

LEGAL FORMULATION OF MARRIAGE OF DIFFERENT RELIGIONS FOR THE BENEFIT OF SOCIETY

Dian Septiandani, Dharu Triasih, Dewi Tuti Muryati*

Abstract

Different religious marriages are a problem for society. Indonesia is a country with the majority of the world's largest Muslim population issues concerning marriage is still common. There is a need for proper legal formulation for interfaith marriage as an effort to minimize any adverse impacts arising in different religious marriages.

Keywords

legal formulation, marriage of different religion

* Faculty of Law, University of Semarang, Semarang, Indonesia

Correspondence: Dian Septiandani, Faculty of Law, University of Semarang, Semarang, Indonesia

Introduction

The function Different religious marriages are still a problem for society. Indonesia is a country with the majority of the world's largest Muslim population, issues concerning marriage is still common, both marital issues in Islam, as well as intermarriage interfaith matters. Different religious marriages describe the function of social integration between couples of different religions, before and after marriage. And the socialization of the value and the role of the child from the relationship of different spouses of religion (Yowan).

Regarding the marriage of different religions, in essence, marriage law in Indonesia is not specifically regulated (certain article on marriage of religious couple). What is governed is the validity of marriage is a marriage performed according to religion and belief, this means that the Marriage Law submits to the teachings of their respective religions. So the rules may or may not be returned to their respective religious rules. In 2006, Law No. 23 of 2006 on Population Administration was amended with Law Number 24 Year 2013 regarding Population Administration (UU Adminduk), which regulates the Recording of Marriage in Indonesia in Articles 34, 35 and 36.

Article 35 states that the registration of marriage as referred to in Article 34 shall also apply to marriages established by the Court, the marriage of foreign nationals conducted in Indonesia upon the request of the foreign national concerned. Up to Article 35 and 36 of this law there are no significant problems. However, if we read the explanation of Article 35 which states that the marriage established by the Court is a marriage conducted between different faiths. The above explanation shows that an explanation of a passage of a law (Elucidation of Article 35 of the Adminduk Law) leaves aside a provision or sound of another article of law (Articles 2 and 8 of Law No. 1 of 1974). Although Article 8 Sub-Article f of Law no. 1 of 1974 does not expressly prohibit the marriage of different religions, but it has become common knowledge, that every religion in Indonesia prohibits marriage between people of different religions.

This is reinforced by explanatory content of Article 2 paragraph (2) of Law no. 1 of 1974 that there is no marriage outside the law of each religion and his belief. While the contents of the explanation of Article 35 of Law no. 23 of 2006 allows for marriage of different religions.

Given the differentiation of the intentions of these seemingly contradictory rules, it is necessary to review the legal issues concerning the proper formulation of laws for interfaith marriage as an effort to minimize any impacts arising in religious marriages.

Research Method

This study is a "normative legal research". With the approach used is the approach of the law (statute approach) (Peter Mahmud Marzuki, 2013). Aims to know and understand the process of legal work in society that is the application of Islamic legal rules and positive law in Indonesia against the marriage of different religions. This research is based on existing laws or norms and then looks at how social realities and legal practices occur when those laws or norms work in society.

Analysis and Discussion

The purpose of the first marriage is the Shari'a to build a family. Men meet and bind themselves in the sacred bond of marriage. Women in Arabic literature are called "al-mar'ah imad al-bilad", women are the pillars and the establishment of the State. Therefore, when men commit commitments in "grave agreement" (mitzaqan ghalidan) in marriage with women, it can be said that in the struggle to uphold the pillar of the state. Even as an affirmation of the Qur'an, marriage is a true building to gain serenity (sakinah). Therefore, the Arabs refer to the house as "maskan", shelter and dwelling for comfort and tranquility (Monib, Muhammad dan Ahmad Nurcholish, 2009).

Second, means of fulfilling sexual needs. The Qur'an says, "Zuyyinah li al-nnasi hubbu-al-shahawati min al-annisai (Surah Ali-Imran, 3:41). "Man (men) in decorate the love of women. Men love and love the opposite sex. "This is the true and righteous Shari'a. For the proper distribution of love and love it makes Islam the Shari'a, namely marriage. Therefore the Prophet Muhammad said, "Annikahu sunnati", marriage is my sunnah. In his other words, "There is no better form in Islam than marriage"(Monib, Muhammad dan Ahmad Nurcholish, 2009).

Third, the right and true Shari'a to obtain offspring and future generations. Through marriage, human beings get the clarity and authenticity of the lineage. Obviously the father and mother, obviously the flow of blood and flesh. Said the Qur'an, "Zuyyinah linnasi hubbusyahawati minannisa wa al-bani-nah. Adorned the human self is a love of women and children. "(Surah Ali-Imran: 3, 41).

Marriage has a noble purpose for the world and the hereafter. Required the existence of a rule that shelter. The marriage rule for the Indonesian nation is Law no. 1 of 1974 concerning Marriage, officially valid from the date of promulgation, dated January 2, 1974, then became effective on October 1, 1975, through the Government Regulation of the Republic of Indonesia no. 9 of 1975 on the Implementation of Law no. 1 Year 1974 about Marriage. The law has been formally juridical for the Indonesian nation, and has become part of the positive law. This marriage law, in addition to laying the principles, as well as accommodate the principles and provide the legal basis of marriage that has been the handle and apply for various groups of Indonesian society (Asmin, 1986).

In understanding the marriage of different religions under the laws of Marriage there are three different interpretations. First, the interpretation of the opinion that the marriage of different religions is a violation of Law no. 1/1974 Article 2 paragraph 1 jo Article 8 f. The second opinion, that interfaith marriage is valid and can be carried out, because it has been included in mixed marriages, with arguments in article 57 on mixed marriages that focus on two persons in Indonesia subject to different laws, which means that this article regulates the marriage between two Different citizens also organize two people of different religions. The third opinion that interfaith marriage is not regulated in Law no. 1/1974, therefore based on Article 66 of Law no. 1/1974 then the issue of marriage of different religions may refer to the rule of mixed marriage, because not yet regulated in marriage law.

Although it is forbidden, the marriage of religious differences is still being done. Various ways are taken, to gain recognition from the state. From marriage abroad, change religion temporarily then change ID (KTP), or ask for court decision.

Submission of one of the religious laws of the bride may be more frequently used. In Islam, it uses an opinion that allows Muslim men to marry non-Muslim women, who belong to ahlul kitab. It is this foundation that is really practiced by institutions such as Paramadina, Wahid Institute, and Indonesian Conference on Religion and Peace (ICRP), even expanded to allow for different religious marriages for Muslim women.

In principle, if the community uses the rules contained in the Marriage Law, then there will be no religious marriage, but because of the provision of Article 35 of the Population Administration Act which states: "The marriage registration referred to in Article 34 shall also apply to: a. marriage set by the Court. "The explanation of

Article 35 letter a states," the meaning of 'marriage set by the court' is a marriage made between different faiths. "

Article 34 Marriage Recording in Indonesia ;

- (1) Legitimate marriage under the Statutory Rules shall be reported by the Residents to the Implementing Agencies where the occurrence of the marriage shall be no later than 60 (sixty) days from the date of marriage.
- (2) Based on the report referred to in paragraph (1), the Civil Registry Officer shall record on the Deed of Marriage Register and issue a Marriage Certificate Quotation.
- (3) The quotation of the Marriage Certificate referred to in paragraph (2) shall be given to the husband and wife, respectively.
- (4) Reporting as referred to in paragraph (1) for the Muslim Population shall be conducted by KUA Kecamatan
- (5) Data on recording of events as referred to in paragraph (4) and in Article 8 paragraph (2) shall be submitted by KUA Kecamatan to Implementing Agency within no later than 10 (ten) days after the marriage registration is carried out.
- (6) The result of data recording as referred to in paragraph (5) does not require the issuance of citations of Civil Registration certificate.
- (7) At the sub-district level the report as referred to in paragraph (1) shall be carried out at the UPTD of the Implementing Agency.

With the existence of Law no. 23 of 2006 on Population Administration (Adminduk) allows different religious couples to be registered by marriage through the establishment of a court. During this time, prior to the Adminduk Law, different religious couples usually married abroad to avoid marriage laws that prohibit married couples from being married. But there is also a way of submitting temporary in one of the religious law, the morning married according to male religion, afternoon married in accordance with the religion of women. This is not very accurate. Religion has set it, but there is still a gap.

Different religious marriages that have been legalized by the District Court (PN), does not mean the couple was married in the PN. So the PN authority here only allows not to marry religious couples because the capacity of the court is not for that.

Factors that legalize religious pairs among others, referring to Article 35 letter a of Law no. 23 of 2006 and Article 10 paragraph (3) of Government Regulation no. 9 of 1975 as well as Article 28 B The second amendment to the 1945 Constitution and Article 29 of the 1945 Constitution.

The magnitude of the potential marriage of different religions, encouraging the need for the role of the state. According to Tedi Kholiludin who concluded that the state has no authority in regulating the religious issues of society. However, on the other hand it justifies the role that the state plays on the basis of consent (agreement) granted by the community through restrictions on state power. In the role that is run on the basis of the consent, the state holds the authority (being an authority) to regulate religious life. The condition, according to Tedi, will be different when the state is understood as a stakeholder (being in authority) (Tedi Kholiludin, 2009).

A more detailed view of the role of the state within the religious community is expressed by Hazairin in his book "Pancasila Democracy". In his work, Hazairin interpreted the implications that must be implemented by the state in connection with the inclusion of Article 29 of the 1945 Constitution, namely:

1. In the state of the Republic of Indonesia shall not occur or apply anything contrary to Islamic norms for Muslims, or that are contrary to the norms of Christianity for Christians, or that are contrary to the rules of Balinese Hinduism for the people Balinese Hindu, or as opposed to Buddhist decency for Buddhists;
2. The Republic of Indonesia shall be obligated to enforce Islamic Shari'ah for the Muslims, the Christian Shari'a for the Christians, and the Hindu-Balinese Shariah for the Balinese, merely enforcing the Shari'a requires the intercession of state power;
3. The Shari'a which does not require the assistance of state power to administer it and so may itself be exercised by every member of the religion concerned, becomes a personal obligation to God for each person, which he exercises according to his own religion;
4. If for misinterpretation or because in religious books, perhaps in slippage, a regulation contrary to the third, fourth, and fifth sanctions in Pancasila, then such a religious rule, after being mocked with the leaders religion concerned, shall be deactivated;

5. The relation of a religion with a second precept in Pancasila is left to the norms of religion itself or to the wisdom of those religions. That is, the norm in the second precepts that is contrary to the norm of a religion or with the general belief of its adherents based on its religious style does not apply to them (Hazairin, 1983).

For the marriage of religious differences, former Minister of Religious Affairs Quraish Shihab argued that they should be returned to their respective religions. What is clear in the marriage relationship between husband and wife, must first be based on equality of religion and beliefs of life. But in the case of different religious marriages, there must be a guarantee of the religion of each husband and wife to respect their partner's religion. So do not have a mutual stance to perform religious worship according to religion. Quraish's statement is similar to the statement of Father Andang Binawan SJ., Lecturer of Philosophy School Driyakarya. Romo Andang also explains that the Catholic Church law allows for religious marriage as long as the non-Catholic bride is willing to promise to submit to the Catholic marriage law, monogamy and not divorce for life, and to let her partner still embrace the Catholic (Hukumonline).

The issue of marriage of different religions has long been addressed by the Majelis Ulama Indonesia (MUI). Islamic religious institutions that issued many of these fatwas in the 1980s have addressed the marriage of different religions. The result is a marriage of different religions declared haram alias forbidden to be done by Muslims, not least between Muslim men with non-Muslim women, whatever his religion. The fatwa of this ban was re-appointed to society 15 years later, exactly in July 2005. MUI, that year again raised the issue of unlawful marriage of different religions as one dictum of the crucial 11 crucial fatwa MUI. In addition to the prohibition of different religious marriages, other fatwas are a ban on inter-religious prayer, inheritance of different religions, and 3 isms: pluralism, liberalism and secularism (religion) (M. Monib dan Ahmad Nurcholish, 2009).

Although the MUI issued a fatwa ban on religious weddings, in fact many Muslims themselves do not agree with the fatwa. In fact, many clerics from both academics and Islamic religious leaders, such as boarding schools, ignore the MUI fatwa. Moreover, legally, both Islamic and national positive law, MUI fatwa has no binding power. That is, the fatwa is "only appeal" alone. For those who agree please follow; who disagree may ignore it (M. Monib dan Ahmad Nurcholish, 2009).

The author does not agree with the above statement. MUI fatwa is not merely an appeal that has no obligation to comply with it, but it is *ijtihad* of ulama. The

position of *ijtihad* as a source of Islamic law whose position must also be obeyed by Muslims in Indonesia.

Article 2 Paragraph (1) of the Marriage Law is a form of compromise as well as respect for the values of recognized religions in Indonesia. The State in this article shall be prudent by not intervening and shall submit it to the respective religious law of the individual concerned. Thus, it can not be said that the Marriage Law only accommodates the interests of the majority community of Muslims, but has seen the whole of the religions and beliefs that exist in Indonesia at that time.

The existence of religion can not be separated from the life of the nation because it is a necessity of the establishment of a state based on an ideology of Pancasila where Sila first mentions Belief in the One Supreme. This means that the founders of the country believe that Indonesia will not be separated from a basic understanding of religiosity (Ryan Muthiara Wasti).

Law Number 1 Year 1974 on Marriage, does not allow the marriage of different religions. Interfaith marriages can not be made in accordance with article 2, paragraph 1 of Law No.1 / 1974, that marriage is lawful, if done according to the law of each religion and belief. And in Article 10 PP No.9 / 1975 stated that, a new marriage valid if done in front of the clerk employee and attended by two witnesses. And the ordinances of marriage are done according to the laws of their respective Religions and beliefs.

Many who assess this rule there are still loopholes for different religious weddings, because the sound of the article is considered not assertive. Whereas with the government's indecision in regulating the marriage of religious differences as the absence of such rules in the Marriage Law, it is necessary to have a proper and strict legal construction concerning the prohibition of marriage of different religions. In this case it is necessary to reformulate or revise the interfaith marriage, because in the Marriage Law, the marriage law has not been firm in regulating inter-religious marriage, as well as clarity about the legal status for those who want to intermarriage.

Law is the normative rules that govern the pattern of human behavior. The law does not grow in empty space, but grows from the consciousness of society in need of common rules. This law on marriage of different religions can grow well when there is a society that exists and runs the rule.

Conclusion

There is still a gap for different religious weddings, because the sounds of the articles are considered not assertive. Whereas with the government's indecision in regulating the marriage of religious differences as there is no rule with the strict prohibition on the Marriage Law, it is necessary to have proper and strict legal construction regarding the prohibition of marriage of different religions. In this case, it is necessary to reformulate or revise about interfaith marriage, because in Law no. 1/1974 About Marriage Law has not been firm in arranging interfaith marriages, as well as clarity about the legal status of those who want to intermarriage.

References

- Asmin. (1986). *Status Perkawinan Antar Agama Ditinjau dari Undang-undang Perkawinan No. 1 Tahun 1974*. Jakarta: Dian Rakyat.
- Hazairin. (1983). *Demokrasi Pancasila*. Jakarta: Bina Aksara.
- <http://www.hukumonline.com/berita/baca/hol15655/empat-carapenyelundupan-hukum-bagi-pasangan-beda-agama>.
- Kholiludin. (2009). Tedi. Kuasa Negara atas Agama: Politik Pengakuan, Diskursus "Agama Resmi" dan Diskriminasi Hak Sipil, cetakan Pertama. Semarang: Rasail Media Group.
- Marzuki, Peter Mahmud. (2013). *Penelitian Hukum*. Jakarta: Kencana Prenada Media.
- Monib, Muhammad dan Ahmad Nurcholish. (2009). *Kado Cinta Bagi Pasangan Nikah Beda Agama*. Jakarta: PT Gramedia Pustaka Utama.
- Ryan Muthiara Wasti, Direktur Pusat Advokasi Hukum dan Hak Asasi Manusia (PAHAM) Jakarta, <http://www.dakwatuna.com/2014/09/09/56730/paham-pernikahan-beda-agama-melanggar-konstitusi>.
- Yowan, "Islamic Fundamental Responses On Inter-Faith Marriage", (<http://ejurnal.ung.ac.id/index.php/JPI/article/view/582>, diakses 1 Januari 2017).