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Legal Status of Overseas Marriage Registration in the Perspective of Indonesian Marriage Law

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Abstract. This study aims to analyze the legal status of overseas marriage registration from the perspective of Indonesian marriage law. Law Number 16 of 2019, amendments to Law Number 1 of 1974 concerning Marriage, states that marriages conducted by Indonesian citizens outside Indonesia are legal if carried out according to law, which applies in the country where the marriage is taking place and for Indonesian citizens does not violate the provisions of the Marriage Law. Furthermore, within 1 (one) year after the husband and wife return to the territory of Indonesia, proof of their marriage must be registered at the marriage registration office where they live. There is still a problematic status of the registration law, whether it makes the validity of the marriage or is it only limited to the administrative order. This research uses a conceptual approach, a statutory approach, a historical approach and a philosophical approach. Legal materials used in this study consist of primary legal materials, secondary legal materials and tertiary legal materials which are normative in nature by searching, collecting and studying literature and documents, both conventionally and via the internet. The results of this study are the legal status of marriage registration abroad in the perspective of Indonesian marriage law, precisely in Article 56 of Law no. 16 of 2019 amendments to Law no. 1 of 1974 concerning Marriage, it can be concluded in general that the legal status of overseas marriage registration still does not provide legal certainty regarding the validity of marriage except for the extent of an administrative order. And there are three legal principles in Article 56 of the Marriage Law, namely: the *lex patriae* principle, the *lex loci celebration* principle and the principle of public order.

Keywords. Legal Status, Registration, Foreign Marriage

Introduction

Law undergoes changes following the development of society's legal needs which are not static. The rapid development of globalization in the fields of economy, social, culture, science and technology today has given color to the development of law (Benería et al., 2015; Sorokin, 2017). The advancement of transportation and communication technology, for example, has provided more and more opportunities to visit almost every point in the world in a relatively fast time.

The world and mankind seemed to be a world village. Globalization in the socio-cultural field, can be seen from the legal activities of Indonesian citizens (WNI) who come into contact with foreign citizens, such as marriages between Indonesian citizens or one of the foreign

nationals in Indonesia or abroad, or such as marriages made by fellow citizens. residents (Muttaqin, 2020).

Law Number 16 of 2019, amendments to Law Number 1 of 1974 Concerning Marriage, states that a marriage that is carried out outside Indonesia between two Indonesian citizens or an Indonesian citizen with a foreign citizen is legal if it is carried out according to applicable law in the country where the marriage took place and for Indonesian citizens it does not violate the provisions of this law. Furthermore, paragraph (2) states that within 1 (one) year after the husband and wife return to Indonesian territory, the proof of their marriage must be registered at the marriage registration office where they live.

The main principle contained in Article 56 is quite clear, namely that a marriage of an Indonesian citizen which is carried out according to the laws in force in the country where the marriage is taking place is only considered valid if the implementation of the marriage concerned does not conflict with the prevailing laws and regulations in Indonesia (Djubaidah, 2010).

Marriages that are carried out overseas after returning to Indonesia must be registered at the local marriage registry office, as stated in Article 56 paragraph (2) which states:

"Within 1 (one) year after the husband and wife return to the territory of Indonesia, proof of their marriage must be registered at the Marriage Registry Office where they live".

Referring to Article 56 paragraph (2) above, the proof of marriage for Indonesian citizens from abroad, after returning to Indonesia, within 1 (one) year must be "registered" with the local Marriage Office, so that the Indonesian government knows the legal position of the spouse concerned after returning to the lap of the Indonesian legal system (Isnaeni, 2016). However, after returning to Indonesia, the legal position of the marriage can be complicated if the overseas marriage is only valid according to the law of the country where the marriage was held and is contradictory or illegitimate according to the Indonesian legal system, in this case a marriage between an Indonesian citizen or one of the Indonesian citizens who is contradictory. with the rules of marriage law in Indonesia, due to the legality of marriage according to the Indonesian marriage law system based on religion.

The regulations on marriage for Indonesian citizens abroad are also found in Article 37 paragraph (1) of the Adminduk Law, which stipulates the following.

Marriage of Indonesian Citizens outside the territory of the Unitary State of the Republic of Indonesia Must be registered at the competent authority in the local country and reported to the Representative of the Republic of Indonesia

Marriages outside the territory of Indonesia are reviewed from the Article above, in principle, marriages for Indonesian citizens abroad are in accordance with the laws of the local country. And if the local state where the marriage was carried out does not organize a marriage for foreign citizens, then in accordance with Article 37 paragraph (2) and Paragraph (3) of the Adminduk Law, the registration of an Indonesian citizen overseas marriage is carried out at the local Representative of the Republic of Indonesia.

Marriage for Indonesian citizens abroad is used as a way out for Indonesian citizens who want to get married but are impeded by regulations that cannot be carried out in Indonesian Territory, this is because the meaning of "registration" contained in Article 56 paragraph (2) of Law Number 1 Year 1974 regarding Marriage is still unclear. The meaning of "registration" whether it must meet the formal and material requirements or is it sufficient is only one of the requirements. By registering when he returned to Indonesia, interfaith marriages were carried out outside the territory of Indonesia, was the marriage legitimately legal according to the Indonesian marriage law, or was it merely an administrative report.

Although seen from one side, formally it can be that a marriage which is carried out abroad is legal if it is carried out according to the law in force in the country where the marriage was carried out, but it may not be materially fulfilled. However, as an independent and sovereign country, it must not violate public order (Heriawanto, 2019; Bedner & Van Huis, 2010; Heriawanto, 2019; Muttaqin, 2020; Ramadayanti, 2020).

The concept of public order in each country is different. Sudargo Gautama defines Public Order as foreign legal rules which actually must be enforced according to the HPI Indonesia provisions, which cannot be used or enforced because these foreign legal rules are contrary to public order and morality (Gautama, 1988). Public Order is relative. The relative nature is determined by three factors, namely the time factor, the place factor and the intensity factor (inlandsbeziehungen). There are 3 kinds of concepts of public order, namely the Italian-French concept, the German concept and the Anglo Saxon concept (Gautama, 1988).

Although every country has the principle of public order, in practice, the application varies. This difference also depends on other HPI principles, such as the principle of nationality (Gautama, 1981). or domicile adopted in the country. Therefore this study examines the legal status of overseas marriage registration in the perspective of Indonesian marriage law.

Methods

This research uses a conceptual approach, a statutory approach, a historical approach and a philosophical approach. Legal materials used in this study consist of primary legal materials, secondary legal materials and tertiary legal materials which are normative in nature by searching, collecting and studying literature and documents, both conventionally and via the internet.

Results and Discussion

Regulation of Marriage Registration and Registration in Indonesia

In general, a person's legal standing begins at the time he is born and ends in death for himself. Meanwhile, the incidence of birth until the death of a person will bring very important legal consequences not only for the person concerned, but also for his ex-wife or husband and their children and even their grandchildren. Therefore, it is very necessary for someone to have and obtain a proof of himself in his legal position, so that it is easy to get certainty about these incidents. And for this purpose, the Civil Registry Institution aims to enable complete registration and recording and therefore to provide legal certainty about the incidents of these events including the marriage events in them (Situmurang & Sitanggang, 1996).

Marriage for Indonesian citizens who are Muslim, is stated in Article 8 of Law Number 23 of 2006 which has been amended by Law Number 24 of 2013 concerning Administration and Population, which stipulates that the obligations of the Implementing Agency start from registration, marriage registration, divorce, and divorce and referrals to residents who are Muslim at the sub-district level are carried out by a registrar at the District Office of Religious Affairs (KUA).

The explanation in Article 34 of Law Number 23 of 2006 which has been amended by Law Number 24 of 2013 concerning Administration and Population explains that what is meant by marriage is a physical and spiritual bond between a man and a woman as husband and wife in accordance with statutory provisions. invitation. This means that a legal marriage for Muslims is a marriage that is carried out according to Islamic Religious Law as stipulated in Article 2 paragraph (1) of Law Number 16 of 2019, amendments to Law Number 1 of 1974 concerning Marriage (Djubaidah, 2010).

The obligation to register marriages in Indonesia is emphasized in Article 2 paragraph (2) of Law Number 16 of 2019 Amendment to Law Number 1 of 1974 concerning Marriage, which stipulates that "Every marriage is recorded according to statutory regulations applies. " Likewise further emphasized in Article 12 of Law no. 16 of 2019 which stipulates that "The marriage procedure is regulated in its own statutory regulations." The importance of marriage registration is also emphasized in the General Explanation of Law Number 16 of 2019, amendments to Law Number 1 of 1974 concerning Marriage, stating:

"In this Law it is stated that a marriage is legal if it is carried out according to the law of each religion and belief; and besides that every marriage must be recorded according to the prevailing laws and regulations. The registration of each marriage is the same as the recording of important events in a person's life, for example, births, deaths that are stated in certificates, an official certificate which is also included in the register of registration in the General explanation of the law, 1974.

From the provisions above, it is clear that every legal marriage "must" be recorded according to the prevailing laws and regulations, which means that there is a possibility that the implementation of marriage registration will vary according to the prevailing laws and regulations. Therefore, the elucidation of Article 12 of Law Number 16 of 2019, amendments to Law Number 1 of 1974 concerning Marriage, reminds us that "the provisions of Article 12 do not reduce the provisions stipulated in Law Number 22 of 1946 jo. Law Number 32 of 1954; while for residents who have a religion other than Islam, it is regulated in various laws and regulations concerning civil registration (Usman, 2019).

Furthermore, in Article 2 of Government Regulation (PP) No. 9 of 1975 affirms the institution for registering marriage, which is stipulated as follows. (1) Registration of marriages of those who carry out their marriage according to the Islamic religion is carried out by the Registrar as referred to in Law Number 32 of 1954 concerning Registration of Marriage, Divorce and Reconciliation. (2) Marriage registration of those who are married according to their religion and belief other than the Islamic religion, is carried out by the registration officer of marriage at the civil registry office as referred to in various laws regarding marriage registration. (3) Without prejudice to the specific provisions that apply to the procedure for recording a marriage based on various applicable regulations, the procedure for registering a marriage is carried out as stipulated in Article 3 to Article 9 of this Government Regulation.

With the provisions in Article 2 of Government Regulation Number 9 of 1975, marriage registration is carried out only by two agencies, namely the Registrar of Marriage, Divorce and Referral Employees, and the Civil Registry Office or the agencies/officials who form them

Legal Status of Overseas Marriage Registration in the Perspective of Indonesian Marriage Law

Law Number 16 of 2019, amendments to Law Number 1 of 1974 Concerning Marriage, states that a marriage that is carried out outside Indonesia between two Indonesian citizens or an Indonesian citizen with a foreign citizen is legal if it is carried out according to applicable law in the country where the marriage took place and for Indonesian citizens it does not violate the provisions of this law. Furthermore, paragraph (2) states that within 1 (one) year after the husband and wife return to Indonesian territory, the proof of their marriage must be registered at the marriage registration office where they live.

The main principle contained in Article 56 is quite clear, namely that a marriage of an Indonesian citizen which is carried out according to the laws in force in the country where the marriage is taking place is only considered valid if the implementation of the marriage

concerned does not conflict with the prevailing laws and regulations in Indonesia (Djubaidah, 2010).

Based on the explanation above, it can be concluded as follows: first, that marriages of Indonesian citizens abroad must be reported to the Consulate General of the Republic of Indonesia. Second, the Consulate General of the Republic of Indonesia issues a certificate that there has been a marriage between Indonesian citizens in that country and in the report contains the sentence "This proof of marriage registration is not a marriage certificate". Third, after returning to Indonesia the couple must register their foreign marriage and by the Disdukcapil issue a report that there has been a marriage between Indonesian citizens abroad and in the voice of the report the words "This overseas marriage report is not a marriage certificate". Thus, it can be concluded in general that the legal status of overseas marriage registration still does not provide legal certainty for the validity of marriage, except for the extent of administrative order. Based on the explanation above, Article 56 of Law Number 16 of 2019 Amendment to Law Number 1 of 1974 Concerning Marriage, contains several legal principles as follows:

Lex Patriae Principle (Citizenship)

Based on the *lex patriae* principle, foreign marriage registration in Article 56 of Law Number 16 of 2019 Amendments to Law Number 1 of 1974 concerning Marriage, the personal status of a person is determined based on the nationality law or often called the *lex* principle of that person's nationality. This principle is also used in Article 16 AB which theoretically still applies in Indonesia. the personal status of a person including regulating kinship relations more specifically the area of marriage requires as much stability as possible.

The reasons why the principle of nationality must be used include the following: (1) Best suited for one's legal feelings, (2) More permanent than domicile law, (3) The principle of nationality provides more certainty (Basuki et al, 2005).

Asas lex loci celebration

The principle in International Civil Law (HPI) which is used in the formal form of a legal action is the *locus regit actum*. The principle of *locus regit actum* with regard to marriage uses the *lex loci celebration* principle, namely the formal validity of marriage is determined based on legal principles at the place where the marriage is formalized or takes place. By the makers of Article 56 of the Marriage Law, marriages between Indonesian citizens or one of the Indonesian citizens abroad are valid if they are legal according to the law of marriage, this is in accordance with the principle of *lex loci celebration* However, we must not ignore public order as a protection against national law.

Principle of Public Order

Public order is an important part of HPI because in enforcing foreign law, a country is bound by the national interest of its country, so that foreign law does not have to be enforced by a country, when it is considered contrary to public order. So, this public order is a filter against the enforcement of foreign laws in a country. Based on Article 56 marriages that are carried out abroad or when they have returned to Indonesia, these marriages must be registered in order to carry out the prevailing public order.

Conclusion

The legal status of overseas marriage registration still does not provide legal certainty for the validity of marriage, except for the extent of administrative order. And there are three

legal principles in Article 56, namely: the *lex patriae* principle, the *lex loci celebration* principle and the public order principle.

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