

**LEGISLATION OF DIVORCE IN INDONESIA AND UNITED KINGDOM
(ENGLAND AND WALES): A COMPARATIVE ANALYSIS**



**Approved for Defense
10/01/2022**

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THESIS

Submitted to Family Law Study Program International Program

Faculty of Islamic Studies

Islamic University of Indonesia

To qualify for the degree of Bachelor of Law

YOGYAKARTA

2022

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AFFIDAVIT

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Signed below:

Name : Fakhriyah Tri Astuti
Student Number : 17421006
Program Study : Family Law Study Program
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Thesis Title : Divorce Legislation in Indonesia and United Kingdom
(England and Wales): A Comparative Study

It hereby states that the results of writing this thesis are the work itself and true authenticity. Suppose it turns out that the writing of this thesis is plagiarism or plagiarization of the work of others in the future. In that case, I am willing to take responsibility and accept sanctions based on the rules and regulations that apply at the Islamic University of Indonesia.

This statement I made was real and not forced.

Yogyakarta, 8 January 2020



Fakhriyah Tri Astuti

PENGESAHAN

Skripsi ini telah dimunaqasyahkan dalam Sidang Panitia Ujian Program Sarjana Strata Satu (S1) Fakultas Ilmu Agama Islam Universitas Islam Indonesia Program Studi Ahwal Al-Syakhshiyah IP yang dilaksanakan pada:

Hari : Kamis
Tanggal : 3 Februari 2022
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Judul Skripsi : Divorce Legislation in Indonesia and United Kingdom (England and Wales): A Comparative Analysis

Sehingga dapat diterima sebagai salah satu syarat untuk memperoleh gelar Sarjana Strata Satu (S1) Ahwal Al-Syakhshiyah IP pada Fakultas Ilmu Agama Islam Universitas Islam Indonesia Yogyakarta

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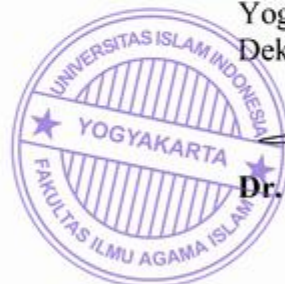
Pembimbing

Erni Dewi Riyanti, S.S., M.Hum.

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Yogyakarta, 3 Februari 2022

Dekan,




Dr. H. Tamyiz Mukharrom, MA,

NOTES

NOTES

Yogyakarta, 30 March 2021 AD

17 Shu'ban 1442 H

About : Thesis
 To : Honorable, Dean of the Faculty of Islamic Studies, Universitas Islam
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 in Yogyakarta

Assalamu'alaikum wr. wb.

Based on the appointment of the Dean of the Faculty of Studies of Universitas Islam Indonesia with the letter Number: 45/Dek/60/DAAT/FLA/III/2021 on March 30, 2021 for our duties as student mentor:

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Academic Year : 2020/2021

Thesis Title : Legislation of Divorce in Indonesia and United Kingdom (England and Wales): A Comparative Studies

After we thoroughly and we made improvements as necessary, we finally determined that the above-mentioned student's thesis was qualified to be submitted for thesis *muqarran* of Faculty of Islamic Studies, Universitas Islam Indonesia.

So, hopefully in the near future it can be declared, and with this we send 4 (four) copies of the thesis in question.

Wassalamu'alaikum wr,wb.

Thesis Supervisor,



Erni Dewi Riyanti, S. S., M.Hum.

SUPERVISOR'S APPROVAL

SUPERVISOR'S APPROVAL

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Based on the process, results and improvements of graduate so far, the person concerned can register to follow the thesis examination in the Family Law Study Program (Ahwal Syakhshiyah) of Faculty of Islamic Studies, Universitas Islam Indonesia, Yogyakarta.

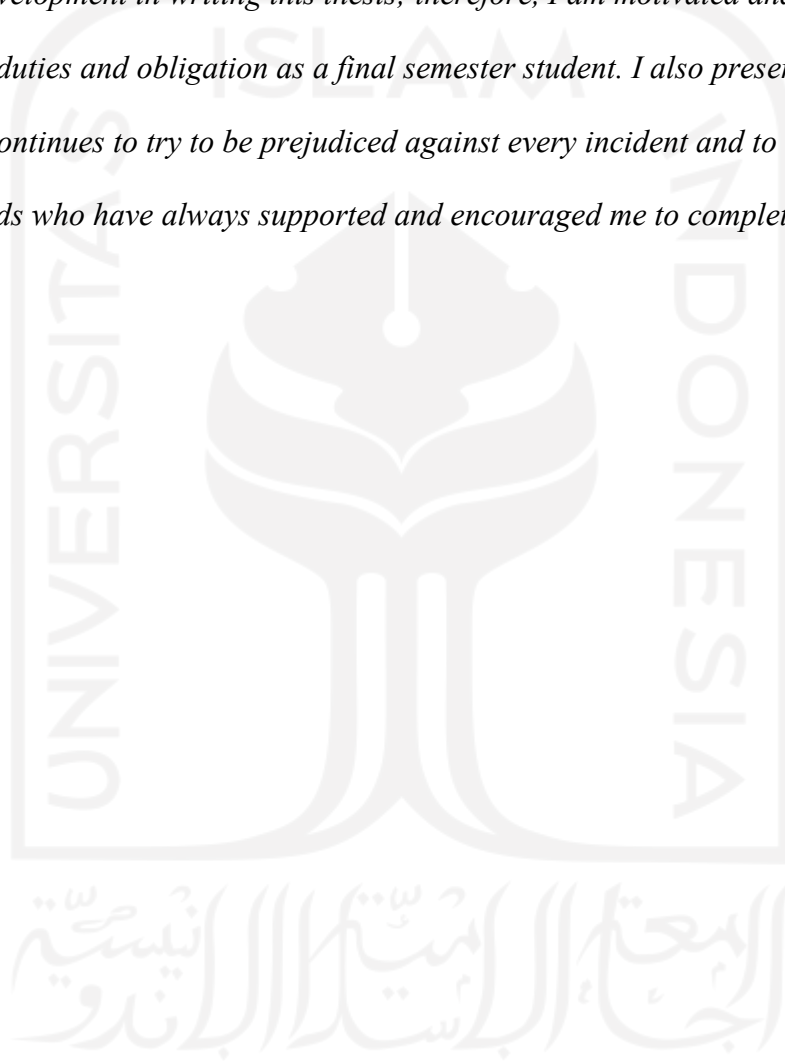
Thesis Supervisor,

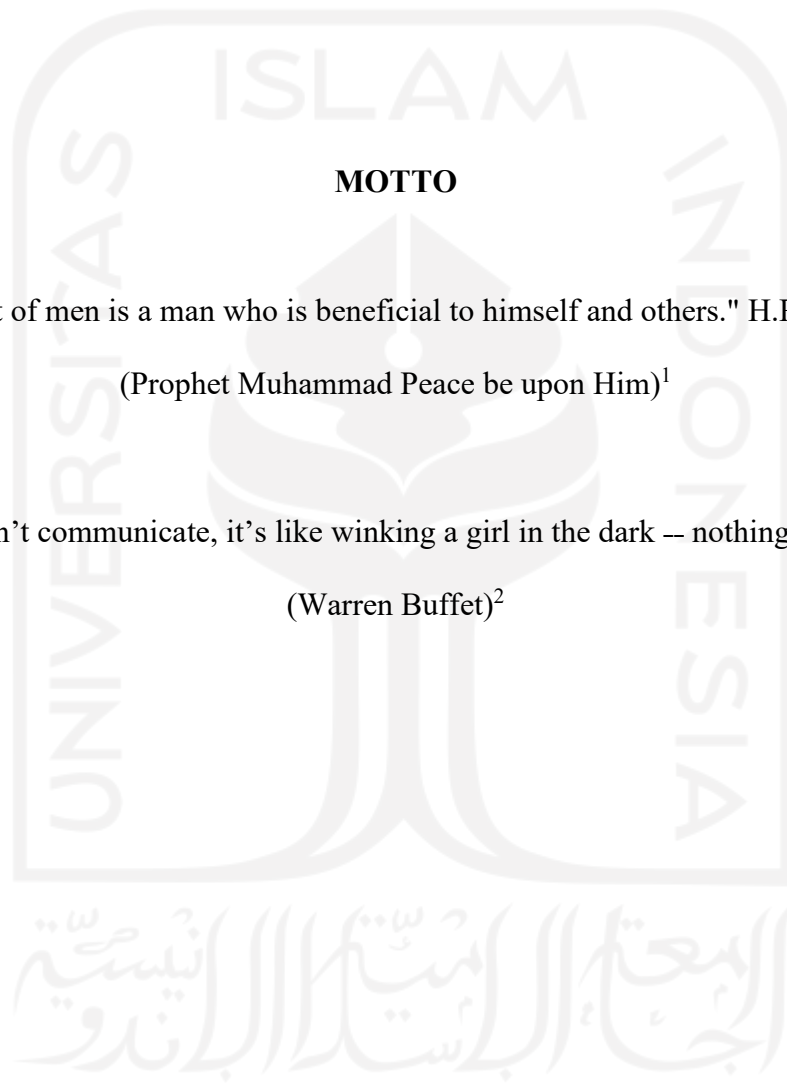


Emi Dewi Riyanti, S. S., M. Hum.

DEDICATION

"This thesis I present to both parents and my family who always pray, support, and ask about my development in writing this thesis; therefore, I am motivated and continue to remember my duties and obligation as a final semester student. I also present this thesis to myself, who continues to try to be prejudiced against every incident and to the coach and also my friends who have always supported and encouraged me to complete this thesis."





MOTTO

"The best of men is a man who is beneficial to himself and others." H.R Bukhari
(Prophet Muhammad Peace be upon Him)¹

"If you can't communicate, it's like winking a girl in the dark – nothing happens."
(Warren Buffet)²

¹Kementrian Agama DKi, "Sebaik -Baiknya Manusia Adalah Yang Bermanfaat Bagi Makhluk Yang Lain," 2018, <https://dki.kemenag.go.id/berita/sebaik-baiknya-manusia-adalah-yang-bermanfaat-bagi-mahluk-yang-lain>.

²Catherine Clifford, "Billionare Warren Buffet: This Is the 'One Easy Way' to Increase Your Worth by 'at Least' 50 Percent," 2021, <https://www.cnn.com/2018/12/05/warren-buffett-how-to-increase-your-worth-by-50-percent.html>.

LATIN ARAB TRANSLITERATION GUIDELINES
JOINT DECISION
MINISTER OF RELIGION AND MINISTER OF EDUCATION AND CULTURE
REPUBLIC OF INDONESIA

Number: 158 year 1987

Number: 0543b//U/1987

Transliteration is intended as a diversion from one alphabet to another. Here, the Arabic-Latin transliteration is the copying of Arabic letters with Latin letters and their devices.

A. Consonant

Arabic consonant phonemes in the Arabic writing system are denoted by letters. This transliteration is partly symbolized by letters and partly denoted by signs, and some are symbolized by letters and signs at once.

Here is a list of Arabic letters in question and transliteration with Latin letters:

Table 0. 1: Consonant Transliteration Table

Arabic letters	Name	Latin letters	Name
ا	Alif	Not symbolized	Not symbolized

ب	Ba	B	Be
ت	Ta	T	Te
ث	Ṡa	ṣ	es (with a point above)
ج	Jim	J	Je
ح	Ḥa	ḥ	ha (with the dot below)
خ	Kha	Kh	ka and ha
د	Dal	D	De
ذ	Ḍal	Ḍ	Zet (with the dot above)
ر	Ra	R	Er
ز	Zai	Z	Zet
س	Sin	S	es
ش	Syin	Sy	es and ye
ص	Ṣads	ṣ	es (with a point below)
ض	Ḍad	Ḍ	de (with dots below)
ط	Ṭa	ṭ	te (with dots below)
ظ	Ẓa	ẓ	zet (with dots below)
ع	'ain	`	inverted comma (above)
غ	Gain	G	Ge
ف	Fa	F	Ef
ق	Qaf	Q	Ki

ك	Kaf	K	Ka
ل	Lam	L	El
م	Mim	M	Em
ن	Nun	N	En
و	Wau	W	We
هـ	Ha	H	Ha
ء	Hamzah	‘	Apostrophe
ي	Yes	Y	Ye

B. Vocal

Arabic vowels, such as Indonesian vowels, consist of single or monophthong and double or diphthered vowels.

1. Single Vowels

The single vowels of Arabic, whose symbol is a sign or harakat, transliteration as follows:

Table 0. 2: Single Vocal Translator Table

Arabic letters	Name	Latin letters	Name
َ	Fathah	A	A
ِ	Kasrah	I	I

د	Dammah	U	U
---	--------	---	---

2. Double Vowels

Arabic double vowels whose symbol is a combination of harakat and letters, transliteration in the form of a combination of letters as follows:

Table 0.3 Double Vocal Transliteration Table

Arabic letters	Name	Latin letters	Name
يَا...	Fathah and yes	Ai	A and u
وَا...	Fathah and wau	Au	A and u

Example:

- كَاتَبَ kataba
- فَعَلَ fa'ala
- سَأَلَ suila
- كَيْفَ kaifa
- حَوْلَ haula

C. Maddah

Maddah or long vowels whose symbols are in the form of vowels and letters, transliteration in the form of letters and signs as follows:

Table 0. 4 Maddah Translation Table

Arabic letters	Name	Latin letters	Name
آ.. اى	Fathah and alif or yes	Ā	A and the line above
ى..	Kasrah and yes	Ī	i and the line above
و..	Dammah and wau	Ū	U and the line above

Example:

- قال qāla
- رامى ramā
- قائل qāla
- يقول yaqūlu

D. Ta' Marbutah

Transliteration for ta' marbutah there are two, namely:

1. Ta' marbutah life

Ta'marbutah live or who can harakat fathah, kasrah, and dammah, transliteration is "t".

2. Ta' marbutah died

Ta' marbutah died, or who got the breadfruit harakat, the transliteration is "h."

3. If in the last word with ta' marbutah followed by a word that uses the word sandang *al* and the reading of the two words is separate, then ta' marbutah is transliterated with "h."

Example:

- رَوْضَةُ الْإِطْفَالِ raud}ah al-at} fāl/raudahtul at} fāl
- الْمَدِينَةُ الْمُنَوَّرَةُ al-madīnah al-munawwarah/
al-madīnatul munawwarah
- طَلْحَةُ talhah

E. Shaddah (Tasydid)

Shaddah or tasydid, which in Arabic is symbolized by a sign, a sign of shaddah or tasydid, transliterated with letters, the same letter as the letter marked shaddah.

Example:

- نَزَّلَ nazzala
- الْبِرُّ al-birr

F. Sandang said.

The word sandang in the Arabic writing system is denoted by a letter, namely ,ال but in this transliteration, the word sandang is distinguished from:

1. The word sandang followed by the letter shamsiyah

The word sandang followed by the letter shamsiyah is transliterated according to the sound, i.e., the letter "l" is replaced with a letter that directly follows the word sandang.

2. The word sandang followed by the letter qamariyah

The word sandang followed by the letter qamariyah is transliterated under the rules outlined in front and accordance with the sound. Either followed by the letters shamsiyah or qamariyah, the word sandang is written separately from the word that follows and is connected without sempang.

Example:

- الرَّجُلُ ar-rajulu
- الْقَلَمُ al-qalamu
- الشَّمْسُ asy-shamsu
- الْجَلَالُ al-jalālu

G. Hamzah

Hamzah is transliterated as an apostrophe. But that only applies to hamzah located in the middle and at the end of the word. In contrast, hamzah, located at the beginning of the word, is symbolized in Arabic writing in the form of alif.

Example:

- تَأْخُذُ ta'khužu
- سَيَائِنُ syai'un
- النَّوْءُ an-nau'u
- إِنَّ inna

H. Word Writing

Whether fail, isim, or letter, every word is written separately. Only certain words whose writing with Arabic letters are commonly assembled with other words because some

letters or letters are omitted. The writing of the word is also coupled with other words that follow it.

Example:

- وَ إِنَّ اللَّهَ فِيهِ خَيْرُ الرَّازِقِينَ / Wa innallāha lahuwa khair ar-rāziqīn /
- Wa innallāha lahuwa khairurrāziqīn
- بِسْمِ اللّٰهِ مَجْرَاهَا وَمُرْسَاهَا / Bismillāhi majrehā wa mursāhā
- Bismillāhi majrehā wa mursāhā

I. Capital Letters

Although capital letters are unknown in the Arabic writing system, in this transliteration, the letter is used as well. Capital letters are what happens in E.Y.D., among others: capital letters are used to write the first letter of the name of oneself and the beginning of the sentence. When the name of the self is preceded by the word sandang, then the one written in capital letters remains the initial letter of the name of the self, not the initial letter of the final word.

Example:

- اَلْحَمْدُ لِلّٰهِ رَبِّ الْعَالَمِينَ / Alhamdu lillāhi rabbi al-'ālamīn /
- Alhamdu lillāhi rabbil 'ālamīn
- الرَّحْمٰنُ الرَّحِیْمُ / Ar-rahmānir rahīm/Ar-rahmān ar-rahīm
- Ar-rahmānir rahīm/Ar-rahmān ar-rahīm

The use of capital letters for Allah only applies when in Arabic, it is complete. Capital letters are not used if the writing is united with other words so that some letters or harakats are omitted.

Example:

- اللهُ غُفُورٌ رَّحِيمٌ Allaāhu gafrunū rahīm
- لِلّٰهِ الْأُمُورُ جَمِيعًا Lillāhi al-amru jamī'an/Lillā-amru jamī'an

J. Tajwid

This transliteration guideline is an integral part of Tajwid Science for those who want fluency in reading. Therefore, the inauguration of this transliteration guideline needs to be accompanied by guidelines.



ABSTRACT**Legislation of Divorce in Indonesia and United Kingdom (England and Wales): A
Comparative Analysis**

Fakhriyah Tri Astuti

(17421006)

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

ABSTRACT

Legislation of Divorce in Indonesia and United Kingdom (England and Wales): Comparative Analysis

Fakhriyah Tri Astuti

(17421006)

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

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ، وَبِهِ نَسْتَعِينُ عَلَى أُمُورِ الدُّنْيَا وَالْآخِرَةِ، وَالصَّلَاةُ وَالسَّلَامُ عَلَى
أَشْرَفِ الْأَنْبِيَاءِ وَالْمُرْسَلِينَ وَعَلَى آلِهِ وَصَحْبِهِ أَجْمَعِينَ

Thank Allah, the beneficent, and the Merciful. Praise and gratitude to Allah for giving me the strength and guidance to finish this thesis. Peace is on Him the Prophet Muhammad S.A.W., his family, relatives, and followers.

This thesis is entitled "Legislation of Divorce in Indonesia and United Kingdom (England and Wales): Comparative Analysis." This thesis is written to meet one of the requirements to obtain a Bachelor's degree at the Family Law Study Program, Faculty of Islamic Studies, Universitas Islam Indonesia.

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Yogyakarta, January^{1st} 2022



Writer,

Fakhriyah Tri Astuti



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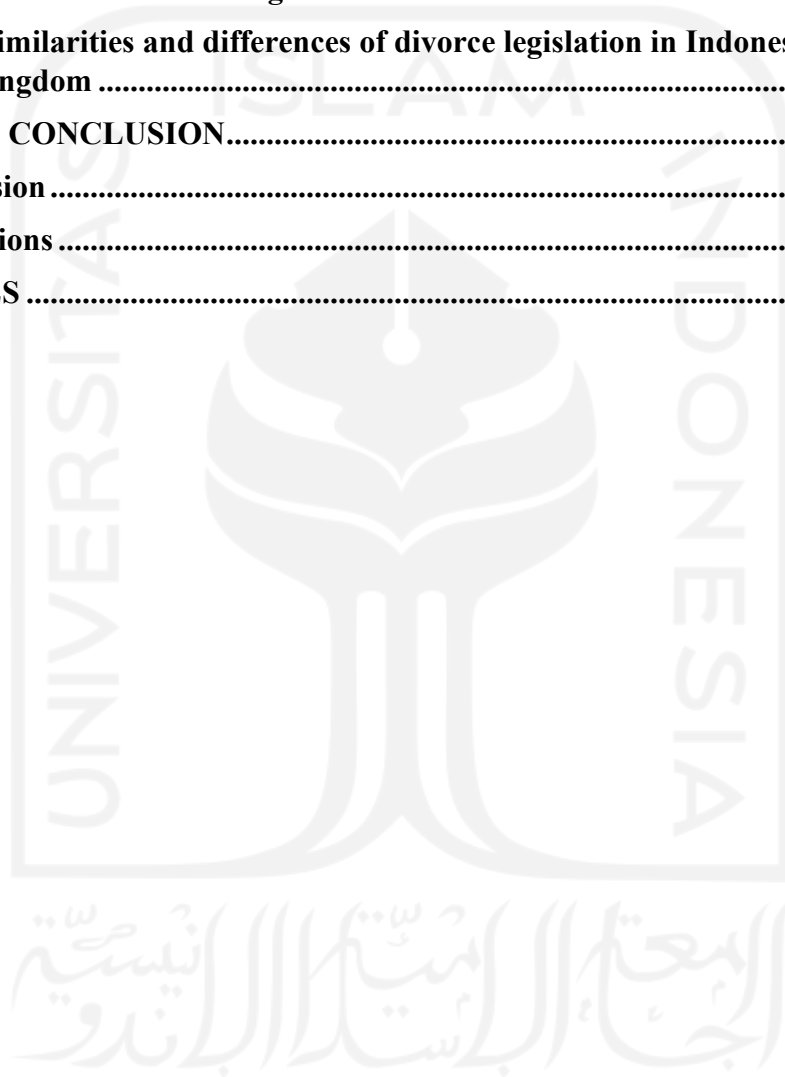


TABLE LIST

Table 1 The Legislation of Divorce in Indonesia and the United Kingdom, 40



CHAPTER I

INTRODUCTION

A. Background Issues

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. 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 Islam¹, 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 ijtihad of the scholars, 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, 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-husband and then divorced from her husband before the child in her womb was born.

¹Dian Erika Nugraheny, "Minister of Trade Said the Majority of Indonesian Muslims Agree with Pancasila," *Nasional Kompas*, April 13, 2021, <https://nasional.kompas.com/read/2021/03/13/11584391/menag-sebut-mayoritas-muslim-indonesia-setuju-dengan-pancasila>.

Those mentioned have different rules regarding the waiting period before being able to have sex with other men.

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.²

Laws regarding divorce in each country are definitely different, this is due to differences in legal systems, cultures, and even geographic locations. For example, between Indonesia and the United Kingdom, it is clear that 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 fairly high level of diversity, the United Kingdom must believe that the legal products produced can be followed by everyone.

²Office for National Statistic, "2011 Census: Key Statistics and Quick Statistics for Local Authorities in the United Kingdom," 2013.

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.³

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 things that 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.⁴ However, as we all know, LGBT activists in Indonesia often fight for their existence.

³“Divorces in England and Wales: 2019,” 2020, <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/divorce>.

⁴Syafi'in Mansur, “Homoseksual Dalam Perspektif Agama-Agama Di Indonesia,” *Aqlania* 08, no. 01 (2017): 21–60.

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 how 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.

B. Problems Statement

Depending on the background issues of this research, it formulates the points of the problem, namely:

1. How is divorce legislated in Indonesia and the United Kingdom?
2. What account for similarities and differences of divorce legislation in Indonesia and the United Kingdom?
3. How are the similarities and differences of divorce legislation in Indonesia and the United Kingdom?

C. Research Objectives and Benefits

1. Research Objectives:
 - a. To find out the legislation of divorce in Indonesia and the United Kingdom.

- b. To know the causes of similarities and differences of divorce legislation in Indonesia and the United Kingdom.
- c. To know the similarities and differences of divorce legislation in Indonesia and the United Kingdom

2. Benefits of Research:

a. Theoretical Benefits

This research is expected to contribute new thinking and understanding of the concept of legislation in Indonesia and the United Kingdom related to divorce and know the factors that cause similarities and differences of divorce law in Indonesia and the U.K.

b. Practical Benefits

It can be a reference for students, legal practitioners, and the public regarding the concept of invitations in Indonesia and the United Kingdom regarding divorce.

3. Systematic Discussion:

This research will be divided into five chapters related to one and the other.

Each chapter consists of sub-sub with the aim that the discussion in this thesis is arranged systematically:

CHAPTER I (one) is an Introduction that contains several sub-chapters. The division of the sub-chapters includes Background Problems, where the author explains the various causes that become the basis and support for the emergence of focus and research questions, Research Objectives, and Research Benefits approaching where the purpose of this thesis and what are the benefits can be obtained from this thesis.

Discussion systematics, presenting the format of the writing arrangement that will be discussed in this study.

CHAPTER II (two) contains literature studies and theoretical frameworks. Library research contains the main literature used in this study that has similarities in terms of problems, procedures, and results adapted to this discussion. The Theory Framework contains a description of the theory that describes the subjects of discussion by the theme in this study.

CHAPTER III (three) is a chapter that discusses the research methods in this thesis. The Research Method contains the Type of Research and Approach that researchers used in compiling this thesis. Then the Data Source and Source Selection in this Study. Furthermore, Data Collection Techniques and Data Analysis Techniques as the last element in the research method, which is a discussion in this chapter to produce data that is then discussed and get the conclusion.

CHAPTER IV (four) is a chapter that discusses the results of research and discussion. In this chapter, the cores of the discussion and research of the data have been described that lead to the final results of this study, namely data on how the concept of the law on divorce and its legal consequences in Indonesia and the United Kingdom.

CHAPTER V (five) is the closing part of the study, which contains the conclusions of the entire discussion and will be given some suggestions.

CHAPTER II

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

A. Previous Studies

There has been preliminary research on legislation in Indonesia relating to divorce and its legal consequences and in the United Kingdom from several papers. However, there are some studies that the author refers to part and the process of deepening the material, including:

Nunung Rodliyah (2014) "Due to Divorce Law Based on Law No. 1 of 1974 concerning Marriage". In this paper, the researcher briefly explains divorce and its laws. The author also explains the divorce terms submitted to the court, writing in detail about the legal effects of separation in Indonesia according to Law No. 1 of 1974; the author divides and discusses how divorce affects children, shared property, and living for abandoned wives. In addition to basing on Law No. 1 of 1974, the author also bases the consequences of divorce on the Compilation of Islamic Law.¹

Octavian Immanuel Nelwan (2019), "The Consequences of Spousal Divorce Law Are Viewed from the Point of View of Law No. 1 of 1974". In contrast to the previous literature study, the author discussed more the causes of divorce according to Law No. 1 of 1974. The author explained in detail how each cause affects the resulting consequences, making the consequences of divorce discussed because of the causes

¹Nunung Rodliyah, "Due to Divorce Law Based on Law No. 1 of 1974 concerning Marriage," *Progressive Justice* 5, no. 1 (2014): h. 127.

discussed earlier, making the eradication more balanced to the cause-and-effect research.²

Mutia Wardah (2018) "Hadhanah Due to Divorce in Family Law in Indonesia and Morocco." It is the only comparative source that discusses the straightness of aspects of family law, especially hadhanah. In this thesis, the author explains in detail how family law in Indonesia, even explaining how religious, political, cultural, social, and economic life in both countries, makes a very detailed comparison, in addition, he also discusses how family law in Indonesia and encounter Morocco similarities and differences. The author also explains the reformation and history of family law in Indonesia and Morocco. Then afterward, the author explained the understanding, terms, and even wages of hadhanah according to various madzhab and compared them based on the laws applicable in both countries.³

Setiyanto Andrew Jofrans Mumu (2018) "Juridical Review of Parental Responsibility to Children After Divorce In Law No. 1 1974 Article 45 Paragraph (1)". In this study, the focus of the author's discussion is a form of parental responsibility to the child after divorce in Law No. 1 of 1974 article 45 paragraph (1). In addition, the author also discusses how the legal consequences for parents who do not carry out responsibility for the child after divorce in Law No. 1 the year 1974 article 45 paragraph (1). The child who is the impact of the divorce of both parents is the focal

²Oktavianus Nelwan, "Akibat Hukum Perceraian Suami-Isteri Ditinjau Dari Sudut Pandang Undang-Undang Nomor 1 Tahun 1974," *Lex Privatum VII* (2019): 103–10, [http://dx.doi.org/10.1016/j.regsciurbeco.2008.06.005%0Ahttps://www.researchgate.net/publication/305320484_SISTEM_PEMBETUNGAN_TERPUSAT_STRATEGI_MELESTARI](http://scioteca.caf.com/bitstream/handle/123456789/1091/RED2017-Eng-8enc.pdf?sequence=12&isAllowed=y%0Ahttp://dx.doi.org/10.1016/j.regsciurbeco.2008.06.005%0Ahttps://www.researchgate.net/publication/305320484_SISTEM_PEMBETUNGAN_TERPUSAT_STRATEGI_MELESTARI).

³Mutia Wardah, "Hadhanah Akibat Perceraian Dalam Hukum Keluarga Di Indonesia Dan Maroko," 2018.

point of the author's discussion, making all the rights of the child related to the mental and quality of the child discussed in detail. Such as the responsibility of parents to experiences in childhood to adulthood, then how parents instill values such as religious values, social and responsibility to the child, if noticed in this study, the authors discuss in detail how the form of parental responsibility that leads to the way parents treat their children (parenting) even though the parents are divorced.⁴

Rasidah (2020) "Juridical Analysis of the Position of Common Property After divorce Based on the Indonesian Legal System." This research focuses its discussion on the legal arrangement of shared property based on the legal system in Indonesia, where the general provisions on shared assets are stipulated in Law No. 1 of 1974 article 31, which explains that if a marriage breaks up due to divorce, then the joint property is regulated under their respective laws, which means that a joint property lawsuit is based on the law applicable to a region, if the area rests on customary law, then the law governing joint property is the customary law of the region. In addition, the author also discussed the legal consequences of the sharing of joint property in the case of separation in Indonesia based law, and the author said that in addition to the issue of child custody, joint property is a discussion in a complicated divorce case and takes time to resolve when compared to other legal consequences. The author explained that the law has distinguished between Innate property, Joint property, and

⁴Danu Aris Setiyanto, "Konstruksi Pembangunan Hukum Keluarga Di Indonesia Melalui Pendekatan Psikologi," *Al-Ahkam* 27, no. 1 (2017): 25, <https://doi.org/10.21580/ahkam.2017.27.1.1183>.

Acquisition property based on article 35 of Law No. 1 of 1974. The author also explains how customary law sees and regulates joint property due to divorce.⁵

Agnes Maria Janni Widyawati (2020) "Divorce and Its Aftermath According to Law No. 1 of 1974 concerning Marriage". This study explains in general about divorce law, things that can cause divorce according to positive Indonesian law, and various divorces that are divorced in the form of divorce and divorce, then the author explains in general how the consequences of divorce against the duties for both parties, the consequences of divorce to children and property is different.⁶

Charlotte Bradley (2021) "Family Law 2021 A Practical Cross-Border Insight into Family Law". This research explains family matters, especially on separation and dissolution of civil partnership relation, money management effects on divorce, marital agreements, cohabitation, and unmarried family, the rights of the children regarding their parent's obligation or their financial matters, and the international condition of children. The unique thing about this research is how the writers inform us about many topics related to family law matters in the United Kingdom, especially in England and Wales, by answering questions that many people, including me, have asked many times as a researcher, such as what can be called as the causes of jurisdiction to have the order for divorce? The writers answer it shortly but fully understandable, and its answer is based on the law applied in England and Wales.⁷

⁵Rasidah, Hanafi Arief, and Afif Khalid, "Analisis Yuridis Tentang Kedudukan Harta Bersama Setelah Terjadinya Perceraian Berdasarkan Sistem Hukum Indonesia," 2020.

⁶Agnes Wisyawati, "Perceraian Dan Akibatnya Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Jurnal Hukum Dan Dinamika Masyarakat* 18, no. 1 (2020), <http://mpoc.org.my/malaysian-palm-oil-industry/>.

⁷Charlotte Bradley and Nevin, "Family Law 2021," 2021.

James Stewart (2021) "Family Law in The United Kingdom (England and Wales): Overview." The writers mention and explain all the laws regarding family law, including jurisdiction and conflicts of law in England and Wales, such as pledging before and after marriage, how is the law of the marital properties, divorce, nullity, and judicial separation which explain detailly about children matters including child custody and adoption, the writer explains cohabitation, family dispute resolution, civil partnerships, same-sex marriage, controversial areas, and interestingly explain how COVID-19 effects on the ruling of family law in the United Kingdom especially in England and Wales.⁸

Sayed Mohammad Sadri (2015) "Spouse Maintenance According to the Law Approved in Iran and England." It is a comparative study related to how this thesis wants to be written; in this research, the writer's point of view is one of the consequences of divorce, which is on spouse maintenance. The research explains how divorce can obtain maintenances, the regulations about the maintenance, types of spouse maintenance based on the England law. The research provides information on how husband and wife can be declined for maintenance and punishment.⁹

Liz Trinder (2017) "Finding Fault? Divorce Law and Practice in England and Wales". The research conducted on divorce and separation law regulation in England and Wales be made and applied. Besides, it explains the history of the divorce law also its changes throughout the years since then. The research provides information about

⁸James Stewart et al., "Family Law in the UK England and Wales: Overview" (England, Wales: Thomson Reuters, 2021).

⁹Sayed Mohammad Sadri et al., "Spouse Maintenance According to the Law Approved in Iran and England" 4, no. 2 (2015): 244–55.

the statistic of divorce disputes and jurisdictions that have been made. Still, this main research point explains about the finding fault, which in the United Kingdom generally applied that for the dispute to be made and accepted by the court is one of the parties has to be proven fault as one of the grounds of divorce as stated in the Divorce, Dissolution and Separation Act 2020. It gained pro and contra until the act was recently reviewed and changed.¹⁰

Cathrine Fairbairn (2019) "No-fault Divorce". This research explains the current basis for divorce. It is consequences in England and Wales based on Matrimonial Causes Act 1973 and Family Act 1996 as the base of the divorce law, which stated children's rights as the impact of divorce. Still, besides these, it explains how 'no-fault divorce' regulation is finally reviewed by the United Kingdom parliament, including the responses and the consultations paper of the United Kingdom government.¹¹

Cathrine Fairbairn (2020) "Financial Provision when A Relationship Ends." As one of the consequences of divorce and dissolution, assets and provisions must be divided. But before this research, explain the divisions of the wealth itself based on the case of a law that has already happened before. The research conducts the information and regulation of how the court decides the sharing provisions or assets dispute. This research shows how if one wants to make a dispute in court about the related case practically and how the orders as the final result of the dispute are enforced for both parties.¹²

¹⁰Liz Trinder et al., "Finding Fault? Divorce Law and Practice in England and Wales Summary Report," 2017.

¹¹Cathrine Fairbairn, "'No-Fault Divorce'," 2019.

¹²Cathrine Fairbairn, "Financial Provision When a Relationship Ends," no. 05655 (2020).

Rosemary Auchmuty (2016) "The Experience of Civil Partnership Dissolution: Not 'Just Like Divorce.'" The writer this some interviews with lesbian or gay that have experience dissolution; however, the writer stated that most family lawyers respond that dissolution is similar to divorce. By doing this research, the writer found legal differences between both terms. It is based on three reasons, first that many people marginalize the history of it, second, the civil partnership institution has to be well known and understood by more people so that the regulation and the legal basis can be made because of the civil partnership institution, and to know the difference of marriage and civil partnership, and dissolution and divorce that people have to understand the precise history deeply.¹³

B. Theoretical Framework

1. The Reformation of Divorce Legislation in Indonesia and the United Kingdom
 - a) Reformation of Divorce Legislation in Indonesia

Divorce in Indonesia from the beginning was never regulated in a special law but instead joined in a law on marriage which has been codified in Law No. 1 of 1974 on marriage. Therefore, in this chapter, the author will describe changes in the law regarding family law relating to divorce law itself, whose reforms can be divided as follows:

1. Before the Dutch occupation

¹³Rosemary Auchmuty, "The Experience of Civil Partnership Dissolution: Not 'Just like Divorce,'" *Journal of Social Welfare and Family Law* 38, no. 2 (2016): 152–74, <https://doi.org/10.1080/09649069.2016.1156884>.

At this time, 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.¹⁴

2. The Dutch Colonial Period

At this time, initially, the Dutch 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.¹⁵ 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

¹⁴Nurhikmah Hairak H. Biga, "History of Renewal of Islamic Family Law in Indonesia," *Al-Mizan* 13, no. 2 (2017): 185–203.

¹⁵Ulil Absiroh, "Understanding of History 350 Years Indonesia Colonized By Dutch," *Jurnal Online Mahasiswa (JOM) Fakultas Keguruan Dan Ilmu Pendidikan (FKIP) Universitas Riau* 1 (2017): 1–15.

new court that especially took care of worldly problems.¹⁶ (*werdwdijke 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 theory¹⁷, 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*¹⁸.

Until the emergence of a theory that opposes the theory of *reception in complexu*, the *receptive* theory was triggered by C.Snouck Hurgronye¹⁹, 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.

¹⁶Biga, “History of Renewal of Islamic Family Law in Indonesia.”

¹⁷N. Muhammad, “Epistemologi Pengembangan Hukum Islam,” *Al-Mizan* 9, no. 1 (2013): 77–86.

¹⁸Biga, “History of Renewal of Islamic Family Law in Indonesia.”

¹⁹Muhammad, “Epistemologi Pengembangan Hukum Islam.”

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). Here are the rules on marriage in the Netherlands²⁰:

- (a) For Europeans applies the Code of Civil Law (*Burgelijk Wetboek*)
- (b) The Chinese people, in general, also apply B.W. with few exceptions in terms related to soul recording and events before marriage.
- (c) For Arabs and Foreign Easterners who are not Chinese apply their customary laws
- (d) For native Indonesians apply their laws plus for Christians apply the Law of Christian Marriage Java, Minahasa, Ambon
- (e) 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.

²⁰Biga, "History of Renewal of Islamic Family Law in Indonesia."

3. The Post-Independence Period

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:

(a) The Old Order Era

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.²¹

- 1) 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.
- 2) On 16 June 1949, it was enacted in Sumatra based on the Emergency Government Decree of the Republic of Indonesia dated 14 June 1949.
- 3) 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.

²¹Biga.

(b) The New Order Era

At 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.²² 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.²³

(c) The Reform Era

At 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

²²Biga.

²³Hikmatullah Hikmatullah, "Selayang Pandang Sejarah Penyusunan Kompilasi Hukum Islam Di Indonesia," *Ajudikasi : Jurnal Ilmu Hukum*, 2018, <https://doi.org/10.30656/ajudikasi.v1i2.496>.

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 family²⁴. 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.²⁵

2. Reformation of Divorce Legislation in the United Kingdom

a) Brief History of United Kingdom

The United Kingdom of Great Britain and Northern Ireland or commonly known as Great Britain or the United Kingdom²⁶ 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 a number of 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,

²⁴“Impelementasi Ketentuan Anak Luar Kawin Dalam Undang-Undang Perkawinan Pasca Putusan MK Cited from Accessed on Saturday, January 20,” 2012, <https://www.hukumonline.com/talks/baca/arsip/lt4f79272c66780/implementasi-ketentuan-anak-luar-kawin-dalam-uu-perkawinan-pasca-putusan-mk>.

²⁵Lembaran Negara Republik Indonesia,” Undang-Undang Republik Indonesia, 2019, <https://jdih.go.id/files/4/2019uu016.pdf>.

²⁶J. S. Morrill et al., “United Kingdom,” Encyclopedia Britannica (Encyclopedia Britannica), accessed January 20, 2022, <https://www.britannica.com/place/United-Kingdom>.

Scotland, Wales, and Northern Ireland, 'Britain' is an informal designation. When someone mentions Britain, it means the United Kingdom.²⁷ 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 Wales²⁸.

(1) Government System of the United Kingdom

The U.K. has a monarchical-parliamentary system of government.²⁹ 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,³⁰ 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

²⁷Morrill et al.

²⁸ibid

²⁹Morrill et al., "United Kingdom."

³⁰"United Kingdom: Government," United Kingdom Government, accessed February 20, 2022, <https://globaledge.msu.edu/countries/united-kingdom/government>.

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 legal law.³¹

(2) 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 Ireland³². For the legal system, this country does not use a certain system³³, 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.³⁴ In general, English law is sourced from legislation, judicial precedent, custom, and book of authority³⁵. The House of Commons and

³¹“Bill Becomes an Act of Parliament,” accessed January 20, 2022, <https://www.parliament.uk/about/how/laws/passage-bill/lords/lrds-royal-assent/>.

³²“United Kingdom Country Profile,” QQFS, 2020.

³³“Crime, Justice and the Law,” United Kingdom Government, accessed January 20, 2022, <https://www.gov.uk/browse/justice/courts-sentencing-tribunals>.

³⁴Nurul Qamar, *Perbandingan Sistem Hukum Dan Peradilan*, 2010.

³⁵Qamar.

the House of Lords share the power to make laws³⁶. 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 England³⁷. 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 Sovereignty³⁸.

(3) Life of the United Kingdom Society

(1) Politics field

In running the government in the United Kingdom, there are two main political parties in England because the UK adheres to a 2-party system³⁹, namely the Conservative Party and the Labor Party. The Conservative Party has been in power since 2010, currently holding 363 parliamentary seats in government⁴⁰. 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 2014⁴¹. The UK's other

³⁶“The Two-House System,” United Kingdom Government, accessed January 20, 2022, <https://www.parliament.uk/about/how/role/system/>.

³⁷“How Are Laws Made?,” 2022, <https://www.parliament.uk/about/how/laws/>.

³⁸United Kingdom Government, “Parliament’s Authority,” accessed January 20, 2022, <https://www.parliament.uk/about/how/role/sovereignty/>.

³⁹Britannica, T. Editors of Encyclopedia. "two-party system." Encyclopedia Britannica, 19 May 2020. <https://www.britannica.com/topic/two-party-system>.

⁴⁰“State of the Parties,” 2022, <https://members.parliament.uk/parties/Commons>.

⁴¹Louth et al., “Encyclopedia Britannica” (Encyclopedia Britannica, 2019), <https://www.britannica.com/topic/Conservative-Party-political-party-United-Kingdom>.

main party is the Labor Party, the party which is currently the official opposition party in the UK with 198 seats in parliament⁴². 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 policy⁴³.

The leader of the Conservative party, Boris Johnson, has been the incumbent Prime Minister of the UK since 2019⁴⁴. 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 2024.⁴⁵

(2) Economy field

⁴²Morrill et al., "United Kingdom."

⁴³Webb and P. David, "Labour Party," 2020, www.britannica.com/topic/Labour-Party-political-party.

⁴⁴Rita Uli Hutapea, "Mantan Menlu Boris Johnson Terpilih Jadi Perdana Menteri Baru Inggris," *Detik News*, July 23, 2019, <https://news.detik.com/internasional/d-4636454/mantan-menlu-boris-johnson-terpilih-jadi-perdana-menteri-baru- inggris>.

⁴⁵United Kingdom Government, "General Election," 2022, <https://www.parliament.uk/about/how/elections-and-voting/general/>.

The UK has a partially regulated market economy.⁴⁶ The economy of the United Kingdom is a highly developed social, market-oriented economy.⁴⁷ 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 GDP⁴⁸.

In 2019 the UK was the fifth most exporter country in the world and the fifth most importer⁴⁹. 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 imports⁵⁰.

The UK service zone also dominates, accounting for 81% of GDP⁵¹. London is the second most populous city center in the world⁵², while Edinburgh is ranked 21st in the world, and 6th in Europe for its financial services industry in 2021⁵³. Of the 500 largest industries in the world, 26

⁴⁶Department for Business Innovation & Skills, "Principles for Economic Regulation" 2011, no. April (2011).

⁴⁷Nigel Hawkins, "Privatization Revisited," Adam Smith Institute, 2010, <https://doi.org/10.1111/j.1541-1338.1994.tb00604.x>.

⁴⁸Pat Thane, "The Origins of the British Welfare State," *The Journal of Interdisciplinary History* 50, no. 3 (2019): 427–33, https://doi.org/10.1162/jinh_a_01448.

⁴⁹ "Global Economy Watch – Projection", cited from <https://www.pwc.com/gx/en/research-insights/economy/global-economy-watch/projections.html> accessed on Saturday, January 20th 2022 04.00 P.M

⁵⁰By Matthew Ward, "Statistics on UK-EU Trade," no. December (2021): 1999–2020.

⁵¹House of Commons, "A3 : Components of GDP," *Economic Indicators*, no. 02787 (2020): 2787.

⁵² David Reid, "New York Stretches Lead over London as the World's Top Financial Center, Surveys Shows," 2019, <https://www.cnn.com/2019/09/19/new-york-beats-london-again-as-the-worlds-top-financial-center.html>.

⁵³Z/Yen Group, "Global Finance Center Index (GFCI 27 Rank)," 2022, <https://www.longfinance.net/programmes/financial-centre-futures/global-financial-centres-index/gfci-27-explore-data/gfci-27-rank/>.

are headquartered in the UK⁵⁴. 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 capita⁵⁵. The size of London's economy makes it the largest city by GDP per capita in Europe⁵⁶.

(3) Religion and Social Field

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.⁵⁷ 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.)⁵⁸. 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)⁵⁹.

⁵⁴“The World’s 500 Largest Companies Generated \$27.6 Trillion in Revenues and \$1.5 Trillion in Profits in 2015,” Fortune, 2016, <https://fortune.com/global500/2016/>.

⁵⁵Energy & Industrial Strategy Department for Business, “Crude Oil and Petroleum Products – Methodology Note,” no. 1 (2021).

⁵⁶“The GDP of London,” European Commission, accessed February 20, 2020, https://ec.europa.eu/growth/tools-databases_en.

⁵⁷Statistic, “2011 Census: Key Statistics and Quick Statistics for Local Authorities in the United Kingdom.”

⁵⁸“British Social Attitudes: Record Number of Brits with No Religion,” 2017, <https://natcen.ac.uk/news-media/press-releases/2017/september/british-social-attitudes-record-number-of-brits-with-no-religion/>.

⁵⁹Statistic, “2011 Census: Key Statistics and Quick Statistics for Local Authorities in the United Kingdom.”

71% of young people between the ages of 18 and 24 say they have no religion⁶⁰.

Historically the original inhabitants of the United Kingdom were considered to be 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%⁶¹.

b) 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, in order 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

⁶⁰“British Social Attitudes: Record Number of Brits with No Religion.”

⁶¹Statistic, “2011 Census: Key Statistics and Quick Statistics for Local Authorities in the United Kingdom.”

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. So, Henry used this as an excuse to divorce Catherine and marry Anne again.⁶²

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).⁶³

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

⁶²Henry Kha, "The Reform of English Divorce Law : 1857 – 1937," 2017, 1857–1937.

⁶³Kha.

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.⁶⁴

13. The Legislation of Divorce in Indonesia and the United Kingdom

1) Divorce Law in Indonesia

Divorce in Indonesian comes from the word 'cerai,' which according to The Great Dictionary of Indonesian Language (KBBI), means separation or breakup of husband and wife relationship.⁶⁵ Divorce means separation between the husband and wife while both are still alive or the breakup of the marriage, which can happen with *thalak* (divorce by *thalak*) or *khuluk* (divorce by lawsuit).⁶⁶ In another sense, divorce is one of the causes for marriage relation to be separated

⁶⁴Kha.

⁶⁵Pusat Bahasa, "Kamus Besar Bahasa Indonesia," 2016, <https://kbbi.kemdikbud.go.id/>.

⁶⁶Handar Subhandi, "Pengertian Perceraian Dan Dasar Hukum Perceraian," *Jurnal Universitas Hasanuddin*, vol. 2, 2014, <https://doi.org/10.13140/RG.2.2.15543.21924>.

other than death and on the court's decision.⁶⁷ Divorce, in other terms, is a legal event that is consequently governed by law or a legal event that has given legal repercussions.⁶⁸ Divorce can also be understood as the breakup of the married couple conducted at the wish of the husband and wife or because of the breakup of the court.⁶⁹

Divorce in Indonesia can be divided into two kinds, namely:

- (a) Divorce by *thalak*, i.e., divorce filed for divorce by and on the initiative of the husband to the religious court, which is considered to occur and apply along with all legal consequences from the moment the divorce is declared in front of siding religious court.⁷⁰
- (b) Divorce by *khulu'*, i.e., filed for divorce by and on the initiative of the wife to the religious court, which is considered to occur and apply along with all legal consequences since the fall of the court's verdict that has a fixed legal enforcement⁷¹

In Indonesia itself, divorce is not made as a specific law, but made as to the part of the Marriage Act but is specifically contained in Chapter VII on The End of Marriage and Consequently Article 38 and Article 39, in addition to the Marriage

⁶⁷Rasidah, Arief, and Khalid, "Analisis Yuridis Tentang Kedudukan Harta Bersama Setelah Terjadinya Perceraian Berdasarkan Sistem Hukum Indonesia."

⁶⁸Pasal 41 Undang-Undang No. 1 tahun 1974 tentang Perkawinan

⁶⁹Febri Handayani and Syaflidar, "Implementasi Mediasi Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama," *Jurnal Al-Himayah* 1, no. 2 (2017): 227–50.

⁷⁰Undang-Undang No. 1 tahun 1974 Tentang Perkawinan

⁷¹ibid

Act, divorce is also regulated in the Compilation of Islamic Law Chapter XVI on The Breakup of Marriage Article 113-Article 128.⁷²

The law in the United Kingdom itself does not give a specific understanding with regard to divorce, but based on the Encyclopedia Britannica, a divorce is an act that makes the breakup of the bond caused by a valid marriage, which due to the breakup of the marriage relationship allows the divorced party to remarry. In the United Kingdom itself, divorce based on religion such as Catholic divorce or Hindu marriage is difficult to do even rarely, because if based on religion, marriage is a very forbidden thing.⁷³

2) Divorce Law in the United Kingdom

Divorce under the laws of the United Kingdom itself is contained in the Divorce Reform Act 1969 and Divorce, Dissolution and Separation Act 2020, while as a result of divorce is stipulated in the Matrimonial Causes Act 1973 (MCA 1973) and The Children Act (CA 1989) is the legal basis regarding the children abundance and custody.⁷⁴

The United Kingdom is one of the countries that allow same-sex couples to live and live together like husband and wife but not in marriage, or in our terms as Indonesians 'kumpul kebo', this is referred to as civil partnership, it is regulated in The Civil Partnership Act 2004 (CPA 2004). Initially, this unmarried couple relationship was only for those of the same gender and wanted to live like

⁷²Subhandi, "Pengertian Perceraian Dan Dasar Hukum Perceraian."

⁷³"Encyclopedia Britannica," accessed 24 March 2021, <https://www.britannica.com/topic/divorce>.

⁷⁴Stewart et al., "Family Law in the UK England and Wales: Overview."

husbands and wives. Before this rule was held, same-sex couples were not allowed to marry in any state in the United Kingdom, and now civil partnerships get many of the same rights as those who marry, in the law that applies in England and Wales itself, civil partnership is allowed since December 2005 and can register as a civil partnership partner, and in 2019 it was allowed for those with different genders to register as civil partnerships, same-sex couples can change their status as a civil partnership to marriage.⁷⁵ Because this regulation makes the population of civil partnership couples increasing since it was passed in 2005 precisely in December until the end of 2010, there were 85,556 civil partners in total.⁷⁶ But based on data in 2012 and 2013, the breakup of civil partnerships stood at 802 in 2012 and 974 in 2013.⁷⁷ Therefore, it is no wonder that the laws of the United Kingdom govern this issue. If in the marriage bond the breakup of the relationship between the husband and wife is referred to as divorce, then the breakup of the relationship between civil partners is referred to as dissolution, which is stipulated in the Divorce, Dissolution, and Separation Act 2020. With regard to the legal consequences of dissolution, many are at least regulated in the Matrimonial Causes Act 1973, but when it comes to property, civil partners refer to The Trust of Land and Appointment of Trustees Act 1996 (ToLATA), in fact when it comes to inter-civil partners property is not regulated by law in the United

⁷⁵Catherine Fairbairn, “Civil Partnership for Opposite Sex Couples,” no. January (2020): 1–14.

⁷⁶Helen Ross, Karen Gask, and Ann Berrington, “Civil Partnerships Five Years On.,” *Population Trends*, no. 145 (2011): 168–98, <https://doi.org/10.1057/pt.2011.23>.

⁷⁷Office for National Statistics, “Civil Partnerships in the UK,” 2013.

Kingdom specifically but follows the property law and the principles of constructive trusts and proprietary estoppel.⁷⁸

3) Factors Causing Divorce in Indonesia and the United Kingdom According to Law

In Indonesia itself, in Article 39 Paragraph (2) Law No. 1 the Year 1974 and Article 19 Government Regulation No. 9 of 1975 explains unequivocally about the reasons for divorce that between husband and wife cannot live as husband and wife, namely:

- 1) Adultery, drunkard, gambler, and so on that always committed by one of the parties, which are very difficult to cure.

Adultery, in this case, is adultery that is done consciously. Adultery is a sexual relationship between a husband and his affair other than his wife or a wife with a man other than her husband. With regard to being a drunk, a compactor, and a gambler which is very difficult to cure, are things that will bring about the destruction of the household, the purpose of the household itself will not be achieved.

- 2) It was leaving the other party for 2 (two) consecutive years without the permission of the other party and without any valid reason or because of matters beyond its control.

In the Marriage Act, it is stipulated that the husband and wife must have a permanent joint residence. So, if one party leaves the other without a valid

⁷⁸Stewart et al., "Family Law in the UK England and Wales: Overview."

reason or without the other party for two consecutive years, then the abandoned party can sue for divorce. To be considered to leave the joint residence if the other party leaves the joint residence refuses to return.

- 3) Got a prison sentence of 5 (five) years or a heavier sentence by one party after the marriage takes place.

This punishment is for committing a crime after the marriage is held. If the sentence has been imposed five years or more severe and then appeal or cassation and get leniency up to under five years, then this reason can still be used as a reason for divorce. Similarly, in the event of a sentence imposed by a foreign judge whose verdict of five years or more can be used as a reason for divorce.

- 4) Atrocities or severe persecution that endangers another's life or that includes a criminal offense that commits by one of the parties. But the cruelty of the mind can be an insult, slander, or something else that disturbs the soul.

Regarding this severe persecution, including severe injury or persecution that endangers his life and this action must be an act committed by the husband against the wife or wife against her husband.

- 5) There is a disability or disease on one of the parties that result in not being able to carry out his duties as a husband and wife.

What is meant by disability or illness is a disease or deformity that is very severe that the husband or wife cannot carry out their duties as a husband or wife.

- 6) There are constant quarrels, and there is no hope of living together again in the home between husband and wife.

Disputes between husband and wife are commonplace. In fact, continuous disputes will greatly harm the harmony and survival of the household. This dispute must be proven by witnesses, neighbors, and others about the possibility of getting along again.

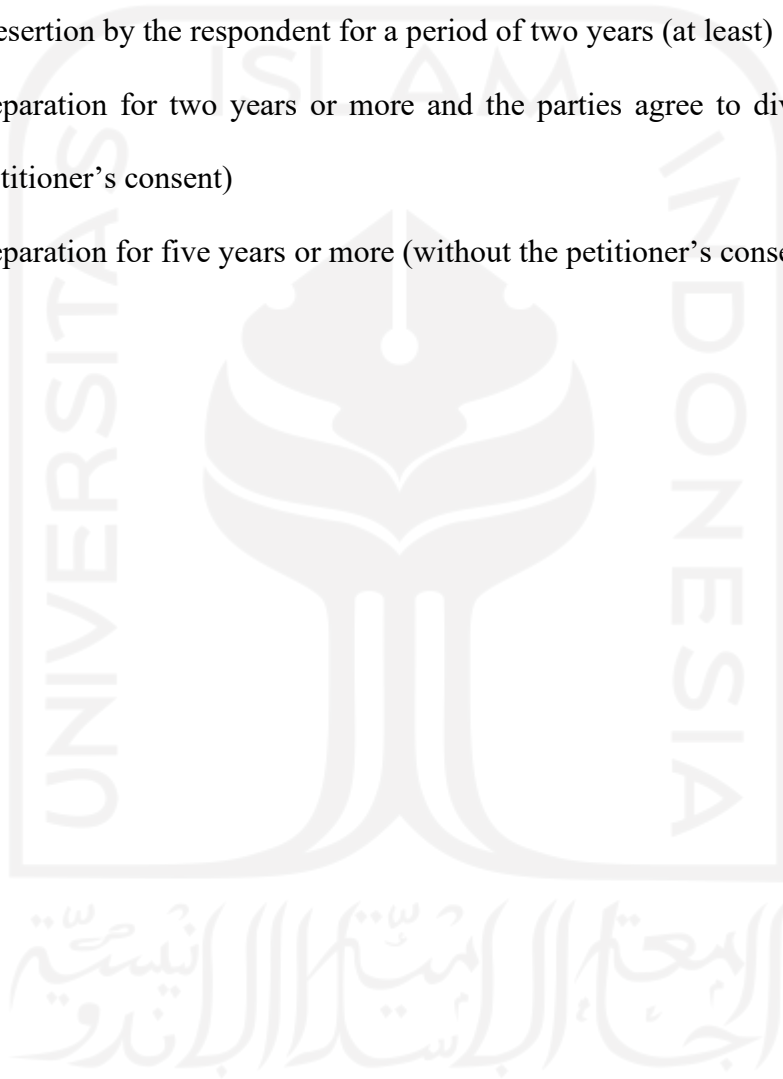
The factors that cause disputes are as follows:

- (1) Economic and financial factors
- (2) Sexual intercourse factors
- (3) Factors of differences in views, religion, and so on
- (4) Factors related to the parent in educating the child and others.⁷⁹

In the United Kingdom itself, especially the states of England and Wales, divorce or dissolution can be applied to the courts if the marriage already counted as one year since the enforcement of the court about the marriage or the civil partner status. The initial application must be submitted to the family court first. In England and Wales law, it is stated in the Divorce, Dissolution and Separation Act 2020 that the only reason a divorce can be made is the existence of a statement or evidence that the marriage has impossibly fixed and has irretrievably broken down. In this case, the ono who administer for getting a divorce or separating must prove that the other party did one of the following:

⁷⁹Wisyawati, “Perceraian Dan Akibatnya Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan.”

- 1) Adultery by the respondent means the litigant feels too difficult to live with the partner (with a person of the opposite sex)
- 2) Unreasonable behavior by the respondent means that the behavior cannot be accepted by the petitioner.
- 3) Desertion by the respondent for a period of two years (at least)
- 4) Separation for two years or more and the parties agree to divorce (with the petitioner's consent)
- 5) Separation for five years or more (without the petitioner's consent).



CHAPTER III RESEARCH METHOD

A. Types of Research and Approaches

1. Type of research

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.

2. Type of Approach

The normative-juridical approach is used in research, namely, how to examine aspects of the law and applicable regulations. The legal materials such as legislation, government regulations, or books of legal science.¹

B. Data Sources

Collecting data is the initial action taken before conducting further analysis. In the collection of data, researchers dig a lot of data literature or literature books related

¹Kornelius Benuf and Muhammad Azhar, “Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer,” *Gema Keadilan* 7 Edisi 1, no. April (2020): 20–33, <https://doi.org/10.14710/gk.7.1.20-33>.

to the research of this thesis. The data source in question is categorized into two types of data sources that are primer and secondary data. Primer data is the data based on the legal resources related to the divorce law and regulation in Indonesia and the United Kingdom, Primary legal materials, legal materials consisting of laws and regulations, official treatises, and official documents. The primary legal materials used in this study are:

- 1) Law No. 1 of 1974 on Marriage
- 2) Divorce, Dissolution and Separation Act 2020
- 3) The Children Act 1989
- 4) The Matrimonial Causes Act 1973.

Secondary book materials are materials that provide explanations about primary legal materials in the form of books, journals, scientific works of book experts, documents, legal dictionaries, and also thesis or research related to the problem studied.

Tertiary legal material is materially supporting research or referral in solving problems in this research. The author takes tertiary legal material sourced from official articles, news in print and online that are widely published in the mass media.

C. Resource Selection

Each data source that used in this research has its own position and urgency. Therefore, this research requires a resource selection stage to differentiate and differentiate each data based on its position and urgency. These are the data selection in this study, namely:

1. Primary legal materials consist of laws and regulations, official treatises, and official documents. The primary legal materials used in this study are:
 - 5) Law No. 1 of 1974 on Marriage
 - 6) Divorce, Dissolution and Separation Act 2020
 - 7) The Children Act 1989
 - 8) The Matrimonial Causes Act 1973.
2. Secondary book materials are materials that provide explanations about primary legal materials in the form of books, journals, scientific works of book experts, documents, legal dictionaries, and also thesis or researches related to the problem studied.
3. Tertiary legal material is materially supporting research or referral in solving problems in this research. The author takes tertiary legal material sourced from official articles, news in print and online that are widely published in the mass media.
others.

D. Data Analysis Technique

1. Content Analysis

This method is interpreted as this analysis or this study, namely the technique of severing and analyzing data obtained in the process of data collection, evaluation, data presented, and the collection of research findings.

This method is used to understand the data found in Law No. 1 of 1974 Article

39 sentences (1) about Divorce, Divorce, Dissolution and Separation Act, The Matrimonial Causes Act 1973, and The Children Act 1989.²

2. Comparative Method

Comparative methods that focus attention 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.³



²Ahmad Rijali, "Analisis Data Kualitatif," *Alhadharah: Jurnal Ilmu Dakwah* 17, no. 33 (2018): 81.

³Puspa Juwita, "Penelitian Komparatif," 2009.

CHAPTER IV
RESULT AND DISCUSSION

A. Result

1. The legislation of Divorce in Indonesia and the United Kingdom

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: Marriage Act Chapter VII on the Breakdown of Marriage. Compilation of Islamic Law Chapter XVI on The Termination of Marriage Article 113-128	Arranged in: Divorce, Dissolution and Separation Act 2020 Matrimonial Causes Act 1973 The Children Act 1986
2	Reasons for divorce accepted by law	One party commits adultery or becomes a drunkard, gambler,	Reasons for divorce accepted by law: 1. Adultery by the respondent which means the petitioner finds it intolerable to

		<p>and so on that is very difficult to cure.</p> <p>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.</p> <p>One party gets a prison sentence of 5 (five) years or a heavier sentence after the marriage takes place.</p> <p>Either party commits severe cruelty or persecution that endangers another's life or which includes a criminal offense. At</p>	<p>live with the respondent (with a person of the opposite sex)</p> <p>2. Unreasonable behavior by the respondent, which means that the behavior cannot be accepted by the petitioner</p> <p>3. Desertion by the respondent for a period of two years (at least)</p> <p>4. Separation for one year or more, and the parties agree to divorce (with the petitioner's consent)</p> <p>5. Separation for five years or more (without the petitioner's consent)</p>
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		<p>the same time, the cruelty of the mind can be in the form of insults, slander, or other things that disturb the psyche.</p> <p>One party gets a body defect or disease that results in not being able to carry out his obligations as a husband and wife.</p> <p>Between husband and wife, there are continuous disputes and quarrels, and there is no hope of living in the household anymore.</p>	
3	Legal consequences of divorce against children	<p>Article 45 paragraph (1) of Law No. 1 of 1974 concerning Marriage states that</p>	<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</p>

		<p>both parents are obliged to care for and educate their children as best as possible.</p> <p>The court will rule the custody falls to the mother or father. ¹</p>	<p>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.</p> <p>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.²</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	<p>Legal consequences of divorce against to the rights and obligations of the</p>	<p>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</p>	<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:⁴</p>

¹Law no. 1 Year 1974 Regarding Marriage

²Stewart et al., "Family Law in the UK England and Wales: Overview."

⁴MCA 1973

	<p>husband and wife:</p>	<p>for and/or determine an obligation for the ex-wife.³</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 trust made for the benefit of one of the parties</p> <p>(h) Sell the specified property and share the proceeds</p> <p>(i) Share a pension fund</p>
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³Muhamad Syaifuddin dkk, Hukum Perceraian, Sinar Grafika, Jakarta, 2013, hal. 400.

			(j) The court can take all assets to share with both parties.
5	Legal consequences of divorce against the common property	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. ⁵	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.

⁵Article 131 Legislation No. 1 1974 regarding Marriage

7		<p>Not arranging about 'separation' between relationships of each other</p>	<p>Arranging a 'breakup' in a sesame-type relationship</p> <p>Regarding the division of property is not specifically regulated but follows the law of the Trust of Land and Appointment Trustees Act 1996</p>
8	<p>Waiting time after divorced before establishing a relationship with another person</p>	<p>Set a waiting time ('iddah) after divorce before establishing a relationship with another person:</p> <p>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</p>	<p>There are no arrangements regarding waiting times after the divorce is decided by the court ('iddah)</p>

		<p>breaks up while the widow is pregnant, then the waiting time is until giving birth.</p> <p>Another thing is if the widow has not had sex with her ex-husband, then there is no waiting time for her.</p> <p>This is based on Article 39 of the Government Regulation of 1975.</p> <p>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.</p> <p>6</p>	
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⁶Rodliyah, "Akibat Hukum Perceraian Berdasarkan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan."

As can be seen in the table above, it is clear that 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 2022⁷.

B. 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

⁷Prabhleen Kundhi, "Government Announces 'No Fault' Divorce to Become Law on 6 April 2022," 2022, <https://www.ibblaw.co.uk/insights/blog/divorce/government-announces-no-fault-divorce-to-become-law-on-6-april-2022>.

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 1991⁸. 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.

As explained above, there are factors that lead to the finding of similarities regarding divorce law in Indonesia and the United Kingdom.

1. Factors that caused similarities and differences of divorce legislation in Indonesia and the United Kingdom

(a) Causes of similarities:

- 1) When viewed from a 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 divorce⁹, 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

⁸Heru Susetyo, "Latar Belakang Pembentukan Kompilasi Hukum Islam," 2021, <https://www.hukumonline.com/klinik/a/latar-belakang-pembentukan-kompilasi-hukum-islam-lt6124e4100b854>.

⁹Kha, "The Reform of English Divorce Law : 1857 – 1937."

visitors in the UK every year¹⁰, however in Indonesia, which until now the law still takes and applies Islamic values in it.

- 2) 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.¹¹, 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 wives¹². 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 reasons¹³. 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 judge¹⁴. 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

¹⁰“United Kingdom: New Report Finds Only One in 10 Attend Church,” accessed January 20, 2022, <https://web.archive.org/web/20111213155625/http://news.adventist.org/2007/04/uite-kigom-ew-report-fis-oly-oe-i-10-atte-church.html>.

¹¹Gavin Thompson et al., “Grey Britain: The Ageing of the UK Population,” *Olympic Britain: Social and Economic Change since the 1908 and 1948 London Games*, 2012, p19-23.

¹²Alian Muhammad Reza Pahlevi, Syariffudin Yusuf, “Sejarah Undang-Undang Perkawinan Atas Pendapat Hingga Pertentangan Dari Masyarakat Dan Dewan Perwakilan Rakyat Tahun 1973-1974,” *Journal of Indonesian History* 9, no. 2 (2020): 167–77.

¹³Biga, “History of Renewal of Islamic Family Law in Indonesia.”

¹⁴Khiyaroh, “Alasan Dan Tujuan Lahirnya Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan,” *Al-Qadha* 7, no. 1 (2020): 1–15, <https://doi.org/10.32505/qadha.v7i1.1817>

organizations in both countries had a huge impact on the establishment of detailed divorce laws in Indonesia and the United Kingdom.

- 3) 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 so¹⁵, 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 Parliament¹⁶.

- (b) As explained in the previous chapter on the biography of the U.K. state and the history of family law in Indonesia, here are the factors that cause differences in divorce law in Indonesia and the United Kingdom:

Causes of differences:

- 1) The position of religion in the country

Indonesia is not a religious country. Indonesia is a country with the ideology of Pancasila¹⁷. Where in the first precept it is stated that 'Belief in One

¹⁵Rodliyah, "Akibat Hukum Perceraian Berdasarkan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan."

¹⁶Thomas Peter Ellis, "Welsh Tribal Law and Custom in the Middle Ages," *The American Historical Review* 1, no. 1 (n.d.), <https://doi.org/10.2307/1838124>.

¹⁷Siti Tiara Maulia, "Pemahaman Konsep Nilai-Nilai Pancasila Sebagai Ideologi Bangsa," *SEMINAR NASIONAL: Aktualisasi Nilai-Nilai Pancasila Di Era Reformasi*, 2019, 46–55, https://publikasiilmiah.ums.ac.id/bitstream/handle/11617/10772/4_Siti_Tiara_Maulia.pdf?sequence=1&isAllowed=y.

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 bill¹⁸, but keep in mind that the movement of the whole government other than with the permission of the Queen who is the head of state¹⁹, the decisions that will be taken in the ratification of laws or laws 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 and detailed, as evidenced by the existence of several independent laws governing divorce and its consequences.

2) 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.

¹⁸Stephen Koss and Harold Wilson, "The Governance of Britain," *Political Science Quarterly* 92, no. 3 (1977): 555, <https://doi.org/10.2307/2148525>.

¹⁹"Parliament and Crown," accessed January 20, 2022, <https://www.parliament.uk/about/how/role/relations-with-other-institutions/parliament-crown/>.

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.²⁰ 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.²¹ 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

²⁰Louth et al., "Encycl. Br."

²¹Nazarudding Lathif, "TEORI HUKUM SEBAGAI SARANA / ALAT UNTUK MEMPERBAHARUI ATAU MEREKAYASA MASYARAKAT," *Pakuan Law Review* 3 (2017): 73-94, <https://journal.unpak.ac.id/index.php/palar/article/view/402>.

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.

2. The similarities and differences of divorce legislation in Indonesia and the United Kingdom

(a) The similarities of divorce legislation in Indonesia and the United Kingdom

- 1) 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.
- 2) As a result of the law of divorce that occurs, Indonesia and the U.K. both regulate in financial aspects, child custody, and also obligations to fellow husbands and wives (couples).

(b) The differences in divorce legislation in Indonesia and the United Kingdom

There are some fundamental differences regarding divorce law in Indonesia and the United Kingdom:

1. 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.²²
2. Although 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.²³ 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.²⁴
3. 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.

²²Rodliyah, "Akibat Hukum Perceraian Berdasarkan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan."

²³"Divorce : Who Gets ' Custody '?" 2020.

²⁴Wardah, "Hadhanah Akibat Perceraian Dalam Hukum Keluarga Di Indonesia Dan Maroko."

CHAPTER V

CONCLUSION

A. Conclusion

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

1. 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.
2. 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.
3. 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.

B. Suggestions

Here are some suggestions for readers and subsequent authors:

1. The author hopes that the results of the study can be utilized as a form of legal comparison to learn, making it a source and method for each reader.
2. The government can utilize the research as a source and comparison in making development and changes in divorce law in Indonesia.
3. Researchers who conduct further research on divorce in Indonesia and in the United Kingdom can discuss and interview experts who understand divorce law in Indonesia and the United Kingdom.

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PENGESAHAN

Skripsi ini telah dimunaqasyahkan dalam Sidang Panitia Ujian Program Sarjana Strata Satu (S1) Fakultas Ilmu Agama Islam Universitas Islam Indonesia Program Studi Ahwal Al-Syakhshiyah IP yang dilaksanakan pada:

Hari : Kamis
Tanggal : 3 Februari 2022
Nama : FAKHRIYAH TRI ASTUTI
Nomor Mahasiswa : 17421006
Judul Skripsi : Divorce Legislation in Indonesia and United Kingdom (England and Wales): A Comparative Analysis

Sehingga dapat diterima sebagai salah satu syarat untuk memperoleh gelar Sarjana Strata Satu (S1) Ahwal Al-Syakhshiyah IP pada Fakultas Ilmu Agama Islam Universitas Islam Indonesia Yogyakarta

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
Ketua

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Yogyakarta, 3 Februari 2022

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