

The Ratio Legis of Canonical Law Has Become Part of Marriage Law in Indonesia

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Abstract

In Indonesia, matters regarding marriage are regulated under Law Number 1 of 1974, which was amended by Law Number 16 of 2019. Article 1 stipulates that marriage is for our happiness now and in the eternities based on the belief in One and Only God, which means that marriage involves not only the two parties, but also their religious beliefs. Article 2 (paragraph 1) stipulates that marriage can be legally recognized when it is performed according to the religion of the two parties. While religion plays a role in the marriage, it has no involvement in the divorce settlement. This can be seen in the provisions of Article 39 paragraph (1) stating that divorce can only be granted in front of a court session after the court has tried and failed to reconcile the two parties. There are some ambiguities in the regulations under the Indonesian Marriage Law. This paper specifically deals with the marriage of Catholics which is rooted in the Canon Law. Marriage ceremony in Catholicism begins with the couple saying wedding vows which are then confirmed and blessed by the church pastor. The wedding vows are words of commitment to a shared life that are irrevocable. Therefore, as part of reforms to marriage law in Indonesia, this paper aims to find the ratio legis of Canon Law to be part of marriage law in Indonesia. The paper uses a normative research with statutory, conceptual, and philosophical approaches. Catholic teachings refer to the Scriptures and Canon Law so that religious law should ideally be part of positive law. The wedding vows in Catholic tradition are irrevocable except in cases of marriage impediment, defective marriage contract, and invalid *forma canonica*. In such cases, rather than divorced, a marriage can be annulled and, therefore, asserted that no valid marriage ever existed in the first place.

Keywords: Canon Law, Ratio Legis, Marriage Law

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Background

Marriage law in Indonesia is regulated in Law Number 1 of 1974 concerning marriage which has been amended by Law Number 16 of 2019 (subsequently referred to as the Marriage Law). Before the enactment of the law, Indonesia experienced an era of diversified marriage laws during which various kinds of marriage laws were enacted: Islamic law for Indonesian muslim; customary law for Indonesian natives; *Huwelijks Ordonantie Christien Indonesier* (S. 1933 No. 74) for Indonesian Christians; Civil Code with some modifications for Chinese Indonesians; and far-eastern customary laws for Indonesians of Arab and Indian descendants.¹ The Indonesian government ratifies the Marriage Law which consists of 14 chapters and 67 articles as part of legal unification. With the enactment of this law, the previous marriage law regulations are no longer valid. This is emphasized in Article 66 of the Marriage Law stipulating that "for marriage and everything related to marriage based on this law, with the entry into force of this law, the provisions in the Civil Code (*Burgelijk Wetboek*), Indonesian Christian Marriage Ordinance (*Huwelijks Ordonantie Christien Indonesier* S. 1933 No. 74), Mixed Marriage Regulations (*Regeling op de Gemingde Huwelijken* S. 1898 No. 158) and other regulations governing marriage as long as it has been regulated in law, is declared null and void". The drafting of Marriage Law is a concrete effort that has been put in place for partial codification by the government.²

From the regulation in Article 1 of Marriage Law we see that marriage is intended to create a family which represents a smallest community consisting of father, mother and children. This indicates an axiological aspect exists in a marriage. The axiology intends to determine essential value in the family law.³ The article tells us that the purpose of marriage is not simply to create a happy and lasting family, but also to uphold the belief in the One Supreme God. The first principle of the Pancasila, the belief in the One Supreme God, is reflected in the Article 1 of Marriage Law that put religious value into the purpose of marriage, and therefore marriage serves not only to create a civil union but also to live a life based on the Pancasila as the source of positive law in Indonesia. The achievement of marriage purposes indicates an epistemological aspect. By epistemological

¹ Anwar Rachman et.al., *Hukum Perkawinan Indonesia Dalam Perspektif Hukum Perdata, Hukum Islam, dan Hukum Administrasi*, Jakarta, Kencana, 2020, p. 2.

² Moch. Isnaeni, *Hukum Perkawinan Indonesia*, Bandung, Refika Aditama, 2016, p. 19.

³ Anwar Rachman et.al., *Loc.cit.*

aspect we mean a philosophical effort to discover the truth and explore the knowledge of family and marriage laws based on human reasoning as means for human being in living the family life.¹

Article 2 (paragraph 1) stipulates that marriage can be legally recognized when it is performed according to the religion of the two parties. Article 2 paragraph (1) is the implementation of Article 28e (paragraph 1) of the 1945 Constitution which stipulates that everyone is free to embrace religion and worship according to his religion. Here religion is recognized as a value that is not only understood, but also must be lived and practiced in daily life, including married life. Thus religion determines the validity of the marriage. It can be explained that in absolute terms a marriage is considered valid if it is performed according to the religious law and beliefs of both parties to the marriage.

Togetherness in living a married life is an essential part in order to achieve the purpose of marriage, but it cannot be denied that there can be incompatibility among couples that can lead to divorce. The Marriage Law allows for divorce which is regulated in Article 38 stating that a marriage may be terminated due to death, divorce, and upon court's decision. Divorce is the process of terminating a marriage union upon the will of the husband or wife, or both, due to disharmony.²

Article 39 (paragraph 1) of the Marriage Law states that divorce can only be conducted before a court hearing after the court has tried and failed to reconcile the two parties. To apply for a divorce you need very good reasons to prove that you and your partner can no longer living a harmonious life as husband and wife as regulated in Article 39 paragraph (2). Article 19 of Government Regulation Number 9 of 1975 concerning the Implementation of the Marriage Law determines that divorce petition can be filed in the event that one of the parties:

- a. has committed adultery, is an alcoholic, is addicted to drugs, is a gambler or exhibits other vices which are difficult to cure;
- b. has left the other spouse for two consecutive years, without consent and without legitimate reasons or the absence of reasons beyond his control;
- c. has been sentenced to imprisonment for five (5) consecutive years or a longer period;
- d. has resorted to cruelty or severe ill treatment, endangering the life of the other spouse;
- e. has developed a disability or disease, preventing from fulfilling the duties of husband or wife; or
- f. has irreconcilable differences, for example - continuous quarrels and fights and there is no hope of living in harmony again in their home.

In the divorce trial, the judge renders a decision based on the provisions on the reasons for divorce as regulated in Government Regulation Number 9 of 1975 concerning the Implementation of the Marriage Law and in accordance with the facts. The decision constitutes an effort to resolve disputes due to the inability of the parties to resolve the disputes themselves.³ This means that to get divorced you will need a judge decision.

Article 1 of the Marriage Law regarding the purpose of a happy and lasting marriage that uphold the belief in the One Supreme God also shows that marriage involves not only a civil engagement between two human persons but also a religious bond which is strengthened in Article 2 of the Marriage Law stating that marriage is considered valid if it is based on religion. On the other hand, in the process of terminating marital union as stated in Article 38, no religious law was involved. The provisions of this article indicate the existence of a vague norm, namely ambiguous legal rules that lead to differences of opinion or interpretation and settlement of legal cases. The existence of vague norm has been quite problematic; if positive legal norms are formulated rigidly, it will make decision makers unable to harness their wisdom.

This paper specifically deals with the valid Catholic marriage which begins with the couple saying wedding vows which are then confirmed and blessed by the church pastor. Marriage vows are words of commitment to love each other and to live together for a lifetime in joy and sorrow and in gain and misfortune.⁴

Catholic marriages are regulated in the Code of Canon Law with the scriptures and church traditions as the sources of law. The Code of Canon Law (*Codex Iuris Canonici*) is an official compilation of ecclesiastical law for Roman Catholics. The 1983 Code of Canon Law is the revised version of much earlier Code of Cannon Law promulgated by Pop Benedict XV and was released on 27 May 1917.⁵

The vague norm in this paper is that a Catholic married couple can decide to divorce by filing a divorce suit in the District Court. Thus, a Catholic married couple can terminate their marriage union based on Marriage Law as the national law and ignoring canonical law as a rule for the Catholics which is part of the regulation of the legal requirements of a Catholic marriage.

¹ *Ibid.*

² Muhammad Syaifuddin, *Hukum Perceraian*, Jakarta, Sinar Grafika, 2016, p. 6.

³ Franky Anggriawan et.al., *Asas Indissolubility Dalam Hukum Perkawinan Katolik*, Jurnal LamLaj, Fakultas Hukum Universitas Lambung Mangkurat Banjarmasin, Vol. 4 No. 1 Bulan Maret 2019, p. 128.

⁴ Silvester Susianto Budi, *Kupas Tuntas Perkawinan Katolik*, Yogyakarta, Kanisius, 2015, p. 6-7.

⁵ Yohanes Servatius Lon, *Hukum Perkawinan Sakramental Dalam Gereja Katolik*, Yogyakarta, Kanisius, 2019, p. 4.

Methods

This study is a normative legal research that focuses on the law of marriage and divorce, especially in terms of the Marriage Law as a national law and the Canon Law as a marriage law for Catholics. The approaches adopted in this study include statute, conceptual and philosophical approaches. It uses primary source of law consisting Marriage Law and Code of Canon Law and secondary source of law consisting of published books and journals on the law of marriage and divorce.

The collecting and processing of legal materials begins with a literature study that lists the primary and secondary legal materials, which are then classified and arranged systematically to make it easier to read and study. Legal materials are collected and grouped to make them easier to study and analyze in accordance with their respective themes. The collected and grouped legal materials that turn out to be irrelevant to the theme under discussion were temporarily excluded and will be used when necessary. The entire legal materials in this study are compiled using the deductive method by collecting them systematically in order to obtain an overview of the problems discussed. The deductive method was adopted to obtain the results that were concluded from general to specific matters so that it was expected that the problems formulated in this study can be explained.

Discussion

Marriage According to Canon Law

Canon Law is a legal system that applies and developed throughout the history of the Catholic Church, where it was developed along with Roman law so that the Church law was divided into two: *Corpus Iuris Civilis*, or corpus of civil law and *Corpus Iuris Canonici* or compilations of law in the Roman Catholic Church.¹

The Canon Law is established based on the teachings of the Catholic Church and intended to guarantee and maintain their integrity. Canon Law helps Catholics to abstain from acts that are contrary to the teachings of the Church.² Substantially, Canon Law contains regulations regarding the church life for Catholics.³

As social beings, humans are not created to live alone, but to interact with fellow humans. In their interaction, humans build same-sex and opposite-sex social relationships, and the latter lead them to marital union. This is in accord with what we read in Genesis 2:24: "That is why a man leaves his father and mother and is united to his wife, and they become one flesh." Relationship that bring men and women into marital union requires them to promise each other to love and cherish in their married life.

Canon Law 1055 (1) defines marriage as the matrimonial covenant by which a man and a woman establish between themselves a partnership of their whole life, and which of its own very nature is ordered to the well-being of the spouses and to the procreation and upbringing of children, has, between the baptised, been raised by Christ the Lord to the dignity of a sacrament. Marriage is a reciprocal agreement between a man and a woman. From the provisions of the article, we see explicitly that marriage is a legal union because it involves an agreement that leads to the partnership of the whole life of a man and woman.

The bride and groom begin their marriage ceremony by saying the wedding vows. The wedding vows are made in the presence of Church officials, witnesses and congregation. In essence, the utterance of the marriage vows reads "before God, the priest, the witnesses, and the congregation, I ...(name) sincerely declare that ...(name) who is present here, from now on, will be my wife/husband. I pledged my faithfulness to him/her in good and bad, and I would love and honor him/her for the rest of my life. That is my promise for the sake of God's Name and the Holy Gospel." The promises show that both parties agree to be husband and wife, to be true to each other in good and bad, and to love and respect each other. Pronunciation of marriage vows is the main event in a wedding ceremony. A wedding liturgy without promises each partner in a couple makes to the other is considered as neither valid nor binding. The wedding promises constitute a commitment to face the challenges and difficulties of living a married life.

According to the teachings of the Catholic Church, the wedding promises must be made by the couple themselves because they bind only the parties to the marriage. This is a manifestation of the free will of both parties to be bound in marriage. Article 1057 of the Code of Canon Law stipulates that matrimonial consent is an act of the will by which a man and a woman mutually give and accept each other through an irrevocable covenant in order to establish marriage.

Fundamentally, the covenant by promising to each other indicates mutual trust and binding, and brings about legal certainty. Violation of the marital vows is not only betraying the spouse but also a sin for not being faithful to God and the Church. The agreement to pronounce the marriage vows shows that there is an alliance of men and women in living household life. Articles 1128 and 1129 of Canon Law describe the life of husband and wife as fellowship of life in which they share bed, table and house. Living their fellowship of life, husband and wife share their ups and downs in their life. This togetherness underlies the achievement of the purpose of marriage.

¹ Alf. Catur Raharso, *Sistem Legislasi Gereja Katolik*, Malang, Dioma, 2012, p. 104.

² Yohanes Subani, *Pengantar Hukum Gereja (Modul)*, Kupang: FFAUNWIRA, 2008, p. 4.

³ Yohanes Servation Lon, *op.cit.*, p. 4.

Robertus Rubiyatmoko argues that marriage is an agreement (foedus, consensus, covenant) made by a man and a woman to form togetherness throughout their life.¹ This is in accordance with Article 1055 of Canon Law, stating that marriage is a covenant by which a man and a woman establish between themselves a partnership of the whole of life and which is ordered by its nature to the good of the spouses and the procreation and education of offspring, has been raised by Christ the Lord to the dignity of a sacrament between the baptized.

Agreement to pronounce wedding vows involves human acts that in moral theology are considered as actions that proceed from insight into the nature and purpose of one's doing and from consent of free will; or shorter, they are acts which proceed from insight and free will.² As the free will of both parties, a marriage occurred because of nothing but the will of both parties to the marriage.

The Relationship between Catholic Marriage and Annulments

Everyone has the right to live a family life. This requires a marriage union between a man and a woman to live together in a family. The willingness of a married couple to live a family life is expressed in the wedding vows before a Pastor, witnesses and congregation in a wedding ceremony. The pronouncement of wedding promises indicates that both parties agreed to live a married life. Article 1057 of Canon Law stated that matrimonial consent is an act of the will by which a man and a woman mutually give and accept each other through an irrevocable covenant in order to establish marriage.

The will of a man and women, as stated in Article 1057 of Canon Law, is the prerequisite without which a marriage union and married life will not exist. This is the human's free will to choose between different possible courses of action without being impeded, and constitutes one of human rights. There is a correlation between willingness and agreement which in the end becomes a commitment to exercise the right to have a family. When this happens, it means that the parties are willing to be loyal to and accepting of each other. That way, it is not justified if one of the parties rejects the condition of the couple who is sick and down, or regrets their decision to have a family, because the promises made in a Catholic wedding are irrevocable.

A Catholic marriage is declared invalid and contrary to the Code of Canon Law if there are impediments, defect of contract, and defect of form. The impediments to marriage include:³

1. Impotence;
2. bond of prior marriage;
3. either party made a public perpetual vow of chastity;
4. consanguinity, or close relationship by blood;
5. one or both parties is below the absolute minimum age;
6. disparity of cult;
7. sacred orders;
8. abduction;
9. crime;
10. the parties are related by marriage;
11. public propriety; and
12. the parties are related by adoption.

Impediment to marriage, defect of contract and defect of form serve as the ratio legis for annulment of marriage under Catholic Canon Law. Without this legis ratio, a marriage contract should be declared valid and irrevocable.

In case of marriage impediments, defect of contract, and defect of form, the marriage shall be dissolved via annulment, rather than via divorce. In a marriage annulment or annulment that is a process to declare marriage invalid, it is necessary to investigate and prove the validity of marriage. The investigation and verification processes are carried out by the Church Tribunal as an institution of the church's judicial authority. This is regulated in Article 1671 of the Code of Canon Law stipulating that Marriage cases of the baptized belong to the ecclesiastical judge by proper right, and anyone, whether baptized or not, can file a lawsuit in court.

Annulment is a way that the church does to resolve marital problems. Articles 1441 and 1446 of Canon Law encourage the pastors to resolve marital problems in a fair and peaceful manner that is oriented towards reconciliation because the mission of the church is to proclaim peace to those in need, including married couples who failed in their marriage.

The purpose of annulment is to preserve the teaching of Jesus Christ about marriage, as written in the Gospel of Matthew 19:6 that "what God has joined together, let no one separate". Annulment differs from divorce in that the latter ends a valid marriage while the former asserts that no valid marriage ever existed in the first place.

Annulment is not a divorce but rather a settlement of marriage agreements that have been invalid from the

¹ Robertus Rubiyatmoko, *Perkawinan Katolik Menurut Kitab Hukum Kanonik*, Yogyakarta, Kanisius, 2011, p. 18.

² Alf. Catur Raharso, *Kesepakatan Nikah Dalam Hukum Perkawinan Katolik*, Malang, Dioma, 2008, p. 147.

³ *Ibid.*, p. 34 – 55.

start. Regulations in the Code of Canon Law are in accordance with those in the Marriage Law, especially in the case of annulments in which legal protection exists.

When a marriage of husband and wife who have children is annulled, their kids will still be considered children of the marriage. This is regulated in Article 1137 of the Canon Law stating that those born or conceived of a valid or putative marriage are considered as legitimate children. The regulation is in accordance with that in Article 28 (2a) of Marriage Law stipulating that the decision to annul the marriage does not apply retroactively to the children born from the marriage.

Conclusion

Regulations in the Marriage Law are affected by religious laws. This can be seen from the purpose of marriage which is to create a happy and lasting family that uphold the belief in One Supreme God. Stronger religious influence can be found in Article 2 (paragraph 1), where it is stipulated that marriage can be legally recognized if it is performed according to the religion of the two parties. Wedding ceremony is a legal union of a couple as spouses that involve sacred elements, therefore it must be performed according to religious law.

The ratio legis of Canon Law in Indonesian Marriage Law is that religious teachings are not excluded from the national laws, rather they have become parts of the material sources of positive law, especially in Article 2 of Marriage Law that facilitate religious teachings on the sacred values of marriage. Catholic teachings on marriage are based on Holy Scripture and Canon Law. The enforcement of Canon Law is based on the Catholic teachings that, in essence, regulate how Catholics live their religious life. Marriage union in Catholic teaching is established at the time of the wedding vows uttered by both parties to the marriage that read as follow: “before God, the priest, the witnesses, and the congregation, I ... (name) sincerely declare that ... (name) who is present here, from now on, will be my wife/husband. I pledged my faithfulness to him/her in good and bad, and I would love and honor him/her for the rest of my life. That is my promise for the sake of God’s Name and the Holy Gospel.” By performatively pronounced the wedding vows, the bride and groom have come to a mutual agreement and irrevocable commitment to become husband and wife and to create a family. This is consistent with Article 1057 of the Code of Canon Law stating that matrimonial consent is an act of the will by which a man and a woman mutually give and accept each other through an irrevocable covenant in order to establish marriage.

Promises in a Catholic religious marriage are manifested free will of the two parties that no one has the right to force them to pronounce, meaning that Catholic religious marriage upholds human rights and legal protection, especially the right to have a family and to procreate through legal marriage. It can be said that every adult has the right to marry without any coercion, and is protected by law.

Article 10 (paragraph 2) of Law Number 39 of 1999 concerning Human Rights corroborates that a valid marriage can only take place at the free will of the prospective husband and wife concerned, and in accordance with the provisions of the legislation. This regulation shows the relationship between the will and the agreement to pronounce the marriage vows in the Catholic marriage as a commitment to live a family life without any compulsion.

In Catholic teaching, a marriage is valid if there are no impediments such as defect of contract and defect of form. When the opposite was the case, this means that there are impediments to the Catholic marriage, and therefore declared invalid. This indicates that there is preventive legal protection in Article 1060 of Canon Law stating that marriage enjoys the favour of law. Consequently, in doubt the validity of a marriage must be upheld until the contrary is proven. In the event that defect of contract and defect of form were found in Catholic marriage, rather than resorting to divorce settlement, the marriage can be annulled and, therefore, asserted that no valid marriage ever existed in the first place.

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