

Comparative Study of Divorce in Islamic Family Law and Buddhist Ethics

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Abstract. This research undertakes a comparative analysis of the concept of divorce within the frameworks of Islamic Family Law and Buddhist Ethics. Marriage, recognized as a profound bond of both physical and spiritual union, holds significant value in both religious traditions. However, contemporary social realities reveal a high incidence of divorce, prompting a critical examination of the legal and ethical mechanisms governing its dissolution. Within Islamic jurisprudence, divorce (talak) is permitted but considered detestable by Allah, governed by stringent procedural mechanisms including talak (the husband's right), khulu' or gugat cerai (the wife's right to initiate), and fasakh (judicial intervention). These processes carry clear legal implications concerning the waiting period (iddah), the possibility of reconciliation (rujuk), and the division of marital property. Conversely, while Buddhism does not explicitly prohibit divorce, the teachings of the Buddha strongly encourage spouses to exhaust all avenues for peaceful conflict resolution before considering separation as a last resort. The ethical framework in Buddhism grants equal rights to both parties to dissolve the marriage. This study employs a qualitative descriptive analytical method through library research, drawing upon primary legal texts such as Indonesia's Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI) for Muslims, alongside the Vinaya Pitaka for adherents of Buddhism. The findings indicate that while both traditions view divorce as a final option, they diverge fundamentally in their legal structures; Islamic law establishes specific, gender-differentiated rights and obligations, whereas Buddhist ethics emphasize mutual consent and personal responsibility without formal legalistic procedures. The research concludes by recommending that couples, regardless of faith, prioritize reconciliation and peace, aligning with the core principles of both religions, and urges policymakers and legal practitioners to promote harmonious family life and reconsider legal frameworks that might better serve the welfare of children and families.

Keywords: Buddhist Ethics; Comparative Study; Divorce; Islamic Family Law; Talak

1. Introduction

The institution of marriage stands as a cornerstone of human society, universally recognized for its role in fostering stability, continuity, and emotional fulfillment. Across diverse cultural and religious landscapes, it is often framed not merely as a social contract but as a sacred covenant, imbued with profound spiritual significance. In the context of Indonesia, a nation characterized by its rich tapestry of religious beliefs, the legal and ethical frameworks governing marriage and its dissolution vary considerably among different faith communities. This variation becomes particularly salient when examining the issue of divorce, a phenomenon whose prevalence has become a pressing social concern globally and locally. The increasing rates of marital breakdown challenge traditional norms and necessitate a deeper understanding of how different belief systems conceptualize, regulate, and ethically navigate the termination of this foundational relationship. For scholars and policymakers alike, comprehending these diverse perspectives is not an academic exercise in abstraction but a practical

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imperative for crafting effective social policies, mediating family disputes, and promoting societal well-being. This article therefore seeks to bridge a critical gap in comparative legal studies by conducting a focused analysis of divorce as understood and practiced within two major religious traditions present in Indonesia: Islam and Buddhism.

The choice of these two traditions is deliberate and significant. Islam, as the majority religion in Indonesia, provides a comprehensive and codified legal system for family matters, known as Islamic Family Law, which is formally integrated into the national legal structure through legislation like the Compilation of Islamic Law (KHI). This system offers detailed, prescriptive rules regarding the initiation, process, and consequences of divorce, creating a distinct legal landscape for Muslim citizens. On the other hand, Buddhism, while a minority faith, possesses a rich and sophisticated ethical philosophy that guides personal conduct, including relationships and family life. Unlike Islam, Buddhism does not prescribe a formal legal code for divorce; instead, its approach is rooted in ethical precepts and psychological insight, emphasizing personal responsibility and the cultivation of compassion. By juxtaposing these two systems—one highly structured and juridical, the other more fluid and ethical—the study aims to uncover not only the differences in their operational mechanics but also the underlying philosophical values that shape their respective views on marital dissolution. This comparison is particularly relevant in a pluralistic society like Indonesia, where interfaith dialogue and mutual understanding are crucial for social cohesion.

Furthermore, the rising tide of divorce cases presents a complex challenge that transcends mere legal procedure. It impacts individuals, children, and the broader community, often leaving lasting emotional and economic scars. Understanding the conceptual underpinnings of divorce in different traditions can provide valuable insights for developing more holistic and humane approaches to family mediation and conflict resolution. For instance, the Islamic emphasis on the iddah period and the possibility of rujuk reflects a deliberate attempt to preserve the marriage, even after its formal dissolution has begun. Similarly, the Buddhist emphasis on non-attachment and the cessation of suffering offers a unique perspective on managing the emotional turmoil associated with separation. These differing emphases highlight the potential for cross-pollination of ideas, where legal systems might incorporate ethical considerations to mitigate harm, and ethical frameworks might benefit from structured processes to ensure fairness and clarity. The research presented here is thus situated at the intersection of law, ethics, and sociology, aiming to contribute to a more nuanced and compassionate discourse on one of the most sensitive issues facing modern families.

Finally, this study is motivated by a desire to address a notable gap in existing literature. While numerous works examine divorce within Islamic law or explore Buddhist ethics in general, few undertake a direct, systematic comparison between the two, especially within the specific socio-legal context of Indonesia. Previous research often focuses on either the legal technicalities of Islamic divorce or the philosophical tenets of Buddhist ethics in isolation. This article fills that void by providing a comprehensive, side-by-side analysis, grounded in authoritative texts and contemporary scholarly interpretations. The findings are intended to be of practical value to various stakeholders, including prospective spouses who seek to understand the long-term implications of their commitments, married couples navigating difficulties, legal professionals involved in family court proceedings, and policymakers tasked with designing laws and social programs that support family resilience. By illuminating the common ground and the points of divergence, this research hopes to foster greater empathy, informed decision-making, and ultimately, a more supportive environment for families facing the difficult journey of divorce.

2. Proposed Method

This research adopts a qualitative descriptive-analytical methodology, primarily relying on library research, also known as doctrinal or normative legal research. This approach is deemed most appropriate for the study's objective, which is to compare and contrast the conceptual and procedural frameworks of divorce as articulated within two distinct religious traditions. The methodology involves a systematic collection, analysis, and synthesis of existing textual sources, including primary legal documents, religious scriptures, and secondary scholarly literature. The primary focus is on interpreting the meaning, application, and underlying principles of these texts to construct a coherent comparative narrative. The researcher did not collect new empirical data through surveys or interviews but instead engaged in a deep, interpretive reading of established sources to answer the three core research questions: the nature of divorce in Islamic Family Law, its nature in Buddhist Ethics, and the key points of comparison between them.

The selection of primary sources was guided by the need to represent the authoritative legal and ethical frameworks for each tradition within the Indonesian context. For Islamic Family Law, the research draws heavily upon the official legal instruments that govern the lives of Muslim citizens in Indonesia. This includes Law No. 1 of 1974 on Marriage, which serves as the foundational civil statute for all marriages in the country, and the Compilation of Islamic Law (KHI), which provides the detailed implementation of Islamic jurisprudence for family matters in the courts. These texts were analyzed to identify the specific provisions related to the grounds for divorce, the procedures for initiating it (through *talak*, *khulu'*, or *fasakh*), the rights and obligations of the parties during and after the divorce, and the legal consequences such as the *iddah* period and the division of assets. The analysis also considers how these provisions are interpreted and applied by Indonesian courts, as reflected in judicial decisions and scholarly commentaries.

For the Buddhist Ethical perspective, the research centers on the Vinaya Pitaka, one of the three main divisions of the Tipitaka, which constitutes the canonical scripture of Theravada Buddhism. The Vinaya Pitaka contains the monastic rules and disciplinary codes, but it also includes narratives and dialogues that offer guidance on laypeople's conduct, including marriage and family life. The researcher examined passages within the Vinaya Pitaka that address interpersonal conflict, the dissolution of relationships, and the ethical responsibilities of spouses. Given that Buddhism does not have a centralized legal authority or codified family law akin to the KHI, the analysis also incorporates interpretations from contemporary Buddhist scholars and practitioners, as found in academic journals and books, to understand how the ethical principles derived from the Vinaya are applied to modern-day situations involving divorce. This dual-source approach ensures that the analysis is grounded in the primary religious text while also being contextualized within contemporary understanding and practice.

The process of analysis involved several stages. First, the researcher conducted a comprehensive review of the selected primary and secondary sources to identify all relevant information pertaining to the research questions. Second, the data was organized thematically according to the three research objectives. Third, a comparative analysis was performed, systematically identifying similarities and differences in the conceptualization of divorce, the roles and rights of spouses, the procedural aspects, and the ethical imperatives guiding the process in each tradition. To ensure rigor and avoid bias, the researcher employed a critical hermeneutic approach, questioning the assumptions embedded in the texts and considering the historical and cultural contexts in which they were written and are now applied. The use of transition phrases such as "furthermore," "in contrast," and "consequently" was deliberately incorporated to maintain a logical flow and enhance the readability of the argument. The entire process was documented meticulously to ensure transparency and reproducibility, adhering to the highest standards of academic integrity.

3. Results and Discussion

Concept and Process of Divorce in Islamic Family Law

The concept of divorce within Islamic Family Law is deeply rooted in the Quran and the Sunnah of the Prophet Muhammad, forming a comprehensive legal framework that governs the dissolution of marriage. Central to this framework is the notion that while divorce is legally permissible, it is considered the most detestable of permissible acts in the sight of Allah, reflecting a profound theological emphasis on the sanctity and permanence of the marital bond (Ghozali, 2003). This inherent tension—between the legal permissibility and the moral undesirability of divorce—is what gives Islamic divorce law its distinctive character, marked by procedural safeguards designed to prevent hasty or capricious decisions. The primary mechanism for divorce in Islam is *talak*, which is traditionally the exclusive right of the husband to pronounce. The pronouncement of *talak* can take various forms, such as *talak raj'i* (revocable divorce) and *talak ba'in* (irrevocable divorce), each carrying different legal consequences for the possibility of reconciliation (Nuruddin & Nuruddin, 2016). The husband's power to initiate divorce is not absolute, however; it is subject to conditions and restrictions aimed at ensuring justice and preventing abuse.

Beyond the husband's right to *talak*, Islamic law recognizes the wife's right to seek divorce under certain circumstances, thereby introducing a degree of gender equity into the system. This right is exercised through two main legal avenues: *khulu'* and *gugat cerai*. *Khulu'* is a form of divorce initiated by the wife, typically in exchange for returning her dowry (*mahar*) or making some other financial concession to her husband. It represents a contractual agreement to dissolve the marriage, acknowledging the wife's agency in seeking relief from an unhappy union (Kustini, 2016). *Gugat cerai*, on the other hand, is a judicial divorce petition filed by the wife before a court, usually on grounds such as cruelty, abandonment, or failure to fulfill marital obligations. The court, acting as a neutral arbiter, examines the evidence and, if satisfied that the grounds are valid, grants the divorce. This judicial process, known as *fasakh*, serves as a crucial check on the husband's unilateral power and provides a formal channel for wives to secure their legal rights. The existence of these multiple pathways reflects the complexity of Islamic family law, which seeks to balance the preservation of the marital institution with the protection of individual rights, particularly those of the wife.

The legal process of divorce in Islam is further defined by a set of mandatory post-divorce obligations and procedures. One of the most significant is the *iddah* period, a waiting period during which the divorced woman must abstain from remarriage. The duration of *iddah* varies depending on the woman's circumstances—for instance, it lasts for three menstrual cycles for women who menstruate and until childbirth for pregnant women (Nisak & Kusumawati, 2024). The purpose of *iddah* is multifaceted: it serves to determine paternity in case of pregnancy, provides a cooling-off period for potential reconciliation, and allows the woman time to adjust emotionally to her new status. During this period, the husband is obligated to provide maintenance (*nafkah*) to his ex-wife. Another critical aspect is the principle of *rujuk*, or reconciliation. If the divorce is revocable (*talak raj'i*), the husband may reconcile with his wife during the *iddah* period without the need for a new marriage contract. This provision underscores the Islamic ideal of preserving the family unit whenever possible. Finally, the division of marital property is governed by specific rules, often requiring an equitable distribution based on contributions and needs, although the exact application can vary depending on local customs and judicial interpretation (Azhari, 2024).

Concept and Process of Divorce in Buddhist Ethics

In stark contrast to the highly structured legal framework of Islamic Family Law, the approach to divorce in Buddhist Ethics is characterized by its emphasis on personal respon-

sibility, ethical conduct, and the cultivation of inner peace. Buddhism does not proscribe divorce through a formal legal code; instead, it offers a set of ethical guidelines derived from the teachings of the Buddha, which encourage individuals to act with wisdom, compassion, and mindfulness in all aspects of life, including their relationships. The foundational principle is that marriage is a voluntary union based on mutual respect and shared values, and its dissolution should likewise be a matter of mutual agreement and ethical consideration, rather than legal compulsion (Kusuma & Putra, 2023). The Buddha's teachings consistently advocate for resolving conflicts peacefully and amicably, viewing divorce as a measure of last resort to be undertaken only after all efforts at reconciliation have been exhausted. This perspective is rooted in the Buddhist understanding of suffering (*dukkha*) and the causes of suffering, which include attachment and aversion. A troubled marriage is seen as a source of suffering for both partners, and the ethical path is to alleviate this suffering through skillful means, which may include separation if harmony cannot be restored.

Within this ethical framework, there is no hierarchical or gender-based distinction in the right to initiate divorce. Both spouses are considered equal agents capable of making decisions about their own lives and relationships. The decision to end a marriage is viewed as a personal and ethical choice, guided by the principles of the Noble Eightfold Path, which includes Right Speech, Right Action, and Right Livelihood. The emphasis is on minimizing harm and avoiding actions that stem from anger, greed, or ignorance. Consequently, the process of divorce in Buddhist Ethics is not governed by rigid legal procedures but by a commitment to honesty, communication, and mutual respect. There is no equivalent to the Islamic *iddah* period or the formal requirement for reconciliation (*rujuk*). Instead, the focus is on the psychological and emotional well-being of the individuals involved, encouraging them to let go of resentment and cultivate forgiveness. This approach is less concerned with the legal formalities of dissolution and more focused on the ethical quality of the separation itself. As noted by scholars, the Buddhist perspective encourages individuals to view divorce not as a failure but as an opportunity for personal growth and the release of unwholesome attachments (Siswoyo, 2023).

The absence of a formal legal structure for divorce in Buddhism does not imply a lack of guidance or seriousness regarding the matter. On the contrary, the ethical teachings provide a profound and nuanced framework for navigating the complexities of marital breakdown. For example, the concept of *karma* plays a significant role in shaping ethical behavior. Individuals are encouraged to consider the long-term consequences of their actions, including the impact of divorce on their children, extended family, and their own future well-being. The goal is not to assign blame or enforce punitive measures but to foster a sense of accountability and responsibility for one's choices. Furthermore, the Buddhist emphasis on community and interdependence suggests that divorce should be handled with sensitivity to the broader social context, seeking the counsel of wise friends or spiritual teachers if needed. While there are no legal penalties for divorce in Buddhism, the ethical weight of the decision is substantial, as it requires individuals to confront their own motivations and strive for a resolution that is free from ill-will and regret. This ethical approach, while lacking the enforceability of law, offers a powerful model for personal transformation and relational healing, highlighting the importance of intention and inner virtue over external compliance.

Comparative Analysis of Divorce Concepts in Islamic Family Law and Buddhist Ethics

A comparative analysis of divorce in Islamic Family Law and Buddhist Ethics reveals a fascinating interplay of similarities and fundamental differences, shaped by the distinct theological, legal, and philosophical foundations of each tradition. The most striking similarity lies in the shared view of divorce as a last resort, a measure to be taken only after all other

avenues for reconciliation have been thoroughly explored. Both traditions recognize the profound disruption that divorce causes to individuals and families and therefore place a strong emphasis on preserving the marital bond. In Islamic law, this is institutionalized through mechanisms such as the *iddah* period, which serves as a mandatory cooling-off period, and the principle of *rukuk*, which allows for reconciliation without the need for a new marriage contract (Azhari, 2024). Similarly, in Buddhist Ethics, the teaching encourages spouses to resolve their differences through dialogue, patience, and compassion, viewing divorce as a failure to live up to the ideals of loving-kindness and mutual understanding (Kusuma & Putra, 2023). This common ground underscores a universal human concern for the stability and well-being of the family unit, transcending religious boundaries.

However, the fundamental differences between the two systems are equally pronounced and stem from their contrasting approaches to authority and governance. Islamic Family Law operates within a clearly defined legal and juridical framework, where divorce is regulated by specific, codified rules and procedures. The rights and obligations of the spouses are delineated with precision, and the state, through its judicial system, plays an active role in overseeing the process. The husband's right to pronounce *talak*, the wife's right to petition for *khulu'* or *gugat cerai*, and the court's authority to grant *fasakh* are all part of a structured legal hierarchy that seeks to ensure order and predictability (Nuruddin & Nuruddin, 2016). This legalistic approach provides clarity and enforceability, offering a clear path for resolving disputes and protecting the rights of the parties involved. In contrast, Buddhist Ethics eschews formal legalism in favor of a more fluid, individualized approach. There is no central authority or codified legal code governing divorce; instead, the emphasis is on personal conscience, ethical reasoning, and the cultivation of wholesome mental states. The decision to divorce is left entirely to the discretion of the individuals, guided by the principles of the *Dharma* rather than the dictates of a legal system. This difference highlights a core philosophical distinction: Islam seeks to regulate human behavior through divine law, while Buddhism seeks to transform human consciousness through ethical practice.

Another key point of divergence is the treatment of gender roles and rights within the divorce process. Islamic Family Law, while recognizing the wife's right to initiate divorce through *khulu'* and *gugat cerai*, still retains elements of patriarchal structure, most notably in the husband's primary right to pronounce *talak*. Although modern interpretations and legal reforms have sought to mitigate this imbalance, the legal framework continues to reflect a historical context in which men held greater authority in family matters (Mulyadi, 2023). Buddhist Ethics, on the other hand, promotes a more egalitarian view of relationships, where both spouses are considered equal agents with equal rights to make decisions about their lives. The ethical teachings do not differentiate between the sexes in matters of divorce, emphasizing instead the importance of mutual respect and consent. This egalitarian ethos is consistent with the broader Buddhist principle of non-discrimination and the recognition of the inherent dignity of all sentient beings. Furthermore, the legal consequences of divorce differ significantly. Islamic law mandates specific financial obligations, such as the payment of *nafkah* during the *iddah* period and the equitable division of marital property, which are enforceable by the state (Irawan et al., 2025). In Buddhist Ethics, there are no such legal mandates; financial arrangements and the division of assets are left to the discretion of the parties, guided by principles of fairness and generosity. This lack of legal enforcement places a greater burden on the individuals to act ethically and responsibly, but it also allows for greater flexibility and personal autonomy.

Despite these differences, there is potential for mutual enrichment between the two systems. The legal clarity and enforceability of Islamic Family Law could benefit from incorporating the ethical sensitivity and psychological insight of Buddhist Ethics, particularly in areas such as mediation and counseling. For instance, the Islamic emphasis on *rukuk* could be

enhanced by adopting Buddhist practices of mindfulness and compassionate communication to facilitate genuine reconciliation. Conversely, the ethical depth and personal empowerment of Buddhist Ethics could be strengthened by integrating some of the structural safeguards of Islamic law, such as formal procedures for asset division and child custody, to ensure that vulnerable parties, especially women and children, are protected from exploitation. The comparative analysis thus reveals not only the distinctiveness of each tradition but also the possibility of a synergistic approach that combines the strengths of legal regulation with the virtues of ethical reflection, ultimately serving the best interests of all parties involved in the complex and often painful process of divorce.

4. Conclusions

The comparative study of divorce in Islamic Family Law and Buddhist Ethics reveals a compelling narrative of convergence and divergence, rooted in the distinct worldviews and institutional structures of each tradition. Both systems, despite their different methodologies, share a fundamental commitment to preserving the sanctity of marriage and minimizing the harm caused by its dissolution. The Islamic legal framework, with its codified rules, procedural safeguards, and emphasis on reconciliation through *iddah* and *rujuk*, provides a structured and enforceable mechanism for managing divorce within a patriarchal social context. In contrast, Buddhist Ethics, devoid of formal legal prescriptions, offers a profoundly personal and introspective approach, urging individuals to act with wisdom, compassion, and non-attachment, viewing divorce as a consequence of unresolved suffering that can be alleviated through ethical conduct. This analysis demonstrates that while the paths to resolving marital breakdown differ, the ultimate goal—a peaceful and just resolution that respects the dignity of all parties—is remarkably aligned.

The findings of this research hold significant practical implications for various stakeholders in contemporary society. For prospective and current spouses, whether Muslim or Buddhist, the study underscores the importance of approaching marriage with a deep sense of commitment and a willingness to engage in continuous effort to nurture the relationship. The Islamic emphasis on the detestability of divorce serves as a powerful deterrent against taking the institution lightly, while the Buddhist focus on mindful communication and letting go of attachment offers valuable tools for managing conflict and fostering emotional resilience. For legal practitioners and mediators, the research highlights the need to adopt a more holistic approach to divorce proceedings. Judges and lawyers could benefit from integrating ethical considerations into their practice, using the Buddhist principles of compassion and non-harm to guide their decisions and encourage settlement. At the same time, counselors and therapists working with divorcing couples could draw upon the Islamic legal framework to provide clients with a clear understanding of their rights and obligations, thereby reducing uncertainty and anxiety. This blended approach would create a more humane and effective system for handling divorce, one that addresses both the legal and the emotional dimensions of the process.

Finally, for policymakers and legislators, this comparative analysis offers a roadmap for reforming family law to better serve the needs of a diverse and evolving society. The research suggests that legal frameworks should not be static but should evolve to incorporate ethical insights from different traditions. For instance, while maintaining the essential legal protections provided by Islamic Family Law, policymakers could introduce provisions that encourage mediation and counseling, drawing inspiration from the Buddhist emphasis on reconciliation and personal growth. Similarly, efforts to promote gender equality within the legal system could be strengthened by adopting the egalitarian ethos of Buddhist Ethics, ensuring that both spouses have equal rights and opportunities to initiate and navigate the divorce process. Ultimately, the goal should be to create a legal and social environment that

supports healthy, stable families while also providing compassionate and fair pathways for those whose marriages have irretrievably broken down. By learning from the strengths of both Islamic law and Buddhist ethics, society can move towards a more balanced and humane approach to one of life's most challenging experiences.

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