

Married in “*Iddah Cerai Mati*” from the Perspective of Islamic Law and Marriage Law

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Abstract: In Islamic law marrying in the iddah period is haram. Likewise, the marriage law number 1 of 1974 stipulates a period of iddah for women. However, the implementation of the iddah in the community is still not running as the rules, especially “iddah cerai mati”. This article examines the implementation of “iddah cerai mati” in rural communities, namely in Pakuniran District, Probolinggo Regency. Pakuniran district consists of 17 villages. This study took three informants from each village. Data collection techniques are observation and interview. The results showed that the majority of women were married during the iddah period. They married a week, two weeks, a month after her husband died. The factor that causes not to implement “iddah cerai mati” is the ignorance, poverty, and habits. Poverty can be said as a trigger in doing “iddah cerai mati”. Therefore, according to the researcher, poverty can decrease the period of *‘iddah*. In the future, there must be more research on the implementation of the iddah in the community because iddah is a fundamental Islamic marriage law.

1 INTRODUCTION

The phenomenon of irregularities in Islamic family law in society is widespread. Among others, irregularities in marriage, namely *sirri* marriage (Aziz, 2018), which is married not recorded at the Office of Religious Affairs (KUA) (Arsal, 2012); irregularities in divorce, namely divorce outside the Religious Court (Saputra, 2012); domestic violence (Harahap, 2006). These irregularities can be known readily because there are shreds of evidence and there are institutions that take care of them. However, deviations in the iddah are demanding to know, because iddah is an individual's responsibility. There is no institution in charge of recording the iddah, let alone the “iddah cerai mati”.

Study of the iddah revolves around the following themes. First, iddah is considered to be discriminatory towards women, because only women are obliged to be iddah, while men are not obliged, therefore there needs to be a new interpretation of iddah (Azis, 2010). Second, how is the implementation of iddah for career women who have to leave home to work? In this case, the career woman who is carrying out the iddah may go out of the house to work, but must still maintain herself in

association and communication with men. (Muttaqin, 2014). Third, the concept of Iddah according to the Shafi'i school, that the iddah begins in the holy period, not during menstruation (Salam, 2017).

The absence of divorce in rural communities has not received the attention of researchers. In rural communities, women who die of their husbands do not carry out the iddah as they should. They have remarried within a week, twenty-five days or a month after the death of her husband where it should carry out the iddah. It is a waiting period, not allowed to marry for four months ten days or approximately 130 days. Ironically, this kind of practice occurs in a Muslim-majority society.

This article examines women who do not carry out “iddah cerai mati” in Pakuniran District, Probolinggo Regency. The majority of the population in Pakuniran District, Probolinggo Regency are Moslems, even Probolinggo Regency is nicknamed as the city of “santri” (“Daftar julukan Kota di Indonesia,” 2018). Such a city has many pesantren, namely educational institutions that teach Islam with specific characteristics. However, despite being nicknamed the city of santri, the law of iddah is not carried out by the majority of the community

in one of its sub-districts, namely Pakuniran sub-district.

This article describes the factors and motivations for not implementing the "iddah cerai mati" in the Pakuniran sub-district community where the population is predominantly Muslim. What is the opinion of Islamic community leaders regarding the violation of the law of iddah that occurred in their area? The purpose of this study is to be able to map the problem of implementing iddah in the community. On the other hand, by knowing the problem of implementing iddah, it is also possible to know the right solution to be able to carry out the iddah properly.

2 LITERATURE REVIEW

2.1 "Iddah Cerai mati" in Islamic Law and Law No. 1 of 1974

According to Islamic law, Iddah is a waiting period for a wife who is separated from her husband, either because of divorce or because of death. In the waiting period, a woman is prohibited from accepting a proposal to marry a man, is prohibited from holding a marriage contract, even prohibited from preening (Mathlub, 2005; Hasan 2006; Ayyub, 2005). Prohibited from leaving home, except in very urgent circumstances, such as work (Somad, 2010; Ghozali, 2012; Ringkasan Fikih, n.d.).

The purpose of the iddah is to respect marriage, that is, if marriage is not easy to break, there is a waiting time to think about its continuity. Therefore, after divorce, one cannot immediately remarry. Besides that, it is also to ensure that the wife is not pregnant. According to the 'ulama, the iddah is the area of 'ta'abbudi' or worship (Wahbah Az-Zuhaili, n.d.). Therefore, only women are obliged to be iddah, while men are not obliged (Mayasari, 2016). Even though in this day and age, iddah is reinterpreted. Based on the wisdom, so that the husband is obliged to be iddah. Because in the view of contemporary Islamic law, 'iddah is a matter of ethics, not pure worship (Rohman, 2013).

The law of "iddah cerai mati" is divided into two, namely "iddah cerai mati" in a state of a pregnant and non-pregnant wife.

First, the law of "iddah cerai mati" if the wife is not pregnant. According to Surat Al-Baqarah (2): 234 iddah for a wife who has "iddah cerai mati" and is not pregnant is four months and ten days. During the iddah period, a wife may not marry or even be allowed to be married. She also had to carry out

"ahead," which meant that she was not allowed to leave the house, not to be preening, not to act that could attract the attention of men.

Second, "Iddah cerai mati" in a pregnant wife's condition. Based on QS. At-Thalaq: 4, the woman who is pregnant 'the iddah is to give birth. For women who are pregnant as well as their husbands die, there are differences of opinion among scholars. First, the iddah is to give birth and second, to choose a longer one. That is, whichever is longer, between "iddah cerai mati" and iddah pregnant.

2.2 "Iddah Cerai mati" According to Marriage Law No.1 in 1974

"Iddah Cerai mati" according to Law No. 1 of 1974 article 11 paragraph (2) is 130 days. There is no difference in the provisions of the iddah between Islamic law and the marriage law in Indonesia. Both are on the mandatory legal status and the time provisions (Zuhaili, 2011; Asmin, 1986). Thus, it can be concluded that iddah has a strong position both in Islamic law and in legislation in Indonesia.

2.3 Alimony During 'Iddah 'Cerai Mati'

Alimony or giving the basic need for a wife is an obligation of a husband (Al-Jaziri, 2003; Sabiq, 2008). Alimony means to give a basic need to wife, which includes food, drinking, clothing, medicine, shelter, services, etc. according to reasonableness. Ulama agree with these obligations (Al Jauziyyah 1432; الجوزي, Sabiq, 2008). This obligation is based on Q.S.4;(34)" Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth", dan Q.S.65(7)" Let a man of wealth spend from his wealth, and he whose provision is restricted - let him spend from what Allah has given him. Allah does not charge a soul except [according to] what He has given it. Allah will bring about, after hardship, ease". And Q.S. 2(233) "Upon the father is the mothers' provision and their clothing according to what is acceptable".

In addition, the hadith also explains the obligation of the husband to provide a basic need for his wife. Among these hadiths are "It is narrated that a friend who asked the Prophet Muhammad," what is the right of the wife to the husband? The Prophet Muhammad replied, "You feed, and when you eat, you clothe when you are dressed, do not hit her face, do not vilify her and don't snap except inside the house" (Al-Jaziri, 2003; Sabiq, 2008). Based on the

verses and hadith, we can conclude that the husband is obliged to provide a basic need for his wife. This obligation can fall in the condition that the wife does not obey her husband (*nusyuz*) (Al-Jazīrī, 2003; Sabiq, 2008), or the wife let it go (Sabiq, 2008; محمود شلتوت, شلتوت, Mahmud Syaltut, and Sayis, Muhammad Ali 1986, محمد علي, (الساييس)).

The obligation to provide a basic need is stopped when the husband dead (Sabiq, 2008; Zuhaily, 1985). Ulama agree with the wife is obliged to carry out *iddah* four months and ten days, and the wife does not have a right to ask a basic need. The argument put forward is that with death, the marriage bond is broken. With the breakup of a marriage, there is no obligation for the husband. If the husband has inheritance, the heirs are entitled to the inheritance. The wife is one of the heirs. The primary need of the wife whose husband has died is from the inheritance part. Whereas when the husband does not leave the property, the basic need of a wife is her responsibility. Heirs have no obligation to replace the obligations of a dies husband ('Aqlah, 2015).

"Ulama of the mazhab agreed on these provisions except Imam Ahmad bin Hanbal. It is reported that Imam Ahmad bin Hanbal argued that if the wife who was left dead by the husband was pregnant, then the husband was obliged to give a basic need for his wife until she gives birth. Likewise, the child who is still in the womb is the heir who gets a part of the assets of his/her dead father. Therefore, the basic need of baby's womb is taken from the inheritance part ('Aqlah, 2015).

2.4 Shelter's Wife During Iddah 'Cerai mati'

The husband must provide a shelter for the wife as long as the husband lives based on Q. S.[65]:6, "Lodge them [in a section] of where you dwell out of your means and do not harm them in order to oppress them". However, when the husband dies, the obligation falls. The assets of the dead people turn to their heirs. However, Imam Abu Hanifah believes that if the house occupied by the husband is a house owned by a husband, not rented, or rented but has been paid for, then the wife can stay in the house until the end of her *iddah* period.

However, if on the contrary, the house is rented but not paid yet, then the wife does not have the right to live in that house. Because the wife does not have a right for that house rented. Whereas the husband's assets have been transferred to the right of the heirs based on the dead of her husband and the

marriage relationship has been broken due to death. The opinion of Imam Abu Hanifah is based on the hadith of the Prophet Muhammad, "that the basic need and residence of the wife is the duty of the husband if the husband has the right of *ruju*". Imam Malik agreed with Imam Abu Hanifah by giving an additional, if the husband had had sex with his wife. If the husband has not had sex with his wife, then the wife may not stay in the husband's house. Imam Syafi'i and Imam Ahmad bin Hanbal also had the same opinion among other opinions ('Aqlah, 2015; Sabiq, 2008).

2.5 Childcare (ḥaḍānah) During 'Iddah 'Cerai mati'

Childcare is maintaining, fulfilling their needs, loving and educating them, so that they can grow and develop optimally both physically, psychologically, and intellectually, without any obstacles in the family environment. As Ibn Qudamah said "care and parenting for children are mandatory because children will perish without care. Care is a kinship of children and guardianship right". Parenting is the mandate of Allah SWT to both parents in this world.

The most entitled to take care of children is the mother, because of the mutual closeness of mother and child, more than anyone else ('Aqlah, 2015). The cost of parenting when his father died was to his grandfather if the grandfather was still alive. If no one cares the child, then the mother must pay for the child's care. According to Imam Abu Hanifah, it is not permissible to take children's assets obtained from his father's inheritance for the cost of care. Because the property will be needed by the child in his/her adult period ('Aqlah, 2015).

2.6 Alimony During 'Iddah Cerai Mati According to the Law in Indonesia

The place of residence of the wife during the *iddah cerai mati* according to the Compilation of Islamic Law in Indonesia (KHI) is the duty of the husband. As stated in KHI article 81, "A residence is a proper place of residence for a wife during a marriage bond, or *iddah* for divorce or *iddah cerai mati*" (Kompilasi Hukum Islam (KHI), n.d.).

The article is in line with the mazhab of Syafi'i which requires giving a place to live but does not provide alimony (Sabiq, 2008; Zuhaily, 1985). However, according to Mahmūd Syaltut, the provision of a place of residence is inseparable with Alimony, because both are basic needs even though

they are only called one of them, then the others are automatically included in that definition. (شلتوت، محمود Syaltut and Sayis, Muhammad Ali 1986 محمد علي، السائيس). Based on Syaltut's opinion, both the residence and the alimony of the wife during Iddah *cerai mati* are the obligation of the husband. Thus, it means taken from the husband's inheritance, before being inherited.

When compared rationally between the views of fiqh which do not give residence rights and alimony to the wife left dead by the husband based on KHI in Indonesia that gives the right to residence, it seems more human what is stipulated in KHI. A wife whose husband has died is indeed experiencing psychological loss and shock. Moreover, added to the loss of residence and income when in the period of iddah, according to the provisions of fiqh. When Syaltut discussed the alimony and residence of his wife in the period of *'Iddah cerai bain*, where there were differences of opinion among the mazhab, he chose an opinion that gave the place of residence rights and alimony with humanitarian arguments. He refers to QS. Al-Baqarah {2}:237, "and do not forget the service (good relations) among you". Therefore, the provisions of KHI that provide a place to stay, during the period of Iddah *cerai mati* are in line with QS. Al-Baqarah {2}: 237, that is giving respect to the wife for her services in her marriage and maintaining good relations. Giving a place of residence, based on Syaltut's view, can be extended by giving alimony. Whereas if the husband does not have a place to live, then the wife still has to implement 'iddah. The cost of her life is her responsibility or her guardian ('Aqlah, 2015).

2.7 The Obligation of Mourning (Iḥdād) in the 'iddah period

Women in the period of Iddah *cerai mati* must be *iḥdād*, namely staying at home both day and night, may not be decorated and may not communicate with men, not *muhrim*. It is to show respect for her late husband and family. However, according to the author of the Fiqh Sunnah, if the woman should be to bear the costs of her life, and she needs to go out to work, then the provision must stay in the house to be fall. Sabiq stated, staying at home is worship. While the worship is fall due to the presence of uzur or difficulty (Sabiq, 2008), thus, women who work may leave the house to work.

Whereas *iḥdād* in KHI is referred to in article 70, namely the wife left by the dead husband, is obliged to mourn during the iddah period to show condolences for the death of her husband and to

safeguard the occurrence of slander (Kompilasi Hukum Islam (KHI), n.d.). In the article, it is not stated how to mourn, whether to stay at home as discussed in jurisprudence or be sufficiently condolent, as is customary in Indonesia.

3 METHOD

The type of research is empirical research conducted by doing observation in the field to obtain the data directly. Empirical research focuses on data taken from informants ("Metode Penelitian Kualitatif," n.d.). This research is conducted directly where the object lives in order to obtain data related to the discussion of this research. Then, the objects to research are women who do not carry out the "iddah *cerai mati*," the person who married off the woman in the period of iddah and Islamic religious leaders in Pakuniran Subdistrict.

Viewed by the type of analyzing, this research includes the group of description research. In this case, research will explain and figure the phenomenon that contains factors of not carry out "iddah *cerai mati*" in Pakuniran district.

The research location is Pakuniran District, Probolinggo Regency. Pakuniran Subdistrict is located in the southeast of Probolinggo District, the area of Pakuniran Subdistrict is 114.26 Km², Pakuniran District consists of 17 Villages. Pakuniran District is chosen as research location because it has a kind of tradition of women not carrying out "iddah *cerai mati*" which is the object of this research.

Primary data is obtained directly from the source then observed and recorded for the first time. It is obtained by doing an interview directly without a mediator to the informants. Data in this research is obtained from seventeen women who did not carry out "iddah *cerai mati*," seventeen "takmir musola" who married off women and seventeen Islamic religious leaders in Pakuniran District. From each village, three informants were taken.

Analyzing data uses descriptive qualitative analysis. In this step, all problems will be explained and finished so that that reader will get comprehension about the systematic process of analysis. The researcher attempts to describe and analyze it through the perspective of Islamic Law and Indonesia marriage law, Number 1/1974. The last step of processing data is the conclusion. This step is conducted by taking important points yielded from elaborating and discussing data.

4 RESULT

4.1 The Socio-Cultural Conditions of the Pakuniran Sub-District Community

Geographically, the Pakuniran area is located in the mountains. In general, the population is migration from Madura Island. The everyday language used is Madurese. The majority is Muslim, although there are also non-Muslims. As a Muslim-majority society, this does not mean that the majority understands Islamic teachings. They still believe in tradition and practice tradition in their daily lives. Although Muslim, they are terrified of breaking tradition because there is a belief that violations of tradition will bring disaster. (As'ari, society leader, Interview, Ranon village, 13 February 2018)

Educational institutions in Pakuniran sub-district are still in the kindergarten to the junior high school level, while the high school level does not yet exist. It can be said that the majority of education is still low. It results in the standard of living of the population, who on average become farm laborers (Hasan, society leader, Interview, Patemon Kulon Village, 14 February 2018).

4.2 The Factors Causing the "Iddah Cerai Mati" Were Not Implemented in the Pakuniran Sub-District Community

Seventeen women did not carry out the "iddah cerai mati" which the researchers interviewed directly. Seventeen of these women live in villages in Pakuniran District. They do not carry out the "iddah cerai mati," immediately get married after her husband dies. Some married a week after her husband died, there were two weeks, and one month after her husband died.

Why did they make a marriage during the iddah period? Their answers can be grouped into two:

First, they do not understand iddah; they do not know there is an obligation of iddah. They immediately married, so that there would be a living, even though the average income received from the new husband was only 20 thousand rupiah a day. As stated by Jum'ati, "neng edisa kanjeh sobung sepahammah 'iddah, reng oreng banyak se awam, akabin pole makle bisa se nyareh agin pesse ontok nak kanak se asekola." (In this village no one understands the term 'iddah, many people are laymen, marriages do not reach the time' iddah so

that there are those who support children who are in school). (Jum'ati, marriages in the iddah period, Interview, Ranon Village, 13 February 2018). Besides not understanding the law of iddah, the other factor is poverty and no employment. While the extended family also cannot be used as a backrest, making them get married soon. Even his family forced him to marry. As stated by Sittina, "kauleh tak paham 'iddah, ben esoro akabin bik keluarga." (I do not understand 'iddah, and my family ask me to get married again) (Sittina, marriages in the iddah period, Interview, Bucor Wetan village, 24 February 2018). Marriage is seen as the only way to support their children and themselves.

Second, there are those who understand iddah but do not implement it because of economic needs. For their children's school, moreover, there are children in the pesantren. As Shariah said, "kauleh akabin pole polanah nak kanak kauleh neng e pondok, sobung se akakanah." (I did not carry out 'iddah because my child is studying at a pesantren, needs funds, I have no funds. That is why I got married). (Syariah, marriages in the idle period, Interview, Glagah village, 23 February 2018)

From the direct observations of the researchers, in general, the condition of women who did not implement iddah was poor, their education was an only elementary school. Her husband died in poor condition and had two or three children. His family cannot be used as an economic backrest, because he has his dependents. Therefore, his family also forced him to get married immediately, because he was sorry to see the suffering of his children. They attend the "majlis taklim" in the village but never listen to the law of iddah.

4.3 The View of Islamic Religious Leaders in Pakuniran District against Irregularities "Iddah Cerai Mati"

As for the views of village leaders on the deviation of "Iddah cerai mati," the researchers took two elements. First, Islamic religious leaders who married off women during the iddah period, namely "takmir mushola" (namely muadzin and imam for five daily prayers in a small mosque) and secondly, Islamic religious leaders who did not marry off women in the iddah period, namely figures of Islamic community organizations.

4.4 The View of Islamic Religious Leaders “Takmir Musholla”

Religious figures who married women in the iddah period, which researchers interviewed as many as 17 people. Their position in the community is takmir musolla. They stated that they married because of pity. Economically, the woman who was left dead (Faizah, 2014) is still small; no one can provide a living. As Mahfud said, takmir musholla of Sagan village, "I married because I was asked by her uncle, who felt sorry for the economic factor". However, according to the researchers, who came directly to the field, they married because they got rewards. The female family gives a reward of 150 thousand to 300 thousand to a married religious figure. They know the obligations of the iddah but are willing to marry off women who are still in the period of iddah.

4.5 The View of Figures of Islamic Community Organizations

They stated that the Muslim community in Pakuniran sub-district, in general, only received education in elementary school, poor, which was the factor they did not carry out “iddah cerai mati”. As Habib Zen, a religious leader in the village of Bimo, said, "that the people here are the majority of lay people, do not understand iddah. It has become a habit of the people not to carry out “iddah cerai mati”. As a religious leader, I cannot ban, because marriage is an individual right ". Likewise, according to Ghanam, Islamic religious leaders from the village of Gunggungan Kidul, "people here do not understand iddah, carrying out marriage secretly, is not celebrated. We cannot rebuke carelessly, because it can be a dispute."

5 DISCUSSION

The factors that caused the 'iddah cer, ai mati' not to be carried out were several things. Namely, not understanding the law of iddah, ignoring the law of iddah and poverty. Even though Pakuniran people are mostly Muslim, but they do not understand Islamic teachings well, especially the law of "iddah cerai mati". Probably because most preachers were in the city, paying little attention to the village community as Pakuniran district. The Pakuniran district community is located on the mountainside. The majority of the population work as farmers.

They live in poverty. The average education level of the population is still elementary school. As a result, villagers have no understanding of Islamic teachings. This finding is similar to Arsyad's finding that public knowledge of the iddah is lacking (Arsjad and Barakah, 2017).

The villagers' lack of understanding of the iddah law is also due to the lack of attention and supervision from officers of the Office of Religious Affairs (KUA) whose main task is marital affairs. This finding supports the findings of Ismail's research that women marry during the iddah period in Lampung Province. According to Ismail's research (Ismail and Khotamin, 2017), the factor that causes women to marry during the iddah period is the absence of attention and reprimand from community leaders.

Women's marriage during the iddah period is also related to siri marriage (i.e., a marriage that is not recorded at KUA). That was because they carried out the marriage in a siri. In general, the first marriage is carried out recorded. However, the second marriage after a divorce or husband dies is done in siri. Siri marriage is prohibited in the marriage law number 1 of 1974, but there are no sanctions as Faizah (2014) pointed out that there is a legal dualism of the siri marriage in Indonesia.

The above factors that cause women to marry during the iddah period, namely misunderstanding, deliberate ignorance, and poverty cannot be used as syara' reasons for not implementing iddah. Because iddah is an important part of the teachings of Islam (Kaltsum, 2015)

All respondents, namely women who did not implement iddah, stated that they did not implement iddah because they were poor. They married two weeks or one month after the husband's death even though she should have carried out 'Iddah cerai mati' for 130 days. By getting married, someone gives an Alimony to fulfill their daily needs and their child, from the husband who is newly married. This practice is a violation of 'iddah law. However, when viewed from the cause, namely poverty, it can cancel an obligation or at least reduce liabilities. Because 'iddah is worship. While one of the great rules in the field of worship is fall, when there is uzur' (IslamKotob, n.d., n.d.; المقديسي, 2010; عقلاان, 2010) Poverty, there are no costs for daily life not only for themselves but also for their children, they are uzur. Plus, the environmental condition is far from the city, which is not the available job for women. Thus, the violation is caused by uzur. In the opinion of the author, the existence of uzur can reduce the old provisions of 'Iddah cerai mati.

6 CONCLUSION

Based on the data above, it can be concluded that the people of Pakuniran Subdistrict, some do not understand the iddah and some already understand the iddah. The "takmir musholla" who acted married, in general, they understood the existence of the law of iddah, but they did not pay attention to this teaching. According to the researcher, the absence of attention to the iddah, due to not understanding the teachings of Islam, the absence of institutions that pay attention to iddah, let alone punish violations of iddah. Whereas in Islamic law, all schools require iddah towards women. As for their acknowledgment that they are sorry for widows, the poor, no one gives a living, in reality, this is true. However, poverty which is used as an excuse to remarry within one week, two weeks or one month after the death of her husband, cannot be justified, because both Islamic law and marriage laws in Indonesia require iddah.

Not carrying out the iddah is a violation of Islamic marriage law and Marriage Law No.1 Year 1974. The wisdom of the iddah is to maintain the sanctity of "nasab" and respect the deceased husband and his family — the reason for being poor, even though it is following the reality, but according to Islamic law cannot be justified. However, according to researchers, poor conditions can become uzur, which can reduce the period of 'iddah. Because 'iddah is worship, which can decrease or fall due to uzur.

In the future, there should be more research on the implementation of iddah in the community. Moreover, especially how the role of 'modin,' religious counselors, the Office of Religious Affairs and the Religious Courts are towards the implementation of the iddah in the community. These institutions are the front guard for the implementation of the law of Iddah and marriage law in general in the community.

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