

LEGAL ASPECTS OF INTERFAITH MARRIAGE IN INDONESIA

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ABSTRACT

Interfaith marriage is a marriage conducted by a pair (male and female) who have a different religion. In Indonesia, interfaith married become into the problem because of different interpretation of Article 2 of Act No. 1 of 1974 on Marriage that states "Marriage is valid, if solemnized according to the each religions and beliefs law, and each marriage is recorded in accordance with the according to the regulations that is applied". One interpretation states that marriage valid if solemnized according religion and beliefs law and spouse have same religion. Another interpretation states that marriage still valid eventhough spouse have different religion and marriage solemnize twice according law of each spouse religion. This paper aims to study legal aspects of interfaith marriage in Indonesia associated with Article 2 of Act No. 1 of 1974 on Marriage. The result, interfaith marriage can be legalized and registered according to Act No.1 of 1974 on Marriage. Procedures are including smuggling of law, marriage twice according to each religious couple, married in Registry Office, and married abroad.

Keywords: interfaith marriage, beliefs law, registered.

INTRODUCTION

Interfaith marriage or inter-religious marriage is marriage do by couple (man and woman) who have different religion. In Indonesia, interfaith marriages became common as increasing intensity interaction people in Indonesia because of better information technology and transportation facility. There are six religions officially be legalized by Government of Indonesia and all leaders of religions agree to ban interfaith marriage. Even forbid by leaders of religions, some couples still conduct interfaith marriage.

Marriage in Indonesia is regulated by Act Number 1 of 1974 on Marriage. There is no rule regulate interfaith marriage explicitly. Legalization of marriage regulated by Article 2 which state a marriage is legal, if solemnized according to the law of each religions and beliefs, and each marriage is recorded according to applicable laws and regulations".

". That state cause two main interpretation. One interpretation states interfaith marriage was prohibited and could not be legalized, but other interpretation states interfaith marriage still legal if solemnized according to each bride religion law.

Aim of this paper is to study legal aspect of legalized interfaith marriage according to Act No. 1 of 1974 on Marriage. Normative juridical method be used to study regulations related to interfaith marriage in Indonesia.

RELIGION AND INTERFAITH MARRIAGE

Government of Indonesia legalized six religion: Islam, Catholicism, Christianity, Buddhism, Hinduism, Confucianism; as official religion in Indonesia. Consequences of having official religion, every people must follows and obeys to one of six official religions law in marriage. In principle, all six religions prohibit interfaith marriage. All religions want a marriage conduct by couple within one-faith (one religion). Interfaith marriage, if permitted by a particular religion, is very limited, and exception is only give with certain conditions.

In Islam, A moslem is prohibited marrying a polytheist (Surah Al Baqarah verse 221). In Surah Al Mumtahanah, Allah forbids moslems from marrying infidels. An exception in interfaith marriage only is gave to man to marry women of Kitabiyah (Karsayuda, 2006). Women of Kitabiyah are defined as women from Jewish or Christian community. Under Sunni school of law, moslem can not marry non Kitabiyah, include who do not believe any prophet or holly scriptures, the atheist, the idolatry, and the worship of sun or stars (Jones, Leng, & Mohamad, 2009). In contemporary definition, Kitabiyah was only existed before presence of Muhammad prophet. Therefore, a moslem is prohibit from marrying another religion people and there is no exception.

Catholicism explicitly states, "Marriage between a Catholic and the disciples of other religion is illegal." (Canon 1086). The church provides dispensations with conditions prescribed by church law (Canon 1125). The interfaith marriage dispensation is gave by the Bishop with certain requirements that state in a written agreement by the couple. First, one of the couple must be a Catholic; Secondly, the one who is not a Catholic promises to accept a marriage in Catholicism and does not prevent the Catholic party from doing his/her faith, and is willing to educate their children in Catholic".

According to Indonesian Protestant Church Fellowship (Persekutuan Gereja-gereja Indonesia/PGI) leader, marriage is a social deed so church should be serve the blessing of marriage to the couple with different religions (Siahaan, 2014). The interfaith couple should be get pastoral ministry to communicate the friction so that the friction can be eliminated as much as possible. The pastoral ministry also provide the fulfillment of the child's right to freely choose the religion or belief that he will embrace.

In Hinduism, a marriage is legal when the bride has the same religion, Hinduism. According to Hindu law, a marriage is only valid when a sacred ceremony is held by Pedende, and Pedende always wants to carry out a wedding ceremony when both of bride are Hindu. Marriage of Hindu that not adequate the requirements will be canceled. Pedende will refuse a marriage if the

couple have different religion. The Pedende can't bless, unless the non-Hindu party agrees to become a Hindu and signs Sudi Vandheni (a statement of convert into Hinduism). In principle, Indonesia Hindu society ban interfaith marriage. If the couples solemnize interfaith marriage, they will be considered adultery (Sahbani, 2014).

Buddhism pays more attention to moral teachings and practices by focusing on human perfection and does not specifically regulate interfaith marriage. Buddhism does not restrict its disciples to marry with adherents of other religions. Buddhism do not ban interfaith marriage. In Buddhism marriage is conduct because of karma (casuality as God destiny) and human is prohibited to prevent or prohibit (Tempo.co, 2014).

Confucian religion also rejects interfaith marriage, but it does not hinder interfaith marriage. In the Rules of the Council of Indonesian Confucianism Clergy and the Marriage Law of the Indonesian Council of Confucian Religion (Matakin), it is stated that the ritual of affirming a marriage can only be performed for the couple who believed in Confucianism. In case interfaith marriage, the recognition and notification will be given. (Gabrillin, 2014)

Summarize the description above, mostly religion prohibit interfaith marriage, especially Islam, Hinduism, and Confucianism which state that interfaith marriage is not legal marriage. Other religion, Catholic, have exception with specific requirement for interfaith marriage. This gives consequence that interfaith marriage can't be legalized according to religion law. One religion, Buddhism assume marriage is fate or God destiny and give permission interfaith marriage. Like Buddhism, Protestant also give permission interfaith marriage.

LEGAL ASPECT OF INTERFAITH MARRIAGE

There is only Article 2 in Act Number 1 of 1974 on Marriage regulates the legality of marriage. Article 2 which states a marriage is legal, if solemnized according to the law of each religions and beliefs (paragraph 1), and every marriage is recorded according to the applicable laws and regulations." (paragraph 2). To be legitimate, marriage must be fulfilled two requirement. Those are conducted according to the religion and recorded. First requirement has two interpretation. One interpretation state only legal if couple have same religion and interfaith marriage cannot be legalized. Another interpretation state, interfaith marriage can be legalized if conducted according to each bride religion. Couple will marry twice, one conducted according husband religion and then conducted according wife religion. Second requirement is recorded at Religious Affairs Office (Kantor Urusan Agama/KUA) for moslem marriage and Registry Office (Kantor Pencatatan Sipil/KPS) for non moslem marriage. How about interfaith marriage?

Moslem couple marriage will be record if marriage is conduct in the presence of KUA marriage registrar officer, or report with two witnesses to KUA marriage registrar officer that marriage was conduct according Islamic Law. For these marriages, KUA will issue marriage certificate and the couple is declare officially as husband and wife. To legalize marriage, non moslem couple must register their marriage to KPS. One important document that must be attached is religion marriage statement letter from religious community. Furthermore, it is seems no chance for different religion couple to conduct interfaith marriage in Indonesia. Interfaith marriage becomes problem if one of couple is moslem and another is non moslem. KUA will refuse their marriage registration application. According Islamic Law, interfaith marriage is prohibited. Even though the couple has a letter of statement their marriage conducted according Islamic Law, KUA still refuse because one of the couple is not moslem. In the other hand, KPS refuse to record marriage because one of couple is a moslem. The problem still exist if the couple want to interfaith marry at KPS in presence of KPS officer. KPS officer will refuse to married the couple to be husband and wife.

Practically, there are some procedures do by a different religious couple to conduct interfaith marriage. First, a pair of couple follow his/her pair religion and pretend convert his/her pair religion. After married, he/she back to his/her respective religion. This procedure is easiest way to conduct interfaith marriage. Without any long arguing with the religious community and their family, the couple can marry. This procedure is called as smuggling of law (Setiyowati, 2015), because they cheat the law. Smuggling of law is did by couple which one pair of couple is moslem and another non moslem. At least, there are three reasons to smuggle law. The reasons are God is merciful and will not punish people who have good will, women must follow husband's doing, and avoid conflict with then get permission from his/her pair family to marry. With this procedure, there is no difficulty to register marriage at KUA or KPS, because the couple has same religion.

Second procedure of interfaith marriage is conduct at KPS. This procedure is did by the couple to avoid family ban to solemnize marriage according to one of religious couple. Register marriage to KPS also do by couple that solemnized marriage within two religious laws. But, KPS will register marriage only if court give order to register that marriage.

Third procedure is shortcut to legalize interfaith marriage for rich couple. They married abroad. The favorite destination countries for interfaith marriage are Singapore, Hong Kong, and Australia. At those countries, interfaith marriage is legal. Indonesia Embassy will issue marriage certificate for this marriage. When they back to Indonesia, KPS will register their marriage, because Act Number 1 of 1974 on Marriage recognize the validity of marriages abroad in accordance with the laws of the country where the marriage is carried out.

CONCLUSION

From the discussion above, it can be concluded that interfaith marriage can be legalized if it fulfill aspect:

1. Done according to religious law, couple has same religion administratively, and then is registered by Religious Affairs Office (Kantor Urusan Agama/KUA) for marriage that is conducted according Islam law or by Registry Office (Kantor

- Pencatatan Sipil/KPS) for marriage that is conducted other than Islam religious. This aspect result the behavior of law smuggling by the couple with different religion.
2. Done according to each couple religious law, and then is registered by Registry Office (Kantor Pencatatan Sipil/KPS) with court order so that KPS must register interfaith marriage.
 3. Done in presence of officer at Registry Office (Kantor Pencatatan Sipil/KPS) with court order so that KPS must register interfaith marriage.
 4. Done abroad or outside Indonesia region, and Registry Office (Kantor Pencatatan Sipil/KPS) will register because Indonesia marriage law recognize the validity of marriages abroad in accordance with the laws of the country where the marriage is carried out.

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