



Legal Dualism in Native Christian Marriage Law in The Dutch East Indies (19th–20th Centuries)

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ABSTRACT

This study analyzes the legal status of marriage among native Christians within the dualistic legal system of the Dutch East Indies during the 19th and 20th centuries. The main issue is the contestation between church law and colonial civil law, which affected the legality of native Christian marriages. The research employs a structural historical approach, utilizing colonial archival sources and church documents. The findings reveal that the Dutch colonial government implemented ambivalent policies that created structural tension between ecclesiastical and state authority. This legal dualism resulted in legal uncertainty for native Christian marriages recognized by the church but not always acknowledged by colonial civil law. The study contributes to a deeper understanding of colonial legal dynamics and their impact on indigenous communities.

Keywords: legal dualism; Christian marriage; indigenous communities; Dutch colonialism; church authority; colonial civil law

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INTRODUCTION

In the teachings of Christian and Catholic Churches, marriage holds an important position. Marriage is not merely a meeting of two spouses in a ceremonial procession attended by many people and a display of luxury and happiness, but is also considered a manifestation of God's plan that brings them together, blessed and sanctified by God himself through the church institution. In this regard, Christian faith believes that marriage is a revelation that comes from God himself and determines the life of humanity (Hadiwardoyo, 2015, p. 9). Thus, Christian or Catholic marriage values have a dual function: socio-cultural function and spiritual function, involving many parties including religious institutions that legitimize it.

Regarding the validation of marriage status, this legality is not limited to the ceremonial procession held and witnessed by many people, but must also include administrative requirements that must be fulfilled by both spouses and their families, both in church institutions and government institutions. In this case, both carry the meaning of providing legality to the new life built by the related spouses, who come from two different families (Visser, 1895, p. 3). Validation by the church, apart from its religious aspects, and formalization by civil registration as a state representative become the legal basis for legitimate Christian/Catholic marriage as well as recognition of the status,

rights, and obligations of both spouses who are now united as a new social unit: the family (Sairin & Pattiasina, 1996, pp. 55-56).

However, the presence of both institutions, Church and State, does not always have harmony in establishing the legality of such status, considering that both are based on different legal foundations. The Church is based on its religious law oriented to the scriptures as its highest legal source, while the state relies on civil law that refers to its state administrative legal sources (Schreiner, 2003, p. 68). Although there are efforts to harmonize both, it is possible that differences emerge and similarity of ideological orientation does not guarantee the denial of such differences. This can be seen in the Dutch Indies legal system that applied in Indonesia during the colonial era, with the Dutch government as the highest authority holder, which was notably a Christian nation (van Vliet, 2008, p. 109).

This paper will attempt to examine the status of marriages validated by the Church, whether Christian or Catholic, during the colonial era, to understand the adjustment or position of marriage according to the Church and automatically also the Church institution within the colonial civil law system (*Burgerlijke Recht*). From this, we will understand not only both aspects but also the problems that arise and resolution efforts by the related parties.

RESEARCH METHOD

This paper is the result of brief research based on documentary analysis as a primary source. This study is based on the consideration that the chosen theme concerns events that occurred in the past, namely when the Dutch East Indies legal system as part of the colonial structure was in effect in Indonesia. Thus, this study has a historical context although its focus or object is marriage as part of the legal system. In relation to the above, the method used is the historical research method. This method consists of four stages: heuristic (data tracking), data criticism (both external, i.e., toward the physical aspects of data, and internal toward the content of data) to find data that is truly relevant to the research, data interpretation (which consists of the analysis stage to extract facts or meaning from data, and synthesis intended to arrange facts obtained from various data), and finally reconstruction to compile the final report (Jayapalan, 2008).

In compiling the reconstruction, a methodology will be used that is relevant to the study theme. The purpose of using historical methodology is to direct the research focus and support the drawing of conclusions, so that the conclusions drawn can be objective and valid according to the problems presented. In this study, structural methodology is considered most appropriate because this methodology views structure as the focus (Lloyd, 1992). By using structural methodology, the research object, namely Christian marriage, is placed within the applicable colonial legal structure.

Related to this, as an introduction to the reconstruction of this report, the concept of marriage needs to be understood, particularly in the context of colonial law. In this case, an attempt will be made to reveal the concepts and general views in the Dutch East Indies within the temporal context of this study regarding marriage, and especially its application to marriage based on Christian teachings and carried out by institutions that prevail in Christian/Catholic Churches. Both are considered as one unified entity given that in the colonial legal system both are considered similar, namely marriage based on Christian teachings (*Christelijke Huwelijk*).

The initial general concept of marriage held by the Dutch before the 19th century is written as follows:

Dit heeft dus het oude heidendom van het huwelijk gemaakt, van dat heilig verbond tusschen man en vrouw, waaruit toch het kind moet geboren worden, als de heerlijke vrucht en de schone bekroning der edelste liefde (Linnebank, 1935, p. 22).

This has thus been made by ancient paganism about marriage, about the sacred covenant between man and woman, from which the child must be born, as the glorious fruit and beautiful crown of the noblest love.

From the above view, it can be known that Western nations from the beginning (presumably sourced from Christian scriptures) were already aware of the sacred or sacral element of the marriage process, although the main emphasis was on the biological aspect, namely offspring.

However, in its development, the above view changed, and this is evident in the following quote from the same author: "When hearts have found each other and bodies have united, there is nothing that can bring separation except death. Everything that conflicts with this is considered unfaithfulness, betrayal, adultery. Not only is he adulterous who secretly associates with another man's wife, but also he who, after abandoning his own wife, marries another" (Linnebank, 1935, p. 22). When two hearts meet and physically unite, nothing can separate them except death. Everything contrary to this is considered unfaithful, betrayal, and adultery. He who secretly associates with another man's wife is not only considered adulterous, but also he who, after leaving his wife, marries another woman.

Although the above quote primarily refers to men, a similar concept also applies to women. The second quote shows that marital relationships are no longer limited to biological aspects but encompass moral, ethical aspects, and ultimately enter the legal realm. Terms used such as opposition and several criminal terms like adultery imply that legal aspects have entered the marital relationship above.

Regarding Christian views on marriage in the past, the following quote should be noted:

"It is especially very sad that so many in our days must marry and there can be no mention of a true bridal chance. It remains a shame for the entire life when one must enter marriage as a sacrifice of one's own summer. If this is no longer a shame among many today, then this testifies to the moral decline of our generation. The destruction of many marriages is the result of unchastity before marriage" (Anon, 1896, p. 5).

It is particularly regrettable that so many marriages must occur in our days without mention of the bride's opportunity. This remains a disgrace for life when a man, as a form of self-sacrifice, must enter into a union. If there is no longer disgrace among many people nowadays, this proves the moral decline of our generation. The destruction of many marriages is the result of impurity before marriage.

The Protestant Christian view above clearly shows how marriage attains a high and important position liturgically, socially, and in faith. In this case, marriage is identified with a sacred event that affects and encompasses the life of the couple who conduct it.

The Catholic Church also has a similar view toward marriage, which is considered part of God's plan and thus receives an important position in church faith as a form of Sacrament. Therefore, the Catholic Church opposes the view expressed in the mid-19th century which states:

"The Sacrament of marriage is nothing but a side matter that can be added to the agreement and can also be separated from it; the Sacrament itself consists of nothing other than the mere marriage blessing. By virtue of natural law, the bond of marriage is not indissoluble, and in various cases, the so-called divorce can be ratified by civil authority" (Encykliëk van Zijne Heiligheid Pius IX, 1865, p. 38).

The Sacrament of Marriage is nothing other than a side issue that can add to the agreement problem and also divorce; the Sacrament itself is nothing other than a mere marriage blessing. Based on natural law, the marriage bond is not indissoluble, and in various cases, the so-called divorce can be validated by an important power.

In opposing the above view, even the Pope himself had to issue a decree to refute it. This means that for the Catholic Church, marriage is not an ordinary ritual like other rites in the human life cycle, but also becomes a sacred bond that is validated and created by God himself for the couple, so the church is obliged to participate in maintaining and determining it. From the three views above, this historical study will examine how the interaction of the three parties (state policy, church, and society) takes place within the scope of marriage according to the context of Dutch Indies civil law.

RESULTS AND DISCUSSION

Introduction: Colonial Approach to Indonesian Society

In governing its colony in the Indies, the Netherlands was not limited to political, military, administrative, and economic spheres but also conducted studies and social approaches toward the society it governed, in this case, Indonesian society. The purpose of this approach was to understand fundamentally and comprehensively the socio-cultural elements that lived and developed within each community, and this knowledge was necessary to determine appropriate and targeted policies to the fullest extent possible while avoiding social conflicts or clashes with the governed society. Therefore, the colonial approach implemented by the Dutch government toward its colonial society was based on scientific studies conducted by experts in their respective fields (Fasseur, 1993, p. 55).

Marriage Legal Systems According to Colonial Classification

This also applied to the field of marriage, which was considered an important part of the social system of every community that grew and lived in Indonesia. From scientific studies conducted on marriage systems everywhere, the Dutch colonial government established marriage based on three legal systems: matrilineal, patrilineal, and customary law (*ouderechtstelsel*). Here, attention should be paid to the following perspective:

In each of these three groups of regions, marriage naturally shows its characteristic features, differing in connection with these divergent kinship systems. The communal character of marriage solemnization, marital relations, and marriage dissolution, the circumstance that in Indonesia what is considered a private matter among us is regarded as a community affair, is naturally most evident in those regions where tribes, lineages, tribal villages, or families are still legal communities with their own leaders and rights; but even where this is no longer the case, this communal character still emerges strongly (Stibbe & de Graaf, 1919, p. 117).

In each of these three regional groups, marriage indeed displays distinctive characteristics that differ in relation to the diverse kinship systems. The communal nature of marriage validation, relationships, and dissolution the condition that prevails in Indonesia as a communal (shared) matter in our civil affairs is clearly demonstrated in regions where tribes, lineages, tribal villages, or families still constitute legal communities with their own leadership and rights; but even when this no longer occurs, this communal character still appears strong.

Non-Intervention Policy in Marriage Social Practices

The above quotation clearly shows that marriage cannot be separated from community life that still maintains communal bonds as a form of association, whether social group associations or when becoming legal associations.

Thus, the marriage process must be placed within the context of communal life involving one or several social bonds such as tribes and, furthermore, positioned within the ritual and social functions that regulate the life of each respective tribe. Therefore, the colonial government realized that it was impossible to create regulations without governing the life and existence of its citizens who were part of social associations (Burns, 2010, p. 77).

In social practices applicable to marriage, such as matchmaking, proposals, dowries, and ritual processions of respective religions related to marriage validation based on the customary values of each social association, the colonial government did not interfere and left these matters to the relevant social institutions and norms. The government would only intervene when it concerned civil matters as mentioned in the above quotation, namely when the government felt it necessary to recognize the legality of marriages conducted by anyone, whether members of customary associations or government subjects themselves (Nederlandsch onderdaan).

Similarly, when the marriage process requiring legality was conducted according to religious legal foundations that were not within the government's intervention authority according to applicable legal regulations (Staatsblad van Nederlandsch Indie, 1855), the colonial government did not interfere. For example, in marriages conducted according to provisions applicable in Islamic or Hindu religious law, the colonial government delegated authority to the institutions empowered to regulate them, although within the colonial bureaucracy there were several officials appointed and paid by the government to handle such matters in their respective religions, such as the head religious official (hoofdpenghoeloe). In such cases, the legality of marriages that took place was based on the respective religious laws that oversaw and regulated them.

First Regulation on Islamic Marriage (1895)

Although the government maintained a non-intervention policy regarding religious matters and their laws, the existence of religious officials appointed as government employees and the government's interest in controlling social life demanded and provided opportunities for the Dutch to issue regulations concerning customary marriage, particularly those involving religious aspects. This was done on September 8, 1895, when the government issued the first regulation on marriages conducted according to Islamic law, which in Article 1 stated as follows:

"Tot het sluiten van huwelijken tusschen Mohammedanen volgens de leer van den Islam en het kennismaken van verstootingen van aldus gehuwde vrouwen (talaq) zijn allen bevoegd de daartoe door het Hoofd van Gewestelijk Bestuur aangewezen personen. De aanwijzing geschied na overleg met het Inlandsch bestuur en lettende op de plaatselijke gewoonten en gebruiken. Zooveel mogelijk worden geheele categorieën van personen aangewezen, hetgeen echter, waar dit bezwaar oplevert of niet gebruikelijk is, een en ander ter beoordeeling van het Hoofd van Gewestelijk Bestuur, de aanwijzing van bepaalde personen niet uitsluit." (Staatsblad van Nederlandsch-Indië, 1895)

The Staatsblad van Nederlandsch-Indië of 1855 number 2, which was the Government Regulation of 1854 serving as the legal guideline in the Dutch East Indies that regulated all aspects of colonial life including society socially, stated: "Bij de aanwijzing worden de standplaatsen en resoorten der aangewezenen bepaald" (Staatsblad van Nederlandsch-Indië, 1895).

To validate marriages among Muslims according to Islamic teachings and notification of separation of married women (talaq), authority is only given to persons designated for that purpose by the head of regional government (resident). This designation is made after consultation with indigenous rulers (regents) and with attention to local customs and traditions. As far as possible, all categories of designated persons, but if there are objections or it is not customary, it must be left to the opinion of the head of regional government, does not exclude

the designation of specific persons. In the designation, the positions and working areas of the designated persons are determined.

In the above provisions, it is clearly evident that religious norms (in this case those governing marriage) are integrated into the government bureaucratic structure, with colonial officials (whether European or indigenous) determining them. Through the appointment of these officials, the colonial government could control the process of validation and annulment of marriages taking place among the community, particularly those practicing Islam. Although the above regulation only applied to Java and Madura outside the territories of Javanese kings in Yogyakarta and Surakarta (Vorstenlanden), this legal basis became the colonial government's access to interfere in customary law matters, in this case Islamic law, and also became the starting point for further development or expansion of such intervention.

Expansion of Regulations Outside Java (1910)

This proved true fifteen years later, along with the success of the colonial pacification (conquest) process outside Java, when the above regulation was also applied outside Java. In the regulation published on December 29, 1910, in Article 1 paragraph 1, the colonial government established among other things as follows:

"Tot het sluiten van huwelijken tusschen Mohammedanen volgens de leer van den Islam en het kennisnemen van verstootingen van Aldus gehuwde vrouwen (talaq) en van herroepingen (roedjoe) van verstootingen zijn allen bevoegd de daartoe door het Hoofd van gewestelijk bestuur aangewezen personen, die voor hunne verrichtingen van de belanghebbenden betaling mogen vorderen, waarvan het bedrag een door het Hoofd van gewestelijk bestuur vastgesteld maximum niet zal mogen overschrijden" (Staatsblad van Nederlandsch-Indië, 1910).

To validate marriages among Muslims according to Islamic teachings and notification of separation from married women (talaq) and their reunification (rujuk) from that separation, authority is only given to persons designated by the head of regional government for that purpose, who for their actions may demand payment from the parties concerned, the amount of which may not exceed the maximum limit set by the head of regional government.

According to the above provisions, there are two new elements that emerged compared to the 1895 regulation, namely that outside Java, religious officials given authority could validate the occurrence of rujuk or marriage restoration, and had the right to request wages from both spouses who were married, separated, or remarried. This means that the government gave extensive authority to Islamic religious officials, who came from lower-level clerics or people who understood Islamic law, but became part of the colonial bureaucracy.

Although with the above rules the government had extensive authority in determining the legality of marriage under Islamic law, as mentioned above, the government still respected prevailing customs. This is evident in the subsequent provisions in the same regulation as published in 1910:

"Op het Gouvernement Sumatra's Westkust en op de Residentie Tapanoeli, zij is mede van toepassing met dien verstande dat in deze gewesten door de daartoe aangewezen personen geen huwelijk mag gesloten worden zonder voorafgaande overlegging eener schriftelijke ongezegelde verklaring van het hoofd der betrokken negri, wijk of kampung, waaruit blijkt dat zich gene aan de adat ontleende bedenkingen tegen het huwelijk verzetten, op strafe eener gelijke geldboete als in de eerste aline van artikel 4 bepaald" (Staatsblad van Nederlandsch-Indië, 1910).

In the West Coast Sumatra Government region and in the Tapanuli Residency, this regulation also applies with the understanding that in these regions, no marriage may be validated by designated persons without prior

submission of a written unsealed declaration from the head of the relevant negeri, ward, or kampung, which proves that there are no objections derived from custom against the marriage, under penalty of the same fine as determined in the first paragraph of Article 4.

Based on this provision, the role of the lowest local authorities (village or hamlet heads) was still considered in customary matters. This means that considering they were outside the religious sphere, customary elements were still respected and their validity recognized by the colonial government to establish the legality of marriage and divorce.

Strengthening Indigenous Bureaucracy Role (1929)

Along with governmental reforms that took place in the third decade of the 20th century, the colonial government strengthened the position of indigenous bureaucracy. The regent as the highest indigenous government official gained a clearer role and was distinguished from European bureaucracy. The role given was to strengthen their status as leaders of indigenous society responsible for organizing and supervising the implementation of social life in various aspects (Sutherland, 1983), including marriage.

This is evident in the regulation issued by the colonial government on September 24, 1929, which among other things stated:

"Partijen die een huwelijk volgens de leer van den Islam willen sluiten, moeten zich op strafe van de in deze ordonnantie bedreigde boeten, aanmelden bij de door de overheid voor het uitoefenen van toezicht bij het sluiten van dergelijke huwelijken aangewezen huwelijksbeambten en aan die beambten kennisgeven van verstootingen van Aldus gehuwde vrouwen en van herroepingen van verstootingen. Tot het ambtelijk toezicht bij het sluiten van huwelijken volgens de leer van den Islam en het kennisnemen van verstootingen (talak) en van herroepingen (roedjoe) van verstootingen van Aldus gehuwde vrouwen zijn alleen bevoegd de daartoe door den Regent, met inachtneming van de plaatselijke gewoonten en gebruiken, aangewezen personen" (Staatsblad van Nederlandsch-Indië, 1929).

Parties wishing to conduct marriage according to Islamic teachings must report to marriage officials designated by the authorities to exercise supervision in the process of such marriages under threat of fines contained in this ordinance and notify these officials of talaq from married women and rujuk from that talaq. Those entrusted to conduct supervision in the marriage process according to Islamic law and to notify talaq and rujuk from divorce of married women are persons designated by the regent with consideration of local customs and traditions.

Court and Legal Aspects of Marriage (1931)

Besides integrating marriage issues into politics and administrative bureaucracy, in the early fourth decade of the 20th century, the colonial government also strengthened its supervision in the legal aspects of the status and position of indigenous marriage mentioned above. This is evident from the decision made by the government on November 24, 1931, as the final regulatory form in rules determining the legality of indigenous marriage, particularly for Muslims. In that regulation, among other things, the following provision was included:

"Indien onderscheidenlijk in de gevallen uit een rechterlijke uitspraak volgt, dat bij het sluiten van een huwelijk het vereischte toezicht acterwege is gebleven of dat de vereischte kennisgeving niet is gedaan, zendt de fiscaalgriffier van het betrokken landgerecht, dan wel de betrokken regentschapsrechter, een afschrift van het vonnis, dan wel een op de zaak betrekking hebbend uittreksel uit het register bedoeld in artikel 110 van het Inlandsch

Reglement, aan den betrokken huwelijksbeambte, die het daarvoor bestemde register alsnog aanvult met de unschrijving van het desbetreffend huwelijk, de verstooting of de herroeping bvan de verstooting, onder verwijzing naar de rechterlijke uitspraak waarop dit berust" (Staatsblad van Nederlandsch-Indië, 1931).

If in the respective cases it follows from a judicial decision that in making a marriage bond the required supervision was not obtained or the required notification was not made, the fiscal clerk of the relevant land court or the relevant regency judge will send a copy of the verdict or a summary related to the case from the register referred to in Article 110 of the Indigenous Regulation, to the relevant court official who fills the provided register by recording the marriage, talaq, or rujuk while referring to the legal decision that underlies it.

From the provisions above, it can be understood that the opportunity to bring marriage issues to court as legal matters is wide open, including the regent's authority to adjudicate them as a form of legal case through their own court (regentschapgerecht). As implementation guidelines for this judicial process, the government provided the following provisions:

"De ordonnantie beoogt de registratie van huwelijken gesloten volgens het voor Mohammedanen geldende recht te doen geschieden de noodige rechtzekerheid te waarborgen. De beslissing inzake echtscheidingen ten gevolge van taliq of pasha zoomede van geschillen betreffende de geldigheid van huwelijken, verstootingen en herroepingen van verstootingen behoort tot de competentie van den godsdienstigen rechter" (Governor-General of the Dutch East Indies, 1931).

This regulation intends to provide the necessary legal certainty for the registration of marriages conducted according to the law applicable to Muslims. Decisions regarding divorce as a result of talak or passa as well as disputes concerning the validity of marriages, talak, and rujuk fall under the authority of religious judges.

In accordance with the guidelines above, officials referred to as religious judges became part of the district court, directly making decisions with responsibility to the regent as the court's chief.

Mixed Marriage and Civil Administration System

In addition to forms of marriage based on Islamic legal rules and under the authority of indigenous civil and religious officials mentioned above, the colonial government also provided opportunities for mixed marriages (gemengde huwelijk). What is called mixed marriage is stipulated in the following provisions:

"Huwelijken tusschen personen die in Nederlandsch Indie aan een verschillend recht onderworpen zijn, worden gemengde huwelijken genoemd. De vrouw die een gemengd huwelijk aangaat, volgt staande huwelijk, publiek en privaatrechtelijk, den staat van haren man" (Staatsblad van Nederlandsch Indie, 1898).

Marriages between people subject to different laws in the Dutch East Indies are called mixed marriages. Women who enter into mixed marriages follow their husband's status in public and private law.

From the concept created regarding mixed marriages above, it appears that no religious elements are mentioned within it. In other words, this marriage can be called secular and therefore subject to pure legal and administrative regulations. For this purpose, the Dutch government appointed an institution authorized to validate it, called the Civil Registry (burgerlijke stand) (Staatsblad van Nederlandsch Indie, 1908).

In that regulation, the legal status was more firmly established as follows:

"De volktrekking van gemengde huwelijken heeft plaats overeenkomstig het voor den man geldend recht. Wanneer het recht, waaraan de man is onderworpen gene schriftelijke huwelijksakte vordert, is hij, door wien of te

wiens overstaan het huwelijk voltrokken wordt, overeenkomstig een door den Gouverneur Generaal nader vast te stellen model."

The implementation of mixed marriages takes place according to the law applicable to the male partner. When the law governing him does not require a written marriage certificate, the person who performs the marriage is obligated to create a certificate according to a model established by the Governor-General.

This provision became the beginning of the administrative and legal system governing the marriage process in Indonesian society within the colonial legal and administrative system, as the government thereby granted the Civil Registry authority to issue marriage certificates.

Bureaucratic Reform and Civil Registry (1930s)

However, as with the institutional structure governing Islamic marriages, bureaucratic intervention was later implemented in this civil registry in line with changes in government political policy. This occurred in the early 1930s when the Dutch East Indies experienced the impact of economic recession that required the Batavia government to strengthen government bureaucracy. In a government bureaucratic reform regulation, particularly concerning civil registry, the following provision was stipulated:

"Deze registers worden gehouden door ambtenaren van den burgerlijken stand welke betrekking, tenzij de Gouverneur Generaal daartoe bij wijze van uitzondering op deze op gene plaats een afzonderlijken of een anderen beambte aanwijze of bereids hebbe aangewezen, vervuld zal worden door de assisten residenten gevestigd buiten de afdeelingshoofplaatsen, ieder voor hun resort en overall elders door den ambtenaar of beambte die op het bureau van den resident-afdeelingshoofd het hoogst in rang is."

These registers are maintained by civil registry officials whose positions are filled by assistant residents unless the Governor-General as an exception appoints other officials stationed outside the division capitals, each for their respective areas, and elsewhere by the official or employee with the highest rank in the resident's office. Based on the explanation above, the colonial marriage administration system was part of government bureaucracy integrated into the power structure, regardless of whatever law governed it.

Christian Marriage in Colonial Law

Foundations of Christian Marriage: Biblical and Institutional Legitimacy

Besides Islam, Christianity or Catholicism had also established its position within the colonial power system, including in conducting marriages according to church law. As mentioned in the early part of this writing, marriage became an important part of the spiritual and physical life of Christians or Catholics, and the church played a crucial role in providing legality to this process. This legality not only affirmed the union of two individuals but also formed the foundation for establishing a new social unit the family and this dual function opened interactions with the colonial power and administrative systems.

According to Christian faith and teachings, the highest source of law for marriage legality is the Gospel, which contains the words of Jesus himself in the Book of Matthew 19:6: "So they are no longer two, but one flesh. Therefore, what God has joined together, let no one separate." From this, it can be understood that Christian teaching acknowledges that marriage is God's own plan and will, based on the love of both spouses and elevated to become a sacrament.

Besides the foundation of faith mentioned above, the legality of marriage in Christianity and Catholicism is sourced from Church decisions that provide God's sacrament through priests or ministers. In the process of blessing and validating marriage, these two elements unite: the element of faith and the institutional element. In the institutional element, the Church appears as an institution responsible for being a witness while simultaneously being the party that provides legal foundation by recording the marriage in its administration, with the priest as the official who validates it.

The Church-State Tension: Conflicting Views on Marriage

When this is placed within the legal system applicable in a country and the Church becomes part of it, a problem will occur when both have different views or adopt differences, both in principle and technically. One example is the fundamental basis held by the church above that a marriage cannot be divorced by humans something that could be validated by the state when civil law allows divorce (scheiding or verstooting) to occur.

From the church's side, particularly the Catholic Church, it was initially acknowledged that there were difficulties in reconciling these two views, considering that both touched the foundation of understanding the meaning of marriage. In this regard, Saint Augustine wrote as follows:

"After I have discussed and talked about this matter according to my ability, I know that the question about marriage is nevertheless very dark and complex. I also would not dare to reveal all difficulties whether in this work or in another that has been or could be explained, if I were asked to do so." (van Welie, 1946, p. 1)

To overcome the above difficulties, the Church (particularly Catholic) issued a number of regulations and codified them as part of church law that became guidelines for making decisions and policies about marriage.

Marriage as Contract: Legal Framework and Authority

From these regulations, it appears that the foundational view that gives the church as an institution entry into the legal aspects of marriage is the assumption that marriage is a contract between two humans. Through a contract involving rights and obligations, there needs to be a party that has the authority to validate it so that it is accepted in community life. This is evident from the following quote:

"Because marriage is a contract or agreement, everything that applies to the agreement as such also applies to marriage. An agreement is an act between two people, thus an act that humans perform as social beings who associate with other humans and together with others try to achieve certain goods. Therefore, marriage belongs to social life. From this fact, it follows again that the authority, which is established in society to watch over the rights and duties of humans and in the interest of all people makes laws concerning everything, can also make laws about marriage." (Bender, 1932, p. 8)

The above quote explains the position of marriage in social life outside matters of faith. With the term "authority" above, two connotations can emerge: the Church as representing the power of faith and the state as the manifestation of physical and administrative power. Both parties as institutions then have interests in ensuring the validity of marriages made, especially by the faithful: on one side, the Church becomes the vessel of their faith, while on the other side, the state becomes the vessel of social status for the couple's life.

Evolution of Legal Perspectives: From Divine Plan to Civil Relations

Thus, from the beginning, the state also gained access to authority in validating marriage, although in its legal development, differences with Church doctrine began to emerge. However, regardless of these differences, in principle, in Europe since the early centuries of the Common Era, there was consistency in recognizing marriage status that could provide legality for the existence of this process and, as a consequence, the status of spouses as a new couple in social life.

Although the state departed from a view similar to the church that marriage originates from human desire and action both showed differences. Unlike the church, which considers humans as God's creatures and marriage as God's plan, the state views humans as legal subjects who have rights and obligations, while their use in relationships with others must be regulated.

"In marriage law, we deal with humans. By persons, we understand legal subjects; every being that is authorized to have rights is a person. Every human is thus a person, but there are also persons who are not humans: these are legal entities that stand opposite to natural persons." (Kalma, 1930, p. 9)

Through the quotation above, it appears that a shift has occurred once again from marriage as a human affair toward human relationships that require legitimating institutions, and finally from these institutions, it was then brought to civil relations through their human status.

Harmonization Efforts in Early 20th Century Europe

Although there are these differences, there was also awareness at the beginning of the 20th century to find harmony between church rules and state law regarding marriage. This awareness particularly grew to overcome various problems that arose and to facilitate the marriage process that met the requirements for both to take place, as shown here:

"Naast het thans nog geldende huwelijksrecht is ook nog opgenomen het recht van staten, dat door een andere wetgeving is vervangen. Naar dit recht wordt in de verschillende staten verwezen zoodat de kennis daarvan voor den ambtenaar van den burgerlijken stand van belang kan zijn. Eveneens, omdat er in verschillende wetgevingen naar wordt verwezen, is in de verzameling opgenomen een oezicht van verschillende soorten van kerkelijk recht." (Versteegh & Septer, 1941, p. 3)

Translation: Besides the currently applicable marriage law, the law of states that has been replaced by other legislation is also still included. This law is referred to in various states so that knowledge of it is important for civil registry officials. Likewise, because it is referred to in various legislations, an overview of various types of church law is also included in the collection.

Colonial Implementation: Christian Marriage in the Dutch Indies

When this adjustment occurred in Europe, in the Dutch Indies the problem of differing views was no longer experienced, particularly regarding marriages performed by Christians. Unlike the handling of marriages according to Islamic teachings that the Dutch did not experience in Europe, marriages in Christian or Catholic churches in their colonial territories were customs brought from Europe and would become part of the colonial legal system applied in the Dutch Indies. For this purpose, the colonial government issued a number of regulations governing Christian marriages through agreements with church authorities.

Both the regulation of Christian marriages by rulers and the validation of these marriages by the Church had existed since Christianity and Catholicism spread and achieved their existence under the protection of Western rulers, both Portuguese and Dutch. For example, in the first half of the 17th century, VOC ruler Arnold de Vlaming van Oudshoorn made regulations regarding the marriage of Ambon residents that were required to be carried out according to Christian law in Protestant churches, and ministers were entrusted with the responsibility to validate them even though they were registered in VOC civil records (Knaap, 1987, p. 88).

Although there were differences in customs adhered to by various tribes that first embraced Christianity in the Indonesian archipelago, including differences in their marriage traditions, blessing by the Church as a form of legitimacy and marriage registration in civil records both under the VOC and the Dutch Indies government as the basis of their legality obscured all existing differences. As a result, marriages with different ethnic backgrounds could be performed with orientation toward one commonality, namely as Christians. This was considered easier to do thanks to the Dutch colonial government's policy toward indigenous Christians who in their legal practice were distinguished from other indigenous religious groups (Stibbe & de Graaf, 1917, p. 488; Juwono, 2023).

Legal Framework Development (1851-1861)

After the publication of the First Law of the Dutch Indies in 1854 (Regeerings Reglement) which also regulated society, indigenous Christians obtained their own status with their rights and obligations. For this purpose, their marriages were also regulated in Dutch Indies government regulations published in 1851 (Staatsblad van Nederlandsch Indië, 1851, No. 70). Among other things, this provision contained the following provisions:

"Dat voor het voltrekken van huwelijken van inlandsche christenen, overeenkomstig hetgeen voor de huwelijken van europeanen en daarmede gelijk gestelde personen bij art 52 van het burgerlijk wetboek voor Nederlandsch Indie is voorgeschreven, slechts twee afkondigingen op den tot dus vere gebruikelijken voet, zullen geschieden, instead van drie, zoo als tot nu toe heeft plaats gehad.

Dat die personen welke de huwelijken der inlandsche christenen in de Moluksche Eilanden inzegenen, gehouden zullen zijn, van alle door hen gedane inzegeningen maandelijks berigt te geven aan het europeesch plaatselijk bestuur waaronder de gehuwden behoren, welke bestuur daarvan aanteekening zal behooren te houden op de acte van aangifte."

Translation: That for the performance of marriages of indigenous Christians, in accordance with what is prescribed for marriages of Europeans and persons equated with them in article 52 of the civil code for the Dutch Indies, only two announcements shall be made on the basis customarily used thus far, instead of three as has taken place until now. That those persons who bless the marriages of indigenous Christians in the Moluccan Islands shall be obliged to report monthly all blessings they have performed to the local European government under which the married couples belong, which government shall be required to make notation thereof on the declaration deed.

In the above provisions, it is not mentioned who provides the blessing, but what is certain is that the marriage is performed by Christians and in a Christian manner. Although those who bless are obliged to inform government officials, the authority of these officials is only to register marriages and validate their deeds.

What is interesting to note is that ten years later the Dutch government issued new regulations and clarified who had the right to validate Christian marriages. This is stated in the 1861 regulation as follows (Staatsblad van Nederlandsch Indië, 1861, No. 38):

"Alle personen tot de Inlandsche christenbevolking behoorende, die onderling een wettig huwelijk eillen aangaan, zullen in persoon daarvan aangifte moeten doen aan den ambtenaar, belast met het civiel bestuur der woonplaats van eene der partijen.

De acte van huwelijks-aangifte behoorlijk zijnde opgemaakt en geteekend, zal meergenoemde ambtenaar aan de aanstaande echtgenooten een door hem onderteekend bewijs afgeven, houdende hunne namen en voornamen, mitsgaders verlof aan den leeraar of schoolmeester, daartoe bevoegd om van het voorgenomen huwelijk op twee achtereenvolgende Zondagen afkondiging van den kansel te mogen doen. De leraar of schoolmeester daartoe bevoegd tot het voltrekken van het huwelijk mogen overgaan, doch niet binnen den tijd van drie dagen na de laatste huwelijks afkondiging."

Translation: All indigenous Christian residents who wish to enter into lawful marriage must personally submit an application to the official entrusted with civil administration in the place of residence of either party. After the marriage application deed is properly prepared and signed, the official will provide signed evidence to the couple containing their names and first names, along with permission for the authorized teacher or principal to announce the marriage on two consecutive Sundays. The teacher or principal authorized for this purpose may validate the marriage, but not within three days after the last marriage announcement.

From the content of the above provision, it is clear that the government, represented by civil registration officials, does not interfere with the authority of religious institutions to validate marriages. Therefore, it is not clergy members but employees affiliated with the church, such as teachers and principals, who can validate marriages. This is certainly not a regulation made by the government but rather authority granted by the internal church.

Expansion and Clarification of Church Authority (1900-1902)

For forty years, this regulation served as the government's guideline for governing Christian marriages, with the expansion of its area of application from Maluku to the Timor region. In 1900, the government then clarified the status of the church regarding marriage by issuing a new regulation, which included the following content (Staatsblad van Nederlandsch-Indië, 1900):

"De afkondigingen hebben plaats in eene kerk van het kerkgenootschap, waartoe de beide aanstaande echtgenooten behooren. Indien beide partijen niet behooren tot een zelfde kerkgenootschap, geschieden de afkondigingen te gelijker tijd in eene kerk van het eene- en in eene kerk van de andere kerkgenootschap."

Translation: The announcement is made in a church of the church foundation where both prospective spouses belong. If both parties do not belong to the same church foundation, the announcements are made simultaneously in one church and in a church of the other foundation.

Considering that the Catholic Church does not recognize the existence of church foundations, this regulation was clearly intended for Protestant Christian marriage forms. However, the colonial government never issued marriage regulations for Catholics, so it can be assumed that civil law in Protestant Christian marriage also applied to Catholics in their churches.

Meanwhile, the strengthening of the church's position was also balanced by the strengthening of the government's position in making marriage regulations. Two years later, the strengthening of this apparatus's position was established in the following regulation:

"Het hoofd van plaatselijk bestuur is bevoegd om uit hoofde van gewichtige redenen, vrijstelling te verleen van het doen der tweede huwelijksaankondiging, zullende hij verplicht zijn om binnen acht dagen aan het Hoofd van gewestelijk bestuur toe te zenden een afschrift van het besluit van vrijstelling onder opgave der gronden, welke tot het verleen daarvan hebben geleid" (Staatsblad van Nederlandsch-Indië, 1902).

Translation: The head of local government (assistant resident) is authorized for important reasons to grant exemption from making the second marriage announcement, and he is obligated to send to the head of regional government (resident) within 8 days a copy of the exemption decision along with reporting the grounds that led to its granting.

Government Legal Intervention and Court Involvement (1904-1911)

Through the above provision, the government could control the marriage process taking place in the Church, even from the beginning, namely from the marriage announcement and the possibility of objections or obstacles being monitored by the government. In this case, along with the strengthening of European bureaucracy in the legal and governmental sector, the government used the Civil Code to regulate marriages among Christians and Catholics (Staatsblad van Nederlandsch-Indië, 1904).

Since then, the government opened opportunities for increasingly intensive legal intervention, namely by involving state court apparatus in handling marriage issues. For this purpose, in 1911, the government issued the following regulation (Staatsblad van Nederlandsch-Indië, 1911):

"Wanneer de acte van huwelijksaangifte niet heeft bestaan dan wel deze is verloren geraakt, vervalscht of verminkt, zoomede wanneer daarin dwalingen, uitlatingen of andere misslagen hebben plaats gehad, een en ander na een daartoe strekkend verzoek aan den landraad binnen wiens rechtsgebied de acte is of had behooren te worden opgemaakt welke college, na verhoor, indien daartoe gronden zijn, van belanghebbenden, uitspraak zal doen. Ten aanzien van deze uitspraak gelden de algemeene regelen omtrent het hooger beroep."

Translation: When the marriage registration deed does not exist or has been lost, falsified, or damaged, as well as when fraud, omissions, or other crimes have occurred, this condition after a request for it is brought to the court within whose legal jurisdiction the deed should have been made, which institution, after interrogation of the concerned parties if there are grounds for it, will file a lawsuit. Regarding this lawsuit, general rules about appeals apply.

Apart from the political developments that occurred in the first decade of the 20th century regarding the strengthening of government authority due to decentralization programs, the above policy marked a shift from the dominance of religious or church law toward government law in the field of marriage, including in its implementation process. Thus, the function of marriage as a spiritual ceremony began to be displaced by the juridical administrative function of government.

The Comprehensive Marriage Law of 1933: Government Dominance and Church Control

After consolidating its dominant position and influence in the field of marriage, particularly concerning Christian marriages, the government then issued the first Marriage Law for indigenous Christians that was equated with regulations in the Civil Code, thus similar to Europeans. The regulation issued on February 24, 1933, consisting of 78 articles, adopted regulations that had been made in 1861 for the Maluku Islands region and were later decided

to apply to all of the Dutch East Indies. Christian legal elements in marriage were also adopted, such as the prohibition of polygamy and polyandry.

However, government dominance in this regulation was very large, apart from deviations from church rules in the field of marriage. This dominance is evident, among other things, in the following Article 19 (Staatsblad van Nederlandsch-Indië, 1933):

"Alle personen die met elkander een huwelijk willen aangaan, moeten daarvan aangifte doen bij den ambtenaar van den burgerlijke stand of een godsdienstvoorganger, binnen wiens resort een der partijen woont. Waar in deze ordonnantie van godsdienstvoorganger wordt gesproken is daarmede bedoeld een krachtens artikel 6 van het reglement op den burgerlijken stand voor christen-inlanders door het hoofd van gewestelijk bestuur aangewezen godsdienstvoorganger."

Translation: All persons who wish to enter into marriage with each other must register with the civil registration official or a religious official within whose jurisdiction one of the parties resides. Where this ordinance speaks of a religious official, it refers to a religious official appointed by the head of regional government based on Article 6 of the regulation on civil registration for indigenous Christians.

Considering that this regulation became the Marriage Law (the last one made in the Dutch East Indies), the above provision shows the great authority and control by the government over all churches, both Christian and Catholic. Nevertheless, religious officials from churches also have the right to refuse if the facts concerning the bride and groom contradict church rules, and to submit to civil registration officials for validation (Article 22).

With the issuance of the above regulation, there appears to be a process of shift in marriage legality for indigenous Christians during the colonial era. Although there were several changes or improvements, this last regulation became the highest legal guideline for regulating marriages for Christians, both in churches and in colonial government administration.

CONCLUSION

The development of the legal status of indigenous Christian marriages became a distinctive phenomenon in Indonesian historiography, particularly in relation to the legal system of the past. What needs to be noted in this study is that there were two interconnected and applicable structures: the Church structure with all its norms and regulations, and the colonial administrative structure with all its provisions regarding marriage.

Unlike marriages conducted by Muslims or other religious communities in the Dutch East Indies, the colonial government's attitude toward Christian marriages demonstrated an interactive tendency that later transformed into domination. While initially during the VOC era, indigenous Christian marriages were strongly encouraged and left entirely to religious officials or the Church, during the Dutch East Indies government era, control was gradually implemented by government apparatus, and ultimately through legislative instruments, state dominance over the church in matters of marriage was established.

Nevertheless, it cannot be denied that government policy in this regard was closely related to their attitude and politics toward indigenous Christians, which experienced its own particular dynamics, especially since the second half of the 19th century. When in the 1854 government regulation these Christians were still classified within the indigenous group, from the early 20th century they were gradually classified as a special group occupying a position between indigenous people and Europeans based on their religion. With such status, this group received special attention from the colonial government with all its facilities.

In line with this step, the colonial government also tightened its control, albeit under the pretext of providing protection against threats from other groups. This control encompassed all aspects of life including marriage and subsequently the offspring produced from it. Therefore, it can be concluded that in this matter the colonial government had a dualistic policy toward the existence of indigenous Christian marriages.

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