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JURIDICAL ANALYSIS OF INTERFAITH MARRIAGE AGAINST THE DECISION OF THE SOUTH JAKARTA DISTRICT COURT (STUDY OF DECISION Number: 1139/Pdt.P/2018/PN. Jkt.Sel.)

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Abstract

This research aims to: (1) Determine the legal basis considered by the judge in the Decision of the South Jakarta District Court Number: 1139/Pdt.P/2018/PN. Jkt.Sel. regarding the permission for interfaith marriage. (2) Understand the implications of the judge's decision on interfaith marriage in the aforementioned court decision. The research adopts a Juridical Normative approach, employing both legislative and case study approaches. Primary, secondary, and tertiary legal sources are utilized. Document and literature studies are employed for legal data collection. The findings are as follows: (1) The judge's consideration in approving the request for permission for interfaith marriage is based on the absence of a specific law explicitly prohibiting such marriages, leading to a legal vacuum. Referring to the 1945 Constitution stating that the government provides protection to the entire nation and advances public welfare, interfaith marriage should not be problematic. (2) The implications of the judge's decision on marriage are that the approval of the application does not raise immediate issues, but it may affect the marital relationship and the rights of the children in the future. In conclusion, the recognition of interfaith marriages can create normative voids. This is because Law No. 1 of 1974 on Marriage does not explicitly prohibit interfaith marriages, leading to varying interpretations within society. Therefore, judges may refer to the Constitution, which emphasizes the government's duty to protect the nation and promote public welfare, indicating that interfaith marriage should not be a problem.

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Introduction

Indonesia society shows a striking plurality, especially in terms of ethnicity or ethnicity and religion. The impact of this diversity is that there are differences in various aspects of life, including views on life and interactions between individuals. In Indonesia, the government recognizes several major religions, such as Islam, Protestant Christianity, Catholicism, Hinduism, Buddhism, and Confucianism. This social interaction also opens up opportunities for relationships that can develop into marriages.

Differences in marriage are a common thing in multicultural Indonesia, these differences are in the form of regional origin, race, ethnicity, custom or culture of prospective couples who want to get married. However, if the difference exists in the beliefs or religion of the prospective bride, of course it will create new problems that affect the process, the legal status of a marriage or not and the legal impact that arises if the marriage is continued.

After the enactment of Law Number 1 of 1974, marriage between individuals of different religions was declared invalid and not allowed. However, in reality this kind of marriage still occurs in the community, either secretly or openly by holding a marriage abroad and then recording it at the Civil Registry Office in Indonesia as if the marriage is in line with the provisions of mixed marriage as explained in Article 57 of the Marriage Law Number 1 of 1974.

Although the state regulates restrictions on marriage between individuals of different religions, these principles also respect the right of individuals to practice religion and worship according to their own beliefs. Marriage is the right of every citizen of Indonesia and without coercion from other parties, so marriage is something optional. This is regulated in the 1945 Constitution Article 28B, paragraph (1), that every citizen of Indonesia has the right to form a family and continue descendants through legal marriage.

The analysis carried out by the researcher, namely related to interfaith marriage, is still a problem that occurs in Indonesia. Interfaith marriage is contrary to Marriage Law Number 1 of 1974. Meanwhile, when viewed from the 1945 Constitution which stipulates that providing protection to the entire nation and promoting general welfare, interfaith marriage should not be a problem. So from this presentation, the researcher has an interest in researching this matter with the title, namely "Juridical Analysis of Interfaith Marriage Against the Decision of the South Jakarta District Court (Case Study of Court Decision Number: 1139/Pdt.P/2018/Pn.Jkt.Sel.)".

Research Methods

In this normative law research, it discusses the Juridical Analysis of Interfaith Marriage Against the Decision of the South Jakarta District Court (Case Study of Court Decision Number: 1139/Pdt.P/2018/Pn.Jkt). The normative law research cell is also often known as doctrinal research or literature study. Therefore, the study of documents in this study is an activity of collecting and evaluating written information related to law, both published or unpublished by the public, but can be accessed by certain parties such as law teachers, legal researchers, and law students when conducting legal analysis by combining legal discussions, research results, and analyst bases whose sources are obtained through several approaches. Some legal approaches, such as the statute approach, the conceptual approach, the case approach.

Results and Discussion

Judge's Consideration in the South Jakarta District Court Decision Number: 1139/Pdt.P/2018/PN. Jkt.Cell Related to Interfaith Marriage

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In 2018, there was a case in the city of South Jakarta related to interfaith marriage. This case was recorded with the number 1139/Pdt.P/2018/PN. Jkt.Sel in court. In this case, the first applicant, named Edhu Mario Purwadiadji and a Muslim, planned to marry the second applicant, who was named Diana Stevani and was a Christian. Both parties have agreed to hold the wedding at the South Jakarta City Population and Civil Registration Office. However, the implementation of the marriage was hampered because the South Jakarta Population and Civil Registration Office refused to recognize the marriage, considering the religious differences between the two parties. Although the applicant has applied for marriage registration, especially the applicant who wants to perform interfaith marriage, the Population and Civil Registration Office firmly rejects the application. To overcome the refusal from the Population and Civil Registration Office, the applicant may attempt to use a determination from the Court in the City.

Judging from the application of the petitioners according to Article 21 paragraph (3) of Law Number 1 of 1974 states 'that the party whose marriage is rejected has the right to submit an application to the Court in the area where the marriage registrar who refuses to take up a position'. The requirement for this application is that the rejected party must submit a certificate of rejection. Then in the process of approving interfaith marriages, the judge examines the essence and essence of the applicants' applications. In the judge's decision, it was found that the judge considered and examined carefully before giving consent for the interfaith marriage. In making decisions, judges pay attention to the principles contained in the Preamble to the 1945 Constitution. This opening affirms that the state of Indonesia has the main goal, which is to protect the entire Indonesia nation and all of Indonesia's bloodshed and to promote general welfare, develop the nation's intelligence, and create lasting peace, and realize social justice. Therefore, the state aims to ensure justice for all citizens, including in the context of interfaith marriage that occurs in Indonesia. Judges In considering the granting of interfaith marriage applications, judges can categorize them in two aspects, namely social aspects and juridical aspects.

Judging from the social aspect, marriage is considered an act that is part of the life of creatures created by God Almighty. It is important to always pay attention to this, especially in Indonesia which has a heterogeneous society, where many people have interfaith marriages. Therefore, the state does not have the authority to prohibit or prevent two people who are interested in each other from entering into a marriage bond. In order to prevent future legal vacancies in the service of public interests and ensure legal certainty, the marriage registration process can be carried out at the Civil Registry Office if, after both parties have previously applied to the local District Court and obtained a special decision or permit.

Judging from the juridical aspect, according to Article 27 Paragraph (1) and Article 29 paragraph (2) of the 1945 Constitution states that all Indonesia Citizens, without exception, have an equal status within the legal framework and guarantee the freedom of every resident to follow their religious beliefs and worship according to their own beliefs. Thus, every citizen of Indonesia has the same rights before the law and every citizen has the right to practice his religion without coercion, including in the relationship with his or her life partner. Then refer to the Decision of the Supreme Court of the Republic of Indonesia. No. 1400 K/Pdt/1986, it is emphasized that religious differences between the bride and groom are not a reason to prohibit their marriage. This opinion shows that the Supreme Court has the view that religious differences are not an obstacle to carrying out the marriage bond.

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Implications of Judges' Determination on Interfaith Marriages

Law Number 1 of 1974 concerning marriage does not specifically regulate the rights and obligations of husband and wife in interfaith marriages. The law recognizes that in this case, all rights and obligations of husband and wife in marriage, both ordinary and mixed marriages (interfaith), are considered equal. The details regarding the rights and obligations of husband and wife are regulated in Chapter VI, namely Articles 30 to 34 of the Marriage Law.

Regarding the legal status of children born to couples who have religious differences in marriage, it can be detailed based on Article 42 of the Marriage Law. The article stipulates that a child who is considered legitimate is a child born in or as a result of a marriage that is considered valid. Therefore, children born from marriages that are recognized as legitimate, whether they are carried out at the Office of Religious Affairs or the Civil Registration Office, are considered legitimate children in the eyes of the law. The child has the rights and obligations regulated in Articles 46 to 49 of the Marriage Law.

Parents of different religions also need to pay attention to the provisions of Article 42 of Law No. 23 of 2001 concerning Child Protection. The Child Protection Law explains that children have the right to determine their religion of choice, as long as the child has reached the age of puberty, is responsible, and meets the requirements and procedures in accordance with the rules of the religion he chooses, as well as applicable laws. It can be concluded that the rights and obligations of husband and wife, both in ordinary marriage and interfaith marriage, are regulated by Articles 30 to 36 of Law Number 1 of 1974 concerning Marriage. In principle, all rights and obligations of husband and wife must be the same and in accordance with applicable regulations. However, the application of the rights and obligations of husband and wife who have religious differences can cause conflicts in the household. In a situation like this, when there are two individuals who are subject to two different religious laws, there is a potential for conflict, especially in terms of parenting patterns. Children are likely to choose the religion they will follow in the future. To reduce the potential for conflict, it is important for husbands and wives to negotiate or talk openly.

Conclusion

Based on Decision Number: 1139/Pdt.P/2018/PN. Jkt.Sel, who gave approval to the application for an interfaith marriage license at the South Jakarta District Court, can conclude that the recognition of interfaith marriage can cause a void in norms. This is because Law Number 1 of 1974 concerning Marriage does not clearly prohibit interfaith marriage, so it can give rise to various different interpretations in society.

Legal implications of the determination granted by the South Jakarta District Court Number: 1139/Pdt.P/2018/PN. Jkt.Sel, the state aims to ensure justice for all citizens, including in the context of interfaith marriages that occur in Indonesia. In the future, it is hoped that it can create welfare and justice within the legal framework, one of which is through marriage regulations. Marriage regulations also regulate the relationship between husbands, wives, and their children so that they have the force of law that remains as regulated in the Marriage Law and the Child Protection Law.

Recommendation

Referring to the issues discussed, the author would like to give some advice to the government because it is not clearly regulated regarding interfaith marriage in Law Number 1 of 1974 concerning Marriage, causing various interpretations of several articles in it. Therefore, it is necessary to revise or reform the Marriage Law. Since marriage is considered a human right, the government must take a

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firmer stance in regulating interfaith marriage to protect and guarantee the human rights of each individual.

Second, for people who are forced to undergo interfaith marriages, the author suggests that they should understand well the procedures for submitting applications for interfaith marriages. This is so that they do not face obstacles when applying at the District Court or the Civil Registry Office at the next stage.

Then the last thing for District Court Judges who handle cases of interfaith marriage license applications are expected to have a solid basis for consideration, so that the decisions taken can be properly accounted for in handling future cases.

References

Books

Asikin, Z., & Amiruddin. (2016). Pengantar Metode Penelitian Hukum. Raja Grafindo Persada..

Amalia, N., & Jamaluddin. (2016). Buku Ajar Hukum Perkawinan

Agustin Sukses Dakhi. (2019). Perkawinan Beda Agama (Suatu Tinjauan Sosiologi). Sleman : CV Budi Utama

Cahyani, T.D. (2020). Hukum Perkawinan (Vol.1). UMMPress

Hutapea, Purba. (2022). Reformasi Hukum dan Pelayanan Pencatatan Sipil di Indonesia.

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Journals and Articles

Arianti, N. D. K., Suastika, I. N., & Dantes, K. F. (2022). Efektivitas Undang-Undang Nomor 16 Tahun 2019 Tentang Perkawinan Terhadap Proses Dispensasi Perkawinan Anak Dibawah Umur Di Desa Sidetapa (Case Study of the Singaraja District Court). *Jurnal Media Komunikasi Pendidikan Pancasila dan Kewarganegaraan*, 4(2), 22-35.

Anwar, S. (2021). Hak Dan Kewajiban Suami Istri Menurut Undang-Undang Nomor 1 Tahun 1974. *Al Kamal*, 1(1), 88-98.

Ali, S. (2021). Penetapan Status Anak Istilhaq Terhadap Anak Laqith Dalam Perspektif Hukum Islam. *Salimiya: Jurnal Studi Ilmu Keagamaan Islam*, 2(3), 78-104.

Aulil Amri. (2020). Perkawinan Beda Agama Menurut Hukum Positif dan Hukum Islam

Annisa Fianni Sisma. (2022). Menelaah 5 Macam Pendekatan dalam Penelitian Hukum

Legislation

Constitution of the Republic of Indonesia Year 1945

Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 concerning Marriage (Statute Book of the Republic of Indonesia Number 1 of 1974, Supplement to Statute Book of the Republic of Indonesia Number 3019)

Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage

Law Number 23 of 2002 concerning Child Protection

Decision of the Supreme Court of the Republic of Indonesia No. 1400 K/Pdt/1986 of 1986