INITIATING THE FAMILY JUSTICE SYSTEM IN INDONESIA AS PART OF THE INDONESIAN LEGAL SYSTEM

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ABSTRACT

The Central Statistics Agency (BPS) noted that in 2023, as many as 463,654 divorce cases occurred in Indonesia. Meanwhile, the Religious Justice Agency pointed out that the majority of causes of divorce are Domestic Violence (KDRT). Unfortunately, the Religious Court does not have the authority to adjudicate domestic violence experienced by (the majority) of women who are in the process of divorce at the Religious Court. Women must take two paths: the Religious Court for their cases and the District Court for the domestic violence they experience. Likewise, for Non-Muslims, divorce is adjudicated by the District Court and is included in the scope of Civil. In contrast, the domestic violence experienced by them is included in the criminal scope even though it is still in the same court, namely the District Court. The complexity of the judicial system in Indonesia requires a new court institution, namely the family court.

Keywords: Family Law, Family Court, Divorce, Domestic Violence

A. INTRODUCTION

The number of family law cases in Indonesia, both criminal and civil, such as domestic violence (KDRT), divorce, inheritance disputes, wills, grants, joint property settlements, child adoption, mixed marriages, and others, require solutions both in terms of practice and academics[1].

Currently, these cases are resolved through religious courts for cases such as divorce, settlement of joint property, adoption of children, and so on, as well as general courts for cases of domestic violence. The existence of this judicial dualism often results in conflicting decisions and ambiguity in judicial competence.

The Central Statistics Agency (BPS) noted that in 2023, as many as 463,654 divorce cases occurred in Indonesia. This figure has increased compared to the previous year, which reached 291,677 cases. Based on data from the Religious Justice Agency,

[1] Silitonga, Saritua. Effectiveness of Alternative Dispute Resolution Methods in Family Law Cases. *Journal of Law, Humanities and Politics* 4.3 (2024): 451-458.

divorce has several causes. Namely the factors of disputes and quarrels, the economy, leaving one, domestic violence, drunkenness, apostasy, imprisonment, gambling, polygamy, adultery, forced marriage, physical disability, madat, and others.[2,3]

The division of absolute competence in handling family cases into two justice systems impacts women's access to justice. The low level of women's education in Indonesia further exacerbates the complexity faced by Indonesian women in seeking justice. Women who experience domestic violence (KDRT) and want to process a divorce must face two judicial institutions at once. The general court will handle the criminal act he experienced, while the religious court will process the divorce case. If explored further, these two cases are interrelated in family law. This is a logical consequence of the Continental European legal system implemented in Indonesia, which separates criminal and civil justice, including religious justice.

If you look at countries with Anglo-Saxon legal systems, such as Australia, America, and the United Kingdom, there is no Religious Court but a Family *Court*. Family Court handles cases related to family matters, such as divorce, juvenile delinquency, and domestic violence. For women facing family problems in Anglo-Saxon countries, an integrated one-stop justice system can be used to resolve these issues, thus facilitating women's access to justice. In contrast, in Indonesia, Muslim women who face family cases in both the criminal and civil realms have to deal with a complex justice system. In addition, judges in the District Court/General Court are expected to be able to handle various types of cases, even though judges who handle family problems should ideally have special skills and expertise in family matters.

Family problems are a problem that occurs a lot in Indonesia. The Family Court, which specialises in adjudicating family matters, has been urgently established out of necessity, especially to bring Muslim women closer to *access to justice*. A more effective judicial system, such as the concept of Family Court in *Anglo-Saxon* countries is expected

[2] https://bandung.kompas.com/read/2024/05/16/110741878/jumlah-perceraian-di-indonesia-tahun-2023-capai-463654-kasus#google_vignette, accessed on May 1, 2024.

[3] Ika Defianti, *"Divorce Rate in Indonesia Continues to Rise, Marriage Institutions Are No Longer Sacred?"*, https://www.liputan6.com/news/read/5073532/angka-perceraian-di-indonesia-terus-naik-lembaga-perkawinan-tidak-lagi-sakral?page=2, accessed on November 26, 2023.

to be a Court that can resolve family cases more focused and on target. For this reason, it is time for Indonesia to have a Family Court specialising in handling family cases.

B. DISCUSSION

B.1 The Influence of the Application of the Continental European and Anglo-Saxon Legal Systems in the Judicial System

Several legal systems apply in the world, and the difference in legal system also affects the judicial system that applies in a country. *The Anglo-Saxon* Legal System applies in the United Kingdom of Great Britain and Commonwealth countries or Countries affected by the United Kingdom, such as *the United States*. On the other hand, there is the *continental European* legal system, the Communist Legal System, the Islamic Legal System, the Customary Law System and different legal systems. Civil and criminal law in Indonesia is based on Dutch law. The law in the Dutch system, or continental Europe, divides law into two parts: private law and public law. And this school is known as the codification system (grouping of laws) and is also called written or *civil law*.[4,5,6]

B.1.1. *Continental European Legal System*

The continental European system or civil system comes from the Latin ius *civile*, which is a law that applies to all Roman society. During the time of Emperor Justinian (VI century BC), the Corpus *Iuris Civilis was codified* which consisted of four books, namely *Instituti*, *Diegesta/Pandectae*, *Caudex*, and *Novellae.* In its development, the provisions of *the Corpus Iuris Civilis* were used as the basis for the preparation of the codification of legal books in various countries such as Germany, the Netherlands, Italy, France and several Asian countries, including Indonesia.[7] [8]

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[4] Scholten, Paul. Structure of Legal Science. *Translation by B. Arief Sidharta,* Alumni, Bandung, (2003). 205.

[5] Ahmad, Al-Habsy. *Analysis of the Influence of the Application of the Continental European and Anglosaxon Legal Systems in the Judicial System in the Republic of Indonesia*, *Petitum* Journal 9.1, (2021): 51-65.

[6] Ahmad, Habsy and Chairul Amri. *Analysis of the Difference in the Criminal Components of the Civil Law and Common Law Legal Systems, Amsir Multidisciplinary Scientific Journal* 1.2 (2023): 231-240.

[7] Hadi, Syofyan. Examining the Indonesian Legal System (Comparative Study with Other Legal Systems). *DiH: Journal of Legal* Sciences 12.24 (2016): 371408.

[8] Mousourakis, George, and George Mousourakis. Roman Law, Medieval Legal Science and the Rise of the Civil Law Tradition. *Comparative Law and Legal Traditions: Historical and Contemporary Perspectives* (2019): 197-249.

The first source of law in the *Continental European* system was legislation. Joseph Dainow stated that in general, the main source of law in the *continental European* system is systematically codified legislation.[9] In line with this, Vincy Fon and Fransico Parisi[10] stated that law is the primary source of law, while court decisions are secondary sources of law. In the *continental European* system, it is binding because the law is structured in a systematically codified law. Thus, the *continental European* system emphasizes the importance of written laws, namely laws and regulations as the main basis of its legal system. Hostorily, this was born from the development of the principle of legality in Europe which requires a law written in a law to ensure the protection of the people. The purpose of written law is to guarantee that it must be definitive. The definite law is characterized by clarity of both writing and meaning, not ambiguous, not multi-interpretation, and not ambiguous.[11] Based on the above concept, the development of law in the *continental European system* is carried out through the process of legislation. For this reason, the role of judges is only limited to implementing the norms of the law formed by the parliament. Judges are likened to *the speaker of the law* alone, because the judge's discretion is very limited.[12] [13] Even in applying a legal norm to a concrete case, the judge only interprets according to the interpretation of the parliament. Thus, judges are very passive and do not have a big role in the development of the law. Judges only play the role of *negative legislators.*[14] Judges are not given the authority to form laws. Judges cannot be positive *legislators.*[15]

In the Continental European legal system, judges only have the role of carrying out the "*command*" from the parliament to be applied to concrete cases. Judges are "bound" by law as an order from parliament. Judges are only obliged to implement the law as it should. Vincy Fon and Fransico Parisi stated that the main task of judges and courts is to resolve cases brought against them, courts and judges are not given the authority to create rules or

[9] Dainow, Joseph. *The civil law and the common law: some points of comparison*. *The American Journal of Comparative Law.* 15 (1966): 424.

[10] Fon, Vincy and Fransico Parisi, *Judicial Precedent in Civil Law System: A dynamic Analysis*, International Review of Law and Economics, (2006): p. 522.

[11] Ulfah, Maria. *Comparison of Legal Systems*. Banjarmasin, Islamic University of Kalimantan Muhammad Arsyad Al-Banjari, (2022): 11

[12] *Ibid.*

[13] Hadi, Syofyan. "Examining the Indonesian Legal System (Comparative Study with Other Legal Systems)." *DiH: Journal of Law* 12.24 (2016): 371408.

[14] *Ibid.*

norms.[16] This position of judges is the background for the opinions of Jeremy Bentham, John Austin and Hans Kelsen in developing legal positivism. Although John Austin with his *analytical jurisprudence* argues that judges have the authority to interpret the law, this authority is very limited so that it is not in the context of *judge made law*. With the strong position of the law, the principle of *precedent* or *stare decisisis* is not known. This means that the judge has no obligation to follow the previous judge's decision. Usually, the judge's decision is *inter-party* which only binds the parties to the case, so the judge is not bound. However, in its development, the *continental European system* recognizes the principle of *jurisprudence constante*, where judges make previous decisions as the source of their decision law on the condition that there is similarity with the new case.[17] In addition to the two main characters above, the *continental European* system has other characteristics, including:

a. Public law and private law are strictly separated.
b. The judicial system does not recognise the jury system.
c. The judge's method of thinking is carried out in a "deductive" manner.

B.1.2. Anglo *Saxon Legal System*

The *anglo saxon* system, or the common law system, initially developed in England around the eleventh century. This system began to grow since the strengthening of the king's position by establishing a new institution in the form of a royal court. This system comes from the customs found in court decisions, so the law is unwritten. In its development, this system spread to various British colonies with several variants, including the *Anglo-American system.* In this system, the law created by the court or judge through its decision is the primary source of law. Joseph Dainow stated that the decision made by the court or judge is not only binding on the parties to the case, but the decision must be followed by another judge after him in the same case. Therefore the decision becomes a general rule or a customary rule.[18] From this opinion, judges have a very important role in the development of the law. Judges must create laws through their decisions. This concept in *the common law* legal system is called *jugde-made law*. Judges function as *positive legislators,* where

[16] *Ibid.*
[17] *Ibid.,* p. 523.
[18] Dainow, Joseph. *Op.cit.:* 424.

judges formulate legal norms *case by case.* Judges' decisions that contain legal principles or norms are then made into general norms that bind the parties to the dispute and are generally valid and binding.

In the *brazier system of the saxon* judge function is very large in the development of the law. Judges not only function to resolve cases submitted to them but also to create generally applicable rules. To create rules, judges are given the authority to reinterpret the provisions of existing regulations. Judges are not limited to implementing their functions as the mouth of the law. More than that, judges are positive *legislators*. The position of the judge is so important, so in the common law. it is known *as the precedent* principle or *the principle of stare decisis.* Vincy Fon and Fransico Parisi stated that with the principle of *stare decisis*, the judge, after that is obliged to decide the case based on the previous court decision.[19] Josep Dainow even stated that the principle *of precedent* provides stability and continuity in the axon Anglo system, wherein in the same case, the court is obliged to follow the previous judgment so that there will be the same verdict against the same case.[20] From the description above, the principle *of stare decisis* requires subsequent judges to follow the previous judge. Judges are not allowed to make different decisions for the same case. This principle can only be set aside if the judge afterwards sees that the previous judge's decision is "*out of date*", with considerations based on truth and common sense.[21] In addition to the two main characters above, *the common law* system has other characteristics, including:

1. Public and private law are not separated.
2. The judicial system uses a jury system.
3. The judge's thinking method is carried out in an "inductive" manner.

B. 2. LEGAL CHANGES IN THE CONTEXT OF THEORY

An important discourse in the context of the state of law *is the* enforcement of legal life in society. This perspective is believed not to be related to the understanding of the state of law, *but* to look critically at the tendency that will occur in the nation's life that develops

[19] See Gray's Opinion, Jhon Chipman in Anthony D'Amato. *Analytic Jurisprudence Ontology*. Ohio: Anderson Publishing Co, (1996): 47.

[20] Dainow, Joseph, *Op.cit.*: 425.

[21]Iswantoro, W. "Stare Decisis or Legal Uniformity?Supreme Court Magazine 32 (2023): 90

towards a modern social order.[22] This condition requires a law with a national dimension that contains a local paradigm and can respond to contemporary society's dynamics.[23]

In the context of a developing nation like Indonesia, the law is always directed towards efforts to achieve a better standard of living than in previous times. Referring to such a reality, law's role is important to realize development goals as outlined. The existence of law in the development process is actually not only functioning as a tool of social control but more than that, the law is expected to be able to move people to behave by new ways to achieve a goal, a desired state of society.[24] In other words, the law actually functions as a vehicle for social engineering (*social engineering).* In this context, the law is expected to be able to direct the community to new patterns of behaviour that are appropriate and desirable. Therefore, the law is designed in such a way that it can change or even erase old habits that are no longer by the development of the times and the values that are sahih. The two functions of the law are a harmonious combination to create laws following the dynamics of the building society because in the development itself, things must be maintained and protected. On the other hand, the law is treated to create a pattern that is under development, so that the changes resulting from the development run in an orderly and orderly manner.[25]

These characteristics show the traditional and narrow function of law, namely solely as a means of social control. Besides the law, there are still other means of social control that may be more effective, in this case, an informal social control system. 26 So, in this case, the law is solely interpreted as a means to maintain the *status quo* or provide justification for the changes that occur.

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[22] In a sociological perspective, the performance of the modern state has been sharply stated, for example by Poggy, Gianfranco in *The Development of The Modern State: A Sociological Introduction,* London, Hutchinson & Co., (1978): 95-101.

[23]The national law that is to be created is a frame of reference for the life of the nation and state In this regard, the development of Indonesian structured law is based on all aspects of Indonesian people's life, including social, political, religious, and cultural. See Dimyati, Khudzaifah. Legal *Theorization: A Study on the Development of Legal Thought in Indonesia, 1945-1990.* Surakarta, Muhammadiyah University, 2005: 1

[24] Otje Salman. *Public Legal Awareness of Inheritance Law*. Bandung, Alumni, 1993, Cet.I: 1

[25] According to Wolfgang Friedman, there are at least three characteristics of law that are very fundamental to the law, namely; *first*, Stability, which is an important object of law and intensive for its development; *second,* formalism, because law is one of the means and methods to regulate social interaction; *Third,* in terms of impact, there is a tendency to adhere to formal order, which is an excessive tendency in this case can result in the emergence of views that are too narrow towards change, especially development. Friedman, Wolfgang. *Legal Theory.* London Steven & Son, (1967), *fifth edition:* 70-71

In the view of legal experts, legal development contains at least two meanings; *First*, as an effort to update positive law (legal modernization), *second*, as an effort to functionalize the law, namely by participating in social changes in accordance with the needs of the community that is building.[26] Thus, legal development is not limited to legislative activities, but to efforts to make law a tool for social engineering .

Law as a *social engineering*, thus becoming the main feature of the modern state, Jeremy Bentham even proposed this idea around the 1800s.[27] But it only received serious attention after Roscoe Pound introduced it as a special perspective in the discipline of legal sociology, asking that scholars focus more on law in practice and not get caught up in the attitude of making law in *the books*.[28]

Social change and renewal, including modernization in the field of law, are closely related to each other. Renewal or modernization can be interpreted as a form of activity that is carried out deliberately to bring society to the planned and desired changes.[29]

However, renewal or modernization is not only a change towards progress and maturity but a change that has its own characteristics which are basically in the form of a state called modernity, with its main characteristics including; urbanization, secularization, democratization, openness to the mass media, improvement and progress of education, literacy and understanding of foreign languages, and communication and transportation.[30] This condition in turn will easily give rise to a general picture of the relationships between individuals in society and other attitudes, such as individualization, rationalization, high horizontal and vertical mobility, as well as the sense of time and its efficient use.

The demand for legal change begins to arise when there is a gap between the circumstances, relationships and events in society and the existing legal arrangements. When the gap has reached such a level, the demand for legal change is even more urgent. There are several possibilities for interpreting what a change in law means;[31] *First*, changes in the form of providing concrete content to abstract norms. Because it is indeed a characteristic of the law to give an abstract and general form to the things it regulates, so

[26] Rahardjo, Satjipto. *Law and Social Change,* Bandung. Alumni, (1983): 93

[27] Solaiman, Anti-Legal *Development and Social Change,* paper in http://taufiqnugroho.blogspot.com, accessed on November 26, 2023.

[28] Silbey, Susan S. *After Legal Conciousness*. Annual Review Law, Social Science, (2005):324.

[29] Rahardjo, Satjipto, *Ibid.*: 193-194.

[30] *Ibid.*: *40-42.*

[31] *Ibid.*: 57-58

that the regulation can last for a long time. *Second*, changes are regulatory changes. Formally, the change of law is a function of the work of various change factors that burden the law with various demands.

Change in the first form occurs because of the demands of social change. In other words, legal changes are often left behind by social change.[32] In this case, the law is seen as a tool to maintain stability or a tool of *social control*, such as some Dutch colonial heritage laws that were still enforced when Indonesia was just independent, which in its implementation occurred several changes in accordance with the development of society. This first change is called a change in deployment. Meanwhile, change in the second form occurs to change the social structure. In other words, social change lags behind legal change. In this case, the law can be seen as a tool to conduct *social engineering*, such as the enactment of the 1945 Constitution after Indonesia's independence, which fundamentally discusses the life and structure of Indonesian society. Legal change is seen as *social engineering* , this is called legal renewal or modernization.

The renewal or rather modernization of family law in the Islamic world which includes aspects of marriage, divorce, inheritance, phenomenal has begun since the XX century.[33] The triggering factor that gave birth to the movement to reform and modernize family law widely throughout the Islamic world was the presence of the Turkish Family Law Law, *the Ottoman Law of Family Right* (*Qanun Qarar al Huquq al 'Ailah al Ottoman)* in 1917.[34] In addition to being adopted in its entirety, the birth of the law has inevitably given birth to the spirit of legal renewal and modernization in other parts of the Muslim world. For example, Egypt, which did not have to wait long, was inspired by the reforms carried out by Turkey, which gave birth to the Egyptian Family Law Law, namely Law Number 25 of 1920 and Law Number 20 of 1929.[35] The renewal carried out by Egypt in turn was followed by many Muslim countries in the world, including Indonesia.

[32] Soekanto, Soerjono. *Some problems in the framework of development in Indonesia: (a sociological review).* University of Indonesia Publishing Foundation, 1975: 146 147

[33] Esposito, John L. *Woman In Muslim Family Law.* New York, Shiracause University Press, (200)1: 78-82

[34] Mahmood, Tahir. *Family Law Reborn in The Muslim World.* Bombay, Tripathi, 1972: 17

[35] *Ibid.*

B. 3. THE URGENCY OF ESTABLISHING AN INTEGRATED FAMILY JUSTICE SYSTEM

Family issues in Indonesia are adjudicated by 2 (two) courts, namely: the Religious Court and the District Court. Religious Courts are regulated in Law Number 3 of 2006 concerning amendments to Law Number 7 of 1989. The types of cases tried by the Religious Court include: permission to have more than one wife, permission to marry a person who is not yet 21 years old, marriage dispensation, marriage prevention, marriage rejection, marriage annulment, lawsuit for negligence of husband and wife, divorce due to talaq, divorce lawsuit, settlement of joint property, control of children, determination of the obligation to provide living expenses by the husband to the ex-wife, revocation of guardian power, revocation of parental power, adoption of children, appointment of guardian in the event that a child is not yet 18 years old, determination of the origin of a child, refusal to provide information to perform mixed marriage, determination of heirs, determination of inheritance, distribution of inheritance, giving of wills, granting grants, giving waqf, giving zakat, infaq, shodaqoh, and sharia economy.[36]

Several family problems were also heard in the District Court. The types of family cases heard by the district court include: marriage, divorce, child adoption, termination of parental or guardian power, distribution of inheritance, making wills, settlement of joint property, determination of heirs, annulment of marriage (all applicable to Indonesian people who are not Muslims). Other family problems that are heard in the District Court are problems that fall within the realm of criminal law, such as domestic violence, child molestation, family rape, and child delinquency. These family cases should be resolved specifically by the Family Court and tried by judges who specifically have knowledge and skills to examine family law issues.

Some countries have Family Courts, including Australia. The Australian government has a Family Justice system designed to assist the community in resolving family problems. In every Family Court in Australia, there is a legal aid post provided to support the community. This legal aid post is managed by three entities: the University,

[36] See Law Number 3 of 2006 concerning amendments to Law Number 7 of 1989 concerning Religious Courts.

NGOs, and the Government. NGOs in Australia have advocates who can help people solve family problems.[37]

Family courts also exist in a number of countries, including the United States, the United Kingdom, India, and Hong Kong. In America, the family court mechanism is led by a single judge without a jury. Before the family case reaches the Court, the applicant must go through the mediation process first. Family courts in the United States use legal resources regulated in family law. In the United Kingdom, the Family Court consists of two types of Courts, namely the High Court of the Family Division and the Family Court. The family court was established under the mandate of the Crime and Courts Act of 2013 and the Children's Law of 1989. Meanwhile, Family Law in the UK has been regulated since 1996. [38,39]

The family court in India has been established since September 14, 1984 in accordance with the Family Court Act. Family courts in India are under the jurisdiction of the High Court, and handle various types of cases such as marriage, divorce, restoration of marital rights, legalization of marital status, guardianship, as well as child custody. [40]

Family courts in Hong Kong have stressed the importance of mediation to help couples seeking separation or divorce reach mutually beneficial agreements, including child custody arrangements and determining living expenses.[41]

Based on observations, the types of cases adjudicated by family courts in the above countries do not seem to be as complex as cases handled by family courts (religious courts, district courts) in Indonesia. One of the factors that cause the complexity of cases in Indonesia is the mixed legal system that applies in Indonesia. The mixed legal system consists of a combination of *Civil Law, Common Law*, and *Islamic Law*.

[37] Busroh, Firman Freaddy. The Idea of Establishing Family Justice in Indonesia, Legal Issues, (2017). 46. 3: 267-274

[38] Dyson, Elizabeth D., and Richard B. Dyson. Family Court in the United State. *J.Fam. L.9* (1969): 1.

[39] Weisberg, D. Kelly, and Courtney G. Joslin. *Modern Family Law: Cases and Materials*. Aspen Publishing, 2024.

[40] Shakya, Safe. Family Law in India: An Analysis. *Indian J. Integrated Rsch. L.* 3 (2023): 1.

[41] Scully-Johnson, Anne. Three Pillars: Articulating a Family Law Pedagogy for Hong Kong. *Teaching Family Law*. Routledge, 2024. pp. 132-147.

Indonesia adheres to the Civil Law legal system. In handling the case, the judge will look for appropriate regulatory references and be active in finding facts and meticulous in assessing evidence, so that a complete picture of the case is obtained. However, in practice and development, the judiciary in Indonesia no longer fully implements the *Civil Law* system because it has had and applied several characteristics that are identical to the *Common Law* system such as court decisions that refer to jurisprudence and custom. Islamic law also applies in Indonesia, marked by the Compilation of Islamic Law (KHI), special courts, namely the Religious Court, and the Sharia Court that applies in Aceh.

According to Prof. Mahfud, the Indonesian state is not a system of *Common Law* or *Civil Law*, but a Prismatic law state, which is based on the ideals of Indonesian law. Thus, the existence of these two systems functions as a "counterweight" and their adoption is not absolute, but through a filtering process.[42]

The legal system in Indonesia is a unit consisting of various components or elements that interact with each other. According to Lawrence M. Friedman, the legal system has four main functions, (1) As part of the social control system that regulates human behavior in society, (2) As a means to resolve disputes or disputes that arise in society, (3) It has a function as "social engineering", namely as a tool to design and shape society according to the desired, and (4) As "social maintenance", which is a function that emphasizes the role of law in maintaining the "status quo" and preventing unwanted changes.[43]

According to Friedman, there are three *elements* of the legal system, namely *legal structure, legal substance and legal culture. Legal structure* concerns institutions that are

[42] Noho, Muhammad Dzikirullah H. Occupying the Common Law System and Civil Law System through the Perspective of Progressive Law in Indonesia. *Rechtvinding Online. September* (2020).
[43] M Friedman, Lawrence. American Law. New York, W.W.Norton & Company, 1984.

authorized to make and implement laws and regulations (court institutions and legislative institutions). *Legal substance* is the material or form of laws and regulations, and *legal culture* is what is mentioned as people's attitude towards the law and the legal system, which concerns their belief in their values, thoughts or ideas.[44,45]

A good legal structure alone will not be able to function effectively without being supported by adequate legal substance. Similarly, high-quality legal substance will not be able to provide benefits felt by the community if it is not supported by a well-run legal structure. Furthermore, a superior legal structure and legal substance will not be able to be felt without a conducive legal culture in society. The law will be able to carry out its role and function optimally if the three aspects of the subsystem, namely the legal structure, legal substance, and legal culture, can interact with each other and carry out their respective functions properly and harmoniously. Thus, the law will run in harmony, balance, and in accordance with its purpose and function in regulating people's lives.

In Indonesia, there are 4 (four) Judicial Environments as the executors of the functions and authority of judicial power, namely the General Court, the Religious Court, the State Administrative Court, and the Military Court. The limits of power between each ward are determined by the jurisdiction delegated by law within the boundaries of the jurisdiction each carries out the function of adjudicating.

The determination of the limits of competence and authority of each judicial environment in Indonesia has a very important goal in maintaining order and justice in this country. First, the main objective is to ensure that any case that arises can be handled by a judicial institution that has the appropriate specialization and expertise. With clear limits of authority, criminal, civil, state administration, and religious cases can be handled by courts that have special competence in these fields. This will increase the efficiency and

[44] *Ibid.*

[45] Flora, Henny Saida, and Ratna Deliana Erawati. The Orientation and Implications of New Criminal Code: An Analysis of Lawrence Friedman's Legal System. *IUS Journal of Law and Justice Studies* 11.1 (2023): 113-125.

effectiveness of the judicial process and ensure that decisions are made based on a deep understanding of the relevant law.

Second, the determination of the limits of authority also aims to prevent overlap and jurisdictional conflicts between various judicial environments. In a complex legal system, it is not uncommon to be confused about which court is authorized to handle a particular case. With clear boundaries, this can be avoided, so that the legal process can run more smoothly and quickly. In addition, this also provides legal certainty for the community, because they can clearly know where to file their case.

Third, another purpose of this delimitation of authority is to protect individual rights and ensure that justice is accessible to all levels of society. With the existence of courts that have specific authority, people can more easily seek justice according to the type of case they are facing. For example, in a case of divorce or inheritance dispute, the religious court will be more appropriate and have a better understanding of the applicable law compared to other courts. Thus, determining the limits of competence in each judicial environment is one way to strengthen the legal system in Indonesia and ensure that justice can be upheld effectively and efficiently.[46,47,48,49]

By implementing competency limits for each court, this will provide legal certainty for people seeking justice regarding which courts have the authority to examine and decide the disputes they face, so that they know where to file cases. However, the judiciary is

[46] Lisdiyono, E. *Supreme Court Accountability*. Jakarta, Rajawali Pers, (2016).

[47] Maksum, Hairul. Limitation of the authority of the General Court in resolving disputes over unlawful acts involving state agencies or government officials.*Juridica* 2.1 (2020): 4-16.

[48] Lev, Daniel. Legal evolution and political authority in Indonesia: selected essays. *Legal Evolution and Political Authority in Indonesia*. Brill Nijhoff, (2021).

[49] Siboy, Ahmad. The integration of the authority of judicial institutions in solving general election problems in Indonesia. *Legality: Scientific Journal of Law* 29.2 (2021): 237-255.

sometimes still unable to provide an adequate sense of justice for parties litigating in court, especially for women.

The word "fair" is the most profound feeling in the discipline of human relations based on the general principles applied. Aristotle described justice as a form of equality or "*equality*", which is the principle that a same case should be needed in the same way and a different case should be needed in a different way.[50,51] Justice is the opposite of:

1. Violations of the law, deviations, irregularities, uncertainties, unexpected decisions, not limited by regulations;
2. Partiality in the application of rules; and
3. Rules that are biased or arbitrary, involve discrimination that is not based on irrelevant differences.

Justice or "*justice*" can be distinguished in two (2) forms[52,53] , namely:

1. Discriminatory Justice, which states that justice relates to the same awards and wealth that must be received by the same person under the condition of his or her equal position in the State;
2. Corrective Justice, justice that applies in a civil relationship. In corrective justice there is no difference in the meaning of a person's position in the state. Everyone who causes others to suffer losses must recover (bear) the loss.

Basically, everyone is part of the seeker of justice. Everyone hopes to see the judge act as he should and is balanced, everyone hopes to see the Court succeed in achieving the right result, but too often we are disappointed, it is easier to seek justice than to find justice.[54]

[50] Nasution, Bahder Johan. A philosophical study of the concept of justice from classical thought to modern thought. *Yustisia* 3.2 (2014).

[51] Nasution, Bahder Johan. Philosophical Studies on Law and Justice from Classical Thought to Modern Thought. *Al-Ihkam: Journal of Law & Social Institutions* 11.2 (2016): 247-274.

[52] Harahap, Rifnatul Hasanah, Pagar Pagar, and Syafruddin Syam. A Study Of Islamic Legal Philosophy Of The Concept Of Collective Property In Indonesia Based On Corrective Justice And The Islamic Education Model. *Islamic Education: Journal of Islamic Education* 11.03 (2022).

[53] Pratama, Febrian Duta, Rafly Pebriansya, and Mohammad Alvi Pratama. "The Concept of Justice in Aristotle's Thought. *Praxis: Journal of Applied Philosophy* 1.02 (2024).

[54] Rawls, John. *Justice and Democracy*. Yogyakarta, Kanisius, 2001.

To find justice, one of the institutions given the task is the judiciary. However, judicial institutions have not fully realized the principle of simple, fast and low-cost justice. According to Sudikno Mertokusumo, the meaning of the principles of simplicity, speed, and low cost, namely:[5556]

1. The word "fast" can be interpreted in the judicial process, too many formalities are obstacles to the course of the judiciary. In this case, it is not only the course of the Judiciary in the examination before the trial, but also the completion of the minutes of the examination in the trial until the signing by the judge and its implementation. It is not uncommon for cases to be delayed for years because witnesses do not come or the parties do not take turns not coming, even the case is continued by the heirs.
2. The simple principle is a clear, easy-to-understand and unconvoluted event, and quite *a one-stop service* (dispute resolution is enough to be resolved through one Judicial institution). The fewer and simpler the formalities that are required or required in proceedings before the Court, the better. Too many formalities are difficult to understand, allowing for various interpretations, not guaranteeing legal certainty and causing reluctance or fear to appear before the Court.
3. It is determined that the cost of conducting proceedings in court or borne or reached by the people. The high cost mostly causes interested parties to be reluctant to file a claim for rights with the Court.

Based on the description above, forming a Family Court that specializes in adjudicating family problems is a solution to bring the community, especially women closer to accessing justice. This is also in line with Edi Setiadi's opinion that "in *penal mediation* with the model of *family and community group conferences*, the perpetrator and his family are expected to produce a comprehensive agreement and can satisfy the victim to recover the state of loss and can help to keep the perpetrator out of distress or the next problem".[57,58]

[55] Mertokusumo, Sudikno. *Civil Procedure Law.* Yogyakarta, Liberty, 2002.

[56] Berutu, Lisfer. Realizing simple, fast and low-cost justice with e-Court. *World Legal Scientific Journal* 5.1 (2020): 41-53.

[57] Mulyadi, Lilik in Edi Setiadi. *Integrated Criminal Justice System and Law Enforcement System in Indonesia*. Kencana, Jakarta, 2017, p. 70.

[58] Syaufi, Ahmad. *Construction of a criminal case settlement model oriented towards restorative justice*. Blue Ocean (IKAPI Member), 2020.

By forming the Family Court, it will emphasize absolute competence to adjudicate a case related to family affairs. With this specificity, all cases that hear family problems can be delegated to the Family Court, thus easing the burden on the General Court, which handles almost all cases, both general criminal, special criminal, general civil and special civil cases.

With the establishment of the Family Court, the absolute competence to adjudicate cases related to family affairs will be clearer. The specificity of Family Court jurisdiction will provide significant benefits. First, all cases related to family matters, such as divorce, child custody, the distribution of gono-gini property, and others, can be delegated to the Family Court. This will be very helpful in providing more focused attention and handling of sensitive issues related to the family. In addition, the establishment of the Family Court can also reduce the workload of the General Court which previously had to handle various types of cases, both general crimes, special crimes, general civil cases, and special civil cases. By transferring family cases to the Special Court, the General Court can concentrate more on handling other cases, so that the judicial process can run more effectively and efficiently. Overall, the existence of the Family Court is expected to provide better legal certainty in resolving family disputes, as well as help ease the burden of the General Court in handling a variety of incoming cases.

C. CONCLUSION

Family problems are an issue that often occurs in Indonesia. There is an urgency to establish a Family Court that specifically adjudicates family cases. One of the reasons for the importance of establishing the Family Court is to facilitate access to justice for Muslim women victims of domestic violence (KDRT). Previously, they had to go through two different judicial procedures, namely the criminal justice system for domestic violence cases and the religious court for the divorce process.

It is hoped that the Integrated Family Court system can become an effective one-stop justice system in resolving family cases in a focused and targeted manner. The concept of Family Court has also been applied in several other countries, especially Anglo-Saxon countries such as Australia, America, the United Kingdom, India, and Hong Kong. In an integrated judicial system, the family court handles family cases, both in the criminal and civil realms.

BIBLIOGRAPHY

BOOK

Dimyati, Khudzaifah. Legal *Theorization: A Study on the Development of Legal Thought in Indonesia, 1945-1990.* Surakarta, Muhammadiyah University, (2005).

Dyson, Elizabeth D., and Richard B. Dyson. Family Court in the United State. *J.Fam., L.9* (1969).

E. *Supreme Court Accountability*. Jakarta, Rajawali Pers, (2016).

Edi Setiadi. *Integrated Criminal Justice System and Law Enforcement System in Indonesia*. Kencana, Jakarta, (2017).

Esposito, John L. *Woman In Muslim Family Law.* New York, Shiracause University Press, (2001).

Friedman, Wolfgang. Legal Theory. London Steven & Son, fifth edition, (1967).

Gray, Jhon Chipman in Anthony D'Amato. *Analytic Jurisprudence Ontology*. Ohio: Anderson Publishing Co, (1996).

M, Lawrence. American Law. New York, W.W.Norton & Company, (1984).

Mahmood, Tahir. *Family Law Reborn in The Muslim World.* Bombay, Tripathi, (1972).

Mertokusumo, Sudikno. *Civil Procedure Law.* Yogyakarta, Liberty, (2002).

Mousourakis, George, and George Mousourakis. Roman Law, Medieval Legal Science and the Rise of the Civil Law Tradition. *Comparative Law and Legal Traditions: Historical and Contemporary Perspectives,* (2019).

Otje Salman. *Public Legal Awareness of Inheritance Law*. Bandung, Alumni, (1993).

Poggy, Gianfranco in *The Development of The Modern State: A Sociological Introduction*, London, Hutchinson & Co., (1978).

Rahardjo, Satjipto. *Law and Social Change.*, Bandung. Alumni, (1983).

Rawls, John. *Justice and Democracy*. Yogyakarta, Kanisius, (2001).

Scholten, Paul. *Translation by B. Arief Sidharta*, Alumni, Bandung, (2003).

Silbey, Susan S. *After Legal Consciousness*. Annual Review Law, Social Science, (2005).

Silitonga, Saritua. Effectiveness of Alternative Dispute Resolution Methods in Family Law Cases. *Journal of Law, Humanities and Politics* 4.3 (2024).

Soekanto, Soerjono. *Some problems in the framework of development in Indonesia: (a sociological review).* University of Indonesia Publishing Foundation. (1975).

Syaufi, Ahmad. *Construction of a criminal case settlement model oriented towards restorative justice*. Blue Ocean. (2020).

Ulfah, Maria. *Comparison of Legal Systems*. Banjarmasin, Kalimantan Islamic University Muhammad Arsyad Al-Banjari, (2022).

Weisberg, D. Kelly, and Courtney G. Joslin. *Modern Family Law: Cases and Materials*. Aspen Publishing, 2024.

JOURNAL

Ahmad, Al-Habsy. *Analysis of the Influence of the Application of the Continental European and Anglosaxon Legal Systems in the Judicial System in the Republic of Indonesia*, *Petitum* Journal 9.1, (2021).

Ahmad, Habsy and Chairul Amri. *Analysis of the Differences in the Criminal Components of the Civil Law and Common Law Legal Systems, Amsir Multidisciplinary Scientific Journal* 1.2, (2023).

Berutu, Lisfer. Realising simple, fast and low-cost justice with e-Court. *Legal World Scientific Journal* 5.1 (2020).

Busroh, Firman Freaddy. The Idea of Establishing Family Justice in Indonesia, Legal Issues, (2017). 46. 3.

Dainow, Joseph. *The civil law and the common law: some points of comparison*. *The American Journal of Comparative Law*. 15 (1966).

Fon, Vincy and Fransico Parisi, *Judicial Precedent in Civil Law System: A dynamic Analysis*, International Review of Law and Economics, (2006).

Hadi, Syofyan. Examining the Indonesian Legal System (Comparative Study with Other Legal Systems). *DiH: Journal of Law* 12.24, (2016).

Harahap, Rifnatul Hasanah, Pagar Pagar, and Syafruddin Syam. A Study Of Islamic Legal Philosophy Of The Concept Of Collective Property In Indonesia Based On Corrective Justice And The Islamic Education Model. *Islamic Education: Journal of Islamic Education* 11.03, (2022).

Iswantoro, W. Supreme Court Magazine 32, (2023).

Lev, Daniel. Legal evolution and political authority in Indonesia: selected essays. *Legal Evolution and Political Authority in Indonesia*. Brill Nijhoff, (2021).

Maksum, Hairul. Limitation of the authority of the General Court in resolving disputes over unlawful acts involving state agencies or government officials.*Juridica* 2.1 (2020).

Nasution, Bahder Johan. Philosophical Studies on Law and Justice from Classical Thought to Modern Thought. *Al-Ihkam: Journal of Law & Social Institutions* 11.2 (2016).

Nasution, Bahder Johan. A philosophical study of the concept of justice from classical thought to modern thought. *Yustisia* 3.2 (2014).

Noho, Muhammad Dzikirullah H. Occupying the Common Law System and Civil Law System through the Perspective of Progressive Law in Indonesia. *Rechtvinding Online. September* (2020).

Pratama, Febrian Duta, Rafly Pebriansya, and Mohammad Alvi Pratama. "The Concept of Justice in Aristotle's Thought. *Praxis: Journal of Applied Philosophy* 1.02 (2024).

Scully-Johnson, Anne. Three Pillars: Articulating a Family Law Pedagogy for Hong Kong. *Teaching Family Law*. Routledge, (2024).

Shakya, Safe. Family Law in India: An Analysis. *Indian J. Integrated Rsch. L.* 3 (2023).

Siboy, Ahmad. The integration of the authority of judicial institutions in solving general election problems in Indonesia. *Legality: Legal Scientific Journal* 29.2 (2021).

Soekanto, Soerjono. "Legal awareness and legal compliance." *Journal of Law & Development* 7.6 (1977).

LAWS & REGULATIONS

Law Number 3 of 2006 concerning amendments to Law Number 7 of 1989 concerning Religious Courts.

WEBSITE

https://bandung.kompas.com/read/2024/05/16/110741878/jumlah-perceraian-di-indonesia-tahun-2023-capai-463654-kasus#google_vignette, accessed on May 1, 2024.

Ika Defianti, *"Divorce Rate in Indonesia Continues to Rise, Marriage Institutions Are No Longer Sacred?"*, https://www.liputan6.com/news/read/5073532/angka-perceraian-di-indonesia-terus-naik-lembaga-perkawinan-tidak-lagi-sakral?page=2, accessed on November 26, 2023.

Solaiman, Anti-Legal *Development and Social Change*, paper in http://taufiqnugroho.blogspot.com, accessed on November 26, 2023.