

NORMATIVE GAPS IN EMPLOYMENT RIGHTS PROTECTION WITHIN CIVIL SERVICE CONTRACTS IN DIVORCE DISPUTES: A COMPARATIVE STUDY OF INDONESIA AND HUNGARY

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ABSTRACT

This article analyzes a normative gap in the protection of civil servant contracts during divorce disputes by conducting a comparative study between Indonesia and Hungary. This study is normative legal research with a conceptual, comparative, and legislative approach. This article affirms that the issues surrounding the protection of employment rights in civil servant contracts during divorce disputes reveal normative gaps due to the disharmony between legal regimes, particularly between employment law and family law, as well as the weak integration between judicial decisions and administrative implementation. These conditions result in the absence of a clear and uniform mechanism for the implementation of post-divorce economic rights, leading to variations in practices that culminate in legal uncertainty and potential injustice for the parties involved. Through a comparative legal approach between Indonesia and Hungary, this study finds that the difference in the construction of the relationship between the private and public spheres significantly affects the level of labor rights protection, where Indonesia tends to be interventionist (over-regulation), while Hungary emphasizes a clear separation (under-regulation) with stronger individual rights protection. This research emphasizes the need for a reformulation of legal policies that balance institutional interests and private rights through the principles of proportionality, justice, and strengthening implementation mechanisms, to create a more effective, consistent, and substantively just system of labor rights protection in the context of divorce disputes for Civil Servants (PNS).

Keywords: Civil Servants; Divorce; Employment Rights; Indonesia; Hungary.

INTRODUCTION

Employee rights protection refers to a normative framework that positions employees as equal subjects of law.¹ This is relevant to the right to decent employment and freedom of association as inalienable fundamental rights. The urgency of protecting employee rights is a fundamental aspect in realizing social justice, balanced industrial relations, and sustainable economic development. Within the context of inherently unequal employment relationships, where employers tend to hold a more dominant position than employees, legal protection serves as a crucial instrument to prevent exploitation, discrimination, and violations of human dignity.² Employee rights such as decent wages, occupational safety and health protection, working time certainty, and freedom of association are not merely normative demands but also fundamental human rights that must be guaranteed by the state.³

Employee rights such as decent wages, occupational safety and health protection, working time certainty, and freedom of association are not merely normative demands but also fundamental human rights that must be guaranteed by the state.⁴ Furthermore, protecting employee rights also has strategic implications for enhancing productivity and the quality of the workforce, as employees who feel secure and valued tend to be more motivated and loyal to their employment. From the perspective of law and public policy, the state is obligated to establish responsive regulations and effective law enforcement to ensure that any violation of employee rights is dealt with firmly.⁵ Therefore, the protection of employee rights is not merely a labor issue, but an integral part of efforts to realize justice, welfare, and respect for human values in the life of the nation and state.⁶

¹ Indriyani Anita et al., “Urgensi Penetapan Kebutuhan ASN Untuk Menghindari Permasalahan Yang Timbul,” *Aliansi: Jurnal Hukum, Pendidikan Dan Sosial Humaniora* 1, no. 5 (July 2024): 227–32, <https://doi.org/10.62383/aliansi.v1i5.411>.

² Bertrand Venard, Yehuda Baruch, and Julien Cloarec, “Consequences of Corruption: Determinants of Public Servants’ Job Satisfaction and Performance,” *International Journal of Human Resource Management* 34, no. 20 (2023): 3825–56, <https://doi.org/10.1080/09585192.2022.2161323>.

³ Mahir Pratama and Lisman Manurung, “Bureaucratic Reform: Analysis of Work From Anywhere Policy Plans for Asn,” *Dia: Jurnal Administrasi Publik* 20, no. 02 (2022): 263–74, <https://doi.org/10.30996/dia.v20i02.7018>.

⁴ Dodi Nopriza, Luhut Simbolon, and Susanto, “Peran Serta PNS Kemhan Sebagai Komponen Cadangan Dalam Mendukung Upaya Pertahanan Negara,” *Jurnal Pendidikan Dan Konseling* 4, no. 4 (2022): 5023–33.

⁵ Purwanto Purwanto et al., “Streamlining Regional Regulations with Omnibus Law for Legal Harmonization,” *Rechtsidee* 12, no. 2 (December 26, 2024): 7–13, <https://doi.org/10.21070/jihr.v13i1.1038>.

⁶ Hyoung Joo Lim and Dafydd Mali, “An Analysis of the Effect of Temporary/Permanent Contracts on Firm Efficiency Performance: Evidence from South Korea,” *Journal of Applied Accounting Research* 24, no. 1 (2023): 149–69, <https://doi.org/10.1108/JAAR-08-2021-0227>.

One group of employees entitled to protection is Civil Servants (Pegawai Negeri Sipil/PNS). The forms of protection for Civil Servants include guarantees of employment status certainty and legal protection while performing their duties. As state officials, Civil Servants are protected through an administrative legal system ensuring that all actions concerning them such as appointment, transfer, promotion, and termination must be based on applicable laws and regulations and may not be carried out arbitrarily.⁷ Furthermore, Civil Servants also receive protection in the form of welfare guarantees, including fixed salaries, performance allowances, pension benefits, and health insurance, aimed at providing economic security during their employment and after retirement. Protection is also provided against work-related risks, such as work accident insurance and legal defense should Civil Servants face issues arising from the performance of their official duties, provided that these duties are carried out in accordance with established procedures and regulations.⁸ With such protection, Civil Servants (PNS) are expected to perform public service functions professionally, neutrally, and with integrity, free from pressure or concerns regarding their security and welfare.

Employee rights in Civil Servant employment contracts within divorce disputes represent a complex issue, as it involves the intersection of labor law, family law, and the protection of individual economic rights. In principle, civil servant status guarantees job security, fixed income, and various attached allowances, such as family benefits and pension rights. However, in the event of divorce, legal consequences arise concerning these rights, particularly regarding income distribution, maintenance obligations, and the status of benefits previously allocated to the spouse. In many cases, divorce requires administrative adjustments, such as updating family data and transferring benefit entitlements, which can directly impact the income structure of the Civil Servant concerned.

This study specifically analyzes the normative gaps in the protection of employee rights in civil servant employment contracts during divorce disputes through a

⁷ Khayla Abdullah, Khoirul Anwar, and Nafi Alrasyid, "Peran Pengawasan Ombudsman Republik Indonesia Dalam Menjamin Transparansi Dan Akuntabilitas Proses Rekrutmen Pegawai Negeri Sipil," *Arus Jurnal Sosial Dan Humaniora* 5, no. 2 (August 5, 2025): 1982–90, <https://doi.org/10.57250/ajsh.v5i2.1468>.

⁸ Yulia Fithriany Rahmah, "Human Rights and Gender Equality: An Analysis of Polygamy Regulations for Civil Servants in Indonesia," *Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan* 12, no. 1 (March 20, 2025): 20–38, <https://doi.org/10.32505/qadha.v12i1.10900>.

comparative study of Indonesia and Hungary. A legal comparison between the two countries in this context is important and relevant, particularly to understand the strengths and weaknesses of the regulations governing Civil Servants' rights in divorce disputes. There are two legal issues analyzed in this research, namely: (i) the challenges in protecting employee rights in civil servant employment contracts during divorce disputes, and (ii) a legal comparison of the protection of these rights between Indonesia and Hungary..

RESEARCH METHOD

This research, focusing on the normative gaps in the protection of employee rights in civil servant employment contracts during divorce disputes through a comparative study of Indonesia and Hungary, is normative legal research. Normative legal research emphasizes doctrines, principles, and theories within the law to address legal issues. The primary legal materials used consist of laws and regulations concerning Civil Servants, as well as marriage and family law. Secondary legal materials include journal articles, books, and research findings discussing marriage, divorce involving Civil Servants, and employee protection in both Indonesia and Hungary. Non-legal materials include legal dictionaries. The analysis of legal materials is conducted prescriptively, whereby existing legal issues are examined, and legal prescriptions are formulated to resolve them based on the collected materials.

RESEARCH OUTCOME AND DISCUSSION

1. Problems of Protecting Employee Rights in Civil Servant Contracts in Divorce Disputes

Civil Servants (PNS) form an integral part of the state apparatus, playing a strategic role in governance, development implementation, and the provision of public services to the community in a professional, neutral, and integrity-driven manner.⁹ As the main element of government bureaucracy, Civil Servants (PNS) serve not only as policy

⁹ Wildan Syahamata Ady I Dewa Kade Wiarsa Raka Sandi, Retno Saraswati, "The Urgency of Upholding the Election Organizer Code of Ethics in Facing Concurrent General Elections and Concurrent Regional Head National 2024," *International Journal of Social Science Research and Review* 5, no. 1 (2023): 159–65.

implementers but also as unifying factors for national unity, guardians of state administrative stability, and representatives of the state's presence in everyday society. The position of Civil Servants is regulated within a legal framework that emphasizes the principle of meritocracy a system that prioritizes qualifications, competence, and performance as the primary basis for appointment, placement, promotion, and career development thereby aiming to create an effective and efficient bureaucracy.¹⁰ In performing their duties, Civil Servants (PNS) are bound by strict legal norms, ethics, and discipline, aimed at ensuring that all actions are aligned with the interests of the state and society, and are free from corruption, collusion, and nepotism.

Civil Servants also possess rights guaranteed by the state, such as the right to decent income, social security, legal protection, and competence development all designed to support optimal performance and the welfare of state officials.¹¹ Civil Servant status also entails significant obligations, including the duty to maintain political neutrality, loyalty to the state and government, and readiness to be posted to various regions according to organizational needs. In practice, Civil Servants often face various challenges, such as demands for bureaucratic reform, improved public service quality, and adaptation to technological advancements and globalization. These challenges require a shift in mindset and work culture towards becoming more modern, responsive, and accountable.¹² Therefore, strengthening a transparent, accountable, and performance-based personnel system is essential to ensure that Civil Servants can optimally fulfill their role as public servants and servants of the state, ultimately contributing significantly to realizing good governance and overall public welfare.¹³

Divorce involving Civil Servants is regulated differently compared to general divorce proceedings, as their status places them not only as individuals in the private sphere but also as state officials bound by public responsibilities, professional ethics, and

¹⁰ Naoto Higuchi, "What Is New about Japan's New Migration Policy? From Recruitment of 'Nonlabor' Workers to Selection by Neoliberal Meritocracy," *Social Science Japan Journal* 28, no. 1 (February 4, 2025), <https://doi.org/10.1093/ssjj/jyae011>.

¹¹ Lilis Sholihah and Mulianingsih, "Reformasi Birokrasi (Reposisi Dan Penerapan E-Government)," *JMB Media Birokrasi* 5, no. 1 (2023): 41–58.

¹² Nehru Asyikin, "Legal Politics of Bureaucratic Reform in Really Good Governance According to Prophetic Law," *Legality: Jurnal Ilmiah Hukum* 28, no. 1 (2020): 81–95, <https://doi.org/10.22219/ljih.v28i1.10393>.

¹³ Safrizal Safrizal, Taufeni Taufik, and Yesi Mutia Basri, "Good Governance on Village Fund Management with The Use of Information Technology as A Moderating Variable," *Indonesian Journal of Economics, Social, and Humanities* 4, no. 1 (2022): 15–28, <https://doi.org/10.31258/ijesh.4.1.15-28>.

institutional interests. This distinct regulation is driven by the need to preserve the authority, discipline, and image of the state bureaucracy, requiring stricter oversight of personal conduct that could potentially impact an official's integrity and performance.¹⁴ In this context, divorce is not merely viewed as a civil relationship between husband and wife, but also as an event that can affect employment stability, administrative responsibilities, and public trust in government institutions.¹⁵ Therefore, Civil Servants are required to obtain permission from their superiors before filing for divorce, as a form of supervision and guidance aimed at ensuring that the decision has been thoroughly considered and does not conflict with disciplinary norms and professional ethics.¹⁶

This specific regulation also relates to the protection of the rights of affected parties, particularly spouses and children, considering that Civil Servants receive a fixed income derived from state finances. The state has an interest in ensuring that maintenance obligations are fulfilled fairly and proportionately, which is why certain provisions regulate the division of salaries or allowances after divorce. This differs from the general public, who rely primarily on court decisions without administrative intervention from their employers.

On the other hand, specific regulations regarding Civil Servant divorce also aim to prevent the misuse of employment status, such as unauthorized polygamy or irresponsible divorce, which could undermine the moral values and professionalism of state officials. Thus, these distinct regulations reflect a balance between protecting individual private rights and safeguarding public and institutional interests, ensuring that Civil Servants can perform their functions optimally while upholding the ethics, discipline, and social responsibilities inherent in their positions.

The issue of protecting employee rights in Civil Servant employment contracts during divorce disputes is complex, as it involves the intersection of labor law, family law, and socio-economic aspects. Divorce, which falls under the domain of family or

¹⁴ Indriyani Anita et al., "Urgensi Penetapan Kebutuhan ASN Untuk Menghindari Permasalahan Yang Timbul."

¹⁵ Amiruddin Asrul Hamid, Titi Martini Harahap, Resi Atna Sari Siregar, Syaipuddin Ritonga, "Sociological Analysis of the Concept of Divorce In Marriage Law in Indonesia," *Journal of Religious, Social and Cultural* 1, no. 1 (2022): 42–51.

¹⁶ Hasudungan Gultom, Fauzi Syam, and Ar'fai, "Penjatuhan Hukuman Disiplin Pemberhentian Dengan Hormat Tidak Atas Dengan Permintaan Sendiri Dalam Kasus Izin Perkawinan Dan Perceraian Pegawai Negeri Sipil Dari Perspektif Kepastian Hukum," *Rechtum* 6, no. 3 (2024): 565–84.

marriage law, is also closely related to religious law.¹⁷ This further emphasizes that divorce involving Civil Servants conceptually falls within the realm of legal pluralism. Legal pluralism is a concept in legal studies describing the existence of more than one legal system living and operating simultaneously within a society, including state law, customary law, as well as social and religious norms recognized and observed by specific communities.¹⁸

The concept of legal pluralism emerged as a critique of the centralistic view that considers only state law as valid and possessing full authority to regulate societal life. In social reality, particularly in developing countries like Indonesia, cultural diversity, traditions, and value systems give rise to various forms of living law that function effectively within society.¹⁹ From an academic perspective, legal pluralism is understood not merely as a social fact, but also as an analytical framework for examining how the interaction, conflict, and harmonization between various legal systems take place in daily practice. John Griffiths argues that there are two types of legal pluralism: strong legal pluralism and weak legal pluralism.²⁰ Strong legal pluralism refers to the recognition of non-state laws by the state, whereas the latter emphasizes the existence of autonomous legal systems operating outside state control. Sally Falk Moore, in presenting her ideas on legal pluralism, introduced the concept of the semi-autonomous social field, which explains that within a social group, there exist internal mechanisms capable of creating and enforcing their own rules, while remaining subject to the influence of larger legal systems.²¹ Regarding legal pluralism, Marc Galanter points out that state law is often not the only effective source of norms, as in practice society relies heavily on informal rules

¹⁷ Ivo Junia Imako Haris, "Children's Position on a Defective Marriage (Fasid) in Terms Establishment of Inheritance Right as an Effort for Legal Certainty," *Sociological Jurisprudence Journal* 7, no. 1 (2024): 40–44, <https://doi.org/10.22225/scj.7.1.2024.40-44>.

¹⁸ Dicky Eko Prasetyo Disantara, Fradhana Putra, Briggs Samuel, and Mawunyo Nutakor, "The Problematics of the Legal Standing of Deoxyribonucleic Acid (DNA) Test Results Concerning Civil Relationships of Illegitimate Children : A Legal Pluralism Perspective," *Mizani* 11, no. 02 (2024): 435–48.

¹⁹ Dita Perwitasari Dicky Eko Prasetyo, Fradhana Putra Disantara, Nadia Husna Azzahra, "The Legal Pluralism Strategy of Sendi Traditional Court in the Era of Modernization Law," *Rechtsidee* 8, no. 1 (2021): 4.

²⁰ Dicky Eko Prasetyo, "Hukum Adat Di Indonesia: Perspektif Pluralisme Hukum," in *Refleksi Dinamika Hukum Di Indonesia* (Jakarta: PT Adikara Cipta Aksa, 2025), 174–80.

²¹ Jati Nugroho, "Recognition Model of National Legal Pluralism in a Unitary State through the Prismatic Theory Approach," *Jurnal Humaya: Jurnal Hukum, Humaniora, Masyarakat, Dan Budaya* 1, no. 2 (2021): 107–15, <https://doi.org/10.33830/humaya.v1i2.1861.2021>.

and dispute settlement mechanisms outside the courts.²² On the other hand, Eugen Ehrlich, through the concept of living law, asserts that the law actually operative within society is not always identical to that written in legislation, but is rather reflected in actual social practices.²³

The issue of Civil Servants (PNS) in divorce disputes is essentially a clear manifestation of legal pluralism, as it involves the convergence and interaction of various legal systems that coexist and operate simultaneously within society. In this context, at least three legal regimes intersect: state law governing Civil Service employment, family law regulating marital relations and divorce, as well as social norms and ethics prevalent in society. The legal pluralism perspective explains that law is not solely derived from the state, but also originates from social practices and values living within the community; consequently, the conflicts arising in divorce disputes involving Civil Servants cannot be understood through a single normative approach alone.²⁴ In practice, Civil Servants as state officials are subject to strict administrative regulations, such as the obligation to obtain divorce permission and provisions regarding salary division, while as individuals, they are also bound by court decisions within the realm of family law that emphasize justice for all parties, including former spouses and children.

This condition reflects what John Griffiths termed as strong legal pluralism, where different legal systems can operate simultaneously and may even potentially conflict with one another, without a single authority being fully dominant.²⁵ Furthermore, Eugen Ehrlich's concept of living law is also relevant in explaining that the practice of resolving divorce disputes involving Civil Servants is not solely determined by written regulations, but also by customs, notions of justice, and administrative practices that have developed

²² Jansen Edinata Simanjuntak et al., "Customary Law and Multiple Legal Systems in Criminal Justice: Indonesia's Penal Reform Experience," *Architecture Image Studies* 6, no. 3 (December 3, 2025): 1864–80, <https://doi.org/10.62754/ais.v6i3.528>.

²³ Muhammad Akmal Habib Dicky Eko Prasetyo, "Lex Sportiva and Lex Ludica: The Existence and Reconstruction of Sports Law Principles in the Postmodern Era," *Novum: Jurnal Hukum* 12, no. 3 (2025): 412–28.

²⁴ M. Thahir Maloko et al., "Analyzing the Prohibition of Interfaith Marriage in Indonesia: Legal, Religious, and Human Rights Perspectives," *Cogent Social Sciences* 10, no. 1 (2024): 1–13, <https://doi.org/10.1080/23311886.2024.2308174>.

²⁵ Dedy Sumardi, Ratno Lukito, and Moch Nur Ichwan, "Legal Pluralism within the Space of Sharia: Interlegality of Criminal Law Traditions in Aceh, Indonesia," *Samarah* 5, no. 1 (2021): 426–49, <https://doi.org/10.22373/sjhk.v5i1.9303>.

within respective institutions.²⁶ In the context of Indonesia, which encompasses diverse legal systems including customary and religious laws, divorce disputes involving Civil Servants are often influenced by these norms, adding complexity to the protection of employee rights and the fulfillment of post-divorce obligations.

The issue of Civil Servants in divorce disputes cannot be viewed in isolation solely within the framework of labor law but must be understood as part of the dynamics of legal pluralism involving interaction, negotiation, and even conflict between various legal systems. This pluralism is the primary reason behind frequent uncertainty and disharmony in practice, highlighting the need for an integrative and comprehensive approach in formulating policies and resolving disputes to accommodate various interests fairly and proportionately. In practice, divorce not only impacts the personal relationship between spouses but also has direct implications for the rights and administrative status of Civil Servants, particularly regarding income, family allowances, and maintenance obligations. A key issue lies in the unclear boundary between the Civil Servant's individual rights to their salary and the legal obligation to allocate a portion of it to the former spouse based on court decisions or internal regulations. This often leads to conflicts, especially when there are differing interpretations between personnel agencies and judicial bodies regarding the amount and mechanism of such allocation.

Furthermore, the issue involves regulatory disharmony, where administrative and disciplinary labor laws do not always align with family law, which emphasizes substantive justice for the parties after divorce. This situation creates legal uncertainty for Civil Servants regarding both the protection of their employment rights and the fulfillment of obligations towards their former spouse and children. Problems also arise when divorce affects work performance and career stability, for instance due to psychological pressure, decreased productivity, or potential disciplinary violations if administrative procedures such as obtaining divorce permission are not met. On the other hand, protection for former spouses is often inadequate, particularly regarding the enforcement of maintenance rights, which relies heavily on the Civil Servant's

²⁶ Kalindi Kokal and Siddharth Peter de Souza, "Ideas, Narratives and Experiences. A Reflection on Legal Pluralism and the Cause of Justice in South Asia," *Legal Pluralism and Critical Social Analysis* 55, no. 2 (May 4, 2023): 125–39, <https://doi.org/10.1080/27706869.2023.2239589>.

compliance and the effectiveness of supervision by the relevant institution.²⁷ The absence of an integrated mechanism between court decisions and administrative implementation within the personnel sector results in inconsistent protection of rights. In some cases, court rulings regarding maintenance or economic rights are not automatically executed by the institutions, creating a gap between legal norms and actual practice. Consequently, the issue of protecting Civil Servants' rights in divorce disputes essentially highlights the need for regulatory harmonization, clear implementation mechanisms, and strengthened legal protection that balances the rights of Civil Servants as state officials and the economic rights of the affected former spouse, thereby ensuring legal certainty, justice, and sustainability in post-divorce social relations.

The problem of protecting employee rights in Civil Servant employment contracts during divorce disputes, particularly regarding normative gaps, reflects a misalignment between various legal regimes that regulate matters partially and sectorally without adequate integration. This normative gap is evident when administrative and hierarchical labor laws do not fully align with family law, which is oriented toward substantive justice and the protection of vulnerable parties such as former spouses and children. Within legal theory, this condition demonstrates disharmony between norms, leading to legal uncertainty in practice, especially concerning the regulation of salary division, allowances, and the continuity of Civil Servants' rights after divorce.²⁸ On one hand, personnel regulations regard salaries and allowances as the individual rights of Civil Servants, protected by the state. On the other hand, court decisions within the realm of family law may mandate the division of this income as a form of maintenance fulfillment, creating ambiguity in implementation.

Normative gaps are also evident in the lack of a clear and integrated mechanism between judicial bodies and personnel agencies in executing rulings concerning post-divorce economic rights. This leads to varied practices on the ground: some institutions rigidly apply internal rules without considering court decisions, while others attempt adjustments without a solid legal basis, potentially causing injustice to one party. From

²⁷ Yusna Zaidah and Mutia Ramadhania Normas, "Mediasi Online Dalam Penyelesaian Perkara Perceraian Di Era Pandemi," *Journal of Islamic and Law Studies* 5, no. 3 (2022): 334–48, <https://doi.org/10.18592/jils.v5i3.5847>.

²⁸ Berliana Aliefia Putri and Fatkul Chodir, "Peningkatan Nafkah Anak Pasca Perceraian Dalam Pasal 14 Surat Edaran Mahkamah Agung Nomor 3 Tahun 2015 Ditinjau Dari Fiqh Madzhab Syafi'i," *Mandub : Jurnal Politik, Sosial, Hukum Dan Humaniora* 2, no. 4 (October 24, 2024): 60–80, <https://doi.org/10.59059/mandub.v2i4.1693>.

the perspective of legal pluralism as proposed by John Griffiths, this situation reflects the coexistence of various legal systems that are not fully coordinated, ultimately creating space for normative conflict. Furthermore, Eugen Ehrlich's concept of living law illustrates that problem resolution often depends on informal policies or official discretion; while adaptive, this can widen the normative gap due to the absence of uniform standards.

This disparity becomes even more complex within the Indonesian context, which encompasses diverse legal systems, including religious and customary laws that influence perspectives on divorce and the division of economic rights. Consequently, the protection of Civil Servants' rights is often suboptimal, caught between the demands of administrative legal certainty and substantive justice in family relations. Therefore, these normative gaps highlight the urgent need for regulatory harmonization through a comprehensive and integrative approach, ensuring that the protection of rights in divorce disputes is not merely formalistic but also guarantees justice, certainty, and a balance of rights and obligations for all parties involved.

2. Comparative Law on Protection of Employee Rights in Civil Service Contracts in Divorce Disputes between Indonesia and Hungary

A legal comparison between Indonesia and Hungary regarding the protection of Civil Servants' rights in divorce disputes is important and relevant, particularly to understand the strengths and weaknesses of the regulations in both countries. First, legal comparison is necessary to identify the differences and similarities in the regulatory systems of the two nations.²⁹ Although Indonesia and Hungary belong to the same legal family, their normative implementation can differ significantly, both in terms of personnel regulations and family law. Studies indicate that comparing the two countries can provide comprehensive insights into how a legal issue is regulated and resolved differently, while also opening opportunities for improving the national legal system.³⁰

²⁹ Hananto Widodo Dicky Eko Prasetyo, "Ius Constituendum Pengujian Formil Dalam Perubahan Konstitusi," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 4, no. 1 (2022): 2.

³⁰ Ratno Lukito, "'Compare But Not to Compare': Kajian Perbandingan Hukum Di Indonesia," *Undang: Jurnal Hukum* 5, no. 2 (2022): 273.

Second, the urgency of legal comparison lies in the effort to find a more optimal model of rights protection for Civil Servants (Pegawai Negeri Sipil/PNS). In the Indonesian context, the protection of Civil Servants is regulated through various regulations, such as the Law on State Civil Apparatus and government regulations regarding personnel management, which emphasize the principles of professionalism, legal certainty, and protection in carrying out duties. In practice, particularly in divorce disputes, various issues still exist, such as ambiguity regarding salary division, inconsistent court decisions, and weak implementation of regulations. By comparing this with Hungary, which is known for having a more systematic legal codification system in the field of employment law, a more structured and consistent approach to providing legal protection can be identified.

Third, legal comparison serves as a means for critical evaluation of the weaknesses within the national legal system. In cases of divorce involving Civil Servants in Indonesia, there is often a lack of synchronization between family law (for example, regarding alimony and the rights of former spouses) and employment law (which is administrative and disciplinary in nature). Research indicates that even in judicial practice, specific provisions regarding the division of Civil Servants' salaries post-divorce are not always applied consistently, leading to legal uncertainty. By comparing with the Hungarian system, it is possible to identify whether that country possesses better integration mechanisms between these two legal regimes.

Fourth, legal comparison is also important in efforts to promote harmonization and reform of national law. In comparative studies, the primary objective is not merely to identify differences, but also to seek the best solutions that can be adopted or adapted in accordance with Indonesia's social and cultural context.³¹ Accordingly, the results of this comparison can serve as a basis for policy recommendations to improve regulations concerning the rights of Civil Servants in divorce situations, ensuring they are fairer, clearer, and provide legal certainty for all parties.

Fifth, from an academic perspective, legal comparison contributes to the development of legal science itself, particularly in the fields of employment law and

³¹ Nwanneka V. Ezechukwu, *Mobile Payments, Consumer Policy, and the Law: A Comparative Analysis* (Oxon: Routledge, 2023).

family law. The comparative approach enables researchers to understand law not merely as static national norms, but as a dynamic system capable of evolving through interaction with other legal systems. Therefore, the legal comparison between Indonesia and Hungary on this issue is highly significant, as it not only helps identify existing problems and weaknesses but also opens opportunities to formulate a more effective, fair, and responsive model for protecting the rights of Civil Servants, particularly in the context of divorce disputes.

The protection of employees' rights in divorce disputes involving Civil Servants in Indonesia is a complex legal issue, as it lies at the intersection of state administrative law, employment law, and family law. Each of these fields has its own regulatory framework and fundamental principles, yet they intersect in practice. In this context, Civil Servants as state officials are not only bound by a public employment relationship with the state as the employer but also have private lives governed by family law norms. Consequently, when divorce disputes arise, questions emerge regarding the extent to which the state, through employment law instruments, can and may intervene in an individual's employment rights including rights related to employment status, income, and position without violating human rights principles and the fundamental principles of employee protection.³²

Protecting the rights of employees is crucial because divorce often has implications for administrative sanctions against Civil Servants, particularly if the divorce is conducted without complying with procedures stipulated by legislation, such as the obligation to obtain permission from superiors. In practice, this can lead to disciplinary sanctions ranging from reprimands to dismissal, raising questions regarding the proportionality of the punishment and the guarantee of protection for Civil Servants' rights as citizens, who are entitled to legal certainty and justice.

Within the framework of Indonesian positive law, the primary legal basis governing this matter is found in Law Number 20 of 2023 concerning State Civil Apparatus, which affirms the principles of the merit system, professionalism, and protection for State Civil

³² A Surasa, E Herningsih, and N Laela, "Penyelesaian Sengketa Perkawinan Melalui Mediasi Sebagai Pencegahan Terjadinya Perceraian," *Khazanah Multidisiplin* 3, no. 2 (2022): 165–74, <http://journal.uinsgd.ac.id/index.php/kl/article/view/18628%0Ahttp://journal.uinsgd.ac.id/index.php/kl/article/download/18628/7250>.

Apparatus (ASN) in carrying out their duties. Additionally, Government Regulation Number 94 of 2021 concerning Civil Servant Discipline details the obligations, prohibitions, and types of disciplinary penalties that may be imposed, including those related to personal life insofar as they impact discipline and integrity as state officials.³³ Specifically regarding the divorce of Civil Servants, this is regulated in Government Regulation Number 10 of 1983, as amended by Government Regulation Number 45 of 1990 concerning Permission for Marriage and Divorce for Civil Servants. This regulation requires that any Civil Servant intending to divorce must obtain permission or submit notification to the authorized official. The purpose of this requirement is to maintain order and the image of state apparatus; however, in practice, it often creates tension between institutional interests and individual private rights.³⁴

On the other hand, family law, as the basis for divorce in Indonesia, refers to Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019. This law stipulates that divorce may only be effected by a court decision, thereby providing legal legitimacy to the divorce status, but it does not directly regulate the employment implications for Civil Servants. Therefore, the protection of Civil Servants' rights in divorce disputes should be placed within the framework of harmonization between administrative law norms and family law norms, emphasizing the principles of justice, legal certainty, and expediency. Consequently, any administrative sanctions imposed should not be discriminatory or excessive, but rather proportional, taking into account the personal and professional context of the Civil Servant concerned, while ensuring that fundamental rights such as the right to employment, income, and fair treatment remain protected.³⁵ Accordingly, it can be concluded that although the state has the authority to regulate and enforce discipline among Civil Servants, including aspects of their private lives that impact the institution, the protection of employees' rights must remain the top priority. This must be based on legal principles that uphold human rights and substantive

³³ Farah Rahmawaty and Aziza Aziz Rahmaningsih, "Problematika Penegakan Hukum Terhadap Aparatur Sipil Negara Di Indonesia," *Siyasah Jurnal Hukum Tatanegara* 4, no. 1 (August 2024): 47–59, <https://doi.org/10.32332/siyasah.v4i1.9067>.

³⁴ Rafli Akram Kurniansyah, "Pembangkaian Media Dalam Berita Pergub Poligami ASN Pemprov DKI Jakarta (Studi Pada Media Detik.Com Dan Kompas.Com)," in *Prosiding Seminar Nasional Komunikasi*, 2025, 205–16.

³⁵ Noviyanti Dicky Eko Prasetyo, Muh. Ali Masnun, Arinto Nugroho, Denial Ikram, "Discrimination Related to Labour Age Limitation in Indonesia : A Human Rights and Comparative Law Perspective," *Suara Hukum* 6, no. 2 (2024): 228–54.

justice, thereby creating a balance between state interests and individual rights in the context of divorce disputes.

The protection of employees' rights in divorce disputes involving Civil Servants in Hungary exhibits distinct characteristics compared to the Indonesian legal system. This is primarily because the legal framework in Hungary emphasizes a clear separation between the private sphere (family law) and the public sphere (administrative and employment law).³⁶ This means that divorce, as a legal event in a civil servant's private life, does not in principle directly affect their employment status or the continuity of their employment relationship with the state, unless it has a tangible impact on the performance of their duties or constitutes a breach of professional obligations. In this context, Hungary, as a country adhering to the European continental legal system, regulates civil servant status through a relatively modern legal framework based on the principles of professionalism and the protection of employee rights. Here, the employment relationship is viewed not merely as administrative subordination, but also as a legal relationship that guarantees the protection of individual rights, including the right to employment, job security, and protection against arbitrary actions by the state as the employer.³⁷

In divorce disputes, the state does not have the authority to impose administrative sanctions solely on the grounds of divorce, provided that the civil servant continues to fulfill their professional obligations and does not violate ethical or disciplinary norms directly related to their duties. Consequently, employee rights are optimally protected without excessive interference into individual private lives. The legal basis for this can be found in Hungarian Act CXCV of 2011 on Public Service Officials, which serves as the primary framework governing the employment relationship, rights, and obligations of civil servants in Hungary. This includes the principles of non-discrimination and protection against unfair treatment. Additionally, the Hungarian Labour Code (Act I of 2012), although generally applicable to the private sector, provides fundamental principles of labor protection relevant to public servants, such as protection against unlawful termination and guarantees of fair working conditions. On the other hand,

³⁶ Judit Flóra Balatonyi, "Ways to Get and End Marriage: Relationships between Marriage and Divorce Rituals during the Coronavirus," *Religions* 15, no. 6 (June 20, 2024): 753, <https://doi.org/10.3390/rel15060753>.

³⁷ József Péter Martin and Áron Hajnal, "Trials and Errors: Limitations of Anti-Corruption and Rule-of-Law Policies in the Context of Systemic Corruption. The Case of Hungary," *Public Integrity* 1, no. 1 (October 2025): 1–16, <https://doi.org/10.1080/10999922.2025.2554409>.

aspects of divorce are regulated in the Hungarian Civil Code (Act V of 2013), specifically under family law. It governs the procedures and legal consequences of divorce, including the division of common property and parental responsibilities, but does not directly link these matters to a person's employment status. This reflects a legal approach that clearly distinguishes between private and public consequences. As a member of the European Union, Hungary is also bound by various EU legal instruments that guarantee the protection of employee rights and the principle of equality, such as the Charter of Fundamental Rights of the European Union. This charter affirms the right to fair working conditions, protection against unjustified dismissal, and the principle of non-discrimination, which prohibits differential treatment based on personal status, including marital or divorce status.³⁸ In the context of divorce disputes, the protection of civil servants' rights in Hungary tends to be stronger because the state does not directly link private life with employment sanctions. Instead, it considers only professional aspects and performance, creating a clearer balance between individual private rights and public obligations as state officials. This reflects a modern legal paradigm that places the protection of human rights as the fundamental basis for all employment relationships in the public sector.

The normative gap in protecting employees' rights regarding Civil Servants in divorce disputes, as revealed in this comparative study between Indonesia and Hungary, presents interesting dynamics, as each country has strengths and weaknesses rooted in its legal system construction. Indonesia tends to integrate norms of private life into the employment legal regime, whereas Hungary strictly separates the two, resulting in different implications for employee protection. On the positive side, the regulations in Indonesia hold preventive and moralistic value. Through the requirement for divorce permission and the possibility of disciplinary sanctions, the state seeks to maintain the integrity, ethics, and image of state civil apparatus as public representatives. This can promote social stability and personal responsibility in family life, as well as provide institutional control over potential misuse of status or behavior that could tarnish the institution. However, these strengths simultaneously become weaknesses as they create a

³⁸ Ramona Coman, "Backsliding Populist Governments in the Council: The Case of the Hungarian Fidesz," *Politics and Governance* 12, no. 1 (September 9, 2024), <https://doi.org/10.17645/pag.8161>.

normative gap between employee rights protection and interference in private rights. Divorce, which should be a personal matter, can directly impact job security, income, and even career prospects. This potentially violates the principles of proportionality, non-discrimination, and human rights protection, particularly when administrative sanctions are imposed not due to poor performance or professional misconduct, but based on aspects of personal life.

On the other hand, Hungary offers the advantages of legal certainty and stronger protection of employee rights because its legal system does not directly link divorce to employment status. Consequently, civil servants remain protected from the risk of job loss or administrative sanctions as long as they perform their duties professionally. This reflects respect for individual privacy and a clear separation between public and private domains, aligning with modern legal principles and human rights standards in Europe. However, this approach also has drawbacks. Minimal state intervention may result in weaker ethical oversight regarding personal conduct that could indirectly affect professional integrity or public trust. Consequently, there is a potential normative gap in addressing situations where personal conflicts, including divorce, impact an employee's performance or psychological stability without adequate monitoring mechanisms. Thus, the normative gap between these two systems reveals that Indonesia faces the challenge of over-regulation, which potentially reduces employee protection due to excessive interference in the private sphere. Meanwhile, Hungary faces the challenge of under-regulation regarding the ethical and moral supervision of officials. Therefore, this comparison indicates the need to formulate a more balanced regulatory model one that maintains professionalism and integrity without sacrificing fundamental individual rights. This should prioritize the principles of proportionality, justice, and a rational separation between private life and public obligations within the context of protecting Civil Servants' rights in divorce disputes.

Below is a table comparing the legal protection of employees' rights regarding Civil Servants in divorce disputes between Indonesia and Hungary.

Table 1. Comparison of Divorce Dispute Law between Indonesia and Hungary.

Aspect	Indonesia	Hungary	Equality
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Legal Approach	Integrative: blending administrative, personnel and family law	Separation-based: a clear separation between the private and public spheres	Both use a formal legal system based on statutory regulations.
The Position of Divorce on Employment Status	Divorce can have a direct impact on employment status	Divorce does not have a direct impact on employment status	Divorce is recognized as a legitimate legal event in family law.
State Intervention	High: the state can regulate and impose sanctions regarding divorce.	Low: the state does not interfere in private life unless it impacts on employment.	The state still has the authority to regulate civil servant discipline.
Administrative Sanctions	There are: warnings up to dismissal if procedures are violated.	There is no penalty just because of divorce	Sanctions are still possible if they are related to professional violations.
Divorce Procedures for Civil Servants	Permission/notification from superior is required	There is no obligation to get permission from your superior.	Divorce must go through formal legal mechanisms
Protection of Officers' Rights	Relatively weak because it can be affected by private factors	Stronger because it is not affected by life pribadi	Both acknowledge the importance of protecting the rights of officers

Legal Basis for Personnel	ASN Law, PP on Civil Servant Discipline, PP on Marriage/Divorce Permits	Act CXCIX of 2011, Labour Code	Both have special regulations regarding civil servants
Legal Basis for Divorce	Marriage Law (mandatory court decision)	Civil Code (Act V of 2013)	Divorce is regulated in family law
Principles of Human Rights and Non-Discrimination	It is acknowledged but the implementation is not yet optimal	Very strong and explicit (including the influence of European Union law)	Both recognize the principles of justice and human rights
Private vs Public Relations	Not firm (overlap/intervention)	Firmly separated	Both of them acknowledge the existence of these two realms.
System Advantages	Maintaining the morality and image of state apparatus	Guaranteeing private freedom and employee certainty	Both aim to maintain the professionalism of civil servants
System Deficiencies	Vulnerable to violating privacy rights and proportionality	Minimal ethical control over personal life	Both face challenges in balancing interests

(Source: Author's Analysis)

This comparison shows that Indonesia tends to experience over-regulation with strong intervention in the private lives of Civil Servants, whereas Hungary tends toward under-regulation in moral and ethical aspects yet is superior in protecting employee rights. Both share common ground in recognizing the importance of professionalism and legal protection, but differ fundamentally in how they balance state interests and individual rights.

CONCLUSION

The issue of protecting employees' rights regarding Civil Servants in divorce disputes reveals a normative gap stemming from the disharmony between applicable legal regimes. This gap is further evident in the weak integration between judicial decisions and administrative implementation within the civil service. The absence of a clear and uniform mechanism to enforce court rulings regarding economic rights post-divorce leads to varied practices on the ground, potentially creating legal uncertainty and injustice for the parties involved. Consequently, the protection of Civil Servants' rights in divorce cases depends not only on written regulations but also on interpretations and practical policies at the institutional level. This results in inconsistent standards of protection that may disadvantage either the Civil Servant or their former spouse. Legal reform efforts should therefore focus on harmonizing employment law and family law, as well as strengthening implementation mechanisms that guarantee both legal certainty and substantive justice. This approach is expected to create a more effective, balanced, and responsive protection system that addresses the needs of all parties after divorce.

The legal comparison between Indonesia and Hungary demonstrates that the protection of Civil Servants' rights in divorce disputes is heavily influenced by how each legal system constructs the relationship between the private and public spheres. Indonesia tends to integrate these spheres, allowing broader state intervention in the personal lives of officials. In contrast, Hungary strictly separates them, providing stronger protection for individual employee rights. In practice, the Indonesian approach excels in maintaining morality and institutional integrity through disciplinary mechanisms, yet it raises concerns regarding proportionality and potential human rights violations due to the direct link between divorce and employment sanctions. Hungary treats divorce as a private matter with no direct impact on employment status, ensuring job security and individual rights, though it may face limitations in ethical oversight. Therefore, this comparison confirms the existence of a normative gap characterized by a tendency towards over-regulation in Indonesia and under-regulation in Hungary. This highlights the need for a more balanced policy formulation that emphasizes the principles of proportionality,

justice, and respect for private rights, without neglecting institutional interests and the professionalism of state officials.

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