

Recognition of Foreign Divorce Decisions in Indonesia: A Comparative Study of the Principles of Lex Loci Celebrationis and Lex Fori (A Study of How Foreign Divorce Decisions Can Be Recognized in Indonesia and the Legal Obstacles)

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ABSTRACT

As more and more individuals enter into marriages with foreign nationals, various legal issues arise, especially when a divorce occurs abroad. In Indonesia, divorce decisions made by foreign courts do not take effect immediately. There are provisions that require the decision to be recognized first by the courts in Indonesia through a process called execution. This article discusses the steps for a foreign divorce decree to be recognized in Indonesia by comparing two legal principles, namely lex loci celebrationis (the law of the place where the marriage took place) and lex fori (the law of the country where the court is located). From the analysis conducted, it appears that Indonesia mostly refers to the lex fori principle, which makes Indonesian law the main reference. However, there are several obstacles faced, such as the lack of legal cooperation between countries, differences in regulations, and conditions that may be difficult to fulfill by foreign judgments. This research recommends that Indonesia establish stricter regulations and strengthen international legal cooperation to provide legal certainty for those who experience cross-border divorce.

Keywords : *Foreign divorce, foreign judgment recognition, Indonesian law, lex loci celebrationis, lex fori.*

A. INTRODUCTION

Marriage is a legal bond between two individuals that is recognized by law. In the Indonesian legal context, marriage must comply with Law Number 1 of 1974 concerning Marriage, along with its implementing regulations (Article 1 of the Marriage Law). However, in this era of globalization, many couples choose to marry abroad and even file for divorce in a foreign country. Divorce decisions made outside the country are a form of legal ruling originating from a foreign jurisdiction, but their impact is still felt by the individuals involved in Indonesia.

With the progression of globalization, many Indonesian citizens establish relationships with foreign nationals, whether for work, education, or marriage. This has led to an increase in divorce cases filed abroad, especially among couples in international marriages. Nevertheless, various legal issues often arise concerning the recognition of such foreign divorce decrees in Indonesia.

The 1970 Convention is an international treaty aimed at regulating the recognition and enforcement of divorce and legal separation rulings among its member states. This Convention provides a uniform legal framework and mutual support for the recognition and enforcement of divorce rulings, with the intention of protecting individual rights and legal interests involved in the divorce process.

Indonesia, as a member of the 1970 Convention, has adopted and implemented its provisions into the national legal system. According to Law Number 1 of 1974 concerning Marriage, recognition of divorces and legal separations from countries party to the 1970 Convention is governed under Article 43 of the Marriage Law.

Apart from the 1970 Convention, Indonesia is also involved in several bilateral and multilateral agreements related to the recognition and enforcement of divorce decisions, such as the 1970 Hague Convention on the Civil Aspects of International Divorce. In addition, the Indonesian government has developed national policies and standards to provide direction and guidance in handling divorce-related issues.

The recognition of foreign divorce rulings in Indonesia involves two main principles in international law: *lex loci celebrationis* and *lex fori*. The *lex loci celebrationis* principle asserts that the law of the country where the marriage took place governs the divorce, while *lex fori* maintains that the court located in the domicile of one of the parties has the authority to decide the divorce. A deeper understanding of these two principles will

aid in analyzing how Indonesia recognizes foreign divorce rulings and the legal obstacles that may arise.)

B. METHOD

The research method employed in this paper is the normative juridical method, which involves analyzing statutory regulations, legal doctrines, and legal practices related to the recognition of foreign divorce decrees in Indonesia. This study also uses a comparative approach between the principles of *lex loci celebrationis* and *lex fori* in the context of international divorce law.

C. ANALYSIS/DISCUSSION

1. Regulation on the Recognition of Foreign Divorce Decrees in Indonesia

Recognition of a foreign divorce decree refers to the legal acknowledgment of a divorce decision issued by a foreign court, allowing its legal effect to be valid in another country. In Indonesia, such recognition can be carried out through court proceedings, following specific legal processes that permit the ruling to be considered valid under Indonesian law. Within Indonesia's legal framework, the recognition of foreign divorce rulings is governed by several laws and regulations, including: Law Number 1 of 1974 on Marriage, which regulates marriages in Indonesia, including matters related to divorce. The Civil Code (KUHPerdata), which addresses nationality issues, including those arising in international divorces. Law Number 12 of 2011 on the Formation of Laws and Regulations, which outlines the principle of recognition for foreign rulings, which may be used to validate foreign divorce decrees in Indonesia. However, this recognition is not automatic and often requires a legal process to prove that the foreign divorce decision is valid and in accordance with applicable Indonesian laws.

2. The Principles of Lex Loci Celebrationis and Lex Fori in the Recognition of Foreign Divorce Rulings

Lex loci celebrationis is a Latin term. According to general understanding, this principle refers to the legal norm in international private law which dictates that the formal validity of a marriage must follow the law of the country where the marriage was celebrated. This principle is also recognized in English common law.

Roughly translated, it means “the law of the place where the marriage was celebrated,” as it relates to the validity of the union, regardless of the marriage laws of the parties’ domiciles or nationalities. This principle asserts that the applicable law in a marriage is the law of the country where the marriage took place. Therefore, a divorce occurring in the country of marriage celebration can be recognized in another country if this principle is applied. On the other hand, *lex fori* also originates from Latin. It translates to “the law of the forum” or “the court’s law.” In international private law, this principle holds that in civil law disputes, the law of the country where the lawsuit is filed applies. For example, if the matter involves a movable object, then the lawsuit must be filed based on the location of that object. This principle rejects the traditional notion that a legal act depends solely on a single connecting factor. Most of the rules under this principle are local legal norms. The *lex fori* principle holds that the law of the country where the divorce petition is filed—typically the country where one of the parties resides—governs the divorce. Thus, the country of domicile has more authority to recognize the divorce, regardless of where the marriage was originally held.

3. Legal Barriers to the Recognition of Foreign Divorce Rulings in Indonesia

a. Differences in Legal Systems

Indonesia’s legal system, which combines religious law and civil (positive) law, often leads to confusion in recognizing foreign divorce rulings, particularly when the foreign law contradicts Indonesian religious or national law. A key barrier is the principle that divorce in Indonesia must be conducted before a competent court—either the Religious Court for Muslims or the District Court for non-Muslims. This is based on Article 39 paragraph (1) of Law Number 1 of 1974 on Marriage, which states that divorce can only be granted in court after an attempt at reconciliation has been made between the parties. Moreover, Indonesia does not automatically recognize divorce rulings from foreign courts. According to Article 436 of the *Reglement op de Burgerlijke Rechtsvordering* (RBG), a foreign court decision has no legal effect in Indonesia unless it is recognized through a procedure known as *exequatur*. This means that couples who have divorced abroad must file a petition for recognition of the divorce ruling in an Indonesian court to be

legally valid domestically. This process becomes complicated, especially when the grounds for divorce used in the foreign country are not aligned with Indonesian law. For example, divorces based on irreconcilable differences, a common reason in many countries, are not among the recognized grounds under Article 19 of Government Regulation Number 9 of 1975, which sets out legitimate causes for divorce in Indonesia. In addition to positive law, religious law—particularly Islamic law—also poses a barrier, especially for Indonesian citizens who are Muslim. In Islam, divorce must follow certain procedures, including the pronouncement of *ṭalāq* by the husband or a request for divorce (*khulu'*) by the wife through proper Islamic legal processes. These are regulated under Article 115 of the Compilation of Islamic Law (KHI). If a foreign divorce decree does not meet these standards, the Indonesian Religious Court may refuse to recognize it. This often occurs when Muslim couples divorce in secular legal systems that do not consider Islamic legal requirements. Another obstacle lies in civil registration and administrative recording. According to Article 40 paragraph (1) of Law Number 23 of 2006 on Population Administration, any change in marital status of an Indonesian citizen abroad must be reported and recorded at the local Population and Civil Registry Office (Dukcapil) within 30 days of returning to Indonesia. If not reported, the divorce will not be recognized administratively, potentially creating legal issues such as complications in remarriage or division of joint property. Due to these various hurdles, the recognition process for foreign divorce rulings in Indonesia becomes highly complex and time-consuming. Applicants must understand the applicable legal mechanisms and prepare all necessary documentation to ensure a smooth recognition process.

b. Limited Recognition of Foreign Rulings

Indonesia does not automatically recognize foreign divorce judgments. Instead, applicants are required to go through judicial procedures to obtain formal recognition of such rulings. This is rooted in the principle of legal sovereignty, under which legal decisions made abroad are not automatically applicable within Indonesia unless officially validated by a national court. Recognition of a foreign divorce ruling must be submitted to either a District

Court or a Religious Court, depending on the religion of the divorcing parties. This process requires proof that the divorce carried out abroad is legally valid in the country where it took place and also aligns with Indonesia’s legal standards. One of the main obstacles here is the requirement that divorce must be adjudicated in court, as stated in Article 39 paragraph (1) of Law Number 1 of 1974, which mandates that a divorce can only be declared by a court after mediation and reconciliation efforts have been made. If the divorce abroad was conducted without court involvement or lacked mediation, an Indonesian court may refuse to recognize the ruling. Moreover, the divorce ruling must be based on legally acceptable grounds under Indonesian law. According to Article 19 of Government Regulation Number 9 of 1975, valid grounds for divorce include adultery, domestic violence, chronic marital discord, or abandonment by one party for two consecutive years without a valid reason. If a divorce is granted abroad on grounds that fall outside these criteria—such as irreconcilable differences—an Indonesian court may reject its recognition. Procedurally, recognition must be obtained through the *exequatur* mechanism as stipulated in Article 436 of the *Reglement op de Burgerlijke Rechtsvordering* (RBG). This process requires the applicant to submit a copy of the foreign court decision that has been legalized by the Indonesian embassy in the country where the divorce took place and officially translated into Indonesian by a sworn translator. The applicant must also prove that the divorce proceeding was conducted fairly and legally, including evidence that both parties were given equal opportunity to present their case in court. In addition to substantive and procedural requirements, administrative factors may also hinder recognition. As mentioned in Article 40 paragraph (1) of Law Number 23 of 2006 on Population Administration, any Indonesian citizen who experiences a change in marital status abroad is required to report and register the change at the local Population and Civil Registry Office within 30 days of returning to Indonesia. If this step is not completed, the person will still be administratively considered married in Indonesia—even though they are legally divorced abroad. This can lead to significant legal complications, such as challenges in remarrying or in the distribution of joint marital property. Due

to these various legal and bureaucratic hurdles, the process of recognizing foreign divorce rulings in Indonesia is often lengthy and complicated. Applicants must have a clear understanding of the applicable legal procedures and prepare supporting documents in order for their petition to be approved by the court. Therefore, Indonesian citizens who divorce abroad are strongly advised to promptly seek recognition of their divorce in Indonesia to avoid future legal complications.

c. Incompatibility with Religious Legal Principles

In Indonesia, marriage law is heavily influenced by religion—particularly Islam—which forms the basis for marriage and divorce proceedings for Muslim citizens. This is reflected in Article 2 paragraph (1) of Law Number 1 of 1974, which states that a marriage is valid if it is conducted according to the respective religious laws and beliefs of the parties involved. This provision affects the recognition of foreign divorce rulings, especially when the divorce is conducted abroad in a manner that does not conform to the religious legal standards applicable in Indonesia. For Muslims, divorce must follow Islamic legal principles, as outlined in the Compilation of Islamic Law (KHI). Article 115 of KHI states that divorce can only occur when there is a valid reason and must be declared through a session at the Religious Court. If a divorce is granted abroad solely based on mutual consent or through administrative means without court involvement, Indonesian courts may refuse to recognize the divorce. This presents a serious barrier for Muslim couples who divorce in countries with secular legal systems that do not require religious or court-based procedures. Another issue involves the concept of *ṭalāq* (divorce initiated by the husband) in Islam. A Muslim man has the right to pronounce *ṭalāq*, but this must still be carried out through a lawful procedure by submitting a petition to the Religious Court. If a divorce abroad occurs without a legitimate *ṭalāq* or without involving a Religious Court, the divorce may be deemed invalid in Indonesia. Similarly, for Muslim women who wish to initiate divorce (*khulu'*), the process must also comply with Islamic law, which requires filing a petition with the court based on reasons that are recognized under sharia. If the foreign divorce does not meet these standards, recognition in Indonesia may be denied.

For adherents of other religions, although not bound by Islamic law, they must still follow national legal requirements, which mandate that divorce be adjudicated by a court. Article 39 paragraph (1) of Law Number 1 of 1974 affirms that divorce can only occur through court proceedings and after reconciliation attempts have been made. If a divorce abroad is carried out through a notary or administrative body without court involvement, it may be deemed legally invalid in Indonesia. Additionally, differences in legal systems across countries further complicate recognition. For instance, the United States and several European nations allow for no-fault divorce—where no party is blamed—which contrasts with Indonesia’s requirement for specific, proven reasons for divorce as stated in Article 19 of Government Regulation Number 9 of 1975. If a foreign divorce is granted on principles inconsistent with Indonesian law, it may not be recognized. From an administrative standpoint, once recognition is granted by an Indonesian court, the divorce must also be registered with the Population and Civil Registry Office (Dukcapil) to update the marital status in official records. According to Article 40 paragraph (1) of Law Number 23 of 2006, this must be done within 30 days of returning to Indonesia. Failure to do so means that, administratively, the person will still be considered married—potentially leading to legal complications in future remarriages or asset distribution. Thus, foreign divorce recognition in Indonesia is not only subject to compliance with national laws, but must also adhere to religious legal standards applicable to each individual. For this reason, couples who divorce abroad must ensure their process aligns with Indonesian legal requirements to avoid legal difficulties in obtaining official recognition.

4. Solutions to Overcome Legal Barriers

To address the aforementioned barriers, there needs to be an effort to harmonize international legal principles with national law. This includes increasing understanding and awareness of the *lex fori* principle in the context of international divorce. In practice, this means recognizing that divorce proceedings initiated in the country where the couple resides may offer a more practical and fair solution for all parties. Furthermore, legal education and training for Indonesian judges and

court officials regarding international family law is essential. With a better understanding of the procedures and legal reasoning behind foreign divorce rulings, Indonesian courts can process recognition requests more efficiently and fairly. Indonesia should also consider developing clear guidelines and standard operating procedures (SOPs) for the recognition of foreign divorce rulings. These would serve to clarify what documents are required, how to verify foreign judgments, and how to ensure compliance with both civil and religious legal standards. Internationally, strengthening legal cooperation between countries is also necessary, including through bilateral or multilateral agreements that facilitate mutual recognition of court decisions in civil matters like divorce. This would help overcome administrative bottlenecks and conflicting legal systems. Ultimately, reforms in administrative procedures are also needed. For instance, simplifying the civil registry process (Dukcapil) for reporting and recording changes in marital status resulting from foreign divorce can reduce the burden on applicants and improve legal certainty.

D. CONCLUSION

The recognition of foreign divorce rulings in Indonesia faces various legal challenges, both in terms of positive law and religious law. The principles of *lex loci celebrationis* and *lex fori* differ significantly in how international divorces are treated. While *lex loci celebrationis* emphasizes the law of the country where the marriage took place, *lex fori* prioritizes the country where the parties reside.

Indonesia often adopts the *lex fori* approach due to the stronger relevance of the parties' residence in relation to Indonesian law. However, despite efforts to recognize such foreign decisions, challenges remain due to differences in legal systems, the requirement for religious conformity, and complex administrative and procedural rules.

Nonetheless, these challenges can be addressed through enhanced understanding of international legal frameworks and adjustments in domestic regulations. Such efforts are essential to uphold justice and legal protection for Indonesian citizens involved in international divorces.

To facilitate the recognition of foreign divorce rulings in Indonesia, the following measures are recommended:

Authorities should prioritize the application of the *lex fori* principle, especially in cases involving Indonesian citizens who reside abroad and undergo divorce through the courts of their host countries.

Regulatory reforms are needed to align Indonesian procedural law with the evolving landscape of international family law. This includes updating the *exequatur* process and clarifying the role of religious courts in recognizing foreign divorces.

Increased legal education and international cooperation between judicial institutions will be critical in ensuring consistency and fairness in the recognition process. For individuals undergoing divorce abroad, understanding the applicable foreign and domestic laws is crucial to ensure the divorce can be recognized in Indonesia and that their rights and obligations post-divorce are protected.

By implementing these recommendations, Indonesia can better serve its citizens in an increasingly globalized legal environment, while still upholding national sovereignty and religious values in legal processes.

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