

MARRIAGE LAW IN INDONESIA FROM A LEGAL SOCIOLOGY PERSPECTIVE

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Abstract - This research aims to analyze the marriage law in Indonesia. In the context of Indonesia, marriage plays a significant role as an institution that regulates the relationship between husband and wife and provides legal protection for legally married couples. The research methodology employed in this study is a descriptive-analytical approach, gathering data through literature review and analysis of relevant legislation concerning marriage law in Indonesia. The collected data is analyzed, considering social, cultural, religious, and legal aspects of marriage. The research findings indicate that the marriage law in Indonesia serves several objectives. Firstly, it aims to safeguard individual rights and social interests within the context of marriage. Secondly, it ensures the continuity and stability of marital relationships. Thirdly, it guarantees legal protection for legally married couples. Furthermore, this study reveals that the marriage law in Indonesia is based on various sources of law, including national laws and religious principles. The marriage law also reflects the cultural and religious diversity in Indonesia, with principles accommodating the needs and beliefs of different communities.

Keywords: *marriage law, Indonesian, legal sociology.*

1. INTRODUCTION

Marriage is a highly significant institution in society, including in Indonesia. This institution regulates the relationship between husbands and wives and provides legal protection for married couples. The laws governing marriage in Indonesia play a crucial role in ensuring the sustainability of marital relationships and safeguarding the rights and social interests of legally married partners (Zainuddin et al., 2022). According to Article 1 of Law Number 1 of 1974 concerning Marriage (*Pasal 29 UUD 1945 Menjadi Dasar Hukum Perkawinan Di Indonesia | Mahkamah Konstitusi Republik Indonesia*, n.d.), marriage is defined as a spiritual and physical bond between a man and a woman as husband and wife to establish a happy and everlasting family (household) based on the belief in the One Almighty God (Putri, 2020).

Every marriage is not merely based on the biological needs of recognized and legitimate men and women but serves as the embodiment of the inherent essence of human life. Likewise, Islamic marriage law encompasses essential spiritual and religious aspects that include both the inner and outer aspects of life, humanity, and truth. Moreover, marriage is based on religiosity, meaning that religious aspects form the fundamental basis of family life by practicing faith and devotion to Allah. The understanding of marriage is rooted in three fundamental qualities that one must possess before entering into it: faith, Islam, and sincerity (Tobing, 2018).

Marriage issues in Indonesia include cases of unregistered marriages, specifically religiously recognized marriages. Such marriages have complex legal and social implications since they are not acknowledged by the law, thereby failing to provide legal protection for couples, especially in terms of financial rights, inheritance, child custody, and more. Additionally, in some cultures, unregistered marriages can also affect one's social status and image within society.

Furthermore, Indonesia does not recognize same-sex marriages and marriages between individuals of different religions. Same-sex marriage or gay marriage is not regulated by Indonesian law because the majority of religious and cultural norms in the country do not support same-sex marriage. Similarly, marriages between individuals of different religions cannot be conducted in Indonesia. According to Indonesian marriage laws, married couples are required to share the same religion.

With the passage of time and changing social dynamics, marriage laws have also undergone changes and adaptations. Indonesia, as a nation with cultural and religious diversity, has a marriage law system that reflects this diversity. Indonesian marriage law is based on various legal sources,



including national laws and religious principles followed by the society (Cammack et al., 1996). However, in its implementation, Indonesian marriage law faces various challenges and issues. Differences in legal interpretations, social and cultural changes, and discrepancies between national law and local customs are some of the factors that need to be considered when applying marriage laws (Wardhani et al., 2022).

Based on the issues outlined above, this research aims to conduct an in-depth analysis of marriage laws in Indonesia using a legal sociology perspective.

2. RESEARCH METHOD

This research employs a library research method, specifically in the form of qualitative research. When conducting library research, it is crucial to pay attention to the credibility of the sources used. The sources utilized should originate from reliable and relevant authorities in the field of study. Additionally, researchers should consider the freshness and relevance of the sources to the research theme. The author appropriately and openly positions the significant impact of the concepts to be used. This research is characterized by a descriptive research approach, which can produce valid patterns related to the conditions of various groups (Creswell & Creswell, 2018). This study is a qualitative research type that involves textual analysis using legal theory.

This research adopts a legal sociology approach, which is utilized to analyze the reactions and interactions that occur when a law is enforced within a society (Schiff, 1976).

3. DEFINITION AND CONCEPT OF MARRIAGE

Marriage is an institution recognized both legally and socially, binding two individuals as husband and wife. The definition of marriage can vary depending on the perspective used, such as legal, social, and religious viewpoints (Britannica, 2023). In a legal context, marriage is defined as a valid union between a man and a woman regulated by the law. According to Article 1 of Law Number 1 of 1974 concerning Marriage, marriage is the spiritual and physical bond between a man and a woman as husband and wife with the goal of establishing a happy and everlasting family (household) based on the belief in the One Almighty God (Putri, 2020).

Marriage also holds significant social dimensions. As a social institution, marriage forms the basic unit of society, creating the foundation for family relationships, defining responsibilities and obligations between spouses, and providing the basis for reproduction and child-rearing (Yusdani, 2021). The social functions of marriage also encompass preserving and passing down cultural values and maintaining social stability within the community (Yusdani, 2019). Religion plays a significant role in regulating marriage in Indonesia. Each recognized religion in Indonesia has its own rules and principles regarding marriage. For example, in Islam, marriage is considered a sacred bond between a man and a woman governed by Islamic religious rules. Meanwhile, in Christianity, marriage is seen as a lifelong partnership sanctified by God. These religious definitions guide the values, rituals, and responsibilities within marriage (Kadir & Rzki, 2023).

The history of marriage in Indonesia reflects the influence of various factors, including cultural traditions, religion, and colonial periods. Before the colonial era, marriage in Indonesia was heavily influenced by local cultural traditions. Each region had different forms and customs of marriage, often involving local customs, rituals, and unique traditions (Mubarok, 2012). Marriage in Indonesia was also influenced by the religions practiced by its people, such as Hindu-Buddhism, Islam, Christianity, and other religions. Each religion has its own rules and customs regarding marriage (Bemmelen & Grijns, 2018). Over time, these religions had a significant influence on the institution of marriage in Indonesia. For example, with the introduction of Islam to Indonesia, many communities adopted marriage rules and practices in line with Islamic teachings (Aini et al., 2019). During the colonial period in Indonesia, particularly under Dutch colonial rule, there was a significant impact on marriage regulations (Simatupang, 2021). The Dutch colonial government enforced laws governing marriage, incorporating elements of European law. This resulted in changes to the existing marriage system, as Indonesian marriage law began to be based on European norms (Muntaqo, 2020).

Legal sources form the basis for regulating marriage in Indonesia. There are several legal sources used to govern marriage in the country, including: first, national legal sources. Law Number 1 of 1974 concerning Marriage is the primary legal foundation for marriage in Indonesia. This law regulates the conditions for a valid marriage, marriage procedures, the rights and obligations of spouses, divorce, and legal protection for legally married couples (Mudakir et al., 2022). Additionally,



changes to this law are also regulated by legislative acts that follow the development of marriage law in Indonesia.

Second, religious legal sources. In Indonesia, people have the freedom to choose their religion, and these religions play a crucial role in regulating marriage. Each religion has its own legal sources that govern marriage, such as holy scriptures, religious regulations, fatwas, and religious traditions passed down through generations (Hosen, 2005). For example, in Islam, legal sources for marriage can be found in the Quran, Hadith, and *ijma'* (consensus of scholars). By understanding the definition and concept of marriage, as well as examining the history and legal sources of marriage in Indonesia, we can have a more comprehensive understanding of the institution of marriage in this country. This understanding is essential in the context of implementing and developing relevant and just marriage laws in Indonesia (Bagir et al., 2020).

4. Analysis of Marriage Law in Indonesia

4.1 Analysis of Social Aspect in Marriage Law

Social aspects have a significant influence on marriage law in Indonesia. Social norms, such as gender expectations, family roles, and social relationship dynamics, play a crucial role in the understanding and practice of marriage (Arfaizar et al., 2023). Gender roles in marriage law indicate differences in rights and obligations between husbands and wives (Hamid et al., 2022). For instance, in patriarchal traditions (Yusdani & Arfaizar, 2022), husbands often have a dominant role in decision-making within the family and ownership of joint property, while wives' roles are often limited to domestic duties and supporting their husbands in their responsibilities as heads of the family (Tanaya, 2020). Additionally, social norms can also affect societal perceptions of interfaith marriages, divorce, and polygamy. Social factors like societal pressure, stigma, and community expectations can influence individual decisions in dealing with complex marriage situations (FH UI, 2023).

4.2 Analysis of Cultural Aspect in Marriage Law

Cultural aspects play a strong role in marriage law in Indonesia. Local culture, customary traditions, and cultural values contribute to the understanding and practice of marriage within society. Marriage practices governed by customary traditions often have rules and procedures that differ from national marriage laws (Hafidzi et al., 2021). For example, the customs of various ethnic groups in Indonesia often involve customary ceremonies, dowry payments, and obligations to fulfill specific customary requirements before a marriage can be officially recognized. Additionally, cultural values such as family unity, mutual cooperation, and respect for ancestors can also influence perceptions and practices of marriage in Indonesia. For example, the importance of maintaining family harmony and ensuring the continuity of descendants often becomes a crucial factor in marriage decision-making (Saiin & Armita, 2019).

4.3 Analysis of Religious Aspect in Marriage Law

Religious aspects play a significant role in marriage law in Indonesia. The religions practiced by the Indonesian population, such as Islam, Christianity, Hinduism-Buddhism, and others, provide rules and principles governing marriage practices and norms. In the case of Muslims, marriage law is governed by Islamic principles found in the Quran, Hadith, and *ijma'* (consensus of scholars) (Suwarjin, 2023). Islamic marriage practices involve processes such as the marriage contract (*akad nikah*), dowry (*mahar*), and the rights and responsibilities of husbands and wives in marriage (Sidqi & Rasidin, 2023). Besides Islam, other religions also have regulations and traditions that govern marriage, such as the sacrament of marriage in Christianity and traditional wedding ceremonies in Hinduism-Buddhism. Religion also plays a crucial role in regulating the legal status of marriage, including recognizing or rejecting interfaith marriages, divorce, or polygamy. Each religion has different requirements and procedures for handling these matters, and the influence of religion on marriage law cannot be overlooked (Probert et al., 2023).

4.4 Analysis of Legal Aspect in Marriage Law

The legality of marriage encompasses the legal rules, regulations, and procedures governing the formation, recognition, and dissolution of marital bonds (Widanarti & Benuf, 2022). Marriage law in Indonesia is governed by laws such as Law Number 1 of 1974 concerning Marriage. This law establishes



the requirements and procedures for conducting marriage, including age limits, administrative requirements, and the issuance of marriage certificates (Trade, n.d.). Besides legislation, the legality aspect of marriage law also involves the state's recognition of marriage, including the registration of marriages and granting legal status to married couples (Pujiono et al., 2021). The legality of marriage also affects the legal rights and obligations of couples in areas such as inheritance rights, financial responsibilities, and child custody (EMBASSY, n.d.). Through the analysis of social, cultural, religious, and legal aspects of marriage law, this research provides a comprehensive understanding of the various factors that influence and shape the marriage system in Indonesia (Musyafiq, 2023). Understanding these aspects holistically is essential in developing legal policies that are responsive and inclusive of societal dynamics and individual needs within the context of marriage (Pelu & Dakhoir, 2021).

5. CHALLENGES IN THE IMPLEMENTATION OF MARRIAGE LAW

There are several challenges in the implementation of marriage law in Indonesia, including:

5.1 Differences of Legal Interpretation

One challenge faced in the implementation of marriage law in Indonesia is the differences in the interpretation of the laws governing marriage. Despite the existence of the Marriage Law No. 1 of 1974, there are sometimes varying understandings and interpretations of its provisions (FH UI, 2023). These differences in interpretation can arise among those directly involved in the marriage, such as prospective spouses, families, and authorized officials responsible for certifying marriages, as well as among legal professionals such as judges, lawyers, and legal experts (Rizki et al., 2022). These differences in interpretation can lead to legal uncertainty in the implementation of marriage law, resulting in conflicts and difficulties in resolving marriage disputes (Jayusman, 2021).

5.2 Social and Cultural Changes

Social and cultural changes within Indonesian society pose challenges to the implementation of marriage law (Febiana, 2017). Indonesian society has undergone changes in values, norms, and marriage practices due to the passage of time, globalization, and intercultural interactions (Nonci et al., 2023). These social and cultural changes can lead to conflicts between customary norms, religious values, and national laws governing marriage. For instance, differences in perceptions and practices regarding interfaith marriages, polygamy, or divorce may arise in contradiction to the prevailing marriage laws (Hadiati, 2020). Additionally, external cultural influences, such as mass media and popular culture, can also impact people's understanding and practices related to marriage (Schenk, 2019). Changes in gender role expectations, modern lifestyles, and individual freedoms can also affect the understanding and implementation of marriage law (Goldscheider & Goldscheider, 1992).

5.3 Incompatibility Between National Law and Local Custom

Another challenge is the incompatibility between national laws governing marriage and local customs and practices prevalent in certain regions of Indonesia. Indonesia boasts a diverse cultural heritage with various customary traditions and practices that influence marriage practices. The mismatch between national law and local customs can create conflicts in the implementation of marriage law. For example, marriage practices involving high dowries or specific customary ceremonies that are not recognized or regulated by national law can lead to legal uncertainty and difficulties in meeting the formal requirements of marriage recognized by the state (Enabulele, 2016).

To address these challenges, it is important to seek harmonization between national law and local customs, as well as to enhance understanding and awareness among stakeholders involved in the implementation of marriage law (Banach, 1998). Collaboration between the government, legal institutions, customary leaders, and the community as a whole is required to find solutions that accommodate cultural diversity (Banting, 2010) and ensure fair and equitable legal protection for all individuals wishing to marry. Furthermore, educating and raising awareness among the public about marriage law is essential (Mm, 2019). Through effective socialization, people can better understand the provisions of marriage law and the rights and responsibilities associated with marriage (Amal, 2020). With improved understanding, it is hoped that greater alignment will occur between marriage practices in society and national law (Tahir, 2021).

Regular updates and improvements to marriage laws are also needed to accommodate social, and cultural changes and societal needs. Periodic evaluations of existing marriage laws are necessary to ensure their continued relevance in evolving social and cultural contexts. When addressing the



challenges of marriage law implementation in Indonesia, it is crucial to consider human rights principles and gender equality (Purnomo et al., 2023). The protection of individual rights, including the right to choose a life partner, rights within marriage, and protection against domestic violence, should be a priority in the implementation of marriage law (Severo et al., 2021). By addressing challenges such as differences in legal interpretation, social and cultural changes, and the incompatibility between national law and local customs, it is hoped that the implementation of marriage law in Indonesia can become more effective and equitable (Alfitri, 2020). In this effort, cooperation among the government, legal institutions, customary leaders, and the community is key to achieving the goal of comprehensive and equitable legal protection for all individuals within the institution of marriage (Fauzi, 2019).

6. ANALYSIS OF LEGAL SOCIOLOGY

There are 5 categories of marriage laws in Indonesia (Gouwgioksiong, 1964), namely:

- 1) Religious Law Incorporated into Customary Law: This law applies to Indonesian citizens who are Muslims (Anggraeni, 2023).
- 2) Customary Law: This applies to Indonesian citizens who adhere to specific customs and traditions (Hanim & Noorman, 2018).
- 3) *Huwelijke Ordonantie* (Christianity in Indonesia S. 1933 No. 74): This law applies to Indonesian citizens who are Christians (Nofrizal et al., 2022).
- 4) Civil Code (*Kitab Undang-undang Hukum Perdata*): This applies to foreign nationals and descendants of Indonesian citizens (Mangunsong, 2009).
- 5) Law Number 1 of 1974 for all groups: This is the law that encompasses all segments of society (Gavison, 1980).

Law Number 1 of 1974 concerning Marriage in Indonesia is established as a regulation that covers all segments of society (Sanuri, 2021). This law governs the procedures for marriage in Indonesia and includes various aspects related to marriage, such as marriage requirements, minimum age for marriage, permission for polygamy, joint property, and divorce. The complex interaction between law and society in the context of marriage involves studying how social, cultural, and religious norms influence the form and process of marriage, as well as how the law regulates and responds to these dynamics.

In Indonesia, the family plays a central role in society. Marriage is viewed as the formation of a family and an effort to expand family ties. The decision to marry often involves consultation and approval from family members, especially parents. Most Indonesians respect the opinions and wishes of their parents when it comes to marriage. There is a term "muatan kolot" in Indonesian culture that refers to traditional or conservative values (Angkasa, 2021). In the context of marriage, this means that conservative views on family roles and family structure remain strong in some segments of society.

Another aspect that influences marriage is religion, which holds a central place in the lives of Indonesian people. Most people consider religion as the foundation of morals and ethics, and this is reflected in their views on marriage. Each religion has specific views on marriage, gender roles in marriage, as well as the purposes and meanings of marriage. Religious views greatly influence marriage practices and norms in society (FH UI, 2023). Many Indonesians choose to marry according to the teachings of their religion. A valid religious marriage is generally seen as an important step to lead a blessed and harmonious life. Marriage in Indonesia, especially when conducted according to religion, also has legal implications. For example, inheritance laws, child custody, and other matters can be influenced by the religious norms adhered to by the couple (Suhasti et al., 2018).

Additionally, there are societal expectations and norms that people internalize regarding how men and women should behave. This may include expectations about specific roles in marriage, careers, and family life. Traditional views on gender roles often attribute specific roles to men and women. For example, men are expected to be the primary breadwinners of the family, while women are considered responsible for household chores and childcare. Although changes have occurred in society, these traditional views can still pose challenges for couples who want to create a more equal marital dynamic. Couples may face pressure from their families or communities to conform to these traditional norms (Yusdani et al., 2023).



The shifting meaning of legal or religious marriage plays different roles in Indonesian society. While customary marriages hold strong cultural and traditional values, many couples also recognize the importance of legal marriages in the context of law and religion. A legally recognized marriage provides couples with clear legal rights and protections. These include rights to joint property, inheritance, insurance, child custody, and more (Hak et al., 2022). A legally valid marriage is also seen as a stronger long-term commitment between couples. This can influence how couples view their responsibilities and obligations in marriage.

The influence of globalization can bring shifts in existing social norms. This can affect how society views marriage, divorce, as well as gender roles and rights within marriage. Couples may choose to pursue education and careers before marriage or may have different expectations about their roles in marriage. It is important to note that changes due to globalization and modernization can have both positive and negative impacts, depending on how local norms and global values interact.

7. CONCLUSION

The marriage legal system in Indonesia serves as the foundation for regulating marriages in the country. Indonesian marriage law is based on Law Number 1 of 1974 concerning Marriage, which governs various aspects related to marriage, including requirements, procedures, and the rights and obligations associated with the institution of marriage. Marriages in Indonesia are recognized as legally valid unions and are governed by national law. Marriage law dictates the conditions for marriage, such as the minimum age, the consent of both parties and provisions regarding interfaith marriages. Furthermore, marriage law also regulates marriage procedures, marriage registration, and the rights and duties of husband and wife.

In addition to Law Number 1 of 1974 concerning Marriage, marriage law in Indonesia is also supported by other legal sources, such as court decisions, government regulations, and religious provisions. Religion also plays a significant role in marriage law in Indonesia, especially for those who enter into marriages in accordance with their religious beliefs. In the implementation of marriage law, there are challenges that need to be addressed, such as differences in legal interpretations, social and cultural changes, and the disparities between national law and local customs. These challenges affect the implementation of marriage law and require efforts in harmonization, legal reforms, and public education to achieve an effective and fair implementation of marriage law.


Through a good understanding of the marriage legal system in Indonesia, including its requirements, procedures, and underlying principles, it is hoped that the public can recognize the importance of complying with the law and conducting marriages in accordance with the applicable regulations. The effective implementation of the marriage legal system in Indonesia will contribute to the protection of individual rights, gender equality, and the creation of marriages based on fair and equitable principles for all individuals who wish to marry.

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