A JURIDICAL ANALYSIS OF ABROAD INTERFAITH MARRIAGE’S POSITION IN INDONESIA’S LAW

Zalma Afika Nandapratiwi1, Anjar Sri Ciptorukmi Nugraheni2, Andina Elok Puri Maharani3

Master of Notary, Sebelas Maret University, Surakarta, Central Java, Indonesia
1 zalma_afika@yahoo.co.id 2 anjarsri@staff.uns.ac.id 3 andinaelok@staff.uns.ac.id

ABSTRACT

Background: The implementation of the registration of interfaith marriages abroad and the Population and Civil Registry Service in Indonesia currently does not exist. However, the Population and Civil Registry Office in Indonesia continues to carry out the registration of interfaith marriages held abroad by carrying out the registration of marriages of different religions through an application to the local District Court for marriage permits for prospective husbands and future wives.

Aim: The purpose of this study is to determine the position of marriages of interfaith couples held abroad in the legal system in Indonesia and the implementation of registration of interfaith marriages held abroad and at the Population and Civil Registry Office in Indonesia.

Method: The study used Normative Juridical research methods. This method was used for research on issues related to the abroad interfaith marriage’s position in Indonesia’s law. The materials used as research objects of this approach method use primary, secondary, and tertiary legal materials.

Findings: The Population and Civil Registry Service in Indonesia continues to carry out the registration of interfaith marriages held abroad by carrying out the registration of marriages of different religions through an application to the local District Court for marriage permits for prospective husbands and future wives with the consequences of various administrative requirements that must be submitted before the District Court grants in accordance with Law Number 23 of 2006 concerning Administration Residency must be registered with the competent authority in the local country and reported to the republic of Indonesia.

KEYWORDS

legality of marriage, interfaith, registration of marriages

INTRODUCTION

Marriage as a legal event is considered valid if it is carried out under the laws of their respective religions; thus the order of Article 2 paragraph (1) of Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage (UUP). In addition, marriages must also be recorded according to the applicable laws and regulations in accordance with article 2 paragraph (2) of the UUP. From this it can be concluded that the marriage must be carried out according to the laws of each religion and belief, otherwise the marriage is invalid (Shaleh, 1982). The act of recording does not determine the validity of a marriage but states that the event does exist and occur, so it is solely administrative in nature (Hasibuan, 2019).

The ongoing marital bond between a man and a woman who are each subject to different national legal systems will raise international civil law issues in the field of family law (Fauzi, 2018). In international civil law the main problem is which legal system should be applied to the problems that occur (Shaleh, 1982).
With the rampant phenomenon of couples of different religions carrying out marriages abroad, this research is specifically for couples of different religions between Indonesian citizens or between Indonesian citizens and foreigners who marry abroad. Cases of interfaith marriage in Indonesia between two brides of different religions are not simple in Indonesia. In addition to having to go through social and cultural frictions, the bureaucracy that must be passed is also convoluted (Putri, 2018). The absence of regulations that expressly regulate the registration of interfaith marriages will affect the procedures and authority for the implementation of interfaith marriage registration.

However, in fact, nowadays there are still many couples who perform interfaith marriages in Indonesia and abroad (Makalew, 2013). They took many ways to achieve what they wanted, one of which was by smuggling the applicable laws in Indonesia. In general, this couple performs a marriage abroad, then they return to Indonesia and register their marriage at the civil registry office, as if the marriage is the same as a mixed marriage as referred to in article 57 of the Marriage Law. This can be seen in article 56 of the Marriage Law which reads, "Marriages held outside Indonesia between two Indonesian citizens or an Indonesian citizen and a foreigner are valid if they are carried out according to the applicable law where the marriage is held and for Indonesian citizens do not violate the provisions of this Law." From article 56, it can be seen that a person who performs a marriage abroad, namely by civil marriage, is only valid according to local law, but is not valid according to Indonesian law because the marriage violates the provisions of Article 2 paragraph (1) which reads "Marriage is valid, if it is carried out according to the law of each of its agam and trust" in article 8 (f) of the Marriage Law which reads "Marriage is prohibited between two persons who have a relationship whose agam or other applicable regulations are prohibited from marrying".

In addition to marrying abroad, these interfaith couples also take various ways so that they can get married and their marriage is considered "valid" namely by asking for a court determination in addition to that by means of the marriage being carried out according to each religion (Permatasari, 2018). For example, a Christian woman marrying a man of Muslim religion is carried out at the residence of the future husband by fulfilling the wishes of the family of the future husband who is Muslim by saying two sentences of the creed, but then the marriage is carried out again according to Christian religious procedures located on the side of the family the woman is Christian.

A marriage must not only comply with the provisions of Article 2 paragraph (1), but must also be registered in accordance with the provisions of Article 2 paragraph (2) of the Marriage Law, which determines that each marriage must be recorded according to the applicable laws and regulations. Marriage registration aims to make the event of marriage clear both to the husband and wife and to others and society so that if necessary at any time the registration becomes authentic written evidence (Yudhistira, 2013). Marriage registration does not determine the validity of a marriage, but only states that there is a marriage event so that this marriage registration is only administrative in nature (Rahmi & Sakdul, 2017).

Based on the things mentioned above, the author is interested in being able to research religious marriage, by putting it in a thesis with the title "Juridical Analysis of the Position of Interfaith Marriages Held Abroad in the Legal System in Indonesia. "The purpose of this study is to determine the position of marriages of interfaith couples held abroad in the legal system.
in Indonesia and the implementation of registration of interfaith marriages held abroad and at the Population and Civil Registry Office in Indonesia.

METHOD

The study used Normative Juridical research methods, a literature law study conducted by examining library materials or mere secondary data (Sunggono, 2003). This method was used for research on issues related to the abroad interfaith marriage’s position in Indonesia’s law. The materials used as research objects of this approach method use primary, secondary, and tertiary legal materials. Basic norms or rules, fundamental regulations, and laws and regulations with force majeure comprise primary legal substance, which is the major body of law. This study also incorporates secondary legal documents, such as publications from the legal community, research findings, and draft laws, in addition to primary legal materials. The next section includes tertiary legal resources like dictionaries, encyclopedias, cumulative indices, and so forth.

RESULTS AND DISCUSSION

The Position of the Marriage Implementation of Interfaith Couples Abroad in the Legal System in Indonesia

Interfaith marriages that are held abroad are now often carried out by couples of different religions either carried out by fellow Indonesian citizens, or Indonesian citizens with foreigners because their marriages are unlikely to take place in Indonesia. In general, this couple married abroad, then they returned to Indonesia and registered their marriage at the civil registry office. It is as if the marriage is the same as the mixed marriage as referred to in article 56 of the Marriage Law. We can see this in article 56 paragraph (1) of the Marriage Law which reads, "Marriages held outside Indonesia between two Indonesian citizens or an Indonesian citizen with a foreigner are valid if it is carried out according to the applicable law where the marriage is held and for Indonesian citizens do not violate the provisions of this Law" (Republic of Indonesia, 2019).

From article 56, it can be seen that a person who performs a marriage abroad, namely by civil marriage, is only valid according to local law, but is not valid according to Indonesian law, because the marriage violates the provisions of Article 2 paragraph (1) which reads "Marriage is valid, if it is carried out according to the law of each of his religion and his beliefs” (Shaleh, 1982).

In addition to marrying abroad, these interfaith couples also take various ways so that they can get married and their marriage is considered "valid" namely by asking for a court order in addition to that by means of the marriage being carried out according to each religion. A marriage must not only comply with the provisions of Article 2 paragraph (1), but must also be registered in accordance with the provisions of Article 2 paragraph (2) of the Marriage Law, which determines that each marriage must be recorded according to the applicable laws and regulations (Shaleh, 1982).

Before the Marriage Law in Indonesia came into force, interfaith marriage was regulated in the Reglement op de Gemende Huwelijken (GHR) where in Article 7 paragraph (2) of the
A Juridical Analysis of Abroad Interfaith Marriage’s Position in Indonesia’s Law

GHR stated that differences in religion, ethnicity, ancestry were not an obstacle to the occurrence of a marriage, but with the enactment of the Marriage Law, the previous law was no longer valid as long as it was not or was not regulated in the Marriage Law still in force (Republic of Indonesia, 2019). Based on Article 66 of the Marriage Law, the marriage law opens the interpretation that the old marriage laws and regulations are not essentially abolished in their entirety, especially the laws and regulations in force during the reign of the Dutch East Indies.

The abolished Marriage Regulations are only laws and regulations whose problems have been regulated in the Marriage Law. Meanwhile, regarding matters that have not been regulated in the marriage law, it can be interpreted to be still valid. Therefore, many parties state that mixed marriages in this case are different religions are not regulated in the Marriage Law, so the regulations regarding interfaith marriages still refer to the Mixed Marriage Regulations, where in pasa 7 paragraph (2) GHR does not prohibit interfaith marriages.

In International Civil Law there are two views on the meaning of mixed marriage, namely the view that a mixed marriage is a marriage that takes place between parties who have different domiciles, so that to each party the rules of internal law from 2 different legal systems apply and the view that a marriage is considered a mixed marriage if the parties have different nationalities/its nationality. Hence, under the provisions of the marriage law, marriages of different religions are not known, so the discussion of such a conceptual framework will be stopped.

Based on the statement above, interfaith marriages that are carried out abroad when viewed from a legal perspective have two aspects, firstly the marriage is carried out by two people of different religions or different beliefs. Both marriages are held outside the territory of Indonesia, so that both Indonesian law and the law of the place where the marriage took place (lex loci celebrationis) the provisions of Article 56 of the UUP state that a marriage held outside Indonesia between two Indonesian citizens or an Indonesian citizen with a foreign citizen is valid if it is carried out according to the applicable law in the country where the marriage was held and for Indonesian citizens not violating the provisions of this law, the provisions mentioned above clearly appear that marriage is valid if it is carried out according to the applicable law in the country where the marriage was carried out and for Indonesian citizens do not violate the provisions of the UUP. Thus, if there is an Indonesian citizen of Christianity married to a Christian Indonesian citizen abroad, it is legal if it is carried out according to the Christian religious system and does not conflict with Article 2 paragraph (1) of the UUP. Conversely, the marriage becomes invalid if the marriage abroad is only carried out through the civil registry office (Before a judge and or civil registry), without performing blessings in churches, mosques or other religious institutions.

The validity of marriages held abroad in the eyes of Indonesian law only needs to be proven by a marriage certificate or called a marriage certificate. This is in accordance with Article 56 paragraph (2) of the Marriage Law which reads, "Marriages outside the territory of the Republic of Indonesia are valid and recognized under Indonesian law, then the proof of marriage from abroad must be registered with the Population and Civil Registry Office where the husband and wife live.

If Indonesian citizens of different religions marry abroad, for example in front of the local civil registry and still maintain their respective religions, the marriage is valid according to the
law of the place where the marriage is carried out, but is not valid according to Indonesian law in accordance with the provisions of Article 56 of the Marriage Law, because the marriage is carried out in violation of the provisions of the Marriage Law. In this case, it violates the provisions of Article 2 paragraph (1) of the Marriage Act, which states that marriage is valid, if it is performed according to the laws of each of its religions and beliefs. This means that if the marriage is not performed based on its religion and beliefs then the marriage is invalid. Provisions of Article 2 of the Marriage Act. this is a coercive provision so that it is a public order for Indonesian citizens, so it cannot be violated. If these provisions are violated then the marriage can be annulled. After all, the marriage that was carried out abroad was a civil marriage unknown in the Marriage Act.

**Implementation of Registration of the Population and Civil Registry Service in Interfaith Marriages Abroad**

**Recording bada religion abroad**

1) **Singapore**: In Singapore, if there is a marriage between religions, people will not be so concerned, because there interfaith marriages are allowed and get legal recognition from the state. In Singapore, there are two laws governing marriage, namely the Islamic Law (Muslim Marriage Act) and the Civil Marriage Law (Women's Charter). The Women's Charter is a law or regulation in Singapore created to protect and develop women's rights and to ensure legal certainty for interfaith marriage in Singapore.

   In Singapore there are 2 laws governing marriage, specifically the regulation is implemented by the Registry of Muslim Marriage (ROMM) and the Registry of Marriage (ROM). The Registry of Muslim Marriage (ROMM) deals with the recording and implementation of marriages between Muslims, while for those of different faiths, their marriages can be recorded and carried out by the Registry of Marriage (ROM). For those who want to hold a marriage in Singapore, they must follow several procedures and some conditions.

2) **Hong Kong**: For those who want their marriage to take place in Hong Kong, they must comply with the country's regulations (Marriage Ordinance). The marriage procedure in Hong Kong where the bride and groom are from outside the country is regulated in the Marriage Ordinance. For those who wish to enter into an interfaith marriage in the country of Hong Kong, they must first send a message or letter containing a statement of their will to marry to the Marriage Registration and Records Office located at The Marriage Registration and Records Office 3/F, Low Block Queensway Government Offices 66 Queensway Hong Kong and also send an e-mail to the Hong Kong immigration department (Stockinger, 1997).

   An affidavit of the will to marry is made and signed by a notary where one of the brides-to-be lives. Second, for those who hold interfaith marriages in Hong Kong, marriages can be carried out at the marriage registry office or places of worship that have been registered with the marriage registration office or it can also be in a place that applies for permission to the marriage registry.

   Those who have held interfaith marriages in Hong Kong are required to register their marriages at the Embassy of the Republic of Indonesia in Hong Kong. After all these processes are completed and have obtained a marriage certificate from the
Indonesian Embassy, after returning to Indonesia, the marriage certificate must be reported to the civil registry office where they live.

**Analysis of Registration of the Population Service and Civil Registry in Interfaith Marriages Abroad**

Marriage must be carried out in front of the registrar of marriages and registered, there are three legal options for the validity of marriage (Yakin, 2015). This means that for Muslims, for example, it is open to the possibility of carrying out marriage without using Islamic Marriage law. This is often the case in cases of marriage between people of different religions.

In article 3 of Government Regulation No. 9 of 1975, it is stated that everyone who wants to carry out a marriage must notify the will, either orally or in writing, to the Registrar Employee at the place where the marriage will take place, within a period of at least 10 working days before the marriage takes place. Meanwhile, provisions beyond that (10 working days) can ask permission from the sub-district on behalf of the regent, if there are reasons that are deemed important.

From the perspective of religions in Indonesia, interfaith marriage is not justified because it violates the provisions of recognized religions in Indonesia (Ashsubli, 2015). However, the Supreme Court’s ruling in its jurisprudence dated January 20, 1989 No 1400K/Rev/1986 is a loophole for interfaith marriages by allowing them to apply to the Civil Registry Office as the only agency authorized to carry out applications for registration of interfaith marriages. However, a valid marriage in the national marriage law is a marriage that is carried out according to the rules of law that apply according to Islam, Christianity, Hinduism and Buddhism.

The Marriage Law does not contain any provision stating that religious differences between prospective husbands and future wives constitute a prohibition on marriage, which is in line with the 1945 Constitution Article 27 which specifies that all citizens simultaneously have their position in the law, covered by the similarity of human rights to marry with fellow citizens even though they are of different religions and as long as by law it is not determined that religious differences are the prohibition for marriage, then the principle is in line with the soul. Article 29 of the 1945 Constitution on the guarantee by the state of independence for every citizen to embrace their respective religions.

The deadline for reporting marriages abroad based on Law No. 23 of 2006 concerning Population Administration article 37 paragraph 4, registering an overseas marriage in Indonesia is carried out no later than 30 days after the person concerned arrives in Indonesia (can be indicated by the Immigration stamp on the passport). Negligence in recording, can be subject to fines (which are regulated in the written provisions in Dukcapil). The files required for reporting are:

1) Marriage Certificate from the country of origin that has been translated into Indonesian, and has been legalized by the local Indonesian Representative;  
2) Certificate of Marriage from the Indonesian Embassy  
3) A copy of the birth certificate of the husband and wife;  
4) Copy of ID card and family card;  
5) A copy of the husband's passport; and  
6) 3 pieces of 4x6 side-by-side photos with a red background.
Based on this, for marriages carried out abroad according to Law Number 23 of 2006 concerning Population Administration, it must be registered with the authorized agency in the local country and reported to the republic of Indonesia. If the country does not recognize marriage registration for foreign nationals, then the republic of Indonesia records in the registration of marriage certificates, then a marriage certificate is issued and no later than 30 (thirty) days after the husband and wife return to Indonesia and bring proof of their marriage which must be registered with the Population and Civil Registry Office where they live. Otherwise, administrative fines will be threatened as stipulated in Article 107 of Presidential Regulation Number 25 of 2008 which is an implementing regulation of Law Number 23 of 2006 concerning Population Administration and Government Regulation Number 37 of 2007 concerning the Implementation of Law Number 23 of 2006.

Thus, the process of implementing interfaith marriages in Indonesia itself must go through the stages of applying for permission to the local District Court which will later be issued a determination file, then the determination file is taken to the Population and Civil Registry Office to record the interfaith marriage. Marriage registration is carried out by a civil registrar as the executing agency or UPTD of the executing agency who records on the registration of the marriage certificate and issues a quotation of the marriage certificate to be given to each husband and wife.

CONCLUSION

The marital position of interfaith couples abroad must comply with Article 56 paragraph (2) of the Marriage Law which reads, "Marriages outside the territory of the Republic of Indonesia are valid and recognized under Indonesian law, then the proof of marriage from abroad must be registered with the Population and Civil Registry Office where the husband and wife live. Thus, the position of Marriage of Interfaith Couples Abroad can be said to be legal in the country of Indonesia if the marriage held abroad in the eyes of Indonesian law only needs to be proven by a marriage certificate or called a marriage certificate.

The implementation of the registration of interfaith marriages abroad and the Population and Civil Registry Office in Indonesia currently does not exist. However, the Population and Civil Registry Service in Indonesia continues to carry out the registration of interfaith marriages held abroad by carrying out the registration of marriages of different religions through an application to the local District Court for marriage permits for prospective husbands and future wives with the consequences of various administrative requirements that must be submitted before the District Court grants those in accordance with Law Number 23 of 2006 concerning Population Administration must be registered with the authorized agency in the local country and reported to the republic of Indonesia. If the country does not recognize marriage registration for foreign nationals, then the republic of Indonesia records in the registration of marriage certificates, then a marriage certificate is issued and no later than 30 (thirty) days after the husband and wife return to Indonesia and bring proof of their marriage which must be registered with the Population and Civil Registry Office where they live.
REFERENCES