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## **ANALYSIS OF ISLAMIC LEGAL RULINGS RELATING TO WOMEN ACTIVITIES DURING WAITING PERIOD (IDDAH) OF REVOCABLE DIVORCE (TALAQ RAJ'IE) ACCORDING TO MUSLIM JURISTS**

MASTURA RAZALI<sup>1\*</sup>  
NURHANISAH HADIGUNAWAN<sup>1</sup>  
ATIRATUN NABILAH JAMIL<sup>2</sup>

<sup>1</sup> Akademy of Contemporary Islamic Studies, Universiti Teknologi MARA (UiTM) 40450, Shah Alam Malaysia.

<sup>2</sup> Academy of Contemporary Islamic Studies, Universiti Teknologi MARA (UiTM) 32610, Seri Iskandar Malaysia.

\*Corresponding author: [mastura458@uitm.edu.my](mailto:mastura458@uitm.edu.my)

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### **Abstract**

*Iddah or waiting period is a specific period stipulated for a woman who was divorced or after the death of her husband. It is an aspect that needs to be observed after a divorce occurs, other than maintenance and custody. In reality, many women who are observing the waiting period are involved in a career and social activities which leaves certain implications and creates challenges as to the actual process of waiting period as stipulated by Islam. Hence, this conceptual paper aims to review the shari'ah rulings on some common activities that these women who are separated by revocable divorce were involved in, such as in the aspects of career, appearance and celebratory occasions. Qualitative methodology was adopted by collecting and analyzing Muslim jurists' opinions on social activities that the women who are observing waiting period of revocable divorce are involved in. This study found that the opinions of Muslim jurists and their discourse on legal sources on the basis of legal objectives (Maqāṣid al-Sharī'ah) can determine the status of involvement in social activities among women who were revocably divorced and observing the waiting period.*

**Keywords:** : *Waiting period, Divorce, Revocable, Activities, Muslim Jurist.*

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## INTRODUCTION

Human being, as they were created by Allah, are equipped with social instinct. The social instinct is intertwined with familial bond and the familial bond is institutionalized through marriage contract. It is not valid both from legal perspective and norms of life as human beings that the building and development of a civilization is achievable without acknowledgment of marriage laws. A legitimate marriage is a marriage that is contracted between a male and a female, solely. Marriage in Islam is not an ordinary agreement or contract. It is a solid agreement towards the formation of a strong family institution and has its functions among the Muslims as deterrent from being involved in prohibited acts. Marriage is an agreement that enables the spouse, the husband and the wife, to find amusement and enjoyment from each other in the ways allowed by the shari'ah. In other words, marriage is a binding contract that legalizes carnal relation between a man and a woman. The purpose of marriage is to direct human's instincts and desires through lawful means as well as to produce offspring; build and establish a healthy and peaceful society; create harmony, love and mercy in dealings with family members and also to forge discipline and responsibility in matters related to family.

It is commonplace for any spouse who enters into a marriage, wishing to keep the newly tied knot in continuity for as long as they live, moreover so if the marriage is contracted between two willing adults who are in love. However, currently there are manifold increase in divorce cases, reported with various reasons and roots.

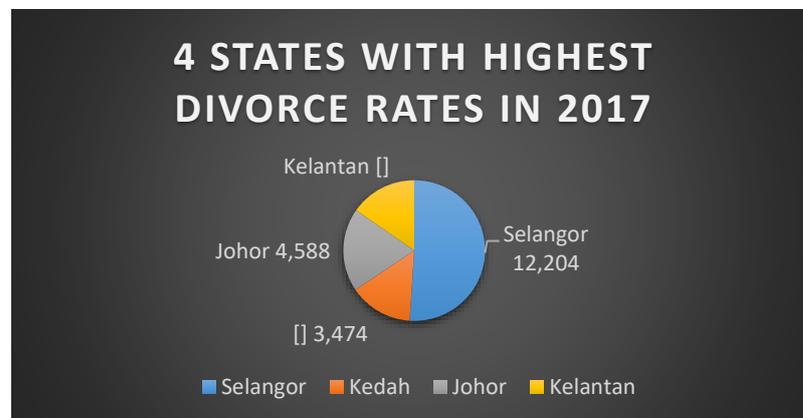


Chart 1. Divorce percentage

Once divorce or death occurred to one of the spouse who are bound by marriage ties, it eventually leads to many implications on the spouse and among them is the obligation to observe a waiting period. The waiting period is an obligation that needs to be observed by the divorced woman or the woman whose husband is deceased. The purpose of legalization of waiting period is as a symbol of submission to Allah and also to guarantee the purity of consanguinity. Nevertheless, the Islamic legal rulings relating to waiting period are not uniform, depending on the types of divorce pronouncements made, either revocable or irrevocable. However, this study focuses only on the waiting period of revocable divorce.

## METHODOLOGY

This study applied qualitative method based on content analysis techniques to obtain data. Content analysis is a research covering an extensive range of fields and its application is widely used (M. N. Rashidi et.al, 2014). Mariette Bengtsson (2016) defines content analysis as a research technique that concludes and validates the text resulting from the assessment and analysis. The method also aims to provide new insights, enhance researchers' understanding of specific phenomena or explain practical actions. In addition, this method also has many advantages including being more transparent, flexible and not involving research participants (M. N. Rashidi et.al, 2014).

This study has reviewed comprehensive articles related to iddah talak raj'ie in scholarly journals. In addition, books are also used to analyze the views of Islamic scholars on social activities that the women who are observing waiting period of revocable divorce are involved in. All these data are conceptually analyzed to Islamic Legal Rulings Relating to women activities during waiting period (iddah) of revocable divorce (talaq raj'ie) according to muslim jurists.

## FINDINGS AND DISCUSSION

### The concept of divorce and waiting period

Divorce is the dissolution of marriage through pronouncement of divorce, by expressing the word 'ṭalāq' or 'divorce' either explicitly (ṣarīh) or implicitly (kināyah). Divorce may happen either by a husband's pronouncement or by a wife's claim through judicial order of court in cases where the marriage can no longer provides harmony and affection as proposed by the revelation of Allah in Sūrah al-Rūm, verse 21: "And among His signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquility with them, and he has put love and mercy between your (hearts). Verily in that are signs for those who reflect." This verse describes the wisdom behind marriage, because the contentment of mawaddah wa raḥmah will prevail between spouses who are compassionate and having empathy and understanding towards each other (Mariam & Mohammad Syafirul, 2017). The word 'ṭalāq' is derived from al-itlāq, which means release or repudiate, that brings into it the meaning of a dissolution of marriage contract through expression of divorce. On the other hand, the judicial definition according to Muslim jurists is 'to repudiate the binding contract of marriage with certain expressions' (al-Malibari, t.t. & Mohd, 2006). By principle, the action of divorcing a wife is a highly prohibited act. However, if more extensive harms may occur, then Islam resorts to a principle available in Islamic jurisprudence, "harms must be eliminated", and indeed Allah SWT's has revealed by His words in Sūrah al-Nisa', verse 130: "But if they disagree (and must part) God will provide abundance for all from His all-reaching bounty: For God is He that careth for all and is Wise" that Allah has guaranteed His bounty for those who are divorced especially for those women who have lost their reliance by delineating many advantages such as maintenance, place of residence, and jointly acquired property (Muslihah et al, 2010).

**The division of divorce**

The divorce that occurred between a spouse can either be revoked or the spouse is required to reinstate a new marriage. Based on the implications, divorce can be divided into two types called revocable divorce and irrevocable divorce. The process of revocable divorce and irrevocable divorce is shown in the provided chart.

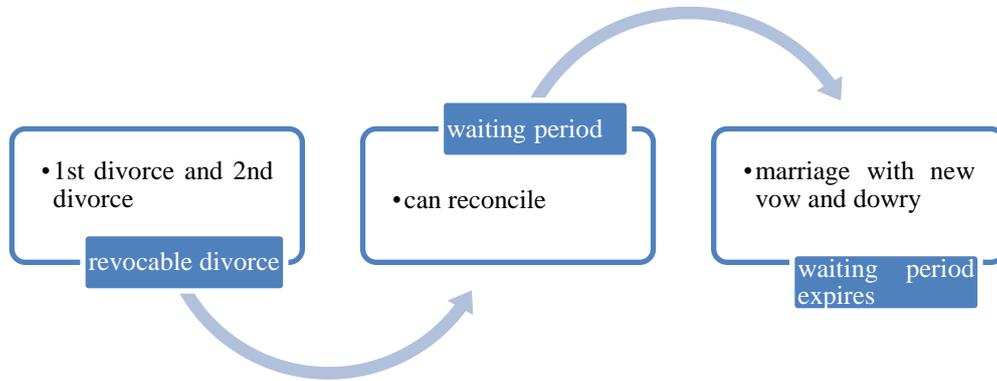


Chart 2. The Process of Revocable Divorce

According to the chart above, showed is the process of revocable divorce involving single pronouncement and double pronouncement expressed by a husband towards his wife. Hence, the waiting period commences after the divorce occurred but the husband has rights to revoke the divorce and regain the ordinary relationship between a husband and a wife just like before the divorce takes place, without necessity to pronounce a new vow of marriage and provide new dowry if it is still within the waiting period (Abū Zuhrah, 1965 & Muhammad Bakar, 2008). The majority of Muslim scholars agree that a husband can reconcile (rujū') with her divorced wife of single or double divorce at any time as long as the wife is still observing the waiting period. However, when waiting period is over and there is no reconciliation affected within that time, then if the spouse wish to return to their original marriage state as legitimate husband and wife, they need to reinstate the marriage with new vow and dowry all over again (Mohamad Som & Abdul Basir, 2006).

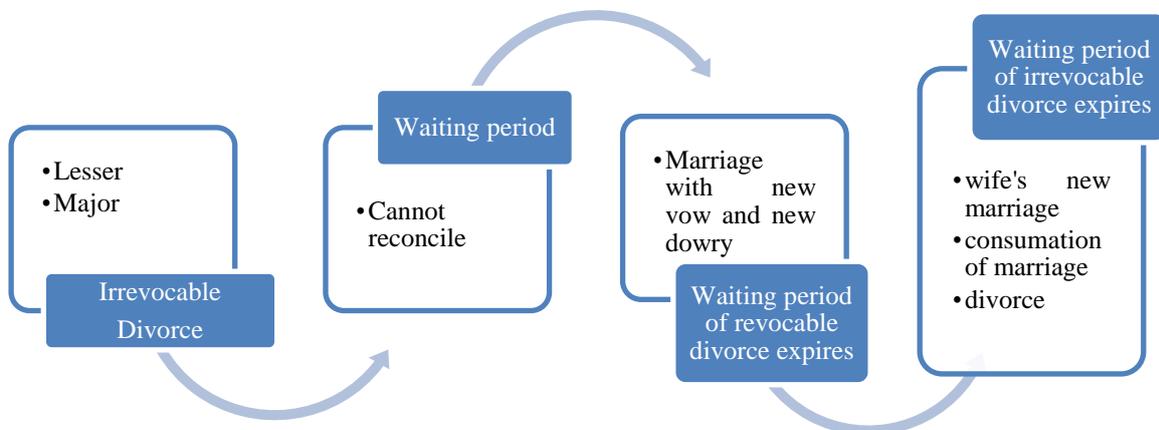


Chart. The Process of Irrevocable Divorce

Chart 3 shows the process of irrevocable divorce with its two divisions, i.e. lesser irrevocable divorce (*bā'in ṣuġhrā*) and major irrevocable divorce (*bā'in kubrā*). Lesser irrevocable divorce involves the redemption by the wife (*khul'u*), judicial decree (*faskh*), vow of continence by the husband (*ilā'*), and revocable divorce of which its waiting period has expired. When this divorce occurs, then waiting period commences but reconciliation cannot take place even if the husband wishes to resume relationship as a husband and wife, unless they wait until the waiting period expires to remarry with a new dowry. While for major irrevocable divorce, it is repudiation of marriage through acts of imprecation and thrice repudiation either separately or in one occasion (Sayyid Sābiq, 1985). For major irrevocable divorce, the husband is prevented from returning as a spouse even though it is still within the waiting period, or even after the waiting period expires, unless the former wife has legitimately married another man, consumed their marriage, and then a divorce occurred between them. Only after the waiting period for this latter divorce of his former wife expires, then it is lawful for them to be married again as a husband and wife, with new vow of marriage and new dowry (Mohd Khairul Anuar, 2014).

### **Waiting period for revocable divorce**

Waiting period is a specific period stipulated by *sharī'ah* to be observed by women who are divorced either by a living or deceased husband as a symbol of mourning (*taffaju'*) and aimed at ensuring that the womb is purely bare from the seeds of the former husband, (*barā'ah al-raḥim*) as well as a period of submission to Allah (*ta'abbud*) (Mustofa al-Khin et.al, 2005). The majority of Muslim scholars concur in their opinions that the waiting period is obligatory and it is strongly supported by the Qur'anic evidence in *Sūrah al-Baqarah* verse 228, meaning:

“Divorced women shall wait concerning themselves for three monthly periods nor is it lawful for them to hide what God hath created in their wombs if they have faith in God and the Last Day. And their husbands have the better right to take them back in that period if they wish for reconciliation. And women shall have rights similar to the rights against them according to what is equitable; but men have a degree (of advantage) over them and God is Exalted and Power Wise.”

According to Abd Karim al-Zaydan, this verse utilizes the stylistic approach of reporting that is understood as an imperative expression and shows that it is a command from Allah SWT ('Abd al-Karim Zaydan, 2009). It clarifies that waiting period is an obligation. The above verse also explains that divorced women shall hold back until they reach purity for three monthly period (*qurū'*). According to al-Qurtubi, the expression "to wait" is defined as being patient from entering into a new marriage and does not leave the matrimonial home, where she resides during marriage (al-Qurtubi, 2002).

Generally, the length of waiting period of revocable divorce depends on the state of the women when they were divorced. For women who have had an intercourse and still have her menstruation, the length of her waiting period is equivalent to being pure from her menstruation thrice (*qurū'*). While for women who have had an intercourse but already in the state of menopause, or in the case when the divorcee is still a child, the waiting period is three months. For pregnant women, their waiting period is until they give birth to their child (Nabihah Hasinah & Che Maryam, 2017). However, it is different from the situation of women who have never

had an intercourse with their husband, the Muslim scholars concur that they do not have to observe a waiting period (Mustofa al-Khin et .al, 2005).

During the length of the waiting period of revocable divorce, there are a number of legal rulings and obligations that must be complied with, covering three aspects:

i) Provision of maintenance

Women who are revocably divorced, either they are pregnant or not, have rights to the provision of maintenance during the whole length of the waiting period. It is obligatory upon the ex-husbands to provide all aspects of maintenance such as food, clothes, place of residence, and others. The best place of residence during waiting period is the place where the divorce had occurred, if it is proper, and if there is no sharī'ah obstructions in doing such. This is because the woman is still under the authority and control of her husband and can be reconciled as long as the women are in their waiting period (Mustofa al-Khin et al, 2005). This matter has been mentioned by Allah in Sūrah al-Ṭalāq verse 6, the meaning of which: "Let the women live (in waiting period) in the same style as ye live, according to your means: annoy them not, so as to restrict them. And if they carry (life in their wombs), then spend (your substance) on them until they deliver their burden."

This situation is different in cases of women who are observing the waiting period for irrevocable divorce; they do not have rights to any forms of maintenance except place of residence, that is when they are not pregnant when the divorce takes place. But pregnant women have rights to receive all forms of maintenance during their waiting period. This opinion is based on the event that occurred to Fāṭimah binti Qays when she was divorced by triple repudiation and the Prophet said, "You have no rights to obtain maintenance unless you are pregnant" (Riwāyat Abū Dāwud).

ii) Prohibition to accept marriage proposal

It is unlawful for a woman who is observing waiting period of revocable divorce to accept a marriage proposal from another man, and the same prohibition is in place upon a man even through implicit expressions because a woman who is observing waiting period for revocable divorce is still under the authority of her husband and her husband has more rights over her than other men. Allah reveals in Sūrah al-Baqarah verse 228: "And their husbands have the better right to take them back in that period if they wish for reconciliation". This verse expounds that a husband can reconcile with his ex-wife as long as it is still within the waiting period and they can reestablish and mend their relationship to find peace with one another.

iii) Requirement to remain at home

Majority of Muslim scholars from all four schools of Islamic jurisprudence share the opinion that it is obligatory upon a wife to remain at the matrimonial home during the waiting period and she is prohibited from leaving it unless urgent necessity arises (Ibn Qudamah, 1999). They based their opinions on the revelation of Allah, meaning: "And turn them not out of their houses, nor shall they (themselves) leave, except in case they are guilty of some open lewdness...." (Surah al-Talāq, 6:1)

However, in today's world, woman has always been in situations where she is required to leave home to work and financially support the family, attend or organize specific events such as her child's marriage ceremony and so forth, while at the same time she is observing her waiting period. Additionally, they are also obliged to manage household

matters such as buying foods and groceries, managing her children's daily schooling and others (Syh Noorul Madihah & Raihanah, 2010). This situation creates uncertainties and raises issues among many women in waiting period, leaving an impact to their conducts and lifestyles.

## **WOMEN'S ACTIVITIES DURING WAITING PERIOD AND THE DISCOURSE AMONG MUSLIM JURISTS**

### **Leaving home to work**

Today, contemporary women's activities are different from the pattern of life lived by women in the past. Today's women are more concentrated across various fields of careers outside home in many levels of service either at support level, management and professional level, or top-level management. Statistics issued by Public Services Department shows that as many as 725,091 women are involved at every level of services since 2017 (Ministry of Women, Family and Community Development). It shows a wide gap in the involvement of activities between contemporary women and women in the past, in which they are more focused on being a homemaker and looking after the children at home. Accordingly, they can fully observe the application of legal rulings on themselves because they are not in the situation where social change has required them to fulfil their career roles that are currently at par with their male counterparts. This is because, the original legal rulings regarding a woman observing her waiting period is that she is prohibited from leaving her home in any condition or situation whatsoever, based on the opinions of the majority of Muslim jurists (Ibn Qudāmah, 1999). The opinion is based on the revelation of Allah S.W.T. in Sūrah al-Ṭalāq: 1 which means: "And turn them not out of their houses, nor shall they (themselves) leave, except in case they are guilty of some open lewdness....".

Muslim scholars from Hanafi School opined that a woman who is observing her waiting period of revocable divorce is not allowed to go out of the house neither during the day nor the night, because her maintenance is still under her husband's liability and guarantee, thus it is unnecessary for a woman to leave her home and finding subsistence (Wahbah al-Zuhayli, 2014).

While a huge majority of Muslim scholars from Hanbali and Shafi'i Schools as well as al-Thawrī and Ibn Qudāmah expounded that a woman who is observing waiting period of revocable divorce can go out during the day to fulfil her needs, such as finding daily necessities, working and others, with the conditions that the necessities are her absolute essentials (Wahbah al-Zuhayli, 1997 & Muhammad Bakar, 2008). The opinion is corroborated by the ḥadīth of the Prophet S.A.W. in which he allowed women who are in waiting period to leave home and cut dates in its farm.

Next, Maliki School has also been allowing women observing waiting period either by revocable divorce or irrevocable divorce through death to go out of the house during the day to fulfil her necessities. However, the jurists of the School do not allow women observing waiting period to go out during the night unless an emergency occurs (Wahbah al-Zuhayli, 2014). The matter was supported by Ibnu Taimiyyah who said: "If women in waiting period is allowed to

go out to fulfil her necessities and she does not spend the night out, then there is no issue for her to leave her home."

Now, the legal rulings issued by Dar al-Iftā' states that women in waiting period are allowed to go out either during the day or the night, depending on the requirement of their careers, to provide the necessities of their lives which is in the category of essentials, and if the career itself is one of the essentials that needs to be obliged with to avoid the harm of being terminated from employment due to their absence because these women are bound by the employment rules and regulations while not being provided with proper leaves to fulfil the obligation of waiting period (Fatimah, 2015).

From the opinions of the Muslim jurists it can be concluded that the social change factor provides room for the Muslim scholars to use their discretion (ijtihād) by using career as a mode of effective cause ('illah), considering it as strictly involving the essentials of going to and from work without taking advantage to visit other places in nature of luxuries such as going for entertainment or to the mall without any urgent necessity and the like.

### **Adornment**

Basically, there are prohibition to adorn oneself or *iḥdād* during waiting period. *Iḥdād* according to *sharī'ah* is abstaining oneself from wearing any adornment or clothes that can attract the attention of man (al-Mawardi, 1999). This adornment includes gold, silver, cosmetics, perfumes and such (Mustofa al-Khin et .al, 2005). Generally, *iḥdād* is a sign of mourning upon the demise of a husband or a family member and it is allowed only for three days for those other than the husband (Abd Moqsiṭh Ghazali, 2009). For a woman whose husband is deceased, they have to conduct *iḥdād* during the whole waiting period, that is for four months and ten days beginning from the day of the death, if the woman is not pregnant. For those who lost their husband while pregnant, the waiting period will be over once they give birth to the baby in their womb (al-Muslih, 1995). This is in tandem with the Ḥadīth of the Prophet S.A.W. "A woman cannot conduct *iḥdād* more than three days, except due to the death of her husband, then she carries out *iḥdād* for four months and ten days..." (Riwāyat al-Bukharī and Muslim)

During the period of *iḥdād*, women are not allowed to wear perfume, adorn herself with make up and apply kohl, wear gold ornaments or don clothes which appear attractive in themselves such as of bright color (Syh Noorul Madihah, 2009). This is a prohibition of evasive legal devices (*sadd al-dharā'i'*) to avoid a woman from revealing herself to marriagable men and raising men's attraction towards her as well as guiding the woman's own desire, which in the end might spark yearnings to marry during the waiting period (Syh Noorul Madihah & Raihanah, 2010).

Thus, it is clear that the prohibition to adorn oneself and appear beautiful (*iḥdād*) during waiting period is only obligatory upon the women whose husbands are deceased and this matter has been agreed among Muslim scholars.

While for women in waiting period of revocable divorce, Muslim scholars share similar opinion that it is not obligatory to conduct *iḥdād*. This is because in reality the woman and her husband is still holding their married status during the course of the waiting period (Muhamad Isna Wahyudi, 2016). As a matter of fact, adorning oneself during the course of the waiting period is encouraged to attract the attention and interest of the ex-husband to reconcile (Abd

Moqsith Ghazali, 2009) because by nature, men are attracted to women due to her beautiful appearance and even beauty is considered one of the criteria in choosing a wife. In other words, waiting period of revocable divorce is a reflection period for both spouses to weigh whether they want to continue or to end their marriage.

Nevertheless, it must be emphasized here, that the adornment allowed is only within the limit allowed by the shari'ah. Adornment which is too extravagant and excessive is prohibited and the purpose of adorning herself by a woman who is observing waiting period of revocable divorce is to attract her ex-husband, not other men. This is because during the stated waiting period, the ex-husband has more rights over her.

### **Organizing and attending wedding feast**

Walimah or wedding feast among the Malay society are nothing uncommon and people is generally aware that organizing a wedding feast is far from simple. It must be planned ahead for months before the occasion and some of them even made wedding plan years before the actual event takes place. However, if the date of the wedding is near and the divorce occurred between parents of the future bride or bridegroom, it is recommended that the wedding event is rescheduled if the harm is not too detrimental. However, if the wedding event cannot be postponed any longer, then it is obligatory upon involved parties to keep within the limitation of shari'ah as it is stipulated and follow the guidelines for women observing waiting period of revocable divorce (<https://muftiwp.gov.my>). Hence, organizing a wedding feast which has been planned for such a long time is not unlawful per se, but it is bound by certain legal rulings as part of the implications of divorce.

In cases where a divorced woman needs to attend a feast during her waiting period, as stated above, women observing waiting period of revocable divorce has to comply with certain legal limitations because she is still bound by the connection or tie with her ex-husband as long as the waiting period is not over. So, it is a must for a woman who is observing her waiting period of revocable divorce to request for permission if she wants to go out. It shows that although the spouse is already separated, however in reality there are a number of obligations that must be fulfilled by both parties. Hence, requesting husband's permission is very important and necessary if the wife wants to leave the house especially to attend activities that do not require the husband's presence.

### **CONCLUSION**

Islam is a complete and comprehensive religion from all aspects. Islam safeguards the rights of women and this is demonstrated through various legal rulings established in the course of Muslim marriage until its dissolution. Legalization of waiting period for divorced woman is a symbol of submission to Allah and to guarantee the purity of consanguinity if the woman is later known to be pregnant during the waiting period. Waiting period of revocable divorce is not a form of domination over life of women, but it is best to be seen as a process for newly separated spouses to improve their relationship so it can be saved through reconciliation. The benefits to be gained by women observing waiting period of revocable divorce is guaranteed by Islam, in which the women are allowed to observe their waiting period while being outside

the matrimonial home for urgent necessities such as going out to work, to ensure that they can go through the waiting period with ease and calmness. Islam also does not prohibit adorning oneself with the hope that the attractiveness of the ex-wife can rekindle the attraction felt by the ex-husband towards his wife, so they are able to achieve a reconciliation. This demonstrates that Islam safeguards existing familial relationships that have been developed and provides mechanism to prevent the relationships from ruin.

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