



# THE 3<sup>rd</sup> INTERNATIONAL CONFERENCE AND CALL FOR PAPER

**"Legal Development in Various Countries"**



**IMAM AS SYAFEI BUILDING**  
 Faculty of Law, Sultan Agung Islamic University  
 Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

**UNISSULA PRESS**

ISBN. 978-602-1145-67-8

September



2017

# **The 3<sup>rd</sup> PROCEEDING**

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Hal i-x, 1-391

**Cetakan Pertama Tahun 2017**

**Penerbit UNISSULA PRESS**

Jl. Raya Kaligawe Km. 4 Semarang 50112

PO BOX 1054/SM,

Telp. (024) 6583584, Fax. (024) 6594366

**ISBN. 978-602-1145-67-8**

## INFORMATION OF THE CONFERENCE AND CALL PAPER

**WORLD CLASS ISLAMIC UNIVERSITY**  
**UNISSULA**  
SULTAN AGUNG ISLAMIC UNIVERSITY

# Welcome to Participants on International Conference

## "LEGAL DEVELOPMENT IN VARIOUS COUNTRIES"

*This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. And focusing on the development of law in both developed and developing countries and its role in shaping a good future.*

**KEYNOTE SPEAKER:**  
**Prof. Henning Glaser**  
Thammasat University, Thailand

**IMAM AS SYAFEI BUILDING**  
Faculty of Law, Sultan Agung Islamic University  
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Organized by : Faculty of Law Sultan Agung Islamic University (UNISSULA) Semarang-Indonesia

**SPEAKERS :**

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Indonesia, September 05<sup>th</sup> 2017

**WORLD CLASS ISLAMIC UNIVERSITY**  
**UNISSULA**  
SULTAN AGUNG ISLAMIC UNIVERSITY

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**FACULTY OF LAW**  
Sultan Agung Islamic University

5  
September  
2017

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This Conference And Call Paper was held by the Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on:

Day: Tuesday

Date : September 5<sup>th</sup> 2017

Time : 08:00 - 15:00 pm

Place : Imam AsSyafei Building 3<sup>rd</sup> Floor

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

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AND CALL FOR PAPER  
“LEGAL DEVELOPMENT IN VARIOUS COUNTRIES”**

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## PREFACE

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Assalamu'alaikum, Wr. Wb

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 Tegan, Ph.D from Sorbone University, Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, MM from SebelasMaret University, Dr. Zaharudin from Universiti Utara Malaysia, and Dr. Anis Mashdurohatun, S.H., M.Hum from Sultan Agung Islamic University.**

This is our third 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 to be discussed as guidelines to exchange and discuss views on the most important recent on Legal Development 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.

See you in our fourth International and call for paper next year.

Wassalamualaikum, Wr. Wb

Semarang, September 5<sup>th</sup> 2017

**Chairman of the Committee,**



**Dr. Anis Mashdurohatun, S.H., M.Hum**  
**NIDN : 06-02105-7002**

## GREETING FROM THE DEAN OF FACULTY OF LAW

---

*As-salamu'alaikum Wr. Wb.*

Thank to Allah SWT is an absolute act that we must say after conducting the International Conference and Call for Paper by theme: “**Legal Development in Various Countries**” which is held by Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on September 5<sup>th</sup> 2017.

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. In the end, as in contract theories, no monist view of legal development possesses the explanatory power needed to understand how law has come to be and where it may take us in the future. What we do have is a foundation built on at least two millennia of legal history. The intellectual starting point for this project is Nathan Isaacs' unfinished work on a cycle theory of legal development. His view of legal development takes issue with Henry Sumner Maine's thesis that development in advanced legal systems is progressive in nature. And, more importantly for the current undertaking, that this progression is linear in nature. Instead, Isaacs' review of thousands of years of Jewish legal development indicated that legal development perpetually progressed in cycles.


Therefore, to discuss more about legal development or law reform, Faculty of Law, Sultan Agung Islamic University is confidence to conduct a conference by the theme “**Legal Development in Various Countries**” focusing on the development of law in both developed and developing countries and its role in shaping a good future.

Finally, we thank to the presenters, article senders, and comittee who have contributed in this event, so that this international seminar ran well.

*Wassalamu'alaikum Wr. Wb.*

Semarang, September 5<sup>th</sup> 2017

Dean,



**Prof. Dr. Gunarto, SH, SE, Akt, M.Hum**  
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# JURIDICAL NORMATIVE REVIEW OF DIFFERENT RELIGIOUS MARRIAGE

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## ABSTRACT

Problem married in Indonesia regular in laws number 1, 1974 it as accured for Indonesian all since on October 1, 1975. Articles 1 of law number 1, 1974 : “Married is badle of body and soul between a man and girl as husband and wife with happy and external family (house hold) purpose based and God”.

From married definition unseble that married have purposed house hold to happy and external on God. Almightry three for in legitimate or not provide of married is religion based that follow by them shall to married beholding. This case regular in article 2 of law number 1, 1974 : “Married is legitimation. If follow religion and religious consed beholding”.

Married if have been beholding by them have same religion it not problem never cheles, but married have been beholding by them religion differ, this problem becoming.

In law of number 1, 1974 isn't regular about religion differ married. Religion differ married not marry differ which in article 57, where different married is a married between a man and girl different nationality, and which one of them Indonesian.

From research can be conclution religion differ married is outside law number 1, 1974.

Keyword : Married, different religion.

## Background and Problem Formulation

Lately the problem of marriage is different religion, that is marriage between a different husband and wife becomes a conversation again. Actually if we observe, this issue of religious marriage from the past until now has always been a hot topic. On the one hand agree with the existence of the marriage of different religion and on the other side do not agree, with their respective arguments.

If we notice, in the Law Number 1 of 1974 about marriage there is not a single chapter governing the marriage of different religions. A religious marriage is not a mixed marriage as mentioned in clause 57 which reads :

“The meaning of mixed marriages in this law is marriage between two people in Indonesia is subject to different laws, because of the difference of citizenship and one of the party of foreign nationality and one of the party of Indonesian citizenship.”

So according law Number 1 of 1974 that is meant mixed marriage is :

1. A man a citizen of Indonesia married to a woman a foreign citizen
2. A woman citizen of indonesia married to a man a foreign citizen.

Before the enactment Law Number 1 of 1974, In Indonesia there are a variety of marriage laws that apply to each resident class. The marriage law referred to above is :

1. KUH civil
2. Ordinance marriage indonesia java Christian, Minahasa and Ambon (Stb.1898 No. 158)
3. Mixed marriage rules (Stb. 1898 No. 158)
4. Law Number 32 of 1954 about the recording of marriage, divorce and reconciliation
5. Customary law.

From October 1, 1975 with the issuance Government regulation number 9 of 1975 on the implementation of law number 1 of 1974 which applies to all citizens. therefore the formal juridical in Indonesia has been found unification in the field of marriage law.

With the enactment of law number 1 of 1974, then the provisions set forth in the marriage law before the enactment of law number 1 of 1974 are declared invalid as far as has been set in law number 1 of 1974. This is affirmed in clause 66 as follows :

“For marriage and anything related to marriage based on this law, then with the coming into effect of this law the provisions set forth in KUH civil, Marriage ordinance christiani (HOCI), Mixed marriage rules (GHR) and other rules governing marriage to the extent provided for in this law shall be invalid.”

From the sound of the aforementioned clause can be concluded that the invalid is “Provisions stipulated in some existing rules” so far as they are set forth in law number 1 of 1974. So things that are not regulated and not contrary to the law number 1 of 1974 are still enforceable.

Marriage of religious differences prior to the enactment of law number 1 of 1974 set out in a famous mixed marriage law (Regeling op de GemengdeHuwelijken) which is famous for its abbreviations GHR.

Clause 1 of GHR mentions :

“Called mixed marriage is marriage between people in indonesia subject to different laws.”

The different laws are caused by differences in citizenship, place, class and religion.

It is clear that the definition of intermarriage according to GHR is different from the law number 1 of 1974, because law number 1 of 1974 limiting on the differences in citizenship and one of the parties of Indonesian citizenship, being according to the GHR among the people in Indonesia are subject to different laws.

From the things described above how is the existence of marriage differences in religion viewed from the law number 1 of 1974.

## **Discussion**

When examined by law number 1 of 1974 and its explanation, as well as the implementing regulation that is government regulation number 9 year 1975 not found provisions that regulate marriage issues of different religions.

If a statutory law does not cover any legal event arising in society and if a legislation of its contents is unclear then it is necessary to have legal interpretation.

Whether the law number 1 of 1974 allows or forbids the marriage of religious differences can be interpreted from the following points :

1. Clause 2 (1) law number 1 of 1974 Which states that marriage is lawful if done according to the law of each religion and belief. This means that the law submits to each religion to determine the ways and conditions of the conduct of the marriage. So whether the prospective bride has met the requirements or not, in addition to depending on the provisions contained in law number 1 of 1974 as well as the legal provisions of each religion.
2. Clause 8 (f) law number 1 of 1974 Which states that a marriage is prohibited between two persons having a relationship which by their religion or other applicable regulations is prohibited from marriage. Of the provisions of article 8 (f) it can be concluded that in addition there are prohibitions strictly mentioned in the law number 1 of 1974 and other regulations, there are also restrictions that originate from the law of each religion.

Based on clause 2 (1) jo clause 8 (f) law number 1 of 1974 It can be concluded that to determine whether or not the marriage of different religions depends on the law itself.

Recognized religions in Indonesia (Islam, Catholik, Protestan, Hindu, Budha) Have different views on different religions marriage.

1. Islam forbids marriage of different religions for Muslim women, whereas for Muslim men there are differences of opinion among Islamic jurists who can be divided into three, namely :
  - a. Prohibit absolutely;
  - b. Permit absolutely;
  - c. Permit on condition that the man of Islam is strong in his faith.
2. Catholics in principle prohibit the conduct of different religious marriages, except in certain cases the prelate may grant dispensation to conduct the marriage of different religions.
3. Protestants want a religious marriage, because the main purpose of marriage is happiness and happiness will be difficult if not achieved faith and the same religion.
4. Hindu and budha forbade the marriage of different religions.

From the different views mentioned above, it shows how complicated the marriage of different religions if based clause 2 (1) jo clause 8 (f) law number 1 of 1974. So in principle law

number 1 of 1974 closed the possibility of marriage of different religions. And again when viewed the history of the formation of law number 1 of 1974 in the discussion of marriage law draft, the issue of a religious marriage is one of the crucial that ultimately the problem is removed from the legislation passed. In the discussion of marriage bill by the people's council in 1973, the marriage of different religions was one of the problems that got a lot of pro and contra responses, finally the problem was eliminated in the law. The result of compromise among the factions in the people's representative council, among others :

- a. Some clauses are omitted :
  1. Adoption
  2. Parental system
  3. Engagement
  4. The determination that differences due to nationality, ethnicity, country of origin, place, religion, belief and progeny do not constitute a liability for marriage.
- b. Some clause have changed :
  1. Legitimate marriage
  2. Minimum age of marriage
  3. Reasons for divorce
  4. Joint treasure.

From this it can be concluded that the marriage of different religions is not desired by law number 1 year 1974.

But in reality live in indonesia where the society is pluralistic heterogeneous happened marriage or intention to carry out marriage of different religion.

The Supreme Court is of the opinion that the matter is not legally resolved, for allowing such a matter would have a negative impact on people's and religious life.

Therefore, the supreme court in the verdict number 1400 / k / pdt / 1986, Argued that a legal vacuum must be found and determined by the law that by filing a petition for marriage to the head of the civil registry office, It must be construed that the applicant has disregarded his religious status (in this case islam religion), so that the head of the civil registration office shall be obliged to accept the petition of the petitioner to establish the marriage of a different religion.

## **Conclusion**

1. Law number 1 of 1974 adheres to the principle that marriage is lawful if done according to the law of their respective religions and beliefs, so that there is no marriage outside the law of religion and belief respectively.
2. Marriage of different religion that is marriage between husband candidate different wife of religion is marriage outside Law number 1 of 1974.
3. The Supreme Court is of the opinion that the marriage of different religions may take place in the civil registry office, by way of the prospective husband and wife applying in advance to the district court to carry out the marriage of different religions.



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