HISTORICAL STUDY OF MARRIAGE LAW BETWEEN THE NORMS AND THE PROBLEMATICS

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ABSTRACT

Purpose: This study aims to examine the history of marriage law between norms and problems in Indonesia.

Methods: The method used in this research is qualitative legal history analysis with a juridical-normative approach. Data was obtained by searching literature regarding marriage in the context of legal history in Indonesia, including laws, regulations, historical documents, and other related literature.

Result and Discussion: Law Number 1 of 1974 concerning Marriage is unification for the entire population of Indonesia, which is plural but also plural with a release clause by their respective laws and religions. Based on the history of the formation of Law No. 1 of 1974 from the Draft Law until its ratification, experienced pros and cons based on religious perspectives and women's rights, both in legislative, executive, and organizational institutions.

Implications of the Research: Based on the formation process, it is influenced and colored by the interests of specific interest groups, with religious elements very dominant in it. In practice, implementing Law No. 1 of 1974 raises legal problems in certain legal events, especially various legal events that comply with Law No. 1 of 1974, which are patriarchal and detrimental to women as wives.

Originality/Value: This research highlights the unique contribution and added value of research to our understanding of the history of marriage law in Indonesia. This research occasionally explores the evolution of norms and problems in marriage law. It identifies essential patterns and practical implications through an in-depth approach to legal historical analysis.

Keywords: History of Marriage Law, Evolution of Norms, Legal Issues, Indonesia.
INTRODUCTION

Since January 2, 1974, Law No. 1 of 1974 concerning Marriage, State Gazette of the Republic of Indonesia Number 12 of 1974, effective since October 1, 1975, from now on referred to as Law No. 1 of 1974. Marriage law is all the regulations relating to marriage, including the marriage itself, the living conditions of husband and wife and their assets, and the legal consequences of marriage, including the rights and obligations between husband and wife. Law no. 1 of 1974 concerning Marriage, Chapter: I concerning the Basis of Marriage, Article 1 contains the meaning and purpose of marriage. Marriage is a physical and spiritual bond.
between a man and a woman as husband and wife to form a happy and eternal family (household) based on the belief in the Almighty God. Marriage is not only based on civil ties but is also a physical and spiritual bond related to religion/spirituality (Pramesi, 2021).

The purpose of marriage desired by Law no. 1 of 1974 is that marriage is seen in terms of the contractual bond of birth and the spiritual bond between husband and wife, intended to build a family by the will of God Almighty. Marriage has legal consequences, first of all, for the parties carrying out the marriage because, with this marriage, a legal relationship occurs between them (Grijns & Horii, 2018). This legal relationship creates rights and obligations between husband and wife, for example, joint residence, obligations for livelihood and loyalty, and division of roles in the family or household. Second, third parties are interested in a marriage's existence because it is related to the assets of the parties to the marriage (Lon, 2019). If the marriage is carried out legally according to law, then the legal consequences that arise are also valid.

Indonesia is a legal state based on Pancasila, where the first principle is belief in one and only God. The laws and regulations relating to the validity of marriage are contained in Article 29, paragraph (1) of the 1945 Constitution, which stipulates that the State is based on Belief in One Almighty God. Article 28J paragraph (2) of the 1945 Constitution stipulates that in exercising his rights and freedoms, every person is obliged to submit to restrictions determined by law with the sole aim of ensuring recognition and respect for the rights and freedoms of other people and to fulfill fair demands by moral considerations, religious values, security, and public order in a democratic society (Rosdiana et al., 2019; Slama, 2014). Article 40 letter c KHI stipulates that a man is prohibited from entering into marriage with a woman who is not Muslim. Article 44 of the KHI stipulates that a Muslim woman is forbidden from marrying a man who is not Muslim. Law no. 1 of 1974 represents unification, but the laws of each religion and belief are still respected, even though implementation creates legal problems; this cannot be separated from the background of the formation of Law no. 1 of 1974.

2 LITERATURE REVIEW

2.1 BASIC CONCEPTS OF MARRIAGE LAW

The basic concept of marriage law in Indonesia refers to a set of norms, rules, and values that regulate the marriage bond between two individuals. As a country with cultural diversity, Indonesia recognizes various traditions and religious beliefs in the context of marriage.
Marriage law in Indonesia is regulated by laws that reflect social, spiritual, and justice values. One of the basic principles in Indonesian marriage law is that marriage is officially recognized by the state, where married couples are regulated by law to protect each other's rights and obligations (Pratama, 2023; Turnip et al., 2022).

The law that regulates marriage in Indonesia is Law Number 1 of 1974 concerning Marriage. This law is the primary legal basis that governs the process, requirements, rights, and obligations of couples who want to get married in Indonesia. One of the essential points held in this law is the conditions that must be met before someone can legally marry, such as the minimum age limit, consent from both parties and provisions regarding marriage between Indonesian citizens and foreign citizens (AGUSTIAN et al., 2023; Ilahi, 2021). The Marriage Law also regulates the division of joint property, the rights and obligations of husband and wife, and divorce procedures. There are also other statutory regulations related to marriage, such as Government Regulations regarding Marriage Registration, Reproductive Health, Child Protection, etc. The Marriage Law is the primary basis for the government in ensuring that marriage in Indonesia is carried out by social, religious, and justice values, as well as providing protection for the rights of individuals involved in marriage (Robinson, 2023; Widyastari, 2020).

Marriage is also considered a sacred bond regulated by the teachings and traditions of each religion recognized in Indonesia, such as Islam, Christianity, Hinduism, Buddhism, and others; in a religious context, marriage law in Indonesia accommodates a variety of different cultural beliefs and practices (Pratama, 2023). Some principles remain valid, such as requirements regarding the minimum age for marriage, division of property, children's rights, and divorce procedures. Amidst this diversity, these essential concepts are the basis for the formation of laws and policies that regulate marriage in Indonesia, with the main aim of ensuring protection and welfare for all parties involved in the institution of marriage (Islamy, 2020; Setyawan et al., 2023).

2.2 THEORETICAL REVIEW OF MARRIAGE IN THE CONTEXT OF LEGAL HISTORY

A theoretical review of marriage in the context of legal history involves an in-depth understanding of how the concept and practice of marriage have evolved and how the law has influenced the dynamics of marriage in society (Ismail, 2020; Miqat et al., 2023). Several previous studies support the view that marriage is an institution that continues to change throughout history, mainly due to developments in law, religion, and social norms. For example,
research by (Manhal, 2023) highlights the evolution of marriage from prehistoric to modern times, showing how factors such as economic necessity, religion, and government policy have shaped the institution of marriage.

Research (Hanifah & Purba, 2023) revealed the critical role of religion and the state in regulating marriage in Indonesia in the Middle Ages, with marriage often used as a political and economic tool. Several studies also show that marriage is not always viewed as a static institution but as a social construction that continues to change. For example, research (Pelu & Dakhoir, 2021) highlights various models of marriage in history that demonstrate the plurality and complexity of relationships between partners. These results are also supported by research by (Efrinaldi et al., 2023) highlighting the critical role of biological evolution in developing the institution of marriage and patterns of human behavior regarding relationships between partners. The theoretical review of marriage in the context of legal history shows the complexity and dynamics involving interactions between social, religious, economic, and biological factors in shaping the institution of marriage.

Research by (Lisdiyono, 2023) also highlights how changes in social and economic structures have influenced marital dynamics, with a shift from extended family-based marriage systems to nuclear families, as well as the increasing importance of love and happiness in partner selection. Meanwhile, research (Setyagama, 2019) emphasizes the importance of marriage as an institution that contributes to social stability and the welfare of children, highlighting the positive outcomes of a stable marriage on the welfare of the family and society.

There is also research that shows a different point of view, such as research (Nurmila & Bennett, 2014) criticizing the traditional view of marriage as a stable and beneficial institution for all individuals by highlighting gender inequality, patriarchal power, and the negative role of marriage on individual freedom, especially for women. This is also supported by research conducted by (Nasir, 2020) investigating the concept of monogamy in marriage, showing the existence of historical and cultural variations in marriage practices, and highlighting the diversity and complexity of marriage relationships in human history. The theoretical review of marriage in the context of legal history reflects the broad and complex debate about the nature, function, and evolution of the institution of marriage in human society.
2.3 THEORETICAL REVIEW OF PROBLEMS THAT OFTEN ARISE IN MARRIAGE LAW

The theoretical review of issues that frequently arise in marriage law involves an in-depth understanding of marriage's various conflicts, tensions, and challenges in legal and social contexts (Ahyani et al., 2020; Nuruddin et al., 2023). Several previous studies support the view that problems such as divorce, domestic violence, gender inequality, and marital instability are often the focus of research and provide attention to the study of marriage law; for example, research by (Nashuddin, 2015) highlights the factors related to divorce, including interpersonal conflict, poor communication, and incompatibility of values. Research conducted by (Nugroho et al., 2021) describes the dynamics of domestic violence and its impact on the welfare of family members, emphasizing the need for legal and social interventions to protect victims of violence.

There is also research that shows a different point of view; for example, research (Jambunanda, 2023) highlights the relationship between marital happiness and mental health, finding that marital happiness can positively impact individuals' psychological well-being. This is also confirmed by the research results (Adawiyah, 2019), showing that factors such as effective communication and partner commitment can help prevent divorce and increase the sustainability of marriage. The theoretical review of problems in marriage law reflects the complexity of the relationship between various social, psychological, and legal factors that influence the stability and welfare of marriage in society.

3 METHOD

Research Method with normative legal research type. The data used is secondary data consisting of primary legal materials and secondary legal materials. The primary legal material is the 1945 Constitution, Article 29 paragraph (1), Article 28J paragraph (2). Law Number 29 of 1999 concerning Human Rights, Article 10. Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law, Article 40 and Article 44; Draft Marriage Law. Mixed marriage, according to Regeling op de Gemengde Huwelijken (Regulation on Mixed Marriage) Stb. 1898 No. 158, Article 1. Civil Code. Primary legal materials are described, systematized, analyzed, interpreted, and assessed using the concepts of morals and practice and their problems. Secondary legal materials in the form of legal opinions in books, journals, and research results are used to examine primary legal materials. A juridical-normative approach is
used to present a comprehensive picture of the evolution of marriage law from time to time and analyze the norms governing marriage and problems that often arise in the implementation of marriage law in Indonesia. The data obtained is then analyzed critically to identify significant trends, patterns, and changes in marriage law and to understand the normative and practical implications of the research findings. This method was chosen because it allows researchers to investigate the complexity of the history of marriage law while providing an in-depth understanding of the norms and issues involved in the Indonesian context (Harahap, 2019).

4 RESULT AND DISCUSSION

4.1 LEGAL HISTORY LAW NO. 1 of 1974

On May 22, 1967, the Government submitted a Draft Law on Muslim Marriage Regulations, which was discussed by the DPR-GR together with a Draft Law on the Basic Provisions of Marriage in October 1968. The two bills still need to be finalized by the DPR-GR and the Government in MPRS Decree No. XXVIII/MPRS/1966, especially Article 1 paragraph (3), states that it is necessary to enact a marriage law immediately.

In connection with the interests and aspirations of women regarding the Marriage Law, in 1958, several members of the DPR, including women DPR members under the leadership of Mrs. Sumari, submitted an initiative proposal for the Marriage Bill, which contained general marriage regulations for all Indonesian citizens without distinction of religion or Tribes. The main contents of the bill are: 1) Every citizen has the right to marry according to their respective religion; 2) The basis of marriage is monogamy; 3) Marriage only occurs at the will of both parties; and 4) The age limit for prospective brides and grooms is 18 years for men and 15 years for women. This bill was never completed in the DPR.

The concept of equal rights between husband and wife, paving the way for a parental system, saw a significant development on May 28, 1962, when the National Legal Development Institute issued a decision concerning family law; the decision encompassed several critical provisions aimed at restructuring the family system to promote equality and fairness within marriages. Firstly, it mandated that only one family system, namely the parental system, be implemented across Indonesia, with adaptations from customary law to align with this parental framework. Secondly, recognizing the importance of efficient operation, the decision abolished all prohibitions against marriages between cross-cousins and parallel-cousins. Thirdly, guided by the principles of Pancasila, it underscored the need to democratize the parental system,
eliminating distinctions in dignity between spouses. This meant that in polygamous marriages, all wives were entitled to equal rights and obligations, and all children, irrespective of maternal lineage, were granted the same rights and duties; the decision acknowledged joint property ownership between spouses for assets acquired during the marriage through either party’s efforts. The decision clarified the principles surrounding marriage, emphasizing monogamy as the fundamental norm. Polygamous unions were permitted under specific circumstances, subject to oversight by authorities, thereby safeguarding against coercion and ensuring the consent of all parties involved; for adherents of Islamic law, refinements were proposed concerning regulations on polygamy and divorce, including stricter guidelines and supervision to mitigate potential abuses and ensure fairness, such as supervision during divorce proceedings and provisions for the maintenance of wives post-divorce (Jatmiko et al., 2022; Mutaqin, 2018), this decision marked a significant stride towards establishing a more equitable and just family law framework in Indonesia.

On January 27, 1972, ISWI (Indonesian Women's Scholars Association) submitted a petition asking the government to resubmit the Marriage Bill. Likewise, the Deliberative Body of Indonesian Women's Islamic Organizations, at its meeting on February 22, 1972, took the decision to urge the government to resubmit to the DPR the two draft laws, namely a. Draft Law Concerning the Basic Regulations on Muslim Marriage; b. Draft Law Concerning the Basic Provisions of Marriage submitted to the DPR, Each with the mandate of the President of the Republic of Indonesia dated 30 May 1967 No. MA/077/67 and former President of the Republic of Indonesia dated 7 September 1968 No. 010/PU/H.II/1968; Suggest to all members of the DPR RI as a result of the Election to take all means possible by the DPR RI Standing Orders Regulations to produce the two Draft Laws on Marriage mentioned above."

The agency's decision strengthens ISWI's petition. Looking at the descriptions, it is clear that there is a great desire among the people, especially women, to have a marriage law that applies to all citizens throughout Indonesia. In the Complete Plenary Session on 30 August 1973, the Minister of Justice, Prof. Oemar Seno Adji, on behalf of the Government, delivered information regarding the Bill on Marriage, among which he said that maintaining the noble character and upholding the morals of the people which is the primary source for the Government in seeking enthusiasm, giving soul and shaping the contents of the Bill on Marriage is Pancasila and its religious teachings and personal values as cultural heritage, and diversity of customs (Purnomo, 2022; Romli et al., 2020).

The Marriage Bill emphasizes that the basis and purpose of marriage will guarantee the noble values of marriage, namely the formation of a happy family, the continuation of offspring,
the care and education of children, and the continuation of nation-building as the rights and obligations of parents. Divorce and polygamy are permitted with the requirement to elevate the position and dignity of women to their proper place.

The Marriage Bill stipulates that a marriage is valid if carried out in the presence of a marriage registrar and recorded in the marriage registrar's register. The provisions of the law carry it out and by the requirements of the marriage law of the parties carrying out the marriage. Religious and spiritual elements, customary law, and the Civil Code aim for legal uniformity.

The birth process of Law No. 1 of 1974, in 1973, brought an almost unstoppable political temperature. Finally, it was born as a provision resulting from a broad compromise outside and within the DPR itself. Challenges to the bill mainly come from Muslims inside and outside the DPR. Several opinions that preceded the discussion in the DPR were: a. All voices from Islamic groups who are members of mass organizations and social organizations reject the bill. b. In the event of 27 September 1973, Islamic masses came to the DPR demanding that the bill be rejected or that a revision be carried out.

The motivation for the reaction given by the Islamic community to the bill is based on the contents of the draft itself, which is contrary to the teachings of Islamic law, which regulates marriage laws for Muslims in general, namely: 1) The large number of Muslims in Indonesia must pay attention to their interests by having a Marriage Law that contains the aspirations of Islamic Law and does not conflict with the first principle of Pancasila; 2) Marriage Law in Islamic society is Islamic Law which cannot be abolished by laws that conflict with Islamic Marriage Law, because if so it means it is contrary to the people's legal consciousness as the highest value; and 3) The President's speech on August 16 1973 in the open plenary session of the DPR stated that the Marriage Law is closely related to religious and spiritual values.

Some of the principles that are considered contrary to Islamic law are 1) the principle of Civil Registration, which determines whether a marriage is valid or not, and the overriding of religious law; 2) The proposed article about differences due to religion/belief not being a barrier to marriage is unacceptable because it will make it easier for Muslim women to marry men who are not Muslim. Such a marriage is still considered an act of adultery; 3) The bill requires the wife's consent as a condition for polygamy for the husband but was rejected because the wife's consent was not needed; 4) If you regulate marriage prohibitions, it should be based on the man. To simplify the formulations; and 5) The bill ignores the fifth pillar of marriage and many other issues relating to the iddah period for a widow because the bill stipulates that the iddah period for widows is 306 days, and also regarding children born out of wedlock, it can be acknowledged by the father and ratification of the adulterous child by his father, rejected.
At the beginning of its drafting, the Marriage Law was intended to regulate family life and improve the conditions of women; marriage law is based on patriarchal views and gender ideology, which differentiates the roles of men and women or husband and wife. The Marriage Law and its implementing regulations, whose initial idea was to remove women from oppression and violence, were not fully realized (Hedi et al., 2017).

When the Marriage Bill was drafted into law, women's groups raised the issue of polygamy. In the process of preparing it, women's groups were unsuccessful in urging decision-makers in the DPR to abolish it or eliminate polygamy. The law only limits polygamy by providing gender-biased conditions; this is because the law is a political product, which is never neutral and full of various values at play, so the law often legitimizes dominant interests. If patriarchal interests are prevalent, then the resulting law will also be patriarchal. Patriarchal interests dominate from the formulation of the Marriage Bill until its ratification. These interests are government interests and religious interests, which ultimately marginalize women. Women's groups experience significant obstacles in dealing with these two interests. There was a split within women's groups, considering that many were not independent; each group had a more prominent political organization as its parent.

4.2 LEGAL PROBLEMS IN LAW No. 1 of 1974 CONCERNING MARRIAGE

Law No. 1 of 1974 concerning Marriage stipulates that the physical and spiritual bonds in marriage are sacred bonds based on each respective religion. Marriage is also only recognized between a man and a woman. Marriage is not possible between a man and a man or between a woman and a woman; the existence of humans who have different sexual orientations is not recognized because it is considered unnatural, especially by the general public. Regulations in society and laws regulate and legitimize heterosexuals; those who have different sexual orientations will face substantial challenges from society. The concept of family is heterosexual, meaning marriage is only possible between a man and a woman legally, according to the law (Nisa, 2016; Tabroni et al., 2021).

In connection with the purpose of marriage to obtain offspring, the result is that the wife does not have control over herself in sexual relations and whether to have children or not and also to determine the number of children. On the other hand, only the husband is allowed to express his sexual desires. Sexual relations for husbands are a symbol of virility and fertility; for women, it is only considered a matter of fertility. This is legitimimized through regulation by the state, whether through ideological, institutional, or legal devices. Biologically, men are
always ready to produce, but women are not because they have to wait for fertility; if the wife works and is breastfeeding because she has a child, the right to breastfeed, the child is difficult to implement because it is considered less competitive in the world of work.

4.3 THE PRINCIPLE OF MONOGAMY VERSUS POLYGAMY

The law, which often only adopts the values that exist in society to function as social control, strictly defines the division of roles between husband and wife in marriage. The wife is a good housewife, while the husband is the head of the family. The husband is the protector and provides support for the wife. As a result, wives are very dependent on their husbands economically; husbands have tremendous power over their wives, as well as in sexual relations and regulating the number of children.

A husband is allowed to have more than one wife or engage in polygamy with certain conditions, namely if the wife cannot carry out her obligations as a wife if the wife is seriously ill or has a physical disability, and if the wife is unable to bear children. Strictly speaking, wives are required to be able to provide perfect service to their husbands. The wife is placed in the function of serving. If the wife has a physical disability or is seriously ill, her function of serving her husband will not be optimal. If the wife cannot give birth to children, then her reproductive function is impaired, and she is not fit to be a wife. This contradicts the provisions that say that husband and wife are loyal to each other and provide physical and spiritual assistance (Dhuha et al., 2022; Inayatillah et al., 2022).

Applications for polygamy for husbands are addressed to the Court, with conditions including approval from the wife, assurance that the husband can guarantee the living needs of his wives and children, and a guarantee that the husband will treat his wives and children fairly. Applications for polygamy for husbands are addressed to the Court, with conditions including approval from the wife, assurance that the husband can guarantee the living needs of his wives and children, and a guarantee that the husband will treat his wives and children fairly. The bargaining position of wives is lower than that of men, and it is evident that the state legitimizes the gender values of women that exist in society. The wife is only asked for her consent, whether she agrees or disagrees, because, in this case, the Court decides to permit the husband to have polygamy. A husband may not ask for consent based on Article 5 paragraph (2), which stipulates that consent from the wife is no longer required for a husband if his wife/wives cannot possibly ask for their permission and cannot be a party to the agreement, or if there is no news from his wife for at least 2 (two) years, or other reasons.

In PP N0.45 of 1990, female Civil Servants (PNS) are prohibited from becoming second wives, and so on. Thus, this PP differentiates female civil servants from male civil servants. If male civil servants are allowed to practice polygamy, then female civil servants should also be
allowed to become second wives and so on. This inconsistency shows the stereotype imposed on female civil servants that she is not a good woman and will not be able to manage her home life. In contrast to male civil servants, even though they have more than one wife, they are considered capable of solving all their problems. The role of men as breadwinners and wives as non-breadwinners is legitimized by dividing the husband's salary between his wives.

4.4 THE VALIDITY OF MARRIAGE VERSUS INTERFAITH MARRIAGE

Whether or not a marriage is valid according to Law no. 1 of 1974 Marriage is measured by the provisions of the religion and beliefs of each person wishing to enter into a marriage, so that every marriage carried out contrary to the requirements of religious law and belief is automatically invalid and has no legal consequences. Minister of Religion Alamsyah Ratu Prawiranegara, in his letter to the Governors of Level I Regional Heads throughout Indonesia dated 18 October 1978, number B.IV/11251, stated, among other things:

"In the Republic of Indonesia, which is based on Pancasila, there are no procedures for marriage, oaths, and burials according to the sect of belief, and it is also unknown to mention "belief" as "religion" either on the identity card (KTP) or so on. Religious people/followers of religions who follow religious beliefs do not lose the religion they adhere to, there are no procedures for "marriage" according to religious beliefs and "oaths according to religious beliefs."

The meaning of religion and belief are connected with the words and. The word and as a connecting word is an equivalent teaching unit, which belongs to the same type and has no different functions. By referring to the meaning of the conjunction, the belief system should receive recognition. The flow of belief is a human self-disclosure into material regarding the belief in the existence of a super-sensory power, which also has its belief system; the validity of marriages for adherents of religious beliefs should still be recognized before the law. The position of Confucianism in Indonesia is based on Law No.1 PnPs of 1965, concerning the Prevention of Abuse and Blasphemy of Religion; Article 1 determines that Confucianism is one of the religions in Indonesia.

R. Soetojo Prawirohamidjojo said Article 2 paragraph (2) is an administrative action. Ordinary people consider marriage registration essential for a marriage's validity. Marriage registration is not a condition that determines the validity of marriage because all marriages in Indonesia are considered valid if religious and belief laws state that they are correct (ASSAIDI
Marriage registration plays a decisive role because registration is a condition for whether or not a marriage is recognized by the state, which has consequences for those concerned.

Marriages due to different religions are not explicitly regulated, giving rise to various legal interpretations, such as closing marriages to people of other faiths, or there is a legal vacuum, or based on the closing provisions, the legal basis regarding Mixed Marriage Regulations S. of 1898 No. 158. What is regulated in the law is only the definition of mixed marriage due to different nationalities. The validity of marriages for people of other religions is essential for legal certainty because it is related to the legal consequences of a marriage. Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law strictly prohibits a man from marrying a woman who is not Muslim and vice versa (Articles 40 and 44).

4.5 RIGHTS AND OBLIGATIONS OF HUSBAND AND WIFE

Law No.1 of 1974 strictly differentiates the roles between husband and wife. The husband is the head of the family, providing support and protection to the wife. The wife is a good housewife; she cares for and educates the children and serves her husband. There is a clear distinction between public and private; wives are forced to make sacrifices to give birth to children according to the purpose of marriage to achieve noble goals. Even if the wife works in the public sector, the obligations as a housewife are still borne by the wife, so the wife has a double burden while the husband does not (Widyastari & Isarabhakdi, 2016). If the wife works and the household is destroyed, the blame lies on the wife because the wife is not a good housewife. Even in the provisions of the Civil Code/BWisteri, as a good housewife, she must also obey her husband's words, live with her husband in the house, and follow her husband. The wife's citizenship follows that of the husband. The wife does not have legal authority but requires legal assistance from the husband, which gives the husband the right to manage the wife's assets. Even if the wife goes to Court, she must get help from her husband, the husband as head of the family has marital power over the wife (Abubakar, 2019).

Strict differences, such as in Law No. 1 of 1974 and the Civil Code/BW, also exist in Islamic, Hindu, Buddhist, and customary law and Protestant Christian marriage law. In Catholic marriage law, it can be seen that the development of equal rights between husband and wife in marriage, namely the mutual acceptance of oneself and one's partner, including educating children, is a reciprocal obligation.
4.6 CONSEQUENCES OF NEGLECTING OBLIGATIONS

About the rights and obligations of husband and wife in Islamic, Hindu, Buddhist, Protestant, Christian, and Catholic marriage law, if one party neglects their respective duties, then each party can file a lawsuit in Court; the wife, in this case, does not have a strong position, because the fault lies with the wife, the reason that makes a wife helpless is if she is not a good housewife, does not respect, does not obey and submit to her husband. The measurement of a disobedient wife who does not follow or is not a good wife is subjective. This is the reason that husbands use to commit polygamy or divorce their wives in Court.

4.7 MARRIAGE AGREEMENT

In Law No.1 of 1974, Islamic marriage law, especially in the Compilation of Islamic Law, also in the Civil Code/BW. There is a marriage agreement, but it only concerns assets. The marriage agreement in Protestant Christian marriage law differentiates the roles between husband and wife because the equality of husband and wife carries the consequences of different duties and roles. The marriage agreement in Catholic marriage law is not an agreement regarding the roles, rights, and obligations of husband and wife. Instead, it emphasizes an agreement of a religious nature, a sacred contract that marriage is a sacrament. Hindu and Buddhist marriage laws do not regulate marriage agreements.

4.8 THE PRINCIPLE OF MAKING DIVORCE DIFFICULT

The division of roles based on gender differences in marriage law cannot be separated from the issue of the rights and obligations of husband and wife, which clearly distinguishes the roles of each party. If one party neglects its duties, the injured party can file a lawsuit in Court. The judge's legal considerations did not use religious law. Still, they used the legal basis for reasons for divorce, as explained in Article 39 of Law No. 1 of 1974 and Article 19 of PP No. 9 of 1975. The legal reasons for divorce are alternative but must still be proven by the reasons for the event.
4.9 ESCAPE CLAUSE

Several articles in Law No. 1 of 1974 contain a release clause, meaning that it initially binds each person to enter into a marriage but then rereleases it according to their respective religious laws:

a. Article 6 concerning marriage conditions. This article applies as long as the laws of each religion and belief do not determine otherwise.

b. Article 8 regarding marriage is prohibited due to blood relations, marriage, marriage the wives are blood-related in polygamy. This article also applies if you have a relationship where marriage is not permitted by religion or other applicable regulations.

c. Article 10 concerning the prohibition of second marriages for ex-husbands and wives if they have been divorced twice, as long as the laws of each respective religion and belief of the person concerned do not determine otherwise.

d. Article 37, concerning the distribution of joint assets due to divorce, is regulated according to each respective law.

e. Article 66 of the closing provisions stipulates that, for marriage and everything related to marriage with the enactment of the Marriage Law, it is declared invalid to the extent that it is regulated in the Marriage Law.

4.10 LAW NO.1 OF 1974 IS PATRIARCHAL AND DETRIMENTAL TO WOMEN AS WIVES.

The entire contents of Law No. 1 of 1974 are patriarchal and detrimental to the wife, starting from the provisions regarding differences in roles regarding the position of husband and wife, resulting in a choice for the wife between being married and divorced if the goals of the marriage are not achieved. In practice, most divorce decisions lie with the wife because she is not a good wife.

Divorce for a wife who does not work will result in a more challenging choice economically because previously, the wife was very financially dependent on her husband. The wife is disadvantaged because, when deciding whether to divorce, the husband sometimes distorts the facts. The wife will have difficulty finding work after the divorce, especially since the child's custody rights rest with the wife. Most judges decide that child custody rights rest with the wife in such conditions. This will increasingly burden the wife's burden of caring for and educating children; not every judge's divorce decision imposes child support obligations on
the husband; some must be filed in a separate lawsuit. The economic impact of divorce is manageable because they are not entirely dependent on their husbands for working wives. Children have the right to care for life, growth and development, protection, and participation, even though their parents are divorced. Neglect of children is a crime.

5 CONCLUSION

Law No. 1 of 1974’s legal history of marriage illustrates its attempt to establish foundational principles within the framework of unifying Indonesian marriage law. Yet, it retains a degree of autonomy in addressing specific legal circumstances. The genesis of this law reflects a significant influence from particular interest groups, particularly with a dominant presence of religious elements. Despite its intended objectives, the implementation of Law No. 1 of 1974 gives rise to various legal challenges, notably concerning gender disparities, the juxtaposition of monogamy and polygamy principles, the recognition of interfaith marriages, and the delineation of spousal rights and obligations. Issues surrounding the consequences of neglecting marital duties, the stringent process for divorce, and the inherent gender bias within the law pose significant disadvantages, particularly for women as wives, highlighting its predominantly male-centric nature. While Law No. 1 of 1974 strives to regulate marriages in Indonesia, it underscores the need for ongoing reform efforts to address these legal complexities and ensure more significant equity within the institution of marriage.

REFERENCES


