

## Revisiting 'Iddah: A Critical Analysis of Gender Equality in Indonesian Feminist Islamic Legal Discourse

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**Abstract:** Feminist legal theory highlights the persistence of women's subordination within the prevailing legal framework and emphasizes the importance of legal mechanisms that promote women's emancipation and equality. So far, the discourse of feminist Islamic law in Indonesia has caused more rejection, particularly with the emergence of the Counter Legal Draft-*Kompilasi Hukum Islam* (CLD-KHI), which is considered contrary to Islamic law, one of which is in the provisions of 'iddah. This study seeks to examine and analyze the demand for gender equality in the 'iddah period as manifested in the CLD-KHI. Using a qualitative research approach emphasizing library-based research on the draft in question and the supporting writings, this study bases its content analysis on the theory of *Maqāṣid al-Shari'ah*, with al-Shatibi as the primary source. The results of this study reveal an insufficiency in the justification of the plea for gender equality in the enforcement of 'iddah from the view of *Maqāṣid al-Shari'ah*. From the conventional perspective of Islamic law, the principle of gender equality as a *maqṣad* does not have a solid foundation, so it leads to rejection rather than acceptance. Therefore, to bear fruit, any legislative effort in the field of Islamic law must be carefully shaped by methodologies and ethos derived primarily from its tradition.

**Keywords:** *Iddah*; *Maqāṣid*; Gender Equality; KHI; Feminist Legal Theory.

### Introduction

In addressing feminism issues, Ning Imaz Fatimatuz Zahra stated, "Women should not demand equality but justice," (NU Online, 2022). In her social media talks, the female intellectual often addressed issues concerning the relationship between Muslim men and women, emphasizing the differences between them in terms of status, rights, and obligations. One video went viral when a social media activist criticized her traditionalist viewpoint and labeled her a "lizard-level moron" (Syafi'i, 2022). Nowadays, the fulfillment of gender equality has been regarded as a standard for achieving justice (Mubarrak, 2016; Ramadhita et al., 2023).

In the Indonesian context, the Compilation of Islamic Laws/ *Kompilasi Hukum Islam* (KHI) is one of the laws that feminists frequently criticize. After more than a decade of the enactment of the KHI through Presidential Instruction (Inpres) No. 1 of 1991, a draft law that offered an alternative to the KHI and included criticism of it was submitted. In 2004, the Gender Mainstreaming Team (PUG) of the Ministry of Religious Affairs, under the leadership of Musdah Mulia, submitted a draft known as the Counter Legal Draft- *Kompilasi Hukum Islam* (CLD-KHI). This team offered criticism of the content of the KHI, stating that it needs to be revised as it does not align with the social and cultural conditions of Indonesian society. The CLD-KHI was expected to be a legitimate product that upholds gender equality, pluralism, and human rights (A. I. Mawardi & Riza, 2019; Rizqon, 2022; Wahid, 2015).

To defend women's freedom, equality, and justice, Indonesian feminist legal groups drafted CLD-KHI, which can be considered a legislative endeavor. At least until now, this movement can be mapped into three waves. The movement's initial wave was the CLD-KHI, which was then followed by the legislative efforts of drafting the Gender Equality and Justice Bill/ *Rancangan Undang-Undang Keadilan dan*

*Kesetaraan Gender* (RUU KKG) and the Sexual Violence Elimination Bill/*Rancangan Undang-Undang Penghapusan Kekerasan Seksual* (RUU PKS), in which the latter was successfully enacted on April 12, 2022. Grounding gender equality through legislative efforts and criticism of prevailing positive laws is the main goal of this movement (Chairil & Shalahuddin, 2021; Shalahuddin, 2020). The CLD KHI announcement immediately caused great controversy. Following a short period of consideration, Maftuh Basyuni, the minister of religion at that time, finally suspended it, deeming it incompatible with the current views of the Indonesian Muslim community due to its liberal interpretation of Islamic family law and, in some cases, deviating from it (A. I. Mawardi & Riza, 2019; Rizqon, 2022).

One of the criticisms raised is the limited understanding of *'iddah* as an obligation for wives after the end of marriage. In the Islamic legal system in Indonesia, the provisions regarding *'iddah* are regulated in the KHI. These provisions contained in Article 153 consist of six articles (Mahkamah Agung RI, 2011). According to CLD-KHI, the transition period applies not only to wives but also to husbands. The provisions of the husband's *'iddah* period adjust the provisions of the wife's. These *'iddah* provisions are contained in Article 88 CLD-KHI (Tim Pengarusutamaan Gender Departemen Agama RI, 2004).

According to several recent studies, the period *'iddah*, which is exclusively applicable to wives, is an obvious social injustice, imposing a double burden on women—the challenges associated with divorce and the obligation of *'iddah* itself (Nuroniya, 2018; Sunuwati, et al., 2023). Moreover, the *'iddah* provision, according to feminists, is a manifestation of a patriarchal culture that perpetuates gender marginalization, as it applies exclusively to women and not to men (Asnawi & Ismail, 2020; Hilal & Harahap, 2021). Therefore, Amina Wadood argued that a gender jihad is necessary to encourage women's empowerment since the current application of *'iddah* underscores inequality and reflects the subjugation experienced in marriage (Abdali, 2023; K. Ali, 2019; Wadud, 2013). To solve this issue, a nexus between the application of Islamic Sharia law and gender equality principles must be established (Maimun et al., 2020; Mashhour, 2005). This can be achieved by comprehensively examining and reinterpreting Sharia law to avoid being trapped in the bondage of textuality and interpretation (K. Ali, 2016; Ismail & Hasan, 2020; Wadud, 2013). In the proposed approach, the concept of *Maqāṣid* was primarily used to advocate for the reinterpretation of Islamic teachings in favor of women's rights and the recognition of patriarchal systems in Islamic sources and interpretations (M. Abdullah, 2018).

In the Indonesian context, the CLD-KHI is one of the manifestations of this struggle for gender equality. Moreover, *Maqāṣid al-Shari'ah* is the basis through which Murtadlo and Wibowo contended that the provisions of the CLD-KHI in general do not contradict Islamic law (Murtadlo, 2021; Wibowo, 2019). According to Murtadlo, the controversy in its articles is only political. Particularly concerning *'iddah*, Nuroniya, Pramesi, and Hidayati based on *Maqāṣid*-based analogies reinforce the CLD-KHI provisions to demand equality by enforcing it on husbands as well (Hidayati, 2018; Nuroniya, 2018; Pramesi, 2021).

Based on the aforementioned explanation, this study examined arguments for gender equality in feminist legal discourse in Indonesia, particularly from the *Maqāṣid* perspective. Furthermore, this study focused on the concept of *'iddah* and its gender-related implications in Islamic law. Additionally, this study was expected to enhance existing knowledge by providing an analysis of *'iddah* in relation to gender equality, legal reform, and contemporary Islamic legal interpretation. Moreover, this study used the concept of *Maqāṣid* to reveal the basic principles that guide the derivation of Islamic law. These insights are essential for comprehending *'iddah* in its larger context and aligning interpretations with Islamic legal traditions.

## Literature Review

### The Concept of *'Iddah* in Islamic Jurisprudence

*Al-'iddah* has the same lexical root as *al-'adad*, which implies limited time. Terminologically, *'iddah* refers to a specified woman's waiting period in the Sharia and her refraining from marrying another man following the end of her marriage with her husband (Az-Zuhaili, 1989; Isnaini, 2022; Mardani, 2017; Sabiq, 2015). Moreover, the Shafi'i school defines *'iddah* more clearly as the period of waiting for a woman to know

the cleanliness of the uterus, observe the *ta'abbudī* factor, or express her sadness to the husband (M. Ali et al., 2021; Al-Shirbini, 1994; Dahlan et al., 2023). In addition, the provisions of *ʿiddah* are explicitly mentioned in several verses in the Qur'an, including Al-Baqarah: 228, Al-Baqarah: 234, Al-Talaq: 4, and Al-Ahzab: 49.

A marriage may be ended for a variety of reasons, including divorce, the death of a spouse, or annulment. When a marriage ends due to divorce or annulment, one of the following three types of *ʿiddah* conditions may be applied to women: the first is for pregnant women who are divorced; their *ʿiddah* remains applicable until childbirth; the second is for women who are divorced before having sexual intercourse (*qabl al-dukhūl*); *ʿiddah* is not required for them; and the third is for women who are divorced after having sexual intercourse (*ba'd al-dukhūl*). In this case, there are three possibilities, depending on the woman's condition. If she has not gotten her menstrual period yet, her *ʿiddah* remains applicable for three months. For women who are still in their menstrual period, their *ʿiddah* remains applicable for three *quru'* which is interpreted differently by different Islamic schools. The Shafi'i, Maliki, and parts of the Hambali schools interpreted it as three pure times, while the Hanafi school and a narration in the Hambali school interpreted it as three menstrual times. Regarding menopausal women, their *ʿiddah* period is equal to that of non-menstruating women, lasting three months (Az-Zuhaili, 1989; Sabiq, 2015). Furthermore, when a marriage ends because of the death of the husband, one of the following three types of *ʿiddah* conditions may be applied to women: if she was pregnant at the time of her husband's death, she must wait until the child is born before the *ʿiddah* period ends; otherwise, the *ʿiddah* period is four months and ten days, regardless of a woman's age or menstrual status, whether the couple has had sexual intercourse or not; and the *ʿiddah* period is a mourning period that all women are required to follow (Nuroniya, 2018; Sabiq, 2015).

During the *ʿiddah* period, a Muslim woman is prohibited from accepting proposals and marrying other men. A marriage will be annulled if this condition is violated (Achyar & Hasanah, 2019; Romadoni, 2019). Moreover, there are other prohibitions, namely *iḥdād* (the restriction on leaving the house and the ban on wearing jewelry and fragrances), for women who perform *ʿiddah* due to the deaths of their husbands. Additionally, a woman must comply with certain restrictions during the *ʿiddah* period, and her husband is responsible for providing her with a place to live and financial support (Musarrofa & Sa'adah, 2023). This is a widely accepted opinion among jurists, particularly in the case when the *ʿiddah* period is due to *ṭalāq raj'ī*. According to several studies, women who are pregnant or have been divorced (either *raj'ī* or *bā'in*) have the right to receive *ʿiddah* maintenance until childbirth (Hilal & Harahap, 2021; Nuroniya, 2018; Sabiq, 2015).

### ***Maqāṣid al-Sharī'ah***

Based on the Islamic worldview of God's wisdom in determining all things, the provisions of Sharia are believed to have their purposes termed *Maqāṣid al-Sharī'ah*. The term *Maqāṣid al-Sharī'ah* consists of two words, *Maqāṣid* and *al-Sharī'ah*. *Maqāṣid* is linguistically the plural form of the root word *maqṣad*, which means something aimed at or a goal to be achieved. Meanwhile, the word *sharī'ah* itself means a place where water flows. In terms of terminology, the word *sharī'ah* implies the laws of Allah addressed to man, which are full of wisdom and welfare for both life on earth and in the hereafter. As a result, the term *Maqāṣid al-Sharī'ah* can be defined as the goals, values, and benefits to be achieved from the guidance of Sharia, both in general and in detail (I. Mawardi, 2018; Mutawali, 2023).

Based on the aforementioned definition, scholars categorized the *maqāṣid* into three categories according to its scope. The first is *al-Maqāṣid al-ʿĀmmah*. These *maqāṣid*s are found throughout most of the Sharia chapters. The second is *al-Maqāṣid al-Khāṣṣah*. This category comprises the *maqāṣid* that Sharia aims to achieve in a particular chapter, such as the *maqāṣid* in marriage or *tabarru'*. The third is *al-Maqāṣid al-Juz'iyah*. This category is primarily concerned with *maqāṣid* to a certain provision (Al-Raisuni, 2014; Rizki et al., 2022).

*Maqāṣid* is divided into three significant levels. The highest level is called *al-Ḍarurīyah*, or primary needs, which determines the benefit of both this world and the hereafter. There are five main *maqāṣid* that need to be highlighted in this level, namely: *ḥifẓ al-dīn* (preserving religion), *ḥifẓ al-naḥs* (guarding the

soul), *ḥifdz an-nasl* (guarding descendant), *ḥifdz al-māl* (guarding property), and *ḥifdz al-'aql* (maintaining reason). The second level is *al-Ḥājīyah*, or secondary needs, which are necessary to achieve a benefit. When unfulfilled, these needs may lead to difficulties but will not hinder the overall benefit. The third level is *al-Taḥsinīyah*, or tertiary needs, which is generally viewed as good. When unfulfilled, these needs will not cause any loss of benefit or difficulties (Al-Raisuni, 2014; Asman & Muchsin, 2021; Hayatudin, 2019).

According to al-Shatibi, several methods can be used to determine *maqāṣid*. It is important to mention these to avoid arbitrary determination of the *maqāṣid*. They are as follows:

- Mujarrad al-amr wal-nahy al-ibtidā'i al-taṣrīhī*. This method aims to explicitly identify expressions with commands and prohibitions.
- Paying attention to the rationale of the ruling ('*illah*'). This method is closely related to the first method; however, it focuses more on tracking the '*illah*'.
- Paying attention to all *al-maqāṣid al-tābi'ah* (derivatives). The existence of all these derivative *maqāṣid* is the will of Allah, which serves to strengthen and establish the existence of *al-maqāṣid al-aṣliyah* (primary goals).
- Absence of Sharia information (*sukūt al-Shārī'*). Islamic jurisprudence maintains the status quo in matters for which there are no regulations or laws to preserve the original intent of religious practices and discourage innovation, particularly in religious rituals and boundaries.
- Induction (*Istiqra'*)

This method is the most important of the other methods. Even though this method is missed by al-Shatibi when discussing the methods of determining *Maqāṣid*, it is the method most frequently mentioned in his other discussions (Al-Raisuni, 2014; Aziz & Sholikah, 2013).

Although there may be a consensus regarding certain moral principles, such as justice and fairness, to be *maqāṣid al-Shārī'ah*, the interpretation and contextual nuances of each principle can diverge based on varying approaches. The exploration of different worldviews reveals that while there might be shared elements, the specific connotations of individual terms invariably differ, sometimes fundamentally. Moreover, the liberal perspective advocates overemphasizing these values, but doing so carries the risk of lapsing into ad-hoc decision-making and opportunism. To avoid these kinds of problems, it becomes imperative to discover a harmonious balance between adhering to the literal guidance of the injunctions that form the foundations and comprehending their intended objectives. Additionally, it is imperative to appropriately analyze the association between *juz'īyah* (partial) objectives and *kullīyah* (comprehensive) objectives of Sharia to ensure a comprehensive and balanced application (F. Abdullah & Mukhlas, 2020).

From here, scholars who interpreted verses and traditions pertaining to '*iddah*' conveyed several *maqāṣid*. In *I'lam al-Muwaqqi'in*, Ibn Qayyim mentioned, as follows:

- Creates sexual preservation by ensuring the emptiness of the uterus and preventing the mixing of semen from two or more men in one uterus.
- As an exaltation of a marriage contract, it needs to be respected, careful with, and guarded with its true glory.
- Provide a period of time for both parties to consider and reaffirm their decision to proceed with the divorce or reunite through reconciliation. There may be regret over the divorce and a desire to remarry.
- In the '*iddah*' pertaining to the death of the husband, there is a form of fulfillment of the husband's rights and the expression of mourning and condolences for the loss of her husband, which is the reason *iḥdād* is instructed with prohibition to dress up at this time.
- It becomes a form of worship that shows servitude to the conditions decreed by God (Al-Jauziyyah, 1991; Az-Zuhaili, 1989).

However, these *maqāṣid* can be explored and even include derivatives from all the five main benefits (Nuroniyah, 2018). However, Ibn Qayyim mentioned that '*iddah*' is closely related to prudence in the fulfillment of four rights: the rights of the husband, the rights of the wife's benefit, the rights of children, and also the rights of Allah in one's obedience to carry out the provisions of '*iddah*'. In this chapter, obedience can be considered to be the greatest *maqāṣid*. Based on this, Ibn Qayyim asserted that it was

erroneous to interpret the purpose of *‘iddah* as being restricted to ensuring the emptiness of the womb. It is only one of the *maqāṣids* contained in the provisions of *‘iddah* (Al-Jauziyyah, 1991).

### Equality and Islamic Feminism

The journey of the Islamic feminist movement has undergone significant development since the period of Fatima Mernissi and Leila Ahmed to the present day. In the early days of this movement, Mernissi, a Moroccan sociologist, shook the foundations with her groundbreaking work “Beyond the Veil”. She discussed how patriarchal interpretations altered the original meaning of Islam in favor of male dominance (Ennaji, 2022; Mernissi, 1987). Another substantial contribution was made by the Egyptian-American scholar Leila Ahmed through her book “Women and Gender in Islam”. She investigated the history of Islamic veils, in which gender roles have been constructed and contested throughout Islamic history (Ahmed, 2021).

The movement was continued by contemporary scholars like Amina Wadud, Kecia Ali, and Ziba Mir-Hosseini. In 2005, American scholar of Islamic studies Amina Wadud defied traditional notions of gender roles in Islamic worship by leading a mixed-gender congregational prayer in New York (Riyani, 2017). She emphasized the need for a more inclusive and equitable comprehension of Islam in her publications, such as “Inside the Gender Jihad” (2006), which introduced the concept of “gender jihad” (K. Ali, 2019). Moreover, American scholar Kecia Ali has made significant contributions to the study of Islamic law and ethics. Through a feminist perspective, her book “Sexual Ethics and Islam” analyzed Islamic legal texts on topics such as marriage, divorce, and sexuality. Furthermore, Ali emphasized the need for a more inclusive approach to sexual ethics in Islam (K. Ali, 2016). Additionally, Ziba Mir-Hosseini, an Iranian-born legal anthropologist, argued that women have been marginalized in Muslim societies due to patriarchal interpretations of Islamic law and advocates for its reinterpretation to reflect evolving social realities and promote gender equality, utilizing Quranic principles of justice and equality to support this cause (Mir-Hosseini, 2019a). Since the early 1990s, Islamic feminism has begun to develop in Indonesia through the translation of the writings of Islamic feminists, including Fatima Mernissi, Riffat Hassan, Asghar Ali Engineer, and Amina Wadud. In addition, the increase in internet usage among Indonesians since 2010 has accelerated the dissemination of Muslim feminist ideals (Nurmila, 2021).

All of these Islamic feminists are dedicated to challenging patriarchal interpretations of Islam and advocating for gender justice within the Islamic tradition. They asserted that traditional interpretations have often perpetuated gender inequalities, restricting women’s autonomy in various aspects of life, including religious practices, legal frameworks, and ethical standards. Moreover, they urged for a more inclusive and equitable comprehension of Islamic texts and jurisprudence, with a focus on the compatibility of Islam with gender equality and women’s empowerment. In addition, they collectively seek to reform the discourse on gender within Islam, aiming toward a more equitable and just interpretation of Islamic principles, whether through activism, scholarly research, or legal advocacy (Nurjanah & Nur, 2022; Wardatun & Smith, 2020).

Challenges and critiques emerge frequently in this field, with some arguing that it poses the risk of conflating feminism with Westernization or secularism (Chairil & Shalahuddin, 2021; Mir-Hosseini, 2019b). Therefore, advocates for Muslim women’s rights should honestly and critically reclaim Islamic tradition. Reviewing the moral decisions made by earlier Islamic scholars with inertia became a sign of authenticity and, as a result, authority within Islamic legal tradition. In addition, to resolve moral conundrums faced by contemporary Muslims while upholding Islamic tradition, feminist legal discourse should recognize the role of human choices and hermeneutical flexibility involved in the formation of gender norms in Muslim societies throughout history (Daud & Rosadi, 2021; Lisnawati, 2019; Rehman, 2020).

### Method

This study focused on the discourse of equality in *‘iddah* by referring to the provisions in the KHI and CLD-KHI. Moreover, this study employed a qualitative research approach within the context of library

research. Materials for this study were collected by reading and reviewing relevant parts of the articles in KHI and CLD-KHI and their supportive writings. This study employed content analysis techniques based on the *Maqāṣid al-Sharī'ah* theory. This theory was used because it was considered quite suitable to be applied. Additionally, it is one of the main theories in the formation of Islamic law and is widely used and discussed nowadays. Furthermore, this study discovered that -as opposed to previous studies which have used the *Maqāṣid* theory to strengthen the equality of husband and wife in 'iddah cases- the theory of *Maqāṣid* actually strengthens the position of the KHI and the majority of traditional ulama in distinguishing between men and women based on text-based norms, particularly in 'iddah cases. In that regard, *Maqāṣid* theory here refers more to al-Shatibi as the main *Maqāṣid* theorist in the Islamic legal tradition.

## Results and Discussion

### The Concept of 'Iddah in *Kompilasi Hukum Islam* (KHI)

In the Indonesian legal system, the 'iddah provision is included in the marriage regulations in KHI. In terms of the process of drafting, KHI compiled the rules of Islamic law derived from books of jurisprudence, legal rules, jurisprudence, and doctrine (opinions of scholars) to then be outlined in the form of a lawbook that was compiled in compliance with the language of legislation (Nurjihad, 2004). Based on the consideration of the Joint Decree of the Chief Justice of the Supreme Court and the Minister of Religious Affairs dated March 21, 1985, No. 07/KMA/1985 and No. 25 of 1985 concerning the Appointment of the Implementation of Islamic Law Development Projects through Jurisprudence, the primary concern for holding this project is the regulatory function of the Supreme Court of the Republic of Indonesia in ensuring the fair and just course of justice in all judicial environments in Indonesia, particularly in the Religious Courts. To achieve this, it is essential to compile a comprehensive body of Islamic law that will be used as positive law in religious courts (Hikmatullah, 2017).

Multiple parties were involved in the establishment of the KHI, including bureaucrats from the Ministry of Justice and the Supreme Court of Justice of the Republic of Indonesia, as well as Muslim intellectuals and scholars. Following the decree, the preparation process involved gathering data through book studies, interviews with scholars, workshops to present and discuss findings, and comparative studies with other Islamic countries. Moreover, the KHI was derived from various sources, including legislation related to marriage such as Law No. 32 of 1954, Law No. 1 of 1974, and Government Regulation No. 7 of 1989, as well as fiqh books from various schools (*madhhab*), with primary reference to the Shafii school. The KHI was ultimately established based on Indonesia's current legal system, which was derived from the jurisprudence of religious courts (Hikmatullah, 2017). Furthermore, Presidential Instruction No. 1 of 1991 has been issued as a result of the efforts of the entire team, under the leadership of Bustanul Arifin. This instruction directed the Minister of Religious Affairs of the Republic of Indonesia to disseminate KHI. Therefore, on July 22, 1991, the Minister of Religious Affairs of the Republic of Indonesia issued Decree No. 154/1991.

The KHI consists of three books, each containing 229 articles. In terms of the number of chapters it contains, each book differs from the other. Most articles are about marriage, followed by inheritance, and the least are about endowment. Moreover, Book I on the Law of Marriage consists of 19 chapters with 170 chapters. Book II on the Law of Inheritance consists of 6 chapters, with 43 chapters starting from chapters 171-214. Book III on the Law of Endowment consists of 5 chapters, with 12 chapters starting from chapters 215-228 (Asriati, 2012). Additionally, one of the objectives of the establishment of the KHI is to equalize the insights of judges within the Indonesian Religious Court in elaborating on the problems posed to them.

The provisions of 'iddah in the KHI are contained in Article 153. The 'iddah waiting period, as outlined in this article, complies with the provisions of Islamic jurisprudence, particularly in the Shafi'i school. The 'iddah period is calculated as follows: for marriages dissolved due to divorce, it commences from the date of the Religious Court's final and legally binding decision. Conversely, for marriages dissolved due to the death of the husband, the waiting period begins from the moment of the husband's demise. Furthermore, other provisions related to 'iddah are regulated in other articles. For instance, the right to provide, which

must be given by the husband during the *'iddah* period, either in the form of money or other worthy goods, is regulated in Article 149 (Mahkamah Agung RI, 2011). No article explicitly regulates the obligation of *'iddah* for husbands.

Some articles in the KHI are believed to contain provisions of *shibh al-'iddah*, which require husbands to refrain from marrying for a certain period to avoid prohibited marriages. Articles 42 and 70 are examples of such articles. Moreover, it is forbidden for a husband who divorces one of his four wives to remarry during the *'iddah raj'i* period of his wife to prevent having more than four wives. Additionally, the Islamic Community Guidance Circular Number P-005/DJ.III/Kh.00.7/10/2021 prohibits marriage during the wife's *'iddah* period. This circular aimed to ensure the validity of the first wife's license provisions and prevent hidden or covert polygamy, which is prohibited by the law in Indonesia (Sumarni et al., 2022; Sunuwati, Siti Irham Yunus, Rahmawati, 2023). However, this provision is more technical in nature to prevent the non-fulfillment of the formal requirements of polygamy. Thus, in terms of Islamic legal terminology, this provision cannot be classified as *'iddah*. Additionally, due to technical factors, including the implementation of the statutory provisions for polygamy, it is not directed at the husband directly as a divorcee. Moreover, marriage detention is not necessary in the event of the death of the wife, who is in *'iddah raj'i*. In other words, if there are other ways to ensure that things of concern do not happen, such as the existence of a wife's consent, this provision of detention of the husband's marriage is not necessary. Therefore, *shibh al-'iddah* is still not *'iddah*, or its mention as *'iddah* is only figurative because it is not directly related to the husband as a legal subject. In addition, there are other instances in which a man is forbidden to marry but cannot be called *'iddah*, such as ihram time. In this regard, these provisions do not directly conflict with Islamic law.

### The Concept of *'Iddah* in the Counter Legal Draft- *Kompilasi Hukum Islam* (CLD-KHI)

The emergence of CLD-KHI is a counterpoint to KHI. There are several reasons why KHI was chosen as a matter of criticism and contradiction. First, the KHI-Inpres is the only detailed provision on Islamic sharia recognized by the government, and almost one hundred percent of religious court judges use the KHI in every decision. Second, KHI was proposed by the Ministry of Religious Affairs to be upgraded from a Presidential Instruction to a bill. Third, the basis for countering the KHI is that some articles are considered contrary to the basic principles of Islam, such as equality (*al-musāwāh*), brotherhood (*al-ukhuwwah*), and justice (*al-'adālah*). Fourth, some articles are considered no longer relevant to the prevailing laws and international conventions that have been ratified. Fifth, KHI is considered a replica of the jurisprudence products of ancient scholars in Arab countries (Fitri, Al, 2022). In other words, although KHI is based on the Qur'an and Hadith and considers Indonesian socio-cultural conditions, it is no longer relevant to the contemporary context (Djawas et al., 2022).

There are some differences between KHI and CLD-KHI regarding various themes such as marriage, inheritance, and *waqf* (endowment). Specifically, there are 18 distinct themes related to marriage, 4 themes related to inheritance, and 1 theme related to endowment. Altogether, 23 main themes have been revised.

The CLD-KHI preparation process was carried out through several stages: a) the first stage is literature study of KHI; b) the second phase is to conduct field surveys in five regions (Aceh, West Sumatra, South Sulawesi, West Nusa Tenggara, and West Java); c) the third stage is to compare Indonesian Islamic family law with the Islamic family laws of Islamic countries such as Jordan, Tunisia, Syria, Egypt, and Iraq; d) the fourth stage is to conduct a critical study of classical literature concerning marriage, inheritance, and endowments; e) the fifth stage is the drafting of conclusions in legal language; f) the sixth stage is to conduct workshops; g) the eighth stage is to launch the CLD draft to the public; h) the last stage is to revise matters that are difficult for the public to accept (Murtadlo, 2021).

If the KHI regulates in detail the provisions of *'iddah* for wives without imposing them on husbands except as a moral recommendation, the CLD-KHI in Article 88 straightforwardly applies these provisions to both husbands and wives (N. M. Kasim, 2012). The contents of this article are as follows:

- (1) For husbands and wives whose marriages have been declared dissolved by the Religious Court, a transition period, or *'iddah* applies.

- (2) During the transition period, the ex-husbands or ex-wives are allowed to remarry through a reconciliation process.
- (3) The transition period for a widow is determined as follows:
  - a. If the marriage is dissolved due to death, the transition period is set at 130 (one hundred thirty) days;
  - b. If the marriage is dissolved due to divorce, the transition period for those who are still in menstrual period is set at 3 (three) holy times of at least 90 (ninety) days, and for those who are not in menstrual period, it is set at 90 (ninety) days;
  - c. If the marriage is dissolved due to divorce while the widow is pregnant, the transition period is set until childbirth.
  - d. If the marriage is dissolved due to death while the widow is pregnant, the transition period is set until childbirth.
  - e. For those who have gotten their menstrual periods and are in the transition period, and are not in the menstrual period due to breastfeeding, the transition period is three menstrual periods.
  - f. For those who are divorced *raj'i*, and in the transition period left dead by their husbands, the transition period changes to four months and ten days from the death of their former husbands.
- (4) For marriages that are dissolved due to divorce and *li'ān*, the transition period is calculated from the decision of the Religious Court, which has permanent legal force.
- (5) For marriages that are dissolved due to death, the transition period is calculated from the moment there is certainty of the death of the spouse.
- (6) For marriages that are dissolved due to a marriage agreement, the transition period is calculated from the end of the marriage in the agreement.
- (7) The *'iddah* period for a widowed man is determined as follows:
  - a. If the marriage is dissolved due to death, the transition period is set at 130 (one hundred thirty) days;
  - b. If the marriage is dissolved due to divorce, the transition period is set following the transition period of the former wife (Tim Pengarusutamaan Gender Departemen Agama RI, 2004, pp. 23–24).

Based on the above, the CLD-KHI aspires to establish a paradigm that ensures justice and equality for both men and women in terms of the imposition of *'iddah*. Both genders should experience this waiting or transition period after divorce equally. In addition, both may engage in activities outside of the house to earn a living during this *'iddah* period (Sumarni et al., 2022).

### **Equality of *'Iddah* Enforcement in *Maqāsid* Perspective**

In 2004, KHI received a controversial response to its draft, the Counter Legal Draft-*Kompilasi Hukum Islam* (CLD-KHI). Articles in the KHI that are considered no longer relevant to the current times were included in the content of the CLD-KHI. One of the articles concerns the provisions of *'iddah* contained in Article 88. According to this article, it is mandatory for the husband to also participate in carrying out the same *'iddah* as the wife. In CLD-KHI, *'iddah* is determined based on the occurrence of the contract, not on *al-dukhūl*. According to Article 88, paragraph 1, the *'iddah* period applies to both the husband and the wife. Additionally, paragraph 7 specifies the *'iddah* period for the husband, which is divided into two categories. If the separation is caused by death, the *'iddah* period is 130 days. If it is due to divorce, the *'iddah* period follows the wife's *'iddah* period. CLD-KHI has specific provisions regarding the necessity for husbands to undergo a transition period, or *'iddah* period. The responsibility for fulfilling the requirement of *'iddah* falls directly on the husband as a legal subject. This is because the purpose of *'iddah* is not only to determine the cleanliness of the uterus but also to ensure gender equality (Wahid, 2014). Therefore, the arrangements regarding the duration of *'iddah* that must be carried out by the husband are also regulated in the same detail as those of the wife.



The differences between KHI and CLD-KHI are inextricably linked to the background of their respective formation reasons. KHI was established as a result of the urgency of uniformizing the guidelines of judges in Religious Courts and the application of laws in accordance with the provisions of conventional Islamic law adopted by the Indonesian Muslim community. The KHI formulation was derived from classical jurisprudence, which Muslim scholars thoroughly examined. The thirteen books of jurisprudence include: (1) al-Bājūrī, *Hāshiyat kifāyat al-akhyār*, (2) al-Malibārī, *Fath al-mu'in*, (3) 'Alī b. Hijazī b. Ibrāhīm al-Sharqāwī, *Hāshiya 'alā al-tahrīr*, (4) al-Qalyubī, *Sharh kanz al-rāghibīn*, (5), al-Anṣārī, *Fath al-Wahhāb*, (6) al-Haytāmī, *Tuḥfat al-muḥtāj*, and (7) Targhib al-mushtaq, (8) Sayyid Uthmān b. Yahya, *al-Qawānīn al-shar'iyya*, (9) Daḥlān, *al-Qawānīn al-shar'iyya*, (10) al-Shamsurī, *al-Farā'id*, (11) al-Bā'alawī's *Bughyat al-Mustarshidīn*, (12) al-Jazīrī's *al-Fiqh 'alā al-madhāhib al-arba'a*, and (13) al-Sharbīnī's *Mughnī al-Muḥtāj*. Moreover, the thirteen books were thoroughly examined (Feener, 2013).

On the other hand, CLD-KHI emerged in response to the gaps in KHI's articles that did not address contemporary issues, particularly gender equality. Moreover, Musdah Mulia, the head of the Department of Religious Affairs Gender Mainstreaming Team, claimed that CLD-KHI, a result of her work with the team, was a form of *ijtihād* (Mulia, 2015).

Nonetheless, CLD-KHI has eventually generated several articles contradicting mainstream Islamic law, particularly in the four schools, and those are the prohibition of polygamy (Article 3, paragraph 2), the legalization of interfaith marriage (Article 54), and others. This occurred as a result of the CLD-KHI drafters subordinating *Uṣūl al-Fiqh* to contemporary civilizational values, particularly those originating in the West, such as the concepts of gender, pluralism, human rights, and democracy (Wahid, 2015). The methodology used in the establishment of CLD-KHI is more inclined toward the method of hermeneutic interpretation, which is a method of understanding and interpreting texts in the Western tradition, initially in reading the Bible. It is a method that Muslims do not use in the interpretation of the Qur'an due to the different characteristics between the two texts. In formulating the articles, the drafting team placed reason in an absolute position, while the text was at a relative level. The implication is that if there is a conflict between public reason and a literal text, then public reason has the authority to revise, refine, and modify it. This is based on the assumption of the need for a shift from theocentrism to anthropocentrism. Therefore, it is necessary to relativize Sharia (Nurjihad, 2004).

Hermeneutics, as defined by feminists, is a methodology applied in the translation and reinterpretation of legal texts to discover truths related to human interests and experiences. This involved deconstructing old laws and then reconstructing new laws in favor of women. (Chairil & Shalahuddin, 2021). Moreover, the drafters of CLD-KHI assessed the contemporary reality that, with the increasing number of women entering the public sphere, the concept of *'iddah* that has been regulated in the KHI seeks to confine women in the domestic sphere. In various religious and state affairs, both men and women play significant roles. Therefore, it is crucial to establish a legal order that opposes attempts at domestication in the form of strengthening the role of women in the public sphere. CLD-KHI was established with a loud voice for gender equality. Furthermore, this gender equality became very complex, in contrast to the development of feminism. This leads to an interpretation of Islamic law with the principles of plurality, nationality, upholding human rights, democracy, benefit, and gender equality (Wahid, 2014). The imposition of *'iddah* exclusively on women is symbolic of their confinement, discrimination, and marginalization. This line of reasoning gives rise to the concept of *'iddah*, which, under the pretext of gender equality as a *maqṣad*, requires husbands to participate in carrying out *'iddah*.

In feminist legal discourse, the imperative of achieving gender equality, including legal parity between men and women, emerges as a critical strategy for eradicating discrimination and the marginalized status endured by women. The *'iddah* law, which is widely regarded as disproportionately disadvantageous to women, necessitates comprehensive reform. This imperative arises from the understanding that Islam, as a broad message of compassion and justice for all (*rahmah lil-'ālamīn*), was not originally intended to establish direct comparisons between men and women (Shalahuddin, 2020).

In the pursuit of gender equality, the *maqāṣid* framework in Islamic jurisprudence is often utilized. This framework is rooted in the assumption that the purpose of a legal provision is essentially related to benefits and that the law should be exclusively guided by these benefits. The reality is that every case must have its benefits even if it also has its drawbacks. If the focus is limited to benefits, it seems easy to use these benefits as a justification for promoting gender equality within the legal framework. From here, the use of this perspective requires careful consideration of the methodological principles that are deeply embedded in the treasures of the Islamic legal tradition to avoid unintentional utilitarianism. Moreover, there is a worrying contemporary trend of taking the discourse of *maqāṣid* and *maṣlaḥah* (public interest) and incorporating it into the Western utilitarianism paradigm. This shift blurs the distinction between *maṣlaḥah* and utility, ignoring the original epistemological and axiological boundaries outlined in *Uṣūl al-Fiqh* (the principles of Islamic jurisprudence). Instead, it places the values of modern Western ideology on top of Islamic fundamentals, such as progress, change, and development. (Setia, 2016).

However, some texts in Islam may be perceived as tending to strengthen the argument for gender equality (Al-Rasyidi, 2021). In Islam, the concepts of gender and sexuality are inextricably linked and serve to emphasize the distinction between men and women (Putra et al., 2019). Since Sharia is applicable to both men and women, it inevitably contains ideals that imply gender equality. However, for equality to have certain domains for its application, it must be interpreted in the context of carrying out the principle of justice. Equality is not a benefit (*maṣlaḥah*) per se. The principle of justice does not always entail equality (Al-Rasyidi, 2021). In cases where a proposition indicates that the law is considered contrary to equality, it takes precedence based on belief in the wisdom of Allah in all the Sharia. Equality between men and women lies more in the rights of humanity and worship. Nonetheless, each must be positioned appropriately in terms of its religious, social, biological, and other functions (Hilal & Harahap, 2021; Putra et al., 2019). Additionally, men and women have functionally complementary relationships (Murata, 1992). In this context, justice is a condition in which things are in their proper place and function (Al-Attas, 2013).

A more in-depth examination of the prepositions related to '*iddah*' revealed that there is neither explicit (*ṣarīḥ*) nor implicit (*gair ṣarīḥ*) demand for gender equality in the case of '*iddah*'. The passages in the Quran explain the provisions of the '*iddah*' period by mentioning the category of women's conditions when separated from their husbands. According to the methodology of *Uṣūl al-Fiqh*, each of these categories of conditions can be regarded as '*illah*' of the provisions of a certain '*iddah*' period. The determination of the times of '*iddah*' is a matter outside the realm of reason and refers only to *naṣ*. This determination is more *ta'abbudī* in nature (Al-Jauziyyah, 1991; Al-Shirbini, 1994; Al-Syatibi, 1997). Moreover, the only attributes that may be used to determine the '*illah*' are those that are mentioned in the text. In this case, *maqāṣid* in the form of reasoning lessons cannot insist on existing determinations. It is precisely the observance of the predestination itself that becomes the *Maqāṣid* followed by '*illah*'. According to al-Shatibi, the methods of *mujarrad al-amr wal-nahy al-ibtidā'i al-taṣrīḥī* are used to determine *maqāṣid*, and they take '*illah*' into consideration.

Considering the aforementioned explanation, *maqāṣid* of '*iddah*' that are concluded by reasoning must be comprehended and positioned appropriately. For example, it is accurate to identify specific purposes like emptying of the uterus, giving time of reference, and others as *maqāṣid khāṣṣah*, which indicate *maqāṣid* for a certain chapter level and should only be understood as wisdom (*ḥikmah*) unless there is evidence showing their determination as '*illah*' or *raison d'être* of a provision, let alone making gender equality as '*illah*' in determining '*iddah*'.

Additionally, it has been acknowledged by scholars that the determination of the '*iddah*' period, whether by pregnancy, menstruation, or a matter of months, should only remain in the area of *ta'abbud* (Abdul Hadi, 2020). Moreover, the *ta'abbud* aspect is more dominant when there is an issue in the area of attraction between *ijtihād* and *ta'abbud*, like the '*illah*' of '*iddah*'. Al-Shirbini interpreted this as follows: "'*Iddah* is decreed to guard the *naṣab* and prevent neglecting the rights of both spouses, children, and former husbands. However, the main aspect is *ta'abbud* with the proposition that '*iddah* is not adequate with one *qur'* by which the emptiness of the womb is known.'" (Al-Shirbini, 1994). In this manner, '*iddah*' cannot be

changed or removed, even if the emptiness of the uterus can be ascertained in another manner (Al-Syatibi, 1997). Although technological advancements such as ultrasound offer a more accurate means of determining uterine emptiness, *'iddah* is not within the realm of reasoning, so its provisions can be replaced (Subri, 2019).

Al-Shatibi very clearly stated:

"In general, the matter of custom takes into consideration its meanings. If in that case there is *ta'abbud*, then it must accept and stop according to the provisions mentioned in the text. This applies to matters where there is no room for reason to understand the benefits of his *juz'iyah* so that other matters are alluded to... The mention of *'iddah* for the purpose of emptying the uterus to avoid mixing water is a global statement (included in this classification)." (Al-Syatibi, 1997).

As with other *ta'abbud* matters, the imposition of *'iddah* on women cannot be alluded to by men. *'Iddah* cannot be imposed on men either by analogy (*qiyās*) or benefit (*maṣlaḥah*). Moreover, *maqāṣid* and its mentioned meanings, such as the emptying of the uterus cannot be realized with the imposition of males. Additionally, it is crucial to take into account these provisions so that the application of *maqāṣid* as a methodology of *ijtihād* that relies on the benefit does not have the potential to threaten and undermine norms based on the text (Brown, 1999).

Based on the foregoing, if the proposition to impose *'iddah* on men is based mainly on the idea of absolute gender equality, it lacks a solid foundation within Islamic jurisprudence. Gender equality is not inherently prioritized as a fundamental principle by Islamic law. Moreover, even in the case of this concept positioned as a *maqṣad* (objective), it can be subject to arbitrary interpretations and applications, rendering it inappropriate as a basis even though the texts of the Quran and Hadith may allow for hermeneutical interpretations that can support it. In light of this, the imposition of *'iddah* on men in the name of equality cannot be justified as it lacks any inherent meaning or basis. Conversely, this enactment could be perceived as an unjustified attempt to impose restrictions on the rights and privileges granted to men by Allah.

In Sharia, these distinctions in law based on gender and sexuality are not uncommon. Each man and woman has certain social roles, with varying laws regulating them. This role is something that has been ordained by God (Murata, 1992); for instance, setting the *'awrah* limit, the system of dividing inheritance, and others. However, these differences are not always perceived as a means of demeaning women's dignity or marginalizing them. The position of sex (biological character) and gender position (related to functions, roles, and responsibilities) between men and women cannot be seen separately and contradicted by one another. Men and women are naturally made with diverse physical and emotional characteristics. Moreover, the application of equality to all provisions of Sharia would lead to new issues that are harmful to the order of human culture universally (Hilal & Harahap, 2021). Islam views both thoroughly and integrally. The current differences in Sharia are the result of Allah's decree that leads to a benefit, namely the balance of humanity and life (NU Online, 2022). The concept of a family that supports each other (*takāful*) and cooperates (*ta'āwun*) is an example of this Islamic perspective. In addition, this Islamic perspective is evident in both Sharia texts and the objective views of scholars throughout history.

The Islamic perspective differs from an individualistic-emotional worldview that demands empirical and quantitative equality as in the demands of *iddah*, which requires husbands to perform tasks similar to those of their wives. (Shalahuddin, 2020) During the period of *'iddah raj'ī*, the husband is responsible for providing maintenance for the wife, which is often re-emphasized by judges through *ex officio* (Dahlan et al., 2023; F. M. Kasim et al., 2022; Turatmiyah et al., 2019; Yuni, 2021). This, in turn, has also the potential to become a double burden for the husband. It should be understood that this distinction in *'iddah* is more rooted in the Islamic roles and financial responsibilities within the family structure than in inequality per se (Hilal & Harahap, 2021). Thus, *'iddah* for women in Islam is a reflection of legal factors and the ideal family picture, rather than undermining the broader goals of justice and welfare embedded in the *maqāṣid*.

The assessment of justice in Islam requires a thorough understanding of every aspect of it. It is important to critically evaluate how the concept of justice is interpreted in the long-standing Islamic legal

tradition to understand it fully. In addition, the Islamic perspective includes the invisible and the wisdom behind Sharia, and this must be taken into consideration when assessing justice. According to Sachiko Murata, it needs to refer to what she calls the “sapiential tradition” in Islam. When interpreting the words in the middle of the verse of *'iddah* (Al-Baqarah: 28), “Husbands have advantages over them (wives)”, scholars of tafsir interpreted it by referring to the position of male primacy in matters of inheritance, *diyah*, judiciary, leadership, and testimony. This priority in the marital relationship is related to the livelihood and the necessity of the wife’s obedience to her husband (Al-Sa’di, 2000; Fitriani et al., 2023). Upon initial examination, this verse may suggest male superiority, but upon further analysis, the woman is seen as embodying the yin in the balance of yin and yang cosmology (Murata, 1992). It is interesting to note al-Qusyairi’s explanation in *Laṭā’if al-Ishārāt* that this word shows the primacy of women in the nature of weakness and helplessness as human beings (Al-Qusyairi, n.d.). In this interpretation, Al-Qusyairi referred to a woman’s weakness as a virtue and an advantage for her. Awareness of limitations can be a valuable capital for women in servitude to their God, enabling them to establish themselves as caliphs on earth and embrace their power (Murata, 1992).

## Conclusion

In conclusion, the demand for gender equality in the implementation of *'iddah* does not have a strong basis in the conventional *Maqāṣid al-Shari'ah* perspective. Instead of promoting women's rights and addressing issues of violence, discrimination, subordination, and marginalization, unjustified demands for gender equality in Islamic law may be the cause of existing controversy and rejection. This mainly arises from methodological concerns regarding the establishment and application of equality as a *maqṣad* and legal *'illah*. The uncritical pursuit of gender equality in Islamic law, without a strong epistemological basis, and a failure to distinguish between *ijtihādī* (interpretive) and *ta'abbudī* provisions, may compromise the arguments put forth in feminist legal discourse and impede the advancement of the movement. Moreover, the application of *Maqāṣid* in line with the structural cooption of the Western utilitarian framework to justify gender will only lead to further rejections. The struggle for women's rights within Islamic law should be honest and grounded in the framework, methodology, and worldview derived from the Islamic tradition itself. In doing so, it can promote a more coherent and effective approach to gender issues while respecting the principles and values of Islamic law.

## Conflict of Interest

This article has not a conflict of interest

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