

Marriage Political Law (Legal Policy) in Indonesia

by

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Abstract

Before studying the politics of Islamic law, it is better to understand what legal politics is. Etymologically, the term legal politics comes from the origin of the word translated from Dutch, namely “*recht politiek*”, “*recht*” and “*politiek*”. *Recht* means law. In the Dutch dictionary, the word “*politiek*” is the same as “*beleid*” in the sense of policy. In Indonesian, policy means a series of concepts and principles that are the main outline of a plan to carry out work, ways of acting, and leadership, in the sense of legal politics. Legal politics, also known as legal policy, is the direction made by the State officially regarding laws that will be enforced or not enforced to realize the goals of the state, including the scope of the formation, application, and implementation of legislation. Law is not defined as an autonomous institution, but the law remains in a position related to other sectors of life in society. This paper aims to analyze the politics of marriage law in Indonesia.

Keywords: Politics, law, marriage, Islam, legal policy.

Introduction:

Indonesia is known as a pluralism-based nation that consists of a wide variety of various ethnic groups, races, customs, and traditions, also includes different religions and therefore is rich in culture. The diversity that exists in Indonesian society is likely for the occurrence of a marriage of different religions, different ethnicities, and other forms of marriage. Although this marriage has been regulated by Law no. 1 of 1974 concerning marriage. However, there are still some parties who assume that this marriage law needs to be revised immediately according to certain parties, because Law no. 1 of 1974 has been a long imprint where some think they have not been able to provide solutions to some problems regarding marriage, especially in modern times (Sidharta, 2008). Therefore, there are still important rules that must be revised or added, even refined, those related to Law no. 1 of 1974 concerning this marriage, as an example regarding the provisions of

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strict sanctions, especially for those who violate the marriage law, such as marriages of different ethnicities and customs, including marriages of different religions, same-sex marriages, unregistered marriages, and includes contract marriages.

In line with this, the main provisions of all existing statutory provisions in Indonesia are none other than the first precept of Pancasila “Belief in One God, and this first principle is of course related to the 1945 Constitution which stipulates State guarantees. on the implementation and provisions of the teachings of their respective religions (Marzuki, 2014). Indonesian society is heterogeneous in various aspects, for example in the aspect of religion. Thus, it is clear that two religious groups have been recognized in the State of Indonesia, namely the *Samawi* Religions and also the *Non-samawi* Religions.

What is meant by Samawi religion is a religion that was revealed by revelation from Allah SWT through the intermediary of the angel Jibril (Gabriel) and delivered by the Apostle by Allah’s choice and spread or conveyed to mankind, such as Judaism, Christianity, and Islam. The definition of non-celestial religion is a religion that comes from the observation of world philosophical thoughts, such as Hinduism and Buddhism.

Marriage provisions are an integral part of Islamic law, where this cannot be separated from the dimension of aqidah (faith), and Islamic morals (Witanto, 2012). Based on this conception, marriage law can be interpreted as a guideline for realizing the implementation and purpose of marriage among Muslims in the hope of having transcendental, sacred values to realize a peaceful, harmonious, peaceful life following the principles and objectives of marriage following Islamic law (Anshary, 2010). Because Islamic law is a divine legal system that of course regulates the relationship between humans and God the Creator (Khaliq) known as the “rules of worship”, and which regulates the relationship between humans and each other, the relationship between humans and nature, and others are called the rule of *mu’amalah* (Idris, 2002). Immanuel Kant mentions the transcendental as the application of the basic principles of pure understanding. Thomas Aquinas and Scotus also used transcendent terms that express reality and logical relationships.

Scope of Legal Politics:

Legal politics is always related to political issues or legal politics itself, social, economic, cultural, security and defence issues, science and technology, as well as relations on an international scale. The definition of legal politics according to Satjipto Rahardjo (1976) is an activity that chooses the way it wants to be used to obtain legal and social goals that exist in society. In this terminology, legal politics includes parts of basic questions such as what are the goals to be achieved in the scope of the existing legal system, then how, then what feels good to get that goal, then when the law should be changed. It also explains in what way the change is carried out, as well as how the formulation of a standard form can help to determine the process of selecting goals and how to get those goals well. So, the implementation of legal politics must refer to materials from social reality including the existing order in the region, nationally, as well as on an international scale. Lubis (2010) stated that legal politics is one of the subsystems within the management system of national life as well as a sub-system of legal politics in Indonesia. Legal politics is also the basic policy of state administrators in the field of law that will apply to the future, is currently in effect, and has been in effect in the past. The starting point comes from the values that exist in society to achieve the goals of a country. Based on the concept of the rule of law, this law will become a rule as a reference to achieve common goals which is certainly the starting point of agreement and political power, in other words, the law must not conflict with

sectarian and primordial political interests, but for all citizens of the country concerned. Therefore, the law can certainly be applied to all circumstances, to be able to sacrifice political ideals within the framework of the state. The meaning of sectarianism is a contradiction that arises due to differences between groups, for example, differences in political parties and religious demonization. What is meant by primordial is a feeling that a person has that highly values social ties, norms, and habits originating from various ethnicities, traditions, and cultures that are brought from birth.

Similar to the previous description that politics includes the formation of laws, application of the law, and implementation or execution. Thus, legal politics does not stop when the law is made by the legislature. Sometimes and even most of the laws that are created still require government policies through presidential decrees (*Kepres*), in addition to bureaucratic institutions that are authorized to implement public policies. The thing to note is that for every legal product in the form of legislation, an evaluation is needed in the context of efforts to make revisions and adjustments to community developments or aspirations from the community that can be carried out by law-making institutions (legislative review) through the function of monitoring the implementation government. In addition, there is also an institution called “judicial review”.

Analysis and Discussion:

Politics in Islamic View:

Referring to the scope of legal politics above, the study of legal politics will tend to describe the influence of politics on law, and in a broader perspective it can be described in the following scheme:

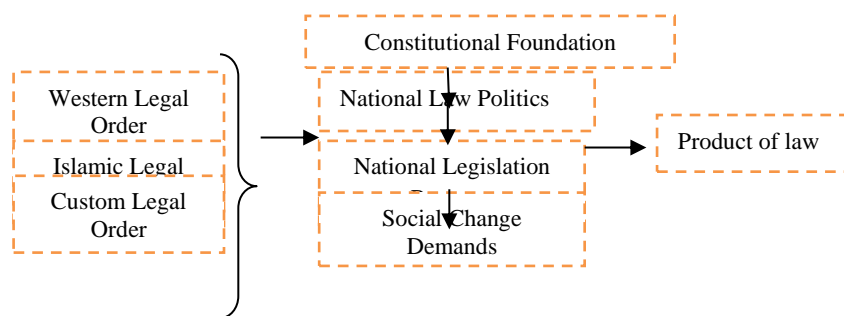


Figure 1: Illustration of Legal Politics in Indonesia

In connection with this scheme, the framework for the formation of laws and regulations related to Islam in Indonesia consists of at least six components, such as the constitution which is used as a reference, traditional legal politics as contained in the GBHN, the national legislation program, especially concerning legal material. The material standards are legal principles and materials in the preparation of regulations, guidelines for social change on a national scale, and legal products in the form of statutory regulations.

In connection with this, the Islamic view of politics, basically Islam still regulates all aspects of human life, which has a very high religious meaning, including political issues (*siyasa*). Winengan (2018) stated that marriage is religious and has a very high value, because marriage is a legal event, linking the legal ties between a man and a woman to live together in a husband and

wife bond in the household and form a family and offspring. Based on the terminology, *siyasa* means to regulate, improve, and educate, and if you look at the origin of the word, then *siyasa* has a meaning related to the state and power. Al Qaradhawy in his book *Al Siyasa al-Sya'iyah* mentions that there are two forms of the meaning of the scholarly version of *siyasa*, namely general and specific. In general, it means the regulation of various human affairs with Islamic religious law. The word “*siyasa*” comes from the root word “*sasa-yasusu-siyasatan*”, in the sense of controlling, driving, and regulating others. If interpreted in the Indonesian context, it means that the relationship between Islam and politics is seen in the acceptance of Pancasila as the principle in the State of Indonesia. This means that it is not eliminating Islamic ideals of eliminating Islamic elements in the political world in the State of Indonesia. However, as long as these Islamic ideals can inspire the political world, in principle it returns to Muslims and has the readiness to appear in a new style so that they can develop the enrichment of social, political, and other knowledge in mapping and analyzing social transformation (Lubis, 2014).

Even though politics existed at the time of the Prophet, unfortunately, today many people are anti-politics. Because many people think that politics is only a place to show who is great and who has wealth. People see this as just a place to seek power. In this case, society should have a broader view that politics is very important because the fate of a nation will be determined by politics. So, it is certain that politics is permissible because it has a major influence in maintaining Islamic teachings in a country while still upholding Islamic principles, with the role of Islam itself (Kuru, 2019).

Controversy and Problems in Marriage Law in Indonesia:

According to the Marriage Law, marriage is very important, because marriage is an inner and outer bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the One Godhead. Marriage is legal, if it is carried out according to the law, religion, and beliefs of each, and recorded according to the applicable laws and regulations (Mustafa, 2013). However, currently, there are still many marriages that are carried out contrary to religious law and applicable laws and regulations. Marriages that are considered contradictory and violate religious provisions/laws or positive laws that apply in Indonesia are as follows:

- i. **Interfaith Marriage:** The purpose of interfaith marriage is a marriage between 2 (two) people, a man, and a woman, who are subject to different religious laws or beliefs (Syarifuddin, 2020). Article 2 Paragraph (1) of Law no. 1974 states that “marriage is valid if it is carried out according to the laws of each religion and belief”. Furthermore, it is also found in the explanation of Law no. 1 of 1974 concerning marriage, it is also emphasized in the formulation of Article 2 paragraph (1), that there is no marriage outside the law of each religion and belief, following the 1945 Constitution of the State. The fourth is always used for couples who will get married, is to carry out marriages abroad. For example, as atris, we have seen many choose this method as an effort. Islamic law states that marriages carried out by prospective brides who have different religions are prohibited, and in the Qur'an, it is stated in Surah al Baqarah verse (221), which states that “Do not marry idolatrous women until they believe.”
- ii. **Siri's Marriage:** The word Siri marriage is originally said to be in Arabic and consists of 2 (two) syllables, namely “marriage” and “siri”. According to the language “marriage” with the meaning of collecting, and used in the sense of *wathi*

/ sexual relations (coitus) through “a marriage contract”. Furthermore, the word “siri” comes from Arabic which means secret, that the marriage is carried out by a pair of both parties of the bride and groom with no notification that is not written or registered with the KUA (Office of Religious Affairs). However, this kind of marriage in Islam has fulfilled the elements and conditions of marriage, which include a pair of prospective brides, two witnesses, a guardian, and consent and *qabul*, also including a dowry. This marriage is of course legal according to religion.

- iii. **Same-sex Marriage:** Marriage is legal if it is carried out with a two-sex partner between a man and a woman, not the other way around, it is carried out with one gender, for example, homosexuality between a man and another man or a lesbian between a woman and another woman. Now, this type of marriage is not known in the religion and teachings adopted in Indonesia and is contradictory to the applicable legal system, meaning that there is no single religion that legalizes it. Islam forbids such marriages, this provision is explained in the Qur’an Surah Al A’raf verse (80-85), We have also sent Lut (to his people). (Remember) when he said to them: “Why do you do that faahisyah (heinous) act, which no one (in this world) has ever done before you. Indeed you come to men to release your lust (for them), not to women you are a people who transgress. The answer of his people was nothing but saying: “Cast them (Lut and his followers) from your city; in fact, they are the ones who pretend to purify themselves, and so on.
- iv. **Contract Marriage:** A marriage contract is a marriage that is carried out by a man and a woman who is married for a certain period, and is written in a contract, and in the view of Islam is known as “*nikah mut’ah*”. This *mut’ah* marriage is unlawful and the marriage contract that has been carried out is not valid.

Need to Renew the Marriage Law in Indonesia:

The principle that underlies the affirmation of the amendment to the 1945 Constitution, one of which is the principle of the rule of law, is following what is written in Article 1 paragraph (3) of the 1945 Constitution which states that “the State of Indonesia is a state of law”. This means that every action and its consequences carried out in the state of Indonesia must be based on law and settlements (Usman, 2006). The current national reform agenda, one of which is the reform of the legal system, where the desire to reform the law is based on the real conditions of the national legal system failing, both in terms of the legal substance, legal structure, and legal culture. In the legal substance, for example, which is still sourced from the laws of the Dutch heritage (such as the Criminal Code (KUHP), the Civil Code of the Civil Code, the Commercial Code (KUH Commerce, and others), if analyzed sociologically and philosophically, the laws of the Dutch colonial products are no longer following the values that exist during Indonesian society in general. Apart from that, the Dutch heritage law no longer reflects the justice embraced by the Indonesian people, so there is a need for the idea of unification.

Likewise, when viewed from the legal structure, it seems that it has experienced a setback, for example, there are many judicial mafia practices, and fraud by law enforcement in the Indonesian judiciary. Likewise, legal culture has experienced the same thing. There are many practices of disobedience, and community injustice against the law and it is a reality of community appreciation of the law.

Therefore, in terms of the development of national law, the three components are elements that are very important for the development of national law which of course realizes the ideals of national law (Rechts Idee). So it can be understood that the study of law is a legal system

In the renewal of marriage law, the most important thing is actually the legal substance, especially the material contained in the Marriage Law, which needs to be changed immediately. Some things that need to be considered include the provisions on interreligious mixed marriages, the age limit for marriage, the enforcement of the consistency of the validity of marriages, the enforcement of the principle of justice in the recognition and ratification of children out of wedlock, a comprehensive arrangement of marital assets, and clear and definite rules need to be realized.

Conclusion:

Based on the descriptions above, the conclusion is that the position of Legal Politics can be traced to the tree of legal science, where the study of legal politics is in the position of the trunk or tree of legal science because the trunk of this legal tree is known as tree fibers in social subsystems, such as history, culture, economics, sociology, politics, law and others. This will appear the study of the sociology of law, the study of legal politics, and legal culture. Furthermore, the Indonesian state includes various kinds of diversity, ethnicity, class, race, and religion and is rich in customs and culture. The diversity that exists in Indonesian society is the possibility of the frequent occurrence of marriages held by different religions with different patterns of marriage. With the existing rules in the marriage law, of course, it is also pluralistic, in the sense that the marriage provisions that have been regulated in positive law are applicable in Indonesia, which include state law, religious law, and even customary marriage law. In the explanation of Law no. 1 of 1974 concerning marriage, it is confirmed by the formulation of Article 2 Paragraph (1) it has been stated that there is no marriage outside the law of each religion and belief, following the 1945 Constitution. Marriages that are considered contradictory and violate religious laws and positive laws that apply in Indonesia, such as interfaith marriages, same-sex marriages, contract marriages, and siri marriages (underhand marriages).

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