

LEGAL ALIGNMENTS FOR POST-DIVORCE *MUALLAF* WOMEN IN THE MULTICULTURAL SOCIETY OF MANADO CITY

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Abstract: This study analyzed the legal alignment for post-divorce *muallaf* women through the decision of the Religious Courts and the implementation in Manado City. This investigation was necessary due to the high rates of male and female *muallaf* marriages in this city. The rights of *muallaf* women have been neglected after divorce, specifically those relating to livelihoods and children. However, legal alignment is a reality, providing there is reinforcement from the court as stipulated in the 1945 Constitution article 27 paragraph 1. A Qualitative method with a normative-sociological approach was used in analyzing the data. The primary data sources were informants, comprising people who changed religion because of marriage, as well as government and clergy officials. In addition, library materials were used after seriously studying the literature such as journal articles, books, and other supporting documents that relevant to this research. The findings showed that legal protection for the rights of post-divorce *muallaf* women was not solely the judge's decision on paper but the responsibility of men that was to be fulfilled after the divorce. Although these rights were not adequately realized, it is concluded the tendency for *muallaf* women to obtain their rights with good cooperation from all litigants, including the law enforcers. This study suggested that the form of legal alignment for women based on the law is not only on paper but also an evaluation is needed from law enforcers.

Keywords: legal alignment; divorce; *muallaf* women; multicultural society

Abstrak: Studi ini menganalisis keberpihakan hukum bagi perempuan *muallaf* pasca bercerai lewat putusan Pengadilan Agama dan sejauhmana pengimplementasiannya bagi perempuan *muallaf* pasca bercerai di Kota Manado. Penyelidikan ini diperlukan karena tingginya angka perkawinan *muallaf* laki-laki dan perempuan di kota ini. Hak-hak perempuan *muallaf*, khususnya yang berkaitan dengan nafkah, anak, dan setelah perceraian, terabaikan. Padahal keberpihakan hukum menjadi kenyataan, asalkan ada penguatan dari pengadilan sebagaimana diatur dalam UUD 1945 pasal 27 ayat 1. Metode kualitatif dengan pendekatan normatif-sosiologi digunakan dalam menganalisis data. Sumber data primer adalah informan, yakni masyarakat yang pindah agama karena perkawinan, pejabat pemerintah, dan agamawan. Selain itu, digunakan bahan pustaka setelah mempelajari secara serius literatur-literatur seperti artikel jurnal, buku, dan dokumen pendukung lainnya, yang relevan dengan penelitian ini. Temuan penelitian menunjukkan bahwa perlindungan hukum terhadap hak-hak perempuan *muallaf* pasca cerai bukan semata-mata keputusan hakim di atas kertas melainkan tanggung jawab laki-laki yang harus dipenuhi setelah perceraian. Meskipun hak-hak tersebut tidak diwujudkan secara memadai, namun disimpulkan adanya kecenderungan perempuan *muallaf* untuk mendapatkan hak-haknya dengan kerjasama yang baik dari semua pihak yang berperkara, termasuk para penegak hukum. Studi ini menyarankan bahwa bentuk keberpihakan hukum bagi perempuan berdasarkan hukum tidak hanya di atas kertas sehingga diperlukan evaluasi dari penegak hukum.

Kata kunci: keberpihakan hukum; perceraian; perempuan *muallaf*; masyarakat multikultural

Introduction

Marriage based on Sharia can strengthen the relationship between the husband and wife,¹ because of the meeting of men and women is a process of Allah SWT's noble secret to regulating domestic life and offspring.² However, a married couple may encounter conflicts during their journey, which may lead to separation.³ Differences of opinion in a family have become natural due to some problems. The stigma between women and men can also be largely different, such as the right of a husband to divorce his wife out of court and in any situation in some communities.⁴

Men and women are humans destined to be different in their creation. Gender is natural, inborn, and ordinarily cannot be changed, though judgments in society give conformity to its culture. As a result, women's rights have recently become a topic of local, national, and global discussions.⁵ These debates include women's rights versus reality, including the lag in the fields of education,⁶

economics,⁷ law,⁸ socio-culture,⁹ and politics.¹⁰ The focus stems from the inequality between women and men in various areas of life. For example, women are not free to determine their life partners but dependent their family's will. Their access to education is also suspended due to the assumption that attending high school is useless because the ultimate responsibility as women is gracious the household.

Women experience problems and limitations in various aspects. These include low education,¹¹ high maternal mortality,¹² low wages,¹³ the conversion of female labor into human trafficking.¹⁴ Also, members

¹ Suhairi Suhairi, "The Impact of the Sesan Customary Practice on the Traditional Marriage of the Lampung Pepadun Society in Instilling Sharia Social Values," *Journal of Social Studies Education Research*, vol. 12, no. 3 (September 24, 2021), pp. 225–47, <https://jsser.org/index.php/jsser/article/view/334>.

² Syarifah Gustiawati and Novia Lestari, "Aktualisasi Konsep Kafah Dalam Membangun Keharmonisan Rumah Tangga," *Mizan: Journal of Islamic Law*, vol. 4, no. 1 (2018), pp. 33–86, <https://doi.org/https://doi.org/10.32507/mizan.v4i1.174>.

³ Muhammad Roy Purwanto et al., "Divorce and And Its Effects on The Social and Religious Life in Malang Indonesia," *Talent Development & Excellence*, vol. 12, no. 2 (2020), pp. 1987–94.; Lucy Pujasari Supratman, "A Qualitative Study of Teenagers Viewpoint in Dealing with Parents' Divorce in Indonesia," *Journal of Divorce & Remarriage*, vol. 61, no. 4 (May 18, 2020), pp. 287–99, <https://doi.org/10.1080/10502556.2019.1699374>; Lyn Parker, Irma Riyani, and Brooke Nolan, "The Stigmatisation of Widows and Divorcees (Janda) in Indonesia, and the Possibilities for Agency," *Indonesia and the Malay World*, vol. 44, no. 128 (January 2, 2016), pp. 27–46, <https://doi.org/10.1080/13639811.2016.1111677>.

⁴ Nadia Sonneveld, "Khul' Divorce in Egypt: How Family Courts Are Providing a 'Dialogue' between Husband and Wife," *Anthropology of the Middle East*, vol. 5, no. 2 (January 1, 2010), <https://doi.org/10.3167/ame.2010.050207>.

⁵ Marsha A. Freeman, "The Human Rights of Women in the Family: Issues and Recommendations for Implementation of the Women's Convention," in *Women's Rights Human Rights* (Routledge, 2018), pp. 149–64, <https://doi.org/10.4324/9781315656571-18>.

⁶ Kazi Md. Mukitil Islam and M. Niaz Asadullah, "Gender Stereotypes and Education: A Comparative Content Analysis of Malaysian, Indonesian, Pakistani and Bangladeshi School Textbooks," ed. Aurora Garcia-Gallego, *PLOS ONE*, vol. 13, no. 1 (January 19, 2018). p. e0190807, <https://doi.org/10.1371/journal.pone.0190807>.

⁷ Rebecca Pearse and Raewyn Connell, "Gender Norms and the Economy: Insights from Social Research," *Feminist Economics*, vol. 22, no. 1 (January 2, 2016), pp. 30–53, <https://doi.org/10.1080/13545701.2015.1078485>.

⁸ Joyce S. Sterling and Nancy Reichman, "Overlooked and Undervalued: Women in Private Law Practice," *Annual Review of Law and Social Science*, vol. 12, no. 1 (October 27, 2016), pp. 373–93, <https://doi.org/10.1146/annurev-lawsocsci-120814-121705>; Andrea J. Ritchie and Delores Jones-Brown, "Policing Race, Gender, and Sex: A Review of Law Enforcement Policies," *Women & Criminal Justice*, vol. 27, no. 1 (January 26, 2017), pp. 21–50, <https://doi.org/10.1080/08974454.2016.1259599>.

⁹ SI Otinche and UM Nnabuenyi, "Culture and the Right of the Rural Woman in Nigeria: An Overview," *International Journal of Basic, Applied and Innovative Research*, vol. 4, no. 2 (2016), pp. 30–43, <https://www.ajol.info/index.php/ijbair/article/view/133167>.

¹⁰ Siri Terjesen, Ruth V. Aguilera, and Ruth Lorenz, "Legislating a Woman's Seat on the Board: Institutional Factors Driving Gender Quotas for Boards of Directors," *Journal of Business Ethics*, vol. 128, no. 2 (February 25, 2014), pp. 233–51, <https://doi.org/10.1007/S10551-014-2083-1>; Zohal Hessami and Mariana Lopes da Fonseca, "Female Political Representation and Substantive Effects on Policies: A Literature Review," *European Journal of Political Economy*, no. 63 (June 2020), p. 101896, <https://doi.org/10.1016/j.ejpoleco.2020.101896>.

¹¹ Selma H. Bouthoorn et al., "Low-Educated Women Have an Increased Risk of Gestational Diabetes Mellitus: The Generation R Study," *Acta Diabetologica*, vol. 52, no. 3 (October 26, 2014), pp. 445–52, <https://doi.org/10.1007/S00592-014-0668-X>.

¹² Tadele Girum and Abebaw Wasie, "Correlates of Maternal Mortality in Developing Countries: An Ecological Study in 82 Countries," *Maternal Health, Neonatology and Perinatology*, vol. 3, no. 1 (November 7, 2017), pp. 1–6, <https://doi.org/10.1186/S40748-017-0059-8>; JMB Suellen Miller, "The True Cost of Maternal Death: Individual Tragedy Impacts Family, Community and Nations," *BMC Reproduct Health*, vol. 12, no. 1 (June 17, 2015), p. 56, <https://doi.org/10.1186/s12978-015-0046-3>.

¹³ Massy Mutumba, Eliud Wekesa, and Rob Stephenson, "Community Influences on Modern Contraceptive Use among Young Women in Low and Middle-Income Countries: A Cross-Sectional Multi-Country Analysis," *BMC Public Health*, vol. 18, no. 1 (April 2, 2018), pp. 1–9, <https://doi.org/10.1186/S12889-018-5331-Y>.

¹⁴ PhuonThao D. Le, "Reconstructing a Sense of Self," *Qualitative Health Research*, vol. 27, no. 4 (March 9, 2017), pp.

of this gender suffer less balanced affirmative political actions at the legislative and executive levels,¹⁵ violence,¹⁶ and inadequate legal support.¹⁷ These issues are not beneficial because of the ideology that differentiate between women and men¹⁸ based on gender as well as its role. The subordinated, inferior, and oppressed treatment ultimately leads to the construction of gender-biased social and religious beliefs. The emergence of a patriarchal ideology¹⁹ also provides a separate reinforcement to the living conditions of women.

In this modern era, discussions related to women's problems are ceaseless and always interesting to study. For instance, the phenomenon women who convert to Islam (*muallaf*) certainly has a huge impact on their families and future. The activities of women are not limited to the domestic arena, as they have explored monumental roles in the public sphere, along with achieving important

positions. At the entrepreneurial level, they have revealed their capabilities as company and country leaders and assistants to presidents in realizing state activities at home and abroad. Although these phenomena signify that they are no longer considered weak, men's domination encumbers and worsens women's lives and activities, which are often internally and externally unbalanced.

The position of women in law is inseparable from their personally built movements, as they have succeeded in providing new ideas for civilization. In Indonesia, the women's movement began with a concept initiated by R.A Kartini, emphasizing that their position has become central, particularly in this modern era. This signified that they are no longer considered objects owned by their husbands but have developed to meet personal and family needs.²⁰ The phenomenon also highlighted the inferiority and marginalization of women, including in the field of science or law. However, the conversion of one's beliefs and decision to *muallaf* (converts) requires adaptation to the socio-religious system, particularly in worship. Attending to family life is equally difficult, so that patience is needed to guide children to achieve success in this world and the hereafter.

Marriage is a (*sunnatullah*) that becomes worship and applies to all creatures of Allah SWT, including humans, animals, and plants. It is a method designate by Allah SWT to ensure humans reproduce and preserve their lives, following the readiness of each partner to play a positive role in realizing the purpose of marriage. The conversion of one or both spouses to *muallaf* demands an improvement in learning to facilitate an understanding of worship, transactions (*muamalah*), etc. Therefore, Allah SWT did not make humans such other creatures, who live freely according to their instincts and commit anarchy without regard for the law. Allah SWT makes laws based on dignity to ensure the relationship between men and women is regulated in an honorable manner.²¹ According to Ghazali, they are bound

509–19, <https://doi.org/10.1177/1049732316646157>; Jeanann Sousou Coppola and Renée Cantwell, "Health Professional Role in Identifying and Assessing Victims of Human Labor Trafficking," *The Journal for Nurse Practitioners*, vol. 12, no. 5 (May 2016), pp. 193–200, <https://doi.org/10.1016/j.nurpra.2016.01.004>.

¹⁵ Jarna Kalita, "Women Empowerment through Participation in Politics," *The Clarion- International Multidisciplinary Journal*, vol. 7, no. 1 (2018), p. 119, <https://doi.org/10.5958/2277-937X.2018.00018.7>; Marciana Nafula Were, "Kenyan Women in Androcentric Political Culture: From Julia Auma Ojiambo to Affirmative Action," *Social Dynamics*, vol. 43, no. 3 (September 2, 2017), pp. 487–504, <https://doi.org/10.1080/02533952.2017.1416975>.

¹⁶ Sadhvi Kalra and Devin K. Joshi, "Gender and Parliamentary Representation in India: The Case of Violence against Women and Children," *Women's Studies International Forum*, no. 82 (September 2020), p. 102402, <https://doi.org/10.1016/j.wsif.2020.102402>; Sophie Namy et al., "Towards a Feminist Understanding of Intersecting Violence against Women and Children in the Family," *Social Science & Medicine*, no. 184 (July 2017), pp. 40–48, <https://doi.org/10.1016/j.socscimed.2017.04.042>.

¹⁷ Pamela Abbott and Dixon Malunda, "The Promise and the Reality: Women's Rights in Rwanda," *African Journal of International and Comparative Law*, vol. 24, no. 4 (November 2016), pp. 561–81, <https://doi.org/10.3366/ajicl.2016.0173>.

¹⁸ Ummy Hanifah, "Konstruksi Ideologi Gender Pada Majalah Wanita (Analisis Wacana Kritis Majalah Ummi)," *KOMUNIKA: Jurnal Dakwah Dan Komunikasi*, vol. 5, no. 2 (2011), pp. 199–220, <https://doi.org/https://doi.org/10.24090/komunika.v5i2.170>.

¹⁹ Eko Mukminto, "Hukum, Ideologi Patriarki, Dan Kekerasan Sistematis Atas Perempuan—Suatu Kajian Žižekian," *Nurani Hukum: Jurnal Ilmu Hukum*, vol. 3, no. 1 (2020), pp. 1–13, <https://doi.org/http://dx.doi.org/10.51825/nhk.v3i1.8566>; Ida Rosida, "Tubuh Perempuan Dalam Budaya Konsumen: Antara Kesenangan Diri, Status Sosial, Dan Nilai Patriarki," *Jurnal Antropologi: Isu-Isu Sosial Budaya*, vol. 20, no. 1 (2018), pp. 85–101, <https://doi.org/https://doi.org/10.25077/jantro.v20.n1.p85-101.2018>.

²⁰ Istina Yudhanti, *Perempuan Dalam Pusaran Hukum*, (Yogyakarta: Thafa Media, 2014), p. v.

²¹ Tomimah Tomimah and Ahmad Faruq, "Tradisi Bhakal Eko-Akoaghi Dalam Perkawinan Masyarakat Madura Perspektif

to each other²² to obey Allah SWT's words and ascertain those creations will not be in vain (QS. Surat az-Zâriyât [51] verse 49).

Islam stipulates that life in pairs through marriage must be performed according to law and provides for the suitability of human life to promote prosperity and peace in this world and the hereafter. Social welfare is achieved by creating, organizing, and controlling the welfare of the family as the smallest societal institution. Individual, as well as social welfare, is depends on family welfare and benefit. Consequently, Islam provides general and specific regulations for the family as well as suggests several marriage principles, such as tranquility and comfort, resulting in its great significance.²³ In Islam, marriage is a form of devotion to Allah SWT, which involves executing by His orders.²⁴

According to Prodjodikoro, the renewal of family law in Indonesia began in 1960 and culminated in the creation of Law Number 1 of 1974 concerning Marriage. Prior to this occurrence, marriage was regulated by various rules. For indigenous of Indonesians, Islamic law applies to Muslims, the Civil Code governs the Christians in Java, Minahasa, and Ambon of European and Chinese descent, while the Mixed Marriage Regulations control mixed marriages.²⁵

In Indonesia, the rules that bind and form the basis for marriage, particularly for Muslims, it refers to Law Number 1 of 1974 concerning Marriage. It is also controlled by the legal products contained in the Compilation of Islamic Law (KHI), which is

a step forward from the renewal of Islamic law.²⁶

As a legal system, Islam embodies different characteristics from the Western legal system, *rechstaat*, and the rule of law. The Islamic legal system (nomocracy) has the dimension of "*hablum minallah wahablum minannas*" which was derived from the Quran and Hadith.²⁷ All aspects of human life originate from Allah SWT (theocentric), contain the values of brotherhood and humanism, and guarantee positive religious freedom.²⁸ Meanwhile, Western law originates from human ratios, is liberalistic and individualistic, contains anthropocentric concepts of humanism, and fosters absolute separation between religion and state, thereby promoting atheism.²⁹ Islamic law perspectives have existed since the beginning of history due to the encouragement of the Quran and Hadith. Therefore, humans use their minds to handle very fundamental life problems concerning faith in the Quran Surah al -Isrâ' [17] verse 36, which should be handled according to Allah SWT's gifts and accounted for.

Islam teaches unity in human life, including equality between women and men regardless of ethnicity, race, language, or social status. This was directed by Allah SWT in Surah al-Hujurât [49] verse 13 that humans living in a social environment should be associate with members of the same and different religions, ethnicities, races, languages, and social statuses. An instance of interaction among diverse groups there are in Manado City. Soekanto stated that interactions in society can lead to patterns of association, which are arranged by different communities to ensure and determine the system of encounters among people. Also, these interactions determine

Hukum Islam," *Journal of Islamic Law and Family Studies*, vol. 3, no. 2 (2020), pp. 65–79, <https://doi.org/https://doi.org/10.18860/jilfas.v3i2.11383>.

²² Abd. Rahman Ghozali, *Fiqih Munakahat* (Jakarta: Kencana Prenada Media Group, 2003), p. 46.

²³ L. McMahon, "The Sweet Tranquility of Domestic Endearment: Companionate Marriage," in *Mere Equals* (Cornell University Press, 2012), pp. 116–38.; M. Zarean and K. Barzegar, "Marriage in Islam, Christianity, and Judaism," *Religious Inquiries*, vol. 5, no. 9 (2016), pp. 67–80, https://ri.ur.ac.ir/article_43969_5139.html; Twila L. Perry, "The Essentials of Marriage: Reconsidering the Duty of Support and Services," *Yale JL & Feminism*, no. 15 (2003).

²⁴ Meraj Ahmad Meraj, "The Importance of Marriage in Islam," *Granthaalayah: International Journal of Research*, vol. 6, no. 11 (November 30, 2018), pp. 1–6, <https://doi.org/10.29121/granthaalayah.v6.i11.2018.1082>.

²⁵ Wirjono Prodjodikoro, *Hukum Perkawinan Di Indonesia* (Bandung: Vorkink van Hoeve, 2005), p. 76.

²⁶ Linda Azizah, "Analisis Perceraian Dalam Kompilasi Hukum Islam," *Al-Adalah*, vol. 10, no. 2 (2012), pp. 415–22, <https://doi.org/https://doi.org/10.24042/adalah.v10i2.295>.

²⁷ Al Chaidar, "Nomokrasi Islam Untuk Indonesia," *Aceh Anthropological Journal*, vol. 4, no. 1 (2020), pp. 1–34.; Zuhraini Zuhraini, "Kontribusi Nomokrasi Islam (Rule of Islamic Law) Terhadap Negara Hukum Pancasila," *Al-Adalah*, vol. 12, no. 1 (2014), pp. 171–90, <https://doi.org/https://doi.org/10.24042/adalah.v12i1.182>.

²⁸ Muhyidin Muhyidin, "Pembangunan Hukum Yang Humanis Teosentrik (Eksistensi Nilai Islam Dalam Pembangunan Hukum Di Indonesia Pada Era Globalisasi Dan Transformasi Global)," *Diponegoro Private Law Review*, vol. 3, no. 1 (2018), pp. 317–25.

²⁹ Sri Wahyuni, "Liberalisasi Hukum Perkawinan Di Negara-Negara Barat," *Asy-Syir'ah*, vol. 48, no. 1–27 (2014), <https://doi.org/http://dx.doi.org/10.14421/asy-syir'ah.2014.%25x>.

the relationship and consequences of any change that may jeopardize the existing way of life. This foreshadows the definition of the social process as the reciprocal influence between various lives.³⁰

Previous studies on legal alignments with post-divorce women have been performed using different methods, approaches, and objects. Dako evaluated the application of the law concerning the living expense burden of post-divorce wives at the Limboto Religious Court. It concluded that the Panel of Judges based their decision on a grammatical interpretation of the husband's actual and potential ability in terms of income.³¹ Salma et.al also examined the legal protection for women and children by analyzing judges' decisions regarding *madhiyah* living at the Religious Courts in West Sumatra. It found a large number of husbands who left their wives and children without financial support.³² Furthermore, Hammad assessed post-divorce women's rights in Indonesian, Malaysian, and Jordanian Muslim Family Law can be found similarities between the *iddah talak* living regulations in the three countries and conventional *fiqh*. Some differences include the varying level of income according to price inflation in Muslim Family Law, unlike conventional *fiqh*. The *iddah talak* income regulations contained in the Malaysian and Jordanian Muslim Family Laws also guarantee women's post-divorce rights compared to the existing regulations in Indonesia.³³ These previous studies showed that *muallaf* women are rarely investigated. This is interesting because the deprivation of their rights may urge them to return due to their original

religions. Consequently, exploring the alignment of the judge or law concerning the rights of post-divorce *muallaf* women is necessary.

This present study was conducted to evaluate and analyze the accommodation of divorce decisions by judges at the Manado Religious Court in support of post-divorce *muallaf* women, as well as the fulfillment of their rights as wives. This aimed to reveal the legal alignments for post-divorce *muallaf* women and the extent of implementation through the decision of the Religious Courts in this city. The obtained findings are expected to contribute towards the development of Islamic family law studies focusing on marriage between men and *muallaf* women as well as the laws governing multicultural societies. Therefore, it is necessary to discuss the marriage of Muslim women in Islamic law.

Method

This study utilized qualitative descriptive methods, which essentially involve the observation of people in their environment, during interactions, and attempting to understand their language and interpretations.³⁴ The process was produced descriptive data in the form of words, which are analyzed in terms of individual responses.³⁵ Therefore, this study identified, sorted, and organized data into individual interpretations or frameworks that explained the phenomenon of conversion to Islam (*muallaf*) in a multicultural society. It was employed a normative-sociological approach, which emphasized the social life of women, as depicted through a study of several problems. The subordination of the law governing *muallaf* women to their post-divorce lives was also explored. The real-life family occurrences and upheavals with Islamic law and sources were analyzed using positive law as a mediator of women's activities in domestic and public spheres.

This study was conducted from May to October 2021 in Manado City, this subject was selected due to the marriages ubiquity of male and female

³⁰ Soerjono Soekanto, *Penegakan Hukum* (Jakarta: BPHN & Binacipta, 1983), p. 15.

³¹ Kartiningi Dako, "Penerapan Hukum Dalam Pembebanan Nafkah Istri Pasca Perceraian Di Pengadilan Agama Limboto," *Al-Mizan*, vol. 15, no. 2 (December 1, 2019), pp. 292–315, <https://doi.org/10.30603/am.v15i2.1380>.

³² Salma, Elfia, and Afifah Djalal, "Perlindungan Hukum Bagi Perempuan Dan Anak (Analisis Putusan Hakim Tentang Nafkah Madhiyah Pada Pengadilan Agama Di Sumatra Barat," *Istinbath: Jurnal Hukum Islam*, vol. 16, no. 1 (2017), pp. 168–208, <http://ejournal.iainmataram.ac.id/index.php/istinbath>.

³³ Muchammad Hammad, "Hak-Hak Perempuan Pasca Perceraian: Nafkah Iddah Talak Dalam Hukum Keluarga Muslim Indonesia, Malaysia, Dan Yordania," *Al-Ahwal: Jurnal Hukum Keluarga Islam*, vol. 7, no. 1 (May 20, 2016), pp. 17–28, <http://ejournal.uin-suka.ac.id/syariah/Ahwal/article/view/1073>.

³⁴ S. Nasution, *Metode Research: (Penelitian Ilmiah)*, (Jakarta: Bumi Aksara, 1988).

³⁵ Sudarma Denim, *Menjadi Peneliti Kualitatif*, (Bandung: CV. Pustaka Setia, 2002), p. 37.

Islamic converts (*muallaf*) as a result of the economy and pregnancy out of wedlock. The primary data sources were informants, comprising 5 community members who changed religions due to marriage, 2 government personnel, and 5 religious officials. The data collection involved observation of the study object, followed by interviews with the legal officials, judges, prosecutors, police officers, related persons, religious leaders, and members of the community involved in marriage activities. Documents were also examined to obtain information from literature on the legal alignments surrounding the marriage of *muallaf* women. The data collected were analyzed qualitatively using the interactive model technique proposed by Miles and Huberman.³⁶ This involved a continuous analysis to obtain results in the form of narrative descriptions and to draw the conclusions.

Manado Multicultural Society

Indonesians are highly diverse people and it can refer to multiculturalism which defined as a group of people living together.³⁷ It entails varying socio-cultural conditions, diverse educational backgrounds, as well as a wide geographical location.³⁸ This understanding was formed because of the foundation of the nation's philosophy namely *Bhineka Tunggal Ika* for the unity and integrity of this country.³⁹ However, it can be an obstacle to the ideology of multiculturalism.⁴⁰

³⁶ Matthew B. Miles and A. Michael Huberman, *Qualitative Data Analysis: A Sourcebook of New Methods*, (Jakarta: UI-PRESS, 1992).

³⁷ Ismail Suardi Wekke, Sabil Mokodenseho, and Firdaus Firdaus, "Religious Education and Tolerance: Learning Process in High School of Minority Muslim Indonesia," 2017, <https://doi.org/10.31227/OSF.IO/KM79D>; Tri Purwani and Indah Arvianti, "Constructing Harmonization of Multicultural Society," *Social Science Learning Journal*, vol. 5, no. 06 (June 3, 2020), 157–70, <https://doi.org/10.15520/SSLEJ.V5I06.2674>.

³⁸ Ismail Suardi Wekke and Sabil Mokodenseho, "Religious Teaching and Learning in Minority Muslim of Manado Indonesia," in *Proceedings of the 2nd International Conference on Education, Science, and Technology (ICEST 2017)* (Paris, France: Atlantis Press, 2017), pp. 187–89, <https://doi.org/10.2991/icest-17.2017.62>; Chang-Yau Hoon, "Putting Religion into Multiculturalism: Conceptualising Religious Multiculturalism in Indonesia," *Asian Studies Review*, vol. 41, no. 3 (July 3, 2017), pp. 476–93, <https://doi.org/10.1080/10357823.2017.1334761>.

³⁹ Kenji Tokawa, "Indigenous Legal Traditions and Canadian Bhinneka Tunggal Ika: Indonesian Lessons for Legal Pluralism in Canada," *The Journal of Legal Pluralism and Unofficial Law*, vol. 48, no. 1 (January 2, 2016), pp. 17–40, <https://doi.org/10.1080/07329113.2015.1072387>.

⁴⁰ Khoirun Nisa, "Government Ambiguity: Between

According to Mahfud, the diversity of Indonesian culture has been described by national leaders as a multicultural society.⁴¹ This was evidenced in Article 32 of the 1945 Constitution, which reads, "The culture of the nation (Indonesia) is the peak of culture in the regions." This is reflected in Manado City, which possesses a diversity culture as well as a strong brotherhood, as illustrated in the slogan *Torang Samua Basudara* (We Are All Brothers).

Multicultural values must consider the basis or ideology of the Indonesian state, Pancasila.⁴² The Pancasila ideology represents the people who hope to participate in the dehumanization process and must be a reference in developing the Indonesian society.⁴³ However, the characteristics of cultural diversity in this country do not signify a multicultural society as there are still the majority and minority groups.

A multicultural society is a variety of cultural communities, along with all their features, slightly different conceptions of the world, a system of meanings, values, social organization, history, customs, and habits. Indonesian's multiculturalism is a result of diverse and broad socio-cultural and geographical conditions. This country has many islands inhabited by a group of people who form a society, a culture, and eventually, a community, resulting in the existence of many diverse cultures.

There is also a close relationship between the formation of a society based on *Bhineka Tunggal Ika* and realizing a unifying national culture. However, several obstacles hinder the formation of a true multicultural society in this country. This is due to the lack of understanding of the concept and strong self-identity possessed by each ethnic group. As a result, each tribe strives

Accommodation and Discrimination of Identity in Multicultural Society," in *ICSPS 2019: Proceedings of the 5th International Conference on Social and Political Sciences, ICSPS 2019, 12th November 2019, Jakarta, Indonesia* (European Alliance for Innovation, 2020), pp. 56–63.

⁴¹ C. Mahfud, *Pendidikan Multikultural* (Bandung: Pustaka Pelajar, 2011), p. 56.

⁴² Muhammad Chairul Huda, "Strengthening Pancasila as National Ideology to Implementate The Balancing Values to Improve Law's Application in Indonesia," *Jurnal Pembaharuan Hukum*, vol. 5, no. 1 (July 22, 2018), pp. 1–12, <https://doi.org/10.26532/jph.v5i1.3010>.

⁴³ S. Sulalah, *Pendidikan Multikulturalisme: Didaktika Nilai-Nilai Universalitas Kebangsaan*, (Malang: UIN-Maliki Press, 2011), p. 120.

to defend its culture and shield itself from other tribes, leading to limited social bonding among groups. For example, an Acehnese who lives on Java Island and becomes a successful entrepreneur, they will prefer to accept employees from the same tribe, even though their skills are similar to Javanese applicants. This is because of the strong emotional ties or relationships from an individual to members of their tribe as well as a tendency to maintain a high identity. This results in division within society, as the people are easily pitted against each other and damaged because of the low sense of identity as Indonesians, alongside the lack of closeness or emotional ties with other groups. The strong identity and ties are only felt with members of the same tribe, such as between Manado natives, and not with other communities.

The phenomenon above emphasizes the difficulty of understanding, accepting, and appreciating people from different tribes, despite sharing a name, region, nation, or language. However, communities with different religions often interact when gather and may change religions because of marriage, religious knowledge, etc.

The Manado people are multicultural with various religions, languages, tribes, ethnicities, as well as cultural structures,⁴⁴ which promote adaptation and enable social interaction. Although they practice different religions, they live in harmony with their neighbors, such as in Paal Dua Sub-district, where the residents are safe, peaceful, and well-controlled. This is due to mutual tolerance and positive responses, even though some individuals of different religions constantly engage in conflict with their neighbors. The consequence of living together in harmony is the construction of a mindset that is more accepting of society without seeking distinctions in all aspects of life.

Muallaf Marriage

Islam has clear rules and guidelines which prioritize three main aspects, namely *aqidah*, *sharia*, and *morality*.⁴⁵ According to the Islamic rules of

life, Humans utilize and regulate the material and non-material provisions from Allah SWT. A system that is regulated wisely and with nobility in forming a balanced human being in terms of thought, spirituality, and physicality can be used as a good example of the application of pure values as well as appreciation of the religion.⁴⁶

In addition to faith, *sharia*, and morals, guidance from Allah SWT also promote conversion to Islam.⁴⁷ Allah SWT guides whomever He wants through various ways including marriage. Although the adherence to Islam by a *muallaf* based on marriage to a Muslim is the only reason for embracing the religion, the more important aspect is that such an individual has received guidance from Allah SWT. Marriages between Muslim women and non-Muslim men occur, but such unions are not based on Islamic law, as the woman will most likely convert to her spouse's religion. This is explained in the Quran Surah Al-Baqarah [2] verse 221 that "*do not marry polytheistic women until they believe.*" This verse signifies that the religion must be adequately explained to the potential bride and groom before marriage to ensure their total conversion in terms of rituals and understanding of worship such as transactions (*muamalah*), etc.

The performance of marriage according to the laws of each religion and belief results in its validity. Based on Article 2 Paragraph 1 of Marriage Law Number 1 of 1974, marriages between persons of a religion other than Islam are still valid because the couple practices Christianity. After conversion to Islam, their first marriage becomes invalid under the law. Conversely, *muallaf*, specifically women, advocate for the adjustment of marriage pillars to Indonesian laws, and the performance of the fulfilled conditions according to procedures. Although Law Number 1 of 1974 concerning Marriage has been revised into Law

⁴⁴ Ismail Suardi Wekke and Sabil Mokodenseho, "Religious Teaching...", pp. 187-168.

⁴⁵ La Jamaa, "Konsep Hukum Dalam Alquran: Keadilan Dan Kemanusiaan," *Tahkim*, vol. 1, no. 2 (2006), pp. 1-20.

⁴⁶ Kamarul Azmi Jasmi, "Pembangunan Insan Daripada Perpektif Islam," in *Ensiklopedia Pendidikan Islam*, 1st ed. (Skudai Johor: Fakulti Tamadun Islam, Universiti Teknologi Malaysia & Persatuan Cendekiawan Pendidikan Islam [Malaysia] (AIES), 2016), pp. 102-7.

⁴⁷ N. Rustina, "Konsep Hidayah Dalam Al-Qur'an," *FIKRATUNA: Jurnal Penelitian Sosial Keagamaan*, vol. 9, no. 1 (2018), <https://jurnal.iainambon.ac.id/index.php/FT/article/download/678/502>.

Number 16 of 2019, these requirements have not changed unless demands outside the rules exist, for which there must be an accompanying policy. For example, files that do not meet the requirements will prevent the marriage registration, leading to the search for solutions by the bride and groom.

Fulfilling the marriage requirements requires the realization of the pillars in Islamic marriage based on the Marriage Law Article 2 paragraphs (1) and (2). Therefore, a Muslim or *muallaf* must register their marriage at the Religious Affairs Office (KUA), and the couple should be completed a statement letter of conversion to Islam from authorized officers, such as Imam of the Mosque, etc.

The majority of theologian in Islam confirm that non-Muslim marriages which obey the adopted religious teachings are valid (Zuhayli, 2011) and even after their convert to Islam (*muallaf*). Zuhayli believes that the marital status of non-Muslims remains valid after the conversion, with the condition that the woman married is not from a forbidden group and the man there are no wives more than four.⁴⁸ This belief also stands for marriage contracts executed without a guardian and witness,⁴⁹ as supported by the Hadith narrated by at-Tirmidhi, which stated "From ibn Umar, that Ghailan bin Salamah Ats-Tsaqafi converted to Islam while he had ten wives in the days of ignorance. They also converted with him, and Prophet SAW ordered Ghailan to select (keep) four of them." The order was obeyed and conveyed to Prophet Muhammad SAW without asking about the terms of marriage because of the belief that the Apostle could not assign a directive based on vanity.⁵⁰ This story inspires the legality of non-Muslim marriages prior to Islamic conversion. The validity of the marriage followed the *al-Istishab* concept from the Shafi'i school that stated the marriage contract of an infidel couple before converting to Islam is valid in the view of law.

⁴⁸ Wahbah Zuhayli, *Al Fiqhul Islami Wa Adillatuhu*, (Beirut: Darul Fikr, 1984), p. 152.

⁴⁹ Wahbah Zuhayli, *Al Fiqh as Syafi'i Al Muyassar*, 1st ed. (Damaskus: Darul Fikr, 2008).

⁵⁰ Zuhayli, *Al Fiqh as Syafi'i Al Muyassar*.

Muallaf women's rights

The presence of *muallaf* is a great blessing for the development of Islam. It depicts an added value to the quantity as well as the quality of Muslims in Indonesia, especially in Manado. This promotes multiculturalism in terms of culture, ethnicity, race, and even belief. The recognized religions in this country are Islam, Protestant Christianity, Catholicism, Hinduism, Buddhism, and Confucianism. In religious pluralism, the adherents interact socially as neighbors and friends, depicting an undeniable relationship between Islam and non-Muslims. For example, marriage to one partner, either a *muallaf* man or woman, as in the case of the woman from Tuminting Sub-district⁵¹ and the man from Wenang Sub-district.⁵²

The marriage of a *muallaf* couple in Indonesian society, including Manado City, has consequences related to inheritance following the death of one spouse. Death causes the transfer of property from an individual to their heirs.⁵³ The religious law attests that *muallaf* wives inherit from their husband, as they adherent to one religion. However, this is different from the inheritance rights of Muslim converts and their non-Muslim parents. This city has a system for regulating the lives of its residents, including their worship, marriage, and inheritance. Due to this culture, a change in religion may prevent some people from obtaining an inheritance.

Studying inheritance law enables the achievement of the goals of Islamic law, namely the ability to provide guidelines and realize justice, which are the ideals of any regulation.⁵⁴ Besides dowry,

⁵¹ Processed from the results of an interview with Salim, The head of the Tuminting District Religious Affairs Office on June 26, 2021.

⁵² Processed from the results of an interview with Efendi Gani, The head of the Wenang District Religious Affairs Office on June 25, 2021.

⁵³ Anggita Vela, "Pembagian Waris Pada Masyarakat Jawa Ditinjau Dari Hukum Islam Dan Dampaknya," *As-Salam: Jurnal Studi Hukum Islam & Pendidikan*, vol. 4, no. 2 (2015), pp. 67–91.

⁵⁴ Eka Rahayu Purbenazir, "Implementasi Hukum Waris Islam Pada Masyarakat Kecamatan Kepahiang Kabupaten Kepahiang," *Qiyas: Jurnal Hukum Islam Dan Peradilan*, vol. 2, no. 1 (2017), pp. 73–82, <https://doi.org/http://dx.doi.org/10.29300/qys.v2i1.465>; Siah Khosyi'ah, "Perdamaian Dalam Menyelesaikan Kewarisan," *ADLIYA: Jurnal Hukum Dan Kemanusiaan*, vol. 10, no. 1 (2016), pp. 1–18, <https://core.ac.uk/download/pdf/234031838.pdf>.

the rights given by a husband to his wife are inheritance, physical and spiritual support, a decent life, etc.⁵⁵

Legal Alignment towards *Muallaf* Women

Humans are governed by law, which is coercive due to its intention to protect litigant people or persons outside society. According to Kusumaatmadja, a law is a series of principles and rules that aim to regulate human relations at social life, national, and state levels. It regulates a person's behavior in society and institutions, thereby serving as a process or method for applying implemented law.⁵⁶ Therefore, its application is aimed at regulating order or signifying the public of the applicable provisions in order to provide protection, guarantees, and equal rights.

In the Manado Religious Court, a *muallaf* woman struggles to obtain her rights after the court process, especially to continue living with her child, as the judge's ruling that the wife acquired a share of her ex-husband's salary is on paper only. Therefore, the man may follow the advice and instructions of his relatives and file a lawsuit for joint property, which may be granted. According to Mufid, the judges carefully study the submission and give consideration in the hope of execution according to the request, or at least the achievement of child support rights.⁵⁷

Equality is an important principle in the administration of the rule of law. In Indonesia, Islamic law is widely practiced and governed by the Quran, which emphasizes the importance of the principle of equality or non-discrimination before the law to obtain justice. An example, in the Quran Surah al-Mā'idah [5] verse 8, where Allah SWT commands that one should always uphold the truth because He is a fair witness. Likewise, Umar Ibn al-Khattab agreed that one of the principles in administering justice is placing the parties in an equal position following the equality before

the law rule. This will provide equal protection to those seeking justice, regardless of their position such as the nobility cannot perform deception and the weak will not despair in justice.⁵⁸

Law enforcement is an attempt to realize the ideas of legal certainty, social use, justice, and its essence is the embodiment process, implying every leader or law enforcer must uphold justice as well as possible. It can also be interpreted as the implementation of regulations by concerned officers and interested parties, according to their authorities and the applicable legal rules. However, it does not mean the implementation of legislation or the decisions of court judges.

Conclusion

The principle of equality before the law is an important principle in the administration of the rule of law. Equality before the law means there is no discrimination between the litigants in upholding justice. This study showed that judges still pay attention to procedures and rules as well as accommodate and support the rights of *muallaf* women while investigating their problems. However, the litigants had difficulties to fulfill the decision at the end of the court due various reasons, such as desire to remarry, poor financial standing, or reluctance. Because of the people in Manado city are multicultural societies, marriages with people of different religions can happen any time. Thus, the State have to make the law as reference in helping the community due to the law is a protector for every citizen, including women.

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⁵⁵ Muslimah Muslimah, "Hak Dan Kewajiban Dalam Perkawinan," *Jurnal Aainul Haq*, vol. 1, no. 1 (2021), pp. 91–104.

⁵⁶ Mochtar Kusumaatmadja, *Fungsi Dan Perkembangan Hukum Dalam Pembangunan Nasional*, (Bandung: Bina Cipta, 1986), p. 11.

⁵⁷ Processed from the results of an interview with Mufid, Chairman of the Manado Religious Court on June 15, 2021.

⁵⁸ Mukti Arto, *Penemuan Hukum Islam Demi Mewujudkan Keadilan: Membangun Sistem Peradilan Berbasis Perlindungan Hukum Dan Keadilan*, (Yogyakarta: Pustaka Pelajar, 2017), pp. 21–22.

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