

Komparasi Kesetaraan Hak dan Kewajiban Perdata Suami dan Istri di Indonesia dan Prancis = A Comparative Study on the Equality of Rights and Obligations of Husbands and Wives in Indonesian and French Law

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Abstrak

Hak dan Kewajiban Suami Istri merupakan bagian dari Hukum Keluarga yang mengatur apa-apa saja yang menjadi baik hak maupun kewajiban masing-masing suami atau istri dalam sebuah perkawinan menurut Hukum Perdata. Secara khusus, pengaturan mengenai hak dan kewajiban suami istri diatur dalam UU Perkawinan di Indonesia dan Code Civil di Prancis. Perbedaan-perbedaan yang ada antara hak dan kewajiban perdata suami dan istri di Indonesia dan Prancis memunculkan pertanyaan mengenai tingkat kesetaraan antara hak dan kewajiban suami istri di tiap-tiap negara dan implementasinya. Dalam skripsi ini, penulis menemukan bahwa meskipun dalam pengaturan mengenai hak dan kewajiban suami istri di Indonesia dan Prancis terdapat beberapa kesamaan dari segi substansi, namun terdapat juga perbedaan-perbedaan fundamental yang terletak pada perbedaan hak dan kewajiban pasangan dalam perkawinan berdasarkan jenis kelamin di Indonesia. Pengaturan di Indonesia secara prinsip menempatkan suami pada posisi yang lebih tinggi dalam keluarga dengan gelar "kepala keluarga" melalui Pasal 31 ayat (3) UU Perkawinan. Kewajiban perdata suami dan istri dalam perkawinan juga masih sarat dengan bias stereotip gender, dengan menyematkan kewajiban yang "maskulin" yakni melindungi dan mencari nafkah kepada suami dan kewajiban yang "feminin" yakni mengurus rumah tangga kepada istri berdasarkan Pasal 34 UU Perkawinan. Sementara itu, hak dan kewajiban perdata suami dan istri dalam perkawinan di Prancis sudah mencapai kesetaraan yang sempurna di mata hukum dengan ketiadaannya perbedaan antara hak dan kewajiban perdata suami dan istri berdasarkan jenis kelamin. Kewajiban untuk saling membantu dalam bentuk *devoir d'assistance*, kewajiban untuk berkontribusi terhadap biaya rumah tangga (*charge de marriage*), dan Kewajiban suami dan isteri untuk memberi makan, merawat dan membesarkan anak-anak mereka (*l'obligation des père et mère de nourrir, entretenir et élever leurs enfants*) sama sekali seimbang antara kedua pasangan tanpa memperhatikan jenis kelamin. Hal ini menunjukkan bahwa pengaturan hukum mengenai hak dan suami istri di Prancis lebih setara ketika dibandingkan dengan hak dan kewajiban suami istri di Indonesia.

.....The Rights and Obligations of Husband and Wife is a section of Family Law that regulates what are the rights and obligations of each husband or wife in a marriage according to Civil Law. In particular, the regulation of the rights and obligations of husband and wife is regulated in the Marriage Law in Indonesia and the Code Civil in France. The existing differences between the civil rights and obligations of husband and wife in Indonesia and France lead to questions regarding the level of equality between the rights and obligations of husband and wife in each country. In this thesis, the author finds that although there are some substantive similarities in the regulation of the rights and obligations of husband and wife in Indonesia and France, there are also fundamental differences that lie in the distinction of the rights and obligations of spouses in marriage based on gender in Indonesia. The Indonesian regulation in principle places the husband in a higher position in the family with the title "head of the family" through Article 31 paragraph (3) of the Marriage Law. The civil obligations of husbands and wives in marriage are also still laden with gender

stereotyping bias, by assigning the "masculine" obligation of protecting and earning a living to the husband and the "feminine" obligation of taking care of the household to the wife based on Article 34 of the Marriage Law. Meanwhile, the civil rights and obligations of husband and wife in marriage in France have achieved perfect equality in the eyes of the law with no distinction between the rights and civil obligations of husband and wife based on gender. The civil rights and obligations of husbands and wives in French marriage law have achieved perfect equality in the eyes of the law with no distinction between the rights and obligations of husbands and wives based on gender. The obligation to help each other in the form of *devoir d'assistance*, the obligation to contribute towards household expenses (*charge de mariage*), and the obligation of husband and wife to feed, care for and raise their children (*l'obligation des père et mère de nourrir, entretenir et élever leurs enfants*) are completely equal between the two spouses without regard to gender. This shows that the legal arrangements regarding the rights and obligations of husband and wife in France are more equal when compared to the rights and obligations of husband and wife in Indonesia.