



THE LEGAL POLITICS ASPECT IN THE IMPORTANCE OF CONSUMMATION IN MARRIAGE LAW

Sulistiyowati

Universitas Nasional, South Jakarta, Indonesia

sulistiyowati.advokat@gmail.com

Dewi Nadya Maharani

Universitas Borobudur, East Jakarta, Indonesia

dewinadyamaharani@gmail.com

ARTICLE INFO

Keywords:

Aspects; Marriage; Politic.

ABSTRACT

Indonesia is a country of law (rechtsstaat). In terms of regulating its state, Indonesia uses various kinds of laws and regulations. This includes equality between men and women. This gives rise to the term equal protection principle or equality before the law, namely equality and equality of individuals and communities in the eyes of the law. The law relating to marriage and the rights and position of both a wife and a husband in the Civil Code was replaced by Law No. 1 of 1974 on marriage, which has now been revised by the law of the Republic of Indonesia No. 16 of 2019 on amendments to Law No. 1 of 1974 on Marriage (Marriage Law). However, this law has no sanctions if anyone does not comply with it. In this case, we need to amend the Marriage Act. This research is descriptive normative legal research. The theory used theory is the theory of the rule of law, the theory of the purpose of law, and the theory of law enforcement. Data collection techniques are Library Studies (library research).

A. INTRODUCTION

As we know, Indonesia is a legal state (*rechtsstaat*). This is strongly emphasized in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution), which states, "The State of Indonesia is a Legal State." Each country's laws are different to achieve a state of safety, peace, and prosperity.¹

About the law, Indonesia has adopted several regulations that were in effect in the Netherlands based on the principle of concordance. The concordance principle states that the laws in the colonial country will also apply in the colony.

Some of these regulations include the *Wetboek van Strafrecht* (Criminal Code), *Wetboek van Koophandel* (Commercial Code), and

¹ Aldila Arumita Sari & R.B. Sularto, "Kebijakan Formulasi Kekerasan Seksual Terhadap Istri (*Marital Rape*) Berbasis keadilan Gender Di Indonesia," *Jurnal Pembangunan Hukum Indonesia* 1, No. 1 (2019): 117-122.

Burgerlijk Wetboek (Civil Code). These regulations have undergone adjustments to suit the conditions in Indonesia, with some articles declared obsolete, revoked, or replaced by new laws. For example, laws related to marriage and the rights and status of both spouses in the *Burgerlijk Wetboek* were replaced by Law No. 1 of 1974 on Marriage, which has since been revised by the Republic of Indonesia Law No. 16 of 2019 on Amendments to Law No. 1 of 1974 on Marriage (Marriage Law). Pluralism is accommodated within the Marriage Law. A marriage is legally valid if it meets material and formal requirements.²

Fundamentally, the most crucial aspect of human existence is marriage, as it represents a sacred covenant in the lives of individuals, regarded as a sacred contract in building a family to achieve a happy life.³ As we understand it, the purpose and goal of marriage in the Islamic tradition are known as a family that *sakinah, mawaddah, wa rahmah*.⁴ Because of this, marriage law has become a crucial subject for in-depth examination.

In another article, the discussion focuses on the persistent obstacles in implementing marriage laws, suggesting that legal unification in the context of marriage should not be limited solely to administrative aspects but comprehensively.⁵ Another article states that the institution of marriage has significant legal implications for both parties involved. Furthermore, various interpretations arise because each religion has its regulations on marriage, especially Islam, which provides clear guidelines. This is reflected in marriage laws, encompassing principles such as Islamic personality, voluntariness, consent, freedom to choose a partner, partnership, open monogamy, and perpetuity. The political dynamics in drafting marriage laws have brought positive changes to marriage law in Indonesia by clarifying the relationship between customary law and applicable religious law.⁶

The Marriage Law serves as the cornerstone for the equalization of rights and responsibilities between husbands and wives. Even after divorce, the equalization of obligations and rights is generally addressed within this Marriage Law. However, many divorce judgments are not executed according to their terms. This, of course, proves disadvantageous to one party whose rights are not fulfilled, even though the legal status of women and men is equal under the Marriage Law. Despite the equality in substance, the Marriage Law does not specify the sanctions that can be imposed if a divorce judgment is not executed, as it lacks such provisions. In addition to

2 Tengku Erwinsyahbana, "Aspek Hukum perkawinan Antar Agama dan Problematika Yuridisnya," *Refleksi Hukum* 3, No. 1 (2018): 97-114.

3 Ahmad Ropei, "Maqashid Syari'ah Dalam Pengaturan Batas Usia Pernikahan Di Indonesia," *Asy-Syariah* 23, No. 1 (2021): 1- 20.

4 Kudrat Abdillah, Ah. Kusairi, "Reinterpretasi Hak Ijbar Dalam Hukum Perkawinan Islam Di Keluarga Pesantren," *Asy-Syariah* 22, No. 1 (2020): 35-50.

5 Wiratni Ahmadi, "Hak dan Kewajiban Wanita Dalam Keluarga Menurut Undang-Undang No.1 Tahun 1974 tentang Perkawinan," *Jurnal Hukum Pro Justitia* 26, No. 4 (2008): 371 - 390

6 Maulida Zahra Kamila, "Politik Hukum Undang-Undang Perkawinan Di Indonesia," *Al-Ahwal Al-Syakhsyiyah: Jurnal Hukum Keluarga dan Peradilan Islam* 3, No. 2 (2022): 207 - 2020

ensuring substantive equality, enforcing divorce judgments should also hold both parties accountable for non-compliance.

So, this article explains the importance of legal consequences arising when divorce decrees are not followed by either party, irrespective of gender, due to the principle of legal equality.

B. RESEARCH METHODS

The normative legal research method utilizes the juridical-normative approach. The juridical-normative approach refers to an approach that relies on existing laws and regulations.⁷ Normative legal research data is collected through a literature review involving secondary data. These secondary data are utilized as primary research material by conducting searches on various legal regulations and other relevant literature about the issue under investigation. This process is commonly referred to as library legal research.⁸ The data collection technique begins with a literature review to clearly understand primary legal materials, namely Law No. 1 of 1974 concerning marriage in conjunction with Law No. 16 of 2019 Amendment to Law No. 1 of 1974 concerning marriage. Additionally, secondary legal materials such as legal and non-legal references like political and social aspects are utilized. This research also incorporates tertiary legal materials such as print and electronic media articles, dictionaries, and others.

C. RESULTS AND DISCUSSION

1. An Overview of Marriage Law Issues

Indonesia is diverse due to its numerous ethnicities, religions, and tribes.⁹ However, Indonesia, as a rule-of-law state, conducts all state activities through the use of law.

The state of law here may also mean that the government carries out state operations based on the provisions and restrictions made before or can be said through rules or laws. A government in a country of law that upholds democracy and human rights everywhere is currently encouraged to reformulate the subject.¹⁰

This law is fair and applies to all persons in the country, the government, the people, those who are ruled, and those who order to be subject to the law. It does not look at anything. So as not to appear to be violating the rights of the people, it is run democratically.

Equality before the law becomes an absolute thing that must be carried out. This includes all aspects of life, including the rights of the parties in a family, namely the rights of the husband, the rights of the wife, and the rights of children. Furthermore, some consequences must be borne if the law is cut down. In other words, there are differences in

7 Bambang Sunggono, *Metodologi Penelitian Hukum*, (Jakarta, PT Raja Grafindo, 2003): 32.

8 Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, (Jakarta: PT Raja Grafindo Persada, 2001): 13.

9 Ferry Irawan Febriansyah & Anwar Sanusi, Larangan Perkawinan Masyarakat Adat Mirah Dan Golan, *DiH: Jurnal Ilmu Hukum* 16, No. 2 (2020): 247- 258.

10 Ahmad Zaini. Negara Hukum, Demokrasi dan HAM, Al Qisthâs, *Jurnal Hukum dan Politik* 11, No. 1 (2018): 3-48

treatment in carrying out the law, resulting in the emergence of disobedience in society.

In order to protect this right, various efforts have begun to be initiated, and what is currently running needs to be appreciated.¹¹ One of the most influential figures in the *Rechtsstaat* in the state is F. J. Stahl. His scholarly work, "Philosophie des Rechts," was published in 1978. According to him, the main elements of *Rechtsstaat* are as follows: firstly, human rights; secondly, the presence of power to guarantee these rights (usually referred to as the separation of powers in Continental European countries); thirdly, a government based on the rule of law; and finally, administrative justice in case of disputes.¹²

As a country that upholds human rights, it is only fitting that there should be concrete sanctions in marriage laws when a decision affecting the dissolution of marriage is not executed correctly. Of course, this concept aligns with equality before the law, which does not discriminate based on gender, as both men and women have equal standing. However, in reality, the perfect execution of this concept has not been achieved. Decisions regarding marriage that are not adhered to do not have any consequences for the violators. This serves as concrete evidence that the rights of each party, which the law should protect, are not fully safeguarded.

In a country, the law also stands without being separated from the elements of government. Elements of government under the law (as the conception of *rechtsstaat*) are judged to grow a sluggish *wattenstaat*. People left the *wetmatigheid van bertuur* at his camp and increased to *rechtmatigheid van bertuur*, or law-based government. Thus, the idea of *formale rechtsstaat* turned into *materiele rechtsstaat*. In its development, *doelmatigheid* was also added to *the rechtmatig bestuur* so that the government, besides being based on the law, also paid attention to the benefits principle. Such a pattern fosters a state of prosperity or *social service state (Sosiale verzorgingsstaat)*.¹³

What is different from the meaning of *wetmatig rechmatig* indicates a change in the *value* in society. The community became more disliked in dealing with absolute power but made the ruler a partner in achieving welfare. Then, the discussion of *rechtmatigheid van hen bestuur* still encounters obstacles to a prosperous order of living for all, especially in Western Europe, so the value shift on the principle of legality is widely transformed into *doelmatigheid van bestuur*.¹⁴

According to the *International Congress of Jurists* held in Bangkok in 1965, the elements of the *rule of law* are (a) The emergence of legal protection, (b) the judiciary, which has a free and neutral, (c) Punbound general election, (d) flexibility to express opinions and associations, (e)

11 Susani Triwahyuningsih, "Perlindungan Dan Penegakan Hak Asasi Manusia (HAM) Di Indonesia," *Jurnal Hukum : Legal Standing* 2, No. 2 (2018): 113-119.

12 Oemar Seno Adji, *Prasara Seminar Ketatanegaraan Undang-Undang Dasar 1945*, (Jakarta: Seruling Masa, 1996): 24.

13 Astim Riyanto, *Teori Konstitusi*, (Bandung: Yapemdo, 2006): 274.

14 *Ibid*, :51

the existence of face-to-face responsibility and (f) the existence of civic education.

At its congress in Athens in 1955, the International Juridical Congress¹⁵ stated the principles underlying the rule of law. Firstly, the importance of the state's compliance with the law; secondly, the executive's obligation to respect personal rights following prevailing regulations and provide adequate means for law enforcement; and thirdly, the belief that law enforcement officers must adhere to rules to protect and enforce them impartially, opposing any interference by authorities or political institutions in their freedom as law enforcers.¹⁶ Here, it is also emphasized that a characteristic of the rule of law is to respect the personal rights of each individual, particularly regarding the rights of parties affected by a decision regarding the dissolution of marriage, as part of upholding human rights enforcement.

Human rights protect the rights of a person, both women and men, including the rights and position of women after marriage. Equalization of the rights and position of women and men after marriage can be seen in Law No. 1 of 1974 concerning Marriage and Law No. 16 of 2019 Amendments to Law No. 1 of 1974 concerning Marriage (Marriage Law)

Every applicable law must have a legal purpose and Marriage Law. According to Gustav Radbruch, there are three fundamental values of law: justice (philosophical), legal certainty (juridical), and expediency for society (sociological). Gustav Radbruch believed that the existence of order and society is very closely related. The community requires an order on how to make it happen, with norms such as customs, decency, and laws.¹⁷

Problems will arise when laws are made but do not follow the rules in their creation. Consequences usually follow articles in the law if they violate them. However, suppose this is not done following the procedure. In that case, it is unsurprising that it will have an unwelcome impact on all parties because they feel that no punishment will be carried out even if the judgment is not implemented.

2. The Analysis of Marriage Law on equal rights and position of both wife and husband in a marriage

The limitations on women's rights in the Civil Code, as stipulated in Articles 105, 108, 109, 110, 1330, and 1813, indicate the persistence of gender inequality in civil law. This creates a situation where women are considered to lack full autonomy over their decisions and actions, especially concerning property management and participation in legal

15 Sri Soemantri, *About State Institutions According to UUD 1945*, (Bandung: Alumni, 1974): 13.

16 Sunny Ismail, *Pergeseran Kekuasaan Eksekutif*, (Jakarta: Aksara Baru, 1981): 123-179.

17 Ahmad Ali, *Menguak Teori Hukum, (legal theory) dan Teori Peradilan (judicialprudence) termasuk Interpretasi Undang-Undang (legisprudence)*, (Jakarta: Kencana Prenada Media Group, 2009): 183.

processes. The argument is that these limitations contradict the widely recognized principle of gender equality in modern society. As a nation committed to democratic values and human rights, it is crucial to amend these discriminatory laws to create better gender equality in civil law. This is important for protecting women's rights and creating a more inclusive and just society for all citizens.

Some of these articles discriminate against women's positions. Whereas in the 1945 Constitution of the Republic of Indonesia, Article 28I paragraph (2) states that, in essence, everyone is protected from discriminatory attitudes towards it.

However, in 1963, the Supreme Court issued Supreme Court Circular No. 3 of 1963 concerning the Idea of Considering *Burgerlijk Wetboek* Not as an Act (Supreme Court Circular Number 3/1963), in number 1, in essence, it reads Articles 108 and 110 of the Civil Code are no longer valid because there is no longer a difference between all Indonesian citizens.

The protection of women has increased along with public awareness of gender equality. Not only that but organizations that, in essence, protect the interests of women were created, such as the National Commission on Violence Against Women. Even in the police force, a section deals explicitly with teenagers, children, and women. This shows the government's seriousness in dealing with problems related to women because they are considered vulnerable if no serious policies are made. Women's empowerment continues to be carried out to maximize potential use and be more effective for the family. However, it is part of the formidable force in building these bangs.

After that, the emergence of laws that discuss marriage, namely, Law No. 1 of 1974 concerning Marriage and Law No. 16 of 2019 Amendments to Law No. 1 of 1974 concerning Marriage, for example in Article 31 Marriage Law, regarding the balance of the position of wife and husband.

Supreme Court Circular Number 3/1963 and Marriage Law have the same function and spirit: to equalize a married woman's rights and position. However, this does not mean that Marriage Law is without weaknesses and must be perfected. Even because it is considered that it has not met the aspect of equality, a judicial review is carried out on the issue of the difference in the age of marriage between men and women in Marriage Law in Article 7 paragraph (1) is stated in essence that marriage can be carried out if the male party has at least 19 (nineteen) years of age and for the female party at least has an age of 16 (sixteen) years.

Then, the judge of the Constitutional Court in the Constitutional Court Decision Number 22 / PUU-XV / 2017 granted part of the application and stated that "Article 7 paragraph (1) along the phrase 'age 16 (sixteen) years' Law No. 1 of 1974 concerning Marriage (Statute Book of the Republic of Indonesia of 1974 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 3019) is contrary to

the Constitution of the Republic of Indonesia of 1945 and does not have the force of law binds."

In the end, Marriage Law was changed by Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage, with specifications related to age in Article 7 paragraph (1), which states that marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years. "

3. The Analysis of Judgment No. 2907/Pdt.G/2020/PA. JT

The process of life between one human being and another is inseparable.¹⁸ Therefore, life carried out between two people, namely men and women, is established with a bond and has fulfilled specific requirements is said to be a marriage.¹⁹ Marriage is universally infinite by nationality, color, or race. Marriage is everyone's right to form a family and continue offspring.²⁰ Marriage is also a matter protected by the state based on human rights.²¹

The existence of marriage aims to build a happy, eternal, and eternal family. Order to have children also creates a balanced relationship between husband and wife.²² Therefore, it is also necessary to have an adult mind between the parties who will build the household.²³

Achieving the goal of marriage is often difficult due to conflicts that arise and lead to divorce.²⁴

Article 38 of Law No. 1 of 1974 concerning Marriage and Law No. 16 of 2019 regarding Amendments to Law No. 1 of 1974 concerning Marriage have stipulated that marriage can end due to several reasons, including death, divorce, and court decisions. It is important to note that divorce through the court is not a new phenomenon but has been a part of the Islamic legal system, especially after Indonesia gained

18 Rastini, Jaka Bangkit Sanjaya dan Rizqi Mulyani Slamet, "Analisis Yuridis Pentingnya Pembuatan Perjanjian Perkawinan Berdasarkan Perspektif Hukum Perdata," *Rewang Rencang : Jurnal Hukum Lex Generalis* 2, No. 6 (2021): 482-497.

19 Mochammad Nasichin, "Akibat Hukum Pembatalan Perkawinan Berdasarkan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Jurnal Pro Hukum* 7, No. 1 (2018): 1.

20 Adhitya Dimas Pratama, "Kedudukan Kepemilikan Hak Atas Tanah Dalam Perkawinan Campuran Tanpa Adanya Perjanjian Pisah Harta," *Jurnal Panorama Hukum* 3, No. 2 (2018): 248-263.

21 I Wayan Agus Vijayantera, "Kajian Yuridis Larangan Adanya Ikatan Perkawinan Terhadap Sesama Pekerja Dalam Satu Perusahaan," *Jurnal Analisis Hukum* 1, No. 1 (2018): 67 – 91.

22 Elfrida Ratnawati, Sri Nanang M Kamba, Januardo SP Sihombing dan Julius F Maloringan, "Catat Perkawinan Untuk Kepastian Dan Perlindungan Hukum (Studi Kasus: Kabupaten Minahasa Utara)," *Jurnal Legislasi Indonesia* 18, No. 2 (2021): 233 – 248.

23 Achmad Bahroni, Ariella Gitta Sari, Satriyani Cahyo Widayati, Hery Sulisty, "Dispensasi Kawin Dalam Tinjauan Undang-Undang Nomor 23 Tahun 2002 Juncto Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak," *Jurnal Transparansi Hukum* 2, No. 2 (2019): 33-63.

24 Ummul Khaira & Azhari Yahya, "Pelaksanaan Upaya Perdamaian Dalam Perkara Perceraian (Suatu Kajian terhadap Putusan Verstek pada Mahkamah Syar'iyah Bireuen)," *Jurnal Penelitian Hukum DE JURE* 18, No. 3 (2018): 319-344.

independence.²⁵ In the case of divorce, Article 39 (2) of the Marriage Law asserts that there are requirements to be met, namely the presence of sufficient reasons indicating that the husband and wife cannot live harmoniously as a married couple. This indicates that divorce is not a hasty decision but rather the result of deliberation and evidence of the continuity of Islamic law within the state legal system.

Several factors that can cause a divorce problem include the existence of another party (third), economic crisis, not having good morals, differences in views regarding certain things, some differences that are difficult to unite, and then regarding sexual life.²⁶

A marriage that is declared broken up by divorce can occur if the divorce pronounced by the husband is performed before the court after being allowed through the court *inkracht*. However, divorce can also occur due to a judgment from the court on a lawsuit filed by the wife.²⁷

Government Regulation Number 9 of 1975 The implementation of Law No. 1 of 1974 concerning Marriage (Government Regulation Number 9/1975) Article 19 (f) said that between husband and wife, there is always a dispute and quarrel, and there is no hope of living in harmony in the household. Reinforced divorce in Islam by Article 116 (f) of the Compilation of Islamic Law, then the reason is considered sufficient to carry out a divorce, where the article reads, "Divorce can occur if between husband and wife, there are constant disputes and quarrels and there is no hope of living in harmony again in his household";

In the divorce proceedings in religious courts, three aspects often debated and sought for judgment in the petitem are divorce rulings, children's rights, and division of marital assets. Firstly, concerning divorce rulings, religious courts have the authority to grant divorce petitions filed by the wife as a measure to resolve irreconcilable marital conflicts. However, when the husband issues a divorce (talak), this must also be recognized as his right, and the court will consider such rulings reasonably. Secondly, regarding children's rights, Islamic law stipulates that the custody of underage children is the responsibility of their mother. At the same time, the father must bear the maintenance costs, following Article 105 of the Compilation of Islamic Law. This is aimed at ensuring that the needs of children, including education, monthly expenses, and healthcare, are adequately met. Thirdly, concerning the division of marital assets, the law states that assets acquired during the marriage constitute marital property and must be fairly divided in the divorce process, per Article 35, paragraph 1 of Law No. 1 of 1974. This division aims to ensure fairness for both parties involved. Thus, the

25 Iwan Romadhan Sitorus & Yusmita, "The Age Of Marriage On Interdisciplinary Islamic Law Perspectives," *MIZANI: Wacana Hukum, Ekonomi dan Keagamaan* 7, No. 1 (2020): 1-10.

26 Dudi Badruzaman, "Tingkat Gugatan Perceraian Antara Pasangan Pernikahan Dini Di Pengadilan Agama," *Asy-Syariah* 23, No. 1 (2021): 125-142.

27 Dini Ramdania, "Aspek Hukum Perceraian Dalam Perspektif Hukum Islam (Studi Terhadap Tingginya Tingkat Cerai Gugat Di Pengadilan Agama Kota Bandung)," *Wacana Paramarta: Jurnal Ilmu Hukum* 19, No. 1 (2020): 17-28.

regulations regarding divorce rulings, children's rights, and division of marital assets are crucial steps in upholding justice and legal protection for all parties involved in the divorce process in religious courts.

In Judgment No. 2907/Pdt.G/2020/PA.JT stated that the Plaintiff with the initials FY filed a divorce suit against the defendant with the faith, even though he had a child with the initials AAR, based on quarrels that occurred continuously and could not live in harmony in the marriage bond, had complied with Government Regulation No. 9/1975 Article 19 (f) which was strengthened by Article 116 (f) of the Compilation of Islamic Law, on the suit of the Plaintiff and the Defendant.

The verdict illustrates the court's decision based on legal considerations and the facts presented in the case. Firstly, the court grants the lawsuit its entirety, indicating that the Plaintiff's claims are deemed justified and follow the applicable law. Secondly, the court issues a *'talak satu bain sughra'* (minor revocable divorce) against Defendant IT in favor of Plaintiff FY, affirming the formal termination of their marriage. Thirdly, the court determines the custody and maintenance of the child born from the marriage to the Plaintiff while granting the defendant the right to visitation and interaction with the child with the Plaintiff's consent. Fourthly, the defendant is ordered to provide child support to the Plaintiff, demonstrating his responsibility as the child's father. Fifthly, the court costs are borne by the Plaintiff following the applicable legal provisions. The overall verdict reflects the court's effort to provide justice to all parties involved in the case, considering their respective rights and obligations and adhering to the applicable legal norms.

In the decision of the judge of the East Jakarta Religious Court Number 2907/Pdt.G/2020/PA.JT is adjudicating regarding the verdict of divorce and the child, but in the judgment, the judge will also not mention the consequences if there is a violation of the judgment in the intent. Therefore, when Plaintiff does not carry out the judgment, namely point 3, it does not reduce the right of a defendant to visit, invite, and travel by first notifying Plaintiff by not giving his rights. In contrast, the obligation is carried out as in the judgment. Therefore, the defendant has no pressure when his rights are hindered. Even Plaintiff uses the child to continue to make the feeling uncomfortable. This happens because the legislation itself is not regulated. So that even if it is not implemented, there will be no legal action. In this law, the implementation of the judgment relies only on personal consciousness, so there is no deterrent effect resulting from non-compliance with the law.

The perfection of a statute must be qualified rather than the material contained in the legislation itself. Concerning the content material of the legislation, as stated in Article 6 paragraph (1) letter i Law No. 12 of 2011 concerning the Establishment of Laws and

Regulations, it is said that "The content of the legislation must reflect the principle: Order and legal certainty."

Marriage Law as a *lex specialis* from the Civil Code, which *lex generalis* when it is associated with marriage, normatively many things have tried to enforce women's rights from the conditions of allowing marriage even for those who are married through the law. In this case, the man's position as a husband is also not reduced because it remains balanced. However, what if the provisions or articles in Law No. 1 of 1974 concerning Marriage and Law No. 16 of 2019 Amendments to Law No. 1 of 1974 concerning Marriage are not implemented?

However, there is a weakness in this law because there is no enforcement power, and criminal sanctions are absent if it is not implemented, even though it is a court decision. A law without enforcement power in implementation is no different from mere advice. It has been previously explained that according to Gustav, law enforcement must fulfill three legal objectives, namely, from the perspective of Legal Certainty, the marriage law, which forms the basis for the emergence of a marital bond recognized by the state, should also be able to protect the content of a court's decision on the dissolution of a marriage if there is a party that does not implement such decision, and ensure that sanctions are imposed if violated. Secondly, its benefits serve as a deterrent against parties who fail to implement such decisions specifically, thereby instilling a deterrent effect to encourage compliance with any court decisions. Thirdly, from the perspective of fairness, it ensures the emergence of tranquility and orderliness in society, with no parties feeling aggrieved because others fail to execute the decisions as they should.

In this case, marriage law has not been able to fulfill the purpose of the law itself fully. Therefore, there must be sanctions in the marriage law so that its application can guarantee the rights of both a wife and a husband. However, in the Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning marriage, namely in Article 45. However, Article 45 only imposes a fine for administrative violations if any provisions of the marriage law are violated. This administrative fine amounts to only Rp 7,500, for instance, in cases where a marriage is not reported.

This regulation emphasizes administrative matters only, the consequences when a person does not report that a marriage will take place. Other regulations, namely the Criminal Code, are regulated regarding crimes against marriage, namely Article 279 and Article 284 of the Criminal Code. The Criminal Code is also not comprehensive to provide criminal sanctions, only limited to the invalidity of marriage or adultery, not related to the rights and position of both the wife and husband when it is violated. For this reason, it is necessary to perfect this marriage law.

Therefore, there is a need for amendments to the marriage law to ensure that the implementation of divorce decrees can be carried out

effectively and without prejudice to any party. This could take the form of administrative sanctions, criminal penalties, or other measures because the existing sanctions in both the marriage law and the criminal procedural law are insufficient to uphold the rights or obligations arising from a divorce decree, whether it concerns child custody or the division of marital assets.

D. CONCLUSION

In substance, the Marriage Law has equalized the rights and positions of a woman and a man regarding domestic life, society, and the law's eyes. In Marriage Law has not complied with Article 6 paragraph (1) letter I, Law No. 12 of 2011 concerning the Establishment of Laws and Regulations, it is said that "The content of the legislation, so that because it is not perfect, results in the achievement of legal objectives that are not optimal. So that when the judgment is not carried out as it should be, as in the case of judgment number 2907/Pdt.G/2020/PA. JT, no consequences are borne for the violator of the verdict. The result is to harm the other party. If this happens, the aggrieved party cannot prosecute the offending party regarding anything not implemented in the judgment. The Marriage Law is substantially absent a sanction that can be imposed if the provisions of the Marriage Act are violated; with this fact, then the purpose of the law has not been fulfilled. Furthermore, although Government Regulation Number 9/1975 and the Criminal Code regulate crimes against marriage, this is not comprehensive regarding all aspects. Therefore, the recommendation is that further amendments to the marriage law be made to impose sanctions on parties who fail to comply with divorce decrees issued by the court, which contain the rights and obligations of the parties post-divorce. This would encourage the violators to adhere to the decisions more diligently, knowing that there are consequences for non-compliance as stipulated in the decree.

BIBLIOGRAPHY

Books :

Ahmad Ali. *Menguak Teori Hukum, (legal theory) dan Teori Peradilan (judicialprudence) termasuk Interpretasi Undang-Undang (legisprudence)*. Jakarta: Kencana Prenada Media Group, 2009.

Astim Riyanto. *Teori Konstitusi*. Bandung: Yapemdo, 2006.

Bambang Sunggono. *Metodologi Penelitian Hukum*. Jakarta: PT Raja Grafindo, 2003.

Oemar Seno Adji. *Prasara Seminar Ketatanegaraan Undang-Undang Dasar 1945*. Jakarta: Seruling Masa, 1996.

Sri Soemantri. *About State Institutions According to UUD 1945*. Bandung: Alumni.

Sunny Ismail. *Pergeseran Kekuasaan Eksekutif*. Jakarta: Aksara Baru, 1981.

Soerjono Soekanto dan Sri Mamudji. *Penelitian Hukum Normatif Suatu Tinjauan*

Singkat. Jakarta: PT Raja Grafindo Persada, 2001.

Journals :

- Achmad Bahroni, Ariella Gitta Sari, Satriyani Cahyo Widayati, Hery Sulistyo. "Dispensasi Kawin Dalam Tinjauan Undang-Undang Nomor 23 Tahun 2002 Juncto Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak." *Jurnal Transparansi Hukum* 2, No. 2 (2019).
- Adhitya Dimas Pratama. "Kedudukan Kepemilikan Hak Atas Tanah Dalam Perkawinan Campuran Tanpa Adanya Perjanjian Pisah Harta." *Jurnal Panorama Hukum* 3, No. 2 (2018).
- Ahmad Ropei. "Maqashid Syari'ah Dalam Pengaturan Batas Usia Pernikahan Di Indonesia." *Asy-Syariah* 23, No. 1 (2021).
- Ahmad Zaini. "Negara Hukum, Demokrasi dan HAM, Al Qisthâs," *Jurnal Hukum dan Politik* 11, No. 1, (2018).
- Aldila Arumita Sari & R.B. Sularto. "Kebijakan Formulasi Kekerasan Seksual Terhadap Istri (Marital Rape) Berbasis keadilan Gender Di Indonesia." *Jurnal Pembangunan Hukum Indonesia* 1, No. 1 (2019).
- Choirunnisa Nur Novitasari. "Dian Latifiani & Ridwan Arifin, Analisis Hukum Islam terhadap Faktor Putusnya Tali Perkawinan." *Jurnal Hukum Keluarga dan Hukum Islam, Samarah : Jurnal Hukum Keluarga dan Hukum Islam* 3, No. 2 (2019).
- Dini Ramdania. "Aspek Hukum Perceraian Dalam Perspektif Hukum Islam (Studi Terhadap Tingginya Tingkat Cerai Gugat Di Pengadilan Agama Kota Bandung), *Wacana Paramarta: Jurnal Ilmu Hukum* 19, No. 1 (2020).
- Dudi Badruzaman. "Tingkat Gugatan Perceraian Antara Pasangan Pernikahan Dini Di Pengadilan Agama." *Asy-Syariah* 23, No. 1 (2021).
- Elfrida Ratnawati, Sri Nanang M Kamba, Januardo SP Sihombing dan Julius F Maloringan. "Catat Perkawinan Untuk Kepastian Dan Perlindungan Hukum (Studi Kasus: Kabupaten Minahasa Utara)." *Jurnal Legislasi Indonesia* 18, No. 2 (2021).
- Ferry Irawan Febriansyah & Anwar Sanusi. "Larangan Perkawinan Masyarakat Adat Mirah Dan Golan." *DiH: Jurnal Ilmu Hukum* 16, No. 2 (2020).
- Iwan Romadhan Sitorus & Yusmita. "The Age Of Marriage On Interdisciplinary Islamic Law Perspectives." *MIZANI: Wacana Hukum, Ekonomi dan Keagamaan* 7, No. 1 (2020).
- I Wayan Agus Vijayantera. "Kajian Yuridis Larangan Adanya Ikatan Perkawinan Terhadap Sesama Pekerja Dalam Satu Perusahaan," *Jurnal Analisis Hukum* 1, No. 1 (2018).

- Kudrat Abdillah, Ah. Kusairi. "Reinterpretasi Hak Ijbar Dalam Hukum Perkawinan Islam Di Keluarga Pesantren." *Asy-Syariah* 22, No. 1 (2020).
- Mochammad Nasichin. "Akibat Hukum Pembatalan Perkawinan Berdasarkan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan." *Jurnal Pro Hukum* 7, No. 1 (2018).
- Maulida Zahra Kamila. "Politik Hukum Undang-Undang Perkawinan Di Indonesia." *Al-Ahwal Al-Syakhsyiyah: Jurnal Hukum Keluarga dan Peradilan Islam* 3, No. 2 (2022).
- Rastini, Jaka Bangkit Sanjaya dan Rizqi Mulyani Slamet. "Analisis Yuridis Pentingnya Pembuatan Perjanjian Perkawinan Berdasarkan Perspektif Hukum Perdata." *Rewang Rencang : Jurnal Hukum Lex Generalis* 2, No. 6 (2021).
- Susani Triwahyuningsih. "Perlindungan Dan Penegakan Hak Asasi Manusia (HAM) Di Indonesia." *Jurnal Hukum : Legal Standing* 2, No. 2 (2018).
- Tengku Erwinsyahbana. "Aspek Hukum perkawinan Antar Agama dan Problematika Yuridisnya." *Refleksi Hukum* 3, No. 1 (2018).
- Ummul Khaira & Azhari Yahya. "Pelaksanaan Upaya Perdamaian Dalam Perkara Perceraian (Suatu Kajian terhadap Putusan Verstek pada Mahkamah Syar'iyah Bireuen)." *Jurnal Penelitian Hukum DE JURE* 18, No. 3 (2018).
- Wiratni Ahmadi. "Hak dan Kewajiban Wanita Dalam Keluarga Menurut Undang-Undang No.1 Tahun 1974 tentang Perkawinan." *Jurnal Hukum Pro Justitia* 26, No. 4 (2008).

Regulation :

Act Number 16 of 2019 on Amendments to Act Number 1 of 1974 on Marriage
Act Number 1 of 1974 on Marriage
Civil Code
Criminal Code
Compilation of Islamic Law.