

Legal System of Polygamy and Divorce in Muslim Countries: Comparative Studies among Turkey, Pakistan, and Indonesia

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Abstract: This article talks about the practice of Islamic family law in the Muslim world; Türkiye, Pakistan, and Indonesia which focus on polygamy and divorce. Talking about polygamy and divorce must be familiar to many people because polygamy is a very sensitive scourge when someone does that. Likewise, with divorce, this kind of thing becomes the subject of gossip in society when a family gets divorced. This paper will explain how family law is in the Muslim world, especially Turkey, Pakistan, and Indonesia with the main study of polygamy and divorce which aims to understand the understanding of society from all walks of life regarding the discussions between the two. This research is a literature study that focuses on discussing polygamy and divorce in three Muslim countries; Türkiye, Pakistan, and Indonesia. The data collection method in this study used documentation, namely collecting books, notes, and others that had relevance to the research, which were then analyzed. The results of this study are; (1) Turkey prohibits polygamy, which is contained in the book of the Ottoman Law of Family Rights, Pakistan also prohibits polygamy until written permission from the wife and the arbitral council, Indonesia legalizes polygamy referring to the Marriage Law. (2) Turkey in the event that a divorce ends with the finalization of a court decision and a waiting period of 300 days stipulated by the Turkish Civil Code, likewise Pakistan regulates divorce in two different rules, one using the Dissolution of Muslim Marriage and the other using Muslim Family Law Ordinance, divorce in Indonesia is regulated in Marriage Law Number 1 of 1974.

Keywords: legal system; polygamy; divorce; Muslim country

Abstrak: Artikel ini mengkaji tentang praktik hukum keluarga Islam di dunia Muslim; Türkiye, Pakistan, dan Indonesia yang fokus pada poligami dan perceraian. Berbicara tentang poligami dan perceraian pasti sudah tidak asing lagi bagi banyak orang karena poligami merupakan momok yang sangat sensitif ketika seseorang melakukan hal tersebut. Begitu pula dengan perceraian, hal semacam ini menjadi bahan gosip di masyarakat ketika sebuah keluarga bercerai. Tulisan ini akan menjelaskan bagaimana hukum keluarga di dunia Islam khususnya Turki, Pakistan, dan Indonesia dengan kajian utama poligami dan perceraian yang bertujuan untuk memahami pemahaman masyarakat dari berbagai lapisan masyarakat mengenai pembahasan antara keduanya. Penelitian ini merupakan studi literatur yang fokus membahas poligami dan perceraian di tiga negara Muslim; Türkiye, Pakistan, dan Indonesia. Metode pengumpulan data dalam penelitian ini menggunakan dokumentasi yaitu mengumpulkan buku-buku, catatan, dan lain-lain yang memiliki relevansi dengan penelitian, yang kemudian dianalisis. Hasil dari penelitian ini adalah; (1) Turki melarang poligami, yang

tertuang dalam kitab Ottoman Law of Family Rights, Pakistan juga melarang poligami sampai ada izin tertulis dari istri dan majelis arbitrase, Indonesia melegalkan poligami mengacu pada UU Perkawinan. (2) Turki dalam hal perceraian berakhir dengan finalisasi keputusan pengadilan dan masa tunggu 300 hari yang ditetapkan oleh KUH Perdata Turki, demikian juga Pakistan mengatur perceraian dalam dua aturan yang berbeda, satu menggunakan Pembubaran Pernikahan Muslim dan selain menggunakan Ordonansi Hukum Keluarga Islam, perceraian di Indonesia diatur dalam Undang-Undang Perkawinan Nomor 1 Tahun 1974.

Kata Kunci: sistem hukum; poligami; perceraian; negara Muslim

A. Introduction

Indonesia and Turkey are countries that are geographically located on the same continent but have different territorial areas. Indonesia is on the Southeast Asian continent, Turkey is on the Western Asian continent, and parts of Turkey are on the European continent. Indonesia and Turkey are countries where the majority of the population is Muslim.¹ In Indonesia, the majority of the Muslim population adheres to the Shafi'i school of thought, while in Turkey the majority of the Muslim population adheres to the Hanafi school of thought². Meanwhile, Pakistan, which has the long name *Islami Jumhuriyya e-Pakistan* (*Islamic Republic of Pakistan*), is a fractional state of India that geographically stretches across southern Asia with an area of 803,940 km². In 2016 the population in this country was recorded at 201,275,591 people and the majority were Muslims with a percentage of 97%. Therefore Pakistan is listed as a country with the second-largest Muslim nation in the world³. Broadly speaking, the Muslim community in Pakistan is divided into two groups, namely Sunni and Shia. The majority of Sunni Muslims in Pakistan are adherents of the Hanafi school of thought and the minority are followers of the Shafi'i and Hanbali schools. As for the Shia group in this country, the majority come from the Itsna Asy'ariyah group, while a small number of others are Isma'iliyah Shia groups.⁴

Turkey has proclaimed itself as a modern country since 1924, geographically Turkey has an area that stretches across the two continents of Europe and Asia with an area of 780,576 KM. And divided into 67 provinces. Turkey is not a religious state, but it guarantees freedom of religion, this is where the Republic of Turkey asserts that it is a country with a 'Muslim population but secular' model. After the collapse of the Ottoman caliphate, the present leader Mustafa Kemal Attaturk who became the father of modern Turkey tried to turn and imitate the West. Mustafa Kemal made a fundamental change, namely turning Turkey into a secular state, by separating government affairs from religion, whose sovereignty lies in the hands of the people. Although Turkey is a secular country, its religious

¹ Sri Wahyuni, "Pembaharuan Hukum Keluarga Islam di Negara-Negara Muslim", *Kosmik Hukum* 11, no. 1 (2011), p. 217.

² Sri Wahyuni, "Pembaharuan Hukum Keluarga Islam Di Negara-Negara Muslim", *Al-Ahwal* 6, no. 2 (2013), p. 211.

³ Muhammad Atho Mudzhar, "Hukum Keluarga di Pakistan (Antara Islamisasi dan Tekanan Adat)", *Al-Adalah* 12, no 1 (2014), p. 221.

⁴ John L Esposito, *The Oxford Encyclopedia of The Modern Muslim World*, terj. Eva YN dkk, *Ensiklopedia oxford : dunia Islam modern* (Bandung : Mizan, 2001), p. 227.

growth has been striking for most Turks⁵.

Turkey's family law renewal was in the form of a 1917 law, namely the birth of Ottoman law which regulated family rights or *Qanun-i Qarar Huquq al-Allah al-Otsmaniah*, which eventually became the inspiration for various other Muslim countries to enact family law. However, the emergence of the 1917 Marriage Law was certainly inseparable from the long process of promulgation that had been passed. Herein lies the significance of understanding the history of Turkish family law reform and codification.⁶

Meanwhile, Indonesian society is classified as heterogeneous in all its aspects, including religion. It is proven that there are two major groups of heavenly religions and non-celestial religions that are recognized in Indonesia, namely: Islam, Hinduism, Buddhism, Protestant Christianity, Catholicism, and Confucianism, each religion has its own rules and regulations including family law. Marriage law in Indonesia is regulated in Law No. 1 of 1974 on the state gazette of the Republic of Indonesia. The contents of the explanation of the Law are contained in the additional Gazette of the Republic of Indonesia Number 3019 in the general explanation section where the description includes several fundamental issues. The Compilation of Islamic Law in Indonesia has the goal of uniting laws, namely unification. In addition, the KHI is also used as an effort to make a judge's decision a decision that has the same legal force as a general court decision.⁷

B. Polygamy and Divorce System

1. Turkey

a. Polygamy System

Historically, Turkey was the first Muslim country to prohibit polygamy, this was stated in *The Ottoman law of family rights* in 1917, in article 7 it was explained that husbands may practice polygamy on condition that they treat their wives fairly. however, the wife has the right to make a *taklik* divorce at the time of the marriage contract so that the husband does not remarry. If the husband violates the *taklik talak*, the wife has the right to divorce.⁸ Turkish law prohibits marriages over existing marriages apply. So before there is a statement regarding the dissolution of marriage, whether due to death, divorce, or annulment of marriage.⁹ The marriage was subsequently declared invalid by the Court on the basis that the person already has a married life still valid.¹⁰

In fact, polygamy was known to the nations of the world before Islam was born. Then came Islam to regulate polygamy in the letter an-Anisa verse 3 which allows polygamy. Ahmad Azhar Basyir believes that polygamy is a way out for a husband from doing justice that was not done before. Socio-political conditions of the Turkish state post-1920 have

⁵Fauzan dan Ahmad Khoirul Fata, "Model Penerapan Syariah Dalam Negara Modern (Studi Kasus Arab Saudi, Iran, Turki, Dan Indonesia)", *Al-Manahij: Jurnal Kajian Hukum Islam* 12, no. 1 (2018), p. 149.

⁶Arifah Millati, "Pembaharuan Hukum Islam", *Jurnal Pemikiran Keislaman* 28, no. 2 (2017), pp. 372-407.

⁷Eza Aulia dan Dara Quthni Effida, "Kodifikasi Hukum Islam Di Indonesia Dalam Perspektif Kepastian Hukum", *Jurnal Ius Civile* 2, no. 2 (2018), p. 101.

⁸The Ottoman Family Right, Pasal 38.

⁹Undang-Undang Sipil Turki, Pasal 93.

¹⁰Undang-Undang Sipil Turki, Pasal 112.

made a shift in society in various fields, especially polygamy cannot be enforced, because it is not in accordance with the situation and development.¹¹

b. Divorce System

Divorce is when a marriage ends with the finalization of a court decision. The divorce date is the date when the divorce decree was finalized. Foreign divorce judgments are awarded by courts for sale mainly in Turkey, including Turkish courts whether the decision is enforcement or recognition, if it is final, the date of finalization of the award given by the foreign court is considered the date of the divorce. The 300-day waiting period stipulated by the Turkish Civil Code number 4721 for a Turkish citizen woman starts from the date the divorce decision is finalized. The divorce decrees, which were sent as two samples by the court's managing director, were entered into the family register by the district civil registry office.

The law in the form of divorce rules in the Turkish Civil Code is developing quite rapidly, it is known from.

- 1) Previously, authority in filing for divorce was absolute power on the husband's side. And the wife has little right to file for divorce for any reason, after that the wife is allowed to file for divorce since the emergence of the law in the form of family rights rules in 1917.
- 2) Divorce is only carried out in court and is preceded by a request for divorce from either the husband or wife.
- 3) Judicial Separation or what is known as bed separation, in conventional fiqh the term judicial separation is not recognized. The matter of bed separation has been regulated in Turkish civil law in 2010.
- 4) Husband and wife have equal rights in filing for divorce based on statutory provisions contained in Articles 129-138 of Turkish Civil Law.
- 5) In this case adultery is the reason for divorce, the husband or wife who is nusyuz is treated the same and does not discriminate.
- 6) Suffering from mental illness in Turkish legislation is included as a reason for divorce, while conventional fiqh fasakh is included therein.
- 7) Divorce by mutual agreement (husband and wife) also applies to Turkish legislation enforces.
- 8) The feeling of feeling aggrieved by each party as a result of a divorce is permissible to file a claim for damages.¹²

The Turkish Statistical Institute (TSI) announced data on marriages and divorces for 2018. The number of married people decreased by 2.9 percent in 2018 compared to the previous year, while divorces increased by 10 percent. Syrians rank first among 22,000 foreign brides. There has been an increase in divorces: While the number of divorced couples was 128 thousand 411 in 2017, it increased by 10.9 percent in 2018 to 142 thousand 448.¹³

11 Ahmad Azhar Basyir, "Hukum Islam Di Indonesia dari Masa ke Masa", *Unisia: Journal Social, Science and Humanities* 16, no. 1 (1992), pp. 9-13.

12 Ozgul Aktas, *Alasan Perceraian dan Kesulitan yang Dihadapi Setelah Perceraian* (Turki: DEU Institute of Educational Science, 2011), p. 16.

13 Vita Fitria, "Hukum Keluarga Di Turki Sebagai Upaya Perdana Pembaharuan Hukum Islam", *HUMANIKA: Kajian Ilmiah Mata Kuliah Umum* 12, no. 1 (2012), p. 119.

Issues that can decide on divorce because of very bad or demeaning behavior, the principle of " *ex officio examination* " which is one of the principles of divorce law, the principle of justice conducted by judges, the obligation of judges to enlighten, the principle of judges to apply the law and the judge's free appreciation of evidence, a rigorous opinion system. rational goals in divorce proceedings" and will be respected by the judge taking into account the social, cultural, and educational status of the spouses and the environment in which they live, local patterns of behavior, customs, and traditions. It is enforced by article 162 of the Turkish Civil Code.

Casting to life is a behavior carried out by one partner with the aim of killing the other. Behavior that does not rely on intent is not counted, and death threats are not considered an activity for life. In addition, actions towards someone other than the spouse (eg partner's mother, father, or sibling). Not based on Article 162, but based on "offense" or "common cause of incompatibility". As stated in the Supreme Court case law: "A lot of bad behavior can be done spiritually, verbally, or in writing, it is important that the act is directed directly to the honor and honor of the partner"

Laws resulting in divorce It is governed by Article 163 of the Turkish Civil Code: "If one spouse commits a shameful crime or leads a life without dignity and for this reason, the other partner cannot be expected to live with him, this partner can always file for divorce". Then One of The Two Leaves His Partner (abandonment). It is governed by article 164 of the Turkish Civil Code. According to This: "If one spouse leaves the other for not fulfilling their obligations arising from the marriage or does not return to the common home without justifiable reasons, the separation lasts for at least six months and this situation continues and the warning made by the judge at the request remains not convincing; the spouse left behind can file for divorce. A spouse who forces the other to leave the common home or prevents her from returning to the ordinary home without justifiable reasons is also deemed to have left."

At the request of the spouse entitled to the case, the judge warned the spouse who left without checking benefits about the consequences of returning to cohabitation within two months and the consequences of not returning. This notice is made by posting where necessary. However, to file a divorce case, a warning cannot be requested until the fourth month of the stipulated period.

The influence of friction with modern western thought on the development of more advanced western civilization has encouraged the spirit of nationalism in the Turkish people to modernize their country. In its development, Family Law Law, which refers to sharia law, was left behind. This can be seen in the proclamation of the Republic of Turkey (Modern Turkey) with efforts to establish a Turkish Civil Law adopting the Civil Law of the Swiss State.¹⁴

2. Pakistan

a. Polygamy System

¹⁴ Fauzan and Fata, "Model Penerapan Syari'ah Dalam Negara Modern (Arab Indonesia)", *Jurnal Al-Manahij* 5, no. 1 (2018), p. 50.

Because Pakistan is a former British colony, Pakistan uses the *Anglo-Saxon legal system*. The *Anglo-Saxon* legal system is a legal system based on judicial jurisprudence. The current or previous judge's decision becomes one of the considerations in deciding the same case in the future. However, *Anglo-Saxon influence* in Pakistan was limited to a few legal cases. The rest is still influenced by customary law and Islamic law. Therefore, in deciding the permission for polygamy, there is still the influence of customary law (consultation of family members), religious law (Islam), and even the influence of the Continental European legal system that Pakistan is also called a country that implements a mixed ¹⁵*Anglo-Saxon legal system*.

After independence from Britain, the marriage law that applies in Pakistan is the *Muslim Family Law Ordinance* (MFLO) which was passed by the Pakistani Parliament in 1961. In addition, there are also technical and supporting regulations passed by parliament as a legal umbrella for adherents of various religions outside the United Kingdom. Islam such as *Christian Marriage* 1872, *Divorce Act* 1869, *Marriage Restraint Act* 1929, *Majority Act* 1875, *Dissolution of Muslim Marriages Act* 1939, *Guardians and Wards Act* 1890, Implementation of *Shari'ah* 1962,¹⁶ *Enforcement of Sharia Act* 1991, and *Prohibition Order* 1979.¹⁷

There are several provisions regulated in MFLO as Pakistan's marriage law. *First* limits the minimum age of marriage is 18 years if applicable Marriage under the age limit will be subject to sanctions with imprisonment for one month or a fine of 1000 Rupee. *Second*, the obligation to register marriages in Pakistan was influenced by the opinions of Imam Hanafi and traditional scholars. Marriage registration is an administrative obligation against the state with a fine of 1000 Rupees or imprisonment for three months for violators.

Third, Pakistan regulates the maximum limit dowry given by the husband to the wife. In MFLO 1961 it was stated that it was not permissible to give a dowry of more than 5000 Rupees. Other provisions that are still related to the dowry that is, if the married person is a relative of a state official, yes provisions may not accept gifts at a price above 1000 Rupees. This provision also tightened the obligation to report to the guardian of the marriage about the cost of dowry and *walimah*. Reporting obligations are carried out no later than the day before the contract is executed. Violation of the provisions of this article result in imprisonment for 6 months.

Fourth, the issue of divorce in Pakistan differs from the legal system in Indonesia, the difference lies in the permissibility of the husband to terminate the divorce (divorce) out of court. Nevertheless, after the divorce dropped, the related party has an obligation to report to the marriage registrar. The marriage registrar has the authority to form an Arbitration Council in charge of dealing with divorce matters. Board Arbitration must seek to reconcile the two parties within a period of three months (90) days. If within 90 days there is no word

¹⁵Fajar Nurhardianto, "Sistem Hukum dan Posisi Hukum Indonesia", *Jurnal Tapis: Jurnal Teropong Aspirasi Politik Islam* 11, no. 1 (2015), pp. 33-44.

¹⁶ Mardiani, *Hukum Perkawinan Islam di Dunia Islam Modern* (Yogyakarta: Graha Ilmu: 2011), p. 48.

¹⁷ Kristen Cherry, "Marriage and Divorce Law in Pakistan and Iran: The Problem of Recognition", *Tulsa J. Comp. & Int'l L* 9, no. 1 (2001), p. 319.

of peace from both parties, then The *divorce* is valid. ¹⁸Violation of this provision is punishable by imprisonment for 1 year or a fine of 5000 Rupees.

Fifth, MFLO 1961 stipulates that a man in Pakistan who is married is prohibited from polygamy until there is written permission from the wife and the Arbitration Council. If a husband who wants to be polygamous must first get his wife's permission and submit an amount of money to the wife. After that, the Arbitration Council will summon guardians from the husband's side and the wife's side to personally jointly discuss the husband's wishes. If the Arbitration Council sees that there are clear and appropriate reasons with the provisions of the MFLO, as well as the husband is deemed to be doing justice, then permission is granted. But if permission is not given and the husband continues to practice polygamy, then the husband will be punished with 1-year imprisonment or a fine of 5000 Rupee.¹⁹

Pakistan is a very assertive country applying the rules regarding marriage. Polygamy without the approval of the Arbitration Board is considered a criminal act. The strict rules of marriage, especially in terms of polygamy because of the many voices from Pakistani women activists who think that polygamy is discrimination against women's rights. It is because according to them, men tend to ignore the rights of wives first time after remarrying. At its peak, after independence, this issue gets a proportional place and becomes a public issue that gets the attention of the Pakistani Parliament. As a result, marriage rules in Pakistan are clearly discussing polygamy, especially article 6 of the Pakistani Constitution,²⁰ that state:

First, a married man is not may remarry (polygamy) with another woman without obtaining written permission from the Arbitration Council and the wife. The Arbitration Council is a judge according to marital affairs in the Pakistani legal system. The Arbitration Council is tasked with providing legal considerations regarding whether or not whether or not a husband is polygamous.²¹

Second, an application for a permit is submitted to the chairman of the Council Arbitration by including costs and written permission from the party's wife. In Pakistan, Islamic law has been influenced by the modern law, namely the existence of legal certainty in the form of permission from the wife. This shows that the Pakistani laws respect women's rights.

Third, if the Arbitration Board considers the petition admissible, the Arbitration Council will ask the husband and the wife to determine their guardian to be invited for deliberation to determine whether polygamy permits are feasible to give. The guardian is the representative of the husband's side and wives who have family ties and skin cell laws. Both husband and wife are obliged to nominate one guardian who will consult with Arbitration

¹⁸ Sabaruddin Ahmad, "Menelisis Ketegasan Hukum Islam di Pakistan", *Al-Maslahah* 15, no. 1 (2019), p. 87-97.

¹⁹ M. Atho Mudzhar, "Hukum Keluarga di Pakistan (Antara Islamisasi dan Tekanan Adat)", *Al-Adalah* 12, no. 1 (2014), p. 11-24.

²⁰ Tahir Mahmood, *Family Law Reform in the Muslim World* (Bombay: NM Tripathi, 1972), p. 249.

²¹ Rohmadi, "Syariah dan Politik Hukum Keluarga di Negara Pakistan", *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi, dan Keagamaan* 1, no. 2 (2014), p. 34.

Council.

Forth, for consideration, the Arbitration Council will record the reasons for filing polygamy from the party sites husband and submitted to the court so as not to be questioned again in the judicial process

Fifth, if the Arbitration Council and the court to give gave permission, but the husband continued to practice polygamy then the husband is obliged to pay a status dowry debt o the wife, paying all forms of dependents to the wife who is considered not in accordance with the responsibilities husband by the court, sentenced to prison confinement for 1 year and pay a fine of 5000 Rupees or both of them.²²

Even though it is included in the civil category, MLFO 1961 it turns out that it also includes a criminal law clause as threats to violators of the law the marriage. MLFO 1961 detailed the rules regarding marriage from the administrative field to problem-solving procedures at the Arbitration Council. pattern Islamic law in MLFO 1961 is not visible from the clause of the laws mentioned in each article. Legal style Islam is clearly visible from the substance of the law that regulates it regarding the limit of marriage, the number of wives that may be married at the same time, and the discretion of the parties to divorce husband.

The influence of the Anglo-Saxon system can be seen in the process of divorce and polygamy permits that require deliberation from both parties. Anglo-Saxon law comes from tradition practiced as part of that too considered important to resolve the issue of divorce and polygamy. Then the influence of the Continental European legal system was very clearly seen from the efforts of the state to form legal certainty. There is a clear judicial procedure, sanctions, and criminal law, and efforts to register marriages form part of the Continental European legal system.

b. Divorce System

Until now, divorce in Pakistan is regulated in several regional regulations (*acts*), including the Indian Divorce Law (*Dissolution of Muslim Marriage Act, 1939*) and the Islamic Family Law Ordinance (*Muslim Family Law Ordinance, 1961*). Even though Pakistan has two laws for divorce, in fact, the MFLO completes procedures that have not been included in the 1939 Act. These two regulations have different formation backgrounds.

1) Divorce according to the *Dissolution of Muslim Marriage Act, 1939*

The 1939 Divorce Law was formed as an implementation of the strong influence of the Hanafi school of thought in society at that time. According to the rules developed in society, the wife has limitations in terms of demanding a divorce, so divorce remains a unilateral right for the husband. The strict divorce law at that time had a big impact on society, namely mass apostasy. Wives who are not comfortable with their households are finally busy taking the extreme route, namely switching from Islam²³

This condition ultimately moved the scholars to find a solution, namely to make *ijtihad*

²² T Mahmood, *Personal Law in Islamic Countries History* (New Delhi: Academy of Law and Religion, 1987), p. 243.

²³ Undang-Undang Perceraian Pakistan 1939 dan MFLO 1961

to find a legal basis for the right to divorce for both parties. At the same time, the British, who at that time occupied the territory of India, saw that sharia law in society required the adoption of other laws because the existing laws did not properly provide women's rights. It was on this basis that the 1939 Law was formed. Starting from this background, the 1939 Divorce Law was born with strong gender overtones, one of which is reflected in article 2 concerning the right to file for divorce for a wife. According to this regulation, a wife is allowed to file for divorce if there are things as determined by law in the husband. Article 2 of this Law is still in effect today and its existence was confirmed by the MFLO 1961.

2) Divorce and Procedure according to *The Muslim Family Law Ordinance 1961*

As previously mentioned, the MFLO was formed based on a survey conducted by Pakistan's lawmaking committee, therefore the draft that is now the MFLO is an applicable law that suits Pakistani society. Regulations regarding divorce are regulated in articles 7 and 8 MFLO 1961. Based on this regulation, the dissolution of marriages in Pakistan can occur in four ways, namely:

a) Divorce on Husband's Initiative

Once married, a husband has the inherent unilateral right to divorce, but this right can be restricted through the marriage contract known as Nikkahnamma. The sight divorce recognized in Pakistani law is not limited to divorce before the court, the husband can pronounce divorce orally or in writing outside the court.³⁴ However, after the husband gives a divorce outside the court, he is obliged to report the divorce incident at the "union council", to issue a divorce announcement to her. If the husband does not register for the divorce, he can be punished with up to 1 year in prison or a fine of 5,000 rupees. In a husband and wife relationship, it is also obligatory to inform the ex-wife's address so that government officials will announce it to the wife and close family members of the wife through official letters or newspapers if the location is not known. where is the wife The announcement letter made by the marriage council is then also submitted to the arbitral tribunal to reconcile the two parties and, if possible, resolve the case?²⁴

The divorce procedure regulated in this regulation has several further implications. As mentioned by Tahir Mahmood in his book *Family Law Reform in the Muslim World*, there are at least four impacts of this law, namely: (1) This law provides time for both spouses to mediate. (2) The concept of triple talaq is not recognized in MFLO because after all the spoken shighat divorce is still written as single divorce. (3) This procedure does not distinguish between divorce before dukhul or after dukhul, because all forms of divorce have a mediation period of 30 days and the iddah will become effective after that. (4) Triple divorce can be effective only after going through the procedure like any other after 90 days. (5) Article 8 of this regulation extends other divorce procedures such as talaq-i tafweez and khulu²⁵

b) Divorce on Wife's Initiative

²⁴Saifuddin Zuhdi, "Reformulasi Hukum Perceraian Di Pakistan, Universitas Muhammadiyah Surakarta", *Jurnal Law and Justice* 1, no. 1 (2016): 46-47.

²⁵T Mahmood, p. 251.

Divorce filed at the initiative of the wife can only be done if the wife gets the right to divorce. The right to divorce is usually written in the marriage name when the marriage is carried out. If the husband is proven to have violated the marriage contract, the wife can file a divorce suit in court. However, if in the marriage the wife does not get rights through nikkahnama, then the wife can apply for khula or khulu'.

c) Khulu'

The definition of khulu, which literally means "untied", is a divorce initiated by the wife and represented by the court. To use this khula right, a wife must use an oath and based on reasons determined by legislation, namely the *West Pakistan Family Law Ordinance*. The procedure for submitting khulu' was previously regulated in article 2 of the 1939 Divorce Law. The provisions in this regulation were later applied and confirmed by the 1961 MFLO.

According to this regulation, a wife can apply for divorce to the court if the following things happen during her marriage. (1) Husband is marquee or does not give news within four years. (2) Husband neglected the responsibility of providing maintenance for two years. (3) Husband commits a crime and is imprisoned for seven years or more. (4) The husband failed to fulfill his obligations without any apparent reason for a period of three years. (5) The husband had been impotent from the start of the marriage and continued until charges were filed. (6) Husband is insane within two years, or suffers from leprosy, or a chronic venereal disease. (7) The wife asked for the right to come of age, whereby she was married off by her guardian before she was 18 years old and refused marriage before she was 18 years old. This provision is stipulated with the condition that the marriage is not perfect (not *dukhul yet*). (8) Husband commits violence. (9) Other reasons deemed valid for filing for divorce according to Islamic law.²⁶

MFLO then added one more reason out of the nine reasons, namely if a husband remarries either bigamy or polygamy. After the wife files for divorce, the family court will then notify the union council of the divorce. Furthermore, the procedure again takes place as the divorce procedure regulated in MFLO article 7. When filing a khula lawsuit, usually a wife is required to return the dowry and other assets received from her husband as *zar-i khula*. As for gifts from the husband's family, they are not included in the *zar-i khula* which must be returned.²⁷

d) Talaq Tafweez

The last form of divorce is a divorce that occurs over both side agreement. This type of divorce does not require court intervention, therefore the talaq-e tafweez procedure is quicker. In accordance with article 8 MFLO, it is enough for both spouses to come to the government office, then they are required to sign a deed of the divorce agreement. After that the divorce can be declared effective, the iddah period is valid and the government officials can issue a certificate of talaq.

²⁶ Pasal 2 ayat 1-9 Dissolution of Muslim Marriage Act 1939.

²⁷ Barrister Ali Shaikh, "Law of Divorce and Khula In Pakistan", p. 4.

3. Indonesia

a. Polygamy System

Indonesia is a former Dutch colony that uses the *Civil Law legal system* (Continental Europe). The characteristic of this legal system is the codification of law, a judicial system that is not subject to the president (independent), and inquisitorial. The main character of the legal system in Continental Europe is a binding judicial decision because it is already in the form of a law with the purpose legal certainty governing a case. By therefore, in matters of marriage even though the majority of the values used are Islamic in nuance, these values are then formed in a law.²⁸

The main reference to polygamy in Indonesia is Law Number 1 of 1974 concerning Marriage or what is known as UUP and Compilation of Islamic Law (KHI). UUP is the legal basis in the form of law and legally general rules about marriage in all religions in Indonesia. Then KHI has a specificity because it is compiled only using Islamic values and applies to the people Islamic only.

Although in Indonesia polygamy is legalized, UUP as the basis of marriage does not freely allow a husband to polygamy. UUP uses the principle of monogamy. This is regulated in Article 3 paragraph 2 which states in principle in a marriage a person men can only have one wife. the article is the first legal clause in the UUP that offends polygamy. It is very clear that the UUP wants it marriage with only one wife. Then in paragraph 2, UUP provides an opportunity for polygamy with conditions permission from the party concerned in this case is required from the wife.

Article 4 paragraph 1 explains that permission for polygamy in Indonesia must go through the courts. A man who will polygamy must submit an application to the court for several reasons. *First*, the wife of the man is not can carry out obligations. In the UUP it is explained that the fulfillment of obligations by both husband and wife aims to keep the household intact. UUP explained that the wife is obliged to love, respect, be loyal, and help outwardly and inwardly. ²⁹Provision regarding the wife's obligations in the UUP is then explained in KHI. Among the obligations of the wife specifically are: physically and mentally devoted to her husband's orders during do not conflict with Islamic law and regulate best for household needs.³⁰

Second, the court can issue a permit for polygamy if the husband in submitting the application has that reason his wife has a disability or an incurable disease healed. ³¹Not all criteria for disability can be submitted as a reason, only those that have an impact on the wife's inability to fulfill obligations. The criteria diseases suffered by wives in UUP are dangerous and contagious, disrupting the biological relationship between husband and wife, resulting in dysfunction of limbs, and difficult to be cured based on a statement from a

²⁸ Fajar Nurhardianto, pp. 33-44.

²⁹ Pasal 33 UUP

³⁰ Pasal 83 KHI

³¹ Pasal 4 Ayat 2 UUP

doctor.³²

Third, one of the goals of marriage is to get and preserve offspring. Having children is happiness separately for married couples. If the goal is not achieved because the wife experienced infertility, then the husband has the right to apply for polygamy in court. Statement of infertility on the part of the wife is not only based on the husband's confession, there must be a statement from a related doctor who stated that the wife experienced infertility.³³

Submission of a polygamy license to the court must be accompanied by some conditions. *First*, the husband has to get consent from the wife both orally and in writing. *Second*, being able to convince the judge that *the* man has the economic ability to meet the needs of all members of his family. *Third*, guarantee justice for all parties (first wife and subsequent).³⁴

Even though Indonesia's in its legal system uses Continental European, the values in Marriage law are still sourced from Islamic law. pattern of Islamic law in the rules of polygamy can be seen in the maximum number of women who can be polygamous, namely four people simultaneously. Then the pattern of the European legal system Continental exists on legal certainty that requires written permission from the wife and a request to the court. That is, what is a condition for the validity of polygamy is that can be registered by a marriage registrar if a polygamy license from the court has been issued.³⁵ The Writer thinks that this system is the best, because it is mutually beneficial complete. Polygamy cannot be removed because it is a solution to some problems, and also can not be permitted freely without the protection of women's rights.

b. *Divorce System*

Positive law in Indonesia regulates divorce, namely in law number 1 of 1974. In Law No. 1 of 1974 Article 19 letter b, one of the reasons for filing for divorce is if one party leaves the other party for 2 consecutive years without the permission of the other party or a valid reason or because of other things beyond his control. The time stipulated in the law is for at least 2 consecutive years without any communication so that you neglect providing maintenance to your family.

If you pay attention to an article by article of the law, it is hoped that human relations related to marriage will run in an orderly manner. Human ideal values can be interpreted if society obeys its implementation. As stated in Article 1 of the Marriage Law which defines "Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming an eternal happy family based on Belief in One Almighty God." This indicates that the wording of this article is only seen as a civil bond but contains a

³² Herliany, "Kekaburan Norma Syarat Untuk Melakukan Poligami dalam Pasal 4 Ayat (2) Huruf (a dan B) Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan", *Kumpulan Jurnal Mahasiswa Fakultas Hukum* 4, no. 3 (2016), pp. 179-188.

³³ Furqan Darajat, "Status Poligami Dalam Perundang-Undangan Konvensional Dan Kontemporer Dan Relevansinya Dengan Surat An-Nisa' Ayat 3", *Al-Manhaj: Journal of Indonesian Islamic Family Law* 2, no. 1 (2016), pp. 70 - 86.

³⁴ Pasal 5 UUP

³⁵ Kutbuddin Aibak, *Kajian Fiqh Kontemporer* (Yogyakarta: Kalimedia, 2017), p. 66.

religious dimension.³⁶

In the sociohistorical context, the conditions and development of Indonesian society played a very important role in and influenced the modernization process of family law, starting from the reign of the Dutch East Indies to the reformation era. During the colonial period, family law was not an important concern for local elites, except for women's organizations and Islamic groups. Likewise during the reign of the old-order regime when the political elite was divided into three major groups and was preoccupied with the basic constitutive discourse of the Indonesian state. The family law modernization program is important for women's organizations and Islamic groups. Along with the occurrence of problems that cause the ideals of marriage to fail to materialize. Nevertheless, divorce can be requested by one of the parties or both parties to accommodate the realities of a failed marriage.³⁷ Divorce in Indonesia basically follows the principles of Islamic law, this is in accordance with the Compilation of Islamic Law used as a basic standard, that is, if a marriage between a husband and wife is interrupted due to divorce, the iddah period for the wife who is left behind or a widow, whether she has menstruation or no menstruation, is determined to be at least 90 days or three times sacred.

Behind that, divorce is something that is hated in Islam even though the permissibility is very clear and can only be done when there is no other way that can be taken by both parties.

The Compilation of Islamic Law (KHI) emphasized that submission of requests both orally and in writing from a husband who will drop divorce on his wife is proposed to the religious court in which the wife is domicile, accompanied by reasons and requesting that a hearing be held for this purpose. However, the KHI is somewhat different from the marriage law. In the KHI, a distinction is made between divorces caused by divorce and divorces due to divorce claims. A divorce application for talak is made by the husband and submitted to the Religious Court, while a divorce suit is instead filed by the wife.³⁸

The compilation of Islamic Law in Indonesia its presence is felt important in the context of legal unification in Indonesia, especially in the religious courts. The birth of the KHI made the guidelines for the religious courts to decide on cases submitted to them, this is of course different from the decisions of cases spread out in fiqh books compiled by classical scholars.

C. Analysis of Divorce and Polygamy Practices in Turkey, Pakistan, and Indonesia

Through the above explanation it is known that the practice of polygamy and divorce in these three countries has different legal rules. Even though sometimes there are the same practices in their application in everyday life, here the act of polygamy and divorce is an act of shame or disgrace for the perpetrators of both.

³⁶ Tri Lisiani Prihartinih, "Tinjauan Filosofis Undang-Undang Nomor 1 Tahun 1974", *Jurnal Dinamika Hukum* 8, no. 2 (2008), p. 196

³⁷ Haifaa A. Jawad, *Otentisitas Hak-hak Perempuan: Prespektif Islam Atas Kesetaraan Jender* (Yogyakarta: Fajar Pustaka Baru, 2002), pp. 232-233.

³⁸ Pasal 129-133 KHI.

As explained in the Qur'an Surat an-Nisa verse 3 concerning polygamy: *Wa in khiftum allā tuqsiṭū fil-yatāmā fankihū mā ṭābalakum minan-nisā'i mašnā wa šulāša wa rubā'(a), fa in khiftum allā ta' dilū fa wāḥidatan au mā malakat aimānukum, zālīka adnā allā ta'ulū*. In the verse it is explained that if the husband is able to do justice to orphans then marry a woman and vice versa. From the explanation of the verse fragment, it can be interpreted that a just person can polygamy in two, three, and four. However, in this case, a husband is rarely found who has the fair nature that is said by the Qur'an, they practice polygamy only because of lust, not because of other reasons such as things that are permissible for polygamy. Like Turkey, Pakistan prohibits the act of polygamy until there is written permission from the wife and through an arbitral council. Indonesia itself legalizes the practice of polygamy but with strict requirements set forth in the marriage code and a compilation of Islamic law.

Talking about divorce, of course, is not foreign to the general public, because divorce activities often occur around us. In the Qur'an it is explained in Surah al-Baqarah verses 226-227, and Surah at-Talaq verses 1, 2, 4, 6, and 7. Divorce is the most hated activity but it is lawful to do, but what if someone Couples who reach divorce will be labeled as failures in terms of the household. Turkey regulates divorce by finalizing it to a court decision, then there is a waiting period of 300 days to be able to remarry as stipulated by the Turkish civil code. Pakistan in the practice of divorce adheres to two schools, namely; dissolution of Muslim marriage and Muslim family law ordinance. Indonesia itself regulates divorce in detail in the rules of marriage law number 1 of 1974.

D. Conclusion

Through the above explanation it is known that the practice of polygamy and divorce in these three countries has different legal rules. Even though sometimes there are the same practices in their application in everyday life, here the act of polygamy and divorce is an act of shame or disgrace for the perpetrators of both. From the writing that the author presents it can be concluded that (1) Turkey prohibits polygamy, which is contained in the book of the Ottoman Law of Family Rights, Pakistan also prohibits polygamy until written permission from the wife and the arbitral council, Indonesia legalizes polygamy referring to the Marriage Law. (2) Turkey in the event that a divorce ends with the finalization of a court decision and a waiting period of 300 days stipulated by the Turkish Civil Code, likewise Pakistan regulates divorce in two different rules, one using the Dissolution of Muslim Marriage and the other using Muslim Family Law Ordinance, divorce in Indonesia is regulated in Marriage Law Number 1 of 1974.

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