

Polalanta Divorce Practices of the Banggai Tribe Community in Banggai Islands District in the Perspective of Islamic Law and Positive Law

Adiyanto Mutalib¹ M Taufan B² & Hilal Malarangan³

^{1,2,3} Department of Islamic Family Law, Universitas Islam Negeri Datokarama Palu

ABSTRACT

This study discuss the practice of Polalantadivorce practice among the Banggai ethnic community from the perspectives of Islamic law and positive law in the Mansamat B Village, South Tinangkung District, Banggai Islands Regency. The aims of this study are examine factors drive the residents of Mansamat B Village, South Tinangkung District, Banggai Islands Regency to engage in Polalanta divorce practice, and to find out the perspective of Islamic and positive law in Polalanta divorce practice among the residents of the village. This study used a qualitative method with data collection techniques involving observation, in-depth interviews, and written document analysis. The data analysis techniques employed include data reduction, data presentation, data verification, and drawing conclusions. This study found that time efficiency and simplicity are significant factors motivating the Banggai ethnic community in Mansamat B Village to opt for divorce outside the Religious Court or Polalanta practice. Additionally, economic considerations also play a role, requires administrative expenses, which, despite subsidies for those less fortunate, are still perceived as significant by some. Hence, the choice to divorce outside the Religious Court is more appealing. Furthermore, a lack of legal awareness and personal issues contribute to this practice. We also found that there are distinctions between positive law and Islamic law concerning divorce. Islamic law requires only formal witnessing, whereas positive law mandates court proceedings in the Religious Court. This provision is outlined in Article 39 paragraph (1) of Law No.1 of 1974, Article 65 of Law No.3 of 2006, and Article 115 of the Compilation of Islamic Law, stipulating that divorce can only take place before a court session after the court has attempted and failed to reconcile both parties.

ARTICLE INFORMATION

Keywords:

Divorce practice,
Banggai tribe,
Islamic law,
positive law

1. Introduction

Marriage is a religious calling that should be followed by those capable of starting a family (Goodman, Dollahite, Marks, & Layton, 2013). Numerous wisdoms can be derived from marriage, including the ability to foster tranquility and a life filled with affection. Marriage is a divine ordinance (*sunnatullah*) with prescribed conditions. It directs an individual's life towards purpose, serenity, peace, and happiness. Formed through the sacred bond between a man and a woman, marriage is considered sacred due to its regulation by religious principles and subsequent confirmation by national legislation, societal customs, and other relevant norms (Dollahite, Hawkins, & Parr, 2012).

Islam teaches and encourages marriage as it positively influences the entire human community. As elucidated in Surah Ar-Rum: 21, Islamic families are established on the principles of harmony (*sakinah*), abundant love (*mawaddah*), and compassion (*rahmah*). It comprises a submissive and loyal wife, an honest and sincere husband, a loving and friendly father, a gentle and tender-hearted mother, and obedient children. This can be achieved when each family member is aware of their rights and responsibilities (Muslih, Nurdin, & Marzuki, 2020).

The happiness in marriage is the goal of every married couple. According to Marriage Law No.1 of 1974, marriage is the spiritual and physical bond between a man and a woman as husband and wife, with the aim of establishing a happy and eternal family (household) based on the belief in the Almighty (Marriage Law No.1 of 1974). Family is formed fundamentally to seek happiness in life (Sund & Smyrnios, 2005). Each family aspires to be peaceful, happy, eternal, peaceful, and to always fulfill the desires of each spouse. While aspiring to be the best partners for each other and their families, challenges may arise along the way. A complete family is the aspiration of every married couple, and achieving and realizing this desired family requires cooperation from all family members. Effective collaboration should commence from the moment the couple gets married. Communication challenges can lead to disharmony in marriage and family life, such as conflicts between spouses (Sillars, Canary, & Tafoya, 2003).

There are numerous problems in marriage and family life, ranging from minor disputes to

major crises; from minor disagreements to divorces and the collapse of household life leading to the phenomenon of a broken home. The causes can stem from errors in the initial formation of the family or during the pre-marital period or may arise while navigating the journey of married life. In essence, many factors contribute to marriages and family life not aligning with expectations. Fundamentally, marriage is intended to be everlasting until the death of one spouse. This is the desire of Islam. However, under certain circumstances where continuing the marriage would lead to harm, Islam permits the dissolution of marriage as a last resort in attempting to salvage the household. In this context, Islam acknowledges divorce as a valid solution to address irreconcilable differences within the family (Omar, 2007).

The emergence of problems in marriage is a common reason cited by married couples for divorce. This reason is often presented when both spouses or one of them feels inequality in the marriage that is difficult to overcome, prompting them to consider divorce. The reality of life proves that building a marriage and a family may be easy, but maintaining and nurturing a family to the level of happiness and prosperity desired by every married couple is very challenging (Diener, Ng, Harter, & Arora, 2010). Many newlywed couples find their marital boat shaky in the first few years, as they may not yet understand the meaning and wisdom of marriage. Divorce seems to have become a common phenomenon in today's society. Many factors contribute to divorce, including immature attitudes between spouses, economic problems, and the presence of a third party in the household. Another cause of divorce is domestic violence (Bowlus & Seitz, 2006).

Despite its nature as an act of worship, not all individuals can sustain the sanctity of their marriages. If a married couple believes it is no longer possible to maintain their marriage, Islam permits them to divorce. However, this permissibility represents a halal act that is disliked or frowned upon by Allah. Implicitly, while Islam allows divorce, it also hopes that the process will not be undertaken by the married couple. This sentiment is evident in Islamic regulations governing the divorce process. When a couple is contemplating divorce or engaged in marital disputes, Islam advises sending an arbitrator to mediate between them. Thus, Islam

encourages efforts to repair the marital relationship rather than separating the couple.

Divorce conducted outside the Religious Court is considered illegal under statutory laws. Divorce outside the Religious Court refers to the termination of marriage by a married couple without involving the Religious Court, being conducted directly and verbally between the husband and wife. Despite being regulated by statutory laws, divorces outside the Religious Court continue to occur in some communities. This is evident in the Mansamat B Village, South Tinangkung District, Banggai Islands Regency. The residents of this village generally perceive that a divorce can be carried out verbally; it is deemed valid, and the resulting consequences are known as *Polalanta* practices. After a verbal divorce (*Polalanta* practice), divorced couples proceed to divide joint property, address child custody matters, and in some cases, the individuals remarry without the involvement of the Office of Religious Affairs (KUA). This is driven by the community's belief that the religious validity of the divorce holds greater importance than its legal recognition. Consequently, the residents of Mansamat B Village, South Tinangkung Subdistrict, Banggai Islands Regency are willing to remarry, even though their divorces are not legally recognized by the state.

The formulated research questions are as follows: 1) What factors drive the residents of Mansamat B Village, South Tinangkung District, Banggai Islands Regency to engage in divorce outside the Religious Court or *Polalanta* practice? 2) What is the perspective of Islamic law and positive law regarding divorces outside the Religious Court (*Polalanta* practice) among the residents of Mansamat B Village, South Tinangkung District, Banggai Islands Regency?

2. Literature Review

2.1 Marriage Legislation

Marriage, also referred to as matrimony, is an institution that grants legitimacy for a man and a woman to live and assemble together within a family unit. The tranquility or serenity of a family is, in part, determined by the requirement that the marriage aligns with the demands of Islamic law (for Muslims). Furthermore, there are additional regulations stipulating that marriages must be officially recorded at the Office of Religious Affairs or the Civil Registry.

The registration of marriage is fundamentally a fundamental right within a family. Additionally, it serves as a protective measure for both the wife and children to secure family rights such as inheritance and others. In the context of unofficial or unregistered marriages, commonly known as "*nikah siri*" or marriages not recorded in the state administration, this situation results in women lacking legal authority in matters of child custody, inheritance rights, and other entitlements as a legitimate wife. Ultimately, this places women at a significant disadvantage.

2.2 The Concept of Marriage in Islam

Marriage is a beautiful thing for every couple aiming to be together. Marriage means to gather and mix. In Islamic terminology, it is the "*ijab* and *qabul*" (contract) that legitimizes the union between a man and a woman, expressed through words signifying marriage, in accordance with Islamic regulations. The term "*zawaj*" used in the Quran denotes a pair, signifying Allah creating humans in pairs, legalizing marriage, and prohibiting adultery. According to Sharia, marriage also signifies a contract, and the concept of physical relations is merely a metaphor (Sulaiman Rasyid, 2009).

Islam is a comprehensive and universal religion that encompasses all aspects of life. No issue in life is left unaddressed, and every problem is touched upon by Islamic values, even if seemingly small or trivial. In matters of marriage, Islam has provided guidance on various aspects, from seeking criteria for life partners to treating them as life companions officially. Islam guides how to celebrate a joyous wedding while ensuring blessings and adherence to the teachings of the Prophet Muhammad (peace be upon him). Similarly, Islam teaches how to conduct a simple yet charming wedding ceremony.

Marriage is a gracious Sunnah. Practicing it earns rewards, abstaining from it is not sinful but considered *makruh* (discouraged) as it deviates from the Sunnah of the Prophet (Sheikh Kamil Muhammad Uwaidah, 1998). The essence of marriage is the union of two individuals of different genders, a man, and a woman, who establish a bond through a covenant or contract. The purpose of marriage is to build a family characterized by tranquility, love, and mercy, aiming to have righteous offspring, which is the desire of every married person. Offspring

represent a generation for their parents. Marriage is a fundamental principle in human interaction and community life. The bond formed through marriage is not only between husband and wife and their descendants but also between two families. Marriage safeguards individuals from destruction and carnal desires (Urin Bactiar, 1998).

Everyone who enters into matrimony hopes for a family characterized by tranquility, love, and mercy. A harmonious family life can be considered a paradise on Earth, benefiting both the individual and their family. Given the increasing prevalence of divorce cases in contemporary society, building a strong foundation begins with careful partner selection. Islam encourages its followers to exercise caution when seeking a life partner, as the future of marital life is closely tied to the choice of spouse. Therefore, Muslims should pay attention to the criteria for selecting a good life partner.

2.3 The Roles of Husband and Wife in the Household

Issues related to family are intriguing subjects for study and development as family matters frequently arise within society. Additionally, when individuals are unable to resolve their issues independently, trusted religious leaders often intervene to address these problems. This intervention is inherently linked to sociological and legal aspects. The legal aspect of the relationship between husband and wife is crucial, considering the existing rules in the country that must be adhered to, given the coercive nature of law. Therefore, examining the husband-wife relationship from both sociological and legal perspectives is important, as these aspects are interconnected.

The relationship between husband and wife in a family can be categorized into four types: (1) ownership relationship, where the wife is considered the possession of the husband, both financially and emotionally; (2) complementary relationship, where the role of the wife complements the activities of the husband; (3) hierarchical relationship, where the husband positions himself as the head of the household, while the wife sees herself as subordinate; (4) partnership relationship, where the husband plays both public and domestic roles. In this context, although the husband primarily serves as the breadwinner, he is capable of participating in household matters

typically handled by the wife. Each type of relationship carries its own consequences for family life (Wahyudi Ibnu Yusuf).

The hierarchical relationship pattern places the husband as the leader and the wife as the subordinate. This position operates in balance, as the roles of leader and subordinate are managed through modern organizational structures within the family. The position of a leader does not imply blind respect; rather, in the hierarchical relationship between husband and wife, the leader's position depends significantly on the support of the subordinate. In real life, the husband's position in the workplace is greatly influenced by support from the wife at home. If the wife supports her husband's career advancement, he succeeds as a leader. Conversely, if the wife does not support him, his work may be disrupted. In such situations, the wife supports the husband's activities, and the husband acts justly towards the subordinate. Within the home, the wife must provide service to her husband as a subordinate, while the husband gives attention and affection so that the subordinate remains loyal in providing service to the leader. This hierarchical relationship between husband and wife is not rigid, authoritarian, or one-sided but rather harmonious, democratic, and balanced. Thus, the success of the husband is not solely his own but also that of his wife. Therefore, if husbands are honest with themselves, they will realize that the concrete tasks of a wife are more challenging than those of a husband. The willingness of a wife to be a homemaker and her sincerity in considering her husband as the head of the household are the highest forms of respect that a wife can give to her husband. This division of roles is a natural arrangement as dictated by nature.

2.4 Divorce

Divorce is the termination of marriage through a court decision or the demand of one party in the marriage (Subekti, 1989). Marriage, as the spiritual and physical bond between a man and a woman as husband and wife, with the aim of forming a happy, prosperous, and eternal family based on the Almighty God, can be terminated due to death, divorce, or a court decision, as stipulated in Article 38 of the Marriage Law (Sударsono, 1991).

Allah's guidance is: *for women whom you fear may rebel*, meaning before they engage in

misconduct (*nusyuz*) by violating the rights granted to you by Allah, o husbands, advise them appropriately and with words that touch the heart, avoiding irritation. If advice does not end their rebellion, then leave them, not by leaving the house but by withdrawing from the marital bed, turning away from them. If necessary, avoid speaking to them for up to three consecutive days to express your displeasure and your lack of need for them. If their behavior persists, and even if this does not work, then, in order to preserve the continuation of your household, discipline (hit) them—but with non-harmful blows that demonstrate firmness without causing harm.

In any marital union, misunderstandings are inevitable. If these misunderstandings cannot be resolved by the husband and wife themselves and threaten the harmony and continuity of marital life, possibly leading to divorce, this verse declares “if a woman fears”—by suspecting signs of *nusyuz*, arrogance leading to the degradation of her rights or even just a negligent attitude of her husband, causing her to feel unappreciated—that the situation might lead to divorce, then it is permissible for both parties to seek genuine reconciliation by sacrificing (compromising) some of their rights for the sake of their partner, even though selfishness is inherent in human nature. Although this selfishness is the natural disposition of humans whose souls are not adorned with religious values (the general nature of humans, both men and women) (Hasan Mazhahiri, 2001).

2.5 The Social Impact of Divorce

In unhealthy households filled with problems and frequent arguments, three categories of children may emerge: 1) **Rebellious Children:** These are children who become problematic outside the home. They may exhibit anger, frustration, and a willingness to express these emotions. Often, these children have witnessed their parents' frequent conflicts. The disruptive behavior may be a response to the tension and a form of rebellion against the unfavorable environment. 2) **Children as Victims:** Children in families that go through divorce can become quite unruly. They may experience anger due to the loss of a peaceful and warm home, becoming resentful towards their parents for providing them with such an unstable living environment. The absence of a father's authoritative figure, when the child stays with

the mother, can contribute to feelings of loss and frustration. 3) **Sad, Withdrawn, and Depressed Children:** Some children may internalize their emotions, becoming sad, withdrawn, and even depressed. They may lose their social identity (Smet B, 1994), and the divorce may lead to a loss of their social standing. As a result, children often resort to lying, claiming that their parents are not divorced, or avoiding questions about their parents' divorce. The negative impacts of divorce on children can include anger, guilt, apathy, withdrawal, or a facade of indifference. Children may also develop a sense of guilt, blaming themselves for their parents' divorce. Other potential consequences include apathy, withdrawal, or a seemingly unaffected attitude toward their parents' divorce. Parents should carefully observe whether the child's reaction is normal or a mere pretense.

Furthermore, children may become apathetic, distant, or, conversely, may appear unaffected by their parents' divorce. Parents need to be cautious in assessing whether the child's response is genuine maturity or a facade. An additional impact is that the child may become insecure and reluctant to establish intimacy with the opposite gender in the future. This apprehension could affect their ability to commit to a relationship later in life.

The lives of adolescents are already filled with various issues specific to their age group, such as adapting to peer relationships, navigating issues related to sex or drugs, and other small yet significant concerns like acne, clothing choices, or disliked teachers. Adolescents may find it challenging to manage their lives independently, and they certainly do not want to be disturbed by their parents' divorce, which could be disruptive to their lives. They no longer have the space or time to cope with the disruption caused by their parents' divorce in their lives.

Psychologically, adolescents are different from children. Although they are still dependent on their parents, they now have a strong inner voice that tells them to become independent and start building their own lives. Continuing dependence on parents is no longer suitable for their sense of security and well-being.

A solution to the significant psychological impact of divorce on children should involve parents reconsidering the decision to divorce. They must choose between following their egos to get divorced or preserving the psychological

well-being of their children, which could be adversely affected by divorce. If divorce is the inevitable path, parents should take on a more active role, closely monitoring and guiding their children to avoid activities that could harm the children's future. Encourage positive activities to develop the child's potential and provide guidance as they grow older to prevent them from experiencing divorce in their own lives, offering positive experiences.

3. Methodology

This study uses qualitative methods. In qualitative research, the use of theory is only a guide so that the research focus is in accordance with the facts in the field (Nurdin & Pettalongi, 2022; Nurdin, Stockdale, & Scheepers, 2016). The data was collected through direct observation, in-depth interviews, and written document analysis at the research site (Rusli, Hasyim, & Nurdin, 2021; Rusli & Nurdin, 2022). The research is conducted in the village of Mansamat B, South Tinangkung District, Banggai Islands Regency to understand practice of Polalantadivorce practice among the Banggai ethnic community from the perspectives of Islamic law and positive law.

The interviews involved eight local figures, local citizens, and three local government staff within the regency. We also interview five figures from the Department of Religious Affairs. The interviews were recorded and transcribed. The results of the transcripts were consulted with the participants to obtain their consent (Nurdin, Scheepers, & Stockdale, 2022). The data analysis technique in this research used a deductive thinking technique, which can be interpreted as a research procedure that produces deductive data from the interviews and field notes. Data analysis was conducted using thematic analysis from Strauss and Corbin (1998). The analysis started with open, axial, and selective coding. The final result of the data analysis is themes found from the data.

4. Results and Discussion

4.1 Factors Leading to Divorce Practices Outside the Religious Court (Polalanta)

Fundamentally, the regulations governing divorce outlined in Law No.1 of 1974 concerning marriage, such as Government Regulation No.9 of 1975, are perceived significantly different with the legal awareness within the Muslim

community, particularly regarding divorces in Mansamat B Village. This led to the continuation of divorce practices outside the Religious Court or Polalanta. Based on interviews with individuals involved in *Polalanta*, Mrs. NI revealed that she divorced almost two years ago. It was attended by both parents, her husband's parents, as well as the grandfather and uncle of her husband as witnesses. Before her husband uttered the talak declaration, witnesses from both sides provided advice, urging them to reconsider the decision for the collective well-being.

As Mrs. NI stated: "I divorced two years ago. My grandfather guided my husband in declaring the talak directly in front of me and the witnesses, which were my parents and my husband's parents, as we were originally married by arrangement. Before the talak declaration, my parents repeatedly advised me to reconsider, but our mutual agreement for the common good, we decided to proceed with the divorce."

Similar to Mrs. NI's statement, Mrs. SP stated that she had divorced outside the Religious Court almost seven years ago. The divorce was conducted within the family, attended by their married children and village elders, who acted as trusted witnesses. As per Mrs. SP's testimony: "I separated from my husband amicably. The village elders led the divorce process, and subsequently, my husband pronounced the talak directly."

Meanwhile, Mrs. MS admitted to divorcing outside the Religious Court almost three years ago. The divorce was conducted within the family, attended by their children, in-laws, and some neighbors. In line with Mrs. MS's narrative: "I divorced amicably at home. My husband orally pronounced the talak in front of me and the witnesses. Regarding the mediation process, my son had advised me, but my decision was firm." Mr. RT carried out Polalanta divorce practice almost three years ago with the presence of their children, sons-in-law, and some nearby neighbors. This can be seen from the statement of the RT Head: I separated from my wife peacefully, and I declared the talak directly.

In the course of interviews with relevant parties, it was found that some individuals in Mansamat B Village, South Tinangkung District, have opted for divorces outside the Religious Court or Polalanta. These divorces are conducted amicably within the family, attended by the husband's family (parents) and the wife's family (parents), as well as some designated

individuals as witnesses. Typically, the divorcing parties bring their respective trusted witnesses to witness the divorce proceedings. Once everyone is gathered, a family discussion is convened as a final attempt before deciding to take the path of divorce. Each family side, both from the husband and wife, may make efforts to reconcile and provide advice to reconsider the decision to divorce. Advice is often given to ensure that both parties (husband and wife) maintain good relations after the divorce, avoiding hostility and resentment from those dissatisfied with the divorce. Following these discussions and once the decision to divorce is firm, the husband pronounces the talak declaration in front of the wife, family members, and witnesses, formalizing the divorce.

While talak (divorce) is a permissible act in Islam, it is considered undesirable, and as a last resort for household matters, it should be approached cautiously. The permissibility of talak is based on the understanding that in certain situations, the dynamics of family life may lead to circumstances contrary to the intended purpose of establishing a family. In such cases, if continued, the household may cause harm to both parties and those around them. To prevent further harm, it is considered better to pursue divorce in the form of talak. Thus, talak in Islam is only permitted for the sake of achieving a beneficial purpose (*maslahat*) (Carroll, 2008).

In Mansamat B Village, there exists a practice of divorces conducted outside the Religious Court called Polalanta, which is driven by several factors. These factors are revealed through interviews with divorcees in Mansamat B Village. Mrs. NI, for instance, explained that she opted for Polalanta approximately two years ago. She stated that the process of divorce outside the Religious Court was quicker, less convoluted, and did not need much time. Her decision was influenced by the desire to conclude the divorce swiftly before her husband returned to work abroad. Although she acknowledged the option of divorcing through the Religious Court, her husband's preference for a familial divorce led to the decision to proceed with the divorce at home.

In contrast, Mrs. SP chose to perform Polalanta almost seven years ago. Financial considerations, with the expensive divorce proceedings in the Religious Court, influenced

her decision. She highlighted the difficulties in meeting daily needs and emphasized that her decision to divorce was driven by economic constraints. Similarly, Mrs. MS, who divorced outside the Religious Court about three years ago, expressed a sense of weariness and a lack of desire for a publicized divorce. She narrated that her divorce became a topic of public discussion, contributing to her decision to conduct the divorce outside formal legal procedures.

When asked why he chose to conduct divorces at home rather than in court, Mr. RT stated that he divorced outside the Religious Court approximately three years ago. He explained that the prevalent norm among Muslims prioritizes Islamic law in daily life, leading him to pursue a divorce outside formal legal proceedings.

Based on the interviews with individuals involved in Polalanta in Mansamat B Village, the following factors contribute to the community's decision:

1. Time Factor

The extended and convoluted duration of court proceedings triggers the preference for *Polalanta* practices among the people of Banggai in Mansamat B Village. As explained by Mrs. NI that she intentionally chose to divorce outside the formal court setting due to the perceived faster and straightforward process. According to her, based on the knowledge gained from neighbors who went through divorce proceedings in the Religious Court or Polalanta, the formal process took almost six months from filing the lawsuit to the final judgment. After expressing the desire to divorce, her husband agreed, opting for a familial divorce without prolonging the process.

2. Economic Factor

Another influencing factor in the community's decision to conduct Polalanta is the economic factor. Given that divorce proceedings in the Religious Court involve administrative costs, which, according to them, are not negligible despite subsidies for those less fortunate, individuals opt for divorces outside the formal court setting. Mrs. SP highlighted financial concerns, stating her objection to the expensive divorce proceedings in the Religious Court while struggling to meet daily needs and frequently accumulating debts.

3. Lack of Legal Awareness

Although divorce regulations are stipulated in Law No. 1 of 1974 and other implementing regulations such as Government Regulation No. 9 of 1975, some members of the Banggai community in Mansamat B Village perceive a significant difference between these regulations and the legal awareness within the Muslim community. This factor leads them to choose Polalanta. Despite having knowledge of the proper divorce process in the Religious Court for Muslims and the Civil Court for non-Muslims, they opt not to comply with the consideration that Islamic law should be prioritized. This aligns with the statement from Mr. RT, emphasizing the preference for Islamic law in daily life as a common practice among Muslims. On the other hand, according to Mrs. NI, she acknowledges that divorce should ideally take place in the Religious Court as it would be recognized as valid according to both religious and state laws. However, her choice to divorce outside the Religious Court is only considered legal in the eyes of religious law. This decision aligns with Mr. RT's assertion that, as a common practice among Muslims, they prioritize Islamic law in their daily lives.

4. Personal Issues

Divorce leads to the termination of marital ties, and although it is permissible, it remains a detested matter in Islam. Hence, those opting for divorce outside the formal court setting consider it a personal issue that should be kept private. Mrs. MS expressed that she chose to divorce outside the Religious Court or Polalanta because she felt embarrassed in front of her neighbors. Considering her marriage age and the fact that her children are grown and married with grandchildren, she views divorce as a personal matter that should not be widely discussed.

4.2 Legal Perspective of Islamic Law and Positive Law Regarding Polalanta Divorce Practice

For Muslims, marriage is not only considered sacred but also a form of worship. It preserves human life, ensures social stability, and establishes dignified relationships between men and women. Marriage holds noble and sublime purposes, as it is a sanctuary for love, affection,

and intimate connections between spouses. With the progress of administrative matters in *muamalah* (worldly affairs) in Indonesia, the implementation of marriage and divorce registration by the government becomes essential. This serves as a preventive measure for individuals involved in or affected by marriages.

In the context of marriage or divorce, proper registration is crucial as authentic proof to prevent harm. In Islamic law, divorce occurs when a husband intentionally or unintentionally utters words that constitute *talak*, leading to the declaration of *talak* to his wife. Many people continue to undergo divorces outside the Religious Court proceedings, which do not comply with the provisions of the Marriage Law No. 1 of 1974. Such divorces are considered illegal, indicating that the marriage process and subsequent divorce proceedings conducted outside the Religious Court implicitly suggest a prohibition against entering into new marriages with different partners. The invalid status indirectly implies polyandry for wives who enter into new marriages post-divorce. This is due to the existing legal bond with their previous husband (Misran Muza Agustina, 2009).

In Islamic law, the function of recording marriages in civil registration is to provide individuals with authentic proof that they have indeed entered into marriage with someone. Most Indonesian Muslim communities believe that once a marriage fulfills its pillars and requirements, it is considered valid according to Islamic law. The majority of scholars (*fuqaha*) argue that *talak* can be valid without courtroom witnesses, meaning it is permissible for a husband to declare *talak* to his wife without the presence and testimony of two witnesses. The Shia Imamiyah scholars state that a valid *talak* or divorce is one that has witnesses. In the book of Kifayatul Akhyar, the conditions for valid *talak* include the husband being an adult, of sound mind, not insane, not asleep, and not coerced. It does not mention that *talak* must be declared in a court, as is also the case in other classical Islamic texts.

Human beings, as social creatures, cannot thrive in isolation. Therefore, every individual needs to live in a community, with the smallest unit of society being the family. To form a family, humans materialize this through marriage. A man and a woman decide to marry based on their mutual love and commitment to live together in matrimony, with happiness and

unity, until death separates them. The sacred vows of marriage extend beyond the spouses to include their respective families, but most importantly, they constitute a sacred pledge to Allah SWT. Marriage does not merely unite a man and a woman; it binds them in a sacred covenant in the name of Allah, signifying the intention of the couple to build a household filled with tranquility, peace, love, and affection (Beni Ahmad Saebani, 2007).

Essentially, marriage is intended to be eternal, lasting until the death of one of the spouses, as desired by Islamic teachings. However, certain circumstances may warrant the dissolution of marriage. In such cases, Islam permits the termination of marriage as a last resort in efforts to preserve the marriage. Breaking the marriage ties is decided for the well-being of the individuals involved and avoid harm (Amir Syarifuddin Sudirman).

Continuous conflicts between spouses may necessitate a decision to end their marriage. Living in a household filled with disputes and disharmony can have adverse effects, especially on their children. Eventually, divorce is considered the best solution to escape a deteriorating situation. Divorce can occur due to various factors, one of which is persistent conflicts between the spouses, where neither the husband nor the wife is willing to compromise (Istria Efendi, 2004). In urgent situations, divorce is permissible, as continuing the marriage may only lead to further suffering for both parties. If forced, a strained marriage can result in an unhealthy relationship within the family.

5. Conclusion

The factors that underlie the community of the Banggai tribe in Mansamat B. choosing to divorce outside the Religious Court/Polalanta divorce practice are primarily time-related. The expedited and uncomplicated nature of this process is what prompts the people of the Banggai tribe in Mansamat B. to opt for divorce outside the Religious Court/Polalanta practice. Additionally, economic considerations is also one of the factors. Considering that divorce in the Religious Court requires administrative expenses, which, despite subsidies for those less fortunate, are still perceived as significant by some. Hence, the choice to divorce outside the Religious Court is more appealing. Furthermore, a lack of legal awareness combined with personal

issues contributes to the prevalence of divorce cases.

The divergence between Islamic law and positive law, especially regarding divorce procedures, is notable. In Islamic law, there is an opinion that divorce merely requires attestation, whereas positive law mandates divorce proceedings in the Religious Court. This regulation is articulated in Article 39 paragraph (1) of Law No. 1 of 1974, Article 65 of Law No. 3 of 2006, and Article 115 of the Compilation of Islamic Law. These stipulations dictate that divorce can only be conducted in a court session after attempts at reconciliation by the concerned court prove unsuccessful. Referring to the legal position of divorce in Indonesia, divorcing outside the Religious Court/Polalanta practice is viewed as an act of disobedience or defiance against the law. This disobedience implies defiance not only against the government or *ulil amri* (authorities) but also against Allah SWT, as it contradicts the words of Allah in Surah An-Nisa verse 59. Therefore, it is deemed necessary to abandon such practices. Even though divorcing outside the Religious Court/Polalanta practice cannot be explicitly labeled as *haram*, it can still be considered *makruh* (discouraged) in Islamic law due to the numerous potential harms it may cause. Thus, the divorce process undertaken by the community of the Banggai tribe in Mansamat B., within the context of Islamic law, can be declared incongruent with Islamic legal provisions due to its conflicting elements with other Quranic verses.

REFERENCES

- Bowlus, A. J., & Seitz, S. (2006). DOMESTIC VIOLENCE, EMPLOYMENT, AND DIVORCE*. *International Economic Review*, 47(4), 1113-1149. doi:<https://doi.org/10.1111/j.1468-2354.2006.00408.x>
- Carroll, L. (2008). Talaq-i-Tafwid and Stipulations in a Muslim Marriage Contract: Important Means of Protecting the Position of the South Asian Muslim Wife. *Modern Asian Studies*, 16(2), 277-309. doi:10.1017/S0026749X00007460
- Diener, E., Ng, W., Harter, J., & Arora, R. (2010). Wealth and happiness across the world: Material prosperity predicts life evaluation, whereas psychosocial prosperity predicts positive feeling. e-ISSN: 2715-4580 p-ISSN: 2715-8268

- Journal of Personality and Social Psychology*, 99(1), 52-61. doi:10.1037/a0018066
- Dollahite, D. C., Hawkins, A. J., & Parr, M. R. (2012). "Something More": The Meanings of Marriage for Religious Couples in America. *Marriage & Family Review*, 48(4), 339-362. doi:10.1080/01494929.2012.674480
- Goodman, M. A., Dollahite, D. C., Marks, L. D., & Layton, E. (2013). Religious Faith and Transformational Processes in Marriage. *Family Relations*, 62(5), 808-823. doi:<https://doi.org/10.1111/fare.12038>
- Muslih, I., Nurdin, N., & Marzuki, M. (2020). Effectiveness of Marriage Services Through Information System Management (SIMKAH) at Palu City Religious Court *INTERNATIONAL JOURNAL OF CONTEMPORARY ISLAMIC LAW AND SOCIETY*, 2(1), 20-36.
- Nurdin, N., & Pettalongi, S. S. (2022). Menggunakan Paradigma Studi Kasus Kualitatif Interpretatif Online dan Offline Untuk Memahami Efektivitas Penerapan E-Procurement. *Coopetition: Jurnal Ilmiah Manajemen*, 13(2), 155-168.
- Nurdin, N., Scheepers, H., & Stockdale, R. (2022). A social system for sustainable local e-government. *Journal of Systems and Information Technology*, 24(1), 1-31. doi:10.1108/JSIT-10-2019-0214
- Nurdin, N., Stockdale, R., & Scheepers, H. (2016). Influence of Organizational Factors in the Sustainability of E-Government: A Case Study of Local E-Government in Indonesia. In I. S. Sodhi (Ed.), *Trends, Prospects, and Challenges in Asian E-Governance* (pp. 281-323). Hershey, PA, USA: IGI Global.
- Omar, S. (2007). Dissolution of Marriage: Practices, Laws and Islamic Teachings. *Policy Perspectives*, 4(1), 91-117.
- Rusli, R., Hasyim, M. S., & Nurdin, N. (2021). A New Islamic Knowledge Production And Fatwa Rulings: How Indonesia's Young Muslim Scholars Interact With Online Sources. *Journal of Indonesian Islam*, 14(2), 499-518.
- Rusli, R., & Nurdin, N. (2022). Understanding Indonesia millennia Ulama online knowledge acquisition and use in daily fatwa making habits. *Education and Information Technologies*, 27(3), 4117-4140. doi:10.1007/s10639-021-10779-7
- Sillars, A., Canary, D. J., & Tafoya, M. (2003). *Communication, Conflict, And The Quality Of Family Relationships* London: Routledge.
- Strauss, A., & Corbin, J. M. (1998). *Basics of Qualitative Research: Grounded Theory Procedures and Techniques* (2 ed.). California, USA: Sage Publications, Inc.
- Sund, L.-G., & Smyrniotis, K. X. (2005). Striving for Happiness and Its Impact on Family Stability: An Exploration of the Aristotelian Conception of Happiness. *Family Business Review*, 18(2), 155-170. doi:10.1111/j.1741-6248.2005.00038.x