

Implementasi dualisme pencatatan perkawinan dalam perspektif jaminan konstitusional perlindungan hak sipil = Implementation of dualism on marriage registration on the perspective of constitutional guarantee on the protection of civil rights / R. Rachmat Hendrawan Akbary

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Abstrak

ABSTRAK

Dua unsur pokok dalam perkawinan di Indonesia adalah keabsahan perkawinan yang penilaiannya didasarkan hukum agama dan kepercayaan, serta pencatatan perkawinan, sebagai proses administratif pengenalan negara terhadap perkawinan sah tersebut. Ketentuan perundang-undang yang berlaku mengatur adanya perbedaan pencatatan perkawinan bagi pemeluk agama Islam dan selain Islam. Perbedaan dimaksud bukan hanya pada perbedaan lembaga pencatatan perkawinan, mekanisme proses dan bukti formal pengenalan negara atas suatu perkawinan sah, namun secara filosofis terletak pada perbedaan pilihan keterlibatan negara dalam memastikan tegaknya hukum agama pada konteks perkawinan. Penulis meninjau sejauh mana dualisme pencatatan perkawinan ini diciptakan dan diimplementasikan dalam rangka usaha negara memberikan jaminan konstitusional perlindungan hak sipil. Penelitian ini menggunakan metode yuridis-normatif, mengacu pada norma-norma hukum yang tertuang dalam peraturan perundang-undangan dan doktrin. Data yang digunakan adalah data sekunder berupa bahan kepustakaan, dengan dilengkapi bahan primer yang didapat dari hasil wawancara dengan beberapa narasumber. Kesimpulan yang diperoleh berdasarkan analisis teoritis atas fakta lapangan yang ditemukan adalah bahwa dualisme pencatatan perkawinan lahir berdasarkan tiga alasan fundamental, yaitu perbedaan filosofi perkawinan Islam dan selain Islam, latar belakang politik hukum yang mendorong lahirnya regulasi bercorak Keislaman dan karakteristik Keislaman pada bangsa Indonesia. Dengan demikian dualisme pencatatan perkawinan justru hadir sebagai bentuk peran negara memberikan jaminan perlindungan hak sipil secara adil dan maksimal bagi seluruh penduduk dan warganegara. Namun Implementasi dualisme pencatatan memunculkan dampakdampak negatif yang kemudian menimbulkan kesan ketidaksetaraan, sehingga implementasi dualisme pencatatan perkawinan belum sepenuhnya mewujudkan komitmen negara atas jaminan konstitusional perlindungan hak sipil

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ABSTRACT

Two principal elements of marriage in Indonesia are the validity of marriage based on the law of each religion and belief, and the registration of marriage as an administrative process for such marriage to be recognized by the government. The prevailing laws regulate differently between the registration of marriage for Moslem and non-Moslem. The distinctions are more than just difference in registry institutions, the mechanism and process for marriage and marriage registration and also the formal documents of state recognition of such marriage, but the philosophical difference lie in the different choice of state involvement to ensure the upright of religion laws on marriage. The Author observed and studied how this dualism were created and implemented as part of state responsibility to ensure the protection of

civil rights. This study was conducted with a juridicalnormative method, where the research refers to norms which are stated on positive law and/or doctrine. The data used are secondary data from the literature, and also supported with primary data obtained from interviews with several sources. In conclusion based on a theoretical analysis of the field facts, dualism of marriage registration were created based on three fundamental reasons, which is the philosophical difference between Muslim and non-Muslim marriage, law politics background that encourage the creation of regulation with Islamic pattern and also the Islamic characteristic of Indonesian. Therefore the dualism of marriage registration is precisely a form of state role to ensure the protection of civil rights for all citizens and residents. However, the implementation of such dualism leads to some negative impacts which then create the impression of inequality, thus the implementation of dualism of marriage registration has not completely materialize the state commitment to ensure the constitutional protection of civil rights.