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

Arzam, Muhammad Ridha DS, Natardi, Doli Witro

IAIN Kerinci | Jl. Pelita IV, Sumur Gedang, Pesisir Bukit, Kerinci, Jambi | arzamzain46@gmail.com, muhammad.ridha1979@gmail.com.
Kementerian Agama Kota Sungai Penuh | Jl. M. H. Thamrin Simpang Tiga Rawang, Kota Sungai Penuh, Jambi | natardinatardi@gmail.com.
UIIN Sunan Gunung Djati Bandung | Jl. A. H. Nasution No. 105, Cipadung, Kecamatan Cibiru, Kota Bandung, Jawa Barat | doliwitro01@gmail.com.

**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’lili* 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
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.\(^1\) This is in line with the maqashid sharia\(^2\), 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.\(^3\) This is the problem most feared by husband or wife because it has several consequences that must be endured.\(^4\)

One of the consequences that must be taken by women after divorce\(^5\), the divorce of thalaq, or divorce due to death is iddah.\(^6\) 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”\(^7\).

---


Determination of the *iddah* period for a pregnant woman whose husband dies aims to provide opportunities for her mourning after she has been bereaved and it is on the grounds for appropriateness the bereaved woman has to show by not remarrying too soon. 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. 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.

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.

In general, the two verses above can be said to be two verses that are considered contradictory (*ta’arudh al-adillah*). Furthermore,
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 divorce 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.\(^\text{12}\) 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.\(^\text{13}\)

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.


\(^{13}\) 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.\textsuperscript{14} 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.\textsuperscript{15} In the development of Islamic law, al-bayan approached at least a method known as hermeneutical that was intended to interpret or translate.\textsuperscript{16}

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.\textsuperscript{17} That is, basically ta‘lili reasoning is a method of legal istimbah that seeks to use ‘illat\textsuperscript{18} as the primary tool. The third is the istislahi method. Maslahah mursalah theory is called istislah.\textsuperscript{19} 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.\textsuperscript{20}

\textsuperscript{16} Jazim Hamidi, \textit{Hermeneutika Hukum, Teori Pemana Hukum Baru…}, 20.
\textsuperscript{17} Muhammad Abu Zahrah, \textit{Ushul al-Fiqh}, (Penerjemah) Saefulh Ma’shum, (Jakarta: Pustaka Firdaus, 2000), 364.
\textsuperscript{18} ‘Illat is a pillar of qiyas (analogy) and qiyas cannot be done if it cannot be determined ‘illat of a problem.
\textsuperscript{19} Wael B. Hallag, \textit{A History of Islamic Legal Theories}, (Penerjemah) E. Kusnadiningrat, (Jakarta: Rajawali Press, 2000), 165.
\textsuperscript{20} Abdul Aziz ibn Abdurrahman ibn Ali al-Rabi‘i‘ah, \textit{Adillat al-Tasyri’i al-Mukhatalaf 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 وَيَذَرُوْنَ اَزْوَاجًا يَّتَرَبَّصْنَ بِاَنْفُسِهِنَّ اَرْبَعَةَ اَشْهُرٍ وَّعَشْرًا ۚ فَبَلَغْنَ اَجَلَهُنَّ فَلََ جُنَاحَ عَلَيْكُمْ فِيْمَا فَعَلْنَ فِيْ اَنْفُسِهِنَّ بِالْمَعْرُوْفِِۗ وَاللّٰهُ بِمَا تَعْمَالُوْنَ خَبِيْرٌ

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. 21

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. 22 The sentence *faidhā balaghna ajalahunna* means that the *iddah* ends or completes. This is further confirmed by the sentence *fālā junāḥa ‘alaikum fima fa’alna fi anfusihinna* 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”. 23 This verse shows the

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

The sentence *wallahu bimā ta’malīna 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”.  

Then for the saints with the word of Allah, *falājunāḥa ‘alaikum fimā 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”.  

The phrase *tuwaffā* has the meaning of death. In using fluent language phrases, it is said *tuwuffiya fulān* which means someone has been expressed in the form *mabnī ma’ul*, even if the expression with *isim fa’il (mabnī ma’lūm)* is 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 deadly?), He answered, Allah s.w.t. That is why the laws of *nahwu* are laid. Therefore, the pronunciation of *alladzīna yutawaffāuna* in this verse means those who die or those who die.  

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’ marbūtah* 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.

---

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 wayadzarūna azwāja* sentence, which means that you have left your wives.\(^{28}\)

For the word *yatarabbaşna*, it has a meaning *intizor* which means to wait. The pronunciation of *yatarabbaşna* means that they are suspending, which is a fragment of the sentence *yatarabbaşna 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 madrūbatu 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 junāha ‘alaikum fīmā fā’alna fī anfusihinna bilma’rub* 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.\(^{29}\) 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:

---

\(^{28}\) Ibid.

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.

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. 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”.

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. 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. 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.

30 Departemen Agama RI, Al-Qur’an dan Terjemahnya…., 39.
31 Muhammad Jawad Mughniyah, Fiqih Lima Madzhab…, 386.
32 Ibid., 387.
33 Abdul Halim Hasan, Tafsir Al-Ahkam, Edisi 1, (Jakarta: Kencana Persada, 2006), 34.
34 Ibnu Mas’ud and Zainal Abidin S, Fiqih Madzab Syafii, 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:

وَالْمَطَلَّقَاتُ يَتَرَبَّصْنَ بِاَنْفُسِهِنَّ ثَلٰثَ قُرُوًاِۗ وَلَّ يَحِلُّ لَهُنَّ اَنْ يَّكْتُمْنَ مَا خَلَقَ اللّٰهُ فِيَّ اَرْحَامِهِنَّ اِنْ كُنَّ يُؤْمِنَّ بِاللّٰهِ وَالْيَوْمِ الّٰخِرِِۗ وَبُعُوْلَتُهُنَّ اَحَقُّ بِرَدِِهِنَّ فِيْ ذٰلِكَ اِنْ اِصْلََحًا ِۗوَلَهُنَّ مِثْلُ الَّذِيْ عَلَيْهِنَّ بِالْمَعْرُوْفِۖ وَلِلرِِجَالِ عَلَيْهِنَّ دَرَجَةٌ ِۗ وَاللّٰهُ عَزِيْزٌ حَكِيْمٌ ٨٢٨

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.36

35 Departemen Agama RI, Al-Qur’an dan Terjemahnya..., 558.
36 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:

   
   \[\text{Ibid., 424.}\]

   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.

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:

   
   \[\text{Ibid., 558.}\]

   And for those who are pregnant, their term is until they give birth.

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:

   \[\text{Ibid., 424.}\]

   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.

   \[\text{Ibid., 558.}\]
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.\footnote{Ibid.}

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).\footnote{Muhammad Madani, *Mawahhîn al-Ittîhād fî asy-Syarî'ah al-Islâmiyyah*, (Penerjemah) Husein Muhammad dengan judul “Ruang Lingkup Hukum Islam”, (Jakarta: Pustaka Firdaus, 1987), 37-38.}

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.\footnote{Slarnet Abidin dan Arninuddin, *Fiqih Munakahat II*, (Bandung: CV Pustaka Setia, 1999), 121.} The rule of Usul Fiqh mentions *alhukmu yadîru ma’a ‘illati*
wujudan aw ‘adaman, meaning the law revolves around the presence or absence of illat.  

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*).  

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

---


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*.*44

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”,45 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”.46

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”.47 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”.48 According to them, “the *iddah* of a pregnant woman, whether from a divorce or her husband dies, is until giving birth”.49

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

---

44 Tim Redaksi Nuansa Aulia, *Kompilasi Hukum Islam*, (Bandung: CV Nuansa Aulia, 2009), 47.
45 Tim Redaksi Nuansa Aulia, *Kompilasi Hukum Islam*, 47.
46 Ibid.
47 Ibid.
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*.\(^{50}\)

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.\(^{51}\)

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:

<table>
<thead>
<tr>
<th>Various Iddah Cases</th>
<th>The duration of Iddah</th>
</tr>
</thead>
<tbody>
<tr>
<td>Divorce, but not yet having intercourse</td>
<td>There is no <em>iddah</em></td>
</tr>
<tr>
<td>death divorce, but not yet having intercourse</td>
<td>Four months ten days or 130 days</td>
</tr>
</tbody>
</table>


### Iddah of Pregnant Woman

<table>
<thead>
<tr>
<th>Divorce</th>
<th>Iddah Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Divorce, but having intercourse followed by pregnancy</td>
<td>Until giving birth</td>
</tr>
<tr>
<td>Divorced due to death, but already having intercourse followed by pregnancy</td>
<td>Until giving birth</td>
</tr>
<tr>
<td>Divorced due to death, but already having intercourse followed by pregnancy</td>
<td>Four months ten days or 130 days</td>
</tr>
<tr>
<td>Divorced due to death, but already having intercourse and menstruation</td>
<td>Four months ten days or 130 days</td>
</tr>
<tr>
<td>Divorced due to death, but already having intercourse and menstruation</td>
<td>Four months ten days or 130 days</td>
</tr>
<tr>
<td>Divorced, but having intercourse and never menstruated</td>
<td>Three months or 90 days</td>
</tr>
<tr>
<td>Divorced, but having intercourse and never menstruated</td>
<td>Four months ten days or 130 days</td>
</tr>
<tr>
<td>Divorced, but having intercourse with menstruation</td>
<td>Three months or 90 days</td>
</tr>
<tr>
<td>Divorced due to husband’s death, but having intercourse with menstruation</td>
<td>Four months ten days or 130 days</td>
</tr>
</tbody>
</table>

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:

<table>
<thead>
<tr>
<th>Surah al-Baqarah verse 234</th>
<th>Surah ath-Thalaq verse 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Divorced due to husband’s death, not pregnant, <em>iddah</em> 130</td>
<td>Death divorce, a woman is pregnant, her <em>iddah</em> until giving birth</td>
</tr>
</tbody>
</table>
days (four months and ten days) | Death divorce, not having intercourse, not pregnant, *iddah* of 130 days (four months and ten days)
---|---
death divorce, no chance for intercourse, not pregnant, *iddah* 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*[^52]

   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.

2. *al-Tarjih*

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*

In lahiriyah, surah al-Baqarah verse 234 was first derived from surah ath-Thalaq verse 4. 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

---

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 (divorced) 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.

**References**


Iddah of Pregnant Woman


Wahyudi, Muhamad Isna, “Kajian Kritis Ketentuan Waktu Tunggu 
(Iddah) dalam RUU HMPA Bidang Perkawinan”, \textit{Jurnal 

Wahyuni, Sri, “Kontroversi Perkawinan Beda Agama di Indonesia”, 

Yendi, Frischa Meivilona, et.al., “Pelayanan Konseling untuk 
Remaja Putri Usia Pernikahan” \textit{Jurnal Konseling dan 

Zahrah, Muhammad Abu, \textit{Ushul al-Fiqh}, (Penerjemah) Saefullah 