

INTERMARRIAGES FROM THE LEGAL PERSPECTIVE OF HINDU MARRIAGE

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Abstract:

For couples of different religions, the relationship between Marriage and the formation of a family based on God Almighty is confusing. Because in Indonesia, marriage is only recognized as legal between people of the same faith. Meanwhile, intermarriage should not be registered to gain legitimacy. However, the regulation makes it possible to submit its decision to the court, determining whether mixed marriages are registered and considered valid as a legal institution for the formation of families. Since the purpose of Hindu marriage is not only oriented towards the world but also on the birth of a virtuous generation, who are expected to be filial to their parents and save their ancestors from sin, then a virtuous generation can only be born through the same marriage. religion is accompanied by sacred rituals. This study is descriptive-analytical, aiming to describe the newly occurring intermarriage, which will be evaluated for its existence and correlated with the Hindu perspective of marriage. Indonesia has never experienced a legal vacuum (Vacumrecht) governing intermarriage. During the Dutch East Indies period (before independence) until after independence on January 2, 1974, marriage regulations were regulated in the Indonesian Christian Marriage Regulations (Huwelijks Ordonantie Christen Indonesier S. 1933 No. 74) and the Mixed Marriage Regulations (Regeling op de gemengde Huwelijken S.1898 No.158).

Keywords: Marriages, Different, Religion, Law, Hindu.

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INTRODUCTION

Responding to every important event in human life always arouses attention to its existence and formality. Furthermore, the event in question occurred only once in his life. Furthermore, the occurrences include real-world life (Skala) and the afterlife (Niskala). A "wedding," for example, is a significant occasion. It is stated to be significant because the law defines Marriage as an inner and outer tie formed by a man and a woman as husband and wife to build a joyful and eternal family (household) based on the One and Only God (Article 1 of Law No. 1 of 1974). Because in forming a family (household), the relationship will be valid if it is based on the belief in God according to their respective religions as stated in Law No. 1 of 1974 Article 2 paragraph (1) "Marriage is legal if it is carried out according to the law of each religion and belief". The continuation of the legal statement, "Every marriage is recorded according to the applicable laws and regulations".

Given the significance of the sacred statement above, it is as if the state guarantees that the state would accept their religions and worship their religion and beliefs (Article 29 (2) of the 1945 Constitution). In addition, as stated in Article 28B, "Everyone has the right to form a family and continue the family line through lawful marriage." Because of these fundamental human rights, state law also guarantees their implementation for all citizens, including individuals of all religions who wish to strengthen their relationship and form a family (household) through Marriage.

According to the above explanation, there will not be an issue if the candidates conducting the Marriage are of the same religion. What if they fall in love and prepare for Marriage, only to discover that they are of different religions? In this case, it is critical to inquire, "Does Indonesia regulate intermarriages?" If this is the case, "Is intermarriage in accordance with Hindu marriage law?" This study is descriptive-analytical, intending to describe recent intermarriages, which will be evaluated in terms of their existence and correlated with the perspective of Hindu marriages. The study data is entirely secondary, including primary material derived from laws and Vedic scriptures and secondary data derived from secondary sources, specifically doctrines found in numerous writings (books) and several similar works, to see the differences and avoid study duplication. All data relevant to the study were analyzed and qualitatively analyzed.

Marriages of the Same Religions. After Law No. 1 of 1974, the meaning of a relationship as a relationship with a man intends to build a permanent and eternal relationship based on God Almighty (Article 1). Compared to the previous regulation (KUHP), husband and wife relations born from a marriage institution (UUP) are more comprehensive than the Criminal Code because the relationship is born by 'agreement' and a 'bond'. While the principles adopted by the two legal institutions are the same as monogamy, namely Article 27 of the Criminal Code states that "a man is only allowed to have one woman...", while Article 1 of the UUP states "a man with a woman", but in Article 3 (2) of the UUP there is an exception to adhere to the principle of monogamy, as long as the wife or wives agree to it.

In addition, in the UUP, the validity of a marriage is stipulated in Article 2 (1) "Marriage is valid if it is carried out according to the law of each religion and belief". The meaning of the words "according to the law of each religion" is that if the bride and groom are of different religions, they must agree to choose one religion to establish a family/household if one is Muslim. The other is Christian, and if they agree to choose Christianity, the Muslim must become Christian. First (baptized first), then a Christian marriage is carried out, and vice versa. The laws of each religion are not the same according to each religious law. If recently it happened, the bride of a different religion married twice, after marrying in Islam, then remarried in a Christian way, and this Marriage is prohibited.

Types of Marriage:

- a. Common marriages: In this case, what is meant by common Marriage in this paper is a marriage carried out in the territory of Indonesia by a bride who is of the same religion or is equalized first. Every Marriage must be carried out based on the conditions and procedures stipulated by Law no. 1 of 1974 concerning Marriage and PP 9/1975 concerning the Implementation of Law no. 1 of 1974. The requirements for Marriage include formal requirements and material requirements, which consist of a marriage permit and a marriage ban. This condition applies to all types of marriages. The chart is as stated earlier.
- b. Intermarriages: If one of the bride or groom is an Indonesian citizen and a foreigner, they can hold intermarriages, and what is meant by intermarriages in Article 57 of the UUP is "intermarriages in this law are marriages between two people who in Indonesia are subject to different laws because of the differences in nationality, and one of the parties is a foreign citizen, and one of the parties is an Indonesian citizen". Thus, according to the UUP, intermarriages must be carried out in Indonesia, not in religious differences (prospective husband and wife).
- c. Marriages outside Indonesia: if one wants to get married abroad, the UUP calls it "marriage outside Indonesia" and is regulated in Article 56 of the UUP, which states that:
 - (1) A marriage that takes place outside Indonesia between two Indonesian citizens or an Indonesian citizen and a foreign citizen is valid if it is carried out according to the law in

force in the country where the Marriage is taking place, and for Indonesian citizens, it does not violate the provisions of the law;

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

Therefore, Marriage outside of Indonesia is not automatically referred to as intermarriage; instead, it is referred to as "marriage outside Indonesia," and Indonesian citizens must comply with the UUUP (not to be of different religions), as well as other obligations, such as recording the Marriage at the office of local marriage registrar. If it fits the UUUP's marriage requirements, it will be recorded. Another crucial point to remember while discussing intermarriages in Indonesia is that since the UUP was enacted, there is no longer any mingling of religious differences.

When is a marriage valid? Article 2 (2) states that: "Every marriage is recorded according to the applicable legislation". This provision gives the impression that the recording (according to the applicable laws and regulations) is merely an administrative act. At the same time, Marriage has been legally created when it is carried out according to the method of religious law, as referred to in paragraph 1. However, when reading Article 10 (3) PP 9/1975, the impression becomes different because it is stated that "By observing the marriage procedures according to each of their religious laws, Marriage carried out in front of the registration officer and attended by two witnesses. Based on that provision, the final stage of the Marriage takes place in the presence of the registrar. Therefore, it can be concluded that the registrar gave legitimacy to the Marriage (Subekti, 1992: 110).

Intermarriages According to Law No. 1 Year 1974. Prior to Law No. 1 of 1974 on Marriages, the Indonesian Christian Marriage Ordinance (Huwelijks Ordonantie Christen Indonesia S.1973 No. 74) and the Intermarriage Regulations (Regeling op de gemengde Huwelijken S.1898 No. 158), one of which regulates intermarriages. As a result, Indonesia acknowledged the existence of intermarriages at the time. Article 27 of the 1945 Constitution states that the state's citizens have equal status before the law. Similarly, the state has the authority to ensure each resident's right to embrace their religion and worship their religious and philosophical views (Article 29 (2) 1945 Constitution). There is no distinction in Indonesia between these two basic provisions at the moment of Marriage as an official institution in building a family through Marriage.

However, the two provisions above, the Indonesian Christian Marriage Ordinance (Huwelijks Ordonantie Christen Indonesia S.1973 No. 74) and the Mixed Marriage Regulation (Regeling op de gemengde Huwelijken S.1898. No. 158), are stated to be invalid anymore when viewed from the provisions of Article 66 of Law no. 1 of 174 concerning Marriage since January 2, 1974, when viewed from the provisions of Article 66 of Law no. 1 of 174. Given the significance of the sacred statement above in Hindu religious belief, the state must ensure all residents the right to embrace their religion and worship according to their religion and belief (Article 29 (2) of the 1945 Constitution). In addition, Article 28B states that "Everyone has the right to build a family and continue offspring through a legal marriage." Because of these fundamental human rights, state law also guarantees their implementation to run as smoothly as possible. Through marriages, every resident, including people of various religions, develops a relationship to build a family (household).

When the provisions of Law No. 1 of 1974 Governing Marriage are closely examined, intermarriages are still regulated by Article 21, paragraphs 1 to 4, but through a different mechanism. Except for their various religions, the mechanism in question must nevertheless adhere to a common marriage's material and formal standards (bride and groom are of the same religion). If the marriage registrar believes there is a legal prohibition against Marriage (even

Marriage between people of different religions), he will refuse to record the Marriage. In the event of a refusal, the request of one of the parties, who wishes to carry out the Marriage by the marriage registrar, will be given a written statement of the refusal accompanied by the reasons for the refusal.

By submitting a certificate of refusal, the parties whose Marriage is rejected have the right to petition the court in the territory where the marriage registrar who held the rejection is domiciled to make a decision. The court will quickly examine the matter before deciding whether to uphold the rejection or order the Marriage. It is specified in the UUUP's Article 21 paragraphs 3-4). If it is the case, Indonesian Law No. 1 Year 1974 allows for intermarriages.

A section in Article 21, paragraph 4 states, "whether the court would strengthen the rejection or order the intermarriage." Thus, while the court ruling in the stipulation does not refuse, it does require the intermarriage bride to be married off first. The registrar is confronted with "Marriages that are not permitted to be registered, as mentioned in paragraph (1)." Perhaps, it is why Indonesian marriage registrars refuse intermarriages, leading people to believe that intermarriages should be performed abroad. In other words, there are no intermarriage laws in Indonesia.

Intermarriages According to Law No. 23 Year 2006. With a clause in Article 21 paragraph (4) that has the same meaning as paragraph (1) of Law No. 1 of 1974, it provides the impression that there are no or, at the very least, regulations for intermarriages in Indonesia, but that they cannot be implemented. In such circumstances, Indonesia has had a civil revival with the reformation of the 1945 Constitution for the fourth time, with human rights being expanded and accommodations being increasingly individualized in the 1945 Constitution. "Everyone has the right to build a family and continue their offspring via proper Marriage. Legitimate, as stated in Article 28B (1). In this case, it indeed includes those who have different religions. Some years later, precisely in 2006, an amendment to the population administration regulations was made with Law no. 23 of 2006 concerning Population Administration.

In this case, the Indonesian Parliament expresses its wish to clarify the rules governing intermarriages. "A legal marriage according to the law must be reported by residents to the Implementing Agency..." as stated in the first paragraph of Article 34. "What is intended by marriage is an inner and outer relationship between a man and a woman as husband and wife in line with statutory provisions,' according to the article's explanation. "The registration of marriages as referred to in Article 34 also applies to marriages determined by the court..." says the continuation of this Article 35 letter. In the explanation, it is further clarified that "marriages determined by the court" refers to marriages between people of different religions, which are also known as 'intermarriage' in this study.

Such material legal provisions can be explained in legal science, and the court also determines where there are no legal requirements for intermarriages. Because it is final and declarative, marriage registrar employees no longer need to question the terms of Marriage based on Article 21 paragraph (4) of Law No. 1 of 1974. In addition, understanding can be improved by applying the legal principle "Lex posterior derogat lex priori", which states that a new law replaces or repeals an older law that governs the same subject. According to this analysis, intermarriages in Indonesia are governed.

METHOD

This study is descriptive-analytical, intending to describe recent intermarriages, which will be evaluated in terms of their existence and correlated with the perspective of Hindu marriages. The study data is entirely secondary, including primary material derived from laws and Vedic scriptures and secondary data derived from secondary sources, specifically doctrines found in

numerous writings (books) and several similar works, to see the differences and avoid study duplication. All data relevant to the study were analyzed, as well as qualitative analysis.

RESULT AND DISCUSSION

Marriages. Humans are social creatures because they will not be able to live alone without the help of other creatures or other humans. With this fact, humans form a society to have a place to form a social network, seek experiences, and pursue education to improve themselves from falling to a higher intellectual level (Putu Sudarsana, 2002: 2). According to the teachings of Hinduism, the social network in question will not be separated from the stages of human life known as Catur Asrama, including the Brahmachari Asrama stage, the learning stage of human life; the stage of the Grihastha Asrama life, namely the family stage (household); 3) endure the Vanaprastha Asrama stage, which is the stage of life breaking away from the world and being alone (performing asceticism); and 4) the stage of a monk's life, namely having carried out the opening of the world from the world (traveling as a monk). On that basis, humans enter into a marriage phase to go to the Grihastha Asrama (household) realm.

Legal Terms of Marriages. In Hinduism, the validity of a marriage is marked by involving 3 (three) testimonies, namely Tri Upa Saksi, namely: 1) Bhuta Saksi (Mabekala Ceremony), 2) Dewa Saksi (Natab Banten Pawiwahan ceremony, mapiuning in the temple/ merajan) 3) Manusia Saksi (witnessed by Indigenous Prajuru, government and relatives) (Remaja, 2005:78).

Types of Marriages. According to Hinduism in the book of Manava Dharmasastra Sloka III. 21, there are eight kinds of marriages (pawiwahan), namely:

- 1) *Brahma wiwaha* is a form of Marriage carried out by giving a woman to a vedic man of her parent's choice.
- 2) *Daiwa wiwaha* is a form of Marriage done by giving a woman to a priest.
- 3) *Arsa wiwaha* is a form of Marriage that occurs because of the will of both male and female families by handing over a cow or ox, according to the scriptures.
- 4) *Prajapati wiwaha* is a form of Marriage in having the parents give the daughter to a man after advising the bride and groom to carry out the Marriage well.
- 5) *Asura wiwaha* is a form of Marriage where a man accepts a woman after giving as much wealth as the woman asks for.
- 6) *Gandharva wiwaha* is a form of Marriage based on love in which the parents do not interfere.
- 7) *Raksasa wiwaha* is a form of Marriage where the man takes the woman by force.
- 8) *Paisaca wiwaha* is a form of Marriage where a man rapes a girl while she is sleeping or by giving her drugs to make her drunk (Ningsih & Suwendra, 2020:44)

Asura Wiwaha, Raksasa Wiwaha, and Paisaca Wiwaha are among the types of marriages stated above that are inappropriate in today's cultures since they violate religious and legal norms.

The Purpose of Marriages. According to the same source as above, there are three (three) purposes of marriages, namely:

1. *Dharmasampati*; the bride and groom carry out Dharma together, including all religious activities and obligations such as carrying out Yadnya. In Grihastha, Yadnya activities can be carried out perfectly.
2. *Praja*; the bride and groom can give birth to children who will continue the mandate and obligations to their ancestors. Through Yadnya and the birth of a Suputra child, a child will be able to pay off debts of service to his ancestors (Pitra Rna), to Gods (Dewa Rna) and teachers (Rsi Rna).
3. *Rati*; both the bride and the groom can enjoy sexual satisfaction and other satisfactions (Artha and Kama) that are not contradictory and based on Dharma (Remaja, 2005: 78)

Concerning 'family,' the preceding description is interpreted as a bond of affection between husband, wife, and children (Jaman, I Gede, Paramita: 2008). In Hinduism, Marriage is defined as a connection between a man and a woman to live together as husband and wife and how they can live together, have children, and establish a family (Prem P. Bahlia, 2010: 128). This statement corresponds to Negra's definition of Marriage, which states that "marriage is an inner and outer relationship between a man and a woman as husband and wife to build a happy and eternal family (household) based on the One Godhead" (Article 1 UUUP).

The phrase "Based on God Almighty" in the perspective of Hindu marriage law is "Yadnya" because it contains the understanding as a way to be able to pay debts (Rna) to the ancestors by giving birth to suputra children. It is why Marriage is a sacred and religious obligation so that it is a "samkara wiwaha" ritual. Therefore the ceremony is sacred (Putu Sudarsana, 2002: 3). If a Hindu religious ceremony is not used to conduct a marriage, the Marriage has no legal consequences under both national and Hindu laws. It is why the marriage ceremony is one of the sarira samkara, namely through the purification of the marriage ceremony, which is the purification of spermatozoa cells (Sukla) and egg cells (sonata), because of the creation of a prospective mother and a prospective father in preparation for the birth of a suputra child. (Putu Sudarsana, 2002: 4).

Pustaka Menawa Dharma Sastra, Sloka III-37 mentions:

Daca Purwanparan Wamcyan

Atmanam Caika Wimcakam

Brahmiputrah cukrita Kramoca

Ye Denasah Prnn

Meaning:

If a son of a wife wedded in a Brahmana Wiwaha achieves good things, he frees the ten levels of his ancestors, the ten levels of his descendants, and himself the twenty-first person from sins.

After the description of the existence of intermarriages in a formal juridical manner in Indonesia, for Hindus, there are no defects. However, in the development of the (Hindu) people, it is highly expected to choose them carefully because it is very clearly contrary to the religious goals of the Hindus themselves. Especially in spiritual welfare, in everyday life for Hindus, both in human activities or events, especially in human activities, it is not easy to implement the consequences of a marriage.

CONCLUSION

Based on the data and analysis, what was asked in the introduction to this paper can be concluded if it is questioned whether Indonesia regulates intermarriages, the answer is by referring to secondary data made from primary and its analysis. Indonesia has never experienced a legal vacuum (Vacumrecht) that regulates intermarriages. During the Dutch East Indies era (before independence) until after independence on January 2, 1974, intermarriage regulations were regulated in the Christian Indonesia Marriage Ordinance (Huwelijks Ordonantie Christen Indonesier S. 1933 No. 74) and Intermarriage Regulations (Regeling op de gemengde Huwelijken S. 1898 No. 158).

With the issuance of Law No. 1 of 1974 concerning marriages, which came into force on January 2, 1974, based on Article 66 of the law, it revoked the two provisions for intermarriages mentioned above by replacing them through the provisions of Article 21 paragraphs 1 to 4, with the mechanism that intermarriages were indeed prohibited because they were recorded. (As the stage of refusal of the validity of the Marriage), however, they can still submit to the court the reasons for the refusal, and the court will briefly examine whether to confirm the refusal or order the Marriage to take place. With the order for the Marriage to be held if they are of different religions, the registrar

still has difficulty registering it so that the Marriage obtains its validity. With the issuance of Law no. 23 of 2006, intermarriages in Indonesia and receiving recognition under the name of Marriage between people of different religions, registration is no longer accompanied by a prior marriage. However, after obtaining a court order, the Marriage can be registered and classified as a legal marriage.

Suppose intermarriages are related to the purpose of Hindu marriages. In that case, the answer does not obtain a positive response because the purpose of building a family (household) is not solely based on statutory provisions alone but is oriented towards being able to give birth to suputra children, who are expected to be able not only to filial piety to his parents but can also save the sins of his ancestors. If this hope cannot be realized through intermarriages, then the Marriage is not a marriage in accordance with the purpose of Marriage for Hindus.

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