

Study of Marriage Processions with Unequal Beliefs in The Perspective of Marriage Law in Indonesia

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ABSTRACT

This study aims to further examine the rules governing interfaith marriages in Indonesia in terms of legal studies. The research method used is a normative approach using analysis of the study of legal material sources. The results of the study indicate that the rules contained in Law Number 16 of 2019 contain three binding articles, namely in article 1 which states that marriage must be based on the first principle of Pancasila, the second principle regulates the validity of marriage based on religious rules that and the third precept contains orders to carry out monogamous marriages. The existing rules are not prohibitive but are commanding and those who can determine whether a marriage is legal or not are from the respective religions. The background that underlies this research is the number of cases of interfaith marriages that occur in Indonesia so that it becomes a controversy in Indonesia.

ABSTRAK

Pengkajian ini bertujuan untuk mengkaji lebih lanjut berkenaan aturan yang mengatur prosesi nikah dengan kepercayaan yang tidak sama di Indonesia ditinjau berdasarkan kajian hukum. Metode pengkajian yang digunakan yakni dengan melakukan pendekatan secara normatif menggunakan analisis kajian sumber bahan hukum. Hasil pengkajian menunjukkan jika dalam aturan yang tertuang dalam Undang-Undang Nomor 16 Tahun 2019 mengandung tiga Pasal yang mengikat, yakni pada Pasal 1 yang menyebutkan jika pernikahan harus didasarkan dengan asas sila pertama Pancasila, sila kedua mengatur berkenaan kesahan dari perkawinan didasarkan pada aturan agama yang sama dan sila ketiga berisikan perintah untuk melaksanakan perkawinan secara monogami. Aturan yang ada tidak bersifat melarang tetapi bersifat perintah dan yang dapat menentukan sah atau tidak dalam perkawinan yakni dari pihak agama sendiri-sendiri. Latar belakang yang mendasari pengkajian ini yakni banyaknya kasus prosesi nikah dengan kepercayaan yang tidak sama yang terjadi di Indonesia sehingga menjadi kontroversi di Indonesia.

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I. INTRODUCTION

Humans are primarily social beings, who are characterized as being unable to live on their own and hence requiring other organisms in order to create social interactions. Humans have personal hobbies that require interaction with other people. In addition, humans have the instinct to live in groups with other humans and to interact with one another; one of these impulses is the instinct to

establish small to big family groups. The diversity of the population in Indonesia causes social interaction between residents in Indonesia which causes acculturation of various types of culture and is bound in a marriage bond (Dwi, 2022). Marriage has a religious significance because it combines male and female living beings who have fulfilled the conditions to engage in marital activities in a holy partnership in order to construct a home ark as husband and wife. Indonesia has a variety of conventions and rules that have been passed down from generation to generation, as a result of its diverse population. In addition to being linked to the couple's personal relationship, marriage is also associated with religious, societal, and legal difficulties. The range of religions adopted by the populace in Indonesia is a consequence of the country's cultural richness. Religion-related marital troubles are the most prevalent and recurrent concerns. According to Syarifuddin, (2018)), even if every religion in Indonesia has various regulations about marriage, there are no contradictory principles among all teachings. When both parties have distinct religious convictions, religious doctrines prohibit the process of unionization.

Differences in the relationship of marriage are considered to be common, but differences in beliefs are not and can cause problems because the rules in Indonesia have exposed people to the rules in Article 1 of Law Number 1 of 1974, which has been replaced by Law Number 16 of 2019, also known as the Marriage Law, which states that marriage is an outer and inner bond of love between two humans. In addition, Article 2 paragraph 1 provides an explanation as to whether a marriage is valid if it is performed in accordance with the legal studies of their different religions. Therefore, it can be inferred that a new marriage can be deemed valid if both parties share the same faith or believe. Consistent with societal advances, marriage-related issues are becoming increasingly complex, as marriages frequently result in actual life difficulties, such as the profusion of marriages between people of different religions (Hadikusuma, 2017). The lives of the following generation are impacted by marriage ceremonies based on various religious beliefs. A youngster will be confused if both of their parents practice different religions. The equality of the religion and beliefs of both partners is one of the conditions that make a marriage valid, but regrettably, this is not always the case. As a result, when it comes to the implementation of marriages between people of different religions, this leaves each religion's sacrosanct laws in place.

Marriages between women who are Muslims and men who are not Muslims are not permitted in Islam. The woman who is not Muslim, however, is nevertheless permitted provided that she follows the laws and regulations of the Islamic faith (Hazairim, 2019). According to Catholic theology, a marriage with a non-Catholic is a form of non-ideal marriage procession, as the procession is viewed as having a sacred significance. It is the same for Protestants according to the rule that a marriage procession should be avoided if it involves individuals of differing religious beliefs (Baso, 2020). According to Buddhist teachings, marriages between individuals of various religious backgrounds can be performed according to the rules if, when the marriage is performed, all procedures and activities are founded on Buddhist teachings and requirements (Fikrah, 2017). In furthermore, Hinduism's teachings, as cited Baso, (2020) state that if a marriage is performed with one bride who is a Hindu and the other who practices a different religion, the intended marriage procession is not regarded as something valid in the eyes of religion and does not receive religious recognition because the marriage is one that is forbidden by Hindu teachings and beliefs. Very binding religious rules cause some couples to make tactics to still be able to carry out marriages even though the bride and groom have differences in beliefs. The tactic that is often used will be to do tactics on legal loopholes, namely by carrying out a temporary religious conversion by one of the bride and groom and returning to their own religion after marriage. The second way is to submit a marriage procession with unequal trust to the district court in order to obtain legal protection so as not to be charged with articles that violate the law.

In addition to the different situations that relate to marriage processions with various religious beliefs, all of these processions need to be registered as administrative evidence owned by the state. Article 2 paragraph 2 of Law Number 16 of 2016 specifies and regulates the official who has the authority to record the procession. The ability to record a marriage procession that has already

occurred in Indonesia is particularly significant since it can serve as proof that the union has been approved by the state and is therefore protected by the law. Following the adoption of Law Number 23 of 2006 about Population Administration, it is stated that the Civil Registry Office has the ability to register weddings, regardless of the couples' respective religions, provided that the district court provides them with legal protection. As long as the application is presented along with the request for approval of the representation, the district court judge's authority serves as the basis for the marriage's validity. Cahyadi, (2021) claimed asserts that a notary official is in charge of recording-related things and has the necessary power.

A notary or PPAT is one of the institutions with the power to create documents and handle other administrative problems according **to the Civil Code (KUHPer)**. The position of a notary has a high level of trust, which means that in order to be a part of a notary position, a person is required to have a trustworthy attitude, so that a notary has an obligation to always keep all forms of things secret in accordance with the oath of office that was taken Adjie, (2020) Notary is a legal profession known as a *nobile officium*, or noble profession. The position is said to be a *nobile officium* because this profession has a close correlation with human relations with the law. Aka drawn up by a notary has the task of being subordinate to the law regarding the status of marriage, its rights, as well as things that must be done or things that are mandatory for every Indonesian citizen. If a notary commits an error at the moment of recording, a person will be deprived of his rights and be required to fulfill a particular obligation (Ghofur, 2019). Therefore, in order to function as a notary, it is necessary to acquire extensive information and hone one's abilities so that the community can gain its rights and responsibilities as intended. As a notary, you must perform your duties objectively and in compliance with applicable laws. In a manner analogous to the registration of marriages, a notary is the party responsible for creating administrative records to ensure the legality and validity of a marriage. The laws and regulations under Article 1 of Law Number 2 of 2014 contain provisions pertaining to notaries. The obligations and powers given to a notary form ownership of the notary's duties. This is legally enforceable since the notary takes an oath of office when he is sworn in and is required to be in charge of all actions thereafter.

However, the definition of marriage may be seen and discovered in Article 26 of the Civil Code, which does not contain any definitions or items that have rules relating to the marriage procession. According to the text, the law offers a perspective on the marriage procession from the standpoint of how it relates to civil law. Therefore, another name for it implies that all applicable laws are regulated in these regulations if the Civil Code's contents have a value to pay high regard to the lord of the wedding procession. Marriage is a significant milestone in every person's life path, Ali, (2017) claims has wide-ranging and huge effects. In society, getting married is also the first step toward establishing order. Therefore, in Law Number 16 of 2019, the government governs the laws connected to the implementation of marriage in order for the order regarding marriage to take place appropriately and strategically. A marriage registration is a recording made by the appropriate agency after the event has occurred. The procedure of registering a marriage is an administrative follow-up to the procession conducted by the civil registration agency. According to Afief, (2021) Law Number 16 of 2019 Article 2 and Government Regulation (PP) Number 9 of 1975 Concerning Implementing Regulations of Law Number 16 of 2019 Amendments to Law Number 1 of 1974 Concerning Marriage both contain provisions relating to things that are recorded. Then, Mardani, (2017) said the goal of documenting the marriage procession is to provide legal protection for those who support them. Married individuals may feel secure in their legal status if they are protected from their marital status.

Indonesia has an issue with marriages that take place without the support of the same faith and beliefs. As in the study "The Study of Marriage Processions with Dissimilar Beliefs in the Perspective of Marriage Law in Indonesia (Case Study of the Determination of the Surakarta District Court Number 333/Pdt.P/2018/PN. Skt)" conducted by Hartini Dwi Utami and I Descendant Oka Setiawan (2022). The results of the study indicate that, using the normative study method, it is possible to conclude that marriage existed prior to the enactment of the Marriage Law, including

marriage under the provisions of the Civil Code, marriage under the provisions of the GHR, marriage under custom, and mixed marriage. The Staatsblad 1898 Number 158's provisions are not applicable to the execution of a marriage procession with unequal beliefs since, as stated in Article 66 of the Marriage Law, those provisions became part of the Civil Code (KUH) upon the effective date of the Marriage Law, The Mixed Marriage Regulations (Huwelijks Ordonantie Christen Indonesiers, Staatsblad 1933 Nomor 74), the Indonesian Christian Marriage Ordinance (Huwelijks Ordonantie Christen Indonesiers, Staatsblad 1933 Number 74), and other regulations governing marriage as long as it has been governed by the Marriage Law are deemed invalid. By getting a court order so that it can be registered, marriage processions with unequal beliefs in Indonesia may be conducted outside the parameters of Law Number 1 of 1974 about Marriage. The second study, "Recording of marriage processions with uneven beliefs at the Yogyakarta City Population and Civil Registration Office," was conducted by Nafdin Ali Chandera in 2017. The study's findings demonstrate that recording based on evidence of church dispensation predominates in the practice of documenting marriage processions with unequal beliefs at the Yogyakarta City Population and Civil Registration Office. The church's dispensation took place in accordance with the field's reality, specifically the unclean method. Church dispensation is illegal smuggling because a person is compelled to comply with certain religious regulations for a particular purpose and intent. The practice of dissolving interfaith marriages at the Yogyakarta City Population and Civil Registration Office is unjustifiable because it violates Indonesian laws and regulations. Because, ideally, when an interfaith couple wants to register a marriage procession with different beliefs, as stated in Law Number 23 of 2006 concerning Population Administration article 35 letter (a), it must be based on evidence from the Court's determination rather than through legal smuggling practices involving church blessings.

The issue that arises during the discussion of the backdrop is that the Indonesian marriage procession is muddled due to the existence of diverse religious beliefs. This issue was decided in accordance with the provisions of Law No. 16 of 2019, which explains and affirms the role of religion and belief in the establishment of marriage. It is stated that a marriage is considered legitimate if both parties have the same faith and worldview. The researchers produced "A Study of Marriage Processions with Unequal Beliefs from the Perspective of Marriage Law in Indonesia" in order to conduct more research on these societal issues. The objective of this research is to present the most up-to-date information and to supplement earlier research addressing issues and problems that occur in this country, namely the occurrence of marriage ceremonies involving citizens of unequal religious views.

II. RESEARCH METHOD

Current research employs a normative method of assessment. This sort of legal research focuses on written legal studies that may be evaluated based on a variety of criteria. In this study, the aspect that is examined is a legal analysis of the legislation that discusses the marriage procedure for couples with diverse religious views in this country. According to (Soekanto, 2020) it is described if the statutory approach is employed as a study and if there are regulations associated with the evaluation being conducted. This strategy provides the opportunity to examine the applicability of applicable laws and regulations. In order to obtain data as study material for the current study, a literature review was used to collect other literature sources that still have a correlation with the topic of study, namely the occurrence of marriage processions with diverse religious beliefs in this country. The gathering and subsequent analysis of data using qualitative descriptive techniques. In this technique, the obtained data is monitored and evaluated in accordance with the applicable laws and regulations, namely Law No. 16 of 2019 governing the marriage procession. This function is implemented to interpret and parse data based on the conditions and events that are occurring (Ibrahim, 2017). The data key sources are the Pancasila, the 1945 Constitution, and Law No. 16 of 2019. The following legal material is secondary legal

material, specifically the use of studies from several books, journals, theses, and theses that raise the same research, namely marriage processions with different beliefs in the Unitary State of the Republic of Indonesia. The final piece of legal material is supplementary legal material, which includes the legal dictionary, the Big Indonesian Dictionary, and other dictionaries that aid in study. To increase the validity of the evaluation, all legal materials are utilized to bolster it.

III. RESULTS AND DISCUSSION

1. Marriage Procession Involving Diverse Religious Beliefs In Indonesia

In Indonesia, marriages based on diverse individual beliefs are actually practiced while being illegal. However, the reality is that in every faith there are marriages that can be performed despite the fact that the partners hold opposing views. The civil register office is responsible for the administration of interfaith marriages. This is due to the fact that the Ministry of Religion has been unable to carry out marriage ceremonies with beliefs that differ from legalization, thus the civil registration office is willing to carry out marriages based on unilaterally adopted regulations. Currently, weddings solemnized at the civil registry office have not been annulled by the religion department office. The standards for registering a representative of a different religion are the same as those for registration in general. A "Religious Certificate" provided by the associated religions, however, is one of the requirements that frequently acts as a barrier to the marriage. Islamic teachings state that it is forbidden to marry someone who do not share the same religion unless the non-Muslim partner is a woman. In Catholic teaching, in order to obtain an SKA or a Certificate of Religion, it can be obtained by submitting a pledge of allegiance to Catholic teachings and will teach these teachings to future descendants. For Protestant Christians, there are no special requirements to apply for an SKA to the nearest church. Then for Hindus and Buddhists, even though both religious rules are prohibited from getting married with different religions, in practice it is not difficult to get SKA. By obtaining an SKA and getting married at the civil registry office, the marriage is legally recognized by the state, but if it is not performed in line with the doctrine and regulations of the marriage's own religion, it is still regarded as illegal by that faith.

2. Marriage Procession Involving Incompatible Faiths Considering Law Number 16 Of 2019 In Perspective

During the colonial era, Indonesian civil law still had a pluralistic structure. This is due to the fact that different groups are nonetheless treated differently under the applicable law, despite Indonesia's population being equal (Imam, 2017). The 1945 Constitution was put into effect and Indonesia gained its independence, which led to advancements in the law. Including the legally obligatory marriage regulations in Indonesia. The adoption of the new rules, specifically the adoption of the marriage legislation contained in Law No. 1 of 1974, which is now Law No. 16 of 2019, which controls marriage. In the process of drafting the Act, numerous parties encountered numerous hurdles and controversies. Beginning with debating each item that regulates the implementation of marriage and culminating with debating the minimum age at which a person may propose marriage. The regulation was officially issued within the framework of Marriage Law No. 16 of 2019 until October 15, 2019. The publication of the rules included in Law No. 16 of 2019 is a form of implementation of the unification of marital law in the Republic of Indonesia and is binding on all citizens. In the most recent regulation, the concept of changing and accommodating community desires is incorporated into mandatory regulations (Undang-undang 2019).

In Law No. 16 of 2019, a discussion of marriage is provided, in which religion is positioned as the most significant aspect of a marriage. Article 1 of the regulation states that a marriage is a sort of inner link that exists between two persons of different sexes as a husband-wife relationship that aspires to produce a harmonious family in accordance with the requirements of the One Supreme God. The goal of article 1 is to define marriage as a household union between two individuals of the

same religion. Article 2 stipulates that a marriage is regarded valid if it has been performed in accordance with the religious laws of each partner. Article 3 stipulates that a man may only have one companion, and a woman may only have one husband. Law Number 16 of 2019 contains a variety of general information, including a) the existence of a religious element that binds community members in the event of marriages, b) the existence of the principle of equilibrium, and c) the existence of a principle to fulfill administrative requirements during the recording process. marriage, d) the existence of the norm of monogamy, and e) the requirement that a marriage be performed by two individuals of legal age.

3. Marriage Procession Involving Various Religious Beliefs On The Basis Of Critical Legal Theory

The law-related rules established in Article 2 regarding the rules of marriage expressly state that the role of religion is very important; according to this interpretation, every marriage must first be regarded as a religiously legal marriage before it can be recognized by the state. Consequently, this article contains a command. The state does not restrict interracial marriages as long as the union has been recognized as valid by both religions (Karim, 2017). Positive application of legal standards containing orders, often known as the rule of law. Consequently, the implementation of positive legal standards is a matter of the public domain. Strictly speaking, the regulations in Law No. 16 of 2019 do not prevent conducting a marriage procession with beliefs that are not explicitly the same; however, this interpretation is derived by interpreting each article of the law. In actuality, couples that continue to conduct marriages with various religions do not typically breach applicable legal norms, but they do offend religious norms.

IV. CONCLUSION

Based on the explanation in the discussion in the previous section, it can be concluded that there are binding rules regarding the implementation of marriage in Indonesia, namely Law Number 16 of 2019. The legal requirements included within articles 1 to 3 of these laws and regulations have the form of an order, not a prohibition. This is due to the fact that the separate religions in Indonesia are the only ones who have the authority to judge whether or not a marriage is legal.

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