

## Comparative Study of Reasons for Divorce Based on National Marriage Laws in Indonesia and Turkiye

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### Abstrak

Perkawinan bertujuan membangun keluarga yang bahagia dan kekal, namun mewujudkan hal tersebut bukanlah perkara yang mudah sebab banyak faktor pemicu konflik yang berujung perceraian. Penelitian berfokus pada alasan perceraian berdasarkan hukum perkawinan. Dengan tujuan mempertajam penalaran dalam mempelajari hukum negara lain, maka penelitian dilakukan dengan cara perbandingan. Negara yang dipilih untuk di perbandingkan dengan Indonesia adalah Turki karena Turki melakukan pembaharuan hukum keluarga dalam bentuk Undang-Undang selain itu karena Indonesia dan Turki memiliki mayoritas penduduk beragama islam dengan mayoritas mazhab Shafi'i di Indonesia dan Hanafi di Turki. Metode penelitian menggunakan pendekatan perundang-undangan dan pendekatan perbandingan dengan data sekunder yaitu Undang-Undang Nomor 1 tahun 1974 tentang Perkawinan, Kompilasi Hukum Islam (KHI) dan *The Turkish Civil Code* 1926. Analisis menggunakan tiga jalur dengan kesimpulan berdasarkan perbandingan secara vertikal yaitu Indonesia dengan Mazhab Shafi'i dan Turki dengan Mazhab Hanafi sama-sama mengadopsi sebagian ketentuan mazhab untuk menjadi bagian dari peraturan, secara horizontal, alasan perceraian dalam Undang-Undang Perkawinan di Indonesia dan *The Turkish Civil Code* 1926 di Turki sebagian besar memiliki keserupaan, dan secara diagonal dengan perbandingan sejarah perundang-undangan perkawinan yaitu setiap aspek dalam peraturan hukum perkawinan sedikit banyaknya dipengaruhi oleh mazhab yang diikuti oleh negara tersebut.

**Keywords:** Alasan Perceraian; Hukum Perkawinan; Indonesia; Turki

### Abstract

*Marriage aims to build a happy and eternal family, but realizing this is challenging because many factors trigger a conflict that leads to divorce. Research focuses on reasons for divorce based on marriage law. To sharpen reasoning in studying the laws of other countries, the research was carried out using comparison. The country chosen to compare with Indonesia is Turkey because Turkey has reformed family law in the form of a law, apart from that because Indonesia and Turkey have a majority Muslim population with a majority of the Shafi'i*

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*school of thought in Indonesia and Hanafi in Turkey. The research method uses a statutory and comparative approach with secondary data, namely Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law (KHI), and the Turkish Civil Code 1926. The analysis uses three paths with conclusions based on vertical comparisons: Indonesia and the Islamic School of Religion. Shafi'i and Turkey, with the Hanafi School, both adopted some of the provisions of the school to become part of the regulations. Horizontally, the reasons for divorce in the Marriage Law in Indonesia and The Turkish Civil Code 1926 in Turkey are largely similar, and diagonally with a comparison of the history of marriage legislation, namely that every aspect of marriage law regulations is more or less influenced by the school of thought followed by that country.*

**Keywords:** Reason for Divorce; Marriage Law; Indonesia; Turkiye

## Introduction

The relationship between a man and a woman, including family, in a bond aimed at building a family of *sakinah, mawadah and rahmah* is the definition of marriage.<sup>1</sup> While Pasal 1 Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan or Article 1 of Law Number 1 of 1974 concerning Marriage, “Perkawinan adalah ikatan lahir batin antara seorang pria dan wanita dengan tujuan membentuk keluarga (rumah tangga) yang bahagia dan kekal berdasarkan ketuhanan yang maha esa” or “Marriage is an inner and outer bond between a man and a woman to form a happy and eternal family (household) based on the one and only God.”

Based on the meaning of marriage from Undang-Undang Perkawinan or Marriage Law, so marriage contains five components, namely: First, the physical and spiritual bond because marriage is the result of the physical and mental bond which causes the married couple to maintain the bond by carrying out obligations and then obtaining rights. Second, marriage is only permitted for couples of different genders. Third, adhere to the principle of monogamy. Fourth, the aim is to build a happy and eternal family. Fifth, it is based on the Almighty Godhead.<sup>2</sup>

To realize the goal of marriage, namely building a happy and eternal family (household), cooperation between both parties is required. Husband and wife must be able to carry out their obligations well so that the couple's rights can be fulfilled because rights will be obtained after fulfilling obligations. The husband and wife must also have a partnership relationship, such as equal and fair cooperation, their respective functions and roles, and good governance in

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<sup>1</sup> Nabilah Naili, *Hukum Perkawinan Islam Indonesia* (Jakarta: Kencana Prenadamedia Group, 2019).

<sup>2</sup> Wafa Moh. Ali, *Hukum Perkawinan Di Indonesia Sebuah Kajian Dalam Hukum Islam Dan Hukum Materil* (Tangerang: Yasmi, 2018).

the family.<sup>3</sup> They also have an attitude of needing each other, complementing each other, being in an equal position, and working together to maintain harmony and harmony in marriage to achieve this goal. However, in reality, building a happy and lasting family is not an easy matter; various factors trigger conflict in the household and often lead to divorce. Each country has different provisions regarding divorce according to its marriage laws.

In Indonesia, marriage law is regulated by Article 1 of Law Number 1 of 1974 concerning Marriage, then also referred to as Kompilasi Hukum Islam (KHI) or Compilation of Islamic Law because the majority of the population in Indonesia is Muslim.<sup>4</sup> Meanwhile, in Turkiye, it is enforced *Majallat Al-Abkam Al-Adliyah* (Undang-Undang Sipil Islam). Still, it needs to be more comprehensive because there is no discussion of family law and inheritance law, so updates are carried out through *The Turkish Civil Code*.<sup>5</sup>

In the regulations regarding divorce in Indonesia and Turkey, several similarities are found, one of which is the reason for divorce, namely that husband and wife are constantly arguing and fighting until there is no longer any hope of returning to harmony in domestic life, in other words, the marriage is shaken to the point that it does not exist. Hope to live together again. One example of a case in Indonesia is lawsuit case number 4773/Pdt.G/2023/PA JT, where the petitioner (pemohon) and respondents (termohon) married in 2017, and since 2019 there have been clashes because the respondent used verbal violence such as attacking the petitioner, then in 2020 after continuous fighting, the respondent left the residence with the petitioner and his address is no longer known to this day (unseen).<sup>6</sup>

Meanwhile, examples of cases in Turkey occur in several coastal areas, where, according to Turkish statistical data in 2014, it is stated that coastal areas have the highest number of divorce cases, one of which is in Anatolia; in this area, household clashes are constantly occurring followed by physical and

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<sup>3</sup> Qosim Muhammad Al Faizi, "Membangun Kesetaraan Gender Dalam Kehidupan Keluarga Perspektif Hukum Islam," *Jurnal Restorasi Hukum* 5, no. 1 (2022): 101.

<sup>4</sup> Eko Setiawan, "Dinamika Pembaharuan Hukum Keluarga Islam Di Indonesia," *De Jure: Jurnal Hukum dan Syar'iah* 6, no. 2 (2014):1

<sup>5</sup> Rahmawati, *Perbandingan Hukum Keluarga Islam* (Sulawesi: IAIN Parepare Nusantara Press, 2020).

<sup>6</sup> "Putusan PA JAKARTA TIMUR Nomor 4773/Pdt.G/2023/PA.JT," n.d., <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaeceb0c7196d79c9a72303830313537.html>. accessed on Friday, 28 March 2024

emotional violence which ultimately protects our couple's dignity, causing the household to be unsustainable.<sup>7</sup>

This research raises the theme of divorce, focusing on discussing the reasons for divorce based on marriage law. To sharpen reasoning in studying the laws of other countries, the research was carried out using legal comparison. The country chosen to be compared with Indonesia is Turkey with the consideration that Turkey carries out family law reforms in the form of laws because Indonesia and Turkey have a majority Muslim population even though the majority of the sects of thought are different, in Indonesia with the Shafi'i school and in Turkey with Hanafi school of thought.

### **Method**

This research is normative legal research. The approach used is in the form of regulations and comparisons. The data source comes from secondary sources consisting of primary legal materials, namely Law Number 1 of 1974 concerning Marriage, Compilation of Islamic Law (KHI), and the Turkish Civil Code 1926, and secondary legal materials obtained from books, scriptures, and scientific articles—data collection methods using literature study and descriptive-comparative data analysis.

### **Result and Discussion**

Divorce is the end of the marital relationship between husband and wife. Islamic law refers to divorce as *talak*. This word comes from Arabic, namely *itlaq* (اطلاق) means leaving or letting go, namely the marriage bond's release and the marriage's end. Islamic law stipulates that the right to impose divorce belongs to the husband because he has a big responsibility in the household. But what needs to be underlined is that the view that divorce is the husband's full right has no basis in the Qur'an and hadith because this was formed from the era of ignorance where many husbands divorced their wives at will.<sup>8</sup> The legal basis for *talak* includes surat Al- Baqarah 229 and Hadith Nabi about *talak* HR. Ibnu Majah No. 2.018.

Although not directly, Islam allows divorce or divorce as an “emergency door” or last alternative when the marriage is no longer possible to maintain and brings more harm than good. However, before a divorce is carried out, various efforts need to be made to reconcile the two parties to save the

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<sup>7</sup> Sdam Serdar ayhan, “Turkiye De Bosanma Sorunu (Sebep Ve Sonuclariyla),” *Strateji Dusunce Ve Analis Merkezi (SDAM)*, 2018, hal.16.

<sup>8</sup> Abu Abdullah Muhammad Bin Yazid Ibn Majah Al Qazwini, *Sunan Ibnu Majah* (t.t: Dar Ihya' Kutub Al Arabiyah, n.d.).89

marriage because the marriage bond is a sacred and strong bond, so it cannot just be ended.

Regarding divorce regulations, each country has its provisions, which differ from one country to another according to the laws in force in that country. In Indonesia, marriage is regulated Law Number 1 of 1974 concerning Marriage and Compilation of Islamic Law (KHI) because the majority of the population in Indonesia is Muslim; in Turkiye, regulations relating to marriage are contained in *The Turkish Civil Code 1926 (Turk-Madeni Kanunu)*.

Both the Marriage Law in Indonesia and the marriage regulations in Turkey contain material regarding divorce, which is divided into several discussions such as reasons for divorce, divorce procedures, consequences of divorce, and so on. However, one thing that can be confirmed is the same between the two regulations in these two countries, namely that the divorce will be official if it is carried out in court.

This article focuses on studies related to reasons for divorce using content analysis and comparative methods through three channels:

### 1) Vertical comparative analysis.

To explain the vertical comparative analysis of Indonesia and Turkiye, the first thing to do is find out the comparison between concepts *fiqh maddhab*. Below are written the two school of thought used in each country are: Syafi' school in Indonesia and Hanafi school in Turkiye.

**Table 1.**  
**Comparative Maddhab**

	<b>Hanafi School</b>	<b>Shafi'i School</b>
<b>Founder</b>	Abu Hanifah An-Nu'man bin Sabit bin Zauta as-Taimi al-Kufi (Kufah, 80 H-150 H atau 699 M-797 M)	Abu Abdullah Muhammad bin Idris bin As bin Usman bin Syafi asy-Shafi'i al-Muthalibi (Gaza, Palestina 150 H-204 H atau 767 M-820 M)
<b>Pattern of legal thinking</b>	Rational	Between traditional and rational
<b>Basic of legal thinking</b>	Al-Qur'an, sunah, pendapat sahabat, qiyas, istihsan, ijmak, urf.	Al-Qur'an, sunah, ijmak, qiyas. <sup>9</sup>

Divorce is the severing of marriage ties or eliminating the relationship of marriage.<sup>10</sup> The original law of talak is divided into two opinions, namely the first opinion by Ibn Abidin stating that the original law of talak is

<sup>9</sup> M.Ali Rusdi Bedong, "Metodologi Ijtihad Imam Mujtahid (Corak Pemikiran Dan Aliran)," *Jurnal Al-A'dl* 11, no. 2 (2018): 130–48.

<sup>10</sup> Ibn Abidin, *Radd Al-Muhtar* (Riyadh: Dar Alim al-Kutb, 2003).425

permissible or permissible so that the husband can use the right of talak in any condition, even if an urgent or emergency does not precede it. The second opinion, put forward by Al-Kamal Ibnul Hamam, is that the original divorce law is forbidden or haram. This opinion was also expressed by Ibn Abidin: divorce will be permitted in emergency conditions.<sup>11</sup>

So, based on the Hanafi School of Law, the original law of talak is forbidden and forbidden. As a result, talak in normal conditions is prohibited, meaning when the relationship between husband and wife is in a condition without problems, fulfilling each other's obligations, so in this condition it is forbidden for the husband to divorce his wife.<sup>12</sup> It's different in an emergency, where the general rule of emergency is to allow something previously not allowed under normal conditions. However, the reasons for the permissibility of divorce are not stated in detail. Still, based on Ibn Abidin's opinion, the need for divorce is general, such as a disobedient wife, nusyuz, illness, etc.

Talak is untying the marriage ties using the word talak or something similar.<sup>13</sup> The original law of divorce according to Imam Shafi'i in *al-Umm* is permissible, divorce is permissible for every husband.<sup>14</sup> Another explanation is that according to al-Ramli, the law of divorce is halal and permissible but is hated by Allah, meaning that divorce is a matter that must be avoided and in essence is not halal, but if you want to divorce then it is permissible.<sup>15</sup>

Divorce is a husband's prerogative right given by Allah so that whatever the husband's reason for divorcing his wife, it is still permissible. A husband can exercise his rights even in normal conditions where there is no reason to divorce his wife. If the husband gives divorce under these conditions, then this can be justified because the original law is that divorce is permissible. The impact of this is that the husband can provide divorce when he is angry, drunk, drunk, or when there is a need, such as an argument. Talak is considered a fall according to the Shafi'i school of thought.

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<sup>11</sup> Wahbah Az-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu (Terjemah) Jilid 9: Pernikaban, Talak, Khulu', Ila', Li'an, Zihar, Masa Iddah, Dar Al-Fikr*, vol. 57, 2010. 323

<sup>12</sup> Syamsudin Al-Sarkhasi, *Kitab Al-Mabsuth*, Juz 6. (Bairut: Dār Ma'rifah). 2

<sup>13</sup> abu zakariya al - Anshori, *Fath Al-Wahhab Bi Syarh Minhaj Al-Thullab*, Juz 2 (Bairut: Dar al-Kutb al-'Ilmiyyah, 1998). 124

<sup>14</sup> Muhammad bin idris Shafi'i, *Al-Umm (Kitab Induk)*, (Terj. Ismail Yakub) (Kuala Lumpur: Victory Agencie, 1984). 224-225

<sup>15</sup> Syihabuddin Al-Ramli, "Nihayah Al-Muhtaj Ila Syarh Al-Minhaj" (Bairut: Dar al-Kutb al-'Ilmiyya, 2003). 423

The original talak law can change to haram, obligatory, makruh, and sunnah. Divorce is obligatory if there is a big argument and the husband swears *ila'*. It is sunnah if the husband does not provide for his wife and the wife cannot maintain her honor. It is haram if *talaq* is *bid'ah* and talak is makruh, that is, if talak is not by the sunnah or does not constitute *bid'ah*.

#### **Comparison *fiqh maddhab* with marriage regulations**

The majority of Turkish society adheres to the Hanafi school of thought, which then influences the regulations that are made, including *The Turkish Civil Code 1926* as the Turkish Civil Code, which in Book II discusses family law. One of the things discussed was related to divorce. According to the Hanafi school, the law of talak is prohibited and prohibited, and is only permitted in emergencies. Emergency conditions are not specified, but examples include *nusyuz* and illness. In *The Turkish Civil Code 1926*, there are six reasons for divorce, including tension or disagreement between husband and wife, which results in suffering or what can be called *nusyuz*, and one of the parties suffering from an illness that disrupts domestic life. These two conditions are considered emergencies because if the marriage continues, there will be no benefits and will only lead to harm, so divorce is permitted. This is quite by the Hanafi school of thought as the majority school of thought there because, in *The Turkish Civil Code 1926*, two principles of the *fiqh madhhab* are accommodated, namely Hanafi and Ja'fari. Meanwhile, adoption is possible for other reasons based on different regulations, such as Swiss Law.

In Indonesia, most people adhere to the Shafi'i school of thought so that in making regulations they cannot be separated from the influence of this *maddhab* of thought. A similar provision in the Marriage Law, which is by the provisions in the Shafi'i school, is related to the reason for divorce, namely quarrels between husband and wife. In the Shafi'i school, the law of talak if there is a serious quarrel between husband and wife is mandatory, because if there are continuous quarrels then it is certain that domestic life will lead to harm, and harm must be prevented. In line with this, one of the reasons for divorce in the Marriage Law and Compilation of Islamic Law are that there are disputes and quarrels between husband and wife so that there is no longer any hope of living in harmony in the household anymore, so divorce must be carried out immediately.

Indonesia and Turkey both adopted some of the provisions of the *maddhab* of thought as part of the regulations they made. Not in its entirety because when making regulations that will apply to all levels of

society, various aspects are taken into consideration so they cannot just come from one thought or from one school of thought. Every rule that will be used as legal unification and provide legal certainty for society must be neutral, objective and fair.

## 2) Horizontal comparative analysis

Regulations relating to marriage are regulated in Law Number 1 of 1974 concerning, Marriage consisting of 14 chapter with 67 article, governs all matters related to marriage, including divorce. A discussion of divorce is contained in Chapter VIII, Marriage Breakup and Its Consequences.

Regarding the reasons for divorce in article 39 jo Article 19 Government Regulation Number 9 of 1975,<sup>16</sup> in Kompilasi Hukum Islam, there are two additional reasons for divorce are “Suami melanggar taklik-talak” (husband violates divorce agreement) and Peralihan agama atau murtad (change of religion or apostasy).<sup>17</sup> Divorce in Indonesia is carried out in the Religious Courts. If the husband submits it, it is called a divorce petition; if the wife files it, it is called divorce.

Divorce law in Indonesia positions judges in court as the only ones who have the right to decide on divorce. According the article 39 ayat 1 “perceraian hanya dapat dilakukan didepan Sidang Pengadilan setelah pengadilan yang bersangkutan berusaha dan tidak berhasil mendamaikan kedua belah pihak” that is, the husband and wife are only applicants for the divorce decision to be implemented. So, the divorce vow is indeed the husband’s right, but this vow can only be made if he gets permission from the court.<sup>18</sup>

In The *Turkish Civil Code* it is stated that there are 6 reasons for divorce, namely:

- a. *Eşlerden birisi zina ederse diğer eş boşanma davası açabilir.* (Turki Madeni Kanunu, 161) “Jika salah satu dari pasangan melakukan perzinahan, pasangan lainnya dapat mengajukan gugatan cerai. (If one of the spouses commits adultery, the other spouse can file for divorce).”
- b. *Eşlerden her biri diğeri tarafından hayatına kastedilmesi veya kendisine pek kötü davranılması ya da ağır derecede onur kırıcı bir davranışta bulunulması sebebiyle boşanma davası açabilir.* (Turki Madeni Kanunu, 162). “Masing-masing pasangan dapat mengajukan kasus perceraian karena mereka dimaksudkan untuk hidup mereka oleh yang lain atau mereka

<sup>16</sup> “Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan,” 1974.

<sup>17</sup> Kompilasi Hukum Islam

<sup>18</sup> Moh. Afandi, “Hukum Perceraian di Indonesia: Studi Komparatif Antara Fikih Konvensional, UU Kontemporer Di Indonesia Dan Negaranegara Muslim Perspektif HAM Dan CEDAW,” *Al-Ahwal: Jurnal Hukum Keluarga Islam* 7, no. 2 (2014): 191–201



diperlakukan dengan buruk atau mereka telah berperilaku sangat dipermalukan. (Either spouse can file a divorce case because they are meant for their lives by the other, or they have been poorly treated, or they have behaved in a very humiliating manner)”)

- c. *Eşlerden biri küçük düşürücü bir suç işler veya haysiyetsiz bir hayat sürer ve bu sebeplerden ötürü onunla birlikte yaşaması diğer eşten beklenemezse, bu eş her zaman boşanma davası açabilir* (Turki Madeni Kanunu, 163). “Jika salah satu pasangan melakukan kejahatan yang memalukan atau menjalani hidup tanpa martabat dan karena alasan ini, pasangan lain tidak dapat diharapkan untuk tinggal bersamanya, pasangan ini selalu dapat mengajukan gugatan cerai (if one of the partners commits a shameful crime or leads a life without dignity and for this reason, the partner cannot be expected to live with him, this partner can always file for divorce)”)
- d. *Eşlerden biri, evlilik birliğinden doğan yükümluluklerini yerine getirmemeye maksadıyla diğerini terk ettiği veya haklı bir sebep olmadan ortak konuta donmediği takdirde ayrılık, en az altı sınırlı ve bu durum devam etmekte ve istem üzerine hakim tarafından yapılan ihtar sonuçsuz kalmış ise: terk edilen eş, boşanma davası açabilir. Diğerini ortak konuta terk etmeye zorlayan veya haklı bir sebep olmaksızın ortak konuta donmesini engelleyen eş de terk etmiş sayılır.* (Turki Madeni Kanunu, 164). “Jika salah satu pasangan meninggalkan pasangannya dan tidak memenuhi kewajiban yang timbul dari perkawinan atau tidak kembali ke tempat tinggal bersama tanpa alasan yang dibenarkan maka perpisahan itu berlangsung sekurang-kurangnya 6 bulan dan jika keadaan ini terus berlanjut maka akan dibuat peringatan dari Hakim, dan pasangan yang ditinggalkan dapat mengajukan gugatan cerai. Pasangan yang memaksa pasangannya untuk meninggalkan tempat tinggal bersama atau menghalangi pasangannya untuk kembali ke tempat tinggal bersama tanpa alasan yang jelas maka dianggap telah melakukan penelantaran. (Suppose one of the partners leaves the other and does not fulfill the obligations arising from the marriage or does not return to the place of residence together without a justifiable reason. In that case, the separation will last at least six months, and if this situation continues, then a warning will be issued from the Judge. The spouse will abandon and can file for divorce. A partner who forces their partner to leave their shared residence or prevents their partner from returning to their shared residence without an apparent reason is considered to have committed neglect.)
- e. *Eşlerden biri akıl hastası olup da bu yüzden ortak hayat diğer eş için çekilmez hale gelirse, tıbbi raporla gezmeye olanak bulunmadığı resmi sağlık kuruluşu raporuyla tespit edilmek koşuluyla bu eş boşanma davası açabilir* (Turki Madeni Kanunu, 165). “Jika salah satu pasangan sakit jiwa dan oleh karena itu kehidupan bersama menjadi tak tertahankan bagi pasangan lainnya, pasangan ini dapat mengajukan kasus perceraian, asalkan ditentukan oleh laporan

dewan medis resmi bahwa penyakit tersebut tidak mungkin untuk lewat (if one of the partners is mentally ill and, therefore, living together becomes unbearable for the other partner, this couple can file a divorce case provided it is determined by the report of the official medical board that the illness is impossible to pass)

- f. *Evlilik birliđi, ortak hayai surdurmeliđi kendilereinden beklenmeyecek derecede temelinden sarsilmis olursa, eslerden her biri bosanma davasi acabilir.* (Turki Madeni Kanunu, 166). “Jika perkawinan terguncang sampai ke dasar yang membuat tidak ada lagi harapan untuk hidup bersama, setiap pasangan dapat mengajukan gugatan cerai (If a marriage is shaken to the point where there is no longer any hope of living together, either spouse can file for divorce.”<sup>19</sup>

In Turkey there is no distinction between the reasons for filing for divorce by husband or wife, so both parties can file for divorce in court.<sup>20</sup> When filing a divorce with the court, it can also include child custody issues after the divorce, the court will provide legal assistance through a lawyer if necessary.<sup>21</sup>

Divorce in Turkiye will officially end when there is a final decision from the court with the issuance of a divorce deed; this is accordance with article 184: “bosanmada yargilama, asagidaki kurallar sakli kalmak uzere hukuk usulu muhakemeleri kanunua sayamaz” that divorce proceedings are subject to civil law. This then relates to judges as people with the right to decide divorce cases in court. After the judge decides on the divorce and issues the divorce certificate, the divorce certificate will be sent by the court in two copies and submitted to the local civil registry office.<sup>22</sup>

### **Comparison of marriage regulations between Indonesia and Turkiye**

*First*, related to the reasons for divorce. Most of the reasons for divorce in Marriage Law with the Turkish Civil Code 1926 are similar to committing adultery. Adultery is an absolute cause of divorce because it destroys marital relations and destroys the dignity of the family. Next is the reason for committing a crime, namely destructive behavior such as criminal acts and abuse committed by one party against another party or

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<sup>19</sup> “Türk-Medenî-Kanunu.Pdf,”.

<sup>20</sup> Abdul Hakim, “Annulment of Marriage and Khuluk in Family Law in Muslim Countries: A Comparative Study of Family Law in Syria, Sudan, Turkey and Indonesia,” *Al Hurriyah : Jurnal Hukum Islam* 7, no. 2 (2022): 201, <https://doi.org/10.30983/alhurriyah.v7i2.5561>.

<sup>21</sup> Ebuzer Ersoy, “The Marriage, Documents, And Divorce In Turkey,” *Jurnal Pembaharuan Hukum* 8, no. 2 (2021): 92.

<sup>22</sup> Dinda Difia Madina, Ahmad Rezy Meidina, and Anwar Zein, “The Dynamics of Polygamy and Divorce in Muslim Countries,” *El-Aqwal: Journal of Sharia and Comparative Law* 2, no. 2 (2023): 135–48, <https://doi.org/10.24090/el-aqwal.v2i2.9410>.

carrying out acts aimed at killing one of the parties. The reason for the disease is that one of the parties gets the disease, but there are slight differences regarding the disease involved. What is meant in Indonesia is a physical illness or physical disability that makes one unable to carry out one's obligations. In contrast, in Turkey, the illness referred to is mental illness or a disease that attacks a person's mind and soul and thus destroys the foundation of marriage. Then, between a husband or wife leaving their partner, what is different here is the time for leaving their partner; namely, in Indonesia, it is two years in a row, while in Turkey, it is only six months. Finally, it is related to the reason for divorce because continuous fighting causes harmony in marriage to no longer exist.

*Second*, the authority for divorce is in the hands of the judge, and divorce is only official if it is carried out in court with a divorce petition, which can be submitted by both husband and wife based on the abovementioned reasons.

### **3) Diagonal comparative analysis**

#### **History of marriage legislation in Indonesia**

In 1950, a committee investigating the regulations and laws of marriage, divorce, and reconciliation (NTR) was created, led by Mr. Teuku Mohammad Hasan, with the task of re-studying various forms of regulations related to marriage and reconstructing draft regulations that are appropriate to the times. In 1954, NTR succeeded in producing a general draft law for Muslims and specifically for Christians.

In 1966, the Provisional People's Consultative Assembly (MPRS), in a decision, stated that a marriage law was needed as soon as possible. So, in July 1973, the government prepared a marriage bill comprising 15 chapters with 73 articles. This bill aims to provide legal certainty regarding marriage, protect women's rights, and create regulations to the demands of the times. In December 1973, the DPR approved the passing of the Marriage Bill into the Marriage Law.

Then, on January 2, 1974, the Marriage Bill, which had received approval from the DPR, was passed and promulgated as Law Number 1 of 1974 concerning Marriage, composed of 14 chapters with 67 articles. Effective on October 1, 1975, since this law came into force, there has been

uniformity in marriage law in Indonesia, and at the same time, states that the marriage regulations in *Burgerlijk Wetboek* no longer apply.<sup>23</sup>

Furthermore, to meet the needs of the Muslim community, which is the majority of society in Indonesia, to create uniformity in regulations relating to marriage, formulated Compilation of Islamic Law (KHI), which is compiled based on the study of 38 classical *fiqh* books with book dominance *Fiqh Maddhab Shafi'i*,<sup>24</sup> followed up with Presidential Instruction Number 1 of 1991 to disseminate KHI which consists of 3 books, namely book I on marriage, Book II on inheritance, and book III on endowments.<sup>25</sup> The existence of a compilation of Islamic law becomes a guide for judges in the Religious Courts to resolve cases relating to marriage, so that legal unification occurs and when there are problems they no longer refer to *fiqh* books.<sup>26</sup>

The principles of marriage according to law number 1 of 1974 concerning marriage are: (1) the purpose of marriage is to form a happy and eternal family; (2) the validity of a marriage depends on the legal provisions of each religion and belief; (3) the principle of monogamy; (4) prospective husband and wife must be more mature in body and soul; (5) make divorce more difficult; (6) the rights and the positions of husband and wife are equal.<sup>27</sup>

According to Indonesian law, two legal doctrines relevant to the reasons for divorce are civil law and Islamic law. Civil law doctrine is contained in the reasons for divorce as stated in article 39 jo article 19 Government Regulations Number 9 in 1975 (pasal 39 jo pasal 19 PP Nomor 9 Tahun 1975) as well as in regulations related to divorce where divorce is only valid if carried out in front of a court hearing. Meanwhile, Islamic legal doctrine is found in additional reasons for divorce in the compilation of Islamic law.

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<sup>23</sup> Nafi Mubarak, "Sejarah Hukum Perkawinan Islam Di Indonesia," *Al-Hukama* 02, no. II (2012): 452–76.

<sup>24</sup> Khairul Umam, "Penyerapan Fiqh Madzhab Shafi'i Dalam Penyusunan Kompilasi Hukum Islam," *De Jure: Jurnal Hukum dan Syaria* 9, no. 2 (2017): 117–127.

<sup>25</sup> Kartika Septiani Amiri, "Perkembangan Dan Problematika Hukum Perkawinan Di Indonesia," *Al-Mujtahid: Journal of Islamic Family Law* 1, no. 1 (2021): 50, <https://doi.org/10.30984/jifl.v1i1.1639>.

<sup>26</sup> Ahmad Rezy Meidina, "Legal System of Polygamy and Divorce in Muslim Countries: Comparative Studies among Turkey, Pakistan, and Indonesia," *Matan: Journal of Islam and Muslim Society* 5, no. 1 (2023): 15–30.

<sup>27</sup> Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia, Antara Fikih dan Undang-Undang Perkawinan dalam*, 57

The process of legal discovery in the concrete case is related to the reasons for divorce, namely that the judge must apply the principle of making it difficult for a divorce to occur, divorce is required to be carried out in front of a court, then must go through mediation and divorce can only be granted if the reasons put forward comply with the provisions. The only acceptable reasons for divorce are those included in the statutory regulations. The discovery of law by judges means that judges can carry out interpretations to get out of the meaning of the text of the law so that it functions in realizing justice for society.<sup>28</sup>

The ontological basis is the nature of human relationships and marriage and family values between men and women. In the Indonesian context, the basic nature of human ontology that underlies the meaning of family life and marriage is derived from the values of Pancasila as contained in the preamble to the 1945 (UUD 1945) constitution, which is the basic norm of the republic of Indonesia.<sup>29</sup>

### **History of marriage legislation in Turki**

In 1876, the Ottoman Turks established the Islamic Civil Code or what is known as the *Majallat al-Ahkam al-Adliya* which formulated Hanafiyah fiqh by selecting the strongest opinions in the maddhab of thought and taking the opinions that best suited the conditions experienced by society. However, it is incomplete because it does not include discussions related to family law and inheritance law. In 1915 the Turkish government permitted family law reform, then in 1917 a Family Law Law was inaugurated called *Qanun Qarar al-Huquq al-'Ailah al-'Usmaniyyah*. Consists of 159 articles but still does not contain rules regarding inheritance. However, the reform of family law in Turkey is a milestone in the history of family law reform in the Islamic world.<sup>30</sup>

In 1919 the law was suspended due to political upheaval which had an impact on the stability of the law. Furthermore, in 1923 the government created a committee to draft a new constitution, but this goal was not achieved due to differences of opinion between modernists and

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<sup>28</sup> Hermansyah, "Asas Mempersukar Perceraian Dan Peran Petugas Informasi Di Lingkungan Peradilan Agama," *Website Badilag Mahkamah Agung*, 2024, <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/asas-mempersukar-perceraian-dan-peran-petugas-informasi-di-lingkungan-peradilan-agama-oleh-hermansyah-s-h-i-2-2>.

<sup>29</sup> Tri Lisiani Prihatinah, "Tinjauan Filosofis Undang-Undang Nomor 1 Tahun 1974," *Jurnal Dinamika Hukum* 8, no. 2 (2013): hal.170

<sup>30</sup> Abu Yazid Adnan Quthny, "Reformasi Hukum Keluarga Islam Turki (Status Poligami Dalam Perspektif Teori Linguistik-Semantik Muhammad Shahrur)," *Ayy-Syari'ah* 2, no. 2 (2016): 1–34.

traditionalists, until in the end Turkey decided to adopt The Swiss Civil Code 1912 which was then made into the Turkish Civil Code. with several changes to adapt to conditions in Turkey and align with Islamic traditions and conditions there, in that year the Turkish Civil Code of 1926 was born.<sup>31</sup>

This law underwent its first amendment which occurred in the period 1933-1956. The results are related to compensation for parties who suffer losses due to divorce, married couples who wish to divorce are given the opportunity to improve their relationship when they are separated, eliminate various forms of divorce other than in court, and also provide divorce in court based on the wishes of both parties.

The second amendment occurred in the period 1988-1992. In 1988, amendments resulted in the implementation of divorce based on the agreement of both parties, maintenance of the wife and temporary decisions during the divorce process. The 1990 amendments relate to 3 main points, namely one party can file for divorce on the basis of incompatibility of behavior caused by an unhappy married life, the party who is guilty and suffering can file for divorce and ask for compensation from the other party and the party who is innocent and poor has the right to file for divorce and ask for maintenance from the other party within one year.<sup>32</sup>

*The Turkish Civil Code 1926* has 5 parts, namely law of persons related to individuals such as protection rights and personal rights, family law which contains regulations regarding engagement, termination of engagement, marriage, divorce, child custody, and so on. Next is kinship *Law* related to the child's lineage, inheritance law contains property arrangements, and the law of property relates to additional articles in the law.<sup>33</sup>

In The Turkish Civil Code 1926, the principles maintained are the principles of Islamic law, so anything stated in The Turkish Civil Code 1926 must not conflict with Islam, including the regulations regarding divorce, which include the reasons for divorce. The differences between The

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<sup>31</sup> Vita Fitria, "Hukum Keluarga Di Turki Sebagai Upaya Perdana Pembaharuan Hukum Islam," *Humanika* 12, no. 1 (2013): 89

<sup>32</sup> Encep Abdul Rojak, "Hukum Keluarga Di Dunia Islam (Perbandingan Kitab Majallatul Ahkam Di Turki Dan Kompilasi Hukum Islam Di Indonesia)," *Tabkim, Jurnal Perabadan Dan Hukum Islam* 02, no. 1 (2019): 1–23.

<sup>33</sup> Asistant Prof and Kürşat Kurtulgan, "ENACTMENT OF CIVIL LAW ( 1926 )," no. 1926 (2016): 103–4.

Turkish Civil Code 1926 and the traditional family law that was previously implemented include the secularization of marriage ceremonies, the principle of monogamy in marriage, the permissibility of interfaith marriages, giving equal rights to husband and wife to sue for divorce, rights over their childer, division of inheritance, and the freedom of individuals to choose their religious affiliation.<sup>34</sup>

The doctrine of Islamic law is a strong influence from the Hanafi school of thought because it is an official school of thought that has the authority to issue fatwas and then prepare regulations to adapt them to the conditions and Islamic traditions of Turkish society. Civil law doctrine, namely several provisions related to inheritance and wills in the Turkish Civil Code of 1926, refers to the Swiss Civil Code of 1912, while regarding divorce, including the reasons for divorce, it still conforms to Islamic law. There is the influence of the doctrine of secularism, namely a way of life that separates religious affairs from state affairs, such as changing the sharia law that applies in Turkiye with swill civil law.<sup>35</sup>

The discovery process in the concrete case is related to the reasons for divorce, namely the limitation that only six reasons are stated in the regulations that allow husband and wife to demand that the judge issue a divorce decree in court. However, the court judge may give the husband and wife a judicial option to reconcile; if this fails by the end of the period given by the judge, then the divorce will still occur. Divorce can only be carried out in court, so all forms of divorce outside the court have been abolished.

The ontological basis is that the essence of marriage is built on the principle of monogamy, and the provisions there adapt to the Islamic traditions of Turkish society and cannot be separated from the Hanafi school of thought, which is the official school of thought there. Furthermore, there must be equality and discrimination between married couples regarding divorce so that both parties can submit divorce applications.<sup>36</sup>

Ratio legis is the aim or objective of the birth of regulations. So from the history of the Marriage Law and the Turkish Civil Code 1926, it can be

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<sup>34</sup> Seval Yildirim, "Aftermath of a Revolution: A Case Study of Turkish Family Law," *Pace International Law Review* 17, no. 2 (2005), 350

<sup>35</sup> Samsuriadi, "Sejarah Lahirnya Negara Islam Sekuler Turki Dan Ide Perbaharuan Mustafa Kemal," *Jurnal J-BKPI* 3, no. 1 (2023), 30.

<sup>36</sup> Muhammad Luthfi Hakim, "Reformasi Hukum Keluarga Islam Di Turki: Dari Tradisional Ke Modern," *Berasan: Journal of Islamic Civil Law* 1, no. 1 (2022): hal.51,

concluded that each country needs unification of marriage law as well as efforts to codify the law so as to reform the law.

Reforming marriage law in Turkey and Indonesia is by issuing regulations regarding marriage using two different systems. Turkey uses a family law legislative system with a secular system, where the legal material comes from Swiss law and the Hanafi school of jurisprudence, but when there is material in classical jurisprudence law that is no longer relevant, it will be changed and replaced with regulations. new, without referring to a particular school of thought but rather with rational considerations that are considered more relevant and can bring benefits. However, if the material is still relevant, it will still be published.

Meanwhile in Indonesia, a reformative approach is used, namely changing family law through legislative channels without eliminating the principles of normative fiqh rules. So with this the emergence of innovation in rules to adapt to the conditions and needs of society but also maintaining the principles of fiqh rules.<sup>37</sup>

Regulations relating to marriage in Indonesia and Turkey cannot be separated from the influence of the schools of thought adopted by these two countries, although this does not in its entirety prove that the material in marriage regulations is very complex, including those related to divorce and the reasons that cause divorce, therefore a combination is needed. between various aspects to create benefits.

In the case of this research, legal analysis needs to be carried out by outlining the legal principles and doctrines adopted by both countries, as well as the process of legal discovery in cases in concreto relating to the reasons for divorce in the law.

## Conclusion

Vertical comparative analysis, namely Indonesia with the Shafi'i Madhhab and Turkey with the Hanafi Maddhab both adopted some of the provisions of that maddhab to become part of the regulations made, one of which is related to reasons for divorce in the form of nuyuz or husband and wife quarrels which are emergency conditions where household life is no longer possible to continue. Horizontally, then between the reasons for divorce in Undang-Undang Perkawinan in Indonesia and The Tukrish Civil Code 1926 in Turkiye Most of them have similarities such as reasons for divorce because of adultery,

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<sup>37</sup> Idham Idham, Efa Rodiah Nur, and Agus Hermanto, "Dynamic Development of Family Law in Muslim Countries," *Al-'Adalah* 19, no. 1 (2022): 161–78, <https://doi.org/10.24042/adalah.v19i1.12421>.



criminal acts by one of the parties, illness, continuous fighting. The difference is in the reasons for leaving a partner, namely when leaving, in Indonesia it is two consecutive years, whereas in Turkey it is only 6 months. Apart from that, divorce in these two countries is only official if it is done in court. A diagonal comparison with a comparison of the history of marriage legislation in Indonesia and Turkey results in the conclusion that based on history, every aspect of marriage law regulations, including divorce and the reasons for divorce, is more or less influenced by the school of thought followed by that country. The reasons for divorce contained in the regulations in Indonesia and Turkey are, of course, adapted to the conditions of society in these two countries with other considerations made by the regulators; however, the times are increasingly developing, and the problems in households are increasingly diverse should be one of the considerations for update the divorce regulations, especially of the reasons for divorce.

The author suggests reconstructing several reasons for divorce in Indonesia and Turkiye. In Indonesia adding, marital rape (rape during marriage) is one of the reasons for divorce and establishing indicators of cruelty and serious abuse as a reason for divorce. Then, Turkiye had specifications for determining whether being treated badly was a reason for divorce.

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