LEGAL DUALISM MARRIAGE REGISTRATION FOR MUSLIMS IN INDONESIA

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ABSTRACT

Marriage has a great significance in human life and the cultural patterns to control and establish a strong foundation in the household. There is a duality of the legal status of marriage to nationals of Indonesia, especially Islam, which is a valid marriage and recorded in the sub-district religious affairs office with a valid marriage according to the norms of Islam but is not listed on the state agencies. Legitimacy of marriage has legal implications of the status of children who are born, as well as inheritance rights affected, and the recording of the key events in the system of administration. This study uses the methodology of normative juridical deduction, the judicial approach. At the end of the discussion will be found the answer from the legal issues that the law of the State Administraon that marriage registration is administrative actions based on the legislation in force undertaken by the competent instasi. With prescriptions for a legal solution.

Keywords: dualism, marriage registration law, office of religious affairs

INTRODUCTION

Process establishment marriage law in Indonesia invites great attention from all levels of Indonesian society. Every time the government proposed draft Marriage Act (here in after abbreviated Marriage Bill) to the House of Representatives of the Republic of Indonesia (here in after referred to as the House of Representatives), always bring up the pros and cons reaction among the people, both Muslims and non-Muslims against the marriage bill. In addition the reaction pros and cons of the marriage bill also emerge from each faction in Parliament, so that the debate relating to the regulation of marriage is always interesting to discuss.

Marriage for man not only as a statement containing permission to have sexual relations as husband and wife, but it is a point of turning the society, thus the marriage has a great significance in human life and the cultural patterns to control and establish a strong foundation in the household . There is dualism of the legal status of marriage to nationals of Indonesia, specifically Islam, which is a valid marriage and recorded in the sub-district religious affairs office with a valid marriage according to Islamic religious norms but not registered against state agencies.

Marriage in the positive law in Indonesia has been specifically regulated by Act Number 1 of 1974 About Marriage, which was then applied to the rules implementing the Government Regulation Number 9 of 1975. In addition to these regulations, marital issues are also set in Act Number 7 of 1989 About the Religious, Presidential Instruction

Number 1 of 1991 About the Compilation of Islamic Law and arranged in a variety of regulations and decisions of other countries.

Problems registration of marriages as legitimate requirement of a marriage is one chapter contents reap many debates. The formulation of the beginning of Article 2 Marriage Bill stated:

1. Marriage is legal if carried out dihadapat employee registrar of marriage, be listed in the list of registrars of marriage by the employee, and carried out according to the provisions of this Act and / or the provisions of the law of marriage parties-parties who perform marriages extent not inconsistent with this law;
2. The marriage registration referred to in paragraph (1) of this article is done by state officials to be further regulated under separate legislation.

The description in the Marriage Bill states unequivocally that a marriage is legal if carried out dihadapat employees registrar of marriage and to be listed in the list of registrars perkawian by employees registrar of marriage is concerned and carried out in accordance with the law and / or statutory marriage parties mating along not contrary to law, further undang.Lebih, also explained that thus the introduction of religion into marriage only between denominations need to be seen in the performance of its functions as a registrar of marriage which is one aspect of the civil registry.

Based on the description of the background of the above problems, then the problem in this research is:

1. What is the law and the rationale for registration of marriage in the Marriage Law?
2. How does the District of Religious Affairs Office authority in performing the duties of marriage documentation for citizens who are Muslims?

DISCUSSION

1996 has been issued by the Cabinet Presidium Instruction Number 31 / U / In / 12/1996 which among other things has instructed the minister of justice and civil registry offices throughout Indonesia for not using the classifications of the Indonesian population. According to Article 131 and IS 163 in registry offices throughout Indonesia as well as the subsequent civil cacatan office in Indonesia for the entire population of Indonesia and is determined only between the citizen and the Stranger.

In Indonesia there are two state agencies or institutions that are tasked to record the marriage and divorce (and *ruju'*).The agency or institution in question are:

a. the District's Office of Religious Affairs of Marriage, Divorce, and *Ruju'* for the Muslims.
b. The registry office*(BugerlijkStand)*for marriage to those who are subject to:
    1. jo Act Number 75 of 1933 Stb Stb. No. 1936 Number 607 of the Civil Rules for the Indonesian people, Christians, Java, Madura, Minahasa, and Ambonia.
    2. Stb 1847 Number 23 on Regulation of Marriage made in accordance with Stb. 1849 Number 25 is on the European Civil Registration.
    3. Act Number 129 of 1917 Stb registration of marriages conducted according to the provisions Stb. 1917 Number 130 jo. Stb. 1919 Number 81 on the Civil Registration Regulations mixture.
    4. Civil Registration for Mixed Marriage as stipulated in Stb. 279 of 1904
    5. PP 9 of 1975 confirms that Christians in Sumatra, Kalimantan, Bali, West Nusa Tenggara and East, mostly in Sulawesi, Maluku and Irian Jaya are not regulated as mentioned in the points above, registration of marriage for them was held at the Office Notes civil pursuant to Article 3 to 9 of this rule.

Religious Affairs Office of the District must record any marriage conducted in each region. Negligence noted this marriage can be penalized to the marriage registrar. One purpose of this marriage registrar is to control the cabinet on the data of Marriage, Divorce and *Ruju'*. In Indonesia occurs marriage that is not recorded at the registry office. In order for a marriage registered is proof, if the marriage were registered then marriages has permanent legal force. In Article 2 paragraph (2) of the Marriage Law explained on the registration of marriages.

The provisions in Article 2 (1) of the Marriage Law states that marriage is valid if it is done according to the law of each religion and belief it. Furthermore, in the explanation of the article stated that there was no marriage outside their respective religions and that beliefs.

And then in Article 2 paragraph (2) of the Marriage Law states that every marriage must be recorded in accordance with applicable regulations. The regulations are Act Number 22 of 1946 and Act Number 34 of 1954 Registration of Marriages, while the marriage registrar employee obligations stipulated in Government Regulation Number 1 of 1954 and Government Regulation Number 2 of 1955.

In the provisions of Article 2 of Government Regulation Number 9 of 1975 that the registration of marriages for the Moslem performed by employees of the officer of District Religious Affairs Office marriage, whereas for other than Islam pecatatan marriage performed by a marriage registrar at the Civil Registry Office.

A fact that is still frequently encountered in the reality of our lives is still a lot of people who enter into marriage without marriage registration is registered in Religious Affairs Office for the Moslems and the Civil Registry Office for the citizen than Islam) with a variety of reasons. Against this kind of marriage, some scholars and legal experts argue that such marriages as valid if carried out pursuant to Article 2 paragraph (1) of the Marriage Law, which is done according to the law of each religion and belief. While registration of marriage is an act of administration only, if not do not affect the validity of marriages that have been conducted it, but on the other hand considers marriage that is not recorded illegitimate and categorized as *marriage imperfect* (broken), so for those who feel harmed as a result of the marriage can requested the cancellation of the Religious Courts because the provisions in Article 2 paragraph (2) of the Marriage Act, is an integral and inseparable and must be implemented in cumulative and not alternative, separate and independent.Meanwhile, according to Soekamto and Purnadi Soerjono Purbacaraka that such provision is imperative. That is, the provision coercive.

The Supreme Court only recognizes the validity of a marriage if it has fulfilled the conditions set by their religion, conducted in the presence of official marriage registrar authorized and recorded by the authorities according to applicable regulations. In line with this, it is understood that the registration of marriage is a requirement that must be met for a valid marriage

according to the religion and according to positive law. In addition, we do not need to be a dichotomy between legitimate marriage according to the religion and authorized by the state, but both conditions must be implemented in a balanced and parallel.

Marriage registration of citizens who are Muslims are also set forth in Article 8 of the Act of Administration that determines that the conduct of the agency obligations for registration of marriage, divorce, divorce, and refer to the Moslem population at district level conducted by the registrar in the District of Religious Affairs Office. The provisions of Article 34 of the Law on Population Administration that:

1. Marriages were legal according to the legislation must be reported by the resident to the institution of marriage occurrence of the conduct in place no later than 60 (sixty) days from the date of marriage;
2. Based on the report referred to in paragraph (1), the Registrar Civil marriage certificate recorded on registers and publishes kutipat Akata marriage;
3. Excerpts marriage certificate as referred to in paragraph (2) respectively given to the husband and wife;
4. Reporting as referred to in paragraph (1) for the Moslem population conducted in the District Office of Religious Affairs;
5. Data from the records referred to in paragraph (4) and in Article 8 paragraph (2) shall be submitted by the District Office of Religious Affairs to the Executing Agency no later than 10 (ten) days after the registration of marriages performed;
6. The results of the data recording referred to in subsection (5) does not require the issuance of civil registry official copies;
7. At the district level report referred to in paragraph (1) shall be UPTD implementing agencies.

CONCLUSIONS

From the above description, it can be concluded as follows:

The First, Marriage Registration is administrative actions based on the legislation in force undertaken by the competent instasi (Office of Religious Affairs for Indonesian citizens who are Muslim and the Civil Registry Office for the citizen who are apart Islam) are characterized by the issuance of a marriage certificate and a marriage certificate to the bride and groom.

*Second,*the marriage registration is very important because it provides certainty and legal protection as well as highly beneficial to the couple and to the impact then, as to assets, the status of children, and so on, as well as being a contributory factor to realize the purpose of marriage is the realization household (family) happy, sakinan, mawaddah, and mercy. And yangketiga, there are still pro kotra view among scholars and legal experts in assessing a civil registry provisions set forth in Article 2 paragraph (2) of Act Number 1 of 1974. The parties considered that the registration of marriage is not the administrative work related to the validity of a marriage. But on the other hand considers that the registration of marriage be the deciding factor validity of the marriage, so marriage is not recorded categorized as an imperfect marriage that may be requested cancellation in court.

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