Interdisciplinary Social Studies
P-ISSN: 2808-0467
E-ISSN: 2808-5051

Traditional Chinese marriage after the enactment of the marriage law in Indonesia (Study on the Chinese community of Cirebon City)

Cynthia Monica Az Zahro*, Universitas Swadaya Gunung Jati, Cirebon, West Java, Indonesia
Indah Gita Syamsiatin, Universitas Swadaya Gunung Jati, Cirebon, West Java, Indonesia
Rd. Dita Puspita Nadjib, Universitas Swadaya Gunung Jati, Cirebon, West Java, Indonesia
Dudung Hidayat, Universitas Swadaya Gunung Jati, Cirebon, West Java, Indonesia
Diky Dikrurahman, Universitas Swadaya Gunung Jati, Cirebon, West Java, Indonesia

*Email for Correspondence: cyntamonica@gmail.com

Keywords:

Cross-country weddings

Religious Conversion

Status and rights of children

ABSTRACT

Indonesia is a multi-ethnic country with a diversity of tribes and cultures that are still preserved and implemented, one of which is the Chinese ethnic culture. There have been cross-country and different religious marriages that were not previously registered in the Civil Registry and then registered, but there are still many misconducts due to ignorance and lack of socialization by the more intensive government, which has resulted in children born to become illegitimate children. The actual circumstances make it difficult for a portion of the ethnic Chinese majority to obtain the legality of their birth certificates, which will affect their future lives. This research method uses empirical jurisprudence with a qualitative approach, so it aims to provide a deeper insight into changes and adaptations in Chinese ethnic marriage institutions after the implementation of national marriage law regulation. Thus, the settlement measure taken after the entry into force of Law No. 1 of 1974 on Marriage in a customaryly married couple, giving birth to an out-of-marriage child by an act on behalf of the mother, which if it is to be authenticated as the child of the father and mother, requires a court decision.

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INTRODUCTION

Marriage is a sacred bond for a harmonious and lasting family (S. Anwar, 2021). Marriages can have different meanings and purposes depending on the culture, religion, and values of the society in which they take place. Marriage is a sacred bond for a harmonious and lasting family (M. Anwar, 2019). (Anwar, 2021). Therefore, since Indonesia is a multicultural country, the execution of marriages is arranged in ceremonies with customary traditions different from one territory to the other territory occupied, respectively. In Indonesia, marriage is considered a sacred thing because it is accountable in this world and the hereafter. A ready-made marriage can make a successful and prosperous family (Anggraini, 2023). Therefore, there is a need for law enforcement to regulate all aspects of marriage.

A marriage will establish a legal relationship between husband and wife. After the existence of offspring, a new relationship will also arise, namely between parents and children. In a relationship, there are rights and obligations that are interconnected and continuous with each other (Shafiya et al., 2024).

Indonesia is a multi-ethnic country with a variety of ethnicities, races, and ethnicities spread throughout its territory. Ethnic Chinese is one of the many foreign ethnicities who come and settle in Indonesia. According to classical Chinese documents, this ethnicity first entered Indonesia during the Han Dynasty in 206 BC – 220 AD. Over time, the relationship between ethnic Chinese and indigenous people underwent cultural fusion and marriage to create a cultural renewal (Helmisyah & Rosyad, 2021).

At the time of Indonesia's independence, there was no civil registration field that regulated registration procedures that regulated registration procedures and civil registration that applied to all citizens, there was

only the Staatblad which is a relic of the Dutch government. Thus, the government passed Law Number 23 of 2006 concerning Population Administration which abolished differences or injustices in population registration in Indonesia (Beatrix, 2016).

When a traditional marriage is carried out, a child is born with the status of an out-of-wedlock child. Because of the Chinese ethnic customary law, the issue of children who marry has quite complicated consequences. Prior to 1974, Chinese customary law played an important role in regulating marriage and progeny. In Indonesia, customary law is often applied in conjunction with Indonesian law and serves the ethnic Chinese community in matters of marriage and offspring (Manalu, 2021).

Prior to 1974, Chinese customary marriages in Indonesia were regulated based on their customary law. However, after Act No. 1 of 1974 was enacted, concerning marriage, Chinese traditional marriages must comply with the rules of the National Marriage Law. The enactment has its own impact on the Chinese community, such as after the Marriage Law was issued, they had to register their marriage, the application of the principle of monogamy is not absolute, and others. The enactment of this Law aims to regulate the practice of marriage and provide legal certainty and protection for all marriages in Indonesia (Maulana, 2022).

The presence of law in society not only plays a role in ordering people's lives but also serves as a facility that can change people's thinking and behavior. The enactment of Law Number 1 of 1974 provides certainty regarding the status of children born out of wedlock so that the provisions of customary law are reduced (Hidayat & Najicha, 2023). There was the enforcement of Act No. 1 of 1974, which gave certainty about the status of children born outside marriage, thus reducing the provisions of customary law.

In fact, in this case, most of the Chinese ethnic communities in the city of Cirebon, especially those who were married by custom at the time the Marriage Act was enacted, did not directly handle the marriage certificate, thus affecting the birth certificate of a child that could be problematic later on. That would trigger problems, for example, in terms of its administration, especially in the ethnicity of the Chinese, who have a customary culture of recognizing out-of-marriage children.

This transformation triggered questions about the status of legitimate children out of wedlock influenced by customary law after the enactment of Law Number 1 of 1974. Prior to the enactment of the law, the Chinese ethnic community had its marriage law rules that referred to the HOCI (*Huwelijk Ordonnantie Christen Indonesia-Indonesia Java, Minahasa en Amboina*) customary law, the Civil Code, Staadsblad 1917 and other local regulations in each region. However, as time goes by with the latest law, the government enacted the law which applies to all ethnicities including ethnic Chinese in Indonesia as described above, so the author formulates several issues, namely whether after the enactment of Law Number 1 of 1974 concerning Marriage replaces the role of customary law in ethnic Chinese marriage and what are the consequences of the traditional marriage law of ethnic Chinese after the Law Number 1 of 1974 takes effect.

METHOD

The method of research used was empirical jurisprudence with a case study of human legal behavior. In addition to conducting observations in the field, we also conducted interviews from the sources that we carefully selected, namely from PSMTI (Paguyuban Social Marga Tionghoa Indonesia) led by Hariyono Sutikno, conducted at Hotel Intan Jl. Karang New (Prinan Drajat) No. 36, Kesambi, City of Cirebon, West Java, at 2:00 PM, with about sixteen people as sources about their marriage, and then the results of the data were processed by describing analytically and studying the library. In answering the research problem, conducted a qualitative approach through data by filling out the questionnaire and conducting an interview with the source directly related to the culture of customary marriage ceremonies in Tionghoa, along with the process of registration of his marriage. Thus, this research can yield results for real proof.

RESULTS AND DISCUSSION

Chinese Traditional Marriage Before the Enactment of Law Number 1 of 1974 concerning Marriage

Indonesia is a country of law, so according to Gustav Radbruch it is known for 3 legal purposes, namely legal certainty, justice, and utility. According to Radbruch, legal certainty is part of the effort to be able to realize justice. Where legal certainty is defined as a situation where the law can function as a regulation that must be obeyed. In contrast to Gustav Radbruch who said that legal certainty is part of the purpose of law, Sudikno Mertokusumo gave his opinion on legal certainty, namely that legal certainty is a guarantee so that the law can take place in accordance with applicable procedures or provisions. Interpreting this based on the principle of legal certainty, a person who has rights is those who have obtained recognition and affirmation of their rights through valid legal processes and decisions. Similarly, the transformation of political development in Indonesia has also brought changes to regulations related to marriage and Chinese people's lives (Prayogo, 2016).

Traditional Chinese weddings in Indonesia are carried out in accordance with the customs of beliefs and religions adhered to. The movement of the population from China to Indonesia has brought the tradition of Chinese traditional marriage in Indonesia to face changes and adjustments. Where Chinese traditional traditions blend with local culture so as to create a diversity of Chinese traditional marriages that have distinctiveness.

Based on the background of Chinese ethnic history and culture in Indonesia and the results of questionnaires and joint interviews with members of the PSMTI (Paguyuban Social Marga China Indonesia) City of Cirebon, they continued to follow and preserve the teachings of their cultural traditions from generation to generation by organizing marriages according to the customary traditions of the past. So suppose doing the customary ceremony of their marriage is valid.

For the Chinese community, even though they are not registered with the relevant institutions and do not follow as stipulated in the law, their marriage is still considered valid by the Chinese community. The following are the procedures for traditional Chinese weddings that are common in practice in Indonesia (Insiyah & Goeyardi, 2024):

1. *Tingjin* or garland is a Chinese custom to propose marriage. In this tradition, the groom will bring gifts in the form of 6-12 trays containing various types of goods. If the proposal is accepted, as a symbol, the mother of the man will attach a necklace to the bride. In addition, this event is a moment to set the wedding date and prepare bazi, which is a calculation of Chinese astrology to determine the suitability of the marriage.
2. *Tinghun* or fiancé is a traditional Chinese tradition where the bride and groom will exchange rings as a symbol of commitment and promise in marriage. However, over time, this tradition has now begun to be abandoned. This is because the exchange of rings will be carried out at the time of the wedding blessing.
3. *Sangjit* is a tradition of giving gifts to the bride's family. The gifts are in the form of items that will be used in their home life. The handover escort group usually consists of members of the groom's unmarried family. At this stage, the groom uses cheongsam and the bride wears a dress. Uniquely, at this stage, part of the handover will later be returned by the woman to the man. This condition is a symbol of prayer so that the delivery bearer can get a partner and get married as soon as possible.
4. *Tea Pai* is a Chinese custom that is carried out before the blessing of the wedding. The bride and groom bow and clench their fists in front of a large married and elderly family. Then they give a cup of tea to family members as a request for blessings. In this event, it is usually held in the morning or afternoon before the blessing procession.

Legal Regulation is the legal basis that is the basis for the implementation of a rule made by the government in a country. Law Number 1 of 1974 occupies an important position in national law in Indonesia. This shows that the Law is a positive source of law and has legal force. Therefore, the Marriage Law is a guideline for judges in the judicial environment in realizing the application of marriage law (Ramadhan & Sjarif, 2022).

Interfaith marriage in Indonesia is not a new phenomenon and has existed for a long time. This phenomenon arises due to the wishes of the community, as well as other influencing factors such as the diverse history and culture in Indonesia. In the past, interfaith marriages were regulated in HOCI (*Huwelijk Ordonnantie Christen Indonesia-Indonesia Java, Minahasa en Amboina*). This regulation went into effect around 1933, and interfaith marriage was considered legal at the time. However, with the existence of Law Number 1 of 1974 in its provisions prohibiting interfaith marriage, this is regulated in Article 2 paragraph (1) which states that "There is no marriage outside the law of each religion and belief, in accordance with the 1945 Constitution." This is also strengthened by the Constitutional Court Decision Number 68/PUU-XII/2014 concerning the Conditions for the Validity of Marriage (Religion), which states that marriages of different religions do not conform to the rules of marriage and have no binding legal force.

Here are other factors related to the ban on interfaith marriage in Indonesia, including:

1. Religious Law Aspect: the prohibition of interfaith marriage not only has worldly ties, but also has spiritual and spiritual space. As in various religions in Indonesia, the prohibition of interfaith marriage is regulated in order to respect the rules of each religion (Hamsin, 2014).
2. Family Aspect: the prohibition of interfaith marriage is also feared to disrupt the integrity of the family where due to different beliefs, lack of acceptance of differences, different teachings and the emergence of emotional support in the family can result in acts of sexual violence. This conflict will cause differences in parenting styles due to differences in religious traditions which can be followed by other factors that trigger divorce (Syah, 2018).
3. Social and cultural aspects: the prohibition of interfaith marriage also exists due to considerations of cultural and social diversity in Indonesia. Interfaith marriage will trigger rejection from the community and family which causes social disintegration. For example, in the study of differences

in mindset in Indonesian society when there is an intermediary explaining more established economic conditions to Chinese men, creating a beautiful picture of life for Indonesian brides. In the end, there was a culture shock because the conditions were much different when arriving in China (Mei, 2024; Rizqon, 2022).

After the enactment of the Marriage Law, customary marriage is no longer used as a determinant of the validity of a marriage or not, but only as a customary symbol. The conditions for the validity of marriage must still refer to Article 2 of the Marriage Law, which says that marriage is considered valid if it has met 2 (two) requirements, namely carried out in accordance with its religion and recorded based on laws and regulations.

One of the legal consequences is the requirement to register marriages, which serves to ensure legal certainty and protection for men and children born outside of marriage, as well as for children. Other legal consequences are listed in Article 3 paragraph (1) of the Marriage Law, namely related to the principle of monogamy which stipulates that in a marriage, a man can only have one wife, and vice versa. However, the principle of monogamy is not absolute because there are several reasons that allow a husband to practice polygamy. The ethnic Chinese themselves apply the principle of monogamy is not absolute, in ancient Chinese customs polygamy used to be a common practice, especially among the rich and noble. So, a man there can have more than one legal wife (Santoso, 2020). Then after the Communist Revolution in China in 1949, polygamy was officially banned.

The enactment of the Marriage Law with all the legal consequences regulated in it has an impact on the influence of Chinese marriage traditions. The Chinese community must adapt its marriage traditions to existing regulations, such as in terms of marriage records, monogamous principles, and minimum age restrictions.

But in reality, based on observations and interviews by one of PSMTI's sources, the woman married a Chinese WNA in 1980. Because they are of different religions, their marriage is done customarily. The main reason was because of the citizenship regulations at that time, where the children of the marriage of an Indonesian woman and a foreign man would become foreigners. The woman did not want the child to be a foreigner, so they chose a traditional marriage and their son was born in 1988. In 2000, they got married religiously at the monastery and received a religiously valid marriage certificate, namely from the religion of a woman who had been a Christian and changed her religion to follow her husband's religion, namely Buddhism. They then hold an official marriage based on existing laws and meet the requirements for a valid marriage according to the Marriage Law.

Based on research, there are several reasons why many ethnic Chinese marriages were not registered before the 1974 to 1980s, namely (Beatrix, 2016):

1. The couple is still a Foreign Citizen (WNA)
2. The couple considers the customary marriage to be valid before God and does not need to be legally registered
3. The ethnic Chinese at that time generally experienced a low level of economy and education, therefore they were reluctant to follow government procedures and regulations
4. Lack of knowledge about the obligation to register and register a marriage at the Civil Registry Office

A considerable positive impact also affects marriage registration. Traditional Chinese marriages were not always recorded through the legal process before the enactment of the Marriage Law. But after the issuance of the Marriage Law in 1974, the registration of marriage through the legal process became a mandatory thing so that the marriage received legal recognition and protection (Fatimah, 2017; Usman, 2017).

Legal Consequences on Chinese Ethnic Customs After the Enactment of Law Number 1 of 1974 concerning Marriage

The impact of the amendment of the Marriage Law on Chinese traditional marriage will have an impact on the regulation of the rights and responsibilities of parents and children. In accordance with Law Number 1 of 1974 explains that an illegitimate child who is not recognized by himself has a valid civil relationship with his mother and family. Thus, a mother has the obligation to accept and recognize an illegitimate child as stated in the Civil Code is no longer necessary, in accordance with the Constitutional Court Regulation Number 46/PUU-VIII/2010 if the child also has a legal relationship with her biological father whose validity has been proven by science and technology, including DNA testing (Risa, 2021; Triwati et al., 2022).

Children born out of wedlock, but recognized by their parents, have the same rights as legitimate children with regard to inheritance and other rights. This is regulated in Article 863 of the Civil Code, namely children out of wedlock who are recognized as entitled to 1/3 of the inheritance they will receive if the child

is legitimate. The amount of inheritance that an illegitimate child gets depends on several factors, such as the class that inherits it, the degree of family relationship, and the number of legal heirs. In Chinese culture, inheritance is usually divided equally between women and men, unless specified in a will.

Based on Article 42 of Law Number 1 of 1974, it is explained that children born from a legal marriage are recognized as legitimate children. Meanwhile, Article 43 paragraph (1) of the Marriage Law regulates children out of wedlock where if a child is born out of wedlock has a valid civil relationship only with the mother and the mother's family. For illegitimate children who want to include their father's name on their birth certificate, a court determination process is required. This is a form of father's recognition of his child which is regulated in Article 51 Paragraph (1) of Presidential Regulation Number 96 of 2018. In the decision, it is explained that the recognition of children living in Indonesian territory who are born out of wedlock according to religious law or their beliefs can only be done by court order.

In 2000, the Population Administration Regulation had not yet been enforced. Thus, the legalization of illegitimate children cannot be done through the relevant institution, namely the Civil Registration Office. In this case, the married couple in 2000 should have legalized the child guided by Article 272 of the Civil Code, which explains that the recognized illegitimate child who can be identified is a child born by a mother but not the result of a legally married man, the child is no longer included in the category of children from adultery. Therefore, the civil registry office in its duties, does not have the authority to legalize children out of wedlock or change them.

One of the reasons why the Chinese woman chose customary marriage is because of the old regulation, namely Law Number 62 of 1958 concerning Citizenship of the Republic of Indonesia, stipulates that children born from the marriage of an Indonesian woman and a foreign man are naturally foreigners. The regulation was then repealed by a new one, Law No. 12 of 2006 where children from mixed marriages will have limited dual citizenship until the age of 18 and must decide on one of the nationalities. This is regulated in Articles 4 and 6 which can be concluded as follows:

1. If the child is born before August 1, 2006, then the girl will follow the nationality of her mother, while the boy will follow the nationality of her father.
2. If the child is born after August 1, 2006, then the girl and boy born will have dual citizenship status where the citizenship status is the citizenship of the father and the citizenship of Indonesia. When a child turns 18 or is married, they must decide on their nationality.

Therefore, the couple who got married in 1980 who then got married religiously in 2000 will have the status of the son who was born in 1988 will have the citizenship status of his father (WNA), thus the status of the child remains as an illegitimate child or the status of the child as a child of the mother's descendants.

Efforts to legalize children out of wedlock according to the Civil Code can be carried out in three events, namely as follows:

1. Child legalization can be done with a subsequent marriage, provided that before the marriage the child is legally recognized and the child is recognized in the marriage certificate. Furthermore, the ratification is carried out through the Court where it is regulated in Articles 272 to 276 of the Civil Code, namely by the filing of a lawsuit to the court by the mother, father or adult child. With the provision that there must be valid evidence regarding the relationship between the father and the child.
2. Then there is the legalization of the child through a Letter of Endorsement from the Minister of Justice, this is regulated in Article 277 of the Civil Code where the endorsement is carried out on the joint request of the mother and father. With the condition, because the father and mother cannot hold a marriage because of a legal obstacle and the child to be legalized is not part of the group that is prohibited from carrying out legalization through marriage is regulated in Article 275 of the Civil Code.

Illegal marriage will have a legal effect on the status and rights of children. Based on the theory of legal certainty according to Mertokusumo (2016), in the event that a child born from an illegitimate marriage that there are limits and standards that will determine the status of the child, this is a manifestation of legal certainty (Julian, 2022). Therefore, children born from illegitimate marriages still have rights to children. Although children's rights must be protected, they still require a father's confession done in court.

Based on the analysis of the case study, the first step recommended to the parties concerned is to submit a letter of application for marriage legalization to the court. This can be done without having to remarry. In order to obtain legal marriage certification, for marriages that take place outside of Islam, they can submit an application for marriage certification to the District Court according to their domicile where they live. If the application for marriage legalization is granted, the District Court will issue a determination related to the marriage legalization. After the determination is issued, it is then taken to the civil registry office as a condition for the issuance of a marriage certificate. This ratification will have legal consequences on the marital status and the status of the child born (Fransiska & Turisno, 2018).

After all the stages above are completed, so as to get a citation of the marriage certificate that proves that the marriage is valid according to the applicable law. Then, this marriage certificate citation can be submitted as a requirement for the management of a child's birth certificate at the local Population and Civil Registration Office. Further explanation can be seen in Domestic Regulation Number 12 of 2010 Articles 10 and 11, namely regarding Guidelines for Marriage Registration and Reporting of Deeds Issued by Other States.

Then in 1988 the child born at that time only had a civil relationship with the mother due to customary marriage, where the basis of the rule at that time still referred to Staatblad 1917 No. 130 Jo S. 1919 No. 81. Furthermore, the effort to legalize the child in 2000 should use the rules of the Civil Code in Article 272 where the ratification is carried out through the court. But in fact, the Population Administration Law in 2000 did not exist so there was no national regulation regulating how to legalize children. The couple's incomprehension which should have asked the Court for determination in accordance with the Civil Code was contrary because ignorance led them to the civil registry office to ask for the legalization of their illegitimate children. Where in the deed issued by the civil registry office it is stated in the title of the deed citation that the Deed of Legalization of Children Out of Wedlock which does not affect the status, rights or status of the child's position. In PERMENDAGRI Number 108 of 2019 concerning Regulations for the Implementation of Presidential Regulation Number 96 of 2018 in Articles 75-79 concerning the Registration of Child Legalization, it is explained that before the parents carry out a legal marriage according to religious law or their beliefs, it is necessary to legalize children for Indonesian citizens and foreigners in Indonesian territory. This can be seen in the Tenth Part of the rule.

In order to comply with the applicable legal provisions, this couple is required to register the marriage determined by the Court first. Thus, the process of certifying the child's status as a biological child can be continued.

CONCLUSION

The ethnic Chinese inhabitants living in Indonesia still preserve the traditions of their cultural customs, including in the case of customary marriages. Prior to the enactment of Act No. 1 of 1974, marriages were considered legitimate only by carrying out various processions characteristic of their culture, but once the Marriage Act was enacted, Chinese ethnic communities had to comply with applicable national laws. Therefore, there is a cultural shift where customary marriages are merely portrayed as preserved cultural symbols, not as legitimate definers of a marriage. Marriages traditionally entered into without civil registration, as found in this study, have legal consequences that include the status of marriage deemed invalid as well as its impact on the status and rights of the child. One solution to this research problem is that Chinese customary institutions such as PSMTI can play an active role in supporting and facilitating the Chinese community to make adjustments to customary marriage traditions with applicable legal provisions.

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