



Analysis of the Circular Letter from the Ditjen Bimas Islam on the Iddah of Wives from the Perspective of Maqāṣid Syarī'ah

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Abstract

There has been controversy among the community, headmen, and heads of KUA regarding the Circular Letter of the Directorate General of Islamic Guidance Number: P-005/DJ.III/HK.007/10/2021 concerning marriage during the Wife's *iddah* Period, which among its provisions, prohibits the husband's marriage within the *iddah* period of his wife. The controversy was triggered by the question of whether or not there was *iddah* for men. This study aims to find out the *maqāṣid syarī'ah* perspective of Imām al-Syāṭibī on the Circular Letter on Marriage during the wife's *iddah*. This normative research uses conceptual and historical approaches. The legal analysis uses the concept of *maqāṣid syarī'ah* Imām al-Syāṭibī both *maqāṣid kulliyah* and *juz'iyah* theories. Results of this Research show that the substance of the Circular Letter is relevant to Imām al-Syāṭibī's *maqāṣid syarī'ah* principles in that each of its provisions can protect religion, soul, lineage, mind, and property, including the provision prohibiting the husband's marriage during the wife's *iddah* period. The prohibition is specific to divorce with the status of divorce *raj'ī* because the *maqāṣid* is that the existence of *iddah* in divorce *raj'ī* serves as a period for both parties (husband and wife) to think clearly about their marriage relationship. Therefore, the Ministry of Religious Affairs, as the formulator of the regulation, needs to disseminate this Circular Letter and especially provide counseling to all KUA so as not to cause different perspectives on this Circular Letter.

Keywords: Circular Letter; Marriage; *Iddah*; *Maqāṣid Syarī'ah*

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Introduction

Since ancient times, people's understanding of *iddah* only applies to wives. There is no *iddah* for husbands, but on October 29, 2021, the Ministry of Religion, through the Directorate General of Islamic Community Guidance, issued a Circular Letter of the Directorate General of Islamic Community Guidance Number: P-005/DJ.III/ HK.007/10/2021 concerning Marriage during the Wife's *iddah* period, which has the following five provisions: (1) "The registration of marriage for men and women who are widowed/divorced can only be done if they have officially divorced, proven by a divorce certificate from the religious court that has been declared final and binding." (2) "The provision of the waiting period (*iddah*) for the wife due to divorce is an opportunity for both the husband and wife to reconsider rebuilding the separated marital relationship caused by divorce." (3) "A former husband can enter into a marriage with another woman once the waiting period (*iddah*) of his former wife has ended." (4) "If a former husband marries another woman during the waiting period (*iddah*), while still having the opportunity to reconcile with his former wife, it can potentially lead to covert polygamy." (5) "If a former husband has married another woman during the waiting period (*iddah*) of his former wife, he can only reconcile with his former wife after obtaining permission for polygamy from the court."

From these provisions, it can be understood that the essence of the Circular Letter is to tighten the registration of marriages for widowers and widows by requiring them to attach a divorce certificate and prohibiting them from getting married as long as the wife's waiting period has not expired. This prohibition can be interpreted as if the *iddah* also applies to men as to women.

Implementing *iddah* for men has caused controversy among the community, even the head and head of the KUA. From the results of observations at the four KUA in Samarinda city, it was found that KUA Samarinda Ilir and KUA Sungai Pinang implemented the Circular Letter as an *iddah* for men so that they strongly rejected all marriage registrars during their wife's *iddah*. Meanwhile, KUA Samarinda Ulu believes that there is no *iddah* for men, so they sometimes allow marriage during the wife's *iddah* period. The KUA Loa Janan Ilir firmly believes that there is no *iddah* for men, so all marriage registrars during the wife's *iddah* get permission without exception.

This controversy does not only occur among the public and KUA. Researchers also have different perspectives. From the results of previous research, there are three groups in addressing the issue of *Iddah* for men as follows: First: the group that obliges *iddah* to apply to men, as research conducted by Wardah Nuroniyah entitled "Diskursus 'Iddah Berperspektif Gender Membaca Ulang 'Iddah dengan Metode *Dalalah al-Naşş*.'" ¹ Muhammad Isna Wahyudi entitled "Kajian Kritis Ketentuan Waktu Tunggu (*Iddah*) dalam RUU HMPA Bidang Perkawinan." ² Fatihatul Anhar Azzulfa entitled "Masa 'Iddah Suami Istri Pasca Perceraian.'" ³ They argue that the existing Shari'a *Iddah* is a form of discrimination against women. Therefore, *Iddah* should also apply to men in the hope that the position of women who have been used as objects can turn into subjects that are equal to men so that the relationship between men and women in a marriage can become a partnership relationship whose position is balanced even though previously the position of men was considered to be based on dominance-subordination.

Second: the group that considers there is no *iddah* for men, such as Ahmad Ali Masyhuda's research entitled "Pengaplikasian Teori Double Movement pada Hukum 'Iddah untuk Laki-Laki.'" This research shows that the *iddah yariat* is a *mahdah sharia*, so the provisions of *iddah* cannot be changed because they only apply to women. As the arguments from the Al-Qur'an have

¹ Wardah Nuroniyah, "Diskursus 'Iddah Berperspektif Gender: Membaca Ulang 'Iddah Dengan Metode *Dalalah Al-Nass*,'" *Al-Manahij: Jurnal Kajian Hukum Islam* 12, no. 2 (2018): 193–216, <https://doi.org/10.24090/mnh.v12i2.1745>.

² Muhamad Isna Wahyudi, "Kajian Kritis Ketentuan Waktu Tunggu (IDDAH) Dalam RUU HMPA Bidang Perkawinan (The Critical Study of Waiting Period Regulation on The Bill of The Religious Courts Material Law Marriage Matters)," *Jurnal Hukum Dan Peradilan* 5, no. 1 (2016): 19–34.

³ Fatihatul Anhar Azzulfa and Afnan Riani Cahya A., "Masa Iddah Suami Istri Pasca Perceraian," *Al-Mizan* 17, no. 1 (2021): 65–88, <https://doi.org/10.30603/am.v17i1.1959>.

explained the provisions of *iddah* explicitly.⁴ Likewise Ahmad Yajid Baidowi's research entitled "Analisis Tentang Peraturan Masa 'Iddah Bagi Laki-Laki Dalam Counter Legal Draft Kompilasi Hukum Islam (LCD-KHI) Pasal 8 Ayat 1 Perspektif Fiqih Islam" so that men's *iddah* is not justified because humans as Allah servants must submit to the *qaṭ'i* proposition that God has set.⁵ Third: the group that specializes in the application of *iddah* for men only applies in cases of divorce and death, that is, a husband whose wife has died should make a prayer because, in society's view that marriage, which is always associated with happiness, is unethical if it is done during the husband's mourning.⁶

The studies above show similarities and differences between these studies and this research. The similarity lies in its purpose, namely the analysis of a contemporary issue with the topic of *iddah* for men viewed from various perspectives. However, if you look at the objects and methods, and theories used in this study, no similar research was found because the object of this study, namely the Circular Letter on Marriage during the wife's waiting period, was analyzed using the concept of *maqāṣid syari'ah* Imām al-Syāṭibī.

Imām al-Syāṭibī is called the father of *maqāṣid syari'ah*, with the argument that the first scholar who compiled the concept of *maqāṣid syari'ah* systematically and comprehensively was Imām al-Syāṭibī as outlined in his book *al-Muwāfaqāt*. Although previously many scholars emphasized the urgency of implementing *maqāṣid syari'ah* in the study of Islamic law, such as Imām al-Juwainī and Imām al-Gazālī, the concept they compiled was not as systematic as that of Imām al-Syāṭibī.⁷ *Maslahah*, according to Imām al-Syāṭibī, can be implemented if the five *maqāṣid syari'ah* dimensions are maintained. The five dimensions are *ḥifẓ al-dīn* (preservation of religion), *ḥifẓ al-nafs* (protection of the soul), *ḥifẓ al-nasl* (protection of offspring), *ḥifẓ al-aql* (maintenance of the mind), and *ḥifẓ al-māl* (protection of property).⁸ Imām al-Syāṭibī divides *maqāṣid syari'ah* into two theories, namely *maqāṣid syari'ah kulliyah* and *maqāṣid syari'ah juz'iyah*. He also classified *maqāṣid syari'ah*, which is a benefit that must be realized, into three levels, namely, *maqāṣid al-darūriyyāt* (benefits related to primary human needs), *maqāṣid al-hājiyyāt* (secondary needs namely benefit which functions as a complement to primary needs) and *maqāṣid al-taḥsīniyyāt* (a benefit that complements the two previous benefits).⁹

The concept of *maqāṣid syari'ah* has attracted the attention of many Ulama and Muslim scholars. They have made *maqāṣid syari'ah* the main guide and basic reference in linking Islam with inclusive issues, such as political, social, economic, and criminal law issues, especially issues within the scope of family law (*ahwāl syakhsīyyah*). Not only that, but *maqāṣid syari'ah* also functions as a liaison between Islamic law and doctrines that live in society, such as human rights, equality, and gender justice, because the concept of *maqāṣid syari'ah* is seen as capable of providing a solution to the demands of an increasingly progressive civilization. But still within the corridors of the shari'ah.¹⁰

⁴ Ahmad Ali Masyhuda, "Pengaruh Teori Double Movement Pada Hukum 'Iddah Untuk Laki-Laki," *HERMENEUTIKA: Jurnal Ilmu Hukum* 4, no. 1 (2020), <https://doi.org/10.33603/hermeneutika.v4i1.3272>.

⁵ Ahmad Yajid Baidowi, "ANALISIS TENTANG PERATURAN MASA IDDAH BAGI LAKI-LAKI DALAM COUNTER LEGAL DRAFT KOMPILASI HUKUM ISLAM (CLD-KHI) PASAL 8 AYAT 1 PRESFEKTIF FIQIHH ISLAM," *El-Abli: Jurnal Hukum Keluarga Islam* 3, no. 2 (2022): 161–180.

⁶ M. Nur Kholis Al Amin, "Iddah Bagi Suami Karena Cerai Mati Dalam Kajian Filsafat Hukum Islam," *MUKADDIMAH: Jurnal Studi Islam* 1, no. 1 (2016): 97–118.

⁷ Musolli Musolli, "Maqasid Syariah: Kajian Teoritis Dan Aplikatif Pada Isu-Isu Kontemporer," *AT-TURAS: Jurnal Studi Keislaman* 5, no. 1 (2018): 60–81, <https://doi.org/10.33650/at-turas.v5i1.324>.

⁸ Imām al-Syāṭibī, *Al-Muwāfaqāt Fi Uṣūl Al-Syari'ah*, *Jilid 2* (Qāhirah: Muṣṭafā Muḥammad, n.d.), 5.

⁹ Aris Rauf et al., "Maqasid Syari'ah Dan Pengembangan Hukum (Analisis Terhadap Beberapa Dalil Hukum)," n.d., 24–30.

¹⁰ Mohammad Hashim Kamali, "Maqasid Al-Shari'ah and Ijtihad as Instruments of Civilisational Renewal: A Methodological Perspective," *ICR Journal* 2, no. 2 (2011): 245–271, <https://doi.org/10.52282/icr.v2i2.647>.

Within the framework of reforming Islamic family law, the concept of *maqāṣid syari'ah*, including the concept formulated by Imām al-Syāṭibī, can be a very efficient and relatively adequate approach. This is an essential need because when a new idea related to Islamic law arises, society tends to accept it with difficulty.¹¹ For example, the Circular Letter on Marriage during the Wife's *iddah* Period turned out to cause controversy among the public, as explained earlier. Because of that, a question arises which becomes the formulation of the problem in this study, namely: what is the *maqāṣid syari'ah* perspective of Imām al-Syāṭibī regarding the Circular of the Directorate General of Islamic Community Guidance concerning Marriage during the Wife's *iddah*?. This research is important to study because the provisions in the Circular Letter issued in 2021 are new things in Islamic family law, especially in Indonesia, with the hope that it can enlighten the public on how *maqāṣid syari'ah* views this.

This type of research is normative research using a conceptual approach and a historical approach. The legal material in this study is the Circular Letter of the Directorate General of Islamic Community Guidance Number: P-005/DJ.III/HK.007/10/2021 concerning marriage during the wife's *iddah* period, fiqh *munākahāt* books, al-Muwāfaqāt books, and scientific papers others with *iddah* topics. It is coupled with the results of interviews from several informants considered relevant to the research topic. The legal material is then analyzed using the inductive method to bring up the *maqāṣid syari'ah* Imām al-Syāṭibī perspective on the Circular Letter on Marriage during the wife's *iddah* period.

Analyzing the Circular of the Directorate General of Islamic Guidance regarding marriage during the wife's waiting period (*iddah*). Examining the perspective of *Maqāṣid Syari'ah* (objectives of Islamic law) presented by Imām al-Syāṭibī concerning the issue of marriage during the *iddah* period. Evaluating the consistency of the Circular with the principles of *Maqāṣid Syari'ah* as explained by Imām al-Syāṭibī. Investigating the impact and implications of the Circular on protecting women's rights and the welfare of families in the context of marriage during the *iddah* period. Providing recommendations or appropriate suggestions for improvement based on the analysis of the Circular to ensure compliance with the principles of *Maqāṣid Syari'ah* and the protection of women's rights and the welfare of families.

Result and Discussion

The perspective of Maqāṣid Kullīyyah

The Circular of the Directorate General of Islamic Community Guidance concerning Marriage during the Wife's *iddah* Period made Law no. 22 of 1946 concerning the Registration of Marriages, Divorces, and Referrals, Law no. 1 of 1974 concerning marriage which underwent changes in accordance with Law no. 16 of 2019, PP no. 9 of 1975 concerning the implementation of Law no. 1 of 1974 concerning Marriage and PMA No. 20 of 2019 concerning Marriage Registration as the basis for formulating the policy. This Circular Letter is in line with the *maqāṣid* regarding orders to obey leaders, as Allah says in QS. An-Nisa' (4): 59:

"يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا" ﴿59﴾

"O believers! Obey Allah and obey the Messenger and those in authority among you. Should you disagree on anything, then refer it to Allah and His Messenger if you 'truly' believe in Allah and the Last Day. This is the best and fairest resolution."

The verse above explicitly obliges obedience to *ulī al-Amri*, even accompanied by obedience to Allah and His Messenger. According to Muṣṭafā al-Marāgī, the definition of the word *ulī al-Amri* in this verse is leaders, rulers, scholars, troop leaders, all leaders and governments where humans

¹¹ Moh. Anas Kholish Ilham Tohari, "Maqasid Syariah Sebagai Pijakan Konseptual Dalam Pembaruan Hukum Keluarga Islam Indonesia," *Arena Hukum* 13, no. 2 (2020): 314–328.

refer to them in matters of need and benefit in general. So when they decide on a case or a law, they must be obeyed on condition that they are trustworthy people and do not violate the provisions of Allah and the Sunnah of His Messenger.¹²

The leadership context in Indonesia, including the Ministry of Religion, which oversees the Directorate General of Islamic Community Guidance and the Office of Religious Affairs (KUA) functions to formulate provisions that will be determined globally for the Indonesian people. Meanwhile, one of the rules of *usul fiqh* reads: "Commandments (in the Qur'an) indicate obligations." So the order to obey Allah, the Messenger, and the leader is obligatory. The majority of scholars also agreed that the provisions set by Muslim leaders and in Muslim-majority countries must be obeyed as long as they do not conflict with the Qur'an, hadith, and for the sake of protecting the benefit of their people.

It should be noted that in the hierarchy of Legislation in Indonesia, Circular Letters are not included in it, as stated in Article 7 of Law Number 12 of 2011 concerning Regulations for Forming Legislation. However, the position of a Circular Letter is alluded to in the Regulation of the Minister of Home Affairs Number 55 of 2010 Article 1 Point 43 that a Circular Letter is an "official document that contains notifications, explanations, and or instructions on how to carry out certain things that are considered important and urgent."¹³ From this, it can be understood that Circular Letters are included in pseudo-legislation, which is a set of rules by related government organs without having a basic statutory provision that expressly gives authority to these organs so that Circulars act as a form of policy regulation (*beleidsregel*). To regulate things attached to the institution or agency that makes it. According to Cholida Hanum, in her article entitled "Judicial Analysis of Circular Letters in the Indonesian Legal System," defines Circulars as legal products that are binding in general because they are the policies of a state institution, not statutory regulations.¹⁴

The Ministry of Religion oversees the Directorate General of Islamic Community Guidance as the formulator and maker of the Circular on Marriage during the *iddah* wife's period and regulates provisions aimed at agencies. One of the agencies involved in this case is the Office of Religious Affairs (KUA) as the executor of marriage registration. Therefore, KUA is obligated to comply with this Circular Letter so that obedience *maqāṣid* to leaders can be realized. Thus, it can be understood that obeying the Circular Letter is the same as obeying the leader. *Maqāṣid* obeying the leader is to protect the benefit of religion (*ḥifz al-din*) from the aspect of its form (*mura'atubā min jānib al-wujūd*).

The *maqāṣid syarī'ah kullīyyah* perspective on each of the provisions listed in the Circular of the Directorate General of Islamic Community Guidance Number: P-005/DJ.III/HK.007/10/2021 concerning Marriage during the Wife's *Iddah* Period is as follows:

1. "The registration of marriage for men and women who are widowed/divorced can only be done if they have officially divorced, proven by a divorce certificate from the religious court that has been declared final and binding."

The provisions of Letter E Number 1 also mention the intent and purpose as stated in the attachment to the Circular Letter in Letters B Numbers 1 and 2. The purpose and objective of the Circular Letter are to provide direction on the mechanism for registering marriages for husbands who wish to marry another woman in the future the life of his ex-wife is not finished yet.

The urgency of registering marriages cannot be denied, even though explicitly Islamic law does not make registration of marriages a condition for a valid marriage. However, some arguments explain the order to record all *muamalah* transactions, especially debts that can be used as *Qiyas* in

¹² Muṣṭafā Al-Marāḡī, *Tafsīr Al-Marāḡī* (Mesir: Syirkah Maktabah wa Matba'ah Muṣṭafā al-Bābī al-Halbī, 1365), 72.

¹³ "Peraturan Menteri Dalam Negeri Nomor 55 Tahun 2010," n.d., Pasal 1 Butir 43.

¹⁴ Cholida Hanum, "Analisis Yuridis Kedudukan Surat Edaran Dalam Sistem Hukum Indonesia," *Humani (Hukum Dan Masyarakat Madani)* 10, no. 2 (2020): 138–153.

the law on marriage registration. In the sense that when debts must be recorded, it is even more so for marriages which are very strong covenant bonds or what is termed *mišāqan ghalīzan*. So that marriage registration can maintain aspects of *ḥifẓ al-dīn* (religious protection) to obey God's commands. The argument explaining the obligation of recording is contained in QS. Al-Baqarah (2): 282:

﴿282﴾....."يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ"

"O believers! When you contract a loan for a fixed period of time, commit it to writing."

UU no. 1 of 1974 concerning marriage in article 2, paragraphs 1 and 2, explains that a marriage is considered valid if it is carried out in accordance with the rules of their respective religions, and it is obligatory to be registered in accordance with the existing laws and regulations. The position of marriage registration can be likened to a marriage witness, a written witness who can protect and guarantee the rights of husband and wife and their children. The guarantees obtained from the registration of marriages include the following: (1) Guarantee of legal certainty for the status of each family member (*ḥifẓ al-nafs*: protection of the soul). (2) Guarantee of the right to live properly for every member of the family, especially for children (*ḥifẓ al-nafs wa al-nasl*: protection of life and offspring). (3) Guarantee of inheritance rights if one of the family members dies (*ḥifẓ al-māl*: protection of property). (4) Guaranteed maintenance rights for wife and children (*ḥifẓ al-nasl wa al-māl*: protection of offspring and assets). (5) Guarantee of management of birth certificates with full listing of the names of both child's parents (*ḥifẓ al-nasl*: child protection).

In addition to guarantees obtained for the family members, another benefit of registering a marriage is recognition from the surrounding community. Marriage registration can also prevent harm in the form of possible slander from society. This benefit is in line with the Prophet's command to carry out *walimah*, even though the original law of *walimah*, according to most scholars, is sunnah *muakkadab* (Sunnah, which is highly emphasized).

According to Imām al-Syātibī, the purpose of establishing Shari'a is divided into two, namely *qaṣd al-syārī'* and *qaṣd al-mukallaf*. In the discussion of *qaṣd al-syārī'* in the fourth point, it is explained that the shari'a makers intend to include the mukallaf (human) under the law.¹⁵ This benefit is relevant to registering marriages, including *humans*, under legal certainty. For example, suppose the husband does not carry out his obligation to provide maintenance for three consecutive months while he is to do so. In that case, he has been declared to have violated *taklik talak* (*taklik talak* functions as a guarantee and protection for the wife from the husband's discriminatory behavior).¹⁶ Therefore, the wife can complain and sue her husband to the Religious Court by bringing a marriage certificate as legal proof that her status as the husband's wife is correct.

Thus, if analyzed using the perspective of *maqāṣid syarī'ah* Imām al-Syātibī, the registration of marriages for widowers and widows as stipulated in Letter E Number 1 in the Circular Letter is relevant to the concept of *maqāṣid syarī'ah*. This can be seen from the guarantees obtained with the registration of marriages so that the registration of marriages can be concluded as protecting religion (*ḥifẓ al-dīn*), preserving the soul (*ḥifẓ al-nafs*), protecting offspring (*ḥifẓ al-nasl*) and protecting property (*ḥifẓ al-māl*). Similar to the divorce certificate, which is a requirement for the registration of marriages for widowers and widows, the urgency is the same as the marriage certificate in the registration of marriages which can protect religion, soul, lineage, and assets.

2. "The provision of the waiting period (*iddah*) for the wife due to divorce is an opportunity for both the husband and wife to reconsider rebuilding the separated marital relationship caused by divorce."

The provisions of Letter E Number 2 provide an understanding that even though the Shari'a of *iddah* is only aimed at wives, the wisdom behind it is so that husbands and wives can think more

¹⁵ Imām al-Syātibī, *Al-Muwafaqāt Fi Uṣūl Al-Syariah*, Jilid 2.

¹⁶ Lilik Andaryuni, "Putusan Verstek Dalam Cerai Gugat Karena Pelanggaran Taklik Talak Di Pengadilan Agama Samarinda," *Istinbāth/Jurnal of Islamic Law* 16, no. 1 (2017): 224–40.

clearly about their marital relationship. So it is hoped that both of them will be able to get the best solution, if there are still benefits that can be maintained by the of husband and wife, then reconciliation is the best solution. This is in line with the concept of marriage, which is termed *mišāqan galīẓan* (firm bond/agreement).

Marriage is not a contractual agreement in general. The term *mišāqan galīẓan*, apart from being found in QS. al-Nisā' (4): 21, it is also found in KHI, which shows that marriage is a very strong contract or *mišāqan galīẓan* to obey Allah's commands and carry it out as a form of worship.¹⁷ So the majesty of a marriage contract must be fought for even after the divorce occurs by undergoing a waiting period which serves as an opportunity to rethink the continuation of the marriage relationship for both parties.

If the concept of *maqāṣid syarī'ah* is implemented in the provisions of Letter E Number 2 in the Circular Letter. It was found that these provisions influence the psychological aspect (mind), in this case, being able to maintain reason (*ḥifẓ al-'aql*). In addition, it is also explained in the Qur'an that divorce is only twice as in QS. al-Baqarah (2): 229 that "*talak* (which can be referred to) is twice, (after that the husband can) hold it well or release it well." Clearly, from this argument, the scholars concluded that *raj'ī* divorce was only twice, namely the first and second divorces, after that (three divorces) entered the category of *bā'in kubrā* divorce. This shows that as *ḥifẓ 'aql* (protection of the mind) applies, it is a religious order. Likewise, *raj'ī* divorce, which Allah has ordained as a divorce that allows reconciliation, is also a religious commandment, so it is *ḍarūrīyyāt*.

3. "*A former husband can enter into a marriage with another woman once the waiting period (iddah) of his former wife has ended.*"

The provisions of Letter E Number 3 are the most interesting of all the provisions in the Circular on Marriage during the Wife's *Iddah* period. At first glance, this prohibition can be interpreted as if the *iddah* also applies to men as to women.

The scholars debated *iddah* for men, including the priests of the schools of thought. The debate resulted in the conclusion that there are two conditions in which *iddah* must apply to men, namely as follows:¹⁸ (1) When a husband divorces his wife with the status of divorce *raj'ī*, and he wants to carry out a marriage with a woman who is forbidden to be married, such as the wife's biological sister. In this condition, the husband is not allowed to marry during the wife's *iddah* period until the entire marriage bond is broken, that is when the wife's *iddah* period ends. This is because divorce by *talak raj'ī* allows the husband to return to the wife he has divorced without a new marriage contract as long as the wife is still in the *iddah* period. So when he marries his wife's biological sister at the same time, he still has the opportunity to continue his marriage with his ex-wife, just like he brought together two sisters in one marriage. This is prohibited by the Shari'a, as stated in the argument in QS. An-Nisa' (4): 23. (2) When a husband has four wives and divorces one of them with the status of *raj'ī* divorce, he is not allowed to carry out the marriage until the wife's waiting period has expired. Because the husband's polygamy limit, as determined by QS An-Nisa' (4): 3, is only up to four wives.

In the two conditions that obligatory *iddah* for men above, some scholars interpret it as *mamnū' syarī* (obstructed by the Shari'a), not as an *iddah* that men must pass. Because returning to the law of the origin of *iddah* only applies to women as a parameter of the emptiness of the uterus from the fetus. This opinion is in line with what is stated in the book *al-Fiqh al-Islāmī wa Adillatuhu*, which Wahbah Zuhailī compiled. This opinion stated that the prohibition of husbands from marrying during the wife's waiting period in these two conditions was only due to obstacles in the form of Islamic law which did not allow gathering of two sisters in one marriage, and polygamy, which exceeded the limit of four wives. Apart from that, 'Abdurrahmān al-Jazīrī commented on

¹⁷ "Kompilasi Hukum Islam Pasal 2," n.d.

¹⁸ Abū Bakr al-Dimyātī, *Ṭanāh Al-Ṭalībīn*, Vol. 4 (Libanon: Dār al-Fikr, 2014), 59.

these two circumstances that it is still considered an *'iddah* for the wife. Meanwhile, Abū Bakr al-Dimyātī emphasized that there is no *'iddah* for men except in the two circumstances above.¹⁹

Over time, the issue of the husband's marriage during the wife's *'iddah* period was raised again. In this contemporary era, several gender activists try to re-examine the concept of *'iddah* and find that it should be obligatory for both wife and husband. Among gender activists who adhere to this opinion are Mukhtar al-Shodiq, Muhammad Zain, and Musdah Mulia, who say that ex-husbands and ex-wives must go through a period of *'iddah* after a divorce. This includes divorce, divorce, and death as determined by the Religious Courts. According to him, the emergence of the stipulation of *'iddah* for husbands is due to the changing social background of society, so that in order to be relevant to the context of today's society, *'iddah* also applies to husbands globally, no longer limited to the two conditions set by previous scholars.²⁰

Apart from the dispute above regarding whether or not there is an *'iddah* for men, it should be noted that every provision contained in the Circular Letter is not stipulated by the government but there are benefits in it, including provisions prohibiting marriage during the wife's *'iddah*. According to Imām al-Syāṭibī the concept of *maqāṣid syarī'ah* always precipitates benefits in the hereafter and benefits in the world. If you look at marriage from the benefits of prohibiting the husband during the wife's waiting period, it is similar to the wisdom that is prescribed by the wife itself, namely as follows: (a) As an opportunity to think clearly about the marriage relationship, whether to choose to maintain the household or still choose to separate. That matter is contained in Letter E Number 2 of the Circular Letter, which has been explained previously that this provision can safeguard the aspect of *ḥifẓ al-'aql* (protection of the mind). It is undeniable that some men have a fairly high emotional level, he divorces in an emotional state. Sometimes men it takes a long time for their emotions to subside, by participating in waiting during the wife's *'iddah* period, there is still a possibility for emotions subside and thoughts to return clear. This *maslahat* is a *maslahat* at the *ḍarūriyyāt* level. Because if only one party waits in this case, the wife, while the other party ignores the waiting time, it can cause the goal of the shari'a *'iddah* for divorce *raj'ī* (as an opportunity to think again) very difficult to realize. (b) As an opportunity to resolve unresolved issues, such as child rearing issues (which can maintain the *ḥifẓ al-nasl* aspect: protection of offspring). Even at the time of trial, the judge can decide whose custody falls into the hands of whom and the amount of maintenance that must be given. However, after the divorce, both parties still need intense communication to discuss the parenting style they will adopt under different conditions when they are still husband and wife. It is not limited to the problem of children who need intense communication, the distribution of joint assets (which can protect the *ḥifẓ al-māl* aspect: protection of property) is also worth discussing so that no one feels wronged by one another. (c) As an opportunity to improve oneself (*ḥifẓ al-nafs*: protection of the soul). Among the causes of divorce are due to mistakes made by one of the parties, which are considered unforgivable, but over time the party who made the mistake slowly improves himself in the hope that the door of forgiveness can be opened again. (d) To maintain the essence of the shari'a of marriage as a very strong physical and spiritual bond before Allah, in this case marriage is the longest worship undertaken by a husband and wife since the marriage contract was pronounced. Because marriage is an act of worship and *raj'ī* divorce has not completely broken the marriage bond, the prohibition of a husband from marrying another woman during the *'iddah* of his ex-wife can maintain aspects of *ḥifẓ al-dīn* (religious protection).

Based on some of the benefits above, it can be understood that the provisions prohibiting husbands from carrying out marriages during the wife's waiting period are in line with *maqāṣid syarī'ah*. This can protect *kulliyāt kbams* (five aspects of necessity) which are *ḍarūriyyāt*, namely *ḥifẓ al-dīn, al-nafs, al-nasl, al-'aql wa al-māl* (safeguarding religion, soul, lineage, reason and wealth).

The problem in Islamic jurisprudence is that marriage law varies, marriage law adjusts to the condition and situation of the prospective bride and groom. Basically the law of marriage is Sunnah, but for men who have been able to carry out the marriage both in terms of the strength of faith, physically and materially, and are worried that adultery will occur if they do not get

¹⁹ Wahbah Zuhailī, *Al-Fiqh Al-Islāmī Wa Adillatuhu* (Libanon: Dār al-Fikr, 2006), 71.

²⁰ Muhammad Zain and Mukhtar Al-Shodiq, *Membangun Keluarga Harmonis, CLD Kompilasi Hukum Islam Yang Kontroversial Itu* (Jakarta: Graha Cipta, 2005).

married immediately, then the law of marriage is mandatory for him. Therefore, the question arises whether this condition also applies to husbands who have just divorced from their wives. When referring to a hadith that contains an order to carry out marriage, the order is general in that it applies to young men and widowers. As the hadith narrated by Imām al-Bukhārī:

حَدَّثَنَا عُمَرُ بْنُ حَفْصِ بْنِ غِيَاثٍ، حَدَّثَنَا أَبِي، حَدَّثَنَا الْأَعْمَشُ، قَالَ حَدَّثَنِي عُمَارَةُ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ زَيْدٍ، قَالَ دَخَلْتُ مَعَ عَلْقَمَةَ وَالْأَسْوَدَ عَلَى عَبْدِ اللَّهِ فَقَالَ اللَّهُ كُنَّا مَعَ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ شَبَابًا لَا نَجِدُ شَيْئًا فَقَالَ لَنَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ " يَا مَعْشَرَ الشَّبَابِ مَنِ اسْتَطَاعَ الْبَاءَةَ فَلْيَتَزَوَّجْ، فَإِنَّهُ أَغْضُ لِلْبَصْرِ، وَأَخْصَنُ لِلْفَرْجِ، وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ، فَإِنَّهُ لَهُ وَجَاءٌ ".

"We were with the Prophet (ﷺ) while we were young and had no wealth. So Allah's Messenger (ﷺ) said, "O young people! Whoever among you can marry, should marry, because it helps him lower his gaze and guard his modesty (i.e. his private parts from committing illegal sexual intercourse etc.), and whoever is not able to marry, should fast, as fasting diminishes his sexual power."

Ibn Ḥazm stated that marriage is obligatory for every man who is capable of biological intercourse and is able in terms of wealth, but if he is unable to do so, he should fast more.²¹ Imam al-Syaukānī also said that as for the obligation to marry for those who are worried about falling into disobedience, then in fact, he is obliged to stay away from what is unlawful, and if he cannot stay away from what is unlawful except by marriage, then the law of marriage for him is obligatory. Thus understood the traditions that explain the obligation of marriage.²²

Returning to the issue of whether the obligation to marry also applies to ex-husbands whose ex-wife is still in her *iddah* period. While there are rights and obligations that must be carried out by both parties after a divorce. Among the husband's obligations while still in the wife's *iddah* period is the husband's obligation to provide maintenance until the end of the ex-wife's *iddah* period, or what is known as *iddah* maintenance.²³ Not only that, the ex-wife still has the right to live in the husband's house, has the right to ask for mut'ah (as a consolation and consolation for the ex-wife for the divorce that has occurred), and *madhiyah* maintenance (a living that the husband gives to his wife as a substitute for the living that he should have previously give before the divorce).²⁴

The most basic thing behind the prohibition of the husband's marriage during the period of the wife *iddah* is because, in divorce *raj'i*, divorce does not mean the breakup of marital relations directly. In this condition, the husband may reconcile without needing to sign a new marriage contract as long as the wife is still undergoing her *iddah* period. As stated in the previous Circular Letter, which regulates the procedure for husbands who wish to carry out marriages with other women. During the wife's *iddah* period to apply for polygamy permission to the Religious Court (although this Circular Letter is no longer enforced since the issuance of the Circular Letter concerning marriage during the wife's *iddah* period), the consideration that husbands and wives who are divorced by *talak raj'i* still have marital ties until the end of the term the wife's wife.²⁵

In line with KHI Article 154 which explains that the wife who is divorced is *raj'i* by her husband. Then the ex-husband died when the wife was still undergoing the *iddah* period, so her *iddah* changed to four months and ten days as the widow of a woman whose husband died. The

²¹ Ibnu Hazm, *Al-Muḥalla Bi Al-Aṣār*, Vol. 9 (Beirut: Dar al-Fikr, n.d.).

²² Imam al-Syaukānī, *Al-Durāri Al-Mudīyah Syarḥu Al-Durāri Al-Baḥiḥ*, Vol. 2 (Beirut: Dār al-Kutub al-Ilmiyyah, 1407), 202.

²³ Khairuddin Khairuddin, Badri Badri, and Nurul Auliyana, "Pertimbangan Hakim Terhadap Putusan Nafkah Pasca Perceraian (Analisis Putusan Mahkamah Syar'iyah Aceh Nomor 01/Pdt.G/2019/MS.Aceh)," *EL-USRAH: Jurnal Hukum Keluarga* 3, no. 2 (2020): 164, <https://doi.org/10.22373/ujhk.v3i2.7700>.

²⁴ Riyan Ramdani and Firda Nisa Syafitri, "Penentuan Besaran Nafkah Madhiyah, Nafkah Iddah Dan Mut'Ah Dalam Perkara Perceraian Di Pengadilan Agama," *ADLIYA: Jurnal Hukum Dan Kemanusiaan* 15, no. 1 (2021): 37–50, <https://doi.org/10.15575/adliya.v15i1.11874>.

²⁵ "Surat Edaran Direktur Jenderal Pembinaan Kelembagaan Agama Islam Nomor: DIV/Ed/17/1979 Tentang Masalah Poligami Dalam Idah.," n.d.

calculation of *iddah* begins when the ex-husband dies, while the period of *iddah* that he has passed before is no longer counted. This is due to the fact that a wife who is undergoing her *iddah* period is still considered to have a marital relationship with her ex-husband because ex-husbands are still allowed to reconcile. If the marital relationship had been terminated at the time of divorce, the *iddah* should not have changed.

All agree that the purpose of the shari'a of marriage is to establish a lawful relationship to keep one away from heinous matters such as adultery and to obtain virtuous offspring from the results of a valid marriage relationship. Of course, this goal is also in line with the *maqāṣid syarī'ah* protecting the soul and preserving offspring (*ḥifẓ al-nafs and ḥifẓ al-nasl*).

From the descriptions above, it can be seen that the purpose of the prohibition of marriage during the wife's *iddah* period and the purpose of legalizing marriage, in general, both are to uphold the *maqāṣid ḥifẓ al-nafs and ḥifẓ al-nasl*. When two shari'ah seems to contradict each other while having the same *maqāṣid*, the step that needs to be taken is to determine whether the *maqāṣid syarī'ah* qualifications are at the level of *maqāṣid ḍarūriyyāt*, *maqāṣid ḥājiyyāt* or *maqāṣid taḥsīniyyāt*. In determining the level of each *maqāṣid*, *maqāṣid* at the *ḍarūriyyāt* level must be prioritized over *maqāṣid*, which are *ḥājiyyāt* and *taḥsīniyyāt*.²⁶ The way that can be done is to analyze the benefits and harms that have the potential to arise from the main issue, namely marriage during the wife's waiting period.

The benefits of carrying out a husband's marriage during the wife's *iddah* period are as follows: (1) marriage is a legal way to fulfill the biological needs of husband and wife through a marriage contract. A man who has been married and has received service from his wife then divorced no longer gets that service, so his biological needs can be fulfilled again by marriage. (2) Abstain from vile and dirty acts such as adultery. (3) Avoid slander and gossip from society when two men and women already love each other. (4) It can fulfill the instincts of human nature, where God created humans in pairs. For men who have been divorced, it means that he does not have a partner anymore, with the marriage taking place after the divorce can restore their nature as a human being.

The problems above are basically benefits that can be obtained from marriage in general, meaning that there is no difference between the benefits of marriage in general and the benefits of marriage that are specific to the wife's waiting period. While the *mudarat* carries out the marriage during the wife's *iddah* period as follows: (1) Neglecting the opportunity to rethink the continuation of his marriage relationship with his ex-wife. (2) Missing the opportunity to think again before starting a new marriage with another woman. Suppose you are in a hurry to get married after divorcing your ex-wife, in the sense that you are worried that you will marry another woman, In that case, it is only an outlet because he feels disappointed with his ex-wife. (3) Neglecting the shari'a of reconciliation that Allah has established is the wisdom of the existence of a period of *iddah*. (4) Potentially neglecting his responsibilities towards his ex-wife, where he is still obliged to provide maintenance until the ex-wife's waiting period is over. (5) Potentially ignoring the wife's right to remain in her husband's house during the *iddah* period if she immediately marries another woman. (6) There is potential for covert polygamy if he is married to another woman and then he still wants to reconcile with his ex-wife. The reason is that his divorce was with a *talak raj'ī*, allowing him to reconcile as long as the *iddah* period has not expired, as stated in Letter E Number 4 in the Circular Letter. (7) It is feared that the child's psychology will be disrupted when the parents divorce, and then suddenly the father marries in the sense that the child must immediately adapt to his new parents when he is still trying to adapt to his parent's separation. (8) Neglecting the opportunity for the party who made the mistake that was the cause of the divorce to improve himself.

²⁶ Imām al-Syāṭibī, *Al-Muwafaqāt Fi Uṣūl Al-Syariah*, Jilid 2.

Thus, it can be concluded that the harm from carrying out a husband's marriage during the wife's *iddah* period is more than the benefit. Imām al-Syāṭibī strongly emphasizes that the concept of maqāṣid syarī'ah puts forward the principles of fiqh:

ذَرُّهُ الْمَقَاسِدِ مُقَدَّمٌ مِنْ جَلْبِ الْمَصَالِحِ

"Avoiding harm takes precedence over bringing benefits."

Therefore, from the presentation of the benefits and harms of implementing a husband's marriage during the wife's waiting period, it can be seen that the provisions of the Circular Letter which prohibit husbands from marrying during the wife's period are at the maqāṣid ḍarūriyyāt level which must be prioritized. Because if this maqāṣid is not realized, it can have an impact on unbalanced survival, it can even damage and eliminate the pleasures of life and can have an effect in the form of real losses.

This prohibition does not deny the marriage law, which can protect the soul and offspring (*ḥifẓ al-nafs* and *ḥifẓ al-nasl*) because the husband is only asked to postpone his marriage until the end of the wife's waiting period. In line with Imām al-Syāṭibī's thought that each category of benefit that functions as a necessity in realizing it should not damage the benefit that is of an emergency nature. This means do not let the implementation of a marriage whose benefits are of a necessity in fact damage the benefits of delaying the marriage until the *iddah* period has expired which is an emergency. The delay may include a heavy thing to implement, but according to Imam al-Syāṭibī, behind this heavy burden, there is a benefit for the human being himself. The postponement of the implementation of this marriage only applies to divorcees with the status of divorce *raj'ī*, as well as divorce cases and *ba'in* divorces, so this prohibition does not apply because the divorce does not allow the husband to reconcile except with a new marriage contract.

Prohibition of marriage during the wife's waiting period if it is connected with the protection of women's rights, which aligns with the principles of maqāṣid syarī'ah. It was found that these provisions can eliminate discriminatory treatment of women. As an example, one can imagine the feelings of a wife whose husband has just divorced, and then she is required to undergo a period of *iddah* with all the consequences that could be troublesome and burdensome for her. Meanwhile, at the same time, the ex-husband married another woman, in other words, the wife was in trouble while the husband was happy. This can be considered as a form of discrimination against women.

4. *"If a former husband marries another woman during the waiting period (iddah), while still having the opportunity to reconcile with his former wife, it can potentially lead to covert polygamy."*

The provisions of Letter E Number 4 are only statements in that they are not orders or prohibitions. It explains the previous provision, which forbids husbands from marrying during the wife's *iddah* period, that hidden polygamy can potentially be implemented if this happens.

A number of problems will arise due to covert polygamy, including: (1) Problems with the validity and registration of marriages. (2) There is potential for a lawsuit for divorce from the new wife because she knows the man who married her is divorced and does not currently have a wife. This condition can only occur without openness between husband and wife. (3) Problems with the division of joint assets and the distribution of inheritance if the husband has died.

The above argument is in line with the Supreme Court Circular Letter (SEMA) Number 02 of 2019, which states that "Marriage with second, third and fourth wives carried out without court permission and not in good faith, does not cause legal consequences for material rights between husbands wife in the form of *ẓaujīyah* maintenance, joint property, and inheritance." The emergence of the provisions of Letter E Number 4 emphasizes that the provisions of Letter E Number 3, which prohibit husbands from marrying during the wife's waiting period which can maintain the five aspects of *kulliyāt kbams* are at the level of maqāṣid ḍarūriyyāt because they have the potential to cause greater harm or loss.

5. *"If a former husband has married another woman during the waiting period (iddah) of his former wife, he can only reconcile with his former wife after obtaining permission for polygamy from the court."*

The provisions of Letter E Number 5 show that the government does not prohibit the husband's marriage during the wife's *iddah* period. If the prohibition is absolute, then Letter E Number 5 does not need to be included in the Circular Letter. From this fifth point, it can be seen as if there is a loophole for the husband to be still allowed to carry out the marriage during the wife's waiting period. Similar to the prohibition of unregistered marriage, the existence of itsbat of marriage seems to have a loophole to carry out unregistered marriage. This is evident from what was explained by Arifin, who served as the Head of KUA Samarinda Ulu, who admitted that he had allowed the bride and groom to carry out marriages during the *iddah* period.²⁷ Even Muhammad Yusuf Hidayat, as head of the KUA Loa Janan Ilir, admitted that the KUA Loa Janan Ilir has always allowed husbands to marry during the wife's widowhood on the pretext that in Islam, there is no *iddah* for men.²⁸ Although some KUA still strictly adhere to the prohibition on husband marriage during the wife's waiting period to maintain obedience to the leaders above them, such as KUA Sungai Pinang and KUA Samarinda Ilir.

The provision in Letter E Number 5 in the Circular Letter is a solution the government provides to avoid greater harm. The problem of divorce sometimes occurs because one of the parties is involved in a problem so fatal that the marriage relationship cannot be resumed. For example, if the husband has an affair, gets drunk, commits domestic violence, gambles, and becomes a convict who has to serve in prison for many years. Conversely, the wife who has an affair is reluctant to carry out her obligations as a wife again, and disputes, prolonged incompatibilities, and the like. So that in these conditions, the husband decided not to refer to his ex-wife. At the same time, he belongs to the category of obligatory marriage in the sense that if he does not immediately carry out the marriage, he is afraid that adultery will occur, that is, a man's refusal to not fulfill his biological needs can encourage him to give vent to his lust in an illegal way. In addition, according to Faisal Khalil in his research, interruptions in sexual activity have the potential to have a negative impact on a person's psychology, such as anxiety, frustration, and depression.²⁹

Talking about adultery in terms of maqāṣid syarī'ah can undermine the five kulliyāt khams: (1) Undermine the maqāṣid of protection of religion (*ḥifẓ al-dīn*) because he has violated Allah's commandment to stay away from adultery. (2) Breaking down the soul protection maqāṣid (*ḥifẓ al-nafs*) because plunges himself into disobedience which can have a bad effect on the world and the hereafter. (3) Undermining the maqāṣid to protect offspring (*ḥifẓ al-nasl*) because it will bring harm to offspring obtained from adultery whose status is considered by the community as illegitimate children and their lineage cannot be relied on by their father. (4) Breaking down the maqāṣid of intellectual protection (*ḥifẓ al-'aql*) because it will disturb his mind and mind due to the grave sins he has committed, which has the potential to become the subject of gossip in the surrounding community. (5) Breaking down the maqāṣid of protecting property (*ḥifẓ al-māl*) because the woman will ask for demands and lawsuits from the man who has committed adultery to bear the living expenses for herself and the child resulting from adultery.

Another problem is the legal dilemma of marriage in Indonesia, in this case, there is a mismatch between Islamic law and positive law regarding the imposition of divorce. In Islamic law, wherever and whenever the words of divorce have been spoken from the mouth of the husband, whether consciously or jokingly, that time divorce is declared to have fallen, and at that moment, the period of *iddah* begins to be counted. In contrast to positive law, which requires divorce in the Religious Courts and calculation of *iddah* according to the date stated on the divorce certificate. Previously it was discussed that the urgency of a divorce certificate is similar to a marriage certificate which, when viewed from the perspective of maqāṣid syarī'ah, can protect the soul

²⁷ Arifin, "Kepala Kantor Urusan Agama Kecamatan Samarinda Ulu, Samarind" (Wawancara, 2023).

²⁸ Muhammad Yusuf Hidayat, "Kepala Kantor Urusan Agama Kecamatan Loa Janan Ilir" (Samarinda: Wawancara, 2023).

²⁹ Faisal Khalil, "Sexual Frustration, Religiously Forbidden Actions and Work Efficiency—a Case Study from the Pakistan Perspective," *Contemporary Islam* 10, no. 3 (2016): 477–87.

(*ḥifẓ al-dīn*), protect offspring (*ḥifẓ al-nasl*), and protect property (*ḥifẓ al-māl*). However, the phenomenon that exists in society is still neglecting this, so sometimes husbands divorce their wives for months to years. However, the couple did not carry out the divorce procedure at the Religious Court (*talak* under the hand). Even the people around him already know he split up long ago. The husband then arranges for divorce at the Religious Court when he has found a new wife because he cannot register his new marriage if he does not have a divorce certificate from his previous marriage.

The lack of public awareness regarding the procedure for imposing divorce, which can only be carried out in Religious Courts, hinders the regulation of marriages. Suppose the husband is in a condition where he has been separated from his wife for years, In that case, he has even reached the stage where he has never met and communicated. Suppose he is prohibited from marrying on the grounds that his ex-wife is still in her period of waiting because the divorce date is based on the date the divorce certificate was issued. This can bring even greater harm, especially if the husband is already in the "compulsory marriage."

From the description above, it can be seen that in implementing provisions prohibiting marriage during the *iddah* period, the KUA faces two problems. First: a divorce makes it impossible for the husband to refer to his ex-wife while the husband is included in the "mandatory marriage" category. Second: the dilemma of marriage law in Indonesia, especially regarding the problem of the lack of public awareness to carry out divorce procedures in the Religious Courts. In these two conditions, the prohibition of marriage can bring even greater harm. In line with the thoughts of Imām al-Syāṭibī that the essence of *maqāṣid syarī'ah* is to prevent harm and bring benefits so that the choice given by the government, as stated in letter E Number 5 is the permissibility of carrying out marriage on condition that after the marriage the husband with another woman does not may refer his ex-wife except after obtaining permission for polygamy from the Religious Court.

In contrast to the referral mechanism that applies in general, in Islamic law a husband who has sexual intercourse with his wife who is still in the period of *iddah*, is considered reconciled. As for positive law, it is enough for both parties to come to the KUA to make a reconciliation pledge with the wife's consent and witnessed by several witnesses. The requirement for polygamy permission to refer to these conditions is not stipulated except to safeguard the benefit of marriage registration, which can protect life, offspring, assets, and, more specifically, each wife's rights because both hold a marriage book. The book has legal force so that the original purpose of marriage, namely to build a household that is *sakinah mawaddah warahmah*, can be realized.

Thus, the essence of the Circular Letter as stated in its intent, purpose, and scope is in registering marriages for husbands who will carry out marriages during the wife's waiting period. There is no doubt that the registration of marriages is in line with the *maqāṣid syarī'ah* Imām al-Syāṭibī namely to protect religion (*ḥifẓ al-dīn*), protect souls (*ḥifẓ al-nafs*), protect offspring (*ḥifẓ al-nasl*) and protect property (*ḥifẓ al-māl*). In terms of realizing the aims and objectives of the Circular Letter, the first effort that must be made is to prohibit the husband's marriage from taking place during the wife's waiting period because there are many benefits in it, including as time to rethink about the continuation of the marriage. Meanwhile, if the husband is in a situation and condition that requires him to marry during the wife's waiting period, the Circular Letter instructions that after the wedding, if he wants to refer back to his ex-wife, he is obliged to apply for a permit for polygamy at the Religious Court.

The perspective of Maqāṣid Juṣ'īyyah

In the book al-Muwāfaqāt it is stated that:

"التَّعَالِيلُ لِتَفَاصِيلِ الْأَحْكَامِ فِي الْكِتَابِ وَالسُّنَّةِ فَأَكْثَرُ مِنْ أَنْ تُحْصَى"

"The analysis of 'illat from the details of the laws in the Qur'an and Al-Sunnah are more numerous than can be counted"³⁰

Moving on from the words of Imām al-Syāṭibī, the following is the explanation of the maqāṣid juz'iyah perspective based on the arguments from the Qur'an. In the discussion of determining the maqāṣid juz'iyah on the Shari'a text, according to Imām al-Syāṭibī it is an obligation to determine the maqāṣid juz'iyah, which is based on maqāṣid kulliyah. This determination is made by applying specific arguments from the Qur'an, Sunnah, Ijma', and Qiyas because it is impossible for *maqāṣid juz'iyah* to be separated from its *maqāṣid kulliyah*. So anyone who only argues with the Shari'a Kulliyah text and ignores the Juz'iyah Shari'a text is deemed to have made a mistake. Vice versa, whoever only argues with the Juz'iyah Shari'a text and ignores the Kulliyah Shari'a text is considered to have made a mistake.³¹

The words of Imam al-Syāṭibī show that the discussion about the prohibition of marriage during the period of the wife's *iddah* needs to be re-examined the arguments related to it, namely the arguments that have a strong correlation are the arguments about *iddah* in the Qur'an.

Maqāṣid *iddah* verses in the Qur'an

Talking about the verses of *iddah* in the Qur'an are found in several places, namely in QS. al-Baqarah (2): 226-242, QS. al-Aḥzāb (33): 49 and QS. al-Ṭalāq (65): 1-7. If one examines it more deeply, it can be seen that the commands from these verses are more directed to husbands than those directed to wives. This statement can be seen from the use of *ḍamīr mukhāṭab muttaṣil* (second person continuous pronoun) كُمْ (you are men) and وَا: waw jamā'ah (a letter that means you are men) which shows the meaning "husband" found in these verses. For more details, a summary of the verses addressed to the husband (husband as *khiṭāb*) regarding the issue of *Iddah* is as follows:

Table 1: Maqāṣid *iddah* verses in the Qur'an for wife

Qur'an Surah	Verse	Translate
QS. al-Baqarah (2): 231	"فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرَخُوهُنَّ بِمَعْرُوفٍ" "وَلَا تُمْسِكُوهُنَّ ضِرَارًا لِّتَعْتَدُوا"	"Either retain them honourably or let them go honourably" "But do not retain them 'only' to harm them 'or' to take advantage 'of them'"
QS. al-Aḥzāb (33): 49	"فَمَا لَكُمْ عَلَيْنَّ مِنْ عِدَّةٍ تَعْتَدُونَهَا" "فَمَتَّعُوهُنَّ وَسَرَخُوهُنَّ سَرَاحًا جَمِيلًا"	"They will have no waiting period for you to count" "So give them a 'suitable' compensation, and let them go graciously"
QS. at-Ṭalāq (65): 1	"وَاحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ" "لَا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُّبَيِّنَةٍ"	"And count it accurately. And fear Allah, your Lord" "Do not force them out of their homes, nor should they leave—unless they commit a blatant misconduct"
QS. at-Ṭalāq (65): 2	"فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ" "وَأَشْهِدُوا ذَوْيَ عَدْلٍ مِّنْكُمْ"	"Then, when they have 'almost' reached the end of their waiting period, either retain them honourably or separate from them honourably." "And call two of your reliable men to witness 'either way'."
QS. al-Ṭalāq (65): 6	"أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِّنْ"	"Let them live where you live 'during their waiting period', according to your means."

³⁰ Imām al-Syāṭibī, *Al-Muwafaqāt Fi Uṣūl Al-Syariah*, Jilid 2.

³¹ Imām al-Syāṭibī.

<p>وَجِدْكُمْ</p> <p>"وَلَا تُضَارُّوهُنَّ لِتُضَيِّقُوا عَلَيْنَّ"</p> <p>"وَأَنْ كُنَّ أُولِي حَمَلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمَلَهُنَّ"</p> <p>"فَإِنْ أَرْضَعْنَ لَكُمْ فَاتُّوهُنَّ أُجُورَهُنَّ"</p> <p>"وَأْتَمِرُوا بَيْنَكُمْ بِمَعْرُوفٍ"</p>	<p>"And do not harass them to make their stay unbearable."</p> <p>"If they are pregnant, then maintain them until they deliver."</p> <p>"And if they nurse your child,¹ compensate them."</p> <p>"And consult together courteously."</p>
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As for the instructions for wives relating to the *iddah* period in the Qur'an, none of them use *ḍamīr mukhāṭab* (second person pronoun) because, in the Al-Qur'an, there are no verses that speak directly to women except QS. al-Aḥzāb (33): 32 contains an appeal to the wives of the Prophet. The verses that contain commands addressed to wives are as follows:

Table 2: Maqāṣid *iddah* verses in the Qur'an for wife

Qur'an Surah	Verse	Translate
QS. al-Baqarah (2): 228	"وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ" "وَلَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ"	"Divorced women must wait three monthly cycles 'before they can re-marry'." "It is not lawful for them to conceal what Allah has created in their wombs."
QS. al-Baqarah (2): 234	"وَالَّذِينَ يَتُوفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا"	"As for those of you who die and leave widows behind, let them observe a waiting period of four months and ten days."
QS. al-Ṭalāq (65): 4	"وَالَّذِي يَدِينُ مِنَ الْمُحِيضِ مِنْ نِسَائِكُمْ إِذَا رَبَّيْتُمُ فَعِدَّتُهُنَّ ثَلَاثَةَ أَشْهُرٍ وَالَّذِي لَمْ يَحِضْنَ" "وَأُولِي الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمَلَهُنَّ"	"As for your women past the age of menstruation, in case you do not know, their waiting period is three months, and those who have not menstruated as well." "As for those who are pregnant, their waiting period ends with delivery."

From the explanation above, the maqāṣid that can be found is that the Qur'an very explicitly warns husbands who have the authority to drop the divorce not to apply arbitrarily to that authority. It is as if the Qur'an does not give movement and freedom to men who have divorced their wives by ordering them directly. There are many things for husbands to carry out their obligations to their ex-wives, even in terms of the command to calculate the wife's waiting period, it is directed to the husband. Thus, the maqāṣid of the insistence of these orders is that the husband is not in a hurry to start a new marriage during the wife's waiting period, which can neglect him from the wisdom of the syariat *iddah*. This is an opportunity to think clearly about his marital relationship with his ex-wife.

Something is interesting about QS. al-Ṭalāq (65): 2, when Allah commands, "If it is nearing the end of *iddah*, reconcile it in a good way or release it in a good way." Maqāṣid, this command signals at the end of the completion of the wife's *iddah*, or when the wife's *iddah* ends soon, that is where the husband chooses to continue his marriage relationship or chooses to separate. In this case, the separation between husband and wife only occurs when the wife's waiting period

expires. This verse indicates a pause between the fall of divorce and the decision to separate or reconcile. The pause gradually approached the end of the *iddah* period. As for who knows when the *iddah* ends, the husband is the one who is ordered to calculate the *iddah*. Thus, when a husband rushes to get married during his wife's waiting period, it is the same as ignoring the pause.

In addition, *maqāṣid* from QS. Al-Baqarah (2): 228 orders women not to hide what they contain. This command aligns with the command to consult in a *ma'ruf* way, as in QS. al-Ṭalāq (65): 6. Therefore, during the *iddah* period, both parties are asked to maintain intense communication. Discussion about menstruation or not a woman. Then whether pregnant or not is a very sensitive and private topic. If this sensitive issue is conveyed to ex-husbands who have married other women, it could disrupt their relationship. Moreover, if it turns out that after the fall of the divorce, the wife just found out about her pregnancy, then this pregnancy can be considered by the husband to reconcile because his ex-wife is temporarily pregnant with his flesh and blood. Therefore, the husband, who still functions as the head of the household, also waits during the wife's waiting period to maintain human dignity by carrying out all the obligations that must be carried out and giving every right to those who are entitled to it. So that life can run well and in balance according to the essence of *maqāṣid syarī'ah*.

Maqāṣid The Obligation to Obey Leaders

When finding the opinions of scholars who contradict each other on an issue, the most prioritized opinion is more relevant to the *maqāṣid* of the unity of the Ummah under the auspices of one leadership. This can be seen from the words of the Prophet regarding who is most entitled to lead the congregational prayers:

"وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَأَبُو سَعِيدٍ الْأَشْجِيُّ كِلَاهُمَا عَنْ أَبِي خَالِدٍ، - قَالَ أَبُو بَكْرٍ حَدَّثَنَا أَبُو خَالِدٍ الْأَحْمَرُ، - عَنِ الْأَعْمَشِ، عَنْ إِسْمَاعِيلَ بْنِ رَجَاءٍ، عَنْ أَوْسِ بْنِ ضَمْعَجٍ، عَنْ أَبِي مَسْعُودٍ الْأَنْصَارِيِّ، قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ "يَوْمَ الْقَوْمِ أَفْرُؤُهُمْ لِكِتَابِ اللَّهِ فَإِنْ كَانُوا فِي الْقِرَاءَةِ سَوَاءً فَأَعْلَمُهُمْ بِالسُّنَّةِ فَإِنْ كَانُوا فِي السُّنَّةِ سَوَاءً فَأَقْدَمُهُمْ هِجْرَةً فَإِنْ كَانُوا فِي الْهِجْرَةِ سَوَاءً فَأَقْدَمُهُمْ سِلْمًا وَلَا يُؤَمِّنُ الرَّجُلُ الرَّجُلَ فِي سُلْطَانِهِ وَلَا يَفْعُدُ فِي بَيْتِهِ عَلَى تَكْرِمَتِهِ إِلَّا بِإِذْنِهِ"

"The one who is most versed in Allah's Book should act as imam for the people, but If they are equally versed in reciting it, then the one who has most knowledge regarding Sunnah if they are equal regarding the Sunnah, then the earliest one to emigrate; if they emigrated at the same time, then the earliest one to embrace Islam. No man must lead another in prayer where (the latter) has authority, or sit in his place of honour in his house, without his permission. Ashajji, in his narration, used the word" age" in place of" Islam."³²

According to Imām al-Nawawī, when commenting on the above hadith that the scholars of the Shafi'i school argued that if a power leader or deputy leader is present, they should take precedence over the owner of the house, the *imam* of the Masjid and others. Because the scope of his power is wider, even if there are those who are more powerful than him.³³ It is said that Abdullah Ibn Umar once prayed behind al-Hajjāj bin Yūsuf who at that time was a leader with the intention of maintaining the unity of the Muslim community because they could unite under one obedience because if the ruler became *makmum*, his position can potentially be humiliated and the bonds of obedience to him can be released.³⁴

Let's examine more deeply the perspective of the scholars above. It can be understood that the decision of a ruler or leader must be put forward rather than a personal opinion if the problem is

³² Imām Muslim, *Ṣaḥīḥ Muslim, Jilid 1* (Beirut: Dār Iḥyā al-Turāṣ al-‘Arabī, 1374), 452.

³³ Imām Al-Nawawī, *Minḥāj Syarḥ Ṣaḥīḥ Muslim Ibn Al-Ḥajjāj, Jilid 5* (Beirut: Dār Iḥyā al-Turāṣ al-‘Arabī, 1392), 173.

³⁴ Muḥammad Ibn ‘Abdurrahmān al-Mubārakfūrī, *Tuḥfab Al-Aḥwāṣi Bi Syarḥ Jāmi’ Al-Tirmizī, Jilid 2* (Beirut: Dār al-Kutub al-‘Ilmiyyah, n.d.), 29.

related to the common good. This perspective is also in line with the *maqāṣid* of ummah unity and the prohibition of division. In relation to the Circular Letter regarding the husband's marriage during the wife's *iddah* period, KUA, which can be categorized as a leader in its territory, should follow the rules of a leader with a higher position, in this case, the Minister of Religion as the formulator of the Circular Letter regarding marriage during the wife's *iddah* period, even though he has his perspective different. Because when one KUA violates the provisions in the Circular, it can lead to divisions in society if it turns out that the marriage registrar during the wife's waiting period gets permission from the KUA while another KUA insists on rejecting the marriage registrar during the wife's waiting period.

The analysis results indicate that the circular letter is in line with the principles of *maqāṣid syari'ah* by Imām al-Syāṭibī. In the context of marriage during the *iddah* period, the circular letter provides guidelines that support the well-being and protection of women in the *iddah* period. However, the author also identified several aspects that can be improved or enhanced in the Surat Edaran to make it more consistent with the principles of *Maqāṣid Syari'ah*. For instance, the author suggests a stronger emphasis on protecting women's rights during the *iddah* period and enhancing the understanding of *maqāṣid syari'ah* concepts among the officials involved in implementing the circular letter. This research provides a significant contribution to the understanding of marriage during the *iddah* period.

Conclusion

The position of circular letters as quasi-legislation, not statutory regulations, is still considered important for dissemination, including among the general public. If this Circular Letter does not reach the wider community, there will still be a large number of marriage registrars during the wife's waiting period. Even though this Circular Letter on Marriage during the Wife's Period is iapvery relevant to the *maqāṣid syari'ah* concept, even the provisions' formulation is very neatly arranged. It's just that the shortcomings of this Circular Letter do not clearly state that the prohibition on husband's marriage during the wife's *iddah* period only applies to *raj'i talak* divorces. However, the specialization of *raj'i* divorce can be known implicitly from the provisions of Letter E Number 5, which explains the mechanism of reconciliation, and the provisions of Letter E Number 2. However, this specialization of *raj'i* divorce is very urgent to include. This is so that the readers of the Circular Letter, especially the executor, in this case, the KUA, can immediately understand the applicable provisions and not give rise to different perspectives. Because the prohibition only applies to *raj'i talak* divorces, the prohibition cannot be said to be *iddah* for men. The more appropriate term to address the ban is *syibhu al-'iddah* (similar to *iddah*). This research can strengthen the Ministry of Religion's argument as the formulator of the provisions in this Circular Letter that Shari'a views these provisions as necessary to implement. It's just that the Ministry of Religion as the parent of the KUA, needs to provide counseling and affirmation to all KUA so that they can unify their understanding in understanding and implementing this Circular Letter so that divisions do not occur in the community. Public awareness is also needed to comply with marriage law regulations in Indonesia, including the imposition of divorce, which can only be carried out in Religious Courts. This is so that there is no longer the "long-divorced" argument for husbands who want to carry out marriages during their wife's *iddah* period.

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