



The Concept of Civil Law in the Renewal of the Law of People, Family, and Marriage in the Frame of Pancasila (Perspectives of Islamic Law)

Yulies Tiena Marsiani^(✉) and Markus Suryoutomo

17 Agustus 1945 University, Semarang, Indonesia
{yulies-tm,msu.atlaw}@untagsmg.ac.id

Abstract. In the framework of national law development, an effort to reform civil law is needed that is directed and integrated, especially in the field of law of people, families and marriages within the framework of Pancasila in order to support development in various fields in accordance with development demands, as well as the level of legal awareness and dynamics that develop in society. The problem is how is the concept of civil law in the renewal of the law of people, families, and marriages in the frame of Pancasila (Islamic legal perspective)? This research uses a normative juridical approach, the data collection is emphasized on the source of primary legal material, in the form of laws and regulations with a study of legal rules and legal science theories. The nature of Islamic family law has a bidimensional nature, a just nature, an individualistic and societal nature gives a position to humans as individuals and family groups in a society. The formulation of its legal norms can adopt the provisions of the Civil Code so that the gap between the law and society never occurs. However, in the formation of national civil law, the values of Pancasila became the basis for the formation of national law.

Keywords: Civil law · Renewal of People's Law · Family · Marriage · Pancasila

1 Introduction

The term “civil law” (privaat recht) is used as opposed to the term “public law” (publiekrecht). What is meant by civil law are the rules of law that regulate the behavior of everyone towards others related to rights and obligations arising in community associations and family associations. Civil Law is essentially a law that regulates the interests between one individual citizen and another individual citizen. Civil law in Indonesia is sourced from:

1. Legislation. It is a very important source of civil law in Indonesia, which among other things consists of:
 - a. The Civil Code (as the main source).

© The Author(s) 2023

A. Endah Kusumaningrum et al. (Eds.): ICLEH 2022, ASSEHR 723, pp. 447–463, 2023.

https://doi.org/10.2991/978-2-38476-024-4_45

b. Various other laws, such as:

- 1) Basic Agrarian Law
- 2) Marriage Act
- 3) Dependent Rights Act
- 4) Labor Law

c. Various laws and regulations whose levels are below the law.

2. Customary Law
3. Islamic Law
4. Laws of other religions besides Islam
5. Jurisprudence
6. Agreements concluded between the parties
7. Expert opinion
8. Treaties, particularly with regard to International civil matters.

The civil law that applies to the Indonesian people is different. Originally, with the enactment of the provisions in the Dutch era (Article 131 juncto Article 163 IS), the law (including civil law) that applied to the Indonesian nation, the legacy of the legal history that divided the Indonesian population into three groups, still survives in the field of civil law, as follows:

1. For foreign European and Eastern Chinese groups, the Civil Code applies. However, in accordance with developments in the jurisprudence, many provisions of the Civil Code apply to all Indonesians regardless of their class of origin. In this case, all Indonesians regardless of the class of their population, are considered to have subordinated themselves secretly to the legal system contained in the Civil Code.
2. For other Foreign East, their respective customary laws apply.
3. For the Indonesian population, Indonesian customary law applies.

So the Civil Code is the main source of law for the Indonesian population, with various laws that have repealed several things, such as the Basic Agrarian Law, the Marriage Law, the Dependent Rights Law and the Manpower Law.

The Indonesian Civil Code is nothing but a translation of the Dutch Civil Code in force in the Netherlands, while the Dutch Civil Code comes from the French Civil Code made during the reign of Napoleon Bonaparte, so that against it is called the Napoleonic Code (Code Napoleon). Meanwhile, Napoleon Bonaparte made the Book of Laws by taking the main source is the Roman Law book known as *corpus Juris Civilis*. The Napoleonic Book stands on three main pillars as follows:

1. The concept of individual property rights
2. The concept of freedom of contract
3. The concept of a patrilineal family.

About what areas fall into the civil law class, there are two approaches as follows:

1. Approach as a statutory systematics
2. Approach through legal scientific doctrine

If it is carried out through an approach as a statutory systematics in this case in accordance with the systematics of the Civil Code (Civil Code) or known as BW (Burgerlijke Wetboek), then civil law is divided into the following areas:

1. Law about people (personen recht)
2. Law on objects (zaken recht)
3. Law on binding (verbintenissen recht)
4. Law on proof and expiration (overdue) (van bewijs en verjaring)

Meanwhile, if an approach is carried out through legal scientific doctrine, civil law is divided into four parts, namely as follows:

1. Law on persons or Individual Law (Persoonenrecht)
2. Family Law or Family Law (Familierecht)
3. Law of wealth or Law of Property (Vermogensrecht)
4. Law of Inheritance (Erfrecht)

The Indonesian Civil Code is a translation of Burgerlijke Wetboek (BW) from the Netherlands. Therefore, in principle until now the Civil Code applies in Indonesia to all residents of Indonesia, in certain fields (such as the 3rd book which applies to all groups and religions of the population), except for the following:

1. Against matters or articles that have been expressly repealed by law, namely:
 - a. About immovable objects with respect to land, which was already repealed and replaced by the Basic Agrarian Law.
 - b. On mortgage guarantees, in particular those with land objections, which have already been repealed and replaced by the Law on Dependent Rights.
 - c. On marriages and marital property that has already been repealed by the Law on Marriage.
 - d. Against the field of labor agreements after the enactment of the Labor Law.
2. To matters or articles of the Civil Code that did not apply from the beginning, especially for those who are Muslim, including in the fields of family law and inheritance law.
3. Against the articles of the Civil Code that have been repealed by the Supreme Court Circular No. 3 of 1963, which states the invalidation of the provisions in the Civil Code as follows:
 - a. Article 108 and Article 110 of the Civil Code which regulate the inability to do from the wife of the mother.
 - b. Article 284 paragraph (3) concerning the recognition of the child where the child's mother is a native Indonesian.

- c. Article 1682 of the Civil Code, which provides for the obligation to make grants by a Notarial deed, which was originally kept by the Notary in question.
- d. Article 1579 of the Civil Code which specifies that the party renting the goods, cannot stop the lease on the grounds that the renting party wishes to use the goods themselves, unless otherwise promised.
- e. Article 1238 of the Civil Code which provides for the obligation of the creditor to make a written somasi before filing a lawsuit to collect the debt/requesting to be executed obligations by the debtor, unless in his own agreement it is specified that with the passage of a certain time, the debtor is naturally considered to have neglected to carry out his obligations.
- f. Article 1460 of the Civil Code which regulates the transfer of risks from the seller to the buyer at the time of the sale and purchase agreement whose goods have been determined even though the goods have not been handed over and the price has not been paid.
- g. Article 1603x paragraphs (1) and (2) which stipulate that there is discrimination between Europeans and native Indonesians in the field of labor agreements.

In the framework of national law development, an effort to reform civil law is needed that is directed and integrated, especially in the field of law of people, families and marriages within the framework of Pancasila in order to support development in various fields in accordance with development demands, as well as the level of legal awareness and dynamics that develop in society.

Family law in general can be interpreted as a law that regulates family relationships. This family relationship is very important because it is related to the discussion of how the legal concept of people, family, and marriage in the renewal of Indonesian civil law in the frame of Pancasila? The legal concept of persons, family and marriage is discussed regarding civil and citizenship rights, child status, understanding of marriage, legal conditions of marriage, prevention and annulment of marriage, marriage agreements, rights and obligations of husband and wife, rights and obligations between parents and children, marriage property law, guardianship and law on divorce, in the renewal of Indonesian civil law in accordance with the values of Pancasila.

2 Findings and Discussion

a. Civil and Civic Rights

Everyone has his civil rights, regardless of any citizen or any religion he adheres to. No one can be sentenced to cause civil death, or loss of citizenship rights. As mentioned in Article 1 of the Civil Code (KUH Perdata) states that enjoying the rights of citizenship does not depend on the rights of statehood.

Daulat P. Silitonga explained that in the case of Civil Law Administration Services in the aspect of Family Law, everyone (WNI/WNA) has the right to make a will (testament), made before a Notary Before the Will giver dies. Administratively there is no requirement to include citizenship in reporting to the Ministry of Law and Human Rights,

but it depends on the object of the will (property/debt) whether to apply the citizenship requirement in the event of a dispute.

In addition, children who are still in the womb are even considered to be born when their interests are desired. However, the law also specifies that if the child in the womb is born deceased, then the child is considered to have never existed. Later, the married wife was considered incapable of doing (unable to perform legal acts) by the Civil Code system (so her position was the same as that of a minor). Such provisions arise because:

- a. The French Civil Code (the place of origin of the Indonesian Civil Code) adheres to the patrilineal system in its family law.
- b. To avoid the principle of one ship with two captains.

However, on the basis of gender emancipation, the provisions of the Civil Code regarding the incompetence of married wives have long been revoked in Indonesia, namely repealed by:

- a. Supreme Court Circular No. 3 of 1963, which states the invalidity of the provisions in the Civil Code, including Article 108 and Article 110 of the Civil Code which regulates the inability to do so from the wife of the mother.
- b. The marriage law is of the principle that both husband and wife are equally capable of doing.

b. Child Status

Children are the most important element in a family. The existence of children in the family is something very meaningful:

- a. children
- b. Stepdaughter
- c. Discordant children
- d. Adopted children
- e. Recognized extramarital children
- f. Unrecognized extramarital children (illegitimate children)

What is meant by biological children is a child born to a husband and wife who have been legally married. Therefore, against this kind of child, it is also called a legitimate child. Meanwhile, what is meant by a stepdaughter is the child of the wife of another husband or the child of the husband in his marriage with another wife. In relation to the law of inheritance, the stepson is treated differently from the biological child.

Then, what is meant by discordant child is a child born to a father and mother who are actually between the two must not marry because of a close family relationship. For example, marriage between brother and sister. This discordant child cannot bequeathed at all, cannot be made an adopted son and cannot be recognized as a child. But according to the civil code system, discordant children are entitled to a living from their parents.

Furthermore, what is meant by an adopted child is someone else's child who is adopted (adopted) to be his own child, through a procedure called "child adoption"

(adoption). In essence, a person can only be regarded as an adopted son, if the adoptive person views the child's birth and mind as truly his own offspring.

In the process of adopting this child, the relationship between the child and the original parent/natural parent for the sake of the law is broken, except in the following cases:

1. In the case of a no-marriage relationship based on familial cords.
2. In the case of the provisions of the *pidaa* law relating to the familial cord.
3. In the case of testimony in an authentic deed.

Furthermore, what is meant by an out-of-wedlock child is a child born to a parent who is not legally married. By both parents, the child can be recognized as a child, when the parents are legally married. If the confession is not made, then the child will still be an out-of-wedlock child (which is not recognized). In many ways, the law equates between a recognized out-of-wedlock child and a legal biological child.

According to Islamic law (read: *fiqh*) the *nasab* status of an out-of-wedlock child is divided into two categories. First, children resulting from premarital sexual relations, yet born in a legal marriage. According to Imam Malik and Imam Shafi'i, a child born after six months of the marriage age of his fathers, then is devoted to his father (legal child). If the child is born before six months, then the child is dedicated to the mother (the child is out of wedlock). Meanwhile, according to Imam Abu Hanifah, the out-of-wedlock child is still entrusted to his father as a legitimate child.

Second, children resulting from sexual intercourse and being born outside of a legal marriage. In this case, the scholars agreed that the child had only a *nasab* relationship with the mother and his mother's family. In other words, the child has the same status as the adulterous child and the *li'an* child. The legal result is that the child does not have a *nasab* with the father, cannot inherit each other and if only the child happens to be a woman, then he is not entitled to be married by the father.

c. Definition of Marriage

Marriage is a very important legal event because with marriage a person will gain life balance, both socially, biologically, and psychologically. According to Islam, marriage is a strong and solid sacred covenant to live together that is happy, safe, serene, and mutually loving. Marriage is a human nature that must occur in life as a means of bestowing the love and love that God Almighty has bestowed upon His servant.

Article 1 and Article 2 of Law Number 1 of 1974 concerning Marriage (UUP) state that what is meant by marriage is a physical and mental bond between a man and a woman as a husband and wife with the aim of forming a happy and eternal family (household) based on the One True Godhead, which must be carried out according to their respective religions, and must also be recorded according to applicable laws and regulations.

Moving on from the definition of Article 1 of the Marriage Law alone, it is clear how thick religious nuances color the marriage law made by the Indonesian government. This choice, among others, is based on a fact, that the Indonesian nation, which has the basis of *Pancasila*, really must be used as a basis when making the rule of law, including the time of assembling the Marriage Law.

In addition to the definition given by UUP No.1 of 1974, the Compilation of Islamic Law in Indonesia provides another definition that adds explanation, namely Marriage according to Islam is marriage, which is a very strong contract or *mitsaaqon gholiidhan* to obey Allah's commands and carry it out is worship.

So in Indonesia, what regulates marriage is Law No. 1 of 1974 concerning Marriage along with the implementing regulations of the Marriage Law, which applies to all Indonesian people based on the values of Pancasila, regardless of religion, region, origin and others. The principles of marriage law in Indonesia are as follows:

- a. The purpose of marriage is to form a happy and eternal family.
- b. Marriage is valid, if it is performed according to the laws of their respective religions and beliefs, and in addition each marriage must be recorded according to the applicable laws and regulations.
- c. In principle applies the principle of monogamy. This means that by applicable law in Indonesia, a husband is only allowed to marry a wife, so he cannot have more than one wife at the same time. The exception to the enactment of this principle of monogamy is opened by law as long as it meets certain conditions, including the conditions of consent of the existing wife, and must also be in accordance with the religion professed.
- d. To be allowed to perform a marriage, the law requires the maturity of the soul and body of the bride and groom. Therefore, the law allows marriages to be held after the bride-to-be becomes an adult, which is already 19 years old for both men and women (Article 7 paragraph (1) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage).
- e. Divorce is complicated, since the law considers that the purpose of marriage is not to divorce, but to form a happy, eternal and prosperous family.
- f. The principle of emancipation between husband and wife applies, so that the position of the wife and husband is balanced, both in the household and in society.
- g. Marriage is not complicated. Therefore, the involvement of the court in the divorce process is only to ensure the implementation of elements of legal certainty and justice for the husband and wife. And the requirement of the adequacy of age or adulthood to be able to marry is also not to complicate the implementation of marriage, but only to ensure that marriage can guarantee happiness and eternity.

In this case, the legal conditions for a man to be able to marry more than one wife in the same period of time (polygamous) are as follows:

- a. If there is more than one wife, it is possible by the religion of those who want to perform the marriage.
- b. If the existing wife and the wife to be married do not exceed the amount justified by the religion professed by those who wish to perform the marriage.
- c. There is consent from existing wives/wives to their marriage to the new wife.
- d. There is certainty that the husband is able to guarantee the living needs of all his wives and their children.
- e. There is a guarantee that the husband will do justice to all his wives and their children.

- f. In addition, in order for the court to grant permission to have more than one wife, one or more of the following conditions must be met (Article 4 of the UUP), namely:
 - g. The wife cannot carry out her obligations as a wife.
 - h. The wife has a disability and/or an incurable disease.
 - i. The wife cannot give birth to offspring.

If the legal reasons and conditions have been met, then the polygamous procedure must be carried out through the court, namely by issuing a polygamous permit by the competent court.

d. Legal Conditions of Marriage

The pillars and conditions determine a legal act, especially those that concern the validity or not of the act from a legal point of view. Both words have the same meaning in that they are both things that must be held. In marriage, harmony and conditions must not be left behind, in the sense that the marriage is invalid when both are absent or incomplete.

In order for a marriage to be legally valid so that it can have full legal consequences, the marriage is required to meet several conditions for the validity of the marriage, namely as follows:

- a. Unless otherwise provided by applicable law, then in principle a person may not enter into a marriage if the religion and beliefs he adheres to prohibit the marriage.
- b. The marriage must be carried out on the basis of the consent of each prospective bride. So, what is called “forced marriage” is prohibited by law.
- c. Marriage must be carried out after the prospective applicant becomes an adult, that is, already 19 years old for both men and women. In the event that one or both brides-to-be are not yet 19 years old, they have sufficient grounds to enter into marriage, then the bride-to-be who is not old enough for the marriage may request a dispensation to be able to enter into a marriage, which dispensation can be requested in court.
- d. If one of the parties or both parties to the marriage is not yet 21 years old, then the marriage must obtain permission from both parents of the party who are still under the age of 21 years.
- e. One man can only enter into a marriage with one woman only, unless qualified, reasons and procedures for having more than one wife (polygamous).
- f. Men can only have marriages with women. Same-sex marriage is prohibited by law.
- g. Unless the provisions of his religion specify otherwise, then a person may not marry a third time with the same partner. That is, if a person has divorced then remarried a second time with the same partner, then divorced again, then they are not allowed to mate a third time with the same partner.
- h. The woman whose marriage has been broken, then she must not remarry before the expiration of her waiting period (iddah period).
- i. Marriage should not be performed with parties prohibited by law. The parties that by law should not be married are as follows:
 - j. Those who are related by blood in a straight lineage down or up.

- k. Those who are related by blood in a sideways lineage, that is, between a brother, between a sibling and a parent's brother and between a person and his grandmother's brother.
- l. Those who are related to *semenda*, namely in-laws, stepchildren, daughters-in-law and mothers or stepfathers.
- m. Those related to *susuan*, namely parents of milk, children of *susuan*, siblings of *susuan*, and aunts/uncles of *susuan*.
- n. Those who are related relatives to the wife or as aunts or nieces of the wife, in the case of a husband of more than one wife.
- o. Those who assume relationships that, by their religion or other applicable regulations, are prohibited from marrying.

e. Prevention and Annulment of Marriage

In the marriage law system in Indonesia (in the Marriage Law) it is known as "marriage prevention". What is meant by marriage prevention is an action taken by the court on the application of the interested parties, to hinder or prohibit the implementation of a marriage that will or is being processed for the marriage, for the reason that one party or both parties do not meet the requirements or conditions for carrying out the marriage in accordance with applicable laws.

The things that can be used as legal reasons so that a marriage can be prevented are as follows:

- a. Because one of the bride and groom is under guardianship so that the marriage will actually result in misery for the other bride and groom from the party pleading for the prevention of marriage.
- b. The party who is in a marital relationship may plead to prevent the marriage of the spouse with the other party, unless the marriage is carried out in the sense of legal polygamy in accordance with applicable law.
- c. If the marriage to be held does not meet the other requirements and conditions regarding the marriage.

Who can prevent marriage, in the sense that who can apply to the court so that a marriage can be prevented from taking place, are the following parties:

- a. The families in the lineage are straight up or down from the bride-to-be.
- b. The brethren of the bride-to-be.
- c. Marriage guardian
- d. Guardian
- e. Custodian
- f. Specially appointed officials
- g. The registrar of marriages shall refuse to enter into a marriage that does not meet the applicable terms and conditions, whereby the party objecting to the refusal of the registrar of marriages may raise his objection by applying for a court determination in which territory the clerk of the registrar of marriages is located with a short proceeding.

h. Other interested parties.

Apart from legal actions in the form of marriage prevention, the Indonesian Marriage Law is also known as legal action called “annulment” of marriage. In this case, what is meant by annulment of marriage is an action taken by the court on the application of the interested parties, to decide or negate the legal consequences of a marriage that has been officially carried out, for the reason that one of the parties or both parties does not meet the requirements or conditions for carrying out the marriage in accordance with applicable legislation.

Compared to the prevention of marriage, an annulment of a marriage is much more complicated and has much more serious legal consequences. This is mainly because the marriage to be annulled has been going on for a long time, already has children, or already has joint property, or other serious things have happened.

Although both decide the ongoing marriage, between the annulment of marriage and divorce against some of the following principled differences:

- a. In principle the annulment of the marriage carries the consequence that the marriage is legally considered to have never existed (so it applies retroactively), except in certain matters only, which are mentioned in the statute. Whereas divorce, marriage by law is considered to have existed with all its consequences, but then dissolves/breaks up halfway, so divorce does not have a retroactive effect.
- b. The juridical reasons for annulment of the marriage are with regard to the facts already present at the time or before the marriage took place, while the reasons for divorce in principle relate to the facts that occurred after the marriage took place.
- c. Many parties can apply to the court for the annulment of a marriage, while divorce can only be filed by the husband or wife only.
- d. The court’s procedure for annulling a marriage is simpler/shorter, which will later come out with a court “injunction”, while for a divorce, the procedure is more complicated/lengthy, which will come out with a court “ruling” (not a court “injunction”).

Who can apply for an annulment of marriage. In accordance with the Marriage Law, those who can apply for annulment of marriage are as follows:

- a. Husband or wife
- b. The families in the straight upward lineage of the husband or wife
- c. Authorized officials only as long as the marriage has not yet been decided
- d. Specially appointed officials
- e. Other parties who have a direct legal interest in the marriage, but only after the marriage breaks up.
- f. Marriage Agreement

In marriage law, it is also known as the so-called “marriage agreement”. What is meant by a marriage agreement is a written agreement, but it does not include talak taklik, which is made voluntarily among the bride and groom on the condition that they must obtain the endorsement of the clerk of the marriage registry. A marriage agreement

also applies to third parties or must also be respected by third parties, which contains matters deemed important by the parties that have not been regulated by law or even to matters that deviate from the provisions of the law to the extent permitted by law, religion and decency, such as agreements on the position of children or property during marriage or after the breakup of a marriage.

The legal consequences of a marriage agreement are as follows:

1. The legal provisions of the agreement in general apply, except for matters of a special nature in the marriage agreement.
2. Binding on both parties (bride and groom).
3. Binding also third parties.
4. Although it may have been made before the marriage, the binding due to the marriage's marriage obligations came into force from the moment the marriage took place.
5. Such a marriage agreement cannot be changed during the marriage lasting except by agreement of both parties and by not harming third parties.

g. Rights and Obligations of Husband and Wife

Because the husband and wife have already bound themselves in a marital bond, and the bond is a noble and holy bond, then as a consequence, between the two parties (between husband and wife) rights and obligations arise according to applicable law.

Among the rights, obligations and position of the husband regulated by law are the following:

- a. The husband has rights, obligations and a legal position that is balanced with his wife.
- b. The husband is capable of doing, meaning that he has the authority to do legal acts.
- c. The husband has a legal position as the head of the household. Therefore, he is obliged to protect his wife and children and provide a living.
- d. The husband (together with the wife) is authorized to determine the place of common position.
- e. The husband is authorized to file for divorce against his wife if the wife neglects her obligations as a wife.
- f. The husband has the right to expect a child born by his wife if his husband can prove that his wife has committed adultery with another man, and the child is the result of the act of adultery.

Meanwhile, among the rights, obligations and positions of the wife regulated by law are as follows:

- a. The wife has rights, obligations and a legal position that is in balance with her husband.
- b. The wife is also capable of doing, meaning that she has the authority to do legal acts. In this case it is necessary to make it clear that in the Civil Code system (which

originated in the Netherlands), only the husband is considered capable of doing, while the wife by law is considered incapable of doing.

- c. The wife has a legal position as a housewife, so she is obliged to manage household affairs as well as possible.
- d. The wife (together with the husband) is authorized to determine the place of common position.
- e. The wife is authorized to file for divorce against her husband, if the husband neglects his obligations as a husband.

h. Rights and Obligations Between Parents and Children

The marriage law also regulates the rights and obligations that arise between the child and his parents. Therefore, the Marriage Law also regulates it.

As for what are the rights and obligations of parents towards their children (i.e. towards biological children, adopted children or recognized children) or the rights and obligations of children towards their parents are as follows:

- a. Parents are obliged to nurture and educate their children.
- b. Parents are still obliged to provide child maintenance costs, even if the parent has been deprived of his or her power as a parent for the following reasons:
 - c. His parents greatly neglected their obligations towards the child
 - d. His parents behaved so badly.
- e. Children are obliged to respect and obey their parents.
- f. An adult child is obliged to keep the parents in a straight line upwards if the parents need it.
- g. Immature children (not yet 18 years old and have never entered into a marriage) have the right to be represented by their parents to perform legal acts in and out of court.
- h. An immature child (not yet 18 years old and has never entered into a marriage) is entitled to live in the power of his parents as long as the parental power has not been revoked.
- i. Parents are obliged not to grant rights or mortgage immovable property belonging to their immature child (not yet 18 years old and unmarried), unless the child's interests require it.

i. Marital Property Law

The basic principles of marriage property as stipulated in the Marriage Law are as follows:

- a. The property is inherited into the marriage becoming the right of each individual who carries the property into the marriage.
- b. The entire proceeds from the innate property become the personal right of the owner of the inherited property.
- c. The entire estate acquired by one of the parties as an inheritance, grant or testament becomes the personal right of the beneficiary of the inheritance, grant or will.

- d. All property acquired by either party or by both parties during the marriage (except property acquired by inheritance, grant, or will) becomes the joint property of the husband and wife (gono gini).
- e. The parties may determine for themselves the status of their property in the marital agreement concluded before the marriage took place.

About the authority to act on property while the husband and wife are still in marital status are as follows:

1.
 - a. Against his personal property, each husband or wife can act individually without the need for help from the other party.
 - b. Against the common property (gono gini) each wife or husband acts with the consent of the other party.
 - c. If the divorced parties live, then the common property (gono gini) is divided according to their respective laws, which are generally divided in half equally large.

11. Guardianship

Guardianship is a form of protection with full authority on the basis of responsibility and love, to provide assistance for a person's inability to carry out legal acts, both related to property and with himself. According to the Marriage Law, then what is meant by a minor in this case is a child who is not yet 18 years old and has never entered into a marriage.

It is better if the guardian is appointed from the immediate family of the child, but if it is in accordance with the appropriateness, it can also be appointed a guardian from outside the child's family as long as it meets the following conditions:

- a. Adults
- b. Healthy
- c. Fair
- d. Be Honest
- e. Behave well

However, because the position of guardian is very important to the child, the law imposes legal responsibility on the guardian if he is wrong in exercising his guardianship powers. Therefore, if for example the guardian is guilty of harming the property of the child under his guardianship, then the guardian may be subject to compensation at the request of the child or the child's family.

12. Law on Divorce

It is not always that a household can always be as happy and smooth as planned during a marriage. In this case, sometimes a marital bond has to be broken halfway through due to divorce. Sometimes it is referred to as a living divorce if the husband

and wife are divorced as well as both are alive, and it is called a dead divorce if they are separated because one of them died.

But, more often and in accordance with the provisions in the legislation, then the term “divorce” is intended only against “living” divorces. The law specifies that a divorce can only be carried out before the court through a divorce suit. So it is impossible for any divorce to be carried out outside the court. The courts authorized for this divorce are the Religious Court for those who are Muslims, and the District Courts for those who are not Muslim. The reasons for divorce are:

- a. One of the parties commits adultery or becomes a drunkard, a gambler and so on who is difficult to cure.
- b. One party leaves the other party for at least two consecutive years without the other party’s permission and without a valid reason or because of something beyond its ability.
- c. Either party faces a prison sentence of a minimum of five years after the marriage takes place.
- d. One of the parties commits atrocities or severe persecution that endanger the other party.
- e. One of the parties has a disability or illness as a result of not being able to carry out their obligations as a husband/wife.
- f. Between husband and wife there are constant disputes and quarrels and there is no hope of living in harmony again in the household.

Thus, as practiced in any other civilized country, the law cannot justify a divorce “by consent”. In this case it is not permissible for a divorce on a consensual basis or on the basis of consent between husband and wife without any specific reasons as aforesaid. It cannot be for example, that the spouse is divorced on the grounds that each of them has found another prospective wife/husband who is considered better.

Furthermore, a divorce has the following legal consequences:

- a. Either father or mother is obliged to nurture and educate his children.
- b. The father is legally obliged to finance (provide a living) to his child.
- c. If in reality the father is unable to fulfill these living obligations, the court may determine that the mother also has those living obligations.
- d. In addition, the court may also require the former husband to provide the cost of subsistence and/or determine an obligation to the former wife.

The legal consequences are stated in the court decision and must be carried out by the parties, namely the husband and wife (mother’s father) towards their children so that the children can continue to grow and develop properly in living their lives in society as a civilized nation. The legal situation in the field of civil law still shows diversity because there are still several legal systems that are still alive, developing and side by side with several other legal systems in the life of Indonesian society.

In the framework of national legal development, efforts are needed to renew the law that is directed and integrated, in accordance with development demands, as well as the

level of legal awareness and dynamics that develop in society based on the values of Pancasila.

13. Pancasila Values

Pancasila is not just an understanding of the basis of the state for the Indonesian nation, but a living reality in the behavior of the Indonesian nation. Therefore, Indonesian people as subjects who are aware of the values of Pancasila are not only trapped in the sense of reality of the values of divinity, humanity, unity, peoplehood and justice but rather direct attention to reality over the values themselves that live in society.

Pancasila values that live in society are in accordance with the rules of law that regulate everyone's behavior towards other people related to rights and obligations in community associations.

3 Conclusion

The concept of civil law in the renewal of the law of persons, families, and marriage in the framework of Pancasila regulates the civil rights of Indonesian citizens. Because everyone has his civil rights, regardless of any citizen or any religion he adheres to. Child status is the most important element in a family. The existence of children in the family is something very meaningful. Therefore, if there is a division of inherited property, for example, then the child will get the inheritance first compared to other heirs.

Marriage is a very important legal event because with marriage a person will gain life balance, both socially, biologically, and psychologically. According to Islam, marriage is a strong and solid sacred covenant to live together that is happy, safe, serene, and mutually loving. Marriage is a human nature that occurs as a means of bestowing the love and love that God Almighty has given to His servants. Because the husband and wife have already bound themselves in a marital bond, and the bond is a noble and holy bond, then as a consequence, between the two parties (between husband and wife) rights and obligations arise according to applicable law. If in marriage a dispute arises that cannot be reconciled anymore, then the law determines that divorce can only be carried out before the court through a divorce lawsuit.

Bibliography

1. Amir Martosedono, 1997, *Tanya Jawab Pengangkatan Anak dan Masalahnya*, Dahara Prize, Semarang.
2. Amir Syarifuddin, 2007, *Hukum Perkawinan Islam di Indonesia*, Prenata Media, Jakarta.
3. Asep Saepudin Jahar; Euis Nurlaelawati; Jaenal Aripin, 2013, *Hukum Keluarga, Pidana & Bisnis, Kajian Perundang-undangan Indonesia, Fikih dan Hukum Internasional*, Kencana Prenadamedia Group, Jakarta.
4. Daulat P. Silitonga, Hak Layanan Administrasi Hukum Keperdataan Dalam Lingkup Hukum Kekeluargaan Dari Aspek Kewarganegaraan, <https://portal.ahu.go.id>
5. Eko Setiawan, 2014, *Dinamika Pembaharuan Hukum Keluarga Islam di Indonesia*, de Jure, Jurnal Syariah dan Hukum, Volume 6 Nomor 2, Desember 2014.

6. H.M. Anshary MK, 2010, *Hukum Perkawinan Di Indonesia, Masalah-masalah Krusial*, Pustaka Pelajar, Yogyakarta.
7. Khoiruddin Nasution, 2009, *Hukum Perdata (Keluarga) Islam Indonesia dan Perbandingan Hukum Perkawinan di Dunia Muslim*, ACAdeMIA+TAZZAFA, Yogyakarta.
8. Muhammad Noor, 2014, *Unifikasi Hukum Perdata Dalam Pluralitas Sistem Hukum Indonesia*-journal.uinsi.ac.id.
9. Muhammad Saifullah; Mohammad Arifin; Ahmad Izzuddin, 2005, *Hukum Islam: Solusi Permasalahan Keluarga*, UII Press, Yogyakarta.
10. P.Rinrani, 2017, *Pelaksanaan Putusan Perkara Cerai Talak yang terkait dengan nafkah istri dan anak di PA Padang*, scholar.unand.ac.id.
11. Rachmadi Usman, 2006, *Aspek-aspek Hukum Perorangan dan Kekeluargaan di Indonesia*, Sinar Grafika, Jakarta.
12. Rizal Mustansyir, Heri Santoso dan Surono, 2018, *Bunga Rampai Rekonstruksi Ilmu Kepancasilaan Dalam Ranah Akademis*, Penerbit Pusat Studi Pancasila, Universitas Gadjah Mada, Yogyakarta.
13. Rosnidar Sembiring, 2019, *Hukum Keluarga: Harta-harta Benda Dalam Perkawinan*, Rajawali Pers, Depok.
14. Siska Lis Sulistiani, 2015, *Kedudukan Hukum Anak, Hasil Perkawinan Beda Agama menurut Hukum Positif & Hukum Islam*, PT Refika Aditama, Bandung.
15. Sonny Dewi Judiasih, 2019, *Harta Benda Perkawinan, Kajian Terhadap Kesetaraan Hak dan Kedudukan Suami dan Isteri Atas Kepemilikan Harta Dalam Perkawinan*, PT. Refika Aditama, Bandung.
16. Titik Triwulan Tutik, 2006, *Pengantar Hukum Perdata di Indonesia*, Prestasi Pustaka Publisher, Jakarta.
17. Wahyuni Retnowulandari, 2016, *Hukum Keluarga Islam di Indonesia, Sebuah Kajian Syariah, Undang-Undang Perkawinan dan kompilasi Hukum Islam*, Penerbit Universitas Trisakti, Jakarta.
18. Yaswirman, 2019, *Hukum Keluarga: Karakteristik dan Prospek Doktrin Islam dan Adat dalam Masyarakat Matrilineal Minangkabau*, Rajawali Pers, Depok.
19. Yulies Tiena Masriani, 2019, *Pengantar Hukum Indonesia*, Cetakan kedua belas, Sinar Grafika, Jakarta.
20. Yunanto, 2019, *Perjanjian Pra Nikah dan Harta Kekayaan Perkawinan*, CV. Madina, Semarang.
21. Zaeni Asyhadie; Sahrudin; Lalu Hadi Adha; Israfil, 2020, *Hukum Keluarga (Menurut Hukum Positif di Indonesia)*, PT. Rajagrafindo Persada, Depok.
22. Zaeni Asyhadie, 2017, *Kitab Undang-Undang Hukum Perdata, Burgerlijk Wetboek*, Penerbit Fokusmedia, Bandung.

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

