

ANALYSIS OF AGREEMENT MARRIAGE ISLAMIC POPULATION CASE IN INDONESIA

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ABSTRACT

In this time some of the peoples Indonesia before marriage was preceded by the making of marriage agreements among prospective grooms and women. The marriage agreement as an often also referred to as a pre-marriage agreement or prenuptial agreement that agreements made before marriage take place and binding the two sides of the bride and married woman candidates. A legal arrangement in the case of a marriage agreement is contained in Article 29 of Law no. 1 of 1974 concerning Marriage, Articles 47 to 52 of KHI and also in Articles 139 to Article 154 of the Civil Code. Islamic law does not set explicitly in marriage agreements. However, based on the Qur'an and Hadith no single verse prohibits the making of marriage legally approval as long as it is not contrary to Islamic Shari'a and the marriage agreement is beneficial to the couple husband and wife. Thus, Islamic law justifies the implementation of marriage agreements among Islamic citizens. Among potential married couples aged over 25 years old up to 40 years past and have education level between D3 to S1 know and understand the purpose and benefits of the marriage agreement, but because it is not obligated in Islamic law hence not implemented marriage agreement among Muslim citizen.

Keywords: Agreement marriage, population Islam, islamic marriage.

1. INTRODUCTION.

A Marriage is a sacred institution so institutionalized for a pluralist country of Indonesia regarding culture, customs, and religion. According to Article 1 of Law no. 1 the Year 1974 about Marriage, which is meant by marriage is the emotional birth bond between a man with a woman, a with the aim of forming a family (household) is happy and eternal based on Belief in God Almighty. Even a reading the definition of marriage contained in Article 1 of Law no. 1 the Year 1974 on marriage mentioned above it can be said that marriage is a sacred nature that unites a man and a woman both inward and inner with the aim of forming family (household) is happy and eternal based on Belief in God Almighty and to obtain offspring of the couple.

In the present time among Indonesian people often occur before the marriage is done making the marriage agreement between prospective grooms and women. The marriage agreement is often also referred to as a pre-marriage agreement or prenuptial agreement that agreements made before marriage take place and binding the two sides of the bride and married woman candidates.

Based on the community mentioned above service is done to know the marriage agreement or pre-marriage agreement before the marriage by married couples. But in practice among the citizens of Indonesian citizens (WNI) Islam in Indonesia in general and in the city of Medan in particular marriage agreements are rarely implemented by the couple husband and wife population Islam.

II. MARRIAGE, DIVORCE AND REGISTRATION.

Since 1974's population Indonesian was the critical object to an of marriage regulations inherited from the colonial state. In its typically pragmatic manner the colonial Government never attempted to bring all citizens under one statute, but instead only intervened in family matters if this was required by external pressures – for instance, from the church in the Netherlands which Wanted a particular regulation for their fellow Christians in the Indies. From the 20th century onwards the administration's moral convictions played a more important role and led to some limited intervention. The reasons were the same as those being currently cited by the Indonesian Government: preventing child marriage, controlling polygamy, countering the birth of illegitimate children, and protecting women against unfair divorce proceedings never took place, however, and the population remained subject to differing legal regimes. [1]

The first was that of Book I of the Civil Code that applied to the European part of the population (including the Japanese) and those who had been equated with the Europeans in particular civil matters – mainly the Chinese. The second was the Ordinance for Christian Indonesians (S. 1933 no. 74), for whom the colonial state kept individual records. The third and most important one was the regime for the Indonesians: either adapt (customary) or Islamic law applied to those Indonesians and non-Chinese Foreign Orientals who were not equated with the European group. This concerned more than

90% of the population of the Dutch East Indies. Finally, there was a particular regulation on 'mixed marriages', for those who were subject to different regimes but still wanted to marry. [9]

The three systems above ranged from implying reasonably extended Government control to Hardly any. In particular the validity of Islamic and (unwritten) adat law for non-Christian Indonesians allowed the Government only insufficient intervention in marriage practices. Outside of Java, these were highly diverse, corresponding to the bewildering variety of family and clan systems. On most of Java marriage was ruled by the teachings of the Shafi School of Islamic law. Marriage registration for non-Christian Indonesians was only made obligatory at the end of the 1920s and early 1930s. It was intended as a tool to supervise whether the substantive Islamic law or adat law was properly applied. Non-registration was a criminal offense, but the marriage was left intact, and the punishment was a rather insignificant fine. Institutions that exercised some control complemented this system of substantive rules. The most important was the Islamic courts, which had jurisdiction over all matters concerning marriage and divorce, but were linked to the general state court system for Indonesians by the need for an exequatur of their judgments.¹³ On the outer islands, adat courts played a similar role, with the difference being that their decisions were subject to appeal to the state court system for Indonesians. 'Almost four years after its promulgation and two years after its implementation, the new Indonesian marriage law has succeeded in dramatically affecting Indonesian society – a success which was not anticipated by respected Indonesian legal experts.'⁴⁵ Basing themselves on figures from the Department of Religion and interviews the authors claimed that the divorce rate had decreased by approximately 70%, that the procedure before the Islamic courts had reduced polygamy and that child marriage was now 'sufficiently rare to be reported by the press as an oddity'.⁴⁶ To all those involved in legal implementation studies this will sound too good to be true, and indeed it is. It took a number of years before thorough research into this matter was carried out, but the findings were quite different from those of Katz & Katz. First, Cammack, Young and Heaton⁴⁷ reported on the basis of a demographic survey that the number of underage marriages – in violation of the law – had continued to decline steadily over the years, but still stood at more than 20% of the total. [4] They perceived no impact of the Marriage Law on the downward

trend recorded. While some of these underage marriages were actually registered by 'sympathetic' registrars, most were not registered at all.[6]

III. METHODE MARRIAGE IN THE VIEW OF ISLAM.

In the view of Islamic law, adultery means *fahisyah*, which is a vile act. *Zina* in the sense of the term is the sexual relationship between a man with a woman who is not bound to each other in a marital relationship. The *fuqaha* (jurist of Islam) defines adultery, i.e., sexual intercourse in the sense of entering the penis (male sex) into the vagina of women declared *haram*, not for *syubhat*, and on *dasara lust*. *Zina* according to Islamic law is not limited to married people only but applies to anyone who has intercourse while they are not husband and wife, whether married or unmarried. Anyone who proves convincingly has committed adultery; then he is exposed to adultery. It's just that there are different punishments that will be imposed on people who have or have never married a person who has never married. Unlike the positive law that only imposes penalties for adulterers who have been married, then for those who have not married or by likes or commonly among people calling the *kebo* get together is not given a punishment. In Islamic law the act of adultery is very severe punishment and is a nasty or lousy deed to be avoided. According to Sudarsono [4] "in case of adultery, then for the perpetrators are sentenced to volumes or stoning on the condition that the act has met the requirements determined by *syara* '. Furthermore, he formulates if there is adultery that has fulfilled the legal requirements as follows: If the adulterer either male or female free, has *baligh*, then the punishment as follows: 1) with volumes (*hit*) 100 times and exiled (*tagrib*) for a year for them, mature, intelligent, but never touched with a legitimate wife, 2) if the adulterer has tasted tame with the rightful wife, called *zina muhsan*, then his punishment by stoning, that is, stoned to death. *Rasulullah* said, which means "let not one of you do sex with a woman because *shaitan* became the third person between them both." (Ahmad 1/18, Ibn Hibban 1/436, At-Thabrani (Al-Mu'jam Al-Awshoth 2/184, and Al-Baihaqi 7/9, validated by Shaykh Al-Albani (As-Sahihah 1/792 no 430).

The type of research conducted and used in the preparation of this study is the study of normative law or doctrinal legal analysis, because this review is only directed to written regulations so that this research is closely related to the library because it requires

data that is secondary to the library [6], conducted by examining library materials or secondary data, as revealed that the objectives of normative legal research, namely; "A process to find a rule of law, legal principles, and legal doctrines to answer the legal issues faced". Normative legal research is conducted to generate new arguments, theories or concepts as prescriptions in solving problems encountered [8].

But everyday facts show that not all Siri marriages always colored by adverse effects on women and children. Not even a few cases of marriage Siri whose life partner is much more harmonious than married couples and legally registered in the office of religious affairs. However, since some women's positions in Indonesia are subordinated and often fall victim to patriarchal ideology, it must be admitted that Siri marriage causes much suffering and becomes a medium for male superiority to show its power and arrogance to women.

Nowadays many of us meet couples who prefer to do marriage Siri or marriage under the hands especially for the middle to lower class; it is influenced by the limited knowledge about the law, the consequences will be generated and cost issues. As for the upper-middle-class control fear of sin and adultery and many other reasons. The term Siri or marriage is kept the secret is already known among the scholars. It's just that marriage siri known in the past different understanding with siri marriage at this time. Formerly the meaning of marriage siri is marriage by the pillars of marriage and the conditions according to s only the witness was asked not to notify the occurrence of marriage to the public, to the public, and by itself no walimatul-" ursy. The siri marriage known by the Indonesian people today is a marriage conducted by a guardian or a guardian's representative and witnessed by witnesses, but not done in the presence of the Officer of the Register as an official government apparatus or not registered in the Office of Religious Affairs for those who are Muslim or Civil Registry Office for non-Muslims.

The conclusion of whether the marriage siri can be stopped its speed. The answer is no, in fact, researchers can guarantee the number and interest of marriage siri will always increase from year to year. So many people, who are beginning to realize the effects of free sex, and undertake to abide by their Islamic values. Islam strictly enjoined to protect your children and descendants from the torments of hellfire, which means start marriage from something good.

The object of this research is the Islamic law awareness of minority Muslim community of North Sumatera province. The regions to be studied are limited to Karo, Dairi, Pakpak Barat, Humbang Hasundutan, and Toba Samosir. The informants of this study are scholars from the District Office of Religious Affairs, Muhammadiyah, Nahdlatul Ulama, and the Indonesian Religious Scholars Council, or MUI The informants are:

Table 1: List of Religious Scholars, Figures, Community as Research Informant

No	District Name	Informant Number	Details
1	Karo	4 persons	Office of Religious Affairs, Muhammadiyah, Nahdlatul Ulama, and the Indonesian Religious Scholars Council
2	Dairi	4 persons	Office of Religious Affairs, Muhammadiyah, Nahdlatul Ulama, and the Indonesian Religious Scholars Council
3	Pakpak Barat	4 persons	Office of Religious Affairs, Muhammadiyah, Nahdlatul Ulama, and the Indonesian Religious Scholars Council
4	Humbang Hasundutan	4 persons	Office of Religious Affairs, Muhammadiyah, Nahdlatul Ulama, and the Indonesian Religious Scholars Council
5	Toba Samosir	4 persons	Office of Religious Affairs, Muhammadiyah, Nahdlatul Ulama, and the Indonesian Religious Scholars Council
6	Nias Utara	4 persons	Kandepag, Muhammadiyah, Nahdlatul Ulama dan Majelis Ulama Indonesia
	Total	24 persons	

- 1) Batak Ethnic Culture There are five points of life philosophy of the Batak ethnic: wealth (hamoraon), many descendants (hagabeon), honor (hasangapon), peace (hadameon) and unity (hasadaon). With their cultural values, Batak ethnic community emphasize on wealth, many children, honor, peace and unity, then clarified by dalihan natolu, and this generates norms among hulahula, dongan tubu and boru.
- 2) Social and Cultural Change in Batak ethnic Community Every human society must change. Changes in society can be about social values, social norms, patterns of organizational behavior, structure of social institutions, layers in society, power and authority, social interaction and some others.
- 3) Social Differentiation Basically differentiation shows diversity in a community in terms of ethnicity, customs, language, race, culture, religion, and so forth. The concept of social differentiation should not be interpreted

as a differentiation degree and human dignity. The concept of social differentiation shows differentiation in the society regardless of the hierarchy of social classes. Thus, the concept of social differentiation is defined as horizontal, not vertical variety of class distinctions. Social differentiation can lead to social intersection and acculturation, primordial relationship, paternalism and political stream. Tied to the law, Anleu explains that a legal pluralism in a society will generate imposed law, convergence and parallel. Legal pluralism in a society will produce a law imposing or to be imposed and consequently other law would be ignored. Imposed law will be accepted by the society if applied by the authority to achieve political aim and social order to avoid conflict. According to Anleu, law pluralism in a society will produce a state similar to the sociological term convergence. Each law in its running in society moves towards a common point. Perhaps this is what is called eclecticism by A. Qodri Azizy). And the last third possibility is a parallel emerging. According to Anleu, when there is a legal pluralism in a society there is a possibility that each will survive and applicable to every adopter. (coexist).

IV. RESEARCH RESULT.

Law Process in Marriage Based on the observation, the minority Muslim community in North Sumatera carry out marriage based on three legal systems of existing together in the society, the system of customary law, Islamic law and state law. Richard Sinaga explains that the validating marriage for indigenous people is not enough only with prayer, because such procedure of confirmation of marriage is the customs of sibontar mata, that a wedding is only filled with prayer and there are no custom events (mangadati). As a matter of fact, a marriage should go through three steps: affirmation according to religion adopted, affirmation according to law (Civil / Office for Religious Affairs) and affirmation according to the customs of dalihan na tolu or Batak customs. The customary marriage of Dalihan Na Tolu must be witnessed by the elements of dalihan na tolu from the party of parboru and elements of dalihan na tolu from the party of paranak. The marriage processes carried out systematically by the minority Muslim community in North Sumatera region are as follows:

1) Manyapai Boru: this stage is a part of customary law, where the prospective groom party ask the girl and her family whether willing to marry the boy who would marry her.

2) Manulangi Tulang: after the agreement between the family of the prospective groom with the family of the prospective bride is achieved, the groom asks permission from tulang and inang tulang that he will marry another girl. An ideal marriage for Batak ethnic is the marriage between a man with the daughter of his mother's brother (pialai, mabido) called marboru ni tulang or marrying pariban. Similarly, a woman ideally marries the son of her father's sister (pasapea, fassio) or maranak ni namboru, also called marrying pariban. Therefore, when a man marries another woman he must ask permission from tulang and inang tulang.

3) Mangaririt Boru, after manulangi tulang, duties of parents are mangaririt /manyisik boru/mangindangi. In the ceremony of mangaririt boru, the party of the groom's parents want to know the bride and her family that will become their laws. There are some things to be done related to the bride. The first is whether the prospective bride has got a certain thing that could hinder her from marriage bases on the customary law. Second, whether the bride is obstructed or not to marry based on Islam. There are some women forbidden to be married: nasab, semenda and blood relationships. The third is difference of faith or religion.

4) Padomos Hata / Patobang Hata / Patua Hata / Mangarisik-rustle and Marhusip: the party of the prospective groom would again visit the family of the prospective bride to make a proposal. In the proposal event there are two things to be discussed, the first is the day to propose formally (patobang hata) by the party of dalihan na tolu, the family of the prospective groom. The second, the requirements to be met at the time of the proposal, namely: things needs to be prepared, such as the amount and form of dowry and the number and shape of tuhur (hones money), and other equipments.

5) Manulak Sere / Marhata Sinamot: in customary law, the thing related known is sinamot, whereas in Islamic law dowry which is the provision of a prospective groom to the prospective bride which is the requirement of marriage. (Ibnu Rusyd, 1995, the Section II , 15). While manulak sere / marhata sinamot, the family of the groom carry batang boban/sinamot previously agreed with the woman's family. Sinamot is a form of money or valuable objects that would normally be owned by the woman's family to be used for parties and other purposes. minority Muslim community of North Sumatera will bring a dowry and this sinamot.

6) Mangalehen Pamunan Mangan: before the prospective bride is married and brought on the next day after the wedding ceremony, the parents of the bride together with the relatives will gather to provide food to the bride called mangan pamunan, that is the farewell feast. In this mangalehen mangan pamunan event there will be a salvation prayer and advice from the family party of dalihan na tolu in Islamic way.

V.CONCLUSION.

The population Muslim community of North Sumatra implement simultaneously three legal systems in marriage. They go to the customary, Islamic and state laws. While in inheritance they implement the customary inheritance law. The reasons for the implementation of Islamic marriage law is due to worship, to obtain legitimate child according to religion, to gain recognition in the family and customs of dalihan na tolu, and easy to implement. While the reasons complying with the state law is to get the legality from the state and the family, adherence to the customary law in order to gain recognition from family and the customs of dalihan na tolu and the minority Muslim community of Nort.

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