

## Government Efforts In The Renewal Of Marriage Administration Law (An Analysis Of Euis Nurlaelawati's Views)

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### Abstrak

Marriage registration is one of the legal products issued by the government as an effort to respond to reforms in Islamic law, especially in the field of Islamic Family Law. This update has given rise to debate among experts and the public regarding the interpretation of the marriage registration regulations themselves. This debate ultimately has implications for the order of practice that occurs among society. Regarding the discourse regarding the interpretation of registration regulations, Euis Nurlaelawati has an understanding of thought patterns starting from aspects of interpreting marriage registration regulations as well as sociological aspects that occur in society. This research is operational by carrying out field research which explores information on the expert's understanding (Euis Nurlaelawati) regarding the issue of marriage registration, both the results of Euis Nurlaelawati's views expressed in book or journal form as well as conducting direct interviews with Euis Nurlaelawati. Researchers in analyzing Euis Nurlaelawati's views use progressive legal theory as a method in the legal sociology approach. The results of this research are that in Euis Nurlaelawati's view it falls into the category of progressive legal perspective. This can be seen when Euis Nurlaelawati, in understanding marriage registration regulations, does not only look at the text contained in the legislation but also looks at aspects that occur in upper society.

**Keywords : Government Efforts; Marriage Registration ; Euis Nurlaelawati ; Progressive Law.**

### INTRODUCTION

One of the methods in Islamic law reform is the siyasah Syar'iyah method. The siyasah syar'iyah method is a method of legal reform by means of the policy of the ruler (government) by issuing a legal product as a regulation for the benefit of the people and the legal product does not conflict with shari'ah. (Nasution, 2007).

Many issues are the renewal of Islamic law and one of the issues is related to the administrative law of marriage, namely marriage registration. The reason for the renewal of Islamic law is none other than to fulfill the interests of humans themselves. In the context of a government, the renewal of Islamic law, especially in relation to marriage administration, really needs to be done with the aim of orderly marriage administration. It is in the interest of the

government for the orderly administration of marriage that there is a necessity for the renewal of Islamic law.

The issue of studying the reform of marriage administration law begins with a discussion of the legal pillars of marriage. In the scientific treasury of Islamic law (fiqh) in discussing the legal pillars of marriage, it has not been found explicitly in classical Islamic fiqh books related to marriage registration as one of the legal pillars of marriage. In the view of the expert (Khairuddin Nasution), the scientific understanding that is still related to the issue of marriage registration in classical Islamic fiqh books is related to the issue of the presence of witnesses and the function of witnesses in marriage. (Nasution, 2009).

The study of the issue of the existence of witnesses and the function of testimony in marriage among classical scholars there are different views. According to Imam Hanafiyah as quoted by al- Sarakhsi, the presence of witnesses in marriage must be present because it is a pillar of marriage. Another case according to Imam Malik Imam, Ibn Abi Laila and Uthman al-Bata as also quoted by al- Sarakhsi states that the presence of witnesses does not have to be present in marriage because witnesses are not a pillar of marriage and what is a pillar of marriage is the announcement of marriage. (Nasution, 2009).

Another case with the opinion of Imam Malik and Imam Abu Hanifah as quoted by al-Kasani states that the presence of witnesses is part of the conditions for the validity of marriage, the function of marriage itself serves to avoid accusations of adultery and avoid slander in the community. (Nasution, 2013).

Regarding the issue of the pillars of marriage in Islamic fiqh, the scholars have formulated the things that are included in the category of pillars of marriage. As the opinion of Imam Mâliki as quoted by al- Girnati al- Maliki states that the pillars of marriage are the ijab Kabul shigot, husband, wife and dowry. According to the Shafi'i school of thought as quoted by al-Nawawi states that the pillars of marriage are the prospective man and the prospective woman, the shigot of Ijab Kabul, witnesses and two people doing the contract. Meanwhile, according to the Hanbali school of thought, as quoted by Ibn Qudamah, which states that the pillars of marriage are the prospective male and female partners, guardians, witnesses and contracts. (Nasution, 2013).

Considering the pillars of Islamic marriage formulated by the scholars as described above shows that the issue of marriage registration is not explicitly written in classical fiqh. For the absence of this discussion, this confirms that the issue of marriage registration is included in the category of renewal of Islamic marriage administration law. Because the issue of marriage registration is one of the reforms of Islamic law and one of the methods of reform is the siyasah syar'iyah method. So the government issued legislative regulations as an effort by the government to make policies on the renewal of marriage administration law.

The regulations governing the issue of marriage registration are contained in article 2 paragraph (2) of Law No. 1 of 1974 concerning Marriage. For Indonesian people who are Muslims, the regulation of marriage registration is found in articles 5 and 6 of the Compilation of Islamic Law and this compilation has become material law in the Religious Courts. (Kompilasi Hukum Islam, n.d).

The regulation of marriage registration as a form of government effort in making legislative policies on the renewal of marriage administration law, it turns out that in its dynamic development, it has experienced a difference among experts in understanding the interpretation of legislative regulations related to marriage registration. The difference between experts lies in the interpretation of the legal understanding of marriage registration that determines whether a marriage is valid or not. Here there are several groups, namely the first group that states that marriage registration is a pillar of marriage and the second group states that marriage registration is not a pillar of marriage.

The first group that states that marriage registration is a determinant of the validity of marriage in this case is represented by Siti Musdah Mulia. According to Siti Musdah Mulia, marriage registration is included in the pillars of marriage. In contrast to the second group represented by Neng Djubaidah, it states that marriage registration is not a pillar of marriage. (Djubaidah, 2010).

Not only experts such as Neng Djubaidah and Siti Musdah Mulia have views on understanding the issue of marriage registration regulations. There is also one expert in the field of Islamic Family Law, namely Euis Nurlaelawati. According to Euis Nurlaelawati, Article 2 paragraph (1) and paragraph (2) of Law No. 1 of 1974 concerning Marriage creates an attitude that has legal dualism and ambiguity in its interpretation. This will have an impact on the law among the community. (Alimin dan E. Nurlaelawati, 2013).

Based on the problems described above, in this study the researchers will describe the laws and regulations related to marriage registration as a form of government efforts in making policies on administrative law reform. Then explain Euis Nurlaelawati's views on marriage registration and after that the researcher will analyze Euis Nurlaelawati's views based on a progressive legal perspective.

## **METHOD**

The type of research used in this research is field research. (Zubair, 1990). The research process is to examine the work of Euis Nurlaelawati's book or writing. The work in question is a book entitled portrait of Islamic civil administration in Indonesia, the role of PA and KUA in resolving family law issues and an article entitled first marriage without registration: isbat nikah a solution? In addition to examining the works of Euis Nurlaelawati, researchers also conducted direct interviews to obtain and complement primary data on the issue of marriage registration. besides that, researchers also took other works related to the issue of marriage registration as supporting data. The nature of this research is descriptive analytic. (Ali, 2010). The method is to analyze and explain Euis Nurlaelawati's views regarding the issue of marriage registration and this research is included in the category of qualitative research. The approach used in this research is to use a sociological approach. (Ali, 2010).

## **RESEARCH RESULTS**

### **Progressive Legal Theory**

The theoretical framework used by this research as a research analysis knife is the progressive legal theory of Prof. Dr. Satjipto Rahardjo, S.H to analyze Euis Nurlaelawati's views on marriage registration with a progressive legal approach. The presence of progressive legal theory is none other than the goal of making humans more orderly, bringing peace and prosperity. Because in his view, progressive law is that the law is for humans, not vice versa humans for the law. (Rahardjo, 2010).

The background that causes the emergence of progressive law in Indonesia is none other than the concern of the way of law that is always positivistic. The state of this positivistic way of law causes the way of law to only always see the law from the aspect of legislation but see the dynamism of the laws and regulations. (Rahardjo, 2010).

Progressive law in Satjipto Rahardjo's view has several characteristics, namely that law is a liberating teaching, progressive law believes that legal institutions are always dynamic, the law is not only the regulatory aspect but the law also has behavioral aspects, the law is a teaching of humanity and justice. (Mukhidin, 2014).

## DISCUSSION

### **The Issuance Of Marriage Registration Regulations As A Government Effort To Reform Marriage Administration Law**

The regulation of marriage registration is the result of legal products issued by the government through the method of legal reform using the *siyasah syar'iyah* method. The *siyasah syar'iyah* method is a method of legal reform by means of the policy of the ruler (government) by issuing a legal product as a regulation for the benefit of the people and the legal product does not conflict with *shari'ah*. (Nasution, 2007).

The birth of the marriage registration regulation is an effort made by the government in responding to the issue of reforming marriage administration law. The objectives of the issuance of marriage registration regulations carried out by the government include:

- A. In order to order the administration of a marriage
- B. In order to guarantee the acquisition of certain rights (such as obtaining a birth certificate, making an identity card, making a family card, and others
- C. In order to provide a form of protection of marital status
- D. In order to provide certainty and protection of certain marital rights such as inheritance rights, the right to obtain a birth certificate and others. In order to provide certainty and protection of certain marital rights such as inheritance rights, the right to obtain birth certificates and others.
- E. Provide certainty about the legal status of husbands, wives and children.

Considering the important purpose of a marriage registration in marriage is none other than the government's efforts so that people can feel the benefits and justice in every marriage. (Usman, 2017).

The regulations governing marriage registration are contained in Article 2 paragraph (1) and paragraph (2) of Law No. 1 of 1974 concerning Marriage which reads:

- 1) Marriage is valid, if it is carried out according to the laws of each religion and belief.
- 2) Every marriage is recorded according to the applicable laws and regulations.

This article is the result of legal products from the government's efforts to reform marriage administration law. Another regulation specifically for the Indonesian people who are Muslims was the Compilation of Islamic Law. Related to the regulation of marriage registration is found in articles 5 and 6 of the Compilation of Islamic Law which reads:

#### Article 5

- 1) In order to ensure order for the islamic community, every marriage must be recorded.
- 2) The registration of marriage as referred to in paragraph (1) shall be carried out by a marriage registration officer as provided for in law no. 22 of 1946 in conjunction with law no. 32 of 1954.

#### Article 6

- 1) To fulfill the provisions of article 5, every marriage shall be solemnized in the presence of and under the supervision of a marriage registration officer.
- 2) A marriage performed outside the supervision of a marriage registration officer shall have no legal force.

### **The Issue Of Marriage Registration In The View Of Euis Nurlaelawati**

Euis Nurlaelawati in expressing her views on the issue of marriage registration begins with the discourse in the interpretation of Law No. 1 of 1974 concerning Marriage Article 2 paragraph (1) and paragraph (2). The discourse of interpretation controversy lies in the way of interpreting article 2 paragraph (1) and paragraph (2) by interpreting partially between article 2 paragraph

(1) and paragraph (2) of Law No. 1 of 1974 concerning Marriage and there are also those who interpret intergal between article 2 paragraph (1) and paragraph (2) of Law No. 1 of 1974 concerning Marriage. As a result of this interpretation, it will have implications for the understanding of whether marriage registration determines the validity of a marriage or not, in other terms, whether marriage registration is included in the pillars of marriage or not. (Usman, 2017).

According to Euis Nurlaelawati, Article 2 paragraph (1) and paragraph (2) of Law No. 1 of 1974 concerning Marriage creates an attitude that has legal dualism and creates ambiguity in its interpretation. This will have an impact on legal practice among the community. (Alimin dan E. Nurlaelawati, 2013).

According to Euis Nurlaelawati, the cause of legal dualism and ambiguity in interpretation is none other than the inability of the state to carry out its role to take over the religious authority whose truth has been declared by classical scholars in terms of understanding related to the pillars and conditions of marriage. departing from the inability to take over the role of religious authority, according to Euis Nurlaelawati, the current marriage registration regulation product is the product of a compromise between traditionalists and modernists. ( E. Nurlaelawati, 2013).

Euis Nurlaelawati said that even though there is legal dulism in the editorial regulation of marriage registration as contained in the Compilation of Islamic Law, it has provided legal clarity that a person's marriage must be recorded and the state has a role here to find out the legal activities of the community whether or not the marriage was held. (Direct Interview with Euis Nurlaelawati Via WhatsApp, September 22, 2020).

Euis Nurlaelawati continued in her view that the ambiguity in interpretation and legal dualisms that occur in the regulation of marriage registration can be observed in the regulation of marriage registration itself. The rules of marriage registration referred to by Euis Nurlaelawati are the Compilation of Islamic Law (KHI) Articles 5 and 6. Euis Nurlaelawati said that in articles 5 and 6 there is no firmness for unrecorded marriages and only emphasizes that unrecorded marriages will have no legal force on the marriage. (E. Nurlaelawati, 2013).

According to Euis Nurlaelawati, the regulations in articles 5 and 6 of the Compilation of Islamic Law clearly lead to an understanding to distinguish between the legality of marriage that must be recorded and the validity of marriage and not consider a person's marriage invalid even though the marriage is not recorded. In this case, according to Euis Nurlaelawati, when she understands that the regulation of marriage registration, both in article 2 paragraph (1) and paragraph (2) of Law No. 1 of 1974 concerning Marriage and articles 5 and 6 of the Compilation of Islamic Law (KHI), seems to want to state that a marriage is valid if it is carried out according to religious provisions and does not regulate the necessity of marriage registration. Thus, it is very natural, according to Euis Nurlaelawati, that the regulation of marriage registration applies double validity. (E. Nurlaelwati, 2013).

For the differences in legal dualism that occur among the community, according to Euis Nurlaelawati, legal dualism is unavoidable due to the diverse socio-culture of Indonesian society and Indonesia is not an Islamic country and neither is it a secular country, so another thing that can be done for the practice of legal dualism that occurs in the community is to provide sanctions for violators if the regulation of marriage registration is not changed to emphasize marriage registration as a pillar of marriage. According to Euis Nurlaelawati, this sanction is not aimed at criminalizing civil law actions but rather providing administrative sanctions for violators. (Interview directly via WhatAPP, September 22, 2020).

Apart from the debate between experts from a theoretical understanding related to the regulation of marriage registration, according to Euis Nurlaelawati, in the aspect of legal practice in the community, they have also ignored the provisions of marriage registration. this happens because of the community's understanding that marriage registration is only administrative in

nature, not determining whether a marriage is valid or not. (Interview directly via WhatAPP, September 22, 2020).

Based on the data found by Euis Nurlaelawati to confirm the understanding of the issue of marriage registration both understood by the Religious Affairs Office (KUA) institution and community leaders, there has been a contestation of authority. The contestation is that from the institution of the Religious Affairs Office (KUA) the authority to register marriages and attend marriages is the Religious Affairs Office (KUA). Meanwhile, according to community leaders, the authority to marry and attend marriages is the authority of religious leaders because religious leaders are considered to understand and be competent in the field of religion. ( Alimin dan E. Nurlaelawati, 2013).

Euis Nurlaelawati obtained data on the occurrence of this authority contestation when conducting research with her colleague named Alimin. Her research was conducted in West Java, namely in Bogor district, precisely in the Leweliang Religious Affairs Office and the Depok city Religious Affairs Office. ( Alimin dan E. Nurlaelawati, 2013).

### **Euis Nurlaelawati In Her View Progressive Law On The Issue Of Marriage Registration**

As described above in terms of Euis Nurlaelawati's view in understanding the regulation of marriage registration, based on the results of the compiler's research found that in her view Euis Nurlaelawati is included in the category of a progressive legal view. This is stated so, because when Euis Nurlaelawati sees the regulation of marriage registration, she does not only see the textual regulations listed in article 2 paragraph (1) and paragraph (2) of the Marriage Law and articles 5 and 6 of the Compilation of Islamic Law (KHI) but also sees the deep meaning of the regulation of marriage registration in the aspect of legal practice that occurs in the community.

This deep meaning lies in the way Euis Nurlaelawati interprets the marriage registration regulations by not being trapped in the text in the marriage registration regulations but also looking at the marriage registration regulations with the legal practices carried out by the local community to see whether the marriage registration regulations have succeeded in realizing the legal objectives of welfare, justice, benefit and happiness.

This is in accordance with the concept of progressive legal theory which states that when looking at a legislative regulation, do not be trapped in the logic of the regulations contained in the legislation, but also look at other aspects such as aspects of social interests in society, namely to achieve the goals of progressive law, namely the establishment of justice, welfare and happiness. (Rahardjo, 2010).

Because the goal of progressive law itself is to uphold justice, welfare and happiness, the characteristics of progressive law in reading a legislative regulation do not think that the law only talks about logic and regulations, but progressive law in reading the law must always be in the process of becoming (law in the making) and reject the status quo in order to realize the ideal goals of progressive law, namely the establishment of justice, welfare and happiness. (Rahardjo, 2010).

As for the nature of progressive law, what is meant by always being is that the law must always look for legal ideals that are concerned with the greater interests of humans because the law does not exist for individuals but for the benefit of more and wider benefits. If there is a problem in the realm of law, then the regulation should be improved, not forcing humans to follow the regulation pattern. (Rahardjo, 2010).

In addition to progressive law always wanting to be better, progressive law also rejects an understanding that always maintains the status quo. This means that progressive law wants the law to be free from the status quo but what is prioritized is the mission of extracting meaning towards the creation of justice, welfare and peace. (Rahardjo, 2010).

In terms of the application of progressive law in Indonesia, there are several stages that we must do, starting from the stage of learning law on campus to law enforcement as legal practice in society. At the stage of studying law in the law faculty, the paradigm of legal thinking that must be taught by lecturers in class is progressive law. The implementation of teaching about law by lecturers who think progressive law will affect the next stage, namely at the stage of law enforcement in the community will have progressive legal nuances. (Rahardjo, 2010). Based on the explanation of progressive law above, in the context of Euis Nurlaelawati's views on marriage administration law, according to researchers, the logic of Euis Nurlaelawati's thinking is the logic of progressive legal thinking in civil law.

Progressive law in Euis Nurlaelawati's view regarding the regulation of marriage registration can be seen from the perspective of Euis Nurlaelawati's understanding when understanding the regulations contained in the marriage registration regulations listed in article 2 paragraph (1) and paragraph (2) of Law No. 1 of 1974 and articles 5 and 6 of the Compilation of Islamic Law.

There are four indicators that serve as a measure to explain that Euis Nurlaelawati's view regarding the regulation of marriage registration is a progressive legal view, namely:

#### 1. Progressive Law Believes Legal Institutions Must Be Dynamic

This can be observed in Euis Nurlaelawati's view that when understanding the regulation of marriage registration, it is not stuck in the textual but also looks at the social aspects of legal practices that occur in society. Because the way of law by looking at the Marriage Law which starts from understanding the text of the Law and then correlated with the implementation of the text of the Law shows that the way of thinking carried out by Euis Nurlaelawati is that the law is dynamic because the ultimate goal is for humans. This is the nature of progressive law that the law is for humans not the other way around. (Rahardjo, 2010).

Starting from the textual reading in the laws and regulations concerning marriage registration, when understanding the regulation of marriage registration according to Euis Nurlaelawati, there is legal dualism, this is due to differences in interpretation between article 2 paragraph (1) and article 2 paragraph (2) of Law no. 1 of 1974 concerning Marriage which relates to the understanding of interpretations that ask whether this article is interpreted partially, which means that between article 2 paragraph (1) and paragraph (2) are interpreted separately or this article is interpreted separately. 1 Year 1974 concerning Marriage which is related to the understanding of the interpretation which asks whether this article is interpreted partially, which means that article 2 paragraph (1) and paragraph (2) are interpreted separately or this article is interpreted integrally, which means that article 2 paragraph (1) and paragraph (2) are interpreted as one.. (Usman, 2017).

In addition to legal dualism in the interpretation of marriage registration regulations, according to Euis Nurlaelawati, the effect of this legal dualism is the occurrence of double validity. (Alimin dan E. Nurlaelawati, 2013). This means that on the one hand the marriage registration regulations emphasize that marriage is valid according to religion and belief. But on the other hand, the marriage registration regulations emphasize that marriages must be registered.

Based on the data found by Euis Nurlaelawati to confirm the understanding of the issue of marriage registration both understood by the Religious Affairs Office (KUA) institution and community leaders, there has been a contestation of authority. The contestation is that from the institution of the Religious Affairs Office (KUA) the authority to register marriages and attend marriages is the Religious Affairs Office (KUA). Meanwhile, according to community leaders, the authority to marry and attend marriages is the authority of religious leaders because religious leaders are considered to understand and be competent in the field of religion. ( Alimin dan E. Nurlaelawati, 2013).

This pattern of view, as carried out by Euis Nurlaelawati, shows that in her interpretation of the marriage registration regulations, she considers the laws that develop in society. Because in society changes will always occur and the law is required to be dynamic to respond to these developments.

#### 1. Law As A Teaching Of Humanity And Justice

As the pattern of thinking of Euis Nurlaelawati, who thinks dynamically by looking at the developments that have occurred in the regulation of marriage registration, is none other than the goal of the interests of the community itself so that it brings benefits to humanity and justice. This pattern of view explicitly emphasizes that Euis Nurlaelawati hopes that the regulation of marriage registration will continue to take into account human interests and uphold justice for violators of marriage registration regulations.

#### 2. Law As A Regulatory And Behavioral Aspect

As explained above, Euis Nurlaelawati in looking at the regulation of marriage registration is not trapped in the text in article 2 paragraph (1) and paragraph (2) of the Marriage Law. However, Euis Nurlaelawati sees the legal practices that occur in society. As Euis Nurlaelawati sees the legal behavior that occurs in the region, namely in Bogor district, precisely at the Leweliang Religious Affairs Office and the Depok city Religious Affairs Office. b( Alimin dan E. Nurlaelawati, 2013).

#### 3. Law As A Liberating Teaching

The pattern of Euis Nurlaelawati's view that does not want to be trapped in the text of the marriage registration regulation emphasizes that Euis Nurlaelawati rejects the status quo. This affirmation of rejecting the status quo shows that Euis Nurlaelawati's view has the spirit of liberation from a stagnant way of law towards a progressive way of law.

### CONCLUSION

That the birth of the registration regulation is the government's effort to respond to the renewal of marriage administration law with the aim of creating justice and legal certainty in a marriage. For the birth of this marriage registration regulation by Euis Nurlaelawati, it is stated that the regulation of marriage registration has double validity due to the interpretation of marriage registration which interprets partially between article 2 paragraph (1) and paragraph (2) and there are also those who interpret integrally between article 2 paragraph (1) and paragraph (2) of Law No. 1 of 1974 concerning Marriage. besides that the product of the regulation of marriage registration according to Euis Nurlaelawati is the product of a compromise on the debate between traditionalists and modernists.

That the pattern of views presented by Euis Nurlaelawati on the regulation of marriage registration which begins with understanding the text of the marriage registration regulation, then proceeds by looking at aspects of legal practice that occur among the community is a progressive pattern of legal thinking. Because progressive law does not want in understanding the law to stop at the status quo, but progressive law is always dynamic to realize that law is for humans not the other way around.

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