
Islam and customary law: Iddah for husbands after divorce in South Tapanuli Regency

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Abstract: This article aims to describe the phenomenon of the implementation of iddah for husbands after divorce in South Tapanuli Regency. Field studies using juridical-sociological as the approach. The primary data source of this study is the results of interviews with traditional leaders, religious leaders and husbands who carry out iddah after divorce. Secondary data sources are in the form of the Compilation of Islamic Law, books, journals, and other materials relevant to this study. This study was analyzed using a descriptive approach. The results of the study show that the phenomenon of iddah for husbands after divorce in South Tapanuli Regency only regulates the time when husbands are allowed to remarry. During the iddah period, there is no prohibition on dressing up, using perfume, and leaving the house. The length of the husband's iddah according to South Tapanuli Custom is adjusted to the iddah of his ex-wife. However, the majority of the time required for the iddah period is longer because permission must be obtained from the wife's family or in-laws.

Keywords: Customs; iddah; Islam; divorce; South Tapanuli

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Introduction

Marriage is a sacred bond between a man and a woman as a joint commitment to go through the joys and sorrows of a household (Sumarni, 2022). Marriage, although called a sacred bond (Lisnawati & Imran, 2023). Does not rule out the possibility that the marriage could fail in the middle of the road. Divorce in Islam is permitted, if it is considered that maintaining the marriage will bring more harm than good. The consideration of maintaining this harm does not only look at the impact on the husband and wife, but also considers the significant impact on the child because they no longer receive love from their parents. Apart from that, it is not permissible for women to remarry while they are in the waiting period (iddah) (Khoiri & Muala, 2020).

Iddah in Islam refers to a specific waiting period for a woman after divorce or the death of her husband before she is allowed to remarry (Hamzah, 2024). This period is not only intended to ensure the clarity of pregnancy status but also has spiritual and emotional dimensions. For a woman, iddah becomes a time to restore inner stability, engage in introspection, and rebuild harmonious relationships with herself and others (Abdillah, 2021). Furthermore, iddah serves as an opportunity for both parties to forgive each other and, if possible, mend the relationship.

Compilation of Islamic Law Article 153 regulates that iddah applies to a widow whose marriage has ended, other than those who have not had husband and wife relations after marriage and the end of the marriage is not due to the death of the husband. Iddah for a woman who breaks up her marriage is: First the dissolution of a marriage is caused by death, even though before the relationship between husband and wife occurs, the iddah has been determined for 130 (one hundred and thirty) days. Second the break-up of a marriage is caused by divorce, the iddah for three holy periods if menstruation is still active, is three menstruations or 90 days, for those who do not experience

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menstruation it is still 90 days. Third, if the marriage breaks up due to divorce and the widow is pregnant, the time is set until delivery. Fourth, if the marriage is broken up due to death, the woman is pregnant, then the waiting time is until she gives birth (Kompilasi Hukum Islam, pasal 153).

Customary law (Suryani, 2022) regulating Iddah for women is the same as the explanation in Islam (Compilation of Islamic Law). Qabla ad-dukhul women do not have iddah. The Iddah of menstruating women is three times holy. According to public understanding, the Iddah for women who do not menstruate is one bath. The Iddah of a pregnant woman is obedient until she gives birth and ends her postpartum period. The iddah of a woman whose husband has died and is pregnant is until she gives birth and ends her postpartum period (Ahmad Fuad, 2024). Thus, iddah only applies to women after a divorce, iddah does not apply to men, and they can immediately marry another woman.

However, the implementation of the iddah rule does not only refer to the law, but also applies customary law. As is the case in South Tapanuli Regency, there is a belief that an ex-husband has iddah, is obliged to refrain from marrying temporarily after a divorce. At the earliest, the ex-husband is obliged to wait until the iddah period of his ex-wife ends. A husband whose wife has died may not remarry for at least four months and ten days or even up to one year. The simple consideration is as a form of respect for his ex-wife's family.

The phenomenon of husbands having iddah that occurs in South Tapanuli Regency is different from the provisions in Islamic Law, where iddah only applies to ex-wives after a divorce, either by life or death. This phenomenon is interesting to study further because this region shows a unique pattern, requiring ex-husbands not to be able to marry other women, at the earliest unless the iddah of the divorced ex-wife has finished. In this condition, a husband is not practicing polygamy and does not want to marry a woman who is forbidden to marry.

There have been many articles discussing the iddah for husbands after a divorce, including: first writing by Rita Sumarni, the title Material Analysis of the Concept of Syibhul Iddah for Men according to Wahbah Zuhaili. The result, according to Wahbah Zuhaili, is that men literally do not have iddah. A man who divorces his ex-wife can immediately marry another woman, as long as there are no sharia obstacles (Sumarni, 2022). Second the writing of Ahmad Nur Fauzi and Achmad Khudori Soleh entitled Iddah for Men in the Integrative Multidisciplinary Perspective of Twin Towers. The result in Islamic law is that iddah is obligatory for women and not obligatory for men, and some argue that the legal basis for 'iddah is a temporal argument (Ahmad Nur Fauzi, 2024). Third Ahmad Yajid Baidowi, title Analysis of Regulations on Iddah Period for Men in Counter Legal Draft Compilation of Islamic Law (CLD-KHI) Article 8 Paragraph 1 Islamic Fiqh Perspective. This study will examine how the regulations on iddah period for men that have been listed in article 88 of CLD-KHI are viewed from how these regulations can be made and with what background the regulations were created which are then connected to the perspective of Islamic fiqh law (Baidowi, 2022).

From the description above, the author concludes that no one has examined the phenomenon of iddah for husbands after divorce in South Tapanuli Regency. The article above describes many aspects of normative law or the general perspective of Islamic jurisprudence on the implementation of iddah for husbands. The difference in the novelty of this article is seen in its focus on the interaction of Islamic law and customs in South Tapanuli Regency related to Husband's Iddah, that the implementation of iddah in South Tapanuli is different from existing law. This article aims to highlight the unique local phenomenon of the implementation of diverse iddah for husbands after divorce in South Tapanuli. Therefore, this article aims to fill this gap by providing data and analysis of norms to identify the legal position of iddah for ex-husbands after divorce. The implementation of iddah for husbands in South Tapanuli is the result of customary law that applies in the surrounding community, not based on the interpretation of Islamic law.

Method

The main data in this study were collected through in-depth interviews. The sources of this study were religious figures, traditional figures, and husbands who carried out the iddah for divorce in South Tapanuli. The sources were selected based on the eligibility and availability of research access from the sources. In addition, the sources were selected based on the competence that was considered to understand the understanding of iddah for husbands after divorce. The focus of this study was to see how the implementation of iddah for husbands after a divorce occurred. The study was conducted using the interview method, the interview began with the most typical general questions about how the implementation of iddah for husbands after a divorce occurred. Then other questions were based on the answers given by the research sources. This research is called field by using juridical-sociological as its approach research (Maros et al., 2016). The juridical-sociological approach attempts to analyze normative legal practices and then describe the application of law in society. Furthermore, the data is analyzed using a descriptive approach, to see how the customary legal system can influence decisions regarding the iddah for a husband after a divorce (Sumarni, 2022).

Results and Discussion

Husband's iddah after divorce in South Tapanuli Regency

Iddah is a waiting period for a woman to temporarily not marry after being divorced by her husband. For women, iddah is very important to restore spiritual or inner stability after a divorce. The iddah period also functions to do self-introspection so that it is possible to reconcile after both forgive each other. One of the prohibitions for women during the iddah period is not to leave the house. Iddah aims to ensure that there is no pregnancy from a previous marriage after a divorce.

The South Tapanuli Regency area has strong norms and customs, one of which is that the obligation of iddah also applies to husband and wife after a divorce. However, the provisions of iddah according to South Tapanuli customs between husband and wife are different. This difference is caused by the provisions of the iddah for husbands not being regulated in Islamic law, ethically and philosophically, this obligation is part of respecting the ex-wife's family. Iddah for a wife after a divorce is the same as the teachings of Islamic law, such as three times pure, four months and ten days and until giving birth. This is because the majority of the South Tapanuli community adheres to Islam (Naufal Harahap, interview September 7, 2024). The South Tapanuli community has a custom prohibiting women during the iddah period that they are not allowed to decorate or beautify themselves, wear perfume, jewelry, not marry other men, and are not allowed to leave the house except for important circumstances (Syamil Hasibuan, interview September 7, 2024).

Iddah for husbands according to South Tapanuli customary law only regulates the husband's permission to remarry. During the iddah period, South Tapanuli customary law does not allow husbands to remarry, there is no prohibition on beautifying themselves, wearing perfume, and leaving the house. The minimum iddah for a husband according to South Tapanuli Custom is adjusted to the iddah of his ex-wife. This means that if the wife's iddah is three times pure, then the husband's iddah is at least three times pure. If the wife's iddah dies, then the husband's iddah is at least four months and ten days. In fact, it often happens in South Tapanuli society that the husband's iddah is sometimes longer than the iddah of his ex-wife. This is because some South Tapanuli people marry someone who is still related, such as an uncle's child (bone). So it is feared that after the divorce if the ex-husband immediately marries someone else, the family relationship will be broken, because it is considered disrespectful (Wahid Harahap, customary figure, interview, September 8, 2024).

To maintain this harmonious relationship, a husband wants to remarry after a divorce must first ask permission from his uncle (Isran Hasibuan, traditional figure, interview, September 8, 2024). To get permission, of course, you have to choose and see the ideal time, so that it is possible that the

husband's iddah can last up to one year or more. This is what happened to Mr. Pardomuan Harahap, after his wife died they remarried after one year. Mr. Pardomuan Harahap, his wife died leaving two children. His two children were fully cared for by his in-laws. On the basis of respecting his in-laws, he dared to express his desire to remarry after a year, (Pardomuan Harahap, interview 8 September 2024). The results of the interview with Mr. Taufik Siregar when his wife died, leaving a five-year-old child, then took his child to his parents' house because he felt he had more rights to the child. It is a tradition that a husband must wait for four months and ten days and is not allowed to marry immediately after the death of his wife, so Mr. Taufik Siregar remarried after his child was six years old (Taufik Siregar, interview 9 September 2024). Mr. Adanan Hasibuan, after divorcing his wife, remarried after almost a year. Daily activities as usual, South Tapanuli Customary Law does not prohibit leaving the house to earn a living, because South Tapanuli culture makes the husband the backbone of the family (Adanan Hasibuan, interview 9 September 2024).

Apart from customary law which is administrative although not written, social sanctions for ex-husbands who remarry before their wife's iddah period ends are stigmatization or ostracization in society for violating customary norms (Sumarni, 2022). Social sanctions such as getting the stigma of Bayo Gait (flirtatious husband) are punishments used by society to ensure that people comply with the norms and laws of South Tapanuli Customary Law (Ibrahim Siregar, Interview September 9, 2024). The results of an interview with Mr. Ruslan Pasaribu said that he did not have a problem with customary law requiring husbands not to marry before their wife's iddah period ends. Ruslan Pasaribu explained that the customary rules provide an opportunity for both parties to introspect. Ruslan himself divorced his wife in an emotional state. He said that his wife tried to return to the beginning, committed to repairing the relationship, letting go of everything that was not working in their relationship, creating a new atmosphere. Divorcing a wife is not a reason to avoid problems, in fact, after the divorce, big problems will occur (Ruslan Pasaribu, Interview September 9, 2024).

The South Tapanuli community has a Paniroi or advisor tasked with preventing divorce. If a husband feels he cannot handle problems in his household, he should convey this nicely to the Mora or wife's family. Furthermore, the Mora family (wife's family) and the Anak Boru family (husband's family) provide solutions to the existing problems (Binson Harahap, Interview, September 9, 2024).

Islamic legal view on iddah for husband after divorce

The implementation of the Iddah command is obligatory for a woman when divorced by her husband referring to the Quran, Hadith. Indonesia, the majority of whose people adhere to Islam, uses the Quran and Hadith as sources of law (Abdurahman & Jauhari, 2024).

The Compilation of Islamic Law does not miss Article 153 which states that Iddah applies to a widow whose marriage has ended, other than those who have not had husband and wife relations after marriage and the end of the marriage is not due to the death of the husband. Iddah for a woman who breaks up her marriage is: first the dissolution of a marriage is caused by death, even though before the relationship between husband and wife occurs, the iddah has been determined for 130 (one hundred and thirty) days. Second he break-up of a marriage is due to divorce, the iddah for three holy periods if menstruation is still active, is three menstruations or 90 days, for those who do not experience menstruation it is still 90 days. Third if the marriage breaks up due to divorce and the widow is pregnant, the time is set until delivery. Fourth if a marriage is broken up due to death, a widow is pregnant, then the waiting period is until she gives birth.

Based on the above explanation, it has been agreed and is a definite law that iddah is only required for women. The determination of iddah for women who have been divorced by their husbands serves to see whether they are pregnant or not, this is important to keep her womb from mixing so that if her child is born it is not a child of doubt (Nuroniya, 2018). If the woman's womb has contained cells that will become a child, then the signs will be visible during the iddah. That is

why she is required to wait for a specified period. If she were to marry during the iddah period, of course two cells would be mixed in her womb, namely the first husband's cell and the second husband's cell. If her child is born, then the child is called a child of doubt, meaning a child whose father is uncertain, and the marriage is invalid. This is in accordance with the opinion of the Syafi'i School of Law which states that the waiting period for women aims to find out whether there is a seed from her husband in her womb or not. As for the obligation of iddah for a wife who is still a child because it is impossible for her womb to be filled only to honor the bonds of marriage. The Hanafi School of Law does not provide much comment on the reasons for the obligation of iddah, only concluding that it is a religious command. In addition, iddah also functions to honor the deceased spouse and the family left behind so that there is no slander and hatred (Wahyudi, 2016).

The phenomenon of iddah for husbands that occurred in South Tapanuli Regency is contrary to Islamic Law. Wahbah Zuhaili stated that the practice of iddah for husbands after divorce is called syibhul iddah, namely husband and wife have the same iddah (Khairuddin, 2024). The implementation of syibhul iddah is for at least three reasons: First, the ex-wife has a mahram relationship with the husband's new wife. If the husband divorces his wife with a ba'in divorce and then intends to marry his ex-wife's sister, then it is not allowed until the iddah of his ex-wife is over. Second, the husband has four wives. If a husband has four wives and then divorces one of his wives, then the next marriage is not allowed in Islam to remarry as long as the iddah of the wife he divorced has finished. If the wife he divorced is pregnant, then the waiting period for the husband to marry for the fifth time is after his ex-wife gives birth to a child. Third, Tahlil. A husband is not allowed to immediately marry a woman who has been divorced three times before another man marries her Muhallil (Muhammad Haikal, 2021).

The author observes in the context of the practice of iddah for husbands in South Tapanuli Regency there are several reasons: First, it is based on a system of respecting children and the ex-wife's family, especially if the divorce is due to the wife's death. Second, the people of South Tapanuli are worried that if a man's ex-husband marries another woman during the iddah period, while he still has the opportunity to refer his ex-wife, then this has the potential for hidden polygamy. However, to align with the provisions of Islamic Law and the principles of husband's welfare, the community and stakeholders need to consider the broader requirements of Islamic law and support policies that ensure husbands get the best rights.

Based on the purpose of marriage to obtain happiness and peace in life, human nature is created in pairs, to satisfy biological needs so as not to fall into adultery (Abd et al., 2024). For that, the family of the ex-wife in the South Tapanuli community must have a patient attitude and foster sincerity towards the divorce that occurs to their child. If death causes the divorce of their child, the family of the ex-wife should support their daughter-in-law to remarry as soon as possible so that the grandchildren left behind are well cared for. This is in accordance with the South Tapanuli Customary Law recognizing the Patrilineal principle, namely the husband is the backbone of the household, while the wife is responsible for taking care of the needs of the house such as looking after and caring for children.

The most reasonable reason for the need for iddah for men is that the phenomenon that occurs after divorce often results in conflict between the families of both parties and conflict between husband and wife. Because Marriage is a social event which means that this marriage brings together two large families, a man and a woman (Maghfiroh, 2024). However, the practice of iddah that occurs in South Tapanuli is considered too long as the results of the interviews conducted, the iddah for men can be up to one year or even more. The iddah for men should be the same as the iddah for women according to the condition of women at the time of divorce (syibhul iddah) (Sumarni, 2022). Although in literature there has never been a verse of the Quran or hadith that explains the permissibility of

syibhul iddah, it is considered that there has been enough time to calm the conflict between the two parties (Sumarni, 2022).

The Compilation of Islamic Law actually indirectly explains the permissibility of syibhul iddah, as explained in Article 42, "A man is prohibited from entering into marriage with a wife whose four wives are still married or are still in the iddah talak raj'i period or one of them still bound by marriage while the others are in the iddah talak raj'i period." Continued in Article 70 letter a, "The husband carries out the marriage, while he does not have the right to carry out the marriage contract because he already has four wives, even if one of the four wives is in the iddah talak raj'i".

The concept of Syibhul iddah can be considered as an effort to sad zāriyyah towards matters that will occur, which are māni syar'i in nature (Jamilah dan Isa, 2019). The maqasid sharia perspective allows iddah for husbands because it brings benefits that are prioritized over avoiding harm, the harm is avoiding conflict between families and protecting children. The essence of enforcing Islamic law is to bring benefit. So the essence of determining the iddah period is to regulate marital relations and divorce to realize child protection (hifzh al-nasl) (Asiyah et al., 2023).

Conclusion

The phenomenon of Iddah for husbands according to South Tapanuli customary law only regulates the husband's permission to remarry. During the iddah period, South Tapanuli customary law does not allow husbands to remarry. During the iddah period, husbands are not prohibited from beautifying themselves, using perfume, and leaving the house. The minimum iddah for a husband according to South Tapanuli Custom is adjusted to the iddah of his ex-wife. This means that if the wife's iddah is three times pure, then the husband's iddah is at least three times pure. If the wife's iddah dies, then the husband's iddah is at least four months and ten days. The practice of iddah for husbands in South Tapanuli Regency occurs because they respect their children and the family of their ex-wife, especially if the divorce is due to the wife's death. Concerned that if a man's ex-husband marries another woman during the iddah period, while he still has the opportunity to refer his ex-wife, then this has the potential for hidden polygamy. Finally, getting a negative stigma or ostracization in society for violating customary norms. The Bayo Gait (flirtatious husband) stigma is a punishment used by society to ensure that ex-husbands immediately remarry after a divorce.

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