



**Women's Iddah Period in 'Grey Divorce':
Reformulation of Islamic Marriage Law in Indonesia Based on *Maqāṣid al-Sharī'ah***

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Abstract

Marriage, divorce, maintenance, inheritance and the legal consequences arising from these issues are problematic issues in Islamic family law that will always arise in Muslim communities in Indonesia and throughout the Muslim world. The phenomenon of 'divorce at an advanced age' (divorce among the elderly) is increasing in Indonesia, triggering normative challenges in Islamic marriage law, especially regarding the mandatory iddah period for menopausal women. The study uses empirical legal methods, explained by the theory of *maqāṣid al-sharī'ah*. Data were collected through interviews and literature studies. The literature reviewed includes classic legal texts such as fiqh books, journal articles, and legislation. This study concludes that based on the Compilation of Islamic Law, Article 153 paragraph (6) of the Indonesian Islamic Law Code (KUHP), an *iddah* period of one year is mandatory for menopausal women. This period is much longer if we use the Georgian Calendar and raises critical questions in the context of 'divorce at an advanced age', where the main purpose of *iddah istibra al-rahim* (ensuring an empty uterus) is medically irrelevant. This study reveals that the classical provisions on 'iddah menopause are *ijtihadi* (dependent on legal reasoning) and contextual, so they are open to normative reformulation. Consequently, this article proposes a reformulation of Article 153 (6) of the KHI to be more gender-just and responsive to *maqāṣid*. By distinguishing between '*iddah ta'abbudi* (ritualistic) and '*iddah ta'aqquli* (rational) in the context of 'grey divorce', this reformulation aims to strengthen legal protection for women while maintaining the relevance of Islamic family law in Indonesia.

Keywords: '*Iddah*', 'grey divorce', menopausal women, Islamic marriage law, *maqāṣid al-sharī'ah*, legal reformulation

Abstrak

Perkawinan, perceraian, nafkah, harta warisan dan akibat hukum yang ditimbulkan dalam persoalan tersebut merupakan problematika hukum keluarga Islam yang akan selalu muncul dalam masyarakat Muslim di Indonesia dan di dunia muslim. Fenomena 'perceraian di usia lanjut' (perceraian di kalangan lansia) semakin meningkat di Indonesia, memicu tantangan normatif dalam hukum perkawinan Islam khususnya mengenai masa iddah wajib bagi perempuan menopause. Kajian menggunakan metode hukum empiris dan dianalisis dengan teori maqāṣid al-sharī'ah. Data dikumpulkan melalui mewawancara dan studi literatur. Literatur yang dianalisis adalah teks-teks klasik hukum seperti kitab-kitab fikih, artikel jurnal dan peraturan perundang-undangan. Kajian ini menyimpulkan bahwa berdasarkan Kompilasi Hukum Islam Pasal 153 ayat (6) Kitab Hukum Islam Indonesia (KUHP) mewajibkan masa iddah selama satu tahun bagi perempuan menopause. Masa ini jauh lebih lama jika kita menggunakan Kalender Georgia dan menimbulkan pertanyaan kritis dalam konteks 'perceraian di usia lanjut', di mana tujuan utama iddah istibra al-rahim (memastikan rahim kosong) secara medis menjadi tidak relevan. penelitian ini mengungkapkan bahwa ketentuan klasik tentang 'iddah menopause bersifat ijtihadi (tergantung pada penalaran hukum) dan kontekstual, sehingga terbuka untuk reformulasi normatif. Oleh karena itu, artikel ini mengusulkan reformulasi Pasal 153 (6) KHI agar lebih adil gender dan responsif terhadap maqāṣid. Dengan membedakan antara 'iddah ta'abbudi (ritualistik/devosional) dan 'iddah ta'aqquli (rasional/fungsional) dalam konteks 'perceraian abu-abu', reformulasi ini bertujuan untuk memperkuat perlindungan hukum bagi perempuan sekaligus mempertahankan relevansi hukum keluarga Islam di Indonesia.

Kata Kunci: *'Iddah, 'perceraian abu-abu', perempuan menopause, hukum perkawinan Islam, maqāṣid al-sharī'ah, reformulasi hukum*

Introduction

The phenomenon of 'grey divorce' refers to the dissolution of marriage among middle-aged and older cohorts, generally involving individuals over the age of 50.¹ Sociological research indicates that this type of divorce is increasing significantly in modern societies, including Indonesia.² Data released by the Ministry of Religious

¹ Susan L. Brown and I-Fen Lin, "Graying of Divorce: A Half Century of Change," *The Journals of Gerontology: Series B* 77, no. 9 (2022), p. 1710–1720. Yunitanti and Yanto Paulus Hermanto, 'Grey Divorce' and the Role of the Church: Building Recovery Spaces for Older Couples," *Formosa Journal of Multidisciplinary Research* 4, no. 4 (2025), p. 159.

² Susan L. Brown and I-Fen Lin, "The Graying of Divorce: A Half Century of Change," *The Journals of Gerontology: Series B* 77, no. 9 (2022), p. 1710–1720. I-Fen Lin, et. al., "Antecedents of Gray Divorce: A Life Course Perspective," *The Journals of Gerontology: Series B, Psychological Sciences and Social Sciences* 73, no. 6 (2018), p. 1022–1031. Utari Kamila Dewi, "Fenomena Gray

Affairs (2020–2024) indicates a significant trend in ‘gray divorce’, where men aged 52 and older accounted for the highest number of *talak* applications, totalling 202,333 individuals over the five-year period.³ This phenomenon possesses distinct characteristics that differentiate it from divorces occurring during reproductive years, primarily as it is no longer associated with biological reproduction, the upbringing of young children, or the formation of a new nuclear family.⁴ Consequently, marital dissolution at this stage does not merely involve shifts in personal and social dynamics, but also presents complex challenges within Islamic family law,⁵ particularly regarding the mandatory application of the ‘iddah period for women who have reached menopause or are no longer within their reproductive age.

In the classical *fiqh* (Islamic jurisprudence) tradition, the ‘iddah period for a divorced woman is determined based on her biological categories and reproductive status.⁶ The majority of *fuqahā*’ (jurists) assert that women who still menstruate must observe an ‘iddah of three *qurū*’ (menstrual cycles/purity periods), whereas women who have reached menopause or have not yet menstruated are assigned a ‘iddah period of three months, in accordance with the Qur'an, Surah al-Ṭalāq [65]:4.⁷ This provision demonstrates that, from its inception, ‘iddah was formulated with consideration for a woman's biological condition, while simultaneously aiming to preserve lineage clarity (*ḥifẓ al-nasl*) and ensure social stability following a divorce.⁸ However, the application of these norms within the context of contemporary society—particularly in cases of “grey divorce” gives rise to several normative challenges.

Within the framework of Islamic marriage law in Indonesia, Article 153 of the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*) prescribes a common ‘iddah period for divorced women, overlooking specific socio-biological conditions such as those experienced by menopausal women. Notably, Article 153, paragraph (6) of the KHI stipulates that the ‘iddah duration for women who do not menstruate

Divorce: Mengapa Pasangan Usia Senja Memilih Bercerai?” *Triwikrama: Jurnal Ilmu Sosial* 11, No. 8 (2025), p. 511–520.

³Muhammad Ghifari A,” Perceraian Usia Senja Meningkat, Apa Itu Gray Divorce?”, in *Media Indonesia*, 16/12/2025, 11:12, <https://mediaindonesia.com/humaniora/840673/perceraian-usia-senja-meningkat-apa-itu-gray-divorce>

⁴ Susan L. Brown and I-Fen Lin, “The Gray Divorce Revolution: Rising Divorce Among Middle-Aged and Older Adults,” *The Journals of Gerontology: Series B* 67, no. 6 (2012), p. 731–741.

⁵ Rahmawati, at. al., “Dis-implementation of the Islamic Family Law in Fulfilling The Rights of Ex-Wives After Divorce in Indonesia,” *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, 9, No. 1 (2025), p. 538–559. Yunitanti, & Y. P. Hermanto, “Grey divorce” and the role of the church: Building recovery spaces for older couples,” *Formosa Journal of Multidisciplinary Research*, 4, No. 4 (2025)

⁶ Muhyiddin Abu Zakaria Yahya bin Syaraf Al-Nawawī, *Al-Majmū‘ Sharḥ al-Muhadhdhab* (Juz 17). Beirut: Dār al-Fikr, 1997. S. Hilal, and S.M. Harahap,”Iddah in the View of Islam and Feminists.” *Adalah* 7, no. 2 (2021).,” *Adalah: Jurnal Hukum Islam* 7, No. 2 (2021), p. 145–160.

⁷ Al-Qur’an, QS. al-Ṭalāq [65]: 4; Wahbah al-Zuhaylī, *al-Fiqh al-Islāmī wa Adillatuh*, Jilid VII (Damaskus: Dār al-Fikr, 1989), p. 527–530.

⁸ Ibn Qudāmah, *al-Mughnī*, Jilid VIII (Beirut: Dār al-Fikr, t.t.), p. 93–95.

for reasons other than breastfeeding is one year.⁹ This duration is excessively long if the primary rationale is *istibrā' al-raḥim* (verification of the womb), considering that the reproductive capacity of menopausal women has ceased.¹⁰ Furthermore, this mandate contrasts sharply with the three-month *'iddah* allotted to non-menstruating women who are breastfeeding. The significance of *istibrā' al-raḥim* is further diminished by advancements in medical technology, specifically Ultrasonography (USG), which allows for precise detection of a woman's uterine state.¹¹ Additionally, this one-year period is further extended by the dual calendar system prevalent in Indonesia, namely the Hijri and Gregorian calendars; while a Hijri year consists of 354–355 days, the Gregorian year spans 365–366 days.¹² The duration becomes even more protracted under Article 153, paragraph (4) of the Compilation of Islamic Law (KHI), which dictates that the *'iddah* is calculated not from the husband's pronouncement of *talak*, but from the date the Religious Court's decision attains final and binding legal force.¹³

In cases of 'grey divorce', where it is almost certain that the woman has reached menopause, the duration of the *'iddah* period carries significant legal implications regarding the rights and obligations of the former spouses. These include the provision of maintenance (*nafaqah*), the eligibility for remarriage, and inheritance rights should one of the parties pass away during this period.¹⁴ Empirical studies on the practice of *'iddah* reveal various disparities in the fulfillment of women's rights, particularly concerning the right to *'iddah* maintenance, which is

⁹ Kementerian Agama RI, *Kompilasi Hukum Islam di Indonesia*, Direktorat Jenderal Bimbingan Masyarakat Islam Direktorat Bina KUA dan Keluarga Sakinah Tahun 2018, p. 76. Presidential Instruction Number 1 of 1991 concerning Compilation of Islamic Law.

¹⁰ Mary C. Towner, et.al., "Why Do Women Stop Reproducing Before Menopause? A Life-History Approach to Age at Last Birth," *Philosophical Transactions of the Royal Society B: Biological Sciences* 371, no. 1692 (2016).

¹¹ Fen Fu, et al., "Diagnostic Value of Multimodal Hysterosalpingo-Contrast Sonography Combined with Negative Intrauterine Contrast-Enhanced Ultrasound in Female Infertility," *BMC Women's Health* 25 (2025), p. 62. Alexandra Irma Gabriela Baušić, et al., "Transvaginal Ultrasound vs. Magnetic Resonance Imaging: What Is the Optimal Imaging Modality for the Diagnosis of Endometriosis?" *Biomedicines* 11, no. 10 (2023), p. 2609.

¹² Sofia Hardani, *Kalender Umat Islam Indonesia*, (Jakarta: PT RajaGrafindo Persada, 2023). Rofiuddin, Ahmad Adib. "Penentuan Hari dalam Sistem Kalender Hijriyah." *Al-Ahkam: Jurnal Ilmu Syari'ah dan Hukum* 26, no. 1 (2016), p. 1–20.

¹³ Presidential Instruction Number 1 of 1991 concerning Compilation of Islamic Law. Irham Zahir, "Comparative Analysis of Talaq That Passed Outside The Court In The Perspective of Islamic Law and Compilation of Islamic Law," *Jurnal al-Dustur* 4, No. 1 (2021).

¹⁴ Sofia Hardani, *Problematika 'iddah di Indonesia*, (Jakarta: PT RajaGrafindo Persada, 2025), p. 24-29. Mursyid Djawas, et.al., "The Construction of Islamic Inheritance Law: A Comparative Study of the Islamic Jurisprudence and the Compilation of Islamic Law," *Juris: Jurnal Ilmiah Syari'ah* 21, No. 2 (2022). Arbanur Rasyid, et.al., "Dynamics of Childless Marriage Through the Lens of Maqasid Al-Shari'a," *Jurnal Ilmiah Peuradeun* 12, No. 2 (2024).

frequently not met equitably in cases of *talak ba'in* (irrevocable divorce) within the framework of contemporary Indonesian law.¹⁵

Various studies on Islamic law in Indonesia highlight the necessity of reforming *'iddah* regulations within the context of modern family law. For instance, several studies emphasize the need to harmonize Indonesian law regarding the *'iddah* period to ensure it is more responsive to the social realities of contemporary Muslim families,¹⁶ while other research argues that the current legal approach does not yet fully incorporate principles of gender justice in the formulation of rights and obligations during *'iddah*.¹⁷ A normative approach that disregards such social realities tends to result in substantive injustice for women, particularly in divorce cases that deviate from the traditional structures of domestic life.¹⁸

From the perspective of *maqāṣid al-sharī'ah*, Islamic law is fundamentally aimed at realizing public interest (*maṣlaḥah*) and averting harm (*mafsadah*).¹⁹ Al-Shāṭibī emphasizes that all Sharia provisions must be directed toward the preservation of the five essential objectives (*al-ḍarūriyyāt al-khams*): namely religion, life, intellect, lineage, and property.²⁰ In the context of *'iddah* for women in "grey divorce", a fundamental question arises: whether the *'iddah* regulations for menopausal women within the Indonesian Compilation of Islamic Law (KHI) align with the objectives of justice (*'adl*), public interest (*maṣlaḥah*), and the alleviation of hardship (*raf' al-ḥaraj*).²¹

¹⁵ Aldi Saputra Putra, et. al., "Kajian Sosiologi tentang Pemberian Nafkah *'iddah*," *Maqashiduna: Jurnal Hukum Keluarga Islam* 1, no. 1 (2023), p. 1–15. Fadhilatul Maulida and Busyro Busyro, "Nafkah *'iddah* Akibat Talak Ba'in dalam Perspektif Keadilan Gender (Analisis terhadap Hukum Perkawinan Indonesia)," *Al-Hurriyah: Jurnal Hukum Islam* 3, no. 2 (2025), p. 113–126.

¹⁶ Dety Mulyanti et al., "Harmonisasi Hukum Menentukan Masa *'iddah* bagi Wanita Cerai di Luar Pengadilan menurut Kompilasi Hukum Islam dan Hukum Fiqh," *USRAH: Jurnal Hukum Keluarga Islam* 4, no. 1 (2025), p. 14–29. Ahmad Ash Shiddieqy et al., "Integrating Islamic Family Law and Gender Equality: A Comparative Study of Legal Reform and Social Norms in Contemporary Indonesia and Morocco," *Legitima: Jurnal Hukum Keluarga Islam* 7, no. 2 (2025): 123–147.

¹⁷ Ruby Isla, et.al., "Islamic Family Law Reform: *'iddah* for Husbands as an Effort for Gender Equality," *Indonesian Journal of Islamic Law* 6, no. 1 (2023), p. 1–16. Aldi Saputra Putra, Zagie Zagie Al-Insan, and Wahyu Fitrianoor, "Kajian Sosiologi tentang Pemberian Nafkah *'iddah*," *Maqashiduna: Jurnal Hukum Keluarga Islam* 1, no. 1 (2023), p. 1–15.

¹⁸ Aldi Saputra Putra, et. al., "Kajian Sosiologi tentang Pemberian Nafkah *'iddah*," *Maqashidun*, 1, no. 1 (2023), p. 1-15. M. Hidayat, et. al., "Islamic Family Law and Women's Rights in Indonesia: Between Normativity, Reform, and Social Realities," *ASEAN Journal of Islamic Studies and Civilization* 2, no. 2 (2025), p. 237–256.

¹⁹ Ilham Abdi Prawira, Rahmad Setyawan, dan Fahlul Ulum Ahmad Adnani, "The Paradigm Shift of *Maqāṣid al-Syarī'ah* in Contemporary Society: From Protection to Development," *Academica: Journal of Multidisciplinary Studies* 9, no. 2 (2025).

²⁰ Al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharī'ah*, Jilid II (Beirut: Dār al-Kutub al-'Ilmiyyah, 2004), p. 8–10

²¹ Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law* (London: IIIT, 2008), p. 75–78.

The study uses empirical legal methods, explained by the theory of *maqāṣid al-sharī'ah*.²² Data were collected through interviews with informants, including Islamic family law experts, Islamic legal experts, and women's figures. The literature reviewed included classical legal texts such as fiqh books, journal articles, and laws. The research aims to critically analyse the provisions of the 'iddah period for women in cases of "grey divorce" and to formulate a normative reformulation of Islamic marriage law that is more contextual, equitable, and relevant to the social dynamics of contemporary Indonesian society.

'Iddah in Classical Islamic Jurisprudence and Legal Implications

In classical Islamic jurisprudence (*fiqh*), 'iddah is understood as a mandatory 'iddah period observed by a woman following a divorce or the death of her husband.²³ According to the majority of jurists (*jumhur al-fuqahā'*), the primary objective of 'iddah is to ensure the emptiness of the womb (*barā'at al-raḥim*) to preserve lineage clarity, while simultaneously providing a psychological and social transition period after the dissolution of marriage.²⁴ Syafī'iah Clerics define that 'iddah is a period a wife must observe to ascertain the purity of her womb, to serve a devotional purpose (*ta'abbudi*), or to mourn the death of her husband.²⁵ Meanwhile, Hanafiah Clerics define 'iddah as a prescribed time limit for a woman to identify any remaining traces or effects of the marriage or sexual intercourse.²⁶ Ibn Qudāmah, for instance, emphasizes that 'iddah is a *ta'abbudī* (devotional) provision that simultaneously possesses social rationality (*ma'qūl al-ma'nā*).²⁷ The foundational basis for 'iddah is derived from the commands of Allah in the Qur'an, specifically in Surah al-Baqarah verses 228 and 234, al-Ṭalāq verse 4, and al-Aḥzāb verse 49. These Qur'anic provisions are further reinforced by numerous Prophetic traditions (*hadith*), including the narration from Fatimah binti Qais: "My husband divorced me with three pronouncements. I decided to move (from his house to another place). So I came to Allah's Messenger (may peace be upon him), and he

²²Faisar Ananda Arfa and Watni Marpaung, *Metodologi Penelitian Hukum Islam*, Jakarta: Kencana, 2016. Nur Solikin, *Pengantar Sosiologi Hukum Islam*, Pasuruan: Qiara Media, 2022.

²³ Sofia Hardani, et.al., "Iddah dan Ihdad sebagai Pendidikan Moral di Era Modern; Issue Emansipasi dan Pemanfaatan Media Sosial", *JPPPI (Jurnal Penelitian Pendidikan Indonesia)* 9, no. 2 (2023), p. 540.

²⁴ Al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*, Jil. III (Beirut: Dār Iḥyā' al-Turāth al-'Arabī, t.t.), 457–460; Wahbah az-Zuhaili, *al-Fiqh al-Islāmi wa Adillatuhu*, Juz VII, (Damaskus: Dār al-Fikr, 1996), p. 624. Muhammad Bagir Al-Habsyi, *Fiqh Praktis Menurut Al-Quran, Assunnah dan Pendapat Para Ulama*, (Bandung: Mizan, 2002), p. 221. Sayyid Sābiq, *Fiqh as-Sunnah*, (Kairo: al-Faḥ al-'Arabiy, tth.), p. 277. Ahmad al-Ghundur, *at-Thalāq fī al-Syarī'at al-Islāmiyah wa Qānūn*, (Mesir: Dār al-Ma'ārif, 1967), p. 291. Al-Khātib al-Syarbini, *Mughniy Al-Muhtāj*, Juz. 5, (Beirut: Dār al-Kutūb al-'Ilmiyah, tth.), p. 78.

²⁵Abdurrahman al-Jaziri, *Al-Fiqh 'alā Mazāhib al-Arba'ah*: 454; Abu Bakar bin Muḥammad al-Dimyathi. *I'ānah al-Thālibīn* juz 4. (Libanon: Dār al-Fikr, tth.), p. 37.

²⁶Abdurrahman al-Jaziri, *Al-Fiqh 'alā Mazāhib al-Arba'ah*, p. 451; Muḥammad Abū Zahrah, *Al-Ahwāl al-Syakhsiyyah*, (Kairo: Dār al-Fikr al-'Arabiy, tth.), p. 435.

²⁷ Ibn Qudāmah, *al-Mughnī*, Jil. VIII (Beirut: Dār al-Fikr, t.t.), p. 93–95.

said: Move to the house of your cousin 'Amr b. Umm Maktum and spend your period of 'Idda there (Narrated by Muslim)".²⁸

The verses of the Qur'an explicitly differentiate the 'iddah period based on a woman's biological condition. Specifically, Surah al-Ṭalāq [65]: 4 mandates a three-month 'iddah period for women who have reached menopause (*al-lā'ī ya'isna min al-mahīd*), whereas those who are still menstruating must observe an 'iddah of three *qurū'*. Wahbah al-Zuhaylī explains that this differentiation demonstrates the Sharia's attentiveness toward the biological realities of women in the formulation of family law.²⁹ Nevertheless, classical jurisprudence (*fiqh*) tends to position 'iddah as a relatively static normative obligation, offering limited room for contextual reinterpretation. This serves as a point of departure for contemporary critiques, particularly when 'iddah is applied to social conditions that differ significantly from the classical context, such as divorce in old age ('grey divorce').

The legal implications arising from the obligation to observe 'iddah are substantial within Islamic family law, affecting the wife, the husband, and the legal relationship between them. These implications encompass aspects of marriage, maintenance, housing, and inheritance, as follows: (1) An absolute prohibition on remarriage during the 'iddah period;³⁰ (2) The right to maintenance (*nafaqah*) and housing. In cases of *talak raj'i* (revocable divorce), the former husband remains obligated to provide 'iddah maintenance and housing for the former wife. This obligation is predicated on the legal status of the woman, who is still legally considered a wife until the expiration of the 'iddah period.³¹ In *talak ba'in* (irrevocable divorce), the obligation for maintenance is generally extinguished unless the woman is pregnant;³² (3) The marital status during the 'iddah of *talak raj'i* is not entirely severed. The husband retains the right of *rujū'* (reconciliation) without a new marriage covenant, while the wife is not permitted to refuse reconciliation within this period. This consequence demonstrates that 'iddah functions as a protective mechanism for marital integrity;³³ (4) 'iddah also has implications for inheritance rights. Should either party pass away during the 'iddah of *talak raj'i*, inheritance rights remain valid because the marital bond is not legally fully terminated.³⁴ Conversely, in *talak ba'in*, inheritance rights generally do not apply, except under specific conditions disputed among the clerics;³⁵

²⁸An-Naisaburi, *Shahīh Muslim*, Juz. 5, (Bairūt: Dār al-Kutūb Al-'Ilmiyyah, t.th), p. 232.

²⁹Wahbah al-Zuhaylī, *al-Fiqh al-Islāmī wa Adillatuh*, Jil. VII (Damaskus: Dār al-Fikr, 1989), p. 527–531.

³⁰ Wahbah al-Zuhaylī, *al-Fiqh al-Islāmī wa Adillatuh*, vol. 7 (Damaskus: Dār al-Fikr, 1989), p. 528–530.

³¹Presidential Instruction Number 1 of 1991 concerning Compilation of Islamic Law.

³²Ibn Qudāmah, *al-Mughnī*, vol. 8 (Beirut: Dār al-Kutub al-'Ilmiyyah, 1997), p. 93–95.

³³Sayyid Sābiq, *Fiqh al-Sunnah*, vol. 2 (Kairo: Dār al-Fatḥ li al-I'lām al-'Arabī, 1999), p. 287.

³⁴Ahmad Rofiuddin, "Hak Waris Istri dalam Masa 'iddah," *ASAS: Jurnal Hukum Ekonomi Syariah* 10, no. 1 (2018), p. 45–47.

³⁵ Wahbah al-Zuhaylī, *al-Fiqh al-Islāmī wa Adillatuh*, vol. 8, p. 214–216

(5) The obligation of *'iddah* impacts children's rights, specifically regarding the protection of lineage and the certainty of a child's status. Through this *'iddah* period, Islamic law prevents the confusion of lineage (*ikhtilāf al-ansāb*) and ensures clarity in the biological relationship between the child and the father.³⁶ This aspect constitutes one of the primary rationales for the establishment of *'iddah* in classical jurisprudence.

***'Iddah* in Islamic Marriage Regulations in Indonesia**

In Indonesia, the regulation of *'iddah* is codified within the Compilation of Islamic Law (KHI), specifically Article 153, paragraphs (1) through (6). The formulations in Article 153 generally adopt classical jurisprudence from a normative standpoint, without providing differentiations based on social context or the age of the woman. The KHI explicitly stipulates that the *'iddah* period for a woman whose husband has passed away is 130 days (Article 153, paragraph (2)a). In cases of marital dissolution due to divorce, the *'iddah* period for women who still menstruate is set at three purity cycles (*quru'*), totaling at least 90 days; for those who do not menstruate, the period is fixed at 90 days (Article 153, paragraph (2)b). For pregnant women, the *'iddah* period lasts until delivery (Article 153, paragraph (2)c and d). Furthermore, women who do not menstruate due to breastfeeding observe a three-month *'iddah* (Article 153, paragraph 5), whereas a one-year period is mandated for women who do not menstruate for reasons other than breastfeeding (Article 153, paragraph 6).³⁷

An examination of the provisions for menopausal women in the Qur'an reveals a distinct discrepancy with the Compilation of Islamic Law (KHI) regulations. While the Qur'an establishes a three-month *'iddah* for menopausal women, the Compilation of Islamic Law (KHI) mandates a duration of one year. This represents an exceedingly long period that lacks a direct foundational basis in either the Qur'anic text or Prophetic tradition (*hadith*).

Table 1: Comparison of *'Iddah* Periods between the Qur'an and Compilation of Islamic Law

Female Category	Qur'anic Provisions of <i>'Iddah</i>	Compilation of Islamic Law Provisions of <i>'Iddah</i>	Normative Notes
Divorced and still menstruating	Three <i>qurū'</i> (menstrual or purity cycles) (QS. al-Baqarah [2]: 228)	Three purity cycles, minimum of 90 days	KHI provides an administrative time standard

³⁶ Jasser Auda, *Maqāṣid al-Sharī'ah as Philosophy of Islamic Law*, (London: IIIT, 2008), p. 125–127.

³⁷ Presidential Instruction Number 1 of 1991 concerning Compilation of Islamic Law.

		(Article 153, para 2b, KHI)	for legal certainty
Amenorrhoeic (Pre-menarche)	Three months (QS. al-Ṭalāq [65]: 4)	Three months (90 days) (Article 153, para 2b, KHI)	KHI establishes a standardized duration.
Pregnant (Divorced or Widowed)	Until giving birth (QS. al-Ṭalāq [65]: 4)	Until giving birth (Article 153, para 2c, KHI)	No discrepancy exists.
Widowed (Husband passed away)	Four months and ten days (QS. al-Baqarah [2]: 234)	Four months and ten days (Article 153, para 2a, KHI)	No discrepancy exists.
Divorced before sexual intercourse	No 'iddah period (QS. al-Aḥzāb [33]: 49)	No 'iddah period (Article 153, para 1, KHI)	Full consistency in application
Menopausal women in "grey divorce"	Categorized as <i>Yā'isa min al-mahīd</i> , 3 months (QS. al-Ṭalāq [65]: 4)	One year (Article 153, para 6, KHI)	Opens space for normative critique and contextual reformulation

The aforementioned table indicates that while the KHI generally adopts the 'iddah provisions stipulated in the Qur'an, it incorporates the politicization and standardization of timeframes (e.g., the 90-day rule). Within the framework of 'grey divorce', this specific regulation becomes a crucial focal point for normative critique and legal reformulation, which constitutes the primary objective of this study. A further critique can be established by analysing KHI provisions against the dual calendar system observed by Indonesian Muslims, which carries significant legal implications.

The determination of the 'iddah period in both Islamic jurisprudence and Indonesian positive law is far from a mere formality; rather, it encompasses a range of vital social, biological, and juridical objectives. In the Indonesian legal context, 'iddah is recognized as a normative pillar designed, *inter alia*, to protect women following divorce or the death of a spouse. Although it is not explicitly regulated within Law Number 1 of 1974 on Marriage, its technical elaborations are codified within the Compilation of Islamic Law (KHI)

A number of recent Indonesian studies have critically examined the normative approach of the KHI regarding the issue of 'iddah. Mulyanti et al. demonstrate that, in practice, 'iddah provisions are frequently devoid of adequate protection for women's rights specifically concerning 'iddah maintenance (*nafaqah*) thereby

exacerbating the vulnerability of women following marital dissolution.³⁸ Rosyida et al, assert that judicial practices within Religious Courts continue to position *'iddah* as a unilateral obligation for women, lacking a reciprocal balance of responsibility from the male counterpart.³⁹ Furthermore, other scholarship has advocated for an expansion of the *'iddah* discourse toward the framework of gender justice, including the conceptualization of *'iddah* for men as a form of post-divorce ethical responsibility.⁴⁰

The concept of *'iddah* for men, referred to as *syibhul 'iddah* (quasi-*'iddah*), Isla has been implemented in Indonesia through the Circular Letter of the Director General of Islamic Community Guidance (*Bimbingan Masyarakat Islam*) No. P-005/DJ.III/HK.00.7/10/2021 regarding Marriage during the Wife's *'iddah* Period.⁴¹ This circular serves as a technical guideline for the registration of marriages for former husbands intending to remarry another woman while their former wife is still observing her *'iddah*. Furthermore, the regulation aims to provide legal certainty regarding the mechanisms and procedures for marriage registration in such cases, ensuring institutional consistency in the recognition of remarriage for former husbands.⁴²

In this specific context, *'iddah* is no longer understood merely as a mechanism for pregnancy verification; rather, it is conceptualized as a legal institution imbued with ethical, spiritual, and social dimensions.⁴³ Consequently, as the biological function of *'iddah* becomes redundant, fundamental questions arise regarding the rationality and fairness of its rigid application to menopausal women. Several contemporary Islamic legal scholars argue that the enforcement of *'iddah* without considering its social context risks transforming the institution from a protective instrument into a disproportionate legal burden.⁴⁴

³⁸ Dety Mulyanti, et.al., “Harmonisasi Hukum Menentukan Masa ‘Iddah Bagi Wanita Cerai di Luar Pengadilan,” *Usrah: Jurnal Hukum Keluarga Islam* 4, no. 1 (2025), p. 1–15. Fajri M Kasim, et.al., “The Protection of Women and Children Post-Divorce in Sharia Courts in Aceh: A Sociological Perspective,” *Ahkam: Jurnal Ilmiah Syariah* 22, No. 2 (2022).

³⁹ Ryvina Izza Rosyida, et. al., “Nafkah ‘iddah Bagi Perempuan Pasca Perceraian dalam Perspektif Perundang-Undangan di Indonesia,” *Legal Standing: Jurnal Ilmu Hukum* 9, no. 2 (2025), p. 210–225.

⁴⁰ Ruby Isla, et.al., “Islamic Family Law Reform: ‘Iddah for Husbands as an Effort for Gender Equality,” *Indonesian Journal of Islamic Law* 6, no. 1 (2023), p. 45–63. Irna Nur Arisa, et.al., “Women's Political Leadership: An Analysis of Gender Equality In Legislators In Sekadau,” *Jurnal Sosiologi Dialektika Sosial* 11, No. 1 (2025).

⁴¹ Wahbah az-Zuhaili, *Al-Fiqh al-Islami wa ‘Adillatuhu*, juz VII: 7178. Sartina and Lilik Andaryuni, “Konsep Syibhul ‘Iddah Bagi Laki-Laki Ditinjau dari Hukum Islam,” *Jurnal Tana Mana* 3, no. 2 (2024).

⁴² Sofia Hardani, *Problematika ‘Iddah di Indonesia*, p. 160.

⁴³ Susan L. Brown & I-Fen Lin, “The Gray Divorce Revolution: Rising Divorce Among Middle-Aged and Older Adults,” *The Journals of Gerontology* 67, no. 6 (2012), p. 731–741.

⁴⁴ Amina Wadud, *Qur’an and Woman: Rereading the Sacred Text from a Woman’s Perspective* (New York: Oxford University Press, 1999), p. 72–75.

As previously elucidated, one of the primary implications of the prolonged *'iddah* period is the legal impediment it poses to the remarriage of both the former wife and the former husband (the latter being subject to *shibhul 'iddah*). In the context of 'grey divorce' involving menopausal women, this duration extends to one year, compounded by the duration of the divorce proceedings until a final court decree is issued. Furthermore, this period is exacerbated by the reliance on the Gregorian calendar, which is approximately 11 days longer than the Hijri calendar, thereby further delaying the legal capacity of the parties to enter into a subsequent marriage.

***Maqāṣid al-Sharī'ah* as a Framework for the Reformulation of 'Iddah in Indonesian 'Grey Divorce'**

The *maqāṣid al-sharī'ah* approach offers a robust theoretical framework for the contextual reformulation of Islamic family law.⁴⁵ Al-Shāṭibī asserts that the application of Islamic law must be directed toward the realization of public interest (*maṣlahah*) and the prevention of harm (*mafsadah*).⁴⁶ Within the context of *'iddah*, the objective of preserving lineage (*ḥifẓ al-nasl*) cannot be dissociated from the broader goals of justice (*'adl*) and the alleviation of hardship (*raf' al-ḥaraj*).

Furthermore, Jasser Auda's contemporary *maqāṣid* theory emphasizes the systemic flexibility and contextuality of Islamic jurisprudence.⁴⁷ Adopting this multi-dimensional approach, the enforcement of *'iddah* for women in cases of 'grey divorce' necessitates a critical re-evaluation: whether the practice continues to fulfil its protective function, or conversely, whether it contravenes the principles of equity and public interest for both women and men. While several Indonesian studies have adopted a *maqāṣid* approach in critiquing Islamic family law, scholarship specifically linking *'iddah*, 'grey divorce', and the normative reformulation of the KHI remains significantly sparse. This lacuna represents the research gap that the present study aims to address.

Within the context of 'grey divorce', the enforcement of a one-year *'iddah* period for menopausal women creates a pronounced tension between formal legality and substantive justice. Given that elderly women have passed their reproductive years and generally face zero risk of pregnancy, the biological function of *'iddah* namely *istibrā' al-raḥim* becomes functionally

⁴⁵ Abdul Majid, "Islamic Legal Reform Based on Maqāṣid Syarī'ah: A Study of Al-Ghazālī's Thoughts and Its Relevance in the Context of Indonesian Family Law," *USRAH: Jurnal Hukum Keluarga Islam* 6, no. 4 (2025). Mursyid Djawas, et.al., "Creating Family Resilience in Indonesia: A Study of "Marriage Guidance" Program in Aceh and South Sumatera," *al-Ihkam: Jurnal Hukum dan Pranata Sosial* 17, No. 1 (2022).

⁴⁶ Abū Ishāq al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharī'ah*, Jil. II (Beirut: Dār al-Kutub al-'Ilmiyyah, 2004), p. 8–12. Faisal Zulfikar, "Maqashid Syariat Asy-Syatibi Review of Marital Rape in the Sexual Violence Crime Law," *Nurani: Jurnal Kajian syari'ah Dan Masyarakat* 23, No. 1 (2023), p. 97-110.

⁴⁷ Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: The International Institute of Islamic Thought, 2008), p. 75–82.

redundant. Under these circumstances, a one-year 'iddah period loses its protective rationale and instead transforms into a symbolic obligation that unnecessarily constrains the social, economic, and psychological spheres of women post-divorce.⁴⁸

The provision for the waiting period ('iddah) for women who have reached menopause is regulated under Article 153, paragraph (6) of the Compilation of Islamic Law (KHI), which mandates a duration of one year. This regulation stands in contrast to the direct mandate of Surah al-Ṭalāq [65]: 4, which stipulates a three-month 'iddah for women who no longer menstruate. In classical jurisprudence (*fiqh*), this Qur'anic provision is understood as a fixed normative injunction (*ta'abbudī*); as elucidated by Ibn Qudāmah, menopausal women (*al-āyisah*) fall into the category whose 'iddah is determined strictly by the calculation of months.⁴⁹

Nevertheless, the phenomenon of 'grey divorce' highlights evolving socio-biological realities that are not fully accommodated by the current normative construction of the KHI. The primary objective of 'iddah to verify the emptiness of the womb (*istibrā' al-raḥim*) becomes factually redundant for post-menopausal women. Ibn Rushd, in *Bidāyat al-Mujtahid*, asserts that the differentiation of 'iddah determinations in *fiqh* is intrinsically linked to the possibility of pregnancy, suggesting that the biological rationale ('illah) plays a pivotal role in legal construction.⁵⁰ Empirical findings in Indonesia further indicate that, in practice, the provision of 'iddah maintenance (*nafaqah*) is frequently inadequate and inconsistent across different judicial jurisdictions, reflecting a varied judicial response to the social dynamics and post-divorce needs of women.⁵¹

The textual-biological approach adopted by the KHI tends to prioritize formal legal certainty at the expense of substantive justice. Yet, within the Islamic jurisprudential tradition, the principle of *ta'līl al-aḥkām* (legal ratiocination) permits the adjustment of rulings in accordance with shifts in the effective cause ('illah) and context. Al-Sarakhsī asserts that jurisprudential rulings are subject to change if their underlying causes evolve.⁵² This perspective is reinforced by al-Qarāfī, who emphasizes the necessity of distinguishing between immutable textual provisions (*nass*) and their contextual legal application.⁵³

In conclusion, this normative analysis demonstrates that the 'iddah period in cases of 'grey divorce' necessitates a reinterpretation grounded in *maqāsid al-*

⁴⁸ Susan L. Brown dan I-Fen Lin, "The Gray Divorce Revolution: Rising Divorce Among Middle-Aged and Older Adults," *The Journals of Gerontology: Series B* 67, no. 6 (2012), p. 731–741.

⁴⁹ Ibn Qudāmah, *al-Mughnī*, Juz 8 (Beirut: Dār al-Fikr, t.t.), p. 130.

⁵⁰ Ibn Rushd, *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid*, Juz 2 (Beirut: Dār al-Ḥadīth, 2004), p. 68.

⁵¹ Dety Mulyanti et al., "Harmonisasi Hukum Menentukan Masa 'Iddah bagi Wanita Cerai di Luar Pengadilan menurut Kompilasi Hukum Islam dan Hukum Fiqh," *USRAH: Jurnal Hukum Keluarga Islam* 4, no. 1 (2025), p. 14–29. Wahyu Fitrianoor, "Analisis Putusan Hakim dalam Penetapan Nafkah 'Iddah: Studi Kasus Pengadilan Agama Kota Banjarbaru," *Maqashiduna: Jurnal Hukum Keluarga Islam* 3, no. 1 (2025), p. 15–16,

⁵² Al-Sarakhsī, *al-Mabsūṭ*, Juz 6 (Beirut: Dār al-Ma'rifah), p. 150.

⁵³ Al-Qarāfī, *al-Furūq*, Juz 1 (Beirut: 'Ālam al-Kutub, 1998), p. 177.

sharī'ah. Such a reinterpretation does not seek to negate the validity of *'iddah*; rather, it aims to reaffirm its ethical and protective objectives to ensure alignment with the social realities and biological conditions of women. This normative reformulation is imperative to ensure that Indonesian Islamic marriage law remains relevant and equitable, thereby preventing it from becoming entrenched in a textual legalism that disregards substantive public interest (*maṣlahah*).

'Iddah for Women in Cases of 'Grey Divorce': A Reformulation in the *Maqāṣid al-Sharī'ah* Perspective

From the perspective of *maqāṣid al-sharī'ah*, *'iddah* is conceptualized not merely as an administrative obligation, but as a legal mechanism designed to safeguard the dignity and well-being (*maṣlahah*) of women. Al-Ghazālī classifies the protection of life and honor (*ḥifẓ al-nafs* and *ḥifẓ al-'ird*) as essential objectives of the Sharia.⁵⁴ Furthermore, contemporary scholarship highlights the importance of balanced maintenance and protection mechanisms during the *'iddah* period to ensure gender justice within Indonesian Islamic family law, as existing provisions frequently fail to guarantee the post-divorce welfare of women.⁵⁵

On this basis, the normative reformulation of Article 153, paragraph (6), subparagraph (b) of the KHI is directed toward a *Maqāṣidī* approach. This approach retains the fundamental principles of *'iddah* while facilitating a mechanism for limited judicial discretion within the Religious Courts. Ibn al-Qayyim asserts that a judge possesses the authority to issue rulings based on manifest public interest (*maṣlahah*) insofar as they do not contravene definitive textual sources (*naṣṣ qathī*).⁵⁶ Such discretion allows the court to consider factual circumstances, including medical evidence regarding the impossibility of pregnancy and considerations of the woman's social welfare.

Consequently, the reformulation of Article 153, paragraph (6), subparagraph (b) of the KHI is not intended to negate textual provisions; rather, it aims to interpret them contextually to achieve the ultimate objectives of the Sharia namely justice, public interest, and the protection of women within the framework of 'grey divorce' in Indonesia. The normative reformulation of the *'iddah* period in cases of 'grey divorce' must be undertaken by considering the evolving social, biological, and psychological contexts of menopausal women, without disregarding the foundational objectives of the Sharia (*maqāṣid al-sharī'ah*). Within this framework, *'iddah* is conceptualized not merely as a biological mechanism, but as a

⁵⁴ Muhammad bin Muhammad Al-Ghazālī, *al-Mustaṣfā min 'Ilm al-Uṣūl*, Juz 1 (Beirut: Dār al-Kutub al-'Ilmiyyah, 1993), p. 286.

⁵⁵ Aldi Saputra Putra, et. al, "Kajian Sosiologi tentang Pemberian Nafkah 'iddah," *Maqashiduna*, 1, no. 1 (2023), p. 1–15. Fadhilatul Maulida and Busyro Busyro, "Nafkah 'Iddah Akibat Talak Ba'in dalam Perspektif Keadilan Gender (Analisis terhadap Hukum Perkawinan Indonesia)," *Al-Hurriyah: Jurnal Hukum Islam* 3, no. 2 (2025), p. 113–126.

⁵⁶ Ibn al-Qayyim al-Jawziyyah, *I'lām al-Muwaqqi'in 'an Rabb al-Ālamīn*, Juz 3 (Beirut: Dār al-Jil, 1973), p. 14.

legal instrument for protection and equity within family law. To this end, the following measures are proposed:

First, the reorientation of the objectives of *'iddah*. In the context of 'grey divorce', the function of *ḥifẓ al-nasl* (preservation of lineage) becomes biologically redundant as the woman has entered menopause. Consequently, the purpose of *'iddah* should be reoriented toward *ḥifẓ al-nafs* (psychological protection), *ḥifẓ al-'ird* (protection of dignity), and *ḥifẓ al-māl* (economic protection), particularly in guaranteeing the certainty of maintenance and post-divorce rights. Second, the normative differentiation of the *'iddah* period. This involves distinguishing the *'iddah* period for menopausal women in 'grey divorce' from that of women within their reproductive years. The *'iddah* for menopausal women should be established more flexibly and proportionately for instance, by basing it on administrative requirements and legal protection rather than a rigid temporal calculation that imposes an undue burden on both parties.

Third, *maṣlahah*-based flexibility. The *maqāṣid* approach facilitates the application of the principle of *maṣlahah mursalah* (unrestricted public interest),⁵⁷ allowing the determination of the *'iddah* period in 'grey divorce' to account for the woman's concrete circumstances. These include economic independence, health status, and the absence of potential lineage conflict. This flexibility remains strictly within the legal framework and the jurisdiction of the Religious Courts.

Fourth, the enhancement of rights protection. The reformulation of *'iddah* in cases of 'grey divorce' must be accompanied by the robust protection of women's rights, including guarantees for post-divorce maintenance (*nafaqah*), temporary housing rights, and access to justice. Simultaneously, the protection of men's rights must also be addressed. The current protracted duration of the *'iddah* period for menopausal women imposes an extended financial burden of maintenance upon the former husband and constitutes a legal impediment to remarriage under the principle of *shibhul 'iddah*.⁵⁸ In this context, *'iddah* is repositioned as an instrument of substantive justice rather than a mere normative burden. Fifth, integration into the Compilation of Islamic Law (KHI). Normatively, this reformulation can be realized through the inclusion of a specific clause within Article 153 of the KHI. This clause would regulate the *'iddah* for menopausal women or those in "grey divorce" scenarios through a *maqāṣid al-sharī'ah* approach. Such an amendment would ensure that Islamic marriage law in Indonesia remains contextual, adaptive, and grounded in gender justice.

As a conceptual framework for the reformulation of *'iddah* for menopausal women in 'grey divorce', the following table presents the proposed amendments to Article 153, paragraph (6) of the KHI, based on the *maqāṣid al-sharī'ah* perspective:

⁵⁷ Azni Azni, et.al., "Pseudo-Maṣlahah and Epistemological Failure in Marriage Dispensation at Indonesian Religious Courts," *Jurnal Ilmiah Peuradeun* 13, No. 2 (2025).

⁵⁸ Abidin Nurdin, "Mut'ah and Iddah: Post-divorce Payment Practices in Aceh," in John R. Bowen and Arskal Salim, *Women and Property Rights in Indonesian Islamic Legal Contexts*, (2018). Sofia Hardani, *Problematika 'Iddah di Indonesia*, p. 156-157.

Table 2: Reformulation of Article 153 (6) of the KHI based on *Maqāṣid al-Sharī'ah*

Aspect	Current KHI Provision	Proposed Normative Reformulation	Normative Foundation (Evidence & <i>Maqāṣid</i>)
Legal Subject	Divorced women who no longer menstruate for reasons other than breastfeeding.	Divorced women who no longer menstruate due to menopause ('grey divorce').	QS. al-Ṭalāq [65]: 4; Principle of <i>ḥifẓ al-nafs</i> (protection of the soul/psychology).
Determination of 'iddah	Fixed duration of one year.	Three months, synchronized with the Hijri calendar.	QS. al-Ṭalāq [65]: 4; <i>Maṣlahah mursalah</i> ; <i>raf' al-ḥaraj</i> (alleviation of hardship).
Legal Approach	Biological (ill-defined/ambiguous).	Contextual– <i>Maqāṣidī</i> .	Al-Shāṭibī, <i>al-Muwāfaqāt</i> .
Biological Considerations	Disregards factual/medical conditions.	Incorporates medical evidence (verification of non-pregnancy).	Factual realization of the objective of <i>ḥifẓ al-nasl</i> .
Role of Religious Courts	Absence of judicial discretion.	Inclusion of limited judicial discretion.	<i>Wilāyat al-ḥukm</i> (judicial authority); <i>ta'līl al-aḥkām</i> (legal ratiocination).
Dimension of Justice	Formal justice.	Substantive and proportional justice.	Principle of 'adl (equity) in Sharia.
Protection of Women	'iddah as a normative obligation.	'iddah as a protective mechanism.	<i>ḥifẓ al-nafs</i> and <i>ḥifẓ al-'ird</i> (protection of honor/dignity).
Theoretical Framework	Literal classical jurisprudence (<i>fiqh</i>).	<i>Maqāṣid al-sharī'ah</i> .	Jasser Auda (Systemic & Contextual approach).

Legal Orientation	Legal certainty (<i>rechtzekerheid</i>).	Legal certainty and public interest (<i>maṣlahah</i>).	<i>Maṣlahah 'āmmah</i> (general public interest).
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The Normative Foundation column in the aforementioned table demonstrates that the reformulation of Article 153, paragraph (6) of the KHI, remains deeply rooted in *naqlī* (textual) evidence. However, it is expanded through a *maqāṣid al-sharī'ah* approach to ensure substantive justice and public interest (*maṣlahah*) for elderly women who have reached menopause within the context of 'grey divorce'.

In this regard, Azni, a professor of Islamic law and a prominent figure, emphasized that from the perspective of the *maqāṣid al-sharī'ah*, if the consideration for the length of the iddah is to ensure the cleanliness of the uterus, then women who do not menstruate, let alone have divorced menopause (grey divorce), do not need to undergo the iddah period, because it is no longer in accordance with the concept of *hifz al-nafs* and *hifz al-nasl*. There is no soul or offspring that must be protected from the woman's womb. However, this condition must be examined by a doctor. However, in the aspect of *hifz al-din*, the sharia reasons for iddah cannot be ignored; Allah's command regarding the iddah period must still be carried out, but the shortest iddah period is taken, namely three months. For older women, the one-year iddah period is not beneficial, especially if the woman needs a life partner and is soon to find another partner. Therefore, it is best to return to the Quranic rule of Surah At-Talaq, verse 4.⁵⁹

Furthermore, Jumni Nelli, Professor of Islamic Family Law at Sultan Syarif Kasim State Islamic University in Riau, explained that for women approaching menopause who are no longer menstruating, but who have not yet been confirmed as menopausal, the iddah period is one year, as stipulated in the Compilation of Islamic Law (KHI). This formulation is often criticized for being generalistic, not based on actual biological conditions, and potentially inconsistent with the objectives of protection (*maqāṣid al-sharī'ah*). According to *maqāṣid*, iddah not only ensures the emptiness of the uterus (*hifz al-nasl*), but also includes protecting women's economic well-being (*hifz al-māl*), and protecting their dignity and psychological stability (*hifz al-'ird*). Therefore, setting 1 year absolutely can be too long for women who are medically infertile, too short if they still have the potential to become pregnant, and is not flexible to modern biological realities.⁶⁰

In line with the above opinion, according to Ridwan Hasbi, Professor of Islamic Family Law at UIN Sultan Syarif Kasim Riau, emphasized that the provision of a one-year iddah period for women who do not menstruate in the KHI needs to be reformulated, returned to the original iddah period, which is 3 months (Surat At-

⁵⁹Interview with Azni, Professor of Islamic Law and a female figure at UIN Sultan Syarif Kasim Riau, February 25, 2026.

⁶⁰Interview with Jumni Nelli, Professor of Islamic Family Law and a female figure at UIN Sultan Syarif Kasim Riau, February 25, 2026.

Talaq verse 4), or even shorter. If associated with the opinion that states that traces of a man who has sex with his wife slowly disappears over three months, then perhaps this is the divine wisdom of the iddah provision for women who do not menstruate, whether due to illness or menopause. Reformulation is carried out on the KHI, or can also be through a Circular Letter of the Supreme Court. If women who do not menstruate are due to menopause as in the case of "grey divorce", then there must be psychological considerations that they are more mentally prepared to live independently after divorce, compared to young women. This is in accordance with the principles of *hifzun nafs* (maintaining emotional/psychological stability) and *hifzul huquq al-syakhsyiyah* (safeguarding individual rights). In the aspect of women's protection, the long iddah period for women does not protect their basic rights.⁶¹

According to Alaidin, Professor of Islamic Law at UIN Sultan Syarif Kasim Riau, there is indeed a confusing article in the KHI (Indonesian Islamic Law Compilation) that stipulates a one-year iddah period for women who do not menstruate. This is based on the opinions of the Maliki and Hanbali schools of thought. Because it is based on *ijtihad* (the principle of Islamic jurisprudence), if it is linked to the *maqāṣid al-sharī'ah*, it is no longer relevant to the current era. Therefore, the KHI should be adjusted. Simply return to the original iddah period for women who do not menstruate, which is three months. A long iddah period in today's era does not guarantee protection for women; in fact, it can be the opposite.⁶²

In line with the various opinions above, the reformulation of the iddah period for women undergoing 'late-life divorce' is not simply a matter of shortening the waiting period; it is an effort to restore the spirit of Islamic law (*rūḥ al-tashrī'*) to its noble position: providing substantive justice and not merely a textual formality. This is based on the principle that Islam is a teaching that is *ṣāliḥ li-kulli zamān wa-makān* (appropriate for all times and places).⁶³ Reluctance to reformulate regulations that are no longer biologically and sociologically relevant is tantamount to denying the dynamism of Sharia itself. By re-contextualizing 'iddah within the framework of *maqāṣid al-sharī'ah*, this study affirms that the KHI must continue to evolve—becoming a legal framework that is adaptive, logical, and just amidst the emerging phenomenon of 'gray divorce'.

Therefore, according to Mufidah Ch., an expert in the sociology of Islamic law and gender at UIN Malang, an excessively long iddah period for women is very domesticating, because it limits their movement in public spaces, because the actual issue of iddah is more directed towards protection. While women are not clearly referred to as weak creatures who need constant protection from various aspects, in

⁶¹Interview with Ridwan Hasbi, Professor of Islamic Family Law at UIN Sultan Syarif Kasim Riau, February 25, 2026.

⁶²Interview with Alaidin Koto, M.A., Professor of Islamic Law, UIN Sultan Syarif Kasim Riau, February 26, 2026.

⁶³Yusuf al-Qaradawi, *Sharī'at al-Islām Ṣāliḥah li al-Taṭbīq fī Kulli Zamān wa Makān* (Cairo: Dār al-Ṣaḥwah, 1993), p. 25.

social construction, women are often weakened by the existing system and culture, making women economically dependent on their husbands. On the other hand, not all men are able to provide sufficient income, so for those who cannot, paying iddah for a year is also burdensome. Thus, a woman's iddah for a year does not provide substantive justice for both women and men. Moreover, divorce is the result of a household experiencing many problems, so a long iddah is ineffective in providing protection for the rights of women or men.⁶⁴ The reason for the determination of iddah in Article 153, paragraph 6 of the KHI, according to Maghfirah, an academic at UIN Sultan Syarif Kasim Riau, is that it should be reviewed, because the iddah rules made by Allah SWT for women who have not menstruated for three months are certainly based on Allah's omniscient knowledge of what humans do not know. Humans do not have a strong argument to contradict Allah's clear provisions in Surah At-Talaq verse 4. In various interpretations of literature, when Allah mentions a number, it means qath'iy, unless there is another argument that explains it.⁶⁵

Furthermore, this reformulation underscores that the renewal of Islamic family law in Indonesia is an inevitability. The KHI must transform from a mere instrument of textual formalism into a law that is responsive to new demographic phenomena such as 'gray divorce'. This transformation is essential to realize the vision of Islamic law as *rahmatan lil- 'ālamīn* (a mercy to all creation) that is adaptive to human welfare (*maṣlahah*).

Conclusions

This study asserts that the provisions concerning the 'iddah of elderly women in Article 153, paragraph (6), subparagraph (b) of the Compilation of Islamic Law (KHI) remain oriented toward formal legal certainty and do not yet fully reflect substantive justice in the context of 'grey divorce'. The prevailing textual-biological approach tends to overlook the shifting social realities and biological conditions of post-menopausal women, thereby potentially creating injustices and disproportionate normative burdens. Through a *Maqāṣid al-Sharī'ah* perspective, this research demonstrates that 'iddah should be understood as a mechanism for protection and welfare rather than a mere administrative obligation. Consequently, this study recommends a revision of Article 153, paragraph (6), subparagraph (b) of the KHI to incorporate provisions for adjusting the 'iddah period for elderly women based on medical considerations and factual circumstances. This should be accompanied by the strengthening of limited judicial discretion for Religious Court judges. Such a reformulation is imperative to guarantee equitable legal certainty, prevent judicial disparity, and reinforce legal protection for all citizens, irrespective of gender, within a contextual framework of Islamic marriage law that aligns with Indonesia's constitutional values. This study concludes with the thesis that the

⁶⁴Interview with Mufidah Ch., Professor of Sociology of Islamic Law, UIN Maulana Malik Ibrahim, Malang, February 27, 2026.

⁶⁵Interview with Maghfirah, Lecturer of Fiqh Munakahat at UIN Sultan Syarif Kasim Riau, February 27, 2026.

integration of medical considerations, sociological realities, and the principles of *maqāṣid al-sharī'ah* is the key to the modernization of Islamic family law. Consequently, the *'iddah* period should no longer be viewed as rigid dogma, but rather as a legal institution that is logical, humanist, and just.

References

Journals and Books

- Abū Zahrah, Muhammad, *Al-Ahwāl al-Syakhsiyyah*. Cairo: Dār al-Fikr al-‘Arabiy, n.d.
- Al-Dimyathi, Abu Bakar bin Muhammad. *I’ānah al-Thālibīn*. Vol. 4. Lebanon: Dār al-Fikr, n.d.
- Al-Ghazālī. Muhammad bin Muhammad. *Al-Mustasfā min ‘Ilm al-Uṣūl*. Vol. 1. Beirut: Dār al-Kutub al-‘Ilmiyyah, 1993.
- Al-Ghundur, Ahmad. *At-Thalāq fī al-Syarī’at al-Islāmiyah wa al-Qānūn*. Egypt: Dār al-Ma’ārif, 1967.
- Al-Habsyi, Muhammad Bagir. *Fiqh Praktis Menurut Al-Qur’an, Assunnah dan Pendapat Para Ulama*. Bandung: Mizan, 2002.
- Al-Jaṣṣāṣ. *Ahkām al-Qur’ān*. Vol. 3. Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, n.d.
- Al-Jawziyyah, Ibn al-Qayyim. *I’lām al-Muwaqqi’īn ‘an Rabb al-‘Ālamīn*. Vol. 3. Beirut: Dār al-Jīl, 1973.
- Al-Jaziri, Abdurrahman. *Al-Fiqh ‘alā Mazāhib al-Arba‘ah*. Beirut: Dār al-Fikr, n.d.
- Al-Nawawī. Muhyiddin Abu Zakaria Yahya bin Syaraf, *Al-Majmū’ Sharḥ al-Muhadhdhab* (Juz 17). Beirut: Dār al-Fikr., 1997.
- Al-Qarāfī. *Al-Furūq*. Vol. 1. Beirut: ‘Ālam al-Kutub, 1998.
- Al-Sarakhsī. *Al-Mabsūṭ*. Vol. 6. Beirut: Dār al-Ma’rifah, n.d.
- Al-Shāṭibī, Abū Ishāq. *Al-Muwāfaqāt fī Uṣūl al-Sharī’ah*. Vol. 2. Beirut: Dār al-Kutub al-‘Ilmiyyah, 2004.
- Al-Syarbīnī, Al-Khātib. *Mughnī al-Muḥtāj*. Vol. 5. Beirut: Dār al-Kutub al-‘Ilmiyyah, n.d.
- Al-Zuhaili, Wahbah. *Al-Fiqh al-Islāmī wa Adillatuhu*. Vol. 7. Damascus: Dār al-Fikr, 1996.
- An-Naisaburi. *Shahīh Muslim*. Vol. 5. Beirut: Dār al-Kutub Al-‘Ilmiyyah, n.d.
- Asep Kurniawan, et. al, “Islamic Family Law Reform.” *Indonesian Journal of Islamic Law* 6, no. 1 (2023). <https://doi.org/10.35719/ijil.v6i1.2021>.
- Ash Shiddieqy, Ahmad, et al. “Integrating Islamic Family Law and Gender Equality.” *Legitima: Jurnal Hukum Keluarga Islam* 7, no. 2 (2025): 123–147. <https://doi.org/10.33367/legitima.v7i2.7101>.
- Arisa, Irna Nur, et.al., “Women's Political Leadership: An Analysis of Gender Equality In Legislators In Sekadau,” *Jurnal Sosiologi Dialektika Sosial* 11, No. 1 (2025). DOI: <https://doi.org/10.29103/jsds.v11i1.16522>.

- Auda, Jasser. *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach*. London: The International Institute of Islamic Thought (IIIT), 2008.
- Azni Azni, et.al., "Pseudo-Maṣlahah and Epistemological Failure in Marriage Dispensation at Indonesian Religious Courts," *Jurnal Ilmiah Peuradeun* 13, No. 2 (2025). DOI: <https://doi.org/10.26811/peuradeun.v13i2.2047>.
- Baušić, Alexandra Irma Gabriela., et al. "Transvaginal Ultrasound vs. MRI." *Biomedicines* 11, no. 10 (2023): 2609. <https://doi.org/10.3390/biomedicines11102609>.
- Brown, Susan L., and I-Fen Lin. "Graying of Divorce: A Half Century of Change." *The Journals of Gerontology: Series B* 77, no. 9 (2022). <https://doi.org/10.1093/geronb/gbac057>.
- Brown, Susan L., and I-Fen Lin. "The Gray Divorce Revolution: Rising Divorce Among Middle-Aged and Older Adults." *The Journals of Gerontology: Series B* 67, no. 6 (2012). <https://doi.org/10.1093/geronb/gbs089>.
- Dety, Mulyanti, et.al., "Harmonisasi Hukum Menentukan Masa 'Iddah Bagi Wanita Cerai di Luar Pengadilan." *USRAH: Jurnal Hukum Keluarga Islam* 4, no. 1 (2025). <https://doi.org/10.46773/usrah.v4i1.658>.
- Dewi, Utari Kamila, et.al., "Fenomena gray divorce: Mengapa pasangan usia senja memilih bercerai?" *Triwikrama: Jurnal Ilmu Sosial* 11, no. 8 (2025).
- Djawas, Mursyid, et.al., "Creating Family Resilience in Indonesia: A Study of "Marriage Guidance" Program in Aceh and South Sumatera," *al-Ihkam: Jurnal Hukum dan Pranata Sosial* 17, No. 1 (2022). <https://doi.org/10.19105/al-lhkam.v17i1.6150>.
- Djawas, Mursyid, et.al., "The Construction of Islamic Inheritance Law: A Comparative Study of the Islamic Jurisprudence and the Compilation of Islamic Law," *Juris: Jurnal Ilmiah Syari'ah* 21, No. 2 (2022). DOI: <https://doi.org/10.31958/juris.v21i2.7495>.
- Fitrianoor, Wahyu. "Analisis Putusan Hakim dalam Penetapan Nafkah 'iddah: Studi Kasus Pengadilan Agama Kota Banjarbaru." *Maqashiduna: Jurnal Hukum Keluarga Islam* 3, no. 1 (2025). <https://doi.org/10.47732/maqashiduna.v3i1.758>.
- Fu, Fen, et al. "Diagnostic Value of Multimodal Hysterosalpingo-Contrast Sonography." *BMC Women's Health* 25 (2025). <https://doi.org/10.1186/s12905-025-03598-2>.
- Hardani, Sofia, et al. "Iddah dan Ihdad sebagai Pendidikan Moral di Era Modern; Issue Emansipasi dan Pemanfaatan Media Sosial, *JPPi (Jurnal Penelitian Pendidikan Indonesia)* 9, no. 2 (2023). <https://doi.org/10.29210/020232815>.
- Hardani, Sofia, *Kalender Umat Islam Indonesia*. Jakarta: RajaGrafindo Persada, 2023.
- Hardani, Sofia, *Problematika 'Iddah di Indonesia*. Jakarta: RajaGrafindo Persada, 2025.

- Hidayat, et al. "Islamic Family Law and Women's Rights in Indonesia: Between Normativity, Reform, and Social Realities." *ASEAN Journal of Islamic Studies and Civilization* 2, no. 2 (2025). <https://doi.org/10.62976/ajisc.v2i2.1430>.
- Hilal, S., and S. M. Harahap. "Iddah in the View of Islam and Feminists." *Adalah* 7, no. 2 (2021). <https://doi.org/10.24042/adalah.v7i2.8515>.
- Ibn Qudāmah. *Al-Mughnī*. Vol. 8. Beirut: Dār al-Kutub al-‘Ilmiyyah, 1997.
- Ibn Rushd. *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid*. Vol. 2. Beirut: Dār al-Hadīth, 2004.
- Kasim, Fajri M., et.al., "The Protection of Women and Children Post-Divorce in Sharia Courts in Aceh: A Sociological Perspective," *Ahkam: Jurnal Ilmiah Syariah* 22, No. 2 (2022). DOI: <https://doi.org/10.15408/ajis.v22i2.28747>.
- Lin, I-Fen, et.al., "Antecedents of Gray Divorce: A Life Course Perspective." *The Journals of Gerontology: Series B, Psychological Sciences and Social Sciences* 73, no. 6 (2018). <https://doi.org/10.1093/geronb/gbw164>.
- Majid, Abdul, "Islamic Legal Reform Based on Maqāṣid Syarī'ah: A Study of Al-Ghazālī's Thoughts and Its Relevance in the Context of Indonesian Family Law." *USRAH: Jurnal Hukum Keluarga Islam* 6, no. 4 (2025). <https://doi.org/10.46773/usrah.v6i4.2195>.
- Maulida, Fadhilatul, and Busyro Busyro. "Nafkah 'iddah Akibat Talak Ba'in." *Al-Hurriyah* 3, no. 2 (2025). <https://doi.org/10.30983/alhurriyah.v3i2.720>.
- Nurdin, Abidin, "Mut'ah and Iddah: Post-divorce Payment Practices in Aceh," in John R. Bowen and Arskal Salim, *Women and Property Rights in Indonesian Islamic Legal Contexts*, (2018). DOI: https://doi.org/10.1163/9789004386297_008.
- Prawira, Ilham Abdi, et al. "The Paradigm Shift of Maqāṣid al-Syarī'ah in Contemporary Society: From Protection to Development." *Academica: Journal of Multidisciplinary Studies* 9, no. 2 (2025). <https://doi.org/10.22515/academica.v9i2.14126>.
- Putra, Aldi Saputra, et al. "Kajian Sosiologi tentang Nafkah 'iddah." *Maqashiduna* 1, no. 1 (2023). <https://doi.org/10.47732/maqashiduna.v1i1.386>.
- Rahmawati, et al. Dis-implementation of the Islamic family law in fulfilling the rights of ex-wives after divorce in Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, 9, No. 1 (2025). <https://doi.org/10.22373/sjhc.v9i1.27172>.
- Rasyid, Arbanur, et.al., "Dynamics of Childless Marriage Through the Lens of Maqasid Al-Shari'a," *Jurnal Ilmiah Peuradeun* 12, No. 2 (2024). DOI: <https://doi.org/10.26811/peuradeun.v12i2.1182>.
- Refiuddin, Ahmad Adib, "Penentuan Hari dalam Sistem Kalender Hijriyah." *Al-Ahkam: Jurnal Ilmu Syari'ah dan Hukum* 26, no. 1 (2016). <https://doi.org/10.21580/ahkam.2016.26.1.878>.

- Rofiuddin, Ahmad, "Hak Waris Istri dalam Masa 'Iddah.'" *ASAS: Jurnal Hukum Ekonomi Syariah* 10, no. 1 (2018). <https://doi.org/10.24042/asas.v10i01.3265>.
- Rosyida, Ryvina Izza, et al. "Nafkah 'iddah.'" *Legal Standing* 9, no. 2 (2025). <https://doi.org/10.24269/ls.v9i2.11506>.
- Sābiq, Sayyid. *Fiqh al-Sunnah*. Vol. 2. Cairo: Dār al-Fatḥ li al-I'lām al-'Arabī, 1999.
- Sartina, and Lilik Andaryuni. "Konsep Syibhul 'iddah Bagi Laki-Laki Ditinjau dari Hukum Islam." *Jurnal Tana Mana* 3, no. 2 (2024). <https://doi.org/10.33648/jtm.v3i2.333>.
- Towner, Mary C., et.al., "Why Do Women Stop Reproducing Before Menopause? A Life-History Approach to Age at Last Birth." *Philosophical Transactions of the Royal Society B: Biological Sciences* 371, no. 1692 (2016). <https://doi.org/10.1098/rstb.2015.0147>.
- Wadud, Amina, *Qur'an and Woman*. New York: Oxford University Press, 1999.
- Yunitanti, and Yanto Paulus Hermanto. "'Grey Divorce' and the Role of the Church: Building Recovery Spaces for Older Couples." *Formosa Journal of Multidisciplinary Research* 4, no. 4 (2025). <https://doi.org/10.55927/fjmr.v4i4.159>.
- Yusuf al-Qaradawi. *Sharī'at al-Islām Ṣāliḥah li al-Taṭbīq fī Kulli Zamān wa Makān*, Cairo: Dār al-Ṣaḥwah, 1993.
- Zahir, Irham, "Comparative Analysis of Talaq That Passed Outside The Court In The Perspective of Islamic Law and Compilation of Islamic Law," *Jurnal al-Dustur* 4, No. 1 (2021). DOI: <https://doi.org/10.30863/jad.v4i1.1343>.
- Zulfikar, Faisal., et.al, "Maqashid Syariat Asy-Syatibi Review of Marital Rape in the Sexual Violence Crime Law," *Nurani: Jurnal Kajian syari'ah Dan Masyarakat* 23, No. 1 (2023). <https://doi.org/10.19109/nurani.v23i1.16991>.

Internet Data

- Muhammad Ghifari A," Perceraian Usia Senja Meningkatkan, Apa Itu Gray Divorce?", in *Media Indonesia*, 16/12/2025, 11:12, <https://mediaindonesia.com/humaniora/840673/perceraian-usia-senja-meningkat-apa-itu-gray-divorce>.

Laws and Legal Regulations

- Kementerian Agama RI. *Kompilasi Hukum Islam di Indonesia*. Jakarta: Direktorat Jenderal Bimas Islam, 2018.
- Presidential Instruction Number 1 of 1991 concerning Compilation of Islamic Law.

Interviews

- Interview with Azni, Professor of Islamic Law and a female figure at UIN Sultan Syarif Kasim Riau, February 25, 2026.

Interview with Jumni Nelli, Professor of Islamic Family Law and a female figure at UIN Sultan Syarif Kasim Riau, February 25, 2026.

Interview with Ridwan Hasbi, Professor of Islamic Family Law at UIN Sultan Syarif Kasim Riau, February 25, 2026.

Interview with Alaidin Koto, M.A., Professor of Islamic Law, UIN Sultan Syarif Kasim Riau, February 26, 2026.

Interview with Mufidah Ch., Professor of Sociology of Islamic Law, UIN Maulana Malik Ibrahim, Malang, February 27, 2026.

Interview with Maghfirah, Lecturer of Fiqh Munakahat at UIN Sultan Syarif Kasim Riau, February 27, 2026.