

Reconstruction of Marriage Registration Post Decision of The MK RI No. 46/Puu-Viii/2010 Jo Perspective of Sharia Maqoshid

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ABSTRACT (10 PT)

Indonesia in the 1945 Constitution of the Republic of Indonesia Article 1 paragraph 3 "Indonesia as a State of Law, that in Law No. 1 of 1974 in conjunction with UUM No. 16 of 2019 concerning Marriage. The position in the registration of marriages is considered to be still a legal problem that develops in the understanding that questions the urgency or importance of a marriage that is not registered. Treatment that looks down on the position of women is certainly increasingly unpopular to be accepted now and in the future.

The position of marriage without being recorded in the intention of defrauding the principle of transparency can certainly be seen as an irresponsible act in the current state of the values of public awareness. Moreover, by utilizing the syara' argument which actually does not have a correlation with the prohibition of marriage registration, even all worship activities must represent a form of protection for others.

The purpose of this writing is to find out the extent to which the application of the legal consequences of the Constitutional Court's Decision No. 46/PUU-VIII/2010 in terms of the law of marriage registration; and is there an Urgency of Legal Problems regarding the Reconstruction of the Implementation of Marriage Registration so that it can be accepted and applied in society in the Maqoshid Syariah Perspective.



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INTRODUCTION

Indonesia is a nation state so that the legal development that occurs does not adhere only to a secular legal system and is not a religious state. However, based on the Pancasila philosophy where the development of a developing legal system recognizes religious law, customary law, and western law, the Dutch colonial heritage. The three legal systems characterize the formation and implementation of marriage law in force in Indonesia. Especially the influence of Islamic law is very dominant in its relevance in the formation of positive law as the number of Muslims is the largest number of citizens at 86.7% of the total population of Indonesia.

The demographic size of the Muslim population determines the formation of applicable marriage laws with the dominance of the influence of Islamic law in the soul and content of the provisions of the applicable marriage law through Law no. 1/1974 concerning Marriage (UUP). The magnitude of this influence is intertwined in the attractiveness of its legislative efforts so that it accommodates the distribution of existing Muslim interests. However, the provisions in the marriage law must lead to one meaning and avoid associations or divergences that can lead to multiple interpretations which must be avoided in the ideal of universality of a law.

The dominance of Islamic values in the UUP has given rise to multiple interpretations that lead to the determination of different fiqh within Muslims themselves when viewing or interpreting guidance based on existing syara'. The organic formulation of the UUP is influenced by the attraction of the political power of each proponent of the opinion of the meaning of a certain interpretation. Both the influence of individuals, community organizations, to political parties so that a content of the article is found that actually contradicts the usual provisions of making legislation.

In subsequent legal developments through the formation of new rules after 17 years of the UUUP running, Presidential Instruction No. 1/1991 concerning the Dissemination of the Compilation of Islamic Law (KHI) which reflects the subsequent ambiguous protocol. Although the contents of the KHI are very strict in determining the further rules regarding marriage, the position of the statute of this Presidential Instruction is not sufficient to form an order compared to the existence of the law. The coercive power and social binding power of the Inpres institution are less powerful than the law. The continuation of the provisions in the form of the Presidential Instruction is certainly a deliberate political law that has a broad dimension for the implementation of marriage rules. It is very difficult to make uniform acceptance of a rule taken from the frame of *ijtihadi fiqh*, even in dogmatic textual provisions there are often differences in interpretation. The indication of the ease or practicality of making an Presidential Instruction as a guide for religious judges in deciding cases from the resident's prerogative will be much easier than making a new law.

The mechanism for changing the contents of the legislation has begun to be facilitated by the existence of a judicial review of the constitution of the 1945 Constitution at the Constitutional Court (MK) since the enactment of Law no. 24/2003 on the Constitutional Court. Such changes save more time and save all the required resources than drafting a new law. This lawsuit mechanism is also relatively fast and simple that can be carried out by every citizen who is legally capable. This opens up an absorptive dialectical space in addition to reflecting the values that are developing at this time rather than the values when the old law was drafted.

The values that develop in society, including issues of universality, then have a testing room for the values in the old law. Are the values in the old laws still relevant or in sync with the values that develop and apply in today's society? Testing the old value against the new value can produce new values which may seem to be in conflict with the *fiqh* values when the UUP was formed. The differences in the constellations of space and time allow a shift in the value decisions adopted later because the old values are the influence of the political context which is corrected by the development of an increasingly transparent, open, and efficient era. So that the novelty of these values, although different from the old values, is not merely contradictory but rather a development process to seek more concrete truths.

Current developments, marriage registration is considered to be an urgent need in relation to the interests of population data and the legal consequences it causes. Marriage registration is an integral part of the legal protection function of women and their offspring regarding their inheritance law. This is a value whose importance is now increasingly felt in order to protect arbitrary actions or behavior that can result from marriage without registration at the authorized institution.

RESEARCH METHODS

The research methodology in this study uses a thematic juridical normative approach, namely exploring the thematic relations between regulations that reflect the links of interest between them. Using this method is expected to open an understanding of why a statutory regulation needs to be developed and how it is developed along with the elements of the factors that influence it so that it can be applied in the community.

Analytical descriptive research is a research that aims to accurately describe the characteristics of individual facts, groups, and circumstances to determine the frequency of occurrence of something. The intended analysis is based on the description and facts obtained which are analyzed in depth in order to answer the research (Sunaryati Hartono, 1994).

The data sources of this research used secondary data in the form of legislation, literature review of literature books, judge's decisions, journals related to marriage registration law, research report papers, articles, mass media and the internet. This includes researching primary materials through interviews with judges of the Religious Courts and community leaders of religious experts, as well as the Heads of KUA in the City and District of Cirebon.

The data collection technique used by the author here is the method of library research, where the library method is research conducted by analyzing the contents of books or others.

RESULTS AND DISCUSSION

Legislation of a regulation in Indonesia is sourced from the legal substance that applies and is accepted by the community. Which legal substance can come from customary law, western law that has existed and was widely used before, and religious law. In Law no. 1/1974 This UUP is dominantly the influence of Islamic law where the contents of this law are the embodiment of the values contained in Islam with the legal sources of the Holy Book of the Qur'an, hadith, ijma, and qiyas. After the legislation, the values contained therein then become positive law that applies and is binding on all Indonesian citizens. Thus, the values in these sources of law, including those from sources of Islamic law, will apply and bind nationally.

The problem then is the interpretation or understanding of a rule in the source of Islamic law is that it can vary according to individual and institutional interpretations, in addition to the interpretation itself in representing the desired truth is to develop according to time influenced by space, technology, science, until the current context. This is related to the fact that the Qur'an which is the main source of Islamic law as a guide for all human beings in the context of constructing a just life order based on ethics and continuing to exist in this life must continue to be reinterpreted as an eternal necessity.

This growing understanding must then be consolidated into a sentence that contains a certain will in positive law because law as *lex scripta* or written must be able to represent legal certainty. The input instrument of positive legal sources that have differences between thoughts (horizontal variant) and at the same time the necessity of building meaning (vertical variant) which is then applied to all heterogeneous citizens will certainly experience many obstacles in its implementation independently. Or the existing compliance is narrow and vulnerable to the growing demands for fair treatment (equality) in society. So it can be understood that in this case it requires a kind of legal cluster because of the absolute differences that exist, such as the difference in rules in each religion.

In addition, the previous existence of horizontal and vertical variants, requires more integrated meaning of interpretation from positive legal sources that exist in the current context so that there is a single meaning of positive legal rules. A dynamic conclusion point is needed from an interpretation of Islamic law sources to determine a more coherent fiqh system to be brought to the unification of positive law. Therefore, later in the sub-discussion of the problem, the fiqh space needed to help explore this research on marriage, just polygamy, marriage registration, the relationship between men and women and children, equality, is associated with population administration and legal responsibilities that surround it.

The problem became more ambiguous when the Constitutional Court's decision No. 46/PUU-VIII/2010, where the decision is the result of a judicial review of Article 2 paragraphs (1) and (2) of Law no. 1/1974 UUUP so that the result of the unity of the UUP associated with the Compilation of Islamic Law (KHI) does not have a coherent flow of content and objectives. Definitions and relations of marriage and the obligation to register marriages are placed outside the UUP and KHI rooms so that the significance of UUP and KHI seem barren. In addition to the obligation to reposition this situation, a reconstruction effort is needed on how to arrange for the integration of laws to occur in an effort to organize people's lives with dignity, keep away evil, and always try to find benefits for legal events that occur. At least it can be seen that since the problem arose until the Constitutional Court's decision was made, there was no attempt to correct the law either from the government or from the legislature, so that it seemed as if this problem had dragged on without any improvement while the dysfunction of the marriage law was real and continues to occur in society.

The history of written marriage law in Indonesia can be classified into 3 periods of manufacture, namely before independence until 1946, 1946 - 1973 and 1974 - present. The marriage laws left by the Dutch are: 1. For native Indonesians who are Muslims, religious laws that have been prescribed in customary law apply. 2. For other native Indonesians, customary law applies. 3. For native Indonesians who are Christians, the *Huwelijks Ordonantie Christen Indonesia* (HOCI) in *Staatsblad* 1933 No. 74. 4. For Chinese foreigners and Indonesian citizens of Chinese descent, the provisions of the Civil Code with minor changes (*Burgelijk Wetboek*) apply. 5. Share

CONCLUSION

The problem of Law Enforcement in Indonesia regarding the importance of Position in Marriage Registration which develops in the understanding of weak implementation, this must be realized by strengthening Socialization in the Community.

The urgency of an unregistered marriage becomes even more ambiguous when referring to the Constitutional Court's decision no. 46/PUU-VIII/2010, where the decision is the result of a judicial review of Article 2 paragraphs (1) and (2) of Law no. 1/1974 UUUP that, in the Marriage Law which is associated with the Compilation of Islamic Law (KHI) does not have a coherent flow of content and purpose.

That the position of marital problems must be carried out by recording marriages placed outside the UUP and KHI rooms so that the importance of the presence of UUP and KHI is to protect according to regulations and not seem sterile

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