

## **POLITIK HUKUM PERKAWINAN BEDA AGAMA MENURUT UU NO. 1 TAHUN 1974 TENTANG PERKAWINAN DI INDONESIA**

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### **INTISARI**

Tujuan penelitian Disertasi ini adalah (1) memahami, menganalisis dan mengungkap perkawinan beda agama tidak diatur dalam Undang-Undang No. 1 tahun 1974. (2) Memahami, menganalisis dan menjelaskan perkawinan beda agama di Indonesia apakah sesuai dengan muatan filosofis tujuan perkawinan di Indonesia. (3) menganalisis, upaya pengaturan politik hukum yang terkandung dalam Undang-Undang No. 1 tahun 1974 mengenai perkawinan beda agama.

Penelitian ini termasuk jenis penelitian normatif filosofis. Oleh karena itu pendekatan yang digunakan adalah filosofis, normatif dan historis. Teknik pengumpulan data dengan studi pustaka dan studi perundang-undangan baik terhadap data primer maupun data sekunder. Bahan data kemudian dianalisis secara kualitatif dengan menggunakan pola pikir induktif, deduktif, komparatif dan reflektif.

Dari hasil pembahasan disimpulkan : *pertama*, perkawinan beda agama tidak dicantumkan dalam UU No. 1 Tahun 1974 karena; 1) Penolakan dari mayoritas umat Islam dan Fraksi Persatuan Pembangunan di Parlemen sebab perkawinan beda agama bertentangan dengan aqidah dan ajaran syari'at Islam. 2) Perkawinan beda agama bertentangan dengan budaya perkawinan yang ada di masyarakat sebab perkawinan mengandung aspek hukum, sosiologis dan aspek agama. 3) perkawinan beda agama bertentangan dengan ajaran agama-agama di Indonesia, seperti pada agama Islam, Kristen, Protestan, Hindu, dan Budha. *Kedua*, perkawinan beda agama tidak sejalan dengan muatan filosofis tujuan perkawinan di Indonesia, sebab, 1) tujuan perkawinan membentuk keluarga (rumah tangga) yang bahagia dan kekal berdasarkan Ketuhanan Yang Maha Esa, menuntut ketaatan terhadap ajaran agama bagi pemeluknya. 2) perkawinan beda agama lebih banyak *mafsadat*nya daripada *maslahat*nya (dari segi kesahan perkawinan, agama si anak, dan hak kewarisan). 3) perkawinan beda agama bertentangan dengan perkawinan religius. 4) Perkawinan beda agama bertentangan dengan nilai-nilai filosofi Pancasila yang menganut sistem perkawinan berdasarkan agama. *Ketiga*, upaya pengaturan politik hukum perkawinan beda agama dalam undang-undang ke depan harus sesuai dengan sistem hukum Pancasila (religius komunal, humanis dan penghormatan terhadap martabat kemanusiaan, menekankan integrasi bangsa, kerakyatan demokratis, keadilan dan kesejahteraan). Kepastian hukum perkawinan beda agama dengan pencatatan dalam UU No. 1 Tahun 1974 adalah melalui pencatatan di Kantor Catatan Sipil dengan Penetapan Pengadilan sesuai UU No. 23 Tahun 2006 tentang Administrasi Kependudukan.

**Kata Kunci** : Perkawinan Beda Agama, Politik Hukum, UU No. 1 Tahun 1974

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## **POLITIC OF LAW OF MARRIAGE BETWEEN DIFFERENT RELIGIONS BY LAW NO. 1 YEAR 1974 ABOUT MARRIAGE IN INDONESIA**

### **ABSTRACT**

**By : Fathol Hedi,<sup>1</sup> Abdul Ghofur Anshori,<sup>2</sup> Harun<sup>3</sup>**

The aims of the research of this Dissertation are : (1) to understand, analyze and discover that marriage between different religions is not regulated in Law No.1 Year 1974. (2) to understand, analyze and explain whether marriage between religions is agree with the philosophical aim of marriage in Indonesia. (3) to analyze efforts of political of law which is contain in regulation No. 1 Year 1974 about marriage between religions.

This research is included in the kind of Normative, Philosophical Research. So, it is used philosophical, normative and historical approaches. The Technical of Data Compilation uses Library Study and Study of Law, either towards primary or secondary data. The data ingredients are then analyzed qualitatively using inductive, deductive, comparative and reflective patterns of thought, as well as content analysis.

The result of the discussion is concluded. *First:* Marriage between different religions is not included in Law of Marriage No. 1 Year 1974, because: 1) The refusal of Muslim majority and the Fraction of Development Unity in Parliament because it is considered to be against the faith and teachings of Islam; 2) Marriage between different religions is contrary to the marriage culture that exists in society because marriage contains legal aspects, sociological and religious aspects ; 3) To be contrary to the teachings of religions in Indonesia which do not allow marriage between different religions, such is Islam, Christianity, Protestantism, Hinduism, and Buddhism). *Second,* it is not parallel with the philosophical content of Marriage in Indonesia because: 1) The aim of marriage in forming family/household based on the Oneness Divinity demands the adherents' piety towards their religious teachings; 2) There will be too much damage done than the goodness side (i.e., legality of marriage, the religion of the child, and the right of inheritance); 3) It is against to the religious marriage; 4) It is against with the philosophical values of Pancasila which follows Marriage System based on Religion. *Third,* The efforts of the regulation in the Politic of Law of Marriage in the future must be in accordance with the legal system of Pancasila (religious communal, humanist and respect for human dignity, emphasizing the integration of the nation, democratic society, justice and prosperity). The certainty of Marriage Law of Different Religions by recording in Law No. 1 Year 1974 is through the registration at Civil Office with the Court's Degree in accordance to Law No. 23 Year 2006 about Demography Administration.

**Keywords:** Different Religion's Marriage, Political Law, Law No. 1 Year 1974

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