

# RECORDING OF DIFFERENT MARRIAGE VIEWED FROM LAW NUMBER 23 YEAR 2006 ABOUT POPULATION ADMINISTRATION

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## RECORDING OF DIFFERENT MARRIAGE VIEWED FROM LAW NUMBER 23 YEAR 2006 ABOUT POPULATION ADMINISTRATION

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**Abstract:** The purpose of this study is to examine and analyze various religions in Indonesia based on Law No. 23 of 2006 and to examine and analyze various religious cases in Indonesia. The type of research used is normative legal research or also called doctrinal legal research. In this study, the law is often conceptualized as what is written in written rules (law in a book) or law as a benchmark of behaving for a human being deemed appropriate. This research uses several types that are adapted to the context used in this research: invitation approach (approach to law), conceptual approach and case approach.

The results of research related to the image of marriage of different religions viewed from the Law no. 23 of 2006 has been implemented by the mandate of Article 35 letter a along with its explanation by arranging reservations to the District Court. Making legal certainty about the marriage of different religions has not been fully able to annul the benefits of the petitioners. Because with the need to comply with the requirement to file an order to the District Court no and you can ask permission to marry it because there are still figures related to the differences among the religions in Indonesia.

**Keywords:** different religion, marriage recording

### I. INTRODUCTION

Marriage is a sacred bond because in the bonds of marriage there is not only a bond of birth or physical only but also there is a spiritual bond based on God Almighty, the meaning is that a marriage is not just an outward relationship, more than that that is an inner bond or relationship between a man and a woman who aims to form a happy and eternal family based on the One Supreme Godhead.<sup>1</sup>

As for the purpose of marriage is to form a happy and eternal family, for that husband and wife need to help each other and complement, so that each can develop personality and

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<sup>1</sup> Sution Usman Adji, *Kawin Lari dan Kawin Antar Agama*, Liberty, Yogyakarta, 1989, p. 21.

achieve the prosperity of the inner and inner. Thus in marriage must really have a round preparation, in the sense of being born and also the mental and body maturity in the sailing of the household.<sup>2</sup>

According to the provisions set forth in Article 22 paragraph (1) of Law Number 1 Year 1974 concerning Marriage (hereinafter referred to as Law No. 1 Year 1974 / Marriage Law) states that marriage is lawful if done according to law, their respective religions and beliefs. Article 2 Paragraph (1) of the Marriage Law may be interpreted that a marriage shall only be recognized by the State so long as such marriage is allowed and exercised according to their respective faiths and beliefs. This also applies to the marriage of different religions, as long as the marriage of the different religions is recognized and carried out lawfully according to the relevant religious law is lawful according to the State. If according to their respective religions are not allowed and not recognized its validity, then it is not legitimate according to religion. Based on this interpretation, the authors themselves argue that the marriage of different religions is not regulated in the Marriage Law, so it could be in practice cannot be allowed.

In addition such legal marriages shall be recorded in accordance with applicable laws and regulations, in accordance with the provisions of Article 2 paragraph (2) of Law no. 1 of 1974 which reads "Every marriage is recorded according to the prevailing laws and regulations". The act of recording does not determine the validity of a marriage, but declares that the event does exist and occurs, so it is merely administrative.<sup>3</sup>

Along with the times, though Law no. 1 Year 1974 has been valid for 43 years since enacted, does not mean there is no problem in the implementation. One of them is related to issues of marriage of different religions. The phenomenon of different religious marriages is found in our society. As an example, there are weddings among artists such as Lidya Kanda and Jamal Mirdad, Ari Sihale and Nia Zulkarnaen, Ira Wibowo and Katon Bagaskara, Deddy Corbuzier and Kalina and others. Usually to deal with the arrangements contained in the Law of Marriage, there are four ways commonly adopted married couple of different religious marriage. First, the determination of the court, it is based on the Jurisprudence of Supreme Court Decision Number 1400 K / Pdt / 1986, which the Civil Registry Office is allowed to hold a marriage of different religions.<sup>4</sup> Secondly, marriage is done according to the law of each religion. Marriage is done first according to the religious law of a bride (husband / wife) and then followed by marriage according to the next religious law of the bride.<sup>5</sup> Third, both partners determine the choice of law. Where one spouse declares to be subject to the law of her partner by means of "conversion", but after the marriage takes place each party re-embrace their respective religions.<sup>6</sup> Fourth, marry abroad. Where the deed obtained from the country where the marriage took to Indonesia to be recorded only.<sup>7</sup>

The marriage of different religions is not regulated in the Marriage Act, but the ways of marrying the different religions described above are very rampant in society, not only among artists but also among ordinary people. This is actually due to the fact that the Marriage Law is

<sup>2</sup> Marsono, *Hukum Perkawinan Nasional*, Rineka Cipta, Jakarta, 2005, p. 7.

<sup>3</sup> Wantji Shaleh, *Hukum Perkawinan Di Indonesia*, Ghalia Indonesia, Jakarta, 1982, p. 17.

<sup>4</sup> Moh. Syamsul Muarif, "Legalitas Perkawinan Beda Agama Dalam Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dan Undang-Undang Nomor 23 Tahun 2006 Tentang Perkawinan", *Thesis Magister Al-Ahwal Al-Syakhsyah*, Universitas Islam Negeri Maulana Ibrahim, Malang, 2015, p. 5.

<sup>5</sup> Aman Dahwal, *Hukum Perkawinan Beda Agama Dalam Teori Dan Praktiknya Di Indonesia*, Mandar Maju, Bandung, 2016, p. 16-17.

<sup>6</sup> *Ibid.*, p. 17.

<sup>7</sup> *Ibid.*, p. 18.

not strictly regulated to prohibit the existence of different religious marriages in Indonesia. So it should be necessary to change the marriage law or the formation of implementing regulations that can formulate firmly and appropriately to prohibit the occurrence of marriage of different religions in Indonesia.

Subsequently, Law No. 23 of 2006 on Population Administration (hereinafter referred to as Law No. 23 of 2006/Population Administration Act), where it is expected that the formulation of the Population Administration Act can reinforce the rules regarding the non-permissibility of marriage of different religions in Indonesia in accordance with the mandate of the Marriage Law. But it is regrettable that the Population Administration Act actually provides an opportunity for those who will hold a different religious marriage. This is as stated in Article 35 letter a reads, "The registration of marriage as intended in Article 34 shall also apply to the marriage established by the Court. Further described in the elucidation of Article 35 letter a, namely, "Referred to" Marriage as stipulated by the Court "is a marriage made between people of different religions".

The enactment of the provision of Article 35 Sub-Article a of the Population Administration Act is one of the setbacks for marriage arrangements in Indonesia, as it is apparent that the government inconsistency in facing the marriage phenomenon of different religions. It is precisely with the provision of Article 35 letter a causes a conflict of norms between the Marriage Law and the Population Administration Act. On the one hand, the Marriage Law does not regulate the existence of different religious marriages, but on the other hand the government provides an opportunity to be able to hold and register the marriage of different religions through the establishment of the court.

It causes the meaning of marriage which should be a bond between birth and soul between a man and woman who are practiced on the basis of religion and belief respectively precisely deviate far, because essence the legitimacy of a marriage according to the Law of Marriage is a marriage which is carried out according to religion and beliefs of the parties so that they can be registered either in the KUA or at the Office of Population and Civil Registration. However, after the Law on Population Administration, the marriage of different religions which according to the Law of Marriage is not regulated and is not allowed to be given space to be held or registered in the Office of Administration and Population through the determination of the court.

Besides other problems that occur there is uniformity of opinion of judges related to the marriage of different religions. This can be seen with the application of the determination of a marriage of different religions received or rejected by the Panel of Judges. This can be seen from several decisions that have been made compiler, namely Stipulation of District Court Number 7/Pdt.P/2014/PN. Pti, Determination of the District Court Number 46/Pdt.P/2016/PN. Skt., Determination of District Court Number 8/Pdt.P/2013/PN. Ung, and Stipulation of District Court Number 71/Pdt.P/2017/PN. Bla.

The purpose of this study is to examine and analyze the recording of religious marriages in Indonesia based on Law no. 23 of 2006 and to review and analyze the settlement of cases of different religious marriages in Indonesia.

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## II. LITERATURE REVIEW

### 2.1 Theoretical Framework

#### 2.1.1 Legal certainty

Certainty is a word that comes from a certain word that has a meaning of course, has remained, and should not.<sup>8</sup> While certainty has meaning provisions and provisions.<sup>9</sup> If the word certainty is combined with the word law becomes legal certainty, which has the meaning as a provision or legal provision of a country that is able to guarantee the rights and obligations of every citizen.

The normative legal certainty when a rule is created and enacted as it is clearly defined and logical. Clearly, in the sense that there is no doubt (multi interpretation) and logical does not cause collision and obscurity of norm in the system of norms with each other.

#### 2.1.2 Theory of Justice

Among the well-known theories of justice include the theory of justice put forward by Aristotle based on the principle of equality, justice is done to the same things are treated equally and things that are not equally are treated unequally in proportionality (justice consist in treating equals equally and unequal unequally in proportion to their inequality).<sup>10</sup>

Aristotle distinguished justice into two:<sup>11</sup>

- a) Universal (general) justice that is justice that is formed simultaneously with the formulation of law;
- b) Specific justice is identified with fairness or equalities. This particular justice is divided into:
  - 1) Distributive justice is proportional justice;
  - 2) Rectifications justice is also called remedial justice, corrective justice or compensatory justice that is justice in the relationship between law enchantments in a business transaction or contract in which contains the sense of equalities.

### 2.2 Concept

#### 2.2.1 Marriage

Marriage is derived from the word "marriage" which means to establish a life with married or married.<sup>12</sup> While marriage has meaning matters relating to mating, marriage, animal intercourse.<sup>13</sup>

Article 1 of the Marriage Law regulates the definition of marriage that is, "Marriage is a mental bond between a man and a woman as husband and wife in order to form a happy and eternal family (household) based on the One Godhead".

#### 2.2.2 Marriage Different Religion

What is meant by the marriage of different religions is a marriage performed by people who embrace different religions and beliefs that differ from each other. For example marriage between a Muslim man with a Protestant woman and vice versa.<sup>14</sup>

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<sup>8</sup> W. J. S. Poerwadarminta, *Kamus Umum Bahasa Indonesia*, Balai Pustaka, Jakarta, 1986, p. 716.

<sup>9</sup> *Ibid.*

<sup>10</sup> E. Sumaryono, *Etika Hukum Relevansi Teori Hukum Kodrat Thomas Aquinas*, Kanisius, Yogyakarta, 2006, p. 256.

<sup>11</sup> 20

<sup>12</sup> Umi Chulsum & Windy Novia, *Kamus Besar Bahasa Indonesia*, Kashiko, Surabaya, 2014. p. 350.

<sup>13</sup> *Ibid.*

<sup>14</sup> Abdurrahman dan Riduan Syahrani, *Masalah-Masalah Hukum Perkawinan di Indonesia*, Alumni, Bandung, 1978, p. 20.

Furtherm<sup>27</sup> Rusli and R. Tama argued that from the definition of marriage formulated in Article 1 of Law Number 1 Year 1974, then what is meant by the marriage of different religions is the bond of birth and bond between a man with a woman, who because of different religion<sup>1</sup> causes the inclusion of two different rules concerning the terms and proced<sup>1</sup>ures of marriage in accordance with their respective religious law, with the aim of establishing a happy and eternal family based on the One Supreme Godhead. From this formula, it can be seen that in the marriage of religious differences related to the existence of two rules (law) religion (different) that is about the terms and procedures of marriage implementation.<sup>15</sup>

According to Abdurrahman, the marriage of different religions is a marriage done by people who embrace different religions and beliefs with each other.<sup>16</sup>

### III. METHOD

The type of research used is normative legal research or also called doctrinal legal research. In the research of this type of law, the law is often conceptualized as what is written in law (law in books) or law is used as a benchmark to behave for human beings who are considered appropriate.<sup>17</sup> This research uses several approaches adapted to the problems raised in this research is statute approach, conceptual approach and case approach.

### IV. RESULT AND CONCLUSION

#### 4.1 Implementation of Marriage Recording Differences in Indonesia

##### 4.1.1 Arrangement of Marriage Registration Before the Establishment of Law no. 23 of 2006

Article 2 Paragraph (1) of the Marriage Law states that marriage is law<sup>3</sup> if done according to the law of each religion and belief. In the next explanation mentioned that there is no marriage outside<sup>3</sup> the law of each of his religion and belief. If it is violated then the marriage cannot take place.<sup>18</sup> Article 2 paragraph (2) of the Marriage Law states also that each marriage is recorded according to the prevailin<sup>42</sup> laws and regulations. As mentioned in the general explanation that marriage registration is the same as important events in the life of a person such as birth, death listed in the certificate of an official deed is also listed in the listing list. The act of recording does not determine the validity of a marriage, but declares that the event does exist and occurs, so it is merely administrative.<sup>19</sup>

The registration of marriage is regulated in Article 2 of Government Regulation no. 9 of 1975 stating that:

- a. For the Islamic recording by the Registrar Officer as referred to in Law no. 32 of 1954 concerning the Marriage Registers, Talah and Re<sup>28</sup> uk.
- b. For non-Muslims, the registration shall be made by the marriage registry officer at the Civil Registry Office.

Article 3 PP. 9 of 1975 states that anyone who wishes to marry shall notify his or her intent, whether oral or written to the appointing officer at the marriage, shall be held within a period of at least ten working days before the marriage takes place. The will of marriage shall

<sup>15</sup> Rusli dan R. Tama, *Perkawinan Antar Agama dan Masalahnya*, Pionir Jaya, Bandung, 1986, p. 17.

<sup>17</sup> Amiruddin dan Zainal. Asikin, *Pengantar Metode Penelitian Hukum*, Edisi Revisi PT. RajaGrafindo Persada, Jakarta, 2016, p. 146

<sup>18</sup> K. Wantjik Saleh, *Hukum Perkawinan di Indonesia*, Ghalia Indonesia, Jakarta, 1976, p. 16.

<sup>19</sup> *Ibid.*

13 contain: Name, Age, Religion or belief, occupation, residence of the prospective bridegroom, if one or both have ever married also mentioned the name of the previous wife or husband's name.

Article 6 PP. 9 of 1975 states that the recording officer in addition to examining whether the terms of marriage have been met and whether there are no marital obstacles under the law, and also examines:

- a) The birth certificate of the prospective bride.
- b) Information about the name, religion or belief, occupation and residence of the parents of the prospective bride. 37
- c) A written permit or court permit as referred to in Article 6 paragraph (2), paragraph (3), paragraph (4) and paragraph (5) of the Marriage Law. 13
- d) Dispensation of the courts or officials as referred to in Article 7 paragraph (2) of the Marriage Law.
- e) Court or official dispensation. 13
- f) The death certificate of a spouse or husband or divorce certificate for marriage for a second or more time.
- g) Authentic or under authorized power of attorney authorized by the registrar officer, if one of the prospective bridegroom or both cannot attend by himself for any important reason so represented by others.

Upon fulfillment of the procedures and conditions of notification, and there is no marriage impediment, the registrar shall notify the notification of the will of marriage in the Office of the Record of Marriage at a designated place and readable by the public. Ten days after the announcement of the marriage and during the announcement there was no prevention of marriage, the marriage could take place.

The problems with marriage recording and its procedures and legal basis are as follows:

The Marriage Law in Article 2 paragraph (2) states:

“Every marriage is recorded according to the prevailing laws and regulations”.

Article 10 paragraph (3) of PP. 9 Year 1975 states:

“By observing the ordinances of marriage according to their respective laws of religion and belief, marriage is performed before the clerk and attended by two witnesses”.

Article 11 paragraph (1) states: 11

“Shortly after the marriage in accordance with the provisions of Article 10 of this government regulation the bride and groom sign the marriage certificate which has been prepared by the Registrar Officer under the applicable provisions”.

Article 11 paragraph (2) states:

“The marriage certificate signed by the bridegroom is further signed by both witnesses and the Registrar who attends the marriage and for those who are married according to the religion of Islam are also signed by the marriage guardian or represent him”.

Article 11 paragraph (3) states:

“By signing a marriage certificate, the marriage has been officially registered”.

16 According to Sudikno Mertokusumo<sup>20</sup>, a deed is a signed letter, containing events which form the basis of a right or an engagement, and originally made deliberately for proof. According

26  
<sup>20</sup> Sudikno Mertokusumo, *Hukum Acara Perdata di Indonesia Edisi Revisi*, Cahay Atma Pustaka, Yogyakarta, 2013, p. 106.

to Wahyono Darmabrata, the marriage certificate is an instrument of evidence proving the truth about the occurrence of legal events in the form of marriage events.<sup>21</sup>

#### 4.1.2 Arrangement of Marriage Recording of Different Religions after the Establishment of Law no. 23 of 2006

The formation of Law no. 23 of 2006 became the first milestone of regulation on civil registration in national law. The ordinances which previously regulated civil registration in Indonesia were declared no longer valid.

Some considerations for the establishment of this Law are:

- a. The Unitary State of the Republic of Indonesia pursuant to Pancasila and the 1945 Constitution is obliged to provide protection and recognition of the determination of personal status and legal status of any important population and events experienced by Indonesians residing within and / or outside the territory of the Unitary State of the Republic of Indonesia.
- b. To provide protection, recognition, determination of the personal status and legal status of any important population event and event experienced by Indonesians and Indonesian citizens outside the territory of the Unitary State of the Republic of Indonesia, a regulation on Population Administration is required.
- c. Arrangements on Population Administration can only be accomplished if supported by professional services and awareness rising, including Indonesian citizens residing in the country.
- d. The existing laws on the Population Administration are no longer appropriate to the orderly and non-discriminatory Citizenship Administration services, so there is a need for a comprehensive arrangement to be the guidance for all state administration related to population.

The objective of restoring the population administration by the establishment of the Population Administration Law is to provide the fulfillment of administrative rights such as public services as well as the protection related to the population document without any discriminatory treatment.

Through the Law on Population Administration particularly Article 35 letter a, the positive law in Indonesia opens the possibility of recognizing the marriage of different religions in Indonesia by applying for the establishment of a court on which the marriage of religious differences can be registered in the Civil Registry Office. The validity of the marriage will be judged by the District Court Judge where the petition is filed.

Marriage registration is an administrative act and not a legal requirement for marriage, but it is still very important to do, as it is authentic evidence of a person's legal status. The form is a marriage book or marriage certificate, which indicates that marriage, has actually taken place and is legally valid.

The issue though every marriage must be registered, but the law requires marriage to be registered, but the law requires that marriage must be approved by religion first. This is because, since the enactment of the Marriage Law, Indonesia no longer knows what is known as civil

<sup>21</sup> Wahyono Darmabrata dan Surini Ahlan Syarif, *Hukum Perkawinan dan Keluarga di Indonesia*, Rizkita, Jakarta, 2002, p. 39-40. (hereinafter referred to as Wahyono I)



marriage.<sup>22</sup> Marriage in Indonesia shall be carried out in accordance with the religious ordinances of the parties that carry out the marriage. The consequence of this provision, marriage recording becomes a separate issue, because not all couples who will carry out marriage, religion same. There are couples whose religions are different, causing difficulties because the law prohibits the marriage of religious differences, while they sometimes remain in their respective religions. Without the endorsement of religious authorities, KUA authorities and civil registry authorities as marriage registers cannot record the marriage.

Therefore many parties are deliberately looking for loopholes in order to carry out the marriage even though different religions. The trick is to smuggle the law by way of marriage carried out twice according to each religion of the married parties, subjection to one religion, or conduct marriage abroad. All have their own consequences. Thus, to prevent attempts to smuggle the law in ways mentioned by the authors, the marriage of different religions is accommodated by the formation of Law no. 23 of 2006.

Article 35 Sub-Article a of Law no. 23 of 2006 states, "The marriage registration shall also apply to marriages set by the court". In the explanation of the article it is described that, "The meaning of marriage set by the court is a marriage performed among people of different religions.

The provisions of Article 35 and Article 36 of this law are understandable and reasonable. But it becomes odd when reading the explanation of Article 35 letter a which, if associated with Article 2 paragraph (1) and Article 8 letter f of Marriage Law. The phrase stated above, shows that an explanation of a section of a law abolishes or annuls a provision or sound of another article of law.

Article 2 Paragraph (1) of the Marriage Law states that, "Marriage is lawful, if done according to the law of their respective religion and belief. Where in his explanation lays out that there is no marriage outside the law of each of his religion and belief, in accordance with the 1945 Constitution.

Based on the explanation of Article 2 of the Marriage Law referred to by the law of each religion and its belief it shall include the provisions of the laws and regulations applicable to its religious class and belief as long as it is not contradictory or otherwise specified in this Law.

#### 4.1.3 Implementation of Marriage Recording of Different Religions Before the Establishment of Law no. 23 of 2006

Regarding the marriage of different religions is not regulated in the Marriage Law. So there is a legal vacuum (*recht vacuum*). However, for couples who have been dammed by their love, they try to find a way for the marriage to take place. As Wahyono Darmabrata points out about the different religious marriages, in which he argues, there are 3 (three) common ways for married couples to marry.<sup>23</sup>

<sup>22</sup> Civil marriage does not look at all the status of religion, age, social status and others, but only looks at everything in terms of cultivation alone.

<sup>23</sup> Wahyono Darmabrata, *Tinjauan Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan Beserta Undang-Undang dan Peraturan Pelaksanaannya*, Gitama Jaya, Jakarta, 2003, p. 102. (hereinafter referred to as Wahyono II)

- a. Asking for a court decision first. On the basis of the determination of that marriage couples in the Office of Civil Registry. But this method can no longer be implemented since the issuance of Presidential Decree no. 12 of 1983.
- b. Marriage is exercised according to the law of each religion: (i) Marriage is done first according to the bride's religious law (usually husband), then followed by marriage according to the next religious law of the bride. The issue of which marriage is considered valid. If the second (last) legal marriage becomes a re-issue of the first marital status, (ii) both partners determine the choice of law. One view states are subject to the law of their partner. In this way, one spouse "converts" as a form of law submission.
- c. Frequently used later, is a marriage abroad. Several recorded meanings choose this way as an effort to deal with the difficulty of marriage of different religions.

In the case of the certificates of the different religious pairs, the letters must be accompanied by applying to the Civil Registry Office (for non-Muslims) and the Office of Religious Affairs (for Muslims) to carry on their marriage and recording. Then if the will to establish a different religious marriage is rejected, then it can apply to the District Court for those who are religious other than Islam and / or the Religious Courts for those who are Muslims to get the marriage's determination of marriage to different religions and its recording, and on the process of licensing and the recording of different religious marriages, accompanied by a Court Decision on the possibility of marriage of different religions. Thus, according to the court's decision, the marriage of different religions can be carried out and also the recording.

In addition to court decisions, marriage of religious differences is usually done abroad marriage; the Marriage Law provides a space that can be used as a means to legalize the marriage. Article 56 of the Marriage Law states that a marriage which takes place outside Indonesia between two Indonesians or an Indonesian citizen with a foreign citizen is lawful if done according to the law applicable in the country where the marriage is held and for the Indonesian Citizen is not violates the provisions of this law.

#### *4.1.4 Implementation of Marriage Recording of Different Religions After the Establishment of Law no. 23 of 2006*

The enactment of Law no. 23 of 2006 allows different pairs of religions to be registered with their marriage of origin through the Stipulation of Courts. In Article 35 letter a, the marriage registration shall also apply to marriages set by the court. In the explanation of this article mentioned marriage set by the court is a marriage performed among people of different religions.

Ratification of Law no. 23 of 2006 adheres to several provisions on marriage of different religions. This law places the recording of a population event such as marriage as a right. To see how far the implementation of different religious marriages in Indonesia after the Act no. 23 of 2006, then the authors in this case will analyze 2 (two) decisions related to marriage applications different religion.

- 1) Analysis of Application for Recording of Marriage of Different Religions Received (Stipulation of Court Number 85 / Pdt.P / 2014 / PN Pti)
- 2) Analysis of Unacceptable Admittance of Marriage Recording Application (Stipulation of Court Number 71 / Pdt P / 2017 / PN Bla)

Based on the two decisions that have made the analysis, there are still differences of opinion between the Judges in giving the determination related to the marriage of different religions, so there is still the acceptance accepted or rejected by the District Court. Basically there are Judges referring to the Marriage Act is also based on Law no. 23 of 2006 in providing legal considerations.

#### 4.2 Legal Certainty of Marriage Differences in Religion in Indonesia

##### 4.2.1 Review of marriage

The provisions contained in Article 2 paragraph (1) of the Marriage Law clearly shows that Law Number 1 Year 1974 on Marriage determines the validity of a marriage to the respective religious and belief laws. After marriage takes place according to the ordinances of each religion and belief, the bride and groom sign the marriage certificate prepared by the marriage registry official.<sup>24</sup>

In addition to being able to legally marry, must be met the terms of marriage. There are several articles governing the terms of marriage in Law no. 1 of 1974. From several articles can be concluded that marriage is considered legal according to Law no. 1 of 1974 if it meets the following conditions:<sup>25</sup>

- a. Marriage is done according to the law of each religion and belief.
- b. The marriage must be recorded or registered to the authorized official or agency.
- c. Marriage is based on the approval of both prospective brides.
- d. A marriage of a person who has not reached the age of 21 must obtain permission from both parents or guardian, or the court determining the marriage permit if no family party presses their opinion about the marriage permit.
- e. Marriage is only permitted if the man has reached the age of 19 years and the woman has reached the age of 16 years, unless there is another dispensation from the court.
- f. Marriage takes place between two people who have no blood relation either from straight line down, upward or sideways and there is no relationship between semenda and the relationship of husbandry, and the relationship of marriage that is some brothers of his wife, in the case of a married husband more than one.
- g. Unlawful marriage if committed by a person who is still married to another person unless there is an exception from the court.
- h. Unlawful marriage if committed by spouses who have been divorced twice, unless religion and belief determine otherwise.

##### 4.2.2 Arrangement of Marriage in Indonesia

###### a. Arrangement of Marriage According to the Civil Code

Marriage according to the Civil Code prevailing in Indonesia until 1974 from 30 April 1847 only as "Civil Engagement". There is no article mentioning the definition and purpose of marriage in the Civil Code as well as in the Marriage Law. Article 26 of the Civil Code only states that the Act considers marriage in terms of its relationship with the Civil Code alone. This

<sup>24</sup> Hilman Hadikusuma, *Hukum Perkawinan Indonesia*, CV. Mandar Maju, Bandung, 2003, p. 88. (hereinafter referred to as Hadikusuma II)

<sup>25</sup> Wasman and Wardah Nuroniyah, *Hukum Perkawinan Islam Di Indonesia (Perbandingan Fiqih dan Hukum Positif)*, Teras, Yogyakarta, 2011, p. 49-50

means that the rules according to religious law are not important as long as they are not regulated in the Civil Code.

Marriage according to religion is not prohibited, but its implementation should be done after the marriage according to the Civil Law. As stipulated in Article 81 of the Civil Code, “No religious ceremonies are to be held, before both parties prove to their religious officials that marriage in the presence of civil registry employees has taken place.

Furthermore, will be discussed related to the legal requirements of marriage according to the Civil Code. Legitimate requirements of marriage there are two kinds, namely material requirements and formal conditions. Material requirements are conditions that are inherent in the parties to marriage, also called subjective conditions, whereas formal conditions are the procedures or procedures for marriage under religious law and law, also called objective conditions.<sup>26</sup>

b. *Arrangement of Marriage According to Marriage Law*

Article 2 Paragraph (1) of the Marriage Law states that, “Marriage is lawful if done according to the law their respective religions and beliefs. In line with “under the One Supreme Godhead” in Article 1 of the Marriage Law, then the religious norms and beliefs that determine the validity of marriage.

Then Article 2 Paragraph (2) of the Marriage Law adds, each marriage is recorded according to the prevailing laws and regulations, this is the only paragraph that regulates the marriage recording.

Of the Marriage Law, which contains the legal validity of marriage in Article 2 paragraph (1) and formally in Article 2 paragraph (2), nationally the validity of the marriage shall apply to all Indonesians.<sup>27</sup>

A marriage may take place if the prospective bridegroom fulfills the conditions for marriage. The terms of marriage in Indonesia are set forth in Articles 6, 7 and 11 of the Marriage and Regulation Law. 9 of 1975.

c. *Arrangement of Different Religious Marriage in Indonesia*

Currently in Indonesia a national marriage law (law) has been established that applies to all Indonesians, namely Law Number 1 Year 1974 regarding Marriage. The law is contained in the sheet

The Republic of Indonesia Year 1974 Number I: while the explanation is contained in Supplement to State Gazette Number 3019.<sup>28</sup>

Prof. Dr. Mr. Hazairin was quoted by Drs. Sudarsono, SH in his book National Marriage Law states: Article 2 refers first to the law of each religion and belief for each of its adherents. According to the above explanation of Article 2 paragraph (1) “there is no marriage beyond the law of each religion and its belief”. So, according to Prof. Dr. Mr. Hazairin for Muslims is no possibility to marry in violation of its own religious law. So it is with Christians and for Hindus or Buddhists. The law of religion and belief in question is not only found in the holy books or in beliefs that are formed in Christian churches or in community units (as in Bali) who believe in

<sup>19</sup> <sup>25</sup> Julkadir Muhammad, *Hukum Acara Perdata Indonesia*. Citra Aditya Bakti, Bandung, 2008, p. 76.

<sup>27</sup> Nurdin Ilyas, *Pernikahan Yang Suci, Berlandaskan Tuntutan Agama*, Bintang Cemerlang, Yogyakarta, 2000, p. 13.

<sup>28</sup> Sudarsono, *Hukum Perkawinan Nasional, op. cit.*, p. 1.

the Supreme Godhead, but also all provisions -the provisions of the legislation (which are still applicable to each group of religions and beliefs respectively) that have preceded this National Marriage Law and which will be fixed later (see chapters 11: 2, 12, 16: 2, 39: 3, 40: 2, 43: 2, chapter 67).

The unregulated marriage of religious differences explicitly in Law no. 1 of 1974 causes different interpretations of Article 2 paragraph (1) of Law no. 1 Year 1974. This causes legal uncertainty for couples who make different religious marriages while the marriage of different religions in Indonesia cannot be avoided as a result of the heterogeneous society. The author argues with the existence of Article 2 paragraph (1) jo. Article 8 letters (f) of Law no. 1 In 1974 actually did not want the occurrence of different marriages religion. 64 Because in Article 8 (f) it is stated that marriage is prohibited between two persons having a relationship which, by their religion or other applicable law, is prohibited from marrying. There clearly stated "prohibited between two persons prohibited by his religion", it is clear that marriage between a Muslim and a polytheist is not permitted either by Islamic law or Article 8 letter (f) of Law Number 1 Year 1974 regarding Marriage.

On interfaith marriages authorized by the Supreme Court in its decision dated January 20, 1989 Number: 1400 K/Pdt/1986, on interfaith marriage in filling a legal void embraced an establishment which reflects an attempt to fill the legal void, because in Law No. 1 of 1974 does not strictly regulate the prohibition of marriage of different religions. This verdict is a very bold breakthrough in the solution of the law. In the verdict, the panel of judges is of the opinion that even if the applicant is Muslim as according to Article 63 paragraph (1) of Law Number 1 Year 1974 stated that the authority to intervene is the Religious Courts, but rejection based on religious differences as intended in Article 8 (f) Law Number 1 Year 1974 and since the case is not a case as referred to in Article 60 paragraph (3) of Law Number 1 Year 1974 it is appropriate if the case is handled by the District Court.

However, based on the determination that the authors have reviewed in Chapter II in this study, that the presence of Law no. 23 of 2006 does not necessarily provide legal certainty for the implementation of different religious marriages in Indonesia. But just give certainty that the marriage of different religion can be listed in Indonesia. In order to establish a different religious marriage, a marriage of different religions must apply to the court in order to have the marriage and be registered at the Office of Population and Civil Registry. In this case, whether or not the marriage partners of different religions are married based on the legal considerations of the judges. Thus, although the rules are clearly regulated in Article 35 letter and its explanation, it does not guarantee that the interfaith marriages can be held and registered in the Office of Population and Civil Registry.

## V. CONCLUSION

Implementation of recording of marriage of different religions viewed from Law no. 23 of 2006 has been carried out based on the mandate of Article 35 letter a and its explanation by applying to the District Court.

The legal certainty of the marriage of religious differences has not been fully applicable to the interests of the petitioners. Due to the need to comply with the requirement to apply for stipulation to the District Court does not necessarily permit applicants to obtain permission to

marry it is due to the still different perceptions of judges related to the arrangement of marriage of different religions in Indonesia.

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<sup>10</sup>

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<sup>13</sup>

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