



The Standing of Inter-Religious Marriage Based on Surakarta District Court Decree According to Compilation of Islamic Law Number 1 of 1974 about Marriage

Diah Nuzul Permatasari* ; Burhanudin Harahap

Sebelas Maret University, Indonesia
Email: diahnpermatasari@yahoo.com

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Abstract

This paper aimed to find out and to analyze the standing of inter-religious marriage based on the Surakarta district court decree according to the Compilation of Islamic law number 1 of 1974 about marriage. This study was categorized as an empirical legal study. An empirical legal study is a study utilizing the empirical fact taken from the human behavior, at the beginning of the study, the secondary data is studied and then is continued by the study on the primary data in the field or towards the community. The result of the study showed that there was a deviation on the parties who did inter-religious marriage and it was considered as illegal. The parties insisted to perform the marriage by filing a request to the District Court of Surakarta. The district court of Surakarta granted the request to fill the legal gap. The decree is based on the jurisprudence. That decree commanded the Population and Civil Registration Agency to perform and record the marriage, however, in this case, the Population and Civil Registration Agency did not possess legal right to marry off the parties, its right is only to record, so the Population and Civil Registration Agency of Surakarta was only allowed to record the permission of marriage decreed by the District Court.

Keywords: Inter-Religious Marriage; Court Decree; Marriage Law; Compilation Of Islamic Law;

Introduction

Marriage is an important event of human' life since it does not only bind both bride and bridegroom but also bind the family and the community. Essentially, marriage is regarded as a sacred event and because of that, every religion always relates the marriage norms with the religious' norms.¹

Based on Article 1 Act no.1 of 1974 about Marriage, marriage is a physical and emotional bond between a man and woman as a husband and wife by the aim is to form a happy and everlasting household build upon god. Moreover, according to article 2 paragraph (1) of Act no.1 of 1974 about Marriage, the marriage is valid only if it takes place in accordance with the religious laws and beliefs of

¹ Boedi Abdullah, M. Ag., Perkawinan dan Perceraian Keluarga Muslim. Pustaka Setia Cetakan 1, Bandung. 2013. Hal 20.

the parties. By the formulation of article 2 paragraph (1), there is no marriage outside the law of parties' beliefs and religion, as it is in accordance with the 1945 Constitution.

In the Compilation of Islamic law article 2, it is stated that Marriage, based on Islamic law, is a powerful covenant or *miitsaaqon gholiidan* between man and woman in order to form a happy family to obey Allah' order, marriage by the goal to form *sakinah, mawaddah, and warahmah* household is a worship. Article 4 of the compilation of Islamic law states that marriage is valid only if done in accordance with Islamic law, in accordance with article 2 paragraph (1) of act no. 1 of 1974 about Marriage.

Based on the articles within the Act no. 1 of 1974 about Marriage and the Compilation of Islamic law, it is clear that marriage shall be done upon the beliefs and religion of the parties, and it is forbidden to marry someone whose religion is different. However nowadays, by the growth of science, the way of thinking of the community, the development of era and technology. The community does not think that different religion is a barrier to perform inter-religious marriage despite the religion explicitly forbid it. This inter-religious marriage occurs when a man and a woman whose religion is different wants to perform the marriage. In this case, there is a deviation and if it is viewed from the community' reality, that marriage is illegal.

According to the Article 44: " A Muslim woman is forbidden to perform a marriage with a man whose religion is not Islam" Thus, it means that compilation of Islamic law does not take the opinions from *jumhur fuqala* or *Syafi'iyah* opinion, while the majority of Moslem in Indonesia is the follower of *Syafi'i* sect., According to Ahmad Imam Mawardi, it is a controversial law. Compilation of Islamic law reasons that it is the *Maslahat* of the community because a marrying *Ahl al-Kitab* brings more *mafsadat* compared to the *maslahat*.²

It can be known that the Ulama of the sects basically agrees about the permission of marrying *ahlul Kitab* woman, but when this matter is connected with conditions and other things related to the concept of *maslahat* and *mafsadat*, the status becomes abominable (*makrooh*) or even becomes forbidden (*haram*).³ In Article 5 paragraph (1) of Compilation of Islamic law, it explains that in order to warrant the marriage order for Islam community, every marriage should be registered. While in the Act no. 1 of 1974 about Marriage, there is also an article contains marriage registration. Article 2 paragraph (2) states that every marriage is registered in accordance with the legislation in force. This marriage registration aimed to make the marriage becomes completely legal, legal in accordance with the religion and the state.

For the interest of administration, The Marriage law divides Indonesian people into Islam people and non-Islam people. All citizens whose religion is Islam from regardless of their ethnic, who perform Islamic marriage, it is registered in Religious Affairs Office, while all citizens whose religion is not Islam, who perform the marriage in accordance with their religion, it is registered in Population and Civil Registration Agency.

The marriage has been performed based on the law of religion and beliefs shall be registered by the registration officer with the aim of creating government and citizenship administration order. Citizenship administration order means avoiding administration chaos related with someone legal standing certainty. In the practice, unregistered marriage leads to the wife and children right' violation. Unregistered marriage is an unexpected action which is not expected by the Law since it leads to some problems.

² Mardani. *Hukum Perkawinan Islam di Dunia Islam Modern*. Graha Ilmu, Yogyakarta. 2011. Hal 130.

³ *Ibid.*, Hal 85.

In the case of inter-religious marriage and marriage registration, there are some cases in Surakarta city that have got the decree of Surakarta district Court, a Catholic man requester, and an Islam woman requester have agreed to perform a marriage that formerly planned to be performed in front of Population and Civil Registration Agency of Surakarta officer. But that plan could not be performed since the Population and Civil Registration Agency of Surakarta rejected it because of the different religion of the parties. So they filed a request to the District Court Of Surakarta. After through long process and various consideration of Judges, the Judge of DISTRICT COURT of Surakarta grant the request so that inter-religious marriage could be performed. Whereas according to Islamic Law (Compilation of Islamic law) and Catholic/ Christian law, marriage performed by the parties whose religion is different is forbidden. Based on the description above, the writer intends to conduct a study related to how is the standing of inter-religious marriage based on Surakarta district court decree according to Islamic law compilation number 1 of 1974 about marriage?

Methodology

This study was categorized as an empirical legal study, an empirical legal study is a study utilizing the empirical fact taken from the human behavior, at the beginning of the study, the secondary data is studied and then is continued by the study on the primary data in the field or towards the community.⁴ Based on the issue will be discussed, the nature of this study was a descriptive study. A descriptive study is a method of studying the status of the human group, an object, a condition set, a mind system, or a class of today' circumstances.

The data collection technique used in this study was the interview. The interview is a direct conversation between two or more persons where the interviewer asks the designed questions to a respondent to gain the answers that relevant to the issue of the study.

The data analysis is the research activities done in the form of doing review towards the result of the data tabulation which is assisted by the existing theories. The analysis is the data simplification process into more readable and interpretable forms. In this case, the researchers will analyze the obtained data, whether it is primary or the secondary data. Then the data will be tabulated and analyzed in the way of qualitative descriptive by using empirical legal approach.

Discussion

Inter-Religious Marriage Based on the Decree of District Court of Surakarta According to Compilation of Islamic Law

Basically, all religions in Indonesia forbid inter-religious marriage, for Islam people it becomes more explicit after the issuance of the President Instruction no.1 of 1991 article 44 about the compilation of Islamic law. Moreover, Al-Quran firmly forbids inter-religious marriage. That prohibition is clearly explained in the Al-Quran' verses on the surah Al-Baqarah, al-Mumtahanah, and al-Maidah.

The content of one of those surahs is Allah' commandment on verse 221 of Al-baqarah: "And do not marry polytheistic women until they believe. And a believing slave woman is better than a polytheist, even though she might please you. And do not marry polytheistic men (to your women) until they believe. And a believing slave is better than a polytheist, even though he might please you. Those invite you to the Fire, but Allah invites to Paradise and to forgiveness by His permission".

⁴ Soerjono Soekanto. Pengantar Penelitian Hukum. Universitas Indonesia Press, Jakarta. 2010. Hal 52.

In the perspective of Islamic Law article 44 of Compilation of Islamic law, it is stated that an Islam woman is forbidden to perform a marriage with someone whose religion is not Islam. Generally, The Fiqh book forbid the marriage between a Muslim and non-muslim. In accord with the religion, inter-religious marriage is illegal. The pillars of marriage in the Compilation of Islamic law article 14 states that to perform marriage there shall be:

1. Prospective husband
2. Prospective wife
3. Marriage Guardian
4. Two witnesses
5. Ijab and Qobul⁵

In the inter-religious marriage, there are prospective husband, prospective wife, marriage Guardian, and two witnesses, but they cannot perform ijab and Qobul because of the different religions of the parties, which means there is a pillar of marriage that is not performed and it means illegal according to Islam. So as if it is seen in the Christian that requires matrimony which is not performed in the inter-religious marriage. Submission is the only way, in other words, a party follows the other party' religion who wants to perform the marriage. Often in this modern era, someone only pretends to convert the religion. That person does laws smuggling by pretending to convert the religion to perform a marriage, and later after getting the marriage certificate, he/she worships his/her previous religion.

Basically, a Muslim man is allowed to marry an ahlul Kitab (the people of the book) woman based on the specification of QS. Al-Maidah paragraph 5. The definition of Ahlul Kitab refers to two huge religions of Semitic people before Islam, namely Jews and Christian. Ibnu Rusyd wrote that the scholars agree that there is a different opinion on the appropriateness (the halal) of marrying an ahlul Kitab woman slave and the ahlul Kitab woman whose status is as a prisoner (bi al-milk).⁶

Regarding the Ulema, a man is allowed to perform a marriage with an ahlul Kitab woman. What is meant by Ahlul Kitab is a person who believes in bible and zabur. While a Muslim shall have faith in these books, so it is allowed. For Muslim women, they are forbidden to marry a man who does not believe in Al-Quran. Five pillars of Islam states that believe in holy books and prophets. In Islam, Isa believes in Bible and Musa believes in Zabur, so a Muslim man is allowed to marry an ahlul Kitab woman.

While an Islam woman is forbidden to perform a marriage with a man whose belief is other than Islam. The disallowance is caused by a man gives no freedom, for example, a Christian' faith believes in Al-Quran.

According to the advice of MUI:

⁵ Undang- Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan dan Kompilasi Hukum Islam, Citra Umbara, Bandung, Hal 232.

⁶ Ibnu Rusyd, Bidayah al-Mujtahid, Hal. 33.

1. A marriage between Muslim women and non-muslim men is forbidden
2. A muslim man is not allowed to marry a non-muslim woman

There is a different opinion on the marriage of Muslim man and ahlul Kitab woman. After considering that the mafsadat is bigger than the maslahat, Indonesian Ulema Council advice that inter-religious marriage is forbidden.⁷

Inter-Religious Marriage Based on Surakarta District Court Decree According to Article 2 Paragraph (1) of Act No.1 Of 1974 About Marriage

For a country like Indonesia, Marriage law that accommodates principles and gives the basis of marriage law which becomes the guidelines and is in force for various groups on our community is absolutes. In the act no.1 of 1974 about Marriage, the marriage is valid only if it takes place in accordance with the religious laws and beliefs of the parties, apart from it, every marriage shall be registered based upon the prevailing legislation. The registration of marriage is as same as the registration of other important events in someone' life such as birth and death which is stated in a statement letter, a legal deed contained in the registration list.

In the enforcement of Act no. 1 of 1974, inter-religious marriage is not regulated since it is forbidden by the religious teachings. There is an obstruction for the parties whose religion is different to perform a marriage. It is based on the article 2 paragraph (1) which state that marriage is legal if it is done under the law of respective religions and beliefs. By the formulation of this article, there is no marriage outside the law of respective religion and belief, accords with the 1945 Constitution. Based on that article, H. Hilman Hadikusuma concludes that article 2 paragraph (1) of the marriage law concludes that inter-religious marriage is illegal.⁸ On the contrary, according to Djaja S. Meliala who states that the allowance of inter-religious marriage is grounded on the bride and bridegroom' beliefs, whether or not the beliefs of each party allow the inter-religious marriage.⁹

In the practice of filing the request of inter-religious marriage), the Population and Civil Registration agency of Surakarta refused to record the inter-religious marriage at first. The refusal was based on the Article 2 paragraph 1 of the act. No 1 of 1974 about Marriage which states that the requirement of legal marriage is performed in accordance with the religions and beliefs of each party. Another attempt made by the requesters after knowing that their request is refused is by filing their request to the district court. This is based on the article 21 paragraph 4 of Act no. 1 of 1974 which states a request can be filed to the district court if the Population and Civil Registration Agency refuses the request.

The procedure of filing request to the Court is by submitting the letter of refusal from the population and Civil Registration Agency. In accordance with article 21 paragraph (4) of Act no. 1 of 1974 about Marriage which states that The Court will investigate the case in a brief and give the decree whether to strengthen the refusal or to command the marriage to be performed. This is based on article 35 item a of Act no.23 of 2006 about Citizenship administration which states that marriage registration as meant in article 34 of Act no.23 of 2006 about Citizenship administration prevails for the marriage decreed by the court. On the description of article 35 item a, it is stated that what is meant by marriage

⁷ Mardani. Hukum Perkawinan Islam di Dunia Islam Modern. Graha Ilmu, Yogyakarta. 2011. Hal 84.

⁸ Hilman Hadikusuma. Hukum Perkawinan Di Indonesia. Mandar Maju, Bandung. 2007. Hal 18.

⁹ Djaja S. Meliala. Hukum Perdata Dalam Perspektif BW. Nuansa Aulia, Bandung. 2014. Hal 99.

decreed by the court decree is a marriage performed by parties with different religions. After getting the court decree, it becomes the basis of the Population and Civil Registration Agency to register the marriage. The function of that marriage registration is to issue a marriage deed so it can be registered in the citizenship administration.

Related to the considerations of the Judges of the District Court of Surakarta in granting the inter-religious marriage request, According to Pandu Budiono S.H., M.H. As the Judge of the District Court of Surakarta the judges' consideration were:

a. To Fill the Legal Gap

What is meant by the legal gap here is the issues caused by the acts that often do not in line with the community life. The legal gap within the community service also prevent the negative effects on the community' social or religious life in the form of the social values smuggling such as the kumpul kebo phenomenon in the community. In fact, inter-religious marriage is not regulated by the act no.1 of 1974 about Marriage. In the other words, in a quo case, a legal gap (recht vacuum) occurs where it may lead to a question " can the inter-religious marriage be recorded or performed, and is there a way out of this problem'. The judge considered this as essential. Consequently, rule-breaking is needed. While Indonesian community is heterogenous that comprises various ethnics, culture, and religions. In the daily life, as the mindset of the community and the era develops, there are many communities who do not deem a difference as taboo, including the difference religion in having a relationship until the marriage stage. The inter-religious marriage occurs when the parties still stick to their religions and beliefs without any submission to their partner' religion.

According to the researcher, it is clear that the article 2 paragraph (1) and 2 of act no. 1 of 1974 about Marriage regulates that marriage should be performed in each respective beliefs and then recorded by the legislation in force. In this case, every judge possesses a different point of view and mindset in stipulating a decree.

b. Based on Jurisprudence the Decree of the Supreme Court Reg. no. 1400 K/Pdt/1986, 20 January 1989 Which Take a Decision on Inter-Religious Marriage Request

The decree in 1986 by no. 382/PDT/P/1986/PN.JKT.PST. The requester was Andi Vonny Gani P. A Muslim woman intended to perform an inter-religious marriage with a Protestant Christian named Petrus Hendrik Nelwan where in that case usually cassation becomes the support of jurisprudence. However in that case, when the requester filed a request in the District Court of Central Jakarta to perform an inter-religious marriage, the district court rejected the request. Then, the requester filed for cassation. In order to consider the community needs and there is a legal gap, the Judges grant the cassation by the decree of the Supreme court reg. no. 1400 K/Pdt/1986 20 January 1989.

Based on the decree of the Supreme Court of the Republic of Indonesia. No.1400 K/Pdt/1986 20 January 1989 which states, "The different religions of the prospective husband and wife is not a prohibition of marriage for them". It means that the Supreme court inferred that the religious difference is not an obstacle to perform the marriage.

Indonesia as the state that uses legislation as the source of law, especially civil law because the source comes from the written law. It affirms that Indonesia is a state with civil law system, however, the judges' degree can be the source of law and be followed by the other judges when stipulating similar cases called as jurisprudence. It is almost similar to the state whose system is the common law that using the

judges' decree as the legal basis such as England. It can be concluded that Indonesia uses mixed system between civil law and common law, but civil law is more dominant.

Based on those considerations, the Judge grants the request of inter-religious marriage in Surakarta by the stipulations are as follow:

1. Granting the request of the applicants
2. Giving permit to the requesters to perform an inter-religious marriage in the population and Civil Registration Agency of Surakarta
3. Commanding the officer of Population and Civil Registration Agency of Surakarta to record the inter-religious marriage to the marriage registry
4. Put the court fees upon the requester

Giving permit to the requesters to perform an inter-religious marriage in the population and Civil Registration Agency of Surakarta, in fact the population and Civil Registration Agency of Surakarta does not marry off the parties, the absence of religious marriage performed leads to the absence of the legal consequences of that marriage because basically there is no marriage performed. The Population and Civil Registration Agency of Surakarta record the marriage based on the decree of the District Court of Surakarta.

In line with the statement above, according to Mr. Sudarsana S.H as the head of Marriage and Divorce section of Population and Civil Registration Agency of Surakarta, basically, the parties who perform an inter-religious marriage may not perform the marriage in front of the religious leader in accordance with their religious teachings. In this case, there is no marriage performed in the Islamic or Christian procedure.

The function of the population and Civil Registration Agency is to register important events and citizenship events. In the case of inter-religious marriage, the Population and Civil Registration Agency can only record the marriage, they do not marry off the parties. While the Religious Affairs Office marry off and record the marriage in the Islamic way.

Prof. Wahyono Darmabrata, a professor of Civil law of Universitas Indonesia, states that there are four ways of laws smuggling for inter-religious partners, those are:

1. Filing stipulation
2. in accordance with respective beliefs
3. Temporary submission towards one' beliefs
4. Performing the marriage abroad

The standing of inter-religious marriage based on the Islamic Law Compilation and Act no.1 of 1974 about marriage is deemed as illegal. The decree of district Court of Surakarta that grants the request of inter-religious marriage by permitting the requesters to perform an inter-religious marriage in the

Population and Civil Registration Agency of Surakarta is basically means nothing if it is viewed from the religious side since the religion explicitly forbid inter-religious marriage. That marriage essentially not exists, the DISTRICT COURT permit the registration, but not the performing of the marriage. The Population and Civil Registration Agency of Surakarta states that they only register the marriage of the requester, do not marry off the requester. What is recorded is the decree of permitting inter-religious marriage, in this case, is a marriage between Islam and Christian/ Catholic is allowed to be registered in the Population and Civil Registration Agency of Surakarta.

This reality of law becomes the reason to review the regulation about marriage. The basis that strengthens the review is the prevailing of Pancasila as the philosophy of the state and the 1945 Constitution.

Conclusion

The standing of the marriage based on the decree of District Court of Surakarta according to the compilation of Islamic law and Act no. 1 of 1974 about Marriage is forbidden the inter-religious marriage. The result of the study showed that there was a deviation on the parties who did inter-religious marriage and it was considered as illegal. The parties insisted to perform the marriage by filing a request to the District Court of Surakarta. The district court of Surakarta granted the request to fill the legal gap. The decree is based on the jurisprudence. no. 1400 K/Pdt/1986 ,20 January 1989 which take a decision on inter-religious marriage request. That decree commanded the Population and Civil Registration Agency to perform and record the marriage, however, in this case, the Population and Civil Registration Agency did not possess legal right to marry off the parties, its right is only to record, so the Population and Civil Registration Agency of Surakarta was only allowed to record the permission of marriage decreed by the District court and basically, the religious marriage is not performed.

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