



The Development of Indonesian Marriage Law in Jakarta Governor Regulation No. 185 of 2017

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Abstract: The Governor of DKI Jakarta regulates that any prospective bride and groom who intend to get married shall follow guidance and health checks. This policy is a condition for the implementation of marriage. The health checks carried out are not only Tetanus Toxoid vaccination, but also other health tests. If necessary, the doctor can provide a referral for further examination of medically found indications. The prospective bride and groom will then receive a marriage-worthy certificate. This certificate is one of the requirements to obtain the N1 form. This policy is significant leap taken by the Governor of DKI Jakarta. This present study concerns with the perspective of progressive law on DKI Jakarta Governor Regulation No. 185 of 2017 in the context of the development of Islamic family law in Indonesia. The study utilized library research approach with the descriptive analysis method. The primary data included the DKI Jakarta Governor Regulation No. 185 of 2017, and the secondary data were related literature. This study used the progressive legal theory and the Islamic law approach. The analysis and conclusion drawing were done deductively. The study revealed that the DKI Jakarta Governor Regulation No. 185 of 2017 is a progressive policy in preventing the transmission of infectious diseases among prospective brides and grooms, and in reducing maternal and infant mortality. This regulation shall bring goodness and benefit into domestic life, especially for

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the bridal couples and their descendants, as well as the society and nation. Further, the regulation shall give a positive impact on the development of marriage law in Indonesia.

Keyword: DKI Jakarta Governor Regulation No. 185 of 2017, Progressive Law, Pre-Marital Guidance and Health Checks

Abstrak: Pemerintah DKI Jakarta telah membuat kebijakan mengenai kewajiban setiap warga negara yang ingin menikah untuk melakukan pemeriksaan kesehatan. Ini adalah syarat pernikahan. Pemeriksaan kesehatan ini tidak hanya tentang imunisasi TT, tetapi juga mencakup tes HIV/AIDS, IMS, dan Hepatitis yang dikeluarkan oleh Puskesmas atau Rumah Sakit setempat. Surat keterangan ini disebut surat nikah, digunakan untuk mendapatkan blanko N1. Tujuan penulisan ini adalah untuk menganalisis bagaimana tinjauan mashlahah terhadap Peraturan Gubernur DKI Jakarta Nomor 185 Tahun 2017 tentang Penyuluhan dan Pemeriksaan Kesehatan Bagi Pengantin Wanita Dalam Rangka Pengembangan Hukum Keluarga Islam di Indonesia. Peraturan Gubernur DKI Jakarta ini merupakan upaya preventif, guna menutup celah untuk hal-hal yang tidak diinginkan, antara lain: mencegah penyakit menular antara calon pengantin, menghambat angka perceraian di DKI Jakarta, mencegah kekerasan dalam rumah tangga, mencegah kematian ibu dan bayi. disebabkan oleh karena faktor kesehatan, dan mencegah penyakit yang diturunkan dari orang tua ke anak. Kebijakan ini sejalan dengan tujuan syariat Islam itu sendiri atau yang disebut dengan maqāsid syarī'ah, yaitu demi hifz al-nafs (melindungi jiwa) calon pengantin dari penyakit menular, melindungi jiwa ibu hamil. wanita dan juga bayi. Hal ini memberikan keuntungan bersama, terutama bagi calon pengantin dan keturunannya sebagai generasi penerus bangsa.

Katakunci: Peraturan Gubernur DKI Jakarta No. 185 Tahun 2017, UU Progresif, Pembinaan Pra Nikah dan Pemeriksaan Kesehatan

Introduction

Marriage is defined as a physical and spiritual bond between a man and a woman as a husband and a wife with the aim of forming a happy and everlasting family (household) based on the One Almighty God.¹ The purpose of marriage shall be understood and manifested by the husband and wife so that it will become the benchmark for living their domestic life. The marriage goal is a shared commitment. Allah swt says in the following Qu'ran Surah Ar-Rum 30: 21:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ
يَتَفَكَّرُونَ - ٢١

¹ Law No. 1 of 1974 concerning Marriage

“And of His signs is that He created for you from yourselves mates that you may find tranquillity in them; and He placed between you affection and mercy. Indeed in that are signs for a people who give thought.”²

Humans in general tend to seek and find a partner in order to obtain serenity (*sakina*) from him/her. A man who marries a woman hopes that he will feel at peace with her, comfortable to love and give affection (*mawaddah wa rahmah*), and easily achieve happiness in navigating life in this world. The same goes to women who marry men, in search for peace, tranquility, and happiness with their husbands in living this complicated life.³

The DKI Jakarta government has made a policy that obliges every Jakarta resident who wants to get married to carry out a health check as one of the prerequisites for a marriage to take place. The policy is made on the ground that the government has paid attention to the reproductive health of the prospective bride and groom. Reproductive health refers to a state that shows a person’s physical, mental, and social health conditions that are related to his/her reproductive system and functions, including the absence and abnormalities that affect a person’s health.

A number of previous studies have discussed about similar pre-marital issues including: Khusni Tamrin who wrote “Premarital Check Up from the *Maqâshid Al-Syari’ah* Perspective”⁴, Khoirul Bariyyah in his writing, “The Significance of Premarital Health Checks in the Perspective of Islamic Law (A Study at KUA in Central Lampung District)”⁵, Jemi’an in his research, “Health as a Marriage Requirement (A Study of the Views of *Ulemas* of Gayo Lues-Aceh District)”⁶, Hana Ayu Aprilia in her writing, “Pre-Marriage Health Test for the Prospective Grooms at the Office of Religious Affairs (KUA) Jatirejo Mojokerto”⁷, Armia Yusuf with the title “Requirements for Health Examination in Islamic Marriages as an Effort to Ensure the Quality of Descendants”⁸, and

² Ministry of Religious Affairs of the Republic of Indonesia, *Al-Mubin*, (*Al-Qur’an dan Terjemahannya*) Jakarta: Pustaka Al-Mubin, (2013), p. 406

³ Faqihuddin Abdul Kodir, *Qira’ah Mubadalah*, Yogyakarta: IRCiSoD, 2019, p. 333

⁴ Khusni Tamrin, "Tes Kesehatan Pranikah (Premarital Check Up) Perspektif Maqâshid Al-Syari’ah", Universitas Islam Negeri Raden Intan Lampung, (2020)

⁵ Khoirul Bariyyah, "Signifikansi Pemeriksaan Kesehatan Pranikah Dalam Perspektif Hukum Islam (Studi Pada KUA Di Wilayah Kabupaten Lampung Tengah)" Institut Agama Islam Negeri (IAIN) Metro, 2019

⁶ Jemi’an, ‘Kesehatan Sebagai Syarat Pernikahan (Studi Pandangan Ulama Kabupaten Gayo Lues-Aceh)’ Universitas Islam Negeri Maulana Malik Ibrahim Malang, 2011. <<http://etheses.uin-malang.ac.id/id/eprint/7813>>.

⁷ Hana Ayu Aprilia, "Tes Kesehatan Pra Nikah Bagi Calon Mempelai Laki- Laki Di Kantor Urusan Agama (KUA) Jatirejo Mojokerto", *Jurnal Al-Hukma The Indonesian Journal of Islamic Family Law*, 7 no. 2, (2017), p. 85-110.

⁸ Armia Yusuf, "Syarat Pemeriksaan Kesehatan Dalam Perkawinan Islam Sebagai Upaya Menjamin Kualitas Keturunan", *Universitas Islam Negeri Sumatera Utara*

Erdanela Setiawati, Vitri Yuli Afni Amran and Nirmala Sari in their work, "Knowledge of Prospective Bride and Groom about Premarital Health Examination in Padang City, West Sumatra"⁹. In this study, however, the authors conducted a different issue from the aforementioned previous studies, which concerns with the consultation and health checks for prospective bridal couples who will hold marriages under the DKI Jakarta Governor Regulation No. 185 of 2017. The study posed the following question: What is the perspective of progressive law on the DKI Jakarta Governor Regulation No. 185 of 2017 in the context of the development of Islamic family law in Indonesia?

Progressive Legal Theory Study

In the *Kamus Besar Bahasa Indonesia* (Big Indonesian Dictionary), law is defined as "a regulation or custom that is officially considered binding, which is confirmed by the ruler or the government. Law can also refer to any laws and regulations, among others, to regulate the social life of the community. It can also mean benchmarks (rules, provisions) on certain events (nature, and so forth), or decisions (considerations) determined by judges (in courts); verdict"¹⁰. Progressive originates from the word "progress" which means move forward/onward in space or time. The word "progressive" means advancement; leaning towards improving the current situation (politics); tiered up.¹¹ According to Soetandyo Wignjosoebroto, the word "progressive" refers to the character of a variable that has a strong tendency to always move forward, leaving its original position. The opposite is regressive, which is the tendency to stay in the existing position (status quo).¹² Thus, linguistically, it suggests that progressive law should be able to keep up with the times, be able to respond to the changing times with all the basics within it, and be able to serve the community by relying on the morality aspect of the human resources of law enforcement itself.¹³

Satjipto Rahardjo (hereinafter Tjip), who introduced progressive law, does not provide definitions and limitations on progressive law. He allows progressive legal science to always be open and fluid so that it can capture and digest every

⁹ Vitri Yuli Afni Amran and Nirmala Sari Erdanela Setiawati, "Pengetahuan Calon Pengantin Tentang Pemeriksaan Kesehatan Pranikah Di Kota Padang, Sumatera Barat", Padang: Program Studi Kebidanan, Fakultas Vokasi Universitas Baiturrahmah Padang, 2019, *Jurnal. Kes Cehadum*, Vol. 1. no. 4 (2019) p. 1-8

¹⁰ 'No Title' <https://kbbi.web.id/hukum.html>.

¹¹ 'No Title' <https://kbbi.web.id/progresif.html>.

¹² Soetandyo Wignjosoebroto, *Prof Tjip Dan Ajaran Hukum Progresifnya; Sebuah Pengantar Ringkas, Dalam Myrna A. Safitri (Ed), Satjipto Rahardjo Dan Hukum Progresif: Urgensi Dan Kritik*, Jakarta: Huma, 2011, p. vii

¹³ Dkk I Gede A.B. Wiranata, *Mengajarkan Keteraturan Menemukan Ketidak-Teraturan, Pengantar Dalam Buku Satjipto Rahardjo, Membedah Hukum Progresif*, Jakarta: Penerbit Buku Kompas, 2008, p. ix

change that occurs and can carry out its duties to serve humans and humanity.¹⁴ The definitions of progressive law are described by Tjip's colleagues and students who are steeped in the idea of progressive law.

According to Soetandyo, the term "progressive law" is "a new legal paradigm that seeks to answer contemporary problems that cannot be solved with the old paradigm (positivism)".¹⁵ In line with the previous definition, Abu Rokhmat states that progressive law is a scientific effort that criticizes the old legal-positivistic method that causes Indonesian law unable to satisfy justice seekers.¹⁶

Suteki, Director of the Satjipto Rahardjo Institute in 2013, defines progressive law as a liberation movement because it is fluid and always anxious to seek the truth.¹⁷ Bernard L. Tanya then puts forward a concise definition of progressive law as a law with the spirit of doing the best for the community, nation, and state.¹⁸

Based on the descriptions above, progressive law can be described as a set of rules and principles that are visionary, creative, "anxious" and open for human development and progress by promoting the paradigm that law serves humans, under the basis of morality and conscience.¹⁹

Several definitions above also indicate that progressive law is essentially a law for human welfare. This statement is highly relevant if it is associated with the background of the emergence of progressive legal thought. The idea of progressive law was proposed by "Sang Begawan Hukum (The Law Master)" Satjipto Rahardjo²⁰ for the first time in 2002 through his writings in *Harian Kompas* entitled "Indonesia Needs Progressive Law Enforcement".²¹ This idea then became widely known and developed rapidly. There are at least two main aspects behind the emergence of progressive legal thought. First, Tjip's understanding of theory as ever-changing led him to think about creating a new theory. Second, Tjip's restlessness and concern about the legal conditions in this

¹⁴ Satjipto Rahardjo, *Biarkan Hukum Mengalir; Catatan Kritis Tentang Pergulatan Manusia dan Hukum*, 2008.

¹⁵ Wignjosoebroto.

¹⁶ Abu Rokhmat, 'Gagasan Hukum Progresif Perspektif Teori Masalah, Dalam Al-Manahij', *Jurnal Kajian Hukum Islam*, 7.1, 1. p.1

¹⁷ MYS, 'Menggali Karakter Hukum Progresif' <m.hukumonline.com>.

¹⁸ MYS, 'Menggali Karakter Hukum Progresif,...

¹⁹ Tiswarni, 'Hukum Progresif; Solusi Dalam Menghadapi Kebuntuan Positivistik Hukum Di Indonesia, Dalam Al-Ahkam', *Al-Ahkam, Jurnal Hukum Islam*, 1.1, p. 60.

²⁰ Abu Rokhmat, 'Gagasan Hukum Progresif Perspektif, ..., p. 3

²¹ Abu Rokhmat, 'Gagasan Hukum Progresif Perspektif, ..., p. 2

country became the foundation for him to come up with something that can overcome the legal chaos in Indonesia.²²

In order to realize the forms and practices of the laws and regulations that are still being practiced in the country, it is necessary to use tactics to challenge the status quo and progressively carry out legal leaps. These leaps and liberations are mixed into progressive legal ideas and types by changing rapidly, seeking extreme reversals both in theory and practice, and carrying out legal breakthroughs.²³ These are done to solve social problems that occur in the community so that the happiness and welfare of the community can manifest.

In legal-positivism thought,²⁴ law is conceptualized as a product of legislation. Law is a legislation produced through the national legislation process, regardless of whether the content of the law is fair or not for the community. Legal actors, in this case the legislature and the government, only serve as mouthpieces for the law.²⁵ The legal thought above has the potential to side with the interests of the elite by ignoring welfare and justice for the community.

On the other hand, progressive law has a different paradigm. The law is supposed to serve humans. Therefore, legal actors can make creative changes to existing regulations.²⁶ Legal actors in the legislative sector can improve regulations so that the regulations can bring justice and welfare to the community. Legal actors in courts can also think creatively and interpret regulations in providing justice for the people and justice seekers. Legal actors must have sensitivity to crucial issues in society. The government, both the executive and legislative, needs to be encouraged to respond and care for the interests of society at all levels.

In line with the descriptions above, Satjipto Rahardjo argues that the progressive legal philosophy is a law that liberates, appeases, and has a conscience. Further, the progressive legal philosophy is law made for humans, not humans made for law.²⁷ In other words, law is designed to serve human welfare, and not the other way around. This philosophy is clearly illustrated in a number of Tjip's writings on progressive law.

²² Satjipto Rahardjo, *58 Tahun Negara Hukum, Indonesia Negara Hukum, Proyek Yang Belum Selesai, dalam Membedah Hukum Progresif*, Jakarta: Penerbit Buku Kompas, 2008, p.52 Tiswarni. p. 58

²³ Tiswarni. p.72

²⁴ Satjipto Rahardjo, *Ilmu Hukum*. Bandung: PT Citra Aditya Bakti, 2006, p. 268

²⁵ Yanto Sufriandi, 'Penerapan Hukum Progresif Dalam Penegakan Hukum Di Tengah Krisis Demokrasi', *Jurnal Hukum*, 2.17, p. 242.

²⁶ Satjipto Rahardjo, *Hukum Progresif Sebagai Dasar Pembangunan Ilmu Hukum Indonesia, Dalam Menggagas Hukum Progresif Di Indonesia*. Semarang: Pustaka Pelajar, 2006. p.9; Sufriandi. p. 242

²⁷ Satjipto Rahardjo, *Sisi-Sisi Lain Dari Hukum Di Indonesia*, Jakarta: Penerbit Buku Kompas, 2006, p.9; Rokhmat. p.8

In terms of the characteristics of progressive law, Tjip and other proponents of progressive legal thought have provided adequate information. Satjipto Rahardjo in his book "Initiating Progressive Law in Indonesia" states that progressive law has the characteristics of being a visionary legal science, in relation to the great principles it carries.²⁸ In addition, Sutrisno mentions several characters of progressive legal thought, with the following paradigms: a) law is created for human welfare; b) legal pluralism; c) synergy between central and regional interests; d) coordination; and e) harmonization of law.²⁹ With such paradigms, the character of progressive law seems to be open. In other words, progressive law is open to receiving explanations from other sciences in interpreting the material of laws or seeking the implied meanings of a law. Furthermore, progressive law also has the characteristic that is always in progress and is not final. This law keeps trying to find the truth, in terms of the meaning of justice, certainty, order, welfare, and others related to the needs of the community.³⁰

Professor of Law of UGM Yogyakarta, Denny Indrayana, elaborates on progressive law into 13 characters, one of which is progressive law not only concerns with text, but also context. In addition, progressive law places certainty, justice, and benefit in one line. Progressive law is not limited to obeying bureaucratic procedural formalities, but also to substantive material. Progressive law has a character that firmly holds on to conscience and is not materialistic.³¹

From the aforementioned explanations, the characteristics of progressive law are as follows:

1. Progressive law is a visionary, leaping, and creative legal science.
2. Its legal theory lies on the paradigm that the law serves humans.
3. It is open, fluid, and flowing.
4. It is always restless in doing liberation and seeking.
5. It relies on morality and conscience, and not based on mere rationality.³²
6. Progressive law does not concern only on the text, but also on the context. Progressive law does not only rule on regulatory texts, but also rules on the contexts and situations that occur.
7. Progressive law puts certainty, justice, and benefit in one line.
8. Progressive law is not limited to compliance with bureaucratic procedural formalities, but also with substantive material aspects.

²⁸ Satjipto Rahardjo, *Menggagas Hukum Progresif Di Indonesia*, Semarang: Pustaka Pelajar, 2006, p.16

²⁹ Endang Sutrisno, *Bunga Rampai Hukum Dan Globalisasi*, Yogyakarta: Genta Press, 2007, p.82

³⁰ Sutrisno. p.67-68

³¹ MYS, *Mengali Karakter Hukum Progresif ...*

³² Tiswarni. p. 61-62

Here, progressive law can be described as a law that carries freedom in the way of thinking and acting out the law. Progressive law also carries its “fluid” and “flowing” nature in the context of serving humans. In relevance with this present study, a regulation that is made shall be able to provide welfare for the community. Regulations shall not be rigid in order not to lose their spirit and relevance to the times.

Legal Basis for Pre-Marriage Health Examination

Health and fertility checks, recommended by medical professionals and marriage counselors, are pre-marital preparation efforts which are implied or explicitly recommended in Islamic teachings. In fact, those who have no history or sign of diseases or genetic disorders in their family, according to Islamic law, are still recommended to undergo standard examinations, including blood and urine tests.³³ However, anything that does not meet these principles is still prohibited by the sharia. On the other hand, any efforts that can realize the principles as a whole is highly recommended by the sharia.

Health checks carried out in honesty, bravery, and objectivity by newlyweds can be in accordance with certain symptoms experienced by the prospective brides and grooms. For example, if a family member has a history of poor health, she/he should undergo a more specialized medical examination. However, if everything goes well, only standard health checks will be carried out, which consist of blood and urine tests.

The Indonesian legal basis for this matter is confirmed in the Joint Instruction of the Directorate General of Islamic Guidance and Hajj Affairs at the Ministry of Religious Affairs and the Directorate General for the Eradication of Infectious Diseases and the Health of the Residential Environment of the Ministry of Health No. 2 of 1989 concerning Tetanus Toxoid (TT) Immunization of Prospective Bride and Groom and becomes the basis for the implementation of Law No. 1 of 1974 concerning Marriage and Government Regulation No. 9 of 1975 concerning the Implementation of Law no. 1 of 1974, as well as the Presidential Instruction of the Republic of Indonesia No. 1 of 1991 concerning the Compilation of Islamic Law. This regulation orders all Heads of Regional Offices of the Ministry of Religious Affairs and Heads of Offices of the Ministry of Health in all regions in Indonesia to:

1. Instruct all structures under their authorities to conduct guidance and administer TT injections to the prospective brides and grooms who are about to get married. The implementation refers to the existing guidelines;

³³ BP 4, *Perkawinan Dan Keluarga* Jakarta: PT Raja Grafindo Persada, 2005, p. 31-32

2. Observe the implementation of guidance and the implementation of TT injections for prospective brides and grooms in all regions in Indonesia;
3. Prepare periodic reports related to the implementation of this Joint Instruction since it came into force to be carried out as proper as possible with a sense of responsibility.³⁴

Philosophical Basis of DKI Jakarta Governor Regulation No. 185 of 2017

The issuance of DKI Jakarta Governor Regulation No. 185 of 2017 was motivated by issues occurring in society, including free sex among millennials in the capital city of Jakarta. The prevalence of spread of diseases is high, including among prospective brides and grooms as well as children, and also the occurrence of child marriage. Child marriage is a marriage between the bride and groom who are still under the marriage age determined by law. According to Law No. 16 of 2019 concerning Marriage, the bride and groom shall be 19 years old.³⁵ This factor certainly has a major impact on family life, be it psychological, family economy, and reproductive health. From the health point of view, the number of mothers and babies who died during childbirth was relatively high.

Prior to the Governor Regulation, there have been regulations requiring prospective married couples to get TT vaccination. This regulation is contained in the Joint Instruction of the Directorate General of Islamic Guidance and Hajj Affairs of the Ministry of Religious Affairs and the Directorate General of PPM and PLP of the Ministry of Health No. 2 of 1989. These policies and regulations were driven by the findings related to the high maternal mortality rate (MMR), which prompted the government to formulate and implement regulations for controlling MMR, including the enactment of orders for TT immunization for every bride and groom.

This regulation is of urgent nature, especially for pregnant women in their first pregnancy. It is hoped that this such immunization provide them with immunity against diseases such as tetanus infection in unborn babies. However, this regulation was not successful as targeted because there were still prospective brides and grooms who did not get TT vaccination. Ideally, in regards to pre-marital health checks and consultations, the prospective partners should know or detect their health status, consequences, or history of health problems that they may carry so that they will not transmit any disease to their prospective partners or their offspring.

³⁴ Joint Instruction of the Directorate General of Islamic Guidance and Hajj Affairs at the Ministry of Religious Affairs and the Directorate General for the Eradication of Infectious Diseases and the Health of the Residential Environment of the Ministry of Health No. 2 of 1989 concerning TT Immunization of Prospective Bride and Groom

³⁵ Article 7 Law No. 16 of 2019 on the Amendment of Law No. 1 of 1974 concerning Marriage

The policy is expected to enable preventive measures as early as possible. Performing health checks does not mean that the prospective partners are suspected of having a disease. However, this is a precautionary measure, especially if both of them intend to have children, because this health factor will greatly affect the reproductive health of the respective bride and groom.

Therefore, the government has formulated a policy to oblige prospective couples, who will enter the marriage stage, for consultation and health checks in order to achieve the goal of marriage, which is to establish a happy and prosperous family based on the One Almighty God. Efforts to carry out this health coaching for prospective brides and grooms aim to improve the quality of health in particular and the quality of the next generation of the nation. Therefore, it is deemed urgent to formulate regulations as affirmed in DKI Jakarta Governor Regulation No. 185 of 2017 in the context of increasing family resilience and welfare.³⁶

Government Policy in DKI Jakarta Governor Regulation No. 185 Year 2017

The DKI Jakarta Governor Regulation No. 185 of 2017 contains an explanation regarding the related parties, the prospective bridal couples in Jakarta who will get married, and their health problems. Therefore, this regulation only provides guidance on reproductive health issues for prospective brides and grooms. The previous regulation regarding the development of adolescent reproductive health, the DKI Jakarta Governor Regulation No. 31 of 2013 concerning the Implementation of Adolescent Reproduction, Chapter 1 General Provisions, Article 1 point 39, states that: "A consultation process in which a peer counselor helps adolescents of their own age to solve adolescent reproductive health problems".

In addition, before the DKI Jakarta Government decides on this policy, the plan for fostering reproductive health for prospective brides and grooms in Jakarta is a highly crucial issue. In this regulation, the obligation to provide guidance and health checks to prospective brides and grooms is also explained in Article 7 paragraph (2), which states:

"Every member of the society who is getting married in the DKI Jakarta Province, including the poor as in the latest UDB data, has the same rights and obligations to obtain quality Guidance and Health Check-ups for Prospective Brides and Grooms, including information services with due observance of the principles of justice and equality gender".

³⁶ The Preamble of the Governor Regulation of DKI Jakarta No. 185 of 2017 concerning Guidance and Health Examination for Prospective Bride and Groom

This Governor Regulation describes that all residents of DKI Jakarta who will get married shall undergo consultation and health checks.³⁷ The health checks are not limited to TT vaccination, but also for HIV/AIDS, STIs, and hepatitis. The lists can be seen in the certificates of consultation and inspection of bride and groom health from the authorities, such as public health centers (*Puskesmas*) and/or local hospitals. The certificate, known as marriage-worthy certificate, is one of the requirements needed in marriage arrangements to get the N1 form.³⁸

In addition, the efforts to carry out guidance and health checks for prospective brides and grooms are explained in Article 8 of the Governor Regulation, as follows:

1. Guidance programs and health checks for prospective brides and grooms who will get married in DKI Jakarta shall bring the greatest virtue and benefit to encourage the improvement of bride and groom health levels so as to create a healthy, strong, and quality next generation.
2. The program shall be implemented in a coordinated and continuous manner in practice using the principle of cooperation with related parties or agencies and is expected to stimulate and realize the community participation independently.³⁹

Prospective brides and grooms need to get a health check to determine their health status in order to plan and prepare for a healthy and safe pregnancy. Health checks carried out include:

1. Anamnesis, a consultation effort between a doctor and a patient to obtain data on medical history and other related information in guiding the diagnosis of the patient's illnesses, including family diseases. The anamnesis includes:
 - a. General history and additional information about the health of the prospective bride and groom
 - b. Completing the examination requirements through informed consent, in which the patient agrees to the treatment, and then the patient obtains data from the doctor about medical treatment that can help the patient along with the risks that may later be encountered
 - c. If needed, mental health problems can be detected early. The effort that can be taken with relatively low, effective, and efficient financing is self reporting (SRQ) under the license of WHO. In the

³⁷ Governor Regulation of DKI Jakarta No. 185 of 2017 concerning Guidance and Health Examination for Prospective Bride and Groom Article 7 paragraph (2)

³⁸ Governor Regulation of DKI Jakarta No. 185 of 2017 concerning Guidance and Health Examination for Prospective Bride and Groom Article 15

³⁹ Governor Regulation of DKI Jakarta No. 185 of 2017 concerning Guidance and Health Checks for Prospective Bride and Groom Article 8

SRQ, there are 29 questions related to mental disorders that the patient must answer with either yes or no.⁴⁰

2. Physical examinations, (including by health workers) to obtain information by measuring or checking bridal couple's health include pulse, respiratory rate, blood pressure, body temperature, and whole body. Nutritional checks are to obtain information and determine nutritional status and early detection of anemia, by measuring or checking: weight and height, upper arm circumference, and indications of anemia.⁴¹
3. Examination of vital signs, carried out to determine body temperature, blood pressure, pulse, and heart and lung abnormalities by measuring body temperature, blood pressure, pulse per minute, respiratory rate per minute and auscultation of the heart and lungs. The problems with vital signs among prospective brides and grooms include infection, high blood pressure, heart disease, lung disease (asthma and tuberculosis), and so if not treated immediately these can affect their health due to discomfort (weakness), headache, shortness of breath, and loss of appetite.⁴²
4. Supporting Examinations (laboratory), including:
 - a. Blood tests, including Hb, blood group, and Rhesus;
 - b. Under certain circumstances or based on the doctor's advice, laboratory tests may be performed, including blood sugar, HIV, STI, Hepatitis, Torch, Malaria, Thalassemia, and other clinical evidence.⁴³
5. TT immunization status
The prospective bride and groom can have a health check at:
 1. Public health centers (*Puskesmas*), to carry out health checks, laboratory tests, and Tetanus Toxoid vaccination
 2. Hospitals, specific laboratory examinations are based on a referral letter from the *Puskesmas*⁴⁴

⁴⁰ Technical Instructions for Providing Guidance and Health Examination for Prospective Bride and Grooms in the Context of Fostering Family Resilience and Welfare in the Attachment of DKI Jakarta Governor Regulation No. 185 of 2017 concerning Guidance and Health Examination for Prospective Bride and Groom

⁴¹ Ministry of Health and Ministry of Religious Affairs, *Buku Saku Bagi Penyuluh Pernikahan) Kesehatan Reproduksi Calon Pengantin*, Jakarta, 2016, p. 5

⁴² Technical Instructions for Providing Guidance and Health Examination for Prospective Bride and Grooms in the Context of Fostering Family Resilience and Welfare in the Attachment of DKI Jakarta Governor Regulation No. 185 of 2017 concerning Guidance and Health Examination for Prospective Bride and Groom

⁴³ Agama. p. 14

⁴⁴ Agama. p.12

Related Parties in DKI Jakarta Governor Regulation No. 185 Year 2017

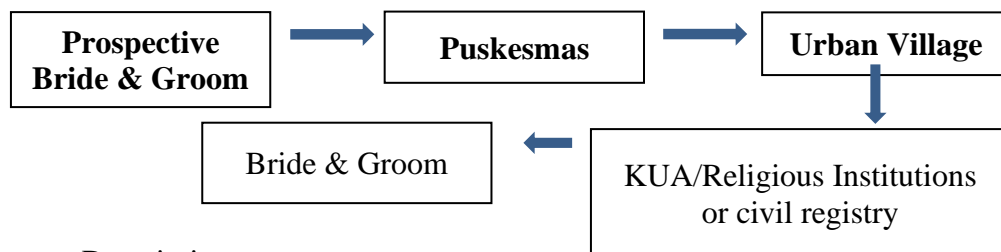
The Governor of DKI Jakarta has reached an agreement to cooperate with Puskesmas, and KUA/other religious institutions to perform health checks and health coaching activities for prospective brides and grooms in the working area of Puskesmas. The team includes:

1. Doctor: on duty on the first check
2. Nurse/midwife: person in charge of IEC;
3. Analyst: carry out supporting checks;
4. Counselor: in charge if health problems are found in the prospective bride and groom
5. Management of FIIV, STI, hepatitis, and so forth, as needed;
6. Laboratory facilities to support health checks (carried out inside or outside Puskesmas according to standard provisions).⁴⁵

The following is the service flow and administrative process for guidance and health check-ups for prospective brides and grooms

Figure 1.

Service flow and administrative processes for the guidance and health check program for prospective brides and grooms



Description:

Implementation of health services at Puskesmas is as follows:

1. Health guidance and IEC on reproductive health
2. Health check
3. TT Vaccination
4. Provision of marriage-worthy certificate

The explanation of the above diagram is shown below:

1. The prospective bride and groom who will enter the marriage stage visit the local urban village office to prepare the requirements for registering

⁴⁵ Governor Regulation of DKI Jakarta No. 185 of 2017 concerning Guidance and Health Examination for Prospective Bride and Groom Article 9 paragraph (2)

- the marriage. The office asks the prospective bride and groom to carry out a health check at Puskesmas or other health facilities specified.
2. The prospective bride and groom who will have a health check-up and guidance to a health facility must show an ID card.
 3. The health examinations include physical checks and laboratory checks, and then a conclusion is made based on the results of the examinations.
 4. However, if based on the health checks, medical indications are found that require further treatment or examination or referral, the prospective bride and groom will receive a referral letter to the referred hospital.
 5. Afterwards, the prospective bride and groom will get a certificate signed by Puskesmas doctor in the form of a marriage-worthy certificate.
 6. The prospective bride and groom can then present the certificate or evidence to have guidance and a health check. On-duty officers fill out forms N1, N2, or N4 and deposit them at the KUA or submit them to other religious institutions in the Civil Registry to be used in marriage procedures and marriage registration. The prospective bride and groom show a marriage-worthy certificate. The urban village office prepares Forms N1, N2, or N4 to be submitted to the KUA, or the Civil Registry office, to carry out the stages of registering the marriage.⁴⁶

The details of the health examination and guidance process at Puskesmas are as follows:

1. The prospective bride and groom voluntarily come for a health check by showing their ID cards. They must come together with their potential partner.
2. Registering at the registration counter.
3. Carrying out medical records and physical examinations for prospective bride and groom, including MUAC measurements. If necessary, an examination related to mental health disorders can be detected early.
4. Carrying out follow-up examinations such as laboratory tests and other medical support based on the prospective bride and groom needs. The examinations are in line with the recommendations obtained in previous examinations.

⁴⁶ Technical Instructions for Providing Guidance and Health Examination for Prospective Bride and Grooms in the Context of Fostering Family Resilience and Welfare in the Attachment of DKI Jakarta Governor Regulation No. 185 of 2017 concerning Guidance and Health Examination for Prospective Bride and Groom, p. 4

5. If necessary, a referral letter can be sent to the prospective bride and groom to the nutrition poly, VCT clinic, or other related clinics for their further health management.
6. Bride and groom who are declared normal and healthy continue to undergo reproductive health training or IEC and receive TT immunization.
7. If the bride and groom have complaints or problems regarding health checks and supporting examinations, they can be transferred to a public clinic related to their health for the next stage of treatment or action.
8. If further action and treatment are needed based on the results of the health examinations and cannot be carried out by Puskesmas, the doctor will refer them to the designated hospital.
9. For the prospective bride and groom with physical health problems, they still get a certificate of having undergone a health check and will receive a separate letter of recommendation regarding the problems and can continue to provide care or related medical efforts.
10. Afterwards, the bride and groom return to the urban village office to fill out N1, N2, and N4, and then submit these documents to the KUA for Muslims and to the Civil Registry for other religions for the complete administrative procedures of the marriage process and registration.⁴⁷

Progressive Legal Review of DKI Jakarta Governor Regulation No. 185 of 2017 in the Context of the Development of Islamic Family Law in Indonesia

Pre-marital health of the prospective bride and groom is an important issue. If either of them is, in fact, not in a healthy condition, such as having a contagious disease, this can have a bad impact on the partner and may even spread to their offspring in the future.

In light of such possibilities that occur in the community, the Governor of DKI Jakarta formulated a Regulation of the Governor of DKI Jakarta No. 185 of 2017 concerning Guidance and Medical Examination for Prospective Bride and Groom as a requirement that must be met by the prospective bride and groom before marriage.⁴⁸ This regulation is one of the breakthroughs made by the Governor,⁴⁹ carried out with the spirit of doing the best for the community, nation

⁴⁷ Technical Instructions for Providing Guidance and Health Examination for Prospective Bride and Grooms in the Context of Fostering Family Resilience and Welfare in the Attachment of DKI Jakarta Governor Regulation No. 185 of 2017 concerning Guidance and Health Examination for Prospective Bride and Groom, p. 5

⁴⁸ Governor Regulation of DKI Jakarta No. 185 of 2017 concerning Guidance and Health Examination for Prospective Bride and Groom

⁴⁹ Governor Regulation of DKI Jakarta No. 185 of 2017 concerning Guidance and Health Examination for Prospective Bride and Groom Article, p. 72

and country.⁵⁰ The regulation is very relevant to the vision of a healthy Indonesia wherein prospective couples will get health guidance and examination before their wedding takes place. A healthy household will achieve happiness and also produce healthy and strong children.⁵¹ Such a regulation is progressive in which it is able to provide welfare for the community. Regulations should not be rigid so as not to lose their spirit and are no longer relevant to the times.

Prophet Muhammad saw had taught Muslims to seek a mate who preferably comes from the descendants of families who have many children. This can be interpreted as the Prophet asked his people to marry or choose a “fertile” partner. In his hadith, he states:

وَعَنْهُ قَالَ: كَانَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَأْمُرُنَا بِلِبَاءَةِ وَيَنْهَى عَنِ التَّبْتُلِ نَهْيًا شَدِيدًا، وَيَقُولُ: تَزَوَّجُوا الْوُلُودَ الْوُدُودَ فَإِنِّي مُكَابِّرُ
بِكُمْ أَنْبِيَاءَ يَوْمَ الْقِيَامَةِ. رَوَاهُ أَحْمَدُ وَصَحَّحَهُ ابْنُ حِبَّانَ

“From (Anas ibn Malik r.a) the Messenger of Allah ordered us to marry and forbade us to be single/not married.” The Messenger of Allah said, “Marry a woman who has many children and has great affection as I will be proud in front of the previous prophets on the Day of Resurrection. Narrated by Ahmad and (this hadith) authenticated by Ibn Hibbān.”⁵²

Having offspring with good morals, physical health, and piety is the dream of every parent. The Qur’an immortalizes the prayer of the Prophet Zechariah who prayed to Allah swt asking to be given good and pious offspring. This is mentioned in Ali Imrān (3: 38) as follows:

هَذَاكَ دَعَا زَكَرِيَّا رَبَّهُ قَالَ رَبِّ هَبْ لِي مِنْ لَدُنْكَ ذُرِّيَّةً طَيِّبَةً إِنَّكَ سَمِيعُ الدُّعَاءِ – ٣٨

“At that, Zechariah called upon his Lord, saying, “My Lord, grant me from Yourself a good offspring. Indeed, You are the Hearer of supplication”⁵³

Among the prayers mentioned in the Qur’an, there is guidance to pray to be granted gifts by Allah in the form of partners and offspring who become the gems of the heart as written in Al-Furqān (25: 74):

⁵⁰ Governor Regulation of DKI Jakarta No. 185 of 2017 concerning Guidance and Health Examination for Prospective Bride and Groom

⁵¹ Governor Regulation of DKI Jakarta No. 185 of 2017 concerning Guidance and Health Examination for Prospective Bride and Groom

⁵² Ibnu Hajar Al-Asqalani, *Terjemah Bulugh Al-Maram*, Jakarta: Pustaka Amani, 1996, p. 386

⁵³ Agama. p. 55

وَالَّذِينَ يَقُولُونَ رَبَّنَا هَبْ لَنَا مِنْ أَزْوَاجِنَا وَذُرِّيَّاتِنَا قُرَّةَ أَعْيُنٍ وَاجْعَلْنَا لِلْمُتَّقِينَ إِمَامًا - ٧٤

“And those who say, “Our Lord, grant us from among our wives and offspring comfort to our eyes and make us a leader [i.e., example] for the righteous.”⁵⁴

However, Islamic law does not discuss about guidance and health checks for the prospective bride and groom in the Qur'an nor Hadith. At the time of the Companions, this practice also did not exist. Islamic law following its legal sources, the Qur'an and Hadith, does not require the prospective bride and groom to carry out guidance and health checks as a requirement for the implementation of marriage. Nevertheless, as times change and science and technology keep advancing, various kinds of problems arise. The formulation of regulations for guidance and pre-marital health checks for the prospective bride and groom in the DKI Jakarta province has been motivated by the social situations and conditions within the community. Within this permissive society, the high number of child marriages is directly proportional to the maternal and infant mortality rates.

From the perspective of progressive law, the regulation related to guidance and health checks bring upon goodness and benefit to the people of the DKI Jakarta province. The regulation on guidance and health checks is in line with with basic norms in Islamic law because both have a goal to realize the goodness and benefit for the prospective bride and groom from transmitting infectious diseases to their partners during marriage, anticipating the death of pregnant women, saving their lives as well as the baby in their wombs. Hence, the ultimate purpose is to produce healthy offspring and bring goodness to society, nation, and country.

Prior to the enactment of DKI Jakarta Governor Regulation No. 185 of 2017, there has also been a policy that every prospective bride and groom who will get married shall take the TT vaccination. Yet, the guidance and health checks depends on the awareness of community members. Thus, with this Regulation, all prospective brides and grooms, in addition to TT vaccination, shall carry out guidance and health checks as well.

However, the implementation has not yet optimally performed as expected; still, this regulation can educate health awareness in the community. This policy simply aims to bring goodness for the community in the long term, and it carries a moral message for the members of the community, especially the prospective bride and groom, to be aware of their own health, to avoid a permissive lifestyle, and to carry out religious orders.

Further, the regulation can also become a pilot project for the central government, and can be implemented in stages in other provinces in Indonesia, or

⁵⁴ Agama. p. 366

in other provincial capitals. The implementation can be carried out starting from big cities that are affected by the bad effects of globalization. It is hoped that this Governor Regulation gives a positive contribution to the Government in formulating regulations on guidance and health checks for all prospective brides and grooms and becomes a positive point in the development of Islamic marriage law in Indonesia.

Nevertheless, further studies are needed to adjust this policy if it is applied nationally. For example, in general, the purpose of implementing a policy of guidance and health checks is very useful to improve the health level of marriages in the community. This also complements the previous policy about the provision of TT immunization to prevent mothers-to-be and their babies from getting Tetanus. This policy also complements other examinations related to both infectious and congenital diseases.

Regulations should be progressive and have the characteristics of constantly being in progress and not final. It always seeks the truth, in terms of the meaning of justice, certainty, order, welfare, and others related to the needs of the community.⁵⁵ In this case, in order to make this policy a national policy, it is necessary to coordinate with the Ministry of Health. The government needs to prepare health facilities, in this case Puskesmas and adequate healthcare workers. However, this policy will be counter-productive if there are no proper implementation tools to support this in practice. This issue is highly significant because there are still many community members who do not receive good health services, especially those who live in remote areas in Indonesia.

To accelerate the realization of this policy, however, there is no need to wait for the complete readiness of the health equipment as this policy can be implemented in stages. For example, the government can conduct initial mapping of the cities or districts. Afterwards, socialization of this policy can be carried out to the community, and coordination between urban villages, KUA, and health facilities, e.g. Puskesmas and designated health facilities with referral health facilities if further examination is needed, should be performed. Having taken all these steps, the policy can be gradually applied, and in time, this policy will be nationally carried out. In this regard, the government is able to keep up with the times, respond to changing times with all the basics in it, and be able to serve the community.

Still, it is important to note to provide a subsidy for the poor. The government needs to prepare a pre-marital health check and guidance scheme for the poor as a preventive way to avoid the emergence of challenging issues when implementing this policy among the poor. Whether it is cross-subsidization or combined into the public health programs initiated by the previous governments, such as *Jamkesmas* or *Kartu Indonesia Sehat*, this policy should be accessible by

⁵⁵ Sutrisno. p. 67-68

all circles of society to improve their health status as well as the health level of all Indonesians.

Conclusion

The DKI Jakarta Governor Regulation No. 185 of 2017 is a policy that is progressive in the context of preventing the transmission of infectious diseases among prospective bridal couples, and of reducing maternal and infant mortality. This regulation aims to bring goodness and benefit in marriage life, especially for the prospective brides and grooms and their descendants, as well as the society and nation.

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