

**THE LEGALITY OF MARRIAGE ACCORDING TO LAW NO. 1 OF 1974
CONCERNING MARRIAGE IS REVIEWED FROM THE LAW OF THE
AGREEMENT**

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ABSTRAK

Kepastian hukum merupakan indikator suatu hukum masuk dalam kategori hukum yang baik, fakta tentang sahnya suatu perkawinan telah menimbulkan multitafsir di kalangan para ahli dan masyarakat khususnya di kalangan umat Islam. Hal ini terlihat dari pernyataan anggota masyarakat bahwa “perkawinan rahasia” sebagai perkawinan yang sah menurut agama meskipun tidak dicantumkan. Perjudohan dalam suatu masyarakat dimaksudkan untuk memecahkan masalah dalam lingkup hukum keluarga dan perkawinan, bukan untuk menimbulkan masalah baru dalam masyarakat. Masalahnya adalah bagaimana keabsahan hukum perkawinan dilihat dari sudut perjanjian, dengan harapan untuk memperolehnya. kepastian tentang penafsiran yang benar tentang keabsahan perkawinan, sehingga kebingungan tentang keabsahan suatu perkawinan dapat diselesaikan. Dilihat dari segi hukum perjanjian, Perkawinan termasuk dalam perjanjian hukum keluarga dan menurut ketentuan perjanjian ini dikategorikan sebagai perjanjian formal. perjanjian, artinya perjanjian itu lahir dan mengikat secara hukum apabila syarat dan tata cara (formalitas) perkawinan menurut UU No. 1 Tahun 1974 jo. No PP. 9 Tahun 1975 terpenuhi. pencatatan perkawinan secara yuridis merupakan syarat untuk memperoleh pengakuan dan perlindungan dari negara serta mengikat pihak ketiga: (orang lain) menurut aspek peraturan c Tata cara dan pencatatan perkawinan mencerminkan suatu kepastian hukum, karena adanya perkawinan dibuktikan dengan akta perkawinan. Akibat selanjutnya, dalam pandangan hukum perkawinan tidak sah jika perkawinan itu tidak memenuhi tata cara dan pencatatan perkawinan.

Kata Kunci : Keabsahan Pernikahan, Hukum Perjanjian

ABSTRACT

Legal certainty is an indicator for a legal into good legal category, the fact about the validity of marriage has led a multi interpretation among the experts and the society, especially among Muslims. This is shown in the society members statement that "the secret marriage" as a valid marriage according to religious even it is not listed. " Arranged marriage in a society is intended to solve problems within the scope of family law and marriage, not to create new problems in society. the problem is how the legitimacy of the marriage law seen from the viewpoint of the agreement, with expectations to obtain certainty about the right interpretation of the validity of marriage, so the confusion about the validity of a marriage can be resolved. Seen from

the viewpoint of the legal agreements, Marriage included in family laws agreements and according to the provisions this agreements are categorized as a formal agreements, it means that the agreement was born and legally binding if the requirements and procedures (formality) of marriage according Act No. 1 Year 1974 jo. No PP. 9 Year 1975 fulfilled. Afterwards, from the binding aspect, the function of marriage records juridically is a requirement in order to obtain recognition and protection from the state and binding the third party: (others). According to the regulatory aspects the procedure and the registration of marriages reflect a legal certainty, as the result the existence of marriage proved by a marriage certificate. As a further consequence, in the law viewpoint a marriage is invalid if the marriage did not comply the procedure and registration of marriage.

Keywords: *Validity of marriages, Law Agreement*

INTRODUCTION

Law No. 1 of 1974 concerning Marriage, further written Law No. 1 of 1974, was issued so that there is legal unification and there is legal certainty in the field of marriage law in Indonesia. This can clearly be read from the sound of Article 66 of Law No. 1 of 1974 which formulates: "For marriage and everything related to marriage under this Law, then with the enactment of this Law the provisions stipulated in the Civil Law Code (*Burgelijk Wetboek*), The Christian Indonesian Marriage Ordinance (Huwelijks Ordonnantie Christen Indonesiaers: 1933 No. 74), Regulation of Mixed Marriage (*Regeling op de gemeng de Huwelijken* S. 1898 No. 158), dan Peraturan-peraturan lain yang mengatur tentang perkawinan sejauh telah diatur dalam Undang-undang ini dinyatakan tidak berlaku".

Prior to the enactment of Law No. 1 of 1974, in the legal order in Indonesia as a legacy of the colonial legal system that applies on the basis of Article II of the Transitional Rules of the 1945 Constitution (Article 131 IS jo Article 163 IS), namely: for indigenous Indonesians who are Muslim, religious law that has been replicated in customary law, for other indigenous Indonesians applies customary law, for native Indonesians who are Christians apply Huwelijks ordonantie Cristen Indonesia (S. 1933 Number 74), for Chinese Foreign Easterners and Indonesian citizens of Chinese descent applies the provisions of the Civil Law Code with little change, for other Foreign Easterners and other Indonesian citizens of Foreign Eastern descent applies their customary laws, and for Europeans and Indonesian citizens of European descent and equated with them applies the Civil Code.

After the enactment of Law No. 1 of 1974 the orientation of law in the framework of the renewal and development of national law, is not familiar with the classification of the people and the application of legal unification for Indonesian citizens, there is a legal view that considers the inclusion of religious law in the National Law framed in the concept of legal unification, so that there is unification but also accommodates pluralism in the legal sector (legal marriage), This means that religious law, especially Islamic law, is gaining legitimacy as a positive law in Indonesia, and the enactment of Islamic law must be interpreted still within the corridors of legal unification. In National Law, especially in Law No. 1 of 1974, there are still nuances of law that are derived from legal values and understanding (*begrip*) or concepts of Islamic law, Customary Law and Civil Code.

Only in this case should it be noted that the nuances introduced (*introdusir*) to citizens should be understood in an atmosphere of legal unification.

One of the important aspects of the law to observe is the validity of marriage with the number of members of society who practice "marriage sirri", in the event that a legal marriage will place the position of man and woman in the social aspect in a position of respect, in accordance with his position as an honorable creature, and in the legal aspect will get legal protection of his rights and obligations. Legal certainty is an indicator that a law falls into the category of a good law, the reality that occurs regarding the legality of marriage¹ has led to multi-interpretation among experts and the public, especially among muslims. This is evident in the statement of a member of the public stating that "sirri marriage as a legal marriage according to religion even though it is not recorded". From this statement there are at least two things that can be criticized, namely:

First, the definition is valid according to religion. Legal marriage according to religion refers to the notion of legal marriage according to the provisions of Islamic Law, but does not follow the legal methods as stipulated in Law No. 1 of 1974, especially related to the terms of marriage jo. Government Regulation No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974, so that sirri marriage is also known as a form of marriage under the hands.

Second, it's not recorded. Sirri marriage is not recorded because the category is as a marriage under the hands, and the recording of marriage does not approve a marriage because it is only a mere administrative act, which approves marriage if the marriage is carried out in meeting the conditions of marriage as stipulated in Law No. 1 of 1974 jo. Government Regulation No. 9 of 1975.

The legality of marriage has been clearly regulated systematically in Law No. 1 of 1974, and marriage is also an act of covenant law in the field of family law. The problem is about the interpretation to understand the purpose and content of the provisions in Law No. 1 of 1974 jo. Government Regulation No. 9 of 1975 concerning the legality of marriage and considering that marriage is also a legal act that occurs due to an agreement in the field of family law, then the problem can be determined how legal marriage as stipulated in Law No. 1 of 1974 is reviewed from the point of view of treaty law, in the hope that clarity may be obtained about the proper interpretation of the validity of marriage; So that confusion in the understanding of the validity of marriage can be resolved.

Problem Formula

Based on the explanation on the background, the formulation of the problem in this study is how legal marriage according to law no. 1 of 1974 on marriage is reviewed from the law of agreement.

RESEARCH METHODS

Based on these objectives, this study uses normative juridical approach methods, namely by reviewing and testing related legal aspects and their implementation.

RESULT AND DISCUSSION

¹ Tri lisiani Prihatinah, Philosophical Review of Law No. 1 of 1974, Journal of Legal Dynamics, Vol. 8, No. 2, May 2008.

People's perceptions of marriage are often confused with the term marriage, the two terms actually have different understandings. But since the use of the term marriage in Law No. 1 of 1974, then technically juridical confusion of understanding should no longer be a problem; In the sense of the sense it has been given officially by the legislator and becomes an official understanding.

From the point of view of the language of the word marriage comes from the word "marriage" which is a translation of the Arabic "marriage". The word "marriage" contains two meanings, namely in the true sense (haqikat) means gathering and in a figurative sense means aqad or entering into a marriage covenant. According to Islamic law, marriage is a noble and sacred aqad between a man and a woman who is the legal cause as a husband and wife and the smoothness of sexual relations with the aim of achieving a family full of affection, virtue and mutual resentment, a situation commonly called *sakinah*, while the understanding of marriage according to Law No. 1 of 1974 as formulated in Article 1 of Law No. 1 of 1974 determines the understanding of marriage. Marriage is a bond of inner birth 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 Supreme Divinity.²

Article 1 of Law No. 1 of 1974 not only formulates the meaning of marriage, but there is also the purpose of marriage. According to K. Wantjik Saleh, the meaning of marriage is: the bond of birth and mind between a man and a woman as a husband and wife, while the "purpose" of marriage is to form a happy and eternal family (household) based on the Supreme Divinity.³

The purpose of marriage according to Law No. 1 of 1974 has been formulated ideal because not only looking at the birth but at the same time there is an inner relationship between husband and wife aimed at building a family or household that is eternal and happy for both and in accordance with the will of God Almighty.⁴ Furthermore, by J. Satrio explained, that according to Law No. 1 of 1974 a marriage is not just an agreement between husband and wife, but a sacred inner birth bond with the aim to form a happy household / family based on the Supreme Divinity. He explained that what is meant by family is in the sense of a family of *batih* (*gezin*), consisting of a husband and wife and children. Furthermore, he argued that obtaining / having children is included in the purpose of marriage, it is in line with the explanation of Article 1 of Law No. 1 of 1974 that forming a happy family is closely related to offspring, which is also the purpose of marriage.⁵

The formulation of the definition of marriage as stipulated in Article 1 of Law No. 1 of 1974 above can clearly be stated that a marriage is an agreement that occurs because of an agreement. The next can be explained as follows. First, the terms of the agreement. Marriage is a bond, so marriage is a legal relationship born of a covenant, and must meet the legal requirements of the agreement, namely the existence of agreement, manners, certain things and the *kausanya halal* (Article 1320 *kuh civil*). According to Law No. 1 of 1974, marriage must meet the requirements of the agreement (agreement) between the bride and groom (Article 6 paragraph (1) of Law No-mor 1 of 1974). Then to bind the agreement or to give

² Sudarsono, 2005, *National Marriage Law*, Jakarta: Rineka Cipta, p. 2.

³ Saleh, K. Wantjik, 1990, *Indonesian Marriage Law*, Jakarta: Ghalia Indonesia, p.

⁴ Prakoso, Djoko dan Murtika, I Ketut, 1987, *Asas-Asas Hukum Perkawinan di Indonesia*, Jakarta: PT Bina Aksara, hlm. 4

⁵ Satrio, J., 1988, *Principles of Civil Law*, Purwokerto: Hersa, p. 53.

consent or agreement must be qualified capable to make the agreement, meaning the ability to be responsible. J. Satrio asserted that the ability to "make" alliances and agreements must be based on the element of "intention" (intentional) and suitable for "agreement" which is a legal action, then in Law No. 1 of 1974 has been determined the criteria of a person declared no longer under the power of parents, meaning that by law is considered responsible (capable), that is when he is 18 years old (Article 47 paragraph (1) of Law No. 1 of 1974. This agreement and ability according to the Civil Code is a subjective condition for the validity of the agreement, meaning that if violated this subjective condition only has the meaning of being canceled. It has been required that for the bride-to-be is already 16 years old and the groom is already 19 years old (Article 7 paragraph (1) of Law No. 1 of 1974), for that it has been determined that for those who are not yet 21 (twenty-one) years old there is still a need for permission from parents (Article 6 paragraph (2) of Law No. 1 of 1974.⁶

The object of the agreement according to Article 1320 of the KuHerdata must be certain, only in this case the object is marriage and according to family law this agreement gives rise to status, namely status as a husband and as a wife. The object of the agreement is the content and achievements that are the subject of the agreement in question. The achievement is a certain behavior (handeling), in this case is the behavior as a husband and as a wife.⁷ Then seen from the lawful kausa of a treaty, and according to Hamaker quoted by J. Satrio it is said that the vows of an agreement are the deliberate result of the act of closing the treaty, which is what is their "goal" (the parties together) to close the agreement, and hence called an "objective objective", to distinguish it from the subjective purpose, by which it is considered a motive, or in another sense a covenant to engender a legal relationship, meaning that between them (the parties) becomes bound to act in a certain pattern, or perform certain actions or do not perform certain actions. In this case the vows of the agreement (marriage bond) can be done if between them there is nothing that prevents the marriage (Article 8 to Article 11 of Law No. 1 of 1974). Thus against the bride and groom who have fulfilled the conditions of marriage, it is considered by law to have fulfilled the objective requirements of the validity of the agreement. Conversely, if for the bride and groom who do not meet the conditions of marriage, it means for them by law is considered not to meet the objective requirements of the validity of the agreement; With the marriage can not be carried out.⁸

Second, the principle of freedom of contract. The principle of freedom of contract as stipulated in Article 1338 of the Civil Code states that people are free to close the agreement, regulate the contents of the agreement and what forms and laws applied to the agreement that will bind its makers. Regarding the principle of freedom of contract in this agreement (marriage bond) specifically for the field of marriage that can be applied only to the element of free people closing the covenant only, meaning that the agreement (marriage bond) is required there must be an agreement based on the freedom to declare the agreement. While regarding the freedom to regulate the content of the agreement and what laws it applies in its agreement there is no freedom, because in accordance with its scope that a marriage

⁶ Satrio, J, 1995, Law of Engagement, Engagement Born From The Covenant, Bandung: Publisher of Citra Aditya bakti, p. 1

⁷ *Ibid*, hlm. 32

⁸ *Ibid*.p. 60-61.

is in the field of family law, then regarding the content of the agreement and what law it applies has been determined by Law No. 1 of 1974, except regarding marriage agreements that are allowed to deviate the law in terms of the consequences of marriage regarding marital property only. .

Third, the principle of the agreement binds the parties who make it. This principle is contained in Article 1338 of the Civil Code which states that all agreements made legally apply as law to those who make them. According to J. Satrio, it is stated unequivocally that the word "lawfully" means "fulfilling the conditions for the validity of the agreement".⁹ So in this case regarding marriage the application of the word "legally" in addition to fulfilling the principles and conditions of the validity of the agreement must also meet the conditions of marriage as stipulated in Article 6 to Article 12 of Law No. 1 of 1974 jo. Government Regulation No. 9 of 1975. Furthermore, it is also mentioned that the word "applies as a law" here is interpreted as binding on the parties who close the agreement as the law also binds people to whom the law applies. Thus for the parties who have closed a covenant, in this case the bride and groom can be interpreted that they have set the law for themselves.¹⁰

The establishment of the law provides an interpretation in the explanation of Article 2 of Law No. 1 of 1974 that absolute marriage must be carried out according to the law of each religion and its beliefs, in the sense that its implementation is always associated with the teachings of each religion and its beliefs, otherwise marriage is considered invalid. The notion of marriage by looking at Article 2 paragraph (1) and paragraph (2) of Law No. 1 of 1974 is no longer only a "legal act" but also a "religious act". Marriage as a "legal act" is characterized by the recording of marriage and as a "religious act" marked by the implementation of marriage according to religious provisions embraced by the bride-to-be who will marry. The interpretation of the validity of marriage embraced by Law No. 1 of 1974 refers to the systematic interpretation, namely interpreting the validity of marriage by linking the provisions of Article 2 paragraph (1) of Law No. 1 of 1974 with provisions governing the terms of marriage in Chapter II from article 6 to article 12 of Law no. 1 of 1974 jo. Article 10 paragraph (1, 2, 3) PP No. 9 of 1975 jo. Law No. 23 of 2006 concerning Population Administration; In other words, the validity of marriage if the marriage is intended to be done by following the marriage procedure and the procedure of recording the marriage.

A treaty is born can be measured the nature of the agreement, which in this case there are 3 (three) categories, namely in agreements in general can be measured from the existence of agreement (consensus principle), on the agreement for the birth of an agreement in addition to the existence of a consensus also measured by the fulfillment of the formalities required by law, in addition to the real agreement of the birth of the agreement also in addition to being measured from the existence of consensus has also been in real submission of objects perja Njiannya. In the terms of marriage, there has been determined the existence of marriage procedures (formalities) stipulated in Article 12 of Law No. 1 of 1974 jo. Article 10 paragraph (10, paragraph (2) and paragraph (3) of PP No. 9 of 1975, then when viewed from civil law, the agreement (marriage bond) is more appropriately categorized as a

⁹ *Ibid*, hlm. 142.

¹⁰ *Ibid*.p. 142.

formil agreement, because the process of carrying out marriage must follow the formalities arranged in the form of marriage procedures.

As outlined above, that the covenant (marriage bond) only binds the parties who close the covenant, namely the groom and the bride. If this concept is applied to the sirri marriage event, then Sirri Marriage is seen from the point of view of the legal agreement "there is a possibility" has fulfilled the validity of the agreement and is based on the principle of coensual only and civil law is only binding between the groom and the bride (husband and wife) only, meaning that other people or third parties are not bound to the Sirri Marriage. So if there is someone else who meets the wife in the Marriage of Sirri, in my opinion juridically it is not an act of unlawful; Because Sirri Marriage in the eyes of marriage law (Law No. 1 of 1974) is not a legal marriage, or in other words in the eyes of the law between them there has never been a legal event of marriage, because it is carried out by not meeting the conditions of marriage as stipulated in Article 6 to Article 12 of Law No. 1 of 1974 jo. Article 10 paragraph (1), paragraph (2) and paragraph (3) pp No. 9 of 1975.

The regulation of the recording of marriage in Article 2 paragraph (2) of Law No. 1 of 1974 and included in the Article on the Legality of Marriage, shows the meaning of a legal marriage and has binding power not only to bind the husband and wife, but also bind the third party (other person) and the award by the third party (other person) and no third party is harmed by the marriage. Thus the recording of marriage has strategic value or serves to determine that the marriage gets state recognition and protection and binds the third party.

CONCLUSION

Viewed from the point of view of The Law of Agreement, it can be concluded that the marriage bond is an agreement in the field of family law and in accordance with its provisions the nature of the agreement is categorized as a formil agreement, meaning that the agreement is born and legally binding if the fulfillment of the terms and procedures (formalities) of marriage according to Law No. 1 of 1974 jo. PP No. 9 of 1975. Then viewed from the aspect of binding, the function of recording marriage juridically is a requirement that the marriage get legal recognition and protection from the state and bind the third party (other person). Viewed from the aspect of regulation, the procedure and recording of marriage reflects a legal certainty, with the determined that a marriage event occurs evidenced by the existence of a marriage certificate. As a further consequence in the legal view no marriage or marriage is invalid if the implementation of the marriage does not follow the procedures and recording of marriages.

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LAWS AND REGULATIONS

Law No. 1 of 1974 on marriage.