



Marriage Appreciation Trust Viewed from Indonesian Positive Law

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Abstract

Indonesian society is the society it consists of from various ethnicity, nation, culture, religion and beliefs are diverse. Indonesian citizen, deep matter implementation his marriage subject to Law No. 1 of 1974, however only for people whose religion and beliefs recognized by the state. Objective from study This is analyze validity marriage devout trust seen from regulation the prevailing laws and regulations in Indonesia. Study This done with use method law normative through studies library. The resulting research results is after legalized Regulation Government Number 40 of 2019 concerning Implementation Constitution Number 24 of 2013 concerning Administration Population. So that he admitted marriage devout trust in Indonesia in law positive, with implementation marriage through procedures that have determined in regulation legislation. Is one _ proof that law positive in Indonesia, admitted existence devout trust after exists decision court Constitution.

Keywords: Marriage, Appreciation Trust, Positive Law

Abstrak

Masyarakat Indonesia adalah masyarakat yang terdiri dari berbagai macam suku, bangsa, budaya, agama dan kepercayaan yang beraneka ragam. Warga Negara Indonesia, dalam hal pelaksanaan perkawinannya tunduk pada Undang-Undang No. 1 Tahun 1974, namun hanya bagi mereka yang agama dan kepercayaannya diakui oleh negara. Tujuan dari penelitian ini adalah menganalisis keabsahan perkawinan penghayat kepercayaan ditinjau dari peraturan perundang-undangan yang berlaku di Indonesia. Penelitian ini dilakukan dengan menggunakan metode penelitian hukum normatif melalui studi kepustakaan. Hasil penelitian yang dihasilkan adalah setelah disahkannya Peraturan Pemerintah Nomor 40 Tahun 2019 tentang Pelaksanaan Undang-Undang Nomor 24 Tahun 2013 tentang Administrasi Kependudukan. Sehingga perkawinan penghayat kepercayaan di Indonesia diakui secara hukum positif, dengan pelaksanaan perkawinan melalui prosedur yang telah ditentukan dalam peraturan perundang-undangan. Hal ini merupakan salah satu bukti bahwa hukum positif di Indonesia, mengakui eksistensi penghayat kepercayaan setelah adanya putusan Mahkamah Konstitusi.

Kata kunci: Perkawinan, Kepercayaan Penghayat Kepercayaan, Hukum Positif

I. Introduction

Indonesia is a country whose people consists from various ethnic group nation, culture, customs and traditions, as well different beliefs that have embraced since from down hereditary, this also causes every trust own different rules. Lord create man different kind of one the goal is to get forward his descendants through marriage. Marriage is bond born and inner between a man with a woman as husband wife with objective form happy family based on Supreme

Godhead One¹. A marriage stated legitimate if done according to laws of each religion and belief. Marriage is something incident very important law with various consequence the law, therefore it's law arrange problem marriage in detail ².

Appreciation trust is part from Indonesian citizen, deep matter implementation his marriage subject to Law No. 1 of 1974, so that marriage devout can stated legal in the eyes applicable law implementation must in accordance with regulation applicable laws. In 2019, President Joko Widodo legalized it marriage for society that isn't adherents of a recognized religion in Indonesia, in other words, for adherents expressed belief in Regulation Government Number 40 of 2019 concerning pesana Constitution Number 24 of 2013 concerning Administration Population.

Although Already arranged in regulation applicable law, in fact Still Lots marriage devout presumed belief. No legitimate in a manner Indonesian law. Marriage devout trust often become controversial in life society, because considered. No in accordance in a manner applicable law. Related legitimate or nope marriage devout trust, positive law m Indonesia that everyone is entitled form family and move on descendants through legal marriage through Law No. 1 of 1974 concerning Marriage state something marriage legitimate if done according to the laws of each religion and belief, as well as every marriage must recorded.

Recording a marriage become element important for validity in implementation marriage. this aim for protect citizen and protect, provide certainty law for husband, wife and children in something family, as well give protection to resulting rights in marriage like right inheritance, rights obtain certificate birth and so on. In Article 2 paragraph 2 of Law no. 1 of 1974 stated that marriage noted according to regulation applicable laws. Can interpreted that recording marriage done through procedures that have set in law positive in Indonesia. So, got ensure rights from husband, wife and children in a marriage that has held can protected by the state. From the explanation above, is reason from writer For study discussion related marriage devout trust reviewed from law Indonesian positive. Writer consider that in study This interesting and available novelty law in marriage devout trust so that can understand How consequence law to marriage devout trust this.

II. Research Methods

As for the method used in study This is with use study normative law. Approach in method study This ie approach legislation and approaches conceptual ³. Material law used is regulation relevant applicable laws with middle problem researched. Collection technique material law used in study. This is studies literature with method analysis qualitative.

III. Results and Discussion

1. Marriage Believers in the Marriage Law No. 1 of 1974

Marriage is behavior man as creation Almighty God One for life in the natural world to reproduce⁴. In Indonesia that became condition for a marriage legitimate according to law positive Indonesia has arranged in Article 2 of the Marriage Law. In the 2nd article condition legit something marriage characteristic kumula t if so must fulfillment elements contained within chapter so that something marriage can it's true legitimate according to law Indonesian positive. The people who enter in class devout trust in carry out marriage must subject to Law No. 1 of 1974. Article 1 of the Marriage Law, explains that "Marriage is bond born and inner between a man and a woman as husband wife with objective form family Whichhappy and everlasting based on Supreme God Esa". Marriage considered legitimate, If done based on religion or each

¹ *Marriage Law, Article 1 (Indonesia, 1974).*

² Munir Fuady, *The Concept of Civil Law* (Jakarta: Rajawali Pers, 2014).

³ Johnny Ibrahim, *Normative Law Research Theory and Methodology* (Malang: Bayumedia Publishing, 2006).

⁴ Hilman Hadikusuma, *Indonesian Marriage Law. According to: Legislation, Customary Law, Religious Law* (Bandung: Mandar Maju, 2007).

other's beliefs. Article 2 paragraph (1) of the Marriage Law mentions, "Marriage is legitimate if done according to law each his religion And his trust".

According to UU marriage, marriage is legitimate according to religion and his trust each. Every citizen who has entered into a marriage has the right to be registered, including adherents of belief. On base that, Then appear regulation legislation about marriage understanding trust. Development arrangement recording marriage started from Constitution Number 22 of 1946 Concerning Registration of Marriage, Divorce and Referrals. In article 1 paragraph (1) explains that marriage based on Islamic law, then recording done by employees registration of marriage, divorce and reconciliation. However, in Law Number 22 of 1946 only applies to the Java Madura region. This because not yet there is possibility to enforcement in the region outside Java Madura, so the outer region Java still use old laws and regulations legislation other ⁵.

Then born Constitution Number 32 of 1954 Concerning Implementation Constitution Number 22 of 1946 Concerning Recording Marriage, Divorce, Reconciliation of Outer Areas Java Madura. With exists regulation it's the outer region use Constitution the. Furthermore recording marriage arranged in Regulation Government Number 9 of 1975 Concerning Implementation Constitution Number 1 of 1974 Concerning Marriage. In article 2 paragraph (1) PP No. 9 of 1975 explains that the marriage was performed based on Islamic law , then recording done by employees note Marriage, Divorce, Refer. This in accordance with Law Number 32 of 1954 .

Continued in paragraph (2) explains that marriage done with besides Islamic law, then recording done in the office notes civil. Then he took it out Decree of the Minister of Religion of the Republic of Indonesia Number 477 of 2004 concerning Registration of Marriage in it explain that recording marriage at the Office of Religious Affairs. However decision of the Minister of Religion No happened long after issued Ministerial Regulation Number 11 of 2007 Concerning Marriage Registration. Furthermore, during the reform period experienced development related with registration of marriage that For non Islamic society do recording marriage can do it at the office notes civil. This in accordance in Article 38 of the Law Number 23 of 2006 concerning administration population. Deep Constitution the is form policing in service administration ⁶.

Recording marriages are also arranged in Compilation of Islamic Law (KHI) in articles five and six, namely :

1. Article 5 chapter II reads :
 - 1) To be assured order marriage for any Islamic community marriage must noted
 - 2) Recording marriage referred to in paragraph (1), carried out by employees Marriage Registrar as regulated in Constitution Number 22 of 1946 jo Law Number 32 of 1954.
2. Article 6 chapter II reads :
 - 1) For fulfil provision in chapter 5, each marriage must took place before and below supervision Employee Marriage Registrar .
 - 2) Marriages performed outside supervision Employee Marriage Registrar not have strength law.

With so, society that is not do recording employee marriage marriage registration, then marriage the considered wild marriage or compassionate marriage⁷. Written settings in KHI article five accordingly with Constitution number 1 of 1974 article 2 paragraph (2) which explains that marriage noted in accordance with regulation legislation. However recording marriage No as reference legitimate or nope marriage, but with exists recording marriage so get rights as well as certainty law inside. Which means is public get protection law if happen dispute or inside violation marriage.

2. Marriage Believers in Law No. 23 of 2006 concerning Administration Population

Problems experienced by followers trust is the problem of religious status in the KTP column. That problem become gate from things discriminatory towards the observers trust. This

⁵ M Zamroni, *Legal Principles of Marriage Registration in Indonesia* (Surabaya: Media Sahabat Cendekia, 2019).

⁶ *Ibid.*

⁷ Abd Shomad, *Islamic Law* (Jakarta: Kencana, 2010).

because KTP as proof of legal residence often become document important in life everyday. Moreover in matter obtain service facility public. Though, amount adherents of the religion are Indonesia, based on information from Assembly Sublime Trust to Almighty God Esa Indonesia (MLKI), at this in Indonesia exists around 12 million soul adherents trust ⁸.

Article 105 Law No. 23 of 2006 about Administration Population instruct Government For publish Regulation Government For arrange marriage devout trust. Article 105 of the Adminduk Law reads, In time no later than 6 (six) month since promulgated Constitution this, Government must publish Regulation Government Which arrange about determination requirements and procedures marriage for devotees trust as base he got quote deed marriage and service recording IncidentImportant. Condition And system method recording marriage for devout trustexplained on Chapter 81 paragraph (1) until (3) Regulation Government No 37 year 2007 about Implementation Constitution Number 23 Year 2006 regarding population administration as follows:

- 1) Marriage Appreciation Trust done in ahead leader Appreciation Trust .
- 2) Leaders of adherents of the belief as referred to in paragraph (1) are appointed and determined by the organization of adherents of the belief, to fill out and sign the marriage certificate of adherents of the belief.
- 3) Leaders of belief as referred to in paragraph (2) are registered with the Ministry whose field of duties is technically to foster the organization of adherents of belief in God Almighty.

Article 83 paragraph (1) and paragraph (2) of Government Regulation No. 37 of 2022 concerning the implementation of Law Number 23 of 2006 concerning population administration states:

- 1) Acting Implementing Agencies or UPTD Implementing Agencies record marriages as referred to in Article 82 in the following manner:
 - a. Submit the marriage registration form to the husband and wife;
 - b. Perform verification and validation of the data listed in the marriage registration form, and
 - c. Record in the register of marriage certificates and issue excerpts of marriage certificates of adherents of the faith.
- 2) An excerpt of the marriage certificate as referred to in paragraph (1) letter c is given to each husband and wife.

ID cards and birth certificates are one of the requirements that must be met if adherents of a believer want their marriage to be registered by the State, even though making a KTP, KK, and other population administration is not easy for adherents of the faith. A result discrimination waiter administration population. Appreciation Trust No Can fulfil conditions recording marriage in accordance Article 82 letters b and d Regulations Government No. 37 of 2007 concerning Implementation Constitution Number 23 Year 2006 about Administration Population that is photocopy ID card And Deed Birth . By Because that, marriage Appreciation Trust No noted by Country impact on No get deed marriage issued by the Registry Office civil ⁹.

3. Devoted Marriage Trust To Decision Court Constitution Number 97/PUU-XIV/2016

Through Decision Pronounced number 97/PUU-XIV/2016 in Hearing Plenary on November 7 2017, the Court Constitution state that the word religion" in Article 61 Paragraph (1) and Article 64 Paragraph (1) of the Law Administration Population contrary with The 1945 Constitution of the Republic of Indonesia and no have strength law tie in a manner conditional throughout No including trust ¹⁰.

Then Court The constitution also states that Article 61 Paragraph (2) and Article 64 Paragraph (5) of the Law Administration contrary with the 1945 Constitution of the Republic of Indonesia and no have strength law bind. Court Constitution with authority For interpret law, explained that the phrases "religion" and "belief" are viewed as something separate. With thus,

⁸ Prianter Jaya Hairi, "Follow-up to the Constitutional Court's Decision Regarding Adherents of Faith," *Brief Legal Info Magazine IX* , 2017.

⁹ Muhammad Shohib, "Mardi Santosaning Budhi Belief Practices in Kuncen Village, Kranggan District, Temanggung Regency (Islamic Law Review)" (Salatiga: IAIN Salatiga, 2011).

¹⁰ Samsul Maarif, *The Ups and Downs of Ancestral Religion Recognition in Religious Politics in Indonesia* (Yogyakarta, 2018).

besides confess existence the six regulated religions in regulation legislation, the state also has confess existence Trust To Almighty God One.

Decision Court Constitution Number 97/PUU-XIV/2016, para general has bring consequence law to improvement administration population in Indonesia because allow trust be included in column KK and KTP. No only that's the verdict it also has expand terminology of "religion" in regulation mandatory legislation including Trust To Almighty God One. From expansion terminology of "religion", has bring consequence law to legality marriage for Appreciation Trust ¹¹.

Through this Decision of the Constitutional Court Number 97/PUU-XIV/2016, the provisions concerning the legality of marriage in Article 2 of the Marriage Law must also be subject to the decision so that the legality of marriage is not limited to marriages held according to religious provisions but also to marriages held according to the provisions of Belief in God Almighty. Thus, marriages for adherents of a belief that are carried out according to the provisions of their beliefs are legal in the eyes of the law so that they can be registered with the marriage registrar, which in this case is the authority of the Civil Registry Office.

With the Constitutional Court Decision Number 97/PUU-XIV/2016, there was also a change in the contents of Law Number 23 of 2006 concerning Population Administration and Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration, changes only occurs in articles such as:

- 1) Article 61 paragraph (1) of Law Number 23 of 2006 concerning Population Administration reads, "Card Family contains information regarding the name column of the Family Card, full name of the head of the family and family members, NIK, gender, address, place of birth, date of birth, religion (including beliefs), education, occupation, marital status, relationship status in the family, nationality, immigration documents, parents names.
- 2) Article 61 paragraph (2) of Law Number 23 of 2006 concerning population administration is deleted.
- 3) Article 64 paragraph (1) of Law Number 24 of 2013 concerning amendments to Law Number 23 of 2006 concerning population administration to read: "Electronic Identity Card includes a picture of the Garuda Pancasila symbol and a map of the territory of the Unitary State of the Republic of Indonesia, contains elements of population data namely NIK, name, place, date of birth, male or female, religion (including beliefs, marital status, blood type, address, occupation, nationality, passport photo, validity period, place and date of issuance of the KTP-el, and signature of the KTP-el holder el.

Follow up exists decision Court Constitution Number 97/PUU-XIV/2016 which is material test results to Article 61 paragraph (1) and (2), article 64 paragraph (1) and (5) of the Law Number 23 of 2006 concerning Administration The population has experience change become Constitution Number 24 of 2013 concerning Administration Population. Inside Decision the related with emptying of religion for devout trust in Card Family (KK) and Identity Card (KTP).

From the verdict the born Regulation Government of the Republic of Indonesia Number 40 of 2019 Concerning Implementation Constitution Number 23 of 2006 concerning Administration Population as has changed with Constitution Number 24 of 2013 concerning Administration Population. Recording marriage for devout trust has arranged in Regulation Government Number 40 of 2019 namely as following :

- (1) "Recording marriage devout trust to Almighty God One conducted at the Department of Population and Registration Civil Regency/City or UPT Office of Population and Registration Civil Regencies/Cities no later than 60 (six twenty) day after done marriage before leader devout trust to Almighty God Esa". So that can understood If marriage devout trust can done recording marriage at the Population and Registration Office civil . Besides it is also regulated related provisions in recording marriage .
- (2) "Recording marriage devout trust to Almighty God One as referred to in paragraph (1) is carried out with conditions :

¹¹ *Ibid.*

- a. Official Recording Civil at the Department of Population and Registration Civil District/City provide form recording marriage to partner husband wife;
- b. Partner husband wife fill in form recording marriage and surrender to official Recording Civil with Show KTP el For done reading KTP el and Attach documents that have determined;
- c. Official Recording Civil do verification and validation of the data listed in form recording marriage and attached documents;
- d. Based on completeness and suitability of the resulting data verification and validation as referred to in letter c, officials Recording Civil recorded in the deed register marriage and publishing quote deed marriage; and
- e. Quote deed marriage as referred to in letter d are given respectively to husband and wife.

Reluctantly exists recording marriage to use For get certainty law to legal marriage in a manner law, and the Indonesian people who do recording marriage get protection law as well as confession from the state, so the state is not only confess his marriage will but also obliged protect in a manner law to marriage that has recorded in service public state administration. As for form state protection against marriage recorded ie if happen violation law Good in realm civil nor criminal, the state can give protection.

Post exists the decision of the Constitutional Court, the adherents trust existence can more recognized. It is also offset with policy the Indonesian government also issued a number of regulation which is trust from decision *a quo*. At least there are five regulations that the author find and describe in this paper, namely ¹²:

- a. Ministry of Home Affairs Regulation (Permendagri) Number 118 of 2017 concerning Blank Card Family, Register And Citation Deed Recording Civil
- b. Circular Letter Director General Population and Records Civil Number 471.14.10666/DUKCAPIL concerning Publishing Card Family for Appreciation Trust To Almighty God One
- c. Ministry of Education and Culture publish Regulation of the Minister of Education and Culture Number 27 of 2016 concerning Service Faith Education To Almighty God Esa in the Education Unit
- d. Director General of Primary and Secondary Education, Ministry of Education and Culture has also emit a Circular with number: 9955/D/PD/2018 About Share Manual Report Participant educate Appreciation Trust To Almighty God One .
- e. Regulation Government Number 40 of 2019 concerning Implementation Constitution Number 23 of 2006 concerning Administration Population As Amended with Constitution Number 24 of 2013 concerning Change on Constitution Number 23 of 2006 concerning Administration Population.

IV. Conclusion

Marriage devout trust reviewed from law Indonesian positive Already arranged in a manner normative start from Constitution Number 1 Year 1974 about Marriage, Regulation Government Number 40 of 2019 concerning Implementation Constitution Number 23 of 2006 concerning Administration Population As Amended with Constitution Number 24 of 2013 concerning Change on Constitution Number 23 of 2006 concerning Administration Population However law Marriage for Appreciation Trust Still Not yet effective Because require CardSign resident, Which No Can accessed believer. Decision Court Constitution Number 97/PUU-XIV/2016 is a legal event and legal consequences for the marriage of adherents of belief, especially the registration of marriages. By including belief in the religion column on the National Identity Card (KTP), adherents of that belief can make a KTP and register their marriage.

Through Constitutional Court Decision Number 97/PUU-XIV/2016, religious terminology is not only limited to the six religions contained in laws and regulations but also

¹² Ahmad Syaifudin Anwar and Aji Baskoro, "Legal Protection of Believers After the Constitutional Court Decision Number 97/PUU-XIV/2016 Responsive Legal Perspective," *Staatsrecht: Journal of State Law and Islamic Politics* 2, no. 1 (2022): 3, <https://ejournal.uin-suka.ac.id/syariah/Staatsrecht/article/view/2803>.

includes Belief in God Almighty. After the decision, marriages for adherents of the faith have obtained legality because the validity of the marriage as stipulated in the provisions of Article 2 of the Marriage Law does not only apply to marriages carried out according to religious provisions but also to marriages carried out according to the provisions of belief in God Almighty.

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