

# Different Marriage Analysis Based of Indonesian Law & Regulation (Case number 278/Pdt.P/2019/PN.SKT)

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## ABSTRACT

The life of society has evolved, there are no boundaries between people from any race, religion, tribe background in Indonesia. Because of that, it's very possible for people from two different religions to have any relationship and want to get married. One of those people is Agustinus Dwi Nugroho and Ika Dede Yuniar, they appeal some plea to Surakarta Court, demanding for their marriage to be legalized. In the verdict, the judge granted all the pleas. The issue in this research is how is different religion marriage in Indonesian laws? (Case Studies number 278/Pdt.P/2019/PN.Skt), the research method is Normative with conceptual, laws and case approach and supported by data from library and some interviews. Different religion marriage in Indonesian law is not yet being regulated but there are a few laws related to the topic, such as: Article 2 Paragraph (1) and Article 8 Law Number 16 Year 2019, Article 35 Law Number 23 Year 2006, and Article 40 and Article 44 in Islamic Law Compilation. In the verdict that became the subject in this research, the writer feels there's some law that is not yet included in the consideration, such as Article 8 Law Number 16 Year 2019 and Article 44 in Islamic Law Compilation because one of the parties in that verdict is a moslem.

**Keywords:** *Private Law, Marriage Law*

## 1. INTRODUCTION

The life of society has evolved, there are no boundaries between people from any race, religion, tribe background in Indonesia. Because of that, it's very possible for people from two different religions to have any relationship and want to get married. Marriage can be identified as a something that law can regulate because its required relationship between humans and can cause a legal consequences

According to the Indonesian Dictionary (KBBI), the definition of marriage is "A matter (affairs and so on), derived from the word marry which means forming a family with the opposite sex, being married or having a wife" [1]. Meanwhile, according to Article 1 Law Number 16 of 2019, marriage is an inner and outer bond between a man and a woman as husband and wife with the goals of forming a happily ever after family based on Almighty God". [2]

From the practical point of view, marriage must be prepared properly in order to achieve the purpose of the marriage itself. Because of that, it's important that all parties evolved has mentally, materially, and administratively and also has to pay attention to the laws and regulations.

Indonesia is a country that is known as a religious country and highly honours religious and cultural value, therefore Indonesian people consider marriage is not only a

relationship between humans, but also involves a sacred relationship, namely the relationship between humans and their God. Therefore, a marriage must meet certain requirements in religion as well as the requirements as stated in the applicable Laws & Regulations.

Indonesia is a country with various ethnic groups, cultures, races and religions. Each of that provide an interesting aspect to study. And because of Indonesia current social life it is very possible for a different religion relationship to happen and want to get married but still want to uphold their own religion in accordance with the right to religion in Article 28E of the 1945 Constitution ("UUD 1945"), this is where research related to legal aspects is carried out. Especially when this circumstances has legal issues related to the wider community.

In the end, different religion marriages have always been a polemic, especially in the Marriage Law in Indonesia, submits the validity of a marriage performed by everyone to the law of their respective religions, this is stated in Article 2 Paragraph (1) Law Number 16 of 2019 "Marriage is legal, if it is carried out according to the laws of each religion and belief."

### **1.1. Related Work**

Based on the introduction, the issues in this research is "How is the different religion marriage in Indonesian Laws? (Case Studies number 278/Pdt.P/2019/PN.Skt)"

### **1.2. Our Contribution**

The purpose of this research is to address issues that have been outlined in the background is to how is different religion marriage in Indonesian Laws? (Case Studies number 278/Pdt.P/2019/PN.Skt)

### **1.3. Paper Structure**

The structure of this paper uses research method to collect data, manage data and conclude from the data according to the problem to be studied by the author. This legal research studies certain legal phenomena, either one or more symptoms. This legal research is carried out with a series of scientific activities based on certain methods, systematics, and thoughts. The research method used by the author in the study is as follows: Types of Research The research approach used in this paper is descriptive analytic, meaning that data analysis can be done by describing in detail the reality or condition of an object, in order to provide a clearer picture of the problems posed so that is easier to draw a conclusion. This legal research approach is to use literature research and interview techniques. Literature research is a research that reviews the library and the collection of books journal, and other references relevant to the research. Meanwhile, interviews were conducted to strengthen the data that had been collected. This research uses various material: primary legal material such as Constitution of the Republic Of Indonesia, Law Number 16 of 2019 as an Amendment to Law Number 1 of 1974 on Marriage, Law Number 23 of 2006 on Civil Administration, Law No 12 Of 2011 On The Establishment Of Laws, Government Regulation Number 9 Of 1975, 6) Instruction of President Number 1 O 1991 On Islamic Law Compilation, secondary legal material such as related literature, articles, etc.

## **2. BACKGROUND**

### **2.1 Definiton of Marriage**

The definition of marriage according to the Big Indonesian Dictionary (KBBI) is a matter (affairs and so on) comes from the word marry which means forming a family with the opposite sex, having a husband or wife.

According to the provisions in Article 1 of Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 on Marriage, the meaning of marriage is an inner and outer bond between a man and a woman

According to Sajuti Talib, marriage is a holy agreement between a man and a woman to live together legally to form an eternal, caring, loving and peaceful family.

### **2.2 Legal Basis**

Marriage is regulated in Article 28B Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the article states "Everyone has the right to form a family and continuing offspring through legal marriage". [3] It can be interpreted from that article that form a family and continuing offspring through a legal marriage is a human rights, guaranteed by the Constitution of Indonesia.

Marriage itself is regulated in more detail and in depth in Law Number 1 of 1974 on Marriage, the law was made through various considerations, one of them is considering that at that time there were no regulations governing marriage law in Indonesia that were in accordance with the Pancasila philosophy as the basis of the state and the ideals for fostering national law, then a law on marriage should be made for the benefit of all Indonesian citizens.

Law Number 1 of 1974 on Marriage was ratified in Jakarta by President Soeharto on January 2, 1974. Law Number 1 of 1974 on Marriage was promulgated by the Minister/State Secretary, Sudharmono. SH on January 2, 1974 in Jakarta. The enactment of this Law is followed by implementing regulations, Government Regulations Number 9 of 1975 which regulates matters of a technical nature such as the implementation of marriage and divorce procedures. The legal basis for marriage is also regulated in Instruction Of President Number 1 of 1974 on Compilation of Islamic Law, namely in book 1 which regulates marriage law from Article 1 to Article 170. Marriage also must be registered so that the marriage is recognized by the state and gets the rights and obligations as a married couple, marriage registration is regulated in Law Number 23 of 2006 on Civil Administration, more precisely in Articles 35 to 39 which regulates marriage registration and the registration of the annulment of the marriage.

### **2.3 Purpose of Marriage**

According to Article 28B Paragraph (1) Constitution of the Republic of Indonesia, marriage purpose's is to form a family and continue offspring, In Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 on Marriage, the purpose of marriage is contained in Article 1, namely to form an eternal and happy family based on the Almighty God.

The purpose of marriage is also regulated in Article 3 of Presidential Instruction Number 1 of 1991 on the Compilation of Islamic Law, which states that marriage purpose is to realize a *sakinah, mawaddah and rahmah* family.

## **2.4 Case Position**

July 8, 2019, has been received and registered at the Registrar's Office of the Surakarta District Court in Register Number 278/Pdt.P/2019/PN.Skt. an plea for Different religion marriage by the applicants, namely: Agustinus Dwi Nugroho (Applicant 1) who is known to be Catholic, and Ika Dede Yuniar (Applicant 2) who is Muslim.

Previously, the applicants had notified the Surakarta City Population and Civil Registration Office about the implementation of the marriage, but due to the religious differences of the two applicants, the Surakarta City Population and Civil Registration Office rejected the plea based on Article 2 paragraph (1). and (2) Law Number 1 of 1974 on marriage in conjunction with Article 35 of Law Number 23 of 2006.

Because the applicants remain in their stance to carry out the marriage and remain in their respective beliefs, the applicant applies for a plea to the Surakarta District Court which refers to Article 1 of Law Number 1 of 1974 in conjunction with Article 35 letter (a) of Law Number 23 of 1974. 2006 on Population Administration and its explanation, the applicants think that the legal principle in force in the Republic of Indonesia in principle, different religion marriage is not a barrier to marriage. Based on these reasons, the applicant request that the chairman of the Surakarta District Court is pleased to accept, examine this plea and subsequently is pleased to provide a decision that grants, grants permission,

From the evidence and statements of witnesses, it is known that the applicant had married on July 20 2019, at the San Inigo Dirjodipuran Church, Surakarta, according to Catholic religious procedures and the applicant remained in their respective beliefs.

In legal considerations, the applicants are deemed to have attached valid and complete evidence, as well as added information from both the parents of the applicants and the entire extended family agreeing and giving permission to Petitioner 1 and Petitioner 2 to get married and Petitioner 2 states that they are willing to marry religiously. Catholic Church/Parish of San Inigo Dirjodipuran Surakarta.

Furthermore, the Panel of Judges considered the letter from the Population and Civil Registry Office of Surakarta City regarding the rejection of the plea for registration and issuance of marriage certificates submitted by the applicants and taking into account the authority and jurisdiction of the Surakarta District Court, the Panel of Judges decided that

the Surakarta District Court had the authority to examine and decide this case.

In this case, the judges considers several law:

1. Article 29 paragraph (2) of the Constitution of the Republic of Indonesia
2. Article 28B (second amendment) of the 1945 Constitution of the Republic of Indonesia.
3. Law Number 1 of 1974
4. Article 35 of Law Number 23 of 2006 on Population Administration
5. General Explanation of the Law Republic Indonesia Number 23 of 2006 which has been amended by Law Number 24 of 2013.

In other considerations, the Panel of Judges also considered that the Applicant who based on a mutual agreement supported and sanctioned by their families and Catholic religious leaders, had their marriage on July 20, 2019 at the Catholic Church of the San Inigo Dirjodipuran Surakarta Parish, which was blessed by Father Ignatius Nandy Winarta, Thus, Petitioner II is considered to have submitted to the Catholic religion in carrying out his marriage with Petitioner I.

The Panel of Judges also considered the fact that the social life of the community cannot be denied the occurrence of marriages between people of different religions, while from another aspect no regulations are regulating this, therefore to prevent irregularities in community life where a man and a woman live together. as husband and wife without a legal marriage bond (*Kumpul Kebo*) because of different religions, so they cannot carry out a legal marriage, the law must provide a way out, especially providing protection and recognition of personal status and legal status in every important event experienced by the community/residents, especially in marital matters.

Based on these considerations, the Panel of Judges finally granted the petitions from the applicants and gave permission to the applicants to register different religion marriages at the Population and Civil Registration Office of Surakarta City and ordered the Surakarta City Population and Civil Registration Office to register different religion marriages.

## **2.5 Analysis**

In this paper, the author will focus more on how different religion marriages according to the law in Indonesia. Different religion marriages in Indonesia have been around for a long time, since the ancient kingdoms there have also been different religion marriages, namely *Rakai Pikatan* who is Hindu and *Pramodharwan* is Buddhist. Over time, different religion marriages in Indonesia are also regulated in the HCR which categorizes different religion marriages in mixed marriages following

Article 7 Paragraph (2) of the GHR. The definition of mixed marriage according to Article 1 of the GHR is "marriage between people in Indonesia who are subject to different laws". Indonesia is a diverse country, since long ago, various ethnic groups, religions, and races have lived in Indonesia, with this diversity, conflict is also unavoidable. One of them is the discussion about the formation of laws governing marriage. At that time there was a lot of political pressure from the parties, especially from the majority group, namely the Islamic community, therefore Law Number 1 of 1974 can be said to have a lot of influence from Islamic law.

Different religion marriage itself is not specifically regulated in the laws and regulations in Indonesia. According to Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 on Marriage, Article 2 Paragraph (1) states that a marriage is considered valid if it is carried out according to their respective religions and beliefs and Article 8 letter (f) also provides confirmation, namely "Marriage is prohibited between two people who have a relationship whose religion or other applicable regulations are prohibited from marrying." [5] The article in the law clearly states that whether a marriage is legal or not depends on the respective religions adopted by the parties to the marriage. Therefore, the role of religion in marriage in Indonesia is very important, of course, because Indonesia is a country that upholds religious values. Regarding different religion marriage, it can be interpreted that it is permissible or not to do this, depending on the religion of the two parties who want to carry out the marriage.

One of the positive laws in Indonesia that relate to religious matters is Presidential Instruction Number 1 of 1991 on the Compilation of Islamic Law. In connection with the topic raised by the author, Article 44 of Presidential Instruction Number 1 of 1991 on the Compilation of Islamic Law states that a Muslim woman is prohibited from marrying a man who is not Muslim [6] and also in Article 40 letter (c) states that it is forbidden to marry between a man with a woman because of certain circumstances, one of which is a woman who is not Muslim. [7] Depending on the religion of both parties who want to carry out the marriage. One of the positive laws in Indonesia that relate to religious matters is Presidential Instruction Number 1 of 1991 on the Compilation of Islamic Law. In connection with the topic raised by the author, Article 44 of Presidential Instruction

Number 1 of 1991 on the Compilation of Islamic Law states that a Muslim woman is prohibited from marrying a man who is not Muslim and also in Article 40 letter (c) states that it is forbidden to marry between a man with a woman because of certain circumstances, one of which is a woman who is not Muslim.

Different religion marriage is also mentioned in the explanation of Article 35 of Law Number 23 of 2006 on Population Administration, in the explanation of the Law, different religion marriage is one of the marriages that can be legalized through a court order.

A marriage that can be applied to the court is a marriage that is rejected by the local regional civil registry office, according to Article 21 of Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 on Marriage.

In the case used as a case study in this research, some of the positive laws listed in this case are:

1. Article 29 paragraph (2) of the Constitution of the Republic of Indonesia
2. Article 28B (second amendment) of the 1945 Constitution of the Republic of Indonesia
3. Article 21 paragraph (3) of Law Number 1 of 1974
4. Article 35 of Law Number 23 of 2006 on Population Administration and its Elucidation.

The author in the plea contained several regulations related to different religion marriages but they were not listed, namely Article 8 letter (f) of Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 and Article 44 of Presidential Instruction Number 1 of 1991 on Compilation Islamic law.

Article 2 Paragraph (1) of Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 states that whether or not a marriage is legal is left to their respective religions, in this case, the woman is Muslim, then she should also consider the Compilation of Islamic Law as regulations for people who are Muslim in Indonesia are considered in the determination.

The author assumes that Article 8 letter (f) of Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 is an article relating to different religion marriages, the article states that a marriage is prohibited between two people who have a relationship that by their religion or regulations If one of the bride and groom is Muslim, the author assumes that the judge should include the Presidential Instruction Number 1 of 1991 on the Compilation of Islamic Law as a consideration. Article 44 of Presidential Instruction Number 1 of 1991 on the Compilation of Islamic Law clearly states that "Muslim women may not marry men who are not Muslim."

And the petition from the applicant is to register the marriage, the author considers the article is irrelevant

and not matched with the plea from the applicant. From this description, regarding the theory used in this study, the regulations regarding different religion marriage in Indonesia have not matched the theory, if it is associated with the 1945 Constitution of the Republic of Indonesia after the amendment which stated that marriage and forming a family are human rights. 28B Paragraph (1) of the 1945 Constitution of the Republic of Indonesia and is the basic concept of marriage in Indonesia, the author feels that legal certainty regarding different religion marriages in Indonesia has not yet been implemented.

### **3. CONCLUSION**

The regulations of different religion marriage in Indonesia are not in match with the theory used in this paper, the theory of justice and legal certainty. Different religion marriage in Indonesia are still not regulated with legal certainty. But there are several related articles. with different religion marriage such as Article 2 Paragraph (1) and Article 8 letter (f) of Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 on Marriage,

Based on the description of the issues raised that in the determination of 278/Pdt.P/2019/PN.SKT, the author assumes that there are still several regulations related to different religion marriage that should be included as considerations in the determination, such as Article 8 letter (f.) Law Number 16 of 2019 on Marriage and Article 44 of Presidential Instruction Number 1 of 1991 on the Compilation of Islamic Law.

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