

Legal Analysis of Interfaith Marriage in Indonesia

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ABSTRACT

In Article 2 paragraph (1) of Marriage Law, it has been stated that the provisions and conditions for a valid marriage are marriages that are conducted according to the laws of each religion and belief. Interfaith marriage is a delicate religious topic that has a lot to do with someone spiritual view. Every religion in the world has its own laws governing marriage as a religious matter. The research method used is normative juridical research. This research used laws and regulations regarding to interfaith marriage, including Civil Code, Law number 1 of 1974 on Marriage, and Law No. 23/2006 on Population Administration. Based on research result, when associated with legal issues in the marriage that occurs, it can be interpreted that interfaith marriages can only be registered in civil registry, but it does not mean that it is religiously valid. Interfaith marriages are also associated with human rights, freedom in human rights to marry and build a family remains subject to the rules or Law Number 1 of 1974, this is clearly seen in the Human Rights Law in Indonesia Article 10 paragraphs (1) and (2) which state that this freedom must be in accordance with statutory regulations.

Keywords: *Interfaith Marriages, Human Rights, Laws, Marriage*

INTRODUCTION

Indonesia is a country that has many ethnic groups, languages, and religions that are legally recognized and protected by the nation, such as Islam, Christianity, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism. With the existence of social interactions within a country, it is possible to establish a marriage relationship. Marriage is a sacred because in the marriage bond both of physical bond and spiritual bond based on God Almighty, it means that a marriage is not just an internal relationship, but a relationship between a man and a woman which aims to form a happy and eternal family based on God Almighty.

Marriage creates a bond between two social groups, such as families, cultures, opinions, and castes, rather than just a relationship between a man and woman. Interfaith couples have a variety of difficulties, such as social and religious restrictions, conservatism, contrasting religious beliefs, undesirable behavior, and many others.¹ Marriage is a permanent relationship between a man and a woman that is recognized as valid by the community based on the applicable marriage regulations. To form a prosperous and happy family, the marriage is needed. There is no valid marriage without compatibility with religious norms and applicable regulations. Based on Article 2 Paragraph (1) of Law Number 1 of 1974 concerning Marriage stated that "Marriage is valid when it is conducted according to the laws of each religion and belief". In the provisions of the Law, a valid marriage can only be held when the bride and groom have the same belief or religion.

However, there have begun to be many marriages of different religions as the influence of globalization. The problem of this marriage attracts a lot of attention from citizen about whether it is allowed or not. The issue of interfaith marriage is not just a personal matter for those who ask and talk about it, but also a sensitive religious matter and has a lot to do with one's spiritual beliefs. As a religious issue, almost all religions in the world have their own rules about as the principle for marriage. It also must be in accordance with the provisions of a legislation and norms applied in society. Inter faith marriage becomes an inevitable social phenomenon in which religious doctrines are transformed and incorporated into social and cultural contexts. For instance, in spite of many societies and religions strongly stereotyping and even prohibiting inter-faith marriage, the practice of inter-faith marriage has widely flourished and rapidly increased.²

15

¹ Sonny Dewi Judiasih, Nazmina Asrimayasha Nugraha, and Luh Putu Sudini, "Prohibition of Intera Religion Marriage in Indonesia," *Jurnal Dinamika Hukum* 19, no. 1 (January 8, 2019): 186, <http://dinamikahukum.fh.unsoed.ac.id/index.php/JDH/article/view/2462>.

² Rosdiana Rosdiana, Ummu Hanah Yusuf Saumin, and Masayu Mashita Maisarah, "Legitimacy on Inter-Faith Marriages: An Analysis of the Role of Religious Councils on the Legal Policy in Indonesia," *AHKAM: Jurnal Ilmu Syariah* 19, no. 1 (July 9, 2019), <http://journal.uinjkt.ac.id/index.php/ahkam/article/view/11710>.

There is no provision in a particular legal requirement that regulates and conducts inter-religious marriages. Article 2 paragraph (1) of Law Number 1 Year 1974 states that as long as the religious law of each party allows for interfaith marriages, then there is no problem with such marriages. However, when both parties do not allow interfaith marriages, then this can be a problem according to Article 2 paragraph (1) of Law Number 1 of 1974 that stated “marriage based on the law of religion and belief in each person.” From this article, it explains that there are no more interfaith marriages.

In Article 2 paragraph (1) of the Marriage Law, it has been stated that the provisions and conditions for a valid marriage are marriages that are conducted according to the laws of each religion and belief. It has been determined that the conditions for conducting a marriage are valid according to the religion adhered to by the groom and bride. A marriage must still be recorded and adjusted to the provisions of Article 2 paragraph (2) of Law Number 1 Year 1974 which stipulates that every marriage must be registered according to the applicable laws and regulations. The purpose of marriage registration is that each marriage makes the event clear, both for the husband and wife, for relatives, and for the community as authentic evidence (proves the validity of the marriage). Marriage registration does not determine the validity of a marriage, only states that there has been a marriage conducted. With the increasingly widespread debate or pros and cons of interfaith marriage in Indonesia, the researcher is interested in analyzing the laws and regulations governing interfaith marriage. The problem statement in this research is what are the legal regulation regarding marriage and its registration, and the legal regulation of interfaith marriage in Indonesia. This research aims to examine the laws and regulation regarding the interfaith marriage in Indonesia.

RESEARCH METHOD

The research method used is normative juridical research (normative legal research method). The normative legal research method is library research, which is conducted by secondary data or library resources.³ By using the deductive method of thinking (away of thinking in drawing conclusions drawn from something general in nature that has been proven to be true and the conclusion is intended for something specific). This research used laws and regulations regarding to interfaith marriage, including Civil Code, Law number 1 of 1974 on Marriage, and Law No. 23/2006 on Population Administration.

³ Rissa Dwi Novita and Muhammad Abdul Razak, “Personal Data Protection in Falsification of Covid-19 Vaccination: A Juridical Review,” *YURIS (Journal of Court and Justice)* 1, no. 3 (2022): 25–37.

RESULT AND DISCUSSION

Legal Arrangements on Marriage and Marriage Registration

Marriage according to Law Number 1 of 1974 is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty. The Explanation of Article 1 of Law Number 1 of 1974 explains that: "As a State based on Pancasila, that the first principle is Belief in One God, marriage has a very close relationship with religion or spirituality, then marriage not only has a physical element, but spiritual element also has an important role. Forming a happy family is closely related to the purpose of marriage, maintenance, and education become the rights and obligations of parents.

Article 2, Law Number 1 of 1974, Marriage is valid when it is conducted according to the laws of each religion and belief and each marriage is registered according to the applicable law. The explanation in the article is that there is no marriage outside the law of each religion and belief. In accordance with the 1945 Constitution, it includes the statutory provisions applicable to the group of religion and belief. Marriage registration in Indonesia was regulated in Article 34 of Law Number 23 Year 2006 as follows:

- 1) Marriages that are legal according to the Laws and Regulations must be registered by the Resident to the Implementing Agency in the place where the marriage conducted no later than sixty days from the date of marriage,
- 2) Based on the registration as referred to in paragraph (1), the Civil Registration Officer write it in the Marriage Certificate Register and issues a Marriage Certificate Except.
- 3) The Marriage Certificate as referred to in paragraph (2) shall be given to the husband and wife respectively,
- 4) Registration as referred to in paragraph (1) for Residents who are Muslims is conducted by the KUA/Kec,
- 5) The data of the marriage events as referred to in paragraph and in Article 8 paragraph (2) must be submitted by the KUA/Kec to the Implementing Agency no later than 10 (ten) days after the marriage registration is conducted,
- 6) The marriage data as referred to in paragraph (5) does not require the issuance of a Civil Registration certificate quotation,
- 7) At the sub-district level, the registration as referred to in paragraph (1) is conducted at the UPTD of the Implementing Agency.

Article 35 of Law Number 23 Year 2006, contains:

1. The registration of marriage as referred to in Article 34 shall also apply to marriages determined by the Court;
2. Marriage of a foreign national conducted in Indonesia at the request of the

foreign national concerned.

The Analysis of Legal Regulation of Interfaith Marriage

Interfaith marriage are unions between a man and a woman who has various religions or ideologies, either by adhering to the religious rituals adopted by one partner or by being married in other nations that permit it.⁴ According to Rusli and R.Tama, inter-religious marriage is a physical and mental bond between a man and a woman, because of different religions, cause two different regulations regarding the conditions and procedures for the implementation of marriage in accordance with their respective religious laws, with the aim of forming a happy and eternal family based on God Almighty. According to Ketut Mandra and I Ketut Artadi, inter-religious marriage is a physical and mental bond between a man and a woman who each have different religions and maintain their religious differences as husband and wife with the aim of forming a happy and eternal household based on God Almighty. In addition, according to Abdurrahman, inter-religious marriage is a marriage between people who have different religions and beliefs. The Marriage Law does not definitively mention the definition of interfaith marriage.

From the definition of the scholars above, an interfaith marriage is a relationship between two men and women who have different beliefs and are bound in one relationship, called marriage. There are two main elements that must exist in the definition of interfaith marriage, called the existence of different beliefs or embracing different religions and bound by the existence of a marital relationship. Every person who intends into a marriage shall register his or her name with the marriage registration officer through orally registration by one of the bride and groom or by his or her parents, and may be represented by another person." However, when there is a valid reason that oral notification is not possible due to a problem, the notification may be made in written form. In the event that notification is delegated to another person, that person must be appointed based on a special power of attorney.

Article 2 of Law Number 1 Year 1974, stated that the marriage is valid if performed according to the laws of each religion and belief and each marriage is registered according to the applicable law. The definition of marriage contains aspects of legal consequences, the purpose of marriage is to get each other and conduct the right and obligation that aims to establish a relationship based on mutual assistance, since marriage is also included in the implementation of religion, it contains a goal to seek and expect the pleasure of Allah SWT. In order to maintain the honor and dignity of human, Allah SWT makes recommendations

⁴ Indira Hastuti, Edy Sanjaya, and Budi Prasetyo, "Interfaith Marriage And Its Legal Consequences For Children Born According To Islamic Law," *International Journal of Educational Research & Social Sciences* 3, no. 1 (February 20, 2022): 509-517, <https://ijersc.org/index.php/go/article/view/303>.

that are in accordance with the law and dignity, then the relationship between men and women is regulated respectfully between each other and by saying *Ijab Kabul* based on a sense of willingness and sincerity. As long as the marriage adheres to the customs of laws of one of the spouses' respective religions, an interfaith marriage is considered legal under state court regulations. According to Law of Population Administration, there has not been synchronization of marriage registration with legal requirements, which has implication for the non-contradiction principle in the creation of legal structures.⁵

Regarding marriage between different religions in Indonesia, there are provisions in Law No. 23/2006 on Population Administration.¹² Article 35 letter a of Law No. 23/2006 and its explanation states that the marriages between people of different religions, it is determined by the Court.¹³ From the explanation above, it is clear that there is a contradiction between Law No. 1 of 1974 and Law No. 23 of 2006. Then, it appears that there is a lack of clarity in the regulations regarding interfaith marriages, where Law No. 1 of 1974 prohibits, but Law No. 23 of 2006 is allow it. Basically, Article 35 letter a of Law No. 23/2006 does not explicitly state whether a marriage is valid or not, but the article only regulates that interfaith marriages that have been determined by the court can be registered at a civil registration institution like marriages in Indonesia, which is usually in accordance with Article 34.

From the description of the two regulations above, it can be understood that interfaith marriages can only be registered civilly, but not religiously. This is because according to Law No. 1/1974, marriage must be conducted in compliance with the laws of each religion. Law Number 32 Year 1974 and Law Number 23 Year 2006 are regulations that have an equal position, in the hierarchy of laws and regulations, one law regulation should complement each other and not contradict or conflict. Law Number 1 of 1974 concerning Marriage (Marriage Law) normatively (*verwijzing*) does not recognize interfaith marriages, but the Marriage Law itself provides a legal loophole in legalizing interfaith marriages. Many applications for interfaith marriage that have been granted through Court Decisions and have been successfully registered at the Population and Civil Registry Office are declared valid along with all their legal consequences in state administration and are legally binding on civil law.⁶ But in reality, the contents of the articles in Law Number 1 Year 1974 and Law Number 23 Year 2006 contradict each other in discussing interfaith marriages. Thus, there is a conflict between Article 2 paragraph (1) of Law Number 1 of 1974 and Article 35 Letter a of Law Number 23 of 2006. In Law Number 1 of 1974, it is implied that the

⁵ Ermi Suhasti, Siti Djazimah, and Hartini Hartini, "Polemics on Interfaith Marriage in Indonesia between Rules and Practices," *Al-Jami'ah: Journal of Islamic Studies* 56, no. 2 (May 30, 2019): 367–394, <http://www.aljariah.or.id/index.php/AJIS/article/view/56205>.

⁶ Desimaliati Desimaliati, "Legality of Registration For International Religious Marriage Based on Court Decisions According to Law and Regulations in Indonesia," *Cepalo* 6, no. 2 (November 15, 2022): 77–90, <https://jurnal.fh.unila.ac.id/index.php/cepalo/article/view/2704>.

existence of interfaith marriages is not desirable, while Law Number 23 of 2006, interfaith marriages are recognized by being registered in civil registry on the condition of requesting a court decision. As an example of a case in Decision Number 916/Pdt/2022/PN/Sby, in April 2022, Surabaya District Court (PN) issued a decision to determine the interfaith marriage. The decision issued by the Surabaya District Court raises the problem of interfaith marriage that giving permission to citizens who have different religions to marry.

The chronology began with a couple in Surabaya who had the interfaith marriage are relief after their marriage was recognized by the State. This happen because Surabaya District Court had granted their application. Before their application was granted by Surabaya District Court, the marriage of RA, a Muslim groom, and EDS, a Christian bride, was not registered by local Population and Civil Registration Office (Dispendukcapil). Their marriage files were rejected while they had already married with the consent of their families and using their respective religious methods. After being rejected by Dispendukcapil, they applied to Surabaya District Court for their marriage could be registered at Dispendukcapil. The application for interfaith marriage to the District Court was filed on April 13, 2022. Then, the request was granted by single judge Imam Supriyadi on April 26, 2022 with decision number 916/Pdt.P/2022/PN.Sby. The judge also ordered in his decision that the Dispendukcapil register the marriage of RA and EDS. As a court decision, this decision must be implemented and cannot be rejected. There were several considerations taken by the single judge in analyzing this case. First, interfaith marriage is not prohibited under Law No. 1/1974 which does not regulate interfaith marriage. Therefore, it was considered to grant the petition to fill the legal regulation of interfaith marriage. The next consideration is Article 35 Letter a of Law Number 23 of 2006 related to the issue of interfaith marriage is the authority of the district court to examine and decide.

From the case above, there is a conflict of regulations between Law Number 1 Year 1974 and Law Number 23 Year 2006. Indeed, there is no explicit prohibition of interfaith marriage in Law Number 1 Year 1974. Then, there is a regulation that reinforces this, called Article 35 Letter a of Law Number 23 of 2006 that stated "Marriage Registration as referred to in Article 34 also applies to the marriages determined by the court, and marriages of foreign nationals conducted in Indonesia at the request of the foreign national concerned." There are also those who associated interfaith marriage to human rights.⁷ Citizen who support the interfaith marriage always use the right to freedom in human rights and democracy as an excuse to support the legalization of interfaith marriage. When look closely, Law No. 39/1999 on Human Rights in Indonesia does not explicitly regulate the issue of interfaith marriage. Human rights only guarantee and protect the right to build a household, while the issue of marital status is still

⁷ Gina Hanifah et al., "Inkonsistensi Peraturan Perundang-Undangan Dalam Memandang Keabsahan Perkawinan Beda Agama," *Cross-border* 5, no. 2 (2022).

returned to Law Number 1 Year 1974, Article 2 paragraphs (1) and (2).

However, the pro-religious marriage group argues that the concept of freedom in human rights should refer to the concept of international human rights as the initial instrument of its formation. The concept of freedom in international human rights is more concerned with human happiness (married couples) that cannot be reduced under any circumstances. Law No. 39/1999 has guaranteed the right and freedom of a person to form a family, while at the same time explaining that a valid marriage is a marriage that held by the determination of the bride and groom in accordance with the provisions of the law (Article 10 paragraphs (1) and (2) of Law No. 39/1999). The phrase "in accordance with statutory provisions" can be understood that human rights also return the provisions on the permissibility and valid status of a marriage to Law Number 1 Year 1974, and the Law leaves it to the religious law adopted by the bride and groom.

There should be no serious issue about interfaith marriage between human rights and Law No. 1/1974, as it is clear that the articles are related to each other. However, according to some groups, Law No. 1/1974 is considered to have contradicted the theory of rights and freedom in human rights. Article 2 of Law No. 1/1974 remains contradictory to Article 10 of Human Rights, because Human Rights bound by its own basic foundation or instrument, called the International Universal Declaration of Human Rights (UDHR). As a legal fraction of International UDHR, Law No. 39/1999, Indonesia should embrace the same principles of freedom as those contained in the UDHR. The freedom to marry in the articles of the UDHR is not bound by the rule of law. Article 16 paragraphs (1) and (2) of the UDHR state that differences in skin color, race, nationality, citizenship or religion are not an obstacle to marriage, then interfaith marriage is considered legal and valid according to the UDHR.

The International Covenant on Civil and Political Rights (ICCPR), Article 23, Right to marriage and family states "The family is the natural and basic social group unit and is entitled to the protection of society and the state". Textually, the right of a family is to be protected, and become the duty of society and the state to fulfill that right. When the prohibition of interfaith marriage has been determined by law in Indonesia, and the Civil Registry Office and Religious Affairs Office are unwilling to register and legalize such marriages, referring to Article 23 of the Human Rights Law in the International Covenant above, then Indonesia has failed to protect the basic rights of its citizens, and the prohibition of interfaith marriage is a direct and systematic violation of people's rights by the state. A similar opinion was also stated by Patrick Hummus in his research, he mentioned that the prohibition of interfaith marriages in the Marriage Law and the Compilation of Islamic Law in Indonesia has actually contradicted the Human Rights Law in Indonesia, which is basically ratified from the Universal Declaration of Human Rights (UDHR). He explained that according to the UDHR, the differences in race, ethnicity, nation and even religion cannot be used as a

barrier for someone to marry and build a family (Article 6 paragraph (1) UDHR).

The freedom in human rights to marry and build a family is still subject to the applicable rules or Marriage Law, this is clearly seen in the Human Rights Law in Indonesia Article 10 paragraphs (1) and (2) which state that this freedom must be in accordance with statutory regulations. Then Article 50 of Human Rights Law is often interpreted as the freedom and discretion of an adult woman to conduct her own legal actions without any restrictions from any party, even the marriage. However, there are exceptions to the freedom mentioned in the form of freedom of legal acts that have been determined otherwise by religious law (Article 50 of Human Rights). This freedom and discretion cannot be exercised when it is excluded by religious rules, then all the rules basically based on religious norms or rules. When the exception is not mentioned, Article 50 could be used as a legal basis to allow a woman to conduct the interfaith marriage. In addition, Article 10 paragraphs (1) and (2), as well as paragraph 50 of the Human Rights Law, with Article 2 of the Marriage Law are related and interconnected, while religious law are become the determinant of the validity and rules regarding marriage.

CONCLUSION AND SUGGESTION

Conclusion

Marriage according to Law Number 1 of 1974 is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty. Marriage registration as referred to in Article 34 shall also apply to marriages determined by the Court and marriages of foreign nationals conducted in Indonesia at the request of the foreign national concerned. The valid requirements for marriage are regulated in Article 2 paragraph (2), when it is conducted according to the laws of each religion and belief. It is implicitly regulated in Law Number 23 of 2006, Article 35 Letter a a marriage determined by the court. When associated with legal issues in the marriage that occurs, it can be interpreted that interfaith marriages can only be registered in civil registry, but it does not mean that it is religiously valid. Interfaith marriages are also associated with human rights, freedom in human rights to marry and build a family remains subject to the rules or Law Number 1 of 1974, this is clearly seen in the Human Rights Law in Indonesia Article 10 paragraphs (1) and (2) which state that this freedom must be in accordance with statutory regulations.

Suggestion

The government should immediately make more clear regulations to resolve legal issues regarding interfaith marriages for there is no confusion of regulations in the implementation of interfaith marriages.

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