



## Legal Consequences of Marriage During Iddah Period Based on Compilation Islamic law

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**Abstract:** This journal discusses marriage during the Iddah period. In Article 2 of the Compilation of Islamic Law, it is stated that marriage according to Islamic law is marriage, which is a very strong mistaken gholiidhan contract to obey Allah's commands. However, not all Islamic teachings can be implemented properly. This is evidenced by the existence of couples who do not care about iddah issues. Carrying out iddah for women is considered a form of worship. The type of research used types of sociological research, which aims-describes the implementation of marriage during the Iddah period and the legal consequences of marriage during the Iddah period. The results of the study's three main points can be concluded. First, the implementation of marriage during the iddah period is the same as marriage in general, it's just that the marriage is carried out during the iddah period so the marriage is invalid. Second, because the marriage law during the iddah period will arise, the husband and wife will not get a marriage certificate, and when the marriage takes place there will be hereditary problems.

**Keywords:** Marriage; Iddah; Islamic Law Compilation

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## 1. Introduction

Indonesia is a constitutional state by the mandate of the 1945 Constitution of the Republic of Indonesia Article 1 paragraph 3. Law is a social phenomenon and is part of the nation's culture, which has regulated the order of life in Indonesian society by laws that have been in effect since long ago. One example of a legal product is marriage law. Marriage is a very important institution in society. The existence of this institution is to legalize the legal relationship between a man and a woman.<sup>1</sup>

Humans are by nature social beings who cannot live alone but need other people in their lives. Humans as social beings are the creation of every human being, both male and female partners. Naturally, need another person (opposite sex) to be a partner in his life in a marriage bond. <sup>2</sup>The marriage bond cannot be equated with an engagement bond in civil law, or not only to get offspring, but more than that, namely to build a happy family full of love, reassure the soul and end with obtaining inner and outer happiness. Happiness as a form of manifestation of the physical and spiritual well-being of citizens is one of the goals of independent Indonesia. The state has an interest in protecting the interests of its citizens, then Law No. 1 of 1974 concerning Marriage and followed by various technical regulations under it.<sup>3</sup>

Marriage is a religious order regulated by Islamic law and is the only way of channeling sex that is legalized by Islam. From this point of view, when a person is married at the same time he not only has the desire to carry out religious orders (shari'a), but also has the desire to fulfill his biological needs which by nature must be channeled.<sup>4</sup>Marriage according to Islam is a marriage that is sunnah of the Prophet Muhammad, therefore as followers of a good Prophetj they must marry. In Islam, marriage is not just a civil matter, but a religious matter and event, because marriage is done to fulfill the sunnah of Allah and the sunnah of the Prophet.<sup>5</sup>Furthermore, a marriage that is recognized and legal to perform in Indonesia is a marriage described in Article 1 of the Marriage Law, namely marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household. based on the belief in the One and Only God.<sup>6</sup>This Marriage Law was formed in order to carry out the mandate of Article 28B paragraph (1) of the 1945

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<sup>1</sup> R Soeroso, "Comparison of Civil Law," 2001.

<sup>2</sup> M Ali Hasan, "Pedoman hidup rumah tangga dalam islam cetakan ke-2," *Jakarta: Prenada Media Group*, 2003.

<sup>3</sup>Nasrudin, N., Kasim, N. M., & Tijow, L. M.. (2021) *Pencatatan Perkawinan Berdasarkan Penerapan Objektivikasi Hukum Perkawinan Islam di Indonesia*. Jurnal Syntax Admiration2(10)..

<sup>4</sup> Ahmad Atabik dan Khoridatul Mudhiihah, "Pernikahan Dan Hikmahnya Perspektif Hukum Islam," *jurnal pemikiran hukum dan hukum islam* 5, no. 2 (2016): 286.

<sup>5</sup> Arso Sosroatmodjo, marriage law in Indonesia, 1975.

<sup>6</sup> See Article 1 of Law Number 1 of 1974 concerning Marriage.

Constitution, that the only way to legalize sexual relations is through a legal marriage, namely one carried out by a man and a woman according to their respective religions.<sup>7</sup>

Marriage law in Islam has a very important position, therefore the laws and regulations regarding marriage are regulated and explained clearly and in detail. Islamic marriage law basically does not only regulate the procedures for carrying out marriages but also regulates all issues that are closely related to marriage. The importance of marriage for human life in general and especially for Muslims is as follows:<sup>8</sup>

1. By carrying out a marriage, a household can be formed where life in the household can be carried out in a peaceful and peaceful manner accompanied by a sense of affection between husband and wife.
2. With a valid marriage, human relations can be carried out, both individually and in groups, between men and women in an honorable and lawful manner, in accordance with the position of humans as other creatures of God.
3. Carrying out a marriage by following the provisions stipulated in the Al-Qur'an and the Sunnah of the Prophet is one of the acts of worship for Muslims.
4. By carrying out a legal marriage, it is expected to obtain legal offspring in the community so that the continuity of life in the family and offspring can continue in a clear and clean manner.
5. With the occurrence of marriage, a family arises which is the core of social life, so that it can be expected that a community life will emerge that is orderly and in a peaceful atmosphere.

In Islamic Law, it is stated that there are several marriages which are prohibited (haram) which can be distinguished between those which are prohibited forever and those which are prohibited temporarily. What is prohibited forever are marriages carried out because of blood ties, marital ties, breast-feeding ties and because of adultery. What is prohibited for the time being are marrying women who are related at the same time, marrying more than four women at the same time, wives who have been divorced three times, women of other people's wives, and women who are still in the state of divorce (Q.IV: 32 and the hadith of Mutafaq Alaih and from Ibn Hibban).<sup>9</sup>

According to KHI article 115, namely divorce can only be carried out in front of the Religious Court hearing after the Religious Court has tried and has not

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<sup>7</sup> Dolot Alhasni Bakung, "Analisis UU NO. 1 Tahun 1974 Tentang Perlindungan Anak Terkait Perkawinan Dibawah Umur (Studi Pada Masyarakat Batu Layar Provinsi Gorontalo)," ALHURRIYAH: Jurnal Hukum Islam 15, no. 1 (2018): 15–27, 18.

<sup>8</sup> Munir Fuady, *concept of civil law*, 2014.

<sup>9</sup> Hilman Hadikusuma, *hukum perkawinan indonesia menurut perundangan hukum adat hukum agama*, 2007.

reconciled the two parties. Therefore, the waiting period is calculated from the date of the decision which has permanent legal force, while for marriages that break up due to death, the waiting period is calculated from the husband's death. Dissolution of marriage due to physical death of the husband, that is, indeed with death the corpse is known so that the death is truly biological, as well as juridical death, namely in the case of a husband who is *mafqud* (disappeared, it is not known whether he is still alive or dead). For a wife whose husband has died, it is to offer condolences or mourn and at the same time guard against slander.

The reality that occurs in people's lives is that there are people who carry out unregistered marriages or unregistered marriages and marriages during the *iddah* period. Article 6 of the Compilation of Islamic Law states that marriage must take place before and under the supervision of a Marriage Registrar and marriages performed outside the supervision of a Marriage Registrar do not have legal force. Article 2 of the Marriage Law also explains that every marriage is recorded according to the applicable laws and regulations. As we know so far, *iddah* only applies to women and not to men. Carrying out *iddah* for women is considered as part of worship.

Based on this case, her marital status was considered invalid because it was not in accordance with Islamic law and positive law in Indonesia. According to Article 11 of the Marriage Law specifically for women whose marriages have broken up due to a divorce or divorce from their husband, a waiting period applies before they can remarry. The waiting period is regulated in Article 39 of Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage which stipulates that for a widow to remarry if her marriage is broken up due to divorce the waiting time is 130 days, whereas if If the woman is still menstruating, then the waiting period is three times the sacred period of menstruation or equal to 90 days.

In Indonesian law, human rights have limits, namely limits where each individual may not violate the norms/values of religion, decency, public order, or security. This is done in order to realize the protection of human rights itself,<sup>10</sup> Protecting human rights guaranteed in the Constitution is an obligation for the state.<sup>11</sup> Indeed, due to the development of the times, such rights also develop.<sup>12</sup>

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<sup>10</sup> Dian Ekawaty Ismail and Yowan Tamu, "Upaya Perlindungan Hak-Hak Tersangka/Terdakwa Melalui Mekanisme Praperadilan Di Kota Gorontalo," *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada* 21, no. 1 (2009): 81–92, 83.

<sup>11</sup> Ahmad Ahmad and Novendri Mohamad Nggilu, "Denyut Nadi Amandemen Kelima UUD 1945 Melalui Pelibatan Mahkamah Konstitusi Sebagai Prinsip the Guardian of the Constitution," *Jurnal Konstitusi* 16, no. 4 (2020): 785–808, 788.

<sup>12</sup> Lisnawaty Badu, "Euthanasia Dan Hak Asasi Manusia," *Jurnal Legalitas* 5, no. 01 (2012), 3.

In the Compilation of Islamic Law, marriage during the iddah period is clearly prohibited, namely in Article 40 that it is prohibited to enter into a marriage between a man and a woman in certain circumstances:

1. Because the woman in question is still married to another man;
2. A woman who is still in her iddah period with another man;
3. A woman who is not Muslim.

The implementation of the iddah period is guided by Article 153 paragraph (2) of the Compilation of Islamic Law which states: a. If the marriage is broken up due to death, even though qobla al dukhul, the waiting time is set at 130 days. b. If the marriage is broken up due to divorce, the waiting time for those who are still menstruating is set at 3 (three) sacred times with a minimum of 90 (ninety) days. c. If the marriage is broken up due to divorce while the widow is pregnant, the waiting time is fixed until she gives birth. d. If the marriage is broken up due to death, while the widow is pregnant, the waiting time is fixed until she gives birth. From the explanation above, it is clear that marriage during the iddah period is prohibited by law or the Compilation of Islamic Law. The prohibition of marriage during the iddah period here certainly has its reasons.

According to Islamic law, marital status during the iddah period is invalid. This can affect how the status of the child will be. Children born from illegitimate marriages are called children out of wedlock. According to Article 100 of the Compilation of Islamic Law, a child out of wedlock only has a family relationship with his mother and his mother's family. The legal consequences for the child arising from the marriage are that the child is not entitled to obtain bloodline relations, maintenance, inheritance rights (inheritance), and guardianship from the father who married him, but to his mother. All Islamic teachings including the laws contained therein to achieve the benefit of humans by maintaining the goals of sharia, namely preserving religion, soul, intellect, lineage and property.

## **2. Method**

In this study, researchers needed several materials in conducting research, there were several materials obtained including primary, secondary and tertiary legal materials. This study uses a number of legal concepts. The type of research or approach used by the author is sociological legal research.

## **3. Consequences of Marriage Before the Iddah Period Based on Compilation of Islamic Law**

Marriage is generally done by adults regardless of profession, religion, ethnicity, poor or rich, living in a village or in a city. However, not a few people who already have both physical and mental abilities will find a partner according to what they want. Unfortunately, not everyone can understand the essence and

purpose of a complete marriage, namely to find true happiness in a household. In realizing the goal of a marriage, one of the principles contained in Law Number 1 of 1974 concerning marriage is that the prospective bride and groom are mentally and physically mature, so that they can realize a good marriage without ending in divorce. (Bastomi 2016)<sup>13</sup>To be able to enter into a marriage, each couple must have a number of conditions specified in Article 6 to Article 12 of the Marriage Law No. 1 of 1974. Articles 6 to 12 cover the main conditions, and article 12 covers the material conditions that are regulated in the Marriage Law. Couples who want to get married must meet these conditions.<sup>14</sup>

“Iddah comes from the Arabic language, namely al-'adad which means number. The use of this word is because if you explain about iddah, you will definitely talk about the date, month, and year. Also regarding the number of timeframes, as quoted from Faith Zainudin Al-Malibari in his book *Fathul Mu'in*, Wati Rahma Ria explained that the safe period for a woman to wait (restraint) so that it can be known that her womb is free for reasons of ta'abbud or from being pregnant .<sup>15</sup>The iddah period is carried out as a consequence of ending a marriage. This iddah period is carried out by a woman or a widow. According to the language, iddah is defined as a count, so according to terms it is defined as the process of a woman deciding on marriage to wait so that it can be known whether the woman's uterus is clean or empty which can be marked by the birth process or counting months or by calculating the holy period or menstruation (quru ). Sayid Sabiq defines the iddah period as the time given to women who have just decided to marry either because of the death of their husband or because of a divorce to wait and are not yet allowed to marry. The iddah period must be carried out by a woman after separation from her husband either due to the death of the husband or due to divorce.<sup>16</sup>

There are three types of iddah due to the breakup of a marriage, namely; Iddah by giving birth. Intended for women who are divorced or abandoned by their husband while pregnant. The basis is the word of Allah SWT. Meaning: "and women who are pregnant, their iddah period is until they give birth to their wombs". Among the wisdom of a woman who is pregnant until she gives birth is that in the womb of a divorced woman there is a share or right of her ex-husband, and this right should not be neglected or belittled by marrying another man, Iddah with Aqra'. Intended for women who have had and are still

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<sup>13</sup> Sri Nanang Meiske Kamba dan Nur Moh Kasim, “Sosialisasi Pembinaan Anak dalam Rangka Mencegah Perkawinan di Bawah Umur Berbasis Masyarakat,” *Jurnal Abdidas* 3, no. 4 (2022): 662–66.

<sup>14</sup> Zuriyati T Deni, Nur Mohamad Kasim, dan Dolot Alhasni Bakung, “Faktor Penghambat Lembaga Kantor Urusan Agama Dalam Mengatasi Perkawinan Di Bawah Umur,” *Jurnal Pendidikan dan Konseling (JPDK)* 4, no. 6 (2022): 13284–91.

<sup>15</sup> Rahmi Ria Wati and MUHAMAD ZULFIKAR, “ISLAMIC FAMILY LAW” (Zam-zam Tower, 2017).

<sup>16</sup> Rahmi Ria Wati dan MUHAMAD ZULFIKAR, “HUKUM KELUARGA ISLAM” (Zam-zam Tower, 2017).

menstruating who are divorced from their husbands while not pregnant. The basis is the word of Allah, namely: "a woman who divorces her husband must undergo an iddah period of three quru". As well as Iddah with a matter of months. There are two types of iddah; first, iddah with a month count instead of aqra'. Second, iddah which is basically determined by months, not as a substitute for aqra'. Iddah with months, instead of aqra', is intended for menopausal women. Iddah here for three months. As Allah says: "and women who are no longer menstruating (menopausal) among your women if you are in doubt (about their iddah period), then their iddah period is three months; and so (also) women who do not menstruate. The determination of iddah is open to find out whether there is a womb in the womb or not, because it is clear that a woman who is not menstruating cannot get pregnant. However, the determination of iddah here has two objectives, first, to respect the marriage contract. Second, women who never menstruate, menopause and a wife who is still small is equated with a woman who has had menstruation. The three month period as stated in this text replaces three menstruation, because women usually experience menstruation once in a month. Iddah with calculations, as a basic stipulation, is intended for women whose husbands die when they are not pregnant, this iddah is for four months and ten days. As the word of God: "those who died among you by leaving the wives (let the wives) suspend themselves (iddah) four months and ten days". Here one of the wisdoms of iddah is to use the month count and not the aqra' as the iddah of a woman whose husband divorces her, in which the husband is alive and he is the person who knows best about the condition, habits and menstrual period of his ex-wife. Whereas The three month period as stated in this text replaces three menstruation, because women usually experience menstruation once in a month. Iddah with calculations, as a basic stipulation, is intended for women whose husbands die when they are not pregnant, this iddah is for four months and ten days. As the word of God: "those who died among you by leaving the wives (let the wives) suspend themselves (iddah) four months and ten days". Here one of the wisdoms of iddah is to use the month count and not the aqra' as the iddah of a woman whose husband divorces her, in which the husband is alive and he is the person who knows best about the condition, habits and menstrual period of his ex-wife. Whereas The three month period as stated in this text replaces three menstruation, because women usually experience menstruation once in a month. Iddah with calculations, as a basic stipulation, is intended for women whose husbands die when they are not pregnant, this iddah is for four months and ten days. As the word of God: "those who died among you by leaving the wives (let the wives) suspend themselves (iddah) four months and ten days". Here one of the wisdoms of iddah is to use the month count and not the aqra' as the iddah of a woman whose husband divorces her, in which the husband is alive and he is the person who knows best about the condition, habits and menstrual period of his ex-wife. Whereas as a basic stipulation, it is intended for a woman whose husband has died while not pregnant, this iddah is for four months and ten days. As the word of God: "those who died among you by leaving the wives (let the

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Iddah is the termination of the marital relationship between a man and a woman, women are not required to marry until the time specified by the Shari'a. The purpose of the iddah period is to find out whether the divorced woman is pregnant or not. In addition, the purpose of the iddah period is to find out whether the woman's womb is clean after the divorce from the previous marriage. For a woman to keep or stop her desire to remarry is an act of worship because she has obeyed the laws of Allah SWT, and also to show her condolences for the death of her husband to return to the bosom of Allah.<sup>18</sup>

Marriage during the iddah period is regulated in Article 11 of the Marriage Law No. 1 of 1974, namely for women whose marriages have broken up because of a divorce or divorce from their husband, a waiting period applies to them before they can remarry. The waiting period is regulated in article 39 of the Republic of Indonesia government regulation No. 9 of 1975 regarding the implementation of law no. 1 of 1974 concerning marriage which stated that: paragraph (1) letter a) if the marriage is broken up due to death, then the waiting time is set at 130 days.

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<sup>17</sup>Husnul Khitam, 2020, *Livelihood and Iddah: The Perspective of Islamic Law*, Az Zaqra, Vol. 12, No. 2, h. 199.

<sup>18</sup>Nurhayati, 2019, *Iddah in Divorce*, *Warta Journal*, Edis. 62, ISSN:1829-7463, p. 47-48



letter b) if the marriage is broken up due to divorce, then the waiting period for women who are still menstruating is set at 3 sacred times with a minimum of 90 days and women who are not menstruating is set at 90 days. letter c) if the marriage breaks up while the widow is pregnant, then the waiting period is set until delivery. Implementation of the iddah period is also regulated in the origin 153 paragraph 2 of the Compilation of Islamic Law (KHI) which states that: a. if the marriage is broken up due to death, even though qobla al dukhul, the waiting time is set at 130 days. b. If the marriage is broken up due to divorce, the waiting time for those who are still menstruating is set at 3 sacred times for at least 90 days, and for those who are not menstruating again, it is set at 90 days. c. If the marriage is broken up due to divorce while the widow is pregnant, the waiting time is determined until she gives birth. d. If the marriage is broken up due to death, while the widow is pregnant, then the waiting time is determined until she gives birth. For a woman whose marriage has been broken up due to her divorce and she has not had sexual intercourse with her previous husband, it is not valid for her to carry out iddah. The calculation of the iddah period for divorce is calculated from the fall of a court decision that has permanent legal force, while for death it is calculated from the death of the husband.

Marriage during the iddah period is considered a serious offence. The consequence can invalidate the validity of the marriage because the provisions of the iddah period are one of the conditions for the validity of a widow's marriage. The jurists agree that marriage during the iddah period is invalid, as stipulated in the Marriage Law Number 1 of 1974 Article 2 paragraph (1) "marriage is valid, if it is carried out according to the laws of each religion and belief". This means that marriages carried out during the iddah period are contrary to Islamic teachings, as stated in the Compilation of Islamic Laws (KHI) Article 40 letter (b) which prohibits the marriage of women who are still in the iddah period with other men. Marriages that take place during the iddah period include fasid conditions or damage to the marriage and are declared invalid must be separated first and only remarried after the woman's iddah period ends. Women who undergo iddah are women who are divorced from their husbands, not men or their husbands. A woman who is divorced from her husband in any form, divorced by life or death, is pregnant or not, is menstruating or not, is obliged to undergo the iddah period. Al-Ghazali explained that maslahah means something that brings benefits or benefits and keeps away from harm.

According to Islamic law, marital status during the iddah period is invalid. This can affect how the status of the child will be. Children born from illegitimate marriages are called children out of wedlock. According to Article 100 of the Compilation of Islamic Law, a child out of wedlock only has a family relationship with his mother and his mother's family. The legal consequences for the child arising from the marriage are that the child is not entitled to obtain bloodline relations, maintenance, inheritance rights (inheritance), and guardianship from the father who married him, but to his mother. All Islamic teachings including

the laws contained therein to achieve the benefit of humans by maintaining the goals of sharia, namely preserving religion, soul, intellect, lineage and property. The terms of the iddah period do not recognize tolerance. reduction in quantity (rukhsah) or an emergency because this is Allah's commandment "women whose husbands divorce should hold back (wait) for three times holy" (Al-Baqarah: 228) and "those who died among you leaving behind wives (then let the wives) pray four months and 10 days. (Al-Baqarah: 234). If the woman is a widow during pregnancy, "then the waiting time for their iddah is until they give birth to their womb". (At-Thalaq: 4) (Al-Baqarah: 234). If the woman is a widow during pregnancy, "then the waiting time for their iddah is until they give birth to their womb". (At-Thalaq: 4) (Al-Baqarah: 234). If the woman is a widow during pregnancy, "then the waiting time for their iddah is until they give birth to their womb". (At-Thalaq: 4)

According to the author's analysis, marriage during the iddah period is not valid so that if a husband and wife have sexual intercourse, then it is tantamount to committing adultery. So that if you have a child, the status of the child is a child out of wedlock and only has a civil relationship with his mother. Marriage during the iddah period also has an impact on the surrounding community because it is a bad example for society. Because one of the parties knows about having married during the iddah period, it is possible that the other party will also do the same. Thus the implementation of marriage during the iddah period will only bring harm.

The main lesson of iddah is actually not just wanting to know the seeds of a woman's pregnancy when her husband divorces, as has been believed so far. This is because technological advances in the medical field have provided a clear way to find out whether a fetus is present in the womb. So it makes no sense if iddah is only to find out whether a woman is pregnant or not. However, the law on iddah places more emphasis on introspection, rethinking, condolences and so on. Iddah was actually proclaimed as a vehicle for reconsidering the pros and cons of divorce. In addition, iddah is felt to function more as a symbolic bond for the existence of sadness that is so stabbing at husband and wife. From here we can read that iddah is a binding moral ethics of divorce between husband and wife.

By paying attention to the provisions of iddah, it can be understood that iddah is a period wait determined by syara' for a persona woman who has been divorced by her husband, whether divorced or divorced, during this waiting period she may not accept another person's proposal or marry another man before the end of her iddah period. From the explanation above, iddah is an obligation that must be carried out. In such a way because it is a mandatory thing in Islamic law. Thus marriage during the iddah period is not valid according to Islamic law and positive law in Indonesia. The Compilation of Islamic Law clearly regulates the dowry provisions to protect the rights of the wife, even if a divorce occurs the wife still has the right to the dowry she has received. This is in accordance with

Article 35 paragraph (1) a husband whose wife refuses qobla al-dukhul is obliged to pay half the dowry that has been determined in the marriage contract.

#### **4. Conclusion**

Marriage during the iddah period is a serious offence. The consequence can invalidate the validity of the marriage because the provisions of the iddah period are one of the conditions for the validity of a widow's marriage. The jurists agree that marriage during the iddah period is invalid, as stipulated in the Marriage Law Number 1 of 1974 Article 2 paragraph 1 Marriage is valid if it is carried out according to the laws of each religion and belief. This means that marriages carried out during the iddah period are contrary to Islamic teachings, as stated in the Compilation of Islamic Laws (KHI) Article 40 letter (b) which prohibits the marriage of women who are still in the iddah period with other men. Marriages that take place during the iddah period include fasid conditions or damage to the marriage and are declared invalid must be separated first and only remarried after the woman's iddah period ends.

The implementation of marriage during the iddah period is carried out when the woman is still carrying out her niddah period and in practice it is also carried out in front of an invalid guardian because this marriage is only carried out in front of the Kadi so that the marriage is contrary to Islamic law and positive law in Indonesia. The legal consequences that will arise are that the husband and wife will not get a marriage certificate, and when the marriage during the iddah period occurs and the prospective wife has mixed, there will be lineage problems (offspring), and children born from illegitimate marriages, the status of the child is called with children out of wedlock. So the legal consequence is that the child only gets civil rights from the mother and the mother's family line because the marriage during the iddah period is not sane and is carried out in series.

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