



Certainty of Divorce Laws in Different Countries Based on Indonesian International Civil Law

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ABSTRACT

International divorce cases involving spouses from different nationalities present complex challenges that necessitate a solid grasp of private international law principles. The divorce process in Indonesia, particularly for couples with different nationalities, requires adherence to national legal regulations and applicable laws. International treaties, notably the Convention on the Civil Aspects of International Divorce, provide a uniform legal framework for addressing such cases. Recognizing and enforcing foreign divorce judgments across jurisdictions is vital to prevent multiple divorces and ensure legal certainty, necessitating coordination between countries. Child protection takes center stage in interstate divorce cases, emphasizing jurisdictional determination and the proper application of the law to safeguard the child's best interests. This research, using normative juridical methods, explores the application of international private law in inter-state divorce cases in Indonesia, shedding light on legal complexities and contributing to a deeper understanding of legal certainty. In essence, addressing interstate divorce issues involves considerations of jurisdiction, choice of law, recognition, and the protection of children's rights, making a profound understanding of international private law increasingly crucial in the context of marriages and divorces across different countries amid rising human mobility and globalization

INTRODUCTION

Marriage marks the beginning of a new phase in a person's life and has personal, social, and legal aspects. Legally, marriage is defined as an agreement or agreement that results in obligations and rights for husband and wife. In Indonesia, marriage is regulated by Law Number 1 of 1974 concerning Marriage, which covers various aspects, including the conditions, procedures and legal consequences of marriage.

One of the aspects regulated by the Marriage Law is marriage involving two different nationalities. Article 57 states that mixed marriage refers to the marriage relationship between two individuals in Indonesia who have different legal understandings. These differences may include nationality, where at least one of the parties concerned has Indonesian citizenship. In this context, mixed marriages are considered part of International Private Law (HPI), with their uniqueness lying in their foreign element, namely differences in nationality. The existence of this foreign element gives an international dimension to the civil relationship, making it an integral part of Private International Law.

Divorce from different countries is becoming an increasingly relevant issue in the context of globalization and increasing human mobility. In this case, international private law plays an important role in providing legal certainty in handling divorce involving couples from different countries. Indonesia, as a country with an international civil law system that is internationally recognized, has a legal framework that regulates divorce between countries.

According to the provisions contained in Article 58 of the Marriage Law, in the context of a mixed marriage between two individuals who have different nationalities, it is emphasized that the husband has the right to grant Indonesian citizenship to the wife. On the other hand, the wife can lose her citizenship in accordance with the regulations stipulated in the applicable Citizenship Law of the Republic of Indonesia. If the husband is an Indonesian citizen, then the wife who has foreign citizenship will automatically become an Indonesian citizen if the marriage has not lasted more than one year. However, if the marriage has lasted more than one year, the granting of Indonesian citizenship to the wife must be subject to the provisions established by the regulations applicable to the wife, as explained in the work (Saragih, 1974). Article 57 in the Marriage Law regarding mixed marriages, defines it as a marriage between two individuals who are subject to different laws in Indonesia because of their different nationalities, as explained by (K. Wantjik Saleh, 1976). This type of mixed marriage is international because the future husband and wife have different nationalities, which often reflects the different customs adhered to by both. The importance of understanding and respecting these cultural differences in building family life is emphasized, because not understanding or disrespecting these differences can lead to prolonged tension or conflict. Such tension can develop into serious estrangement, as stated by Sumiarni as quoted in the source (Waspada & Kharisma, 2020). Several cases reflect that the marriage was not successful in achieving its goals and ultimately ended in divorce.

Through a careful analysis of the existing legal basis, this research will reveal how Indonesia handles legal aspects related to divorce from different

countries, including the recognition and implementation of foreign divorce decisions, as well as protecting the rights of the parties involved. Apart from that, this introduction will also examine how the principles of international private law, such as the principles of *lex fori* and *lex loci celebrationis*, are applied in the context of divorce from different countries in Indonesia.

Divorce between couples who have different nationalities can give rise to a number of complex legal issues in the realm of private international law. One of the main questions is determining the law that will regulate the divorce. Generally, the applicable law (*Lex Loci Regulation*) is the law of the country where the couple is married or lives. However, in situations of divorce between spouses of different nationalities, official recognition of the divorce is required in the countries concerned. Divorce recognition involves the process of officially recognizing the divorce in each country where the couple has citizenship. This may involve a divorce recognition process that differs in each country concerned. A valid divorce certificate may be an important document for various purposes, including changing marital status in each partner's country of origin. The process of obtaining a divorce certificate may vary in each partner's country of origin (Azizah Rima Gitacahyani., et al, 2023)

The division of joint assets is a crucial aspect of the divorce process, and the legal regulations governing this division can vary depending on the applicable jurisdiction. The situation is further complicated when divorcing couples have different nationalities, giving rise to potential legal conflicts. If there are children in the marriage, the issue of child custody becomes very significant. Private international law will consider the child's residence, custody rights, and the decision-making process regarding the child.

Divorce can also affect rights related to pensions or inheritance, especially in the case of couples with different nationalities. The application of international civil regulations may be necessary to determine these rights. Each case of divorce between nationalities will have unique characteristics, and the resolution of legal issues will depend greatly on the applicable laws of the countries involved, as well as the existence of pre-nuptial or nuptial agreements. Due to its complexity, it is highly recommended to seek legal assistance from an experienced international private law professional to navigate all legal aspects arising from an intercitizenship divorce.

Attention to legal issues arising from divorce between nationalities has sparked attention in the context of private international law. Efforts by countries and international organizations to overcome the complexity of this problem are manifested in the creation of treaties, conventions and legal guidelines that regulate divorce in situations of different nationalities. Some significant developments in response to this issue involve:

1. Convention on International Family Law: This convention seeks to establish the principles that must be followed in handling divorce cases with international elements
2. Increasing Awareness of Children's Rights: The issue of child custody in the context of divorce between different nationalities receives special attention, with a focus on the best interests of the child as the main guide.

3. Development of National Laws: Many countries have modernized and adapted their family laws to address different nationality issues in divorce. This situation creates a number of issues related to legal uncertainty in marriage between countries, where each country has differences and unique characteristics of civil law, including regulations relating to marriage. Differences in civil law between countries can result in variations in marriage terms and procedures. Apart from that, there are often inconsistencies between national civil law and international private law, as stated by (Ervina Martha Herawati & Farrel Arrigo., et al, 2023).

The importance of discussing legal certainty in inter-country marriages based on Indonesian international civil law is very significant. This discussion aims to provide a clear and comprehensive picture of legal certainty in inter-state marriages in Indonesia. In particular, this article will carefully examine various aspects of legal certainty in inter-country marriages and divorce processes in that context, by referring to the principles of International Private Law and legal norms that apply in Indonesia.

Thus, it is hoped that this research can contribute to further understanding of the legal certainty of divorce in different countries based on international civil law in Indonesia. An in-depth analysis of the legal framework and its implementation will provide a comprehensive picture of how Indonesia responds to legal challenges that arise in divorce cases involving parties from various countries.

LITERATURE REVIEW

Understanding and Concept of Divorce in Different Countries:

Marriages between individuals from different countries create legal complexities, including marriage regulations, international recognition, and the status of children. The diversity of marriage and citizenship laws requires an in-depth understanding of the laws of both countries involved.

Principles of Indonesian Private International Law:

- Principles of Jurisdiction: The importance of determining the jurisdiction of the court to decide interstate divorce.
- Applicable Law: Choice of law to be applied, whether Indonesian national law, the law of origin of one of the parties, or international law.
- Recognition and Enforcement of Foreign Judgments: The importance of recognizing and implementing divorce judgments from foreign courts within Indonesian jurisdiction.

Role of International Conventions:

International conventions, such as the Hague Convention, provide a uniform legal framework for handling divorce between different nationalities. It is important for countries to adopt such agreements to simplify legal processes.

Influence of National Legislation:

The jurisdiction of the courts in Indonesia and the applicable national laws are the main determinants in the divorce process. Legislation, including Article 66 of the Marriage Law, influences marriage regulations.

Soekanto and Suardi et al.'s views:

- Soekanto highlighted the potential influence of various regulations, including religious law, statutory regulations, unwritten norms, conventions and customary law on marriage regulations.

- Suardi et al. emphasized that the resolution of divorce from different countries in Indonesia must be carried out through the courts, especially the Religious Courts for those who are Muslim. The Indonesian Embassy does not have authority in the divorce process.

Divorce between different nationalities requires a thorough understanding of aspects of international and national law. The contribution of international conventions, the views of legal experts such as Soekanto, and the legal actions that must be taken in Indonesian jurisdictions are important in dealing with the complexity of such divorce cases.

METHODOLOGY

This research will use normative juridical methods, which involve analysis of statutory regulations and legal principles that apply in Indonesia. A normative juridical approach is used to analyze and interpret law by referring to related literature. This research is based on an in-depth analysis of legal regulations, official documents and relevant literature. This research uses a normative juridical approach by analyzing theories, concepts, legal principles and regulations that are closely related to the research subject. The focus of this analysis is based on primary legal materials, and the research method applied is the library method. Therefore, this research requires an in-depth study of documents such as books and statutory regulations that are relevant to this research topic.

The aim of the normative juridical approach in this research is to understand the essence of the law and applicable norms, as well as carry out a comprehensive analysis regarding their application and implementation in legal practice. This approach provides a strong basis for exploring an in-depth understanding of the legal regulations that are the focus of the research.

RESULTS AND DISCUSSION

Divorce involving couples from different countries has become an increasingly common phenomenon in the context of globalization. This creates legal complexity, especially in the context of ensuring legal certainty in divorce processes from different countries. This research aims to describe the relevant literature to understand the key aspects that influence legal certainty in divorce cases from different countries, with a focus on the context of international private law in Indonesia.

Understanding and Concept of Divorce in Different Countries:

Marriages between citizens of different countries raise a number of legal issues, which include questions about the regulation of marriage, international recognition of such marriages, the legal status of children born from such marriages, as well as the rights and obligations of each party related to civil rights, citizenship, immigration rights, and the potential for divorce in

relationships between couples of different nationalities. The diversity of marriage laws and citizenship regulations in each country can complicate these aspects, requiring an in-depth understanding of the laws and regulations that apply in both countries involved in the marriage.

Mixed Marriage is a form of marriage between two individuals in Indonesia who are subject to different laws, due to differences in nationality, with at least one party having Indonesian citizenship. This is regulated in accordance with the provisions of Article 57.

Divorces involving partners of different nationalities can result in a number of legal consequences that need to be considered from a private international law perspective. These aspects include considerations regarding jurisdiction, choice of applicable law, recognition and implementation of decisions, as well as other legal issues that require special attention.

First of all, determination of jurisdiction becomes essential. Jurisdiction refers to the court's authority to decide divorce cases. In the context of couples with different nationalities, determining where a divorce can be filed becomes complex. The concept of jurisdiction may involve consideration of residence, nationality, or special agreements between partners. Once the jurisdiction is determined, the next step is to determine the law that will be applied to govern the divorce, known as the "choice of law" or "lex causae." In the perspective of private international law, the rules to be considered to determine the relevant law, may involve the application of the national law of one of the partners or even internationally applicable law, as provided for in the International Private Convention.

Once a divorce is enforced in one jurisdiction, the issue of recognition and enforcement of the judgment in another jurisdiction becomes significant. This is important because partners may have residences or interests in different countries. To avoid the possibility of multiple divorces, many countries have international treaties governing the recognition and enforcement of civil judgments from other countries.

Principles of Indonesian Private International Law:

1. Jurisdiction Principle: The focus of this theory is on the jurisdiction of the court which has the authority to decide interstate divorce cases. The question that arises is whether courts in Indonesia have the legal authority to handle divorces involving individuals with different nationalities.
2. Applicable Law: This theory discusses the choice of law that will be applied in the context of inter-country divorce. The fundamental question involves determining whether the applicable law is Indonesian national law, the law of a party's country of origin, or even specific international law.
3. Recognition and Enforcement of Foreign Judgments: The focus of this theory is the recognition and enforcement of divorce judgments given by the courts of other countries. Questions that arise include whether divorce decisions from foreign courts can be recognized and enforced in Indonesia, and what the process is.

4. Child Protection in Inter-State Divorce: This theory emphasizes the protection of children's rights and interests in inter-country divorce cases. How determining jurisdiction and applying appropriate laws can ensure that the best interests of the child remain the main priority in the divorce process.

5. It is hoped that in-depth knowledge of these theories will provide a comprehensive view of the legal complexities involved in inter-country divorce, especially when it involves couples of different nationalities.

Several countries have adopted international treaties governing divorce matters between individuals of different nationalities. A prominent example is the 1970 Convention on the Civil Aspects of International Divorce (Hague Convention on the Civil Aspects of International Child Abduction). Such conventions provide a uniform international legal framework for handling divorce cases involving couples of different nationalities.

The Influence of National Legislation, The law governing a divorce lawsuit is determined by the jurisdiction of the court where the lawsuit is filed and the national law that applies to each party involved in the divorce. If a divorce petition is submitted to an Indonesian court, the entire divorce process is required to comply with the legal provisions and regulations in force in the Indonesian jurisdiction. In a divorce situation in Indonesia, the requirements, reasons and procedural stages must comply with the legal regulations in force in this country. In addition, all parties involved in a divorce, including foreign nationals, must pay attention to relevant national laws. Thus, the legal aspects governing divorce are not only national in nature, but also take into account the legal status of foreign citizens involved in the divorce legal process in Indonesia.

According to Soekanto's view quoted in the work of Naratama & Dewi (2023), Article 66 of the Marriage Law explains that various other regulations have the potential to influence the provisions contained in the Civil Code or Burgerlijk Wetboek (BW) and the Regeling of De Gomengde Huelijken (GHR). These regulations cover aspects such as (1) religious and belief law which is in line with the 1945 Constitution, (2) statutory regulations, (3) unwritten norms such as customary law, (4) various conventions, and (5) religious law. Understanding the plurality of legal sources that have the potential to influence marriage regulations is crucial in describing a comprehensive legal framework in the context of marriage.

According to (Indonesia, 2021), in accordance with applicable legal regulations, the resolution of the divorce process in a marriage in Indonesia must be carried out through the courts, especially the Religious Courts. In this context, the Indonesian Embassy (Embassy of the Republic of Indonesia) does not have the authority to initiate or manage the divorce process in a marriage that has already occurred.

The following are the steps in the divorce procedure for the Plaintiff (the party filing the divorce petition) and the Defendant (the party accused in the divorce petition) who are abroad, in accordance with the provisions of Article 66 paragraph (4) of Law no. 7 of 1989:

1. If the Plaintiff and Defendant are abroad, but the marriage took place in Indonesia, a divorce petition can be submitted to the Religious Court which has jurisdiction in the area where the marriage took place or to the Central Jakarta Religious Court.
2. If the Plaintiff and Defendant are abroad, and the marriage took place abroad, proof of the marriage must be registered or reported to the Religious Affairs Office (KUA) within one year.
3. A divorce application can be submitted to the Central Jakarta Religious Court in situations where the Plaintiff and Defendant are abroad, and proof of marriage has never been registered or reported to the Religious Affairs Office in the area where the couple lives.

Settlement of divorce in marriages of different nationalities, according to the international civil law system, involves a number of fundamental concepts that influence legal procedures and dispute resolution. These concepts cover crucial aspects related to citizenship, jurisdiction, individual rights, and principles of private international law which are the basis for handling this type of divorce. This kind of marriage involves two individuals from different countries, so it can give rise to conflicts regarding citizenship and affect the divorce agreement. This basic concept involves the conditions, validity and legal consequences of marriages of different nationalities, which is a very important basis in handling divorce cases. In this context, the principles of private international law have a central role. These principles include the *Lex Loci Celebrationis*, *Lex Domicilii*, and other principles that provide guidance in forum selection, jurisdiction, and dispute resolution procedures. Properly understanding these principles will help parties navigate the legal complexities associated with premarital divorce settlements at the national level (Akbar, 2021).

According to Suardi et al. (2022), based on applicable law, the resolution of divorce cases involving marriages from different countries submitted in Indonesia must be carried out through judicial channels, especially in the Religious Courts in Indonesia for those who are Muslim. In this context, the Indonesian Embassy (Embassy of the Republic of Indonesia) does not have the right or authority to initiate or handle the divorce process in an existing marriage.

First of all, determining jurisdiction is a crucial aspect. Jurisdiction, which is the court's authority to hear divorce cases, is an important consideration. In situations where spouses have different nationalities, determining where to file for divorce becomes complex. The concept of jurisdiction may involve factors such as residence, citizenship, or specific agreements between partners. Once jurisdiction is established, the next step is to determine which law will apply to govern the divorce, which is referred to as the "choice of law" or "*lex causae*." In an international private law perspective, regulatory considerations will be used to determine the relevant law, which may include the application of the partner

country's national law or even internationally applicable law, as regulated in the International Private Convention (Admincapil. 2022).

CONCLUSIONS AND RECOMMENDATIONS

In the context of marriages between different nationalities in Indonesia, aspects of international private law play an important role in dealing with the complexities that arise, especially in the context of divorce. This kind of marriage involves two individuals from different countries, giving rise to a number of legal issues involving jurisdiction, the choice of applicable law, and the recognition and implementation of divorce decisions. Some important points that can be drawn in conclusion involve:

1. Court Jurisdiction: Determining court jurisdiction in divorce cases from different countries requires consideration of residence, citizenship, or special agreements between the spouses. This is the first step in dealing with such a divorce.
2. Choice of Law (Lex Causae): Determining the law to be applied in an inter-country divorce case involves considering whether to apply Indonesian national law, the law of one of the parties' country of origin, or even applicable international law.
3. Recognition and Enforcement of Foreign Judgments: Once a divorce is enforced in one jurisdiction, it is important to ensure recognition and enforcement of the divorce judgment in another jurisdiction, especially if the spouses have interests or residence in different countries.
4. Child Protection: An important aspect in divorce cases from different countries is the protection of children's rights and interests. Determining jurisdiction and applying appropriate laws is aimed at ensuring that the best interests of the child remain the top priority.
5. Role of International Conventions: Some countries have adopted international conventions, such as the Hague Convention, which provide a uniform legal framework for handling divorce cases between countries. This helps simplify the legal process and recognition of divorce decisions from other countries.
6. Role of National Law: Indonesian national law, including the Marriage Law and related laws and regulations, is the main guide in handling divorce from different countries at the national level.

By understanding and applying the principles of international civil law, Indonesia is trying to provide legal certainty in handling divorce from different countries. Although there are complexities and challenges, the existing legal framework provides a basis for dealing with these issues carefully and fairly.

FURTHER STUDY

This research still has limitations, so it is necessary to carry out further research related to the topic of Certainty of Divorce Laws in Different Countries Based on Indonesian International Civil Law in order to improve this research and add insight to readers.

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