

Avoiding Covert Polygamy at the Office of Religious Affairs: Authority and Family Law Reform in the Prohibition of Marriage During a Wife's 'Iddah Period

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Abstract: This study examines regulations prohibiting remarriage during the wife's waiting period ('*iddah*') by examining the state's authority in regulating marriage and how legal development is carried out. The term waiting period ('*iddah*') is commonly associated with women, but contemporary developments have introduced regulations stipulating that men also have a waiting period, specifically a prohibition on husbands marrying during their wives' '*iddah*', as outlined in the Circular Letter of the Directorate General of Islamic Community Guidance. This empirical research was conducted at the Office of Religious Affairs (KUA) in Metro City, Indonesia, using a socio-legal approach. Data were obtained through interviews with five KUA heads and relevant literature, then analyzed using Khaled Abou Fadl's theory of authority and Mochtar Kusumaatmaja's theory of development law. Research findings show that regulations prohibiting husbands from remarrying during their wives' waiting period are a renewal of Islamic family law in Indonesia, based on the principles of justice, equality, and legal benefit, particularly in avoiding covert polygamy. Second, this regulation is a manifestation of the state's coercive authority, which relies on its structural position in regulating and directing marriage law, including interpreting and translating Islamic normative values into regulations. This policy is a form of legal development as a control tool to protect a just society. The contribution of this research lies in its integrative approach to combining classical *fiqh* norms with the study of state policy authority in contemporary Islamic family law reforms.

Keywords: legal reform, covert polygamy, authority, development law

Abstrak: Penelitian mengkaji regulasi pelarangan perkawinan suami dalam masa tunggu ('*iddah*') istri, dengan mengkaji otoritas negara dalam mengatur urusan perkawinan dan melihat bagaimana pembangunan hukum dilakukan. Terminologi masa tunggu ('*iddah*') lazimnya dilakukan oleh perempuan, namun, pada perkembangan kontemporer ini, adanya regulasi yang mengatur bahwa laki-laki memiliki masa tunggu, berupa larangan suami untuk menikah dalam masa '*iddah*' istri, sebagaimana diatur dalam Surat Edaran Direktorat Jendral Bimbingan Masyarakat Islam. Penelitian empiris ini dilakukan di Kantor Urusan Agama (KUA) Se-Kota Metro, Indonesia, menggunakan pendekatan sosio-legal. Data diperoleh

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melalui wawancara dengan lima Kepala KUA dan literatur yang relevan, lalu dianalisis melalui teori otoritas Khaled Abou Fadl dan teori hukum Pembangunan Mochtar Kusumaatmaja. Temuan penelitian menunjukkan bahwa regulasi terkait larangan suami menikah dalam masa iddah istri, merupakan pembaharuan hukum keluarga Islam di Indonesia yang dilandasi prinsip keadilan, kesetaraan, dan kemaslahatan hukum khususnya dalam menghindari adanya praktik poligami terselubung. Kedua, regulasi ini merupakan bentuk ekspresi otoritas koersif negara, yang mengandalkan posisi structural dalam mengatur dan mengarahkan hukum perkawinan, termasuk dalam menafsirkan dan menerjemahkan nilai-nilai normatif Islam ke dalam regulasi. Kebijakan ini merupakan bentuk pembangunan hukum sebagai alat control dalam melindungi masyarakat yang berkeadilan. Kontribusi penelitian ini terletak pada upaya integratif antara norma fikih klasik dan kajian otoritas kebijakan negara dalam reformasi hukum keluarga Islam kontemporer.

Kata kunci: reformasi hukum, poligami terselubung, otoritas, hukum pembangun

Introduction

The discourse on the waiting period (*'iddah*) is a common topic of discussion among women. This is reflected in various classical texts discussing the practice of *'iddah* carried out by women as a result of divorce.¹ However, in the development of contemporary Islamic family law, a new idea has emerged in both *fiqh* and gender studies: that men (husbands) also have a waiting period.² Nevertheless, this waiting period does not have the same meaning as the *'iddah* period for women after divorce.³ This idea emerged as a response to social realities in which

¹ 'Alâ' al-Dîn Al-Kâsânî, *Badâ'i' al-Shanâ'i' fî Tartîb al-Sharâ'i'* (Dâr al-Kutub al-'Ilmiyyah, n.d.); Ibn Rushd, *Abû al-Walîd. Bidâyat al-Mujtahid Wa Nihâyat al-MuqtaShid* (Dâr al-Ma'rîfah, n.d.); Imâm al-Shâfi'i, *al-Umm* (Dâr al-Ma'rîfah, n.d.); Ibn Qudâmah, *Muwaffaq al-Dîn. al-Mughnî* (Maktabah al-Qâhirah, n.d.).

² Wahbah az Zuhaili, *al-Fiqh al-Islam Wa Adillatuhu* (Dâr al Fikr, 1989); Yûsuf Qaradhâwî, *Fiqh al-Ushrah al-Muslimah fî al-Diyâr al-Hijrah* (Dâr al-Shurûq, 1998); Yusna Zaidah and Raihanah Abdullah, 'The Relevance of Ihdad Regulations as a Sign of Mourning and Human Rights Restriction', *Journal of Human Rights, Culture and Legal System*, 4.2 (2024): 422–448, doi:10.53955/jhcls.v4i2.229; Sunuwati, Siti Irham Yunus, Rahmawati, 'Gender Equality in Islamic Family Law: Should Men Take Iddah (Waiting Period After Divorce)?', *Russian Law Journal*, 11.3 (2023), doi:10.52783/rlj.v11i3.1504.

³ Hasanuddin Hasanuddin, Muhammad Syukri Albani Nasution, and Imam Yazid, 'Analysis of Waiting Period for Men after Divorce Perspective of Jamaluddin Athiyah's Maqâshid Sharia Theory', *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi dan Keagamaan*, 8.2 (2024): 341, doi:10.29300/mzn.v8i2.2818; Fuady Abdullah, Nova Anggraini Putri, and Youssof Salhein, 'Revisiting 'Iddah: A Critical Analysis of Gender Equality in Indonesian Feminist Islamic Legal Discourse', *JURIS (Jurnal Ilmiah Syariah)*, 22.2 (2023): 275, doi:10.31958/juris.v22i2.10320; M. A. Kamaruddin, Amir, A., & Razaq, A. R. العدة في التلقيح الصناعي: دراسة من النظر الطبي والرؤية الشرعية. The 'Iddah in Artificial

women are restricted in their social activities. At the same time, men are free to engage in activities and can even remarry during their wives 'iddah period.

Literature suggests that husbands often conduct multiple marriages during their wives' waiting period. Ustuvia found five cases,⁴ and Maghviroh found 22 cases.⁵ The large number of marriages in these circumstances can give rise to other legal consequences, such as covert polygamy.⁶ Muhajir noted that covert polygamy is carried out under the pretext of obtaining marriage validation through *isbât nikah* (marriage validation), and that polygamy can still be practised on the grounds of protecting the interests of the children.⁷ As is known, covert polygamy is a practice that violates the legal provisions of polygamy as stipulated in the Marriage Law and the Compilation of Islamic Law.⁸

In response to this phenomenon, In 2021, the Ministry of Religious Affairs, as the state authority and representative in regulating citizens' religious lives, including marriage,⁹ through the Directorate General of

Insemination: A Study between Medical and Shariah Point of View. *Malaysian Journal of Syariah and Law*, 8.1, (2020): 33-49. <https://doi.org/10.33102/mjssl.v8i1.177>.

⁴ Aida Ustuvia, 'Poligami dalam Masa Iddah (Studi Kasus di KUA Kecamatan Parakan Temanggung)' (unpublished Bachelor thesis, Universitas Islam Negeri Sunan Kalijaga, 2005) <<https://digilib.uin-suka.ac.id/id/eprint/36560/>>.

⁵ Dewi Roma Maghviroh, 'IMPLEMENTASI SE DIRJEN PEMBINAAN KELEMBAGAAN AGAMA ISLAM TENTANG POLIGAMI DALAM MASA IDDAH: Studi Kasus di Kantor Urusan Agama Kecamatan Lowokwaru dan Pengadilan Agama Malang', *Tafaqqub: Jurnal Penelitian dan Kajian Keislaman*, 11.1 (2023): 78-92, doi:10.52431/tafaqqub.v11i1.1340.

⁶ Cindera Permata, 'WHEN STATE REGULATES HUSBAND IS IDAH: Pros and Cons among Penghulu in Yogyakarta', *al-Ahwal: Jurnal Hukum Keluarga Islam*, 16.2 (2023): 281-301, doi:10.14421/ahwal. 2023.16205.

⁷ Muhammad Muhajir and Qurratul Uyun, 'SEMA Waiver Number 3 of 2018 in the Case of Isbat for Polygamous Marriage: Study of Legal Considerations of Judges in Decision Number 634/Pdt.G/2018/PA.Mtr', *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum*, 55.2 (2021): 263, doi:10.14421/ajish.v55i2.1002.

⁸ T.D. Wirastri and S.C. van Huis, 'The Second Wife: Ambivalences towards State Regulation of Polygamy in Indonesia', *Journal of Legal Pluralism and Unofficial Law*, 53.2 (2021): 246-468, Scopus, doi:10.1080/07329113.2021.1912579; Sam'un and Mukhammad Nur Hadi, 'Husband's 'Iddah in Indonesian Islamic Law Context: Insights from the Fatwa Approach of the Indonesian Women's Ulema Congress', *Al-Hukama*, 13.2 (2023): 297-323, doi:10.15642/alhukama.2023.13.2.297-323.

⁹ Eva F. Nisa, 'The Bureaucratization of Muslim Marriage in Indonesia', *Journal of Law and Religion*, 33.2 (2018): 291-309, doi:10.1017/jlr.2018.28; Stijn Cornelis van Huis and Theresia

Islamic Community Guidance, issued Circular Letter Number: P-005/DJ. III/Hk.00.7/10/2021 (SE 5/2021) regarding Marriage During the Wife's 'Iddah Period, the provision regulated that a husband may marry another woman once his former wife's 'iddah period has ended.¹⁰ This is part of the government's efforts to update the law and regulate the lives of its citizens.

This Circular Letter has two essential missions: first, to ensure that marriages are registered following the law and to prevent legal loopholes (covert polygamy), and second, to realize the wisdom of the 'iddah period concerning the opportunity for couples to return to marriage during the 'iddah period.¹¹ The implementation of the Circular Letter has been carried out by the Office of Religious Affairs, including the Office of Religious Affairs (KUA) in the Metro City area, Indonesia, which is a small city with a diverse society. However, some literature suggests that there are both pros and cons to implementing this circular. These pros and cons stem from the strong influence of classical *fiqh*, which remains a normative reference and supports state policies.¹² Although this circular letter lacks strong legal standing, it is interesting to examine how the Office of Religious Affairs responds to this regulation in the context of its authority to regulate marriage and its efforts to reform the law.¹³

Dyah Wirastri, 'Muslim Marriage Registration in Indonesia: Revised Marriage Registration Laws Cannot Overcome Compliance Flaws', *Australian Journal of Asian Law*, 13.1 (2012) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2159574>.

¹⁰ Fatihatul Anhar Azzulfa and Afnan Riani Cahya A., 'Masa Iddah Suami Istri Pasca Perceraian', *Al-Mizan*, 17.1 (2021): 65–88, doi:10.30603/am.v17i1.1959.

¹¹ Jayusman Jayusman and others, 'Perspektif *Maslahah Mursalah* Terhadap Pernikahan Suami pada Masa Iddah Istri Pasca Surat Edaran Dirjjen Bimas Islam Nomor: P-005/DJ.III/Hk.00.7/10/2021 Tentang Pernikahan dalam Masa Iddah Istri', *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law*, 3.2 (2022): 39–55, doi:10.24042/el-izdiwaj.v3i2.14525.

¹² Muhammad Riza Syauqi and Fatih Ahmad Mahfudhi, 'From Fatwa to Bureaucracy: How Indonesian Penghulu Negotiate Islamic Law and State Regulations on Post-Divorce Marriages', *YUDISIA: Jurnal Pemikiran Hukum dan Hukum Islam*, 16.1 (2025): 121, doi:10.21043/yudisia.v16i1.32605; Q. Zaman, Vinna Lusiana, and Ari Widyawati, 'Regulatory Ambiguity in Iddah: The Intersection of Circular Letters and Sirri Marriage Practices in Pontianak City', *AT-TURAS: Jurnal Studi Keislaman*, 12.3 (2025): 393–413, doi:10.33650/ar-turas.v12i3.12592.

¹³ Ahmad Ash Shiddieqy and others, 'Integration of Islamic Family Law and Gender Equality: A Comparative Study of Legal Reform and Social Norms in Contemporary Muslim Societies', *Legitima: Jurnal Hukum Keluarga Islam*, 7.2 (2025): 1–26, doi:10.33367/legitima.v7i2.7101.

A literature search shows that there have been several studies examining circular letters on the prohibition of husbands marrying during their wives' 'iddah period from various perspectives. Among them are: the research by Diky Pramana,¹⁴ Revita Mala Siregar,¹⁵ Jayusman,¹⁶ Nurluluil Maknun,¹⁷ and Miftah Elfaruq,¹⁸ discussing the provisions of marriage during the wife's 'iddah period from the perspective of Islamic law (*maqâshid al-sharî'a* and *maShlahah mursalah*). Second, the research by Akhmad Miftakhurrozaq,¹⁹ Sunuwati,²⁰ and M. Miftahudin,²¹ discussing the issue from the perspective of family law reform aimed at addressing gender inequality in the provisions of the 'iddah period. Third, several discussions on a similar topic using various approaches, including *mubâdalah*,²² gender,²³ legal politics,²⁴ and

¹⁴ Diky Pramana, Abnan Pancasilawati, and Lilik Andar Yuni, 'Perbandingan Konsep Syibhul 'Iddah dalam KHI Dan Surat Edaran Dirjen Bimas Islam (Prespektif *Maqâshid Syari'ah*)', *MAQASID: Jurnal Studi Hukum Islam*, 13 (2024): 1.

¹⁵ Revita Mala Siregar, Sampurna Siregar, and Putra Halomoan Hsb, 'Pernikahan Suami dalam Masa Iddah Istri Perspektif *Maslahah al-Mursalah* dalam Surat Edaran Nomor: P-005/DJ.III/Hk.00.7/10/2021', *TAZKIR: Jurnal Penelitian Ilmu-Ilmu Sosial dan Keislaman*, 10.2 (2024), doi:<https://doi.org/10.24952/tazkir.v10i2.12378>.

¹⁶ Jayusman and others, 'Perspektif *Maslahah Mursalah* Terhadap Pernikahan Suami pada Masa Iddah Istri Pasca Surat Edaran Dirjen Bimas Islam Nomor'.

¹⁷ Nurluluil Maknun and Akrom Auladi, 'KONSIDERASI *MASLAHAH* DALAM ATURAN PERNIKAHAN SUAMI SELAMA BERLANGSUNGNYA MASA IDDAH ISTRI (Studi di KUA Kecamatan Watumalang Terhadap Implementasi Surat Edaran Dirjen Bimas Islam No. P.005/DJ.III/HK.00.7/10/21)', *At-Ta'aruf Jurnal Hukum Keluarga Islam*, 1.1 (2023), doi:[10.59579/ath.v1i1.5091](https://doi.org/10.59579/ath.v1i1.5091).

¹⁸ Miftah Elfaruq, 'Ketentuan Pernikahan Suami dalam Masa Idah Istri (Studi Analisis SE Ditjen Bimas Islam Nnomor P-005/DJ.III/Hk.007/10/2021)' (unpublished Master Thesis, Universitas Islam Negeri Sunan Kalijaga, 2023) <<https://digilib.uin-suka.ac.id/id/eprint/63449/>>.

¹⁹ Akhmad Miftakhurrozaq, 'Syibhul 'Iddah Bagi Laki-Laki dalam Pembaharuan Hukum Keluarga Islam di Indonesia Perspektif *Maqâsid Syari'ah*' (unpublished Bachelor thesis, Universitas Islam Negeri Walisongo, 2022) <<https://eprints.walisongo.ac.id/id/eprint/19333/>>.

²⁰ Sunuwati, Siti Irfham Yunus, Rahmawati, 'Gender Equality In Islamic Family Law'.

²¹ M Miftahudin, 'Regulation of the Director General of Islamic Guidance on Marriage of Husband during Wife's Iddah Period: An Effort to Develop Family Law in Indonesia', *SMART: Journal of Sharia, Tradition, and Modernity*, 3.2 (2023), doi:[10.24042/smart.v3i2.20509](https://doi.org/10.24042/smart.v3i2.20509).

²² Khairul Umami and Aidil Aulya, 'Konstruksi Idah Suami (Studi Surat Edaran Dirjen Bimas Islam Nomor P-005/DJ.III/HK.007/10/2021)', *Ijtihad*, 38.2 (2022): 39–52, doi:<https://journals.fasya.uinib.org/index.php/ijtihad/article/view/166>.

²³ Muhammad Ardli Mubarraaq, 'Surat Edaran Dirjen Bimas Islam Nomor P-005/DJ.III/HK.00.7/10/2021 Tentang 'iddah Suami dalam Perspektif Gender' (unpublished Bachelor thesis, Universitas Islam Negeri Prof. K.H. Saifuddin Zuhri, 2022) <<https://repository.uinsaizu.ac.id/13346/>>.

²⁴ Abdul Azis, 'Iddah for Husbands: A Political Analysis of Islamic Family Law', *al-Qadha: Jurnal Hukum Islam dan Perundang-Undangan*, 10.1 (2023): 34–49, doi:[10.32505/qadha.v10i1.5905](https://doi.org/10.32505/qadha.v10i1.5905).

multidisciplinary integration.²⁵ Fourth, responses from the head of the KUA (Office of Religious Affairs),²⁶ scholars,²⁷ Islamic family law activists,²⁸ and Sharia Court judges.²⁹

Although this study shares similarities with recent trends, it focuses on examining the state's authority in regulating marriage affairs and how marriage law reform is carried out as a form of legal development. As is well known, this regulation reflects the state's intervention in the private sphere, which is based on the spirit of reforming Islamic family law in Indonesia. Using the theoretical framework of authority and development law, this study examines the state's authority to interpret religious law and regulate marriage matters in the interest of maintaining order and protection. In addition, development law is used to determine the extent to which the state can intervene and adapt to social dynamics, including the values of gender equality and the renewal of Islamic marriage law.

Research Methods

This research presents an empirical analysis of Islamic family law regulations, specifically the prohibition of marriage during the wife's iddah period, as outlined in the Circular Letter of the Director General of Islamic Guidance, Number: P-005/DJ.III/Hk. 007/10/2021. The socio-

²⁵ Ahmad Nur Fauzi, "Iddah Laki-Laki dalam Prespektif Integratif Multidisipliner Twin Towers", *Asy-Syari'ah: Jurnal Hukum Islam*, 10.1 (2024), doi:<https://doi.org/10.55210/assyariah.v10i1.1453ps>.

²⁶ Cindera Permata, 'Kesetaraan Perempuan dalam Hukum Keluarga Islam: Dinamika Respon Penghulu Terhadap Kebijakan Pelarangan Pernikahan Suami dalam Masa 'Iddah Istri' (unpublished Master Thesis, Universitas Islam Negeri Sunan Kalijaga, 2023) <<https://digilib.uin-suka.ac.id/id/eprint/63403/>>.

²⁷ Rizqi Ariana Zulma, 'Pendapat Penghulu KUA dan Ulama NU Kecamatan Wiradesa Tentang Konsep *Syibbul Iddah*' (unpublished Bachelor thesis, Universitas Islam Negeri K.H. Abdurrahman Wahid, 2024) <<http://etheses.uingusdur.ac.id/id/eprint/8062>>.

²⁸ Anggi Syahnata, 'Persepsi Pegiat Hukum Keluarga Islam di Banjarmasin Terhadap Surat Edaran No: P005/DJ/III/HK.00.7/10/2021 Tentang Pernikahan dalam Masa 'iddah Istri' (unpublished Bachelor thesis, Universitas Islam Negeri Antasari, 2023) <<http://idr.uin-antasari.ac.id/id/eprint/22963>>.

²⁹ S Sukiati, Imam Yazid, and Muhammad Irfan, 'Analysis of Sigli Syariah Court Judges' Opinion on Ex-Husband's Marriage During Their Ex-Wife's Iddah Period', *Al-Hurriyah: Jurnal Hukum Islam*, 9.1 (2024): 67–76, doi:10.30983/alhurriyah.v9i1.7771.

legal approach employed involves examining legal texts, such as circulars issued by authorized state institutions, in conjunction with social realities that reflect the societal context in which legal texts are applied, thereby informing knowledge, understanding, and actions.

Furthermore, to interpret the data as a social reality, this study uses two main theories as an analytical framework. The first theory is Khaled Abou El Fadl's theory of authority, which is used to examine the state's authority in understanding and interpreting religious texts as reflected in regulations. The second is Mochtar Kusumaatmadja's theory of development law, which is used to examine the state's efforts through policies issued to create social engineering aimed at creating justice and order, particularly in marriage law.

The research was conducted in Metro City, Indonesia, which was chosen based on its diverse social and cultural conditions and the implementation of the circular letter. The data were obtained through semi-structured interviews with five heads of the KUA in Metro City regarding the prohibition of marriage during the wife's *'iddah* period. The KUA heads were selected not only for their educational background and expertise in marriage matters, but also for their administrative and structural roles as state officials responsible for marriage matters. Additionally, the data were obtained from various sources, including laws, regulations, and relevant research results.

Data analysis techniques were employed in accordance with Miles and Huberman's interactive model. First, the data were reduced to select those relevant to the research context. Second, the data are presented using various methods, including quotations and data presentation tables. Third, the presented data are interpreted and discussed with other findings, both pro and con. Fourth, conclusions are drawn to identify the main findings of the study and provide policy recommendations and suggestions for further research.

Results and Discussion

Reform of Islamic Family Law in Indonesia: Response of the Office of Religious Affairs to the Prohibition of Husbands Marrying During Their Wives 'Iddah Period

Legal reforms do not always take the form of legislation, but they can also be implemented through policy circulars.³⁰ Although Circular Letters are not included in the hierarchy of legislation, they exercise the government's discretionary powers and are the product of administrative actions aimed at expressing a written policy.³¹ In the Indonesian legal system, circular letters are classified as soft law, which serves to guide the performance of legal actions.³²

On October 29, 2021, the Directorate General of Islamic Community Guidance of the Ministry of Religious Affairs of the Republic of Indonesia issued Circular Letter Number P-005/DJ.III/HK.007/10/2021, which contains provisions regulating marriage during the wife's 'iddah period.³³ This circular letter is the result of a Focus Group Discussion with the Director General of the Religious Courts of the Supreme Court of the Republic of Indonesia. The primary consideration in this letter is the ineffectiveness of Circular Letter No. D.IV/E.D/17/1979 on the Issue of Polygamy During the 'Iddah Period, which has been in effect for a long time.³⁴

A crucial point in this circular letter is the prevention of covert polygamy practices. Concealed polygamy is a situation where a man

³⁰ Fitriani Ahlan Sjarif and Efraim Jordi Kastanya, 'Surat Edaran Sebagai Instrumen Administrasi Negara di Masa Pandemi Covid-19', *Jurnal Hukum & Pembangunan*, 51.3 (2021), doi:<https://doi.org/10.21143/jhp.vol51.no3.3135>.

³¹ Philipus M. Hadjon, *Pengantar Hukum Administrasi Indonesia: Introduction to the Indonesian Administrative Law* (UGM Press, 1993).

³² Hendry Aspan and others, 'Legal Mechanisms for Business Accountability: A Comparison of Soft and Hard Law in Indonesia', *LAW REFORM*, 20.2 (2024), doi:<https://doi.org/10.14710/lr.v20i2.59273>.

³³ Muhammad Iqbal Juliansyahzen and others, 'Between Sharia, Gender, and Science in the Construction of "Iddah: The Response of Banyumas" Ulama', *El-Mashlahah*, 14.1 (2024): 189–210, doi:10.23971/el-mashlahah.v14i1.7917.

³⁴ Ibnu Akbar Maliki, Zezen Zainul Ali, and Muhammad Khusaini, 'Artificial Intelligence and the Law: The Use of Artificial Intelligence as a Tool to Assist Judges in Deciding Polygamy Cases', *Nurani: Jurnal Kajian Syari'ah dan Masyarakat*, 23.2 (2023): 211–228, doi:10.19109/nurani.v23i2.20152.

marries another wife simultaneously without permission from the court and without the knowledge of his legal wife, family members, and the general public.³⁵ Before the implementation of the marriage ban during the wife's *'iddah* period, there were many cases where a husband remarried another woman during the *'iddah* period of his former wife. This is reflected in the findings of another study, which shows that in 2004, there were 5 cases of marriage during the wife's *'iddah* period,³⁶ and between 2017 and 2018, there were 22 cases.³⁷ There was even one case in 2009 where there was one case of covert polygamy because the former husband had remarried another woman during his ex-wife's *'iddah* period and referred her back.³⁸ Additionally, in Metro City, where the research was conducted, four attempts at marriage during the wife's waiting period were observed. However, these did not occur because the KUA had implemented this policy in the administrative screening process for marriage registration.

Furthermore, the realization of the wisdom of *'iddah* is also the objective of this provision, namely, to provide an opportunity to return to one's spouse as well as protection and equality for women.³⁹ This circular letter has also received a response from the KUA officials in Metro City. Based on interviews with the heads of the KUA in five sub-districts, all of them said that they accepted and supported the policy.

This indicates that the uniformity of understanding is influenced by the social background of each informant, who is more open-minded than

³⁵ Gilbert Nyakundi Okebiro, 'Hidden Polygamy Among Dignitaries in African States', *SSRN Electronic Journal*, published online 2015, doi:10.2139/ssrn. 2827004.

³⁶ Ustuvia, 'Poligami dalam Masa Iddah (Studi Kasus di KUA Kecamatan Parakan Temanggung)'.

³⁷ Maghviroh, 'Implementasi SE Dirjen Pembinaan Kelembagaan Agama Islam Tentang Poligami dalam Masa Iddah'.

³⁸ Ika Laili Rohmi, 'Perkawinan Suami dalam Masa Iddah Isteri (Pelaksanaan Surat Edaran No: D.IV/E.d/17/1979 Dirjen Bimbaga Islam Tentang Masalah Poligami dalam Iddah di KUA Kec. Tlogowungu Kab. Pati pada Bulan Januari–Agustus 2009)' (unpublished Bachelor thesis, Institut Agama Islam Negeri Walisongo, 2010) <<https://eprints.walisongo.ac.id/id/eprint/3080/>>.

³⁹ Viktoriia Kobko-Odarii and others, 'Reconstructing Gender Equality in Family Law: A Normative and Comparative Analysis of European Family Law Systems in Religious Context', *Syariah: Jurnal Hukum dan Pemikiran*, 25.1 (2025), doi:<https://doi.org/10.18592/sjhp.v25i1.17694>.

the others. Unlike some findings in other regions, KUA employees rejected the implementation of the circular because it was not in accordance with classical *fiqh* teachings.⁴⁰ However, this cannot be considered solely as an influence of the social background of the informants, but also of the structural-institutional nature of their position as heads of the Office of Religious Affairs, which is subordinate to the Director General of Islamic Community Guidance, the agency that issued the Circular. This aligns with institutional theory, which posits that decisions within an organisation or institution are influenced by coercive institutional pressure.⁴¹

The informants understand that the circular is intended for cases where a divorce has occurred, and the wife is still in her '*iddah*' period, the husband is not permitted to remarry until the wife's '*iddah*' period is complete.⁴² Furthermore, the Head of the KUA in Metro Timur stated that:

*"We understand this circular letter to mean that a husband who has divorced his wife should not rush to remarry until his former wife's 'iddah period has ended. The purpose is to ensure that if the divorced wife is pregnant, the fetus has a father and to prevent the husband from engaging in covert polygamy."*⁴³

All KUA heads interviewed understood the substance of Circular Letter (SE) 5/2021 as a form of anticipation against covert bigamy practices and legal protection against potential uncertainty regarding the status of children after divorce.⁴⁴ In some cases, the wife's waiting period is used by the former husband as an opportunity to engage in covert polygamy by marrying another woman and then taking his former wife back.⁴⁵

⁴⁰ Syauqi and Mahfudhi, 'From Fatwa to Bureaucracy'.

⁴¹ M. Tina Dacin, Jerry Goodstein, and W. Richard Scott, 'Institutional Theory and Institutional Change: Introduction to the Special Research Forum', *The Academy of Management Journal*, 45.1 (2002): 43, doi:10.2307/3069284.

⁴² Mu'alim Arifin, 'Interview with Head of North Metro Religious Affairs Office (KUA), Metro City', May 29, 2025.

⁴³ Ahmad Subandi, 'Interview with the Head of East Metro Religious Affairs Office (KUA), Metro City', January 6, 2025.

⁴⁴ Abd Rahman Dahlan and others, 'Women's Post-Divorce Rights in Malaysian and Indonesian Court Decisions', *AHKAM: Jurnal Ilmu Syariah*, 23.1 (2023), doi:10.15408/ajis.v23i1.27967.

⁴⁵ Abdulmuid AYKUL, 'İSLÂM AİLE HUKUKUNDA ERKEĞİN İDDETİ: 'Iddah of Man in İslâmic Family Law', *Mütefekkir*, 9.18 (2022).

Following the issuance of SE 5/2021, its implementation has not undergone significant changes, with the emphasis now placed on document verification, particularly for prospective brides and grooms who have been married before.⁴⁶ The Head of the Metro Pusat KUA echoed this sentiment, stating that:

*"The implementation of marriage registration following SE 5/2021 continues to proceed following the regulations, and the circular serves as the primary guideline. In practical terms, there are no differences, all marriage registrations are conducted in the same manner. However, following the issuance of the circular, we began verifying whether the 'iddah period of the former wife has been completed or not."*⁴⁷

Based on the above explanation, the efforts made by the government and the Head of the KUA demonstrate an effort to uphold and enforce marriage laws. Some feminist scholars also argue that the waiting period is an opportunity for reflection and consideration for both men and women. Therefore, a waiting period for men would also be beneficial as it promotes justice and equality.⁴⁸ Similarly, Faqihuddin Abdul Kodir advocates that men should also be given a waiting period (a waiting period like women) because, from a religious and moral perspective, there should be a minimum waiting period to approach and marry another woman as a form of respect.⁴⁹ This was also confirmed by the head of the KUA, who stated that the waiting period for husbands is intended to protect the feelings, humanity, and social status of women,⁵⁰ children, and the extended family.⁵¹

⁴⁶ Nursalim, 'Interview with the Head of West Metro Religious Affairs Office (KUA), Metro City', May 30, 2025.

⁴⁷ Gunawan, 'Interview with the Head of the Central Metro Religious Affairs Office (KUA), Metro City', May 28, 2025.

⁴⁸ Ziba Mir-Hosseini, 'Islamic Law and the Question of Gender Equality', in *Routledge Handbook of Islamic Law*, 1st edn (Routledge, 2019), doi:10.4324/9781315753881.

⁴⁹ Faqihuddin Abdul Kodir, *Qiro'ah Mubadalah Tafsir Progresif Untuk Keadilan Gender dalam Islam* (IRCiSoD, 2019).

⁵⁰ Ahmad Subandi, 'Interview with the Head of East Metro Religious Affairs Office (KUA), Metro City', January 6, 2025.

⁵¹ Nanang Yusron, 'Interview with the Head of South Metro Religious Affairs Office (KUA), Metro City', May 29, 2025.

In addition, SE 5/2021 explicitly supports and affirms the principle of monogamy in the Marriage Law. However, this rule is not absolute, a husband may still have more than one wife, but must comply with the applicable provisions to avoid covert polygamy.⁵² Thus, this Circular Letter generally imposes an absolute prohibition on husbands marrying women during their wives' *'iddah* period, although in practice, there are still pros and cons.⁵³ The following is a brief explanation of the essence of SE 5/2021 and the response from the Head of the KUA in Metro City.

Table 1: Essence of Circular Letter 5/2021 and Responses from Heads of KUA in Metro

No	Aspect	Field Findings
1.	Essence of the Circular Letter	Prevention of marriage during the wife's <i>'iddah</i> period
2.	Implementation at the Office of Religious Affairs (KUA)	Verification of divorce status and divorce certificate before processing a new marriage
3.	Rejection or Resistance	No KUA officials have rejected or expressed opposition to this proposal.
4.	Community Education	Only conducted during marriage registration, and no systematic outreach.
5.	Coordination with Religious Courts	No formal coordination mechanism is in place

Source: Processed by the authors

Based on the table above, it is evident that SE 5/2021 is being implemented consistently and collectively by officials at the KUA. This demonstrates the success of top-down policy enforcement at the administrative level.⁵⁴ Compared to Ali's findings, which noted differences

⁵² Muhamad Andriyanto and Muhamad Fauzi Manarul Hidayah, 'KETIKA IZIN PENGADILAN DIABAIKAN: Studi Tentang Konflik Poligami Antara Praktik Sosial dan Norma Hukum Keluarga Islam', *Usrotuna: Journal of Islamic Family Law*, 2.1 (2025) <<https://journal.taskuliah.com/usrotuna/article/view/15>>.

⁵³ Yusmita et al, 'PROHIBITION OF POLYGAMY WOMEN CIVIL SERVANTS IN A GENDER PERSPECTIVE: Criticism Against PP No. 10 of 1983 Jo PP No. 45 of 1990', *Nusantara: Journal of Law Studies*, 2.1 (2024), doi:10.5281/ZENODO.17390174.

⁵⁴ Mark T. Imperial, 'Implementation Structures: The Use of Top-Down and Bottom-Up Approaches to Policy Implementation', in Mark T. Imperial, *Oxford Research Encyclopedia of Politics* (Oxford University Press, 2021), doi:10.1093/acrefore/9780190228637.013.1750.

in the implementation of the Marriage Law in various regions due to multiple interpretations or weak supervision, this SE case demonstrates more solid procedural standards, as it is based on the uniform bureaucratic work procedures of the Ministry of Religious Affairs.⁵⁵ However, the weakness lies in the lack of public education and the absence of formal coordination with the Religious Court. This highlights the limited role of inter-agency collaboration, which is a crucial factor in the effectiveness of a fair marriage law system.⁵⁶

SE 5/2021 is a concrete form of administrative reform in Islamic family law in Indonesia. It reflects a shift in approach from a normative-formal model to a substantive social protection model. By preventing husbands from remarrying before their wives' *'iddah* period is over, the state guarantees legal order and clarity of children's lineage. This approach reflects the application of the principle of *sadd al-dzari'ah* (closing loopholes in the law) in *fiqh*, which aligns with the spirit of *maqâshid al-shari'a*, aiming to protect offspring and honour. A study by Ichwan also shows that the strengthening of administrative regulations in marriage in Indonesia is a form of the state's response to the need for more inclusive and responsive legal frameworks addressing family issues.⁵⁷

The provisions outlined above in this circular letter are the result of Islamic legal *ijtihad* in Indonesia. This concept did not exist in classical *fiqh* and represents an effort to adapt Islamic principles to the diverse social and legal contexts of Indonesia. Prohibiting a husband from marrying during his wife's *'iddah* period is merely a pause or waiting period; it does not mean violating or creating new Islamic law. However, this implementation is intended to support the

⁵⁵ Z.Z. Ali, 'Marriage Administration Brokers: The Rational Action in the Practice of Delegating Marriage Administration in Central Lampung', *Al-Ahwal*, 17.1 (2024): 1–20, ScopuS, doi:10.14421/ahwal.2024.17101.

⁵⁶ Chesney Callens and Koen Verhoest, 'Interagency Collaboration', in *Elgar Encyclopedia of Public Management*, ed. by Kuno Schedler (Edward Elgar Publishing Limited, 2022), pp. 335–339, doi:10.4337/9781800375499.interagency.collaboration.

⁵⁷ M. N. Ichwan, 'Official Ulama and the Politics of Re-Islamization: The Majelis Permusyawaratan Ulama, Sharilhringatization and Contested Authority in Post-New Order Aceh', *Journal of Islamic Studies*, 22.2 (2011): 183–214, doi:10.1093/jis/etr026.

implementation of Islamic law that can provide certainty, justice, and public interest.⁵⁸

Authority in the Regulation of Marriage Law in Indonesia

Discussions regarding authority in the field of Islamic law studies demonstrate the importance of examining how textual interpretations can be translated into implementable policies. The study of authority has been discussed in classical theory by Weber, who classified authority into three characteristics: charismatic, traditional, and rational-legal.⁵⁹ However, in religious studies, authority can be viewed through Abou El Fadl's framework of authority analysis. According to him, without authority in religion, religious life becomes subjective, individual, and relative.⁶⁰ At least in the study of Islamic law, there are key issues that discuss the discourse of authoritative and authoritarian authority, namely:

First, there is authenticity (competence), which enables one to discern whether a command truly comes from God and His prophet. Texts that have authenticity will be considered authoritative. In contrast, those that do not have authenticity will not be regarded as authoritative (strong). Second, the determination of meaning, which is the way to understand God's will in authoritative texts. An authoritative text possesses its existence and integrity, thereby becoming autonomous.⁶¹ An autonomous text allows for interpretation, so it does not become "dead" in the hands of the reader. Therefore, there must be a proportional balance between the text, the author, and the reader in determining meaning; any dominance will result in authoritarian reading. Third, the concept of representation: in Islam, absolute sovereignty belongs only to God, but on the other hand,

⁵⁸ Ahmad Rajafi and others, 'Exploring the Model of Implementation of Islamic Law in Indonesia', *al-'Adalah*, 17.1 (2020): 31–50, doi:10.24042/adalah.v17i1.4577.

⁵⁹ Max Weber, *The Theory of Social and Economic Organization* (The Falcon's Wings Press, 1947).

⁶⁰ Khaled Abou El-Fadl, *Speaking of God's Name: Islamic Law, Authority and Women* (Oneworld Publications, 2001).

⁶¹ Muhammad Fauzinudin Faiz, Dawam Multazamy Rohmatulloh, and Muhammad Solikhudin, 'Challenging the Status Quo: Khaled M. Abou El Fadl's Perspectives on Islamic Legal Authority and the Restrictive Fatwa on Women's Solo Travel', *JIL: Journal of Islamic Law*, 4.1 (2023): 47–66, doi:10.24260/jil.v4i1.1071.

Islam also has the concept of caliphate (human) as God's representative. However, this representation opens the door to authoritarianism if certain conditions are not met.

Thus, similar to the interpretation of the meaning of the *'iddah* law itself, the verses about *'iddah* originate from authoritative texts (the Qur'an and Hadith) that are autonomous. Therefore, there is room for reinterpretation by readers (in this case, policymakers). As is well known, the concept of *'iddah* has undergone numerous interpretations in response to social developments. The provisions of *'iddah* in Islamic law (the text) have traditionally only explicitly regulated *'iddah* for wives, and it has been understood that only women are required to observe it.⁶² However, today, *'iddah* is viewed as applicable to men (husbands) as a waiting period following divorce.⁶³

This condition is reinforced by government policy, which holds the authority (state), stating that a husband may not marry another woman during his wife's *'iddah* period. This is outlined in the policy of the Ministry of Religious Affairs of the Republic of Indonesia, as implemented by the Directorate General of Islamic Community Guidance through Circular Letter Number P-005/DJ.III/Hk.00.7/10/2021 concerning Marriage During the Wife's *Iddah* Period. This provision implies that the husband also has an *'iddah* period because he must wait for his wife's *'iddah* period to end before he can remarry. This is done in the name of justice and the benefits of the law. This is done as an effort to maintain a balance between special interests and public interests.

At this level, the objectivity of the text (authoritative) and the axis of subjectivity (reader) interact with each other. It must also be acknowledged that every interpretation process cannot be separated from subjectivism, whether it comes from individuals or collectively involving an institution (in this case, the state) that claims to be the interpreter of God's will. However, according to Abou El Fadl, overly subjective interpretation will

⁶² Azzulfa and Cahya A., 'Masa Iddah Suami Istri Pasca Perceraian'.

⁶³ Shofiatul Jannah and Dwi Hidayatul Firdaus, 'Reformulation of the Concept of Iddah in The Compilation of Islamic Law Perspective of Negotiative Hermeneutics', *De Jure: Jurnal Hukum dan Syar'iah*, 15.2 (2023): 286–300, doi:10.18860/j-fsh.v15i2.21065.

also fall into the trap of authoritarianism.⁶⁴ The state policy prohibiting men from marrying during their wife's 'iddah period is the result of discussions between the Directorate General of Islamic Community Guidance (Ministry of Religion of the Republic of Indonesia) and the Directorate General of Religious Courts (Supreme Court of the Republic of Indonesia) in 2021. This policy is a follow-up to the previous regulation No. DIV/Ed/17/1979, dated February 10, 1979, addressed the issue of polygamy during the 'iddah period, but was not effectively implemented.

This circular letter is a manifestation of written discretion aimed at addressing issues not adequately regulated in both religious and legal aspects.⁶⁵ Therefore, the substance of the circular letter contains notifications regarding certain matters deemed essential and urgent,⁶⁶ issued by officials and addressed to their subordinates, these documents regulate various technical issues related to public service and are intended to carry out matters. As Khaled argues, there are two types of authority: holding a position of authority and exercising that authority. In this case, the government (state) is the authority because it holds an official position that grants it the power to issue orders or directives.

Thus, considering the functions inherent in officials or institutions that have the power to regulate society, there is a risk of authoritarianism on the part of policymakers. Where an authority imposes its will as if it were God's representative (caliph) without negotiating with the text, the author, and the reader. Therefore, to curb and prevent such attitudes, Khaled M. Abou El Fadl proposes five prerequisites for interpreting textual authority into policy.⁶⁷ The correlation between these five prerequisites and the policy outlined in the circular letter prohibiting marriage during the wife's 'iddah period is illustrated in the following table.

⁶⁴ El-Fadl, *Speaking of God's Name; Islamic Law, Authority and Women*.

⁶⁵ Catur Agil Pamungkas and Anom Wahyu Asmorojati, 'Menguji Ketepatan Penambahan Kewenangan Penjabat Melalui Surat Edaran Menteri Dalam Negeri', *Media of Law and Sharia*, 4.2 (2023): 89–103, doi:10.18196/mls.v4i2.3.

⁶⁶ Fitri Elfiani and Rizki Anla Pater, 'Analisis Eksistensi Surat Edaran Terhadap Peraturan Perundang-Undangan dalam Penyelenggaraan Pemerintahan', *Journal of Juridische Analyse*, 2.01 (2023): 19–37, doi:10.30606/joia.v2i01.1803.

⁶⁷ Imam Nurhakim, 'Pertautan Antara Reader, Text, dan Author dalam Memahami Nash', *MAGHA: Jurnal Ilmu al-Qur'an dan Tafsir*, 2.2 (2017): 1–14, doi:10.24090/maghza.v2i2.1565.

Table 2: Prerequisites for Interpreting Textual Authority into Policy in the Prohibition of Marriage During the Wife's 'Iddah Period

No	Aspect	Definition	Relevance to the Policy
1.	Honesty	An open and honest attitude towards knowledge and the ability to understand God's will	This policy requires openness about marital status and honesty in protecting the rights of wives who are observing the 'iddah period.
2.	Sincerity	Hard work with high ethics and awareness of the rights of others	The state strives to protect the rights of wives through regulations so that there is no neglect during the 'iddah period.
3.	Overall	A comprehensive effort to investigate God's will with all relevant texts	The policy reflects considerations from all Sharia arguments regarding the 'iddah period and family justice.
4.	Rationality	Logical interpretation and common sense	The prohibition is logical in preventing domestic conflict and ensuring a fair transition period for the wife.
5.	Self-control	Self-control in interpreting God's will without being arbitrary	The regulation requires self-control from the husband so that he does not rush into marriage while his wife is still in the 'iddah period.

Source: Processed by the authors

The Director General of Islamic Guidance issued Circular Letter Number: P-005/DJ.III/Hk.007/07/2021 did not act arbitrarily and make changes without basis. The Director General of Islamic Guidance considered the objectives of benefit (*mashlahat*) and legal certainty, which include: First, upholding the wisdom of 'iddah, which is the opportunity to rethink and rebuild the household. Second, preventing the practice of covert polygamy in society, and third, protecting and ensuring equality for women.⁶⁸

⁶⁸ Riha Nadhifah Minnuril Jannah and Naning Faiqoh, 'Pendekatan Keadilan Gender Pada Penerapan Iddah Ditinjau dari Studi Islam', *Urwatul Wutsqo: Jurnal Studi Kependidikan dan Keislaman*, 10.1 (2021): 50–72, doi:10.54437/urwatulwutsqo.v10i1.233.

Additionally, the above circular letter is addressed to all Provincial Heads of the Ministry of Religious Affairs, who then delegate it to the district and city offices of the Ministry of Religious Affairs, with implementation carried out by the Office of Religious Affairs. Thus, the Religious Affairs Office, through the Marriage Registrar, is tasked with implementing, enforcing, and upholding the circular letter regarding the prohibition of marriage during the *'iddah* period in society. The implementation is carried out by reviewing marriage registration documents and explaining the purpose of the circular letter.⁶⁹

Although the implementation of SE 05/2021 has been carried out by the KUA throughout Metro City, and it is acknowledged that SE 05/2021 is a state policy as the authority in interpreting Islamic values in family law matters, they still view SE 05/2021 as merely a circular letter.⁷⁰ Moreover, its status is one level above an appeal, but it is not yet a binding regulation.⁷¹ Although the circular letter is not included in the hierarchy of legislation and is not generally binding, it remains binding for parties under its authority. This is in line with Hans Nawiasky's theory that state legal norms are always layered, hierarchical, and grouped.⁷² These groups include: 1) *Staats' fundamental norm* (fundamental state norm), 2) *Staats grundgezets* (basic state rules), 3). *Formell GeseQ* (formal laws), and 4). *Verordnung* and *Autonome SaQung* (implementing rules and autonomous rules).⁷³ Thus, this circular letter falls under the implementation of policies and autonomous rules.⁷⁴

⁶⁹ Mu'alim Arifin, 'Interview with Head of North Metro Religious Affairs Office (KUA), Metro City', May 29, 2025.

⁷⁰ Nursalim, 'Interview with the Head of West Metro Religious Affairs Office (KUA), Metro City', May 30, 2025.

⁷¹ Gunawan, 'Interview with the Head of the Central Metro Religious Affairs Office (KUA), Metro City', May 28, 2025.

⁷² Sadhu Bagas Suratno, 'Pembentukan Peraturan Kebijakan Berdasarkan Asas-Asas Umum Pemerintahan Yang Baik', *E-Journal Lentera Hukum*, 4.3 (2017): 164, doi:10.19184/ejlh.v4i3.5499.

⁷³ Cholida Hanum, 'Analisis Yuridis Kedudukan Surat Edaran dalam Sistem Hukum Indonesia', *Hukum dan Masyarakat Madani*, 10.2 (2020): 138–153, doi:10.26623/humani.v10i2.2401.

⁷⁴ Ridwan HR, *Hukum Administrasi Negara* (UII Press, 2002).

Therefore, referring to the above explanation, this is what is referred to as authority, namely, religious authority, which regulates religious aspects through marriage affairs. However, in practice, the authority of religion remains a matter of debate. For example, the authority described by Alatas is characterized by religious figures who possess strong charisma and are preserved in all aspects, both economic and social.⁷⁵ However, in this context, the authority exercised by the state represents both religious and legal authority, which can influence or even coerce the state.

Within Khaled Abou El Fadl's framework, such conditions can be referred to as coercive authority.⁷⁶ Coercive authority relies on structural position. This authority directs the behavior of others by persuading, pressuring, threatening, or punishing them so that those under it have no choice but to obey.⁷⁷ The applicability of this type of authority is evident in the responses of the informants who are structural officials of the KUA, who generally accept and support this policy.⁷⁸ This indicates a structural-institutional relationship between the heads of the KUA, who are subordinate to the Director General of Islamic Community Guidance, resulting in a tendency to implement these regulations, despite conflicting with their background knowledge in other aspects. In institutional theory, the institutional environment often has a significant impact on policies or actions taken, even outweighing the rationality of the knowledge possessed by the actor.⁷⁹

Prohibition of Husbands Marrying During Their Wives 'Iddah Period: Developing Family Law that is Protective and Fair

Indonesia, as a country with a Muslim majority, is enthusiastic about continuing to reform its family law. This enthusiasm is driven

⁷⁵ Ismail Fajrie Alatas, *What Is Religious Authority: Cultivating Islamic Communities in Indonesia* (Princeton University Press, 2021).

⁷⁶ El-Fadl, *Speaking of God's Name: Islamic Law, Authority and Women*.

⁷⁷ Edi Susanto, 'Kritik Nalar Hukum Islam Model Khaled M. Abou El-Fadl', *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 1.2 (2019): 123–132, doi:10.19105/al-lhkam.v1i2.2557.

⁷⁸ Susanto, 'Kritik Nalar Hukum Islam Model Khaled M. Abou El-Fadl'.

⁷⁹ Maria Roszkowska-Menkes, 'Institutional Theory', in *Encyclopedia of Sustainable Management*, ed. by Samuel O. Idowu and others (Springer International Publishing, 2023), pp. 1983–1990, doi:10.1007/978-3-031-25984-5_389.

by issues surrounding marriage that foster ongoing change and reform in the legal field. In the context of Islamic legal reform, Islamic family law is the most developed aspect of Islamic law. Historically, family law has been one of the most complex areas of law, influenced by a range of factors, including religion, politics, and culture.⁸⁰

The reform of Islamic family law in Indonesia is taking a path of compromise between Sharia and secular law.⁸¹ The accommodation and reconciliation in Islamic family law make it a unique system. Various reform efforts have been made, one of which is by the Directorate General of Islamic Community Guidance (Dirjen Bimas) of the Ministry of Religious Affairs of the Republic of Indonesia through a Circular Letter on marriage during the wife's *'iddah* period. The aim is to enhance certainty and transparency in the conduct of marriages. This is related to the regulation of marriage administration and the prevention of violations of marriage law, specifically covert polygamy.⁸² As stated by the head of the East Metro Religious Affairs Office, the issuance of Circular Letter No. 5/2021 will close loopholes in marriage law manipulation by husbands, at least ensuring that former husbands are aware of the consequences if they remarry, while their former wives are still in the *'iddah* period and may be pregnant.⁸³ Additionally, the presence of SE 5/2021 will be highly effective in closing loopholes related to covert polygamy, as the tightened administrative marriage checks ensure that a husband cannot remarry until the *'iddah* period is complete.⁸⁴

Thus, these efforts contribute to the development of a fair legal system. The changes and reforms made by the Directorate General of Islamic Community Guidance (Dirjen Bimas) through regulations prohibiting husbands from remarrying during their wives *'iddah* period demonstrate

⁸⁰ Azis, 'Iddah for Husbands'.

⁸¹ Abdullah Saeed, *Pemikiran Islam: Sebuah Pengantar* (Baitul Hikmah, 2014).

⁸² Isqi Dzurriyyatus Sa'adah and Mohamad Sar'an, 'Implementasi Praktik Poligami dalam Hukum Keluarga Islam Analisis Terhadap Tafsir an-Nisâ Ayat 3', *al-Mawarid Jurnal Syariah dan Hukum (JSYH)*, 6.1 (n.d.): 2024, doi:<https://doi.org/10.20885/mawarid.vol.6.iss1.art5>.

⁸³ Ahmad Subandi, 'Interview with the Head of East Metro Religious Affairs Office (KUA), Metro City', January 6, 2025.

⁸⁴ Nanang Yusron, 'Interview with the Head of South Metro Religious Affairs Office (KUA), Metro City', May 29, 2025.

the goal of development in the field of Islamic family law, which was not previously regulated in classical *fiqh* literature.⁸⁵ According to Mochtar Kusumaatmadja, the changes made are characteristics of a society that is developing law as a means to assist the process of change and development.⁸⁶

The issuance of this circular letter serves as a means for the Director General of Islamic Guidance to effect change in society, even though it is not enshrined in legislation and cannot directly bind society. However, the Director General of Islamic Guidance is an institution that has the authority to regulate its structural officials. Therefore, SE 05/2021 is a form of Islamic family law reform that falls under the category of soft law, guiding the performance of legal actions.⁸⁷ It also takes extraordinary doctrinal steps by engaging in *ijtihad* regarding the text and emphasizing the social context to achieve public welfare, certainty, and justice.⁸⁸ This is in line with the argument presented by the Head of the Metro Central KUA, where such regulations can be considered part of progressive Islamic family law reform, as they do not rule out the possibility of hidden polygamy occurring in the future, which could harm women and children.⁸⁹

Thus, SE 05/2021 indicates the reality of Indonesian society undergoing a shift towards modern legal thinking.⁹⁰ Law is a reflection of government policy as embodied in regulations, which are also part of the development agenda.⁹¹ The implementation of rules prohibiting

⁸⁵ Muhammad Nurohim, Yûsuf Hanafi Pasaribu, and Asmaiyani Asmaiyani, 'The Relationship between a Wife's Satisfaction in the Iddah Period with Marriage and Divorce', *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan*, 21.2 (2021): 208–218, doi:10.30631/alrisalah.v21i2.778.

⁸⁶ Mochtar Kusumaatmadja, *Konsep-Konsep Hukum dalam Pembangunan* (Pusat studi Wawasan Nusantara, Penerbit Alumni, 2002).

⁸⁷ Angelika Nußberger, *Hard Law or Soft Law—Does It Matter?* (Oxford University Press, 2018), 1, doi:10.1093/oso/9780198830009.003.0003.

⁸⁸ Mustamam and others, 'Reinterpreting *Hifzh al-Nasl* in Contemporary Marriage Contracts: Navigating Islamic Normativity and State Law', *MILRev: Metro Islamic Law Review*, 4.2 (2025): 1258–1280, doi:10.32332/milrev.v4i2.11158.

⁸⁹ Gunawan, 'Interview with the Head of the Central Metro Religious Affairs Office (KUA), Metro City', May 28, 2025.

⁹⁰ Mochtar Kusumaatmadja, *Hukum, Masyarakat dan Pembangunan Nasional* (Binacipta, 1995).

⁹¹ Winda Wijayanti, 'Eksistensi Undang-Undang Sebagai Produk Hukum dalam

husbands from marrying other women during their wives 'iddah period can help fill the legal vacuum that has existed and protect women who wish to be married to their husbands during this period. Additionally, it prevents husbands from having negative motives to have more than one wife without court approval.⁹²

Furthermore, the presence of SE 5/2021 can also protect the rights of wives after divorce.⁹³ During the 'iddah period, wives had the right to be referred to by their husbands and still receive financial support from them. Thus, the substance of SE 5/2021 is an effort to uphold order and legal certainty in family law. The theory of Development Law emphasizes the renewal and development of law as its primary objective, with the establishment of law serving as a tool for regulation, thereby guiding human activities toward renewal and development.⁹⁴

The operationalization of the above legal development theory is not only focused on the principles and rules governing community life but also encompasses institutions and the process of enforcing or implementing these rules in reality.⁹⁵ Additionally, the relevance of the gender-specific wisdom of the 'iddah period is legitimized by the Directorate General of Islamic Community Guidance of the Ministry of Religion of the Republic of Indonesia, which stipulates that a former husband is prohibited from remarrying another woman until the 'iddah period of his former wife has ended. This is to prevent hidden polygamy and to reinstate the wisdom of the 'iddah period as an opportunity to reflect on rebuilding a household.⁹⁶

Pemenuhan Keadilan Bagi Rakyat (Analisis Putusan Mahkamah Konstitusi Nomor 50/PUU-X/2012)', *Jurnal Konstitusi*, 10.1 (2016): 179, doi:10.31078/jk1018.

⁹² Arifin Abdullah and Delia Ulfa, 'Kedudukan Izin Rujuk Suami dalam Masa 'Iddah (Analisis Perspektif Hukum Islam)', *SAMARAH: Jurnal Hukum Keluarga dan Hukum Islam*, 2.2 (2019): 417, doi:10.22373/sjhk.v2i2.4746.

⁹³ Lilik Andar Yuni and Akhmad Haries, 'Protection of Women's Rights After Divorce in Religious Courts: What Makes This Mission Difficult to Achieve?', *Mazahib Jurnal Pemikiran Hukum Islam*, 23.2 (2024), doi:https://doi.org/10.21093/mj.v23i2.7958.

⁹⁴ Kusumaatmaatmadja, *Konsep-Konsep Hukum dalam Pembangunan*.

⁹⁵ Mochtar Kusumaatmadja, *Pembinaan Hukum dalam Rangka Pembangunan Nasional* (Bina Cipta, 1986).

⁹⁶ Wardah Nuroniyah, 'Diskursus 'Iddah Berperspektif Gender: Membaca Ulang 'Iddah dengan Metode *Dalâlah al-Nass*', *Al-Manahij: Jurnal Kajian Hukum Islam*, 12.2 (2018): 193–216, doi:10.24090/mnh.v12i2.1745.

In this context, policies (laws) that were previously only used as tools have shifted to become instruments in community development. This shift is based on the idea that order and regularity are essential for the development and renewal of law. The waiting period regulation for men after divorce not only reflects the provisions of divorce law for order but also serves as a means of having a broader impact on every aspect of individual and family life, as well as on Islamic human values.⁹⁷ Order is the primary goal in the implementation of law; order is a fundamental requirement for a well-ordered society. Additionally, justice is the ultimate goal of law. Therefore, the order sought through law must also align with justice.⁹⁸

Conclusion

This study concludes that the regulation regarding the prohibition of husbands marrying during their wives *'iddah* period, as stipulated in the Circular Letter of the Director General of Islamic Guidance Number: P-005/DJ.III/Hk. 007/10/2021, represents a form of reform of Islamic family law in Indonesia based on the principles of justice, gender equality, and legal benefit. This idea reflects the recognition of the need for a waiting period for men, not in a biological sense as it is for women, but as a form of moral and legal ethics, so that men also take a break to think, mourn, and allow for the possibility of reconciliation. In practice, this policy was born as a response to the phenomenon of covert polygamy, which often occurs when a husband remarries during his wife's waiting period and then returns to his first wife without permission for polygamy. Furthermore, this study demonstrates that the policy is an expression of the state's coercive authority, leveraging its structural position to regulate and direct marriage law through its power to interpret and translate Islamic normative values into contextual

⁹⁷ Rosdalina Bukido and others, 'Divorce Among Female Muslim Civil Servants: Legal Perspectives in Indonesia', *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan*, 25.1 (2025): 85-116, doi:10.18326/ijtihad.v25i1.85-116.

⁹⁸ Mochtar Kusumaatmadja, *Fungsi dan Perkembangan Hukum dalam Pembangunan Nasional* (Universitas Padjadjaran, 1970).

and adaptive socio-community regulations. This policy also represents a form of state intervention in the private sphere, aimed at maintaining order, ensuring legal certainty, promoting social justice, and preventing legal deviations in marriage practices.

In terms of legal development, this policy reflects a shift in the function of law from a tool of control to an instrument for creating a more just and equitable society. In this context, (legal) policies that were previously only used as tools have shifted to become instruments of community building. This shift is based on the fact that order and regularity are two essential elements for legal development and reform.

This research contributes to the integration of classical *fiqh* norms and the study of state policy authorities in contemporary Islamic family law reform efforts. This research also enriches the discourse on gender justice in Islamic law. It offers a new paradigm for interpreting '*iddah*' as an instrument of protection not only for women but also for building the moral responsibility of men after divorce. However, due to the limitations of this study in terms of both analysis and research subjects, further studies are needed that are more comprehensive and involve a wider range of research subjects to achieve a responsive and progressive reform of Islamic family law in response to contemporary issues.

Acknowledgments

The researchers would like to thank the State Islamic University of Jurai Siwo Lampung, the State Islamic University of Sunan Kalijaga, and the Islamic University of Indonesia for their support of this research.

Author Contribution

Dri Santoso contributed as the originator of the main research idea, conducted preliminary research and created the research framework, and wrote the article. Zezen Zainul Ali developed the ideas and concepts outlined in an academic paper. Siti Wahyuni assisted in collecting data and analyzing field findings, which were subsequently incorporated into the research article.

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