



Non-Muslim Divorce Practices in Indonesia: An Examination of Court Procedures and Religious Norms in the Light of Islamic Law

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Abstract

In countries with a Muslim-majority population, legal systems often distinguish between Muslims and non-Muslims, particularly in matters of marriage and divorce. This differentiation creates a structural gap for non-Muslims seeking justice in divorce proceedings, as their rights are frequently not accommodated on an equal basis. The primary objective of this article is to examine the application of *haqq al-insānī al-asāsī* within non-Muslim divorce cases in Indonesia, focusing on the implementation of the core Islamic values of justice (*al-'adl*), equality (*al-musāwāh*), and human dignity (*karāmah insāniyyah*). This research employs a qualitative prescriptive design with a normative-juridical approach, drawing upon both literature review and judicial decisions as primary data sources. The study analyses 18 District Court rulings from various regions, including Semarang, Salatiga, Cirebon, Kediri, Magelang, Singkawang, Bekasi, and Manado, to assess how Indonesia's pluralistic legal system accommodates minority rights within its judicial structure. The framework of Islamic legal thought concerning justice, equality, and human dignity serves as the methodological tool for analysing the findings, with data primarily derived from official court documents. The results reveal that the application of *haqq al-insānī al-asāsī* in non-Muslim divorce cases remains procedural and formalistic, falling short of achieving substantive justice. Court decisions tend to emphasise factual and administrative aspects while neglecting the moral and theological dimensions inherent in the institution of marriage. This leads to a moral legal dissonance, whereby non-Muslim litigants obtain legal certainty but remain spiritually bound according to their faith traditions. The study identifies three primary challenges: the gap between positive law and religious morality, the structural inequality of Indonesia's dual-court system, and the limited ethical and spiritual sensitivity in judicial reasoning. These findings underscore the need for a more inclusive, human-centred, and substantively just legal reform that bridges state law and moral theology within Indonesia's pluralistic judicial context.

Keywords: Equality; Human Dignity; Islamic Law; Justice; Non-Muslims Divorce.

Abstrak

Di negara-negara dengan mayoritas penduduk Muslim, sistem hukum seringkali membedakan antara Muslim dan non-Muslim, terutama dalam hal perkawinan dan perceraian. Perbedaan ini menciptakan kesenjangan struktural bagi non-Muslim yang mencari keadilan dalam proses perceraian, karena hak-hak mereka seringkali tidak diakomodasi secara setara. Tujuan utama artikel ini adalah untuk mengkaji penerapan *haqq al-insānī al-asāsī* dalam kasus perceraian non-Muslim di Indonesia, dengan fokus pada implementasi nilai-nilai Islam inti seperti keadilan (*al-'adl*), kesetaraan (*al-musāwāh*), dan martabat manusia (*karāmah insāniyyah*). Penelitian ini menggunakan desain kualitatif preskriptif dengan pendekatan normatif-yudisial, mengacu pada tinjauan literatur dan putusan pengadilan sebagai sumber data utama. Studi ini menganalisis 18 putusan Pengadilan Negeri dari berbagai wilayah, termasuk Semarang, Salatiga, Cirebon, Kediri, Magelang, Singkawang, Bekasi, dan Manado, untuk menilai bagaimana sistem hukum pluralistik Indonesia mengakomodasi hak minoritas dalam struktur peradilan. Kerangka pemikiran hukum Islam mengenai keadilan, kesetaraan, dan martabat manusia digunakan sebagai alat metodologis untuk menganalisis temuan, dengan data utama diperoleh dari dokumen resmi pengadilan. Hasil penelitian menunjukkan bahwa penerapan *haqq al-insānī al-asāsī* dalam kasus perceraian non-Muslim masih bersifat prosedural dan formalistik, sehingga gagal mencapai keadilan substansial. Putusan pengadilan cenderung menekankan aspek faktual dan administratif sambil mengabaikan dimensi moral dan teologis yang melekat dalam institusi perkawinan. Hal ini menyebabkan ketidakharmonisan hukum moral, di mana pihak non-Muslim memperoleh kepastian hukum tetapi tetap terikat secara spiritual sesuai dengan tradisi keagamaan mereka. Studi ini mengidentifikasi tiga tantangan utama: kesenjangan antara hukum positif dan moralitas agama, ketidaksetaraan struktural dalam sistem peradilan ganda Indonesia, dan kurangnya sensitivitas etis dan spiritual dalam penalaran yudisial. Temuan ini menyoroti kebutuhan akan reformasi hukum yang lebih inklusif, berorientasi pada manusia, dan substantif adil yang menjembatani hukum negara dan teologi moral dalam konteks peradilan pluralistik Indonesia.

Kata Kunci: Hukum Islam; Keadilan; Kesetaraan; Martabat Manusia; Perceraian Non-Muslim.



Introduction

Religious courts constitute an integral part of the legal system in many nations, including Indonesia, a country characterised by profound religious and cultural diversity.¹ As institutions responsible for adjudicating cases related to family and religious law, they play a crucial role in upholding justice, protecting human rights, and maintaining respect for religious pluralism. However, in recent years, their role and jurisdiction have become the subject of renewed debate, particularly regarding efforts to balance the enforcement of religious norms with universal principles of justice and human rights.² As a multireligious state,³ Indonesia recognises the validity of marriages based on religious norms⁴ while assigning their legal enforcement to state institutions.⁵ This dual structure creates both harmony and tension; harmony through the acknowledgment of religious legitimacy, yet tension when religious doctrines diverge from the procedural frameworks of state law. Within this context, Indonesia's Religious Courts and District Courts operate under distinct mandates: the former adjudicates cases involving Muslim citizens,⁶ while the latter handles those concerning non-Muslims.⁷ This division generates a notable procedural disparity in divorce proceedings, particularly regarding the legal foundation, evidentiary mechanism, and religious validity of judgments. In Religious Courts, divorce is governed by Islamic procedural requirements, including *ikrar talak* (formal pronouncement of divorce) and mediation grounded in the principles of family justice.⁸ In contrast, divorce cases for non-Muslims in District Courts follow a civil and administrative process under the Indonesian Civil Code, without reference to theological doctrine.⁹ Consequently, decisions rendered by Religious Courts carry dual legitimacy—both legal and religious—whereas District Court rulings, though legally binding, often lack spiritual recognition from respective religious institutions. This asymmetry produces a duality of status for non-Muslim individuals: they are legally divorced under state law but remain spiritually bound under their faith traditions. Such dualism reflects a deeper structural challenge in Indonesia's legal pluralism, calling for a more integrated approach that reconciles religious authenticity with juridical universality.

Non-Muslim divorce represents one of the most ethically and juridically complex issues within Indonesia's family law system. Non-Muslim individuals are often confronted with a profound moral dilemma: whether to obey state law, which permits divorce under certain conditions, or remain faithful to religious doctrines that strictly prohibit it.¹⁰ For Catholics and some Protestant

¹ Agus Joko Pitoyo and Hari Triwahyudi, "Dinamika Perkembangan Etnis Di Indonesia Dalam Konteks Persatuan Negara," *Populasi: Jurnal Kependudukan Dan Kebijakan* 25, no. 1 (2017): 64–81, <https://doi.org/https://doi.org/10.22146/jp.32416>.

² Wahyu Prijo Djatmiko, *Budaya Hukum Dalam Masyarakat Pluralistik* (Yogyakarta: Thafa Media, 2022). 45.

³ Agus Masykur, "Pluralisme: Masyarakat Multireligius," *Dirasat Islamiah: Jurnal Kajian Keislaman* 3, no. 2 (2022): 37–52.

⁴ Elfirda Ade Putri, "Keabsahan Perkawinan Berdasarkan Perspektif Hukum Positif Di Indonesia," *Krtha Bhayangkara* 15, no. 1 (2021): 151–65, <https://doi.org/https://doi.org/10.31599/krtha.v15i1.541>.

⁵ Andy Satria et al., "Penegakan Hukum Pernikahan Perceraian Di Era Digital Apa Tantangan Dan Solusinya," *ALADALAH: Jurnal Politik, Sosial, Hukum Dan Humaniora* 2, no. 2 (2024): 30–35, <https://doi.org/https://doi.org/10.59246/aladalah.v2i2.766>.

⁶ Azizah Yasmin, Hurriyah Aqilah Ramadhoifah, and Aura Rista Afifah, "Peradilan Agama Sebagai Lembaga Penegak Hukum Islam Di Indonesia," *Sriwijaya Journal of Private Law*, 2024, 83–90, <https://doi.org/https://doi.org/10.28946/sjpl.v1i1.3373>.

⁷ Pasal 1 huruf b, "Peraturan Pemerintah Republik Indonesia Nomor 9 Tahun 1975 Tentang Pelaksanaan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan" (1975).

⁸ "Tahapan Penanganan Proses Perkara," accessed October 26, 2025, <https://pa-tigaraksa.go.id/tahapan-penanganan-proses-perkara/>.

⁹ "Tentang Gugatan Perceraian - Pengadilan Negeri Tabanan," accessed October 26, 2025, <https://pn-tabanan.go.id/berita/artikel/detail/tentang-gugatan-perceraian/11b9842e0a271ff252c1903e7132cd68>.

¹⁰ Muhammad Faisal Hamdani et al., "The Legal and Human Rights Challenges of Interfaith Marriage in Indonesia," *Journal of Law and Sustainable Development* 11, no. 12 (2023): 1–15, <https://doi.org/https://doi.org/10.55908/sdgs.v11i12.1020>.

communities, marriage is regarded as a sacred covenant (*sacramentum*) that cannot be dissolved,¹¹ whereas under Indonesian civil law, marriage is treated as a civil contract¹² that may be annulled through judicial procedures.¹³ Although positive law provides formal mechanisms for dissolution, many of its provisions remain misaligned with theological principles and moral obligations.

The phenomenon of non-Muslim divorce in Indonesia reveals an alarming trend in which legal proceedings frequently occur without consideration of the religious dimension that should inherently define the institution of marriage. Based on an analysis of eighteen court rulings across Singkawang,¹⁴ Semarang,¹⁵ Manado,¹⁶ Kediri,¹⁷ Cirebon,¹⁸ Magelang,¹⁹ Bekasi,²⁰ and Salatiga,²¹ it is evident that the majority of divorce cases are driven primarily by social and personal factors such as domestic conflict, violence, economic pressure, third-party involvement, and incompatibility rather than by religious reflection or doctrinal causes. This pattern indicates a growing secularisation of family law practice, where the spiritual and theological essence of marriage is increasingly marginalised by the rationalism of positive law. Such a condition reflects a structural weakness in Indonesia's judicial system, which tends to operate in a formalistic and religion-insensitive manner, often neglecting the moral and spiritual dimensions that shape the nation's socio-religious fabric. Philosophically, marriage within Indonesian society is not merely a social or legal bond; it embodies moral and spiritual commitments that are deeply rooted in religious consciousness. Consequently, the resolution of divorce cases should ideally refer to the religious doctrines of the parties involved, while simultaneously upholding the principles of justice and freedom of religion as guaranteed by the Constitution. Integrating positive legal norms with religious values is therefore essential to construct a justice mechanism that is more inclusive, humane, and grounded in Indonesia's pluralistic faith traditions. Such integration not only strengthens the legitimacy of judicial decisions but also fosters harmony between legal rationality and moral spirituality, ensuring that family law serves not only the interests of justice but also the preservation of human dignity within a multireligious society.

Although numerous studies have examined the pluralism of family law in Indonesia, the specific issue of non-Muslim divorce within a Muslim-majority context remains underexplored. Most previous research tends to focus exclusively on either the theological dimension (such as the Canon Law of the Catholic Church) or the legal-formal dimension (such as the application of the Indonesian Civil Code), without integrating both perspectives into a single comprehensive normative framework. The study "The Catholic Church's Legal Perspective on the Divorce of

¹¹ Al Purwa Hadiwardoyo, *Perkawinan Menurut Islam Dan Katolik: Implikasinya Dalam Kawin Campur* (Yogyakarta: Kanisius, 1990). 38.

¹² "Pernikahan Non Muslim Harus Tercatat Di Disdukcapil - Selamat Datang Di Website Resmi Pemerintah Daerah Kota Cimahi," accessed October 26, 2025, <https://cimahikota.go.id/berita/detail/78172-pernikahan-non-muslim-harus-tercatat-di-disdukcapil>.

¹³ "Tata Cara Gugat Cerai Perceraian Non Muslim," accessed October 26, 2025, <https://www.hukumonline.com/berita/a/tata-cara-gugat-cerai-perceraian-non-muslim-lt64ef12b8c0167>.

¹⁴ "Judgement Number 63/Pdt.G/2024/PN Skw, Number 74/Pdt.G/2022/PN Skw," n.d.

¹⁵ "Judgement Number No. 282/Pdt.G/2017/PN SMG" (2017).

¹⁶ "Judgement Number 97/Pdt.G/2024 PN Mnd, Number 200/Pdt.G/2024/PN Mnd, Number 367/Pdt.G/2024/PN Mnd" (n.d.).

¹⁷ "Judgement Number 12/Pdt.G/2024/PN Kdr, Number 41/Pdt.G/2024/PN Kdr" (2024).

¹⁸ "Judgement Number 15/Pdt.G/2017/PN Cbn, Number 7/Pdt.G/2019/PN Cbn, Number 15/Pdt.G/2019/PN Cbn" (n.d.).

¹⁹ "Judgement Number 6/Pdt.G/2024/PN Mgg, Number 31/Pdt.G/2023/PN Mgg" (n.d.).

²⁰ "Judgement Number 245/Pdt.G/2024/PNBks, Number 275/Pdt.G/2024/PN Bks" (n.d.).

²¹ "Judgement Number 29 /Pdt.G/2024/PN Slt, Number 25/Pdt.G/2024/PN Slt, Number 21/Pdt.G/2024/PN Slt" (2024).

Catholic Couples Adjudicated in Civil Courts”²² highlights a juridical gap between ecclesiastical norms and civil court decisions, resulting in what the author terms “dual obedience” — a dual loyalty of believers to both state law and religious law. Similarly, “The Perspective of Indonesian Civil Law and Canon Law on Divorce within the Catholic Community”²³ reveals conceptual contradictions that create both legal and spiritual dilemmas for Catholic couples in Indonesia. On one hand, the state constitutionally guarantees freedom of religion; yet on the other, civil law often neglects theological sensitivities intrinsic to sacramental doctrine. Meanwhile, “Examining the Reality of Divorce in Catholic Families and Its Prevention through Canon 1141”²⁴ underscores the role of Canon 1141, which affirms that a valid marriage can only be dissolved by the death of one spouse. This study adopts a theological-normative approach, emphasising moral and spiritual formation as preventive measures against divorce. It reveals a disjunction between the spiritual values of the Church and the legalistic approach of the state, which tends to prioritise administrative formalities over spiritual principles. In contrast, “The Executorial Force of Civil Court Divorce Decisions on Catholic Marriages”²⁵ employs a juridical-positivistic approach, treating law as an autonomous system detached from religious norms.

Although the aforementioned studies have made significant contributions, a research gap remains at the normative and philosophical levels: there has been no comprehensive study that examines non-Muslim divorce through an integrative approach linking religious law, state law, and human rights principles within the Islamic framework of *haqq al-insānī al-asāsī*. This research seeks to fill that gap by offering a new analytical perspective on how the Islamic values of justice and freedom of religion can serve as an ethical foundation for protecting minority rights, particularly those of Catholic communities, within Indonesia’s family law system that is predominantly shaped by Muslim-majority norms.

This research introduces a new analytical lens by applying the Islamic concept of *haqq al-insānī al-asāsī* (fundamental human rights) to the issue of non-Muslim divorce. Rather than viewing Islamic law as an exclusive system for Muslims, this study positions it as a universal ethical framework grounded in the principles of justice (*al-‘adl*), equality (*al-musāwāh*), and human dignity (*karāmah insāniyyah*). The novelty of this study lies in its use of Islamic human rights principles as a tool for defending the rights of religious minorities—an approach rarely found in previous legal or theological literature. By integrating Islamic human rights theory with an empirical analysis of court decisions, this research bridges the normative dimension of Islam, positive law, and the protection of minority rights. It further demonstrates that Islamic values can serve as a unifying moral foundation to promote inclusivity and justice within a pluralistic society.

The primary aim of this study is to examine how the principles of *haqq al-insānī al-asāsī* (fundamental human rights in Islam) are applied in non-Muslim divorce cases in Indonesia, with specific attention to the enforcement of justice, equality, and human dignity. Building on this analytical lens, the research further seeks to identify socio-legal challenges and reform opportunities

²² Vincensia Felyssa Gianna Musung, Vecky Gosal, and Maikel Kuntag, “Pandangan Hukum Gereja Katolik Terhadap Perceraian Pasangan Beragama Katolik Yang Terjadi Di Pengadilan Berlandaskan Hukum Sipil,” *Lex Privatum Jurnal Fakultas Hukum, UNSRAT* 15, no. 2 (2025), <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/60746>.

²³ Rafael Suban Larantukan and Rosalinda Elsina Latumahina, “Perspektif Hukum Perdata Indonesia Dan Hukum Kanonik Terhadap Perceraian Dalam Komunitas Katolik,” *Journal Evidence Of Law* 4, no. 1 (2025): 82–88, <https://doi.org/https://doi.org/10.59066/jel.v4i1.1011>.

²⁴ Pilipus Benizi Jindung and Karifansius Firman, “Menelaah Realitas Perceraian Dalam Keluarga Katolik Dan Upaya Pencegahannya Melalui Penerangan Kanon 1141,” *PASTORAL CATECHETICAL JOURNAL* 2, no. 1 (2025): 44–56, <https://doi.org/https://doi.org/10.70343/ed2km781>.

²⁵ Fransiscus Hapsektio Priyaseputra and Abraham Ferry Rosando, “Kekuatan Eksekutorial Putusan Cerai Pengadilan Negeri Terhadap Perkawinan Katolik,” in *Seminar Nasional Dan Call For Paper 2023 Dengan Tema” Penguatan Kapasitas Sumber Daya Manusia Menuju Indonesia Emas 2045” PSGESI LPPM UWP*, vol. 10, 2023, 231–46, <https://doi.org/https://doi.org/10.38156/gesi.v10i1.279>.

within Indonesia's pluralistic legal system. Through this approach, the study endeavours to formulate inclusive and equitable solutions that not only uphold individual rights but also foster a harmonious and just society. The ultimate objective is to bridge legal formalism and ethical universality, aligning judicial practice with both the universal values of human rights and the normative commitments of Islamic legal-ethical thought.

Method

This study constitutes a library-based research undertaking employing a qualitative method with a normative-juridical approach.²⁶ Its primary objective is to explore the interaction between state law and religious teachings in the context of non-Muslim divorce in Indonesia, while examining selected court decisions that reflect the dynamics and challenges within non-Muslim family law. Characteristically, the research is descriptive-analytical,²⁷ aiming to illustrate the existing legal realities in order to identify patterns, tendencies, and discrepancies in the implementation of non-Muslim divorce law. The theoretical framework is grounded in Human Rights Theory and Islamic legal principles, particularly the concept of *haqq al-insānī al-asāsī* (fundamental human rights in Islamic thought), which serves as the conceptual foundation for assessing the application of justice, equality, and religious freedom in legal practices.²⁸ The study utilises primary data derived from documented court rulings, as well as secondary data comprising primary legal sources (statutory regulations and jurisprudence), secondary sources (academic journals and scholarly books), and tertiary sources (legal encyclopaedias and dictionaries).²⁹ Data analysis is conducted through three key stages: data reduction,³⁰ data presentation,³¹ and conclusion drawing.³² This methodological approach ensures rigorous analytical precision and conceptual consistency, while affirming the relevance of human rights and Islamic legal reasoning in shaping a family law system that is inclusive, just, and grounded in universal human values.

The *haqq al-insānī al-asāsī* (human rights) paradigm in Islam

Human rights originated from the tradition of natural philosophy, which initially emerged from Newtonian physics and later evolved through the philosophical works of John Locke and Jean-Jacques Rousseau. Consequently, the notion of human rights developed as a response to resist all forms of human oppression and domination. As a concept grounded in human nature, human rights are regarded as universal principles that transcend social and cultural boundaries. The idea of "nature" in Western philosophy finds its equivalent in the Islamic concept of *fitrah*, which similarly denotes the innate disposition and moral integrity inherent in every human being.³³

Human rights have often been stigmatised as instruments of Western colonialism and perceived as a means to undermine Eastern, particularly Islamic, civilisations. Such misconceptions

²⁶ M.S. Kaelan, *Metode Penelitian Kualitatif Bidang Filsafat* (Yogyakarta: Paradigma, 2005). 58.

²⁷ Moh Nazir, *Metode Penelitian* (Jakarta: Ghalia Indonesia, 1988). 87.

²⁸ Mizaj Iskandar, "HAM Dalam Prespektif Islam," *Media Syari'ah: Wahana Kajian Hukum Islam Dan Pranata Sosial* 19, no. 1 (2017): 111–26, <https://doi.org/https://doi.org/10.22373/jms.v19i1.2017>.

²⁹ Wahyudin Darmalaksana, *Metode Penelitian Kualitatif Studi Pustaka Dan Studi Lapangan, Pre-Print Digital Library UIN Sunan Gunung Djati* (Bandung: Pusat Perpustakaan UIN Sunan Gunung Djati Bandung, 2020). 23.

³⁰ Alven Safik Ritonga and Isnaini Muhandhis, "Teknik Data Mining Untuk Mengklasifikasikan Data Ulasan Destinasi Wisata Menggunakan Reduksi Data Principal Component Analysis (Pca)," *Jurnal Ilmiah Edutic: Pendidikan Dan Informatika* 7, no. 2 (2021): 124–33.

³¹ Dwi Setyowati, "Pelatihan Membuat Grafik Dalam Microsoft Excel. Untuk Pengolahan Dan Penyajian Data," *DHARMA BAKTI*, 2019, 101–12.

³² Wiwin Yuliani, "Metode Penelitian Deskriptif Kualitatif Dalam Perspektif Bimbingan Dan Konseling," *QUANTA: Jurnal Kajian Bimbingan Dan Konseling Dalam Pendidikan* 2, no. 2 (2018): 83–91.

³³ Robby Habiba Abror, "Paradoks Universalitas HAM Barat Di Muka Cermin Islam Perspektif Filsafat Hukum Dan HAM," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 12, no. 2 (2012): 217–35, <http://dx.doi.org/10.18326/ijtihad.v12i2.217-235>.

have contributed to strained relations between the two cultural spheres, at times obscuring the potential for mutual understanding and constructive engagement. Consequently, the discourse on human rights has become entangled within this broader civilisational tension, rendering its acceptance and implementation challenging within many Eastern and Muslim-majority societies.³⁴

The meaning and concept of human rights cannot be separated from the development of international instruments that contain them. One of the most important documents is the Universal Declaration of Human Rights formulated in 1948, which is considered to be the most comprehensive human rights document published by all countries and nations representing various cultural backgrounds, beliefs, ideologies, and political orientations.³⁵ Human rights are considered a universal value; a value construct that transcends the boundaries of civilisation, cultural barriers, and specific paradigms. Human rights values—without exception—cannot be modified in an effort to concord with the local culture of a country or society.³⁶

Human rights fundamentally refer to the power or authority that a person possesses, which is essential. Since human rights are fundamental, their fulfilment is obligatory and urgent. This aligns with Islamic concepts, particularly the principle of Tawhid, which is the most basic teaching in Islam. The concept of human rights in Islam is divided into two types based on the category of *huquuqul ibad*. First, human rights that can be implemented by the (Islamic) state, and second, human rights that cannot be implemented directly by the state. The former are termed legal rights, while the latter are referred to as moral rights. The distinction between the two lies solely in the issue of accountability before the state. The source, nature, and accountability before God remain the same.³⁷

From the Islamic perspective, the Qur'anic conception of human rights affirms the principle of religious freedom, recognising each individual's autonomy to profess and adhere to a faith of their choice in accordance with divine guidance. The Quran states: "*There is no compulsion in religion*" (Al-Qur'an, al-Baqarah: 256); "*Say, O Prophet! O non-Muslims, I will not worship what you worship, and you will not worship what I worship; for you, your religion, and for me, mine*" (Al-Qur'an, al-Kafirun, verses 1-6).³⁸ Accordingly, the application of Islamic law must uphold non-discrimination and equal treatment among all members of society, enabling every citizen to enjoy the essential rights to freedom of expression, belief, worship, and association in accordance with both Islamic values and universal human rights principles.³⁹

Islam is a universal and comprehensive religion, encompassing numerous important concepts. These concepts include *aqidah*, *ibadah*, and *muamalat*, each of which teaches about faith, belief, worship, and social interaction. In addition to imparting teachings on faith, Islam also encompasses dimensions based on the provisions of *sharia* or *fiqh*. Moreover, according to Abul A'la al-Maududi, there are two concepts of rights in Islam: first, human rights or *huquq al-insan al-dharuriyyah*, and

³⁴ Muhammad Hafiz, "Dinamika Hukum Dan Hak Asasi Manusia Di Negara-Negara Muslim," *Al-Ahkam* 23, no. 2 (2013): 201–24, <https://doi.org/https://doi.org/10.21580/ahkam.2013.23.2.23>.

³⁵ Tamyiz Mukharrom and Supriyanto Abdi, "Harmonizing Islam and Human Rights Through the Reconstruction of Classical Islamic Tradition," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (2023): 40–57, <https://doi.org/https://doi.org/10.22373/sjhk.v7i1.16436>.

³⁶ Abdullah Tri Wahyudi, "Universalitas Dan Partikularitas Hak Asasi Manusia Dalam Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Al-Ahkam: Jurnal Ilmu Syariah Dan Hukum* 1, no. 1 (2016): 93–102, <https://doi.org/https://doi.org/10.22515/alakhkam.v1i1.82>.

³⁷ Wahyudi.

³⁸ Muhammad Faisal Hamdani, "Hukum Keluarga Islam Dalam Perspektif HAM Universal (UDHR) Dan HAM Islam (UIDHR)," *AHKAM: Jurnal Ilmu Syariah* 16, no. 1 (2016): 21–30, <http://dx.doi.org/10.15408/ajis.v16i1.2892>.

³⁹ Khusnul Khotimah, "Konsep HAM Dalam Pemikiran Hukum Islam Modern (Telaah Atas Pemikiran Abdullahi Ahmed An-Na'im)," *Al-Manahij: Jurnal Kajian Hukum Islam* 2, no. 2 (2008): 133–49, <https://doi.org/10.24090/mnh.v2i2.3686>.

second, God's rights or *huquq Allah*.⁴⁰ The two types of rights are inseparable, distinguishing the concept of human rights according to Islam from the Western perspective.⁴¹

The Qur'an and as-Sunnah, as sources of law and guidelines for life, have accorded great respect to human rights. These two sources have laid down the basic principles of human rights long before the notion of these rights developed within the global community.⁴² Human rights in Islam began with several events that can be elucidated as follows:

- a) The Charter of Medina (*al-Dustur al-Madinah*) contains basic teachings that include five main principles. Firstly, establishing good interaction with others, both Muslims and non-Muslims. Second, supporting each other in the face of common enemies. Third, to defend the oppressed. Fourth, giving each other good advice. And fifth, respecting religious freedom. These five principles became the basis laid by the Medina Charter as the foundation of state life in the pluralistic society in Medina.⁴³
- b) The Cairo Declaration which contains human rights provisions is as follows:

Contents of The Cairo Declaration ⁴⁴			
1	The right to equality and freedom (QS. al-Isra: 70, al-Nisa: 58, 105, 107, 135 and al-Mumtahanah: 8)	8	The right to education (QS. al-Taubah: 122, al-'Alaq: 1-5)
2	Right to life (QS. al-Maidah: 45 and al-Isra': 33)	9	The right to freedom of religion (QS.al-Kafirun: 1-6, al-Baqarah: 136 and al-Kahf: 29)
3	The right to self-protection (QS. al-Balad: 12-17, al-Taubah: 6)	10	The right to freedom of asylum (QS. al-Nisa: 97, al-Mumtahanah: 9)
4	The right to personal honour (QS. al-Taubah: 6)	11	The right to employment (QS. al- Taubah: 105, al-Baqarah: 286, al-Mulk: 15)
5	Family rights (QS. al-Baqarah: 221, al-Rum: 21, al-Nisa 1, al-Tahrim: 6)	12	The right to equal treatment (QS. al-Baqarah 275-278, al-Nisa 161 Ali 'Imran: 130)
6	The right to equality of women and men (QS. al-Baqarah: 228 and al-Hujurat: 13)	13	The right of ownership (QS. al-Baqarah: 29, al-Nisa: 29)
7	Rights of children from parents (QS. al-Baqarah: 233 and surah al-Isra: 23-24)	14	The right of detention (QS. al-Mumtahanah: 8)

The emergence of the Cairo Declaration cannot be separated from the formation of the Universal Declaration of Human Rights (UDHR) in 1948 by the United Nations. Although not particularly significant, the abstentions submitted by several Muslim countries marked the beginning of the Cairo Declaration and highlighted the often contentious relationship between the Islamic community and the concept of human rights.⁴⁵ Furthermore, Muslim countries, particularly those in the Middle East, face a dilemma regarding the upholding and implementation of human rights. On one hand, Muslim communities are hesitant to accept the principle of universality of human rights, viewing it as potentially contradictory to Islamic values. On the other hand, there exists a pressing need to demonstrate that Islam also respects human rights, given the strong moral

⁴⁰ Khotimah.

⁴¹ Achmad Suhaili, "Hak Asasi Manusia (HAM) Dalam Penerapan Hukum Islam Di Indonesia," *Al-Bayan: Jurnal Ilmu Al-Qur'an Dan Hadist* 2, no. 2 (2019): 176–93, <https://doi.org/https://doi.org/10.35132/albayan.v2i2.77>.

⁴² Suhaili.

⁴³ "Constitution of Medina (Dustur Al-Medinah)," accessed October 27, 2025, <https://oceanlibrary.com/constitution-of-medina/>.

⁴⁴ Susan Mumm, "Cairo Declaration on Human Rights in Islam," in *Religion Today: A Reader* (Routledge, 2017), 67–73.

⁴⁵ "Islamic Law vs Human Rights," accessed October 26, 2025, <https://humanists.international/2008/03/islamic-law-vs-human-rights/>.

imperative that human rights hold in international relations.⁴⁶ This dilemma provides insight into why the Organisation of Islamic Cooperation (OIC) member states adopted the Cairo Declaration in the 1990s while seemingly not recognising the UDHR as the universal foundation of human rights.⁴⁷

Fundamentally, human rights in Islam emphasise the principles of justice (*al-'adl*), equality (*al-musāwāh*), and human dignity (*karāmah insāniyyah*):

a) The concept of justice (*al-'adl*) in Islamic legal thought

The term "justice" derives from the Arabic root *'adala-ya'dilu-'adlan-'adālatan-'udūlatan*, which denotes truthfulness and the act of judging rightly and fairly. In its simplest form, justice signifies the absence of arbitrariness, acting neither unjustly toward oneself nor toward others. The term "others" in this context extends to include fellow members of society, the surrounding environment, and ultimately, God as the Supreme Creator. Consequently, the concept of justice in Islam is comprehensive, encompassing four interrelated dimensions: justice toward oneself as an individual, toward other human beings as members of society, toward the environment as part of God's creation, and toward God as the ultimate source of truth.⁴⁸ The principle of justice embodies several essential aspects:

1. Neither exceeding nor diminishing what is rightfully owed;
2. Maintaining impartiality and avoiding biased judgement;
3. Acting in accordance with one's capacity, position, and rightful proportion;
4. Adhering steadfastly to the truth; and
5. Refraining from any form of arbitrariness or abuse of power.⁴⁹

There are two principal formulations regarding the concept of justice. The first defines justice as the harmony between the exercise of rights and the fulfilment of obligations, representing a balance between entitlement and duty in accordance with the legal framework. The second formulation, often emphasised by legal scholars, views justice as the equilibrium between legal certainty and proportionality, thereby ensuring both the predictability and fairness of legal outcomes.⁵⁰ In the Qur'an, the command to act justly is consistently associated with piety (*taqwā*). As stated in the Al-Qur'an, "Be just; for justice is nearer to piety."⁵¹ This verse underscores that believers must always uphold justice, even towards those they may dislike, and are forbidden from acting deceitfully under any circumstances.

b) The principle of equality (*al-Musāwāh*) in Islamic legal and ethical thought

Equality (*al-musāwāh*) is a fundamental human right that affirms the equal worth and dignity of all individuals, without privilege or superiority based on external differences. While every human being possesses unique attributes, these distinctions must never serve as grounds for claims of superiority; fundamentally, all people share the same value

⁴⁶ Hafiz, "Dinamika Hukum Dan Hak Asasi Manusia Di Negara-Negara Muslim."

⁴⁷ Siti Ruhaini Dzuhayatin, "Pidato Pengukuhan Guru Besar: Pendekatan Konvergensi-Divergensi Dalam Kontestasi Islam Dan Hak Asasi Manusia Internasional," 2025, <https://uin-suka.ac.id/id/show/kolom/313/pendekatan-konvergensi-divergensi-dalam-kontestasi-islam-dan-hak-asasi-manusia-internasional-pidato-pengukuhan-gb-prof-dr-siti-ruhaini-dzuhayatin-ma-dosen-fak-syariah-dan-hukum>.

⁴⁸ Idris Idris, Armai Arief, and Made Saihu, "Keadilan Sosial Dalam Perspektif Al-Qur'an," *Journal of Creative Student Research* 1, no. 4 (2023): 57–75, <https://doi.org/https://doi.org/10.55606/jcsrpolitama.v1i4.2214>.

⁴⁹ Rifky Adji Sukmana, Kurniati Kurniati, and Lomba Sultan, "Paradigma Keadilan Dalam Penegakan Hukum Negara Berdasarkan Teori Kebenaran Perspektif Filsafat Hukum Islam," *JURNAL ILMIAH FALSAFAH: Jurnal Kajian Filsafat, Teologi Dan Humaniora* 8, no. 2 (2022): 17–32, <https://doi.org/https://doi.org/10.37567/jif.v8i2.1589>.

⁵⁰ A. Ridwan Halim, *Pengantar Ilmu Hukum Dalam Tanya Jawab* (Jakarta: Ghalia Indonesia, 2005). 176. See also, Mahir Amin, "Konsep Keadilan Dalam Perspektif Filsafat Hukum Islam," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 4, no. 02 (2014): 322–43, <https://doi.org/https://doi.org/10.15642/ad.2014.4.02.322-343>.

⁵¹ *Al-Qur'an Dan Terjemahannya* (Jakarta: Kementerian Agama Republik Indonesia, 2022). Al-Maidah: 8.

before God and within the social order. In Islam, the principle of equality transcends normative abstraction and constitutes a foundational doctrine asserting that one's true nobility is determined solely by piety (*taqwā*).⁵² The Qur'an explicitly rejects any form of arrogance rooted in lineage, race, or social origin, as articulated in Surah al-Nisā':1, which declares that all humankind was created from a single soul (*min nafsīn wāḥidah*).⁵³ Consequently, Islam accords equal respect, dignity, and protection to every human being, irrespective of religion, ethnicity, race, or nationality. According to Nurcholish Madjid, the concept of *musāwāh* is inspired by the Qur'anic expression "*kalimatun sawā*," which literally means "a common word" or "a shared platform," as found in the verse:

قُلْ يَا أَهْلَ الْكِتَابِ تَعَالَوْا إِلَى كَلِمَةٍ سَوَاءٍ بَيْنَنَا وَبَيْنَكُمْ⁵⁴

"Say, O People of the Book! Come to a common word between us and you,"

Madjid interprets *kalimatun sawā* as a theological basis for equality, openness, and civilized dialogue among adherents of different faiths not as an attempt to homogenize doctrines, but as a shared moral ground for universal human ethics.⁵⁵ He argues that this verse represents an invitation to interreligious cooperation on common moral values such as justice, honesty, and humanity, while preserving the diversity of belief.⁵⁶ In this sense, *al-musāwāh* serves as the ethical foundation of pluralism, promoting harmony in a multi-religious society through mutual respect rather than domination or hierarchy. Abdurrahman Wahid views Islam as an inherently egalitarian faith that rejects injustice based on class, race, ethnicity, gender, or identity. For him, equality is not only a constitutional demand but a core value of faith, affirming that all humans Muslim and non-Muslim alike—are equal before God. This vision positions Islamic egalitarianism as the moral foundation for democracy, interfaith harmony, and justice in a plural society.⁵⁷

- c) The principle of human dignity (*karāmah al-insāniyyah*) in Islamic legal and ethical discourse

Etymologically, the Arabic term *karāmah*, derived from the root *karuma*, denotes honour, nobility, dignity, prestige, and moral excellence. Terminologically, *karāmah* signifies a divine gift and trust (*amānah*) bestowed by Allah SWT upon humankind in the form of inherent honour and spiritual elevation. Within this framework, human dignity (*karāmah al-insāniyyah*) represents not merely a moral attribute but a theological affirmation of the sanctity and worth that God has granted to every individual.⁵⁸ In contemporary human rights discourse, Abdullahi Ahmed An-Na'im emphasises that the recognition of human dignity constitutes the foundational basis of all human rights. He argues that respect for human dignity is not only a moral imperative but the essence of every right itself. According to An-Na'im, every individual, regardless of religious, cultural, or ethnic background, possesses inherent value and worth that must be respected and protected by

⁵² Sukron Ma'mun, "Kesetaraan Dalam Islam – Character Building," accessed October 26, 2025, <https://binus.ac.id/character-building/2023/02/kesetaraan-dalam-islam/>.

⁵³ *Al-Qur'an Dan Terjemahannya*. An-Nisa:1.

⁵⁴ *Al-Qur'an Dan Terjemahannya*. Ali-Imran: 64.

⁵⁵ Nuraeni Nuraeni, "Mencari Kalimatun Sawa Dalam Pluralisme Agama (Kajian Dalam Perspektif Islam)," *Living Islam: Journal of Islamic Discourses* 3, no. 2 (2020): 278–90, <https://doi.org/https://doi.org/10.14421/lijid.v3i2.2459>.

⁵⁶ Muhammad Supawi and Arifinsyah Arifinsyah, "Makna Kalimatun Sawa Terhadap Relevansi Wacana Inklusivisme Agama Dan Realitas Peradaban Manusia, Butir Pemikiran Nurcholish Madjid," *MODELING: Jurnal Program Studi PGMI* 11, no. 1 (2024): 414–29, <https://doi.org/https://doi.org/10.69896/modeling.v11i1.2246>.

⁵⁷ Moh. Rivaldi Abdul, "Kesetaraan Antar Umat Beragama Menjalani Kehidupan Bersama," accessed October 26, 2025, <https://mubadalah.id/kesetaraan-antar-umat-beragama-dalam-menjalani-kehidupan-bersama/>.

⁵⁸ Munif Mahadi Attamimi, "Hak Asasi Manusia Perspektif Al-Qur'an (Dimensi Akidah, Syariat Dan Akhlak)" (Institut PTIQ Jakarta, 2020). 73.

all legal and political systems. This conception of dignity transcends particularistic boundaries, positioning human beings as moral agents endowed with inalienable rights by virtue of their humanity.⁵⁹ In Islamic theology, the concept of *karāmah insāniyyah* affirms that every human being possesses intrinsic honour and nobility originating from divine creation. This dignity is universal, unconditional, and independent of religion, race, ethnicity, or social status.⁶⁰ The Qur'an explicitly declares:

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ

"And indeed, We have honoured the children of Adam."⁶¹

This verse establishes that human dignity is inherent and inalienable, forming the moral and legal basis for the protection of fundamental human rights in Islam, including the right to life, liberty, and justice. Within the Islamic legal-ethical framework, *karāmah al-insāniyyah* also underpins the principle of spiritual equality, affirming that the only measure of human excellence lies in piety (*taqwā*). Hence, upholding human dignity is not merely an ethical recommendation but a manifestation of divine justice (*al-'adl*) and compassion (*rahmah*), reflecting the very core of Islamic teachings on humanity and social harmony.⁶²

The objectives of Islamic law focus on five main aspects encompassed in the concept of the five essential needs (*al-dharuriyat al-khamsah*). This concept includes five important aspects that must be maintained by every individual, namely protection of religion (*hifdzu al-din*), protection of the soul (*hifdzu al-nafs*), protection of reason (*hifdzu al-aql*), protection of lineage (*hifdzu al-nasl*), and protection of property (*hifdzu al-mal*).⁶³ These five aspects must be upheld by every Muslim to create a more humane social order, which is based on respect between individuals, between individuals and society, between societies, between society and the state, and between one religious community and another. These five principles are not only guarantees of fundamental rights but also the obligations and duties of the Sharia, which individuals must not relinquish or squander, even if done voluntarily.⁶⁴ Therefore, the application of Islamic law should ideally avoid discriminatory treatment against fellow citizens, ensuring that all individuals can enjoy freedom of opinion, religion, worship, and association.⁶⁵

In the Indonesian context, Eldridge argues that the human rights protection system is strongly influenced by social issues such as poverty, culture, religion, and national stability and order.⁶⁶ The

⁵⁹ Adi Abdilah Yusup, "Agama Dan Penghormatan Pada Martabat Manusia Dalam Perspektif Abdullahi Ahmed An-Na'im," *JURNAL ILMIAH FALSAFAH: Jurnal Kajian Filsafat, Teologi Dan Humaniora* 10, no. 2 (2024): 107–23, <https://doi.org/https://doi.org/10.37567/jif.v10i2.3035>.

⁶⁰ Dani Abdu Latief, Muhamad Adji Saputra, and Sholahuddin Al Ayubi, "Peran Al-Qur'an Dalam Membahas Konsep Kesetaraan Gender Dan Hak Asasi Manusia: Studi Atas Prinsip Keadilan, Martabat, Dan Hak Individu," *JUTEQ: JURNAL TEOLOGI & TAFSIR* 2, no. 7 (2025): 1288–99, <https://languar.net/index.php/JUTEQ/article/view/296>.

⁶¹ *Al-Qur'an Dan Terjemahannya*. Al-Isra':70.

⁶² Fitri Mustafa et al., "The Deconstruction of Marriage Law in Islam: A Critical Analysis of The Practice of Contract Marriage in The Modern Era: Dekonstruksi Hukum Perkawinan Dalam Islam: Analisis Kritis Terhadap Praktik Kawin Kontrak Di Era Modern," *Al Hairy | Journal of Islamic Law* 1, no. 1 (2025): 51–74, <https://doi.org/https://doi.org/10.64344/hry.v1i1.14>.

⁶³ Abu Ishaq Al-Syatibi, *Al-Muwafaqat Fi Ushuli Al-Syariah*, Juz. 2 (Beirut: Dar Al-Kutub Al-Ilmiyah, 2003). 109.

⁶⁴ Milhan Milhan, "Maqashid Syari 'Ah Menurut Imam Syatibi Dan Dasar Teori Pembentukannya," *Al-Ussrah: Jurnal Al Ahwal As Syakhshiyah* 9, no. 2 (2022): 83–102.

⁶⁵ Munawir, ""Menafsir Ulang Egalitarianisme: Membangun Kehidupan Tanpa Diskriminasi" - UIN Alauddin Makassar," accessed October 26, 2025, <https://uin-alauddin.ac.id/tulisan/detail/menafsir-ulang-egalitarianisme---membangun-kehidupan-tanpa-diskriminasi-0225>.

⁶⁶ Triantono Triantono and Muhammad Marizal, "Konsep Moderasi Pidana Mati RKUHP Dalam Perspektif HAM Dan Kepentingan Negara," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 2022, 111–27, <https://doi.org/https://doi.org/10.24090/volksgeist.v5i1.6399>.

emergence of this influence brings forth a philosophical and sociological interpretation, particularly of Article 28A and Article 28J of the 1945 Constitution of the Republic of Indonesia.

“Every person has the right to live and to defend their life and existence.⁶⁷ Everyone is obliged to respect the human rights of others within the order of social, national, and state life”.⁶⁸

In human rights instruments, provisions on the freedom of marriage are found in Article 16(1) of the Universal Declaration of Human Rights, which states that adults, regardless of nationality, citizenship, or religion, have the right to find a partner and build a family. They have equal rights in marriage, during marriage, and in divorce.⁶⁹ Furthermore, in international documents, the basic element of freedom of religion is stated in Article 18 of the Universal Declaration of Human Rights as follows:

"Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance."⁷⁰

In a highly diverse society such as Indonesia, which consists of various cultures, races, ethnicities, and religions, marriages between individuals from different backgrounds are natural and unavoidable. Intense social interactions and existing diversity create opportunities for relationships between different groups, making such phenomena difficult to avoid. With this diversity, interethnic, interracial, and interreligious marriages frequently occur as part of the complex social and cultural reality within a multicultural society.⁷¹

Paradigm of divorce in non-Muslim religions

Divorce, as defined by Bruce, constitutes the termination of the marital relationship between a man and a woman who have cohabited as husband and wife.⁷² Among Christians, including ecclesiastical leaders, there exists no clear consensus regarding divorce. At least three distinct perspectives can be identified: Firstly, some advocate for both divorce and remarriage; Secondly, others support divorce but oppose remarriage; Thirdly, a faction rejects both divorce and remarriage. These differing viewpoints stem from the interpretation of the phrase found in Matthew 19:9, which states, "except for fornication."⁷³

In Catholic Christianity, divorce is not permitted for married couples, as marriage within this tradition is predicated on the principles of monogamy and indissolubility in accordance with Scripture, which asserts: "*What God has joined together, let no man separate.*"⁷⁴ Furthermore, according to the teachings of Pope John Paul II in the "*Apostolic Exhortation Familiaris Consortio*", the section addressing God's plan for marriage and the family delineates:⁷⁵

⁶⁷ "Constitution of the Republic of Indonesia, 1945" (1945). Article 28 A

⁶⁸ Constitution of the Republic of Indonesia, 1945. Article 28 J.

⁶⁹ "Universal Declaration of Human Rights, 1948" (1948). Article 16 (1)

⁷⁰ Universal Declaration of Human Rights, 1948. Article 18 means: Every person has the right to freedom of thought, conscience and religion; this right includes the freedom to change one's belief in religion or belief, and the freedom to practice one's religion or belief in an activity of teaching, worship or devotion, and obedience, whether done alone or together with others, in public or in private.

⁷¹ Hendrasari B. R. Rawung Runtu, Gafrila Jenifer, Wenly R. J. Lolong, "Problematika Perkawinan Beda Agama Di Indonesia Dalam Perspektif Hak Asasi Manusia," *Khatulistiwa: Jurnal Pendidikan Dan Sosial Humaniora* 5, no. 4 (2025): 36–67, <https://doi.org/https://doi.org/10.55606/khatulistiwa.v5i4.7475>.

⁷² F.F Bruce, *The New Century Bible Commentary: I & II Corinthians* (Grand Rapids, Michigan: William B. Eerdmans Publishing, 1992). 69.

⁷³ Peniel C D Maiaweng, "Perceraian Dan Pernikahan Kembali," *Jurnal Jaffray* 15, no. 1 (2017): 97–114, <https://doi.org/https://dx.doi.org/10.25278/jj71.v15i1.237>.

⁷⁴ Hadiwardoyo, *Perkawinan Menurut Islam Dan Katolik: Implikasinya Dalam Kawin Campur*. 38.

⁷⁵ Al Purwa Hadiwardoyo, *Perkawinan Dalam Tradisi Katolik* (Yogyakarta: Penerbit Kanisius, 1988). 125.

"Marriage between two baptised persons is a visible symbol of the New and eternal Covenant between Christ and the Church, a sacrament, an event of salvation. Their love is characterised by an indissoluble, faithful union of souls and bodies, open to their offspring."⁷⁶

Divorce within Christianity is essentially the legal separation of husband and wife. Each party may articulate this separation using various expressions, such as leaving the spouse, instructing the spouse to vacate the shared residence, or dissolving the marital bond. Divorce occurs when a husband and wife mutually agree to cease fulfilling their marital obligations. However, divorce itself represents the legal dissolution of the marriage bond, which is deemed contrary to the will of God. Jesus remarked, *"Because of your hardness of heart, Moses allowed you to divorce your wife, but from the beginning, it was not so."* This assertion underscores that divorce does not align with God's intention for marriage. According to biblical teachings, only two grounds for divorce are deemed justifiable, specifically the act of adultery. Divorce not only signifies the termination of the relationship between husband and wife but also impacts other facets, including children, property, the church, and God's commandments. All parties involved in the marriage must contend with the repercussions, as divorce can result in prolonged and potentially devastating conflicts, both directly and indirectly.⁷⁷

Christian religious leader, Rev Jhonsar Padang, contends that within Christianity in general, and in the Batak Church specifically, divorce is virtually unknown, as the Gospels clearly stipulate that divorce is impermissible. Jesus taught that anyone who divorces his wife is deemed to be committing adultery. The relationship between husband and wife in marriage is frequently described as a symbol of the relationship between God and humanity. Due to the sacredness of the husband-wife relationship, it is viewed as an image that should exist between God and His people, which elucidates why divorce is prohibited.⁷⁸

In Catholic Christianity, no grounds exist that justify divorce, as although the Gospels acknowledge that divorce may be justified on the basis of adultery, it is perceived as a termination of the validity of marriage, which is, in essence, inseparable. This perspective contrasts with that of Protestant Christianity, which directly references the texts in the Gospels. From a Protestant viewpoint, divorce is permissible on the grounds of adultery, as adultery is regarded as a betrayal by the wife against the husband and a symbol of the denial of marital fidelity.⁷⁹ In contrast, adherents of Protestantism tend to be more lenient regarding grounds for divorce, including inability to prepare meals, infertility after three years, illness, or prolonged unresolved conflicts between husband and wife. Consideration of these grounds for divorce suggests that civil law, as applied in courts, may not align with the teachings of Catholic Christianity. Judges, through legal understanding and tactful communication, should endeavour to dissuade couples from pursuing divorce, as granting divorce within the context of Catholic Christian teachings is ineffective. This is because the law should not contradict religious beliefs. Although the government delineates grounds for divorce for non-Muslims, adherence to these grounds is not obligatory if they conflict with religious teachings. Within Catholic Christian marriage, the church asserts that the bond between husband and wife is indissoluble.⁸⁰

As articulated in the Bible, several provisions govern the law of divorce in the Christian context, namely:

⁷⁶ Hadiwardoyo. 125.

⁷⁷ Hasan Bakti Nasution, Agusman Damanik, and Deska Afriani Caniago, "Perceraian Dalam Islam Dan Kristen," *Studia Sosia Religia* 5, no. 2 (2023): 79–87, <https://doi.org/http://dx.doi.org/10.51900/ssr.v5i2.14753>.

⁷⁸ Nasution, Damanik, and Caniago.

⁷⁹ Ethelbert Bullinger William, "The Companion Bible," *Kregel Publications: Appendix* 60 (n.d.): 1906–22.

⁸⁰ Ermi Suryani, *Perceraian Muslim Dan Non Muslim (Studi Kasus Di Pengadilan Agama Dan Pengadilan Negeri Kotamadya Bogor)*, Tesis, Sekolah Pascasarjana Universitas Islam Negeri (UIN) Syarif Hidayatullah Jakarta, 2014.

- a. God hates divorce and does not want any betrayal, on the basis of the Law: "*God wants everyone to take care of themselves and be faithful to their spouse*";⁸¹
- b. Divorce happens because of people's ignorance and stupidity. The view on divorce exists because of the Bible verse. However, if you read the chapter thoroughly, you will find that the divorce decree in Moses' time and Jesus' words of permission to divorce in the case of adultery were actually caused by human immaturity, not God's plan;⁸²
- c. Divorce is considered treason against God Malachi 2:14 and you ask, "*For what reason?*" Because the Lord has been a witness between you and the wife of your youth, to whom you have been unfaithful, even though she is your ally and the wife of your covenant. The book of Malachi highlights how God's people were being unfaithful by worshipping other gods, which grieved God. As such, divorce is seen as a betrayal not only of the spouse, but also of God who witnessed the Christian marriage vows;⁸³
- d. Divorce is strongly opposed by God, as stated in Matthew 5:31-32. It has also been said: "*Whoever divorces his wife shall give her a certificate of divorce. But I say to you that whoever divorces his wife, except for sexual immorality, makes her an adulteress; and whoever marries a divorced woman commits adultery.*"⁸⁴

From this discourse, it can be concluded that an individual should not hastily pursue divorce solely on account of a partner's infidelity. Despite the profound emotional distress experienced by the injured party, as a believer, the priorities should encompass repentance, forgiveness, and reconciliation. Cases of adultery should not be resolved through a swift decision to divorce as justification for the wronged party. Forgiveness should remain paramount in the preservation of the marital relationship.⁸⁵

Non-Muslim divorce practices in Indonesia

In the Indonesian legal context, several non-Muslim divorce cases exemplify the challenges and dynamics arising from the interaction between state law and religious values, as well as social norms. The following are pertinent examples of such cases.

Table 1. Christian divorce data in district courts and the contributing factors

No Judgement	Religion	Cause of Divorce	District Court
Number No. 282/Pdt.G/2017/PN SMG	Catholic	No Routine Maintenance	Semarang
Number 29 /Pdt.G/2024/PN Slt	Christian	Incompatibility, Dispute	Salatiga
Number 25/Pdt.G/2024/PN Slt	Christian	Dispute	Salatiga
Number 21/Pdt.G/2024/PN Slt	Christian	No Routine Maintenance	Salatiga
Number 63/Pdt.G/2024/PN Skw	Christian	Forced Marriage	Singkawang
Number 74/Pdt.G/2022/PN Skw	Christian	No permanent job	Singkawang
Number 12/Pdt.G/2024/PN Kdr	Christian	Dispute and quarrel	Kediri
Number 41/Pdt.G/2024/PN Kdr	Catholic	Dispute and quarrel	Kediri
Number 245/Pdt.G/2024/PNBks	Protestant Christian	Dispute and quarrel	Bekasi
Number 275/Pdt.G/2024/PN Bks	Christian	Beating	Bekasi

⁸¹ Alkitab Terjemahan Baru (Jakarta: Lembaga Alkitab Indonesia, 2007). Malachi 2:15-16.

⁸² Alkitab Terjemahan Baru. Matthew 19:8-9, Matthew 5:31-32, Deuteronomy 24:1-4.

⁸³ Alkitab Terjemahan Baru. Malachi 2:14

⁸⁴ Alkitab Terjemahan Baru. Matthew 5:31-31

⁸⁵ Alkitab Terjemahan Baru. Matthew 5:31-31

Number 15/Pdt.G/2017/PN Cbn	Catholic	Quarrel	Cirebon
Number 7/Pdt.G/2019/PN Cbn	Catholic	Economic	Cirebon
Number 15/Pdt.G/2019/PN Cbn	Catholic	Third Person	Cirebon
Number 6/Pdt.G/2024/PN Mgg	Christian	Third Person	Magelang
Number 31/Pdt.G/2023/PN Mgg	Catholic	Economy, Maintenance	Magelang
Number 97/Pdt.G/2024 PN Mnd	Protestant Christian	Dispute and quarrel	Manado
Number 200/Pdt.G/2024/PN Mnd	Christian	Economy	Manado
Number 367/Pdt.G/2024/PN Mnd	Christian	Inviolability	Manado

The divorce cases recorded in court, as evidenced by the data presented above, indicate that many divorces are not predicated on religious considerations. The data reveals that the grounds for divorce filed by Catholic and Christian couples encompass a wide range of issues, including quarrels, physical violence, differences in principles, involvement of third parties, economic factors, and incompatibility. This suggests that social and personal factors are more influential than religious aspects in the decision to pursue divorce. The divorce process is governed by positive law, whereby courts adjudicate cases without regard for religious norms. This underscores the role of civil law in offering protection and ensuring equitable settlements for individuals involved in divorce proceedings.

The prevalence of numerous divorce cases, whether in Singkawang, Manado, Kediri, Cirebon, Magelang, Bekasi, or Salatiga, reflects a societal trend in which individuals prefer to pursue legal solutions rather than adhere to traditional religious norms that often prohibit divorce. Despite the stigma surrounding divorce in religious contexts, many individuals opt for divorce in the interest of personal and familial well-being. This phenomenon illustrates shifting attitudes within society, which increasingly accept divorce as a viable option when relationships are deemed unhealthy. Issues such as violence, incompatibility, and recurrent arguments indicate that divorce is frequently viewed as a last resort for couples who perceive no alternative means of improving their relationship. This highlights the necessity for enhanced support for couples in fostering harmony prior to contemplating divorce. Overall, the data elucidates that divorce in the context of the courts is more profoundly influenced by interpersonal and social issues than by religious considerations, reflecting the complex realities of contemporary life in Indonesian society.

Judges' considerations in deciding cases

In adjudicating divorce cases involving non-Muslim couples in Indonesia, judges must assess a variety of legal aspects and pertinent facts. The following is a comprehensive description of the considerations that judges take into account in non-Muslim divorce cases, supported by relevant references:

- a. Psychological condition: as highlighted in court decision No. 282/Pdt.G/2017/PN SMG, the judge underscored the social realities and psychological condition of the couple as the primary basis for granting the divorce, particularly the irreconcilability of the parties. The decision was not predicated on establishing fault but rather on the substantial inability to sustain the marriage. This ruling aimed to ensure justice, equity, and the protection of the interests of all parties involved, including any children.⁸⁶
- b. Applicable law: the judge is required to ensure that the divorce judgement aligns with the legal framework governing non-Muslim couples. In Indonesia, divorce law for non-Muslims

⁸⁶ "Judges' Considerations in the Ruling of Court Decision No. 282/Pdt.G/2017/PN SMG," n.d.

is primarily dictated by the Civil Code (KUHPerdata), specifically Book III, which pertains to the Law of Engagement, alongside other relevant statutes and regulations.⁸⁷

- c. Grounds for divorce: the judge will consider the grounds presented by either party in their application for divorce. The Civil Code delineates several valid grounds for divorce, including irreconcilable differences, cruelty, or severe breach of duty, among other pertinent grounds.⁸⁸
- d. Presence of evidence: the judge must assess the evidence submitted by the parties. This evidence may include documents, testimonies, or other materials that substantiate the grounds for divorce. The judge's decision is contingent upon the facts disclosed during the trial.⁸⁹
- e. Children's interests: in cases where children are involved, the judge must prioritise the best interests of the children. This encompasses considerations related to child custody, visitation rights, and financial support obligations. The decision should aim to ensure the child's well-being and stability.⁹⁰
- f. Division of joint property: the judge is responsible for determining the equitable division of joint property between the spouses. This division must be fair and compliant with applicable laws, taking into account each party's contributions to the joint assets.⁹¹
- g. Balance and fairness: the judge must ensure that the decision reached is equitable and balanced for both parties. This necessitates consideration of the divorce's impact on all individuals involved and the rendering of an impartial decision.⁹²
- h. Legal procedures: the judge must confirm that all legal procedures are adhered to meticulously. This includes verifying that all necessary documentation and administrative requirements have been satisfactorily completed.⁹³
- i. Adherence to legal principles: the decision should be consistent with overarching legal principles, such as justice, legal certainty, and the protection of human rights.⁹⁴

By carefully considering all of the aforementioned factors, the judge is expected to deliver a decision that is just and in accordance with the law governing non-Muslim divorces.

Analysis of the principle of Islamic justice (*al-'Adl*)

In non-Muslim divorce cases such as No. 282/Pdt.G/2017/PN SMG (Catholic, Semarang), No. 25/Pdt.G/2024/PN Slt (Christian, Salatiga), and No. 12/Pdt.G/2024/PN Kdr (Christian, Kediri), the principle of justice (*al-'adl*) appears to have been applied merely in a procedural sense, without consideration for the substantive justice that necessitates a balance between legal frameworks and moral imperatives. The judicial decisions in these cases predominantly centred on factual evidence such as recurrent disputes, neglect of maintenance, or economic hardship, while overlooking the spiritual values intrinsic to the institution of marriage. When divorces involving Catholic or Protestant couples whose theological traditions regard marriage as a sacrament⁹⁵ are resolved administratively, without scope for religious recognition or consideration, a moral-legal dissonance emerges that undermines the very essence of justice: non-Muslim litigants achieve legal certainty yet remain spiritually entangled. From the perspective of fundamental human rights in Islam (*haqq al-*

⁸⁷ "Kitab Undang-Undang Hukum Perdata (Civil Code)," n.d.

⁸⁸ "Kitab Undang-Undang Hukum Perdata (Civil Code)." Article 39 of the Civil Code

⁸⁹ "Kitab Undang-Undang Hukum Perdata (Civil Code)." Article 1866 of the Civil Code

⁹⁰ "Law No. 1 of 1974 on Marriage." (1974). Articles 45 and 46

⁹¹ "Kitab Undang-Undang Hukum Perdata (Civil Code)." Article 97

⁹² "Law No. 48 of 2009 on Judicial Power" (2009). Article 97

⁹³ "Supreme Court Regulation (Perma) on Procedures for Filing and Hearing Divorces," n.d.

⁹⁴ Constitution of the Republic of Indonesia, 1945. Particularly Article 28 G Which Guarantees The Protection of Human Rights.

⁹⁵ Yohanes Servatius Lon, *Hukum Perkawinan Sakramen Dalam Gereja Katolik* (Yogyakarta: Kanisius, 2019). 11.

insānī al-asāsī)⁹⁶, this situation reflects a deficiency in distributive justice, as the state fails to accommodate the theological and existential needs of non-Muslim minorities. Consequently, the implementation of al-‘adl necessitates a transformation from a legalistic understanding of justice towards relational justice (*‘adālah ijtīmā’iyyah*)⁹⁷, emphasising the integration of legal norms, empathy, and the safeguarding of human dignity. Such an approach highlights that Indonesia’s plural legal system has not yet fully actualised the vision of *haqq al-insānī al-asāsī*—that judicial decisions must not only be legally valid but also morally and spiritually just.

Analysis of the principle of equality (*al-Musāwah*)

The principle of equality (*al-musāwah*) in Islamic law asserts that all human beings are equal before God, irrespective of religion or social status⁹⁸, as explicitly articulated in the Qur’an (al-Ḥujurāt: 13).⁹⁹ However, in judicial practice, as evidenced by cases such as No. 31/Pdt.G/2023/PN Mgg (Catholic, Magelang), No. 97/Pdt.G/2024/PN Mnd (Protestant, Manado), and No. 245/Pdt.G/2024/PN Bks (Protestant, Bekasi), this equality often remains formal rather than substantive. Indonesia’s dual legal system affords Muslims a distinctive advantage via the Religious Courts, where both legal and theological recognition are integrated, whereas non-Muslims receive only administrative legality through the District Courts, devoid of corresponding spiritual acknowledgment. This procedural uniformity paradoxically engenders substantive inequality that contravenes the essence of *al-musāwah al-dīniyyah* (religious equality). As illustrated in No. 7/Pdt.G/2019/PN Cbn (Catholic, Cirebon) and No. 41/Pdt.G/2024/PN Kdr (Catholic, Kediri), individuals may be declared legally divorced yet remain spiritually bound, thus creating an existential dilemma for litigants. From the perspective of *haqq al-insānī al-asāsī*, such conditions infringe upon the principle of *al-musāwah al-dīniyyah*, as the extant legal framework implicitly privileges the majority religion. The attainment of genuine equality necessitates procedural innovations such as faith-sensitive mediation, interfaith advisory panels, or optional post-divorce religious certification, thereby enabling both Muslim and non-Muslim citizens to access justice in accordance with their conscience and faith traditions. Within the context of Islamic jurisprudence, equality must be understood as contextual parity, an ethical commitment to justice that honours diversity while upholding the universal values of human rights.¹⁰⁰

Analysis of the principle of human dignity (*Karāmah Insāniyyah*)

The principle of human dignity (*karāmah insāniyyah*), as affirmed in the Qur’an,¹⁰¹ recognises the inherent honour and intrinsic worth of every human being, irrespective of religion or race.¹⁰² In cases such as No. 15/Pdt.G/2019/PN Cbn (Catholic, Cirebon) and No. 6/Pdt.G/2024/PN Mgg

⁹⁶ Ramza Fatria Maulana, Mahyudin Ritonga, and Shofwan Karim, “Freedom of Religion in Islam and Human Rights,” *WARAQAT: Jurnal Ilmu-Ilmu Keislaman* 10, no. 1 (2025): 175–89, <https://doi.org/https://doi.org/10.51590/waraqat.v10i1.988>.

⁹⁷ Ach Khoiri, “Hukum Perdata Islam Dan Keadilan Sosial: Perspektif Teoritis Dan Praktis,” *VOICE JUSTISIA: Jurnal Hukum Dan Keadilan* 9, no. 1 (2025): 1–13, <https://journal.uim.ac.id/index.php/justisia/article/view/3494>.

⁹⁸ Muhammad Fajrul Falah, “Egalitarianisme Muslim Dan Nonmuslim Dalam Kitab Al-Musāwah Al-Insāniyyah Karya ‘Ali Jum‘Ah,” *Syariah: Journal of Fiqh Studies* 1, no. 1 (2023): 1–20, <https://doi.org/https://doi.org/10.61570/syariah.v1i1.10>.

⁹⁹ *Al-Qur’an Dan Terjemahannya*.

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ

“O humanity! Indeed, We created you from a male and a female, and made you into peoples and tribes so that you may ‘get to’ know one another. Surely the most noble of you in the sight of Allah is the most righteous among you. Allah is truly All-Knowing, All-Aware”

¹⁰⁰ Abdul, “Kesetaraan Antar Umat Beragama Menjalani Kehidupan Bersama.”

¹⁰¹ *Al-Qur’an Dan Terjemahannya*. Al-Isrā’:70 Indeed, We have honored the children of Adam. وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ

¹⁰² Latief, Saputra, and Al Ayubi, “Peran Al-Qur’an Dalam Membahas Konsep Kesetaraan Gender Dan Hak Asasi Manusia: Studi Atas Prinsip Keadilan, Martabat, Dan Hak Individu.”

(Christian, Magelang), issues such as infidelity and third-party involvement were adjudicated purely on legal grounds, with scant attention paid to the emotional and spiritual trauma experienced by the litigants. A similar pattern is evident in No. 200/Pdt.G/2024/PN Mnd (Christian, Manado) and No. 367/Pdt.G/2024/PN Mnd (Christian, Manado), where judicial decisions emphasised legal validity but lacked any effort towards moral restoration or post-divorce social reintegration. Although these proceedings comply administratively with civil law, they tend to reduce human relationships to mere contractual arrangements, stripping them of their moral and spiritual dimensions. The absence of psychosocial and spiritual rehabilitation in such judgments underscores the urgent need for a dignity-centred approach to justice—a form of adjudication that humanises rather than merely legalises.¹⁰³ A judicial approach that neglects the human dimension stands in opposition to the moral spirit of *Haqq al-Insānī al-Asāsī*,¹⁰⁴ which positions *karāmah* as the ethical foundation for the protection of life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-ʿaql*), lineage (*ḥifẓ al-nasl*), and faith (*ḥifẓ al-dīn*).¹⁰⁵ Accordingly, the legal system should not conclude its function at the dissolution of marital ties but should extend its role towards the restoration of dignity through restorative justice grounded in the values of compassion (*raḥmah*) and empathy. Such an approach would reorient law from a bureaucratic mechanism into a moral instrument of humanity, ensuring that justice operates not merely to regulate but also to heal. Within this framework, *karāmah insāniyyah* serves not only as the protection of human rights but also as the very essence of justice itself, affirming that the ultimate purpose of law is to preserve the sanctity, honour, and humanity of every individual.

Conclusion

The findings of this study reveal that the application of the principles of *haqq al-insānī al-asāsī*, particularly those of justice (*al-ʿadl*), equality (*al-musāwāh*), and human dignity (*karāmah insāniyyah*), in non-Muslim divorce cases in Indonesia remains procedural and formalistic, falling short of achieving substantive justice. In terms of justice, District Court rulings tend to prioritise factual evidence over spiritual and moral considerations, creating a moral–legal dissonance in which non-Muslim litigants attain legal certainty but remain theologically bound according to their faith traditions. From the standpoint of equality, the uniform procedural framework of the Indonesian Civil Code has produced substantive inequality: Muslim citizens benefit from dual recognition, both legal and theological, through the Religious Courts, while non-Muslims obtain only administrative legality, thereby contradicting the principle of religious equality (*al-musāwāh al-dīniyyah*). Meanwhile, regarding human dignity, the adjudicative process often reduces marriage to a mere legal contract, neglecting psychosocial and spiritual rehabilitation, and thus diverging from the Qurʾānic mandate of *karāmah insāniyyah* to safeguard a life (*ḥifẓ al-nafs*), a reason (*al-ʿaql*), a lineage (*al-nasl*), and a faith (*al-dīn*). Overall, the principal challenges in non-Muslim divorce cases in Indonesia lie in the disconnect between positive law and religious values, the asymmetry within the dual court system, and the limited moral and spiritual sensitivity within judicial practices. Nevertheless, opportunities for reform remain open through the adoption of faith-sensitive mediation, interfaith advisory panels, and dignity-centred restorative justice models that integrate empathy, recovery, and spiritual values. Such reforms have the potential to guide Indonesia’s pluralistic legal system toward substantive justice that embodies the principles of justice (*al-ʿadl*), equality (*al-musāwāh*), and human dignity (*karāmah insāniyyah*), transforming the law from a mere

¹⁰³ Achmad Sodiki, “Hukum Yang Memanusiakan Manusia » Prasetya UB,” accessed October 27, 2025, <https://prasetya.ub.ac.id/prof-achmad-sodiki-hukum-yang-memanusiakan-manusia/>.

¹⁰⁴ Bambang Heri Supriyanto, “Penegakan Hukum Mengenai Hak Asasi Manusia (HAM) Menurut Hukum Positif Di Indonesia,” *Jurnal Al-Azhar Indonesia Seri Pranata Sosial* 2, no. 3 (2016): 151–68, <https://jurnal.uai.ac.id/index.php/sps/article/view/167>.

¹⁰⁵ Al-Syatibi, *Al-Muwafaqat Fi Ushuli Al-Syariah*. 104.

regulatory mechanism into a moral and humanising institution that restores and uplifts every individual, irrespective of religious affiliation.

This study recommends more inclusive reforms in Indonesia's legal system for non-Muslim divorce cases, such as simplifying procedures, improving access to legal information, and balancing religious values with human rights. Strengthening legal education and human rights awareness is also essential to reduce stigma. Future research should compare practices across regions or Muslim-majority countries and evaluate how reforms affect minority rights, gender equality, and child welfare.

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