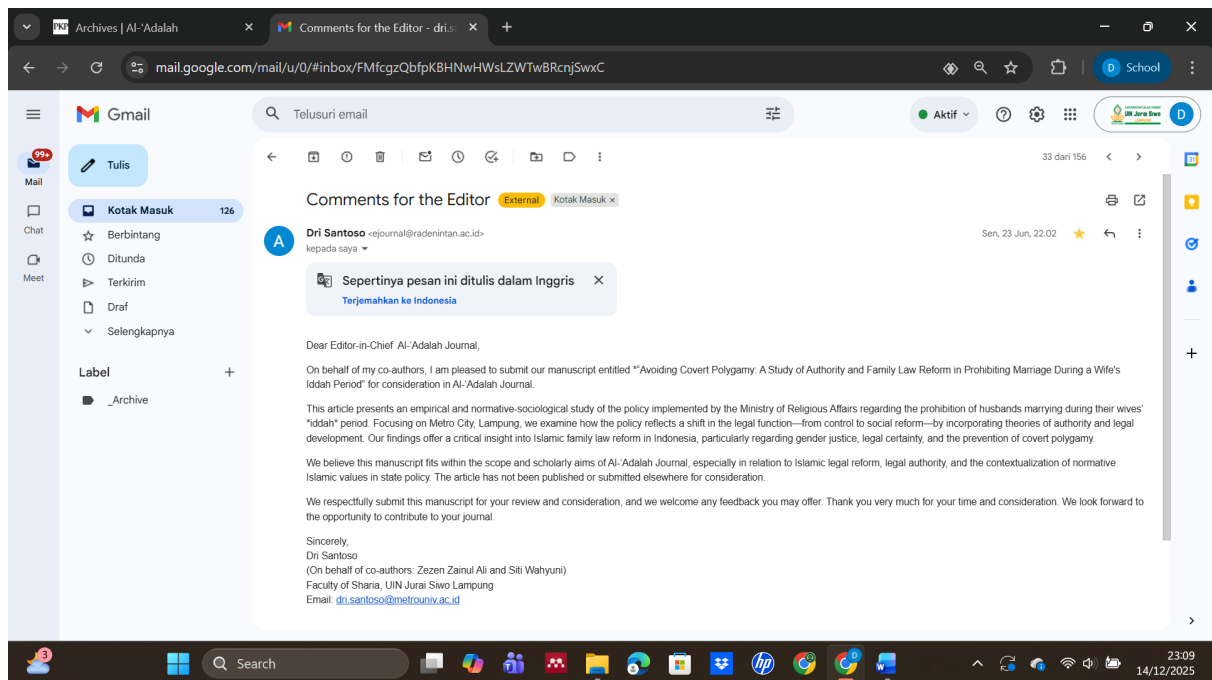
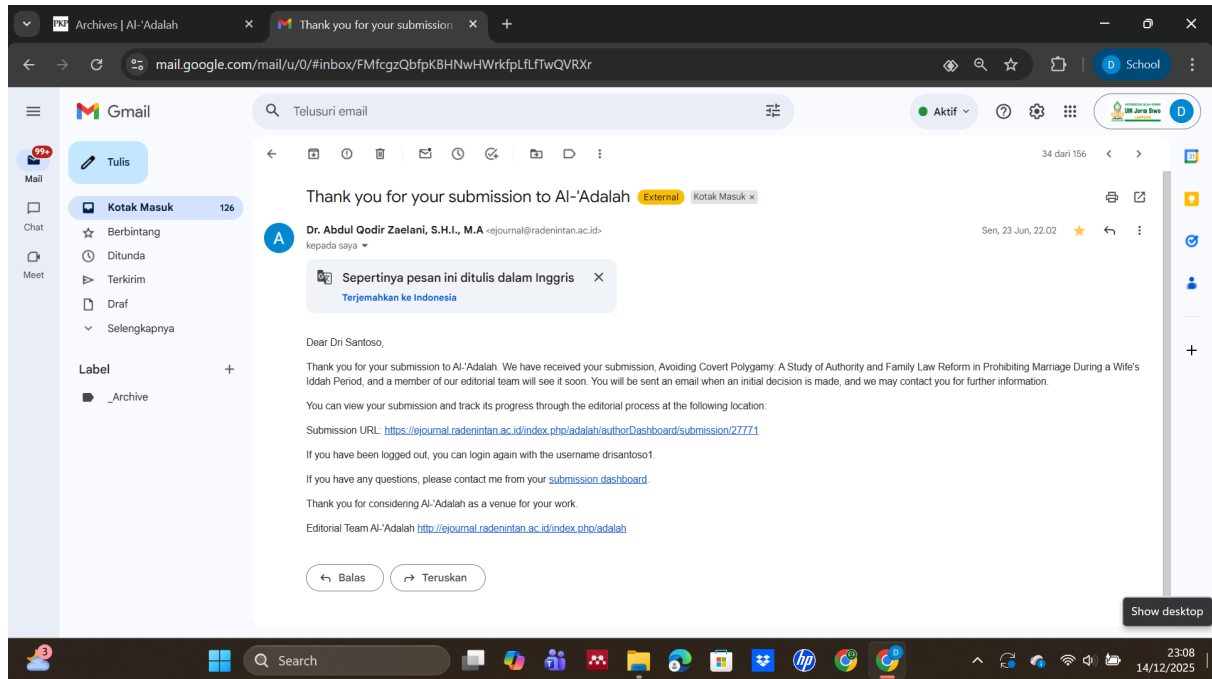


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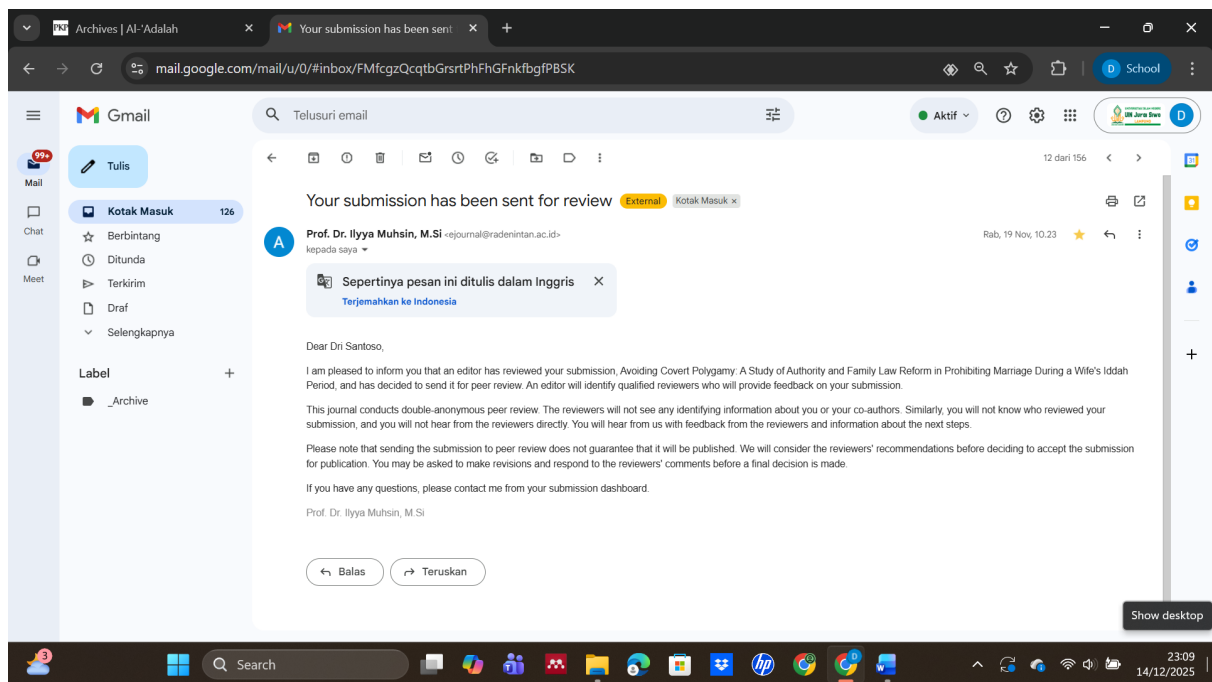
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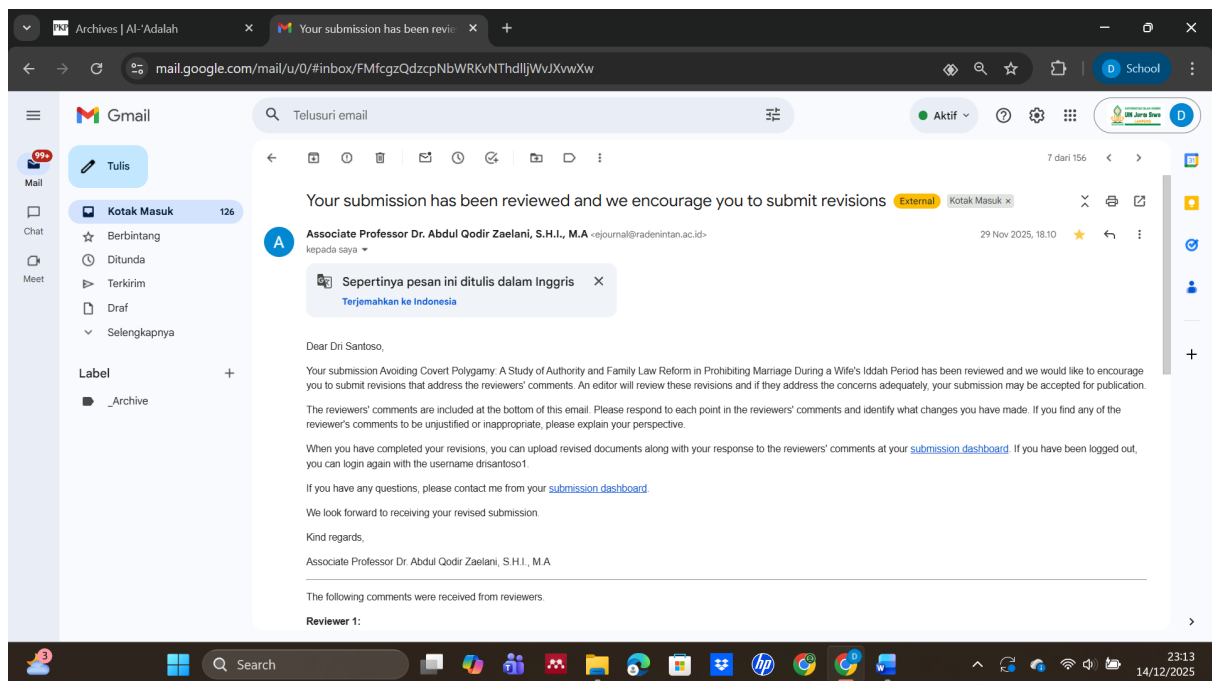
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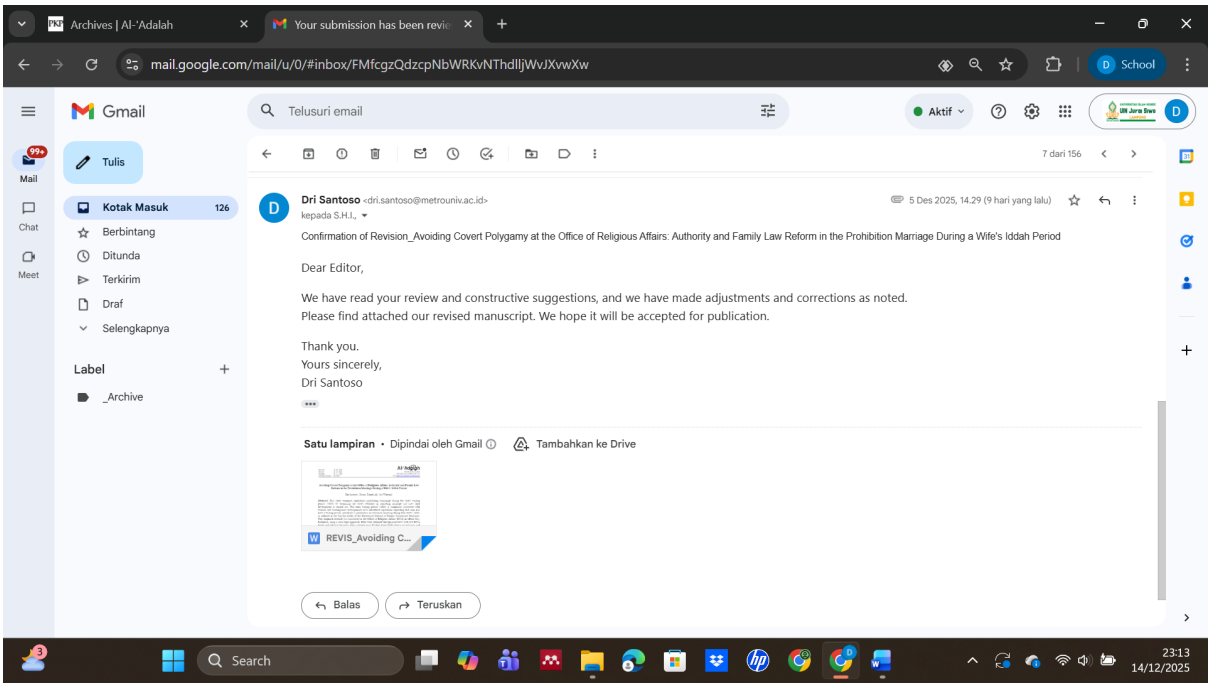
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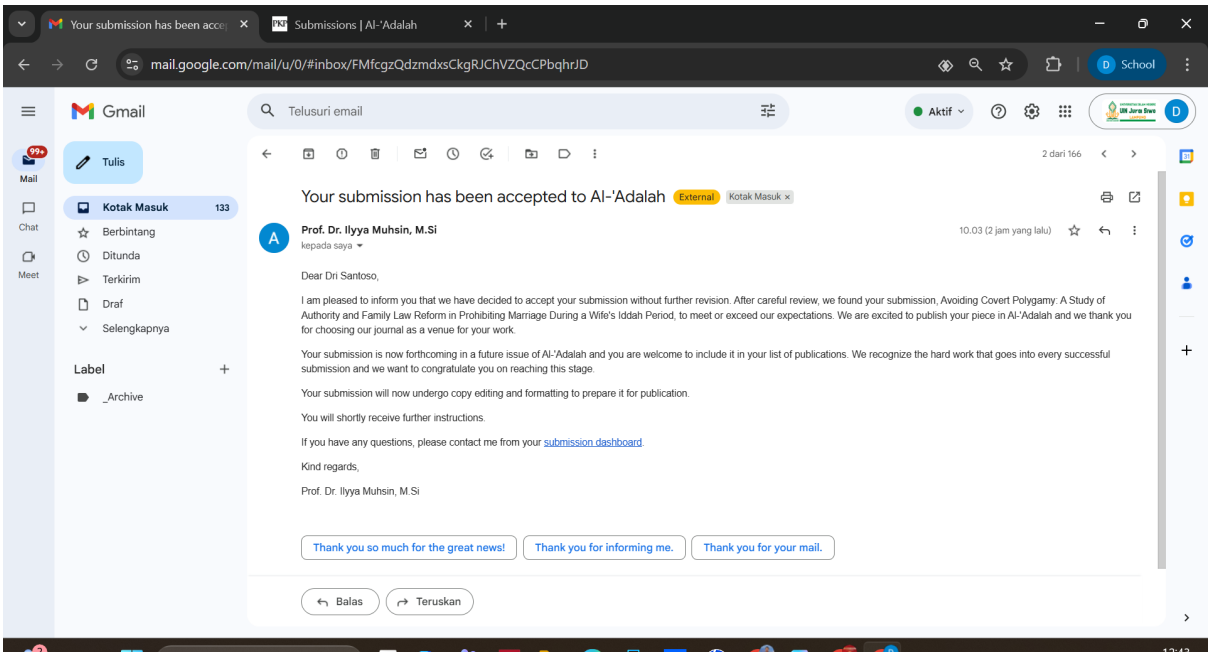
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Avoiding Covert Polygamy: A Study of Authority and Family Law Reform in Prohibiting Marriage During a Wife's Iddah Period

Dri Santoso^{*1}, Zezen Zainul Ali², Siti Wahyuni³

Abstract: The research focuses on the prohibition of marriage for husbands during their wives' iddah period by examining the state's authority in regulating marriage affairs and looking at how the law is developed. Women usually observe the iddah period, but in the development of contemporary Islamic family law, the idea has emerged that men should also have a waiting period in the form of a prohibition on marriage during their wives' iddah period. This research is an empirical study conducted in Metro City, Lampung, employing a normative-sociological approach to analyze the policy prohibiting marriage during the wife's iddah period. Data was collected through interviews with five Heads of the Religious Affairs Office (KUA) in Metro City and relevant literature. The data was analyzed using authority theory and legal development theory. This study found that the prohibition on husbands marrying during their wives' iddah period is a form of Islamic family law reform in Indonesia based on the principles of justice, gender equality, and legal welfare to prevent the phenomenon of polygamy. Second, there is an expression of state authority through policies in interpreting and translating normative Islamic values into contextual social regulations. This policy reflects a shift in the function of law from a tool of control to an instrument for shaping a more just and equitable society. The contribution of this research lies in its integrative approach between classical *fiqh* norms, state policy authority, and the principles of *maqāṣid al-syarī'ah* within the framework of contemporary Islamic family law.

Keywords: *Legal Reform; Covert Polygamy; Authority; Development Law*

Abstrak: Penelitian berfokus pada pelarangan perkawinan suami dalam masa iddah istri dengan mengkaji otoritas negara dalam mengatur urusan perkawinan dan melihat bagaimana pembangunan hukum yang dilakukan. Masa iddah lazimnya dilakukan perempuan, namun, pada perkembangan hukum keluarga Islam kontemporer ini, muncul gagasan laki-laki memiliki masa tunggu berupa pelarangan perkawinan suami dalam masa iddah istri. Penelitian ini merupakan penelitian empiris dilakukan di Kota Metro Lampung dengan pendekatan normatif-sosiologis, yang menganalisis kebijakan pelarangan pernikahan suami dalam masa iddah istri. Data diperoleh dari wawancara dengan lima Kepala KUA di Kota Metro dan literatur yang relevan. Data dianalisis dengan teori otoritas dan teori hukum Pembangunan. Penelitian ini menemukan bahwa, larangan bagi suami untuk menikah selama masa iddah istri merupakan bentuk pembaharuan hukum keluarga Islam di Indonesia yang dilandasi oleh semangat keadilan, kesetaraan gender, dan kemaslahatan hukum guna menghindari adanya fenomena poligami. Kedua, adanya ekspresi otoritas negara melalui kebijakan dalam menafsirkan dan menerjemahkan nilai-nilai normatif Islam ke dalam regulasi sosial-kemasyarakatan yang kontekstual. Kebijakan ini mencerminkan pergeseran fungsi hukum dari alat kontrol menjadi instrumen pembentukan masyarakat yang lebih berkeadilan dan setara. Kontribusi penelitian ini terletak pada upaya integratif antara norma fikih klasik, otoritas kebijakan negara, dan prinsip *maqāṣid al-syarī'ah* dalam kerangka hukum keluarga Islam kontemporer.

Keywords: Reformasi Hukum; Poligami Terselubung; Otoritas; Hukum Pembangunan

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Introduction

Discussions regarding the waiting period (*iddah*) are typically focused on women. However, in the development of contemporary Islamic family law, the idea has emerged that men also have a waiting period. Nevertheless, this waiting period does not have the same meaning as the waiting period for a woman to become pregnant.² This idea has emerged as a response to social realities in which women are restricted in their social activities. At the same time, men (former husbands) can freely engage in activities and even remarry during their wife's waiting period.

The practice of husbands marrying during their wives' waiting period was observed in 5 cases by Ustuvia³ and in 22 cases by Maghviroh.⁴ The prevalence of husbands marrying during their wives' waiting period can lead to other legal consequences, such as covert polygamy,⁵ where a husband marries during his wife's waiting period (*talāq raj'i*) and then reconciles with the wife he had divorced. 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.⁶

The Ministry of Religious Affairs, as the authority and representative of the Indonesian government, issued Circular Letter Number P-005/DJ.III/Hk.00.7/10/2021 (SE 5/2021) regarding marriage During the Iddah Period of a Wife, which states that a husband may marry another woman once the *iddah* period of his former wife has ended.⁷ This is part of the government's efforts to update the law and maintain regulation of its citizens' lives.

This Circular Letter has two essential missions: to ensure that marriages are registered following the law and to prevent legal loopholes (covert polygamy), as well as to realize the wisdom of the *iddah* period concerning the opportunity for couples to return to marriage during the *iddah*

² Hasanuddin Hasanuddin, Muhammad Syukri Albani Nasution, and Imam Yazid, 'Analysis of Waiting Period for Men after Divorce Perspective of Jamaluddin Atīyah's Maqāṣid Sharia Theory', *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan*, 8.2 (2024), p. 341, doi:10.29300/mzn.v8i2.2818; Fuady Abdullah, Nova Anggraini Putri, and Youssef Salhein, 'Revisiting 'Iddah: A Critical Analysis of Gender Equality in Indonesian Feminist Islamic Legal Discourse', *JURIS (Jurnal Ilmiah Syariah)*, 22.2 (2023), p. 275, doi:10.31958/juris.v22i2.10320.

³ 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/>>.

⁴ 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), pp. 78–92, doi:10.52431/tafaqqub.v11i1.1340.

⁵ Cindera Permata, 'WHEN STATE REGULATES HUSBAND'S IDAH: Pros and Cons among Penghulu in Yogyakarta', *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 16.2 (2023), pp. 281–301, doi:10.14421/ahwal.2023.16205.

⁶ 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), pp. 297–323, doi:10.15642/alhukama.2023.13.2.297-323.

⁷ Fatihatul Anhar Azzulfa and Afnan Riani Cahya A., 'Masa Iddah Suami Istri Pasca Perceraian', *Al-Mizan*, 17.1 (2021), pp. 65–88, doi:10.30603/am.v17i1.1959.

period.⁸ The implementation of this Circular Letter has been carried out by the Religious Affairs Office, including the Religious Affairs Office (KUA) within the Metro City area. Although this Circular Letter does not have a strong legal standing, it is worth examining how the Religious Affairs Office responds to this regulation, the state's authority in regulating marriages, and the efforts made in legal development.

A literature search reveals that research on the same topic, specifically Circular Letter Number: P-005/DJ.III/Hk.00.7/10/2021 regarding the prohibition of husbands marrying during their wives' iddah period has been conducted by many researchers. There are at least four research groups. Deky Pramana,⁹ Revita Mala Siregar,¹⁰ Jayusman,¹¹ Nurlulul Maknun,¹² and Miftah Elfaruq¹³ conducted the first group. This group discusses the provisions regarding a husband's marriage during his wife's iddah period from the perspective of *maqāṣid syarī'ah* and *maṣlahah mursalah*. The second group examined various opinions on the circular letter prohibiting marriage during the wife's waiting period from different perspectives, including those of the KUA (Office of Religious Affairs) head,¹⁴ N.U. (Nahdlatul Ulama) scholars,¹⁵ Islamic family law activists,¹⁶ and Sharia Court judges.¹⁷ The third group examined the circular letter on the husband's waiting period

⁸ Jayusman Jayusman and others, 'Perspektif Masalah Mursalah Terhadap Pernikahan Suami Pada Masa Iddah Istri Pasca Surat Edaran Dirjen 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), pp. 39–55, doi:10.24042/el-izdiwaj.v3i2.14525.

⁹ Deky Pramana, Abnan Pancasilawati, and Lilik Andar Yuni, 'Perbandingan Konsep Syibhul Iddah Dalam KHI Dan Surat Edaran Dirjen Bimas Islam (Prespektif Maqāṣid Syarī'Ah)', *MAQASID: Jurnal Studi Hukum Islam*, 13 (2024), p. 1.

¹⁰ Revita Mala Siregar, Sampurna Siregar, and Putra Halomoan Hsb, 'Pernikahan Suami Dalam Masa Iddah Istri Perspektif Masalah Almursalah 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.

¹¹ Jayusman and others, 'Perspektif Masalah Mursalah Terhadap Pernikahan Suami Pada Masa Iddah Istri Pasca Surat Edaran Dirjen Bimas Islam Nomor'.

¹² Nurlulul 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.

¹³ Miftah Elfaruq, 'Ketentuan Pernikahan Suami Dalam Masa Idah Istri (Studi Analisis SE Duditjen 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/>.

¹⁴ 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/>.

¹⁵ Rizqi Ariana Zulma, 'Pandangan Penghulu Kua Dan Ulama Nu Kecamatan Wiradesa Tentang Konsep Syibhul Iddah' (unpublished Bachelor thesis, Universitas Islam Negeri K.H. Abdurrahman Wahid, 2024) <http://etheses.uingusdur.ac.id/id/eprint/8062>.

¹⁶ 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>.

¹⁷ S Sukiaty, 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), pp. 67–76, doi:10.30983/alhurriyah.v9i1.7771.

using various approaches, including Mubadala,¹⁸ gender,¹⁹ legal politics,²⁰ and multidisciplinary integration.²¹ The fourth group, led by Akhmad Miftakhurrozaq,²² Sunuwati,²³ and M. Miftahudin,²⁴ examines the circular letter of the Director General of Islamic Guidance from the perspective of family law reform, aiming to address gender inequality during the iddah period, which has so far primarily affected women.

Furthermore, this research shares similarities with the fourth group in its focus on reforming Islamic family law in Indonesia. However, it differs in that the focus of this research is on the regulation prohibiting a husband from marrying during his wife's iddah period, examining the state's authority in regulating marriage matters and how legal development is carried out. As is known, the regulation prohibiting a husband from marrying during his wife's iddah period reflects the state's intervention in the private sphere, based on the spirit of reforming Islamic family law in Indonesia. Thus, the state is seen as having the authority to regulate marriage matters to achieve justice and the common good, as well as to develop laws that are adaptive to social dynamics and gender equality values.

Method

This study is an empirical analysis of Islamic family law policies, specifically the prohibition of marriage during the wife's iddah period, as stipulated in the Circular Letter of the Director General of Islamic Guidance, Number: P-005/DJ.III/Hk.007/10/2021. The approach used is a normative-sociological approach, examining legal texts (circular letters, regulations, and fiqh literature) and relating them to the social context. The focus of the research is in Metro City, where five Heads of Religious Affairs Offices were interviewed regarding the prohibition of marriage

¹⁸ 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), pp. 39–52, doi:<https://journals.fasya.uinib.org/index.php/ijtihad/article/view/166>.

¹⁹ 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.uinsaiizu.ac.id/13346/>>.

²⁰ Abdul Azis, 'Iddah for Husbands: A Political Analysis of Islamic Family Law', *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan*, 10.1 (2023), pp. 34–49, doi:[10.32505/qadha.v10i1.5905](https://doi.org/10.32505/qadha.v10i1.5905).

²¹ Ahmad Nur Fauzi, 'Iddah Laki-Laki Dalam Prespektif Integratif Multidisipliner Twin Towers', *Ayy-Syari'ah: Jurnal Hukum Islam*, 10.1 (2024), doi:<https://doi.org/10.55210/assyariah.v10i1.1453ps>.

²² Akhmad Miftakhurrozaq, 'Syibhul 'Iddah Bagi Laki-Laki Dalam Pembaharuan Hukum Keluarga Islam Di Indonesia Perspektif Maqosid Syariah' (unpublished Bachelor thesis, Universitas Islam Negeri Walisongo, 2022) <<https://eprints.walisongo.ac.id/id/eprint/19333/>>.

²³ 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](https://doi.org/10.52783/rlj.v11i3.1504).

²⁴ 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, Traditon, and Modernity*, 3.2 (2023), doi:[10.24042/smart.v3i2.20509](https://doi.org/10.24042/smart.v3i2.20509).

during the wife's iddah period. Additionally, the research data refers to legal documents and relevant previous research findings. This study employs two primary theories: Khaled Abou El Fadl's theory of authority, which aims to understand the dynamics between religious texts, interpreters, and state policies, and Mochtar Kusumaatmadja's theory of development law, which examines how law serves as a means of social engineering in creating justice and order. The data analysis technique refers to Miles and Huberman's interactive model, namely: (1) data reduction, (2) data presentation, (3) data interpretation, and (4) conclusion drawing.

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

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 five provisions regulating marriage during the wife's iddah period. 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 Idah Period, which has been in effect for a long time.

A crucial point in this circular letter is the prevention of covert polygamy practices. Before the implementation of the ban on marriage 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,²⁵ and between 2017 and 2018, there were 22 cases.²⁶ 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.²⁷ In addition, in the city of Metro, where the research was conducted, four attempts at marriage during the wife's iddah period were found, but none of them took place.

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

²⁵ Ustuvia, 'Poligami Dalam Masa Iddah (Studi Kasus Di KUA Kecamatan Parakan Temanggung)'.

²⁶ Maghviroh, 'IMPLEMENTASI SE DIRJEN PEMBINAAN KELEMBAGAAN AGAMA ISLAM TENTANG POLIGAMI DALAM MASA IDDAH'.

²⁷ 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/>>.

women.²⁸ 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. 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.²⁹ 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."³⁰

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. 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.³¹

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.³² 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."³³

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

²⁸ Permata, 'WHEN STATE REGULATES HUSBAND'S IDAH'.

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

³⁰ Ahmad Subandi, Interview with the Head of East Metro Religious Affairs Office (KUA), Metro City, 6 January 2025.

³¹ Abdulmuid AYKUL, 'İSLÂM AİLE HUKUKUNDA ERKEĞİN İDDETİ: İddah of Man in İslāmic Family Law', *Miitefekir*, 9.18 (2022).

³² Nursalim, Interview with the Head of West Metro Religious Affairs Office (KUA), Metro City, 30 May 2025.

³³ Gunawan, Interview with the Head of the Central Metro Religious Affairs Office (KUA), Metro City, 28 May 2025.

equality.³⁴ 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.³⁵ 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,³⁶ children, and the extended family.³⁷

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. 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.³⁸ 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 iddah 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
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.³⁹ Compared to Ali's findings, which noted differences in the implementation of the Marriage Law in various regions due to multiple interpretations or weak

³⁴ Ziba Mir-Hosseini, 'Islamic Law and the Question of Gender Equality', in *Routledge Handbook of Islamic Law*, 1st edn (New York, NY: Routledge, 2019: Routledge, 2019), doi:10.4324/9781315753881.

³⁵ Faqihuddin Abdul Kodir, *Qiro'ah Mubadalah Tafsir Progresif Untuk Keadilan Gender Dalam Islam* (Yogyakarta: IRCiSoD, 2019).

³⁶ Subandi, 'Interview with the Head of East Metro Religious Affairs Office (KUA), Metro City'.

³⁷ Nanang Yusron, Interview with the Head of South Metro Religious Affairs Office (KUA), Metro City, 29 May 2025.

³⁸ Permata, 'Kesetaraan Perempuan Dalam Hukum Keluarga Islam: Dinamika Respon Penghulu Terhadap Kebijakan Pelarangan Pernikahan Suami Dalam Masa 'Iddah Istri'.

³⁹ Mark T. Imperial, 'Implementation Structures: The Use of Top-Down and Bottom-Up Approaches to Policy Implementation', in *Oxford Research Encyclopedia of Politics*, by Mark T. Imperial (Oxford University Press, 2021), doi:10.1093/acrefore/9780190228637.013.1750.

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.⁴⁰ 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.⁴¹

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 *maqāṣid al-syar'ah*, 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.⁴²

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

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 by Abou El Fadl, who argues that without authority in religion, religious life will be subjective, individualistic, and relative.⁴³ At least in the study of Islamic law, there are key issues that discuss the discourse of authoritative and authoritarian authority, namely:

⁴⁰ Z.Z. Ali, 'Marriage Administration Brokers: The Rational Action in the Practice of Delegating Marriage Administration in Central Lampung', *Al-Ahwal*, 17.1 (2024), pp. 1–20, doi:10.14421/ahwal.2024.17101.

⁴¹ Chesney Callens and Koen Verhoest, 'Interagency Collaboration', in *Elgar Encyclopedia of Public Management*, ed. by Kuno Schedler (Edward Elgar Publishing Limited, 2022), pp. 335–39, doi:10.4337/9781800375499.interagency.collaboration.

⁴² M. N. Ichwan, 'Official Ulama and the Politics of Re-Islamization: The Majelis Permusyawaratan Ulama, Sharilhringratization and Contested Authority in Post-New Order Aceh', *Journal of Islamic Studies*, 22.2 (2011), pp. 183–214, doi:10.1093/jis/etr026.

⁴³ Khaled Abou El-Fadl, *Speaking of God's Name: Islamic Law, Authority and Women* (London: Oneworld Publications, 2001).

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, while 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.⁴⁴ 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, 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.⁴⁵ However, today, iddah is viewed as applicable to men (husbands) as a waiting period following divorce.

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,

⁴⁴ 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), pp. 47–66, doi:10.24260/jil.v4i1.1071.

⁴⁵ Azzulfa and Cahya A., 'Masa Iddah Suami Istri Pasca Perceraian'.

according to Abou El Fadl, overly subjective interpretation will also fall into the trap of authoritarianism.⁴⁶ 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.⁴⁷ Therefore, the substance of the circular letter contains notifications regarding certain matters deemed essential and urgent,⁴⁸ issued by officials and addressed to their subordinates to carry out matters related to public service that regulate various technical issues. As Khaled argues, there are two types of authority: being in authority and being in a position of 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. Aboe El Fadl proposes five prerequisites for interpreting textual authority into policy.⁴⁹ 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.

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.

⁴⁶ El-Fadl, *Speaking of God's Name: Islamic Law, Authority and Women*.

⁴⁷ 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), pp. 89–103, doi:10.18196/mls.v4i2.3.

⁴⁸ Fitri Elfiani and Rizki Anla Pater, 'ANALISIS EKSISTENSI SURAT EDARAN TERHADAP PERATURAN PERUNDANG-UNDANGAN DALAM PENYELENGGARAAN PEMERINTAHAN', *Journal Of Juridische Analyse*, 2.01 (2023), pp. 19–37, doi:10.30606/joja.v2i01.1803.

⁴⁹ Imam Nurhakim, 'PERTAUTAN ANTARA READER, TEXT, DAN AUTHOR DALAM MEMAHAMI NASH', *MAGHZA: Jurnal Ilmu Al-Qur'an Dan Tafsir*, 2.2 (2017), pp. 1–14, doi:10.24090/maghza.v2i2.1565.

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 her iddah period.

Source: *Processed by the authors*

The Director General of Islamic Guidance in issuing 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. Third, protecting and ensuring equality for women.⁵⁰

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.⁵¹

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 letter⁵² and its status is one level above an appeal, not yet a binding regulation.⁵³ 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

⁵⁰ 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), pp. 50–72, doi:10.54437/urwatulwutsqo.v10i1.233.

⁵¹ Arifin, 'Interview with Head of North Metro Religious Affairs Office (KUA), Metro City'.

⁵² Nursalim, 'Interview with the Head of West Metro Religious Affairs Office (KUA), Metro City'.

⁵³ Gunawan, 'Interview with the Head of the Central Metro Religious Affairs Office (KUA), Metro City'.

always layered, hierarchical, and grouped.⁵⁴ These groups include: 1). *Staats fundamental norm* (fundamental state norm), 2). *Staats grundgezet*s (basic state rules), 3). *Formell GeseQ* (formal laws), and 4). *Verordnung* and *Autonome SaQung* (implementing rules and autonomous rules).⁵⁵ Thus, this circular letter falls under the implementation of policies and autonomous rules.⁵⁶

According to the explanation above, this is what is referred to as authority, which Khaled Abou El Fadl describes as coercive authority.⁵⁷ Coercive authority is a form of authority that relies on a 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.⁵⁸

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 by issues surrounding marriage that foster ongoing change and reform in the field of law. 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 various factors such as religion, politics, and culture.⁵⁹

The reform of Islamic family law in Indonesia tends to take the path of compromise between Sharia and secular law.⁶⁰ 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. As stated by the head of the Metro Timur Marriage Office explained that 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

⁵⁴ Sadhu Bagas Suratno, 'Pembentukan Peraturan Kebijakan Berdasarkan Asas-Asas Umum Pemerintahan Yang Baik', *E-Journal Lentera Hukum*, 4.3 (2017), p. 164, doi:10.19184/ejlh.v4i3.5499.

⁵⁵ Cholida Hanum, 'Analisis Yuridis Kedudukan Surat Edaran Dalam Sistem Hukum Indonesia', *Hukum Dan Masyarakat Madani*, 10.2 (2020), pp. 138–53, doi:10.26623/humani.v10i2.2401.

⁵⁶ Ridwan HR, *Hukum Administrasi Negara* (Yogyakarta: UII Press, 2002).

⁵⁷ El-Fadl, *Speaking of God's Name: Islamic Law, Authority and Women*.

⁵⁸ Edi Susanto, 'KRITIK NALAR HUKUM ISLAM MODEL KHALED M. ABOU EL-FADL', *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 1.2 (2019), pp. 123–32, doi:10.19105/al-lhkam.v1i2.2557.

⁵⁹ Azis, 'Iddah for Husbands'.

⁶⁰ Abdullah Saeed, *Pemikiran Islam: Sebuah Pengantar* (Yogyakarta: Baitul Hikmah, 2014).

if they remarry, while their former wives are still in the iddah period and may be pregnant.⁶¹ 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.⁶²

Thus, these efforts align with Mochtar Kusumaatmadja's theory of development law. Change is a characteristic of a developing society. The law functions as a means to assist the process of change and development in society.⁶³ Therefore, the changes and reforms implemented by the Director General of Islamic Community Guidance, through the issuance of Circular Letter No. 05/2021, prohibiting husbands from marrying during their wives' iddah period, demonstrate the objective of development in the field of Islamic family law, which was not previously regulated in classical fiqh literature.

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, Circular Letter No. 05/2021 represents a progressive renewal of Islamic family law, as it has taken extraordinary doctrinal steps by engaging in *ijtihad* regarding the text and emphasizing the social context to achieve public welfare, certainty, and justice. 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.⁶⁴

Thus, SE 05/2021 indicates the reality of Indonesian society undergoing a shift towards modern legal thinking.⁶⁵ Law is a reflection of government policy as embodied in regulations, which are also part of the development agenda.⁶⁶ The implementation of rules prohibiting 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

⁶¹ Subandi, 'Interview with the Head of East Metro Religious Affairs Office (KUA), Metro City'.

⁶² Yusron, 'Interview with the Head of South Metro Religious Affairs Office (KUA), Metro City'.

⁶³ Mochtar Kusumaatmadja, *Konsep-Konsep Hukum Dalam Pembangunan* (Bandung: Pusat studi Wawasan Nusantara, Penerbit Alumni, 2002).

⁶⁴ Gunawan, 'Interview with the Head of the Central Metro Religious Affairs Office (KUA), Metro City'.

⁶⁵ Mochtar Kusumaatmadja, *Hukum, Masyarakat Dan Pembangunan Nasional* (Bandung: Binacipta, 1995).

⁶⁶ Winda Wijayanti, 'Eksistensi Undang-Undang Sebagai Produk Hukum Dalam Pemenuhan Keadilan Bagi Rakyat (Analisis Putusan Mahkamah Konstitusi Nomor 50/PUU-X/2012)', *Jurnal Konstitusi*, 10.1 (2016), p. 179, doi:10.31078/jk1018.

period. Additionally, it prevents husbands from having negative motives to have more than one wife without court approval.⁶⁷

Furthermore, the presence of SE 5/2021 can also protect the rights of wives after divorce.⁶⁸ 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.⁶⁹

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.⁷⁰ 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.⁷¹

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. 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.⁷²

⁶⁷ 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), p. 417, doi:10.22373/sjhk.v2i2.4746.

⁶⁸ Lilik Andar Yuni and Akhmad Haries, 'Protection of Women's Rights After Divorce in Religious Courts: What Makes This Mission Difficult to Achieve?', *Mazabib Jurnal Pemikiran Hukum Islam*, 23.2 (2024), doi:https://doi.org/10.21093/mj.v23i2.7958.

⁶⁹ Kusumaatmaatmadja, *Konsep-Konsep Hukum Dalam Pembangunan*.

⁷⁰ Mochtar Kusumaatmadja, *Pembinaan Hukum Dalam Rangka Pembangunan Nasional* (Bandung: Bina Cipta, 1986).

⁷¹ Wardah Nuroniyah, 'Diskursus 'Iddah Berperspektif Gender: Membaca Ulang 'Iddah Dengan Metode Dalalah al-Nass', *Al-Manabih: Jurnal Kajian Hukum Islam*, 12.2 (2018), pp. 193–216, doi:10.24090/mnh.v12i2.1745.

⁷² Mochtar Kusumaatmadja, *Fungsi Dan Perkembangan Hukum Dalam Pembangunan Nasional* (Jawa Barat: Universitas Pedjajaran, 1970).

Conclusion

This study found that the prohibition on 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 is a form of reform of Islamic family law in Indonesia based on the principles of justice, gender equality, and legal welfare. This idea reflects the recognition of the need for a waiting period for men, not in the 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.

Additionally, this research shows that the policy is an expression of state authority in interpreting and translating normative Islamic values into contextual and adaptive social 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. From the perspective of development law theory, this policy reflects a shift in the function of law from a tool of control to an instrument for shaping a more just and equitable society.

The contribution of this research lies in its integrative approach between classical fiqh norms, state policy authority, and the principles of *maqāṣid al-syarī'ah* within the framework of contemporary Islamic family law. This research also enriches the discourse on gender justice in Islamic law. It offers a new paradigm in interpreting iddah as an instrument of protection not only for women but also for building the moral responsibility of men after divorce.

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Author Contribution

D.S contributed as the originator of the main research idea, conducted preliminary research and created the research framework, and wrote the article. Z.Z.A constructed the ideas and concepts that had been planned in an academic paper. S.W helped collect data and analyze field findings into an analysis that was added to the research article.

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Avoiding Covert Polygamy: A Study of Authority and Family Law Reform in Prohibiting Marriage During a Wife's Iddah Period

Abstract: The research focuses on the prohibition of marriage for husbands during their wives' iddah period by examining the state's authority in regulating marriage affairs and looking at how the law is developed. Women usually observe the iddah period, but in the development of contemporary Islamic family law, the idea has emerged that men should also have a waiting period in the form of a prohibition on marriage during their wives' iddah period. This research is an empirical study conducted in Metro City, Lampung, employing a normative-sociological approach to analyze the policy prohibiting marriage during the wife's iddah period. Data was collected through interviews with five Heads of the Religious Affairs Office (KUA) in Metro City and relevant literature. The data was analyzed using authority theory and legal development theory. This study found that the prohibition on husbands marrying during their wives' iddah period is a form of Islamic family law reform in Indonesia based on the principles of justice, gender equality, and legal welfare to prevent the phenomenon of polygamy. Second, there is an expression of state authority through policies in interpreting and translating normative Islamic values into contextual social regulations. This policy reflects a shift in the function of law from a tool of control to an instrument for shaping a more just and equitable society. The contribution of this research lies in its integrative approach between classical *fiqh* norms, state policy authority, and the principles of *maqāṣid al-ṣyari'ah* within the framework of contemporary Islamic family law.

Keywords: *Legal Reform; Covert Polygamy; Authority; Development Law*

Abstrak: Penelitian berfokus pada pelarangan perkawinan suami dalam masa iddah istri dengan mengkaji otoritas negara dalam mengatur urusan perkawinan dan melihat bagaimana pembangunan hukum yang dilakukan. Masa iddah lazimnya dilakukan perempuan, namun, pada perkembangan hukum keluarga Islam kontemporer ini, muncul gagasan laki-laki memiliki masa tunggu berupa pelarangan perkawinan suami dalam masa iddah istri. Penelitian ini merupakan penelitian empiris dilakukan di Kota Metro Lampung dengan pendekatan normatif-sosiologis, yang menganalisis kebijakan pelarangan pernikahan suami dalam masa iddah istri. Data diperoleh dari wawancara dengan lima Kepala KUA di Kota Metro dan literatur yang relevan. Data dianalisis dengan teori otoritas dan teori hukum Pembangunan. Penelitian ini menemukan bahwa, larangan bagi suami untuk menikah selama masa iddah istri merupakan bentuk pembaharuan hukum keluarga Islam di Indonesia yang dilandasi oleh semangat keadilan, kesetaraan gender, dan kemaslahatan hukum guna menghindari adanya fenomena poligami. Kedua, adanya ekspresi otoritas negara melalui kebijakan dalam menafsirkan dan menerjemahkan nilai-nilai normatif Islam ke dalam regulasi sosial-kemasyarakatan yang kontekstual. Kebijakan ini mencerminkan pergeseran fungsi hukum dari alat kontrol menjadi instrumen pembentukan masyarakat yang lebih berkeadilan dan setara. Kontribusi penelitian ini terletak pada upaya integratif antara norma fikih klasik, otoritas kebijakan negara, dan prinsip *maqāṣid al-ṣyari'ah* dalam kerangka hukum keluarga Islam kontemporer.

Keywords: Reformasi Hukum; Poligami Terselubung; Otoritas; Hukum Pembangunan

Commented [s1]: This title is editorially interesting because it highlights a direct contribution, namely avoiding covert polygamy. In addition, in terms of substance, the title raises the theme of family law reform through a policy from the Ministry of Religious Affairs that regulates the waiting period for husbands during their wives' iddah period. This is very interesting because normatively there are no such rules, even in Islam. The author also consistently avoids using familiar terms such as "husband's iddah." However, the title mentions the study of authority and legal reform, which are indeed variables that will be raised, but the narrative is still too ambiguous. Please revise it to better describe the content of the research.

Commented [s2]: The abstract is well presented in a structured manner, with the first sentence beginning with the objective, which confirms the purpose of the research, but the significance of the research in the next sentence still needs improvement. This is important to reinforce the importance of your research because there have been many studies discussing this theme. The sentence "This study is an empirical study conducted in Metro Lampung City" needs to directly explain the subject of the study, for example, the KUA (Office of Religious Affairs) in Metro Lampung City. The approach is also quite good, but a brief explanation of why this approach was used is needed. Furthermore, a detailed explanation of the research method is important for assessing your research procedures. The theory used is quite good, but the theory of authority used needs to be mentioned, because the way the theory works will differ between figure A and figure B even though they carry the same theory, as does the theory of development law. Then the research findings are quite good, still at the normative explanation stage and generally already known, it is necessary to present the original findings of your research. The findings related to authority are also still merely conceptual and do not match the context of the findings. Then, what about the findings related to development law? It seems that they have not yet emerged. In general, the abstract is good, but it would be better if it could be improved according to the notes so that the abstract is easy to read by other readers.

Introduction

Discussions regarding the waiting period (iddah) are typically focused on women. However, in the development of contemporary Islamic family law, the idea has emerged that men also have a waiting period. Nevertheless, this waiting period does not have the same meaning as the waiting period for a woman to become pregnant.¹ This idea has emerged as a response to social realities in which women are restricted in their social activities. At the same time, men (former husbands) can freely engage in activities and even remarry during their wife's waiting period.

The practice of husbands marrying during their wives' waiting period was observed in 5 cases by Ustuvia² and in 22 cases by Maghviroh.³ The prevalence of husbands marrying during their wives' waiting period can lead to other legal consequences, such as covert polygamy,⁴ where a husband marries during his wife's waiting period (*talāq rajʿī*) and then reconciles with the wife he had divorced. 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.⁵

The Ministry of Religious Affairs, as the authority and representative of the Indonesian government, issued Circular Letter Number P-005/DJ.III/Hk.00.7/10/2021 (SE 5/2021) regarding marriage During the Iddah Period of a Wife, which states that a husband may marry another woman once the iddah period of his former wife has ended.⁶ This is part of the government's efforts to update the law and maintain regulation of its citizens' lives.

This Circular Letter has two essential missions: to ensure that marriages are registered following the law and to prevent legal loopholes (covert polygamy), as well as to realize the wisdom of the iddah period concerning the opportunity for couples to return to marriage during the iddah

¹ Hasanuddin Hasanuddin, Muhammad Syukri Albani Nasution, and Imam Yazid, 'Analysis of Waiting Period for Men after Divorce Perspective of Jamaluddin Aṭṭīyah's Maqāṣid Shari'a Theory', *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan*, 8.2 (2024), p. 341, doi:10.29300/mzn.v8i2.2818; Fuady Abdullah, Nova Anggraini Putri, and Youssef Salhein, 'Revisiting 'Iddah: A Critical Analysis of Gender Equality in Indonesian Feminist Islamic Legal Discourse', *JURIS (Jurnal Ilmiah Syariah)*, 22.2 (2023), p. 275, doi:10.31958/juris.v22i2.10320.

² 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/>>.

³ 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', *Tafāqquh: Jurnal Penelitian Dan Kajian Keislaman*, 11.1 (2023), pp. 78–92, doi:10.52431/tafaqquh.v11i1.1340.

⁴ Cindera Permata, 'WHEN STATE REGULATES HUSBAND'S IDAH: Pros and Cons among Penghulu in Yogyakarta', *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 16.2 (2023), pp. 281–301, doi:10.14421/ahwal.2023.16205.

⁵ 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), pp. 297–323, doi:10.15642/alhukama.2023.13.2.297-323.

⁶ Fatihatul Anhar Azzulfa and Afnan Riani Cahya A., 'Masa Iddah Suami Istri Pasca Perceraian', *Al-Mizān*, 17.1 (2021), pp. 65–88, doi:10.30603/am.v17i1.1959.

period.⁷ The implementation of this Circular Letter has been carried out by the Religious Affairs Office, including the Religious Affairs Office (KUA) within the Metro City area. Although this Circular Letter does not have a strong legal standing, it is worth examining how the Religious Affairs Office responds to this regulation, the state's authority in regulating marriages, and the efforts made in legal development.

A literature search reveals that research on the same topic, specifically Circular Letter Number: P-005/DJ.III/Hk.00.7/10/2021 regarding the prohibition of husbands marrying during their wives' iddah period has been conducted by many researchers. There are at least four research groups. Deky Pramana,⁸ Revita Mala Siregar,⁹ Jayusman,¹⁰ Nurlulul Maknun,¹¹ and Miftah Elfaruq¹² conducted the first group. This group discusses the provisions regarding a husband's marriage during his wife's iddah period from the perspective of *maqāṣid syarī'ah* and *maṣlaḥah mursalah*. The second group examined various opinions on the circular letter prohibiting marriage during the wife's waiting period from different perspectives, including those of the KUA (Office of Religious Affairs) head,¹³ N.U. (Nahdlatul Ulama) scholars,¹⁴ Islamic family law activists,¹⁵ and Sharia Court judges.¹⁶ The third group examined the circular letter on the husband's waiting period

Commented [s3]: The introduction begins quite well, presenting the topic in a structured manner that is enjoyable for the reader. However, the structure of your introduction is still vague and unclear, and needs to be adjusted.

The narrative "Discussions related to the waiting period (iddah) are usually a topic of discussion for women" needs to be reinforced with existing literature. Furthermore, the narrative "the idea that men also have a waiting period" needs to be clarified. Who developed this narrative? This needs to be explained to strengthen the academic debate. For example, you could also explain the pros and cons. Furthermore, the explanation of the data on "the practice of husbands marrying during their wives' waiting period" also seems unclear in its correlation with the previous paragraph. Please improve the transitions between sentences to make them coherent.

The academic debate has not yet been seen globally. It would be better if the discussion in the early part was in a global context, for example, the purpose of the waiting period and the context for men.

The transition between KHI and the Ministry of Religious Affairs is still unclear. Please revise this. The Ministry of Religious Affairs is the authority, but what kind of authority? Who justifies this? This needs to be explained. Then, is the circular letter that was issued really a form of legal reform? Substantive or procedural? It is important to see whether this is a reform or just a regular policy. In addition, the selection of locations in the KUA (Office of Religious Affairs) in Metro City is still unclear. It is necessary to explain the significance of the location selection briefly and in detail in the research method.

⁷ Jayusman Jayusman and others, 'Perspektif Masalah Mursalah Terhadap Pernikahan Suami Pada Masa Iddah Istri Pasca Surat Edaran Dirjen 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), pp. 39–55, doi:10.24042/el-izdiwaj.v3i2.14525.

⁸ Deky Pramana, Abnan Pancasilawati, and Lilik Andar Yuni, 'Perbandingan Konsep Syibhul 'Iddah Dalam KHI Dan Surat Edaran Dirjen Bimas Islam (Prespektif Maqāṣid Syarī'ah)', *MAQASID: Jurnal Studi Hukum Islam*, 13 (2024), p. 1.

⁹ Revita Mala Siregar, Sampurna Siregar, and Putra Halomoan Hsb, 'Pernikahan Suami Dalam Masa Iddah Istri Perspektif Masalah Mursalah Dalam Surat Edaran Nomor: P-005/DJ.III/Hk.00.7/10/2021', *T.AZKIR: Jurnal Penelitian Ilmu-Ilmu Sosial Dan Keislaman*, 10.2 (2024), doi:https://doi.org/10.24952/tazkir.v10i2.12378.

¹⁰ Jayusman and others, 'Perspektif Masalah Mursalah Terhadap Pernikahan Suami Pada Masa Iddah Istri Pasca Surat Edaran Dirjen Bimas Islam Nomor'.

¹¹ Nurlulul 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'arif: Jurnal Hukum Keluarga Islam*, 1.1 (2023), doi:10.59579/ath.v1i1.5091.

¹² Miftah Elfaruq, 'Ketentuan Pernikahan Suami Dalam Masa Idah Istri (Studi Analisis SE Ditetapkan 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/>.

¹³ 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/>.

¹⁴ Rizqi Ariana Zulma, 'Pandangan Penghulu KUA Dan Ulama Nu Kecamatan Wiradesa Tentang Konsep Syibhul Iddah' (unpublished Bachelor thesis, Universitas Islam Negeri K.H. Abdurrahman Wahid, 2024) <http://etheses.uingusdur.ac.id/id/eprint/8062>.

¹⁵ 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>.

¹⁶ S Sukiaty, 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), pp. 67–76, doi:10.30983/alhurriyah.v9i1.7771.

using various approaches, including Mubadala,¹⁷ gender,¹⁸ legal politics,¹⁹ and multidisciplinary integration.²⁰ The fourth group, led by Akhmad Miftakhurrozaq,²¹ Sunuwati,²² and M. Miftahudin,²³ examines the circular letter of the Director General of Islamic Guidance from the perspective of family law reform, aiming to address gender inequality during the iddah period, which has so far primarily affected women.

Furthermore, this research shares similarities with the fourth group in its focus on reforming Islamic family law in Indonesia. However, it differs in that the focus of this research is on the regulation prohibiting a husband from marrying during his wife's iddah period, examining the state's authority in regulating marriage matters and how legal development is carried out. As is known, the regulation prohibiting a husband from marrying during his wife's iddah period reflects the state's intervention in the private sphere, based on the spirit of reforming Islamic family law in Indonesia. Thus, the state is seen as having the authority to regulate marriage matters to achieve justice and the common good, as well as to develop laws that are adaptive to social dynamics and gender equality values.

Method

This study is an empirical analysis of Islamic family law policies, specifically the prohibition of marriage during the wife's iddah period, as stipulated in the Circular Letter of the Director General of Islamic Guidance, Number: P-005/DJ.III/HK.007/10/2021. The approach used is a normative-sociological approach, examining legal texts (circular letters, regulations, and fiqh literature) and relating them to the social context. The focus of the research is in Metro City, where five Heads of Religious Affairs Offices were interviewed regarding the prohibition of marriage

Commented [s4]: After presenting the issues and data discussed, authors should critically review the latest and most influential literature to identify academic gaps that this study aims to fill. It is important to explain how this research contributes to, expands on, or challenges previous findings. A well-structured literature review not only demonstrates academic rigor but also reinforces the originality and significance of the article for the international academic community. The theoretical framework has not yet been applied in the introduction. The theoretical explanation needs to be adjusted to determine the positioning of the research.

¹⁷ 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), pp. 39–52, doi:<https://journals.fasya.uinib.org/index.php/ijtihad/article/view/166>.

¹⁸ Muhammad Ardli Mubarraq, 'Surat Edaran Dirjen Bimas Islam Nomor P-005/DJ.III/HK.007/10/2021 Tentang 'iddah Suami Dalam Perspektif Gender' (unpublished Bachelor thesis, Universitas Islam Negeri Prof. K.H. Saifuddin Zuhri, 2022) <<https://repository.uinsaiizu.ac.id/13346/>>.

¹⁹ Abdul Azis, 'Iddah for Husbands: A Political Analysis of Islamic Family Law', *Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan*, 10.1 (2023), pp. 34–49, doi:10.32505/qadha.v10i1.5905.

²⁰ Ahmad Nur Fauzi, 'Iddah Laki-Laki Dalam Prespektif Integratif Multidisipliner Twin Towers', *Ay-Syari'ah: Jurnal Hukum Islam*, 10.1 (2024), doi:<https://doi.org/10.55210/assyariah.v10i1.1453ps>.

²¹ Akhmad Miftakhurrozaq, 'Syibhul 'Iddah Bagi Laki-Laki Dalam Pembaharuan Hukum Keluarga Islam Di Indonesia Perspektif Maqosid Syariah' (unpublished Bachelor thesis, Universitas Islam Negeri Walisongo, 2022) <<https://eprints.walisongo.ac.id/id/eprint/19333/>>.

²² Sunuwati, Siti Irfham 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/rj.v11i3.1504.

²³ 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', *JMART: Journal of Sharia, Tradition, and Modernity*, 3.2 (2023), doi:10.24042/smart.v3i2.20509.

during the wife's iddah period. Additionally, the research data refers to legal documents and relevant previous research findings. This study employs two primary theories: Khaled Abou El Fadl's theory of authority, which aims to understand the dynamics between religious texts, interpreters, and state policies, and Mochtar Kusumaatmadja's theory of development law, which examines how law serves as a means of social engineering in creating justice and order. The data analysis technique refers to Miles and Huberman's interactive model, namely: (1) data reduction, (2) data presentation, (3) data interpretation, and (4) conclusion drawing.

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

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 five provisions regulating marriage during the wife's iddah period. 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.

A crucial point in this circular letter is the prevention of covert polygamy practices. Before the implementation of the ban on marriage 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,²⁴ and between 2017 and 2018, there were 22 cases.²⁵ 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.²⁶ In addition, in the city of Metro, where the research was conducted, four attempts at marriage during the wife's iddah period were found, but none of them took place.

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

Commented [s5]: The methods section describes the detailed framework of a study. In general, the research methods have been well presented but require some improvements to enhance academic accuracy and clarity. Although it is claimed to be empirical research, the design is not specific enough. The selection of research objects also raises concerns; it is necessary to clarify why the research was conducted in a metropolitan city and why the head of the KUA (Office of Religious Affairs) was chosen. In addition, the lack of contextual details about the participants' backgrounds limits the richness and transferability of the findings.

The data collection method is quite good, involving interviews, but it is also necessary to emphasize how the interviews were conducted. Furthermore, you have not explained how the data was processed so that you could present data graphs, etc. Although the theories of authority and development law are mentioned as the main analytical lenses, the explanation of how these theories were operationalized is insufficient, so a contextual explanation is needed. The data analysis section is also underdeveloped. It only mentions the stages without a clear description of those stages.

Commented [s6]: The Results and Discussion section is generally divided into three sub-discussions: first, data presentation; second, a review of authority theory; and third, development law. This is quite good because it makes it easier for readers to understand the flow and substance of the research.

It is important to note that, although academic references are often cited, they are not sufficiently integrated into the discussion to build a solid academic dialogue. Literature is often used only to support points that have already been made, rather than to challenge, refine, or deepen the analysis.

Commented [s7]: In the first part, the author attempts to present important findings regarding the response of the head of the KUA (Office of Religious Affairs) regarding the iddah period. Although this discussion is a useful starting point, this section has several critical weaknesses that limit its analytical sharpness and clarity of presentation. Although titles are provided, the content is not systematically organized, resulting in redundancy and loss of focus. Therefore, it is necessary to divide the context of the presentation and try to categorize the pros and cons of the regulation. If there are pros, explain why, and if there are cons, explain why. Then it is important to discuss at the outset whether the regulation prohibiting husbands from remarrying during their wives' iddah period is part of legal reform. Considering that this policy is only a circular letter, and was issued by a director general rather than a minister. Regarding the response to the norms in the circular letter, how did the KUA respond to it, and it is also important to look at the background of the head of the KUA so that he could respond to these norms.

The title mentions "avoiding covert polygamy," but this subsection does not discuss this. It is necessary to elaborate on this, especially the response from the head of the KUA. In general, this section is well presented, and the data display and analysis are also visible. The most important...

²⁴ Ustuvia, 'Poligami Dalam Masa Iddah (Studi Kasus Di KUA Kecamatan Parakan Temanggung)'.

²⁵ Maghviroh, 'IMPLEMENTASI SE DIRJEN PEMBINAAN KELEMBAGAAN AGAMA ISLAM TENTANG POLIGAMI DALAM MASA IDDAH'.

²⁶ 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/eprint/3080/>>.

women.²⁷ 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. 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.²⁸ 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."²⁹

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. 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.³⁰

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.³¹ 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."³²

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

²⁷ Permata, 'WHEN STATE REGULATES HUSBAND'S IDAH'.

²⁸ Mu'alim Arifin, Interview with Head of North Metro Religious Affairs Office (KUA), Metro City, 29 May 2025.

²⁹ Ahmad Subandi, Interview with the Head of East Metro Religious Affairs Office (KUA), Metro City, 6 January 2025.

³⁰ Abdulmuid AYKUL, 'İSLÂM AİLE HUKUKUNDA ERKEĞİN İDDETİ: İddah of Man in İslāmic Family Law', *Miitefekteir*, 9.18 (2022).

³¹ Nursalim, Interview with the Head of West Metro Religious Affairs Office (KUA), Metro City, 30 May 2025.

³² Gunawan, Interview with the Head of the Central Metro Religious Affairs Office (KUA), Metro City, 28 May 2025.

equality.³³ 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.³⁴ 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,³⁵ children, and the extended family.³⁶

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. 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.³⁷ 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 iddah 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
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.³⁸ Compared to Ali's findings, which noted differences in the implementation of the Marriage Law in various regions due to multiple interpretations or weak

³³ Ziba Mir-Hosseini, 'Islamic Law and the Question of Gender Equality', in *Routledge Handbook of Islamic Law*, 1st edn (New York, NY: Routledge, 2019; Routledge, 2019), doi:10.4324/9781315753881.

³⁴ Faqihuddin Abdul Kodir, *Qiro'at Mubadalah Tafsir Progresif Untuk Keadilan Gender Dalam Islam* (Yogyakarta: IRCiSoD, 2019).

³⁵ Subandi, 'Interview with the Head of East Metro Religious Affairs Office (KUA), Metro City'.

³⁶ Nanang Yusron, 'Interview with the Head of South Metro Religious Affairs Office (KUA), Metro City, 29 May 2025.

³⁷ Permata, 'Kesetaraan Perempuan Dalam Hukum Keluarga Islam: Dinamika Respon Penghulu Terhadap Kebijakan Pelarangan Pernikahan Suami Dalam Masa Iddah Istri'.

³⁸ Mark T. Imperial, 'Implementation Structures: The Use of Top-Down and Bottom-Up Approaches to Policy Implementation', in *Oxford Research Encyclopedia of Politics*, by Mark T. Imperial (Oxford University Press, 2021), doi:10.1093/acrefore/9780190228637.013.1750.

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.³⁹ 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.⁴⁰

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-dzarr'ab* (closing loopholes in the law) in *fiqh*, which aligns with the spirit of *maqāṣid al-syarī'ah*, 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.⁴¹

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

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 by Abou El Fadl, who argues that without authority in religion, religious life will be subjective, individualistic, and relative.⁴² At least in the study of Islamic law, there are key issues that discuss the discourse of authoritative and authoritarian authority, namely:

³⁹ Z.Z. Ali, 'Marriage Administration Brokers: The Rational Action in the Practice of Delegating Marriage Administration in Central Lampung', *Al-Ahwal*, 17.1 (2024), pp. 1–20, doi:10.14421/ahwal.2024.17101.

⁴⁰ Chesney Callens and Koen Verhoest, 'Interagency Collaboration', in *Elgar Encyclopedia of Public Management*, ed. by Kuno Schedler (Edward Elgar Publishing Limited, 2022), pp. 335–39, doi:10.4337/9781800375499.interagency.collaboration.

⁴¹ M. N. Ichwan, 'Official Ulema and the Politics of Re-Islamization: The Majelis Permusyawaratan Ulama, Sharilhringatzation and Contested Authority in Post-New Order Aceh', *Journal of Islamic Studies*, 22.2 (2011), pp. 183–214, doi:10.1093/jis/etr026.

⁴² Khaled Abou El-Fadl, *Speaking of God's Name: Islamic Law, Authority and Women* (London: Oneworld Publications, 2001).

Commented [s8]: Part two relates to the application of authority theory in this case. Authority in the context of the regulation of marriage law in the circular letter also needs to be clarified, whether it is part of the regulation or merely a guideline. This will have different legal consequences. It is necessary to explain how this theory, as mentioned, can guide the analysis. There is no clear explanation of how this theory guides the coding or interpretation of data, nor how it helps to reveal the data you have found. Instead, the narrative often deviates into normative statements rather than critical interpretations.

In addition, the authority used here is based on Abou El Fadl's framework. Why was this figure chosen? This needs to be explained. If a choice was made, it is necessary to explain the reasoning behind it. This is important before looking further into authority in the regulation of marriage law.

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, while 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.⁴³ 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, 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.⁴⁴ However, today, iddah is viewed as applicable to men (husbands) as a waiting period following divorce.

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,

⁴³ 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), pp. 47–66, doi:10.24260/jil.v4i1.1071.

⁴⁴ Azzulfa and Cahya A., 'Masa Iddah Suami Istri Pasca Perceraian'.

according to Abou El Fadl, overly subjective interpretation will also fall into the trap of authoritarianism.⁴⁵ 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.⁴⁶ Therefore, the substance of the circular letter contains notifications regarding certain matters deemed essential and urgent,⁴⁷ issued by officials and addressed to their subordinates to carry out matters related to public service that regulate various technical issues. As Khaled argues, there are two types of authority: being in authority and being in a position of 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.⁴⁸ 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.

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.

⁴⁵ El-Fadl, *Speaking of God's Name; Islamic Law, Authority and Women*.

⁴⁶ 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), pp. 89–103, doi:10.18196/mls.v4i2.3.

⁴⁷ Fitri Elfiani and Rizki Anla Pater, 'ANALISIS EKSISTENSI SURAT EDARAN TERHADAP PERATURAN PERUNDANG-UNDANGAN DALAM PENYELENGGARAAN PEMERINTAHAN', *Journal Of Juridische Analyse*, 2.01 (2023), pp. 19–37, doi:10.30606/joja.v2i01.1803.

⁴⁸ Imam Nurhakim, 'PERTAUTAN ANTARA READER, TEXT, DAN AUTHOR DALAM MEMAHAMI NASH', *MAGHZA: Jurnal Ilmu Al-Qur'an Dan Tafsir*, 2.2 (2017), pp. 1–14, doi:10.24090/maghza.v2i2.1565.

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 her iddah period.

Source: *Processed by the authors*

The Director General of Islamic Guidance in issuing 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. Third, protecting and ensuring equality for women.⁴⁹

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.⁵⁰

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 letter⁵¹ and its status is one level above an appeal, not yet a binding regulation.⁵² 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

⁴⁹ 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), pp. 50–72, doi:10.54437/urwatulwutsqo.v10i1.233.

⁵⁰ Arifin, 'Interview with Head of North Metro Religious Affairs Office (KUA), Metro City'.

⁵¹ Nursalim, 'Interview with the Head of West Metro Religious Affairs Office (KUA), Metro City'.

⁵² Gunawan, 'Interview with the Head of the Central Metro Religious Affairs Office (KUA), Metro City'.

always layered, hierarchical, and grouped.⁵³ These groups include: 1). *Staats fundamental norm* (fundamental state norm), 2). *Staats grundgezet*s (basic state rules), 3). *Formell GeseQ* (formal laws), and 4). *Verordnung* and *Autonome SaQung* (implementing rules and autonomous rules).⁵⁴ Thus, this circular letter falls under the implementation of policies and autonomous rules.⁵⁵

According to the explanation above, this is what is referred to as authority, which Khaled Abou El Fadl describes as coercive authority.⁵⁶ Coercive authority is a form of authority that relies on a 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.⁵⁷

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 by issues surrounding marriage that foster ongoing change and reform in the field of law. 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 various factors such as religion, politics, and culture.⁵⁸

The reform of Islamic family law in Indonesia tends to take the path of compromise between Sharia and secular law.⁵⁹ 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. As stated by the head of the Metro Timur Marriage Office explained that 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

Commented [s9]: This section is quite good because it seeks to examine how the development of family law continues to progress. It would be better to begin the discussion by examining the concept of legal development itself. There is ambiguity between development and reform, which needs to be clarified and explained. The narrative "The reform of Islamic family law in Indonesia tends to take the path of compromise between Sharia and secular law" needs to be theoretically reinforced in order to be convincing. In addition, the narrative "these efforts are in line with Mochtar Kusumaatmadja's theory of legal development" seems subjective. As researchers, we must be objective and not fixated on theory, but rather use theory as a tool for analysis. This is important so that writers can be more focused and critical of the substance without getting caught up in academic procedure. Since this section is about legal development, it would be better if the position of SE in this legal system is explained and whether it has contributed to legal development in Indonesia.

⁵³ Sadhu Bagas Suratno, 'Pembentukan Peraturan Kebijakan Berdasarkan Asas-Asas Umum Pemerintahan Yang Baik', *E-Journal Lentera Hukum*, 4.3 (2017), p. 164, doi:10.19184/ejlh.v4i3.5499.

⁵⁴ Cholida Hanum, 'Analisis Yuridis Kedudukan Surat Edaran Dalam Sistem Hukum Indonesia', *Hukum Dan Masyarakat Madani*, 10.2 (2020), pp. 138–53, doi:10.26623/humani.v10i2.2401.

⁵⁵ Ridwan HR, *Hukum Administrasi Negara* (Yogyakarta: UII Press, 2002).

⁵⁶ El-Fadl, *Speaking of God's Name: Islamic Law, Authority and Women*.

⁵⁷ Edi Susanto, 'KRITIK NALAR HUKUM ISLAM MODEL KHALED M. ABOU EL-FADL', *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 1.2 (2019), pp. 123–32, doi:10.19105/al-lhkam.v1i2.2557.

⁵⁸ Azis, 'Iddah for Husbands'.

⁵⁹ Abdullah Saeed, *Pemikiran Islam: Sebuah Pengantar* (Yogyakarta: Baitul Hikmah, 2014).

if they remarry, while their former wives are still in the iddah period and may be pregnant.⁶⁰ 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.⁶¹

Thus, these efforts align with Mochtar Kusumaatmadja's theory of development law. Change is a characteristic of a developing society. The law functions as a means to assist the process of change and development in society.⁶² Therefore, the changes and reforms implemented by the Director General of Islamic Community Guidance, through the issuance of Circular Letter No. 05/2021, prohibiting husbands from marrying during their wives' iddah period, demonstrate the objective of development in the field of Islamic family law, which was not previously regulated in classical fiqh literature.

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, Circular Letter No. 05/2021 represents a progressive renewal of Islamic family law, as it has taken extraordinary doctrinal steps by engaging in ijtihad regarding the text and emphasizing the social context to achieve public welfare, certainty, and justice. 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.⁶³

Thus, SE 05/2021 indicates the reality of Indonesian society undergoing a shift towards modern legal thinking.⁶⁴ Law is a reflection of government policy as embodied in regulations, which are also part of the development agenda.⁶⁵ The implementation of rules prohibiting 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

⁶⁰ Subandi, 'Interview with the Head of East Metro Religious Affairs Office (KUA), Metro City'.

⁶¹ Yusron, 'Interview with the Head of South Metro Religious Affairs Office (KUA), Metro City'.

⁶² Mochtar Kusumaatmadja, *Konsep-Konsep Hukum Dalam Pembangunan* (Bandung: Pusat studi Wawasan Nusantara, Penerbit Alumni, 2002).

⁶³ Gunawan, 'Interview with the Head of the Central Metro Religious Affairs Office (KUA), Metro City'.

⁶⁴ Mochtar Kusumaatmadja, *Hukum, Masyarakat Dan Pembangunan Nasional* (Bandung: Binacipta, 1995).

⁶⁵ Winda Wijayanti, 'Eksistensi Undang-Undang Sebagai Produk Hukum Dalam Pemenuhan Keadilan Bagi Rakyat (Analisis Putusan Mahkamah Konstitusi Nomor 50/PUU-X/2012)', *Jurnal Konstitusi*, 10.1 (2016), p. 179, doi:10.31078/jk1018.

period. Additionally, it prevents husbands from having negative motives to have more than one wife without court approval.⁶⁶

Furthermore, the presence of SE 5/2021 can also protect the rights of wives after divorce.⁶⁷ 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.⁶⁸

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.⁶⁹ 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.⁷⁰

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. 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.⁷¹

⁶⁶ 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), p. 417, doi:10.22373/sjhk.v2i2.4746.

⁶⁷ 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.

⁶⁸ Kusumaatmadja, *Konsep-Konsep Hukum Dalam Pembangunan*.

⁶⁹ Mochtar Kusumaatmadja, *Pembinaan Hukum Dalam Rangka Pembangunan Nasional* (Bandung: Bina Cipta, 1986).

⁷⁰ Wardah Nuroniyah, 'Diskursus 'Iddah Berperspektif Gender: Membaca Ulang 'Iddah Dengan Metode Dalalah al-Nass', *Al-Manahij: Jurnal Kajian Hukum Islam*, 12.2 (2018), pp. 193–216, doi:10.24090/mnh.v12i2.1745.

⁷¹ Mochtar Kusumaatmadja, *Fungsi Dan Perkembangan Hukukum Dalam Pembangunan Nasional* (Jawa Barat: Universitas Padjadjaran, 1970).

Conclusion

[This study found that the prohibition on 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 is a form of reform of Islamic family law in Indonesia based on the principles of justice, gender equality, and legal welfare. This idea reflects the recognition of the need for a waiting period for men, not in the 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.]

Additionally, this research shows that the policy is an expression of state authority in interpreting and translating normative Islamic values into contextual and adaptive social 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. From the perspective of development law theory, this policy reflects a shift in the function of law from a tool of control to an instrument for shaping a more just and equitable society.

The contribution of this research lies in its integrative approach between classical fiqh norms, state policy authority, and the principles of *maqāṣid al-ṣyārʿiyyah* within the framework of contemporary Islamic family law. This research also enriches the discourse on gender justice in Islamic law. It offers a new paradigm in interpreting iddah as an instrument of protection not only for women but also for building the moral responsibility of men after divorce.]

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Author Contribution

D.S contributed as the originator of the main research idea, conducted preliminary research and created the research framework, and wrote the article. Z.Z.A constructed the ideas and concepts that had been planned in an academic paper. S.W helped collect data and analyze field findings into an analysis that was added to the research article.

Commented [s10]: This conclusion attempts to summarize how this circular letter plays a role in preventing covert polygamy through the existence of circular letters. Although these narratives are relevant, this conclusion lacks structural clarity and analytical sharpness. This paragraph is too dense and combines too many ideas without clear transitions, making it difficult to follow the core argument. Instead of offering a coherent synthesis, this paragraph tends to repeat previous points without providing deeper reflection or critical insight. The final statement about the study's contributions and recommendations is vague and idealistic, failing to articulate clear academic or practical significance. To strengthen this conclusion, it needs to be reorganized into a more focused and flowing narrative that: (1) briefly summarizes the two key positions; (2) critically reflects on the tensions and potential for synthesis between them; and (3) clearly articulates how this study contributes to academic discourse, policy debate, religious understanding, and technology.

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Commented [s11]: Although this manuscript already refers to reputable journals, it would greatly benefit from adding more references from leading international journals. To meet high-quality scientific publication standards, authors are advised to conduct a more in-depth review of the latest works that have been peer-reviewed by recognized international journals. Strengthening the international scope of references will enhance both the credibility and visibility of the research.

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In the first part, the author attempts to present important findings regarding the response of the head of the KUA (Office of Religious Affairs) regarding the Iddah period. Although this discussion is a useful starting point, this section has several critical weaknesses that limit its analytical sharpness and clarity of presentation. Although titles are provided, the content is not systematically organized, resulting in redundancy and loss of focus.

Therefore, it is necessary to divide the context of the presentation and try to categorize the pros and cons of the regulation. If there are pros, explain why, and if there are cons, explain why. Then it is important to discuss at the outset whether the regulation prohibiting husbands from remarrying during their wives' iddah period is part of legal reform. Considering that this policy is only a circular letter, and was issued by a director general rather than a minister. Regarding the response to the norms in the circular letter, how did the KUA respond to it, and it is also important to look at the background of the head of the KUA so that he could respond to these norms.

The title mentions "avoiding covert polygamy," but this sub-section does not discuss this. It is necessary to elaborate on this, especially the response from the head of the KUA.

In general, this section is well presented, and the data display and analysis are also visible. The most important thing is to strengthen the analysis of each finding, not only presenting it but also showing what lies behind the findings.

Avoiding Covert Polygamy: A Study of Authority and Family Law Reform in Prohibiting Marriage During a Wife's Iddah Period

Abstract: The research focuses on the prohibition of marriage for husbands during their wives' iddah period by examining the state's authority in regulating marriage affairs and looking at how the law is developed. Women usually observe the iddah period, but in the development of contemporary Islamic family law, the idea has emerged that men should also have a waiting period in the form of a prohibition on marriage during their wives' iddah period. This research is an empirical study conducted in Metro City, Lampung, employing a normative-sociological approach to analyze the policy prohibiting marriage during the wife's iddah period. Data was collected through interviews with five Heads of the Religious Affairs Office (KUA) in Metro City and relevant literature. The data was analyzed using authority theory and legal development theory. This study found that the prohibition on husbands marrying during their wives' iddah period is a form of Islamic family law reform in Indonesia based on the principles of justice, gender equality, and legal welfare to prevent the phenomenon of polygamy. Second, there is an expression of state authority through policies in interpreting and translating normative Islamic values into contextual social regulations. This policy reflects a shift in the function of law from a tool of control to an instrument for shaping a more just and equitable society. The contribution of this research lies in its integrative approach between classical *fiqh* norms, state policy authority, and the principles of *maqāṣid al-ṣyārī'ah* within the framework of contemporary Islamic family law.

Keywords: *Legal Reform; Covert Polygamy; Authority; Development Law*

Abstrak: Penelitian berfokus pada pelarangan perkawinan suami dalam masa iddah istri dengan mengkaji otoritas negara dalam mengatur urusan perkawinan dan melihat bagaimana pembangunan hukum yang dilakukan. Masa iddah lazimnya dilakukan perempuan, namun, pada perkembangan hukum keluarga Islam kontemporer ini, muncul gagasan laki-laki memiliki masa tunggu berupa pelarangan perkawinan suami dalam masa iddah istri. Penelitian ini merupakan penelitian empiris dilakukan di Kota Metro Lampung dengan pendekatan normatif-sosiologis, yang menganalisis kebijakan pelarangan pernikahan suami dalam masa iddah istri. Data diperoleh dari wawancara dengan lima Kepala KUA di Kota Metro dan literatur yang relevan. Data dianalisis dengan teori otoritas dan teori hukum Pembangunan. Penelitian ini menemukan bahwa, larangan bagi suami untuk menikah selama masa iddah istri merupakan bentuk pembaharuan hukum keluarga Islam di Indonesia yang dilandasi oleh semangat keadilan, kesetaraan gender, dan kemaslahatan hukum guna menghindari adanya fenomena poligami. Kedua, adanya ekspresi otoritas negara melalui kebijakan dalam menafsirkan dan menerjemahkan nilai-nilai normatif Islam ke dalam regulasi sosial-kemasyarakatan yang kontekstual. Kebijakan ini mencerminkan pergeseran fungsi hukum dari alat kontrol menjadi instrumen pembentukan masyarakat yang lebih berkeadilan dan setara. Kontribusi penelitian ini terletak pada upaya integratif antara norma fikih klasik, otoritas kebijakan negara, dan prinsip *maqāṣid al-ṣyārī'ah* dalam kerangka hukum keluarga Islam kontemporer.

Keywords: Reformasi Hukum; Poligami Terselubung; Otoritas; Hukum Pembangunan

Commented [s1]: The title of this research is appealing because it raises the issue of family law reform through the Ministry of Religious Affairs' policy regulating the waiting period for husbands during their wives' iddah period. The idea is progressive and relevant to preventing covert polygamy, while offering a perspective of equality in marital relations. However, editorially, the relationship between the aspects of authority and legal reform is still not clearly illustrated. It is recommended that the title be refined to better reflect the focus and direction of the research analysis. In addition, the use of the term "husband's waiting period" needs to be explained in conceptual and juridical terms so that this innovation has strong academic legitimacy.

Commented [s2]: The significance of the research in the abstract still needs to be strengthened to highlight the distinguishing features and urgency of this study compared to previous studies. The methods section should be clarified. The findings section is still at a descriptive-normative level and does not yet reveal any new elements. Researchers need to highlight more specific findings related to aspects of authority and legal development so that the abstract has strong scientific value.

Introduction

Discussions regarding the waiting period (iddah) are typically focused on women. However, in the development of contemporary Islamic family law, the idea has emerged that men also have a waiting period. Nevertheless, this waiting period does not have the same meaning as the waiting period for a woman to become pregnant.¹ This idea has emerged as a response to social realities in which women are restricted in their social activities. At the same time, men (former husbands) can freely engage in activities and even remarry during their wife's waiting period.

The practice of husbands marrying during their wives' waiting period was observed in 5 cases by Ustuvia² and in 22 cases by Maghviroh.³ The prevalence of husbands marrying during their wives' waiting period can lead to other legal consequences, such as covert polygamy,⁴ where a husband marries during his wife's waiting period (*talāq rajʿī*) and then reconciles with the wife he had divorced. 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.⁵

The Ministry of Religious Affairs, as the authority and representative of the Indonesian government, issued Circular Letter Number P-005/DJ.III/Hk.00.7/10/2021 (SE 5/2021) regarding marriage During the Iddah Period of a Wife, which states that a husband may marry another woman once the iddah period of his former wife has ended.⁶ This is part of the government's efforts to update the law and maintain regulation of its citizens' lives.

This Circular Letter has two essential missions: to ensure that marriages are registered following the law and to prevent legal loopholes (covert polygamy), as well as to realize the wisdom of the iddah period concerning the opportunity for couples to return to marriage during the iddah

¹ Hasanuddin Hasanuddin, Muhammad Syukri Albani Nasution, and Imam Yazid, 'Analysis of Waiting Period for Men after Divorce Perspective of Jamaluddin Aṭṭīyah's Maqāṣid Shari'a Theory', *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan*, 8.2 (2024), p. 341, doi:10.29300/mzn.v8i2.2818; Fuady Abdullah, Nova Anggraini Putri, and Youssef Salhein, 'Revisiting 'Iddah: A Critical Analysis of Gender Equality in Indonesian Feminist Islamic Legal Discourse', *JURIS (Jurnal Ilmiah Syariah)*, 22.2 (2023), p. 275, doi:10.31958/juris.v22i2.10320.

² 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/>>.

³ 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', *Tafāqquh: Jurnal Penelitian Dan Kajian Keislaman*, 11.1 (2023), pp. 78–92, doi:10.52431/tafaqquh.v11i1.1340.

⁴ Cindera Permata, 'WHEN STATE REGULATES HUSBAND'S IDAH: Pros and Cons among Penghulu in Yogyakarta', *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 16.2 (2023), pp. 281–301, doi:10.14421/ahwal.2023.16205.

⁵ 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), pp. 297–323, doi:10.15642/alhukama.2023.13.2.297-323.

⁶ Fatihatul Anhar Azzulfa and Afnan Riani Cahya A., 'Masa Iddah Suami Istri Pasca Perceraian', *Al-Mizān*, 17.1 (2021), pp. 65–88, doi:10.30603/am.v17i1.1959.

period.⁷ The implementation of this Circular Letter has been carried out by the Religious Affairs Office, including the Religious Affairs Office (KUA) within the Metro City area. Although this Circular Letter does not have a strong legal standing, it is worth examining how the Religious Affairs Office responds to this regulation, the state's authority in regulating marriages, and the efforts made in legal development.

A literature search reveals that research on the same topic, specifically Circular Letter Number: P-005/DJ.III/Hk.00.7/10/2021 regarding the prohibition of husbands marrying during their wives' iddah period has been conducted by many researchers. There are at least four research groups. Deky Pramana,⁸ Revita Mala Siregar,⁹ Jayusman,¹⁰ Nurlulul Maknun,¹¹ and Miftah Elfaruq¹² conducted the first group. This group discusses the provisions regarding a husband's marriage during his wife's iddah period from the perspective of *maqāṣid syarī'ah* and *maṣlaḥah mursalah*. The second group examined various opinions on the circular letter prohibiting marriage during the wife's waiting period from different perspectives, including those of the KUA (Office of Religious Affairs) head,¹³ N.U. (Nahdlatul Ulama) scholars,¹⁴ Islamic family law activists,¹⁵ and Sharia Court judges.¹⁶ The third group examined the circular letter on the husband's waiting period

Commented [s3]: Overall, this introduction has strong potential to be a solid and interesting introduction. However, some parts need to be rearranged to make the narrative more systematic. The introduction begins with an interesting writing style and is able to bring readers into the context of the research. The introduction would be stronger if it showed the academic debate in a global context. A description of the purpose of the iddah period according to classical views and its relevance to the position of men, for example, could broaden the reader's perspective. The transition from global to local needs to be explained briefly in the introduction to show its relevance to the focus of the research.

The emergence of the idea that men also have a waiting period needs to be explained in terms of who first proposed the idea, the context in which it arose, and the pros and cons among academics and Islamic law practitioners.

⁷ Jayusman Jayusman and others, 'Perspektif Masalah Mursalah Terhadap Pernikahan Suami Pada Masa Iddah Istri Pasca Surat Edaran Dirjen 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), pp. 39–55, doi:10.24042/el-izdiwaj.v3i2.14525.

⁸ Deky Pramana, Abnan Pancasilawati, and Lilik Andar Yuni, 'Perbandingan Konsep Syibhul 'Iddah Dalam KHI Dan Surat Edaran Dirjen Bimas Islam (Prespektif Maqāṣid Syarī'ah)', *MAQASID: Jurnal Studi Hukum Islam*, 13 (2024), p. 1.

⁹ Revita Mala Siregar, Sampurna Siregar, and Putra Halomoan Hsb, 'Pernikahan Suami Dalam Masa Iddah Istri Perspektif Maslahah Almursalah Dalam Surat Edaran Nomor: P-005/DJ.III/Hk.00.7/10/2021', *T.AZKIR: Jurnal Penelitian Ilmu-Ilmu Sosial Dan Keislaman*, 10.2 (2024), doi:https://doi.org/10.24952/tazkir.v10i2.12378.

¹⁰ Jayusman and others, 'Perspektif Masalah Mursalah Terhadap Pernikahan Suami Pada Masa Iddah Istri Pasca Surat Edaran Dirjen Bimas Islam Nomor'.

¹¹ Nurlulul 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'arif: Jurnal Hukum Keluarga Islam*, 1.1 (2023), doi:10.59579/ath.v1i1.5091.

¹² Miftah Elfaruq, 'Ketentuan Pernikahan Suami Dalam Masa Idah Istri (Studi Analisis SE Ditetapkan 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/>.

¹³ 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/>.

¹⁴ Rizqi Ariana Zulma, 'Pandangan Penghulu KUA Dan Ulama NU Kecamatan Wiradesa Tentang Konsep Syibhul Iddah' (unpublished Bachelor thesis, Universitas Islam Negeri K.H. Abdurrahman Wahid, 2024) <http://etheses.uingusdur.ac.id/id/eprint/8062>.

¹⁵ 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>.

¹⁶ S Sukiat, 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), pp. 67–76, doi:10.30983/alhurriyah.v9i1.7771.

using various approaches, including Mubadala,¹⁷ gender,¹⁸ legal politics,¹⁹ and multidisciplinary integration.²⁰ The fourth group, led by Akhmad Miftakhurrozaq,²¹ Sunuwati,²² and M. Miftahudin,²³ examines the circular letter of the Director General of Islamic Guidance from the perspective of family law reform, aiming to address gender inequality during the iddah period, which has so far primarily affected women.

Furthermore, this research shares similarities with the fourth group in its focus on reforming Islamic family law in Indonesia. However, it differs in that the focus of this research is on the regulation prohibiting a husband from marrying during his wife's iddah period, examining the state's authority in regulating marriage matters and how legal development is carried out. As is known, the regulation prohibiting a husband from marrying during his wife's iddah period reflects the state's intervention in the private sphere, based on the spirit of reforming Islamic family law in Indonesia. Thus, the state is seen as having the authority to regulate marriage matters to achieve justice and the common good, as well as to develop laws that are adaptive to social dynamics and gender equality values.

Method

This study is an empirical analysis of Islamic family law policies, specifically the prohibition of marriage during the wife's iddah period, as stipulated in the Circular Letter of the Director General of Islamic Guidance, Number: P-005/DJ.III/HK.007/10/2021. The approach used is a normative-sociological approach, examining legal texts (circular letters, regulations, and fiqh literature) and relating them to the social context. The focus of the research is in Metro City, where five Heads of Religious Affairs Offices were interviewed regarding the prohibition of marriage

Commented [s4]: Authors need to demonstrate depth of analysis by reviewing the latest relevant and influential literature in the field. The introduction would be improved by presenting a clearer and more explicit overview of recent developments in the field of study. Although the topic is relevant, the current presentation lacks a clear position within the existing literature framework. After describing the social issues discussed, the authors should critically review the latest and most influential literature to identify the academic gaps that this study aims to fill. It is important to explain how this research contributes to, expands upon, or challenges previous findings. A well-structured literature review not only demonstrates academic rigor but also reinforces the originality and significance of the article for the international academic community.

¹⁷ 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), pp. 39–52, doi:<https://journals.fasya.uinib.org/index.php/ijtihad/article/view/166>.

¹⁸ Muhammad Ardli Mubarra, 'Surat Edaran Dirjen Bimas Islam Nomor P-005/DJ.III/HK.007/10/2021 Tentang 'iddah Suami Dalam Perspektif Gender' (unpublished Bachelor thesis, Universitas Islam Negeri Prof. K.H. Saifuddin Zuhri, 2022) <<https://repository.uinsaizu.ac.id/13346/>>.

¹⁹ Abdul Azis, 'Iddah for Husbands: A Political Analysis of Islamic Family Law', *Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan*, 10.1 (2023), pp. 34–49, doi:10.32505/qadha.v10i1.5905.

²⁰ Ahmad Nur Fauzi, 'Iddah Laki-Laki Dalam Prespektif Integratif Multidisipliner Twin Towers', *Ay-Syari'ah: Jurnal Hukum Islam*, 10.1 (2024), doi:<https://doi.org/10.55210/assyariah.v10i1.1453ps>.

²¹ Akhmad Miftakhurrozaq, 'Syibhul 'Iddah Bagi Laki-Laki Dalam Pembaharuan Hukum Keluarga Islam Di Indonesia Perspektif Maqosid Syariah' (unpublished Bachelor thesis, Universitas Islam Negeri Walisongo, 2022) <<https://eprints.walisongo.ac.id/eprint/19333/>>.

²² 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/rj.v11i3.1504.

²³ 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.

during the wife's iddah period. Additionally, the research data refers to legal documents and relevant previous research findings. This study employs two primary theories: Khaled Abou El Fadl's theory of authority, which aims to understand the dynamics between religious texts, interpreters, and state policies, and Mochtar Kusumaatmadja's theory of development law, which examines how law serves as a means of social engineering in creating justice and order. The data analysis technique refers to Miles and Huberman's interactive model, namely: (1) data reduction, (2) data presentation, (3) data interpretation, and (4) conclusion drawing.

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

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 five provisions regulating marriage during the wife's iddah period. 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 Idah Period, which has been in effect for a long time.

A crucial point in this circular letter is the prevention of covert polygamy practices. Before the implementation of the ban on marriage 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,²⁴ and between 2017 and 2018, there were 22 cases.²⁵ 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.²⁶ In addition, in the city of Metro, where the research was conducted, four attempts at marriage during the wife's iddah period were found, but none of them took place.

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

Commented [s5]: The author needs to explicitly explain the reasons for choosing Metro City as the location and the considerations for selecting the head of the KUA as the main subject. The stages of data processing and analysis also need to be described more systematically so that readers can assess the reliability of the research procedures. The application of theory in the research has not been explained. In general, the methods provide an overview of the research design, but they need to be strengthened to be more detailed and demonstrate a high level of academic rigor, as noted above.

²⁴ Ustuvia, 'Poligami Dalam Masa Iddah (Studi Kasus Di KUA Kecamatan Parakan Temanggung)'.

²⁵ Maghviroh, 'IMPLEMENTASI SE DIRJEN PEMBINAAN KELEMBAGAAN AGAMA ISLAM TENTANG POLIGAMI DALAM MASA IDDAH'.

²⁶ 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/>>.

women.²⁷ 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. 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.²⁸ 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."²⁹

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. 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.³⁰

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.³¹ 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."³²

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

²⁷ Permata, 'WHEN STATE REGULATES HUSBAND'S IDAH'.

²⁸ Mu'alim Arifin, Interview with Head of North Metro Religious Affairs Office (KUA), Metro City, 29 May 2025.

²⁹ Ahmad Subandi, Interview with the Head of East Metro Religious Affairs Office (KUA), Metro City, 6 January 2025.

³⁰ Abdulmuid AYKUL, 'İSLÂM AİLE HUKUKUNDA ERKEĞİN İDDETİ: İddah of Man in İslāmic Family Law', *Miitefekteir*, 9.18 (2022).

³¹ Nursalim, Interview with the Head of West Metro Religious Affairs Office (KUA), Metro City, 30 May 2025.

³² Gunawan, Interview with the Head of the Central Metro Religious Affairs Office (KUA), Metro City, 28 May 2025.

equality.³³ 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.³⁴ 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,³⁵ children, and the extended family.³⁶

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. 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.³⁷ 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 iddah 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
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.³⁸ Compared to Ali's findings, which noted differences in the implementation of the Marriage Law in various regions due to multiple interpretations or weak

³³ Ziba Mir-Hosseini, 'Islamic Law and the Question of Gender Equality', in *Routledge Handbook of Islamic Law*, 1st edn (New York, NY: Routledge, 2019; Routledge, 2019), doi:10.4324/9781315753881.

³⁴ Faqihuddin Abdul Kodir, *Qiro'at Mubadalah Tafsir Progresif Untuk Keadilan Gender Dalam Islam* (Yogyakarta: IRCiSoD, 2019).

³⁵ Subandi, 'Interview with the Head of East Metro Religious Affairs Office (KUA), Metro City'.

³⁶ Nanang Yusron, 'Interview with the Head of South Metro Religious Affairs Office (KUA), Metro City, 29 May 2025.

³⁷ Permata, 'Kesetaraan Perempuan Dalam Hukum Keluarga Islam: Dinamika Respon Penghulu Terhadap Kebijakan Pelarangan Pernikahan Suami Dalam Masa Iddah Istri'.

³⁸ Mark T. Imperial, 'Implementation Structures: The Use of Top-Down and Bottom-Up Approaches to Policy Implementation', in *Oxford Research Encyclopedia of Politics*, by Mark T. Imperial (Oxford University Press, 2021), doi:10.1093/acrefore/9780190228637.013.1750.

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.³⁹ 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.⁴⁰

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-dzarr'ab* (closing loopholes in the law) in *fiqh*, which aligns with the spirit of *maqasid al-syari'ah*, 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.⁴¹

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

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 by Abou El Fadl, who argues that without authority in religion, religious life will be subjective, individualistic, and relative.⁴² At least in the study of Islamic law, there are key issues that discuss the discourse of authoritative and authoritarian authority, namely:

Commented [s6]: In this section, it is necessary to reorganize the narrative so that it is not repetitive and each argument has a clear line of analysis. The presentation of the results of interviews with the heads of the KUA does provide an informative initial overview of their views on the policy of the husband's iddah period. However, the presentation is still descriptive and not fully organized. In addition, the discussion needs to begin with a reflective question: can the policy prohibiting husbands from remarrying during their wives' iddah period be considered a form of legal reform? This is important considering that the circular letter was only issued by the Director General, not the Minister of Religious Affairs, so its legitimacy and normative degree need to be critically examined.

³⁹ Z.Z. Ali, 'Marriage Administration Brokers: The Rational Action in the Practice of Delegating Marriage Administration in Central Lampung', *Al-Ahwal*, 17.1 (2024), pp. 1–20, doi:10.14421/ahwal.2024.17101.

⁴⁰ Chesney Callens and Koen Verhoest, 'Interagency Collaboration', in *Elgar Encyclopedia of Public Management*, ed. by Kuno Schedler (Edward Elgar Publishing Limited, 2022), pp. 335–39, doi:10.4337/9781800375499.interagency.collaboration.

⁴¹ M. N. Ichwan, 'Official Ulema and the Politics of Re-Islamization: The Majelis Permusyawaratan Ulama, Sharilhringatzation and Contested Authority in Post-New Order Aceh', *Journal of Islamic Studies*, 22.2 (2011), pp. 183–214, doi:10.1093/jis/etr026.

⁴² Khaled Abou El-Fadl, *Speaking of God's Name: Islamic Law, Authority and Women* (London: Oneworld Publications, 2001).

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, while 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.⁴³ 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, 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.⁴⁴ However, today, iddah is viewed as applicable to men (husbands) as a waiting period following divorce.

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,

⁴³ 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), pp. 47–66, doi:10.24260/jil.v4i1.1071.

⁴⁴ Azzulfa and Cahya A., 'Masa Iddah Suami Istri Pasca Perceraian'.

according to Abou El Fadl, overly subjective interpretation will also fall into the trap of authoritarianism.⁴⁵ 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.⁴⁶ Therefore, the substance of the circular letter contains notifications regarding certain matters deemed essential and urgent,⁴⁷ issued by officials and addressed to their subordinates to carry out matters related to public service that regulate various technical issues. As Khaled argues, there are two types of authority: being in authority and being in a position of 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. Aboe El Fadl proposes five prerequisites for interpreting textual authority into policy.⁴⁸ 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.

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.

⁴⁵ El-Fadl, *Speaking of God's Name; Islamic Law, Authority and Women*.

⁴⁶ 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), pp. 89–103, doi:10.18196/mls.v4i2.3.

⁴⁷ Fitri Elfiani and Rizki Anla Pater, 'ANALISIS EKSISTENSI SURAT EDARAN TERHADAP PERATURAN PERUNDANG-UNDANGAN DALAM PENYELENGGARAAN PEMERINTAHAN', *Journal Of Juridische Analyse*, 2.01 (2023), pp. 19–37, doi:10.30606/voja.v2i01.1803.

⁴⁸ Imam Nurhakim, 'PERTAUTAN ANTARA READER, TEXT, DAN AUTHOR DALAM MEMAHAMI NASH', *MAGHZA: Jurnal Ilmu Al-Qur'an Dan Tafsir*, 2.2 (2017), pp. 1–14, doi:10.24090/maghza.v2i2.1565.

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 her iddah period.

Source: *Processed by the authors*

The Director General of Islamic Guidance in issuing 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. Third, protecting and ensuring equality for women.⁴⁹

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.⁵⁰

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 letter⁵¹ and its status is one level above an appeal, not yet a binding regulation.⁵² 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

⁴⁹ 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), pp. 50–72, doi:10.54437/urwatulwutsqo.v10i1.233.

⁵⁰ Arifin, 'Interview with Head of North Metro Religious Affairs Office (KUA), Metro City'.

⁵¹ Nursalim, 'Interview with the Head of West Metro Religious Affairs Office (KUA), Metro City'.

⁵² Gunawan, 'Interview with the Head of the Central Metro Religious Affairs Office (KUA), Metro City'.

always layered, hierarchical, and grouped.⁵³ These groups include: 1). *Staats fundamental norm* (fundamental state norm), 2). *Staats grundgezet*s (basic state rules), 3). *Formell GeseQ* (formal laws), and 4). *Verordnung* and *Autonome SaQung* (implementing rules and autonomous rules).⁵⁴ Thus, this circular letter falls under the implementation of policies and autonomous rules.⁵⁵

According to the explanation above, this is what is referred to as authority, which Khaled Abou El Fadl describes as coercive authority.⁵⁶ Coercive authority is a form of authority that relies on a 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.⁵⁷

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 by issues surrounding marriage that foster ongoing change and reform in the field of law. 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 various factors such as religion, politics, and culture.⁵⁸

The reform of Islamic family law in Indonesia tends to take the path of compromise between Sharia and secular law.⁵⁹ 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. As stated by the head of the Metro Timur Marriage Office explained that 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

Commented [s7]: In the context of the authority to regulate marriage through circular letters, the author needs to first clarify their legal position: whether the circular letter has the force of a normative regulation, or is merely an internal administrative instrument. This clarification is important because it will determine the legal consequences and the legitimacy of the Ministry of Religious Affairs' authority in regulating marriage practices. The author needs to explicitly show how the theory of authority used actually serves as a guide in interpreting the data. The choice of Khaled Abou El Fadl's concept of authority also needs to be explained more fundamentally. Why was this figure chosen over other thinkers such as Weber or Foucault, for example? What is the relevance of Abou El Fadl's thinking to the context of marriage law regulation in Indonesia?

⁵³ Sadhu Bagas Suratno, 'Pembentukan Peraturan Kebijakan Berdasarkan Asas-Asas Umum Pemerintahan Yang Baik', *E-Journal Lentera Hukum*, 4.3 (2017), p. 164, doi:10.19184/ejlh.v4i3.5499.

⁵⁴ Cholida Hanum, 'Analisis Yuridis Kedudukan Surat Edaran Dalam Sistem Hukum Indonesia', *Hukum Dan Masyarakat Madani*, 10.2 (2020), pp. 138–53, doi:10.26623/humani.v10i2.2401.

⁵⁵ Ridwan HR, *Hukum Administrasi Negara* (Yogyakarta: UII Press, 2002).

⁵⁶ El-Fadl, *Speaking of God's Name: Islamic Law, Authority and Women*.

⁵⁷ Edi Susanto, 'KRITIK NALAR HUKUM ISLAM MODEL KHALED M. ABOU EL-FADL', *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 1.2 (2019), pp. 123–32, doi:10.19105/al-lhkam.v1i2.2557.

⁵⁸ Azis, 'Iddah for Husbands'.

⁵⁹ Abdullah Saeed, *Pemikiran Islam: Sebuah Pengantar* (Yogyakarta: Baitul Hikmah, 2014).

if they remarry, while their former wives are still in the iddah period and may be pregnant.⁶⁰ 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.⁶¹

Thus, these efforts align with Mochtar Kusumaatmadja's theory of development law. Change is a characteristic of a developing society. The law functions as a means to assist the process of change and development in society.⁶² Therefore, the changes and reforms implemented by the Director General of Islamic Community Guidance, through the issuance of Circular Letter No. 05/2021, prohibiting husbands from marrying during their wives' iddah period, demonstrate the objective of development in the field of Islamic family law, which was not previously regulated in classical fiqh literature.

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, Circular Letter No. 05/2021 represents a progressive renewal of Islamic family law, as it has taken extraordinary doctrinal steps by engaging in ijtihad regarding the text and emphasizing the social context to achieve public welfare, certainty, and justice. 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.⁶³

Thus, SE 05/2021 indicates the reality of Indonesian society undergoing a shift towards modern legal thinking.⁶⁴ Law is a reflection of government policy as embodied in regulations, which are also part of the development agenda.⁶⁵ The implementation of rules prohibiting 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

⁶⁰ Subandi, 'Interview with the Head of East Metro Religious Affairs Office (KUA), Metro City'.

⁶¹ Yusron, 'Interview with the Head of South Metro Religious Affairs Office (KUA), Metro City'.

⁶² Mochtar Kusumaatmadja, *Konsep-Konsep Hukum Dalam Pembangunan* (Bandung: Pusat studi Wawasan Nusantara, Penerbit Alumni, 2002).

⁶³ Gunawan, 'Interview with the Head of the Central Metro Religious Affairs Office (KUA), Metro City'.

⁶⁴ Mochtar Kusumaatmadja, *Hukum, Masyarakat Dan Pembangunan Nasional* (Bandung: Binacipta, 1995).

⁶⁵ Winda Wijayanti, 'Eksistensi Undang-Undang Sebagai Produk Hukum Dalam Pemenuhan Keadilan Bagi Rakyat (Analisis Putusan Mahkamah Konstitusi Nomor 50/PUU-X/2012)', *Jurnal Konstitusi*, 10.1 (2016), p. 179, doi:10.31078/jk1018.

period. Additionally, it prevents husbands from having negative motives to have more than one wife without court approval.⁶⁶

Furthermore, the presence of SE 5/2021 can also protect the rights of wives after divorce.⁶⁷ 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.⁶⁸

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.⁶⁹ 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.⁷⁰

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. 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.⁷¹

Commented [s8]: This discussion will be more compelling if it begins with a conceptual explanation of what is meant by legal development, including its differences from legal reform. The author needs to show how data and theory are aligned through data and critical analysis, rather than simply agreeing with theory or being fixated and confined to theory. Theory should be used as a tool for analysis, not as justification, so that the argument remains objective and based on findings.

⁶⁶ 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), p. 417, doi:10.22373/sjhk.v2i2.4746.

⁶⁷ 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.

⁶⁸ Kusumaatmadja, *Konsep-Konsep Hukum Dalam Pembangunan*.

⁶⁹ Mochtar Kusumaatmadja, *Pembinaan Hukum Dalam Rangka Pembangunan Nasional* (Bandung: Bina Cipta, 1986).

⁷⁰ Wardah Nuroniyah, 'Diskursus 'Iddah Berperspektif Gender: Membaca Ulang 'Iddah Dengan Metode Dalalah al-Nass', *Al-Manahij: Jurnal Kajian Hukum Islam*, 12.2 (2018), pp. 193–216, doi:10.24090/mnh.v12i2.1745.

⁷¹ Mochtar Kusumaatmadja, *Fungsi Dan Perkembangan Hukukum Dalam Pembangunan Nasional* (Jawa Barat: Universitas Padjadjaran, 1970).

Conclusion

[This study found that the prohibition on 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 is a form of reform of Islamic family law in Indonesia based on the principles of justice, gender equality, and legal welfare. This idea reflects the recognition of the need for a waiting period for men, not in the 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.]

Additionally, this research shows that the policy is an expression of state authority in interpreting and translating normative Islamic values into contextual and adaptive social 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. From the perspective of development law theory, this policy reflects a shift in the function of law from a tool of control to an instrument for shaping a more just and equitable society.

The contribution of this research lies in its integrative approach between classical fiqh norms, state policy authority, and the principles of *maqāṣid al-ṣyārʿiyyah* within the framework of contemporary Islamic family law. This research also enriches the discourse on gender justice in Islamic law. It offers a new paradigm in interpreting iddah as an instrument of protection not only for women but also for building the moral responsibility of men after divorce.]

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Author Contribution

D.S contributed as the originator of the main research idea, conducted preliminary research and created the research framework, and wrote the article. Z.Z.A constructed the ideas and concepts that had been planned in an academic paper. S.W helped collect data and analyze field findings into an analysis that was added to the research article.

Commented [s9]: The conclusion describes the answers to the research questions/problems and/or research objectives or findings obtained. The conclusion does not contain a repetition of the results and discussion, but rather a summary of the findings as expected in the objectives or hypotheses. Recommendations present things that need to be done in relation to further ideas from the research. The conclusion section should reflect how this research contributes to the broader academic discourse and what new conceptual insights it offers to the discipline.

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Commented [s10]: It is recommended to include references from reputable international journals from research results from the last five or ten years in order to strengthen the scope and increase both the credibility and visibility of the research. Reference management can be done using a reference manager application.

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

Dri Santoso^{*1}, Zezen Zainul Ali², Siti Wahyuni³

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 form of expression of the coercive authority of the state, 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 between classical *fiqh* norms and 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 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 struktural dalam mengatur dan mengarahkan hukum perkawinan, termasuk dalam menafsirkan dan menerjemahkan nilai-nilai normatif Islam ke dalam regulasi. Adapun kebijakan ini merupakan bentuk pembangunan hukum sebagai alat control dalam melindungi masyarakat yang berkeadilan. Kontribusi penelitian ini

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terletak pada upaya integratif antara norma fikih klasik dan kajian otoritas kebijakan negara dalam reformasi hukum keluarga Islam kontemporer.

Keywords: 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.² 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.³ Nevertheless, this waiting period does not have the same meaning as the *'iddah* period for women after divorce.⁴ This idea emerged as a response to social realities, where women are restricted in their social activities, while men are free to engage in activities and can even remarry during their wives' *'iddah* period.

Literature indicates that many marriages are conducted by husbands during their wives' waiting period. Ustuvia found five cases,⁵ and Maghviroh found 22 cases.⁶ The large number of marriages in these circumstances can give rise to other legal consequences, such as covert polygamy.⁷ Muhajir noted that covert polygamy is carried out under the pretext of obtaining marriage validation through *isbat nikah* (marriage validation), and that polygamy can still be practised on the grounds of protecting the interests of the children.⁸ 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.⁹

² 'Alā' al-Dīn Al-Kāsānī, *Bada'i' al-Ṣanā'i' Fi Tartīb al-Sharā'i'* (Dār al-Kutub al-Ilmiyyah, n.d.); Ibn Rushd, *Abū Al-Walīd. Bidāyat al-Mujtahid Wa Nihāyat al-Muqtaṣid* (Dār al-Ma'rifah, n.d.); Imām al-Shāfi'ī, *Al-Umm* (Dār al-Ma'rifah, n.d.); Ibn Qudāmah, *Muwaffaq Al-Dīn. Al-Mughni* (Maktabah al-Qāhirah, n.d.).

³ Wahbah az Zuhaili, *Al-Fiqh al-Islam Wa Adillatuhu* (Dar al Fikr, 1989); Yūsuf Qaraḍāwī, *Fiqh Al-Ushr al-Muslimah Fi al-Diyār al-Hijrah* (Dār al-Shurūq, 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), pp. 422–48, 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/rj.v11i3.1504.

⁴ Hasanuddin Hasanuddin, Muhammad Syukri Albani Nasution, and Imam Yazid, 'Analysis of Waiting Period for Men after Divorce Perspective of Jamaluddin Aṭīyah's Maqaṣid Sharia Theory', *Jurnal Ilmiah Mīzani: Wacana Hukum, Ekonomi Dan Keagamaan*, 8.2 (2024), p. 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), p. 275, doi:10.31958/juris.v22i2.10320.

⁵ 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/>>.

⁶ 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', *Tafaqquh: Jurnal Penelitian Dan Kajian Keislaman*, 11.1 (2023), pp. 78–92, doi:10.52431/tafaqquh.v11i1.1340.

⁷ Cindera Permata, 'WHEN STATE REGULATES HUSBAND'S IDAH: Pros and Cons among Penghulu in Yogyakarta', *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 16.2 (2023), pp. 281–301, doi:10.14421/ahwal.2023.16205.

⁸ 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', *Ay-Syir'ab: Jurnal Ilmu Syari'ah Dan Hukum*, 55.2 (2021), p. 263, doi:10.14421/ajish.v55i2.1002.

⁹ 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), pp. 246–68, Scopus, doi:10.1080/07329113.2021.1912579; Sam'un and Mukhammad Nur Hadi, 'Husband's 'Iddah in Indonesian Islamic

In response to this phenomenon, the Ministry of Religious Affairs acts as the state authority and representative in regulating citizens' religious lives, including marriage.¹⁰ In 2021, through the Directorate General of Islamic Community Guidance, Circular Letter Number: P-005/DJ. III/Hk.00.7/10/2021 (SE 5/2021) regarding Marriage During the Wife's 'Iddah Period, which states that a husband may marry another woman once his former wife's 'iddah period has ended.¹¹ This is part of the government's efforts to update the law and maintain regulation of its citizens' lives.

This Circular Letter has two essential missions: to ensure that marriages are registered following the law and to prevent legal loopholes (covert polygamy), as well as to realize the wisdom of the 'iddah period concerning the opportunity for couples to return to marriage during the 'iddah period.¹² 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 shows that there are pros and cons regarding the implementation of this circular. These pros and cons stem from the strong influence of classical *fiqh*, which remains a normative reference and supports state policies.¹³ Although this circular letter does not have a 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.¹⁴

A literature search shows that there have been quite a number of studies examining circular letters on the prohibition of husbands marrying during their wives' 'iddah period, with at least four

Law Context: Insights from the Fatwa Approach of the Indonesian Women's Ulema Congress', *AL-HUKAMA*, 13.2 (2023), pp. 297–323, doi:10.15642/alhukama.2023.13.2.297-323.

¹⁰ Eva F. Nisa, 'THE BUREAUCRATIZATION OF MUSLIM MARRIAGE IN INDONESIA', *Journal of Law and Religion*, 33.2 (2018), pp. 291–309, doi:10.1017/jlr.2018.28; Stijn Cornelis van Huis and Theresia 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>.

¹¹ Fatihatul Anhar Azzulfa and Afnan Riani Cahya A., 'Masa Iddah Suami Istri Pasca Perceraian', *Al-Mizān*, 17.1 (2021), pp. 65–88, doi:10.30603/am.v17i1.1959.

¹² Jayusman Jayusman and others, 'Perspektif Masalah Mursalah Terhadap Pernikahan Suami Pada Masa Iddah Istri Pasca Surat Edaran Dirjen 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), pp. 39–55, doi:10.24042/el-izdiwaj.v3i2.14525.

¹³ 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), p. 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), pp. 393–413, doi:10.33650/at-turas.v12i3.12592.

¹⁴ 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), pp. 1–26, doi:10.33367/legitima.v7i2.7101.

research trends emerging. First, Deky Pramana,¹⁵ Revita Mala Siregar,¹⁶ Jayusman,¹⁷ Nurluluil Maknun,¹⁸ and Miftah Elfaruq¹⁹ discusses the provisions of marriage during the wife's *'iddah* period from the perspective of Islamic law (*maqāṣid syari'ah* and *maṣlaḥah mursalah*.) Second, they discuss responses to the circular letter from different perspectives, such as those of the head of the KUA (Office of Religious Affairs),²⁰ scholars,²¹ Islamic family law activists,²² and Sharia Court judges.²³ Third, they discuss the circular letter using various approaches, including *mubādalah*,²⁴ gender,²⁵ legal politics,²⁶ and multidisciplinary integration.²⁷ Fourth, Akhmad Miftakhurrozaq,²⁸ Sunuwati,²⁹ and M. Miftahudin,³⁰ discuss the circular letter from the perspective of family law reform aimed at

¹⁵ Deky Pramana, Abnan Pancasilawati, and Lilik Andar Yuni, 'Perbandingan Konsep Syibhul 'Iddah Dalam KHI Dan Surat Edaran Dirjen Bimas Islam (Prespektif Maqāṣid Syari'Ah)', *MAQASID: Jurnal Studi Hukum Islam*, 13 (2024), p. 1.

¹⁶ Revita Mala Siregar, Sampurna Siregar, and Putra Halomoan Hsb, 'Pernikahan Suami Dalam Masa Iddah Istri Perspektif Masalah Almursalah 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>.

¹⁷ Jayusman and others, 'Perspektif Masalah Mursalah Terhadap Pernikahan Suami Pada Masa Iddah Istri Pasca Surat Edaran Dirjen Bimas Islam Nomor'.

¹⁸ 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.

¹⁹ Miftah Elfaruq, 'Ketentuan Pernikahan Suami Dalam Masa Idah Istri (Studi Analisis SE Diding 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/>>.

²⁰ 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/>>.

²¹ Rizqi Ariana Zulma, 'Pandangan Penghulu Kua Dan Ulama Nu Kecamatan Wiradesa Tentang Konsep Syibhul Iddah' (unpublished Bachelor thesis, Universitas Islam Negeri K.H. Abdurrahman Wahid, 2024) <<http://etheses.uingusdur.ac.id/id/eprint/8062>>.

²² 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>>.

²³ S Sukiaty, 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), pp. 67–76, doi:10.30983/alhurriyah.v9i1.7771.

²⁴ 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), pp. 39–52, doi:<https://journals.fasya.uinib.org/index.php/ijtihad/article/view/166>.

²⁵ Muhammad Ardli Mubarra, '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/>>.s

²⁶ Abdul Azis, 'Iddah for Husbands: A Political Analysis of Islamic Family Law', *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan*, 10.1 (2023), pp. 34–49, doi:10.32505/qadha.v10i1.5905.

²⁷ Ahmad Nur Fauzi, 'Iddah Laki-Laki Dalam Prespektif Integratif Multidisipliner Twin Towers', *Assyari'ab: Jurnal Hukum Islam*, 10.1 (2024), doi:<https://doi.org/10.55210/assyariah.v10i1.1453ps>.

²⁸ Akhmad Miftakhurrozaq, 'Syibhul 'Iddah Bagi Laki-Laki Dalam Pembaharuan Hukum Keluarga Islam Di Indonesia Perspektif Maqosid Syariah' (unpublished Bachelor thesis, Universitas Islam Negeri Walisongo, 2022) <<https://eprints.walisongo.ac.id/id/eprint/19333/>>.

²⁹ Sunuwati, Siti Irfham Yunus, Rahmawati, 'GENDER EQUALITY IN ISLAMIC FAMILY LAW'.

³⁰ 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, Traditon, and Modernity*, 3.2 (2023), doi:10.24042/smart.v3i2.20509.

overcoming gender inequality in the provisions of the *'iddah* period, which has so far been imposed on women.

Although this study shares similarities with recent trends, it focuses on discussing regulations through circular letters prohibiting marriage during the wife's *'iddah* period by 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. Thus, through the theoretical framework of authority and development law, this study examines the state's authority to interpret religious law and regulate marriage matters for the sake of order and protection. In addition, development law is used to determine the extent to which the state can intervene and adapt to social dynamics and values of gender equality and the renewal of Islamic marriage law.

Method

This research is empirical research that analyses Islamic family law regulations related to the prohibition of marriage during a wife's *'iddah* period as stated in the Circular Letter of the Director General of Islamic Guidance Number: P-005/DJ.III/Hk.007/10/2021. The approach used is socio-legal, where legal refers to the examination of legal texts in the form of circular letters issued by state institutions that have strong authority in regulating the institutions under them, and socio refers to the social context of the community in implementing legal texts in the form of knowledge, understanding and actions.

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, as described above. 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 functions as state officials in charge of marriage matters. In addition, data were obtained from documents such as laws and regulations and relevant research results.

Furthermore, this study uses two main theories as an analytical framework for interpreting the data as social reality. Khaled Abou El Fadl's theory of authority is used to examine state authority in understanding and interpreting religious texts as reflected in regulations. Meanwhile, Mochtar Kusumaatmadja's development law theoretical framework is used to examine the state's efforts through policies issued to shape social engineering in creating justice and order, particularly in the marriage law. Data analysis techniques were performed with reference to Miles and

Huberman's interactive model. First, the data were reduced to select according to the context of the research to be conducted. Second, the data are presented using several methods such as 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 can also be in the form of policy circulars.³¹ Although circulars 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.³² In the Indonesian legal system, circular letters are classified as soft law, which serves to provide guidance in performing legal actions.³³

Thus, 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 five provisions regulating marriage during the wife's *'iddah* period.³⁴ 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 Idah Period, which has been in effect for a long time.³⁵

A crucial point in this circular letter is the prevention of covert polygamy practices. Concealed polygamy is a situation where a man marries another wife simultaneously without permission from the court and without the knowledge of his legal wife, family members, and the general public.³⁶ Before the implementation of the ban on marriage during the wife's *'iddah* period,

³¹ 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>.

³² Philipus M. Hadjon, *Pengantar Hukum Administrasi Indonesia: Introduction to the Indonesian Administrative Law* (UGM Press, 1993).

³³ 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>.

³⁴ 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), pp. 189–210, doi:10.23971/el-mashlahah.v14i1.7917.

³⁵ 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), pp. 211–28, doi:10.19109/nurani.v23i2.20152.

³⁶ Gilbert Nyakundi Okebiro, 'Hidden Polygamy Among Dignitaries in African States', *SSRN Electronic Journal*, published online 2015, doi:10.2139/ssrn.2827004.

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,³⁷ and between 2017 and 2018, there were 22 cases.³⁸ 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.³⁹ In addition, in Metro City, where the research was conducted, four attempts at marriage during the wife's waiting period were found, but 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.⁴⁰ 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 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.⁴¹ 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 is in line with institutional theory, which states that decisions to do something in an organisation/institution are influenced by coercive institutional pressure.⁴²

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

³⁷ Ustuvia, 'Poligami Dalam Masa Iddah (Studi Kasus Di KUA Kecamatan Parakan Temanggung)'.

³⁸ Maghviroh, 'IMPLEMENTASI SE DIRJEN PEMBINAAN KELEMBAGAAN AGAMA ISLAM TENTANG POLIGAMI DALAM MASA IDDAH'.

³⁹ 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/>>.

⁴⁰ Viktoriia Kobko-Odarri 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>.

⁴¹ Syaumi and Mahfudhi, 'From Fatwa to Bureaucracy'.

⁴² 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), p. 43, doi:10.2307/3069284.

the wife's *'iddah* period is complete.⁴³ 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."⁴⁴

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.⁴⁵ 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.⁴⁶

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.⁴⁷ 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."⁴⁸

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.⁴⁹ 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

⁴³ Mu'alim Arifin, 'Interview with Head of North Metro Religious Affairs Office (KUA), Metro City', 29 May 2025.

⁴⁴ Ahmad Subandi, 'Interview with the Head of East Metro Religious Affairs Office (KUA), Metro City', 6 January 2025.

⁴⁵ Abd Rahman Dahlan and others, 'Women's Post-Divorce Rights in Malaysian and Indonesian's Court Decisions', *AHKAM : Jurnal Ilmu Syariah*, 23.1 (2023), doi:10.15408/ajis.v23i1.27967.

⁴⁶ Abdulmuid AYKUL, 'İSLÂM AİLE HUKUKUNDA ERKEĞİN İDDETİ: *'iddah* of Man in İslâmîc Family Law', *Miitefekkeir*, 9.18 (2022).

⁴⁷ Nursalim, 'Interview with the Head of West Metro Religious Affairs Office (KUA), Metro City', 30 May 2025.

⁴⁸ Gunawan, 'Interview with the Head of the Central Metro Religious Affairs Office (KUA), Metro City', 28 May 2025.

⁴⁹ 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.

be a minimum waiting period to approach and marry another woman as a form of respect.⁵⁰ 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,⁵¹ children, and the extended family.⁵²

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.⁵³ 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.⁵⁴ 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
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.⁵⁵ Compared to Ali's findings, which noted differences in the implementation of the Marriage Law in various regions due to multiple interpretations or weak

⁵⁰ Faqihuddin Abdul Kodir, *Qiro'ah Mubadalah Tafsir Progresif Untuk Keadilan Gender Dalam Islam* (IRCiSoD, 2019).

⁵¹ Ahmad Subandi, 'Interview with the Head of East Metro Religious Affairs Office (KUA), Metro City', 6 January 2025.

⁵² Nanang Yusron, 'Interview with the Head of South Metro Religious Affairs Office (KUA), Metro City', 29 May 2025.

⁵³ 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>>.

⁵⁴ 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.

⁵⁵ 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.

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.⁵⁶ 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.⁵⁷

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 *maqāṣid al-syar'ah*, 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.⁵⁸

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 implementation of Islamic law that can provide certainty, justice, and public interest.⁵⁹

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.⁶⁰ However, in religious studies, authority can be viewed through Abou El Fadl's framework of authority analysis. According to

⁵⁶ Z.Z. Ali, 'Marriage Administration Brokers: The Rational Action in the Practice of Delegating Marriage Administration in Central Lampung', *Al-Ahwal*, 17.1 (2024), pp. 1–20, Scopus, doi:10.14421/ahwal.2024.17101.

⁵⁷ Chesney Callens and Koen Verhoest, 'Interagency Collaboration', in *Elgar Encyclopedia of Public Management*, ed. by Kuno Schedler (Edward Elgar Publishing Limited, 2022), pp. 335–39, doi:10.4337/9781800375499.interagency.collaboration.

⁵⁸ M. N. Ichwan, 'Official Ulema 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), pp. 183–214, doi:10.1093/jis/etr026.

⁵⁹ Ahmad Rajafi and others, 'Exploring The Model of Implementation of Islamic Law in Indonesia', *AL-ADALAH*, 17.1 (2020), pp. 31–50, doi:10.24042/adalah.v17i1.4577.

⁶⁰ Marx Weber, *The Theory of Social and Economic Organization* (The Falcon's Wings Press, 1947).

him, without authority in religion, religious life becomes subjective, individual, and relative.⁶¹ 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, while 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.⁶² 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, 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.⁶³ However, today, *'iddah* is viewed as applicable to men (husbands) as a waiting period following divorce.⁶⁴

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

⁶¹ Khaled Abou El-Fadl, *Speaking of God's Name: Islamic Law, Authority and Women* (Oneworld Publications, 2001).

⁶² 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), pp. 47–66, doi:10.24260/jil.v4i1.1071.

⁶³ Azzulfa and Cahya A., 'Masa Iddah Suami Istri Pasca Perceraian'.

⁶⁴ 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), pp. 286–300, doi:10.18860/j-fsh.v15i2.21065.

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 also fall into the trap of authoritarianism.⁶⁵ 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.⁶⁶ Therefore, the substance of the circular letter contains notifications regarding certain matters deemed essential and urgent,⁶⁷ issued by officials and addressed to their subordinates to carry out matters related to public service that regulate various technical issues. As Khaled argues, there are two types of authority: being in authority and being in a position of 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.⁶⁸ 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.

⁶⁵ El-Fadl, *Speaking of God's Name: Islamic Law, Authority and Women*.

⁶⁶ 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), pp. 89–103, doi:10.18196/mls.v4i2.3.

⁶⁷ Fitri Elfiani and Rizki Anla Pater, 'ANALISIS EKSISTENSI SURAT EDARAN TERHADAP PERATURAN PERUNDANG-UNDANGAN DALAM PENYELENGGARAAN PEMERINTAHAN', *Journal Of Juridische Analyse*, 2.01 (2023), pp. 19–37, doi:10.30606/joja.v2i01.1803.

⁶⁸ Imam Nurhakim, 'PERTAUTAN ANTARA READER, TEXT, DAN AUTHOR DALAM MEMAHAMI NASH', *MAGHZA: Jurnal Ilmu Al-Qur'an Dan Tafsir*, 2.2 (2017), pp. 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 <i>'iddah</i> 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 <i>'iddah</i> 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 <i>'iddah</i> 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 her <i>'iddah</i> period.

Source: *Processed by the authors*

The Director General of Islamic Guidance in issuing 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. Third, protecting and ensuring equality for women.⁶⁹

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.⁷⁰

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

⁶⁹ 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), pp. 50–72, doi:10.54437/urwatulwutsqo.v10i1.233.

⁷⁰ Mu'alim Arifin, 'Interview with Head of North Metro Religious Affairs Office (KUA), Metro City', 29 May 2025.

Islamic values in family law matters, they still view SE 05/2021 as merely a circular letter⁷¹ and its status is one level above an appeal, not yet a binding regulation.⁷² 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.⁷³ 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).⁷⁴ Thus, this circular letter falls under the implementation of policies and autonomous rules.⁷⁵

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, religious authority 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.⁷⁶ 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.⁷⁷ 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.⁷⁸ 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.⁷⁹ This shows that there is a structural-institutional relationship between the heads of the KUA, who are subordinate to the Director General of Islamic Community Guidance, so that there is a tendency to implement these regulations, even though in other aspects they conflict with their background knowledge. In institutional theory, the institutional environment often has a greater

⁷¹ Nursalim, 'Interview with the Head of West Metro Religious Affairs Office (KUA), Metro City', 30 May 2025.

⁷² Gunawan, 'Interview with the Head of the Central Metro Religious Affairs Office (KUA), Metro City', 28 May 2025.

⁷³ Sadhu Bagas Suratno, 'Pembentukan Peraturan Kebijakan Berdasarkan Asas-Asas Umum Pemerintahan Yang Baik', *E-Journal Lentera Hukum*, 4.3 (2017), p. 164, doi:10.19184/ejlh.v4i3.5499.

⁷⁴ Cholida Hanum, 'Analisis Yuridis Kedudukan Surat Edaran Dalam Sistem Hukum Indonesia', *Hukum Dan Masyarakat Madani*, 10.2 (2020), pp. 138–53, doi:10.26623/humani.v10i2.2401.

⁷⁵ Ridwan HR, *Hukum Administrasi Negara* (UII Press, 2002).

⁷⁶ Ismail Fajrie Alatas, *What Is Religious Authority: Cultivating Islamic Communities in Indonesia* (Princeton University Press, 2021).

⁷⁷ El-Fadl, *Speaking of God's Name: Islamic Law, Authority and Women*.

⁷⁸ Edi Susanto, 'KRITIK NALAR HUKUM ISLAM MODEL KHALED M. ABOU EL-FADL', *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 1.2 (2019), pp. 123–32, doi:10.19105/al-lhkam.v1i2.2557.

⁷⁹ Susanto, 'KRITIK NALAR HUKUM ISLAM MODEL KHALED M. ABOU EL-FADL'.

impact on policies or actions taken, even tending to be stronger than the rationality of the knowledge possessed by the actor.⁸⁰

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 by issues surrounding marriage that foster ongoing change and reform in the field of law. 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 various factors such as religion, politics, and culture.⁸¹

The reform of Islamic family law in Indonesia tends to take the path of compromise between Sharia and secular law.⁸² 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.⁸³ As stated by the head of the Metro Timur Marriage Office explained that 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.⁸⁴ 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.⁸⁵

Thus, these efforts are part of building 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 the goal of development in the field of Islamic family law, which was not previously regulated in classical *fiqh*

⁸⁰ Maria Roszkowska-Menkes, 'Institutional Theory', in *Encyclopedia of Sustainable Management*, ed. by Samuel O. Idowu and others (Springer International Publishing, 2023), pp. 1983–90, doi:10.1007/978-3-031-25984-5_389.

⁸¹ Azis, 'Iddah for Husbands'.

⁸² Abdullah Saeed, *Pemikiran Islam: Sebuah Pengantar* (Baitul Hikmah, 2014).

⁸³ Isqi Dzurriyyatus Sa'adah and Mohamad Sar'an, 'IMPLEMENTASI PRAKTIK POLIGAMI DALAM HUKUM KELUARGA ISLAM ANALISIS TERHADAP TAFSIR AN-NISĀ AYAT 3', *Al-Mawarid Jurnal Syariah Dan Hukum (JSYH)*, 6.1 (n.d.), p. 2024, doi:https://doi.org/10.20885/mawarid.vol.6.iss1.art5.

⁸⁴ Ahmad Subandi, 'Interview with the Head of East Metro Religious Affairs Office (KUA), Metro City', 6 January 2025.

⁸⁵ Nanang Yusron, 'Interview with the Head of South Metro Religious Affairs Office (KUA), Metro City', 29 May 2025.

literature.⁸⁶ 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.⁸⁷

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, which plays a role in providing guidance in performing legal actions.⁸⁸ 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.⁸⁹ 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.⁹⁰

Thus, SE 05/2021 indicates the reality of Indonesian society undergoing a shift towards modern legal thinking.⁹¹ Law is a reflection of government policy as embodied in regulations, which are also part of the development agenda.⁹² The implementation of rules prohibiting 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.⁹³

⁸⁶ Muhammad Nurohim, Yusuf 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), pp. 208–18, doi:10.30631/alrisalah.v21i2.778.

⁸⁷ Mochtar Kusumaatmadja, *Konsep-Konsep Hukum Dalam Pembangunan* (Pusat studi Wawasan Nusantara, Penerbit Alumni, 2002).

⁸⁸ Angelika Nußberger, *Hard Law or Soft Law—Does It Matter?* (Oxford University Press, 2018), 1, doi:10.1093/oso/9780198830009.003.0003.

⁸⁹ Mustamam and others, 'Reinterpreting *Hiż al-Nasl* in Contemporary Marriage Contracts: Navigating Islamic Normativity and State Law', *MILRev: Metro Islamic Law Review*, 4.2 (2025), pp. 1258–80, doi:10.32332/milrev.v4i2.11158.

⁹⁰ Gunawan, 'Interview with the Head of the Central Metro Religious Affairs Office (KUA), Metro City', 28 May 2025.

⁹¹ Mochtar Kusumaatmadja, *Hukum, Masyarakat Dan Pembangunan Nasional* (Binacipta, 1995).

⁹² Winda Wijayanti, 'Eksistensi Undang-Undang Sebagai Produk Hukum Dalam Pemenuhan Keadilan Bagi Rakyat (Analisis Putusan Mahkamah Konstitusi Nomor 50/PUU-X/2012)', *Jurnal Konstitusi*, 10.1 (2016), p. 179, doi:10.31078/jk1018.

⁹³ 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), p. 417, doi:10.22373/sjhk.v2i2.4746.

Furthermore, the presence of SE 5/2021 can also protect the rights of wives after divorce.⁹⁴ 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.⁹⁵

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.⁹⁶ 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.⁹⁷

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.⁹⁸ 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.⁹⁹

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, is a form of reform of Islamic family law in Indonesia based on the principles of justice, gender equality, and legal benefit. This idea

⁹⁴ 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>.

⁹⁵ Kusumaatmaatmadja, *Konsep-Konsep Hukum Dalam Pembangunan*.

⁹⁶ Mochtar Kusumaatmadja, *Pembinaan Hukum Dalam Rangka Pembangunan Nasional* (Bina Cipta, 1986).

⁹⁷ Wardah Nuronyah, 'Diskursus 'Iddah Berperspektif Gender: Membaca Ulang 'Iddah Dengan Metode Dalalah al-Nass', *Al-Manahij: Jurnal Kajian Hukum Islam*, 12.2 (2018), pp. 193–216, doi:10.24090/mnh.v12i2.1745.

⁹⁸ Rosdalina Bukido and others, 'Divorce Among Female Muslim Civil Servants: Legal Perspectives in Indonesia', *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 25.1 (2025), pp. 85–116, doi:10.18326/ijtihad.v25i1.85-116.

⁹⁹ Mochtar Kusumaatmadja, *Fungsi Dan Perkembangan Hukum Dalam Pembangunan Nasional* (Universitas Padjadjaran, 1970).

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 shows that the policy is an expression of the coercive authority of the state, relying on its structural position to regulate and direct marriage law through its power to interpret and translate Islamic normative values into contextual and adaptive socio-community regulations. This policy is also a form of state intervention in the private sphere to maintain order, legal certainty, and social justice, as well as to prevent 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 things that are necessary for legal development and reform.

This research contributes to the integrative approach between 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 and 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.

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Author Contribution

D.S contributed as the originator of the main research idea, conducted preliminary research and created the research framework, and wrote the article. Z.Z.A constructed the ideas and concepts that had been planned in an academic paper. S.W helped collect data and analyze field findings into an analysis that was added to the research article.

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