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وَتَنْبِرِيَّتِي إِسْلَامًا وَأَنْبَارًا يَجْنِبًا مِلَّةً مِلَّةً



# **DIVORCED WIFE'S RIGHT TO MAINTENANCE UNDER ISLAMIC AND CIVIL LAW: POSSIBILITY OF HARMONISATION**

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# INTRODUCTION

- In general, *nafaqah* (maintenance) refers to expenses incurred by a person to maintain his family, from food, clothing, accomodation and others. It includes any kind of necessary service based on the custom of a society
- Relationship that arises between the husband and the wife result to the duty to maintain her by the husband

# ISSUES

- Whether both Islamic and Civil Law extends the duty to maintain until after divorce took place
- Whether there is a possibility of harmonisation of law on maintenance to a divorced wife under Islamic and Civil Law

# Objectives

- To examine the principles of Islamic and Civil Law on maintenance to a divorced wife
- To propose harmonisation of the principle on duty to maintain a divorced wife under Islamic and Civil Law

# Methodology

- The research adopts mainly library research where the data will be analysed based on primary and secondary sources as well as legal provisions of law under Islamic and Civil law

# General Principles

- Both Islamic and Civil law imposed the duty to maintain a wife on the husband generally based on the validity of a marital relationship
- Nevertheless, Islamic and Civil Law provides a rather different principle on ex-husband's duty to maintain a divorced wife

- Under Islamic law, despite differences of opinions among the jurists, the jurists are in agreement that the husband is obliged to maintain a divorced wife until the expiry of the 'iddah period, as the marital relationship ended by virtue of the divorce
- Nevertheless, Islamic law highly encourages helping one another, sadaqah and tabarru' for the needy what more if the needy is the divorced wife

- On the other hand, the Civil law imposes the duty to maintain a divorced wife until she marries another man or until she is living in adultery although she is working with good monthly income



# Conclusion

- The basis of all legislation be it Islamic or Civil law is implementation of justice
- The Question to answer is whether it is just to impose the duty to maintain on the husband after divorce took place

# Expected Findings

- The paper will analyse the possibility of harmonisation between the two laws based on certain principles:
  - implementation of justice
  - Good values
  - Helping one another
  - Sadaqah and tabarru'
  - volunteerism

THANK YOU