

Normative Review of Judge's Decision About Interfaith Marriage in Indonesia

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ABSTRACT

The development of the times in the form of developments in human thought patterns and developments in technology has influenced various aspects of life. This development problem also affects the smallest structure of society in Indonesia, namely the family. Patterns of behavior in marriage, family relationships and wealth issues are issues that trigger conflicts in religious courts. There are many groups of people who adhere to human rights who want freedom in all matters, influencing the rules in family law. Likewise with regard to marriage, free flow people want the freedom to choose anyone, and marry people of different religions on the basis of a form of love and affection. So interfaith couples emerge who want to be legalized by Indonesian law. The purpose of this scientific work in the form of an article is to find out things related to interfaith marriages, in terms of prohibiting regulations, the dualism of court decisions regarding whether or not it is permissible to marry people of different faiths, by analyzing various judges' decisions regarding interfaith marriages. The method used is a normative legal research method by analyzing legal sources, in this case the judge's decision which is the basis for consideration of decisions made by different religions. It is hoped that the results of this research can be a contribution to national law-forming bodies to improve existing regulations so that legal certainty is achieved.

INTRODUCTION

Marriage is a sacred thing concerning the relationship between a man and a woman and is the longest worship in human life, there are countries that regulate personal relationships such as relationships of trust and marital relationships but there are also those that do not. In Indonesia, the arrangement of marriage, the relationship between parents and children and even the relationship of wealth are all regulated by the state. In Indonesia, marriage declared by Law Number 1 of 1974 concerning Marriage is only a marriage that adheres to the same beliefs (Article 2) and does not allow marriages with different beliefs but in the implementation in the field many couples who have different beliefs but want to carry out marriage, it is mandatory to register a marriage in Indonesia because this is protected by family law in Indonesia, but related to this registration, it opens up opportunities for legal smuggling and new legal problems in family law in Indonesia because it opens up opportunities for couples of different religions to request the determination of the district court to make marriage registration at the civil registry office. This is a problem that arises because of the choice of law and the choice of forums or institutions that take care of marriages that are Muslim and non-Muslim (Mardani: 59).

Indonesia is very specific with a wide variety of extraordinary customs, tribes, nations, religions, and cultures. The differences that exist in Indonesia make it very difficult for our country to realize legal certainty or *rule of law*, on the other hand, a uniform form of law is needed so that it can be accepted by all parties by



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respecting existing differences. This also includes the issue of marriage, because marriage will not be a problem if it is carried out with their respective religions and beliefs, there is no clear interpretation in Law Number 1 of 1974 concerning marriage which reads that there is a prohibition on carrying out marriage with different beliefs. However, there is contained in Article 57 of Law Number 1 of 1974 that every married couple must be subject to their respective religious laws, this applies to mixed marriages, but there is no clear rule that there is a prohibition on marrying different beliefs or different religions, while even before the codification of family law rules, especially marriage law, there were many marriages of different beliefs in the State of Indonesia. Moreover, it is annulled if the marriage is different from legal beliefs and there is clear evidence of registration so that a marriage certificate is issued. Differences in interpretation of the articles in the Law cause disparities in the application of the law and also in the exercise of authority.

Marriage is the bond of inner birth of a man and a woman to lead to the family of *sakinah* and *mawadah*. In general, marriage in Indonesia is regulated in Law number 1 of 1974 in the compilation of Islamic law, especially for Muslims or those who are Muslims. Meanwhile, for those of different faiths such as religions other than Islam such as Catholic Christianity or Protestant Christianity, use the arrangements contained in the Civil Code or *burgelijk Boek* (BW) which regulates people or families. In Islam, marriage is only allowed if it is based on the same beliefs, because it is explained in the Qur'an not to marry a polytheistic person. In Indonesia, for the issue of marriage, adopting from the application of Islamic rules is carried out because the majority of Indonesian people are Muslims. So that regarding family life and property arising from marriage, both divorce and divorce death, follow the claims in the compilation of Islamic law. The issue of marriage also has a clear forum, namely the Religious Court and the District Court for non-Muslims.

In terms of family law in the 5.0 era, this has experienced extraordinary development plus technological developments, thought, the emergence of gender equality, the emergence of modernization and the increasing development of human rights. The emergence of the understanding that marriage is the freedom of everyone, with whom he is married, and with different beliefs, because of the understanding that marriage is based on mutual love, there is no obstacle whatsoever in carrying out marriage. In the previous phase in Indonesia, if you want to get married with different beliefs, it cannot be done in Indonesia, it can only be done abroad such as Singapore, Hong Kong, America and other European Union countries. Marriage has legality or legal force if the couple has different beliefs but submits to one of the beliefs, for example, if the man is a Muslim, then the woman of different beliefs follows one of the beliefs so that at the time of carrying out the marriage remains one belief whether to choose one religion or another.

LITERATURE REVIEW

The studies carried out regarding the existence of religious marriage, can actually be found in articles written by religious court judges, but the problem is that the cultural heterogeneity in Indonesia causes problems related to religious marriage to be more complex, especially if it is related to the religions in Indonesia, there are Islam, Catholicism, Protestant Christianity, Hinduism, Bhuda and Confucianism as well as the existence of different legal options related to marriage using the religious court system and the district court system. The development of interfaith marriage in Indonesia began to be vigorously supported by technological developments, legalization or acceptance of the laws of other countries, the emergence of women's emancipation, the emergence of foreign cultures and freedoms derived from human rights.

The writing of scientific papers related to interfaith marriage is described from various aspects, such as interfaith marriage when viewed from a positive legal aspect, interfaith marriage is reviewed from the aspect of Islamic law, Interfaith marriage from a psychological aspect, from a sociological aspect, Different marriage is reviewed from the aspect of the conflict that will be caused, interfaith marriage and its relation to offspring and children's education, socio-cultural impact and Human Azazi Rights.

Interfaith marriage is an interesting topic because it always and continuously occurs, even though the regulation of marriage has been made in Law number 1 of 1974 concerning Marriage and is contained in a compilation of Islamic law. One of the articles made by Padli Yanoor, the Legal Section of the Tanah Laut Regency Secretariat, also describes various problems about the positive norms that exist in our country regarding marriage of different faiths. In relation to article writing, it can also be seen the comparative aspect in

conventional law and the aspect of sharia law (Nur Aslah, Journal of Samudra Keadilan Law; 204, vol.10. no.2 December 2015)

The difference in this writing, or the latest from the writing of this article, is to compare 5 or more judges' decisions related to interfaith marriage and see what is the basis for consideration reviewed from the scientific aspect of a judge himself to see the common thread of the rampant interfaith marriage in Indonesia, so that this scientific work is expected to be an aspiration in the advancement of family law science.

METHOD

In finding the law, experts conduct legal research. Legal research is known in two forms, sociological legal research and normative legal research. Sociological legal research tends to be carried out with field research by looking at how norms work while normative legal research is actually analyzed as legal products, one of which is legislation and judges' decisions, which is seen in this case is the history of rule formation, positive legal inventory and concrete analysis of a rule, conducting a medical review of the rules and this is usually done by law enforcers, such as prosecutors, police, judges and even academics. It's just that there is a tendency in normative research, researchers must have more literature, both in the form of books, legal materials in the form of laws, presidential regulations, government regulations and existing rules to support legal materials that will be compiled into a good and quality scientific work, as well as analyzing various judges' decisions, especially if they are used as a basis for resolving the same case, it is considered as a good jurisprudence used by judges in deciding cases (Thesis Writing Guidelines: 6).

The research method used is a normative legal research method, by taking primary, secondary and terrifying legal materials derived from the literature, judges' decisions which will later be examined as a whole. The research is done by analyzing the sources of positive laws in Indonesia, so that they can see whether a regulation has legal problems so that it needs to be revised or improved.

RESULTS AND DISCUSSION

A. Marriage Arrangements in Indonesia

Marriage in Indonesia is clearly regulated in the national legal system, this is a form of state concern for its people by means of clear legal protection. Marriage does not only involve the married party but also involves other parties such as the family, religious affairs office for administration and other parties such as RT, RW, Village and sub-district. Marriage is a relationship between a man and a woman who want to establish themselves in the family container. The purpose of marriage is to carry out worship and perpetuate a good lineage in a halal way. (Auli Amril:49). All the regulations have been clearly outlined in the concept of Positive Law in our country, then the need for rules in family law for what it is for, which is clear so that there are no relationships that violate religious values in the community, such as adultery, contract marriage, community marriage, mutah, and others.

The marriage law in Indonesia is regulated in Law Number 1 of 1974 concerning Marriage, and the compilation of Islamic Law (KHI) and is contained in the BW or Civil Code for non-Muslims. The Marriage Law regulates the formal requirements and material requirements of marriage in Indonesia, matters related to the rights and obligations of husband and wife, legal children in marriage, and related to the division of property due to a living divorce or a dead divorce. The development of family law or marriage is increasingly extraordinary, starting from the change in the age of marriage from 16 years to 19 years, the increase in status so that there is legality for the perpetrators of serial marriage to become legal marriage with the isbat nikah process, and the existence of marriage dispensation against the marriage age that has not been allowed with a court decision that grants permission or dispensation to the issue in question. As well as the latest phenomenon about Marriage, namely the existence of breast milk banks and surrogate mothers or surrogate uteruses. Marriage aims to create a happy and happy family, increase offspring and be a form of worship recommended by Allah SWT (Madani; 28).

B. Pencatatan Perkawinan di Indonesia

Why is it necessary to record proof of marriage by the state, basically it is done as a form of providing legal certainty to the Indonesian people in accordance with the fourth paragraph of the 1945 Constitution, namely the state's goal is to protect all its people and provide legal certainty. Registration is considered necessary to protect women and children as a result of marriage, because without marriage registration it will be difficult for them to obtain rights and obligations, especially if their spouse breaks promises such as irresponsibility or negligence as parents, remarries, and other forms of discrimination related to the implementation of marriage.

Registration is important as authentic written evidence that can be used as evidence in civil matters, Article 2 of Law Number 1 of 1974 states that marriage must be carried out according to their respective laws and religions, but in the implementation in the field there is ambiguity because it seems that with the registration it will cause a marriage certificate without looking at the function of the level of validity of a document made in writing and signed by the authorized official. Article 2 of Law Number 1 of 1974, has become a subject of debate for experts in the field of family law, and this article has different interpretations among judges of state courts and religious courts, in the nature of a *councurring opinion*, that is, the defection is only an administrative requirement or the recording is of the same value as an agreement that has legal force for proof in court (Tholabi Kharlie, 119).

In terms of fiqh, there is nothing that indicates that marriage must have a clear record, this happens of course along with the development of the times, there are problems that arise in the field of family law, especially in the field of marriage, as well as the emergence of new things in connection with technological developments such as long-distance marriage using technology, divorce through wa or SMS, and other contemporary things, of course this makes marriage It needs to be recorded because what happens if the marriage is not recorded, how the wife and child get inheritance rights if the husband dies, as well as the rights of the wife and children to the maintenance provided by their husbands, as well as the rights of the children to get a birth certificate so that the child can go to school and get his rights as a citizen, should things related to the functions and legal consequences of the absence of marriage registration should also be explained in detail as One way to get legal certainty, is the same as an agreement that has the same value as the law. The point is the form of legal protection provided by the state to mothers and children due to the occurrence of legal events, namely Marriage. (D.Y. Witanto; 142).

C. Interfaith Marriage in Indonesia

Difference means not the same, actually differences are common as long as the differences are not sharpened and will cause conflicts in the future. The cause of differences in Indonesia cannot be avoided by different cultures and ethnicities because Indonesia consists of 300 existing ethnic groups, different religions. This is what indirectly triggers interfaith marriage. At least as experienced by a Christian couple who even though the religion is the same but there are differences between Catholic Christianity and Protestant Christianity, although some of us see whether something as simple as that causes differences turns out to still cause differences because the book is different, the pastor is different and the church is also different, this is only for things that according to our point of view are not so much different but still in family life there are differences that are quite real, such as if having descendants will be taken to which church to carry out their faith. We can see that each religion and belief has its own religious rules as Islam prohibits marriage to couples of different faiths.

The emergence of this prohibition is clearly contained in the compilation of Islamic law in Chapter 4, Article 40 Letter C where a Muslim man is prohibited from marrying a non-Muslim woman, as well as the opposite in the compilation of Islamic Law article 44 which cancels the prohibition for Muslim women to marry men of different faiths. Even the same thing was also conveyed by scholars from various mashabs who clearly stated the prohibition against marriage of different faiths and could even be stated to have reached the level of Haram.

Hinduism also prohibits interfaith marriage. Married to a Hindu person must follow Hinduism and

follow the shidasvani ritual, perhaps the Indonesian people have seen this ritual at the time of the marriage of the artist Mahalini with Anak Sule, but they do not do a marriage of different beliefs because in this case Mahalini who follows her husband's religion. As for Confucianism and Buddhism, marriages carried out with different beliefs are not a problem. This is what we see from Indonesia itself which is different in studying various things related to marriage of different faiths. Another fact that arises from differences in beliefs in terms of inheritance distribution is because those who have different beliefs in the concept of Islamic inheritance do not get inheritance. From the aspect of education, differences in parents' beliefs also cause difficulties in educating children.

D. Analysis of Judge's Decisions for Marriages of Different Religions

Based on the reciprocity of the Supreme Court since 2010 until now, obtained from primary data, there are 182 cases related to marriage of different beliefs, which usually marriages of different beliefs occur in the District Court, and the judge makes a consideration based on Law Number 39 concerning human rights which article 1 states that to carry out marriage must be based on the freedom of the parties who will carry out the marriage. And begged the judge to make a determination of the marriage so that the party who carried out the marriage could register their marriage at the civil registry office. Based on article 35 number 23 of 2006 concerning Population Administration because it contains permits for registration or registration of marriages of different faiths. The average argument of the judge in the mechanism of weighing and containing the decision, namely the Human Rights Law and the opportunity for legal rules in civil registration that accepts marriage registration of different faiths.

The right to practice marriage is considered as a freedom and personal right that should not be hindered by the state but is protected by the state, and the concept of modernization in life and various aspects is also the basis of the thinking of the years of those who run the legal system itself. The right to marry and develop offspring is also used as a basis and benchmark for their liberation from practicing marriage on the basis of love even though the marriage is of different beliefs. Meanwhile, with the amendment of Law Number 1 of 1974 concerning Marriage with Law Number 16 of 2019, where the registration has been submitted to their respective religions and beliefs, this also sharpens the legal vacuum and provides a gap in the law that there is no standard rule that really prohibits interfaith marriage.

This is contained in the decisions made by the district court judges and seems to be jurisprudence by other judges in Indonesia, for example in the ruling:

1. Lubuk Linggau District Court Decision Number 3 Pdt.P/2015/PN. Linggau
2. Semarang District Court Decision Number 42/Pdt.P/2014/PN Ur
3. Surakarta District Court Decision Number 186/PN.Skt
4. Depok District Court Decision Number 88/Pdt/2023/PNDpk
5. And others

The development and basis of legal considerations are indirectly influenced by the existing conditions of the community at that time and the turmoil and pros and cons of the community as well as socio-cultural aspects and elements of benefit for the community. The changes and influence of the emergence of legal rules are also the basis for the emergence of legal discoveries in society as stated by professor Mertokusumo in his book Legal Discovery Methods that judges have the right to make legal discoveries and multiply the law itself with the aim of seeking justice for society. (Mertokusumo; 5) .

This legal discovery also exists in terms of the application of Islamic law, especially in studying the jihads of scholars adjusted to the latest developments in the law, including Family law (Helmi; 30) To overcome various confusions about the law, SEMA was issued on July 17, 2023 which answered various problems that arose, as well as disparities in court judges' decisions, so the phenomenon that occurred in Indonesia was interfaith marriage. Islam prohibits interfaith marriage based on the word of Allah surah al-Baqarah verse 221. Interfaith marriage is also prohibited by Law Number 1 of 1974 article 2. In Article 2 paragraph (1) of the 1974 Constitution, it is stated *that marriage is legal, if it is carried out according to the laws of each religion and belief. (2) Each marriage shall be recorded in accordance with the applicable laws and regulations.* In fact, in his explanation, it is emphasized that there is no marriage outside the law of each religion and belief, in

accordance with the 1945 Constitution. Along with the development of Marriage in Indonesia and the emergence of couples of different beliefs who want to carry out marriage using the marriage procedural route in Indonesia. On July 17, 2023, the Supreme Court issued a circular related to interfaith marriage SEMA Number 2 of 2023 concerning Instructions for Judges in Adjudicating Cases of Applications for Registration of Marriages Between People of Different Religions and Beliefs.

CONCLUSION

Marriage of different beliefs occurs in Indonesia has not been clearly stated the legal source, thus causing ambiguity in the law itself, besides that the acceptance of the Indonesian state to the laws of other countries also adds legal smuggling in aspects of marriage law, the authority of the district court and the obligation to register marriages in the population office opens up opportunities for the emergence of the legality of interfaith marriage.

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