

SOSIO-CULTURAL ANALYSIS OF DIVORCE LEGISLATION A COMPARATIVE STUDY BETWEEN INDONESIA AND UNITED KINGDOM

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Info Artikel

Article History:

Received: January 11, 2023

Accepted: October 5, 2023

Published: October 25, 2023

ISSN: 2656-1654

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e-ISSN: 2656-193X

Abstract

This study aims to compare the perspective of legal sources of divorce in Indonesia and the United Kingdom by using a number of legal sources and other written literacy as the reading sources and reference (Public Research). This study used a qualitative-descriptive method by comparing divorce laws; analyzed the factors causing similarities and differences in the form of the rules in terms of divorce in Indonesia and the United Kingdom, and identified similarities and differences in how the two countries regulate the divorce issues. The researcher concerned with the biography and history of the two countries in the development of divorce law and found that social background, religion, political ideology, and history are the factors that have greatly affected the laws issued and implemented in country. This research will be a source of comparison and reflection for divorce law in Indonesia and the UK to become more progressive and developing. Alos, this research will be useful for further research on divorce law in Indonesia or the United Kingdom.

Keywords: *Divorce Law, Indonesia, United Kingdom, Comparative.*

Abstrak

Studi ini adalah studi yang membandingkan perspektif sumber hukum perceraian di Indonesia dan Inggris. Dengan menggunakan sumber hukum dan literasi tertulis lainnya sebagai sumber bacaan dan acuan (Penelitian Pustaka). Penelitian ini menggunakan metode kualitatif-deskriptif, dengan membandingkan undang-undang perceraian serta menganalisa faktor-faktor yang menyebabkan persamaan dan perbedaan bentuk aturan-aturan mengenai perceraian di Indonesia dan United Kingdom, lalu menemukan persamaan dan perbedaan bagaimana kedua negara mengatur mengenai masalah perceraian. Dengan memperhatikan biografi dan sejarah kedua negara dalam perkembangan hukum perceraian. Penulis menemukan bahwa faktor latar belakang sosial, agama, ideologi politik, dan historis sangat mempengaruhi undang-undang yang disahkan dan diterapkan di suatu negara. Penelitian ini akan menjadi sumber perbandingan dan refleksi bagi hukum perceraian di Indonesia

dan Inggris untuk menjadi lebih progresif dan berkembang, selain itu penelitian ini akan berguna bagi penelitian lanjutan mengenai hukum perceraian di Indonesia ataupun United Kingdom.

Kata kunci: *Hukum Perceraian, Indonesia, Inggris Raya, Perbandingan*

INTRODUCTION

The family is the basic pillar of a country because the nation's successors will come from the family. Each country has its ways and rules regarding family law, and some make it a stand-alone law, or a law incorporated in other laws but still related. Many do not realize how important 'literate' the science of law is, especially family law, because family law becomes the basis of the regulation of each society. Seeing how family law in some developing countries is caused by globalization and modernization because the law will continue to follow the development of society as the object of the law itself, the more complex and diverse society, the more diverse the law is developed. Various regulations on families continue to be developed in every country, not least countries that change the law and form new laws due to the rapid mobilization that occurs in the world; in general, family law regulates family life, ranging from marital issues, divorce, shared property, parent's obligations for children and the children custody.

Every family that lives in this world always craves to live a happy, peaceful, and prosperous life. The marriage goal is to build a peaceful, long-lasting, and fortunate family (Hamid Pongoliu, 2017.) But well-being, eternal happiness is not always lived, but sometimes it

must end in a divorce. Divorce is due to arbitrary actions that both husband and wife should not do, and there are times when the husband or wife are still bound in marriage no longer feel like the husband or wife in marriage. In this case, with various considerations, few families take the path of divorce to resolve this issue. This family law related to divorce is a law that will regulate the problem. Not only does it stop here, but divorce will also result in legal consequences that affect the family itself, including parents to children and even wealth.

As we already knew that Islam is the majority religion in Indonesia, there are 87.2% of the Indonesian population adhering to Islam (Dian Erika Nugraheny, 2021), making it has a really big impact for the law that prioritizes strong godly values.

Family law in Indonesia is heavily influenced by Islamic family law, which refers to the Koran, sunnah and ijthad of the scholars (Ahmad Rajafi, 2017), making Indonesian family law very strongly adheres to and reflects on Islamic law. As an example in divorce law, there are rules regarding child custody whose rules also rely on Islamic law, such as a child who, if both parent got divorce, the custody of the child will fall to one of the parents or one of the family from the mother's side or father (Anjar S. C. Nugraheni, 2019), besides

that there is also a rule regarding the waiting period after the divorce is officially declared by the court, where a woman who is divorced from her ex-husband must undergo a waiting period or 'iddah, and this is also regulated in detail the difference between an ex-wife who has not been in a relationship with her ex-husband, for women who are married and have had a husband-wife relationship with their ex-husband, and for women who are married and are pregnant with children resulting from their relationship with their ex-husbands and then divorced from her husband before the child in her womb was born. Those mentioned have different rules regarding the waiting period before being able to have sex with other men (Ahmad Alfin Afadi, 2023).

One of the countries that has one major religion that has attracted the attention of researchers is the United Kingdom, where Protestant Christianity is the most widely practiced religion by the people, around 59.5% of the UK population adheres to Christianity (*Key Statistics and Quick Statistics for Local Authorities in the United Kingdom*, 2013).

Laws regarding divorce in each country are different, this is due to differences in legal systems, cultures, and even geographic locations. For example, between Indonesia and the United Kingdom, the laws produced by practitioners are different, although the things that are regulated may be the same, one of which is the divorce law. The Indonesian legal system, which uses

a codified legal system, makes Indonesia truly refers to the law that has been written in the book, even though other sources of law can be taken into consideration such as previous judges' decisions, or the opinions of legal experts, but the law book is still the main reference. for countries with Civil Law or Continental European legal systems, in contrast to Indonesia, the United Kingdom is a country with a long history, known as one of the developed countries that often makes its former colonies a state, United Kingdom or in Indonesian it is called the United Kingdom is a country with a Common-Law or Anglo-Saxon legal system, a country with this legal system usually makes English as the everyday language. As a country with a high level of diversity, the United Kingdom must believe that the legal products produced can be followed by everyone. The area with the largest legal system in the United Kingdom is England and Wales, so most areas in the United Kingdom follow the laws of England and Wales.

Based on data from the Indonesian Population Census Agency, the divorce rate in 2016 reached 365,633 divorce cases, while in the United Kingdom in 2019 there were 107,599 divorce cases between same-sex couples, because the law in the United Kingdom legalizes the relationship between two people with the same sex or opposite Sex lives like a married couple without a marriage, so the separation rate for same sex couples

in 2019 reached 822 cases (Divorces in England and Wales: 2019, 2020).

The development of family law in both countries is generally influenced by the history and political systems that run in both countries. However, there are regulated in divorce law in the UK but cannot be accepted by Indonesia, one of the most significant differences is that the UK accepts and regulates the existence of same-sex relationships, which is unacceptable in Indonesia because it is contrary to moral values and divinity that is upheld in Indonesia. As previously mentioned, the UK has a population that is predominantly Christian, regarding same-sex relations, it turns out that Christianity also prohibits it and gives very severe punishments to those who commit such acts (Mansur, 2017). However, as we all know, LGBT activists in Indonesia often fight for their existence.

With the explanation above, the researcher really wants to know the factors that make a Christian-majority country like the UK accept and regulate things that are clearly prohibited in their holy book.

In the case above, the researcher wants to see and examine divorce law in general, and the factors that cause the similarities and differences in divorce law between Indonesia and the UK.

With this, the Indonesian people can take lessons and views on how a country must maintain the norms and rules that exist in society that have become living law in society, with that this research

will describe the divorce law between Indonesia and the UK in general, the factors that cause differences and similarities as well as similarities and differences in the laws governing divorce in Indonesia and the UK.

RESEARCH METHOD

Library research is the type of this research, as a study by using books that have to do with research taken from literature. Act No. 1 1997 Regarding Marriage, Divorce, Dissolution and Separation Act 2020, The Children Act 1989, and the Matrimonial Causes Act 1973.

This research uses a qualitative method. A library study was conducted to compare divorce and separation according to the law in Indonesia and the United Kingdom and its legal consequences. According to Wahid Murni, research is a way used to answer research problems related to data in the form of narratives derived from interview activities, observations, and document excavations.

This research is used a normative-juridical approach, namely, how to examine aspects of the law and applicable regulations. The legal materials such as legislation, government regulations, or books of legal science (Benuf & Azhar, 2020). Besides, we also used comparative method that focused on the group of research subjects, then continued by paying attention to the variables studied that exist in the group that is compiled.

In this case, the researchers compare divorce law and its legal consequences between Indonesia and the United Kingdom (Juwita, 2009) to obtain what the factors that made the similarities and differences between both countries.

RESULT AND DISCUSSION

The Reformation of Divorce

Legislation in Indonesia

Before the Dutch colonialism, it is believed that religions in Indonesia have been diverse, such as Hinduism, Buddhism, and Islam. With the existence of many religions, this rule used to deal with the problem of marriage or divorce is regulated by the ruler of the kingdom at that time, if the ruling kingdom there is an Islamic kingdom, then the laws used even Islamic law are still in contact with customary law (Biga, 2017).

At the time, when the Dutch came to Indonesia, as we had already known, the came only to trade in Indonesia. Still, gradually they began to intervene in many sectors other than the sector, including the laws that apply to Indonesian society (Absiroh, 2017). The law applied among Indonesian people at that time is Islamic law that has even been structured in its structure. At that time, the problems of Indonesian society were resolved based on Islamic law, which was carried out by people whom the people of Indonesia had trusted at that time to follow his opinions and advice. But the arrival of the Netherlands eroded the authority of Islamic law, which became the basis in

solving problems in society. However, at first, the Netherlands appreciated the existence of Islamic law that was already rooted in the community.

The Dutch gradually eroded the juridical power of Islamic law; initially, they made it only able in criminal law, then the Netherlands held a new court that especially took care of worldly problems (Biga, 2017) (*Werdwldijke rechtpraak*), Which Guberman court along with the Religious Justice, because Islamic law has long regulated civil problems in Indonesia, the Netherlands allowed the Religious Justice at that time to be handled under Islamic law but still under dutch supervision and intervention. Until the reception *in complexu* theory emerged, which is a theory that says that Indonesians follow their religion, Islam's religion, a religion embraced by Indonesian people at that time, with this theory (Supriatna & Pascasarjana, n.d.), making the Netherlands provide the rules of formal implementation of Islamic law by issuing Stbl. 1882 No. 52 on the Establishment of Religious Justice in Java and Madura under the name *Priesterrad* or also called the Religious Court called the Priest's Court by the Dutch Colonial, the jurisdiction of this court is the same as the *landraad* jurisdiction (General Court) in the Dutch East Indies—as for the outer regions of Java and Madura submitted to customary regulations and *Swapraja* (Ahmad Rajafi, 2017). Until the emergence of a theory that opposes the

theory of *reception in complexu*, the *receptive* theory was triggered by C.Snouck Hurgronje (Muhammad, 2013), which in this theory understood that Islamic law could be accepted and carried out if it has been accepted by customary law, then customary law that has entered the influence of Islamic law is the law used by the people of Indonesia. With that theory, Snouck Hurgronje was appointed as an advisor on Islamic law and the country's children. His theory makes Islamic law in Indonesia slowly and continuously eroded its position to be not included in the Dutch East Indies legal system. Since then, the Religious Court has only had dispute competence in the fields of marriage, talaq, referencing, divorce, and family-related matters such as the wife's livelihood. As for the field of child custody, inheritance, waqf, and others are revoked and further included in the competence of *Landraat* (General Court). First, for Europeans applies the Code of Civil Law (*Burgelijk Wetboek*). Second, the Chinese people, in general, also apply B.W. with few exceptions interms related to soul recording and events before marriage. Third, for Arabs and Foreign Easterners who are not Chinese apply their customary laws. Fourth, for native Indonesians apply their laws plus for Christians apply the Law of Christian Marriage Java, Minahasa, Ambon, and the last one for those who do not use one of them apply mixed marriage rules.

It can be seen how the arrival of the Dutch in those days eroded the power of

Islamic law, making it very limited in certain things. At first, before the Dutch came, Islamic law was the law that governed almost all disputes among the people of Indonesia.

Changes in the legal reform regarding divorce in the independence period can be divided into three periods, namely the old order period or the period when the first president of Indonesia, Ir. Soekarno, the second period of the new order, and the third is the period of reform to date.

During the old order in which President Sukarno ruled, drafted, and passed Indonesia's original law on marriage, this was a form of insistence from the Indonesian people, especially women's groups who asked for equality between men and women, especially regarding marriage, polygamy, and obligations after divorce, then passed Law No. 22 of 1946 on Marriage Blasphemy, Talaq, and Reconciliation. This law does not necessarily directly apply widely; there are three stages of time where this law finally applies in all regions of Indonesia (Biga, 2017). First, on 1 February 1947, it took effect in Java and Madura based on the Determination of the Minister of Religious Affairs dated 21 January 1947. Second one was on 16 June 1949, it was enacted in Sumatra based on the Emergency Government Decree of the Republic of Indonesia dated 14 June 1949, and the last one was on 2 November 1954, it applied to all the territory of the Unitary State of the

Republic of Indonesia under Law No. 32 of 1954.

At the New Order Era, this time, the president in power is President Suharto because Law No. 22 of 1946 only regulates the issue of marriage registration, talaq, and reference as well as institutions that have the right to deal with these matters, making it established and the design of a law covering all family problems in Indonesia, namely the enactment of Law No. 1 of 1974 consisting of 14 chapters and 67 articles, This law has been in force since 1 October 1975 simultaneously in all regions of the Republic of Indonesia (Biga, 2017). In addition to Law No. 1 of 1974 also compiled a compilation of Islamic law in 1991, in which it is explained and regulated in detail regarding marriage, inheritance, and representation, this KHI is used by all religious judges throughout the Religious Courts in Indonesia as a basis for issuing decisions on a case based on Islamic law. The passing of Law No. 1 of 19674 on Marriage and Compilation of Islamic Law in Indonesia did not go as smoothly as it should due to the many differences of opinion among the public regarding the ratification (Hikmatullah, 2018). Changing into The Reform Era, this time, there were no significant changes in the law on marriage as well as in the KHI; apart from that, efforts to replace and make changes to both of them often occurred, until in 2012 after a judicial review carried out by the Constitutional Court, and there was a

change in article 43 paragraph (1) of Law no. 1 of 1974 concerning marriage, which explains the provisions for changing the status and relationship of a child with his parents, including the mother and the mother's family as well as the father and the father's family ("Impelementasi Ketentuan Anak Luar Kawin Dalam Undang-Undang Perkawinan Pasca Putusan MK," 2012). The second change occurred at the end of 2019 regarding the new arrangement on the marriage age limit, namely changes to Law No. 19 of 2019 on changes to the 1974 Law on Marriage ("Lembaran Negara Republik Indonesia," 2019).

Reformation of Divorce Legislation in the United Kingdom

Brief History of United Kingdom

The United Kingdom of Great Britain and Northern Ireland or commonly known as Great Britain or the United Kingdom (*Encycl. Br.*, n.d.) is a sovereign country located off the northwestern coast of continental Europe. The United Kingdom is an island nation consisting of the isle of Great Britain, the northeastern part of the Island of Ireland, and several smaller islands. Northern Ireland is the only part of the United Kingdom that is directly adjacent to the mainland of the Republic of Ireland, besides the United Kingdom's borders are surrounded by the Atlantic Ocean, the North Sea, the English Channel, and the Irish Sea. The United

Kingdom consists of England, Scotland, Wales, and Northern Ireland, 'Britain' is an informal designation. When someone mentions Britain, it means the United Kingdom (*Encycl. Br.*, n.d.). The United Kingdom is a unitary state governed by a constitutional monarchy and a parliamentary system with its capital in London. There are four countries within the sovereignty of the United Kingdom, each of which stands alone, namely England, Northern Ireland, Scotland, and Wales (*Encycl. Br.*, n.d.).

Government System of the United Kingdom

The U.K. has a monarchical-parliamentary system of government (*Encycl. Br.*, n.d.) which Queen Elizabeth II becomes head of state while Boris Johnson as prime minister serves as the current head of UK government. Parliament is housed in the Palace of Westminster ("United Kingdom Country Profile," 2020), this parliament consists of two houses, namely the House of Commons and The House of Lords. The House of Commons is filled by those elected in the general election. In Indonesia, we call it the people's representative, while the House of Lords is filled by those who are appointed or appointed by the prime minister with the approval of the Royal Assent. All affairs and matters relating to parliament are run and regulated by the House of Commons and House of Lords, but any bill or in Indonesia referred to as a bill must go through the royal assent in

order to be carried out and become a new and official law (*Bill Becomes an Act of Parliament*, 2022).

Law System of the United Kingdom

As is well known that the United Kingdom has four constituent parts, which are England, Wales, Scotland, and Northern Ireland ("United Kingdom Country Profile," 2020). For the legal system, this country does not use a certain system (*Crime, Justice and the Law*, 2022), where the law in this country regulates the legal system based on their past history, due to the unification of several countries with different backgrounds making the legal system of each country different. In this thesis, the legal system discussed in more detail is the legal system that only applies in England and Wales. England and Wales run a legal system based on English Law. This law is based on the common law legal system. The common law legal system does not have its own legal codification, judges play an important role in this common law legal system, because judges have the authority to be able to develop the law itself, cases that have been handled by previous judges become the main reference in the common law legal system (Qamar, 2010). In general, English law is sourced from legislation, judicial precedent, custom, and book of authority (Qamar, 2010). The House of Commons and the House of Lords share the power to make laws (*The Two-House System*, 2022). The idea of a new law is called a bill. When

both agree on the draft law to be drawn up, then the king formally approves the bill into law, and it is called as Act of Parliament, that's how the law is made in England (*How are laws made?*, 2022). Although each territory of the country has its own legal system, this Act of Parliament must be applied by every court in adjudicating cases in each country. Parliament can enact, repeal, or amend any laws as it deems fit. This is known as Parliament Sovereignty (*Parliament's Authority*, 2022).

Life of the United Kingdom Society

In the politic field, inside the running of government in the United Kingdom, there are two main political parties in England because the UK adheres to a 2-party system (*The Two-Party System*, 2020), namely the Conservative Party and the Labor Party. The Conservative Party has been in power since 2010, currently holding 363 parliamentary seats in government (*State of the Parties*, 2022). This party was one of the triggers for the birth of socialist liberal laws and decisions in Britain, such as in certain areas LGBT rights and legalizing same-sex marriage in 2014 (Louth et al., 2019). The UK's other main party is the Labor Party, the party which is currently the official opposition party in the UK with 198 seats in parliament (Morrill, J. S., 2020). This party has had five periods in power since 1923, and the most recent one was from 1997-2010. The party adheres to the traditional democratic socialist worldview. The party also

focuses on progressive areas such as labor rights, LGBT rights, gender equality, and immigration policy (Webb & P. David, 2020).

The leader of the Conservative party, Boris Johnson, has been the incumbent Prime Minister of the UK since 2019 (Rita Uli Hutapea, 2019). Although the British government has centralized power, some political power has been transferred to the regional governments in Scotland, Wales, and Northern Ireland. Both Scotland and Wales formed their own devolved parliament in 1999. The Prime Minister of England is the head of the central government, Scotland, Wales, and Northern Ireland have their respective heads of government. They are the leaders or representatives of the parties with the most seats in the government. The next general election in the UK will take place on 2 May 2024 (*General Election*, n.d.).

While in the economic Sector, The UK has a partially regulated market economy (Department for Business Innovation & Skills, 2011). The economy of the United Kingdom is a highly developed social, market-oriented economy (Hawkins, 2010). The UK is the fifth-largest national economy in the world as measured by nominal gross domestic product (GDP), the tenth most by purchasing energy parity (PPP), and the initial top twenty by GDP per capita, which is 3.3% of world GDP (Thane, 2019). In 2019 the UK was the fifth most exporter country in the world and the fifth most importer (*Global Economy*

Watch – Projection, n.d.). In 2020, the UK's trade with the 27 member states of the European Union accounted for 49% of the country's exports and 52% of its imports (Ward, 2021). The UK service zone also dominates, accounting for 81% of GDP (A3: *Components of GDP*, 2020). London is the second most populous city center in the world (Reid, 2019), while Edinburgh is ranked 21st in the world, and 6th in Europe for its financial services industry in 2021 (Zyen, 2022). Of the 500 largest industries in the world, 26 are headquartered in the UK (*The World's 500 Largest Companies Generated \$27.6 Trillion in Revenues and \$1.5 Trillion in Profits in 2015, 2016*). The UK has been an oil importer since 2005, there are significant regional variations in prosperity, with South East England and North East Scotland being the richest areas per capita (*Key Statistics and Quick Statistics for Local Authorities in the United Kingdom*, 2013). The size of London's economy makes it the largest city by GDP per capita in Europe (*The GDP of London*, n.d.).

Other than both sector, UK religion and social sector must be the other pined point, because based on the census conducted by the UK government in 2011, 59.5% of the UK population adheres to Christianity, 25.7% admits to having no religion, 4% of the population adheres to Islam, while the remaining 10.4% is a combination of Hinduism, Buddhism, Judaism, Sikhism, and did not participate in the survey (*Key Statistics and Quick Statistics for Local*

Authorities in the United Kingdom, 2013). A 2016 religious survey was conducted by BSA (British Social Attitudes). Fifty-three percent of those questioned were "non-religious," 41% were Christian, and 6% adhered to another religion (Islam, Hinduism, Judaism, etc.) (*British Social Attitudes: Record Number of British with No Religion*, 2017). Among Christians, 15% are Anglicans (Church of England), 9% are Catholic, and 17% are other Christians (including Presbyterians, Methodists, other Protestants, and the Eastern Orthodox Church) (*Key Statistics and Quick Statistics for Local Authorities in the United Kingdom*, 2013). 71% of young people between the ages of 18 and 24 say they have no religion (*British Social Attitudes: Record Number of British with No Religion*, 2017).

Historically the original inhabitants of the United Kingdom were descendants of the various ethnic groups that settled there before the 12th century, such as the Celtic Romans, Anglo-Saxons, Scandinavians, and the Normans. The Welsh are probably the oldest ethnic group there. The United Kingdom is very ethnically diverse. The largest ethnic group in the UK is White British with 87.1%, followed by Asian British, Asian, Black British, and other ethnic groups at 7.9% (*Key Statistics and Quick Statistics for Local Authorities in the United Kingdom*, 2013).

Reformation of Divorce Legislation in the United Kingdom

One of the most important moments in British history was Henry VIII's divorce from Catherine. This is arguably the beginning of a divorce that is considered an acceptable process in the U.K. To begin the divorce, Henry chose to leave Rome and established the Church of England, which corresponded to the Protestant Reformation that was taking place in Europe. Henry later claimed that his marriage to Catherine was null and void. Before Henry, Catherine was married to Henry's older brother, Arthur, but she died shortly after the wedding. Thus, to obey biblical law, Catherine claimed that she and Arthur never perfected the marriage, so she could marry Henry. The Pope granted a papal dispensation, and everything was fine until Henry set his sights on Anne Boleyn. Henry realized that Catherine was not getting any younger, and he had failed many times to produce a male heir, because of it, Henry used this as an excuse to divorce Catherine and marry Anne again (Kha, 2017) before that, divorce was mostly open only to men and had to be granted by an Act of Parliament, which was very expensive, and therefore also open only to the wealthy. Under the new law, women who divorce on adultery grounds must not only prove that their husbands are unfaithful but must also prove additional wrongdoing, including cruelty, rape, and incest. A private member's bill in 1923 made it easier for

women to file for divorce for adultery, but it still had to be proven. In 1937, laws were changed, and divorce was allowed for other reasons, including drunkenness, insanity, and desertion. A major change occurred in 1969, when the Divorce Reform Act was passed, allowing couples to divorce after they had separated for two years (or five years if only one of them wanted a divorce). A marriage can end if it has been broken and irreparable, and no spouse must prove "wrong." This allows couples to divorce after they have been separated for two or five years (if only one of them wants a divorce) (Kha, 2017).

Until now, the law on divorce in the U.K. is growing, as a conclusion from the history of changes in divorce law in the U.K., which the author can see is at the beginning of the divorce case conducted by Henry VIII divorce only for people who have power and property, divorce can only be filed by men to women until finally, feminists support the holding of divorce filed by women until the emergence of The Matrimonial Causes Act 1857 as a result. After that, changes to the law only regulate the additional reasons to be able to file for divorce. Until now, the latest law that will come into force on 22 April of 2021 is the existence of a 'No Fault' divorce for the law that applies in England and Wales. Although previously 'No Fault' has been introduced in the Divorce Reform Act 1969, there are still several reasons that must be proven by

the party who sued for divorce until the time of the calculation of marriage that is At least one year until you can file for divorce, while in the latest rules, there will be a written proof for the plaintiff and the elimination of the minimum age of marriage (Kha, 2017).

After studying and reviewing the divorce laws in Indonesia and the United Kingdom, the following is an explanation of the matters regulated in the divorce laws in Indonesia and the United Kingdom:

Table 1.

The Legislation of Divorce in Indonesia and the United Kingdom

| No. | Regulation | Divorce in Indonesia | Divorce in the U.K. |
|-----|---|---|--|
| 1 | Divorce Law in Indonesia and United Kingdom | Arranged in: 1. Marriage Act Chapter VII on the Breakdown of Marriage. 2. Compilation of Islamic Law Chapter XVI on The Termination of Marriage Article 113-128 | Arranged in: 1. Divorce, Dissolution and Separation Act 2020 2. Matrimonial Causes Act 1973 3. The Children Act 1986 |
| 2 | Reasons for divorce accepted by law | One party commits adultery or becomes a drunkard, gambler, and so on that is very difficult to cure. 1. One party leaves the other party for 2 (two) consecutive years without the other party's permission and without any legitimate reason because of matters beyond its control. 2. One party gets a prison sentence of 5 (five) years or a heavier sentence after the marriage takes place. 3. Either party commits severe cruelty or persecution that endangers another's life or which includes a criminal offense. At the same time, the cruelty of the mind can be in the form of insults, slander, or other things that disturb the psyche. 4. One party gets a body defect or disease that results in not being able to carry out his obligations as a husband and wife. | Reasons for divorce accepted by law: 1. 1. Adultery by the respondent which means the petitioner finds it intolerable to live with the respondent (with a person of the opposite sex) 2. 2. Unreasonable behavior by the respondent, which means that the behavior cannot be accepted by the petitioner 3. 3. Desertion by the respondent for a period of two years (at least) 4. 4. Separation for one year or more, and the parties agree to divorce (with the petitioner's consent) 5. 5. Separation for five years or more (without the petitioner's consent) |

| No. | Regulation | Divorce in Indonesia | Divorce in the U.K. |
|-----|--|--|--|
| | | 5. Between husband and wife, there are continuous disputes and quarrels, and there is no hope of living in the household anymore. | |
| 3 | Legal consequences of divorce against children | Article 45 paragraph (1) of Law No. 1 of 1974 concerning Marriage states that both parents are obliged to care for and educate their children as best as possible. The court will rule the custody falls to the mother or father. (Nelwan, 2019) | <p>The court may file the following:</p> <p>(a) A lump sum/sum from one parent to the other parent for expenses for the children's future, for example, for provision of a car or for school fees.</p> <p>(b) Transfer of property in the form of guardianship for the benefit of a child. Regular maintenance payments to which courts have jurisdiction, such as if a parent's income is above that of the Child Support Agency (C.S.A.) or the Child Maintenance Service (C.M.S.) or for Education, expenses related to children's disability. (Stewart et al., 2021)</p> <p>Both parents have the same rights and obligations in terms of taking care of children, making no custody of the child devolved to either party.</p> |
| 4 | Legal consequences of divorce against to the rights and obligations of the husband and wife: | In article 41 of the Law on Marriage of 1974 stipulates that the court can oblige the ex-husband to provide the cost of livelihood for and/or determine an obligation for the ex-wife. (Wisyawati, 2020) | <p>Both parties have to prepare the maintenance rights.</p> <p>Some of the possibilities that the court will ask for regarding finances on divorce or dissolution: (H.M. Government, 2020)</p> <p>(a) Make or arrange periodical payments (maintenance) to the other party if the court considers it's a need to be made.</p> <p>(b) Pay a lump or sums to the other party.</p> <p>(c) Make or arrange periodical payments for the benefit of any children.</p> <p>(d) Pay a lump or sum for the benefit of any children.</p> <p>(e) Transfer specified property to the other party.</p> <p>(f) Make a settlement of specified property (that is made for the sake of the other party or a family)</p> <p>(g) Vary any nuptial settlement or</p> |

| No. | Regulation | Divorce in Indonesia | Divorce in the U.K. |
|-----|--|---|--|
| | | | trust made for the benefit of one of the parties. (h) Sell the specified property and share the proceeds. (i) Share a pension fund. (j) The court can take all assets to share with both parties. |
| 5 | Legal consequences of divorce against the common property | 1. Article 37 of Law No. 1 of 1974 concerning marriage, that if the marriage breaks up because of divorce, then the common property is regulated according to their respective laws, which is meant by 'each' here is the law that according to the person concerned is a living law and recognized by both parties. (Ayu et al., 2020) | Included in the rights and obligation of husband and wife |
| 6 | Marital age minimum to get a divorce | It does not set a minimum marital age to register for divorce. | You can file for divorce with a minimum of 1 year of marriage age. |
| 7 | | Not arranging about 'separation' between relationships of each other | Arranging a 'breakup' in a sesame-type relationship Regarding the division of property is not specifically regulated but follows the law of the Trust of Land and Appointment Trustees Act 1996 |
| 8 | Waiting time after divorced before establishing a relationship with another person | Set a waiting time ('iddah) after divorce before establishing a relationship with another person: For a widow whose marriage broke up because of divorce, the waiting time for her who still comes the month is 3 (three) holy times with at least 90 (as many as dozens) days, and for those who do not come, the month is 90 (Ninety) days. If the marriage breaks up while the widow is pregnant, then the waiting time is until giving birth. Another thing is if the widow has not had sex with her ex-husband, then there is | There are no arrangements regarding waiting times after the divorce is decided by the court ('iddah) |

| No. | Regulation | Divorce in Indonesia | Divorce in the U.K. |
|-----|------------|--|---------------------|
| | | no waiting time for her (Nelwan, 2019). This is based on Article 39 of the Government Regulation of 1975. For marriages that break up due to divorce, the waiting time is calculated since the fall of a court ruling that has permanent legal force. (Rodliyah, 2014) | |

As can be seen in the table above, some things are equally regulated in the legislation in Indonesia and the UK, and there are also things that are regulated in Indonesia but not in the UK, and vice versa. The law regarding divorce in the UK can be said to be progressive compared to Indonesia. It can be seen from how the UK already has its own law regarding divorce, while in Indonesia, it is still included in the 1974 Marriage Law. Judges in the UK, where there is no longer a need for reasons for each party to divorce, this is known as 'No-Fault Divorce,' and there is no evidence for each party to file for divorce, plus there is no longer a minimum age requirement for marriage to apply for divorce. Divorced. Some of these things will be officially implemented starting April 2022 (Kundhi, 2022).

DISCUSSION

Some divorce laws in Indonesia are equally regulated in divorce law in the United Kingdom, but there are also laws regulated in the United Kingdom that are not regulated in divorce law in Indonesia. In a broader perspective,

divorce law in the United Kingdom is more progressive and detailed because each case will reflect and follow the previous judge's decision that makes it detailed and licensed, evidenced by the existence of several self-governing laws about divorce and its consequences.

The Indonesian divorce law refers to the legal book which will be made in detail if a particular case requires a detailed interpretation and decision that has never existed before. However, in Indonesia, there is a separate reference source for Muslims, namely the Compilation of Islamic Law, which is legal and can be followed and used as a reference for all religious judges throughout Indonesia through Presidential Instruction No. 1 1991 (Susetyo, 2021). The ratification of KHI in Indonesia is a good sign of the level of enthusiasm and public awareness to continue to use the Al-Quran and Islamic teachings as the basis and source in making decisions.

Similarity causes of divorce legislation:

Based on historical point of view, the existence of divorce laws in the UK is

due to different interpretations of divorce in the Christian scriptures, which are the religion most adhered to by the people of the United Kingdom, because in the past the church had a higher position and was more feared than the government. It makes divorce very difficult and very fatal if carried out by the UK community. Even Luther interpreted that God forbade divorce (Kha, 2017), but as the age of the church function and position was pushed aside, which was followed by the UK community getting further and further away from the bible because of the adoption of social-liberalist ideology, this is also proved by the decreasing number of church visitors in the UK every year (*United Kingdom: New Report Finds Only One in 10 Attend Church*, n.d.), however in Indonesia, which until now the law still takes and applies Islamic values in it. Before the law on divorce was detailed and clear, Indonesia and the U.K. both had laws that privileged men and oppressed women. Before the UK divorce law, only men could divorce their wives (Thompson et al., 2012), just as in Indonesia, men were allowed to marry several times without divorcing their previous wives and without the permission of their wives, and men could leave their wives without any dependents on their wives (Muhammad Reza Pahlevi, Syarifudin Yusuf, 2020).

Until the movements of many organizations demanded and made divorce law clearer and fairer, with the allowed women to sue their husband in

the first place even for certain reasons (Biga, 2017). Indonesia also experiences the same thing that women are not considered one eye and given their freedom and power as wives by making them as licensees if the husband wants to remarry, and the existence of laws governing divorce can be accepted or rejected by the wife even though the final decision is the power of the judge (Khiyaroh, 2020). Equally important to see is the women's movement in the U.K. and Indonesia that made the divorce law was established and passed, meaning that the movement of women's organizations in both countries had a huge impact on the establishment of detailed divorce laws in Indonesia and the United Kingdom.

Indonesia and the United Kingdom both still use customary law as a source of law in making legal decisions. Indonesia is proven by the distribution of property produced during the time of marriage, which is divided based on the law that is believed and accepted by both parties. If both want to use customary law, it is permissible for them to do so (Rodliyah, 2014), whereas in the UK, because each country has its own customs and history, making judges and jurors also look at the customary law and customs of the community as a source in making legal decisions, even in the jurisdictions of England and Wales, they have special institutions if cases are to be resolved under Welsh law even if they have to remain subject to and do

not conflict with the Act of Parliament (Ellis, n.d.).

As explained in the previous chapter on the biography of the U.K. and the history of family law in Indonesia are the factors that caused differences in divorce law in Indonesia and the United Kingdom:

Difference causes of legislation divorce:

The position of religion in the country

Indonesia is not a religious country. Indonesia is a country with the ideology of Pancasila (Maulia, 2019). Where in the first precept it is stated that 'Belief in One Supreme God,' this precept animates all subsequent precepts, and this Pancasila also animates every law that is made, then all existing statutory regulations in Indonesia will be made not to contradict all values contained in every religion in Indonesia. While in the UK, religious leaders elected by the government will enter the ranks of the House of Lords, which is making laws, the House of Commons and the House of Lords both form a bill (Koss & Wilson, 1977), but keep in mind that the movement of the whole government other than with the permission of the Queen who is the head of state (*Parliament and Crown*, n.d.), the decisions that will be taken in the ratification of laws or that will apply are the choices of the most parliamentary members, making the ideology brought by the party winning the election become law that is passed and applies.

Some laws regarding divorce in Indonesia are equally regulated in the divorce law in the United Kingdom, but there are also laws regulated in the United Kingdom which are not regulated at all in the divorce law in Indonesia. If viewed broadly, the divorce law in the United Kingdom is more progressive and detailed because each case will reflect and follow the previous judge's decision which makes it detailed, as evidenced by the existence of several Independent legislations governing divorce and its consequences.

Movement of political parties and their ideology

As previously mentioned, the political party that leads the government will greatly influence the laws that will be passed and implemented in the UK. The political party currently in power in the UK is the Conservative Party with a socialist liberal ideology, and the official opposition is the Labor party with a socialist ideology which last came to power in 2010 ago (*Encycl. Br.*, n.d.). Even so, both of them support LGBT rights and legalize same-sex marriage, which is the most significant difference regarding divorce law which also regulates the separation of same-sex marriage from divorce law in Indonesia. Meanwhile, the movement of political organizations in Indonesia will be greatly influenced by the movement of religious organizations. Besides that, the movements and legal forms that will be legalized and implemented in the

community are those that do not conflict with the ideology of the Indonesian state itself.

Based on the theory of law as a social engineering by Roscou Pound that has been developed based on the USA society, that is law as a mechanism to control the society, which is in this context we have country that made the law (the parliament), and this theory has been developed by Mochtar Kusumaatmadja, made this theory has been developed based on the society of Indonesia itself (Lathif, 2017). As explained before that both Indonesia and United Kingdom have a strong religion values, however both countries have different way of seeing and apply the religion values. Indonesia uses the religion value as a living law and it stronger than any political and positive law that has regulated, because this core value is the main value of 'Pancasila' which is 'Belief in the one and only God', made the positive and future law in Indonesia have to refer to this value, makes Indonesia regulated the law not only refer to the country or the political movement but also seeing how the living law that already exist in the society. It means, Indonesia sees the positive law as important as its living law. While, United Kingdom adopted the theory of Roscoe Pound that the positive law and the influence of political party is stronger than its living law or in another word, the UK differentiates the living law and the positive law.

The similarities of divorce legislation in Indonesia and the United Kingdom

First, it takes excuses and proofs that are acceptable under the law. Divorce law in Indonesia and the United Kingdom, especially in England and Wales, both regulate reasons that can be accepted by judges as reasons for divorce. In addition, both countries are equally regulated to prove the reasons submitted so that the reasons can be accepted by the judge or jury. Second, because of the law of divorce that occurs, Indonesia and the U.K. both regulate in financial aspects, child custody, and obligations to fellow husbands and wives (couples).

The differences in divorce legislation in Indonesia and the United Kingdom

First, there is no period of 'iddah for the people of the U.K. after the divorce decision has been obtained, while in Indonesia, the period of 'iddah is different for women who are pregnant during 'iddah is until the baby they are born, women who have had sex with their ex-husband and separated because of divorce have a period of 'iddah for three holy times or at least 90 days, while women who have never had sex with her ex-husband do not have a period of 'iddah.' (Rodliyah, 2014). Second, even though the two countries both regulate child custody, there are differences in their laws, in England and Wales law, the word 'child custody' is

not found in legal terms because both parents of the child are equally entitled to their children, so there is no there is one party who wins custody "Divorce : Who Gets ' Custody ?" 2020.. Whereas in Indonesia, child custody is regulated in more detail and even contested in court so that one party will win custody of his child while the other party can see, meet or have time with his child if there is agreement from the party who won custody (Wardah, 2018). The most significant difference between the two countries is the existence of divorce or separation rules by same-sex marriages in the U.K., although the U.K. government says there are equal rights to married couples in general, the division of property from same-sex couples still follows the law on property in general.

CONCLUSION

As the conclusion of this thesis, the author tries to answer every problem examined as follows:

Firstly, the law on divorce in Indonesia is regulated in Law No. 1 of 1974 on special marriage in Chapter VII on the Termination of Marriage. The legal consequences of divorce are also regulated in the Law on Marriage in 1974, articles 38 and 39. In addition, the law on divorce is also regulated in the Compilation of Islamic Law Chapter XVI on the Termination of Marriage Article 113-128. Divorce in the United Kingdom, particularly in England and Wales, is regulated in several laws, namely the

Matrimonial Causes ACT 1973, the Children Act 1989, and the Divorce, Dissolution and Separation Act 2020.

Secondly, some factors are the reason for the similarity of divorce law in Indonesia and the U.K. is the history of the beginning of a divorce is known by the public, the movement of women's and feminist advocacy organizations and judges and juries still both make customary law and custom to be a source and reference for divorce issues. The factors that cause differences in divorce law in Indonesia and the United Kingdom are the position of religion in government and the country, as well as the movement of political parties and ideologies.

Thirdly, the legal equality of divorce between the two countries is equal that there are legally acceptable reasons and prove it in court to be able to do a divorce. For the legal consequences of divorce, Indonesia, and the U.K. both regulate in financial aspects, child custody, and also obligations to fellow husband and wife (spouse). While the legal difference about divorce in the two countries is that there is no 'iddah period for the U.K. community after the divorce decision has been obtained, while in Indonesia, the period of 'iddah is different for women who are pregnant, women who have had sex with their ex-husbands and then women who have never had sex with their husbands and divorced.

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