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**A CASE STUDY ON THE PROHIBITION AND MANNER WHILE
OBSERVING 'IDDAH IN PASIR MAS, KELANTAN.**

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Academic Project Report submitted in fulfillment for the degree of
BACHELOR OF SYARIAH AND JUDICIARY (HONS)

Faculty of Syariah And Law

KOLEJ UNIVERSITI ISLAM MALAYSIA

Kuala Lumpur

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March 2004

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

I hereby declare that the work in this academic project is my own except for quotations and summaries which have been duly acknowledged.

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ACKNOWLEDGEMENT

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

In the name of Allah S.W.T, Most gracious, Most Merciful, and His Messenger Prophet Muhammad (p.b.u.h).

Here, I would like to express my gratefulness, as I am able to accomplish the academic project under the topic “ A case study on the prohibition and manner while observing ‘*iddah* in Pasir Mas, Kelantan”.

First and foremost, I would like to express my thankful to Allah, the Almighty for granting my wish and giving the courage and faith to complete this academic project paper. With very pleasure, I would like to thank my supervisor, Mrs Syahirah Bt. Abdul Shukor, who has given me instruction, advises and guidance during the process of this academic project. I am also appreciate to Dean of Faculty of Syariah and Law, Prof. Dr. Hj. Abdul Samad bin Musa, all lectures and all staffs of the Faculty of Syariah and Law.

Besides that, I should not also forget my beloved husband Mr. Khairul Ariman bin Md. Arepen and my parents for their patience and given me moral support and encouragement to complete this academic project.

Finally, I am grateful to all my friends and to those people who have helped me either by directly or indirectly without whose sincere help and guidance, I would not have been able to complete this undertaking. May Allah bless all of you.

ABSTRAK

Iddah atau lebih dikenali sebagai tempoh menunggu bagi wanita yang diceraikan atau kematian suami merupakan satu tanggungjawab yang mesti dilaksanakan oleh setiap wanita yang diceraikan atau yang kematian suami. Dalam tempoh tersebut, mereka wajib menahan dirinya dari berhias atau berdandan dan memakai wangi-wangian sehingga memikat hati orang yang melihatnya. Namun begitu, masih ramai lagi wanita yang alpa dan tidak mengendahkan apa yang menjadi kewajipannya semasa tempoh tersebut. Justeru, melalui penulisan ilmiah ini dapatlah kita menambahkan pengetahuan di samping mengetahui pengertian *'iddah* sekaligus mengenalpasti permasalahan-permasalahan yang wujud di kalangan wanita yang ber'*iddah* khususnya di Pasir Mas, Kelantan dengan lebih mendalam lagi. Hasil kajian menunjukkan bahawa kebanyakan wanita yang melalui tempoh *'iddah* kurang mengetahui tentang tempoh *'iddah* yang sebenarnya dan juga larangan yang telah digariskan oleh hukum syara'. Dengan mengetahui beberapa larangan semasa ber'*iddah*, ini dapat memberi peluang kepada setiap individu yang terlibat supaya mengikut garis panduan yang telah ditetapkan bagi menjamin kesejahteraan ummah. Diharapkan, agar penulisan ilmiah ini memberi manfaat yang berguna kepada pembaca, sekaligus dapat menjawab persoalan-persoalan yang timbul berhubung dengan larangan dan tata tertib *'iddah* dengan lebih terperinci lagi.

ABSTRAK

'Iddah or known as a waiting period for a divorced woman, or by a wife of dead husband, is a responsibility that must be fulfilled for within the period. They are prohibited to wear any ornament or perfume to attract man towards her. However, there are many widowers still ignored it. Therefore, from this academic project will increase more knowledge related with *'iddah*, besides knowing the problems arose among women especially in Pasir Mas, Kelantan deeply. From the studies indicated that many women still did not know the period term of *'iddah*, and the prohibition guided by *syarak*. By knowing the guidelines upon *'iddah*, those people who were involved with this matter, will be given an opinion to follow the rules to achieve a peace and harmony society. Hopefully, this academic project will give useful advantages for readers, in addition to solve the problems concerned with the prohibition and manner while observing *'iddah* in detail.

MULAKHKHAS AL-BAHTH

عدة أو معرفة كوقت أن يجب تنتظر تلك الزوجات ومسؤوليات التي يجب على كل النساء طلاقا رجعيا أو موتا زوجها. وفي هذه الفترة ممنوع عليهن من الزينة أي من التزين بالرائحات حتى يجبون الذين ينظرون إليها. وحدير بالذكر، كثير من النساء غافلات ولا إهتمام على ما يجب عليهن في تلك الفترة. ومن ثم، من هذا البحث أن الكاتبة يجد أن يزيد العلم ويعرف معنى العدة. وكل مسألة التي تتعلق بالنساء في العدة وخصوصا في فاسير مس بكلتن بالدقيق. ومن هذا البحث أيضا دليل على أن كثير من النساء لا يعلمهن بوقت العدة وأمور التي ممنوع عليهن في الشرع. وبالنسبة إلى ذلك، كل ما يمنع عليهن لمصلحة الأمة. وأتمنى من هذا البحث كثيرا منفعة للقارؤون وبذلك لكي كل مسائل التي تتعلق بعدة ينتهي.

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GLOSSARY

<i>Asl</i>	Cause, first principle, foundation.
<i>Hadith</i>	Sayings of the Prophet Muhammad S.A.W.
<i>Hidad</i>	“Mourning”. The state of a widow who abstains from scents, ornaments, on account of the death of her husband.
<i>‘Iddah</i>	The waiting period for divorced woman and death her husband.
<i>Ihdad</i>	The period of mourning observed by a widow for her husband, Namely four months and ten days.
<i>Ijma’</i>	The third foundation of Islam in literally means “collecting” or “assembling”.
<i>Istihadah</i>	The issue of blood of women during which time they are ceremonially unclean.
<i>Khulwah</i>	Privacy, a man & woman being alone together in a situation where there is no fear of intrusion by anyone else, so that an opportunity exists before sexual intimacy.
<i>Khulu’</i>	An agreement into for the purpose of dissolving marriage.
<i>Li’an</i>	“Mutual cursing”. A form of divorce which takes place under the following circumstances.
<i>Nafaqah</i>	the right of a wife and children.
<i>Qadi</i>	A judge, appointed by the ruler to settle dispute according to the shariah.
<i>Quru’</i>	A woman’s becoming pure after menses used particularly in reference to the <i>‘iddah</i> of divorce.
<i>Ruju’</i>	The husband back to her divorced wife in talaq raj’i.

<i>S.A.W</i>	Abbreviation of “ <i>Sallallahu ‘Alaihi Wa Sallam</i> ” meaning ‘ <i>Peace be upon be him</i> ’. It is compulsory for a Muslim to utter this blessing whenever he hears the Prophet Muhammad’s name mentioned.
<i>Sunnah</i>	A term used in the religion of the Muslim to express the custom or manner of life.
<i>Syariah</i>	The law including both the teaching of the Qur’an & of the traditional saying of Muhammad.
<i>Talaq</i>	Divorce initiated by the husband.
<i>Talaq raj’i</i>	A revocable divorced.
<i>Talaq ba’in</i>	An irrevocable divorced.
<i>Umrah</i>	A lesser pilgrimage or a visitation to the sacred mosque at Makkah, with the ceremonies of encompassing the Ka’abah & running between al-Marwah & as-Safā, but omitting the sacrifices.
<i>Wali</i>	A guardian, a person who has responsibility for another person, used particularly for the person who ‘gives’ a woman in marriage.

ABBREVIATION

AS	°alayh al-salām
def.	Definition
n.a.	no author/ no artist
n.d.	no date/no year
n.pl.	no place
n.pb.	no publisher
p.	page
pp.	pages
p.b.u.h	peace be upon him
RA.	Radiya Allāh °anhu/anhā/anhum
SAW	salla Allāh °alyah wa sallam
SWT	subhānahu wa ta °ālā
vol.	volume
juz	juzu'

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF RESEARCH.

Islam is the main religion bestowed by Allah in this world which consists various aspect of human life. As mentioned by Allah in the Holy Qur'an:

اليوم أكملت لكم دينكم وأتممت عليكم نعمتي ورضيت لكم الإسلام ديناً.

Meaning: “*This day here I perfected your religion o you, completed My Favor upon you, and have chosen Islam as your religion for you.*”¹

(Al-Qur'an. Al-Maa'idah. 5:3)

Marriage is one of the aspects from the *Syariat* Islam, encouraged by Islam known as *Sunnah* and the first process in building family. The responsibilities and rules in marriage must be obeyed between spouses due to their happiness. But, if vice versa they cannot achieve a harmony and calm in their life. Because of that, all creatures in this world whether Allah created male or female are mutually needed one and another's.

Allah said in His Qur'an:

يأيتها الناس اتقوا ربكم الذي خلقكم من نفس واحدة...

Meaning: “*O Mankind! Respect (and fear) your Guardian-Lord, who created you, from a single person (Adam)...*”

(Al-Qur'an. An-Nisa'. 4:1)

¹ All Quranic translations in this writing are based on Syed Vickar Ahamed. Prof (Dr). 1999. *Interpretation of the meaning of The Glorious Qur'an*. Cairo: Egypt. Holmdel. New Jersey. TR Group Companies.

Islam encourages marriage because marriage can give happiness and calmness to mankind. Marriage institution encourages the extension family institution which could create many generations and also add the numbers of Muslim in this world as well. The marriage which bestowed by Allah is the one knotted by lawful *akad nikah*. Its purpose is to fulfill the human needs through the way which bestowed by Allah, make the home as a place for protection, feel the love relationship and produce the good generation and also protect the children so that they would feel the best development of life.

In each marriage, we could not avoid from quarrelling between the spouse and in some circumstances, things get worse and the marriage ends up with divorce. Some divorce would leave variety of effects, not only onto the related family, but also onto the society. In fact, Allah S.W.T hates divorce. As mentioned in a hadith of Rasulullah (p.b.u.h):

عن ابن عمر أن رسول الله صلى الله عليه وسلم: قال : أبغض الحلال الى الله عزوجل الطلاق.

Meaning: *Ibn Umar reported that the Prophet (p.b.u.h) said: "Of all lawful acts the most detestable to Allah is divorce"*²

The divorce also would cause suffering to the spouses themselves. For examples, the wife would lose the protection from the husband and the children would lose their parents love. The husband also would lose his wife who managed all his needs. Allah S.W.T is the Most Merciful. Everything that happened has its own reasons and benefits. So, Allah S.W.T has created a rule for the divorced wife this widow, that is through the *'iddah* period. Based on this rule, the importance of both spouses especially for the wife's right is more protected.

² Hadith. Sunan Abu Dawud, Kitab al-Talaq, Vol 2. p.586.

'*Iddah* is referred to the waiting period imposed on a wife who is divorce by her husband, or whose husband has passed away. It is a compulsory for wife who has divorce by *talaq* or *fasakh* or death of husband. The Qur'an says;

والمطلقات يتربصن بأنفسهن ثلاثة قروء

Meaning: "Divorced woman shall wait concerning themselves for three monthly periods."

(Al-Qur'an. Al- Baqarah 2:228)

The Holy Prophet (p.b.u.h) had order Fatimah bint Qais as follows:

اعتدي في بيت أم مكتوب

Meaning: " Complete your 'iddah period in the house of Umm Maktum".³

The waiting period normally lasts for three months and ten days reflecting three menstrual cycles in the case of '*iddah* after the divorce. Where the husband has passed away the '*iddah* lasts for four months and ten days. If a woman does not menstruate, her '*iddah* is only three months. The rationale behind the requirement of a waiting period is to enable whether a woman has conceived or not. If she has not conceived, she may remarry at the expiry of her '*iddah*, but if she is conceiving, she has to wait until childbirth.⁴

A woman should not remarry during the period of '*iddah*. *Shariat* gives clear instructions that widows should not wear ornaments, coloured and showy dresses, perfume, not adorn themselves with any kind of make-up during this period to avoid the attention of men toward her. Thus, the divorce woman should live in her house of the husband until she finishes the '*iddah*. She should live in the same house in which she used to live with her husband until expiry of her '*iddah*. It is called "*mourning period*".⁵

³ Hadith. n.d. *Sahih Muslim*. (CD Rom). n.pb. Tafsir Al-Qurtubhi. Juz' 12: p. 249.

⁴ Mimi Kamariah Majid. 1999. *Family Law in Malaysia*. Malaysia: Malayan Law Journal Sdn. Bhd. pp. 131-132.

⁵ Abdul Rahman I. Doi. 1992. *Shari'ah: The Islamic Law*. Kuala Lumpur: A.S. Noorden. p. 201.

1.2 AIM OF RESEARCH

The aim of this research is to explore the prohibitions and manners for a divorce woman. The writer would explore the waiting period of *'iddah* based on three situations, *'iddah* after a divorce, *'iddah* after the husband has passed away and *'iddah* for a woman does not menstruate. The second aim of this academic project paper is to explore types of *'iddah* and importance of its. Hence, it is hoped that this academic project would provide an overview of the mourning period or *'iddah* that would be faced by a divorce woman in accordance with *syariah*. The aim is to look at the practice of the divorce women in Pasir Mas, Kelantan.

1.3 OBJECTIVES OF THE RESEARCH.

The objectives of undertaking this research are as follow:

1. To identify the situations when a woman has to face *'iddah*.
2. To explore the prohibitions and manners while observing *'iddah* according to *Syariah* in Pasir Mas, Kelantan.
3. To explore briefly the types and duration of *'iddah*, maintenance of *'iddah* and also causes for dropping the maintenance. Beside to know the rights of woman while observing *'iddah* according to *Syariah*.
4. To reveal for society about the effects *'iddah* for woman undergoing *'iddah*.

1.4 SCOPE OF RESEARCH

The scope of this academic project is restricted to the practice of observing *'iddah* in Pasir Mas, Kelantan Darul Naim. Besides that, the academic project tries to identify the

situations when a woman has to face *'iddah* and the problems encountered by the divorce women. The subjects focused on the people who are living in Pasir Mas, Kelantan.

In this research, the writer will highlight on the rules of women observing *'iddah* period. This research focused on the right of women who undergoing *'iddah* likes resident and maintenance. The writer tries to explain the meaning of *'iddah*, the reason that *'iddah* is compulsory for women who observing *'iddah*, the conditions for observing *'iddah* and the importance of it.

Based on this topic, the writer will focus on the divorce women who are undergoing *'iddah*. The different kinds of *'iddah* can be summed up as follow;

- a) *'Iddah* for wives have not been conceived,
- b) *'Iddah* for the wife have been conceived,
- b) The *'iddah* for the wives whom their husband had passed away.
- c) The *'iddah* for the woman who are having *'istihadhah*.
- d) The *'iddah* for the woman being *'khulu*'.

1.5 METHODOLOGY OF RESEARCH.

In collecting the data, the writer employs two methods, namely primary data and the secondary data. The primary data is gathered through personal interview with selected respondents in Pasir Mas, Kelantan. The writer also have prepared the questionnaires which were distributed to the divorce wife who undergoing *'iddah* especially in Pasir Mas, Kelantan.

As regard to the secondary data, the data is obtained from the existing literature reviews such as books, journals, newspapers and Internet. This secondary data is gathered through a library research. There are some libraries which the writer has visited such as

library of University College of Malaysia, National University of Malaysia, University of Malaya, International Islamic University Malaysia, National Library and Islamic Library Center.

1.6 LITERATURE REVIEW.

To accomplish this academic project, the writer referred to various existing literature. Zaleha Kamaruddin, 2000 in her book entitled '*Islamic Family Law Issues 2000*' discussed several of rules be observed during the '*iddah*'. There are various opinions among the schools of thought as regard to the rules that are to be observed by the widow upon the death of her husband. According to Hanafi, a woman is prohibited to leave her house during the night, but she is allowed to do so during the daytime. The jurists also agreed that a woman is proper to leave the house in an emergency situation (*darurah*). According to the Hanbali, woman who are observing '*iddah*' regardless whether divorce or death of her husband, are allowed to leave the house during the daytime. However, the writer is of the opinion that a woman in her '*iddah*', either divorce or death of her husband, should be allowed to go out either during the daytime or at night to enable her fulfill her financial need as it does not go against the Hukum Syara'.

In a book written by Sheikh Muhammad Rif'at Uthman, 1995 in his book entitled "*The Law of Marriage In Islam*" telling about categories of woman in the waiting period of '*iddah*'. There are three categories of woman in the waiting period, (i) a woman waiting after the death of her husband, or after a third divorce, or after the annulment of her marriage due to her being unlawful for her husband, (ii) a woman waiting after a revocable divorce, having been only divorced once or twice, (iii) a woman waiting after a lesser final divorce who is still lawful for her husband to remarry.

In another book written by Mimi Kamariah Majid, 1999 in her book entitled "*Family Law in Malaysia*" said about the prohibitions of '*iddah*'. A woman is prohibited from remarry during her '*iddah*' period. The prohibition after a divorce is necessary as the

husband is permitted to revoke the *talaq* or to *ruju'* during this period. It is also to enable ascertainment of the paternity of any child which the woman may be carrying at that time. Beside that, the writer also stated the different kinds of period, that the waiting period normally lasts for three months and ten days reflecting three menstrual cycles in the case of *'iddah* after a divorce. However, in the case when the husband has passed away, the *'iddah* is lasts for four months and ten days.

Naemah Amin (1990) in her article "*Hak-hak wanita selepas bercerai*" also discusses on the right of women while observing *'iddah*, that is includes maintenance, resident, food, clothes and the other necessary. However, if the divorced wife by *talaq raj'i*, she has a right to get their right during her *'iddah*. In the case of divorce wife by *talaq ba'in*, she only has a right to get her right if she is pregnant, but if she is not pregnant, her husband should give her a place to reside until the end of *'iddah* period. Although the wife was divorced, her husband still have the responsibility to spend their right to her wife during period of *'iddah*.

However, this research is different from the existing literature review because this research is to look on the prohibition and manner while observing *'iddah* in Pasir Mas, Kelantan. In addition, the writers also focused on the different types of *'iddah*, the authority from *Al-Qur'an*, *As-Sunnah* and *Al-Ijma'*. There are many books and other materials which highlight on the conditions of observing *'iddah*, as *'iddah* is compulsory and the related decided cases of *'iddah*.

CHAPTER TWO

THE CONCEPT OF '*IDDAH* IN ISLAM

2.1 THE DEFINITION OF '*IDDAH*

The word '*iddah*' is derived from root *adda* meaning to count; in the case, it is a waiting period, a period of abstinence, or a specified term during which the wife shall remain unmarried after the dissolution of marriage by divorced, or any other form of separation under certain condition.⁶

Al-Sheikh Muhammad Al-Syerbini Al-Khatib, stated that the definition of '*iddah*' as the waiting time of the woman to know about the conditions of their womb (whether pregnant or not) or because of to obey Allah's order or because of the sadness on the death of their husbands.⁷

Based on Dr. Abdul Aziz Amir, '*iddah* on the term of *fuqaha*' means some period to omit the leftovers of the marriage caused of that marriage relationship, besides to ensure the divorced women, would not marry another men until the period of '*iddah*' is finished.⁸

According to Hedaya defines '*iddah*' is the term of probation incumbent upon a woman in consequence of the dissolution of marriage after carnal connection. It has been further said in Hedaya that "the most approved definition of '*iddah*' is, the term by the completion of which a new marriage is rendered lawful."⁹

⁶ Zaleha Kamaruddin. *Islamic Family Law Issues*. 2000. International Islamic University Malaysia. p. 301.

⁷ Mohd Syarbani. Al-Khatib (As-Sheikh). 1978. *Al-Iqna'*. vol 2. Beirut; Dar Al-Fikr. p.346.

⁸ Abdul Aziz Amir. (Dr). 1984. *Al-Ahwal As-Shahsiyyah Fis Syariah Islamiyyah*. First edition. Dar Al- Fikr Al- 'Arabi. p.356.

⁹ Syed Khalid Rashid. *Muslim Law*. 1996. n.pl. Third Edition. Eastern Book Company. p. 117-118.

Ibn Abidin, the author of Radd al-Muhtār defined 'iddah is, When a marriage is dissolved either by divorce or under a decree of a Court after consummation or death of the husband or in any other way the woman cannot contract a second marriage under the Muslim Law until expiry of the certain period of time. This period of time is called 'iddah'. 'Iddah literally means to count. But the Muslim jurists use it technically of her marriage after conceived or on the demise of her husband or under the Hanafi, Maliki and Hanbali laws also on a valid retirement.¹⁰

The word 'iddah is originated from the word 'addad'. Based on the language; means amount. Based on the term Islamic rules are;

اسم للمدة التي تنتظر فيها المرأة وتمنع عن التزويج بعد وفاة زوجها او فراقه لها.

Meaning: *Name wait of period for woman after her husband passed away or divorced, she can't marry another man.*¹¹

اسم لمدة تتربص المرأة لمعرفة براءة رحمها أو لتعبد أو لتفجعها على زوجها.

Meaning: *Name wait of period for woman are to know their womb or to know sadness toward her husband.*¹²

اسم لمدة تتربص المرأة عن التزوج بعد وفاة زوجها وفراقه لها إما بالولادة أو الأقران أو الأشهر.

Meaning: *Name waiting time for woman to marriage after her husband is passed away or divorced, in the same time birth of child or some menstruate or some month.*¹³

¹⁰ Ibn Abidin n.d. *Radd al-Muhtar*, Vol II, Cairo, 1318. n.pb. p. 614.

¹¹ n.a. *Fiqhus Sunnah*. n.d. juz' 2. n.pb. p.277.

¹² n.a. *Bajirmi Khathib*. n.d. vol 4. n.pb. p.35.

¹³ n.a. *Subulus Salam*. n.d. vol 3. n.pb. p.196.

مدة تتربص المرأة لتعرف براءة رحمها من الحمل.

Meaning: *Name time waiting woman is to know clean her womb from pregnancy.*¹⁴

Based on a few of definitions stated above, we would conclude that 'iddah is the waiting time for the wife whose husband had passed away or divorced with her husband whether divorced while still alive or passed away with the purpose to know the condition of her womb after divorce and in that period, they are not allowed to marry another man.

2.2 AUTHORITY OF 'IDDAH.

The rule of 'iddah is compulsory for the women who are being divorced by their husband (divorce while still alive or passed away) and the women whom their husband had passed away based on *Al-qur'an*, *As-sunnah* and *Ijma'*. But, the Qur'an lays down that there shall be no 'iddah for a woman who is divorced by her husband before he has consummated his marriage with her.¹⁵

Al-Qur'an mentioned by Allah;

يأيها الذين آمنوا إذا نكحتم المؤمنات ثم طلقتموهن من قبل أن تمسوهن فما لكم عليهن من عدة تعتدونها فمتعوهن وسرحوهن سراحا جميلا.

Meaning: " *O you who believe! When you marry believing women, and then divorce them before you have touched them, you do not have to wait a period of 'iddah (waiting) for them (to complete the divorce) so given them a present, and set them free in a wholesome (and happy) way.* "

¹⁴ n.a. Mahalli. n.d. juz 4. n.pb. p.39.

¹⁵ Abdul Ghani Azmi Bin Hj. Idris. (1994). *Hukum-hukum Perkahwinan & Kekeluargaan Dalam Islam*. Dinie Publisher. p. 391

(Al-Qur'an. Al-Ahzab33:49)

The above verse lays down that there shall be no 'iddah for a woman who is divorced by her husband before he has consummated his marriage with her.

2.2.1 THE EVIDENCE FROM AL-QURAN.

The compulsion of 'iddah is prescribed by the Holy Quran as follow;

والمطلقات يتربصن بأنفسهن ثلثت قروء.

Meaning: " *Divorced women shall wait concerning themselves for three monthly periods.*"

(Al-Qur'an. Al-Baqarah 2:228)

The Qur'an says;

والى يئسن من المخيض من نساءكم إن ارتبتم فعدكن ثلاث أشهر والى لم يحضن وأولات
الأحمال أجلهن أن يضعن حملهن.

Meaning: " *Such of your women who have passed the age of monthly courses, for them the prescribed period, if ye have any doubt, is three months, and for those who have no courses (it is the same).*"

(Al-Quran. Al-Talaq 65:4)

The Quran says;

والذين يتوفون منكم ويذرون أزواجا يتربصن بأنفسهن أربعة أشهر وعشرا.

Meaning: " *If any one of you die and leaves widows behind him they shall wait concerning themselves for four months and ten days.*"

(Al-Qur'an. Al-Baqarah 2:234)

The above verse clearly had order that the divorced women and death of her husband is compulsory to do an 'iddah, depend on their kind of 'iddah.

2.2.2 THE EVIDENCE FROM AS-SUNNAH

Rasulullah (p.b.u.h) had ordered Fatimah bt. Qais who is being divorced by her husband to do that 'iddah as follow;

اعتدى عند ابن أم مكتوم

Meaning: *Complete your 'iddah period in the house of Umm Maktum.*¹⁶

(Hadith narrated by Muslim)

لا يحل لإمرأة أن تؤمن بالله واليوم الآخر أن تحد على ميت فوق ثلاثة ليال إلا على زوج أربعة أشهر وعشرا.

Meaning: “ *It is not lawful for a woman who believes in God and the day of Judgments to mourn more than three days except to mourn the death of her husband for four month and ten days.*”¹⁷

(Hadith narrated by Bukhari and Muslim)

Through that hadith, Rasulullah S.A.W had ordered all wives who are being divorced by their husband to do that 'iddah, except for the wives who are not conceived by their husband. This is because, that order to the compulsory for that kind of wives.

¹⁶ Muslim. n.d. *Sahih Muslim*. n.pl. Tafsir Al-Qurtubhi. Juz'12 p.249.

¹⁷ Al-Bukhariyy, 1937. *Sahih al-Bukhariyy*. Bayrut: Darul Ihya' al-turath. Juz'17:p.237. #4995.

2.2.2 THE EVIDENCE FROM *IJMA'*

All jurists have the same opinion, stated that '*iddah* is compulsory for the divorced women and the women whom their husband are passed away because the sexual intercourses are happened among them without obstacles through the lawful marriage.

But, they have different opinion about the action of some '*iddah*. All jurists have same opinion, stated that the divorce before having sexual relation intercourse and before *khulwah* is not compulsory to do that '*iddah* except if the husband had passed away.¹⁸

This is based on Allah S.A.W say;

يَأَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُونَهَا .

Meaning: “ *O you who believe! When you marry believing women, and then divorce them before you have touched them, you do not have to wait a period of 'iddah (waiting) for them (to complete the divorce).*”

(Al-Qur'an. Al-Ahzab 33:49)

Based on the above verse, stated that each woman whom their husband had passed away, they are compulsory to do '*iddah* with the '*iddah* for four months and ten days.

2.3 THE REASONS THAT '*IDDAH* IS COMPULSORY.

Generally, there are three main reasons which bring the compulsory for woman to do an '*iddah*. There are;

1. Their husband had passed away.

¹⁸ Muhd Fauzi Muhammad. (Dr). 1998. *Pembubaran Keluarga- Undang-undang Keluarga Islam & Empat Mazhab*. Synergymate Sdn. Bhd. Vol. II. p. 85.

2. The divorce with *talaq* or others.
3. The sexual intercourse with *syubhah* is happened.

But, all jurists have the same opinion, stated that the sexual intercourse on the lawful marriage are the *syubhah* sexual intercourse or sexual intercourse on the damaged marriage are the reasons for the woman to do an 'iddah is compulsory. In addition, Syafie jurist stated that if the wives put their husband's sperms into their wombs also must do the 'iddah.¹⁹

Hanafi's jurist's stated that if the lawful sexual intercourse (*khulwah sahihah*) is happened among the spouse on the lawful marriage and there is no obstacles in doing the sexual intercourse, so the 'iddah is compulsory. But, if the divorce happened before the sexual intercourse, so it is not compulsory for the wife to do 'iddah,²⁰ based on Allah S.A.W mentioned that;

يأيها الذين آمنوا إذا نكحتم المؤمنات ثم طلقتموهن من قبل أن تمسوهن فما لكم عليهن من
عدة تعتدونها.

Meaning: “ O you who believe! When you marry believing women, and then divorce them before you have touched them, you do not have to wait a period of 'iddah (waiting) for them (to complete the divorce).”

(Al-Qur'an. Al-Ahzab 33: 49)

Based on the narration by Imam Ahmad, *khulwah sahihah* is compulsory to do 'iddah, except there is strong obstacles such as hajj ihram or umrah because that ihram is not allowed unlawfully someone to do sexual intercourse. Even though *khulwah* while ihram, 'iddah is not compulsory, so as to the spouse that might not being able to have

¹⁹ Muhd Fauzi Muhammad. (Dr). 1998. *Pembubaran Keluarga. Undang-Undang Keluarga Islam & Empat Mazhab*. p. 106.

²⁰ Muhd Fauzi Muhammad. (Dr). p.106.

sexual intercourse such as blind, fainted or not knowing that they have *khulwah*. So, in that case, it is not compulsory to *'iddah* because they might not having a sexual intercourse.²¹

2.4 THE CONDITIONS FOR OBSERVING THE '*IDDAAH*

There are some conditions for observing the *'iddah* in Islam. This conditions is to protect woman who undergoing to *'iddah* itself. Firstly, divorce or separation effected after conceived or valid retirement (*khulwah sahihah*) in pursuance of a valid marriage contract. Hence, under a valid marriage the *'iddah* shall be rigidly observed on divorce if conceived has actually occurred or according to the Sunnis, is deemed to have occurred in conformity with the Quranic rulings:

والمطلقات بتربصن بأنفسهن ثلاث قروء.

Meaning: “ *Divorce women shall wait concerning themselves for three monthly periods.*”

(Al-Qur'an. Al-Baqarah 2: 228)

Another condition is divorce effected after conceived or valid retirement in pursuance of an irregular marriage contract. It also happened when husband's death after valid or irregular marriage contract, even if before conceived of marriage. All schools maintain that no *'iddah* shall be observed on divorce if the marriage has not been conceived, according to the Quranic ruling:

يأيتها الذين آمنوا إذا نكحتم المؤمنات ثم طلقتموهن من قبل أن تمسوهن فما لكم عليهن من عدة تعتدونها .

²¹ *Ibid.* p.108.

Meaning: “ *O you who believe! When you marry believing women, and then divorce them before you have touched them, you do not have to wait a period of ‘iddah (waiting) for them (to complete the divorce)*”

(Al-Qur’an. Al-Ahzab 33: 49)

From the above verse, it is observed that if the marriage is not conceived, ‘iddah has to be observed in the case of death, but not in the case of divorce. The ‘iddah of widowhood upon the death of her husband is imposed as a mark of respect for the deceased husband.

1.5 THE IMPORTANCE OF ‘IDDAH

There is ‘iddah since the Jahiliyyah period. After that, Islam supported it. This is because there are many benefits in it.²² The main important of ‘iddah is to protect the good generation so that the mixture could ensure the *wali* in the marriage and also could ensure the members of legacy. If a woman is divorced with her husband, and she married again with another man, it is sure that her womb is clean and if she is pregnant, the baby belongs to her with her second husband.

The ‘iddah also has an important object to serve, that is, to make it known whether the woman has a child of the former husband in her womb so that there may be no confusion about the paternity of such a child if the woman seeks to marry.²³ In other words, to ascertain whether the wife is pregnant, and if so, the paternity of the child can be known.²⁴

Another important is to give the time for the divorcee to live together again as a husband-wife and take the wife back as his wife. In other words, give the time for the

²² H.A.Fuad Said. *Perceraian Menurut Hukum Islam*. 1995. JB. Badan Bookstore Sdn. Bhd. pp.182-183.

²³ Syed Khalid Rashid. . 1996. *Muslim Law*. p. 118.

²⁴ Zaleha Kamaruddin. 1998. *Islamic Family Law Issues* 2000. p. 301.

husband to *ruju* to his wife in the *'iddah* period if she is being divorced by *talak raj'ie*. It also can open opportunity for both to think back for living together again if the divorce is occurred with *talak ba'in*. Further, give spouses time for rethinking and reconsideration in the interests of family and children.

In addition, the rationale behind the requirement of a waiting period is to enable establishment of whether or not the woman has conceived. If she has not conceived, she may remarry at the expiry of her *'iddah*, but if she is conceiving, she has to wait until childbirth. In this way, the child's legitimacy and identity can be ascertained.

Finally, to eject the sadness upon the death of her husband, besides to disgorge the loyalty towards him after living happily together. The immediate marriage left many bad effect to the husband's family and could bring many bad impressions towards that marriage. Besides, to mourn the dead husband, in the case of the widow.

CHAPTER THREE

TYPES OF *'IDDAH*.

There are two categories of women who are undergoing the process of *'iddah*, *'iddah* for the wives whose husbands had passed away and *'iddah* for the wives who are being divorced or *talaq* by the husband.

'Iddah for the divorced wives is different because the issue of conceived or not, pregnant or not, having menstrual period or not or menopause will come into picture.²⁵

3.1 *'IDDAH* FOR WIVES HAVE NOT BEEN CONCEIVED.

The women who have been divorced by their husband, but they have not been conceived by the husband, there are two situations. Firstly, divorce while the husband still alive and second, divorce when the husband had passed away.

3.1.1 DIVORCE WHILE THE HUSBAND IS STILL ALIVE.

For a divorced woman who have been not been conceived by their husbands the *'iddah* is not compulsory for them.²⁶ When these women are divorced, they are permitted to marry another man without for the period of *'iddah*. The Qur'an lays down this matter that there shall be no *'iddah* for a woman who is divorced by her husband before he has conceived his marriage with her. It says:

²⁵ Abdul Ghani Azmi Bin Hj. Idris. 1994. *Hukum-hukum Perkahwinan Dalam Islam (Pandangan daripada Pelbagai Mazhab)*. p.392.

²⁶ M. Thalib. (Drs). 1986. *Liku-liku Perkahwinan*. PD. Hidayat. p. 16

يأيتها الذين آمنوا إذا نكحتم المؤمنات ثم طلقتموهن من قبل أن تمسوهن فما لكم عليهن من
 عدة تعتدونها فمتعوهن وسرحوهن سراحا جميلا.

Meaning: “ *O you who believe! When you marry believing women, and then divorce them before you have touched them, you do not have to wait a period of ‘iddah (waiting) for them (to complete the divorce), so give them a present and set them free in a handsome manner.*”

(Al-Qur’an. Al-Ahzab 33: 49)

The above verse clear stated that a divorce woman who have not been conceived by their husband is not compulsory to do an *‘iddah* and they are permitted to marry another man without period of *‘iddah*.

But, in section 14(3) Islamic Family Law Enactment (Federal Territories) 1984 provided that, if the woman alleged she was divorced before the marriage had been consummated, she shall not, during the ordinary period of *‘iddah* for a divorce, be married to any person other than her previous husband, except with the permission of the Syariah Judge having jurisdiction in the place where she resided. This provision as regard to prevent of false accusation did by a woman to deny the intercourse, in relation to remarry before end of *‘iddah* period.

3.1.2 DIVORCE WHEN THE HUSBAND HAD PASSED AWAY.

For case of termination of marriage due to the death of the husband and the couple never been conceived, the widows shall have an *‘iddah* became is *‘iddah* for the women who have been conceived by the husband. The period of *‘iddah* is four months and ten days. The extra period of ten days provides for mourning days by the widow.²⁷

²⁷ Abdul Ghani Azmi Bin Hj. Idris. 1994. p. 393.

The Qur'an said:

والذين يتوفون منكم ويذرون أزواجا يتربصن بأنفسهن أربعة أشهر وعشرا. فإذا بلغن أجلهن فلا جناح عليكم فيما فعلن في أنفسهن بالمعروف. والله بما تعملون خبير.

Meaning: “ *If any one of you die and leaves widows behind him they shall wait concerning themselves for four months and ten days. When they have fulfilled their term, there is no blame on you if they dispose of themselves in a just and reasonable manner. And God is well acquainted with what you do.*”

(Al-Qur'an. Al-Baqarah: 234)

Hence, the wives whose husbands had passed away must complete the period of *'iddah* four months and ten days even though they have not never been conceived by the husbands. This is because to know that the husband has completed his right as a husband and to appreciate the husband's rights.

However, if a person should give a revocable divorce and hold he then die while the divorced is observing *'iddah*, she shall observe *'iddah* four months and ten days from the time of the husband's death and remaining period of *'iddah* due on account of the divorce shall not subsist any longer.

3.2 **'IDDAH FOR THE WIVES HAVE BEEN CONCEIVED.**

The wives that have been conceived and then being divorced by their husbands comprises of three groups, the women who are having menstrual period, the women who are not having menstrual period and pregnant women.²⁸

²⁸Abdul Ghani Azmi Bin Hj. Idris. p. 393.

3.2.1 THE WOMEN WHO ARE HAVING MENSTRUAL PERIOD.

'*Iddah* for the women who are having menstrual period is three times of *quru*', that is three times of having menstrual period or three times of clean from that.²⁹ This means that, if it has actually been conceived, the wife has to observe '*iddah* three menstrual courses or three months if she is not subject to them. The period of '*iddah* shall begin from the time of the death of her husband.

As mentioned by Allah;

والمطلقات يتربصن بأنفسهن ثلاث قروء.

Meaning: “ *Divorce women shall wait concerning themselves for three monthly periods.*”

(Al-Qur'an. Al-Baqarah: 228)

The word *quru*' in the above verse is a collective noun of *qur'un* which means menstrual period or clean. The word *quru*' provides two meanings, due to different interpretation by the Muslim jurists. The Syafie and Maliki jurists give the meaning of the word *quru*' as clean, so the '*iddah* for the women who are being divorced when they still alive after being consummated is three times of clear.³⁰

On the other hand, the Hanafi jurists define *quru*' as menstrual period. Hence, the period of '*iddah* for the women who are being divorced when they are still alive after being conceived is three times of having menstrual period, not three times of clean. Whereas the period of '*iddah* according to Imam Abu Hanifah is 60 days.³¹

²⁹ Abdul Ghani Azmi Bin Hj. Idris .pp. 393-394.

³⁰ *Ibid.* p.394.

³¹ *Ibid.* p.394.

3.2.2 THE WOMEN WHO ARE NOT HAVING MENSTRUAL PERIOD.

The women who are not having menstrual period, either because they do not reach the puberty yet or menopause. In this cases, the period of 'iddah is three months.³²

The Holy Qur'an said;

والى يئسن من المنخىض من نساءكم إن ارتبتم فعدتن ثلاث أشهر والى لم يخضن وأولات
الأحمال أجلهن أن يضعن حملهن.

Meaning: “ *Such of your women who have passed the age of monthly courses, for them the prescribed period, if ye have any doubt, is three months, and for those who have no courses (it is the same)* ”

(Al-Qur'an. Al-Talaq 65: 4)

If a wife is being divorced by her husband and suddenly she is not having menstrual period but she comes from the group of having menstrual period and does not know the cause of no period, she must have an 'iddah because of a 'iddah pregnant woman for nine months (the longest pregnancy 'iddah). If the wife confirmed is not pregnant, she can continue the period of 'iddah menopause women that is four months or more. The total period of her 'iddah is for a year or 12 months.³³

A woman who menstrual period and they are being divorced by the husband in doing 'iddah for women who are never having the menstrual period (three months), all of sudden the period comes again has it and she must change her 'iddah with 'iddah for menstrual period, that is three times of clean or three times of menstrual period. If that

³² Abdul Ghani Azmi Bin Hj. Idris. p.395.

³³ *Ibid.* p.395.

first *'iddah* (three months) is finished, so she is not compulsory to do an *'iddah* again with that *'iddah* for menstrual period.

3.2.3 PREGNANT WOMEN.

The women who are being divorced or her husband had passed away and she is in pregnant, they must complete the *'iddah* until they delivered the baby or the babies are alive or dead, in a good condition or handicap.³⁴

This matter is supported by hadith from Rasullulah S.A.W, narrated by Miswar bin Makhramah, he said:

أن سبيعة الأسلمية نفست بعد وفاة زوجها بليل فجاءت إلى النبي فاستأذنته أن تنكح فأذن لها فنكحت.

Meaning: “ *Subai'ah Al-Aslamiah had delivered several night after the death of her husband, hence she came to the Prophet (p.b.u.h) and asking a permission to remarry to another, and he gave the permission, then Subai'ah remarried*”³⁵

(Hadith narrated by Al-Bukhari)

In another narration, it is said that:

أنها وضعت بعد وفاة زوجها بأربعين ليلة.

Meaning: “*Indeed Subai'ah had delivered after 40 nights of the death of her husband.*”³⁶

(Hadith narrated by Al-Bukhari)

³⁴ Abdul Ghani Azmi Bin Hj. Idris . p.396.

³⁵ Al-Bukhariyy. *Sahih Al-Bukhariyy*. n. pl. Kitab Talaq. Juz'17: p.230. #4985.

³⁶ Al-Bukhariyy. *Sahih Al-Bukhariyy*. p. 230. #4984.

Based on that Hadith, *'iddah* for the pregnant woman is after she gave birth either because of being divorced or being left behind by her dead husband, either her baby is alive or dead, in good condition or handicap, or either that baby has his own soul or not. So, as same as the woman who had an abortion, so her *'iddah* is after gives birth to her baby.

3.3 THE *'IDDAH* FOR THE WIVES WHOM THEIR HUSBAND HAD PASSED AWAY.

The women whom husbands had passed away must follow the period of *'iddah* four months and ten days if they are not pregnant. The period of *'iddah* shall begin from the time of the death of her husband.³⁷

Allah said that;

والذين يتوفون منكم ويذرون أزواجا يتربصن بأنفسهن أربعة أشهر وعشرا.

Meaning: “ *If any one of you die and leaves widows behind him they shall wait concerning themselves for four months and ten days.*”

(Al-Qur'an. Al-Baqarah 2: 234)

Based on the above verse, if a women face *talaq raj'i* by her husband who has passed away in the period of *'iddah*, it is compulsory for that woman to follow the period of *'iddah*. This is because when she has been left behind by her dead husband, it is actually still as his wife. Because of that, it is compulsory for her to do the *'iddah* four months and ten days as proposed by *Syarak*.

³⁷ M. Thalib. (Drs).1986. *Liku-liku Perkahwinan*. p.166.

3.4 THE 'IDDAH FOR WOMEN WHO ARE HAVING *ISTIHADHAH*.

The women who are having *istihadhah* are as same as the women who are having menstrual period. If the menstrual period is occurred for three times, so their 'iddah is finished. Whereas, if they have menopause so their 'iddah is finished in 3 months and 10 days.³⁸

3.5 THE 'IDDAH FOR THE WOMEN WHO ARE BEING *KHULU*'.

The women who are being *khulu*' are stated in the hadith of Rasulullah S.A.W, pointed that their 'iddah is for having menstrual period at one time.³⁹ Based on the history of Thabit, Rasulullah said, that:

خذ الذي اها عليك واخل سبيلها. قال : نعم. فأمرها رسول الله صلى الله عليه وسلم أن تعتد بخصية واحدة وتلحق بأهلها.

The meaning: Let take her own (wife Tsabit) for you (Tsabit) and make easy her business. He answer: Yes. Then, Rasulullah ask wife Tsabit to do an 'iddah with period one time and give back to her family.

Based on that history, its clearly stated a women who are being *khulu*' should having menstrual period at one time.

In conclusion, the types of 'iddah can divided into two categories of women who are undergoing the process of 'iddah, that is 'iddah for the wives whose husband had passed away and 'iddah for the wives who are being divorced or *talaq* by the husband.

³⁸ M. Thalib. (Drs). pp.166-167.

³⁹ M. Thalib. (Drs). p.166.