

## **POLALANTA DIVORCE PRACTICE OF BANGGAI ETHNIC SOCIETY IN BANGGAI DISTRICT BASED ON ISLAMIC LAW AND CONSTITUTIONAL LAW**

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### **Abstract**

This paper aims to describe The issue of divorce between Islamic law and constitutional law which is very distinction, one of argumentation in Islamic law; according to one opinion, divorce only needs to be witnessed, while in constitutional law, divorce must be tried in the Religion Courts. This research was qualitative approach in the form of case study. The results showed that the provision is contained 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, which stipulates that divorce can only be carried out in front of a Court session after the court concerned tried and failed to reconcile the two parties.

**Keywords:** divorce practice, polalanta, Islamic law, and constitutional law.

### **Introduction**

Marriage is a religious doctrine which must carried out by human who can have families. There are so many essences that can be taken from marriage, one of the essences can give birth to peace and happiness in a life full of love. Marriage is a sunatullah whose provisions have been outlined, and marriage can also make a

person's life more directed, calm, peaceful, and happy<sup>1</sup>. Marriage is formed through a sacred bond between a man and a woman, said to be sacred because it is regulated by religion and constitutional law, community tradition, and others.<sup>2</sup> As Allah SWT said in QS Al-Ruum [30]: 21

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ ﴿٢١﴾

The translation:

Furthermore, among the signs of His power is that He created for you wives of your kind so that you may be inclined and find peace in them, and He created between you love and affection. Verily in that are signs for people who think.<sup>3</sup>

Islam teaches and encourages marriage because it will constitutionally affect to all humanity. As explained in QS Ar-Ruum [30]: 21 that the Islamic family is formed in the integration of tranquility (sakinah), full of love (mawaddah) and affection (rahmah). It consists of an obedient and loyal wife, an honest and sincere husband, a loving and friendly father, a gentle and gentle mother, and children who are obedient and obedient to their parents. This can be achieved if each family member knows their rights and obligations.<sup>4</sup>

Happiness in marriage is the goal of every married couple. According to Marriage Constitution No. 1 of 1974, "Marriage is an inner and outer bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the believing in one God".<sup>5</sup> Family or neighborhood added by anyone is formed basically to get the happiness of life. Every family will always aspire to a peaceful, happy, eternal, peaceful family and always get what each partner wants. He wants to be the best partner for himself and his family. But, it does not always go as expected. This is where problems will occur.<sup>6</sup>

Completed family is the ideality of every married couple. To achieve and realize the ideality family requires the cooperation of all family members. The great cooperation must start from the moment the two couples get married. Obstacles in communicating can cause marriages and families to be inharmonious, such as quarrels between husband and wife.<sup>7</sup>

Several problems of many marriages and families, from small to large ones. From just small fights to divorce and the collapse of domestic life that causes a

<sup>1</sup> Abdullah Nasikh'Ulwan, "Perkawinan (Masalah Orang Muda, Orang Tua Dan Negara)" (Jakarta: Gema Insani Press, 1992).

<sup>2</sup> Al Ghazali. "Marriage Ethics (Forming a Happy Family)." (Jakarta: Gema Press, 1994), p. 23.

<sup>3</sup> Ministry of Religion RI. "Al-Qur'an and its translation." (Bandung: New light Algensindo, 2009), p. 217.

<sup>4</sup> Tihami and Sohari. "Fiqh Munakahatt". (Jakarta : PT Raja Grafindo, 1998), p. 17.

<sup>5</sup> Laws Marriage No. 1 of 1974.

<sup>6</sup> Muhammad Hamsah, Nurhamidah Nurhamidah, and Rasimin Rasimin, "PEMIKIRAN PENDIDIKAN KH AHMAD DAHLAN DAN RELEVANSINYA DENGAN DUNIA PENDIDIKAN MODERN," *Risâlah, Jurnal Pendidikan Dan Studi Islam* 7, no. 2 (2021): 378–90.

<sup>7</sup> Walton, Bimo. "Marriage Guidance and Counseling". (Yogyakarta: Andi Offset, 2004), p. 14.

"broken home." The cause can be occurred from the initial mistakes in the formation of the household in the past before marriage. It can also arise when navigating the ark of married life. In other words, many factors cause marriage, and the development of domestic life is not as well as expected.<sup>8</sup>

Basically, the marriage is carried out forever until the death of one of the husbands or wives. It is expected in Islamic doctrine. However, in certain circumstances, there are things that require the termination of the marriage, in the sense that if the marital relationship is continued, then harm will occur. In this case, Islam justifies the termination of marriage as the last step in continuing the household. Dissolving the marriage (divorce) is a good solution. So that divorce is a lawful choice in overcoming irreconcilable domestic disputes<sup>9</sup>.

Emergent problems in marriage are a common reason for divorce proposed by married couples. This reason is often put forward when both partners or one of them feel that the inequality in their marriage is difficult to overcome, which prompts them to consider divorce. The reality of life proves that building a marriage and family is easy, but maintaining and fostering a family to the level of happiness and prosperity that every married couple always desires is very difficult.<sup>10</sup> Tire For example, a married couple who in their first years of marriage have begun to waver in the ark of their household, because the husband and wife have not understood the meaning and wisdom of marriage<sup>11</sup>.

The currently divorced become a common phenomenon in society. Many factors cause divorce, including immaturity between husband and wife, economic problems and the presence of third parties in the household. Another cause of divorce is domestic violence.

A marriage, according to the mentioded two rules, will be considered valid when it is carried out and recorded by a government official in charge of marriage. This is as stated in Article 2 paragraphs (1) and (2) of Law Number 1 of 1974 concerning marriage which reads:

"Marriage is legal, if it is carried out according to the law of each religion and belief, and each marriage is recorded according to the applicable laws and regulations."<sup>12</sup>

Although it is worship, but not all humans can maintain their marital status. If a husband and wife feel that it is no longer possible to maintain their marriage,

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<sup>8</sup> Augs Riyadi. "Marriage Counseling Guidance (Role of Da'wah in Forming a Sakinah Family)". (Kudus: STAIN Kudus, 2011), p. 65.

<sup>9</sup> Ali Miftakhu Rosyad, "Implementasi Pendidikan Karakter Dalam Pembelajaran Pendidikan Agama Islam Di Sekolah Muhammadiyah Se-Kabupaten Indramayu. Al-Afkar," *Journal for Islamic Studies* 4 (n.d.).

<sup>10</sup> Kamil Taufiq. "Questions About the Sakinah Family". (Semarang: Sakinah Development Project, 2004), p. 6

<sup>11</sup> Afandi M. Yazid, *Fiqh Muamalah Dan Implementasinya Dalam Lembaga Keuangan Syariah* (Yogyakarta: Logung Pustaka, 2009).

<sup>12</sup> Law Number 1 of 1974 concerning Marriage Article 2 paragraphs (1) and (2).

then Islam also allows them to divorce. However, this permissibility is a lawful act that is hated or angered by Allah<sup>13</sup>.

Indirectly, Islam allows divorce, but on the other hand hope that the divorce process is not carried out by husband and wife. This is as implied in the Islamic rules regarding the divorce process. When a couple is about to divorce or in the process of a husband-wife dispute, Islam teaches that a magistrate should be sent to reconcile the two. Thus, Islam advocates for improving the husband-wife relationship rather than separating the two. Regarding the recommendation for the appointment of a judge to reconcile disputes between husband and wife, Allah explains in His word, Surah an-Nisa verse 35 as follows:

وَأِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا

The translation:

And if you are worried that there is a dispute between the two, then send a hakam from a male family and a hakam from a female family. If the two hakam intend to make repairs, Allah will surely give taufik to the husband and wife, indeed Allah is All-Knowing, All-Knowing." (Surah An-Nisa: 35)<sup>14</sup>

In the context of constitutional law in Indonesia, divorce procedures are also regulated in a registered process. Besides, the reconciliation process, as is based on Islamic law, there must be sufficient reason for a divorce to be carried out, that the husband and wife will not be able to live in harmony as husband and wife.<sup>15</sup>

After the existence of suitable reasons, it does not mean that the divorce can be carried out directly by the husband and wife. The next step is the implementation of the divorce process before the Religious Courts. This is as explained in the Law on Religious Courts No. 3 of 2006 namely:

"Divorce can only be carried out in front of a court hearing after the court in question has tried and failed to "reconcile the two parties."<sup>16</sup>

Therefore, a divorce that is carried out outside the Religious Court is an illegal divorce according to statutory law. The purpose of divorce outside the Religious Court is a divorce carried out by a husband and wife without involving the Religious Court but carried out directly and verbally between husband and wife.

Although it has been regulated in the Indonesian constitution, divorce outside the Religious Courts is still carried out by some communities. This is what happens in the community Mansamat B Village, South Tinakung District, Banggai Islands Regency. Basically, society Mansamat B Village, South Tinakung District On

<sup>13</sup> Hamsah, Nurchamidah, and Rasimin, "PEMIKIRAN PENDIDIKAN KH AHMAD DAHLAN DAN RELEVANSINYA DENGAN DUNIA PENDIDIKAN MODERN."

<sup>14</sup> Ministry of Religion RI. "Al-Qur'an", p. 123

<sup>15</sup> This is as explained in Law no. 1 of 1974 concerning Marriage Article 39 paragraph (2).

<sup>16</sup> Law No. 3 of 2006 concerning Religious Courts.

average, they think that divorce is enough to be carried out verbally and is considered valid and with the impacts it causes, this is what is known as Polalanta practice.

After a verbal divorce (Polalanta practice), husband-wife couples also distribute assets, take care of children's Hashanah, and it's not even uncommon for the divorced couple to have their next marriage with someone else without going through the KUA. This is none other than the people's belief that their divorce is religiously correct. According to them, religious legitimacy is more important than anything else. Therefore, society Mansamat B Village, South Tinangkung District, Banggai Islands Regency dare to remarry even though their divorce is not legal according to state law.

### Research methods

This study was qualitative method. as stated by Lexy J. Moleong that qualitative methods are used for several considerations:

First, adopting qualitative methods is easier when dealing with multiple realities; second, this method presents directly the nature of the relationship between the researcher and the respondent; third, this method is more sensitive and more adaptable to many sharpening shared influences and to the patterns of values encountered.<sup>17</sup>

Moreover, the considerations mentioned above, another reason the author uses the qualitative method is because the problem under study is a natural problem, so the author believes that the type of research used in the preparation of this scientific paper is appropriate with the title of this research.

Furthermore, to obtain objective data, in this study using data collection techniques as follows:

#### 1. Observation

Observation is "direct observation and recording of the symptoms that appear on the object of research using the five senses".<sup>18</sup> Observation technique is a method of collecting data by observing the research being studied. Observations and recordings are made on objects where events occur or take place, so that observations are with the object being investigated, in this case, to obtain accurate, valid and adequate data.

#### 2. Interview (interview)

Interview (*interview*) is a method of collecting data by asking questions directly by the interviewer (data collector) to the informant, the answers or information are recorded or recorded using a recording device.

#### 3. Documentation

Documentation is a method of collecting data by examining important documents that support the completeness of the data or through written relics, as well as archives, books and others related to the problem under study.

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<sup>17</sup>Lexy J. Moleong. "Qualitative Research Methodology". (Cet. XVII; Bandung: PT. Teen Rosdakarya, 2002), p. 5.

<sup>18</sup>Burhan Bungie. "Qualitative Research, Communication, Economics, Public Policy, and other Social Sciences". (Cet. I; Jakarta: Kencana Prenada Media Group, 2007), p. 115.

Researchers have collected or obtained a number of data and information from various informants, so the next step is to analyze the data that has been obtained. According to Patton as quoted by Lexy J. Moleong suggests that: "Data analysis is the process of arranging the sequence of data, organizing it into a pattern, category and basic sequence unit"<sup>19</sup>. Thus, data analysis is very important in the preparation of research results.

The process of data analysis begins by examining the overall data obtained from various sources, namely from interviews, observations, documentation and so on. The data obtained in this study were analyzed qualitatively by using the presented data that had been collected by researchers at the research site, then the data was analyzed using data analysis techniques commonly used in qualitative research.

## **Results and Discussion**

### **Divorce Implementation Outside of the Religious Courts/Polalanta Divorce Of Banggai Tribe At Mansamat B Village, South Tinangkung District, Banggai Regency**

Bassically, the divorce rules have been stated in Law no. 1 of 1974 concerning marriage, such as PP No. 9 of 1975 is felt to be too far apart from the legal awareness that exists in the Muslim community, especially the divorce that occurred in Indonesia Mansamat B, South Tinangkung District. In Mansamat B, South Tinangkung District There are still some who carry out the practice of divorce outside the Religious Courts<sup>20</sup>.

An overview of divorce society of Mansamat B village, South Tinangkung District, Based on the results of interviews with several divorce actors outside the Religious Courts, Mrs. NI revealed that she had divorced outside the Religious Courts/The Polalanta divorce practice took place almost 2 years ago, in a familial manner with her parents and husband's parents attending, and her grandfather and husband's uncle as a witness. Before the divorce vow was pronounced by her husband, the witnesses from both parties who were her parents previously gave advice to reconsider her intention to divorce for the common good. This can be seen from the words of Mrs. NI:

"I divorced at home 2 years ago amicably, my grandfather who led my husband to pronounce the divorce vows verbally directly in front of me and the witnesses, namely my parents and my husband's parents because they were previously arranged for marriage, before the divorce pledge was made from someone else My own parents have repeatedly advised me not to separate, but by mutual agreement for the common good, we finally decided to divorce."<sup>21</sup>

It is not different much from the narrative of Mrs. NI, Mrs. SP admitted to having divorced outside the Religious Court/Polaranta divorce practice took place

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<sup>19</sup>Ibid, h.103.

<sup>20</sup> Indonesia, *Undang-Undang Perkawinan* (Pustaka Widyatama, 2004).

<sup>21</sup>Initials NI, WargavillageMansamat B, South Tinangkung District "*Interview*" January 21, 2022.

almost 7 years ago, in a family manner, attended by their married children and village elders who were trusted as witnesses. As stated by Mrs. SP:

"I separated from my husband, a village elder who led my divorce process, then my husband mentally abused me directly"<sup>22</sup>

Although, Mrs. MS admitted that divorced outside the Religious Courts/Polalanta divorce practice since almost 3 years ago, as a family with their children and in-laws and some neighbors in attendance. This is in accordance with the statement of Mrs. MS:

"I divorced respectably at home, my husband said the declaration of divorce verbally in front of me and the witnesses, regarding the mediation process before, my son had advised me, but my decision was unanimous".<sup>23</sup>

Mr. RT Divorced outside the Religious Court/Practice of divorce Polalanta took place almost 3 years ago as a family, attended by their children as well as their son-in-law and some close neighbors. This can be seen from the expression of Mr. RT:

"I separated from my wife peacefully, family, and I divorce verbally".<sup>24</sup>

After interviewed the involved parties, the researcher obtained information that they divorced outside the Religious Courts/Polalanta divorce practice in a familial way, attended by the husband's family (father and mother) and the wife's family (father and mother) as well as several brothers or sisters. a person appointed as a witness. Usually the divorced parties bring their respective witnesses who they trust to witness the course of their divorce. After everyone gathered, a family consultation was opened as a last resort before finally decessed the way of divorce. Each of the husband's and wife's families as much as possible tries to reconcile and gives advice to rethink their divorce decision. advise that both parties (husband and wife) maintain a good relationship after divorce. By avoiding hostility and resentment, from parties who are dissatisfied with the divorce that occurred. After being advised and their decision has been unanimous to divorce, the husband pronounces the word talak verbally in front of his wife, family and witnesses, then a divorce occurs.

### **Background Factors of Bangai Ethnic Society at Village Mansamat B to Implement the Divorce outside the Religious Court**

Divorce is a lawful act that is hated by Allah, but as a last resort for domestic life in certain circumstances it may be done. The wisdom behind the permissibility of divorce is that the dynamics of domestic life sometimes lead to something that is

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<sup>22</sup>Initials SP, CitizenvillageMansamat B, South Tinangkung District "Interview" January 21, 2022.

<sup>23</sup>Initials MS, CitizenvillageMansamat B, South Tinangkung District "Interview" January 22, 2022.

<sup>24</sup>Initials RT, WargavillageMansamat B, South Tinangkung District "Interview" January 22, 2022.

contrary to the purpose of forming a household. In this situation, if the household continues, it will cause harm to both parties and the people around them. In order to prevent further harm, it is better to take a divorce in the form of talak. Thus, divorce in Islam is only for a purpose of benefit.<sup>25</sup>

The happened fact at Mansamat B. Village is that there is a practice of implementing divorce outside the Religious Courts/Polalanta divorce practice which is driven by several factors. The factors behind the Banggai tribal community, Mansamat B Village, divorced outside the Religious Courts / Polalanta divorce practice based on the results of interviews with divorce actors outside the Religious Courts in Mansamat B Village, namely Mrs. NI said that:

"I have divorced outside the Religious Court/Polaranta divorce practice around 2 years ago, because the divorce process outside the Religious Courts was faster, and not complicated, it took a lot of time, because I wanted to get a divorce quickly before my ex-husband returned to overseas, actually I had the intention of getting a divorce in court but Because my ex-husband wanted a family divorce, I ended up getting a divorce at home, even though I knew that a divorce had to go to the Religious Courts."<sup>26</sup>

Different from Mrs. NI, Mrs. SP decided to divorce outside the Religious Court/Pollanta divorce practice, she said that:

"I separated from my husband about 7 years ago because I felt that the cost of divorce in court was expensive, while it was still difficult to get daily food needs"<sup>27</sup>

So while Mrs. MS said that:

"I had divorced outside the Religious Courts/Polaranta divorce practice approximately 3 years ago because he felt ashamed and did not want his divorce to be the talk of the community".<sup>28</sup>

Regarding the reason of Mr. RT preferred to divorce at home rather than in court, he said that:

"I have divorced outside the Religious Court/Polaranta divorce practice around 3 years ago because I felt that it was commonplace as Muslims to prioritize Islamic law in daily life".

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<sup>25</sup>Abdul Ghofur Anshori. "Islamic Marriage Law Fiqh Perspective and Positive Law". (Yogyakarta, UII Press, 1990), p. 107.

<sup>26</sup>Initials NI, WargavillageMansamat B, South Tinangkung District"Interview"January 23, 2022.

<sup>27</sup>Initials SP, CitizenvillageMansamat B, South Tinangkung District"Interview"January 24, 2022.

<sup>28</sup>Initials MS, CitizenvillageMansamat B, South Tinangkung District"Interview"January 25, 2022.

Based on the interview with divorce actors outside the Religious Courts above, it can be explained the factors behind the Banggai tribal community, Mansamat B. Village, divorced outside the Religious Courts are as follows:

1. Time Factor

The trial time was so long and convoluted, triggering the Banggai tribal community of Mansamat B. Village to choose to divorce outside the Religious Courts /Polalanta divorce practice. This is as expressed by Mrs. NI, that she deliberately chose to get a divorce outside the Religious Courts/Polalanta divorce practice with consideration of divorce outside the Religious Court/Polalanta divorce practice the process is faster, not complicated and goes straight to the core of the goal without having to procrastinate time. According to him, based on his knowledge from his neighbor who divorced in the Religious Court/Polalanta divorce practice, it took almost 6 months from the filing of the lawsuit to the final decision, while after expressing his desire to divorce his husband, his husband agreed by choosing family divorce.

2. Economic Factor

The other factors are a longer time, another factor that influences the Banggai tribe community in Mansamat B Village to divorce outside the Religious Courts/Polalanta divorce practice is the economic factor. Considering that divorce in the Religious Courts requires significant administrative costs, according to them, even though there are special subsidies for those who are less well off, they still prefer divorce outside the Religious Courts<sup>29</sup>. This is based on the narrative of Mrs. SP who admitted that she objected to the cost of divorce in the Religious Courts while for daily meals there was still insufficient and often debt. here and there.

3. Factor of Law Awareness Lack

In Indonesia, Divorce rules have been regulated in UUUP No. 1 1974 and other implementing regulations, such as PP No. 9 In 1975, however, the difference felt too far from the legal awareness that existed in the Muslim community. Especially for the Banggai tribe, Mansamat B Village, when they divorced, they preferred to divorce outside the Religious Courts/Polalanta divorce practice, although some of them claimed to know the divorce process that should be carried out. in the Religious Courts for those who are Muslims and in the District Courts for those who are non-Muslims. So from this narrative, it can be said that they do not obey the law and are not aware of the laws that apply in Indonesia because in fact they know but choose not to obey it, under the pretext that Islamic law should take precedence if there is a law that regulates it, unless there is no law that regulates it<sup>30</sup>. in Islam, therefore in this case they prefer to divorce outside the Religious Courts. This is in accordance

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<sup>29</sup> Muhammad Hamsah and Nurhamidah Nurhamidah, "Pendidikan Islam Dalam Perspektif Neo-Modernisme (Studi Analisis Pemikiran Fazlur Rahman)," *Risâlah, Jurnal Pendidikan Dan Studi Islam* 5, no. 2, Sept (2019): 150–75.

<sup>30</sup> Ali Miftakhu Rosad, "IMPLEMENTASI PENDIDIKAN KARAKTER MELALUI MANAGEMEN SEKOLAH," *Tarbawi: Jurnal Keilmuan Manajemen Pendidikan* 5, no. 02 (2019): 173–90.

with the statement from Mr. RT, that it is commonplace as Muslims prioritize Islamic law in everyday life. Meanwhile, based on the narrative of Mrs. NI, she admitted that she knew that divorce should be carried out in the Religious Courts, it would be better because it could be recognized as valid under Religious Law and State Law, while her choice to divorce outside the Religious Courts was only valid in the eyes of Religious Law.

4. Personality problem Factor

divorce results in the severing of the marriage ties, although it is lawful, divorce is still a matter that is very hated by God, therefore those who divorce think divorce is a personal matter and a disgrace that must be covered. This is in accordance with what was expressed by Mrs. MS, that she prefers to divorce outside the Religious Court/Polalanta divorce practice because she is embarrassed by her neighbors considering her marriage is no longer young, her children have grown up and are married and even have several grandchildren.

**Conclusion**

The practice of divorce outside the Religious Court/The Polalanta divorce practice carried out by the Banggai tribal community in Mansamat B Village is the legal basis for implementing divorce outside the Religious Courts/The Polalanta divorce practice used by the Banggai people of Mansamat B Village is the basis for divorce as described in Islamic law, which can be done in front of people who have competence in the field of Islamic marriage law. According to the author, the legal basis of the Qur'an'aThis is indeed the basis of all laws relating to human actions (Muslims), including divorce.

However, when referring to the legal position of divorce in Indonesia, divorce outside the Religious Courts/The practice of Polalanta divorce is as a form of disobedience/disobedience to the law which means disobeying the government/ulil Amri and disobedience to ulil amri means disobeying Allah SWT because it violates the word of God in Surah An-Nisa" verse 59. abandoned, and even if the divorce is outside the Religious Courts/Polalanta's divorce practice cannot be said to be haram, and by looking at the impacts mentioned above, in the opinion of the author, divorce outside the Religious Courts/Polalanta divorce practice that happened on the Banggai tribal community, Mansamat B Village, includes things that are illegal because it causes a lot of existing evil. Thus, the divorce process carried out by the Banggai tribe community in Mansamat B Village in the context of Islamic law can be declared not in accordance with the provisions of Islamic law because of the element of conflict with the texts of the Qur'an.' an others.

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