



Research Article

Revisiting the Mulazamah Concept as a Solution to Problems Faced by Career Women During the 'Iddah Period

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Received : June 12, 2026
Accepted : August 13, 2026

Revised : July 14, 2026
Available online : September 10, 2026

How to Cite: Abdul Rozak and Izzul Mutho`. (2026) "Revisiting the Mulazamah Concept as a Solution to Problems Faced by Career Women During the 'Iddah Period", *al-Afkar, Journal For Islamic Studies*, 9(4), pp. 420-436. doi: 10.31943/afkarjournal.v9i4.3458.

Revisiting the Mulazamah Concept as a Solution to Problems Faced by Career Women During the 'Iddah Period

Abstract. As time progresses, the role of women has increasingly extended into the public sector, which was traditionally dominated by men. When a wife works in the public sector and experiences a divorce or the death of her husband, according to Islamic jurisprudence, she is required to observe the 'iddah period, which lasts for a considerable amount of time. During this period, she is not allowed to leave the house except in cases of emergency, and she must observe ihdad if her husband passes away. Such regulations may hinder or even halt a woman's career. Therefore, there is a need for efforts to find alternative solutions. This requires delving into both traditional and modern Islamic legal epistemology, using it as an analytical tool and method for reinterpretation of the 'iddah law. In the researcher's view, the purpose of the waiting period is primarily to ensure that there is no fetus in the

womb in the case of divorce. In the case of a widow, the waiting period is not only to ensure the womb is empty but also serves as a sign of respect and mourning. However, when these rules are applied to the realities of modern life, where most women are now active, working, and engaging in social activities outside the home to support their families or develop themselves, these regulations can restrict and complicate their career activities. The requirement for women to remain in the house for an extended period disrupts their professional activities outside of the home. Thus, this research focuses on a literature review (library research) with the aim of collecting relevant data for the study. The data is gathered from both primary and secondary sources that have been previously published.

Keywords: Women's Role, Iddah, Islamic Law

INTRODUCTION

Iddah, as defined by Islamic jurisprudence scholars, refers to specific regulations that a woman must follow after her husband has either divorced her or passed away. These rules include staying in seclusion *Mulazamah*¹ (not leaving the house and remaining there for a specified period) and observing a state of mourning *Ihdad* (refraining from beautifying herself or applying cosmetics). Iddah is an obligation that must be observed by any woman who has been divorced, whether the divorce is final (*talaq*) or due to the husband's death, without exception. The purpose of iddah is twofold: it provides the couple with an opportunity to reconcile and remarry if desired, and it helps ascertain whether the woman is pregnant. Additionally, it serves as a way for the wife to express her mourning for the loss of her husband. These iddah rules are regarded as dogmatic, meaning their validity cannot be questioned, and they are considered a fixed injunction by the scholars for women in these circumstances.

Such iddah provisions, if connected with the condition of women during the time of the Prophet and the Arab culture at that time, where the majority were at home and very few were active outside the home, would certainly not be a problem, because for women at that time it was not a problem to carry out the iddah command and remain at home for a long time.

However, if such iddah provisions are met with the facts and realities of modern society, where the majority of modern women are active, work and socialize outside the home with positive goals such as supporting the family economy, developing self-existence and so on. Women like this are usually called career women. The iddah provisions that are a package with *mulazamah*, which require women to stay at home for a long period of time,² make career women automatically have to stop all their activities outside the home. All work contracts, work agreements, work bonds and social activities that are the embodiment of a woman's devotion to family and society, which are in fact carried out outside the home, must be canceled. In the name of iddah, all positive social activities must be abandoned.

Iddah with all its rigid rules will certainly cause its own difficulties for humans (especially career women), even though Islam is a religion that is easy and does not

¹ Al-Qur'an Surat 65 ayat 4.

² Fatih Syuhud, *Perempuan, Wanita, Wanita Karier dan Wanita Muslimah*, (PP AlKhoirot Perempuan : Buletin El-Ukhuwah, Juli 2008), 30.

complicate things.³The length of the iddah period, which is calculated in days as 3 (three) months for normal women, 4 (four) months and ten days for those whose husbands have died or 9 (nine) months for those who are pregnant, will make women lose their careers, because the longest leave given by a company or agency, institution and an organization to a woman according to Law No. 13 of 2003 concerning Manpower, articles 75-85 is for 3 months, namely when a woman is pregnant (1.5 months before giving birth and 1.5 months after giving birth).

Are there no wise provisions from Islam that can eliminate the difficulties of career women who have to undergo iddah? Are there no concepts of thought from Islamic thinkers that can overcome this problem? The wisest answer to these questions should be "yes", because Islam is a religion that makes things easy and does not complicate things, is universal, dynamic and flexible. Allah SWT has written this in the Qur'an, Surah al-Inshirah verse 5, that every difficulty and problem must have ease and solution.

The theories of Islamic legal epistemology are often used by Islamic thinkers to solve problems faced by modern Muslims, for example the concept of emergency which is often used by Islamic thinkers to justify a person leaving Allah's command and being forced to violate what Allah has forbidden. This is a manifestation and implementation of the concept of qaidah ushuliyyah which reads: "*ma ubihu li aldharurati bi qadri ta'adzdzuriha*"⁴. However, this emergency concept can only be applied to certain conditions, incidental, and not continuous. While the condition of women who have careers is a condition that continues (becomes a habit) in a woman. So of course this emergency concept cannot be applied in this case.

RESEARCH METHODS

There are two sides that researchers need to mention in this section, namely, on the one hand, a specific study of the concept of reinterpretation of the concept of mulazamah at this time, is rarely done by Islamic thinkers, it can even be said that there is none at all. In fact, on the other hand, the facts, phenomena and realities of modern life show that currently, there are problems faced by career women that must be resolved immediately, namely their objections when they have to do mulazamah (stay at home for a very long period of time).

Most Islamic thinkers only have a little problem with iddah and do not specifically problematize mulazamah for women, especially career women, including in contemporary fiqh books that discuss women (women), Islamic thinkers also do not try to touch on the problem of mulazamah, for example Khoiruddin Nasution when discussing Fazlurrahman's Islamic legal thinking regarding women's problems in his work entitled Fazlur Rahman About Women, he only talks about polygamy, divorce, marriage, inheritance, and niqab/purdah, without even discussing the problems of career women when they have to perform the iddah.⁵

³ Qur'an Surat al-Baqarah ayat 185

⁴ Ahmad bin Muhammad al-Zarqa dan Mustafa Ahmad Zarqa, *Sharh al-Qawaid al-Fiqhiyah*, (Damaskus : Dar al-Qalam, 1996), 187.

⁵ Khoiruddin Nasution, *Fazlur Rahman tentang Wanita* (Yogyakarta, Tafazza-Academia, 2002). Masjufuk Zuhdi, *Masail Fiqhiyyah* (Jakarta : Gunung agung, 1997). M. Ali Hasan, *Masail Fiqhiyyah*

Moreover, it is very unfortunate that a female Islamic thinker like Amina Wadud in the Qur'an According to Women Correcting Gender Bias in the Tafsir Tradition, when she also does not talk at all about the iddah in the concept of iddah, and only talks about nusyuz, divorce, polygamy, witnesses, and inheritance for women.⁶

Furthermore, Istibsjaroh in her book entitled Women's Rights in Gender Relations according to Tafsir al-Sya'rawi, also only talks about the right to life, the right to education, the right to inheritance, the right to hijab, the right to choose a partner, the right to receive a dowry, divorce, and touches a little on iddah, but only discusses the various lengths of iddah that must be carried out by women according to their respective conditions.⁷

Husein Muhammad in his book entitled Fiqh Perempuan Refleksi Kiai atas Wacana Agama dan Gender, also only talks about women's leadership in prayer, behind the boundaries of women's aurat, the right to choose a partner, health rights, the right to muasyarah bil ma'ruf, work and sexual relations, socio-political leadership, rape and looting, he does not talk at all about the problem of mulazamah.⁸

Slightly different from other authors, although only talking about iddah and ihdad, and not specifically talking about mulazamah, Abd. Moqsit Ghozali, in his work entitled Iddah and Ihdad: Formal Legal Considerations and Moral Ethics which was published and made into anthology in Tubuh, Seksualitas, dan Kedaulatan Perempuan, Bunga ramai Pikiran Ulama' Muda stated that after going through the process of formal legal considerations and moral ethics, a new formulation was found regarding the concept of iddah and ihdad that because the main purpose of iddah is to find out the cleanliness of the uterus, then with the existence of quite sophisticated medical equipment, immediately after a woman knows that her uterus is clean from fetuses, immediately her iddah ends, as well as ihdad as a feeling of condolence for the death of her husband, immediately after a woman has been able to organize her heart, strengthen her psychological, inner and spiritual condition, accept and be willing to accept the death of her husband, immediately her ihdad ends.⁹

Talking a little about the problem of iddah which is a problem for women today, although a little inconsistent, Syafiq Hasyim in his work entitled Hal-Hal yang Tak Terpikirkan: tentang Isu-masalah Keperempuan dalam Islam, stated that iddah is nothing more than a culture, not a religion, and on the other hand he stated that iddah is a religious ritual that has the value of worship and is still relevant to be carried

al-Hadithah pada masalah-masalah Kontemporer Hukum Islam (Jakarta : Rajagrafindo, 1998) and Problematika Hukum islam Kontemporer (Jakarta : Lkis, 1999).

⁶ Amina Wadud, Qur'an menurut Perempuan Meluruskan Bias Gender dalam Tradisi Tafsir (Jakarta : Serambi, 2001).

⁷ Istibsjaroh, Hak-Hak Perempuan Relasi Jender Menurut Tafsir al-Sya'rawi (Jakarta : Teraju, 2004).

⁸ Husein Muhammad, Fiqh Perempuan Refleksi Kiai atas Wacana Agama dan Gender (Yogyakarta : Lkis, 2002,)

⁹ Abdul Moqsit Ghozali dkk, Tubuh Seksualitas, dan Kedaulatan Perempuan, Bunga Rampai Pemikiran Ulama' Muda (Jakarta : Rahima, 2002).

out by women today.¹⁰ However, in the matter of reinterpreting Islamic law, Syafiq Hasyim proposed a new methodology in fiqh thought in the form of a reinterpretation of qath'i and dzanni, but this proposal focuses on the formation of gender-based fiqh.

From the description above, basically there is not a single Muslim thinker who focuses his research on the concept of mulazamah, therefore, the results of this author's research will certainly add to and complete the wealth of the library of Islamic legal knowledge, besides that it can also help the community and Muslims in solving the problems faced, especially career women who have problems with the obligation to perform mulazamah.

This study focuses on the library research corridor¹¹, which aims to explore data according to research needs. Data is obtained from research needs. Data is obtained from primary and secondary materials that have been published in the form of books, journals, or in other forms that are considered representative and relevant.

The researcher uses the book *Usul Fiqh* by Muhammad al-Khudari; *Usul al-Fiqh al-Islami* written by Wahbah Zuhayli as a book of Islamic legal epistemology.

Seeing the data source, which only refers to the library corridor, then in the analysis of data processing, a descriptive method will be used. This is because the data obtained from the library is qualitative in nature, meaning in the form of verbal statements and not data in the form of numbers, so this paper will use content analysis techniques, namely techniques used to analyze the meaning contained in the data collected through library research.

This study uses normative and sociological approaches. The normative approach is used to understand religious texts related to iddah such as the provisions in QS. 65: 1 and 4, QS. 33: 49, QS. 2: 234 and 228. While the texts of the hadith are hadiths that report on all the ins and outs of iddah. The sociological approach is used to understand the reality of modern life, especially the lives of career women. This approach is useful as a foothold in an effort to reconstruct the necessity of mulazamah for career women who are undergoing iddah.

RESULTS AND DISCUSSION

The formulation of 'iddah, which is interpreted by classical and modern scholars as a special rule that must be carried out by a woman according to the procedures that are ijtihad by the scholars, such as having to mulazamah (not allowed to go out, stay at home) and having to ihdad (not allowed to dress up and beautify) is an order that must be carried out by women who are divorced by their husbands, whether they are divorced by life or death.

These provisions require career women to stop activities outside their homes. All work contracts, work agreements, work bonds and social activities that are the embodiment of a woman's devotion to her family and society, which are in fact carried out outside the home, must be canceled. In the name of 'iddah, all positive social activities must be abandoned.

¹⁰ Syafiq Hasyim, *Hal-hal yang Tak Terpikirkan : tentang Isu-isu Keperempuanan dalam Islam* (Bandung : Mizan, 2001).

¹¹ Abudin Nata, *Metodelogi Studi Islam* (Jakarta : Graffindo Persada, 1999), 125.

'Iddah with all its rigid rules will certainly cause its own difficulties for humans (especially career women), even though Islam is a religion that is easy and does not complicate things.¹² The length of the 'iddah period, which is calculated in days as 3 months for normal women, 4 months and ten days for those whose husbands have died or 9 months for those who are pregnant, will make women lose their careers, because the longest leave given by a company or agency, institution and an organization to a woman according to Law No. 13 of 2003 concerning Manpower, articles 75-85 is for 3 months, namely when a woman is pregnant (1.5 months before giving birth and 1.5 months after giving birth).

Are there no wise provisions from Islam that can eliminate the difficulties of career women who have to undergo the 'iddah?. Is there no concept of thought from Islamic thinkers that can overcome this problem?.

The concept of emergency is often used by Islamic thinkers to justify a person to abandon Allah's commands and be forced to violate what Allah has forbidden. This is a manifestation and implementation of the concept of qaidah ushuliyah which reads: "*ma ubihu li al-dharurati bi qadri ta'adzduriha*".¹³ However, this emergency concept can only be applied to certain conditions, incidental, and not continuously. While the condition of women who have careers is a condition that continues (becomes a habit) in a woman. So of course this emergency concept cannot be applied in this case.

Thus, it is necessary to find a new format of thinking that is relevant and able to deconstruct the concept of 'iddah (especially the concept of mulazamah) for career women, without ignoring theological values.

'Iddah as one of the Islamic Sharia must be in line with the values of justice, while to achieve Islamic Sharia that is just, Islamic Sharia needs to be studied through the approaches of gender, pluralism, human rights, and democracy. Including the concepts of 'iddah, mulazamah and ihdad, it is also necessary to review these four things, so that the concept of 'iddah is just in its implementation.

In the formulation of Islamic Sharia that is just, all citizens have the same position and receive fair treatment, minorities and women are guaranteed their rights. This formulation is based on maqasid al-syari'at (the purpose of sharia), namely upholding social justice, human welfare, universal equality and local wisdom. The formulation is not Arabism but Indonesianism.

The concept of 'iddah that is just must also be in accordance with the universal basic principles of Islam such as the principle of equality (*al-musawah*), brotherhood (*al-ikha'*), and justice (*al-'adl*) as well as the basic ideas of the formation of civil society such as pluralism, gender equality, human rights, democracy and egalitarianism. The need to deconstruct the concept of 'iddah that is excavated from the empirical reality of society, not from the explanation of classical interpretation (the sanctification of classical fiqh), and consider the welfare of humanity.

The irrelevance of classical fiqh in the application of the concept of 'iddah is because it is composed with different cultures and social imaginations. It is even

¹² Al-Qur'an Surat al-Baqarah ayat 185.

¹³ Mustafa Ahmad Zarqa, *Sharh al-Qawaid alFiqhiyyah*, (Damaskus: Dar al-Qalam, 1996), 187.

problematic in its methodology. Because fiqh is definitively knowing the practical sharia law from the Qur'an and al-Hadith, this understanding makes fiqh very normative so that it ignores the welfare of the people.

Classical fiqh strengthened by fundamentalist Muslims by submitting reality to the text, they have even inserted their ideology into the text and claimed it as God's intention, clearly this has a bad impact on social life in all sectors.

Moreover, classical fiqh also does not optimize the rules of fiqh which include: 1. *al-'ibrah bi khusus al-sabab, la bi umum al-lafadz* (that thought always follows its subjective background). 2. *takhsish bi al-'aql wa takhsish bi al-'urf* (that reason and tradition are able to override the text). 3. *al-amr idza dhaqa ittasa'a and not the other way around al-amr idza ittasa'a al-dhaqa* (if the law is difficult then make it easy, not if the law is easy, then make it difficult).

Efforts that need to be made in building a concept of 'iddah that is just, especially for career women, include: 1. Changing the theocentric paradigm to the anthropocentric paradigm (from elitist to populist). 2. moving from eisegese to exegesis (positioning the text as an object and the mind as a subject with a balanced dialectic). 3. fiqhizing the shari'a (relativeizing the shari'a). 4. public interest as the main basis for interpretation. 5. changing the way of thinking from deductive to inductive (*istiqra'*: paying attention to urf or local wisdom).¹⁴

The three rules of ushul that can be used as a reference in ijtiḥad so that a just law is produced are: 1. *al-ibrah in al-maqasid la bi al-alfadz*. (understanding the Qur'an and Hadith not from the letters but from their meaning) 2. *jawaz nasakh al-nushush bi al-maslahah*. (permissible to annul the text for the sake of public interest). 3. *tanqih al-nushush bi al-aql al-mujtama'* (public reason is able to amend religious dogma).

With deconstructing the concept of 'iddah (including mulazamah and ihdad) based on the above matters, it is hoped that the concept of 'iddah in the future will be able to reflect: Pluralism, Nationalism, Upholding of Human Rights, Democracy and Public Welfare as well as gender equality.

A. Obstacles to Attempts to Deconstruct the Concept of Mulazamah in 'Iddah Figure and Other Illustrations

Several concepts that are able to hinder the deconstruction of the concept of 'iddah (along with mulazamah and ihdad) are: First, the concept of *qat'i dzanni* (related to the scope of the ijtiḥad area), and second, the concept of *ta'abbudi* and *ta'aqquli*.

Regarding the first obstacle in the form of the scope of the ijtiḥad area, Abdullah Ahmed al-Naim said "Ijtiḥad is not permitted in any matter governed by an explicit and definite text of the Qur'an or Sunnah"¹⁵, similarly, Imran Ahsan Khan Nyazee stated: "There is no ijtiḥad within an explicit rule in the text".¹⁶ In this concept, ijtiḥad only applies to the texts of the Qur'an and Sunnah that are dzanni. In other words,

¹⁴ Siti Musdah Mulia, *Muslimah Reformis*, (Jakarta : Mizan, 2004), 391.

¹⁵ Abdullah Ahmed al-Na'im, *The Second Massage of Islam* (New York : Syracuse University Press, 1987), 23

¹⁶ mran Ahsan Khan Nyazee, *Theories of Islamic Law, The Methodology of ijtiḥad*, (Islamabad : The International Institute of Islamic Thought – Islamic Research Institute, 1994), 287.

the scope of the *ijtihad* area is not only on *dzanni* texts, and it is not allowed to extend to texts that are *qat'i*. So, if this concept is connected to *'iddah* texts, then of course there will be no scope for *ijtihad* here, because *ijtihad* texts fall into the category of *qat'i* texts, not *dzanni*.

This fact means that the door to *ijtihad* on *qat'i* texts is closed. According to Shahrur, this condition is a big mistake in Islamic *fiqh*. Shahrur allows *ijtihad* in the *qat'i* text, but it must remain within the *hudud* corridor (*had al-a'la* and *had al-adna*/maximum and minimum limits). Meanwhile, in Masdar Farid Mas'udi's concept of thought, the *'iddah* verse can still be *ijtihad*, because Masdar considers all verses of the *Al-Qur'an* to be *zanni* texts, not *qat'i*.

The second problem that can hinder the deconstruction of *mulazamah* is the concept of *ta'aqquli* and *ta'abbudi* as explained by al-Shatibi. *Ta'aqquli* are texts that can be reasoned, while *ta'abbudi* are texts that cannot be reasoned.¹⁷ *Ta'abbudi* is interpreted as a legal provision that must be accepted as it is without being allowed to be reasoned or reasoned.¹⁸ The principle related to this concept is that put forward by al-Shatibi, namely "*al-asl fi al-'ibadat al-ta'abbud*" that the origin of a worship is *ta'abbud*. Thus, according to al-Shatibi, all worship such as fasting, zakat prayer, *taharah* and *hajj* as well as inheritance are *ta'abbudi* matters that cannot be reasoned (reasoned).

While *ta'aqquli*, are provisions of the text that can still be reasoned. Examples of the concept of *ta'aqquli* are buying and selling, *talaq*, renting and *jinayah*. Al-Shatibi conceptualizes *ta'aqquli* with "*al-asl fi al-'ibadat al-iltifat ila al-ma'ani*". so in this *ta'aqquli* there is a place and space for human reason.¹⁹

In the study of Islamic law, *'iddah* is included in the category of *ta'abbudi*, as stated by al-Shatibi. Consequently, it is not permissible to *ijtihad* and reason in the verses of *'iddah*. If following this path, then there is no more empty space for reconstruction, reinterpretation of the verses of *'iddah*, therefore it is necessary to study more deeply the concept of *ta'aqquli* and *ta'abbudi*.

The concept of *ta'aqquli* and *ta'abbudi* is the result of *ijtihad* of *ulama'*, so it is very possible to conduct *ijtihad* on the concept. A law is classified as *ta'abbudi* and *ta'aqquli* based on the division of worship and *mu'amalah* laws. So that the law that falls into the category of worship is called *ta'abbudi*, and the law that falls into the realm of *mu'amalah* is called *ta'aqquli*. Until now, there has been no absolute boundary regarding the mapping of *ta'aqquli* and *ta'abbudi*, so this reality makes the classification of *ta'aqquli* and *ta'abbudi* laws even more complicated. Thus, it can be concluded that the classification of *ta'aqquli* and *ta'abbudi* is not yet fixed. So the opportunity for *ijtihad* in *'iddah* is still possible. The opportunity to conduct *ijtihad* on something that is *qat'i* and *ta'abbudi* is still very possible to occur, this phenomenon was carried out by Munawir Sjadzali when interpreting verses about inheritance (which al-Shatibi categorized as *ta'abbudi* law).

¹⁷ Yusuf hamid al-Alim, *al-maqasid al-Ammah li al-Shari'ah al-islamiyah* (Kairo : dar al-Hadith, tt), 173-175.

¹⁸ Al-Sahtibi, *al-Muwafaqat fi Usul al-Ahkam* jil. II juz 2 (Beirut ; Dar al-Fikr, tt), 211, 213 dan 214.

¹⁹ Al-Shatibi, *al-Muwafaqat fi Ushul al-Ahkami* Jil.I huz 2, 214.

Thus, it is possible to conduct *ijtihad* on the verses of 'iddah, which is strengthened by the opinion of Imam al-Zarkashi that 'iddah falls into the category of *ta'aqquli*, not *ta'abbudi*. Based on the concept of Munawir Sjadzali and Imam Zarkashi, then conducting *ijtihad* in the texts of 'iddah is permitted, because 'iddah is a *ta'aqquli* verse.

Thus, the basis and legal basis for the author in deconstructing and reinterpreting the verses of 'iddah already exist.

B. Deconstruction of the Concept of the Period of Time (Iddah) for Modern Women (Career Women).

As explained at the beginning, *maqasid shari'ah* (the main goal of Islamic law) is benefit. If *maqasid shari'ah* is linked to the standard concept of 'iddah with the phenomenon of career women, then of course *maqasid shari'ah* will not be achieved, because in the reality of career women, the standard concept of 'iddah will actually make them lose their careers, and kill their creative power.

When a woman is required to perform 'iddah for a long period of time at home, not being allowed to go out and work, then she will lose her source of income and the family and children who are her responsibilities will be neglected. This concept of 'iddah will of course be an obstacle and difficulty for career women, even though Islam clearly aims to make things easier for people, and not make things difficult for people (*la haraj*), even when difficulties and convenience meet, then convenience takes priority (*al-masyaqqah tajlib al-taisir*). Judging from the concept of *maqasid al-shari'ah*, it is possible to deconstruct the concept of 'iddah.

After the basic deconstruction of 'iddah is obtained, the next step is to analyze more deeply, whether 'iddah is obligatory or not (*mubah* or *sunnah*)??? Because if 'iddah is *sunnah*/permissible, then there is no sin if it is abandoned. On the other hand, if 'iddah is obligatory, then leaving 'iddah (in case: *mulazamah*) will result in a sin. In order to know whether it is obligatory to carry out 'iddah or not, it is necessary to examine further the verses in the Al-Qur'a which discuss 'iddah, these verses are al-Qur'an Surah al-Baqarah verses 228, 234 and Surah al-Talaq verses 1 and 4.

From these verses, 'iddah is edited with the word "*yatarabbashna*" which is in the form of the verb *mudhari*, and not in the form of the verb *amar* (command), but in *usul fiqh*, *amar* in the form of the verb *mudhari* is considered as an *amar* that is *ghair sharih*.²⁰ So for the time being, 'iddah can be categorized as obligatory. However, if examined more deeply, then in the concept of *amr* and *nahi*, a new command is declared obligatory if there is an indication (*qarinah*) that leads to obligatory. While in the verses of 'iddah there is no indication that leads to reproach, punishment, torture, and punishment for those who leave 'iddah. So it can be concluded that the law of 'iddah is at most *sunnah* or at least permissible. However, there is one verse that reproaches people who do not carry out 'iddah. This verse is the Qur'an, Surah 65 verse 1. With the above verse saying that a person who violates the provisions of 'iddah is a person who is unjust to himself, then this is what is said to be a *qarinah* (indication) which leads to an obligation. Thus, the law of 'iddah is mandatory.

²⁰ Al-Shatibi, *al-Muwafaqat fi Ushul Al Ahkam* Jilid 2 Juz 3 (Beirut: Dar al-Fikr, tt), 85-92.

Even though 'iddah is obligatory, its implementation does not have to be initial (remaining at home and not being allowed to go out for a long time). Because such a formulation of 'iddah is not in line with the maqasid shari'ah, namely al-maslahah, which in the corridor of the concept of maslahah al-Tufi, such a formulation of 'iddah is not in accordance with the benefit of modern humans (especially career women).

The concept of maslahah al-Tufi will completely throw away the concept of 'iddah, because it is felt to be incompatible with the conditions of modern women (career women to be precise). Al-Tufi's radical thinking would of course be strongly opposed by the classical ulama. So it is necessary to find an alternative solution, so that on one hand 'iddah can still be done, but on the other hand, it is adjusted to the conditions of modern women (career women).

Historically, the law of 'iddah in Islam is a form of preserving the customs of the jahiliyah, whether it is added or reduced in its formulation. The addition, for example, 'iddah is not only applied to women who have died, but also includes women who are divorced by their husbands. While the reduction, for example, in the past 'iddah was realized by waiting for one year (12 months) accompanied by dressing and living in a place that shows deep sorrow, while the 'iddah period in Islam is shorter than the jahiliyah period, namely for those who have died for 4 months and 10 days and for those who are pregnant until giving birth.

The above reality, according to Munawir Sjadzali's thinking, clearly shows that Islam has basically modified the concept of 'iddah during the jahiliyah period by trying to reduce the 'iddah period which was previously for a full year to be shorter. This is a form of Islamic attention and concern for women, where Islam does not want to restrain women for too long.

Meanwhile, from Masdar F. Mas'udi's thinking, the reduction in the period of 'iddah is a matching (flexibility and elasticity) of the provisions of 'iddah with the conditions of women in the era of Islam. This is based on Masdar F. Mas'udi's thinking which states that all verses of the Qur'an are zanni verses that can be reinterpreted and deconstructed through ijtihad.

Deeper, related to the reinterpretation and deconstruction of the concept of 'iddah, it is necessary to know the main purpose of establishing the concept of 'iddah.

As previously explained, the purpose of 'iddah is to determine the cleanliness of the womb. However, for women whose husbands have died, 'iddah, in addition to aiming to determine the cleanliness of the womb, also functions to show deep sorrow.

Judging from Masdar F. Mas'udi's thinking, the provisions of the period of 'iddah are a way (tool) to determine the cleanliness of the womb from the fetus. The main purpose of 'iddah as a way to know the cleanliness of the womb from the fetus can be justified by the opinion of Sunni scholars (namely the imams of the madhhab) who agree that if a pregnant woman is left by her husband, then her 'iddah is until she gives birth, not 4 months and 10 days. This opinion indicates that the more basic and main purpose of 'iddah is the cleanliness of the womb, not respect for the husband.²¹

In addition, the justification for the main purpose of 'iddah as a way to know the cleanliness of the womb from the fetus is the provision of the Qur'an, Surah al-Ahzab

²¹ Al-Nasa'i, Sunan al-Nasa'i Jilid 3 Juz 6, 190-196.

verse 49. This verse clearly shows that a woman who is divorced by her husband before having sexual intercourse, does not need to do 'iddah. Because in the book al-Muhadzdzab, 'iddah is needed only for the bara'ah of the womb, namely knowing the cleanliness of the womb from the fetus. So it can be concluded that when it can be ascertained that the womb is clean by not having sexual intercourse, then the woman does not need (is not obliged) to do 'iddah.²²

Thus, it can be concluded that the main purpose of 'iddah for a woman whose husband has divorced her is to find out whether her womb is clean, but for a woman whose husband has died, in addition to the aim of finding out whether her womb is clean, it is also to show deep sorrow.²³

The above fact, when associated with the development of medical technology in this increasingly sophisticated modern era, then to find out the condition of a woman's womb, then simply with a pregnancy test kit that can be purchased at a pharmacy, or by checking with a doctor, or also with an ultrasound, then it can be known quickly and instantly, whether a woman's womb contains a fetus or not, without taking too long.

Thus, in modern life, especially for career women, after checking their pregnancy with a doctor, and the results show that their pregnancy is clean from a fetus, then immediately their 'iddah period is over. Likewise, with the grief of a woman whose husband has died, where each person is different, it can be fast or long. If in the near future a woman is able to neutralize her grief, then immediately her 'iddah period is over.

If the explanation above is associated with the theory of the limits of shahrur regarding hadd al-a'la and hadd al-adna (minimal and maximal limits), then it can be concluded that the minimal limit of 'iddah for a woman who is divorced by her husband is immediately after there is a belief that the woman's womb is free from fetuses either by medical or non-medical means and for a woman whose husband has died, then the minimal limit of 'iddah is when she has been able to neutralize her grief. Meanwhile, the maximal limit of 'iddah for women is as determined in the Qur'an, namely 3 quru' for those who are still menstruating, 3 months for those who are menopausal, until giving birth for those who are pregnant, and 4 months and ten days for those whose husband has died.

C. Deconstruction of the Concept of Mulazamah for Modern Women (Career Women).

The second deconstruction, after the period of 'iddah, is the deconstruction of the concept of mulazamah, as specified in the Qur'an, Chapter 65, verse 1. Mulazamah is staying in the house for a certain period of time without being allowed to leave the house except in forced circumstances.

It is undeniable that the current phenomenon says that more women in this world are working in all sectors of life, both to support their families and to achieve.

²² bu Ishaq Ibrahim bin 'Ali bin Yusuf al-Fairuz 'Abadi al-Shirazi, al-Muhadzdzab fi fiqh al-Imam al-Shafi'i, (Semarang : Taha Putra, tt), 142.

²³ Zuhaily, al-Fiqh, 425 ; Zakariyya, Fath al-Wahhab, h.126 ; al-Bakri, l'anah, 37-38.

These working women are known as career women.

The concept of career women, over time, has experienced an expansion of meaning. Currently, career women are not only interpreted as women who work in offices, institutions, institutions, or organizations, but career women are also interpreted as women who work in all sectors of life in order to earn income to meet family needs or for achievement.

The fact that there are many career women in this world, slowly, whether it is denied or not, is gradually setting aside the standard concept (old concept; classical concept) of 'iddah. Therefore, the demands of maintaining a career in order to support the family state so. It is very unlikely that a woman who is the breadwinner of the family or who helps the family economy is required not to work for, for example, 3 (three) consecutive months, or for four months and ten days, or for nine months of pregnancy, because if so, then the family she has to support will certainly be neglected and starving.

The company must at least give its workers a maximum of one week of leave for workers who get married, have a death in their family, and to give birth for three months. (Read: Undang-Undang Ketenagakerjaan No.13 Tahun 2003).

Likewise, it is impossible for a teacher to neglect his students or students by not teaching during the 'iddah period as determined in the Qur'an, especially teachers who teach the final grade, as a determinant of a student's graduation, their presence at school is certainly very much needed.

This emergency situation forces many career women to have to do 'iddah properly, a maximum of one week, for the sake of maintaining the career that they are responsible for, and for the sake of everyone who needs them to continue to exist in their careers, such as the family they must support or the students they must teach. Some even ignore the concept of 'iddah. This is done by career women not because they intentionally ignore their religious obligations, but rather because they have families they must support or for the benefit of society.

Therefore, it is necessary to deconstruct the concept of mulazamah, for the sake of maintaining the humanistic, moral, maslahah and just Islamic Sharia. The scholars base the concept of mulazamah on the Qur'an, Chapter 65, verse 1. Zakariyya al-Anshari, when interpreting the verse above, explained that the verse is a prohibition for women who are in 'iddah, either due to divorce or death, to leave the house where they live.²⁴

Basically, in this verse, the prohibition (forbiddance) of leaving the house for women in 'iddah is specific (not general), therefore those who must perform mulazamah in this verse are only for women whose husbands have divorced, with the aim that the husband and wife can reconcile, because if the woman in 'iddah leaves the house, it is feared that she will meet another man which will have an impact on the new marriage.

More specifically, the obligation to perform mulazamah (prohibition of leaving the house) according to the verse above is specifically for women who are divorced, not divorced, because this aims so that during the 'iddah, the husband and wife can

²⁴ Zakariyya al-Anshari, Fath al-Wahhab Juz 2, 131.

reconcile. Meanwhile, for women who are divorced and whose husbands have died, they are not required to perform a mulazamah, because it is no longer possible to reconcile.

In the author's thinking, as explained when the author deconstructed the period of 'iddah, so too is the obligation to perform a mulazamah. Although leaving the house is forbidden and on the contrary, performing a mulazamah is obligatory, this does not have to be done for months, but a woman can quickly perform a mulazamah, immediately after it is known and believed that her womb is clean from the fetus, either by medical or non-medical detection, then immediately her obligation to perform a mulazamah is completed. Likewise with a woman whose husband has died, immediately she has been able to neutralize her grief, then immediately her obligation to perform a mulazamah is completed.

This concept is the final answer to this article, that career women should do 'iddah properly, namely immediately after the doctor declares that she is not pregnant, then immediately she may stop her prayer, and immediately after she can neutralize her grief, then immediately she may stop her prayer.

D. Deconstruction of the Concept of Ihdad for Modern Women (Career Women).

The hadith that is used as a reference, the basis and basis for the obligation to perform ihdad is the following hadith narrated by Bukhari:

*"It is not halal (permissible) for a woman who believes in Allah and the Last Day to perform Ihdad for more than three days, except for her husband for four months and ten days."*²⁵

*"It is not permissible for a woman who believes in Allah and the Last Day to perform ihdad for more than three days, indeed it is forbidden for such a woman to apply kohl, and not to wear dyed clothing".*²⁶

If we look at it more closely, then the hadith above does not talk about the command (obligation) to perform ihdad, but only talks about the procedures for performing ihdad that are permitted by Islam, namely that performing ihdad for the death of a family member should not be more than three days, while performing ihdad for the death of a husband is for four months and ten days.²⁷

If we borrow Shahrur's theory of hadd al-a'la (maximum limit), then it can be understood from the hadith that the maximum limit for a woman whose family has died is three days, while the maximum limit for a woman whose husband has died is four months and ten days. Thus, the duration of ihdad should not be more than these provisions, and it is permissible to reduce these provisions or even not perform ihdad at all, because it is not obligatory.

So it can be concluded that the hadith does not indicate the mandatory order of ihdad, but for women who wish to perform ihdad, do not violate the provisions above, namely ihdad for the death of the family must not exceed three days, and ihdad for

²⁵ Bukhari, al-Bukhari Juz 3 (Semarang : Maktabah Usaha Keluarga, tt), 283.

²⁶ Bukhari, al-Bukhari Juz 3, 284.

²⁷ Ibnu Hajar Al-Asqalany, Fath al-Bari Juz 10, (Beirut : Dar al-Fikr, 1996), 609.

the death of the husband must not exceed four months and ten days.

The non-obligation of ihdad is made clear by the existence of prohibitions that are not accompanied by qarinah (indications) which lead to censure or punishment if one does not perform ihdad. Furthermore, al-Kahlani emphasized that in the hadith in question, there is no evidence that shows the obligation of ihdad.²⁸ Moreover, there is a history from al-Hasan al-Basri that ihdad is not obligatory.²⁹

Likewise, regarding the hadith prohibition of not wearing perfume, colored clothes, staining, combing, wearing jewelry is not categorized as haram. This is because there are no indications that lead to censure or punishment for those who violate it. Thus, it becomes clearer that ihdad is not mandatory.

Thus the deconstruction of the concepts of 'iddah, mulazamah and ihdad that is adjusted to the conditions of modern women who mostly do activities outside the home as career women. This kind of legal deconstruction has embraced gender justice, human rights justice, economic and cultural justice, as the concept of justice promoted by Mansour Fakih.³⁰ Mansour Fakih stated that fiqh must be implemented with the concept of justice in all fields, so that economic, cultural, knowledge, ideological and gender exploitation can be wiped out. Gender differences should not lead to marginalization, subordination, stereotypes and violence against women.

E. Deconstruction of the Concept of 'iddah, So That Men Are Also Obligated to Perform 'iddah.

If we talk about justice, then it would be fairer if 'iddah was not only required for women but also for men (based on the principle of equality; al-musawah), because Islam highly upholds the principle of equality (equality; al-musawah) and the principle of justice (al-'adalah). Apart from that, the most important thing is psychological considerations. Psychologically, 'iddah which is only required for women will have a negative impact on a group of people. Where a man who has just divorced, whether dead or alive, can immediately remarry, giving rise to negative impacts such as:

1. There is a negative view of the surrounding community, a man who immediately remarries after his wife dies is an immoral person (morals). Whereas Islam highly prioritizes morals.
2. Giving rise to hatred from the ex-wife's family, so that the Islamic brotherhood between the man and his ex-wife's family becomes bad (broken). Whereas Islam highly upholds the Islamic brotherhood.
3. Giving rise to a child's hatred for the behavior of his father who married when he was still in great mourning and still mourning the death of his mother. This causes the child to leave the house and fall into things that should not be, for example, becoming a drinker, user and so on.

Another purpose of implementing 'iddah for men is the concept of equality (equality; al-musawa), where 'iddah is a wife's respect for her husband, so it is hoped

²⁸ Al-Kahlani, Subul al-Salam Juz III (Beirut : Dar al-Fikr, tt), 200.

²⁹ I-Shawkani, Nayl al-Authar Juz 7 (Beirut : Dar al-Fikr, tt), 95 ; Ibnu Hajar al-Asqalany, Fath al-Bari Juz 10, 609.

³⁰ Mansour Fakih, Fiqh sebagai Paradigma Keadilan dalam Epistemologi Syara', (Yogyakarta : Pustaka Pelajar, 2000), 145.

that by having 'iddah, men can also respect and appreciate their wives, there is a reciprocal relationship here. This is a form of justice, where not only women are required to respect and honor men, but men are also required to respect women, so that men and women can respect each other.

By implementing 'iddah for men, all *maqasid al-syari'ah* will be covered, such as preserving the soul (*hifdz al-nafs*), preserving the mind (*hifdz al-'aql*), preserving offspring (*hifdz al-nasl*), and preserving property (*hifdz al-mal*).

This change in the law of 'iddah can be justified based on the rule of fiqh:

"*taghayyirul ahkam bi taghayyirul azminah wal amkinah wal ahwal*"

"The change in law is based on changes in time, place and circumstances".

"*al-hukmu yaduru ma'a illatihi wujudan wa 'adaman*"

"The law can change according to the presence or absence of illat (cause) of the law".

Moreover, if the change in law is for the benefit and rejects harm, as the rule of fiqh states³¹:

"*darul mafasid wa jalb al-mashalih*"

"rejecting damage and attracting benefits".

"*jalb al-manfaat wa dafu al-dlarar*"

"attracting benefits and preventing harm".

The concept of *maslahah al-Tufi* which states:

"*jawazu naskh al-nushush bi al-maslahah*"

"may amend the text for the benefit of the benefit."

The legal *istimbat* method used in imposing the concept of 'iddah on men is:

1. *Istihsan*: thinking something is good, namely moving *qiyas jali* (obvious) to *qiyas khafi* (hidden), because you think the move is better. *Qiyas* which is only intended for women is called *qiyas jali*, while 'iddah which is also intended for men is called *qiyas khafi*, this transfer is considered the best way.³²
2. *Maslahah mursalah*: benefits that are not stipulated by law. In this case, 'iddah which is also intended for men is a benefit that is not stated in the text.³³
3. *Sadd al-dzari'ah*: preventing something that leads to damage. Seeing the negative impact of 'iddah which is only imposed on women, the concept of 'iddah which is also imposed on men was created to prevent this.³⁴

CONCLUSION

In the provisions of the Al-Qur'an, Surah 65: 1, women who are performing *iddah*, regardless of the type of *iddah*, are obliged to undergo *mulazamah* (i.e. remain and remain silent at home) during the *iddah* period, as determined by the time according to their respective type of *iddah* period. Meanwhile, the issue of living is

³¹ Imam Musbikin, *Qawaid al-Fiqhiyyah*, 74. Asjmuni A. Rahman, *Kaidah-kaidah Fiqh* (Qawaid al-fiqhiyyah), 14.

³² Abdul Wahab Khallaf, *Ilmu Ushul Fiqh*, 93 ; Miftahul Arifin-Faishal Haq, *Ushul Fiqh* , 139; Amir Syarifuddin, *Ushul Fiqh* 2, 305.

³³ Abdul Wahab Khallaf, *Ilmu Ushul Fiqh*, 98 ; Miftahul Arifin-Faishal Haq, *Ushul Fiqh* , 142 ; Amir Syarifuddin, *Ushul Fiqh* 2, 323.

³⁴ Miftahul Arifin-Faishal Haq, *Ushul Fiqh* , 157 ; Amir Syarifuddin, *Ushul Fiqh* 2, 398.

the responsibility of the "ex-husband" as specified in Surah al-Baqarah paragraph (2) and the provisions of Surah al-Thalaq paragraph 6.

In the author's deconstruction, upon closer inspection, mulazamah which is based on the provisions of Letter 65 paragraph 1, turns out to be only intended for women who have been divorced by raj'i, not women who have been divorced by ba'in because the main purpose of mulazamah is to provide an opportunity for husband and wife to reconcile, so that if the woman who has been divorced by raj'i leaves the house, it is feared that she will meet another man and take him to a new marriage. Thus, mulazamah is not required for women who are divorced from ba'in. Meanwhile, a woman who is divorced raj'i is still obliged to perform the mulazamah but it does not need to be done for a long time, and can be done as soon as possible, as soon as it is known that her womb is clean from the fetus, with medical or non-medical detection, then immediately her obligation to perform the mulazamah is finished. Likewise with a woman whose husband has died, as soon as she has been able to neutralize her grief, then immediately her obligation to perform the mulazamah is finished.

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