



Juridic Review of Different Religion Divorce on Islamic and Catholic Religions

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Abstract. The Supreme Court's decision Number 1400K/Pdt/1986 provides the basis that interfaith marriages can be requested for a court order as a registration application at the Civil Registry Office. The verdict is for couples of different religions who want to get married in Indonesia and register their marriages at the Civil Registry Office. This is inseparable from the enactment of Law Number 1 of 1974 concerning Marriage which stipulates that a marriage is valid if it is carried out by a couple of the same religion. Marriage is certainly desired by every couple to last forever and separated only by death. However, sometimes a marriage can stop due to a divorce between the spouses. Based on the UUP, marriage must be carried out by a bride with the same religion, which of course will also affect the choice of religious law in marriage in the event of a divorce. Then what if there is a divorce between a couple of different religions, especially Catholics and Muslims, if in the end they have to divorce. This study aims to examine the legal options that divorced couples can choose and the divorce process. The research was conducted using legal research methods with a statutory, conceptual, and case approach. Prescriptive analysis is used to analyze legal materials so that answers are obtained as answers to the formulation of the problems raised.

Keywords: Marriage · Divorce · Interfaith Marriage

1 Introduction

Indonesia is a legal state that also does not abandon religious values as a value that is carried out by Indonesian. The philosophy of Pancasila in the first principle, written as Belief in One God is proof that Indonesia is a country that places religion as one of the values of the state. One of its forms is the enactment of Law Number 1 of 1974 concerning Marriage (afterwards referred as UUP). Marriage is a civil relationship of a couple, a man and a woman, who mutually agree to form or build a family, one of which is to continue offspring. Prior to the enactment of the UUP, marriage was regulated in the Civil Code or *Burgelijk Wetboek* (afterwards referred as BW) article 26 which states "The law views marriage only in civil relationships." Referring to Article 21 of the BW, BW only views that a marriage is only a civil relationship and is not a relationship which is an outer and inner bond between a man and a woman. For this reason, in 1974 the UUP was promulgated which places marriage not only as a civil relationship, but also

based on a happy and eternal Godhead. This is stated in Article 1 UUP. The basis of Article 1 of the UUP, other than marriage, it is a civil relationship and marriage is carried out based on marriage law that exists in a recognized religion in Indonesia.

Marriage in Islam is one of the commands of Allah SWT because it is a very strong bond, sacred, and cannot be analogous to material things (Nurul Hikmah, 2020). Marriage is carried out to create a life that is *sakinah*, *mawwadah*, and *Rahmah*, which has the meaning of surviving the process of domestic life with love and being blessed with sustenance from Allah SWT. According to Islamic law, marriage is valid with the implementation of a marriage contract that meets two elements, namely pillars and conditions. There are 5 (five) pillars of marriage namely, prospective husband, prospective wife, guardian of marriage, two witnesses, and *Ijab* and *Qabul* (Gelar Ali Ahmad, 2018).

Marriage in the Catholic religion is something sacred, a marriage is not just a sacred promise to another person, but a spiritual design discipline that will lead a person to know his God better, believe in God, and love God. Marriage is something sacred, as expressed in this statement: Your marriage is more than a sacred covenant with another person. It is a spiritual discipline designed to help you know God Better, trust him more fully, and love him more deeply (Thomas, 2014). The special secret of marriage as a covenant initiated by God is that the two persons who have been united are continually and repeatedly bestowing divine grace on each other. The Second Vatican Council states that marriage finds its meaning when husband and wife testify to one another's faith and love for Christ (Michael Marsch, 2006).

The development of legal needs in the community related to marriage with religious differences, through the judiciary, an application is submitted to be able to carry out an interfaith marriage. Jurisprudence of the Supreme Court Number 1400K/Pdt/1986 states that the Civil Registry Office is allowed to record interfaith marriage. In the decision of the Supreme Court, it is stated that by filing a marriage at the civil registry office and legalizing interfaith marriage after they are deemed to have fulfilled the requirements of marriage according to the law. Interfaith Marriage also has been allowed in Surabaya, based on Decision Number 916/Pdt.P/2022/PN.Sby, the Panel of Judges granted the Petitioner's request to be able to carry out an interfaith marriage before the Surabaya Population and Civil Registry Office, with legal considerations that the marriage occurred between two people of different religious status. only regulated in the explanation of article 35 letter a of Law Number 23 of 2006 concerning population administration, in its explanation what is meant by marriage determined by the Court is marriage carried out between people of different religions and religious differences do not constitute a prohibition to carry out marriages as referred to in Article 8 letter (f) UUUP, marriage between two people with different religious status cannot be applied based on this provision (Supreme Court Decision Number 1400K/Pdt/1986 dated January 20, 1989) and refers to the provisions of Article 35 letter (a) of the UU Adminduk, then interfaith marriage is the authority of the district court to examine and decide on it.

Everyone wants their marriage to remain intact forever, but some households have to end it for some reason. Divorce is part of marriage, because there is no divorce without marriage. Based on Article 113 of the Compilation of Islamic Law (KHI), a marriage can be separate for several reasons, including: separate by death, divorce, and cause of court decision. According to A. Fuad Sa'id, what is meant by divorce is the breakup of

marriage between husband and wife because there is no harmony in the household or other reasons, such as the infertility of the wife or husband and after peace efforts have been made by involving the families of both parties (Abdul Manan, 2001).

Catholic marriage is essentially one for all time and indissoluble, and monogamous. Based on Canon Law (Codex Iuris Canonici) 1055 Agreement *foedus* marriage, by which a man and a woman form between them a partnership (*consortium*) throughout life, which according to its natural characteristics is directed towards the welfare of husband and wife (*bonum coniugum*) as well as the birth and education of children, between baptized persons, by Christ the Lord elevated to the dignity of the sacrament, and according to canon law 1141 the marriage of *ratum* and *consummatum* cannot be separate by any human power and for any reason, other than death. According to Father Andrianus Sulistyono MSF, if there is a dispute between husband and wife, it is better to consult directly in this case directed to the Father who blessed the marriage, the two parish priests who are close to the area where they live, or it can be directed to the accompanying Father of the family in each region.

This study will discuss the formulation of problems related to the legal consequences of divorce in interfaith marriages. This research is a legal research (legal research) in a normative juridical manner. Legal research is a know-how activity not just know-about, so this research aims to solve legal problems, not just what the law is and what problems we are discussing, but through identification of legal problems, legal reasoning, and analyzing legal problems. problem solving solution (Peter Mahmud Marzuki, 2018).

The technique of analyzing legal materials in this research is to provide a prescription on what is the essence of legal research because that is why legal research is carried out. The nature of the analysis of this research is prescriptive which provides an argument from the research results (Peter Mahmud Marzuki, 2018). Solving these legal problems will use legal research in a normative juridical manner because at this writing it is carried out using an approach to national laws and regulations and other legal doctrines. The approach to the problem in question is the approach to legislation, conceptual approach, comparative approach, and *Rechtsvergelijking* or comparative legal study or comparative approach.

2 Method

This research is a normative legal research. Legal research is a know-how activity, not just know-about, so this research aims to solve legal problems, not just what the law is and what problems we are discussing, but through identifying legal issues, legal reasoning, and analyzing legal issues, it will be found problem solving solutions.

In this research regarding:

- a. The principle of monogamy in marriage
- b. Understanding Divorce of different religions

Solving these legal problems will use legal research in a normative juridical manner because at this writing it was carried out using the approach of national legislation and other legal doctrines. The approach to the problem in question is the statutory approach, conceptual approach, comparative approach, and *Rechtsvergelijking* or comparative legal study or comparative approach.

3 Discussion and Results

3.1 Juridical Overview of Interfaith Marriage

Marriage in the territory of Indonesia is subject to the regulations stipulated in the UUP. In UUP, marriage is “an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead.” The UUP norm is clear that a marriage that is carried out is based on carrying out one of the commands in the religion that is believed. Marriage is also a human right that needs to be protected by the state so that Indonesian citizens or foreigners residing in the territory of Indonesia can practice it. This human right is accommodated in the state constitution in Article 28B of the 1945 Constitution of the Republic of Indonesia which states “everyone has the right to form a family and continue their offspring through a legal marriage.” UUP article 2 paragraph (1) states “marriage is legal if it is carried out according to the laws of each religion and belief.”

Article 28B of the 1945 Constitution of the Republic of Indonesia as well as articles 1 and 2 paragraph (1) have explicitly stated that a marriage performed by its citizens and/or carried out in the territory of Indonesia must be carried out with the values adhered to in the teachings of his religion and carried out by a man and a woman. These articles direct people who will carry out marriages are to live them with the same religious beliefs, so that the marriage that takes place is in accordance with the religion of the couple. Simply put, a marriage performed by the bride and groom with the same beliefs. But in fact, there is jurisprudence on the Supreme Court’s Decision Number 1400K/Pdt/1986 regarding the strengthening of the court’s decision of the first instance which gives stipulations to couples of different religions who wish to register their marriages at the Jakarta Population Service. In this jurisprudence, the judge’s consideration in deciding the case is based on the existence of a regulation during the Dutch colonial era that can still be enforced, namely *Regeling op de Gemengde Huwelijken*, S.1898 No.158 abbreviated as GHR and the Indonesian Christian Marriage Ordinance, S.1933 No.74. The two regulations can legalize marriages of different religions because the point of view of the two regulations is that they view marriage as a civil relationship, while the UUP views marriage as a civil relationship based on a religious perspective.

The jurisprudence of the Supreme Court’s decision in principle also pays attention to Government Regulation Number 9 year 1975 concerning the Implementation of Law Number 1 year 1974 concerning Marriage (afterwards referred as PP Marriage) in Article 10 paragraph (3) which states “With regard to marriage procedures according to each the law of his religion and belief, the marriage shall be carried out before the Registrar and attended by two witnesses. Article 10 paragraph (3) of this PP Marriage cannot be separated from paragraph (2) of the article which states “marriage procedures are carried out according to the law of each religion and belief.” The two paragraphs in

Article 10 of PP Marriage can be interpreted that if a marriage cannot be carried out in the same religious law, it is because each bride has different religious beliefs. Thus, interfaith marriages can be carried out in the presence of a registrar (whose employee is an employee of the population and civil registry office) and attended by two witnesses. Simply put, this marriage does not apply the marriage law of a particular religion.

In May 2022, there was a decision by the Surabaya District Court Number 916/Pdt.P/2022/PN.Sby which stipulates interfaith marriages for Muslim grooms and Christian brides. Taking into account several statutory norms that are still in effect and the jurisprudence of the Supreme Court, interfaith marriages can take place in the territory of Indonesia. Marriage registration based on this court decision can be registered at the local Population and Civil Registry Office (according to the stipulation by the local District Court), as has been stated in the explanation of Article 35 letter a of Law Number 23 of 2006 concerning Population Administration (afterwards referred as the Adpen Law). Article 35 letter a of Law Number 23 of 2006 of the Adpen Law states “marriage determined by the Court”, which is then explained that what is meant by marriage determined by the court is marriage between people of different religions. The basis of this argument, interfaith marriages are carried out by first submitting to the court to obtain a determination with the aim that interfaith marriages can be carried out at the Population and Civil Registry Office.

Jurisprudence of the Supreme Court Number 1400K/Pdt/1986 as well as the determination of the Surabaya District Court Number 916/Pdt.P/2022/PN.Sby, judges in their ratio decidendi use the basic human rights contained in the 1945 Constitution of the Republic of Indonesia Article 28 B and Article 29 and view The marriage cannot be based on article 2 paragraph (1) of the Marriage Law. There are three basic considerations for the judges of the Supreme Court to allow interfaith marriages in Indonesia, namely, the Supreme Court recognizes that the purpose of marriage is the main consideration, so it is legal to make decisions based on the fact that both parties love each other and get the blessing of both parents. Both parties, furthermore, the Marriage Law does not regulate cases of interfaith marriage or a legal vacuum and Article 27 of the 1945 Constitution of the Republic of Indonesia stipulates that all citizens have the same position under the law, including the equality of human rights to marry fellow citizens even though they are of different religions, in line with Article 29 of the 1945 Constitution of the Republic of Indonesia states that the state guarantees independence for every citizen, guarantees independence for every citizen to embrace their own religion, and the judges base their decisions on the principle of *virjwillege onderwerping* (voluntary acceptance) of the plaintiff which is rooted in Dutch law to find redress, a solution, by ignoring Islamic legal regulations that prohibit inter-faith marriages (Raja Inal, 2015). So, a legal discovery is needed by the judge in giving his determination which is also based on the PP Marriage and the Adpen Law. The Supreme Court’s jurisprudence and the determination of the Surabaya District Court can actually be criticized, we need to understand that the Indonesian state has a basic philosophy of Pancasila where the first principle is Belief in One God. This means that the life of the state and the social community cannot be separated from the values contained in religion and does not only pay attention to relations between communities. As we understand, in the existing legal concept, the relationship between these communities is a civil relationship. So, actually

the Supreme Court Jurisprudence, the Surabaya District Court Determination, as well as several norms that provide opportunities for interfaith marriages (which in this case only contain the civil concept), are actually contrary to the state constitution and the Marriage Law.

The applicability of the Jurisprudence of the Supreme Court and the determination of the Surabaya District Court regarding interfaith marriages are stipulated that cannot be applied equally to all people. The court's legal product applies only to the parties who submit the application, so that the validity is casuistic. As for interfaith marriages, we need to separate the concept of marriage from a religious perspective and the concept of marriage based on Article 35 letter a of the Adpen Law. The concept of marriage in article 35 letter a of the Adpen Law does not relate it to the concept of religion, so the aim is to provide legal certainty for citizens in the fulfillment of human rights, especially in the freedom to embrace religion and carry out marriages.

We cannot deny that the six religions and beliefs recognized by Indonesia basically have ties to the provisions of their respective marriage laws. On that basis, the Marriage Law, which was promulgated in 1997, is the implication and implementation of the first principle of Pancasila, Belief in One God. From six religions and beliefs, there is a marriage law that basically can be carried out by couple of different religions. Only, in this case one of the bride and groom must be Catholic. As with other religious marriage laws, Catholic marriage law in principle does not allow its people to marry of different faiths. This is regulated in canon law 1108 which states that a marriage is only valid if it takes place before the local ordinary or parish priest or pastor or daikon, who is delegated by one of them, who confirms it, and before two witnesses, but it must be in accordance with the law. The rules stated in the canons below, as well as the exceptions mentioned in the canons. which is the law of marriage in Catholicism. However, the Catholic Church can grant dispensation to its people who want to carry out interfaith marriages by giving dispensation to its people who want to marry of different religions. Based on Canon Law 1127 Regarding the confirmation system that must be used in mixed marriages, the provisions of canonical 1108 should be complied with, but if the Catholic party marries a non-Catholic party from the eastern rite, the canonical confirmation of the celebration is only required for the sake of the licit, while for the sake of validity. required the intervention of a holy servant, taking into account other provisions which according to law must be obeyed. Marriage dispensation is given by⁴ passing the sacrament of marriage and only a marriage blessing is carried out led by a priest. In principle, the marriage is subject to Catholic procedures so that when it will be registered with the population and civil registry office, the registration will be accepted with the aim of obtaining a marriage certificate.

3.2 Consequences of Divorce Law on Interfaith Marriages

Indonesia has 4 absolute competencies in its judicial system, including the General Courts, Religious Courts, State Administrative Courts, and Military Courts. The four courts have their respective powers in deciding cases in the community. Like the Religious Courts, in general the procedural law or formal law that applies in this court is the same as the formal law that applies in general courts, especially civil courts, the difference is that subjects who proceed in religious courts are Indonesian citizens who

submit themselves to Islamic law. In the General Court, criminal and civil cases can be heard in this court. In the context of divorce, the Indonesian people can choose which absolute competence can be used as an institution in seeking justice for themselves or to process their divorce.

Religious Courts will be an option for people whose marriages are subject to Islamic marriage law procedures. That is, if there is a marriage that is subject to Islamic law and one day a husband and wife or one of them converts to a religion other than Islam, this situation can be interpreted that the couple is subject to the law at the time of their marriage and the divorce process is carried out in the Religious Courts. General Court is an option for the Indonesian people whose marriages are subject to other than Islamic law or whose marriages are considered valid by the determination of the district court. Thus, this General Court will conduct a divorce trial if there is a husband and wife who are married under Christian, Catholic, Hindu, Buddhist, Confucian, and religious beliefs. The completion of a marriage through divorce and carried out through the Court is confirmed in Article 39 paragraph (1) and Article 40 paragraph (1) of the Marriage Law. In the Marriage Law, the court has a principle that it will make it difficult for divorce to occur. However, if it is accompanied by strong and basic reasons that the marriage cannot be maintained, then the court will process the divorce.

The Marriage Law was drafted with the aim of regulating civil society relations based on religious values as the first principle of Pancasila. This also has implications for the divorce law or the divorce procedure. So that the divorce was heard in court based on the law of each religion. Divorce is something that can happen in the concept of marriage, where husband and wife can separate due to a certain reason. Article 40 paragraph (2) of the Marriage Law states that "the procedure for filing the lawsuit in paragraph (1) of this article is regulated in its own laws and regulations." In the explanation of Article 49 letter a of Law No. 3 of 2006 concerning amendments to Law No. 7 of 1989 concerning the Religious Courts, the religious courts have the duty and authority to examine, decide, and resolve cases at the first level between people who are Muslims in Indonesia. in the field of marriage, where this marriage includes divorce (claim for divorce and divorce divorce). On the basis of this article, it is clear that the community is Muslim and who submits to Islamic law, if there is something that needs to be resolved, it is submitted to the Religious Court. While people who do not embrace Islam or do not submit themselves to Islamic law, the divorce process and other civil matters are carried out through the submission of an application or lawsuit through the general court.

As with the marriage law, each state-recognized religion and belief has its own procedures for divorce. Like Christianity and Catholicism, these two religions have the concept that marriage is monogamous and does not recognize divorce. That is, people who marry and are subject to Christian and Catholic marriage laws, men may not have more than one wife (monogamy) and the termination of marriage is only allowed because of death. Then, what if there is a divorce where the husband and wife are still alive? Divorce like this in principle is not permitted and if it occurs it is very necessary to have a recommendation from the Church.

Absolute competence in deciding divorce cases for non-Muslim communities is through the General Court. Thus, if a divorce application is submitted to the general court, the judge must know the laws of each religion. As is known, Christianity and

Catholicism have different religious laws regarding divorce from other religions. On that basis, in principle, judges in general courts cannot decide on a divorce from a Christian or Catholic community if the couple who will be divorced do not have a divorce permit from the Church. The divorce process through the judicial process in this case is carried out to complete the administrative process according to national marriage law.

Marriage in Catholicism in principle is monogamous and indissolubility. This property is divided into two, namely absolute indissolubility and relative indissolubility. Absolute indissolubility, i.e. if the marital bond cannot be broken by any power except by death, based on Canon Law 1141, an absolute indissolubility marriage is a sacramental marriage that has been completed with intercourse (*ratum et consummatum*). The relative indissolubility is that the marriage bond cannot be decided on the basis of consensus and the will of the husband and wife themselves, but the competent *gerjawi* power can decide after the fulfillment of the provisions required by law as regulated in Canon 1142 (*matriomonium non consummatum* and Canon 1143-1149) (only for non-sacramental marriages).

The possibility of separation between husband and wife can only occur with 12 canonical obstacles which are described: age barriers, impotence, the existence of marital ties, cult disparities, barriers to different religions, Holy Orders, Vows of Purity in a religious congregation, kidnapping and detention, crime, brotherhood (consanguinity), marital relations, public eligibility, and adoption or legal ties arising through adoption (Tjatur Raharso, 2011). Based on Canon Law 1086, interfaith marriage is an obstacle that makes marriage invalid, except by dispensation. According to Catholic belief, if one of the bride and groom is baptized in the Catholic Church, then ecclesiastical confirmation is needed for the marriage to be valid. Because of these differences of opinion, there was a division of tasks between the pastor and the priest: the exchange of marriage agreements was led by the priest, the word was given by the priest. Double affirmation is prohibited. From the obligation of canonical confirmation in the Catholic Church, the local bishop can grant dispensation (Canon 1127 paragraph 2), so that marriages in the civil registry or in the Protestant church are valid (Meikel Kkaliks Leles Kancak, 2014).

The legal consequences of divorce are related to both joint and congenital assets and children. The legitimacy of interfaith marriages will have an impact on the status of children in interfaith marriages, as well as the division of joint property in marriages, it can occur that children cannot be accepted by the heirs due to the relationship of religious differences (Jane Marlen Makalew, 2013). Interfaith marriages, especially between Catholics and Muslims who are carried out in the Catholic way, are registered with the Population and Civil Registry Office. Consequently, the divorce process is tried in the general court so that the material law used is basically based on the Civil Code. The problem with interfaith divorce is the selection of civil law related to marital property, where in marital property there are inherited and joint assets. Congenital property is property owned by the husband or wife before the marriage and joint property is property acquired during the marriage. In Catholic and Islamic marriages, where this marriage is principally subject to Catholic marriage law, this marriage does not recognize innate property. Thus, if there is no pre-nuptial agreement that regulates the separation of assets, the innate property will be merged into one with the joint property. And, at the time of

divorce, this joint property will be divided equally between the divorced husband and wife.

4 Conclusion

Interfaith marriages in the UUP are not regulated explicitly and clearly, the rules in Article 2 of the UUP regarding the legal requirements for marriages based on religion and registered through state documents, are further explained in Article 35 of the Adpen Law which in its explanation can be recorded interfaith marriages, Principles There are differences between the UUUP and Adpen Law, it is clear that the Adpen Law distinguishes between religious principles and the principle of human rights to marry. This is also reflected in the decisions of Supreme Court Number 1400K/Pdt/1986 and Surabaya, based on Decision Number 916/Pdt.P/2022/PN.Sby.

It is necessary to stipulate more clearly regarding the legal requirements of marriage based on the principles of religion and human rights or only based on the principle of human rights to carry out marriages.

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