

Revealing the Legal Implications of Post-Eiddah Reconciliation from the Perspective of Maslahah

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Abstract

The end of the marriage bond in Islamic law can occur through two forms of divorce, namely divorce raj'i (which allows reconciliation during the iddah period) and divorce ba'in (which does not allow reconciliation without a new contract). This study aims to examine in depth the implications of maslahah on the phenomenon of reconciliation of married couples after the end of the iddah period, especially in the social and cultural context of Indonesian society. The research method used is descriptive-analytical with a juridical normative approach, which is based on a literature study of classical and contemporary sources of Islamic law, as well as applicable laws and regulations. The data is analyzed qualitatively to reveal the requirements, procedures, and rights and obligations that surround the process of rujuk or post-iddah reconciliation. The results show that even though the iddah period has ended, there is legal space that allows for a remarriage contract as a form of reconciliation, as long as the shar'i requirements are met. The views of the imams such as Hanafi, Maliki, Shafi'i and Hanbali provide diverse but complementary perspectives in assessing the validity of post-iddah reconciliation. The discussion emphasizes the importance of considering maslahah in the practice of reconciliation, in order to protect the interests of both parties and maintain social stability. Thus, reconciliation after the iddah period can not only be considered legally valid, but also beneficial in the context of the benefit of the people and does not conflict with the principles of state law.

Keywords: Rujuk, Pasca-Iddah, Maslahah.

Abstrak

Berakhirnya ikatan perkawinan dalam hukum Islam dapat terjadi melalui dua bentuk perceraian, yaitu talak raj'i (yang memungkinkan rujuk selama masa iddah) dan talak ba'in (yang tidak memungkinkan rujuk tanpa akad baru). Penelitian ini bertujuan untuk mengkaji secara mendalam implikasi maslahah terhadap fenomena rekonsiliasi pasangan suami istri setelah berakhirnya masa iddah, khususnya dalam konteks sosial dan budaya masyarakat Indonesia. Metode penelitian yang digunakan adalah deskriptif-analitis dengan pendekatan normatif yuridis, yang didasarkan pada studi kepustakaan terhadap sumber-sumber hukum Islam klasik dan kontemporer, serta peraturan perundang-undangan yang berlaku. Data dianalisis secara kualitatif untuk mengungkap persyaratan, prosedur, serta hak dan kewajiban yang melingkupi proses rujuk atau rekonsiliasi pasca iddah. Hasil penelitian menunjukkan bahwa meskipun masa iddah telah berakhir, terdapat ruang hukum yang memungkinkan dilakukannya akad nikah ulang sebagai bentuk rekonsiliasi, selama syarat-syarat syar'i dipenuhi.

Pandangan para imam mazhab seperti Hanafi, Maliki, Syafi'i, dan Hanbali memberikan perspektif yang beragam namun saling melengkapi dalam menilai keabsahan rujuk pasca iddah. Diskusi menekankan pentingnya mempertimbangkan masalah dalam praktik rekonsiliasi tersebut, guna melindungi kepentingan kedua belah pihak dan menjaga stabilitas sosial. Dengan demikian, rekonsiliasi setelah masa iddah tidak hanya dapat dipandang sah secara hukum, tetapi juga bermanfaat dalam konteks kemaslahatan umat dan tidak bertentangan dengan prinsip-prinsip hukum negara.

Kata Kunci: Rujuk, Setelah-Iddah, Masalah.

INTRODUCTION

The majority of scholars agree that *ṭalaq* applies to a person who is independent, with the right to reconcile with his wife during the iddah period¹. In Islam, *the period of iddah* is obligatory for a wife who has been divorced by her husband. During the iddah period, a woman is not allowed to marry another man. The *iddah* period sets a maximum time limit for a husband to reconcile with his wife. The term "*iddah*" comes from the word "*adad*", which means to count or count, referring to the wife who counts the days, menstrual periods, and holy periods.²

Refer refers to the act of restoring the legal status of marriage after *talaq raj'i* is given by the ex-husband to his ex-wife during the *iddah period*.³ This reference involves the return of a wife into marriage during the iddah period, except in *talaq bain*, using a procedure approved by the scholars. Elements that are approved as harmonious in the referral include the referral speech, the ex-husband who makes the referral, and the ex-wife who is referred. The implementation of the reference agreed upon by scholars generally adopts the bilqauli reference method, although there are still differences of opinion regarding the use of bilqauli reference.⁴ In Indonesian society, the practice of referring after

¹ Nursyamsudin Nursyamsudin, Wardah Nuroniyah, and Azizahtul Khasanah, "The Concept of Referring to Bilfi'li from the Perspective of Shaykh Nawawi Al-Bantani," *Court : Journal of Islamic Law Studies* 6, No. 2 (2021): 213, <https://doi.org/10.24235/Mahkamah.V6i2.9150>.

² Ririn Fauziyah, "Refer Without Wife's Consent: An Analysis of the Book of Fathul Mu'in and the Compilation of Islamic Law (KHI) Introduction to the Occurrence of Talak Raj'i Performed by Husband to His Wife in the Iddah Period" 06 (2023).

³ Shila Dara Aulia, Sayla Arrahmah, and Kayza Safitri, "The Tradition of Eating in the Malay Deli Customs in the Perspective of the Qur'an," *El-Mujtama: Journal of Community Service* 4, no. 2 (2023): 933–44, <https://doi.org/10.47467/elmujtama.v4i2.4502>.

⁴ Muhammad Za'im Muhibbulloh, Dewi Niswatin Khoiroh, and A Rofi'ud Darojad, "The Rights of Wives in Referencing According to the Fiqh of the Four Madhhabs and the Compilation of Islamic Law (Maqasid Al-Shari'ah Perspective),"

divorce is not only a common phenomenon, but also reflects complex social dynamics. The practice is spread across different walks of life, from urban to rural, and involves diverse ethnic, religious, and social status groups. Perceptions of divorce and referral practices vary depending on the social and cultural factors in each. Some societies may view divorce as a failure or embarrassment, while others may be more accepting and consider it part of the modern family dynamic.

The practice of referencing not only affects the individuals involved, but it also affects the family and the wider community. Reactions from family members and the social environment can affect the referral process and decisions made by the couples involved. The hope of achieving reconciliation and strengthening marital relationships is often balanced by social challenges, such as negative perceptions of those around them and pressures from existing social norms. The involvement of certain communities or religious groups can also influence the social dynamics involved in the referral process, either by providing support or emphasis on the decisions made by the couples involved.⁵ Through a deeper understanding of these social factors, we can see that the practice of referencing is not only an individual problem, but also closely related to the social and cultural dynamics that exist in Indonesian society.

Some of the research related to reference includes that fiqh scholars affirm reference as the prerogative of the husband which does not require permission or consent from the wife.⁶ The husband has the authority to refer his wife at any time without time limit. However, in the laws and regulations, the requirement for permission from the wife to refer does not contradict the principles of Islamic law.⁷ The application of the referral procedure in the religious affairs office is often different

The Indonesian Journal of Islamic Law and Civil Law 2, no. 2 (2021): 185–205, <https://doi.org/10.51675/jaksya.v2i2.168>.

⁵ Irwandi Irwandi and Ibnu Izzah, "The Application of Referencing Procedures According to Islamic Law on Community Leaders and the Office of Religious Affairs (Kua) of South Sinjai District, Sinjai Regency," *Qadauna: Islamic Family Law Student Scientific Journal* 1, no. 3 (2020): 171–82, <https://doi.org/10.24252/qadauna.v1i3.14841>.

⁶ Arifin Abdulllah, "The Position of Permission to Refer to Husbands in the Period of 'Iddah (Analysis of Islamic Law Perspective)," *Family Law and Islamic Law* 2, no. 2 (2018).

⁷ Fauziyah, "Refer Without the Consent of the Wife: An Analysis of the Book of Fathul Mu'in and the Compilation of Islamic Law (KHI) Introduction to the Occurrence of Talak Raj 'i Performed by the Husband to His Wife in the Iddah Period."

from what is listed in the compilation of Islamic law, and the public's understanding and knowledge of the concept of referral is still not fully formed.⁸

Based on some of the above research, it is important to evaluate a deeper understanding of the practice of referencing in family law in Indonesia and its legal consequences. Previous research has revealed some aspects of this phenomenon, but this study adds value by expanding the scope of the legal consequences of referencing practice, the main difference lies in the approach used in analyzing the phenomenon. Previous research may have focused more on the legal perspective, while this study attempts to explore the referrals made after *the expiration of the iddah* period and its legal consequences.

RESEARCH METHODS

This study uses a qualitative approach with the aim of understanding in depth the phenomenon of referral after divorce, especially in Ranah Batahan District. Primary data was obtained through in-depth interviews with purposively selected informants, namely couples who made referrals after divorce. In addition, participatory observation was also carried out to enrich understanding of the social and cultural context behind the practice. Secondary data sources are obtained from literature studies, including scientific journals, books, previous research results, and academic literature relevant to the research topic. Data collection was carried out through semi-structured interview techniques and direct observation of the research object.

Data analysis was carried out using a descriptive qualitative analysis method. The analysis process begins with data reduction, which is selecting, focusing, simplifying, and organizing the raw data obtained from the field. Furthermore, the data is categorized based on themes and variables that arise during the data collection process. The results of observations, interviews, and documents were analyzed triangulatively to increase the validity of the findings. The stages of analysis include: (1) data collection, (2) data reduction, (3) data presentation, and (4) conclusion drawing or verification. With this approach, the research aims to reveal in depth the practice of referencing carried out after talaq bain without a new marriage contract, as well as analyze its legal implications

⁸ Amat Mulyoko, "The Role of Kua as a Facilitator in Marriage in Tengan District," *Indonesian Journal of Muhammadiyah Studies* 2, no. 1 (2021): 34–42, [Http://journal.mpk Salatiga.com/index.php/Ijmus](http://journal.mpk Salatiga.com/index.php/Ijmus).

based on the perspective of Islamic law and applicable laws and regulations.

RESULTS AND DISCUSSION

The Concept of Reference and the Limitation of the Iddah Period in Islamic Law

The word "referral" comes from the Arabic رجوعا – يرجع – رجوع (*raja'a – yarji'u – ruju'an*), which means return or return. In the context of Islamic legal terms, reference refers to the process of restoring the full marital status after the occurrence of talaq *raj'i*, which is pronounced by the ex-husband against his ex-wife during the *period of 'iddah* under certain conditions. According to the majority of scholars, such as Malikiyah, referral is the return of a wife who has been rejected to the protection of her husband without the need to make a new marriage contract. Although it does not directly distinguish between talak bain and talak *raj'i*, the absence of renewal of the marriage contract in this context shows its relationship with talak bain. On the other hand, if the wife returns without a new marriage contract, this is related to talaq *raj'i*.⁹

The scholars of various madhhabs agree that refereing is a process in which the husband returns to his wife after giving one or two talaqs, during the iddah period, without the need to perform a new marriage contract.¹⁰ Although there are editorial differences in this sense, the principle remains that the reference restores the continuity of the marriage without the need for a new covenant,¹¹ by retaining the rights of the husband during the *period of iddah* which will be lost after the period ends according to the respective madhhab.¹²

Thus, the concept of reference only applies when the husband has given the first talaq or second talaq to his wife, because it is at this second stage that the reference is allowed according to Islamic law. The word "rujuk", which comes from Arabic, has been absorbed into the Indonesian language and according to the Great Dictionary of the Indonesian Language (KBBI), means that the husband returns to his wife who has been rejected, either in talaq one or talaq two, as long as the wife is still in the *'iddah period*. This definition is substantially in line with that found in the jurisprudence literature, although the sentence

⁹ Al-Jaziri, "Al-Madhāhib Al-Arba'ah," V (N.D.): 330.

¹⁰ Abdurrahman. Al-Jaziry, "Al-Fiqh 'Ala Al-Madzahib Al-'Arba'Ah," *Beirut: Dar Al-Kutub Al-'Ilmiyah* IV (2003).

¹¹ Muhammad Musthafa. Az-Zuhaily, "Al-Wajiz Fi Al-Fiqh Al-Islamy," *Suria: Dar Al-Kahir*. I (n.d.).

¹² Al-Jaziry, "Al-Fiqh 'Ala Al-Madzahib Al-'Arba'Ah."

formulation is slightly different. Regarding the wife's consent in the reference, the four imams of the madhhab agree that only the husband has the right to make the reference. Therefore, in practice, a reference made without the wife's consent is still considered valid, because the reference is considered the main right of a husband. This argument is based on postulates from the Qur'an, such as Surah Al-Baqarah verses 228, 229, and 231, as well as Surah At-Talaq verse 2.¹³

From these definitions, it can be seen that several keywords describe the essence of legal acts called referrals. The phrase "the return of the husband to his wife" reflects that the two had previously been bound in a marriage bond that later ended in divorce. Reference only applies in this context; If a man marries someone else after a divorce, it is not considered a referral. Furthermore, the expression "who has been rejected in the form of raj'i" indicates that a wife who has divorced her husband is still in a state of not completely divorced (not talaq bain). This confirms that the reference only applies in the case of talaq raj'i. If the wife has not been rejected or has been rejected but not in the form of talaq raj'i, it is not a reference. The phrase "still in the period of 'iddah" indicates that the reference can only occur as long as the wife is still in the *period of 'iddah*. After the *'iddah* ends, the ex-husband can no longer return to his wife on the terms of reference; in this case, the husband must start the marriage process again with a new contract. Thus, the reference highlights the importance of the legal process that regulates the return of the husband to his wife after divorce, taking into account the status of talaq and *the wife's 'iddah* period .¹⁴

Ibn Rushd categorized the rulings of reference into two types: refer to talak raj'i and refer to talak bain. First, refer to talaq *raj'i*: Muslims agree that the husband has the right to refer his wife to talaq *raj'i* as long as the wife is still in the *'iddah* period, without requiring the wife's consent, as stipulated in Surah Al-Baqarah verse 228. The fuqaha also agree that talaq *raj'i* must be done after intercourse (dukhl), and the process of referring can be done with certain statements and witnesses. Second, refer to talak bain: refer to women who are talak bain limited to cases such as khulu' on the condition that they are interfered with, and the talak does not include talak three. The scholars of the four madhabs agree that the procedure for referring such a woman is the same as the

¹³ Ledy Oktaleni Fera, *Analysis of the Compilation of Islamic Law (KHI) on Referencing the Perspective of Masalah Mursalah*, 2022, 11.

¹⁴ Emir. Syarifudin, *Islamic Marriage Law in Indonesia Between Munakahat and Marriage Law*. (Jakarta: Kencana, 2016).

procedure for marrying another woman, i.e. it requires a contract, dowry, wali, and consent from the woman. However, in contrast to *talaq raj'i*, the completion of *the 'iddah* period is not considered a condition in referring to *talaq bain*.¹⁵

Referral and marriage have different principles, although both legalize the relationship between a man and a woman. According to scholars, referencing requires witnesses to prove it, while marriage involves guardians and witnesses. Although the implementation of referencing seems simpler, fiqh scholars point out that the referencing process is actually not as easy as it seems. Islamic law facilitates divorced ex-husbands and wives by establishing a period of *'iddah* for the wife, which must be passed before she can remarry. Al-Maraghi, in his commentary, explained that one of the lessons of the provision that a wife who has been rejected three times must marry someone else first before she can return to her husband, is an indication that triple *talaq* causes the man to become no longer *halal* for the woman.¹⁶ In the implementation of referral in Indonesia, there is a procedure that must be followed, where a husband who wants to refer his wife who has been rejected must meet several conditions. First, the husband must be in a state of sound mind. Second, the husband must be an adult. Third, the husband who makes the referral must act voluntarily without any pressure from any party.¹⁷

The reference procedures regulated in the Compilation of Islamic Law are as follows: First, in the referral process carried out in front of the Assistant Marriage Registrar, a reference list is made in two copies. This list must be filled out and signed by the parties involved as well as witnesses. Second, the Assistant Marriage Registrar Officer must send the first sheet of the reference list no later than 15 days after the reference is made. Third, if the first sheet of the reference list is lost, the Assistant Marriage Registrar is obliged to make a copy of the second sheet by making a minutes about the reason for the loss of the first sheet.¹⁸

Article 168 of the KHI stipulates the following procedures: First, the Marriage Registrar Officer makes a certificate regarding the

¹⁵ Irwandi and Izzah, "The Application of Referral Procedures According to Islamic Law on Community Leaders and the Office of Religious Affairs (Kua) of South Sinjai District, Sinjai Regency."

¹⁶ Ahmad Mustafa Al-Maraghi, "Tafsir Al-Maraghi," *Dar Al -Fikri* 1 (n.d.): 224.

¹⁷ Abu Yahya Zakariah al-Anshari, *Fathul Wahab* (Bandung: al ma'arif, n.d.).

¹⁸ Robert M Kosanke, "The Concept of Reference in Islamic Law and Khi," 2019, 56–91.

occurrence of a referral and sends it to the Religious Court at the place of implementation of the talaq concerned. Husband and wife are each given a citation of the Reference Registration Book in accordance with the format set by the Minister of Religion. Second, if the husband, wife, or his attorney is reluctant to bring the citation of the Reference Registration Book to the Religious Court at the place of talaq to take care of and take the Citation of the respective Marriage Certificate after the record by the Religious Court has been added at the bottom of the citation.¹⁹

The legal conditions for the referral are divided into two, namely the conditions for the husband and the conditions for the wife:²⁰

Conditions for husbands; First, the referring man must be the legal husband of the referred woman, where the second marriage has been recognized as legally valid. Second, the referring man must be able to carry out the marriage on his own, meaning he is an adult and acts on his own will without any coercion.

The condition for the wife; first, is that the woman must be the legal wife of the man who will refer. Second, the wife must have been rejected with talaq raj'i before. Third, the wife is still in the period of *iddah* raj'i. Fourth, the wife has been married after their marriage took place.

Scholars agree that the reference is invalid if it does not meet the pillars of reference, although there are differences of opinion about the details of the reference. According to the scholars of *jumhur*, the pillars of reference consist of three types, namely: *Murtaji* or ex-husband, *Murtaja'* or ex-wife, and *Sigat* or ijab referral. Reference in sharia law aims to provide benefits or overcome difficulties for humans. Many people divorce without careful consideration, so after divorce they often feel regret. In this situation of regret, there is often a desire to reconcile and return to the marital bond. However, starting a new marriage also has its own challenges. Refer to it as a solution to overcome difficulties and psychological tensions that may occur during the *iddah* period.²¹ During the period of *iddah* talak raj'i, the wife is required to live in a

¹⁹ Mohd. Idris Ramulyo, *Islamic Marriage Law* (Jakarta: Pt Bumi Aksara, 1999).

²⁰ Fera, *Analysis of the Compilation of Islamic Law (KHI) on Referencing the Perspective of Maslahah Mursalah*, 17.

²¹ Jamhir Cut Putri Saridevi, Soraya Devy, "The Fulfillment of Wives' Maintenance Rights in the Iddah Period (Case Study in Gampong Kuta Kumbang, Seunagan District)" 1, no. 1 (2024).

house provided by her husband, which can also cause discomfort. Allah gives an easy option, which is to return to marital life as before, if it is not possible to reunite again or if you do not want to return to the wife who has been rejected. If that is not possible, then *the iddah* period must be completed until the marriage is completely over or *talaq bain*.²²

Implications of the Law of Referring to Post-Iddah Time

In the view of the Imam of the madhhab, the law of reference (or the law of divorce that can result in the resumption of marriage) varies depending on each madhhab in Islam. The following are the general views of some of the Imams of the madhhab:

In the Hanafi madzhab, referee (returning a divorced wife with three *talaq*) is considered valid if it is done during the *iddah* period (waiting period). If the reference is made after *the iddah* ends, the second marriage is considered valid but with the note that if there is *talaq* again, then the *talaq* is counted as the last of the three *talaqs*, which makes the divorce definitive²³.

In madhhab Maliki, reference can also be done during the *iddah* period. If the referral is made after *the iddah* ends but before the wife marries someone else, the referral is still valid but on the condition that the wife's guardian must agree to this referral.

In madhhab Shafi'i, reference can be done during *iddah* and if done after *iddah*, reference remains valid as long as no more than two *talaqs* have been given beforehand. If *talaq* has reached three times, then the divorce becomes definitive and the wife cannot refer unless she is married to someone else (this is known as *halalah*).²⁴

In the Hanbali madhhab, reference can also be done during *the iddah* period. If the reference is made after *the iddah* ends but before the wife marries someone else, the reference remains valid on the condition that the new agreement between the husband and wife is made.

This view reflects how the interpretation of Islamic law can vary based on the legal traditions held by each madhhab. In practice, it is important for individuals to discuss the matter with a religious scholar or relevant Islamic legal expert to get the right advice according to their specific circumstances.

²² Rosa Nella Wahyuningrum, "A Review of Islamic Law and Positive Law on Referencing Practices in Ngabean Village, Secang District, Magelang Regency in 2010-2017" (2018).

²³ Al-Jaziry, "Al-Fiqh 'Ala Al-Madzahib Al-'Arba'ah."

²⁴ Az-Zuhaily, "Al-Wajiz Fi Al-Fiqh Al-Islamy."

Referrals are carried out after married couples comply with the procedures set by the Ministry of Religious Affairs. The main factor that drives them to refer is the great influence that children feel, which affects the emotions of both parents who have just divorced. This can greatly affect young children, facing social disorders such as ridicule that causes frustration in their mental development due to parental divorce. In addition, couples want to improve the image of their family in the eyes of the community and maintain good relationships and friendship. Another motivation is to avoid a divorce process that could damage their good name before it is decided by the courts.²⁵

Imam Ash-Shafi'i in the book *al-Umm* stated that in his view, a wife does not have the right to refuse or change the decision of reference taken by her husband. For him, referee is the right that a husband has over his wife, not the other way around. Imam Ash-Shafi'i refers to the Qur'an surah Al-Baqarah verse 228 as a legal evidence. In his interpretation, he explained that "in araaduu islahā" (if they want peace) refers to *islah talaq* (peace in talaq), which means referral. Therefore, according to the view of Imam Ash-Shafi'i, if the husband wants a reference, the wife is obliged to accept it. All of this is geared towards achieving the benefit of both parties and the main goal of marriage. This position is also in accordance with the conditions in Indonesia, where women are placed as equal partners in life, without ignoring the position of their husbands, but still respecting their true position. It is hoped that with this approach, women's rights will be better protected and respected.²⁶

The permissibility of a husband to refer to a wife who has been rejected is a gift from Allah. Sometimes talaq occurs in emotional or angry situations, without thinking about the adverse consequences that may arise.²⁷ When a man separates from his wife, he will often miss his presence. The Shari'ah refers to allowing them to reunite, which is Allah's mercy and affection in domestic life. This is a blessing of Allah

²⁵ Amrin Borotan, "The Thoughts of Imam Ash-Shafi'i on the Necessity of the Wife to Accept the Husband's Referral (Study Kitab Al-Umm)" 2, no. 3 (2020): 81–94.

²⁶ A Hafizh, "The Level of Public Understanding of the Practice of Siri Marriage in Ranah Pesisir District, South Pesisir Regency," *Sakena: Journal of Family Law* 7, No. 1 (2022), <https://journals.fasya.uinib.org/index.php/sakena/article/view/197>.

²⁷ Nursyamsudin, Nuronyah, and Khasanah, "The Concept of Referring to Bilfi'Li from the Perspective of Shaykh Nawawi Al-Bantani."

that allows a married couple to achieve happiness²⁸. In married life, often married couples face various problems that can be resolved quickly or lead to divorce.²⁹ Divorce ends the relationship that has been formed between husband and wife, and often has a variety of negative impacts.³⁰ Even so, even though they have been divorced, there are still other efforts to reconcile the couple. Referral is the process of reuniting a divorced husband and wife, on the condition that the talaq given is talaq one.³¹

The divorce that happened to a couple who got married in 2017, namely between Mr. T and Mrs. S who live in the interior of West Sumatra, is an example of a case that shows how initially their marriage was full of love and affection, providing peace and happiness. However, in the course of their household, there are disputes both from within the house and from outside, such as economic problems, social pressures, and family problems. In this case, Mrs. S revealed that after several years of marriage, the pressure increased because they had not been blessed with children. This causes additional pressure from the husband's parents. Even though Mrs. S had a miscarriage, Mrs. S's husband pronounced talaq to Mrs. S with the phrase *kinayah*, which is "just go home to your parents' house". Mother S felt offended and felt unwanted by her husband anymore, so she returned to her parents' house. After passing his *iddah* period, which means more than a year of living his own life, Mrs. S's husband again begged Mrs. S to return to him because he still loved her. Eventually, Mrs. S and her husband got along, and since then their household has been doing well. They have even been blessed with one child from their marriage. In this context, reference or reconciliation between husband and wife after talaq can occur if it is done during the *iddah* period and by mutual agreement. This shows that

²⁸ Sarpani and Elvi Soeradji, "Talak , Refer, and *Iddah* in the Perspective of the Qur'an," *Transparency Law* 10, No. November (2022).

²⁹ M. Mutamakin and Ansari, "Philosophical Study of Islamic Family Law as the Obligation of the Husband to Provide for His Wife and Children M. Mutamakin Ansari Institute of Islamic Religion Ibrahimy Genteng Banyuwangi Introduction Sociologically, Law is a reflection of the value system believed by the community," *Al-Bayan: Journal of the Science of the Qur'an and Hadith* 3, no. 1 (2020): 47–82.

³⁰ Rosa Nella Wahyuningrum, "A Review of Islamic Law and Positive Law on Referencing Practices in Ngabean Village, Secang District, Magelang Regency in 2010-2017."

³¹ Arifin Abdullah, "The Position of Permission to Refer to Husbands in the Time of *Iddah* (Perspective Analysis of Islamic Law)."

even if talaq occurs, there is room to repair the relationship and continue the marriage with renewed love and commitment.³²

This *iddah* period is a waiting period that aims to ensure that there is no pregnancy from the previous husband and provide an opportunity for couples to reconcile or improve their relationship.³³ According to KHI, the *iddah* period for a divorced wife with talaq *raj'i* (recallable talaq), including talaq one, is three months for those who have menstruated, three months for those who have not menstruated (or until she menstruates, if menstruation occurs before the end of three months) and if the divorced wife is pregnant, the husband is obliged to provide alimony until she gives birth. However, the Qur'an also explains that this waiting period is four months and ten days. As mentioned earlier, that referencing, is the right of the husband as well as the right of talaq that he has.³⁴

According to the view of Shaykh Hasan Ayyub, '*iddah* is a waiting period that is obligatory for a woman who is divorced by her husband, either because of a living divorce or a divorce for life. During '*iddah*, a woman can wait for the birth of the child she conceives, or through the quru' or the number of months. During this time, women are not allowed to marry or look for other men to marry her³⁵. According to the agreement of the fuqaha, the husband who gives talaq has the right to refer to his wife by speech, as well as through deeds according to the Hanafi, Hambali, and Malik schools, as long as the wife is still in the *iddah* period. This action can be done without the need to ask permission or consent from his ex-wife.³⁶

³² Susi, Interview (2024).

³³ Nurul Aqidatul Izzah et al., "The Fulfillment of Wives' Rights in the Iddah Period After the Implementation of Circular Letter No. P005 / DJ . III/Hk . 00 . 7/10/2021 Study at the Office of Religious Affairs of Parepare (Islamic Family Law Perspective) Fulfillment of Wives' Rights During the Iddah Period After the " 19, no. 1 (2024): 98–112, <https://doi.org/10.56338/iqra.v19i1.4673>.

³⁴ Sarpani and Soeradji, "Talak , Refer , and *Iddah* in the Perspective of the Qur'an."

³⁵ Shaykh Hasan Ayyub, *Fiqhul Ushrah Al-Muslimah*, ed. In, *Family Fiqh*, (Terj: Abdul Ghofar), 5th ed. (Jakarta: Pustaka Al-Kautsar, 2008).

³⁶ Muhammad Hasbi Ash-Shiddieqy, *The Laws of Islamic Fiqh, Second Edition* (Semarang: Pustaka Rizki Putra, 1997).

Maslahah Perspective in Weighing the Validity of Post-Iddah Reference

The word *maslahah* comes from an Arabic verb which means something that brings good.³⁷ Imam Ghazali defines *maslahah* as an effort to achieve benefits and avoid losses. Muhammad Abu Zahra gave a definition similar to that of Jalal al-Din al-Suyuti which is in line with the purpose of Islamic sharia and the evidences that show its confirmation or rejection.³⁸ *Maslahah* in language is the *plural* *maslaha al-maslahih* taken from the word *al-shilah* (good) as opposed to *façade* (damaged).³⁹ The scholars have different opinions in judging *maslahah*.⁴⁰ Some scholars consider *maslahah* as a shari'iyah argument and as one of the postulates in the formation of law, while other scholars have a different view. Abdul Wahab Khalaf, in his work, stated that Imam Malik and Ahmad bin Hanbal and their followers adhered to the *istislah* approach as a shari'iyah method to establish laws related to events for which there was no *nash* (textual evidence) or *ijma'* (agreement of the scholars). On the other hand, the Shafi'i school and its followers reject the use of *istislah*. They view that the person who uses *istislah* is considered the same as the person who applies *istihsan*, and that *istislah* is actually synonymous with *istihsan*.

Abd al-Wahhab Khallaf, in his view, sets the conditions that must be met in order for *maslahah* to be used as shari'iyah argument. First, *maslahah* must be essential and should not be based on mere prediction (*wahm*); this means that the decision taken must consider the potential harm that may arise as a result. Second, *maslahah* must apply universally for the benefit of the majority of human beings, not just for certain groups or individuals (partial). Third, the constitutionality of the law based on *maslahah* (*maslahah mursalah*) must not contradict the principles contained in the Qur'an, Sunnah, and the agreement of the scholars (*ijmak*). Thus, Khallaf's approach emphasizes the importance of clarity, universality, and conformity with Islamic legal values in using *maslahah* as a legal basis.⁴¹

³⁷ Khoirul Umam. et al., *Ushul Fiqih* (Bandung: Pustaka Setia, 2000), 132.

³⁸ Khoirul Umam. Et al., 135–236.

³⁹ Mardani., *Ushul Fiqih* (Jakarta: Rajawali Press, 2013), 228–29.

⁴⁰ Fera, *Analysis of the Compilation of Islamic Law (KHI) on Referencing the Perspective of Maslahah Mursalah*.

⁴¹ Saifudin Zuhri, *Ushul Fiqih Reason as the Source of Islamic Law*, n.d.

Based on its level, *Maslahah* can be divided into three levels, namely: ⁴² *First, Maslahah dharuriyah*: this is a *fundamental and essential maslahah* for human survival. Everything that is included in this *maslahah* is a must to be done in order to protect religion, soul, intellect, descendants, and property. Examples include obligatory worship, prohibitions on harmful acts, and laws that protect property.

Second, maslahah hajiyyah: this *maslahah* is what humans really want to eliminate difficulties or overcome obstacles that are not urgent as in *maslahah dharuriyah*. Although it is not mandatory, *this maslahah* is allowed and regulated by law to make human life easier. Examples are the rules of economic transactions and waivers in worship such as *jama'* and *qashar*.

Third, maslahah tahsiniyah: this is a *maslahah* related to improving the quality of human life in worship, civility, and social interaction. Although not a primary need, this *maslahah* contributes to morality and virtue in religion and association. Examples are actions that preserve noble morals and maintain honor in customs and *muamalah*.

Maslahat is divided into three types in terms of their existence;⁴³ *First, maslahat al-mu'tabarah* is a benefit that clearly exists in the legal text that recognizes the importance of safeguarding religion, soul, intellect, honor, and property. Examples are *jihād* which is prescribed to defend religion, as well as punishments such as *qiyas* to protect the soul, punishment of limitation for adulterers and theft to protect honour and property.

Second, maslahat al-mughah is a benefit that is contrary to the provisions of the legal text. An example is the equalization of inheritance shares for boys and girls, which may have certain benefits even if they are not in line with existing legal provisions.

Third, maslahat al-mursalah adalah kemaslahatan yang tidak dijelaskan atau diakui oleh teks hukum secara langsung. Ini mencakup kemaslahatan yang muncul dalam konteks mengkodifikasi al-qur'an, pembukuan hadis, dan inovasi lainnya yang memperoleh manfaat dan menolak kerugian, menurut pandangan ushuliyyin.

In terms of changing or not *maslahah*, the scholars divide it into two, namely *maslahah al-ammah* and *maslahah al-khassah*. *Maslahah al-ammah* refers to the benefits that involve the interests of many people or the majority of the people, such as when scholars allow the act of killing the spreaders of heresy that can damage the faith of the people.

⁴² Suwarjin, *Ushul Fiqih* (Yogyakarta: Teras, 1012), 142.

⁴³ Mardani., *Ushul Fiqih*, 230.

Meanwhile, *maslahah al-khassah* refers to personal or individual benefits, as in the case of terminating the marriage of someone who is considered missing.⁴⁴

CONCLUSION

From the above discussion, we can see that the status of reference in marriage is only found in *talaq raj'i* and *bain sugrha*. This study reveals that the law of reference in Islam, especially after the *iddah* period, has important implications in the context of *maslahah* or the public interest. The concept of referential allows reconciliation between husband and wife after *talaq*, taking into account the values of justice, domestic harmony, and the protection of individual rights, especially women's rights. The various approaches of the various *madhhabs* in Islam show the flexibility and adaptability of the law in response to social and cultural dynamics. The *iddah* period or waiting period for a woman is three times the holy period with the aim of making it clear that there is no fetus left in a woman's womb left by her husband. Then the legal consequences of referring to those carried out after the expiration of *the iddah* period can be tolerated according to the applicable customary law so that there is no realization of legal order as well as in the existing administration, but in order for the realization of the practice of reference and *talaq* must be adjusted based on the provisions that have been regulated in the Compilation of Islamic Law articles 167-169. Thus, an in-depth understanding of the implications of the post-*iddah* reference law from the perspective of *maslahah* can provide better guidance in handling divorce cases in an increasingly complex and diverse society, to achieve justice and harmony in the family and society at large.

⁴⁴ Fera, *Analisis Kompilasi Hukum Islam (KHI) Tentang Rujuk Perspektif Maslahah Mursalah*, 26.

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