

# ***IDDAH OF A PREGNANT WOMAN FOLLOWING THE DEATH OF HER HUSBAND: A STUDY OF TA'ARUDH AL-ADILLAH***

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**Abstract:** One of the consequences that must be endured by women after divorce, the divorce of *thalaq*, or divorce due to death is *iddah*. Enforcement of *iddah* for women after the divorce is not Islamic law-oriented but had existed before Islam came. In general, two verses explain about *iddah* which are considered *ta'arudh al-adillah* (considered contradictory) namely surah al-Baqarah verse 234 states that women whose husbands' deaths receive *iddah* for four months ten days and surah ath-Thalaq ayat 4, Allah states that pregnant women get *iddah* until they give birth to their children. Therefore, this study aims to examine the *iddah* law of a pregnant woman whose husband has died based on the instructions of surah al-Baqarah verse 234 and surah ath-Thalaq verse 4, using *ta'arudh al-adillah*. This type of research is a qualitative research that is literature research. Sources of data in this research involved books, scientific journals, articles, internet, legal products, and other forms of written documents relating to *iddah*. Methods of data collection in this research employed reading, comparing, examining as many data sources as possible. Data analysis methods in this research included data reduction, data presentation, and conclusion. For more profound analysis results, this study also performed data analysis techniques, the *bayani* method, the *ta'lii* method, and the *istislahi* method. The results showed that the *iddah* period for a woman whose husband dies according to surah al-Baqarah verse 234 is four months and ten days. This law applies if the woman is not pregnant. However, the provisions for pregnant women are more

specifically specified in surah ath-Thalaq verse 4, because the provisions of pregnancy have been specified (*takhsis*) in surah ath-Thalaq verse 4.

**Keywords:** Iddah, Islamic Law, Ta'arudh Al-Adillah.

## Introduction

Marriage is a step to unite two people of different backgrounds and characteristics in one sacred bond, in order to preserve the continuity of human life.<sup>1</sup> This is in line with the maqashid sharia<sup>2</sup>, but not infrequently over time, the marriage is rifted and separated, either in the form of divorce or because of the death of one of the parties.<sup>3</sup> This is the problem most feared by husband or wife because it has several consequences that must be endured.<sup>4</sup>

One of the consequences that must be taken by women after divorce<sup>5</sup>, the divorce of *thalaq*, or divorce due to death is *iddah*.<sup>6</sup> Enforcement of *iddah* for women after the divorce is not Islamic law-oriented but had existed long before Islam came. "Enforcement of *iddah* that goes hand in hand with *ihdad* can be said to be inhuman since during pre-Islamic era there were a lot of discriminatory community activities especially threatening women. Therefore, Islam came with its sharia as a problem-solving society (jahiliyyah) back in the time".<sup>7</sup>

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<sup>1</sup> Sri Wahyuni, "Kontroversi Perkawinan Beda Agama di Indonesia", *Jurnal Hukum Islam*, Vol. 8, No. 1, 2010, 65. See too, Frisca Meivilona Yendi, Zadrion Ardi, and Ildil, "Pelayanan Konseling untuk Remaja Putri Usia Pernikahan" *Jurnal Konseling dan Pendidikan*, Vol. 1, No. 2, 2013, 110.

<sup>2</sup> Muhamad Taufiq, "Nikah Sirri Perspektif Maqashid Syariah", *Al-Manhaj: Journal of Indonesian Islamic Family Law*, Vol. 1, No. 2, 2019, 115.

<sup>3</sup> Imannatul Istiqomah and Mukhlis, "Hubungan Antara Religiusitas dengan Kepuasan Perkawinan", *Jurnal Psikologi*, Vol. 11, No. 2, 2015, 71.

<sup>4</sup> Armansyah Matondang, "Faktor-faktor yang Mengakibatkan Perceraian dalam Perkawinan", *Jurnal Ilmu Pemerintahan dan Sosial Politik*, Vol. 2, No. 2, 2014, 142.

<sup>5</sup> Muchammad Hammad, "Hak-Hak Perempuan Pasca Perceraian: Nafkah Iddah Talak dalam Hukum Keluarga Muslim Indonesia, Malaysia, dan Yordania", *Al-Ahwal*, Vol. 7, No. 1, 2014, 17-18.

<sup>6</sup> Nabihah Hasinah Abdul Halim and Che Maryam Ahmad, "Kefahaman Mengenai 'Iddah di Kalangan Pelajar Wanita Politeknik Ungku Omar, Ipoh, Malaysia", *Al-Barjari*, Vol. 16, No. 1, 2017, 84-85.

<sup>7</sup> Syah Waliyullah al-Dihlawiy, *Hujjah Allah al-Balighah*, Jilid 2, (Beirut: Dar Ihya' al-Ulum, t.t.), 377.

Determination of the *iddah* period for a pregnant woman whose husband dies aims to provide opportunities for her mourning after she has been berieved and it is on the grounds for appropriateness the berieved woman has to show by not remarrying too soon.<sup>8</sup> This is logically very compatible with human interests, where the feeling of losing the person he/she loves so much can not just disappear, and to reduce the feeling of loss must take quite a long process.<sup>9</sup> Thus, the *iddah* period aims to give time for emotional recovery of the woman left.

Ali bin Abi Talib and Abdullah bin Mas'ud are among others who have their different views on the period of *iddah* a pregnant woman has to take. Ali ibn Abi Talib claimed that "the *iddah* period for a pregnant woman who is left by her dead husband is as long as her pregnancy period (ath-Thalaq verse 4), added with four months and ten days in waiting (al-Baqarah verse 234)". Ali bin Abi Talib added that if a pregnant wife without husband due to death gives birth earlier before the time, which is four months and ten days, then she has to give it another wait in *iddah* period until it is appropriate for her to remarry. However, if she passes the *iddah* period before giving birth she just needs to wait until the birth.<sup>10</sup>

While Abdullah bin Mas'ud argued that the *iddah* period for a pregnant woman who is left by her husband due to death is until she gives birth to her fetus even though the birth occurs before the four-month and ten-day maturity; this is appropriate in surah ath-Thalaq verse 4. The certainty of the fetus contained by the woman is apparent with the birth of a child. The *iddah* period of four months and ten days has the potential to cause legal conflict in the future.<sup>11</sup>

In general, the two verses above can be said to be two verses that are considered contradictory (*ta'arudh al-adillah*). Furthermore,

<sup>8</sup> Compare with Nur Lailatul Musyafa'ah, "Interpretasi Ayat Iddah Bagi Wanita Menopause, Amenorea, dan Hamil dengan Pendekatan Medis", *Al-Daulah: Jurnal Hukum dan Perundangan Islam*, Vol. 8, No. 1, 2018, 105.

<sup>9</sup> Muhamad Isna Wahyudi, "Kajian Kritis Ketentuan Waktu Tunggu (*Iddah*) dalam RUU HMPA Bidang Perkawinan", *Jurnal Hukum dan Peradilan*, Vol. 5, No. 1, 2016, 25.

<sup>10</sup> Abdur Rahim Muhammad, *Pengantar ke Fiqih Imam Ali r.a.*, (Penerjemah) Suaidi, (Jakarta: Arista, 1988), 46.

<sup>11</sup> Abdur Rahim Muhammad, *Pengantar ke Fiqih Imam Ali r.a.*, 45.

the provisions regarding the *iddah* of a woman whose husband dies, as in surah al-Baqarah verse 234, state that the woman is allowed to have her *iddah* for as long as four months and ten days. This verse does not distinguish between a pregnant woman and the woman not pregnant. In this verse, Allah states that if a woman is left by her husband due to death, the *iddah* period is four months and ten days.

In surah ath-Thalaq verse 4, Allah states that a pregnant woman will have her *iddah* until she gives birth. This verse also does not distinguish between divorce (*thalaq*) or death divorce on husband's death. In general, this verse implies that pregnant women who are divorced by their husbands, both devorce and death divorce, have the *iddah* until they give birth. Thus, there is a contradiction (*ta'arudh al-adillah*) in the contents of these two verses for pregnant women whose husbands have died.<sup>12</sup> The case of *iddah* for a pregnant woman whose husband dies in surah al-Baqarah verse 234 is general, and in surah ath-Thalaq verse 4, it is specific, then from one side of the *iddah* a pregnant woman is determined based on the content of surah ath-Thalaq verse 4.<sup>13</sup>

This type of research is literature-based with documented information that has a relationship with the object of the research and is relevant to the focus of the problem to be discussed. This research is also descriptive exploratory (digging), the focus of which is trying to describe, discuss, and explore the main ideas drawn in a new case. The main idea of the research is based on the *iddah* law of a pregnant woman whose husband dies.

Following the topics that will be discussed and reviewed in this article, this research employed a socio-philosophical approach, intended to discuss social discourse and phenomena, as well as to look at the experience (empiric) about the *iddah* of pregnant women left by their husbands due to death. In contrast, the philosophical approach aims to analyze legal thinking related to this research.

<sup>12</sup> See more complete, Nazar Bakry, *Fiqh dan Ushul Fiqh*, (Jakarta: Raja Grafindo Persada, 2003), 253.

<sup>13</sup> Chaerul Uman and Achyar Aminudin, *Ushul Fiqih II*, (Bandung: Pustaka Setia, 2001), 190.

The research data was obtained from books, scientific journals, articles, internet, legal products, and other forms of written documents that were related to the object of research and relevant to the focus of the problem discussed. Data collection methods in research involved how to read, compare, examine many sources of data, both primary and secondary, in order to obtain information about the object of discussion.

The data analysis method in this study used the data analysis method proposed by Miles and Huberman, namely data reduction, data presentation, and conclusion.<sup>14</sup> For more profound data analysis, this study also used data analysis techniques, the *bayani* method. From the perspective of the discovery of Islamic law, there is also a method of finding *al-bayan* law.<sup>15</sup> In the development of Islamic law, *al-bayan* approached at least a method known as hermeneutical that was intended to interpret or translate.<sup>16</sup> Secondly, *Ta'lili* reasoning is based on the assumption of the provisions set by God to control human behavior and to allow humans to perform logical reasoning or legal values<sup>17</sup>. That is, basically *ta'lili* reasoning is a method of legal *istimbath* that seeks to use '*illat*'<sup>18</sup> as the primary tool. The third is the *istislahi* method. *Maslahah mursalah* theory is called *istislah*.<sup>19</sup> *Al-maslahah al-mursalah* is also a method of legal discovery whose cases are not explicitly regulated in the Al-Quran and hadith. It is just that this method is emphasized more on aspects of *maslahah* (goodness) directly. The term that is often used in connection with this method is *istislahi*.<sup>20</sup>

<sup>14</sup> Matthew B. Miles and A. Michael Huberman, *Qualitative Data Analysis (a Source book of New Methods)*, (Beverly Hills: Sage Publications, 1984), 21-24.

<sup>15</sup> Jazim Hamidi, *Hermeneutika Hukum, Teori Penemuan Hukum Baru Dengan Interpretasi Teks*, (Yogyakarta: UII Pres, 2004), 23.

<sup>16</sup> Jazim Hamidi, *Hermeneutika Hukum, Teori Penemuan Hukum Baru...*, 20.

<sup>17</sup> Muhammad Abu Zahrah, *Ushul al-Fiqh*, (Penerjemah) Saefullah Ma'shum, (Jakarta: Pustaka Firdaus, 2000), 364.

<sup>18</sup> '*Illat* is a pillar of *qiyas* (analogy) and *qiyas* cannot be done if it cannot be determined '*illat* of a problem.

<sup>19</sup> Wael B. Hallag, *A History of Islamic Legal Theories*, (Penerjemah) E. Kusnadinigrat, (Jakarta: Rajawali Press, 2000), 165.

<sup>20</sup> Abdul Aziz ibn Abdurrahman ibn Ali al-Rabi'ah, *Adillat al-Tasyri' al-Mukhtalaf fi al-Ihtijaj Biha*, (Damaskus: Mu'assasah al-Risalah, 1979), 221.

### Law of Iddah for a Pregnant Woman left by her Husband due to Death from the Perspective of Surah al-Baqarah Verse 234

In surah al-Baqarah verse 234, there is an explanation that *iddah* for women as intended in this study is four months and ten days. This verse does not distinguish between women who are pregnant or not pregnant. In general, God states that if a woman is left by her husband due to death, then it can be *iddah* for four months and ten days. As elaborated in al-Baqarah verse 234:

وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا ۖ فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَلَا جُنَاحَ عَلَيْكُمْ فِيمَا فَعَلْنَ فِي أَنْفُسِهِنَّ بِالْمَعْرُوفِ ۗ وَاللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ ۚ ٢٣٤

And those who are taken in death among you and leave wives behind-they, (the wives, shall) wait four months and ten (days). And when they have fulfilled their term, then there is no blame upon you for what they do with themselves in an acceptable manner. And Allah is (entirely) Acquainted with what you do.<sup>21</sup>

In general, the purpose of surah al-Baqarah verse 234 is that if a husband dies, his wife must stay and must wait for four months and ten days. The wisdom is to prove pregnancy at four months and the beginning of the movement (fetus) in the fifth month.<sup>22</sup> The sentence *faidhā balaghna ajalahunna* means that the *iddah* ends or completes. This is further confirmed by the sentence *falājunāha ‘alaikum fima fa’alna fī anfusihiinna* means that there is no sin for you, (guardian) letting them act against themselves. The sentence refers more to self-beautifying or putting some fragrance *bilma’rūf* means according to what is appropriate. “That sentence means in a form that is not forbidden and is not meant”.<sup>23</sup> This verse shows the

<sup>21</sup> Departemen Agama RI, *Al-Qur'an dan Terjemahnya*, (Bandung: Syaamil Qur'an, 2010), 38.

<sup>22</sup> Muhammad Ali ash-Ahabuniy, *Rawa'ul Bayan*, Juz 1, (Beirut: Darul Kutub Islamiyah, 1991), 363.

<sup>23</sup> Shafiyurrahman al-Mubarakfuri, *Shahih Tafsir Ibnu Katsir*, (Bogor: Pustaka Ibnu Katsir, 2007), *Jilid* I, 170.

obligation of *ihdad* (left preening) in the period of *iddah* on a woman left by her dead husband.<sup>24</sup>

The sentence *wallahu bimā ta'malūna khabīr* means that Allah knows what you are doing, meaning "to know the actions of men outwardly and inwardly, visible or hidden, then surely Allah will reciprocate".<sup>25</sup> Then for the saints with the word of Allah, *falājunāha 'alaikum fima fa'alna fī anfusihinna* means that there is no sin for you (guardian) to let them act against themselves. It is "the proposition that the guardian cares for the woman and forbids her from things that should not be done and force her to do what is mandatory and that this verse is presented to the guardian and is his responsibility".<sup>26</sup>

The phrase *tuwaffā* has the meaning of death. In using fluent language phrases, it is said *tuwaffīya fulān* which means someone has been expressed in the form *mabnī ma'ful*, even if the expression with *isim fa'il (mabnī ma'lūm)* is considered by some experts *nahwu* considered as a wrong expression because the spirit is revoked. This is as in a hadith narrated by Abu Aswad ad-Du'ali when he was behind the body, so a man asked him *minal mauta* (who is dead?), He answered, Allah s.w.t. That is why the laws of *nahwu* are laid. Therefore, the pronunciation of *alladzīna yutawaffauna* in this verse means those who die or those who die.<sup>27</sup>

The pronunciation *azwāju* has the meaning of *ānnisā'* (female). The Arabs call men *zauj* in the sense of a husband and for his wife the word *zauj* (his partner). Sometimes they also add letter *ta' marbūṭah* so that it becomes *zaujah*, but this word is not fluent. The word *zaujah* is used for men and women. It is a number consisting of two. Then each of the men and women is called *zauj* because the nature of *zauj* consists of two things united to become one thing. Therefore, in both of them, one pronunciation was used.

<sup>24</sup> Wardah Nuroniyah, "Diskursus 'Iddah Berpersepektif Gender: Membaca Ulang 'Iddah dengan Metode *Daḥlah al-Naṣṣ*", *Al-Manahij*, Vol. 12, No. 2, 2018, 197-198.

<sup>25</sup> Hasan Langgulung, *Manusia dan Pendidikan*, (Jakarta: Al-Husnah Zikra, 1995), 20.

<sup>26</sup> Taufiq Dina Amal and Syamsul Rizal Panggabean, *Tafsir Kontekstual al-Qur'an*, (Bandung: Mizan, 1989), 29.

<sup>27</sup> Jalaluddin Muhammad, *Tafsir Jalalain*, Juz 1, (Surabaya: Hidayah, 1997), 36.

This is because even though in terms of their birth, there are two things, but in terms of their being one thing. The couple is indeed united so that each one seems to represent the other. In this pronunciation, it is a fragment of the *minkum wayadzanūna azwāja* sentence, which means that you have left your wives.<sup>28</sup>

For the word *yatarabbasha*, it has a meaning *intīzor* which means to wait. The pronunciation of *yatarabbasha* means that they are suspending, which is a fragment of the sentence *yatarabbasha bianfusihinna arba'ata ashhurin wa 'asrā*, which all mean that the wives should hold themselves to remarry for four months and ten days following the death of her husband. This understanding is specifically for women who are not pregnant. As for women who are pregnant, their *iddah* until the time she gives birth is based on the verse in surah ath-Thalaq verse 4, while for slave women is half of this provision based on the sunnah provisions of the Prophet p.b.u.h.

Then the word *ajl* in the sentence *balaghna ajalahunna* has the meaning *maddatu madnūbatu lishshai'* (the time specified for something). Then it's said that the time that has been determined for man is called death, and what is meant in this verse is the end of the *iddah* period. As for the next pronunciation *falā junāḥa 'alaikum fīmā fa'alna fī anfusihinna bilma'rūf* which means they have no sin for you, saints let them do it to themselves, for example preening and preparing themselves for marriage in good terms following the provisions of Islamic law.

Scholars believe that the verse in surah al-Baqarah verse 234 is *nasikh* for surah al-Baqarah verse 240 which explains *iddah* regarding a dead husband lasts for a full year and *mansukh* is four months and ten days.<sup>29</sup> Syafi'iyah and Malikiyah generally support this opinion. Surah al-Baqarah verse 240 which erases (*nasakh*) surah al-Baqarah verse 234, as for the sentence of surah al-Baqarah verse 240:

<sup>28</sup> Ibid.

<sup>29</sup> Muhammad Jawad Mughniyah, *Fiqh Lima Madzhab*, (Jakarta: PT Lentera Basritama, 2000), 386.

وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا وَصِيَّةً لَّأَزْوَاجِهِمْ مَّتَاعًا إِلَى الْحَوْلِ غَيْرِ  
إِخْرَاجٍ ۚ فَإِنْ حَرَجْنَ فَلَا جُنَاحَ عَلَيْكُمْ فِي مَا فَعَلْنَ فِي أَنْفُسِهِنَّ مِنْ مَّعْرُوفٍ ۗ وَاللَّهُ  
عَزِيزٌ حَكِيمٌ ٢٤٠

And those who are taken in death among you and leave wives behind-for their wives is a bequest: maintenance for one year without turning (them) out. But if they leave (of their own accord), then there is no blame upon you for what they do with themselves in an acceptable way. And Allah is Exalted in Might and Wise.<sup>30</sup>

Some other scholars argue that none of the verses of the Qur'an is erased (*mansukh*), so the verse is only a deduction from a year, and this is not *nasikh-mansukh*, but a relief.<sup>31</sup> Syi'ah scholars generally support this opinion. Al-Qurtubi said that "this opinion is very wrong and he believes that four-month-and-ten-day *iddah* is an eraser for one-year *iddah*".<sup>32</sup>

According to the scholars that surah al-Baqarah verse 234 is replaced by surah ath-Thalaq verse 4, which states that the *iddah* of a pregnant woman whose husband dies lasts for as long as her pregnancy period till she gives birth, and this verse erases (*takhsis*) surah al-Baqarah verse 234.<sup>33</sup> According to Ali Ibn Abbas that there are two periods of *iddah* for a pregnant person, that is if a woman is pregnant and gives birth to a child before it expires four months and ten days, then *iddah* is four months and ten days. However, if a woman is pregnant while the period of four months and ten days has passed, and she has not given birth, then the period of *iddah* is until she gives birth.<sup>34</sup> In other words, Abbas practiced the two verses, and he argued that in this case, *ijma'* (compromise) is more appropriate than choosing one of the two verses.

<sup>30</sup> Departemen Agama RI, *Al-Qur'an dan Terjemahnya*..., 39.

<sup>31</sup> Muhammad Jawad Mughniyah, *Fiqh Lima Madzhab*..., 386.

<sup>32</sup> Ibid., 387.

<sup>33</sup> Abdul Halim Hasan, *Tafsir Al-Ahkam*, Edisi I, (Jakarta: Kencana Persada, 2006), 34.

<sup>34</sup> Ibnu Mas'ud and Zainal Abidin S, *Fiqh Madzab Syafi'i*, Buku 2: Muamalat, Munakahat, Jinayat, (Bandung: CV Pustaka Setia, 2007), 372.

Thus, surah al-Baqarah verse 234 gives a clue that Allah obliges *iddah* for Muslim women to protect the family's honor and guard against splitting and mixing of tribes. That is, this aims to educate the ignorant people during the mourning period and to make this mourning period represent cleanliness, not defilement, in which this period is changed from a period of a year to four months and ten days.

If you look at the *qarinah* surah al-Baqarah verse 234, the author believes that this verse is devoted to women who are not pregnant while their husbands die because there is no need to use the latest technology to ensure a woman is pregnant or not pregnant. By practicing this verse, humans can easily find out whether a woman whose husband has died is pregnant or not. It is clearly known that pregnancy is vulnerable within four months and ten days.

The author agrees with Ali Ibn Abbas above, but disagrees in the case if a woman is pregnant and gives birth to a child before the expiration of the four months and ten days, and then the *iddah* is four months and ten days. In the writer's opinion, his *iddah* period remained until the time she gives birth to a child, but the wife does not require the remaining time because of the four-month and ten-day treatment to honor the death of her husband. Thus, the *iddah* period of four months and ten days in the case of late pregnancy is nothing but to honor the death of her husband. The author thinks that the *iddah* period of a pregnant woman as intended in this study is until the birth of the baby.

#### **Law of Iddah for Pregnant Woman left by Her Husband due to death According to Surah ath-Thalaq Verse 4**

Surah ath-Thalaq verse 4 explains about the *iddah* of a woman of the dead husband refers to *iddah* for a woman left by her husband due to death to give birth to a child. This verse does not distinguish between divorce (*thalaq*) or death divorce. In general, this verse implies that pregnant women who are divorced by their

husbands, both divorce (*thalaq*) or death divorce are in *iddah* until they give birth, as in line with surah ath-Thalaq verse 4:

وَالَّذِي يَسْنَنَ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنْ إِرْتَبْتُمْ فَعِدَّتُهُنَّ ثَلَاثَةُ أَشْهُرٍ وَالَّذِي لَمْ يَحْضَنْ وَأُولَتْ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ وَمَنْ يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مِنْ أَمْرِهِ يُسْرًا ۚ

And those who no longer expect menstruation among your women-if you doubt, then their period is three months, and (also for) those who have not menstruated. And for those who are pregnant, their term is until they give birth. Moreover, whoever fears Allah - He will make for him of his matter ease.<sup>35</sup>

*Wallaa'iy* and *wallaa'i* mean "and women with *hamzah* and *ya* or without *ya*", so it is the same pronunciation after *al-mahidh* which means that despair from menstruation refers to menstruation. The meaning of women who are not menstruating in the above verse can also mean that they are still small. This is supported by the intention of surah al-Baqarah verse 228:

وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ ۗ وَاللَّهُ عَزِيزٌ حَكِيمٌ ۚ ٢٢٨

Divorced women remain in waiting for three periods, and it is not lawful for them to conceal what Allah has created in their wombs if they believe in Allah and the Last Day. And their husbands have more right to take them back in this (period) if they want reconciliation. And due to the wives is similar to what is expected of them, according to what is reasonable. But the men have a degree over them (in responsibility and authority). And Allah is Exalted in Might and Wise.<sup>36</sup>

<sup>35</sup> Departemen Agama RI, *Al-Qur'an dan Terjemahnya*..., 558.

<sup>36</sup> Ibid., 36.

Whereas the meaning of pregnant women, the time of their *iddah* until they give birth, shows that divorce resulting in *iddah* can occur because of *thalaq* or because of the death of her husband. The *iddah* of a pregnant woman ends when she gives birth. This means surah ath-Thalaq verse 4 specifies (*takhsis*) the generality of surah al-Baqarah verse 234. Thus, the laws in surah ath-Thalaq verse 4 is given in the following:

1. Explanation of the *iddah* period for a woman who is *thalaq* if she is menstruating is to wait for three-time menstrual periods. That is, women divorced here are women who have been *jima'* and are not pregnant or women who have broken their menstrual routines because a woman who has not been screwed has no *iddah* for her as alluded to in surah al-Ahzab verse 49:

...إِذَا تَكَتُّمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُونَهَا... ٤٩

When you marry believing women and then divorce them before you have touched them, then there is not for you any waiting period to count concerning them.<sup>37</sup>

2. The *Iddah* of a pregnant woman, both because of *thalaq* and because of the death of her husband, is until she gives birth. This is as stated in surah ath-Thalaq verse 4, namely:

... وَأُولَتْ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ... ٤

And for those who are pregnant, their term is until they give birth.<sup>38</sup>

3. As for women who are not menstruating or women who have dropped out of menstruation, have an *iddah* period of three months. This is as stated in surah ath-Thalaq verse 4, namely:

وَالَّذِي يَبْسُ مِنَ الْمَحْضِ مِنْ نِسَائِكُمْ إِنْ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلَاثَةُ أَشْهُرٍ وَالَّذِي لَمْ يَحِضْنَ... ٤

<sup>37</sup> Ibid., 424.

<sup>38</sup> Ibid., 558.

*And those who no longer expect menstruation among your women-if you doubt, then their period is three months, and (also for) those who have not menstruated.*<sup>39</sup>

Judging from the substance of surah ath-Thalaq verse 4, the issue of *iddah* (waiting period) for women whose husbands have died is until they give birth. While in surah al-Baqarah verse 234, it states that the waiting period (*iddah*) of a woman who was left by her husband due to death is four months and ten days. In Scholars' view, surah al-Baqarah verse 234 is deleted (*nasakh*) by surah ath-Thalaq verse 4 although it is mentioned first in the order of *mushaf* (Al-Quran). This is because surah al-Baqarah verse 234, which explains that *iddah* from a woman who is left by her husband is four months ten days in terms of what was sent down earlier than surah ath-Thalaq verse 4 because the order of the *mushaf* is not the same as the order of *absbabun nuzul* (descent of the verse).

However, scholars choose that in surah ath-Thalaq verse 4, there is no *nasakh*, there is only an affirmation of the *iddah* for a pregnant woman whose husband dies. The affirmation is an affirmation of the pregnancy factor experienced by the woman whose husband dies. Surah ath-Thalaq verse 4 does not mean *nasakh* surah al-Baqarah verse 234, but it only clarifies the legal position. Some of the scholars call this deletion as *nasakh al-hukm duna tilawah* (erase the law, not erase the reading or writing).<sup>40</sup>

Scholars of Fiqh state that the *iddah* of a pregnant woman whose husband dies is until she gives birth even though the birth has not reached four months and ten days, even according to them even though the woman gives birth anytime after the death of her husband.<sup>41</sup> The rule of Usul Fiqh mentions *al hukmu yaḍūru ma'a 'illati*

<sup>39</sup> Ibid.

<sup>40</sup> Muhammad Madani, *Mawāthīn al-Ijtihād fī asy-Syarī'ah al-Islāmiyah*, (Penerjemah) Husein Muhammad dengan judul "Ruang Lingkup Hukum Islam", (Jakarta: Pustaka Firdaus, 1987), 37-38.

<sup>41</sup> Slamet Abidin dan Aminuddin, *Fiqh Munakahat II*, (Bandung: CV Pustaka Setia, 1999), 121.

*wujūd*an aw ‘*adaman*, meaning the law revolves around the presence or absence of *illat*.<sup>42</sup>

This rule shows that surah ath-Thalaq verse 4 which is *nasakh* surah al-Baqarah verse 234 due to a different legal *illat*, namely surah ath-Thalaq verse 4 mentions *iddah* of the woman whose husband dies, which is clarified by surah ath-Thalaq verse 4 implying that a woman who is left by her husband due to death when she is pregnant, then she is in *iddah* to give birth. This means surah ath-Thalaq verse 4 implies that the legal *illat* is *al-hamli* (currently pregnant). Therefore, surah ath-Thalaq verse 4 specializes in the cause of the pregnancy.

Based on the description above, if a woman is left by her husband due to death while she is not pregnant, then she is in *iddah* for four months and ten days (surah al-Baqarah verse 234). However, if a woman is left by her husband due to death while she is pregnant, then she is in *iddah* until she gives birth (surah ath-Thalaq verse 4). Thus, the condition of pregnancy becomes the cause of the *iddah* period of the woman with a dead husband shifting from four months and ten days to giving birth. The change means that the legal provisions for the period of a woman's *iddah* depend on the woman's condition when divorced.

### **Law of *Iddah* for Pregnant Woman left by Her Husband due to death according to the Compilation of Islamic Law in Indonesia**

In positive law in Indonesia, it is stated that for a wife who breaks up a marriage from her husband, it applies to her waiting time or the period of *iddah*, except if her husband divorces a wife before intercourse (*qabla dukhul*).<sup>43</sup> In the Government Regulation Number 9 of 1975, this problem is explained in Chapter VII article 39 and in articles 153, 154 and 155 of Compilation of Islamic Law. Article 153 paragraph (1) Compilation of Islamic Law states “for a

<sup>42</sup> Jaih Mubarak, *Kaidah Fiqh: Sejarah dan Kaidah Asasi*, (Jakarta: PT Raja Grafindo Persada, 2002), 22.

<sup>43</sup> Shaleh al-Fauzan, *Fiqh Sehari-hari*, (Penerjemah) Abdul Hayyie al-Kattani, Ahmad Ikhwani, dan Budiman Musthofa, (Jakarta: Gema Insani Press, 2005), 729.

wife who broke up with a valid marriage should wait or *iddah*, except *qabla al-dukhul* and the marriage is broken not because of the death of the husband".<sup>44</sup>

The Compilation of Islamic Law also stipulates that for women whose husbands have died, their *iddah* is four months and ten days when they are not pregnant. In article 153 verse (2) letter a it is stated: "if the marriage is broken because of death, despite *qabla al-dukhul*, the waiting time is set at 130 (one hundred thirty) days",<sup>45</sup> while *iddah* for women who break up their marriages due to divorce in pregnancy is until she gives birth. In the Islamic Law Compilation, article 153 paragraph (2) letter c states "if the marriage is broken because of divorce when the widow is pregnant, the waiting time is determined until delivery".<sup>46</sup>

The problem lies in *iddah* for a wife whose husband dies when pregnant. In the Islamic Law Compilation article 153 paragraph (2) letter d states, "if the marriage is terminated because of the death, leaving the woman widow and pregnant, the waiting time is determined until delivery".<sup>47</sup> In this case, the Compilation of Islamic Law is based on the opinion of Imam Shafi'i, Imam Ahmad bin Hambal, and Imam Abu Hanifah, who argued that "the woman whose husband died while she was pregnant, then she obtained *iddah* of up to giving birth. They are based on surah ath-Thalaq verse 4".<sup>48</sup> According to them, "the *iddah* of a pregnant woman, whether from a divorce or her husband dies, is until giving birth".<sup>49</sup>

Thus, the Compilation of Islamic Law provides an explanation that the women who are divorced, in terms of either divorce or death divorce, while they are pregnant, the period of *iddah* is until delivery. In terms of the situation of pregnancy, the woman is left by her husband due to his death, according to jumhur

<sup>44</sup> Tim Redaksi Nuansa Aulia, *Kompilasi Hukum Islam*, (Bandung: CV Nuansa Aulia, 2009), 47.

<sup>45</sup> Tim Redaksi Nuansa Aulia, *Kompilasi Hukum Islam...*, 47.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Syaikh Kamil Muhammad 'Uwaidah, *Fiqh Wanita*, (Penerjemah) M. Abdul Ghoffar E. M., (Jakarta: Pustaka al-Kautsar, 1998), 448.

<sup>49</sup> Yahya Abdurahman al-Khatib, *Fikih Wanita Hamil*, (Penerjemah) Mujahidin Muhayan, (Jakarta: Qisthi Press, 2009), 107-112.

Fuqaha, her *iddah* was to give birth. However, according to the history of Ali ibn Abu Talib and Ibn Abbas, “her *iddah* is the last of the two *iddah*. That is, she is in *iddah* with the longest *iddah*”.<sup>50</sup>

A widow whose husband dies, if it turns out that her husband does not have his own home and does not have provisions that can be used as living expenses by his wife, then she may return to her parents. However, if at the time she receives the sad news of being in the house of one of the Muslims, she is allowed to stay in the house if the owner of the house does not mind accepting and bearing her life until the end of the *iddah* period.<sup>51</sup>

Therefore, the Compilation of Islamic Law stipulates that the *iddah* for pregnant women whose husbands have died is to bear children. Thus, the Compilation of Islamic Law refers to the provisions of surah ath-Thalaq verse 4, and does not use the provisions of surah al-Baqarah verse 234 and does not also use the most extended time provisions as mentioned by Ali bin Abu Talib and Ibn Abbas. Whereas if the marriage is broken because of death and his wife is not pregnant, the waiting time is set at 130 days. Thus, the provisions of surah al-Baqarah verse 234 in the Compilation of Islamic Law are set in the case of a non-pregnant woman whose husband dies.

### **Legal Settlement of Iddah for Pregnant Women left by Her Husband due to death by Using *Ta'arudh al-adillah***

The *iddah* case scheme is described in the following:

Various <i>Iddah</i> Cases	The duration of <i>Iddah</i>
Divorce, but not yet having intercourse	There is no <i>iddah</i>
death divorce, but not yet having intercourse	Four months ten days or 130 days

<sup>50</sup> Ibnu Rusyd, *Bidayatul Mujtahid Analisa Fikih Para Mujtahid*, (Jakarta: Pustaka Amani, 2007), Jilid II, 619.

<sup>51</sup> Muhammad Thalib, *Manajemen Keluarga Sakinah*, (Yogyakarta: Pro U, 2008), 348.

Divorce, but having intercourse followed by pregnancy	Until giving birth
Divorced due to death, but already having intercourse followed by pregnancy	Until giving birth
Divorced due to death, but already having intercourse followed by pregnancy	Four months ten days or 130 days
divorce having intercourse and menstruating	It is three-time menstrual periods
death divorce, but already having intercourse and menstruation	Four months ten days or 130 days
divorced, but having intercourse and never menstruated	Three months or 90 days
death divorce, but having intercourse and never menstruated	Four months ten days or 130 days
divorced, but having intercourse with menstruation	Three months or 90 days
Divorced due to husband's death, but having intercourse with menstruation	Four months ten days or 130 days

While the *iddah* case scheme in the Compilation of Islamic Law addressing *ta'arudh al-adillah* in surah al-Baqarah verse 234 and surah ath-Thalaq verse 4 is given as follows:

Surah al-Baqarah verse 234	Surah ath-Thalaq verse 4
Divorced due to husband's death, not pregnant, <i>iddah</i> 130	death divorce, a woman is pregnant, her <i>iddah</i> until giving birth

days (four months and ten days)	
death divorce, intercourse, not pregnant, <i>iddah</i> of 130 days (four months and ten days)	Death divorce, having intercourse, being pregnant, waiting for her to give birth
death divorce, no chance for intercourse, not pregnant, <i>iddah</i> of 130 days (four months and ten days)	death divorce, not having intercourse, not pregnant, the explanation follows surah al-Baqarah verse 234

Thus, the Compilation of Islamic Law considers the burden women are bearing more to determine the *iddah* period following the death of their husbands.

If the woman is pregnant, she is in *iddah* until delivery. However, if the woman is not pregnant, she is in *iddah* for 130 days or four months and ten days. The methods of resolving the law of *iddah* for pregnant women whose husbands have died are by referring to *ta'arudh al-adillah*:

1. *al-Jam' wa al-Taufiq*<sup>52</sup>

If the law generally contains several laws such as the *iddah* case for pregnant women as in surah al-Baqarah verse 234 in a general scope and surah ath-Thalaq verse 4 in a specific scope, then from one side of *iddah* pregnant women are determined based on the content of surah al-Thalaq verse 4 and, on the other hand, ~~is~~ are determined in surah al-Baqarah verse 234. The provisions of surah *ath-Thalaq* verse 4 are special provisions, namely the state of pregnancy. The provisions of surah al-Baqarah verse 234 are general, namely, the woman whose husband dies.

<sup>52</sup> Abdul Jalil, "Studi Analisis Komparatif Metode Mutakallimîn dan Ahnâf dalam Menyelesaikan Pertentangan Dalil Hukum", *Journal, Islamuna*, Vol. 4, No. 1, 2017, 7-8.

## 2. *al-Tarjih*<sup>53</sup>

Both of these verses contain contradictions in determining the period of pregnancy of a woman whose husband dies. In order to know the second law of the verse, then through the *tarjih* method, it can be seen that: 1) In general, a woman whose husband has died, she receives *iddah* for four months and ten days (surah al-Baqarah verse 234); and 2) Specifically, a pregnant woman who is divorced from her husband receives *iddah* until she gives birth (surah *ath-Thalaq* verse 4).

From this stipulation, it is known that if a woman who has been left by her husband due to death but is not pregnant, she receives *iddah* for four months and ten days. This is because the provisions of pregnancy are specified (*takhsis*) in surah *ath-Thalaq* verse 4. Likewise, for a woman whose husband has died without a chance for intercourse, who stopped menstruating or in the circumstances other than pregnancy, she is in *iddah* for four months and ten days.

For a woman who is divorced from her husband but pregnant, the *iddah* is until to give birth. This provision applies to divorce cases due to *thalaq* (a divorce of separation) or divorce due to the husband's death (death divorced). As long as the divorced woman is pregnant, she is in *iddah* until she gives birth.

## 3. *al-Nasakh*<sup>54</sup>

In lahiriyah, surah al-Baqarah verse 234 was first derived from surah *ath-Thalaq* verse 4.<sup>55</sup> Therefore, the surah al-Thalaq verse 4 nasakh surah al-Baqarah verse 234 in different problems, namely the period of *iddah* for a pregnant woman whose husband dies. With this kind of settlement, it can be established that the *iddah* of a pregnant woman whose husband dies is until giving birth. For

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<sup>53</sup> Khoirun Nisa', "Perbenturan Antar Dalil Hukum (Ta'arud al-Adillah)", *Jurnal Penelitian*, Vol. 8, No. 2, 2014, 209-210.

<sup>54</sup> Abdul Rahman Malik, "Abrogasi dalam Alquran: Studi Nasikh dan Mansukh", *Jurnal Studi Al-Qur'an: Membangun Tradisi Berfikir Qur'ani*, Vol. 12, No. 1, 2016, 98-99.

<sup>55</sup> Noel J. Coulson, *Hukum Islam dalam Perspektif Sejarah*, (Penerjemah) Hamid Ahmad dari judul *The History of Islamic Law*, (Jakarta: P3M, 1987), 113.

this reason, there is no *iddah* for pregnant women whose husbands have died for four months and ten days because this provision has nasakh by giving birth to a child.

### Conclusion

Based on the description above, it can be seen that the *iddah* law of a woman whose husband died according to surah al-Baqarah verse 234 is for four months and ten days. This law applies if women whose husbands have died are not pregnant. If in a state of pregnancy, the provisions are more specifically set forth in surah ath-Thalaq verse 4, because the provisions of pregnancy have been specified (*takhsis*) in surah ath-Thalaq verse 4. In a similar way, for women whose husbands have died with no chance for intercourse, and who stop menstruation or in the circumstances other than pregnancy, the *iddah* is four months and ten days.

The *iddah* law for pregnant women whose husbands have died according to Surah ath-Thalaq verse 4 is to give birth. This provision applies to divorce cases because of being denied (divroced) or divorce due to the death of husbands (death divorced). As long as the divorced women are pregnant, they will get *iddah* until they deliver a baby. The *iddah* law for pregnant women whose husbands have died according to the Compilation of Islamic Law in Indonesia is to give birth. If not pregnant, then women whose husbands die will be in *iddah* for 130 days or four months and ten days. Thus, the Compilation of Islamic Law stipulates the period of *iddah* of the women left by their husbands due to death based on the state of pregnancy or non-pregnancy in women.

The law of *iddah* is resolvable by referring to *ta'arudh al-adillah*, namely: 1) *Jam'u wa al-Taufiq*, the provisions of surah ath-Thalaq verse 4 which contains *khas* provisions is more acceptable in the case of a pregnant women left by their husbands due to their death. This is because that particular provision cannot be aborted by the '*am*' provision as mentioned in surah al-Baqarah verse 234. Therefore, surah ath-Thalaq verse 4 is a typical legal provision; 2) *Tarjih*, if women whose husbands die while in pregnancy, the legal

provisions referred to are surah ath-Thalaq verse 4. If women are not pregnant, surah al-Baqarah verse 234 should not serve as a reference; 3) *Nasakh, nash* surah al-Baqarah verse 234 was first derived from surah ath-Thalaq verse 4 whose provisions can serve as the law for pregnant women left by their husbands due to death.

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