

The Urgency of Involving the Indonesian Confucian Religion High Council in the Marriage Registration Process as a Development of an Orderly Model of Population Administration

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Abstract. Marriage registration is a clear proof of the validity and existence of a marriage that is recognized in the eyes of the state. Therefore, registration of marriage is a state obligation as a manifestation of carrying out the mandate of the constitution by guaranteeing the freedom to embrace a religion or to carry out worship in accordance with one's religion. Marriages carried out in accordance with religious law are indeed legal under religious law, but with the many problems faced by Confucians in Indonesia who do not have easy access to information to file a marriage registration at related agencies, the legal consequences are complex. This includes: recognition of children born from marriages of the Confucian religion who are not registered at the Population and Civil Registry Service or do not receive legal protection as a consequence. In addition, it describes the role of the Population and Civil Registration Service and involves the Indonesian Confucian High Council in response to the Circular of the Minister of Religion No. MA / 12/2006 on January 24, 2006 regarding the explanation of Confucian marital status.

Keywords: Administration; Marriage Registration; Religious Law

1 Introductions

Marriage is a sacred event that occurs in a phase of human life. Marriage in Islam is the religion of the majority of the Indonesian population which has legal protection in administrative marriage registration. Dian Mustika stated that: Basically, marriage records are not regulated in texts, either in the Koran or in the Sunnah. This is different from the muamalat transaction which in the Qur'an is instructed to record it. On this basis, fiqh does not consider the existence of marriage registration important. However, along with the times, the existence of authentic evidence against a marriage is considered as a form of family law reform carried out by countries in the Islamic world.

As a country that has a diversity of ethnicities, customs, religions and cultures which have implications for various ways of worship and traditions. This diversity can also be seen, one of which is in marriage. Marriage is considered a sacred event, where there are two parties who agree to bind themselves to become a family, get recognition in the eyes of family, religion, society and state law. Indonesia as a multi-ethnic, cultural and religious country implements a

variety of marriage laws and is divided into several groups, one of which is according to the ethnic / religion adopted by the prospective bride, as happened to the Chinese / Chinese ethnicity / ethnicity.

The presence of Law no. 1 of 1974 concerning Marriage, Inpres No. 6 of 2000 concerning the Revocation of Presidential Instruction No. 14 of 1967 concerning Religion, Beliefs, Chinese Customs and the Circular of the Minister of Religion No. MA / 12/2006 on January 24, 2006 regarding the explanation regarding Confucian marital status has not been a strong enough stimulus for the Department of Population and Civil Registration to respond that marriage registration for Confucians can be implemented properly. It is further stated that the presence of the Department of Population and Civil Registration without a special unit for recording Confucian marriages is only a top-down sterile regulation, does not reflect legal awareness for the real community, so that the realization of equal religious rights in carrying out marriages that are legal in the eyes of the state is only a utopia.

The reality of the implementation of the existing regulations will be examined to answer the problem:

- a. How is marriage registration accepted and applied by the Department of Population and Civil Registration?
- b. What is the trend of the development of Confucian marriage registration at the Population and Civil Registration Service after the issuance of the Circular of the Minister of Religion No. MA / 12/2006 on January 24, 2006 regarding the explanation of Confucian marital status as a step forward in supporting orderly population administration?

On the basis of the above problems, this study aims: 1) to critically describe the reality of the application of Confucian marriage registration at the Department of Population and Civil Registration. 2) describe the development trend of Confucian marriages registration by the Department of Population and Civil Registration in Indonesia.

2 Research Methods

Socio-legal was selected in this study, socio-legal studies in the opinion of Irianto⁴⁵⁶ identified through 2 things, namely:

- a. Socio-Legal Studies conducts textual studies of legislation and policies critically to explain the philosophical, sociological, and juridical problematics of written law. Thus it is known what it means and how it has implications for the subject of the law.
- b. Socio-legal studies using various new methods of marriage results between legal research methods and social science research, such as socio-legal qualitative research and socio-legal ethnography. The use of such interdisciplinary methods may explain very broad legal phenomena such as power relations in the social, cultural, and economic contexts in which the law is located.

The method of legal science research used is qualitative research with phenomenological approach that provides a description of the reality of confucian marriage recording in a phenomenological perspective. From a phenomenological perspective it departs not on the basis of normativity and or on what it should be (Das sein) that refers to the reality that occurs. This research unit is in the Office of Population and Civil Registry as a stakeholder in the recording of Confucian marriage. The study subjects were selected purposively based on statistics on the percentage and total results of confucian marriages that have or have not been recorded in the Civil Population and Recording Service as the final result that was

successfully excavated in outline the commitment of the Ministry of Population and Civil Registry in the implementation of Confucian marriage records to implement basic human rights protections of Confucian religious converts.

Data collection begins with secondary data collection, with online sources from the Civil Population and Recording Service and the Central Bureau of Statistics by prioritizing the search for data based on Confucian religions used as samples through interviews. While data analysis has begun from the initial process of research divided into three stages, namely: data reduction, data display (data model) and withdrawal of conclusions.

3 Results and Discussion

3.1 Marriage, Marriage Registration, and Marriage Regulation in Indonesia

Confucius is a faith tradition embraced by the majority of ethnic Chinese, which comes from the root of the *ru jiao* word built from *Ren* (man) and *Xu* (need) can have the meaning that it is necessary for man to fulfill his human nature in accordance with the provisions of *Tien* (God) or *Shangdi* (Almighty). The meaning of marriage according to Confucian is set out in *Li Ji's* book *XLI: 1 and 3* about *Hun Yi* (Truth of The Meaning of Marriage Ceremony), namely: that the wedding ceremony intends to unite the seeds of goodness / love between two different human families; to create devotion to God and ancestors (*Zong Miao*), and downwards continue generations of. Prior to Law No. 1 of 1974 on Marriage, Indonesia implemented a diversity of regulations on Marriage including:

- a. For indigenous Indonesians who are Muslims apply Islamic Religious Law that has been resipier in The Customary Law;
- b. For other indigenous Indonesians, customary law applies;
- c. For native Indonesians who are Christian, *Huwelijks Ordonantie Christen Indonesiers* (S.1933 Number 74);
- d. For Foreigners of China and Indonesian citizens of Chinese descent, the provisions of the Civil Code apply with little change;
- e. For other foreign Easterners and Indonesian citizens of other Eastern Foreign descent, their customary law applies;
- f. For Europeans and Indonesian citizens of European descent and who are likened to those applying the Civil Code.

Law No.1 of 1974 on Marriage formulates the definition of Marriage as follows: Meanwhile, the validity requirement of a Marriage formulated through Article 2 paragraph (1) of Law No.1, 1974 on Marriage, states: "Marriage is legal, when it is done according to the law of each religion and its beliefs. "Marriage is the inner birth bond between a man and a woman as a husband and wife with the aim of forming a happy and eternal family (home) based on the One Godhead."

Then further outlined in The Explanation of Law No.1 Year 1974 as follows: "As a Country based on *Pancasila*, where the First Glare is the One True Godhead, then marriage is very closely related to religion / inner/batin, so that marriage not only has the inner/ batin element also has an important role to form a happy family closely related to offspring, which is also the purpose of marriage maintenance and education becomes the right and obligation of parents. Confucius has the legal conditions of marriage according to *Ko Tjay Sing*, as well as the following conditions:

- a. Formil's condition, are formal requirements consisting of formalities that precede in marriage. Article 3 to Article 9 pp No.9 of 1975 on The Implementation of Law No.1 year 1974 on Marriage there are 3 stages that must be fulfilled, namely:
 1. Notice to the Registrar of Marriage;
 2. Research of the conditions of marriage
 3. Announcement of the notice to have the marriage.
- b. Material terms, namely: conditions regarding those who wish to marry and permits to be granted by third parties in the case specified by the Law. Furthermore, the material requirements are divided into two categories, namely:
 1. Absolute Materil Terms, which means that the conditions that must be fulfilled by each person who wants to marry, regardless of who he wants to marry.The terms are:
 - a) Marriage shall be based on the consent of both prospective spouses in Article 6 paragraph (1) of Law No.1 in 1974 on Marriage.
 - b) A person who has not reached the age of 21 must obtain the permission of both parents in Article 6 paragraph (2) of Law No.1 year 1974 on Marriage;
 - c) Marriage is permitted if the male has reached the age of 19 years and the woman has reached the age of 16 years in Article 7 paragraph (1) of Law No.1 year 1974 on Marriage.
 - d) For women who break up their marriages, the waiting time in Article 11 of Law No.1 in 1974 on Marriage.
 2. Relative material terms, that the conditions for the party wishing to marry.A person who has met the absolute material conditions is allowed to marry, but he shall not marry any person.With whom to marry must meet relative material requirements among them are:
 - a) Marriage is forbidden between two people who:
 - 1) Relate blood in the lineage down and up;
 - 2) The relationship of blood in the sideways lineage, namely between a brother, between a parent's brother and between one and his grandmother's brother;
 - 3) Related to semenda, namely martua, stepdaughter, son-in-law and stepmother;
 - 4) Related, namely the parents of milk, susuan children and milk aunts;
 - 5) Relate to a relative, or as an aunt or niece of a wife, in the case of a husband with more than one wife;
 - 6) Who has a relationship by his religion or other regulations applicable in Article 8 of Law No.1 in 1974 on Marriage.
 - b) A person who is still married to another person, except in the case stated in Article 3 paragraph (2) and Article 4 of Law no. 1 of 1974 concerning Marriage
 - c) If a husband and wife who have remarried with one another and are divorced for the second time, then between them the remarriage may not be held, as long as each of their respective religions and beliefs does not specify otherwise in Article 10 of Law No. 1 of 1974 concerning Marriage.

3.2 Development of Marriage Registration by Involving the Indonesian Confucians High Council as an orderly effort of Population Administration.

The development of human rights recognition of religious adherents has continued to change from time to time, including during the period when President Abdurrahman Wahid or Gus Dur who became known as the Father of Pluralism issued Presidential Instruction No. 6 of 2000 concerning the Revocation of Presidential Instruction No. 14 of 1967 concerning Religion, Beliefs, and Chinese Customs as an effort to provide protection and recognition for Confucianism as a recognized in the Republic of Indonesia. Furthermore, the issuance of the SE Minister of Home Affairs No. 477/74054/BA.01.2/4683/95 on November 18, 1978, which stated that the official religions recognized by government namely Islam, Christianity, Catholicism, Hinduism and Buddhism, were considered as creating a vacuum for Confucianism to be recognized equally with other religions in Indonesia.

The protection and regulation of human rights and citizens in Indonesia have actually been regulated and become one of the goals of the nation in Preamble of the 1945 Constitution of the Republic of Indonesia which states that the independence of the Indonesian people is achieved, "by the blessing of Allah the Almighty and driven and by a noble desire" based on profound/ divine philosophy in the Preamble to the 1945 Constitution of the Republic of Indonesia or Constitutional theology, freedom of religion/belief, practicing worship according to the religion or belief held, citizens should receive equal recognitions and protection regardless of the majority or minority religions groups. The idea of a rule of law or "Rechtstaat" which is the basis for determining the direction of policy and the goals of the nation and state is explicitly stated in 1945 Constitution of the Republic Indonesia. According to the Julius Stahl, the concept of a rule of law consists of several elements, namely:

- a. Protection of Human Rights
- b. Power Sharing
- c. Government based on Law
- d. State Administrative

Meanwhile A.V Dicey further describes the characteristics of the rule of law with the term "Rule of Law," namely: Supremacy of Law; Equality Before the Law; and Due Process of Law. One of the main characteristics of a Modern Rule of Law Country is the guarantee of the human rights which is regulated through its Constitution with a long history of development. In line with this, the founding fathers and mothers have also thought about fulfillment of Human Rights (HAM) and the rights of citizens through the 1945 Constitution of the Republic of Indonesia. Provisions regarding human rights of citizens are then significantly increased in the 1945 Republic of Indonesia Constitution after amendments.

The provisions of Article 28E paragraph (1) and (2) of the 1945 Constitution of the Republic of Indonesia state that the right to freedom of religion can not be separated from the freedom believe of beliefs, express thoughts and attitudes according to one's conscience. However, the ideal of equality, providing protection to practice one's respective religions and beliefs has not been fully implemented as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia, by looking at the provisions contained in Presidential Instruction No. 14 of 1967 which prohibits all activities related to Chinese actually makes the Chinese people who adhere to Confucianism feel as stepchildren in the Republic of Indonesia because of the government's lack of attention to guaranteeing Confucian followers to practice their religion and beliefs.

Agus Riewanto in his writing entitled Ethnic Chinese, Confucianism, and Human Rights stated that if the religion and belief on majority of ethnicities, namely Confucianism, have

been recognized as being equal to other religions, there is actually no reason to refuse the registration of marriage for these ethnic groups at the civil registration office. This is resulted in an imbalance of legal regulations of marriage registration mechanism, because it only relies on the Circular of the Minister of Religion No. MA /12/2006 on January 24, 2006 regarding the explanation of Confucian marital status.

The importance of marriage registration for the Indonesian people, including followers of the Confucian religion and referring to Presidential Decree No. 12 of 1983 then the existence of the Department of Population and Civil Registration is increasingly clean and carrying out its duties and functions with the authorities they have, regarding a person's civil status in marriage, divorce, recognition, child legalization and adoption. Meanwhile the authority in the field of civil registration is the Department of Population and Civil Registration.

- a. Organizing the recording of quotations/ birth certificates, deaths, divorces for non-Muslims, as well as certificates of recognitions and adoption of children.
- b. Organizing counseling and developing activities in an effort to improve orderly population administration.
- c. Provides material for the formulation of policies in the field of population and citizenship.

As for the role of the Civil Registry Office in terms of implementation the marriages is:

- a. Receiving marriage notification in carrying out marriage registration, both prospective brides must meet administrative requirements at the Civil Registry Office. If there is someone who want to get married at the Civil Registry Office, that person must come to Civil Registry Office employee, then they express their desire to carry out the marriage at Civil Registry Office Concerned. The statement is made at least 10 (ten) working days before the marriage take place unless there is an important reason given by the Camat on behalf of the Regent, the Head of the Level II Region, permitting to deviate from this provision.
- b. Notification is made verbally by one or both of the prospective brides or parents or guardians. However, if there is any reason that the notification of this desire to carry out the marriage verbally is not possible, then the notification can be in writing. Then fill out form Model 11 (Application Form for Marriage Registration).

Since January 26, 2006 with the issuance of the Circular of the Minister of Home Affairs No. 470/336/SJ regarding population administration services for Confucians have the right to able to register marriages at the Population and Civil Registration Service as also regulated in higher regulatory hierarchy, namely Article 2 letter (b) of Law No. 24 of 2013 concerning amendments to Law No. 23 of 2006 concerning Population Administration, every resident is obliged to report population events that he has experienced by meeting the requirements to the Department of Population and Civil Registration.

4 Conclusion

- a. With the adoption of the notion of modern rule of law, making the government responsible for realizing human rights justice through established legal products and policies. The idea of a rule of law contained in the part of the explanation which emphasizes that "rechtstaat" not "machtstaat" which the founding fathers and mothers aspired to have become the spirit in the joints of the life of the nation and state since the early days of independence. This is in line with the theology of the Constitution, concerning the first principle of Pancasila which states YME divinity. Then through the

third amendment to the Constitution in 2001, it was reaffirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic Indonesia accompanied by the recognition and protection of human rights for all Indonesian people, and further responded through Law No. 1 of 1974 concerning Marriage, the material on the Confession and Registration of Marriage for followers of the Confucians religion can be accommodated in Regional Regulation as a guarantee of legal certainty for the registration of Confucians Marriages in the regions.

- b. In the future, the formation of the Sub-Divisions of Marriage Registration, Education and Guidance for the Konghucu/Confucians Community Population and Civil Registration Service together with the District Court to ensure the implementation of the issue of equality of human rights for religions adherents in Indonesia is a necessity. So, it can respond to the legal events of Confucians Religion and cooperate with the Indonesian Confucian Religion High Council (MATAKIN), ministries and state institutions and existing NGO's.

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- [4] Inpres No. 6 tahun 2000 tentang Pencabutan Inpres No. 14 tahun 1967 tentang Agama, Kepercayaan, Adat-Istiadat Cina
- [5] Instruksi Presiden No. 14 tahun 1967 tentang Agama Kepercayaan dan Adat Istiadat Cina.
- [6] officially called amendment, there were only seven formulations concerning the Constitutional guarantee of the Human Rights As stated in Article 27 paragraph (1) and (2), Article 28, Article 29 paragraph (2), Article 30 paragraph (1), Article 31 paragraph (1) and Article 34. Whereas in 1945 Constitution after the amendment there are 26 formulations regarding human rights guarantees contained in Article 28A to Article 28J plus several other provisions scattered in several articles
- [7] Keputusan Presiden No. 12 tahun 1983 tentang Penataan dan Pembinaan Penyelenggaraan Catatan Sipil
- [8] Ko Tjai Sing, *op.cit.*, hlm. 114
- [9] MATAKIN, *Kitab Li Ji*, (Jakarta: Pelita Kebajikan, 2008), hlm. 686
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