

JUDGES' PARAMETERS IN DECIDING DIVORCE ON THE GROUNDS OF ONHEELBARE TWEESPALT

Yuliant Bella Chyntia

Faculty of Law
Brawijaya University Malang
65145, 10-11 Jl. Veteran Str., Malang,
Indonesia
e-mail: yuliantbella@student.ub.ac.id
<https://orcid.org/0009-0002-3028-5513>

Rachmi Sulistyarini

Faculty of Law
Brawijaya University Malang
65145, 10-11 Jl. Veteran Str., Malang,
Indonesia
e-mail: rachmi@ub.ac.id
<https://orcid.org/0009-0004-9540-8996>

Hendarto Hadisuryo

Faculty of Law
Brawijaya University Malang
65145, 10-11 Jl. Veteran Str., Malang,
Indonesia
e-mail: hendartoh@gmail.com
<https://orcid.org/0009-0006-4952-3189>

Abstract

Permanent conflict that cannot be reconciled (onheelbare tweespalt) as grounds for divorce in Indonesia still faces a lack of clear legal parameters. Inconsistent judicial decisions and multiple interpretations of Supreme Court Circular (SEMA) No. 3 of 1981 demonstrate a weak regulatory framework that fails to ensure justice and legal certainty. This research aims to analytically elaborate the legal concept of onheelbare tweespalt as grounds for divorce and to formulate objective parameters for judges to uphold substantive justice, legal certainty, and legal utility. The research method employs a normative juridical approach, analyzing primary, secondary, and tertiary legal materials, as well as case studies of two Supreme Court decisions (No. 1425/K/Pdt/2016 and No. 1900/K/Pdt/2017). The findings reveal the need to strengthen legal parameters that integrate the principles of corrective justice, epikeia, and legal certainty to prevent decision disparities and ensure fair legal protection for parties. The novelty of this research lies in the proposal of ideal parameters for judges in assessing onheelbare tweespalt, which can be applied consistently in Indonesian judicial practice. The urgency of this research is reinforced by the importance of drafting binding judicial guidelines, such as a Supreme Court Regulation (PERMA), to replace SEMA No. 3 of 1981 and promote a fair legal system aligned with humanitarian values.

Keywords: onheelbare tweespalt; divorce; corrective justice; legal certainty; judicial parameters.

1. Introduction

Marriage is universally recognized as a religious engagement that is not only contractual, but also sacred, especially in the context of major religions in the world

(Suryatni, 2021, p. 83). In Indonesia, marriage is not merely a private matter, but an institution that has legal, social, and spiritual dimensions (Yudistira, 2024, p. 16). In positive law, for example, Article 1 of Marriage Law Number 1 of 1974 stipulates that marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (Hanifah, 2019, p. 298). However, social reality shows that this ideal is often faced with the reality of cracking household relationships for various reasons. In the midst of the high divorce rate, a legal problem arises regarding the limits of the judge's parameters in deciding divorce cases. One of the reasons for divorce that often becomes a point of debate is irreconcilable conflict (onheelbare tweespalt), which in practice opens up broad interpretation space for judges in determining the validity of the lawsuit (Safitri & Syatar, 2022, p. 443). The absence of explicit juridical parameters creates the potential for disharmony in court decisions.

Several previous studies have examined the grounds for divorce, but not many have explicitly examined the problem of judge inconsistency in assessing the grounds for divorce based onheelbare tweespalt. Literature studies reveal that in the Dutch legal system, this concept is known as a subjective form of household destruction (Jeremy D. Morley, 2025), but in the Indonesian context, its application has not been rigidly regulated in written norms (Mys, 2012). In fact, Supreme Court Decisions Number 1425/K/Pdt/2016 (Indonesia, Mahkamah Agung, 2016) and 1900/K/Pdt/2017 (Indonesia, Mahkamah Agung, 2018) show that there are differences in the application of consideration of the guilty party in a divorce suit, giving rise to a diversity of interpretations of Supreme Court Circular Letter (SEMA) No. 3 of 1981 (Indonesia, Mahkamah Agung, 1981). The gap between written law and court practice shows that there is no consistency in the parameters of judicial consideration. Based on a comparison of the literature, it is stated that a certainty-oriented legal system will require the development of objective indicators for each multi-interpretive legal norm.

This research is important because it touches on fundamental aspects of the protection of procedural and substantive justice for parties in divorce cases. The existence of clear parameters in assessing onheelbare tweespalt will prevent judges from acting arbitrarily and ensure equality in legal treatment for all parties. The irregularity of jurisprudence in this case has an impact on the emergence of a sense of injustice, and creates legal uncertainty for justice seekers, especially for parties who feel wronged but their rights are not recognized because they are hampered by the formal interpretation of SEMA. This condition, if left unchecked, could undermine the authority of the judiciary and reduce public confidence in the legal system, especially in cases that are very personal and have major implications for the future of the family. In the perspective of *ius constituendum*, it is important to have legal reforms or technical guidelines that are able to provide signs to judges in assessing divorce cases objectively and accountably (Taufik, 2022, p. 15).

Based on the description above, there are several legal questions that are the focus of this research. First, how is the concept of onheelbare tweespalt understood as a reason for divorce in the Indonesian legal system? Second, what are the parameters used by judges in deciding divorce cases filed on the basis of irreconcilable conflict? Third, to what extent can Supreme Court Circular Letter Number 3 of 1981 be used as a binding guideline in judicial practice, and how does it affect the independence of the judiciary?

This research aims to analytically describe the legal concept of onheelbare tweespalt as one of the grounds for divorce, and formulate parameters that can be used objectively by judges in assessing similar cases in order to ensure the fulfillment of the principles of justice, certainty, and legal expediency. This creates a fundamental problem in the legal protection of litigants, as well as a serious challenge to the independence and accountability of judges. Therefore, this research is not only intended to fill the conceptual void regarding restrictions and flexibility in the use of onheelbare tweespalt

reasons, but also to formulate normative foundations and practical recommendations that can strengthen the juridical framework in divorce cases, so as to prevent disparity in decisions and support the realization of a judicial system that is fair, consistent, and in favor of human values.

2. Materials and Methods

In understanding the issue of divorce filed on the basis of *onheembare tweespalt* (irreconcilable permanent conflict), it is important to place this issue within a theoretical framework that explains how the legal system should fairly and consistently assess the grounds for divorce. The two main frameworks that form the conceptual basis of this research are Justice Theory and Legal Certainty Theory, both of which provide an argumentative framework in assessing the extent to which judges' decisions on divorce cases can be accounted for philosophically and juridically.

Justice theory is the main foundation in determining whether a divorce decision has fulfilled a sense of substantive justice for the parties. Aristotle distinguished between distributive and corrective justice (Nurjanah et al., 2022, p. 2). In the context of divorce, corrective justice is relevant to correct domestic relations that have become unequal and untenable, without taking sides on who is at fault or caused the problem in the first place. In this case, Huijbers (1988) states that the judge's decision must consider the balance of relations, not just who sues or who is guilty first (Anshori, 2018, p. 5). In such a situation, the *epikeia* of judicial discretion must be put forward by judges in reading the complexity of domestic relations that can no longer be united for the sake of justice for both parties. John Rawls adds a new dimension of "justice as fairness," which emphasizes that in social conditions that are not ideal, legal decisions must favor the most vulnerable parties so that they do not become victims of a rigid and discriminatory system (Tarigan, 2018, p. 110). This is particularly relevant when judges are faced with the option of rejecting a divorce suit simply because the plaintiff is considered to be the cause of the conflict, even though the household relationship is untenable. In this context, justice does not only mean compliance with norms, but sensitivity to the social and psychological conditions of the litigants.

In positive law, legal certainty is the main principle that must be maintained so that the law can provide clear and measurable protection to the community. According to Utrecht, legal certainty is not only about the orderliness of norms, but also about protection against arbitrary actions, including inconsistent judicial actions (Situmorang, 2023, p. 4). This becomes relevant when there are different court decisions in divorce cases on the grounds of *onheembare tweespalt*, even though the substance of the case is similar. When Supreme Court Circular Letter (SEMA) No. 3 of 1981 is used as a reference by some judges to reject the claim of the guilty party, but ignored by other judges, the question arises: where is the legal certainty in judicial practice? Lon Fuller emphasized that a valid law is one that meets eight moral principles, such as not contradictory, understandable, not retroactive, and consistently applied (Atmadja & Budiarta, 2018, p. 19). If a norm such as SEMA is used inconsistently, then according to Fuller, the norm loses its moral legitimacy as a valid law. Therefore, legal certainty in this context does not mean rigid in the application of norms, but consistent and rational in assessing whether the norm should be applied in each case by considering aspects of justice.

By basing this research on these two theories, a strong argumentative foundation can be built that the court must have clear parameters in assessing *onheembare tweespalt* as a reason for divorce. Judges should not be fixated on the formality of documents or SEMA that have multiple interpretations, but must wisely consider the social and psychological facts of a fractured relationship. When justice and legal certainty are collaborated proportionally, it will create a legal decision that is not only normatively valid, but also substantively fair.

This research uses a normative juridical approach, which is a legal research method

carried out by examining written legal materials as a basis for answering the legal issues raised in the research, namely regarding the parameters of judges in deciding divorce cases on the grounds of onheelbare tweespalt (Rizkia & Fardiansyah, 2023, p. 120). The normative approach was chosen because the problem in this research lies in the vagueness of norms and the inconsistency of jurisprudence in applying the grounds for divorce, not in empirical facts in the field. According to Marzuki, the normative approach is relevant to use when the focus of research is on the study of legal principles, rules, and doctrines, as well as the systematics of relevant laws and court decisions (Marzuki, 2017, p. 110).

In answering these legal issues, researchers used two main approaches: statute approach and case approach (Efendi & Rijadi, 2022, p. 188). The statutory approach is used to examine legal rules relating to the grounds for divorce, such as Law Number 1 of 1974 concerning Marriage (Indonesia, Pemerintah Pusat, 1974), Government Regulation Number 9 of 1975 (Indonesia, Pemerintahan Pusat, 1975), and Supreme Court Circular Letter Number 3 of 1981 (Indonesia, Mahkamah Agung, 1981). This approach aims to understand the scope and juridical limitations of the grounds for irreconcilable divorce. Meanwhile, the case approach is used to analyze two relevant Supreme Court decisions, namely Decision Number 1425/K/Pdt/2016 (Indonesia, Mahkamah Agung, 2016) and Number 1900/K/Pdt/2017 (Indonesia, Mahkamah Agung, 2018), which show differences in assessing the validity of claims from parties considered to be the cause of domestic conflict. An analysis of the two decisions was conducted to identify the extent to which judges have clear parameters or instead rely on subjective assessments.

The sources of legal materials in this research consist of three types: primary, secondary, and tertiary, which were collected through literature review and online searches on credible sources (Efendi et al., 2016, p. 304). Primary legal materials include normative provisions such as the Civil Code, Law Number 1 of 1974 and its amendments, Government Regulation Number 9 of 1975, and Supreme Court Circular Letter Number 3 of 1981, as well as two Supreme Court decisions, namely Number 1425/K/Pdt/2016 and Number 1900/K/Pdt/2017. Secondary legal materials are in the form of scientific literature that supports the understanding of the principles of justice (Aristotle, Rawls, Pound) and legal certainty (Fuller, Utrecht), which serve as a conceptual framework in assessing the consistency of judges' decisions. Meanwhile, tertiary legal materials such as legal dictionaries and encyclopedias were used as complementary references in interpreting the normative concepts used. All of these materials were analyzed using a systematic prescriptive and interpretative approach, which aims to explore what should be done by judges in divorce cases based on onheelbare tweespalt by considering the principles of substantive justice and legal certainty. The deductive analysis method is used to derive general principles into concrete cases through five stages: identification of legal facts, collection of relevant materials, classification and synthesis of norms, assessment of consistency between norms and decisions, and formulation of normative recommendations (Zakaria et al., 2021, p. 1635). This approach is taken to answer the need for clearer and fairer juridical guidelines for judges in handling divorce cases characterized by permanent conflict, as outlined in the background and reinforced through the theoretical framework that has been built.

3. Results

3.1. Permanent conflict as a ground for divorce in the perspective of Indonesian law

Divorce as the end of the marriage relationship in the Indonesian legal system is regulated limitatively in Law Number 1 of 1974 concerning Marriage (Rizal, 2019, p. 77). However, the reason for divorce, known as onheelbare tweespalt, which is a permanent irreconcilable conflict, is not explicitly explained in the legislation (Mys, 2012). This creates juridical ambiguity that opens room for broad interpretation among judges in handling

divorce cases based on prolonged household conflicts. The provisions of Article 39 paragraph (2) of the Marriage Law only state that divorce can occur if the husband and wife can no longer live together, without setting objective indicators (Imaduddin, 2020, p. 7). In practice, this phrase is often used as an entry point to assess whether or not there is *onheelpare tweespalt*, but with very subjective parameters from each judge.

The absence of rigid regulations regarding permanent conflict as a basis for divorce indicates the existence of vagueness of norms, which is contrary to the principle of legal certainty as emphasized by Utrecht that the law must provide definite guidelines regarding what can and cannot be done in society (Laritmas & Rosidi, 2024, p. 24). In this context, vague normative provisions result in disparity in decisions, depending on judges' personal preferences and views on the intensity of domestic conflicts. This research uses a normative approach method with a combination of a statutory approach and a case approach, to show how such loopholes contribute to the inconsistency of decisions, as reflected in the two Supreme Court decisions that are the object of analysis Decision No. 1425/K/Pdt/2016 and Decision No. 1900/K/Pdt/2017. The different outcomes in the two decisions reflect the lack of clear juridical indicators in defining *onheelpare tweespalt* as a valid reason for divorce.

Theoretically, this issue can be analyzed through the perspective of the theory of corrective justice proposed by Aristotle and developed by Huijbers (Anshori, 2018, p. 5). In divorce cases, justice is not only determined by adherence to formal legal procedures, but also by the ability of the law to correct social relations that have been unequal and unhealthy. If the relationship between husband and wife has been filled with continuous quarrels, then the judge's role is not only as an interpreter of the law, but also as a balancer of relations that have lost their harmony. John Rawls even emphasizes that justice must favor the most vulnerable parties in a system that is not ideal, so it is not right if the plaintiff is rejected just because he is considered the cause of conflict when the household is socially and psychologically untenable (Saleh et al., 2024, p. 40).

In many other jurisdictions, including the Netherlands and Germany, courts have recognized that permanent conflict with no hope of reconciliation is a legitimate ground for divorce, and courts focus on the social and emotional impact on the parties, rather than on who is at fault (European Union, 2025). This approach is more in line with the principles of substantive justice than formalistic justice. Contemporary studies show that legal systems that do not provide objective guidelines on grounds for divorce create legal uncertainty and increase the risk of substantive injustice to justice seekers (Kohn, 2025, p. 196). Therefore, in the Indonesian context, it is imperative to normatively reformulate the *onheelpare tweespalt* indicator as a valid reason for divorce so that it can be implemented consistently in judicial practice.

In Indonesian judicial practice, Supreme Court Circular Letter (SEMA) No. 3 of 1981 has long been used as a normative reference by judges in handling divorce cases, especially those involving plaintiffs who are considered the cause of domestic conflict. The SEMA directs judges not to grant divorce claims filed by parties who are the cause of household breakdown. However, normatively, the SEMA has a position that is not equivalent to legislation. SEMA does not have general binding legal force, but rather has an internal administrative nature intended as technical judicial guidelines. This ambiguity is the main source of multiple interpretations that actually interfere with legal certainty in the process of making divorce decisions by judges (Hutagalung, 2022, p. 298).

In the theory of legal certainty according to Utrecht and developed by Gustav Radbruch, the law must fulfill the elements of clarity, consistency, and predictability (Fazri, 2025, p. 9). When SEMA is used as the only reference to reject the claim of the guilty party, without considering the substantive facts and the balance of relations in the household, then procedural justice will sacrifice substantive justice. The inconsistency of judges in applying SEMA No. 3 of 1981 shows a violation of the principle of legal consistency. In one

case, such as Supreme Court Decision No. 1425/K/Pdt/2016, the claim of the guilty party was rejected; however, in Supreme Court Decision No. 1900/K/Pdt/2017, the claim of a similar party was granted. This irregularity creates a gap of injustice that can harm the party who should be entitled to the termination of an unhealthy marriage.

Through the normative and case approach used in this research, it can be explained that SEMA as soft law should not be used as the sole basis in making legal decisions that have a major impact on individual lives. Methodologically, the analysis of the two Supreme Court decisions proves that without standardized normative indicators in assessing onheembare tweespalt, judges tend to rely on subjective interpretations of non-legislative documents such as SEMA. In fact, according to the principles of Lon Fuller's theory of law, a legal norm must fulfill the requirements of transparency and consistency in order to function as a valid guideline in law enforcement (Al'anam, 2025, p. 146).

Furthermore, in modern judicial practice, the use of instruments such as SEMA often creates a dilemma between the principle of justice and the principle of legal certainty (Solikhudin et al., 2024, p. 262). Judicial guidelines without a strong normative basis tend to result in disparity of decisions and erode public trust in the judiciary (Zamani, 2024, p. 15). Therefore, it is necessary to reformulate legal norms in the form of more hierarchical regulations such as Supreme Court regulations (PERMA), which can replace the role of SEMA in a more binding and consistent manner. This will help encourage judicial practices that are not only compliant with procedures, but also oriented towards the principles of justice and protection of citizens' personal rights in the realm of family law.

Supreme Court Decisions Number 1425/K/Pdt/2016 and Number 1900/K/Pdt/2017 are clear illustrations of the inconsistency in the application of the law in divorce cases filed on the grounds of onheembare tweespalt. In the first case, the Supreme Court rejected the divorce petition filed by the plaintiff who was proven to be the main cause of domestic conflict, in line with the provisions of Supreme Court Circular Letter (SEMA) No. 3 of 1981. However, in the second case, although the plaintiff was in a similar position as the guilty party, the divorce petition was granted. This disparity shows that judges do not yet have uniform parameters in assessing grounds for divorce based on irreconcilable permanent conflict.

The difference in legal considerations in the two decisions shows how the ambiguity of legal norms that do not explicitly regulate onheembare tweespalt opens space for subjective interpretation by judges. In the context of Aristotle's theory of corrective justice, judges should consider the balance of relationships that have been unequal as the basis for decisions, not just the formality of who is guilty or triggers domestic conflict (Kartawijaya et al., 2024, p. 9). On the other hand, if seen through the perspective of Lon Fuller, a law that is inconsistent and does not fulfill the principles of transparency and clarity will lose its moral legitimacy as a valid law (Herdhianto et al., 2022, p. 3476).

In an analysis based on normative research methods with a legislative and case study approach, it can be concluded that the two decisions reflect the lack of objective legal parameters to assess permanent conflict. A study of the two decisions shows that SEMA No. 3 of 1981 is used as the main reference by judges in assessing who is entitled to file for divorce. However, in practice, there are decisions that still grant divorce on the basis that domestic life is impossible to maintain, even though the plaintiff is the guilty party. This emphasizes the importance of establishing standardized parameters so that judges do not solely rely on internal documents such as SEMA which are multi-interpretive and non-binding.

In addition, when reviewed from comparative studies of civil law in several European countries, such as the Netherlands and Germany, the courts tend to assess the grounds for divorce more on the substance of the domestic relationship that has been destroyed, not just legal formalities. Legal systems that only focus on formal procedures in divorce tend to ignore substantive justice and negatively impact the protection of

individual rights in family law (Taqwa, 2025, p. 12). Therefore, the consistent application of parameters that are oriented towards the balance of relations is crucial to avoid similar disparities in judicial practice in Indonesia.

In the framework of improving the Indonesian legal system, it is important for the Supreme Court to consider reformulating the *onheembare tweespalt* parameter through a more binding regulation, such as a Supreme Court Regulation (PERMA). This will help create legal certainty, avoid disparity in decisions, and guarantee the rights of justice seekers in divorce cases. In the absence of clear guidelines, judges will continue to face a dilemma between complying with non-legislative documents such as SEMA or prioritizing substantive judgment based on the social and psychological facts of disharmonious domestic relationships.

In deciding divorce cases on the grounds of *onheembare tweespalt*, judges need legal parameters that are not only based on formal documents such as SEMA No. 3 of 1981, but also consider the principles of substantive justice and legal certainty. This approach is in line with Aristotle's theory of corrective justice, which emphasizes balance in the relationship between parties as the basis for decisions (Pratama et al., 2024, p. 18). When a domestic relationship has been damaged and conflicts become unbridgeable, the role of the judge is not only as an interpreter of the law, but also as a balancer of relations that have been unequal. Therefore, judges need to use the *epikeia* principle of judicial discretion to adjust general legal norms to the unique facts of each divorce case (Andang L. Binawan, 2022, p. 320). In addition to the principle of justice, the theory of legal certainty proposed by Utrecht and expanded by Lon Fuller also provides an important foundation for the development of ideal parameters. The applicable law must contain clarity, consistency, and predictability so that each party can understand the legal consequences fairly (Re, 2019, p. 1497). In the context of divorce, clear parameters regarding *onheembare tweespalt* will minimize the potential for disparity in decisions and increase public confidence in the judicial system. In many countries with progressive legal systems, courts utilize objective criteria such as frequency of conflict, intensity of communication breakdown, and psychological impact on children as legitimate indicators of irreconcilable permanent conflict (Yadav et al., 2023, p. 23).

In practical terms, the ideal parameters that judges can apply in assessing *onheembare tweespalt* include: (1) identification of recurring and escalating conflict facts; (2) evaluation of the failure of mediation or reconciliation efforts; (3) consideration of social and psychological impacts, especially on children; (4) consistency with the principles of corrective justice and *epikeia* in assessing legal facts; and (5) alignment with substantive justice without ignoring formal procedures, a complete description of the ideal parameters that judges can apply in assessing *onheembare tweespalt*:

Table 1. Ideal parameters for judges in assessing *onheembare tweespalt*

No.	Parameters	Full Explanation
1	Identification of Recurring and Escalative Conflict Facts	Judges should identify patterns of domestic conflict that are not one-offs, but recurring with increasing levels of intensity. Evidence may include witnesses, mediation reports, and police records. This indicates an irreversible relationship and is a strong ground for divorce.
2	Evaluating the Failure of Mediation or Reconciliation Efforts	An evaluation is made of the record of mediation or amicable efforts facilitated by the court or a third party. If all efforts have failed and both parties remain adamant about divorce, then this is an indicator that the relationship has reached an irreparable impasse.

3	Consideration of Social and Psychological Impacts, Especially on Children	Judges need to assess the impact of prolonged conflict on children, including their mental health and emotional development. Child protection is a priority, so a divorce that removes children from ongoing conflict may be considered a just protective measure.
4	Consistency with the Principles of Corrective Justice and Epikeia in Assessing Legal Facts	Judges must interpret the law wisely (epikeia), bearing in mind that each case has its own unique complexities and social dynamics. Corrective justice demands a judgment that considers the balance of rights and obligations of both parties without being rigidly bound to formal procedures.
5	Favors Substantive Justice without Ignoring Formal Procedures	Although formal procedures are important to maintain legal order, judges should not only focus on who is formally at fault, but assess the substance of the relationship that has been damaged. Substantive justice should be the primary goal to ensure the protection of the rights of both parties.

Thus, it is hoped that the court can produce a decision that is not only normatively valid, but also reflects justice and legal certainty in handling divorce cases on the grounds of irreconcilable conflict.

In the enforcement of divorce law in Indonesia, the role of theories of justice and legal certainty is key in creating a fair, consistent and trustworthy justice system. Aristotle's theory of justice emphasizes justice as a balance of relations, while John Rawls focuses on justice as fairness that prioritizes siding with vulnerable groups. In the context of divorce, this means that judges should not only rely on legal formalism, but also pay attention to the factual conditions of households that cannot be maintained, in order to protect the rights of the parties, especially women and children (Sudono, 2024). Meanwhile, the theory of legal certainty from Utrecht and Lon Fuller provides a normative framework that the law must be clear, consistent, and predictable so that it can be relied upon as a guide for society. In divorce cases based on onheelbare tweespalt, legal certainty is essential so that there is no disparity in decisions that are detrimental to justice seekers. The inconsistency in the application of SEMA No. 3 of 1981 found in the Supreme Court's decision shows that there is a gap in the application of this principle. Vague and inconsistent laws will weaken the legitimacy of the legal system and create public distrust. Combining these two theories, courts need to develop parameters for evaluating onheelbare tweespalt that integrate the principles of substantive justice and legal certainty. This can be done by establishing a clear evaluation framework, including identification of conflict patterns, evaluation of reconciliation failures, and assessment of the social impact on the parties concerned. Aristotle's principle of epikeia can guide judges to adapt norms to the complexity of facts, while Fuller's principle of consistency demands that similar decisions result in consistent rulings in similar cases (Susanto, 2024, p. 207).

In modern judicial practice, this theoretical approach has been adopted by many jurisdictions that prioritize substantive justice over legal formalities. The integration of the theories of justice and legal certainty in the family court system in Europe was able to improve the consistency of decisions and the satisfaction of litigants (Husin & Husin, 2022, p. 136). Therefore, the contribution of these two theories is important to be adopted in the preparation of normative guidelines in Indonesia, so that the divorce legal system can reflect the principles of fair substantive justice and firm legal certainty.

The phenomenon of inconsistency in decisions in divorce cases based on

onheelpare tweespalt in Indonesia reflects the absence of objective legal parameters. This is due to the lack of normative regulations that can guide judges in assessing divorce cases, especially in the face of complex household facts that are prone to multiple interpretations. Reliance on SEMA No. 3 of 1981 as a technical reference without binding power has widened the gap in disparity in decisions. Therefore, juridical reflection is needed that places substantive justice as the main foundation in reformulating divorce law policy.

In this context, the role of the Supreme Court as the highest judicial institution is crucial to initiate the preparation of more binding guidelines, such as the Supreme Court Regulation (PERMA). These guidelines should contain clear and implementable parameters, including identification of conflict patterns, mediation failure, and consideration of social impacts, especially on children. Aristotle's principle of *epikeia*, which emphasizes the wisdom of legal interpretation according to specific contexts, must be combined with Fuller and Utrecht's principle of legal certainty, which demands consistency and predictability in every legal decision (Andang L. Binawan, 2022, p. 320).

Strong and consistent jurisprudence can be an effective reference in preventing disparity in decisions, as well as increasing public confidence in the judicial system (Solehah, 2024, p. 50). Therefore, legal reform is not only an academic necessity, but also a strategic step to strengthen the legitimacy of the judiciary, especially in handling divorce cases that touch on personal and social dimensions. Thus, the legal system will be able to provide justice that is not only procedural, but also substantive for all parties.

In closing, this reflection underlines that the parameters of judges in deciding divorce based onheelpare tweespalt must be directed to balance formal and substantive aspects. The formulation of more stringent and participatory guidelines needs to involve various stakeholders, including academics, practitioners, and family rights protection organizations. With an integrative and adaptive approach to social developments, it is hoped that the Indonesian judicial system can answer the need for justice and legal certainty in divorce cases, and build public trust in the law as a dignified instrument of justice

Conclusions

This study found that irreconcilable permanent conflict (onheelpare tweespalt) as a reason for divorce in Indonesia is still faced with a blurring of juridical parameters that has the potential to cause disparity in decisions and injustice to the parties. The existence of Supreme Court Circular Letter No. 3 of 1981, which is often used as a reference in assessing divorce claims, does not have clear binding force, resulting in multiple interpretations and inconsistencies in judicial practice. Comparative studies with other jurisdictions and analysis of two Supreme Court decisions (No. 1425/K/Pdt/2016 and No. 1900/K/Pdt/2017) reveal a gap between theory and practice, and emphasize the need for clear and uniform legal parameters. The contribution of this research lies in the proposal to develop ideal parameters for judges in assessing onheelpare tweespalt, which integrates the principles of corrective justice, *epikeia*, and legal certainty, in order to realize a justice system that is fair, consistent, and protects the rights of justice seekers. The urgency of this research is reinforced by the need for legal reform through more binding regulations such as PERMA, which can replace the role of SEMA No. 3 of 1981 and minimize the disparity of decisions in divorce cases.

References

- Al'anam, M. (2025). Moralitas Hukum Dalam Pemikiran Lon Fuller, HLA Hart, Dan Hans Kelsen. *Law Jurnal*, 5(2), Article 2. Retrieved from: <https://doi.org/10.46576/lj.v5i2.6015>
- Andang L. & Binawan, A. (2022). Empat Problematik Filosofis Hukum Dalam Dinamika Hubungan Keadilan dan Kepastian. *Jurnal Masalah Masalah Hukum*, 51(3), Article 3. <https://ejournal.undip.ac.id/index.php/mmh/article/view/41008>

- Anshori, A. G. (2018). *Filsafat Hukum*. Gadjah Mada University Press. Retrieved from: [https://books.google.co.id/books?hl=id&lr=&id=IHdIDwAAQBAJ&oi=fnd&pg=PA35&dq=putusan+hakim+harus+mempertimbangkan+keseimbangan+relasi,+bukan+sekadar+siapa+yang+menggugat+atau+siapa+yang+bersalah+terlebih+dahulu+\(Huijbers&ots=6X3LZTtQdi&sig=sChMOmbC1OOYKYnQ7bx3x3narxE&redir_esc=y#v=onepage&q=seperti%20yang%20dilakukan%20Huijbers%20di%20atas%20menjadi%20yurisprudensi&f=false](https://books.google.co.id/books?hl=id&lr=&id=IHdIDwAAQBAJ&oi=fnd&pg=PA35&dq=putusan+hakim+harus+mempertimbangkan+keseimbangan+relasi,+bukan+sekadar+siapa+yang+menggugat+atau+siapa+yang+bersalah+terlebih+dahulu+(Huijbers&ots=6X3LZTtQdi&sig=sChMOmbC1OOYKYnQ7bx3x3narxE&redir_esc=y#v=onepage&q=seperti%20yang%20dilakukan%20Huijbers%20di%20atas%20menjadi%20yurisprudensi&f=false)
- Atmadja, I. D. G., & Budiarta, I. N. P. (2018). *Teori-Teori Hukum*. Setara Press. Retrieved from: <https://repository.warmadewa.ac.id/id/eprint/441/>
- Efendi, J., Ibrahim, J., & Rijadi, P. (2016). *Metode Penelitian Hukum: Normatif dan Empiris*. Retrieved from: <http://eprints.ubhara.ac.id/1490/>
- Efendi, J., & Rijadi, P. (2022). *Metode Penelitian Hukum Normatif dan Empiris: Edisi Kedua* (Cet. 5). Prenada Media. Retrieved from: https://books.google.co.id/books?id=j1W6EAAAQBAJ&printsec=frontcover&hl=id&source=gbs_atb#v=onepage&q&f=false
- European Union. (2025, June 1). Divorce and legal separation. *European e-Justice Portal*. Retrieved from: https://e-justice.europa.eu/topics/family-matters-inheritance/divorce-and-legal-separation/de_en
- Fazri, A. M. (2025). *Pemidanaan Perkawinan Kedua Secara Bawah Tangan Perspektif Teori Masalah dan Kepastian Hukum* (Studi Putusan MA. No. 937 K/Pid/2013, 1513 K/Pid/2015, 376 K/Pid/2015 dan 75 K/Pid/2016). [masterThesis, Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta]. Retrieved from: <https://repository.uinjkt.ac.id/dspace/handle/123456789/85416>
- Hanifah, M. (2019). Perkawinan Beda Agama Ditinjau dari Undang-undang Nomor 1 Tahun 1974 Tentang Perkawinan. *Soumatra Law Review*, 2(2), 297–308. <https://doi.org/10.22216/soumlaw.v2i2.4420>
- Herdhianto, V. D., Firdaus, S. U., & Maharani, A. E. P. (2022). Omnibus Law Dalam Kerangka Prinsip-Prinsip Legalitas (Omnibus Law in the Principles of Legality'S Framework). *Jurnal Inovasi Penelitian*, 2(10), Article 10. <https://doi.org/10.47492/jip.v2i10.1345>
- Husin, K., & Husin, B. R. (2022). *Sistem Peradilan Pidana di Indonesia*. Sinar Grafika. Retrieved from: https://books.google.co.id/books?hl=id&lr=&id=cOWCEAAAQBAJ&oi=fnd&pg=PP1&dq=integrasi+teori+keadilan+dan+kepastian+hukum+dalam+sistem+peradilan+keluarga+di+Eropa+mampu+meningkatkan+konsistensi+putusan+dan+kepuasan+pihak-pihak+berperkara&ots=H3Z_8YzEln&sig=k6V51V1bM2BgfWnAz2jZhKVwKG0&redir_esc=y#v=onepage&q&f=false
- Hutagalung, S. M. (2022). *Praktik Peradilan Perdata, Kepailitan dan Alternatif Penyelesaian Sengketa Edisi Kedua*. Sinar Grafika. Retrieved from: [https://books.google.co.id/books?hl=id&lr=&id=eZVfEAAAQBAJ&oi=fnd&pg=PP1&dq=Surat+Edaran+Mahkamah+Agung+\(SEMA\)+No.+3+Tahun+1981+telah+lama+dijadikan+rujukan+normatif+oleh+para+hakim+dalam+menangani+perkara+perceraian,+khususnya+yang+melibatkan+pihak+penggugat+yang+dianggap+sebagai+penyebab+konflik+rumah+tangga&ots=dU7KVrsosi&sig=OYWqBY0SsnvE4SG5ytk2otJ8gu4&redir_esc=y#v=snippet&q=%20pihak%20Penggugat%20kepada%20pihak%20Tergugat%20melalui&f=false](https://books.google.co.id/books?hl=id&lr=&id=eZVfEAAAQBAJ&oi=fnd&pg=PP1&dq=Surat+Edaran+Mahkamah+Agung+(SEMA)+No.+3+Tahun+1981+telah+lama+dijadikan+rujukan+normatif+oleh+para+hakim+dalam+menangani+perkara+perceraian,+khususnya+yang+melibatkan+pihak+penggugat+yang+dianggap+sebagai+penyebab+konflik+rumah+tangga&ots=dU7KVrsosi&sig=OYWqBY0SsnvE4SG5ytk2otJ8gu4&redir_esc=y#v=snippet&q=%20pihak%20Penggugat%20kepada%20pihak%20Tergugat%20melalui&f=false)
- Imaduddin, A. (2020). Konstitusionalitas Perceraian sebab Perselisihan dan Pertengkaran antara Suami Isteri. *The Indonesian Journal of Islamic Law and Civil Law*, 1(1), Article 1. <https://doi.org/10.51675/jaksya.v1i1.138>
- Indonesia, Mahkamah Agung. (1981). SEMA Nomor 3 Tahun 1981. Retrieved from: <https://jdih.mahkamahagung.go.id/legal-product/sema-nomor-3-tahun-1981/detail>
- Indonesia, Mahkamah Agung. (2016). Putusan MAHKAMAH AGUNG Nomor 1425 K/Pdt/2016. Retrieved from: <https://putusan3.mahkamahagung.go.id/direktori/putusan/fd54d3fd20e61254f8b185936361314c.html>
- Indonesia, Mahkamah Agung. (2018). Putusan PA TASIKMALAYA KOTA Nomor 1900/Pdt.G/2017/PA.Tmk. Retrieved from: <https://putusan3.mahkamahagung.go.id/>

[direktori/putusan/Oea83383edff4ab57475950006aeacb2.html](https://doi.org/10.54477/LH.25192353.2025.2.pp.74-85)

Indonesia, Pemerintah Pusat. (1974). Undang-undang (UU) Nomor 1 Tahun 1974 tentang Perkawinan. Retrieved from: <https://peraturan.bpk.go.id/Details/47406/uu-no-1-tahun-1974>

Indonesia, Pemerintahan Pusat. (1975). Peraturan Pemerintah (PP) Nomor 9 Tahun 1975 tentang Pelaksanaan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan. Retrieved from: <https://peraturan.bpk.go.id/Details/67678/pp-no-9-tahun-1975>

Jeremy D. Morley. (2025). Netherlands Divorce Conditions [The Law Office of Jeremy D. Morley]. Retrieved from: <https://www.international-divorce.com/d-netherlands.htm>

Kartawijaya, R. F., Dijayanti, T., Pamungkas, A. D., & Pratama, M. A. (2024). Legal Justice dan Natural Justice Aristotle. *Praxis: Jurnal Filsafat Terapan*, 1(02), Article 02. <https://doi.org/DOI: 10.1111/praxis.xxxxxxx>

Kohn, L. S. (2025). Justice Delayed by Design: The Harms of Our Protracted Divorce System. *Villanova Law Review*, 70(1), 169–218. Retrieved from: <https://www.villanovawlawreview.com/article/133874-justice-delayed-by-design-the-harms-of-our-protracted-divorce-system>

Laritmas, S., & Rosidi, A. (2024). Teori-teori Negara Hukum. Prenada Media. Retrieved from: https://books.google.co.id/books?hl=id&lr=&id=d3kCEQAAQBAJ&oi=fnd&pg=PP1&dq=Teori+kepastian+hukum+yang+dikembangkan+Gustav+Radbruch+menyatakan+bahwa+hukum+harus+positif,+dapat+diterapkan+secara+tetap,+dan+tidak+multitafsir&ots=VIGVwVA69c&sig=LJyxBnTqy4rmRg5pUAnDMGf5yXw&redir_esc=y#v=onepage&q&f=false

Marzuki, M. (2017). Penelitian Hukum: Edisi Revisi. Prenada Media Group. Retrieved from: https://books.google.com/books?hl=id&lr=&id=56D_DwAAQBAJ&oi=fnd&pg=PR6&dq=Peter+Mahmud+Marzuki,+Penelitian+Hukum,+Kencana+Prenada+Media+Group,+Jakarta&ots=DXMB1XXisA&sig=XxhDL6v7xjJZ8Tp7C-c0lkWdDQA

Mys. (2012). Onheerbare Tweespalt dalam Doktrin dan Yurisprudensi. Retrieved from: <https://www.hukumonline.com/berita/a/ionheerbare-tweespalt-i-dalam-doktrin-dan-yurisprudensi-lt4f7ab5bef40e2/>

Nurjanah, A. S., Rahmansyah, R. A., Praditya, D., & Nabilah, N. (2022). Studi Hukum Berdasarkan Tipe-Tipe Keadilan Perspektif Aristoteles. *Praxis: Jurnal Filsafat Terapan*, 1(01), Article 01. Retrieved from: <https://doi.org/DOI: 10.1111/praxis.xxxxxxx>

Pratama, F. D., Pebriansya, R., & Pratama, M. A. (2024). Konsep Keadilan dalam Pemikiran Aristoteles. *Praxis: Jurnal Filsafat Terapan*, 1(02), Article 02. <https://doi.org/DOI: 10.1111/praxis.xxxxxxx>

Re, R. (2019). Clarity Doctrines. *University of Chicago Law Review*, 86(6), 1497–1562. Retrieved from: <https://chicagounbound.uchicago.edu/ucirev/vol86/iss6/5>

Rizal, S. S. (2019). Asas Peradilan Sederhana, Cepat, dan Biaya Ringan dalam Gugatan Perceraian di Pengadilan Agama Pamekasan: Kajian Putusan Nomor 0862/Pdt.G/2015/PA. Pmk. *AT-TURAS: Jurnal Studi Keislaman*, 6(1), Article 1. <https://doi.org/10.33650/at-turas.v6i1.546>

Rizkia, N. D., & Fardiansyah, H. (2023). Metode Penelitian Hukum (Normatif Dan Empiris). Penerbit Widina. Retrieved from: https://www.google.co.id/books/edition/METODE_PENELITIAN_HUKUM_NORMATIF_DAN_EMP/2X1JEQAAQBAJ?hl=id&gbpv=0

Safitri, Y., & Syatar, A. (2022). Peranan dan Efektivitas Hakim di Persidangan Dalam Menekan Angka Perceraian. *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab*, 439–448. <https://doi.org/10.24252/shautuna.vi.26719>

Saleh, I. N. S., Badilla, N. W. Y., Apriyanto, A., & Depari, D. P. (2024). Buku Referensi Sistem Peradilan di Indonesia: Proses, Hak, dan Keadilan. PT. Sonpedia Publishing Indonesia. Retrieved from: <https://books.google.co.id/books?hl=id&lr=&id=Z7M3EQAAQBAJ&oi=fnd&pg=PA1&dq=John+Rawls+bahkan+menekankan+bahwa+keadilan+harus+berpihak+kepada+pihak+yang+paling+rentan+dalam+sistem+yang+tid>

[ak+ideal,+sehingga+tidak+tepat+jika+penggugat+ditolak+hanya+karena+dianggap+sebagai+penyebab+konflik+padahal+rumah+tangga+sudah+tidak+dapat+dipertahankan+secara+sosial+dan+psikologis&ots=I-Tthuyj-E&sig=SVaaPjcsIwNBPxmDpbmUOVOrDnc&redir_esc=y#v=onepage&q&f=false](#)

Situmorang, I. M. (2023). Etika Hukum Dan Kepastian Hukum. OSF. <https://doi.org/10.31219/osf.io/yzv4a>

Solehah, I. (2024). Relevansi Yurisprudensi sebagai Instrumen Pembaruan Hukum di Indonesia. *YUDHISTIR: Jurnal Yurisprudensi, Hukum Dan Peradilan*, 2(3), Article 3. <https://doi.org/10.59966/yudhistira.v2i3.1675>

Solikhudin, M., Meidina, A. R., Zayyadi, A., Faidati, A., Shufyansyah, I. G., Zain, M. F., & Faizah, N. (2024). Political-Legal Strategies in Regulating Interfaith Marriage: An Analysis of Supreme Court Circular Letter in Indonesia. *Jurnal Ilmiah Al-Syir'ah*, 22(2), Article 2. <https://doi.org/10.30984/jis.v22i2.3237>

Sudono. (2024, June 28). Sensitifitas Hakim dalam Menginterpretasikan Alasan Perceraian. Pengadilan Agama Blitar. Retrieved from: <https://pa-blitar.go.id/sensitifitas-hakim-dalam-menginterpretasikan-alasan-perceraian/>

Suryatni, L. (2021). Perkawinan Merubah Status Pria Dan Wanita Dalam Kehidupan Di Masyarakat. *Jurnal Ilmiah Hukum Dirgantara*, 11(2), Article 2. <https://doi.org/10.35968/jihd.v11i2.769>

Susanto, H. (2024). Hukum dan Keadilan dari Perspektif Pancasila. *Prosiding Mewujudkan Sistem Hukum Nasional Berbasis Pancasila*, 1, 201–212. <https://conference.untag-sby.ac.id/index.php/shnbc/article/view/3642>

Taqwa, L. N. (2025). Implementasi sema No.3 tahun 2018 pada pertimbangan putusan hakim PA Cikarang dalam perkara nomor 479/Pdt.G/2024/Pa.Ckr tentang pemberian nafkah Iddah dalam cerai gugat [bachelorThesis, Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta]. Retrieved from: <https://repository.uinjkt.ac.id/dspace/handle/123456789/85200>

Tarigan, A. (2018). Tumpuan Keadilan Rawls. Gramedia Pustaka Utama. Retrieved from: <https://books.google.com/books?hl=id&lr=&id=RIIt1DwAAQBAJ&oi=fnd&pg=PP1&q=John+Rawls+menambahkan+dimensi+baru+tentang+%E2%80%9Cjustice+as+fairness&ots=G5r--hv-B&sig=ElQDuWG3meevZyRadZ2Mt3OnFNA>

Taufik, M. (2022). Hukum Kebijakan Publik: Teori dan Praksis. Tanah Air Beta. Retrieved from: <https://repository.upstegal.ac.id/4718/>

Yadav, R. K., Bala, M., Chaudhary, P., Singh, P., Mittal, A., Kaif, M., Verma, A., & Dudi, M. K. (2023). Social bearing of laws and their implementation with reference to irretrievable breakdown of marriage: A comparative study of laws in India and Asian countries (12:921). *F1000Research*. Retrieved from: <https://doi.org/10.12688/f1000research.133515.1>

Yudistira, A. (2024). The Urgency of Reformulating the Material Legality Principle in the Criminal Code Based on Godly Justice. *Peradaban Hukum Nusantara*, 1(2), Article 2. <https://doi.org/10.62193/fd0rqm06>

Zakaria, I., Suyono, S., & Priyatni, E. T. (2021). Dimensi Berpikir Kritis (Issue 10) [Journal:eArticle, State University of Malang]. Retrieved from: <https://www.neliti.com/publications/486648/>

Zamani, I. A. (2024). Problematics of Legal Provisions of Article 31 Paragraph (2) of Government Regulation Number 61 of 2014 Concerning Reproductive Health. *Peradaban Hukum Nusantara*, 1(2), Article 2. <https://doi.org/10.62193/rsaq5879>