change: this regulation can aim to respond to social or demographic changes that occur in society, such as an increase in divorce or changes in family dynamics. This regulation can be a way to accommodate the needs of modern society without neglecting religious principles.
10. Filling the legal void: Polygamy is the practice of marrying more than one partner simultaneously in Islam. In some cases, a man remarries another woman before his ex-wife's iddah period is over, and then refers back to the wife who has not finished the iddah period. Finally, the man had 2 marriage certificates without the process of polygamy permission to the court.

The government's goal in establishing waiting periods for men will largely depend on the religious, social, cultural, and legal context in Indonesia.

#### **Jamaluddin Atyyah's maqaṣid sharia analysis of the regulation of waiting periods for men after divorce**

The implementation of changes in legal regulation based on the Maqaṣid view of sharia requires a deep understanding of how society accepts these changes and how these changes will affect existing social norms. Examining the social and cultural impact of legal change is an important step in maintaining a balance between Islamic values, the demands of

'Manifestasi Masalah Pada Remaja Laki-Laki Dan Perempuan Yang Telah Sembuh Dari Kusta', *Jurnal Ilmiah Rehabilitasi Sosial (Rehsos)*, 4.2 (2023) <<https://doi.org/10.31595/rehsos.v4i2.707>>.

<sup>33</sup> Nurul Istifadahoh, Zahida I'tisoma Billah, and Hafidhotul Mufidah, 'Analisis Maqaṣid Syariah Pada Koperasi Produsen Syariah Industri Kreatif Di Bojonegoro', *Jurnal Ekonomika : Manajemen, Akuntansi, Dan Perbankan Syari'ah*, 10.2 (2021), 284–98 <<https://doi.org/10.24903/je.v10i2.1230>>.

modern society, and established social norms.

In adopting the Maqâsid view of sharia, there is a challenge to maintain a balance between respecting the tradition of jurisprudence and adapting to the times.

Regarding the Maqâsid analysis of sharia put forward by Jamaluddin Atyah on the regulation of waiting periods for men after divorce, the division is as follows:

1. <sup>34</sup> (مجال الفرد) (Individual scope)

a. حفظ نفس الفرد (Protection of the Individual's Soul)

Maqâsid sharia jamaluddin atiyah is very concerned about the mental and emotional well-being of individuals, especially in the context of divorce which can have a great psychological impact. This view has significant implications for waiting period regulation. Giving men time to recuperate before considering remarriage is an important part of Maqâsid sharia's goals. It includes not only physical time but also social support and psychological support. Understanding the impact of these changes on individuals is part of achieving individual life protection goals.

b. حفظ عقل الفرد (Protection of the Individual's sense)

In the context of waiting period regulation, this concept will ensure that this regulation does not harm the ability of individuals to think rationally and make wise decisions. When a person goes through a divorce, many changes and challenges must be faced. Therefore, giving men time to adapt to these changes and consider their consequences is essential. Protection of individual reason also includes avoiding impulsive actions that arise as a result of emotional situations.

c. حفظ تدين الفرد (Protection of Individual Beliefs)

In the Maqâsid view of sharia, individual faith is a right that must be respected and protected. When a person goes through a divorce, this can affect their beliefs and outlook on life. This concept considers that giving men adequate

time to undergo the transition stage after divorce is part of protecting individual beliefs. It also includes providing opportunities for men to explore and reflect on their religious values before entering a new phase in their lives.

d. حفظ عرض الفرد (Protection of Individual Honor)

Individual honor is an integral part of the Maqâsid view of sharia. The concept of Jamaluddin Atyah emphasizes the importance of maintaining one's good name and integrity, especially in vulnerable situations such as divorce. Giving men time to preserve their honor, avoid behavior that harms their good name, and reflect on the long-term impact of their actions are important aspects of protecting individual honor.

e. حفظ مال الفرد (Protection of Individual Property)

In the context of property and finance, Jamaluddin Athihag's concepts would assess the need to protect the assets of recently divorced men. Waiting period regulations will be directed at giving men time to settle divorce-related financial matters before entering into a new marriage. This can help prevent property conflicts and ensure individuals' financial rights are protected.

2. <sup>35</sup> (مجال الأسرة) (Family Scope)

In the context of the regulation of waiting periods for men after divorce, the concepts put forward by Jamaluddin Atyah in the field of the Family (الأسرة) have significant relevance. The regulation of the waiting period after divorce is one form of implementation of the principles of Maqâsid sharia related to the protection, justice, and benefit of individuals and families. Here is the link between the Maqâsid concepts of sharia in the field of Family Assembly and the regulation of waiting periods:

a. تنظيم العلاقة بين الجنسين (regulation of relations between men and women)

In the context of waiting period regulation, it is important to maintain good communication and relationships between ex-husband and

<sup>34</sup> Jamaluddin Atyah, *Nahwa Taf'il Maqâshid al-Syari'ah*, h. 142-147.

<sup>35</sup> Jamaluddin Atyah, *Nahwa Taf'il Maqâshid al-Syari'ah*, h. 148-154.

wife. This can prevent infighting and help reduce the negative impact on children if any. Waiting period regulations give men and women time to reflect and evaluate their relationship after divorce. This is in line with regulating the relationship between men and women in the family. This regulation provides an opportunity for both to maintain dignified interactions, prevent further disputes, and maintain an atmosphere conducive to addressing status changes.

b. حفظ النسل (النوع) Protection of Breed-Related Breeds

Waiting period regulations can help protect offspring from the threat of discrimination based on race or sex. In coping with divorce, men need to keep prioritizing the interests of children and ensure that their offspring are protected from the negative effects of divorce. This is in line with the protection of breed-related breeds.

c. تحقيق السكن والمودة والرحمة (Creating Sakinah, Mawaddah, wa Rahmah)

The waiting period provides an opportunity for men to go through the transition process and recuperate after divorce. This correlates to realizing sakinah, mawaddah, and rahmah in the family. Men can use this time to reflect on past experiences, take care of their feelings, and prepare to build new relationships or strengthen relationships with their children.

d. حفظ النسب (Lineage Protection)

Waiting period regulations can also help maintain clarity on children's pedigree and status. The time allotted provides an opportunity for males to ensure that their offspring have a clear identity and properly recognized rights. This involves the protection of genealogy, which is the purpose of this aspect in Maqāṣid sharia.

e. حفظ الدين في الأسرة (Religious Education in the Family)

In the context of religious education in the family, waiting period regulations provide opportunities for men to remain instrumental in educating their children in religious values. This allows men to continue to provide appropriate teaching and example, even after divorce. Thus,

this aspect corresponds to the purpose of religious education in the family.

f. تنظيم الجانب المؤسسي للأسرة (Strengthening Relationships Between Family Members)

The waiting period also gives the man time to reflect and strengthen relationships with other family members. This is in line with strengthening relationships between family members, where men can contribute to building healthy and supportive relationships with ex-wives, children, and other family members.

g. تنظيم الجانب المالي للأسرة (Protection of Family Finances)

In terms of protection of family finances, waiting period regulations recognize men's responsibility to fulfill their financial obligations towards ex-wives and children. This ensures that the financial rights of the ex-wife and children are maintained and secured, along with the protection of family finances.

3. يخص الأمة (Community Scope)

In the Maqāṣid view of sharia, the dissemination of knowledge is highly valued. Men who experience divorce can be encouraged to continue to develop their knowledge and contribute to the dissemination of knowledge in society. In the context of the regulation of waiting periods for men after divorce, the concepts elaborated in the scope of "يخص الأمة" (The scope of society) have important relevance. Regulation of waiting periods not only affects the individuals and families involved but also has an impact on society more broadly. Let's relate those concepts to the regulation of waiting periods:

a. التنظيم المؤسسي للأمة (Reinforcement of the relationship of machines)

Jamaluddin Atiyah's view would encourage men's involvement in community activities, even after divorce. This is important for maintaining social bonds and interdependence within the wider society. The regulation of waiting periods may reflect actions based on the principles of strengthening public relations. Good understanding and implementation of regulations will help maintain social cohesion and reduce the potential for conflict in society. This is important in ensuring that such regulation

not only benefits the individuals involved but also maintains broader social stability.

b. حفظ الأمن (Maintaining security in society)

Good waiting period regulation can help prevent unstable situations or conflicts within the community. In this case, the waiting period can be considered as a period of reflection and adjustment, which can avoid potential impulsive actions or conflicts that can disrupt public security.

c. إقامة العدل (Upholding Justice for Society):

The principle of upholding justice in society also correlates with waiting period regulations. In this case, the regulation must be applied fairly and consistently, without taking sides with either party. This will help maintain the credibility of the legal system and provide a sense of justice to all parties involved.

d. حفظ الدين والأخلاق (Maintenance of Religion and Morals in Society)

The regulation of waiting periods can also be seen as part of efforts to maintain religious and moral values in society. The waiting period gives men time to reflect on ethical values, improve themselves, and ensure that their actions conform to moral principles in Islam.

e. التعاون والتضامن والتكافل (Please Help Each Other)

The Maqasid view of sharia underscores the importance of cooperation and helpfulness in society. Waiting period regulations can enable these values by allowing men to go through divorce proceedings in a way that supports ex-wives and children, and involves support from family and community.

f. نشر العلم وحفظ عقل الأمة (Dissemination of Science):

The waiting period can be an opportunity for men to deepen their knowledge of religious laws and Islamic values. This corresponds to the purpose of the dissemination of knowledge and the maintenance of reason in society. Men can take advantage of this time to learn and reflect on religious values that can guide their actions.

g. عمارة الأرض وحفظ ثروة الأمة (Public Property Justice):

In the context of waiting period regulation,

the principle of maintenance of public property applies in terms of the division of property and financial rights. This regulation should ensure that the wealth owned by the man and the ex-wife is considered fairly and balanced, without harming either party.

4. يخص الإنسانية (Scope of humanity)

In the context of the regulation of waiting periods for men after divorce, the concepts outlined in the scope of "يخص الإنسانية" (Humanitarian scope) have far-reaching implications, including how they can affect individuals, society, and the role of the state in creating and implementing them. Let's relate those concepts to the regulation of waiting periods:

a. التعارف والتعاون والتكميل (Know Each Other and Help Each Other):

Waiting period regulations can reflect the principle of mutual knowledge and mutual assistance in society. The waiting period provides an opportunity for men to interact with their ex-wives and children in an understanding and cooperative way. It can also encourage better communication, thus helping to cope with hurt feelings and conflicts that arise after divorce.

b. تحقيق الخلافة العامة للإنسان في الأرض (Leader Establishment on Earth):

Although this principle tends to be more related to the leadership aspect of humanity as a whole, the regulation of waiting periods can reflect the responsibilities of men as leaders within their family spheres. The waiting period can be a period in which men take on the role of wise leaders in facing change and finding the best solutions for their families.

c. تحقيق السلام العالمي القائم على العدل (Justice-Based International Peace):

The concept of justice-based international peace can also be applied to the regulation of waiting periods. In this case, regulations must prioritize fairness for all parties involved. Fair application of these regulations can help prevent potential conflicts and wider disputes.

d. الحماية الدولية لحقوق الإنسان (Fulfillment of Human Rights):

This concept includes the protection of

human rights. Waiting period regulations should ensure that the rights of ex-wives and children are properly protected. Governments have an important role to play in ensuring that such regulations conform to internationally recognized human rights standards.

e. نشر دعوة الإسلام (Spread of Islamic Da'wah):

In this context, men who have recently experienced divorce can be a clear example of Islamic values in the face of change and challenges. The waiting period regulation provides an opportunity for men to demonstrate good morals, a sense of responsibility, and commitment to Islamic principles in difficult situations.

### Implications of the Findings on the Application of Maqashid As-Sharia in Divorce Law

The theme we are discussing, namely the application of Maqashid As-Sharia in the regulation of waiting periods for men after divorce, has very broad and profound implications for various aspects of individual life, families, society, and humanity as a whole. The application of the principles of Maqashid As-Sharia in this context reflects the main objective of Islamic law, which is to safeguard the welfare and benefit of human beings. Below, we'll explore the broader implications of this theme:

1. Comprehensive Application of Islam: The application of Maqashid As-Sharia in the regulation of waiting periods involves aspects that cover all aspects of the lives of individuals, families, communities, and humanity. It underscores the comprehensive character of Islam that teaches spiritual, ethical, moral, and social values in every aspect of life. The comprehensive application of Islam in the context of the regulation of waiting periods for men after divorce means that the principles of Maqashid As-Sharia not only view the law as a set of formal regulations but also as a guide that covers all aspects of human life. It reflects the understanding of Islam as a religion that

presents a comprehensive framework of how man should live, interact, and maintain his relationship with God, his fellow man, and his environment. In the context of waiting period regulation, the comprehensive application of Islam involves understanding that divorce is not only a formal legal matter between husband and wife, but also involves far-reaching impacts on individuals, families, society, and humanity as a whole. Therefore, this regulation should be based on the principles of Maqashid As-Sharia, which encompasses the main objectives of Islamic law in safeguarding the benefit and welfare of man. The application of the principles of Maqashid As-Sharia in the regulation of waiting periods underscores several important aspects:

- a. Spiritual Values: Islam is not only about laws and rules but also about deepening spiritual values. In the context of waiting period regulations, this means understanding that individuals going through divorce need time to reflect and strengthen their relationship with God. This regulation is not only about physical time but also time to restore spirituality.
- b. Ethics and Morals: Islam teaches ethical and moral values in all aspects of life. In waiting period regulations, this includes how individuals, especially recently divorced men, should treat former spouses and children fairly, respect their rights, and maintain good relationships.
- c. Social Responsibility: Islam teaches the importance of social responsibility towards society. Waiting period regulations should reflect men's responsibility to continue contributing to society in a positive and supportive way, despite going through a divorce.
- d. Respect for Humanity: Islam respects the dignity and humanity of every individual. In waiting period regulations, this means that the rights of ex-wives and children must be respected and protected, and there must be no form

of discrimination.

- e. Relationship Between Individual and Environment: Islam teaches the importance of maintaining a balance between the relationship of the individual with his natural and social environment. The waiting period regulation includes how recently divorced men should maintain healthy relationships with former spouses and children, as well as contribute to family harmony.
- f. Education and Personal Development: Islam encourages education and personal development. The regulation of waiting periods means providing opportunities for men to deepen their understanding of Islamic values, ethics, and their duties as divorced individuals.

With the comprehensive application of Islam, the regulation of waiting periods has not only become a formal legal regulation but also a means to realize the noble goals of Islam in safeguarding human welfare in various aspects of life. This reflects the overall Islamic view of man as a complex being with spiritual, physical, social, and humanitarian dimensions that must be carefully respected and guarded.

- 2. Maintaining Family Stability: The application of Maqashid As-Sharia principles in waiting period regulations helps maintain family stability despite facing divorce. It not only pays attention to the interests of divorced individuals but also involves the protection of the rights and well-being of children and former spouses. The maintenance of family stability through the application of the principles of Maqashid As-Sharia in the regulation of waiting periods after divorce has a very important purpose in the Islamic context. These principles not only prioritize the well-being of individuals involved in divorce, but also recognize the far-reaching impact divorce has on children, former spouses, and society as a whole. Some

aspects related to maintaining family stability in waiting period regulations are as follows::

- a. Protection of Children's Rights: The principles of Maqashid As-Sharia underline the importance of protecting children's rights in all aspects of life. In the context of waiting period regulation, this refers to the right of children to maintain a good relationship with both parents and get the necessary attention, affection, and financial support. Regulations that ensure that children do not become victims of divorce conflict and still get the protection and attention they need are essential to maintaining family stability.
- b. Welfare of Ex-Spouses: Waiting period regulations based on the principles of Maqashid As-Sharia should also take into account the welfare of former spouses involved in divorce. This includes giving them time to reflect, adapt to changes in status, and maintain a dignified relationship with an ex-husband or wife, especially if there are children involved. This regulation can avoid further conflicts and facilitate a better transition process for all parties involved.
- c. Social Cohesion and Society: Islam teaches the importance of maintaining harmony and cohesion in society. Waiting period regulations that reflect the principles of Maqashid As-Sharia help prevent conflicts involving individuals, families, and communities. By maintaining family stability through regulations that support a fair and respectful approach, society can be safeguarded from the negative effects of divorce that can damage social cohesion.
- d. Continuity of Islamic Values: The application of the principles of Maqashid As-Sharia in waiting period regulations can ensure that Islamic

values, such as civility, a sense of responsibility, and empathy, continue to be upheld in the relationship of divorced couples. This can help maintain the framework of Islamic values in the relationship between former spouses so that those values are not eroded by conflict or division.

Through the application of the principles of Maqashid As-Sharia in the regulation of waiting periods, Islam teaches the importance of maintaining family stability and the welfare of all parties involved. These principles include the protection of children's rights, concern for the welfare of the former spouse, maintaining community harmony, and maintaining Islamic values in the transition process after divorce. Thus, the regulation is not only a legal instrument but also a tool to realize the noble goals of Islam in maintaining the stability of the family and society.

1. Maintenance of Dignity and Honor: The principles of Maqashid As-Sharia in this regulation ensure that the dignity and honor of the individual is maintained. This helps avoid the social stigma often attached to individuals going through a divorce, as well as ensuring that the relationship between the former spouses remains dignified.
2. Encourage Introspection and Personal Growth: Waiting period regulation provides time for individuals to reflect and grow from the divorce experience. The application of Maqashid As-Sharia recognizes the importance of mental and spiritual recovery, thus helping individuals through this process healthily and productively.
3. Sustainable Living in Society: The application of Maqashid As-Sharia in the waiting period regulation also supports the creation of sustainable living in society. Individuals who experience divorce and are serving a waiting period can be actively involved in society without damaging relationships or creating adverse conflicts.
4. Balance Between Law and Humanity: The principles of Maqashid As-Sharia recognize

that law and humanity complement each other. Maqashid As-Sharia-based waiting period regulation not only promotes the law but also ensures that the welfare of individuals and communities remains the primary focus.

5. The Importance of the State's Role: In implementing this waiting period regulation, the role of the state as a regulator becomes very important. States should ensure that such regulations are implemented fairly and consistently, and protect individual rights by the principles of Maqashid As-Sharia.
6. Harmony in a Diverse Society: The principles of Maqashid As-Sharia not only apply to individual Muslims but also have the potential to create harmony in a religiously and culturally diverse society. Waiting period regulations that reflect Islamic human values and ethics can set a positive example in wider society.
7. Positive Impact on Future Generations: When the principles of Maqashid As-Sharia are applied in waiting period regulations, this will shape positive attitudes and behaviors in individuals undergoing divorce. This impact will help create future generations who are more aware of ethical, human, and healthy relationship values.
8. Contemporary Context and Social Dynamics: The application of Maqashid As-Sharia in the regulation of waiting periods also reflects Islam's ability to adapt to contemporary contexts and social dynamics. These principles can be interpreted and applied in ways relevant to the challenges and changing times.

Thus, the application of Maqashid As-Sharia in the regulation of waiting periods for men after divorce is not only about legal aspects, but also involves efforts to create a supportive, dignified, and humanitarian environment. This is one clear example of how Islamic principles can provide positive direction in the face of changes and challenges in human life.

## Conclusion

In the perspective of Maqashid As-Sharia put forward by Jamaluddin Atiyah, the regulation of waiting periods for men after divorce can be analyzed in four main areas: individual, family, society, and humanity.

- a. **مجال الفرد** (individual scope): The waiting period must pay attention to the protection of the soul, reason, belief, honor, and property of the individual. This includes giving men time to recover their mental and emotional well-being, ensuring that this regulation does not harm individuals' ability to think rationally, safeguarding men's religious rights and beliefs, as well as protecting their honor and individual property.
- b. **مجال الأسرة** (family scope): The waiting period arrangement should also take into account the regulation of the relationship between the former husband and wife, protection of offspring related to race, attaining sakinah, mawaddah, wa rahmah in the family, protection of ancestry, religious education in the family, strengthening family relationships, and protection of family finances. This regulation provides opportunities for ex-husbands and wives to maintain dignified interactions, prevent further disputes, and maintain an atmosphere conducive to overcoming status changes.
- c. **يخص الأمة** (Community scope): In society, waiting period regulations must strengthen social relations, maintain security, uphold justice, maintain religion and morals, collaboration, solidarity, dissemination of knowledge, and justice in the ownership of public resources. This is important in ensuring that such regulation not only benefits the individuals involved but also maintains broader social stability.
- d. **يخص الإنسانية** (Humanitarian scope): On a broader scale, the waiting period should also cover broader aspects on a human scale, such as getting to know and collaborating between people, establishing just leadership, creating

international peace based on justice, international protection of human rights, spreading Islamic da'wah, and separating sharia maqashid in these four areas to apply Islamic laws in various aspects of individual life, family, society, and all mankind conform to Islamic values and purposes. With this approach, the regulation has a profound impact on various aspects of life-related to divorce.

Thus, the regulation of waiting periods for men after divorce, when applied with due regard to the concept of Maqashid As-Sharia, not only reflects aspects of Islamic law governing the events of divorce, but also serves as a means to achieve broader goals in the lives of individuals, families, communities, and humanity by Islamic values. With this approach, the regulation has a profound impact on various aspects of life-related to divorce.

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