

Marriage Dispute Resolution in Muslim Populated Countries: A Comparative Study of Divorce Law in Indonesia and Singapore

Mohammad Ainul Hakim✉

Universitas Islam Negeri Maulana Malik Ibrahim Malang

✉Inung229@gmail.com

ABSTRACT

Purpose – The issue of reasons for divorce is an interesting discussion to study. In Indonesia, the reason for divorce that is mostly submitted by parties who want to divorce is the dispute between husband and wife. The reason for divorce in Law No. 1 of 1974 is Article 39 paragraph (2), and husband and wife disputes are included as reasons for divorce in the law. Meanwhile, in Singapore, the factors contributing to divorce between husband and wife are also mostly due to husband and wife disputes. The grounds for divorce in Singapore are regulated in Article 49 AMLA 1966 concerning fasakh.

Methods – Data collection methods using library research and descriptive-comparative data analysis. The data that has been collected is analyzed using Descriptive Comparative Law Theory.

Findings – The results of the research obtained that the provisions of the reasons for divorce under these two laws have differences and similarities. The difference is that Law No. 1 Year 1974 explicitly determines that the dispute between husband and wife is the reason for divorce, while Article 49 AMLA indicates that the provisions therein are factors in the occurrence of husband and wife disputes that are the cause of divorce. The similarity between these two laws is that they require husband and wife to participate in mediation or counseling when one of them files for divorce before proceeding to trial.

Research implications/limitations – Based on the conclusions reached, this research recommends the reconstruction of divorce law in Muslim countries. A multidisciplinary approach is expected to maximize the chances of the success of mediation in divorce cases.

Keywords: *Divorce; Family Law; Muslim Populated Countries.*

Introduction

Divorce is part of the law of marriage in Islam, where husband and wife can break the bond of marriage if there is continuous conflict and there is no harmony in the household.¹ Islam regulates the conceptual construction of divorce and its legal consequences in the Qur'anic texts and hadith texts with the principles of justice and love.² The substance of divorce law in Islam is to place the divorced parties (husband and wife) in an equal situation, namely having the same rights and obligations. After divorce, husband

¹ Khoirul Abror, *Hukum Perkawinan dan Perceraian* (Yogyakarta: Ladang Kata, 2020), 161.

² Ali Imron, "Memahami Konsep Perceraian Dalam Hukum Keluarga," *Buana Gender* 1, no. 1 (Juni 2016): 26, <https://doi.org/10.22515/bg.v1i1.66>.

and wife are obliged to observe the post-divorce iddah period and are not allowed to marry other people. Both are also entitled to determine the choice of reconciliation during the iddah period.³

At a practical level in Muslim countries, divorce for Muslims has been regulated and contained in positive legal provisions. The main implication of this arrangement is that divorce is only considered valid if it is carried out in a court session. Some countries that determine the validity of divorce through court decisions include Indonesia, Tunisia, Turkey, and Pakistan.⁴ Filing for divorces in several Muslim countries already carries an egalitarian concept that does not distinguish between husband and wife.⁵ As for the legal consequences that occur after divorce, the obligation for the cost of living and education of children is left more to the father and if objections can be borne together.⁶

As a country with a majority Muslim population, Indonesia regulates divorce law in its positive law. In general, regulations regarding divorce are regulated in Law No. 1 of 1974 concerning Marriage. In addition, divorce for Muslims is regulated separately by written rules in the form of the Compilation of Islamic Law (KHI). The preparation of KHI itself was carried out on the principles of benefit, benefit and justice and overcoming various khilafiyah issues so as to ensure legal certainty.⁷ In the judicial world, KHI is used as a guide for religious judges in handling cases submitted to them, including divorce cases.⁸

Indonesian marriage law is very strict in regulating divorce. One of them can be seen from the limitations of the reasons that can be used for divorce. Article 39 of the Marriage Law states that divorce can only be carried out in front of a court session after the court

³ Ali Sodiqin, "Reformasi Al-Qur'an dalam Hukum Perceraian: Kajian Antropologi Hukum Islam," *Al-Mazaahib: Jurnal Perbandingan Hukum* 2, no. 2 (2014): 260, <https://doi.org/10.14421/al-mazaahib.v2i2.1369>.

⁴ Miftahul Huda, "Ragam Bangunan Perundang-Undangan Hukum Keluarga di Negara-negara Muslim Modern (Kajian Tipologis)," *Al-Manahij: Jurnal Kajian Hukum Islam* 11, no. 1 (2018): 52, <https://doi.org/10.24090/mnh.v11i1.1267>.

⁵ Ibnu Akbar Maliki, Nurhidayati, dan Mardan Erwinsyah, "Pengasuhan dan Perlindungan Anak dalam Undang-Undang Negara Muslim (Meninjau Resiprositas Keluarga dan Negara)," *Syakhshiyah Jurnal Hukum Keluarga Islam* 3, no. 1 (2023): 23, <https://doi.org/10.32332/syakhshiyah.v3i1.7028>.

⁶ Moh Rosil Fathony dan Ellemmia Lorenza Pradana, "Analisis Perbandingan Perceraian dan Akibat Hukumnya di Beberapa Negara Muslim," *Hakam: Jurnal Hukum Islam dan Hukum Ekonomi Islam* 7, no. 1 (2023): 45, <https://doi.org/10.33650/jhi.v7i1.5770>.

⁷ Barmawi Mukri, "Kedudukan dan Peranan Kompilasi Hukum Islam dalam Sistem Hukum Nasional," *Jurnal Hukum* 17, no. 8 (2001): 29.

⁸ Ibnu Akbar Maliki, Zezen Zainul Ali, dan Muhammad Khusaini, "Artificial Intelligence and the Law: The Use of Artificial Intelligence as a Tool to Assist Judges in Deciding Polygamy Cases," *Nurani: Jurnal Kajian Syariah dan Masyarakat* 23, no. 2 (2023): 211, <https://doi.org/10.19109/nurani.v23i2.20152>.

concerned has tried and failed to reconcile the two parties. To conduct a divorce, there must be sufficient reason that the husband and wife will not be able to live together as husband and wife.⁹ This rule is supplemented by more detailed provisions in Article 116 KHI which regulates divorce for Muslims, including confirming that divorce can be carried out if there is a violation of taklik talak and apostasy by one of the spouses.¹⁰ As an implementation of the principle of “divorce made difficult”, divorce proceedings in court must first be reconciled through mediation procedures.¹¹

Meanwhile, in Muslim minority countries, the provisions on divorce are not as detailed as in Indonesia. This can be seen in Singapore, which regulates family law for Muslim communities, including rules related to divorce. In 1966, although Islam is a minority religion in Singapore, the Singapore government has implemented Islamic law through the Administration of Muslim Law Act (AMLA). This Act established legal institutions to deal with issues related to Islam in Singapore.¹²

With regard to divorce laws, the Syariah Court of Singapore, which was established in 1958, has the authority to deal with this matter. Data and reports from the Singapore Syariah Court show that the divorce rate in Singapore is on the rise. This increase is influenced by various factors, including conflict between spouses, economic problems, drug addiction, communication breakdown, poverty, hardship and depression, extramarital affairs, secularization trends, low religiosity, liberalization of norms, individualism, and the weakness of divorce laws. These factors are the reasons behind divorce among Muslim couples today.¹³

Some data from the Singapore Syariah Court reports on the factors of divorce show that these factors can cause discord between husband and wife which can lead to divorce. The grounds for divorce in the AMLA are contained in article 49 on fasakh. The provisions of fasakh in Singapore differ significantly from the provisions of fasakh in Indonesia. The provisions of fasakh nikah in Indonesia relate to the cancellation of

⁹ Agus Toni, “Aktualisasi Hukum Perceraian Perspektif Pengadilan Agama di Indonesia,” *Maqashid: Jurnal Hukum Islam* 1, no. 2 (2018): 37, <https://doi.org/10.35897/maqashid.v1i2.130>.

¹⁰ Linda Azizah, “Analisis Perceraian dalam Kompilasi Hukum Islam,” *Al-'Adalah* X, no. 4 (2012), <https://doi.org/10.24042/adalah.v10i2.295>.

¹¹ Erza Mufti Umam, “Penerapan Asas Mempersulit Terjadinya Perceraian di Pengadilan Agama Wates (Studi Kasus Tahun 2013)” (Skripsi, Yogyakarta, Universitas Islam Negeri Sunan Kalijaga, 2014).

¹² Hussin Mutalib, *Islam in Southeast Asia* (Pasir Panjang, Singapura: Institute of Southeast Asian Studies, 2008). 51

¹³ K.H Abdul Majeed Maideen, “A Study of Muslim Divorces and Procedures in Syari’ah Court Singapore,” *JPI: Jurnal Pengajian Islam* 14, no. 1 (2021): 196.

marriage based on the conditions of marriage while in Singapore fasakh nikah is a reason that causes divorce. Fasakh in Singapore can only be filed by the wife to the Syariah Court.¹⁴

In terms of procedure, the implementation of divorce in Indonesia and Singapore has similarities and differences. The similarities can be seen in the stages in completing a divorce in the Court or Sharia Court, such as the divorce registration process, mediation, trial, and legal remedies. Then the differences can be seen from the stages in divorce in Singapore that do not exist in Indonesia such as the counselling stage, the pre-talk stage, and the division of tasks between the mediation stage and the hakam stage. Then in diagonal comparison, Indonesian and Singaporean family law have their respective advantages. The advantages of divorce procedures in Indonesia are the mediation process that can continue as long as the verdict has not been rendered. Meanwhile, the advantage of divorce procedures in Singapore is the counselling stage that must be followed by the couple before registering their divorce with the Sharia Court.¹⁵

Based on this reality, it shows that there are differences in divorce law between majority Muslim countries and minority Muslim countries. Although both have different portions of regulation, conflict resolution still prioritizes benefit. Therefore, researchers are interested in conducting research under the title “Resolution of Marriage Disputes in Muslim Populated Countries: A Comparative Study of Divorce Law in Indonesia and Singapore”.

Methods

This research is normative juridical research using a statutory approach (statue approach) and a comparative approach (comparative approach). Data sources come from secondary data sources consisting of primary legal materials in the form of Law No. 1 of 1974 concerning Marriage and Administration of Muslim Law Act (AMLA) 1966, and secondary legal materials obtained from books and scientific articles. Data collection methods include library research and descriptive-comparative data analysis. The data that has been collected is analyzed using Descriptive Comparative Law Theory.

¹⁴ Bab III, Pasal 49, Administration Muslim Law Act 1966 (AMLA), edisi revisi 2023, <https://sso.agc.gov.sg/act/aml1966>

¹⁵ Raja Khoirunnisa, “Prosedur Perceraian Di Indonesia Dan Singapura Dalam Perspektif Fikih Syafi’i” (Undergraduate Thesis, Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta, 2023), <https://repository.uinjkt.ac.id/dspace/handle/123456789/67407>.

Result

Divorce Regulation in Islamic Family Law in Indonesia

As is well known, before Marriage Law No. 1 of 1974, which has been amended by Law No. 16 of 2019, came into effect, marital affairs in Indonesia were governed by three legal systems, namely western civil law, Islamic law, and customary law. The three legal systems recognize and regulate divorce in various ways and causes as a way to break a marriage. The various causes and procedures for divorce illustrate the application of the principles of fault and no-fault and marriage law in Indonesia.

In western civil law, divorce only occurs if one of the grounds for divorce is proven, namely adultery (overspell), leaving the common residence in bad faith (*kwaadwillge verlaten*), a sentence of imprisonment of five years or more imposed after marriage and serious injury or maltreatment committed by one spouse to the other (see Article 209 of the Civil Code). In addition, divorce under the Civil Code cannot be based on consent between the parties (see Article 208 of the Civil Code). Both provisions expressly reflect the principle that divorce can only occur if there is evidence of a fault committed by one of the parties.¹⁶

In classical *fiqh*, *talak* and *khuluk* seem to be divorce concepts that are close to the no-fault principle. This is because in divorce and *khuluk* there is no need to prove the fault of one of the parties as a basis for divorce by the husband. In the case of divorce, it can be stated in the extreme that the husband is authorized to impose divorce anytime, anywhere, under any circumstances, and by anyone. A divorce imposed without a reason is only penalized as a *makruh* action.¹⁷

Meanwhile, customary law in Indonesia recognizes divorce based on the agreement of both parties. But often, divorce does occur due to a demand from the wife. This claim can be made if the husband is guilty of violating one of the customary prohibitions. It is the duty of the judges and traditional leaders to determine who is at fault after efforts have been made to maintain the integrity of the marriage.¹⁸

¹⁶ Akmal Adicahya, "Prinsip Fault dan No-Fault dalam Sistem Hukum Perceraian di Indonesia" (Pengadilan Agama Lewoleba, 2023), 5, <https://pa-buntok.go.id/wp-content/uploads/2023/11/Prinsip-Fault-dan-No-Fault-Dalam-Sistem-Hukum-Perceraian-di-Indonesia.pdf>.

¹⁷ Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakahat dan Undang-Undang Perkawinan* (Jakarta: Kencana, 2007), 215.

¹⁸ B. Ter Haar, *Asas-asas dan Susunan Hukum Adat* (Jakarta: Pradnya Paramita, 1960), 181.

The written regulation currently used as a guideline for the procedure of adjudicating divorce cases in the courts in Indonesia is Law No. 1/1974 on Marriage. Article 38 of the Marriage Law confirms that the breakdown of marriage can be caused by three things, namely death, divorce, and a court decision.¹⁹ Divorce in this law can only be done in front of a court session, after the court concerned has tried and failed to reconcile the two parties. Meanwhile, Article 39 paragraph 2 of the Marriage Law states that for divorce there must be sufficient reason that the husband and wife will not be able to live together as husband and wife.²⁰ The reasons that can be used as a basis for divorce are:

- a. One of the parties commits adultery or becomes a drunkard, junkie, gambler, and so on that is difficult to cure;
- b. One of the parties leaves the other for 2 (two) consecutive years without the permission of the other party and without valid reasons or for other reasons beyond his/her will;
- c. One of the parties receives a prison sentence of 5 (five) years or a heavier sentence after the marriage has taken place;
- d. One of the parties commits cruelty or serious maltreatment that is harmful to the other party;
- e. One of the parties suffers from a disability or illness that prevents them from fulfilling their obligations as husband/wife;
- f. There is continuous dispute and quarrel between husband and wife and there is no hope that they will live in harmony again.

In line with the Marriage Law, the Compilation of Islamic Law (KHI) confirms in Article 115 that divorce can only be carried out in front of a Religious Court session after the Religious Court has tried and failed to reconcile the two parties. Meanwhile, the reasons that can be used as a divorce application are as follows.

- a. One of the parties commits adultery or becomes a drunkard, addict, gambler and so on that is difficult to cure;
- b. One of the parties leaves the other party for 2 (two) consecutive years without the permission of the other party and without valid reasons or for other reasons beyond his/her control;

¹⁹ “Undang-undang Republik Indonesia Nomor 1 Tahun 1974 tentang Perkawinan,” t.t.

²⁰ Nunung Rodliyah, “Akibat Hukum Perceraian Berdasarkan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan,” *Keadilan Progresif* 5, no. 1 (2014): 126.

- c. One of the parties receives a prison sentence of 5 (five) years or a heavier sentence after the marriage has taken place;
- d. One of the parties commits cruelty or serious maltreatment that endangers the other party;
- e. One of the parties suffers a physical disability or illness with the result that he/she is unable to fulfill his/her obligations as husband or wife;
- f. There is a continuous dispute and quarrel between husband and wife and there is no expectation that they will live together again in the household;
- g. The husband violates the taklik talak;
- h. A Change of religion or apostasy that causes disharmony in the household.

The necessity for divorce to be carried out in front of a religious court session is in line with the Islamic Shari'ah stipulation that madharat must be eliminated, and the derivative of this rule is that if there is a conflict between maslahat and madharat, maslahat takes precedence. This means that the duties and functions of religious court judges are sacred duties, and in the case of divorce cases, religious court judges are tasked with recreating sakinah, mawaddah, and rahmah families. It should be noted that the presence of this religious court is one of the special courts to handle cases of people of Islam.²¹

Settlement of divorce in court must go through mediation as confirmed in Supreme Court Regulation Number 1 Year 2016. Mediation is a step taken by someone to resolve a dispute between two or more people by negotiation so as to produce a peace. Where an impartial and neutral outsider works with the disputants to help them reach an agreement. The assumption is that the third party will be able to change the power and social dynamics of the conflict relationship by influencing the personal beliefs and behavior of the parties, by providing knowledge and information, or by using a negotiation process.²²

According to Hartawati, a good mediation model used in resolving divorce cases in court is the psychological approach. The psychological approach can be maximized in the caucus stage to dig deeper into the root psychological problems experienced by the parties. Through the dialogue method, the parties present can explain frankly to the mediator judge about their case, their feelings and complaints, and their hopes. This transformative model

²¹ Dahwadin dkk., "Hakikat Perceraian Berdasarkan Ketentuan Hukum Islam di Indonesia," *Yudisia: Jurnal Pemikiran Hukum dan Hukum Islam* 11, no. 1 (2020): 101, <http://dx.doi.org/10.21043/yudisia.v11i1.3622>.

²² Rina Septiani, "Tindak Pidana Penistaan Agama Perspektif Hukum Islam dan Hukum Positif Indonesia," *Syariah: Jurnal Ilmu Hukum dan Pemikiran* 17, no. 1 (Juni 2017): 15.

of mediation can diagnose the causes of conflict and deal with them based on psychological and emotional aspects, so that the disputing parties can repair and improve their relationship between husband and wife.²³

Divorce Regulation in Islamic Family Law in Singapore

During British colonial times, Singapore was part of the region known as the Straits Lands. This region also included the islands of Pinang, Melaka, Dinding, Labuan, as well as the allied Malay states of Perak, Selangor, Negeri Sembilan and Pahang. During this period, the British government passed a law known as the "Mohammedan Marriage Ordinance 1880" which applied to Muslims living in the Straits Lands. This Ordinance regulated the procedure for registering marriages and divorces in four different sections, namely the registration of marriages and divorces, the procedure for registering marriages and divorces, the power of the kadi and the position of property in women.²⁴

In 1960, the Muslim Ordinance 1957 was replaced by the Administration of Muslim Law Act (AMLA) which aimed to strengthen the Syariah Court and establish the Majlis Ugama Islam Singapore (MUIS) to replace the Muslim Advisory Board 1915 in the management of Islamic affairs in Singapore. The AMLA was passed on 17 August 1966, and became effective from 1968. The AMLA consists of 146 articles covering the establishment, functions and powers of MUIS, the establishment and powers of the Syariah Court, including Islamic family law, Muslim finance, management of mosques and religious schools, Hajj and halal affairs, marriage and divorce, management of Muslim property, and matters relating to new converts to Islam.²⁵

The articles dealing with divorce in the AMLA are found in articles 46A to 50. Article 46A sets out the requirements that must be met before applying to the court for divorce. Under this provision, couples who intend to divorce must participate in an activity required by the court before they can apply for divorce. The activity in question is a counseling session that couples who wish to apply for divorce must attend. If the couple does not meet the requirement to participate in this counseling, the court will not proceed

²³ Andi Hartawati, Beddu Sumiati, dan Elvi Susanti, "Model Mediasi dalam Meningkatkan Keberhasilan Penyelesaian Perkara Perceraian di Pengadilan Agama," *Indonesia Journal of Criminal Law (IJoCL)* 4, no. 1 (2022): 72, <https://journal.ilinstitute.com/index.php/IJoCL/article/view/1551>.

²⁴ Ismail Bin Hassan, "Studi Komperatif Tentang Hukum Poligami Menurut Enakmen Keluarga Islam Selangor 2003 Dan Amla Singapura 2001" (Undergraduate Thesis, Universitas Islam Negeri Sultan Syarif Kasim, 2018), <https://repository.uin-suska.ac.id/17429/>.

²⁵ Administration Muslim Law Act 1966 (AMLA), edisi revisi 2023, <https://sso.agc.gov.sg/act/aml1966>

with their divorce petition. Therefore, participation in a counselling session prior to filing a divorce petition is considered an obligation that couples seeking divorce must comply with.²⁶ Article 46B of the AMLA states:

- (1) A married man may apply to the Court for a divorce in accordance with the Muslim law.
- (2) Upon receiving an application under subsection (1), the Court must cause a summons to be served on the wife concerned.
- (3) If the man pronounces a divorce, and the Court is satisfied that the divorce is valid in accordance with the Muslim law, the Court must cause the divorce to be registered.²⁷

The article states that a husband who wishes to get a divorce, submits his divorce petition to the court in accordance with Islamic law. After receiving the divorce petition, the court will summon the husband and wife. If the husband has announced the divorce, and the divorce is deemed valid by the court in accordance with Islamic law, then the court must register the divorce.

The continuation of Article 46 is Article 47 which mentions the provisions when the wife wants to file a request for divorce or khuluk. Article 47 of the AMLA states:

- (1) A married woman may apply to the Court for a divorce in accordance with the Muslim law.
- (2) In any such case, the Court must cause a summons to be served on the husband and enquire whether he consents to the divorce.
- (3) If the husband so consents, the Court must cause the husband to pronounce a divorce and cause the divorce to be registered.
- (4) If the husband does not agree to divorce the wife, but the parties agree to a divorce by redemption (khuluk), the Court may assess the amount of payment to be made by the wife in accordance with the status and means of the parties and must thereupon cause the husband to pronounce a divorce by redemption and, on payment of the amount so assessed, cause the divorce to be registered.
- (5) If the husband does not agree to a divorce by khuluk, the Court may appoint a hakim in accordance with section 50.²⁸

²⁶ Bab III, Pasal 46A, Administration Muslim Law Act 1966 (AMLA), edisi revisi 2023, <https://sso.agc.gov.sg/act/aml1966>

²⁷ Bab III, Pasal 46B, Administration Muslim Law Act 1966 (AMLA), edisi revisi 2023, <https://sso.agc.gov.sg/act/aml1966>

Article 47 of the AMLA explains that if a wife wishes to apply for divorce, she can do so by filing a divorce petition with the court in accordance with Islamic law. Thereafter, the husband will be summoned to determine whether or not he agrees to the divorce petition. If the husband agrees to the divorce, then the court will announce their divorce and the divorce proceedings will be registered. However, if the husband does not agree to divorce but both parties agree to divorce through the khuluk procedure (a form of agreed divorce), then the court will calculate the amount of money to be paid by the wife according to the conditions and resources of both parties. After that, the husband can declare divorce by paying the predetermined amount, and the divorce will be recorded. If the husband still refuses to divorce even by way of khuluk, the court will appoint a hakam in accordance with the provisions of Article 50 of the AMLA. This hakam will assist in resolving the dispute between the husband and wife regarding the divorce petition.

The issue of grounds for divorce in the AMLA is contained in Article 49 on fasakh. In this provision, it is the wife who has the right to file a fasakh with the Sharia Court, because the husband already has the right to divorce, and the husband has the right to divorce his wife for any reason in accordance with the provisions of Islamic law. Article 49 of the AMLA states:

- (1) A married woman is entitled to apply to the Court for and obtain a decree of fasakh on any one or more of the following grounds:
 - a) that the husband has neglected or failed to provide for her maintenance for a period of 3 months;
 - b) that the husband has been sentenced to imprisonment for a period of 3 years or upwards and such sentence has become final;
 - c) that the husband has failed to perform, without reasonable cause, his marital obligations for a period of one year;
 - d) that the husband was impotent at the time of the marriage and continues to be so;
 - e) that the husband is insane or is suffering from some chronic disease the cure of which would be lengthy or impossible and which is such as to make the continuance of the marriage relationship injurious to her;

²⁸ Bab III, Pasal 47, Administration Muslim Law Act 1966 (AMLA), edisi revisi 2023, <https://sso.agc.gov.sg/act/aml1966>

f) that the husband treats her with cruelty.²⁹

The meaning of Article 49 of the AMLA is that a woman can apply for and obtain a decision of fasakh on one of the grounds, among these grounds are if the husband is unable or neglects to provide for his wife for three months, the husband is convicted or imprisoned for a maximum of three years and the sentence is final, the husband fails to fulfill his obligations as a husband without reasonable excuse and lasts at least one year, the husband is impotent, the husband is in a state of insanity or has a chronic illness that requires healing for a long time, and finally the husband commits a cruel act.

In these two laws, a divorce is decided by a qadhi or judge, so divorce based on a judge's decision in the concept of fiqh is termed tafriq, which means revoking the marital status of husband and wife based on a judge's decision based on the demands or requests of one of the parties based on certain causes. Divorce can also occur through a judge's decision without a request for the sake of benefit, such as divorce because one of the parties has apostatized. Divorce that is decided by a judge is as in some cases of fasakh, some cases of bain and some cases of raj'i.³⁰

Separation by decision of the qadhi or judge is different from talaq, because talaq occurs by choice and will of the husband. Separation by decree of a court or judge, on the other hand, is intended to enable a wife to terminate her marriage with her husband by force if the optional means of talaq and khulu' are unsuccessful. The laws of Egypt and Syria adopt the four conditions of separation, the majority of which are adopted from the Malik and Hambali Madhhabs. Separation by judicial decree can take the form of talaq, which is separation due to lack of maintenance or ila', li'an, disagreement between husband and wife, due to the husband's departure, due to the husband's captivity, or due to arbitrariness; it can also take the form of cancellation of the original contract. This is the same as separation that results from a broken contract, such as separation due to apostasy on the part of one of the spouses.³¹

²⁹ Bab III, Pasal 49, Administration Muslim Law Act 1966 (AMLA), edisi revisi 2023, <https://sso.agc.gov.sg/act/aml1966>

³⁰ Kementrian Waqaf dan Urusan Keislaman Kuwait, "Al-Mausuah Al-Fiqhiyyah Al-Kuwaitiyyah," vol. 29, 45 vol. (Mesir: Dar Al-Shafwah, 1993), 6–7.

³¹ Wahbah Zuhaili, "Fiqhul Islam Wa Adillatuhu," vol. 7, 10 vols. (Damaskus: Dar Al-Fikr, 1985), 509–510.

Discussion

Comparative Study of Islamic Family Law in Indonesia and Singapore Regarding the Handling of Divorce

Marriages often face quarrels and conflicts (*syiqaq*) between husband and wife as a form of expression of unpleasant feelings. Although normal, if these quarrels are persistent and unresolved, they can lead to boredom in the family which can eventually lead to divorce. A war of words is often the trigger, where the words divorce may be uttered, although divorce should be avoided because it is considered a lawful thing that is hated by Allah swt.³² Husband and wife disputes are often the main reason for filing for divorce in religious courts, especially because one party feels that the other is not fulfilling their obligations as husband or wife. The household problems that are considered factors that cause them to want a divorce must be proven in court so that the judge decides to grant the divorce.³³

The reason for divorce due to disputes between husband and wife is the reason that the majority of husbands or wives use when they want to divorce.³⁴ This is because this is a common reason for filing for divorce. The dispute here is caused by many things, namely economic factors, sexual harassment, violence, infidelity, and a lack of communication in the family.³⁵ Of these factors that cause domestic disputes, it is undeniable that they cause *syiqaq* (dispute) which is the reason for divorce.³⁶

Law No. 1 of 1974 on Marriage has explained that the reason for divorce caused by disputes between husband and wife is a reason that can be used as a reason when both parties (husband or wife) want to divorce. Article 49 of the AMLA does not explicitly state

³² M. Thahir Maloko dan Arif Rahman, "Mengatasi Kejenuhan Suami-Istri Perspektif Ulama Mazhab," *Mazhabuna: Jurnal Perbandingan Mazhab*, 2020, 230–40.

³³ Motlan Gultom, "Faktor-Faktor Yang Menjadikan Perceraian Di Dalam Lingkungan Keluarga Menurut Uu No. 1 Tahun 1974," *JURNAL RECTUM: Tinjauan Yuridis Penanganan Tindak Pidana* 2, no. 2 (March 11, 2022): 187, <https://doi.org/10.46930/jurnalrectum.v2i2.1382>.

³⁴ Dwi Dasa Suryantoro and Ainur Rofiq, "Perselisihan Dan Pertengkaran Antara Suami Dan Istri Menjadi Faktor Perceraian," *At-Turost: Journal of Islamic Studies* 9, no. 1 (2022): 40.

³⁵ Selly Maria Sari, "Metode Konseling Dalam Menangani Perselisihan Pasangan Suami Istri (Pasutri) Di Kua Sukabumi Bandar Lampung" (Undergraduate Thesis, UIN Raden Intan Lampung, 2017), 58-62 <http://repository.radenintan.ac.id/2318/>.

³⁶ Ahmad Budiyanto and Mohammad Fahmi, "Peran Mediator Dalam Rangka Mendamaikan Perselisihan Suami Istri Di Pengadilan Agama Cilacap," *Jurnal Al-Wasith: Jurnal Studi Hukum Islam*, no. 2 (2016): 45–66.

that the reason for divorce is a dispute between husband and wife.³⁷ Because the reason for divorce in the AMLA is included in the category of fasakh nikah, which can only be filed by the wife. However, implicitly Article 49 of the AMLA which regulates fasakh indicates that it includes husband and wife disputes. This is because the article stipulates that if the husband fails to provide maintenance, the husband fails to fulfill his obligations, and the husband commits cruel behavior, these are factors in a dispute between husband and wife that can lead to divorce.

From the explanation above, it is known that these two laws have differences in terms of regulating the grounds for divorce caused by husband and wife disputes. It appears explicitly in Article 39 paragraph 2 of the Marriage Law that the dispute between husband and wife is included as a reason for divorce. However, it appears implicitly that the provisions in Article 49 of the AMLA indicate that the provisions therein are a factor in the occurrence of marital discord as a cause for divorce. From this, it is clear that there is a difference between these two laws in regulating the grounds for divorce due to marital discord.

Another difference is that the grounds for divorce in the AMLA include the fasakh category listed in Article 49 of the AMLA. However, according to the Marriage Law, fasakh is a marriage that can be cancelled if the parties do not fulfill the conditions for marriage. In Article 49 of the AMLA, the fasakh procedure becomes the grounds for divorce, and the wife can apply for fasakh to the Sharia Court based on the provisions listed in Article 49 of the AMLA.³⁸ The difference is that only the wife has the right to apply for fasakh under the provisions of Article 49 AMLA. This is much different from the provision in Article 23 of the Marriage Law which states that both husband and wife have the right to apply for fasakh nikah.

Regarding the handling of problems so that divorce does not occur between husband and wife, the Sharia Court in Singapore and the Religious Court in Indonesia have similarities in handling. Under Section 46A of the AMLA, applications for divorce in the form of fasakh, khuluk, or talaq must go through a mediation or counseling process for

³⁷ Fifin Maryanti, Ageng Triganda Sayuti, and Umar Hasan, "Perbandingan Akibat Putusnya Perkawinan Antara Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dengan Women's Charter 1961 Singapura (Revised Edition 2009)," *Soumatara Law Review* 4, no. 1 (2021): 109.

³⁸ Raja Khoirunnisa, "Prosedur Perceraian Di Indonesia Dan Singapura Dalam Perspektif Fikih Syafi'i" (Undergraduate Thesis, Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta, 2023), 64 <https://repository.uinjkt.ac.id/dspace/handle/123456789/67407>.

two to four months to resolve the problems that occur in the household. If the couple is able to resolve their domestic problems during the counseling process, then the case can be resolved and referred to other Islamic institutions for additional assistance and counselling. However, if the couple still wishes to divorce, then the case proceeds to the court level for trial.³⁹

The Religious Courts in Indonesia also have similar handling, after filing for divorce in the Religious Court, then at the first hearing, the parties are required by the judge to follow the mediation process before continuing the trial process further. The purpose of the mediation process is so that the parties can resolve their household problems and cancel their divorce petition with the help of a mediator.

The dispute between husband and wife is one of the reasons for divorce according to the Hanafi, Shafi'i and Hambali madhabs, which allow divorce or separation due to dispute or due to harm. Because preventing harm to the wife can be done without talaq, can be done by complaining about the case to the qadhi or court. Then the punishment is to teach the husband a lesson until he is deterred from the actions that cause harm to his wife. The Maliki Madhhab also permits separation due to disputes to prevent disputes from becoming a disaster for both husband and wife.⁴⁰

Mediation efforts in Singapore are also slightly different those in Indonesia. Mediation in Singapore is divided into two stages, namely the Intercession Stage and the Hakam Stage. According to the author, such division is a positive characteristic in the divorce process in Singapore. With this division, court officers and Hakam can focus on their respective duties. Another advantage regarding the divorce settlement process in Singapore is the authority that the Board of Appeal has in the Institution of Seduction Stage. The Lembaga Rayuan stage is also the final stage that couples can take if they are not satisfied with the Syariah Court's decision. The Board of Appeal under MUIS has a final and conclusive decision that cannot be challenged, overturned or modified by any court.⁴¹

Conclusion

Law No. 1 of 1974 on Marriage confirms that the breakdown of marriage can occur in three ways, including death, divorce, and a court decision. The grounds for divorce are

³⁹ Nihayatul Masykuroh, *Islam Di Singapura* (Banten: Media Karya Publishing, 2020), 65.

⁴⁰ Wahbah Zuhaili, "Fiqhul Islam Wa Adillatuhu." vol. 7, 10 vols, 527.

⁴¹ Raja Khoirunnisa, "Prosedur Perceraian Di Indonesia Dan Singapura Dalam Perspektif Fikih Syafi'i," 99.

also regulated in Article 39 paragraph (2), in which one of the provisions of the grounds for divorce is that there are continuous disputes between husband and wife. Meanwhile, the Islamic family law in Singapore, AMLA 1966, confirms that divorce can be filed by the husband, or the wife either *khulu'* or *fasakh*. The issue of grounds for divorce in the AMLA is contained in article 49 on *fasakh*. In this provision, it is the wife who has the right to apply to the Shari'ah Court for *fasakh*.

The results of the comparative study of these two laws show differences in regulating the grounds for divorce caused by husband and wife disputes. It appears explicitly in Article 39 Paragraph (2) of Law No. 1 of 1974 that husband and wife disputes are included as grounds for divorce. However, it appears implicitly that the provisions in Article 49 of the AMLA indicate that the provisions therein are a factor in the occurrence of marital discord as a cause for divorce. Another difference is that the grounds for divorce in the AMLA include the *fasakh* category listed in Article 49 of the AMLA. However, in Law No. 1 of 1974, *fasakh* is a marriage that can be cancelled if the parties do not meet the requirements for marriage. The similarity of these two laws is the requirement to follow the mediation or counseling process for couples who want to divorce before proceeding to the trial stage.

References

- Abror, Khoirul. *Hukum Perkawinan dan Perceraian*. Yogyakarta: Ladang Kata, 2020.
- Adicahya, Akmal. "Prinsip Fault dan No-Fault dalam Sistem Hukum Perceraian di Indonesia." Pengadilan Agama Lewoleba, 2023. <https://pa-buntok.go.id/wp-content/uploads/2023/11/Prinsip-Fault-dan-No-Fault-Dalam-Sistem-Hukum-Perceraian-di-Indonesia.pdf>.
- Ahmad Budiyo dan Mohammad Fahmi. "Peran Mediator dalam Rangka Mendamaikan Perselisihan Suami Istri Di Pengadilan Agama Cilacap." *Jurnal Al-Wasith: Jurnal Studi Hukum Islam* 1, no. 2 (2016): 45–66.
- Azizah, Linda. "Analisis Perceraian dalam Kompilasi Hukum Islam." *Al-'Adalah* X, no. 4 (2012). <https://doi.org/10.24042/adalah.v10i2.295>.
- Dahwadin, Enceng Iip Syaripudin, Eva Sofiwati, dan Muhamad Dani Somantri. "Hakikat Perceraian Berdasarkan Ketentuan Hukum Islam di Indonesia." *Yudisia: Jurnal Pemikiran Hukum dan Hukum Islam* 11, no. 1 (2020). <http://dx.doi.org/10.21043/yudisia.v11i1.3622>.

- Dwi Dasa Suryantoro dan Ainur Rofiq. “Perselisihan Dan Pertengkaran Antara Suami Dan Istri Menjadi Faktor Perceraian.” *At-Turost: Journal of Islamic Studies* 9, no. 1 (2022): 31–45.
- Fathony, Moh Rosil, dan Ellemmia Lorenza Pradana. “Analisis Perbandingan Perceraian dan Akibat Hukumnya di Beberapa Negara Muslim.” *Hakam: Jurnal Hukum Islam dan Hukum Ekonomi Islam* 7, no. 1 (2023). <https://doi.org/10.33650/jhi.v7i1.5770>.
- Fifin Maryanti, Ageng Triganda Sayuti, dan Umar Hasan. “Perbandingan Akibat Putusnya Perkawinan Antara Undang-undang Nomor 1 Tahun 1974 Tentang Perkawinan Dengan Women’s Charter 1961 Singapura (Revised Edition 2009).” *Soumatara Law Review* 4, no. 1 (2021): 104–19.
- Haar, B. Ter. *Asas-asas dan Susunan Hukum Adat*. Jakarta: Pradnya Paramita, 1960.
- Hartawati, Andi, Beddu Sumiati, dan Elvi Susanti. “Model Mediasi dalam Meningkatkan Keberhasilan Penyelesaian Perkara Perceraian di Pengadilan Agama.” *Indonesia Journal of Criminal Law (IJoCL)* 4, no. 1 (2022). <https://journal.ilinstitute.com/index.php/IJoCL/article/view/1551>.
- Huda, Miftahul. “Ragam Bangunan Perundang-Undangan Hukum Keluarga di Negara-negara Muslim Modern (Kajian Tipologis).” *Al-Manahij: Jurnal Kajian Hukum Islam* 11, no. 1 (2018). <https://doi.org/10.24090/mnh.v11i1.1267>.
- Hussin Mutalib. *Islam in Southeast Asia*. Pasir Panjang, Singapura: Institute of Southeast Asian Studies, 2008.
- Imron, Ali. “Memahami Konsep Perceraian Dalam Hukum Keluarga.” *Buana Gender* 1, no. 1 (Juni 2016). <https://doi.org/10.22515/bg.v1i1.66>.
- Ismail Bin Hassan. “Studi Komperatif Tentang Hukum Poligami Menurut Enakmen Keluarga Islam Selangor 2003 Dan Amla Singapura 2001.” Undergraduate Thesis, Universitas Islam Negeri Sultan Syarif Kasim, 2018. <https://repository.uin-suska.ac.id/17429/>.
- Kementrian Waqaf dan Urusan Keislaman Kuwait. “Al-Mausuah Al-Fiqhiyyah Al-Kuwaitiyyah,” 29:6–7. Mesir: Dar Al-Shafwah, 1993.
- K.H Abdul Majeed Maideen. “A Study of Muslim Divorces and Procedures in Syari’ah Court Singapore.” *JPI: Jurnal Pengajian Islam* 14, no. 1 (2021): 194–214.
- M. Thahir Maloko dan Arif Rahman. “Mengatasi Kejenuhan Suami-Istri Perspektif Ulama Mazhab.” *Mazhabuna: Jurnal Perbandingan Mazhab*, 2020, 230–40.

- Maliki, Ibnu Akbar, Zezen Zainul Ali, dan Muhammad Khusaini. "Artificial Intelligence and the Law: The Use of Artificial Intelligence as a Tool to Assist Judges in Deciding Polygamy Cases." *Nurani: Jurnal Kajian Syariah dan Masyarakat* 23, no. 2 (2023). <https://doi.org/10.19109/nurani.v23i2.20152>.
- Maliki, Ibnu Akbar, Nurhidayati, dan Mardan Erwinsyah. "Pengasuhan dan Perlindungan Anak dalam Undang-Undang Negara Muslim (Meninjau Resiprokalitas Keluarga dan Negara)." *Syakhsbiyyah Jurnal Hukum Keluarga Islam* 3, no. 1 (2023). <https://doi.org/10.32332/syakhsbiyyah.v3i1.7028>.
- Motlan Gultom. "Faktor-Faktor Yang Menjadikan Perceraian Di Dalam Lingkungan Keluarga Menurut Uu No. 1 Tahun 1974." *JURNAL RECTUM: Tinjauan Yuridis Penanganan Tindak Pidana* 2, no. 2 (11 Maret 2022): 186–96. <https://doi.org/10.46930/jurnalrectum.v2i2.1382>.
- Mukri, Barmawi. "Kedudukan dan Peranan Kompilasi Hukum Islam dalam Sistem Hukum Nasional." *Jurnal Hukum* 17, no. 8 (2001).
- Nihayatul Masykuroh. *Islam di Singapura*. Banten: Media Karya Publishing, 2020.
- Raja Khoirunnisa. "Prosedur Perceraian Di Indonesia Dan Singapura Dalam Perspektif Fikih Syafi'i." Undergraduate Thesis, Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta, 2023. <https://repository.uinjkt.ac.id/dspace/handle/123456789/67407>.
- Rodliyah, Nunung. "Akibat Hukum Perceraian Berdasarkan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan." *Keadilan Progresif* 5, no. 1 (2014).
- Selly Maria Sari. "Metode Konseling Dalam Menangani Perselisihan Pasangan Suami Istri (pasutri) Di Kua Sukabumi Bandar Lampung." Undergraduate Thesis, UIN Raden Intan Lampung, 2017. <http://repository.radenintan.ac.id/2318/>.
- Septiani, Rina. "Tindak Pidana Penistaan Agama Perspektif Hukum Islam dan Hukum Positif Indonesia." *Syariah: Jurnal Ilmu Hukum dan Pemikiran* 17, no. 1 (Juni 2017).
- Sodiqin, Ali. "Reformasi Al-Qur'an dalam Hukum Perceraian: Kajian Antropologi Hukum Islam." *Al-Mazaahib: Jurnal Perbandingan Hukum* 2, no. 2 (2014). <https://doi.org/10.14421/al-mazaahib.v2i2.1369>.
- Syarifuddin, Amir. *Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakabat dan Undang-Undang Perkawinan*. Jakarta: Kencana, 2007.

Toni, Agus. “Aktualisasi Hukum Perceraian Perspektif Pengadilan Agama di Indonesia.” *Maqashid: Jurnal Hukum Islam* 1, no. 2 (2018). <https://doi.org/10.35897/maqashid.v1i2.130>.

Umam, Erza Mufti. “Penerapan Asas Mempersulit Terjadinya Perceraian di Pengadilan Agama Wates (Studi Kasus Tahun 2013).” Skripsi, Universitas Islam Negeri Sunan Kalijaga, 2014.

“Undang-undang Republik Indonesia Nomor 1 Tahun 1974 tentang Perkawinan,” t.t.

Wahbah Zuhaili. “Fiqhul Islam Wa Adillatuhu,” 7:509–10. Damaskus: Dar Al-Fikr, 1985.