

COMPARATIVE STUDY ON DIVORCE  
UNDER MUSLIM LAW AND CIVIL LAW

BY  
MARIANI BINTI GHANI

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## PREFACE

Divorce is a dissolution of a dead lock of a marriage. Eventhough the aim of the marriage is to last for life. Under both laws, certain conditions must be satisfied. This requirement intends to uphold a marriage. The scope of this project paper is to discuss the differences of the application of divorce law under the Islamic and the Civil Law.

Under the Islamic Law, no grounds need to be satisfied before talaq can be pronounced. Only for a decree of faskh, certain conditions need to be satisfied by the wife. Whereas under the Civil Law, when the grounds available in the act is proved, then a petition can be presented by either parties.

In the preparation of this paper, I have made a research at the Tun Abdul Razak Library, Mara Institut of Technology. Besides the research, I have received the most invaluable help from supevisor, Mrs. Beatrix Vohrah, and I am deeply indebted to her. Without her assistance and guidance I doubt this paper will come into being. But for the view expressed and for the error and omfssion, I alone remain responsible.

Finelly, a special word of appreciation to my father,

## ABSTRACTS

This paper primarily deals with divorce law under the Islamic Law and the Civil Law comparatively.

The first chapter is the introduction to the chapter. In that chapter, the writer discussed the purposes of divorce law under Islamic Law and Civil Law. Divorce is the solution of a dead lock when marriage can no longer be uphold. The continuance of unhappy marriage would likely ~~to~~ ruin the lives of the parties. Eventhough the aim of marriage is to last for life.

The second chapter deals with the jurisdiction of the court under Islamic Law and under Court Law. Under the Islamic Law, the Shariah Court only have the power within their state. Every states have their own act, to govern the power of the court. Whereas under the Civil Law - the court has the power governing all states in Malaysia, as long as the parties concerned domicile in Malaysia at the time the petition is presented.

Chapter three deals with the right of the husband and the wife for a relief of divorce under Islamic Law. The husband has the absolute power to divorce his

wife. The pronouncement of talaq by the husband dissolve the marriage. The wife has no power to divorce her husband. Tafwid is only delegated power. Whereas khul' can be exercised on the consent of the husband. Faskh is a judicial decree from the court..

Chapter four, interalia deals with the grounds available for a petition for a divorce under civil law. Both parties can petition for a divorce and they have an equal rights. The petition can be made after the expiry of two years of the marriage. A leave is necessary if the petition is made within two years.

Chapter five, is the commentary of both laws.

Finally, chapter six, rounds up the purposes of a divorce law.