

Reconstruction of Formulation of the Status “Virgin” In Marriage Registration System in Indonesia

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ABSTRACT

Marriage registration involves several procedures such as reporting the intention to marry, marriage investigation, notice of the intention to marry, wedding vow, and registration. The process of marriage registration involves form fulfilment containing columns to identify the identity of the couple. In the identification, the information about the status “virgin or widow” and “bachelor or widower” often brings controversy as this part creates ambiguity and normative conflicts in the registration of marriage. Marriage status could mean biological, as understood textually, and it could also mean vow, as known based on marriage registration. The ambiguity of the term ‘virgin’ in the registration of marriage causes changes to be made in the law that rules. As a result, the law that frames the norm of ‘virgin’ status reconstructs the existing fixed law. The implementation of marriage registration in politics of law goes through two phases: pluralism of law and unification of law, making the status case more controversial despite the fact that marriage law is based on juridical norms.

Keywords: virgin, marriage registration

INTRODUCTION

Marriage registration published in the form of marriage certificate is a manifestation of politics of law in providing protection and legal certainty. Marriage registration system could not be set apart from form fulfilment. Here the form reveals full-length identity of the couple who is about to marry, guardians, witnesses, dowry, time, the status of bride and groom, and so forth.

The forms of registration in Indonesia vary. The form type NB is to be fulfilled by Moslem couple. The couple is required to fill in other forms as regulated in the addendum of the Ministerial Regulation of Religion no. 11 Year 2007 on marriage registration Article 5 paragraph (2). The addendum is known as type N-1, N-2, N-3, N-4 and N-7.

All addendums are to be filled by either moslem or non-moslem bride and groom candidates. These addendums are mandated in the Ministerial Regulation of Religion No. 2 Year 1990 and the Decree of Religious Minister No. 477 Year 2004 about marriage registration, which then is regulated in Ministerial Regulation of Religion No. 11 Year 2007 without any changes in the forms filled by the bride and groom candidates. As generally known, one of the forms requires information whether the candidates are bachelor or widower, virgin or widow.

Juridical matter creates normative absurdity related to the virgin status stated in the addendum of Article 5 Paragraph (2) Ministerial Regulation of Religion No. 11 Year 2007 about marriage registration:

Notice of intention to marry is done in written form by filling in the form of notice together with the following requirements:

- a. The reference letter from a village chief (kepala desa or *Lurah*) or another headman.

Article 5 Paragraph (2a) is stated in form N-1 stating the norm of “virgin” or “widow”. This is what is being synchronised with the previously mentioned regulation: Peraturan pemerintah (PP) No. 9 Year 1975 concerning the implementation of Act No. 1 Year 1974 about marriage in Article 5, 9a and 12a which state the status of bride and groom candidates of “no previous marriages” or “once married”. Such a dictum is considered contrary to what is written as “virgin” and “widow”. Peraturan Pemerintah (PP) No. 9 Year 1975 concerning the implementation of Act No. 1 Year 1974 about marriage in Article 5.

Article 5

Notice involving name, age, religion/belief, occupation, residence of the couple and if one or both of the couple had previously been married, the names of the previous husband/wife should be mentioned.

Article 9 a

Notification containing the following information is signed by Civil Registry:

- a. Name, age, religion/belief, residence of couple and the parents of the couple; if one or both of the couple had previously been married, so the name of previous husband/wife is to be mentioned;

Article 12 a

Certificate of Marriage states:

- a. Name, date of birth and birth place, religion/belief, occupation, and residence of husband and wife; when one or both of the couple had previously been married, so the name of the previous husband/wife should be mentioned;

The mismatch can be seen in the use of dictum concerning the status option of bride and groom involving bachelor or widower, virgin or widow in form type N-1 as stated in Article 5 Paragraph (2) of the Decree of Religious Minister No. 11 Year 2007 about marriage registration, while Article 5, 9 a, especially Article 12 a of Government Regulation No. 9 Year 1975 about the implementation of Act No. 1 Year 1974 concerning marriage only state the option of “no previous marriage” or “once married”.

The normative formulation of the above dictum concerning the status of virgin or widow, bachelor or widower creates the ambiguity and thus, one of which should be stated in the form and marriage certificate. The meaning of widow and virgin is often confusing. Disorientation of understanding between those two terms could be seen from questions mostly raised about the fixed parameter of the term virgin or widow. The term virgin is usually mixed between a woman who never has previous sexual intercourses and a woman or a man who once had a sexual intercourse before marriage. The question is whether such a woman can still be called a virgin or a widow.

A widow is defined as a woman who has no husband due to divorce but has already made a vow (*aqad*) in the wedding. The question appears in the case of a widow whose marriage is not consummated (*qabla dukhul*). A widow of *qabla dukhul* actually does not possess *iddah* period (certain length of time taken by a divorced woman before she is eligible to remarry). This case leads to another question regarding the position of *qabla dukhul* widow with no *iddah* period.

The mixed definition between the term widow and virgin still triggers misunderstanding. Firstly it may be caused by the fact that the formulation of status whether an individual is defined as a virgin or a widow in the form of marriage registration depends on whether or not an individual has made a vow in his/her marriage (*aqad*); moreover, whether a woman is

defined as a virgin or a widow depends on her status of virginity; Thirdly, whether the a woman is defined as a virgin or widow is closely related to whether the woman has experienced a household life where her marriage is consummated.

Hermeneutic approach including legal hermeneutics is required in finding out the meaning of terms behind the word widow and virgin. For re-conceptualisation of the term virgin, legal conceptualisation was employed. Finding out the significance attached in the form N-1 of marriage registration based on legal norm perspective was also included in the conceptualisation.

According to Imam al Ghazaly (w. 505 H), merit (*maslahah*) brings usefulness and protects from danger (*mudharat*). Al-Ghazali categorised *maslahah* into 3 stages such as *daruriyyat* (primary needs), *hajiyyat* (secondary needs) and *tahsiniyyat* (tertiary needs). Each of those stages was perfected through the formulation of goals of the three stages known as *ushul al-khamsah* (5 basic principles of warranty) comprising *hifdzu al-din* (fundamental protection in religion), *hifdzu al-nafs* (fundamental protection for soul), *hifdzu al-'aql* (fundamental protection for mind), *hifdzu al-nasl* (fundamental protection for following generation), and *hifdzu al-mal* (fundamental protection for wealth). These five principles were then perfected by Shihab al-Din by adding up *hifdzu al-'ird* (dignity). Based on the theory of *mashlahah* proposed by Imam al-Ghazali, all texts in holy Quran and sunna of the Prophet are intended to give *maslahah* for the universe. *Maslahah* is the goal of the rules of Islam, which is called as *Maqashid al-syar'iyah* by Imam al-Ghazali.

Commentary methodology embraces three approaches: First, historical approach is intended to reveal the meaning of texts; Secondly, content approach is intended to reveal the goal and purpose in the utterance of legal specification, and the third is sociological background approach which is intended to reinforce the finding in content approach or to find out a purpose or a goal which is unexplainable through the content approach.

Honesty and serious historical approach should be applied to formulate the meaning of texts of holy Quran. Metaphysic aspects taught in Qur'an may not easily fit the historical therapy, but the sociological teachings are likely to be open to historical therapy. Firstly, Qur'an must be studied according to its chronological structure. It is initiated by investigating the earlier revelation which would create accurate perception concerning the fundamental teachings of Islam, as differentiated from social provision recently constructed. Therefore, an individual is required to study Qur'an as long as the career and struggle of Prophet Mohammad SAW. In addition, an individual should also define the meanings of details in this method in order to clearly reveal the meaning of Qur'an systematically and coherently as a whole.

In relation to content approach, the goals in Qur'an must be understood and defined by taking into account the sociological background such as the world where the prophet was struggling. Such an approach would eliminate subjectivity.

Munaryati Hartono confirmed that the significance of legal construction of law involves four elements: Perfecting through betterment, becoming better and more modern, making the non-existent existent, and abolishing the old system and change it with the new one.

Through the four aforementioned spirits, the construction of law is defined as a continual dynamic law. Moreover, the legal construction represents a relentless process, as each progress demands changes in societies that never stop changing.

ONTOLOGY IN THE STATUS OF VIRGIN

According to the theory of *maqasid al-syari'ah*, the purity of meaning for the word 'virgin' in the formulation of legal norm is made linear and considered based on the provision of norms

taken from Islamic fundamental of Qur'an, hadith and perspectives of *fuqaha'* (Islamic jurist) in the literature of *fiqh* (Islamic jurisprudence). Alignment in legal norm is supported by facilitating the verses of *qauniyah* which is developed in the form of *VeR* technology.

All the benefits embraced in Islamic laws should bring significance for human beings. The benefits in Islamic law intend to protect human beings through *hifdzu al-din* (religion), protect *hifdzu al-nasl* (descendants and generation), and protect and put humans in dignity known as *hifdzu al-'ird*.

The term virgin has broadened in meaning (commentary) from the context of *de jure* in the perspective of legal formalism to the contextual meaning (*de facto*) which fits the current situation. Virgin is a manifestation of being unspoiled for a woman; being virgin can be seen as a priceless dignity.

The concept of protecting virginity has been legitimated by the religion through the prohibition of not approaching adultery. Recalling that adultery causes serious sins, Allah prohibits humans not to even approach this conduct, let alone to do it. It is related to marriage which plays a role in giving the benefits and rewards to those getting married.

Apart from adultery, the definition of virgin according to legal formalism is seen to be narrow. The meaning of virgin based on juridical perspective is left behind and found irrelevant as adultery case is mounting. The increasing number in such a case forces juridical-based virgin to alter into its genuine meaning. Such a condition reveals that the adultery has been in the level of *dharuriyyat*, as it is seen to be a part of a culture in societies. Adultery at young age is to be dealt with the existing legal norms, for they embrace the formulation of the norms concerning biological virginity through the administrative system of marriage which is effective in hampering such a behavioural disorder.

The formulation of legal norms regulating biological virginity is expected to be able to serve as a *saddudz dzira'I* (preventive strategy) in limiting this adultery, as stated in the principle of *ushuliyah*:

“In fact, something prohibited triggers a bad deed.”

The prohibition of not approaching adultery alarms people of the serious sin brought by adultery and its danger. The sin and danger are certainly more obvious when the adultery is done, so that either *mukhshan* or *ghairu mukhshan* adultery deserves caning and stoning as ruled in Islam.

Preventing adultery is also in line with the principle of *fiqhiyyah*:

“Law regulating means follows the goal to be achieved.”

Reverse understanding (*mafhum muhkalafah*) of the formulation of legal norms and concept of biological virgin playing a role in preventing adultery through investigating before marriage should be the primary requirement, which is relevant with the principle of *fiqhiyyah*:

“If an imperfect responsibility is met without a certain cause, so that certain cause is compulsory to be done as well.”

Those principles of *fiqhiyyah* put the change of meaning of virgin in the genuine meaning which then becomes legal prevention domain for those who are going to get married. Through such a meaning, the bride and groom will tend to keep their vital organ before marriage. This principle could also serve as a fundamental of law in term of the change in the real meaning of virgin to prevent individuals from adultery.

ANALYSIS OF LEGAL CONSTRUCTION CONCERNING THE BIOLOGICAL STATUS OF VIRGINITY IN THE SYSTEM OF MARRIAGE REGISTRATION

Human beings are created as the superior beings among His other creatures. What exists on earth was made available by Allah the only God for the sake of human beings. For the reason of responsibilities given to His caliphs and other followers, Allah gave them a priceless thing that is not attached on other creatures: mind. With that, human beings are capable of developing and making progress in technology and science.

When the existing law (*ius constitutum*) can no longer provide solution to every single problem, then the emptiness in law (*rechtsvacuum*) may occur, leading to normative and sociological problem. Law has to be adaptive and dynamic to go hand in hand with ever-changing times.

This reconstruction is intended to emphasise the roles of a law. The construction of law is the first step in managing societies and establishes principles that function to help societies with their goal to betterment.

The construction of law related to the concept of biological status of virginity, based on the law as stated by Sunaryati Hartono, embraces four principles such as Perfecting through betterment, becoming better and more modern, making the non-existent existent, and abolishing the old system and change it with the new one.

Construction of Legal Content Concerning the Status of Virginity

Law regulating marriage and administrative law are established according to the philosophy of investigation, superintendence, and authenticity intended to avoid conduct of falsification of marriage identity. Good administrative system should comprise the investigation and superintendence which is expected to lead to fair selection for the bride and groom without the presence of ambiguity. The status of both parties should be transparent especially between both parties who are married.

The goal of the management in administrative law of marriage can be achieved when the regulatory law concerning administrative system of marriage is well established. In addition to the well-established principles of law, law enforcement in the form of investigation and superintendence legal system of marriage should also be well-managed. The enforcement and content of law require the awareness to enforce the law in the scope of the enforcement of administrative law of marriage. Establishing the dynamic principles of administrative law of marriage is expected to be able to provide the optimal legal protection from any criminal issues such as falsification of biological identity of virginity in the legal system of marriage.

Department of Religious Affairs (KUA) is established to give protection to those married. The comprehensive formation of legislation should involve 1) the principles required in the formation of legislation; 2) ideal legal politics of the nation; 3) sufficient system to verify the legislation. Similarly, the construction of administrative law regulating marriage in Indonesia should also be supported by the three principles.

In order that construction of law runs effectively, the legal content should be available to regulate the administrative law of marriage, especially the investigation and superintendence systems in marriage. Content of regulation which Friedman calls as actual of rules, norms, and behaviours of societies in the system comprise all forms of regulation or rules which give implication of negativity or disadvantages.

The improvement of regulatory administrative systems of marriage in the content level of law should be addressed according to the study on the purity of position related to the law regulating the status of virginity (*al-bikr*) in the perspective of political history of Islamic law

in Indonesia. Looking at the history of Indonesia, the formulation of the virginity status is in its sacred position where the chastity must be protected until marriage.

The Synchronisation can be seen in the dictum concerning the status option of the bride and groom such as bachelor or widower, virgin or widow stated in form type N-1, as written in Article 5 Paragraph (2) Ministerial Regulation of Religion No. 11 Year 2007 about marriage registration, and Article 5, 9a, especially in Article 12a, Government Regulation No. 9 Year 1975 about the implementation of marriage laws (UUP) where the option of 'married' and 'has no previous marriages; is stated.

The ambiguity found in the regulation or norms influenced by registration system of colonial legacy needs reconstruction based on the perspective of legal content. When the virginity status serves as a basis in the value of chastity, then the formulation of virginity status should be based on the biological status, not based on the vow made in the marriage as done nowadays. The formulation of the status needs to be reconstructed according to the principles of chastity in biological perspective.

The irrelevance in the goal of legal politics in term of normative and content formulation should be put to normal according to legal politics of Islam which follow the principle of chastity in the vow of marriage (*aqad*) based on the principle of selecting the bride or the groom to be married with.

Moreover, the construction of the legal content by re-managing the legal content in administration of marriage through the re-verification and re-management of legislation, Ministerial Regulation of Religion No. 11 Year 2007 about marriage registration as the manifestation of law-abidingness by following principles and norms of law as framed in the norms of Islam and respecting the values of virginity which is considered sacred.

The reconstruction of legal content in administrative system of marriage can be analysed based on the reconstruction of regulatory content about what is written in the form and identity written in marriage certificate, and reinforcement of administrative system in marriage which involves investigation and superintendence in marriage based on values of chastity in relation to biological status of virginity by:

- I. Clearly formulating the content concerning the definition and indicator of a virgin, a bachelor, a widow, and a widower according to new concept of definition of biological-based status of virginity.
- II. Resizing the capacity of legal content due to the adaptation to the virginity widow status.

Constructing Legal Structure Concerning Virginity Status

Constructing legal structure required in the formulation of status position in administrative law which regulates marriages in Indonesia is framed in three concepts: reinforcement of the existence of a headman who is responsible for marrying couples based on Islam, separation of authority in investigating the status of virginity through *Visum et repertum* (VeR), and establishment of superintendence body on marriage administration.

The rules related to who is eligible to become a marriage registrar, or commonly known as a *penghulu* (a headman) or *naib* (the head of department of religious affairs) have undergone some changes, one of which is the fact that only a civil servant can be appointed as a headman. In other words, a headman who is not registered as a civil servant is not eligible to marry the bride and groom, except he reports the marriage to the head of Department of Religious Affairs, mainly for the marriages which need the office head of Religious Affairs to be a guardian to substitute the absent guardians.

Administratively, investigation done to the bride and groom is related to the physical identity of the bride and groom, parents or guardians, and witnesses. Identity involves names, address, of residence, date of birth and birth place, religion, and family ties between parents or guardians and the bride or groom, age, occupation, and some other things related to demographic administration. Moreover, investigation related to position and law, especially the relation of law between the bride and groom consists of the bride and the groom and other parties involved in the marriage. Last but not least, health status and biological condition of the bride and groom must be proven good, as it is generally understood that healthy family is one of the manifestations in the legal system of marriage. The health factor is expected to bring the married couple to a peaceful life (*sakinah mawaddah wa rahmah*).

CONCLUSION

Reconstruction of law in the normative formulation of virginity status as stated in Ministerial Regulation of Religion No. 11 Year 2007 about marriage registration has changed the legal principles from virginity status for a woman who has no previous sexual intercourses to the status of unmarried woman. Such a change brings to alteration of legal consequence in virginity status.

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