

**THE PROCEDURE AND IMPLEMENTATION OF MARITAL MATTERS
AMONG MALAYSIAN ARMY**

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

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In the name of Allah the Most Gracious Most Merciful. Praise to Allah S.W.T the Almighty, the cherisher and sustainer of the universe. May the peace and blessings of Allah the Almighty be upon Muhammad the seals of prophets.

Here, I would like to express my gratefulness to Allah, as I am able to complete this academic project under the topic ' The Procedure and Implementation Of Marital Matter Among Malaysian Army'. This project is a partial fulfilment to all third year Law students to obtain a bachelor degree from the Islamic Science University of Malaysia (USIM).

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ABSTRAK

Kajian ini merupakan kajian bagi mengetahui procedure dan pelaksanaan hal-hal kekeluargaan yang berkaitan dengan nikah, cerai, rujuk dan sesi kaunseling bagi anggota tentera. Selain itu, ia bertujuan untuk mengenalpasti faktor-faktor yang membawa kepada perceraian yang berlaku dikalangan anggota tentera. Disamping itu juga, penulis membuat kajian menggunakan bantuan perpustakaan, sesi temubual serta penggunaan internet untuk mendapatkan bahan rujukan pada perkara-perkara yang menjadi persamaan dan perbezaan diantara anggota tentera dan masyarakat umum sebagai contoh procedure untuk berkahwin, cerai dan rujuk, yang mana anggota tentera merujuk kepada 'Peraturan Dan Arahan Nikah, Cerai, Rujukan, Anggota Tentera 1981'. Hasil daripada kajian ini dapatlah disimpulkan Kor Agama Angkatan Tentera adalah sebuah unit yang memainkan peranan penting dalam mengurus dan mentadbir perkara-perkara yang berkaitan dengan hal ehwal keagamaan. Bagi memenuhi kehendak perkhidmatan dan memastikan proses penerapan nilai-nilai Islam berjalan dengan lancar dan berkesan, setiap anggota KAGAT perlulah bertindak mengikut prosedur yang ditetapkan selari dengan bidangkuasanya yang tersendiri.

ABSTRACT

This study is about the procedures of marriage, divorce, and *rujuk* in the Malaysian military service. The aim is to identify the differences between public and military cases. It is also important to identify the divorce factors among Malaysian Army, and propose suggestions to prevent more divorce from its happening. The writer refers to library, session interview and internet surfing to find out the information. It is responsible in dealing with Islamic affairs, aside from providing services such as counseling, talk, and marital ceremonies. To fill up the service and to ensure that the process trained value of Islam to be a good service, every Army or KAGAT unit must follow the procedure and the jurisdiction given by the Malaysian Defenses System. Besides that, the result of this study might help KAGAT to plan programs that may ensure happy marriages among servicemen. KAGAT is the 'religious' unit of the Army. Then, this research shows that all the parties are responsible to make sure that family institution attains peace and happiness. Both spouses should be prepared to bring the marriage to success and not regard divorce as quickest way out. At the end of this chapter, the writer tries to describe about the obligation and the right between a husband and wife and also the solutions or the best way to overcome a family crisis.

ملخص البحث

يهدف هذا البحث إلى بيان أفكار في الأسرة كالنكاح، والطلاق والرجوع بين قوات برية. إن قوات برية (KAGAT) هو مهم جدا على مسؤوليتهم يأتي في حال الدين الإسلام. كما عرفنا، إن النكاح هو أفكار حسن في الإسلام بسبب على ذلك، يجوز علينا أن نحفظ هذا الصلة من يصار الى التهلكة وهي الطلاق. إن الطلاق من أبغض ما أحل الله به. وللطلاق في الزواج مصلحة ومفسدة ولكن مفسدة أكثر من مصلحة لدى المجتمع. يحتوي أيضا في هذا البحث على تعريف الرجوع وأفكار أخرى الذي يشرح إلى أقوال الفقهاء. فوجدت الكتابة نتجة هذا البحث أن كل شخص ذي أسرة عليه أن يتحمل مسؤوليات والواجبات تجاه أسرة للحصول على الأسرة السعيدة.

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GLOSSARY

<i>Fasakh</i>	revocation, annulment of marriage by reason of any circumstances permitted by Islamic law.
<i>Hadith</i>	tradition
<i>Haram</i>	prohibited
<i>Hanafis</i>	followers of the largest of four school of law Mutually considered " orthodox", derives name From Abu hanifa, shavbani and Yusuf are outstnd Outstanding jurists, represents ancient Iraqi school Adopted as official by ottoman turks and Accordingly followed by court of Sudan, Egypt, Palestin, Syria, Iraqi. Dominan in central asia and India.
<i>Hukum Syara'</i>	Islamic law according to any recognize mazhab.
<i>Hanbali</i>	follower of smallest " ortodox" school. Wahabis Of Arabia repudiate many Hanbali tenets but Adhere to teaching of Habali reformers, Ibn Taimiyah and Ibn Waiyyim.
<i>'Iddah</i>	period of retirement specified for termination of the legal effects of marriage.
<i>Islam</i>	literally means submission to the will of God
<i>Quran</i>	the holy book revealed by Allah S.W.T to Prophet Muhammad S.A.W.
<i>Maliki</i>	followers of " ortodox" school of Hijaz, Malik Bin Anas niminal found in Sudan. Upper Egypt ,throughout North and West Africa.
<i>Majlis</i>	A Board that knows as Majlis Agama Islam Selangor
<i>Mutaah</i>	A consolatory gift that is reasonable according to <i>Hukum</i>
<i>Quran</i>	The mother of Books (Umm Al-Kitab). The Collection of message Allah revealed to the Prophet Muhammad S.A.W over a period Of 23 years. This Book, there is no doubt in it, a guide for those who are consciously aware.

<i>Shafi'I</i>	adherents of school founded by shafi'I , Predominant in lower Egypt, East Africa, Much of Arabia, throughout Southeast Asia.
<i>Sunnah</i>	a precedent based on the prophet acts or saying.
<i>Shari'ah</i>	The collection name for all the laws ordained by Allah SWT for his servants through Prophet Muhammad SAW including the Islamic system of ' aqidah, akhlah, ibadah and mu'amalah.
<i>Taklik</i>	Suspended or attached. It envisages the occurring of something with conditions.
<i>Talak</i>	The repudiation is available only to the husband in Order to divorce his wife.
<i>Zina</i>	Adultery, sexual intercourse, prostitution committed by a couple outside of wedlock.

TRANSLITERATION

1. ALPHABET

<u>Arabic</u>	<u>Latin</u>	<u>Example</u>	<u>Transliteration</u>
ء	'	النساء	An-Nisā'
ب	b	بدري	Badri
ت	t	تفكّر	Tafakkur
ث	th	مباحث	Mabāhith
ج	j	جيلاني	Jālānī
ح	ḥ	حديد	Hadīd
خ	kh	خليل	Khalīl
د	d	داعي	Dā'i
ذ	dz	ذكر	Dzikh
ر	r	رابطة	Rābiṭah
ز	z	زكّر	Zakīr
س	s	سيد	Said
ش	sy	شيخ	Syeikh
ص	.s	صبر	Sabr
ض	ḍ	ضعيف	Dai'f
ط	ṭ	الطور	At-Tur
ظ	ẓ	عظيم	'Azīm
ع	'	عمّان	'Ammān
غ	gh	غافر	Ghāfir
ف	f	فتح الله	Fethullah
ق	q	القسطون	Al-Qāsītūn
ك	k	كثير	Kathīr
ل	l	لم	Lam
م	m	مسلم	Muslim
ن	n	نطفة	Nutfah
و	w	وجودية	Wujūdiah

هـ	h	هريرة	Hurairah
ي	y	يوسف	Yūsuf

2. SHORT VOWEL

<u>Arabic Vocal</u>	<u>Latin Vocal</u>	<u>Example</u>	<u>Transliteration</u>
----- ا	a	أمر	Amr
----- ي	i	عاصم	iḥ‘As
----- و	u	صبر	Sabr

3. LONG VOCAL

<u>Arabic Vocal</u>	<u>Latin Vocal</u>	<u>Example</u>	<u>Transliteration</u>
ا	ā	مذاكرة	Muzākarah
و	ū	المتقون	Al-Muttaqūn
ي	ī	علمين	‘Ālamīn

4. DIPHTHONG

<u>Arabic Vocal</u>	<u>Latin Vocal</u>	<u>Example</u>	<u>Transliteration</u>
و	ww	منورة	Munawwarah
ي	yy	تيمية	Taimiyyah
ي	iy	البخاري	Al-Bukhāriyy

5. EXEMPTION

(hamzah) found at the beginning of a word is transliterated to ء5.1. Arabic letter the letter “a” not to ‘, example:

<u>Transliterated</u>	<u>Example</u>
Ahmad	أحمد

ABREVIATIONS

Dr.	doctor
Hj.	Haji
n.d.	no author/ no artist
narr.	narrated by
n. pl	no place
n. pb.	no publisher
p.	page
pp	pages
SAW	alla Allah ‘alayh wa sallam
SWT	subhānahu wa taālā
vol	volume

CHAPTER ONE

Introduction

1.1 INTRODUCTION

The military institution is the oldest in world. It is established together with the establishment of a country. It is to safeguard the country and to ensure sovereignty. According to Islamic laws, it is considered *Fardhu Kifayah* (collective responsibility) and *Fardhu Ain* (individual responsibility) to defend one's country¹.

There are three services of the Malaysian Armed Forces: Land (*Tentera Darat*), Navy (*Tentera Laut DiRaja Malaysia*), and Air Force (*Tentera Udara Diraja Malaysia*). Included in those services are several branches of the Malaysian Armed Forces: The Royal Malay Regiment, *Kor Risik*, *Kor Agama Angkatan Tentera (KAGAT)* and others. *KAGAT* is the 'religious' unit of the Army. It is responsible in dealing with Islamic affairs, besides providing services such as counseling, talk, and marital ceremonies². Field Marshall Montgomery expressed that an army real strength depends on the strength of the soul, heroism and team spirit, and military discipline.

Excellent kinship between servicemen would spur them to serve well and instill a fighting spirit in their mind. On the contrary, domestic problems can shake their concentration thus making the task of defending the country impossible. Field Marshall Montgomery³ added that if the servicemen's spiritual strength is weak, family problems keep on troubling them, the strength of national security is also affected.

Marital matters like marriages, divorces, *ruju'*, and counseling services are less publicly known due to the fact that not much research has been done to cover those areas.

¹ Kor Agama Angkatan Tentera . 1992. *Panduan Perkahwinan Dan Kekeluargaan Menurut Islam*.Kuala Lumpur: Pustaka Antara. p.2.

² Kor Agama Angkatan Tentera . 1997. *Panduan Perkahwinan Dan Kekeluargaan Menurut Islam*. p. 6.

³ Field Marshall Montgomery. 2000. *Basic an Army*. San Francisco: Travelrs' Tales. p. 56.

Thus, the researcher tries to find out the truth behind marriage procedures, divorces, *ruju'*, and counseling sessions in the Malaysian military services⁴.

1.2 SIGNIFICANCE OF THE RESEARCH

This study is necessary because there are not much academic studies done regarding marital matters in the Malaysian Army. As such, the researcher intends to find out the procedures of marriage, divorce, and *ruju'* in the Malaysian military service, and to identify the difference between public and military cases.

It is also important to identify the divorce factors among Malaysian Army, and propose suggestions to prevent more divorce from happening. Besides that, the result of this study might help KAGAT to plan programs that may ensure happy marriages among servicemen.

1.3 RESEARCH OBJECTIVES

Academically, this study is done as a partial requirement for the degree of Bachelors of *Syariah* and Laws, Islamic Sciences University of Malaysia (*USIM*). In addition, it is also done to identify the procedures involved in the process of marriages, divorce, *ruju'*, and counseling services, from the levels handled by *KAGAT* up to the higher courts of law.

The research is also done to identify the divorce factors among Malaysian army in order to reject the bad impressions regarding the high divorce rate in the Malaysian army. Furthermore, it is also done to analyze the differences of marriage, divorce, *ruju'* processes between the military and public. Finally, it is also done to assist *KAGAT* in handling servicemen family problems, and to propose suitable measures needed to be taken to control this problem.

⁴Kor Agama Angkatan Tentera. 1992. *Panduan Perkahwinan Dan Kekeluargaan Menurut Islam*. Kuala Lumpur: Pustaka Antara. p. 34.

1.4 RESEARCH METHODOLOGY

In completing this research, several methods are used. Most of the information regarding the research is obtained through library research. Among the libraries visited are USIM's Library, *UKM's Tun Sri Lanang* Library, and Kuala Lumpur's Islamic Country Library. In addition, the researcher also calls on the Malaysian Institute of Islamic Training's (*ILMI*) to obtain materials regarding military services in Malaysia.

Besides that, the researcher also browsed the Internet to obtain more information about the Malaysian military and marital matters related to the military. To validate the information, interviews were done with *KAGAT* officers.

1.5 LITERATURE REVIEW

Mimi Kamariah Majid in her book *Family Law in Malaysia* described the Muslim marriage, and attempted to expand the discussion of Islamic Family Law. She also mentioned that the Islamic divorce has several types; *talaq*, *khuluk*, *taklik*, *li'an*, and *fasakh*.

Sulaiman Zakaria in his book *Angkatan Tentera Malaysia* (2005), *KAGAT* had obliged to plan, standardize, and contribute efforts to Islamic preaching and appreciation among *KAGAT* members. In addition, *KAGAT* also improve the spreading of Islamic knowledge by focusing on behavior and deeply understanding the defense services in relation to Islamic laws and views. In addition, *KAGAT* also plays an important role in the implementation and enforcement of Islamic based laws and rules provided by *Majlis Agama Islam Persekutuan*.

Azila Ahmad Sarkawi wrote in her book, *Penceraian di Kalangan Anggota Tentera Malaysia* (1997), that the establishment of *KAGAT* is to plan and implement

Mohd Manshur bin Kiah Masyhadi in his book *Kursus Perkahwinan & Keluarga Bahagia* (1992), expresses many elements of Islamic marriage such as the *Rukun* (compulsory steps), advantages, husbands' and wives' responsibilities after divorce. In addition, he also explains about how to build excellent families.

Siti Syawiah binti Abdullah in her research entitled *Divorce: A Case Study in Temerloh, Pahang* (2006) explains about the definition of divorce, types of divorce in Islam, and issues regarding divorce through Short Messaging System (SMS), telephone, and fax.

Buku Panduan Kor Agama Angkatan Tentera.(1995) explains the procedures and implementation of organizing corpse according to military and Islamic laws.

CHAPTER TWO

THE MARITAL MATTER IN ISLAMIC PERSPECTIVE.

2.1 Definition of Marriage

According to Oxford Advanced Learners' Dictionary, marriage can be defined; as a legal relationship between husband and wife; a state of being married; the ceremony in which two people become husband and wife⁵. Literally, marriage means to gather or assemble or to part together. In *fiqh* terminology, marriage means a union which happens through a union between a man and a woman. This is important to make a relationship, physical and sexual, between a couple permissible⁶.

The *aqad* is also a closed tie or union between a man and woman. This *aqad* allows men and women to live together and make all the elements that prohibited before marriage, legal. The *aqad* marriage is also a promise of relationship between a husband and a wife to live together and to love each other for better or worse⁷.

Besides that, the meaning of marriage is also wider on the Islamic point of view. The *aqad*, for example, can allow a relationship between a man and a woman, so as to make limitations between on their own rights and responsibilities⁸.

The Concept of Marriage from the Islamic Perspective

Islam recognizes marriage as a *sunnatullah*; a general and common practice among all Allah's creatures. Islam does not recognize the concept of '*berselibat*'; instead, it promotes marriage.

⁵ Sally Wehweir, 2000. *Oxford Advanced Learner's Dictionary Of Current English*. New York: McMillan. p. 819.

⁶ Kor Agama Angkatan Tentera . 1992. *Panduan Perkahwinan Dan Kekeluargaan Menurut Islam*. Kuala Lumpur: Pustaka Antara p. 45.

⁷ Zuraidah bt. Azizan. 2004. *A Study On The Ground Of Cruelty For Dissolution Of Muslim Marriage In Selangor*. (Degree Thesis). Uninersiti Sains Islam Malaysia. p. 4.

⁸ Zuraidah bt. Azizan.2004. *A Study On The Ground Of Cruelty For Dissolution Of Muslim Marriage In Selangor*. p. 5.

*Hadith of Prophet: Kitab Naylal –Autar Syarih Muntaqa Al-Akhbar*⁹.

يا معشر الشباب من استطاع منكم الباءة فليتزوج فإنه أغض للبصر و أحصن للفرج، ومن لم يستطع فعليه بالصوم فغينه وجاء.

“Those who can afford (financial and health) to get married have do so, for marriage controls oneself (from sins), and those who can not afford (to get married) should fast for it reduces lust”.

Marriage as a religious worship

In the eyes of Islam, marriage is considered as worship to *Allah SWT* as claimed by Prophet *Muhammad SAW*. To reject or ignore marriage is considered as being deviant to the Prophet’s *SAW sunnah* (teachings and practices). Marriage is part of being human and it is one of the main reasons why *Allah SWT* created human beings. The Prophet *SAW* in his saying: *Kitab Naylal –Autar Syarih Muntaqa Al-Akhbar*.

النكاح سنني فمن لم يعمل بسنني فليس مني.

“The wedding *sunnahku*, then those who are not performing *sunnahku* are not with me”¹⁰.

Marriage fulfills human beings desires

Islam does not regard sexual intercourse as disgusting. Instead, Islam sees it as away to reproduce. *Allah SWT* does not allow its subjects to freely follow their desires including practicing homosexual relationships. He had set a specific law for human relationships based on marriage procedures. As mentioned by the Prophet *SAW*:

النكاح أمهات الأولاد فأني أباهي بكم يوم القيامة.

⁹Muhammad b. Ali b. Muhammad al-Syawkawi. n.d. *Naylal-Autar Syarih Muntaqa Al-Akbar*. n.pl: n. pb. p. 113.

¹⁰Muhammad b. Ali b. Muhammad al-Syawkawi. n.d. *Naylal-Autar Syarih Muntaqa Al-Akbar*. p. 45.

(*Hadith* narrated by Muslim)

“Marriage with women can produce child, indeed I ‘m proud with-you all in doomsday”¹¹.

Marriage overcomes social problems

Marriage’s ultimate goal is to reproduce. It gives peace and teaches couples to share responsibilities. Sometimes, this objective is not fulfilled due to health problems. Thus, polygamy is allowed in Islam as long as husbands are fair towards all their wives. Allah SWT explains this in one of the verses:

فانكحوا ما طاب لكم من النساء مثنى وثلاث وربع فإنخفتم ألا تعدلوا فوحدة

(Al-Qur’ān. An- Nisa’ 4:3.)

“Marry women of your choice, two or three or four; but if ye fear that ye that ye shall not be able to deal justly (with them), then only one” (Al-Qur’ān. An-Nisa’ 4:3)¹².

Marriage is a type of contract

In building a marriage, Islam requires both parties agreement. The marriage contract can be altered according to the needs and suitability. Although Islam is very encouraging in marriage procedures, this does not mean that the pair (husbands and wives) is prohibited from divorcing each other¹³.

Islamic laws regarding marriage can be considered as not strict and suits Muslims and other people. Islam also considers the weaknesses of human beings such as the possibilities of committing wrongdoings in choosing marriage partners due to emotion, desires, love, and senses¹⁴.

¹¹ Al-Sayyid al-Sabiq, n.d. *Fiq al-Sunnah*, Beirut: Dar Kitab al-Arabiyy. p. 7.

¹² All Quranic translations in this writing are based on Abdullah Yusuf Ali. 1989. *The Holy Qur’ān, Text, Translation and Commentaty*. Maryland: Amana Corporation. p. 68.

¹³ Azizah bt. Kassim. 1978. *Perkahwinan: Kontrak Yang Maha Kudus*. n. pl. p.17.

¹⁴ Azizah bt. Kassim. 1978. *Perkahwinan: Kontrak Yang Maha Kudus*. p. 18.

In conclusion, Islam is a universal and flexible religion. Divorce is allowed in Islam. *Ibn al-Hunan Fath al-Qadir*'s book outlines that divorce can happen when feelings of hate occur between husbands and wives. Divorce is allowed in Islam but it is loathed by Allah SWT¹⁵.

2.2 The History of Marriage during the Dark Ages

Marriage is an agreement between a man and a woman to live together, controlled by God's rules and laws. It is an *ibadah* in Islam. During *Jahiliah* (the period before the arrival Islam), the Arab society had predicted several kinds of marriages based merely on lust. Women during *Jahiliah* were denied their rights and had no dignity. Part of their main job was to serve men, sexually.

To avoid shame, parents during that period willingly buried their daughters as a sign that they only wanted sons. Among the practices of pagan weddings by Arab society are listed below:

1. *Istibdha* (Plural Marriages)

Plural marriages occur when husbands forced their wives to commit adultery with well known individuals that are wise, strong, and rich so as to produce excellent sons.

2. *Ar-Rahtun* (Polyandry Marriages)

This happens when a wealthy woman voluntarily let herself impregnated by men. If she is pregnant, she will choose either one of the men who had sexual intercourse with her.

3. *Al-Amqtu* (Hatred Marriages)

This happens when a son marries his stepmother after the death of his father his father.

4. *Badal* (Changing wives)

Due to the low dignity of women during the dark ages, they are considered of not having any values. Husbands are willing to trade wives just to avoid boredom.

¹⁵Imam Kamaluddin Muhammad b. Abdul Wahi. n.d. *Syarh Fath al-Sunnah*. Mesir: Maktabah al-Kubra al-Amiriyyah. p.22.

5. *Asy-Syighar* (Barter Marriages)

Women can be forced by their fathers or brothers to get married. No consent whatsoever is needed from the women. It is considered normal.

6. *Khadan*

This is basically living together out of wedlock. There are no valid bonds between the couple.

7. *Baghaya* (Prostitutes)

Prostitution is not uncommon during pagan times. Men visited brothels frequently and openly. If the prostitute gets pregnant and bore a child, she will choose the men most identical to her child to be his/her father.

8. *Al-Irits* (Heritage Marriages)

If a spouse died without having a son, the next of kin of the husband is more entitled against the widow. If the widow does not return the dowry paid to her by her late husband, she can not marry other men. The widow can be forced to be married to relatives of her dead husband¹⁶.

2.3 Five Obligation Levels of Marriage

It comprises of five elements;

1. Should (*Harus*)
2. Optional (*Sunat*), for those who are able to bear the cost of marriage, and are able to maintain livelihood for themselves and their spouses.
3. Compulsory (*Wajib*), for those who fears that he or she would be tempted to commit adultery acts.
4. Objectionable (*Makhruh*), for those who are not able to maintain livelihood for themselves and their spouses.
5. Illegal (*Haram*), for those who have the intentions to hurt women that they are going to marry¹⁷.

¹⁶Nor Akma Sari. 2001. "Perkahwinan Zaman Jahiliah". *Perkahwinan*. Kuala Lumpur: Pustaka Abadi. May. pp . 67-70.

¹⁷Mohd Mansur b. Kiai Masyadi. 1992. *Kursus Perkahwinan & Keluarga Bahagia*. Kuala Lumpur: Pustaka Mukmin. p.33

2.4 Aims of Marriage

The Prophet's SAW said that: A *Hadith* found in the book *Al-Mar'ah wa-Hayāh* written by Dr. Yusuf al-Qaradāwiyy.

نضم العون على الدين المرأة الصالحة

“As good is help hers on religion is the wife pious”

تزوجو النساء فإنهن يأتينكم بالمال

“Marriage with woman, then indeed design that is cause income (estate) to-you”¹⁸.

The most important advantage and purpose of marriage is to take care and protect women, because when women are married it is compulsory for husbands to take care, protect and support their wives. Marriage also enables the preservation of racial identity. Marriage is also viewed as a way for human to find satisfaction thus providing benefits to the public by creating a happy society.

2.5 Meaning of divorce

Divorce is dissolution of the marriage union; the Prophet has often been quoted to say, “of all things which permitted, divorcé is the most hated by Allah.” Divorce is undoubtedly bitter, but it is a legal resource. Its legality is supported by the *Quran*, the *Sunnah* and *Ijma'*.

“And divorce is only to be effected twice, then, either stay together with honor or separate in kindness”¹⁹.

And He says:

“O Prophet, when you divorce women, divorce there at their prescribe period”²⁰.

¹⁸Al-Qaradāwiyy. 1980. *Al-Mar'ah wa- Hayāh*. Al-Qahirah: Maktabah Wahbah. p. 153.

¹⁹Al-Qur'an. Al-Baqarah. 2:229

²⁰Al-Qur'an. At-Talaq. 65:1