

Perkawinan sesama jenis dan hak asasi manusia: penerapan prinsip equality dalam putusan kasus obergefell et.al. v. hodge, director, ohio department of health, USA serta analisis mengenai perkawinan sesama jenis di indonesia = Same sex marriage and human rights the application of the principle of equality in obergefell et.al. v. hodge, director, Ohio Department of Health, USA and the analysis of same sex marriage issue in indonesia

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Abstrak

ABSTRAK

Argumen mengenai "hak" dan "equality" banyak digunakan beberapa tahun belakangan ini dalam menuntut legalisasi perkawinan sesama jenis oleh para pendukungnya. Penerapan prinsip equality dalam tuntutan legalisasi perkawinan sesama jenis adalah berkaitan erat dengan konsep hak asasi manusia karena prinsip equality merupakan salah satu prinsip penting dalam konsep tersebut. Putusan Mahkamah Agung Amerika Serikat dalam kasus Obergefell et al. v. Hodges, Director, Ohio Department of Health merupakan putusan pengadilan yang terbaru mengenai perkawinan sesama jenis dan merupakan putusan penting yang mengubah secara radikal mengenai keabsahan perkawinan sesama jenis di Amerika Serikat dan mempunyai pengaruh besar ke Negara ndash; Negara lain. Penelitian ini menganalisis putusan Mahkamah Agung Amerika Serikat tersebut, khususnya mengenai penerapan prinsip equality. Penelitian ini juga menganalisis mengenai perkawinan sesama jenis di Indonesia, apabila ditinjau dari perspektif universalitas dan relativisme budaya dalam hukum hak asasi manusia. Disimpulkan bahwa penerapan prinsip equality dalam Putusan Mahkamah Agung Amerika Serikat tersebut secara khusus dan dalam isu perkawinan sesama jenis secara umum adalah tidak tepat. Di Indonesia, dari perspektif universalitas ndash; relativisme budaya hak asasi manusia maupun dari penerapan prinsip equality, disimpulkan bahwa perkawinan sesama jenis tidak dapat dilegalisasi.

ABSTRACT

The "rights" and "equality" arguments have been widely used in the last couple of years by the same sex marriage supporters in claiming the legalization of same sex marriage. The principle of equality in same sex marriage legalization claims is closely related with the concept of human rights on the ground that the principle of equality is considered as one of the most important principles in the said concept. The decision of the Supreme Court of the United States of America in Obergefell et al. v. Hodges, Director, Ohio Department of Health is the latest decision concerning the legalization of same sex marriage that changes radically the legality of same sex marriage in the United States and may affect other nations. This research analyzes the said Decision, specifically on the application of the principle of equality. This research also analyzes the same sex marriage issue in Indonesia from the perspective of universality and cultural relativism of human rights. The conclusion of this research is that the principle of equality in the Decision of the Supreme Court of the United States of America was not correctly applied and therefore it cannot be used in the same sex marriage claims. And in Indonesia, it can be concluded that from the

perspective of universality and cultural relativism of human rights, same sex marriage cannot be legalized.