



## From Discrimination Towards The Justice Of Law (A Study Of Marriage Registration For Adherent Of Belief)

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### ABSTRACT

*The existence of adherents of belief in Indonesia is still discriminated against regarding their legal standing in the front of the State, especially regarding the issue of marriage registration. Adherents of belief are not included in the religion recognized by the state so that it is difficult to register their marriages. This is important to discuss because marriage registration will affect the marital legal standing and is related to the state's obligation to provide justice and equal rights. This article discusses the legal justice of marriage registration for adherents of belief using the normative juridical method. The results of the study indicate that although the state has regulated the procedure for registering marriages for adherents of belief, there are still many adherents of belief who experience problems in registering marriages because not all religious organizations are registered. This is phenomenon are deemed not in line with the implementation of the 1945 Constitution which guarantees the constitutional rights of adherents of belief, including the registration of marriages.*

**Keywords:** *Adherents Of Belief, Discrimination, Marriage Registration.*

### ABSTRAK

Keberadaan pemeluk kepercayaan di Indonesia masih mengalami diskriminasi terkait kedudukan hukumnya di depan Negara, khususnya mengenai masalah pencatatan perkawinan. Pemeluk kepercayaan tidak termasuk dalam agama yang diakui negara sehingga sulit untuk mencatatkan perkawinannya. Hal ini penting untuk dibahas karena pencatatan perkawinan akan mempengaruhi kedudukan hukum perkawinan dan berkaitan dengan kewajiban negara untuk memberikan keadilan dan persamaan hak. Artikel ini membahas tentang keadilan hukum pencatatan perkawinan bagi pemeluk kepercayaan dengan menggunakan metode yuridis normatif. Hasil penelitian menunjukkan bahwa meskipun negara telah mengatur tata cara pencatatan perkawinan bagi pemeluk kepercayaan, masih banyak pemeluk kepercayaan yang

mengalami kendala dalam pencatatan perkawinan karena tidak semua organisasi keagamaan terdaftar. Fenomena ini dinilai tidak sejalan dengan pelaksanaan UUD 1945 yang menjamin hak konstitusional penganut kepercayaan, termasuk pencatatan perkawinan.

**Kata kunci:** *Diskriminasi, Pendaftaran Nikah, Penganut Kepercayaan.*

## **Introduction**

The existence of adherents of belief in Indonesia has also colored the nation's plurality consisting of various ethnicities, languages, religions, and cultures. The existence of adherents of belief is recognized by the government based on the 1945 Constitution Article 29 paragraph (2) of the 1945 Constitution in which the state guarantees the independence of each resident to embrace their own religion and worship according to their religion and belief. Based on this article, it can be said that people who adherents of belief have the right to protection and freedom to adherents of belief in their beliefs.

Adherents of belief is a statement and implementation of a personal relationship with God based on belief that is manifested by the behavior of piety and worship to God and the experience of nobility whose teachings are sourced from the local wisdom of the Indonesian nation. Adherents of belief hereinafter referred to as Adherents of belief of Faith are every person who recognizes and adherents of belief in the values of appreciation of Adherents of belief Almighty (Susetyo, 2017).

The existence of adherents of a belief system guaranteed by the 1945 Constitution requires the State to be able to provide legal protection for adherents of a belief system. The legal protection in question is a form of certainty, clarity, and guarantee provided by applicable law to adherents of a belief to be protected, their interests and rights considered as long as they do not conflict with the legislation. But in reality there is still discrimination that must be experienced by adherents of belief. Among the discrimination they experience is when they get married. Adherents of belief still have difficulty in registering marriages to get legal recognition by the state. This is because the beliefs they adherents of belief in have not been recognized by the state as an official religion.

Until now, none of the sects of faith has become a belief recognized by the

state like 6 (six) other religions. This is explained in the MPR RI Decree No. IV/MPR/1978 concerning the Outlines of State Policy (GBHN) which states "adherents of belief is not a religion and its development does not lead to the formation of a new religion. In addition, the Republic of Indonesia, which is based on Pancasila, does not recognize any procedures for marriage, oaths, and burials according to beliefs." (Erwinsyahbana, 2018).

Marriage in Indonesia is considered valid if it meets the requirements in the applicable laws regarding marriage. The laws governing marriage in Indonesia include Law No. 1 of 1974 which explains that marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on the One Godhead. Furthermore, the Marriage Law also states that a valid marriage is if it is carried out according to the laws of each religion and belief. This confirms that every marriage must be registered in accordance with applicable regulations.

Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage states that marriage in national law is known by the existence of a marriage registrar, namely for Muslims it can be processed at the Office of Religious Affairs (KUA), and for non-Muslims it can be processed at the Office of Religious Affairs. Civil Registry Office (KCS). In practice, many marriages are carried out based on adherents of belief, whose marriage registration cannot be processed. The government argues that the marriage of religious beliefs is not in accordance with the provisions stipulated in the Marriage Law because their belief system is not recognized as an official religion in Indonesia (Az, 2020).

Various cases have arisen regarding marriages of adherents of the faith that took place in various areas where marriages of adherents of belief of faith were not recognized so that their marriage certificates were not issued. This shows the ambiguity of the legal status of adherents of belief in the legal system of marriage in Indonesia, although normatively the belief system has been recognized by the state. This condition is exacerbated by the provisions of Article 61 paragraph (2) of Law Number 23 of 2006 concerning Population Administration which states that "Information regarding the religion column as referred to in paragraph (1) for

Residents whose religion has not been recognized as a religion in accordance with the provisions of the Laws and Regulations. invitations or for adherents of belief are not filled in, but are still served and recorded in the Population database.” This means that the identity of the belief is not recorded in the religion column because the adherents of the belief are not included in the religion recognized in Indonesia.

This has led to a lawsuit by adherents of belief regarding Article 61 paragraphs 1 and 2 of the Population Administration Law to the Constitutional Court. The lawsuit was granted by the Court in consideration of the right to profess religion or adherents of belief Almighty is a constitutional right ( *constitutional rights* ) of citizens, not the state administration. Constitutional Court Decision No.97/PUU-XIV/2016 states that the status of a adherents of belief r can be listed in the religion column on the family card and electronic identity card without the need to specify the sect of belief held. This is necessary to create an orderly population administration considering that the number of adherents of belief in Indonesian society is very large and varied . Thus, now the identity of adherents of a belief includes the sects of belief they profess and their marriages are also recorded by the civil registry office.

The government then issued a regulation regarding the rules for recording marriages of adherents of belief as stated in Government Regulation (PP) Number 40 of 2019 concerning Implementing Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration. PP 40/2019 is a form of state responsibility for the right to freedom of religion for religious groups as mandated in Article 29 of the 1945 Constitution. The rules regarding the registration of marriages for adherents of belief are set out in Chapter VI concerning Procedures for Registration of Marriages for Adherents of belief. With this regulation, actually adherents of belief can register their marriage with a special procedure.

PP Number 40 of 2019 explains that the marriage of Adherents of belief is carried out in the presence of Leaders of Adherents of belief appointed and determined by the organization of adherents of belief to fill out and sign the marriage certificate of the adherents of belief. Leaders of Adherents of belief must be registered with the ministry whose field of duty is technically fostering the organization of

Adherents of belief. As for what is meant by an organization for adherents of belief in faith, it is a forum for adherents of belief in faith registered with the agency in the ministry in charge of technical development of adherents of belief.

However, not all adherents of belief organizations in Indonesia are registered. Based on data in 2017, there were only 187 trust organizations registered with the Ministry of Education and Culture in 13 provinces in Indonesia (Kekulturan et al., 2004). In addition, many adherents of belief in the faith are not affiliated with registered organizations. There are even some who embrace ancestral beliefs without having an official name for that belief. These non-organized adherents carry out marriages in front of other leaders of other faith organizations. In fact, there are also those who change their religion temporarily in order to legalize their marriage in state records.

This study will discuss the legal justice of marriage registration for adherents of belief in God Almighty in Indonesia. Although the state has guaranteed the freedom of its people to embrace their religion and belief based on the 1945 Constitution, this does not apply to adherents of belief. Adherents of belief in Indonesia still get discriminatory treatment in terms of registering marriages. Marriage registration is a very important administrative step in the life of the nation and state. Unregistered marriages will have an impact on other residence documents such as family cards, child birth certificates, and identity cards.

### **Research Methods**

The research method used in this study is normative juridical where the researcher examines all laws and regulations relating to the legal issue of marriage registration for adherents of belief. The data used is secondary data in the form of legal principles and applicable legal norms. Researchers study the consistency and suitability of one regulation with another to examine legal justice in marriage registration for adherents of belief in Indonesia.

### **Results And Discussion**

## **Legal Status of Marriage Registration for Adherents of Belief**

Marriage in Indonesia is regulated in Law Number 1 of 1974 concerning Marriage. In practice, the government issued Government Regulation Number 9 of 1975 as implementing regulation of Law Number 1 of 1974. In Article 2 Paragraph (1) it is explained that the registration of marriages of those who carry out their marriages according to the Islamic religion, is carried out by Registrar Officers as referred to in the Law. Law Number 32 of 1954 concerning Marriage Registration, Divorce and Reconciliation. Furthermore, paragraph (2) clarifies that the marriage registration of those who carry out their marriage according to their religion and belief other than Islam is carried out by the Marriage Registrar at the Civil Registry Office as referred to in various laws regarding marriage registration.

Marital status in Indonesia that is recognized by the state is a marriage registered by a registrar in accordance with applicable laws and regulations. For citizens who are Muslim, they are registered with the KUA while those who are religious other than Islam are registered at the civil registry office. Then the problem that arises is regarding the legal status of the adherents of belief marriages. At the implementation level, adherents of faith experience discrimination when registering their marriages because adherents of belief Almighty is not a religion, but is a spiritual cultural wealth of the Indonesian nation so that the beliefs they profess are not included in the official religion in Indonesia.

Based on PP No. 40 of 2019 marriages for adherents of belief must be carried out in the presence of leaders of adherents of belief who have been registered with the Directorate of Adherents of belief and Indigenous Peoples. However, not all of the organizations that are adherents of faith are registered or affiliated with the listed organizations so that many have their marriages carried out in the presence of leaders of other faiths or even change their religion 'temporarily' so that their marriage is legal in the eyes of the law. This shows the inconsistency of the laws and regulations governing marriage issues with the guarantee of freedom of religion and belief in Indonesia. On the one hand, human rights provide guarantees for every Indonesian citizen to form a family and continue their offspring through a legal marriage, but legal

marriage according to the perspective of national marriage law is only limited to marriages carried out based on 6 (six) official religions recognized by the State.

Marital status that is not recognized by the State has a broad and severe social impact, namely living together without a legal marriage bond according to state law. This also has legal consequences for children from marriages who are not registered as children born outside of legal marriages. This means that the child does not have a legal relationship with his father and his father's family. Of course, this is very detrimental and violates the child's human rights to obtain status as a legitimate child from his father (Safina & Fauzul Aliwarman, 2020).

Marriage is legally valid if it fulfills material and formal requirements. In Indonesia, the legal requirements for marriage are regulated in the Marriage Law, which based on Article 2 explains that marriage is legally valid if it is carried out according to the religious law and beliefs of each party to be married and recorded according to the applicable laws and regulations. This article gives rise to multiple interpretations where the words religion and belief are not explained in the meaning contained in them. Do the religion and belief have the same meaning or the belief in question is an adherent of a belief so that it is different from religion. The explanation of the legal sentence according to religion and belief must be further explained in a regulation because it involves the clarity of the legal status of the adherents of belief r's marriage.

The absence of strict regulation of the marriage of adherents of belief in the Marriage Law, including its recording, results in legal uncertainty so that this is a form of discrimination against adherents of belief. Although the belief system cannot be categorized as religion, Article 29 of the 1945 Constitution paragraph (2) states that the state guarantees the independence of each resident to embrace their own religion and to worship according to their religion and beliefs.

Regulations regarding marriage are under the 1945 Constitution, so they should not conflict with the rules above. In addition, to realize the protection and fulfillment of the rights of all citizens, the interests of the belief system should also be accommodated. In the idea of a democratic state based on law, the state must be present to protect the constitutional rights of citizens, including the basic right to

adhere to religion, which includes the right to adherents of belief in God Almighty. Likewise, the state must realize the fulfillment of the rights of adherents of belief in terms of registering marriages so that they are legal in the eyes of the law. Thus, the State has given recognition to the existence of adherents of belief in God Almighty as the embodiment of the rule of law and the protection of the constitutional rights of citizens.

### **From Discrimination to Justice Legal Marriage Registration for Adherents of Belief**

The most basic interest of every citizen is the protection of their rights as human beings. In Law No. 39 of 1999 concerning Human Rights, human rights are defined as "a set of rights inherent in the nature and existence of every human being as a creature of God Almighty and is His gift that must be respected, upheld, and protected by the State, Law, Government and everyone, for the sake of honor and protection of human dignity. Given the importance of these human rights, the 1945 Constitution has explicitly stated in various articles (Nugraheni, 2021).

Article 28 B paragraph (1) of the 1945 Constitution stipulates that every citizen has the right to form a family and continue offspring through legal marriage. Another right granted by the 1945 Constitution contained in Article 29 paragraph (2) is the right to embrace one's own religion and worship according to one's religion and belief. Every citizen who adherents of beliefs in God Almighty has the right to embrace religion and belief without coercion from any party. In both national and international legal frameworks, religious freedom is a human right that cannot be reduced, restricted, or interfered with by anyone, under any circumstances (Dahlan & Liemanto, 2017).

Every citizen who is free to embrace his religion and belief is also entitled to protection against discriminatory actions that interfere with the implementation of these rights. The prohibition of discrimination is regulated in Article 28 I paragraph (2) of the 1945 Constitution which states that everyone has the right to be free from discriminatory treatment on any basis and is entitled to protection against such discriminatory treatment. Article 3 paragraph (3) of Law Number 39 of 1999 concerning Human Rights stipulates that everyone has the right to the protection of human rights and basic human freedoms without discrimination. Article 4 of Law



Number 25 of 2009 concerning Public Services stipulates that the implementation of public services is based on, among other things, equal rights and non-discriminatory treatment (Sukirno, 2019). The prohibition of discrimination shows that everyone has the same position before the law and government ( *equality before the law*).

Everyone has the right to form a family and continue their offspring through a legal marriage. As a human right, the right to marry is universal and non-discriminatory against citizens. This split in the guarantee of marriage rights applies to some citizens, especially the adherents of belief. Law Number 1 of 1974 concerning marriage does not reflect justice for some citizens, the law only favors the religious majority group, narrows the meaning of belief that should exist and its existence is recognized in the law (Shahnara, 2012).

One of the problems of marriage that occurs in the community is about marriages carried out by adherents of belief in the adherents of belief Almighty. The existence of Adherents of belief in Indonesia cannot be separated from historical and cultural factors that live and develop in Indonesia. The constitutional right of every Indonesian citizen to embrace their own religion and belief and to worship according to their religion and beliefs is debated and raises various views. Pros and cons occur in the community regarding the legal status of Adherents of belief who are considered to be able or not to be equated with citizens who embrace religion.

Article 40 of Government Regulation No. 40 of 2019 stipulates that marriages of adherents of belief are carried out by leaders of adherents of belief who have been appointed and determined by organizations of adherents of belief who are registered in the ministry whose field of duty is technically fostering organizations of adherents of belief. After the leader of the adherents of belief fills out and signs the marriage certificate for a adherents of belief , then within 60 days it must be registered with the Regency/City Population and Civil Registry Office, by filling out the marriage registration form and showing the e-KTP and attaching the marriage certificate for the adherents of belief's marriage and a photo, husband and wife, and birth certificates.

The procedure for registering marriages for marriage adherents is actually not burdensome, but the problem is that not all faith-living organizations are registered with the ministry whose field of duty is technically fostering organizations that

adherents of belief. This is a barrier for adherents of indigenous beliefs to obtain a marriage certificate. Thus, it can be argued that the laws and regulations governing the registration of marriages do not provide reinforcement or convenience but instead complicate and weaken the position of indigenous communities, even though the constitution and the Human Rights Law have emphasized the need to provide special treatment for equality and justice. In the context of recording marriages of adherents of belief, any laws and regulations related to this matter must take into account the constitutional rights of indigenous communities. The 1945 Constitution of the Republic of Indonesia and various laws and regulations have clearly regulated the equality of position and the prohibition of discrimination for citizens in law and public services. In addition, related laws and regulations must be guided by Law No. 12 of 2011 concerning the Formation of Legislation, especially Article 6 paragraph (1) letter f which determines the content of the legislation must reflect the principle of *Bhinneka Tunggal Ika*, meaning that it must pay attention to diversity. population, religion, ethnicity and class, special conditions of the region and culture in the life of society, nation and state.

## **Conclusion**

The state has guaranteed the rights of citizens to embrace religion and worship according to their religion and beliefs. In cases of violations of freedom of religion and belief, people experience symptoms of intolerance in religious life. Various human rights violations often occur in adherents of belief. In this case the adherents of the belief experience a form of discrimination in the registration of marriages. They have difficulty in registering their marriages because their beliefs are not included in the official religion recognized by the state.

The procedure for registering marriages for adherents of belief requires marriages to be carried out in front of a religious leader who has been registered with the Directorate of Adherents of belief and Indigenous Peoples. However, not all of the organizations that are adherents of faith are registered or affiliated with the listed organizations so that many have their marriages carried out in the presence of leaders of other faiths or even change their religion 'temporarily' so that their marriage is legal

in the eyes of the law.

Marriage registration for adherents of belief is very important so that their marriage is considered valid according to law. Thus, the marital status and the status of children resulting from marriage become clear. However, on the other hand, the laws and regulations governing the registration of marriages do not provide reinforcement or convenience but instead make it difficult to appreciate the belief in registering their marriages. Marriage registration is related to the state's obligations in fulfilling the constitutional rights of its people, both the right to embrace a belief, the right to have a family and the right to obtain equal and non-discriminatory public services. Thus, there should be no more discriminatory treatment experienced by groups of adherents of belief. Basically, everyone has the right to live in physical and spiritual prosperity, to have a good environment, to have the right to embrace religion and to have the freedom to adherents of belief in beliefs, to have the right to self-development by getting a proper education so that he becomes a person with dignity and respect among fellow human beings.

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