



Registration of Interfaith Marriages at the Civil Registry Office in Pekanbaru

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Abstract

Marriage and religion has a close connection to the Indonesian people in general. All religions regulate marriage because religion is the main foundation in living a domestic life. The state also regulates marriages based on religions that are recognized in Indonesia by issuing Law Number 1 of 1974 concerning Marriage. However, with the existence of 6 recognized religions in Indonesia, it is possible for Indonesian people to have interfaith marriages. With the existence of people who do interfaith marriages, this is certainly a problem in marriage law in Indonesia. Regarding the focus of this research, which is to study how the practice registration of interfaith marriages at the civil registry office in Pekanbaru. The method used is empirical legal research. Research data was collected through field studies that discussed interviews with sources to obtain primary data and literature studies to obtain secondary data. The results showed that the practice of registering interfaith marriages conducted abroad at the Pekanbaru City Civil Registry Office did not look at the religion of each party, because the duties of the Office of Population and Civil Registry only recorded only in accordance with the regulations as contained in Article 35 letter a Law Number 23 of 2006 concerning Population Administration. As for the legal consequences that will have an impact on marital property status, status and position of children and inheritance relationships.

Keywords: Registration; Interfaith; Marriages

I. Introduction

Marriage is a very important event in everyone's life. In Indonesia, marriage is seen as a sacred event related to each other's beliefs. Marriage and religion have a close and inseparable relationship. Almost all religions regulate marriage, which basically requires marriage between men and women with the same religion. This can be understood, because religion is the main foundation and is very important in determining the success of one's household life.

Law Number 1 of 1974 concerning Marriage is a Marriage Law that applies to all Indonesian citizens. Article 1 of Law Number 1 of 1974 concerning Marriage states that Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a family (a happy household) and eternal based on the Godhead. From this understanding, there are 5 elements in marriage, namely:

1. Inner and outer bonds
2. Between a man and a woman
3. As husband and wife
4. Form a happy and eternal family (household)
5. Based on the Godhead¹

From some of the elements above, the fifth element is the most important element in marriage, especially in Indonesia, the marriage must be based on God, because that is said to marriage and religion have a inseparable conection. In Law Number 1 of 1974 concerning Marriage the conditions for the legality of marriage are mentioned in Article 2 Paragraph (1), namely:

"Marriage is legal if it is done according to the law of each religion and belief

The basis of religious law in conducting marriages is very important in Law Number 1 of 1974, so that the determination of a marriage is valid or not depends on religious provisions. This means that if religious law states that a marriage is not permitted so that it is not legal, then the state also views the marriage as illegitimate, so in interfaith marriages that may or may not depend on the religious provisions they hold².

Thus, many interfaith marriages conduct marriages abroad, considering that in Indonesia this is not permitted. The implementation of marriages abroad is regulated in Article 56 of Law Number 1 of 1974:

1. Marriage in Indonesia between two Indonesian citizens or an Indonesian citizen with a foreign national is legal if carried out according to the law in force in the country where the marriage was held and for Indonesian citizens do not violate the provisions of this Law.
2. Within 1 (one) year after the husband and wife return to the territory of Indonesia, their marriage certificate must be registered at the marriage registry office of their residence.

Marriage registration is regulated in Law Number 23 of 2006 concerning Population Administration, which in Article 3 states that:

"Every resident is required to report Population Events and Important Events they have experienced to the Implementing Agency by fulfilling the requirements required in Resident Registration and Civil Registration."

The existence of Law Number 23 of 2006 concerning Population Administration seems to provide an opportunity for couples who have interfaith marriages to have their marriage recognized by Indonesian state law. This is as stated in Article 35 letter a, which reads:

"The registration of marriage as referred to in Article 34 also applies to marriages determined by the Court."

In the explanation of Article 35 letter a it says that what is meant by "Marriage determined by the Court" is a marriage made between people of different religions.

Along with the times, and in this era of modern globalization and increasingly sophisticated technology, not a few people who forget religion as a foundation and and conduct marriages that are not in accordance with applicable rules and laws. Many problems that arise in the life of the community

¹ Rosnidar Sembiring, *Family Law: Assets in Marriage*, Jakarta: Rajawali Press, 2016, page. 43.

² Nur Asiah, *Legal Study of Interfaith Marriage According to Marriage Law and Islamic Law*, *Jurnal Hukum Samudra*, Vol. 10, Number 2, July-December 2015, page. 207.

regarding marriage even though there is a national marriage law that functions to regulate marital problems, one of which is a marriage of different religions.³

II. Research Method

The research method used in this study is a normative juridical, a research approach based on normative literature study and conducted through investigating law secondary data.⁴ To conduct this study, the researcher completes any materials required in studying and finishing this study by investigating the primary, secondary, and tertiary data.⁵ The techniques to collect the data are:

1. Literature study is conducted through collecting law materials relating to the study of materials, such as books of law whether in a form of written texts or soft-copy edition, such as e-books, journal articles, papers, government publication, and other sources provided in the internet and accessed via online. Besides, reading, studying, and noting some reviews of literature materials relating to the object of this study are conducted.
2. Study of interview was conducted to some related interviewees, such as the Head of Pekanbaru City Civil Registry Office.

The method of data analysis used in this study is qualitative descriptive. Qualitative approach in this study is a procedure to produce descriptive data as revealed by the respondents orally and behaviorally. Then, the objects investigated and studied in this study is the whole research⁶.

iii. Research Results and Discussion

The Practice of Registration of Interfaith Marriage Conducted Abroad at the Office of Population and Civil Registry of Pekanbaru City

In practice, the recording of interfaith marriages in Indonesia is difficult, so the interfaith couples take place overseas. This is because the Indonesian Marriage Law regulates the validity of a marriage as stated in Article 2 of Law Number 1 of 1974 concerning Marriage.

Data obtained from the Office of Population and Civil Registry of the City of Pekanbaru, within the last 4 years, namely from 2016 to 2019, there is only 1 (one) pair of different religions who registered their marriages. The couple of different religions are named HD Buddhist men and CB female Catholics.

³ Jane Marlen Makalew, Legal Impacts of Interfaith Marriage in Indonesia, *Lex Privatum Journal*, Vol.I / No.2 / Apr-Jun / 2013, page. 132.

⁴ Mamudji Sri, et al., *Legal Research and Writing Methods*, Faculty Publishing Board Law of the University of Indonesia, Jakarta, 2005, Page 4-5

⁵ Adi Rianto, *Social and Legal Research Methodology*, Granite, Jakarta, 2004, page 31

⁶ Soerjono Soekanto, *Introduction to Legal Research*, UI Press, Jakarta, 2006, Page 32

They married interfaith in France in 2015 and registered the marriage at the Pekanbaru City Civil Registry Office in 2016.

Based on the results of an interview with Ms. Vityana, Head of Pekanbaru Civil Registry, she said the Pekanbaru city civil registry office could not authorize interfaith marriages because it contradicted with Law No. 1 of 1974 concerning Marriage. But the civil registry office can register interfaith marriages if the couple marries abroad. Because the recording entered into the list of foreign marriages registration. And the authority of the civil registry office is limited to recording, not authorize it. She further said that the registration of interfaith marriages conducted abroad was only limited to reporting. The civil registry only records the report and does not see whether the marriage is of a different religion or not because the civil registration authority only records it

For residents of the city of Pekanbaru who have held interfaith marriages abroad, then upon arrival in Pekanbaru they are required to register their marriages with the Department of Population and Civil Registration of the City of Pekanbaru. In the registration process, the required file requirements are:

1. Photocopy of Passport (husband and wife)
2. Photocopy of Birth Certificate (husband and wife)
3. Photocopy of Identity Card (husband and wife)
4. Photocopy of Family Card (husband and wife)
5. Photocopy of Marriage Certificate from the country of marriage.
6. Marriage Certificate (original which has been translated by an official institution)
7. 4x6 articulated photographs (3 sheets)
8. Original Letter from the Embassy of the country of origin (If one of the foreign partners)
9. Letter from the Embassy (Original which has been translated by an official institution)
10. For one foreigner partner, all documents must be translated in official institution.

Mrs. Vityana added, the most important requirement for registering marriages in the Pekanbaru City Civil Registry Office is that one of the parties conducting a marriage must have a Pekanbaru City Identity Card. If the Identity Card is not from the City of Pekanbaru, the civil registry office cannot record the marriages that enter. With this registration, it does not mean that the Department of Population and Civil Registration of the City of Pekanbaru issues a marriage certificate. A marriage certificate already exists, and has been issued in the country where the couple married. The Office of Population and Civil Registration Pekanbaru City only records and issued a marriage Reporting Receipt only. And it will enter into the marriage registration of foreign reporting

From interviews conducted, it can be stated that the registration of interfaith marriages conducted abroad and recorded by the Pekanbaru marriage registration officer is only administrative. The registration does not further examine the process of foreign marriages and their validity, the civil registry also does not see whether the couple are of different religions or not. Civil Registry Officers only carry out their obligations under the Population Administration Act to record important events for every Indonesian citizen. And the civil registry officer also does not see whether the interfaith marriages have been approved by the court or not. The civil registry officer only asks for the file conditions as mentioned above, the most important is that the couple of different religions already have a marriage certificate obtained from abroad.

Marriage registration conducted by the Population and Civil Registry Office only fulfills formal requirements. Although religion prohibits interfaith marriages, the registration of marriages does not have problem, this shows there is no compatibility between the provisions of the law with what happens in practice. Couples of different religions who wish to enter into marriage, can do so abroad and listed in the

Department of Population and Civil Registry in their origin despite the provisions interfaith marriage must first obtain a determination from the court, but it is not implemented in practice.

If seen from the provisions of Article 2 paragraph (1) jo Article 8 letter (f) of Law Number 1 of 1974, basically interfaith marriages are unknown and are not recognized by Indonesian law. However, there is no explicit regulation regarding the prohibition of interfaith marriages or different faiths. So there are many interpretations regarding the implementation and recognition of interfaith marriages. Previously the only legal basis regarding the implementation and recognition of interfaith marriages was based on the Supreme Court Jurisprudence Number: 1400K / Pdt / 1986. With the Supreme Court Jurisprudence, interfaith marriages can still be held and legally recognized. However, currently based on Article 35 letter a of Law Number 23 Year 2006, marriages that can be registered are legal marriages, whereas legal marriages are based on Article 2 of Law Number 1 of 1974 if it is done according to each religion and belief.

The difference between Law Number 1 of 1974, Jurisprudence Number 1400K / Pdt / 1986 and Law Number 23 of 2006 concerning interfaith marriages in Indonesia, creates a conflicting polemic. In this case a government policy is needed by issuing a regulation on the issue of interfaith marriages in Indonesia which can be used as a legal basis for the creation of legal certainty from the regulations made. So that the polemic regarding whether or not interfaith marriages in Indonesia can be clarified.

Based on legal certainty theory, one of the means to realize legal certainty is through the existence of laws and regulations. Legal certainty requires an effort to regulate law in legislation made by the authorities, so that the rules have a juridical aspect that can guarantee the certainty that the law functions as a rule that must be obeyed. Regarding interfaith marriages which are conducted abroad, if seen based on Article 2 of Law Number 1 of 1974 the marriage is clearly invalid in Indonesian law. Therefore, the marriage does not guarantee legal certainty in the event of a dispute in the future. However, the marriage is legal according to the law of the country where the marriage is carried out, in other words the marriage has legal certainty in accordance with local state law.

In line with the theory of legal certainty, the theory of legal administration governing the registration of interfaith marriages contained in Article 35 letter a of Law Number 23 Year 2006, interfaith marriages can be registered at the civil registry office where the domicile is located. Can the registration of interfaith marriages in the registry office mean that Indonesia recognizes the marriage even though it does not fulfill the validity of the marriage as stated in Article 2 of Law Number 1 of 1974 which impacts on the legal certainty of the consequences of the marriage.

If Indonesia does forbid interfaith marriages, the government must issue clear regulations without making new regulations that clearly provide a space or gap for couples who engage in interfaith marriages, whether marriages are conducted domestically or abroad. So that no more people take advantage of these legal loopholes so that the state continues to recognize the marriage.

The Legal Effects of Interfaith Marriage in Indonesia

Marriage causes legal consequences for the husband and wife in marriage, including the legal relationship between husband and wife, marital property status, legal status of children, and inheritance relationships. However, if the marriage is an illegitimate interfaith marriage based on Law No. 1 of 1974 concerning Marriage, then this will have an impact on marital property status, legal status of children and inheritance.

Thus, interfaith marriages, although it can be registered but have other legal consequences which become a problem later on. To that should be a concern for citizens of Muslim-majority Indonesia to prioritize legal marriage religiously and becomes valid also under the laws of the state in order not to cause problems later in life.

Conclusion

In practice, the Pekanbaru City Population and Civil Registry Office only accepts reports of interfaith marriages held overseas without regard to the validity of marriages. The Marriage Reporting Letter is not a Marriage Certificate, the Reporting Letter is only as proof that interfaith marriages conducted abroad have been registered at the local Population and Civil Registry Office.

References

Books

- Adi Rianto, *Social and Legal Research Methodology*, Granite, Jakarta, 2004, page 31.
- Mamudji Sri, et al., *Legal Research and Writing Methods*, Faculty Publishing Board Law of the University of Indonesia, Jakarta, 2005, Page 4-5.
- Rosnidar Sembiring, *Family Law: Assets in Marriage*, Jakarta: Rajawali Press, 2016, page. 43.
- Soerjono Soekanto, *Introduction to Legal Research*, UI Press, Jakarta, 2006, Page 32.

Journals

- Nur Asiah, *Legal Study of Interfaith Marriage According to Marriage Law and Islamic Law*, *Jurnal Hukum Samudra*, Vol. 10, Number 2, July-December 2015, page. 207.
- Jane Marlen Makalew, *Legal Impacts of Interfaith Marriage in Indonesia*, *Lex Privatum Journal*, Vol.I / No.2 / Apr-Jun / 2013, page. 132.

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