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“Legal Reconstruction in Indonesia Based on Human Right”

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PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnau, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

PROCEEDINGS

The 5th International Conference and Call for Paper Faculty of Law 2019 Legal Reconstruction in Indonesia Based on Human Right

Table of Contents

<i>FRONT PAGE</i>	<i>I</i>
<i>Information of The International Seminar</i>	<i>III</i>
<i>Committee Composition</i>	<i>IV</i>
<i>PREFACE</i>	<i>V</i>
Fulfillment Of Teacher Protection Rights	
<i>Yenny AS, Rini Setiawati</i>	<i>1</i>
Legal Reconstruction Of Laws Regarding Human Rights Through Judicial Review To The Constitutional Court	
<i>Umar Ma'ruf</i>	<i>13</i>
Legal Analysis Of Social Security Transformation And The Reality Of Its Implementation In The Community In Indonesia	
<i>Siti Ummu Adillah, I Gusti Ayu Ketut Rachmi Handayani ,Adi Sulistiyono</i>	<i>29</i>
Increasing Voluntary Compliance Of Tax Payments In Micro Small And Medium Enterprises (Msmes) Post-Issuance Of Government Regulation Number 23 Of 2018 (Case Study In Semarang City)	
<i>Amin Purnawan, Akhmad Khisni, Aryani Witasari</i>	<i>40</i>
Legal Analysis Of Racist Exams In Surabaya Papua Dormitory	
<i>Ma'aruf Akib</i>	<i>49</i>
Reconstruction Of Misdemeanor Settlement Based On Pancasila Value	
<i>S. Andi Sutrasno</i>	<i>56</i>
Urgency Of Legal Assistance For Poor People As A Request Of Human Rights	
<i>Adhi Budi Susilo, Indra Yuliawan</i>	<i>62</i>
Reconstruction Of Article 156 Paragraph (1) Of Law Number 13 Year 2003 Regarding Manpower As A Guideline For The Provision Of Workers' Rights Based On Justice	
<i>Rahmatsyah</i>	<i>66</i>
Problematic Presidential Electoral Threshold In The Operation Of Value-Based Simultaneous Justice	
<i>Widayati , Winanto</i>	<i>72</i>

Reconstruction Of Learning Methods In Criminal Law Subjects Using Inquiry Methodsbased On Human Rights And Islamic Values <i>Ira Alia Maerani, Eko Soponyono, Nuridin.....</i>	81
Reconstruction Of Criminal Sanction And Rehabilitation Combating On Narcotic's Victims Based On Religious Justice <i>Carto Nuryanto, Gunarto, Anis Mashdurohatun.....</i>	91
Study of the theory of Legal Protection Against Online High Yield Investment Program Contracts in Indonesia (HYIP) <i>muhamad Iqbal al Hakiem,aryani witasari.....</i>	96
Reconstruction Completion Of The Crime Of Light On Value Pancasila <i>Andi S. Sutrasno.....</i>	102
Law Reconstruction Of Registration On Fiduciary Obligation Based On Justice Value <i>Wieke Dewi Suryandari ; Gunarto; Amin Purnawan.....</i>	108
Reconstruction Of Transport Regulatory On Marine Toll To Support Sea Connectivity Based On Pancasila Justice <i>Hartanto, Gunarto, Anis Mashdurohatun.....</i>	114
Reconstruction Of Scientific Investigation In Indonesia Based On Justice <i>Teguh Prihmono; Gunarto, Sri Endah Wahyuningsih.....</i>	120
Legal Construction On Training Ship Management Belongs To Human Resources Development Of Transportation (Bpsdmp) Based On Dignity Justice Value <i>Wahyu Wibisono, Gunarto, Anis Mashdurohatun.....</i>	126
Protection Of Law Refugees/Asylum Seekers In Indonesia (As A Transit State) No Ratify 1951 Convention Of And The 1967 Protocol <i>Muhammad Djamir.....</i>	133
Reconstruction Of Legal Policy On Decency Crime In Indonesia Based On Pancasila Value (Lgbt Rehabilitation Institute For Children) <i>Cucuk Kristiono, Gunarto, Anis Mashdurohatun; Suparji.....</i>	144
Legal Protection Against Indonesian Workers (Tki) In Abroad <i>Yaya Kareng (Sripatum UniversityOng Argo Victoria ,Sri Yulianingsih.....</i>	149
Reconstruction Of Auction Execution Of Mortgage Object In Determine The Auction Price Based On Justice <i>Moh Djarkasih**.....</i>	158

Reconstruction Policy Of Sanctions Against Destruction Of Evidence Illegal Fishing Based Small Fishing Welfare Values <i>R. Juli Moertiyono</i>	165
Reconstruction Of Legal Policy Interfaith Marriage In Indonesia <i>Moh. Zeinudin, Dian Novita</i>	179
Reform Of Couple Sexual Rights Protection In Case Of Diseases Hiv / Aids In Indonesia <i>Nana Ruhyana</i>	186
Legal Protection Against Disability In Getting Work <i>Oktavianto Setyo Nugroho</i>	193
Reconstruction Of Authority To Arrest In Doing Judge Accused Of Value-Based Justice <i>Agus Sugiarto</i>	203
Enforcement Of Criminal Law In False News (Hoax) Management According To Law No. 11 In 2008 That Has Been Amended To Be Law No.19 Of 2016 Concerning Electronic Information And Transactions In Islamic Law And Positive Laws <i>Yanto Irianto</i>	208
Reconstruction Validity Legal Deeds Are Dealing With Children In The Process Of Law Criminal Justice System Based Child Justice <i>Asep Hermawan</i>	220
Reconstruction Of Performance Assessment Of Drinking Water Companies (Pdam) Based On Consumer Protection <i>Bustaman</i>	225
Reconstruction Legal Rights Associated With A Warranty Not A Bank Debt <i>Euislistianti</i>	229
Reconstruction Of Operational System As A Community Economic System Based On Welfare <i>Abbas Ibrahim Idris</i>	234
Reconstruction Of Criminal Responsibility For Actors Prostitutorial Criminal Justice In The Criminal Justice Based On Value <i>Iwan Rasiwan</i>	242
Reconstruction Of Legal Drinking Water Management Company (Pdam) Based On Justice <i>Suharyadi</i>	248

Reconstruction Of Private Criminal System Implementation In The Commitment Values In Indonesia Justice

Sumanto 252

Reconstruction Of Justice Law Protection Law Protection

Wamyani 260

Criminal Code Draft Law And Development In Indonesia

Nany Pujianti Suwigjo 265

Deconstruction of the Principle of Legal Thinking

Sriyati 270

Development Of The Law Of Complete Systematic Land Registration (Ptl) And Effect Of Conduct Values of Land Based On Dignify Justice In The District Of Kendal, Central Java

Desy Dwi Nurhayati Hartanti 279

Interpretation Teaching Of Human Rights Laws Against Material In Corruption Provisions

Burham Pranawa, Hartiwiningsih, Hari Purwadi 293

Reconstruction Of Article 156 Paragraph (1) Of Law Number 13 Year 2003 Regarding Manpower As A Guideline For The Provision Of Workers' Rights Based On Justice

Rahmatsyah 301

Law Due To Delay The Registration Under Fiduciary Guarantee Pmk No 130 / Pmk.010 / 2012

Jaenudin Umar 307

The Effectiveness Of The Handling Of The Criminal Acts Of Light Tend To Be Settled Judicial Custom

Supena Diansah 313

Urgency Of Legal Assistance For Poor People As A Request Of Human Rights

Adhi Budi Susilo, Indra Yuliawan 327

Independence Institute Of Justice And Judge In Perspective Judicial Reform Blueprint 2010 - 2035

Ahmad Agus Bahauddin 331

Policies Against Crime Criminal Law Made By Children

Achmad Arifulloh 340

Law Enforcement Of Law Number 23 Of 2004 In Preventing Efforts Human Rights Violations In Indonesia

Andri Winjaya Laksana, Lathifah Hanim 350

Reconstruction Of Legal Policy Interfaith Marriage In Indonesia

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Abstract

The controversy about Interfaith Marriages continues throughout the history of marital law in Indonesian politics. Even today, Interfaith Marriages have not been clearly and decisively regulated in Indonesian positive law, especially in Law Number 1 of 1974 concerning Marriage (UUP) the which is a Codification of the national marriage law that is applied in Indonesia. Such conditions of legal regulation, have given rise to a variety of legal and jurisprudential Interpretations of interfaith marriage laws, both of the which are granted, and Reviews those that reject the applications for Interfaith Marriages. Various research results show that Interfaith Marriages continue to occur in Indonesia by Exploiting legal loopholes and the diversity of Interpretations of the legal requirements of marriage According to religious law as stipulated in article 2 paragraph (1) UUP. This article will deliver an interpretation on interfaith marriage laws for over the years and the direction of a reconstructive legal policy in Indonesia.

Keywords: Policy, Marriage, Religion Different Marriage.

A. preliminary

Indonesia is one country that has a pluralistic society with diverse ethnic, language, culture, religion and belief. The claims are clearly reflected in the motto of Indonesia, namely Unity, which means different, but still one. In conditions such diversity, social interaction among groups of different communities occur intensively in the frame of Unity in Diversity. Naturally, the relationship between them run Dialogic and even integrative, thus giving birth to the strong relationships and fused. The pattern of strong and unified relationship be-

tween them, sometimes encountered nothing beyond state regulations, and even religious doctrines. Interfaith marriage is a form of human relationship patterns that it can not be limited by state regulations and any religious doctrine. Therefore, although the doctrine of religion and state regulations tend prohibits interfaith marriage, but throughout the history of human relations in Indonesia, interfaith marriage continue to occur from time to time. And until now, the interfaith marriage law setting has not been set clearly and firmly in Act No. 1 of 1974 About Marriage (UUP) applicable in Indonesia.

B. Discussion

Discussing back on interfaith marriage, there are at least three problems that need to be studied, namely: First, the problem of theology. In this matter, the important question that can be asked is what commentaries “official” of the sacred texts of all religions with regard to the others? Are there any interpretation that is outside commentary “official” (plurality interpretation)? How is the internal struggle going on in the religion associated with the interpretation of “official” and “unofficial” was about interfaith marriage? This important question asked because in every religion there will be power struggles related in an effort to formulate what is called the interpretation “official” of the religion of “the others”, including the issue of interfaith marriage. The power struggle involving different groups of theologians and religious bureaucracy using a variety of arenas and continues throughout history across time and space. The end result of this power struggle is the presence of a dominant discourse of religious thought which is considered as the interpretation “official” of the sacred texts of the religion of how it should respond to the other. The dominant discourse of religious thought is often placed as an absolute truth claims (truth claims) were subsequently formulated into a religious doctrine that can not be shaken.

By using this kind of perspective, we can read the attitude of accepting or rejecting the others were done by most people of all faiths, is a derivative of theological beliefs drawn from the discourse of the dominant ideas of sacred religious texts. For example, when the interpretation is the dominant interpretation which says “there is no truth outside of religion” then this interpretation into a base justification to put religion out of religion not as a religion, or have a lower position or even religion “false” , Dominant commentary is usually constructed through rigid and textual interpretation, so that the reading of scripture will merely follow what is written in the text of religious scriptures.

Thus, it is not strange then, interfaith marriage becomes a be avoided and forbidden. Instead, the dominant interpretation behind it, it will always appear different interpretation, interpretation that is more pluralistic, to see interfaith marriage as something that allows it to do. The reference both derived from religious texts, but more loosely interpreted in accordance with the historical social context that is part and base emergence of religious holy texts that appear or social context faced today. Expressly difference between us and them dilumerkan with a new interpretation that put them (the others) as a part of us. to see interfaith marriage as something that allows it to do. The reference both derived from religious texts, but more loosely interpreted in accordance with the historical social context that is part and base emergence of religious holy texts that appear or social context faced today. Expressly difference between us and them dilumerkan with a new interpretation that put them (the others) as a part of us. to see interfaith marriage as something that allows it to do. The reference both derived from religious texts, but more loosely interpreted in accordance with the historical social context that is part and base emergence of religious holy texts that appear or social context faced today. Expressly difference between us and them dilumerkan with a new interpretation that put them (the others) as a part of us.

The second is the problem of the sociology of religion. In this context, we will talk about religion as a set of people (communities) that build, maintain and strengthen the community with the neighbor’s imagination. As an imagined community, even among fellow believers may not know each other, have never met face to face with most of the others, but in every mind proselytes always woke shadow of their togetherness. Imagination as a community together, always maintained a variety of ways: from building rites joint that allows a meeting of fellow believers, to formulate a common identity that can distinguish with the other, or even develop an instrument to build and strengthen the solidity of the group.

Of course in an effort to build community with the imagination as this, the religious community has always placed as a solid and homogeneous community. Solid meaning that every religious community considers itself a united, strong and notunshaken. Faith communities also considered in itself homogeneous, single and be indifferent to inequalities and differences that may exist in these communities. In addition, in the imaginary community, every religious assume their number is always constant and even growing. It has become something that is plural, each religion proudly displays the statistical growth of their community, or to be “angry and disappointed” when reading the declining number of followers of religion.

In the current perspective it is a threat to the solidity and homogeneity was always seen coming from outside the community; mainly from different religious communities. In other words, other religious communities is seen not as enemies but as fellow-competitors are ready to threaten from all directions. The existence of perspectiveThis makes interfaith marriage is placed as a threat that could destabilize the existence of a religion. Why is that? Because in this perspective, marriage is an instrument that allows the displacement (conversion) religion. So, to say the fear factor in the threat of religious conversion is a source of all mind their interfaith marriage. Furthermore, the issue of religious conversion often become politicized by the dominant groups in every religion, and finally come up as a warning “beware of religious proselytizing through marriage”.

Finally, perkawinan different religions, not just touch theological issues in each religion, but rather concerns the political struggles between various religious identity. When it appeared the view that other religions are a threat, then every religion will try desperately to keep the group feeling and solidarity in the group through various means including the banning of political applying for interfaith marriage. Up here we can come to the

conclusion that diversity is sometimes more emphasis on efforts to “close ranks”, in which the plurality of being seen as a weakness. Pokonya, ready if the enemy came to attack.

Thirdly, problems related to something that we often refer to as the political relationship of state and religion. Inside there are two modes are possible: the political religions of the state and state policy on religion. In the history of nation-states have found various modes of each religious community, both political and non-political to have greater access to State resources. Strategies that do exist three forms: First, the struggle for the religion he follows the official religion of the country. So that the entire country is a representation of the religious orders. Second, pushing various state policies that reflect their religious identity, as well as putting as many people from religious groups as a strategic policy makers and government bureaucracy.

Instead, negarapun have modus for the religions. In the authoritarian political system, from the era of the Old Order to the New Order, the state tends to use religion as an instrument of threat, the seeds of radicalization and social conflicts, so that religion needs to be “governed and regulated” in order not to endanger the existence of repressive regimes. There are several ways of authoritarian regimes in the “manage” religion, namely: First, political prioritize accommodating to the majority religious group and discriminate against religious minorities. Thus, in the face of diversity in religious beliefs, the state more in favor of religious communities than minority religious groups. From this came the religions officially recognized by the state. Second, in the face of religious minority groups (non-dominant), countries use preventive and repressive politics. Where the state has the authority to determine the religious communities are considered deviant and subsequent actions such as banning the criminalization of religious activities of groups considered deviant and disband the organization. Third, do politics koorperatif

against religious groups officially recognized by the state, so the state can exercise control over religious communities. Fourth, promote political harmony, so that the state justify when it intervened in the “areas” religious communities for disturbing public order and disrupting national unity. Where the state has the authority to determine the religious communities are considered deviant and subsequent actions such as banning the criminalization of religious activities of groups considered deviant and disband the organization. Third, do politics kooperatif against religious groups officially recognized by the state, so the state can exercise control over religious communities. Fourth, promote political harmony, so that the state justify when it intervened in the “areas” religious communities for disturbing public order and disrupting national unity. Where the state has the authority to determine the religious communities are considered deviant and subsequent actions such as banning the criminalization of religious activities of groups considered deviant and disband the organization. Third, do politics kooperatif against religious groups officially recognized by the state, so the state can exercise control over religious communities. Fourth, promote political harmony, so that the state justify when it intervened in the “areas” religious communities for disturbing public order and disrupting national unity. do politics kooperatif against religious groups officially recognized by the state, so the state can exercise control over religious communities. Fourth, promote political harmony, so that the state justify when it intervened in the “areas” religious communities for disturbing public order and disrupting national unity. do politics kooperatif against religious groups officially recognized by the state, so the state can exercise control over religious communities. Fourth, promote political harmony, so that the state justify when it intervened in the “areas” religious communities for disturbing public order and disrupting national unity.

In the two modes above, public policy, including policies agama-religion, could

be interpreted as the result of contestation interests (conflict of interest) between various power ideological, economic and political. The contest is not only happening in the decision making process for the formulation of public policy, but also to the conflicts of interest when it comes to how they will be implemented. If public policy is placed as a result of a conflict of interest then an assessment of a public policy should be done in two ways: First, look at the context of the political economy and ideology of a policy (context of policy) and the second look further on the substance of the policy (content of policy). The same way can actually be used to look at various policies issued by public institutions of religion.

Relying on the three issues above, then we can explore further the political context is the background of the policy on interfaith marriage. Policy in this case can be described as a political decision that reflects the country’s stance on a matter. Policies can be in the form of the attitude of the state to make arrangements about something or the attitude to not decide / adjust anything.

In connection with that there are some records that can be given: *first*, Formal gesture of interfaith marriage state is not clear (hazy). This can be seen from Act No. 1 of 1974 About Marriage (UUP), which do not include special provisions governing the interfaith marriage. Which is instead governed is campura marriage between two people in Indonesia are subject to different laws, because of differences in nationality and one Indonesian citizen party (the third part of Article 57 to Article 62).

Second, The attitude of the state towards the validity of the marriage referred to in Article 2 paragraph (1) UUP which states: “Marriage is legal if it is done according to the law of each religion and belief”, and in Article 2 paragraph (2) states: “Every marriage recorded according to the legislation in force”. Further, in the explanation stated: “There is no marriage outside the law of each religion

and belief clear that in accordance with the 1945 Constitution". This formula obviously will lead to multiple interpretations when this formulation leaves a number of questions such as: What is meant by religion or belief that? What is called the law of religion and belief? Who determines the law? A series of the above questions is important because in practice it appears commentary "official" of the country about what is meant by religion.

Misalnyes in the explanation of Presidential Decree No. 1 / PNPS / 1965, does not at all mention the local religions, group psychotherapy and cult as a religion to get protection from the state. Even based on MPR Decree No. IV / MPR / 1978 About the Guidelines states that the belief in One God is not a religion. MPR was later confirmed by the Minister of Religious Instruction No. 4 of 1978 About Wisdom Concerning Faith streams as well as the Minister of Religious Instruction No. 14 of 1978 concerning Cease Minister of Religious Instruction No. 4 of 1978. In the Instruction No. 4 of 1978 stated: "MORA the main task is carrying out some tasks of Public Governance and Development in the field of religion, will not take care of the issue of trust that flows open is the religion ". It re-affirmed in various government policies relating to marriage adherents of belief, such as: Letter of Minister of Religious Affairs to the Governor-KDH Level I whole Indonesia No. B. IV / 11215/1978 About Problems mention of religion, marriage, and burial Pledge for Religious bodies of those who are connected with the cult. Letter of the Ministry of Religious Affairs to Minister of Home Affairs No. MA / 650/1979 About Marriage Registration for penghayat Belief in God Almighty. In the letter stated that "No known their procedures for marriage, vows and burial according to cult nor known mention of" cult "as a good religion on identity cards and others". Letter of the Ministry of Religious Affairs to the Minister of Interior No. B. IV / 5996/1980 concerning marriage,

Third, Because the state does not spe-

cifically regulate interfaith marriage and formulate the validity of marriages according to their religious law in practice will be determined by: (a) Interpretation dominant that appears in each religion deals with religious law. (B) Interpretation of a very stiff from the state bureaucracy, and even then lead to discriminatory interpretation. Up here we see how the country could also be an instrument of the dominant group in each religion to "enter" the interpretation made. For example, references to the Ministry of Religious of interfaith marriage is a compilation of Islamic law in Indonesia, Book I of the Marriage Law Article 42. This is clearly contained in the official document entitled Compilation of Legislation for Religious Harmony Life issued the seventh edition Balitbang Religion and Religious Training , Pustlibang Religious Affairs in 2003. In that document (p. 72), says: "A Muslim woman is forbidden to mate with a man who was not Muslim". Even in the Draft Law On Religious Court Applied Legal Affairs Marriage (2003), formulated into marriage is prohibited between a man and a woman who are not Muslims (Article 31). Up here the country has entered into areas that could be categorized as religious landscape by bringing the dominant religious interpretation is disputed. prohibited formulated into marriage only between a man and a woman who are not Muslims (Article 31). Up here the country has entered into areas that could be categorized as religious landscape by bringing the dominant religious interpretation is disputed. prohibited formulated into marriage only between a man and a woman who are not Muslims (Article 31). Up here the country has entered into areas that could be categorized as religious landscape by bringing the dominant religious interpretation is disputed.

Fourth, In addition, the function of the state bureaucracy that should stop the excessive developing justriu record determines the validity of the marriage. Two people with different religions, which in turn agreed to bind themselves in a marriage becomes blocked to record the marriage (and obtain

documents / Deed of Marriage) as Registrar Employees do not want to register the marriage because they are not of legal religion. The state bureaucracy in this regard has not portray himself as a determinant of registrar. Further, it is confirmed that two people will be deterred from getting civil rights that others, such as a birth certificate. This kind of practice that would lead to a bad lesson for citizens having to change his religion in order to be listed first in the Deed of Marriage.

*Fifth*In many cases, state regulation of marriage was discriminatory, because it distinguishes citizens based on their religion. For example, regarding registration of marriages. In Government Regulation No. 9 of 1975 stated that the registration of marriage according to Islam carried out by the Registrar Officer according to Law No. 32 of 1954. Meanwhile, registration of marriage outside of Islam carried out by the Registrar of Marriage Officer at the Civil Registry Office.

C. Closing

The process of intensified encounter in a pluralistic society make interfaith marriage is no longer a myth, but a reality that we face. But unfortunately, the reality is often not willing to accept as a reality and there is always an attempt to stay put or keep it as a myth. Therefore, there needs to be some serious undertakings to discuss returning it within the framework of theological debate, sociological and political policy of countries. It at least can be started on building a new interpretation that is more pluralistic in religious law each followed by demands on the country that plays a non-discriminatory and do not actually do the politics of omission, which is basically an opportunity to play a dominant interpretation.

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