

## WHEN STATE REGULATES HUSBAND'S *IDAH* Pros and Cons among *Penghulu* in Yogyakarta

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### Abstract

In 2021, the Ministry of Religious Affairs issued a policy concerning the prohibition of husbands remarrying (another woman) during the wife waiting period (*idah*). This policy evoked both pros and cons. This study aims to investigate the emergence of this policy and analyze the responses from the marriage registrars (*penghulu*) at the Office of Religious Affairs (KUA). Taking place in Yogyakarta, this research constitutes fieldwork employing a socio-legal approach. Data were collected through in-depth interviews with the *penghulu*. The research reveals that the policy was fiercely motivated by three factors: firstly, the occurrence of concealed polygamous marriages during the *idah* period; secondly, the endeavor to actualize the wisdom of *idah* associated with the opportunity to reconcile (*ruju'*) within the (on-going broken) marriage; and thirdly, the desire toward the protection of women. Some marriage registrars supported this policy, citing arguments aligned with its content. Conversely, others perceive that it is too far distorting *fiqh* and deemed incompatible with the National Marriage Law. Moreover, it was observed that *penghulu* mostly refused to register marriages for husbands during the *idah* period, although a small minority accepted such registrations.

[Pada 2021, Kementerian Agama mengeluarkan kebijakan terkait pelarangan suami menikah dalam masa idah istri. Kebijakan ini menimbulkan pro dan kontra di berbagai kalangan, baik eksternal maupun internal lembaga tersebut. Penelitian ini bertujuan mengkaji konteks mengapa kebijakan tersebut muncul dan bagaimana respon dari para penghulu KUA. Mengambil setting di Kota Yogyakarta, penelitian ini merupakan penelitian lapangan dengan pendekatan sosiologi hukum. Data dikumpulkan melalui wawancara mendalam dengan para penghulu. Penelitian ini mengungkap bahwa lahirnya kebijakan tersebut dimotivasi oleh tiga faktor, yaitu, fenomena poligami terselubung yang dilakukan dalam masa idah, upaya Kementerian Agama merealisasi hikmah idah yang terkait dengan kesempatan kembalinya pasangan ke dalam perkawinan, dan pemberian perlindungan dan kesetaraan terhadap perempuan. Atas kebijakan tersebut, sebagian penghulu mendukung dengan argumen yang sesuai dengan isi kebijakan. Sedangkan sebagian yang lain menolak

karena menganggap hal tersebut terlalu jauh dari norma fikih dan dianggap tidak sejalan dengan UU Perkawinan. Selain itu, ditemukan juga bahwa penghulu telah menolak pendaftaran pernikahan suami dalam masa idah. Namun sebagian kecil ada yang menerima.]

### Keywords

Husband's *idah*, *penghulu*, wife's *idah* period

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### Introduction

The waiting period known as 'idah' is designated for a wife who has undergone divorce initiated by her husband, whether through *talaq* or the death of the husband.<sup>1</sup> However, the *idah* is applicable solely if the wife has engaged in sexual intercourse with her husband. During *idah*, a wife is not allowed to marry another man.<sup>2</sup> The imposition of idah for wife is outlined in the Quran, namely Al-Baqarah verse 228 and 234, At-Thalaq verse 4, and Al-Ahzab verse 49. Conversely, there is no explicit elucidation in these passages regarding the provision of *idah* for husbands. Consequently, the absence of a prescribed *idah* for husbands leads to the inference that husbands do not have a designated waiting period.

<sup>1</sup> Muhammad Burhan Jamaluddin, "Iddah Lintas Generasi," *As-Salam I* VII, no. 2 (2013): 191–92, <https://doi.org/10.51226/assalam.v7i2.160>.

<sup>2</sup> A Nurhayati, "Iddah Dalam Perceraian," *Warta Edisi: 62* 13, no. 4 (2019): 47–48, <https://doi.org/10.46576/wdw.v0i62.507>.

Therefore, a husband is permitted to marry another woman immediately without undergoing a waiting period akin to that of a wife.<sup>3</sup>

In accordance with the aforementioned norms, Government Regulation Number 9 of 1975, and the Compilation of Islamic Law (KHI) of 1991, specifically regulate the *idab* period for wife.<sup>4</sup> The regulations concerning the *idab* period are largely akin to the provisions outlined in the normative passages. However, in contrast to these, Government Regulation Number 9 of 1975 and the Compilation do not make any mention of the *idab* period for husbands. Consequently, this absence of specific mention implies that husbands are not restricted from immediately marrying another woman, regardless of whether their current wife's *idab* period has reached completion.<sup>5</sup>

Over the course of time, the Directorate General of Islamic Guidance (Bimas Islam) in 2021 released Circular Number: P-005/DJ.III/HK.00.7/10/2021 regarding Marriage during the *Idab* (waiting) Period of a Wife. This Circular Letter stipulates that a husband who has divorced his wife and intends to marry another woman must wait until his former wife's *idab* period is completed. This provision indicates the stance of the Director General of Bimas, disallowing husbands from marrying during their ex-wife's *idab* period.<sup>6</sup> It appears that the regulation (in question) addresses the matter concerning the *idab* period specifically for husbands.

Prior to the imposition of the ban by the Director General of Bimas on husbands marrying during the *idab* period, numerous instances occurred where husbands remarried despite their current wife's *idab* not being completed. This is substantiated by research conducted by Ustuvia in 2004, which identified 5 such cases.<sup>7</sup> Subsequent studies by Maghviroh from 2017 to 2018 revealed an increase, documenting a total of 22 cases.<sup>8</sup>

<sup>3</sup> Ahmad Darbi B, "Iddah Dan Masalahnya Perspektif Para Mufassir," *Al-Fikra: Jurnal Ilmiah Keislaman* 9, no. 1 (2010): 157–70, <https://doi.org/10.24014/af.v9i1.3826>.

<sup>4</sup> "Article 39 of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage." (1975).

<sup>5</sup> "Article 153 of the Compilation of Islamic Law," Pub. L. No. Article 74 (1991).

<sup>6</sup> "Circular Number: P-005/DJ. III/Hk.00.7/10/2021 concerning Marriage in the Idah Wife Period" (n.d.).

<sup>7</sup> Aida Ustuvia, "Poligami Dalam Masa Iddah (Studi Kasus Di KUA Kecamatan Parakan Temanggung)", Thesis (Universitas Islam Negeri Sunan Kalijaga Yogyakarta, 2005), [https://digilib.uin-suka.ac.id/view/creators/AIDA\\_USTUVIA=3ANIM=2E\\_00350362=3A=3A.html](https://digilib.uin-suka.ac.id/view/creators/AIDA_USTUVIA=3ANIM=2E_00350362=3A=3A.html), accessed 17 Dec 2023.

<sup>8</sup> Dewi Roma Maghviroh, "Implementasi SE Dirjen Pembinaan Kelembagaan Agama Islam Tentang Poligami Dalam Masa Iddah (Studi Kasus Di Kantor Urusan Agama Kecamatan Lowokwaru Dan Pengadilan Agama Malang)," *Tafaqqub: Jurnal Penelitian Dan Kajian Keislaman* 11, no. 1 (2023): 80.

Rohmi's research conducted in 2009 highlighted a singular case indicating a trend of what could be termed as 'wild' polygamy. This phenomenon occurred when husbands who had remarried during their former wife's *idah* period eventually reconciled and returned to their initial wives.<sup>9</sup>

Despite numerous documented cases of husbands marriage during their wives' *idah* period, instances were discovered where the Office of Religious Affairs (KUA) declined to solemnize such marriages. This revelation emerged from a study conducted by Halili in 2019, wherein a specific Religious Affairs Office in Gunungkidul Regency refused to officiate the marriage between a husband and another woman while his former wife's *idah* period was ongoing. This indicates that prior to the issuance of the policy prohibiting husbands from marrying during their wives' *idah* by the Director General of Bimas in 2021, certain KUA was already refraining from facilitating marriages under these circumstances.<sup>10</sup>

Building upon the aforementioned context, this article aims to examine why the Director General of Bimas Islam, which prohibits husbands from marrying during their wives' *idah* period. It seeks to analyze the responses of religious officials (*penghulu*) and the practical implementation within the KUA to gauge the potential impact of the Director General's regulation on promoting equality and justice for women post-divorce. Furthermore, this study also explores the responses and implementation within the KUA located in Yogyakarta City. These offices are of particular interest due to their *penghulus* having undergone training in comprehending *fiqh* (Islamic jurisprudence) and human rights, including gender perspectives. This training was provided by lecturers from the Faculty of Sharia and Law at UIN Sunan Kalijaga Yogyakarta in collaboration with the Oslo Coalition on Freedom of Religion and Belief and the Norwegian Center of Human Rights at Oslo University. The examination aims to evaluate how this specialized training has influenced the responses and practices within these KUAs regarding marriages during the *idah* period,

<sup>9</sup> Ika Laili Rohmi, "Perkawinan Suami Dalam Masa Iddah Isteri (Pelaksanaan Surat Edaran No: D.IV/E.d/17/1979 Dirjen Bimbaga Islam Tentang Masalah Poligami Dalam Iddah Di KUA Kec. Tlogowungu Kab. Pati Pada Bulan Januari–Agustus 2009)", Thesis (Institut Agama Islam Negeri Walisongo Semarang, 2010), <https://eprints.walisongo.ac.id/id/eprint/3080/>, accessed 17 Dec 2023.

<sup>10</sup> Halili, "PENGHULU DI ANTARA DUA OTORITAS DAN KOMPILASI HUKUM ISLAM (STUDI TENTANG DINAMIKA PENYELESAIAN ISU-ISU HUKUM PERKAWINAN DI DAERAH ISTIMEWA YOGYAKARTA)", Dr. Disertasi (Universitas Islam Negeri Sunan Kalijaga Yogyakarta, 2005, 2019), <https://digilib.uin-suka.ac.id/id/eprint/36846/>, accessed 17 Dec 2023.

ultimately exploring its potential implications for gender equality and justice.<sup>11</sup> Reviewing the response of *penghulu* and implementation in KUA is used to see the extent to which the regulation from the Director General of Bimas can lead to and provide equality or justice for women after divorce.

Many previous studies have addressed the theme of women's equality in family law in Indonesia and husband marriage during the idah wives. The theme of equality was studied by Nikmah,<sup>12</sup> Harahap,<sup>13</sup> Sofiana,<sup>14</sup> Noviana,<sup>15</sup> and Latief.<sup>16</sup> Then the theme related to the marriage of husbands during the idah wife period is divided into two: *first*, in Circular Number D.IV/E.D/17/1979 concerning the problem of polygamy in idah which was studied by Subkhi,<sup>17</sup> Ustuvia,<sup>18</sup> Badrudi,<sup>19</sup> Muzayyanah,<sup>20</sup> Rohmi,<sup>21</sup> and Maghviroh.<sup>22</sup> *Second*, in Circular Number P-005/DJ/III/Hk.00.7/10/2021 about marriage during the idah wife

- <sup>11</sup> UIN Sunan Kalijaga Yogyakarta dan Oslo University, *Dan HAM (Best Practices Pengarusutamaan Hak Asasi Manusia Dalam Kebebasan Beragama, Gender, Dan Hak Anak Di Lingkungan Kantor Urusan Agama*, (Yogyakarta: Pascasarjana UIN Sunan Kalijaga, 2019).
- <sup>12</sup> Roykhatun Nikmah, "Dialektika Status Wanita Dalam Pembaharuan Hukum Keluarga Di Indonesia," *BUANA GENDER: Jurnal Studi Gender Dan Anak* 5, no. 1 (2020): 39–54, <https://doi.org/10.22515/bg.v5i1.3081>.
- <sup>13</sup> Rustam Dahar Karnadi Apollo Harahap, "Kesetaraan Laki-Laki Dan Perempuan Dalam Hukum Perkawinan Islam," *Sawwa: Jurnal Studi Gender* 8, no. 2 (2013): 361–86, <https://doi.org/10.21580/sa.v8i2.662>.
- <sup>14</sup> Neng Eri Sofiana, "Kesetaraan Gender Dalam Pembaruan Hukum Keluarga Di Syria Dan Indonesia," *Musawa Jurnal Studi Gender Dan Islam* 20, no. 1 (2021): 83–95, <https://doi.org/10.14421/musawa.2021.201.83-95>.
- <sup>15</sup> Lia Noviana, "Status Wanita Di Negara Muslim Modern: Studi Terhadap Hukum Keluarga Di Tunisia Dan Indonesia," *Jurnal Kodifikasia: Jurnal Penelitian Islam* 13, no. 2 (2019): 197–214, <https://doi.org/10.21154/kodifikasia.v13i2.1832>.
- <sup>16</sup> Muhammad Nur Hasan Latief, "Pembaharuan Hukum Keluarga Serta Dampaknya Terhadap Pembatasan Usia Minimal Kawin Dan Peningkatan Status Wanita," *Jurnal Hukum Novelty* 7, no. 2 (2016): 196–208, <https://doi.org/10.26555/novelty.v7i2.a5467>.
- <sup>17</sup> Moch. Fatkhi Subkhi, "Izin Poligami Dalam Masa 'Iddah", Thesis (Universitas Islam Negeri Sunan Kalijaga Yogyakarta, 2004), [https://digilib.uin-suka.ac.id/id/eprint/26455/2/1520310011\\_BAB-I\\_IV-atau-V\\_DAFTAR-PUSTAKA.pdf](https://digilib.uin-suka.ac.id/id/eprint/26455/2/1520310011_BAB-I_IV-atau-V_DAFTAR-PUSTAKA.pdf), Accessed 17 Dec 2023.
- <sup>18</sup> Ustuvia, "Poligami Dalam Masa Iddah (Studi Kasus Di KUA Kecamatan Parakan Temanggung)."
- <sup>19</sup> Badrudin, "Pelaksanaan Perkawinan Suami Dalam Masa Iddah Isteri Akibat Thalak Raj'i Di Kabupaten Jepara", Thesis (Universitas Islam Sultan Agung Semarang, 2016), <http://repository.unissula.ac.id/6924/>, accessed 17 Dec 2023.
- <sup>20</sup> Muzayyanah, "Poligami Dalam Masa 'Iddah," *Al-Adillah* 1, no. 1 (2021): 33–37, <https://doi.org/10.61595/aladillah.v1i1.55>.
- <sup>21</sup> Rohmi, "Perkawinan Suami Dalam Masa Iddah Isteri (Pelaksanaan Surat Edaran No: D.IV/E.d/17/1979 Dirjen Bimbaga Islam Tentang Masalah Poligami Dalam Iddah Di KUA Kec. Tlogowungu Kab. Pati Pada Bulan Januari–Agustus 2009)."
- <sup>22</sup> Maghviroh, "Implementasi SE Dirjen Pembinaan Kelembagaan Agama Islam Tentang Poligami Dalam Masa Iddah (Studi Kasus Di Kantor Urusan Agama Kecamatan Lowokwaru Dan Pengadilan Agama Malang)."

period studied by Faizi,<sup>23</sup> Mubarraq,<sup>24</sup> Meliannadya,<sup>25</sup> Fathullah,<sup>26</sup> Umami dan Aulya,<sup>27</sup> Alam,<sup>28</sup> Isnaini,<sup>29</sup> Syahnata,<sup>30</sup> Jayusman, et al.<sup>31</sup> In contrast to numerous studies delving into the theme of women's equality, this article sets itself apart by adopting a distinctive approach. While prior research predominantly scrutinized women's equality in Islamic family law through the prism of Law Number 1 of 1974 Jo. Law Number 16 of 2019 concerning Marriage and the Compilation of Islamic Law, this study takes a novel perspective. It aims to explore women's equality in Islamic family law by examining the policy established by the Director General of Bimas, specifically focusing on the proscription of husbands from contracting marriages during the *idah* period of their wives, as articulated in Circular Number: P-005/DJ/III/Hk.00.7/10/2021.

- <sup>23</sup> Habib Nur Faizi, "Tinjauan Hukum Islam Terhadap Pernikahan Pasca Surat Edaran Direktorat Jenderal Bimbingan Masyarakat Islam Nomor: P005/DJ.III/Hk.00.7/10/2021 Tentang Pernikahan Dalam Masa Idah Istri (Studi Di Kantor Urusan Agama Kecamatan Seputih Mataram Kabupaten Lampung)", Thesis (Universitas Islam Negeri Raden Intan Lampung, 2022), <http://repository.radenintan.ac.id/22726/>, accessed 17 Dec 2023.
- <sup>24</sup> Muhammad Ardlı Mubarraq, "Surat Edaran Dirjen Bimas Islam Nomor P-005/ Dj. Iii/Hk.00.7/10/2021 Tentang Idah Suami Dalam Perspektif Gender", Thesis (Universitas Islam Negeri Prof. K.H. Saifuddin Zuhri Purwokerto, 2022), <https://repository.uinsaizu.ac.id/13346/1/Cover%2CAbstrak%2C%20Daftar%20Isi%2C%20Bab%20I%2C%20Bab%20V%20dan%20Daftar%20Pustaka.pdf>, accessed 17 Dec 2023.
- <sup>25</sup> Nattasya Meliannadya, "Tinjauan Yuridis-Normatif Terhadap Surat Edaran Nomor: 005/DJ.III/Hk.00.7/10/2021 Tentang Pernikahan Dalam Masa Iddah Istri", Thesis (Universitas Islam Negeri Sunan Kalijaga Yogyakarta, 2022), [https://digilib.uin-suka.ac.id/view/creators/Nattasya\\_Meliannadya,\\_SH=2E=3ANIM=2E=253A\\_20203011040=3A=3A.html](https://digilib.uin-suka.ac.id/view/creators/Nattasya_Meliannadya,_SH=2E=3ANIM=2E=253A_20203011040=3A=3A.html), accessed 17 Dec 2023.
- <sup>26</sup> Muhammad Fathullah, "Persepsi Kepala KUA Di Kota Banjarbaru Tentang Pemberlakuan Syibhul 'Iddah Kepada Laki-Laki" (Universitas Islam Negeri Antasari Banjarmasin, 2022), <https://idr.uin-antasari.ac.id/21635/>, accessed 17 Dec 2023.
- <sup>27</sup> Khairul Umami dan Aidil Aulya, "Studi Surat Edaran Dirjen Bimas Islam Nomor P-005/DJ.III/HK.007/10/2021," *Ijtihad* 38, no. 2 (2022): 39–52.
- <sup>28</sup> Ahmad Syah Alam, "Syibhul Iddah Bagi Laki-Laki Dalam Perspektif Maqasid Al-Syari'ah (Studi Surat Edaran Dirjen Bimbingan Masyarakat Islam Nomor: P-005/DJ.III/Hk.00.7/10/2021)", Thesis (Universitas Islam Negeri Sunan Kalijaga Yogyakarta, 2023), <https://digilib.uin-suka.ac.id/id/eprint/58538/>, accessed 17 Dec 2023.
- <sup>29</sup> Waninda Nur Isnaini, "Analisis Yuridis Terhadap Surat Edaran Nomor: P-005/DJ.III/Hk.00.7/10/2021 Direktorat Jenderal Bimbingan Masyarakat Islam Tentang Pernikahan Dalam Masa Idah Istri", Thesis (Universitas Islam Negeri Sunan Ampel Surabaya, 2022), [http://digilib.uinsa.ac.id/view/creators/Isnaini=3AWaninda\\_Nur=3A=3A.html](http://digilib.uinsa.ac.id/view/creators/Isnaini=3AWaninda_Nur=3A=3A.html), accessed 17 Dec 2023 .
- <sup>30</sup> Anggi Syahnata, "Persepsi Pegiat Hukum Keluarga Islam Di Banjarmasin Terhadap Surat Edaran No: P005/Dj.Iii/Hk.00.7/10/2021 Tentang Pernikahan Dalam Masa Iddah Istri", Thesis (Universitas Islam Negeri Antasari Banjarmasin, 2023), <https://idr.uin-antasari.ac.id/22963/>.
- <sup>31</sup> Jayusman, Efrinaldi, Andi Eka Putra, Mahmudin Bunyamin, and Habib Nur Faizi, "Perspektif Masalah Mursalah Terhadap Pernikahan Suami Pada Masa Iddah Istri Pasca Surat Edaran Dirjen Bimas Islam Nomor: P- 005/DJ.III/Hk.00.7/10/2021 Tentang Pernikahan Dalam Masa Iddah Istri," *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law* 3, no. 2 (2022): 39–55, <https://doi.org/10.24042/el-izdiwaj.v3i2.14525>.

While prior research predominantly scrutinized women's equality in Islamic family law through the prism of Law Number 1 of 1974 Jo. Law Number 16 of 2019 concerning Marriage and the Compilation of Islamic Law, this study takes a lower legal hierarchy perspective. It aims to explore women's equality in Islamic family law by examining the policy established by the Director General of Bimas, specifically focusing on the proscription of husbands from contracting marriages during the *idab* period of their wives, as articulated in Circular Number: P-005/DJ/III/Hk.00.7/10/2021. Moreover, this article focus on the rationale behind the issuance of this policy by the Director General of Bimas. In doing so, it seeks to provide a comprehensive understanding of the motivations underpinning this regulatory directive and how this regulation precept and receipt by *penghulus*.

This article begins by exploring the issuance of Circular Number: P-005/DJ/III/Hk.00.7/10/2021 which contains content, ideas and legal basis, and circulars as a means of change. Then further explain the dynamics of the response of the KUA leaders in Yogyakarta City to the policy. Finally, it describes a circular letter in practice that contains several examples of cases of refusal or acceptance of a husband's marriage registration during the wife's *idab* period in the KUA around Yogyakarta City, including the legal perspective of *penghulu* in rejecting or accepting the case.

## **Director General of Bimas Islam Policy on Muslim Marriage in Indonesia**

As a implementing entity within the division of Islamic community guidance, the Director General of Bimas has promulgated various policies, encompassing decisions, regulations, and circulars. Within a subset of these policies, the Director General of Bimas has been intentional in prioritizing and empowering women. This inclination towards women's empowerment is evident in specific circulars, such as the Circular Letter issued by the Director General of Bimas and Hajj Affairs, numbered DII/2/ED/Pw.00/03/1984, which delineates guidelines for the execution of marriage agreement ceremonies and marriage sermons. Noteworthy among the provisions within this circular is the discourse on the

incorporation of *taklik talaq* (conditional divorce) in the procedural aspects of marriage.<sup>32</sup> Then the Director General of Bimas again issued a policy on the procedures for implementing *talaq* in the process of implementing marriage which was affirmed in Circular Number: DJ.II/HK.00/074/2008 about the instructions of the minister of religious affairs.<sup>33</sup> Moreover, in 2018, the Director General of Bimas reaffirmed the presence of *taklik talaq* in the marriage implementation process. This affirmation was made manifest by the inclusion of specific sheets pertaining to *taklik talaq* in the marriage book. Such inclusion was effectuated through the issuance of Regulation Number 713, which pertains to marriage registration forms, reports, or references.<sup>34</sup>

From policies delineated above, it becomes evident that the Director General of Bimas legitimizes and facilitates aspects related to *talaq* within the context of marriage implementation. The relation between the regulations on *talaq* promulgated by the Director General of Bimas and the empowerment of women in marriage is underscored by the fact that *taklik talaq* is designed to ensure and safeguard women's rights,<sup>35</sup> protect wives from discriminatory acts and arbitrary husbands. In the event of a husband violating *taklik talaq*, the wife possesses the option to initiate proceedings for *kehulu'* (divorce initiated by wife) before the Religious Court. This recourse necessitates the payment of *iwadh* (divorce compensation) as a requisite step in the legal process.<sup>36</sup>

In addition to the consideration of *taklik talaq*, the Director General of Bimas demonstrates a proclivity towards prioritizing and empowering women in administrative affairs. This inclination is evident in the Circular Letter issued number DII/2/HK.03.4/2860/1989, which mandates that the responsibility for registering marriages, as conferred by the religious court, be delegated to the KUA located at the wife's

<sup>32</sup> "Letter of Circulation of Dirjen Bimas and Hajj No: DII/2/ED/Pw.00/03/84" (n.d.).

<sup>33</sup> "Circular Number: DJ.II/HK.00/074/2008 concerning the Instruction of the Minister of Religious Affairs" (n.d.).

<sup>34</sup> "Keputusan Direktur Jenderal Bimbingan Masyarakat Islam Nomor 713 Tahun 2018 Tentang Penetapan Formulir Dan Laporan Pencatatan Perkawinan Atau Rujuk" (n.d.).

<sup>35</sup> Nur Azizah, "Taklik Talak Dan Akibat Hukumnya Perspektif Teori Feminis" (Universitas Islam Negeri Sunan Kalijaga Yogyakarta, 2018).

<sup>36</sup> Khoiruddin Nasution, "Menjamin Hak Perempuan Dengan Taklik Talak Dan Perjanjian Perkawinan," *Unisia* XXXI, no. 70 (2008): 342, <https://doi.org/10.20885/unisia.vol31.iss70.art3>; Lilik Andar Yuni, "The Use of Ex Officio to Fulfill Women's Post-Divorce Rights at the Samarinda Religious Court," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 21, no. 2 (2021): 135–54, <https://doi.org/10.18326/ijtihad.v21i2.135-154>.



place of residence.<sup>37</sup> Apart from that, the Director General of Bimas explicitly affirmed in Circular Number: DJ. II.2/1/HM.01/942/2009 concerning the principle of marriage registration. The circular explicitly stipulates that the formalization of the marriage contract is to be conducted by the KUA located at the residence of the prospective wife.<sup>38</sup> In 2021, the Director General of Bimas initiated a notable development, as evident in the policy issued regarding the proscription of husbands from contracting marriages during their wives' *idab* period. This policy is articulated in Circular Number P-005, specifically addressing the matter of marriages during the wife's *idab* period.<sup>39</sup>

### **Idea and Provisions of Circular Letter Number P-005/2021**

Circular Number P-005/DJ. III/Hk.00.7/10/2021, pertaining to marriage during the wife *idab* period, encompasses five provisions. First, the registration of marriage for widowers and widows, not resulting from death but divorce, is permissible only if accompanied by a divorce certificate issued by the Religious Court. Second, the *idab* period of the wife is regarded as an opportune moment for both husband and wife to contemplate the prospect of rebuilding a household. Third, a husband who has undergone divorce can only enter into a new marriage once the *idab* period of his former wife has concluded. Fourth, should a husband choose to marry another woman during his wife's *idab* period, while retaining the right to reconcile with his wife during *idab*, this scenario potentially gives rise to covert polygamy. Fifth, a husband who marries another woman during the *idab* period can exercise his right of reconciliation only after obtaining permission for polygamy from the court.<sup>40</sup>

#### *The polemic of disguised polygamy*

Consistent with the tenets of Islamic law, Law Number 1 of 1974 pertaining to Marriage permits polygamy. However, this legislation mandates that husbands seek approval from the court and outlines alternative and obligatory conditions for men seeking to engage in polygamous marriages.<sup>41</sup> The issue of polygamy during the *idab* period becomes polemic,

<sup>37</sup> Surat Edaran Dirjen Bimas dan Urusan Haji Nomor: DII/2/ED/Pw.00/03/84.

<sup>38</sup> "Circular Number: DJ. II.2/1/HM.01/942/2009 On the Principles of Marriage Registration" (n.d.).

<sup>39</sup> Circular Number: P-005/DJ. III/HK.00.7/10/2021 concerning Marriage during the Idah Wife Period.

<sup>40</sup> Circular Number: P-005/DJ. III/HK.00.7/10/2021 concerning Marriage during the Idah Wife Period.

<sup>41</sup> "Article 8 of Law Number 1 of 1974 concerning Marriage" (1974).

particularly in scenarios where a husband issues a revocable divorce (*talaq raj'i*) to his wife, marries another woman, and subsequently reconciles with his former wife (the divorcee).<sup>42</sup>

This situation has been anticipated by the Directorate General of Islamic Religious Institutional Development through the issuance of Circular No: D.IV/E.D/17/1979 addressing the issue of Polygamy during the *idah* period. However, subsequent to its dissemination, the policy has engendered diverse interpretations in practice, leading to its ineffectiveness. Consequently, there has been a proliferation of polygamous cases during the *idah* period within the community, and in this context, the *penghulu* lacks a definitive protocol for reference or resolution.<sup>43</sup>

The prevalence of polygamy during the *idah* period is discernible in various studies. Ustuvia's study, for instance, elucidated five cases,<sup>44</sup> while Maghviroh's research spanning from 2017 to 2018 identified 22 instances<sup>45</sup> of husbands contracting marriages during the *idah* period. Additionally, Rohmi's 2009 study, which uncovered one case of husband marriage during the *idah* period, revealed a phenomenon of disguised polygamy, wherein husbands who had married other women ultimately returned to their original wives.<sup>46</sup>

### *Realizing of the wisdom of idah*

The requirement for *idah*, encompassing both its duration and obligations for women, is delineated in the Qur'an. However, the rationale behind *idah* is not explicitly expounded upon. Consequently, scholars in Islamic jurisprudence have undertaken efforts to investigate and interpret the underlying wisdom of *idah*.<sup>47</sup> Following the analysis of the wisdom behind *idah*, a consensus (*ijma*) has emerged among scholars, elucidating that one of the purposes of *idah* is to provide an opportunity for contemplation, thereby facilitating the potential

<sup>42</sup> Based on the content of the fourth point which explains that a husband who divorces his wife even though he has the right to refer to his ex-wife can potentially lead to covert polygamy. See Circular Number: P-005/DJ. III/HK.00.7/10/2021 concerning Marriage during the *Idah* Wife Period.

<sup>43</sup> Interview with Ghufroon Su'udi, *Penghulu* of KUA Tegalrejo and Chairman of the Yogyakarta branch of the Association of Heads of the Republic of Indonesia, on May 10, 2023.

<sup>44</sup> Ustuvia, "Poligami Dalam Masa Iddah (Studi Kasus Di KUA Kecamatan Parakan Temanggung)."

<sup>45</sup> Maghviroh, "Implementasi SE Dirjen Pembinaan Kelembagaan Agama Islam Tentang Poligami Dalam Masa Iddah (Studi Kasus Di Kantor Urusan Agama Kecamatan Lowokwaru Dan Pengadilan Agama Malang)."

<sup>46</sup> Rohmi, "Perkawinan Suami Dalam Masa Iddah Isteri (Pelaksanaan Surat Edaran No: D.IV/E.d/17/1979 Dirjen Bimbaga Islam Tentang Masalah Poligami Dalam Iddah Di KUA Kec. Tlogowungu Kab. Pati Pada Bulan Januari–Agustus 2009)."

<sup>47</sup> Nurnazli, "RELEVANSI PENERAPAN 'IDDAH DI ERA TEKNOLOGI MODERN,'" *Ijtima'iyya: Jurnal Pengembangan Masyarakat Islam* 10, no. 1 (2017): 132, <https://doi.org/10.24042/ijpmi.v10i1.2358>.

reconciliation of husband and wife. The social and ethical aspects of *idab's* wisdom remain relevant in contemporary times.<sup>48</sup> This validation is further affirmed by the Director General of Bimas in the second provision of Circular Number P-005/DJ. III/HK.00.7/10/2021, wherein it is asserted that the *idab* period resulting from divorce serves as an opportunity for husband and wife to engage in reconciliation.<sup>49</sup>

Reconciliation (*ruju'*) is a prerogative rights of husband following a *talaq raj'i*.<sup>50</sup> However, despite being a recognized right, numerous husbands have engaged in marriages with other women during their wives' *idab* period. This trend persisted until the Director General of Bimas implemented a policy prohibiting such circumstances. This circumstance underscores a disregard for the underlying wisdom of *idab*, which is intended to provide both the husband and wife with an opportunity for contemplation, consultation, and potential reconciliation. It is regrettable that some husbands have overlooked this important consideration by bypassing the *idab* period.<sup>51</sup>

#### *For the protection and equality of women*

Before the issuance of the policy by the Director General of Bimas that prohibited husbands from entering into marriages during their wives' *idab* period, there was an absence of specific regulations to address instances where husbands sought to marry other women during their wives' *idab*. This matter subsequently became a subject of deliberation among *penghulus* within the APRI Group (*Penghulu's* Association of the Republic of Indonesia). Several members have advocated for the expeditious establishment of binding rules as a proactive measure to safeguard wives married during the *idab* period.<sup>52</sup>

The imperative for binding rules is considered essential due to the following circumstance: when a husband initiates a divorce from his wife, the latter is obligated to undergo an *idab* period. Throughout this *idab* period, the wife possesses the right to be reconciled by her husband. However, should the husband choose to marry another woman

<sup>48</sup> Sartina dan Lilik Andaryuni, "Konsep Syibhul Iddah Bagi Laki-Laki Ditinjau Dari Hukum Islam," *Jurnal Tana Mana* 3, no. 2 (2022): 294–96, <https://doi.org/10.33648/jtm.v3i2.333>.

<sup>49</sup> Circular Number: P-005/DJ. III/HK.00.7/10/2021 concerning Marriage during the Idah Wife Period.

<sup>50</sup> Supriatna, Fatma Amilia, and Yasin Baidi, *Fiqh Munakabat II* (Yogyakarta: Bidang Akademik, 2008).

<sup>51</sup> Jayusman, "Perspektif Masalah Mursalah Terhadap Pernikahan Suami Pada Masa Iddah Istri Pasca Surat Edaran Dirjen Bimas Islam Nomor: P- 005/DJ.III/Hk.00.7/10/2021 Tentang Pernikahan Dalam Masa Iddah Istri."

<sup>52</sup> Interview with Ghufroon Su'udi, on May 10 2023.

during the *idah* period and subsequently seeks reconciliation with his ex-wife, the woman who entered into marriage during the *idah* period becomes an unwitting victim, as she is inadvertently placed in a polygamous situation without her explicit consent.<sup>53</sup>

The policy prohibiting husbands from marrying other women during the *idah* period of their wives serves as a protective measure for the women whom the husbands intend to marry during the *idah* period. This is articulated on the premise that by disallowing marriages during the *idah* period, unions between husbands and other women are deferred until after the completion of the wife's *idah* period. Marriages conducted post-*idah* period are perceived as a safeguard against potential ulterior motives of husbands seeking to acquire multiple wives without the consent of the existing spouse and without judicial determination, given the loss of the right to reconciliation with the previous wife.<sup>54</sup>

### ***Penghulu's Response to Husband Idah Policy***

The majority of *penghulu* in Yogyakarta City concur that the stipulation is exclusively intended for the *idah* period resulting from *talaq raj'i*. This perspective is grounded in the belief that the only form of *talaq* applicable during *idah* is *raj'i talaq*, as opposed to divorce or *khulu'*. However, despite a general inclination towards agreement regarding the specific type of *idah*, it is noteworthy that divergent opinions exist among the leaders of the KUA in Yogyakarta City with regard to their responses to this policy. Support for this perspective is exemplified by Kusuma, the *penghulu* of KUA Umbulharjo. According to him, the policy holds the potential for several positive impacts, as follows: First, it serves to safeguard the rights of wives during the *idah* period, shielding them from the arbitrary actions of their husbands. Second, it acts as a deterrent against polygamy without the requisite court permission. Third, it serves to preclude legal maneuvering that husbands might employ during the *idah* period.<sup>55</sup>

<sup>53</sup> Fitriyadi, "Pemberlakuan Shibhul Iddah Bagi Laki-Laki Yang Bercerai Di Pengadilan Agama", (2020), <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/pemberlakuan-shibhul-iddah-bagi-laki-laki-yang-bercerai-di-pengadilan-agama-oleh-h-fitriyadi-s-h-i-s-h-m-h-20-5>, accessed 17 Dec 2023.

<sup>54</sup> Arifin Abdullah dan Delia Ulfa, "Kedudukan Izin Rujuk Suami Dalam Masa 'Iddah (Analisis Perspektif Hukum Islam)," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 2, no. 2 (2018): 423, <https://doi.org/10.22373/sjhk.v2i2.4746>.

<sup>55</sup> Interview with Handdri Kusuma, Penghulu of KUA Umbulharjo, on June 8 2023.

The act of a husband who directly marries another woman at the time of his wife's *idah* has actually also committed polygamy without the permission of the Religious Court. This is because in essence *talaq raj'i* has not broken the marriage bond that exists as long as the *idah* undertaken by the wife is still ongoing.<sup>56</sup> Fatkhi further affirms that the *idah* period following *talaq raj'i* does not nullify the rights of the rejected wife, thereby maintaining her legal standing as it was before the rejection. This implies that the legal obligations the husband has towards his wife remain unchanged during this period.<sup>57</sup> Hence, if the husband desires to marry another woman during the *idah* period, he is obligated to seek permission for polygamy from the court. This requirement stems from the fact that his intended marriage falls within the category of polygamy during the *idah* period.<sup>58</sup>

The inadequacy in the regulations governing the issuance of polygamy permits during the wife's *idah* period creates opportunities for husbands with ulterior motives to concurrently have two wives. This is facilitated by the ability to invoke their right of reference without undergoing a court determination, as the referral process is conducted within the framework of village administration. An incident of this nature transpired in 2009 at the Religious Affairs Office of Tlogowungu District. In this case, a husband proceeded to marry another woman during his wife's *idah* period without obtaining a polygamy permit from the court. Subsequently, he referred his former wife to the KUA, asserting his right to do so under prevailing circumstances.<sup>59</sup> Such occurrences represent a form of legal circumvention that husbands can engage in during the wife's *idah* period.<sup>60</sup>

Warsono, the *penghulu* of KUA Danurejan, shares a similar viewpoint to Handdri's. According to him, aside from affording protection to women and deterring covert polygamy, the policy issued by the Director General of Bimas can serve as a legal reference, contributing to legal certainty concerning the marriages of husbands with other women

<sup>56</sup> Maryani dan Novi Ayu Safitri Rita Sumarni, "Analisis Materi Konsep Syibhul Iddah Pada Laki-Laki Menurut Wahbah Zuhaili," *Attractive: Innovative Education Journal* 4, no. 1 (2022): 336, <https://doi.org/10.51278/aj.v4i1.542>.

<sup>57</sup> Subkhi, "Izin Poligami Dalam Masa 'Iddah."

<sup>58</sup> "Surat Edaran Nomor D.IV/E.D/17/1979 Tentang Masalah Poligami Dalam Idah," n.d.

<sup>59</sup> Rohmi, "Perkawinan Suami Dalam Masa Iddah Isteri (Pelaksanaan Surat Edaran No: D.IV/E.d/17/1979 Dirjen Bimbaga Islam Tentang Masalah Poligami Dalam Iddah Di KUA Kec. Tlogowungu Kab. Pati Pada Bulan Januari–Agustus 2009)."

<sup>60</sup> Ach. Rosidi Jamil, "Izin Poligami Dalam Masa Iddah Istri (Tinjauan Masalah Terhadap Surat Edaran No: D.IV/Ed/7/1979)", Thesis (Universitas Islam Negeri Sunan Kalijaga Yogyakarta, 2017), <https://digilib.uin-suka.ac.id/id/eprint/26455/>.

during the wife's *idah*. This becomes particularly relevant given the absence of prior regulation on this matter in the Marriage Law and circulation number 1979, which had not been effectively applied in practical terms.<sup>61</sup>

In opposition to the viewpoints put forth by the *penghulu* of KUA Umbulharjo and the *penghulu* of KUA Danurejan, Purwadi, who serves as the *penghulu* of KUA Kotagede,<sup>62</sup> and Su'udi, the *penghulu* of KUA Tegaltrejo,<sup>63</sup> have expressed criticism towards the policy. Their critique is rooted in several reasons: firstly, they argue that the policy deviates from *fiqh*; secondly, they contend that marrying off a husband during the *idah* period is not in contradiction to the 1974 Marriage Law; and thirdly, they assert that the policy may lead to greater harm, particularly when applied in emergency cases.

In *fiqh*, it is prohibited for a husband to enter into a marriage during his wife's *idah* if there is *mani syar'i* (legal hindrance). Az-Zuhaili elaborates on two conditions that prevent a husband with *mani syar'i* from marrying another woman during the wife's *idah*: First, when he has pronounced *talaq raj'i* to his wife and desires to marry a woman who has a mahram relationship with the wife who has been rejected through *raj'i*. Second, when the husband already has four wives, and one, two, three, or four of them have been rejected through *raj'i* while all are still within the *idah* period.<sup>64</sup>

Concerning the circular issued by the Director General of Bimas, the policy is implemented for every husband who has recently divorced his wife, encompassing even those husbands with only one wife who intend to marry other women without a *mabram* relationship to the wives in the *idah* period. In this context, it becomes evident that the Director General of Bimas enforces these provisions not based on *mani syar'i*, and, as a result, the policy deviates from the principles outlined in *fiqh*.<sup>65</sup> This was also conveyed by

<sup>61</sup> Interview with Warsono, Penghulu of KUA Danurejan, on May 19 2023.

<sup>62</sup> Interview with Setyo Purwadi, Penghulu of KUA Danurejan, on July 14, 2023.

<sup>63</sup> Interview with Ghufroon Su'udi, on May 10 2023.

<sup>64</sup> Asiyah, Rahmi Hidayati, Zufriani, and Syamsiah Nur "SYIBHUL 'IDDAH BAGI SUAMI DALAM PERSPEKTIF MAQASHID AL-SYARIAH," *NUR EL-ISLAM: Jurnal Pendidikan Dan Sosial Keagamaan* 10, no. 1 (2023): 31–32, <https://doi.org/10.51311/nuris.v10i1.506>.

<sup>65</sup> Nurlulail Makhnun dan Akrom Auladi, "KONSIDERASI MASLAHAH DALAM ATURAN PERNIKAHAN SUAMI SELAMA BERLANGSUNGNYA MASA IDDAH ISTRI (Studi KUA Kecamatan Watumalang Terhadap Implementasi Surat Edaran Dirjen Bimas Islam NO.P.005/DJ.III/HK.00.7/10/21 )," *At-Ta'aruf: Jurnal Hukum Keluarga Islam* 1, no. 1 (2023): 10, <https://doi.org/10.59579/ath.v1i1.5091>.

one of the *penghulu* of KUA in Kutai Kartanegara Regency that the regulation of the Director General of Bimas was contrary to *fiqh*.<sup>66</sup>

Consistent with *fiqh*, the Marriage Law similarly does not prohibit husbands from marrying other women during their wife's *idab* period. This alignment is rooted in the absence of any specific article within the Marriage Law that explicitly prohibits such actions.<sup>67</sup> Hence, it can be argued that the policy instituted by the Director General of Bimas, which prohibits husbands from marrying during the wife's *idab*, violates the principle of "lex superior derogat legi inferior" (higher law overrides lower law). Utami also contends that the circular letter from the Director General of Bimas Islam is categorized as a Ministerial Regulation, which holds a lower hierarchical status compared to the law.<sup>68</sup>

Moreover, beyond its deviation from the tenets of *fiqh* and misalignment with the Marriage Law, the Director General of Bimas' policy prohibiting husbands from marrying during the wife's *idab* period also harbors the potential to inflict harm, especially when applied to emergency situations such as when the prospective wife is pregnant or has imminent plans to travel abroad.<sup>69</sup> Purwadi's perspective is the same as Yuyun and Haris, who advocate for the immediate execution of legal measures in emergency cases to facilitate marriages, thus averting potential harm or *mafsadah*.<sup>70</sup> This stance aligns with the principle in *fiqh* that when harm and benefit intersect, prioritizing the prevention of harm should take precedence over pursuing benefit.<sup>71</sup>

<sup>66</sup> Rizal Anggawi Saputra, "Persepsi Kepala KUA Terhadap Surat Edaran Dirjen Bimas Islam NOMOR: P-005/DJ.III/HK.00.7/10/2021 Tentang Pernikahan Suami Dalam Masa Idah Istri Dalam Tinjauan Fiqih Nikah", Thesis (Universitas Islam Negeri Sultan Aji Muhammad Idris (UINSI) Samarinda, 2023), <https://repository.uinsi.ac.id/handle/123456789/3101>.

<sup>67</sup> Article 8 of Law Number 1 of 1974 concerning Marriage.

<sup>68</sup> Juliani Putri Utami, "IMPLEMENTASI SURAT EDARAN DIRJEN BIMAS ISLAM NO:P-005/DJ.III/HK.00.7/10/2021 TENTANG PERNIKAHAN DALAM MASA IDDAH ISTRI (STUDI KASUS KUA UJAN MAS)", Thesis (Institut Agama Islam Negeri Curup, 2023), <http://e-theses.iaincurup.ac.id/view/creators/Utami,Putri,Juliani=3AJuliani=3A=3A.html>.

<sup>69</sup> Interview with Setyo Purwadi, on July 14 2023.

<sup>70</sup> Yuyun Tri Fatimah dan Abdul Haris, "Masa Tunggu Laki-Laki Pasca Perceraian Perspektif Masalah Ath-Thufi," *Sakina: Journal of Family Studies* 7, no. 1 (2023): 9, <https://doi.org/10.18860/jfs.v7i1.2729>.

<sup>71</sup> Duski Ibrahim, *Al-Qawa'id Al-Fiqhiyah (Kaidah-Kaidah Fiqih)*, *Al-Qawa'id Al-Fiqhiyah* (Palembang: CV. Amanah, 2019).

## Refusal and Acceptance of the Circular Letter in Practice: Case

### Exposure

Spouse A and Couple B officially registered their marriage at the Umbulharjo Religious Affairs Office in mid-2022 and December 2022, respectively. Upon reviewing the documentation provided by Spouse A and Spouse B, it came to the attention of the presiding authority that the male party (Spouse A) had recently undergone a *talaq raj'i*, while the female party (Spouse B) was still within the three-month *idah* period. Specifically, the *idah* period had been in progress for approximately 1 month for the male spouse of Spouse A and about 2 months and 20 days for the male spouse of Couple B. In light of this information, the Umbulharjo Religious Affairs Office decided to reject the marriage registration applications submitted by Couple A and Couple B.<sup>72</sup>

Spouse C and Spouse D registered their marriage with the KUA Danurejan in January and August 2023, respectively. Upon reviewing the documentation provided by Spouse C and Spouse D, the *penghulu* party discovered that the male party had recently undergone a revocable divorce, while the female party was still within the three-month *idah* period. Specifically, the *idah* period had been in progress for approximately 1 month and 30 days for the male spouse of Spouse C and about 1 month for the male spouse of Spouse D. Consequently, based on this information, the KUA Danurejan decided to reject the marriage registration applications submitted by Couple C and Couple D.<sup>73</sup>

In rejecting the four cases of marriage registration involving husbands during the *idah* of *talaq raj'i* period at KUA Umbulharjo and KUA Danurejan, a shared legal perspective emerged among the authorities. Anas Yusuf, the *penghulu* of KUA Danurejan, and Handdri Kusuma, the *penghulu* of KUA Umbulharjo, both asserted that the rejection was grounded in adherence to established rules and as a demonstration of respect for women. This legal standpoint in Yogyakarta City contrasts with the position taken by KUA in Watumalang District, Wonosobo Regency, where the refusal was based on the objective of preventing polygamy in disguise.<sup>74</sup>

<sup>72</sup> Interview with Handdri Kusuma, on June 8 2023.

<sup>73</sup> Interview with Anas Yusuf, Penghulu of KUA Danurejan, on September 19, 2023.

<sup>74</sup> Auladi, "KONSIDERASI MASLAHAH DALAM ATURAN PERNIKAHAN SUAMI SELAMA BERLANGSUNGNYA MASA IDDAH ISTRI (Studi KUA Kecamatan Watumalang Terhadap Implementasi Surat Edaran Dirjen Bimas Islam NO.P.005/DJ.III/HK.00.7/10/21 )."



Despite the difference legal views held by KUA in other districts, the *penghulu* of KUA Danurejan and the *penghulu* of KUA Umbulharjo have both made identical decisions in rejecting the registration of marriages involving husbands during the *idab* period. The uniformity observed in the actions taken by KUA Danurejan and KUA Umbulharjo in these cases is attributed to a circular letter issued by the Director General of Bimas, the overseeing institution for KUA.

Unlike the aforementioned rejections, Couple E submitted their marriage registration to the Tegalrejo Religious Affairs Office around February 20, 2023. Upon reviewing the file of Spouse E, it was revealed that the male party had recently been in a *talaq raj'i* with his wife on February 15, 2023. Consequently, the Tegalrejo KUA rejected the marriage registration submitted by Couple E, citing that the wife's *idab* period had only elapsed for 5 days, leaving 2 months and 25 days remaining. Following the rejection from KUA Tegalrejo, Couple E expressed their objections. Subsequently, they sought recourse by approaching Kabid Urais to voice their concerns. In response to the actions taken by Couple E, Kabid Urais contacted the *penghulu* of KUA Tegalrejo via telephone and instructed the acceptance of the marriage registration of Couple E. In compliance with Kabid Urais' directive, the Tegalrejo KUA ultimately accepted the marriage registration of Couple E on February 27, with the condition that the male party provides a written statement renouncing his right of reference.<sup>75</sup>

Looking to the case of Couple E, the acceptance of their marriage registration at KUA Tegalrejo was not grounded in the legal perspective of the *penghulu* but rather resulted from the intervention of Kabid Urais. This acceptance appears to be an isolated incident, as the author has not observed similar instances of other KUA offices accepting registrations of marriages involving husbands during the *idab* period based on directives from Kabid Urais.<sup>76</sup> Indeed, the acceptance of a husband's marriage during the wife's *idab* period at Tegalrejo KUA suggests a potential inconsistency or variation in the proper

<sup>75</sup> Interview with Ghufron Suudi, on September 27, 2023.

<sup>76</sup> Some legal perspectives in accepting cases: 1. The husband has no intention to reconcile with the wife 2. The contents of the Circular Letter of the Director General of Bimas which still seem to provide the option that ex-husbands can still marry during the '*iddah* wives' period. See. Jayusman, "Perspektif Masalah Mursalah Terhadap Pernikahan Suami Pada Masa Iddah Istri Pasca Surat Edaran Dirjen Bimas Islam Nomor: P- 005/DJ.III/Hk.00.7/10/2021 and Muhammad Fathullah, "Persepsi Kepala KUA Di Kota Banjarbaru Tentang Pemberlakuan Syibhul Kepada Laki-Laki," Skripsi Universitas Islam Negeri Antasari Banjarmasin (2022).

implementation of the Director General of Bimas' policy prohibiting husbands from marrying during the wife's *idah*. This case highlights the need for consistent and uniform enforcement of policies across different regions to ensure compliance with established regulations. It also emphasizes the importance of addressing any potential discrepancies or interpretations that may arise in the implementation of such policies.

## Conclusion

The issuance of Bimas' policy prohibiting husbands from marrying during the wife's *idah* was motivated by several circumstances, namely the practice of covert polygamy carried out during the *idah* period due to the absence of regulations governing and the ineffectiveness of 1979 circular letter, efforts to realize the wisdom of *idah* related to the opportunity for the return of spouses to marriage during the *idah* period which had been ignored by the husband, and the provision of protection and equality to women after *talaq raj'i*.<sup>77</sup>

The *pengbuhulus* of the KUA in Yogyakarta City pose different perspectives regarding the substance and intent of the circular. This disparity is evident in the positions adopted by the *pengbuhulu* of KUA Umbulharjo and the *pengbuhulu* of KUA Danurejan, both of whom express endorsement for the policy prohibiting husbands from marrying during the *idah* period of their wives. Their support is founded upon arguments consonant with the rationale behind the circular's issuance. In contrast, the *pengbuhulu* of KUA Kotagede and the *pengbuhulu* of KUA Tegalrejo manifest dissent towards the policy. They argue that the stipulation deviates excessively from established *fiqh* principles and is incongruent with the provisions of the Marriage Law. Furthermore, they contend that its application in emergency situations could engender adverse consequences.

Aligned with divergent interpretations, the *pengbuhulus* exhibit varying stances in response to marriage requests from husbands during the *idah* period of their wives. In general, *pengbuhulus* at the KUA in Yogyakarta City dismiss applications for registering husbands' marriages during the *idah* period, indicative of the impact of the circular letter from the Director General of Bimas on their perspectives. Notwithstanding, some *pengbuhulus*

<sup>77</sup> Fuady Abdullah, Nova Anggraini Putri, and Youssof Salhein, "Revisiting 'iddah: A Critical Analysis of Gender Equality in Indonesian Feminist Islamic Legal Discourse," *JURIS (Jurnal Ilmiah Syariah)* 22, no. 2 (2023): 275–90, <https://doi.org/10.31958/juris.v22i2.10320>.

in KUA Tegalgrejo permit the registration of such marriage applications during the *idab* period. Despite these discrepancies, there is a prevailing consensus on upholding women's equality in Islamic family law, as evidenced by the collective rejection of applications for registering husbands' marriages during the *idab* period.

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