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# Divorce in the Islamic Legal System, the Continental European System, and the Anglo-Saxon Legal System

***Titing Oting Supartini[1], Ah. Fathonih[2], Fauzan Ali Rasyid[3]**
Universitas Islam Negeri Sunan Gunung Djati Bandung
[*]Email: supartinititing@gmail.com[1], ah.fathonih@uinsgd.ac.id[2], fauzan.alirasyid@uinsgd.ac.id[3]

***Abstract***

*This study examines the comparison of the divorce legal system in three main legal traditions, namely Islamic Law, Continental European Law (civil law), and Anglo-Saxon Law (common law). Divorce as a legal event not only has implications for the breakdown of civil relations between spouses, but also has significant social, psychological, and economic consequences. Each legal system offers a different normative, procedural, and philosophical approach to regulating divorce, both in terms of terms, implementation mechanisms, and protection for vulnerable groups such as women and children. This study uses a comparative legal approach by utilizing Kelsen's theory of legal norms, Pound's theory of the social function of law, and Rawls and Dworkin's concepts of substantive and procedural justice. This analysis aims to describe the differences and similarities in divorce legal approaches in the three systems, as well as evaluate the effectiveness of each system in realizing justice and protection of rights in the context of divorce. This research also emphasizes the importance of harmonizing the principles of justice in divorce regulation in the era of globalization.*

***Keywords***: *Divorce, Islamic Law, Civil Law, Common Law, Comparative Law, Substantive Justice, Procedural Justice.*

**Abstrak**

Penelitian ini mengkaji perbandingan sistem hukum perceraian dalam tiga tradisi hukum utama, yaitu Hukum Islam, Hukum Eropa Kontinental (civil law), dan Hukum Anglo-Saxon (common law). Perceraian sebagai peristiwa hukum tidak hanya berimplikasi pada putusnya hubungan perdata antara pasangan, tetapi juga menimbulkan konsekuensi sosial, psikologis, dan ekonomi yang signifikan. Setiap sistem hukum menawarkan pendekatan normatif, prosedural, dan filosofis yang berbeda dalam mengatur perceraian, baik dalam aspek syarat, mekanisme pelaksanaan, maupun perlindungan terhadap kelompok rentan seperti perempuan dan anak. Studi ini menggunakan pendekatan perbandingan hukum dengan memanfaatkan teori Kelsen tentang norma hukum, teori Pound tentang fungsi sosial hukum, serta konsep keadilan substantif dan prosedural Rawls dan Dworkin. Analisis ini bertujuan untuk menggambarkan perbedaan dan kesamaan pendekatan hukum perceraian di ketiga sistem, serta mengevaluasi efektivitas masing-masing sistem dalam mewujudkan keadilan dan perlindungan hak dalam konteks perceraian. Penelitian ini juga menekankan pentingnya harmonisasi prinsip-prinsip keadilan dalam regulasi perceraian di era globalisasi.

**Kata Kunci**: Perceraian, Hukum Islam, Civil Law, Common Law, Perbandingan Hukum, Keadilan Substantif, Keadilan Prosedural.

## INTRODUCTION

Divorce is a legal event that not only breaks the civil relationship between two individuals bound in a marital bond, but also has very complex multidimensional consequences. In the social realm, divorce can cause stigma, trigger the disintegration of family structures, and have an impact on the psychosocial development of children. From a psychological aspect, the divorce process is often accompanied by intense emotional pressure, both for the divorced couple and for the extended family involved. Meanwhile, in the economic dimension, divorce often raises complicated problems related to the division of joint property, ex-spouse allowances, and post-divorce childcare costs.[1]

Every legal system in the world responds to divorce with a distinctive normative approach, rooted in different historical structures, philosophical values, and moral-religious foundations. The Islamic legal system, for example, views divorce as *rukhshah* (dispensation) that is permissible under certain conditions, but is still limited by shari'a ethics and the protection of the rights of women and children.[2] On the other hand, the Continental European legal system in the style *of civil law* positions divorce as part of a codifiably structured legal system, with the dominant role of the state in determining its legal conditions, procedures, and consequences.[3] In contrast to the Anglo-Saxon legal system (common law), which emphasizes more on precedents and jurisprudence doctrines, and prioritizes the principles of individual autonomy and distributive justice in deciding divorce cases.[4]

This paper aims to compare the regulations, doctrines, and philosophies of divorce in the three main legal systems Islamic Law, the Continental European Legal System, and the Anglo-Saxon Legal System by emphasizing the fundamental differences in the normative, procedural, and philosophical approaches used in each system. This comparative approach is expected to open up a broader perspective in understanding the plurality of legal systems in the face of dynamic social realities, especially in the context of divorce as a legal phenomenon that continues to develop globally.

## LITERATURE REVIEW

### Legal Theory and Comparative Systematic Law

Comparative law is a study method that serves to understand and analyze the normative structure of various legal systems by comparing the basic principles, procedures, and legal objectives that apply among different countries, legal traditions, or even religious systems. The main purpose of legal comparison is not only to find formal similarities and differences between legal rules, but also to uncover the rationality behind the formation of these legal norms, as well as to assess their effectiveness in responding to the social, cultural, and economic needs of a society.[5] Thus, comparative law plays an important role in building dialogue between legal systems, both in the context of legal harmonization at the international level and to inspire legal reform at the national level.

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[1] Mary Ann Glendon, *The Transformation of Family Law: State, Law, and Family in the United States and Western Europe* (Chicago: University of Chicago Press, 1989), 45–49.

[2] Abdullahi Ahmed An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a* (Cambridge: Harvard University Press, 2008), 143–144.

[3] Christoph C. Paulus, "The German Civil Code (BGB) and the Concept of Divorce," *International Journal of Law, Policy and the Family* 12, no. 3 (1998): 227–230.

[4] John Eekelaar and Mavis Maclean, *Family Law and Personal Life* (Oxford: Oxford University Press, 2005), 112–115.

[5] Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law*, trans. Tony Weir, 3rd ed. (Oxford: Oxford University Press, 1998), 2–6.

Within this framework, the theory *of Pure Theory of Law* developed by Hans Kelsen became one of the important foundations. Kelsen views law as a normative system arranged in a hierarchical manner, in which each norm derives its validity from the norms above it, until it reaches a basic norm (*Grundnorm*) that serves as the ultimate source of legitimacy.[6] Kelsen's normative approach allows for an objective analysis of legal rules without the interference of moral or sociological considerations, thus making room for comparative law to focus on the internal logic of each legal system.

However, legal comparisons that rely solely on normative analysis run the risk of ignoring the social function of the law itself. Therefore, the functional approach introduced by Roscoe Pound becomes an important complement in comparative legal studies. Pound views law not just as a collection of norms, but as *a tool of social engineering*—a social engineering tool that serves to regulate people's behavior, resolve conflicts, and achieve the goals of social justice and welfare.[7] This approach emphasizes that comparative law should pay attention to the role and effectiveness of legal norms in regulating social realities, rather than solely studying legal texts dogmatically.

The combination of the normative approach of Kelsenian and the functional approach of Poundian constitutes a solid epistemological framework for the study of comparative law, including in the study of the divorce system in Islamic Law, the Continental European System, and the Anglo-Saxon System. Through this approach, the comparison does not only stop at the "what" of the law, but also the "why" and "how" the law works in different social contexts.

**Theory of Justice in Divorce**

In modern legal studies, the concept of justice plays a central role as a normative measure to assess the extent to which a legal system is able to meet moral principles and the protection of human rights. The two dimensions of justice that are often referenced in legal analysis are *substantive justice* and procedural *justice*. Substantive justice focuses on the content or substance of the rule of law, particularly regarding the extent to which the legal norms are materially fair and provide real protection for the rights of individuals, especially vulnerable groups such as women and children. Meanwhile, procedural justice emphasizes fairness in the law enforcement process, including transparency, equal opportunities to be heard, and impartiality of law enforcement institutions.[8]

John Rawls in his A *Theory of Justice* argues that the principle of justice must be built on the basis of an "original position" and a "veil of ignorance", where rules are formulated as if the designers did not know their future social position. This concept aims to ensure that the legal system will prioritize the protection of the most vulnerable parties in society, as everyone has the possibility of being in that position.[9] In the context of divorce, this Rawlsian approach encourages an evaluation of how the law accommodates the needs and rights of women and children, who are often the most socially and economically affected by divorce.

Ronald Dworkin, complementing Rawls's ideas, emphasized the importance of a moral interpretation of law through the principle *of rights as trumps*, in which individual

[6] Hans Kelsen, *Pure Theory of Law*, trans. Max Knight (Berkeley: University of California Press, 1967), 193–210.

[7] Roscoe Pound, *Interpretations of Legal History* (Cambridge: Harvard University Press, 1923), 152; lihat juga Roscoe Pound, "The Theory of Social Interests," *Publications of the American Sociological Society* 8 (1913): 15–16.

[8] Tom R. Tyler, *Why People Obey the Law* (Princeton: Princeton University Press, 2006), 103–107.

[9] John Rawls, *A Theory of Justice*, revised ed. (Cambridge: Harvard University Press, 1999), 52–56.

rights should be the limits to the actions of the majority or the power of the state. Dworkin argues that in assessing the fairness of a legal policy, including divorce regulations, judges and policymakers must prioritize moral principles that maximize the protection of individual rights.[10] In this framework, the examination of the divorce legal system in various legal traditions is seen not only in terms of the existence of formal norms on the rights of wives and children, but also in the extent to which the legal process actually guarantees fair access to justice, including for example women's access to justice, participation in mediation processes, and protection from discrimination.

Therefore, in comparing the regulation of divorce in the system of Islamic Law, Continental European Law, and Anglo-Saxon Law, the concept of substantive and procedural justice as developed by Rawls and Dworkin becomes an essential instrument of analysis. This approach not only assesses the content of legal norms (substance), but also examines the process of their implementation, focusing on the extent to which the legal system contributes to the protection and empowerment of socially and economically weak parties in the divorce process.

## RESEARCH METHODS

This study uses a qualitative-comparative method to compare the concept and regulation of divorce in three legal systems: Islamic Law, the Continental European system, and the Anglo-Saxon system. The main focus of the research is on the legal principles, procedures, and normative implications of divorce in the three systems. The approach used is normative-comparative, namely by examining the legal texts, doctrines, and judicial practices of each system. Primary data include classical and modern jurisprudence books (for Islamic Law), Civil Code and related regulations (for Continental Europe such as Indonesia and France), as well as case law and common law doctrine (for Anglo-Saxon such as the United Kingdom and the United States). Secondary data sources include legal journals, academic books, and relevant scientific articles. Data collection techniques are carried out through systematic literature studies and legal documentation. The data obtained were analyzed descriptive-comparatively, with the aim of identifying similarities and differences in the philosophical, procedural, and substantive aspects of divorce in each legal system, as well as concluding the relevance and contribution of each system to the development of global family law.

## RESULTS AND DISCUSSION

### Divorce in the Islamic Legal System

1. Legal Resources

Divorce law in Islam has a strong normative basis that is sourced from the Qur'an, the hadith of the Prophet Muhammad (PBUH), the ijma' of the scholars, and qiyas (legal analogies). The Qur'an explicitly regulates the provisions of divorce in several passages, such as QS. Al-Baqarah verses 229-231 which explain the procedure of talaq and referral, as well as QS. Ath-Thalaq verses 1-7 which regulate the period of iddah, alimony, and women's rights after divorce.[11] The hadiths of the Prophet PBUH serve as an explanation and complement of these verses, among which the Prophet said: "The halal thing that Allah hates the most is talak" (HR. Abu Dawud no. 2178).[12]

In addition, ijma' or the consensus of scholars and qiyas is a method of legal istinbat in determining divorce issues that are not explicitly explained in the nash, such

[10] Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1977), 184–186; lihat juga Ronald Dworkin, *Law's Empire* (Cambridge: Harvard University Press, 1986), 243–245.

[11] Al-Qur'an, QS. Al-Baqarah: 229-231; QS. Ath-Thalaq: 1-7.

[12] Abu Dawud, *Sunan Abu Dawud*, no. 2178, Kitab Ath-Thalaq.

as the provision regarding the wife's right to propose fasakh or khulu' under certain conditions. These four sources are the main basis for the formation of divorce law in the schools of fiqh, both Hanafi, Maliki, Shafi'i, and Hanbali, each of which has a different interpretation and application in several aspects.[13]

2. Forms of Divorce in Islamic Law

In Islamic law, the form of divorce is classified into several types according to who is the perpetrator of the termination of the contract and what is the reason for the termination:

a. Talak: The right of the husband to divorce his wife by saying the word talaq explicitly. The Qur'an provides signs for the implementation of talaq so that it is not abused, including the prohibition of mentality in menstruation conditions and the obligation to provide the opportunity to refer during the iddah period (QS. Al-Baqarah: 229-230).[14]
b. Khulu': A request for divorce from the wife by giving a ransom to the husband as a condition for the release of the marriage contract. The proof is found in the hadith of the wife of Tsabit bin Qais who asked for khulu' in front of the Prophet PBUH, and the Prophet granted it by returning the dowry that had been given.[15]
c. Fasakh: Cancellation of a marriage contract through a qadhi (judge) decision due to sharia reasons such as domestic violence, serious illness, or the husband's inability to fulfill alimony obligations. Fasakh is regulated in various fiqh books as a form of protection of the wife's rights from injustice.[16]
d. Li'an and Ila': Divorce that occurs due to an oath of intercourse (li'an) in the case of an accusation of adultery against the wife without witnesses, or because of the husband's oath not to associate with the wife for a certain period of time (ila'), as stipulated in the Qur'an. An-Nur verses 6-9 and QS. Al-Baqarah verse 226.[17]

3. Basics of Divorce Law in Islam

Some of the principles that are the foundation of divorce law in Islam include:

a. The basis of ease and non-burdensome (taysīr wa raf' al-ḥaraj) Islam views marriage as a sacred bond, but it also provides a way out when marriage can no longer achieve the purpose of sakinah, mawaddah, wa rahmah. Therefore, divorce is permissible as a last resort to avoid a greater madharat, in line with the fiqh rule of "Adh-dhararu yuzāl" (danger must be eliminated).[18]
b. Principles of protection of the rights of women and childrenIslamic law stipulates protection for women through the obligation of the husband to provide maintenance during the iddah period, the obligation of mut'ah (giving gifts) in cases of talaq that is not caused by the wife's fault, and the prohibition of expelling the wife during the iddah period (QS. Ath-Thalaq: 1-6).[19] This

[13] Wahbah Az-Zuhaili, *Al-Fiqh Al-Islami wa Adillatuhu*, Volume 7 (Damascus: Dar al-Fikr, 1985), 474–479.
[14] Ibid., 482–483.
[15] Muhammad bin Ismail Al-Bukhari, *Shahih Al-Bukhari*, no. 5273.
[16] Wahbah Az-Zuhaili, *Al-Fiqh Al-Islami wa Adillatuhu*, 496–498.
[17] Al-Qur'an, QS. An-Nur: 6-9; QS. Al-Baqarah: 226.
[18] Jalaluddin As-Suyuthi, *Al-Asybah wa An-Nazhair*, (Beirut: Dar al-Kutub al-'Ilmiyyah, 2006), 87.
[19] Al-Qur'an, QS. Ath-Thalaq: 1-6.

protection also includes the right to child custody (*hadhanah*) which is regulated based on the benefit of the child.

4. The Role of Qadhi (Judge) and Divorce Procedures

In the classical fiqh tradition, divorce—especially talaq—can be carried out by the husband without the intervention of the judiciary. The husband simply pronounces the word talaq in accordance with the provisions of sharia, and the talaq is considered religiously valid even without the qadhi ruling.[20] However, along with the development of modern nation-states and the need for administrative arrangements for the protection of the rights of women and children, many Muslim countries have adopted court mechanisms as a condition for the legality of divorce in a positive legal manner.

In Indonesia, for example, Law No. 1 of 1974 on Marriage and Compilation of Islamic Law (KHI) stipulates that divorce can only be carried out before a religious court session, after there has been an effort to mediate and fulfill certain conditions (Article 39 of Law No. 1/1974 and Article 115 of the KHI).[21] This model aims to avoid unilateral talaq practices that are detrimental to women and ensure that rights related to alimony, mut'ah, iddah, and child custody are fairly determined by the competent institutions.

**Divorce in the Continental European legal system**

1. Characteristics of the Civil Law System

The Continental European legal system, otherwise known as the *civil law system*, is a legal tradition that has its roots in Roman law and developed through the codification of laws in European countries such as France, Germany, Italy, and Spain. One of the main characteristics of this system is its codifying and positistic nature, where legal norms are systematically written in a comprehensive law book or *code* that regulates various aspects of legal life[22]. In the context of divorce, all legal provisions including the terms, procedures, and legal consequences of divorce have been expressly regulated in the legislation, thus reducing the judge's discretion in determining decisions outside the limits of written norms.

Another characteristic is the role of the judge who is passive, where the judge in the civil law system functions as the enforcer of the law (*la bouche de la loi*—"mouth of the law"), rather than the law-maker. Judges are bound to decide cases based on the rules that have been determined in the code, in contrast to judges in the common law system who play an active role through precedent[23]. This aims to ensure legal certainty and avoid inconsistencies in the application of the law.

2. Divorce Models in Some Countries
   a. France

      France, as a country with a strong *civil law* system , recognizes four types of divorce under the *French Civil Code:*

      1. *Divorce par consentement mutuel*,
      2. *Divorce accepté*
      3. *Divorce pour altération définitive du lien conjugal*

[20] Jamal J. Nasir, *The Status of Women under Islamic Law and Modern Islamic Legislation*, 3rd ed. (Leiden: Brill, 2009), 148.

[21] Law No. 1 of 1974 concerning Marriage; Compilation of Islamic Law, Presidential Instruction No. 1 of 1991.

[22] René David and John E.C. Brierley, *Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law*, 3rd ed. (London: Stevens & Sons, 1985), 22–24.

[23] John Henry Merryman and Rogelio Pérez-Perdomo, *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America*, 3rd ed. (Stanford: Stanford University Press, 2007), 34–36.

4. *Divorce pour faute*[24].

The most widely used type of divorce today is *divorce by mutual consent*, because the process is faster and more efficient, without having to prove any wrongdoing or violation from either party.

b. Germany

In Germany, divorce is regulated in *the Bürgerliches Gesetzbuch* (BGB) or German Civil Code, specifically in Article 1565 onwards. The main principle used in divorce law in Germany is *Zerrüttungsprinzip* (the principle of permanent fracture), which states that divorce can be carried out if it is proven that the marital relationship has been permanently damaged and there is no hope of restoration[25]. Typically, courts stipulate that a permanent rift is evident if the couple has lived apart for one year (by mutual consent) or three years (without the consent of either party).

3. Principles Embraced

Some of the important principles adopted in the divorce regulation in the Continental European system include:

a. Basis of protection against family institutions
Although divorce is allowed, civil law still views the family as a fundamental social unit that must be protected. Therefore, divorce is only justified when there is no longer any possibility to maintain the integrity of the household[26].

b. The basis of equality in lawsuits
The civil law system provides equal rights for husbands and wives to file for divorce. There is no gender privilege in terms of who has the right to initiate divorce proceedings, thus reinforcing the principle of non-discrimination in family law[27].

c. Mediation as a pre-requisite obligation for divorce lawsuitsIn many civil law countries such as France, Italy, and Germany, mediation is required as a first step to encourage reconciliation between couples before the case is filed in court. The goal is to minimize the negative impact of divorce and facilitate a peaceful settlement without a lengthy litigation process[28].

4. Legal Procedures and Protection

Divorce in the civil law system is generally only valid if it is carried out through a court decision, which serves to assess whether the legal requirements of divorce have been met. This process includes verifying the reasons for the divorce, meeting the terms of mediation (if applicable), and arranging the consequences of the divorce, including:

a. Child custody,
b. Matrimonial property division,
c. Provision of spousal maintenance.

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[24] Code Civil (French Civil Code), Articles 229–246. Lihat juga Mary Ann Glendon, *The Transformation of Family Law: State, Law, and Family in the United States and Western Europe* (Chicago: University of Chicago Press, 1989), 97–99.

[25] Bürgerliches Gesetzbuch (BGB) §§1565–1587. Lihat Christoph C. Paulus, "The German Civil Code (BGB) and the Concept of Divorce," *International Journal of Law, Policy and the Family* 12, no. 3 (1998): 227–230.

[26] Eva Ryrstedt, "Family Law and Family Justice in Europe," in Jens M. Scherpe (ed.), *European Family Law*, vol. 1 (Cheltenham: Edward Elgar Publishing, 2016), 85–87.

[27] Glendon, *The Transformation of Family Law*, 102–104.

[28] Ibid., 110–112.

In France, for example, the *Civil Code* stipulates that judges must decide on custody and alimony arrangements for children in order to protect the *best interests of the child*[29]. A similar case applies in Germany, where the BGB also requires the courts to regulate custody and alimony obligations after divorce.

The active role of the state through the judicial system in supervising the divorce process aims to ensure the protection of the weak, especially children and women, and prevent injustice due to unilateral divorce.

**Divorce in the Anglo-Saxon legal system**

1. Characteristics of the Common Law System

The Anglo-Saxon legal system or better known as common law is a legal tradition that developed in England and former British colonies, including the United States, Canada, Australia, and New Zealand. The main characteristic of this system is that it is based on *precedent or case law*, where previous court decisions serve as a reference (binding precedent) in the settlement of similar cases in the future[30]. Thus, judges' decisions become a source of law that is parallel to legislation, even in some cases playing a more dominant role in determining the direction of legal development.

In contrast to *civil law* which places judges as law applicators, in the common law system, judges have an active role in the formation of law through interpretation and juridical reasoning based on concrete cases. This active role allows for flexibility and legal adaptation to social dynamics without always having to wait for legislative changes[31]. Therefore, in the context of divorce, the role of judges in common law countries is very important, both in assessing the reasons for divorce and in regulating its legal consequences, such as the division of joint property and child custody rights.

2. Divorce Models in Anglo-Saxon Countries
   a. English

      Since the enactment of the *Divorce, Dissolution and Separation Act* 2020, the UK has officially adopted the "*no-fault divorce*" model, which is divorce without the need to prove fault from one of the parties. Previously, the divorce system in the UK required proof of *unreasonable behavior*, infidelity, or neglect as the basis for a divorce lawsuit[32]. These reforms aim to reduce conflicts in the divorce process and facilitate the peaceful and expeditious termination of marital relationships, while maintaining protection for children and vulnerable parties.

   b. United States

      In the United States, the divorce legal system varies between states because federalism gives each state the authority to regulate civil law, including divorce. However, almost all states have adopted *"irreconcilable differences"* as the common basis for divorce, which is in line with the principle *of no-fault divorce*. California has been a pioneer in the implementation of no-fault divorce since 1970 through the California Family Law Act[33]. In addition, some

[29] Code Civil, Articles 373–2-6; BGB §§1626–1631.

[30] John Henry Merryman and Rogelio Pérez-Perdomo, *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America*, 3rd ed. (Stanford: Stanford University Press, 2007), 2–5.

[31] H. Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law*, 5th ed. (Oxford: Oxford University Press, 2014), 214–216.

[32] Divorce, Dissolution and Separation Act 2020 (UK); see also House of Commons Library, *No-fault divorce: The new law*, Briefing Paper No. CBP-8924, 2020.

[33] Herma Hill Kay, "From Fault to No-Fault Divorce and Back Again," *Family Law Quarterly* 49, no. 3 (2015): 449–470.

states still allow *fault-based divorce* under certain conditions, such as domestic violence, neglect, or infidelity.

3. Principles Embraced

The common law system of divorce is based on a number of principles that reflect Western values of liberalism and individualism, including:

a. The principle of individualism and personal autonomy
The common law system places the will and choice of the individual as the center of divorce regulation. The right to decide on the continuation of the marriage is recognized as a personal right, without having to prove the fault of the other party. This principle is the embodiment of the principle of individual liberty which is the main characteristic of the Anglo-Saxon legal system[34].

b. The principle of distributive justice in the division of assets and rights of childrenIn determining the division of property and the arrangement of child custody, courts in common law countries refer to the principle of equitable distribution (fair distribution, not always equal). Considerations include the economic and non-economic contributions of each party during the marriage, the needs of children, and the financial capabilities of both parties[35]. Thus, the justice sought is not only formal, but also considers the factual balance between the parties.

4. Divorce Procedure

The divorce process in the common law system generally begins with the submission of a petition by one of the parties to the court. This process then ends with the issuance of an *absolute decree* (a court decision declaring the divorce valid and final). Before reaching an *absolute decree*, the court usually issues a *decree nisi*, which is a statement that the divorce will be granted unless there is an objection filed within a certain period of time[36].

Although not mandatory, mediation is often recommended in the settlement of divorce cases, especially in the division of assets and child custody. Many jurisdictions in the UK and the United States require mediation consultations as a first step before trial, although the implementation remains flexible and tailored to the circumstances of each case[37].

This procedural flexibility reflects the general character of the common law system that emphasizes substantive justice-oriented adaptation and settlement, rather than simply following formal procedures.

**Analytical Comparison**

| Aspects | Islamic Law | Continental Europe | Anglo-Saxon |
|---|---|---|---|
| Legal Resources | Revelation and fiqh | Civil codification | Precedent & legislation |

[34] Mary Ann Glendon, *The Transformation of Family Law: State, Law, and Family in the United States and Western Europe* (Chicago: University of Chicago Press, 1989), 78–79.

[35] John Eekelaar and Mavis Maclean, *Family Law and Personal Life* (Oxford: Oxford University Press, 2005), 123–127.

[36] Brenda Hale, *Family Law*, 6th ed. (London: Sweet & Maxwell, 2019), 189–191.

[37] Linda C. Neilson, *At Cliff's Edge: Domestic Violence, Legal Ethics, and Family Law Disputes* (Ottawa: Canadian Bar Association, 2017), 66–68.

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|---|---|---|---|
| **Divorce Initiative** | Dominant husband, there are wife's rights | Equivalent | Equivalent |
| **The Role of the State** | Varies (depending on country) | Dominant (mandatory judge) | Very powerful |
| **Dasar Perceraian** | Because of the shari'i, talak | Relationship fractures | Irreconcilable differences |
| **Mediation Procedure** | Recommended | Mandatory | Recommendations |
| **Women's and Children's Rights** | Regulated in fiqh & state | Regulated civil code | Regulated by a judge's decision |

## CONCLUSION

The fundamental differences between the Islamic legal system, civil law, and common law in regulating divorce show that the approach to the dissolution of the marriage bond is influenced by the theological, historical, and institutional paradigms of each system. Islamic law emphasizes the moral and religious aspects with flexibility of practice through the institution of talaq, while the civil law and common law systems emphasize more aspects of state law and equality in procedure. The need for harmonization between the principles of justice, protection of vulnerable groups, and family values is a major challenge in global divorce law reform.

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