

Juridic Analysis of Different Religion Marriage in Indonesia

Hidayat Rumatiga

Lecturer at the Faculty of Law, Djuanda University, 2022 Street. Ciawi Toll Road No. 1, Post Box 35, Bogor 16720

Telp. 081297427321

Email: [hidayat.rumatiga\[at\]unida.ac.id](mailto:hidayat.rumatiga[at]unida.ac.id)

Abstract: *In Indonesia, marriages carried out must be in accordance with the religious laws of each bride and groom. This is in accordance with the provisions of Article 2 paragraph 1 of Law no. 1 of 1974 concerning Marriage which reads "Marriage is valid if it is carried out according to the law of each religion and belief". Likewise, Article 8 letter f of the Marriage Law states that marriage is prohibited if religious regulations prohibit it as well as other applicable regulations." However, in practice, interfaith marriages can still occur in Indonesia. This study aims to determine the law of interfaith marriage in Indonesia, and the legal certainty of interfaith marriage in Indonesia. The research method is a procedure or way of obtaining correct knowledge or truth through systematic steps. use the mind carefully by taking notes, formulating to compiling reports. This research approach is a normative juridical approach, namely the approach to legislation, principles, or dogmas with the support of empirical data about interfaith marriages in Indonesia. The results of this study indicate (1) There are overlapping laws and regulations governing interfaith marriages in Indonesia, namely Law no. 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration Article 35 (marriage registration), Supreme Court Decision Number 1400 K/PDT/1986 (requesting registration at the Civil Registry Office), Article 56 paragraph (2) of Law no. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning marriage (marriage abroad) which is contrary to the marriage law. Interfaith marriage is against religion and Pancasila. The implementation of other rules besides the Marriage Law ignores the principle of *leges specialist derogateleggy* generally. There is no legal certainty about different marriages.*

Keywords: analysis, juridical, marriage, different religions

1. Introduction

Marriage is an inner and outer bond between a man and a woman to form a happy and eternal household (family) based on the One Godhead. The marriage that occurs aims to form a household or family to continue the descent in a marriage bond that is legal by religion and state. Marriage is a necessity of life for all mankind since ancient times until now, because marriage is an actual problem to be discussed inside and outside the rule of law. From marriage, there will be a legal relationship between husband and wife and then with the birth of children, a legal relationship will arise between parents and their children. From their marriage they have assets, and there is a legal relationship between them and these assets.

Abd Al Rahman Al-Jazayri in his book, *al-fiqh 'Alaal-Madhabib al-Arba'ah*, states that there are several scholars who differ on the origin of the meaning of the word marriage, namely as follows: Some say that marriage is the essence of intercourse. which says that marriage is the essence of the contract. And there are others who say that marriage is a combination of contract and intercourse.

In Indonesia, marriages carried out must be in accordance with the religious laws of each bride and groom. This is in accordance with the provisions of Article 2 paragraph 1 of Law no. 1 of 1974 concerning Marriage which reads "Marriage is valid if it is carried out according to the law of each religion and belief". Likewise, Article 8 letter f of the Marriage Law states that marriage is prohibited if religious rules prohibit it as well as other applicable regulations.

However, in practice there can still be interfaith marriages in Indonesia. Professor of civil law at the University of

Indonesia Prof. Wahyono Darmabrata explained that there are four popular ways that interfaith couples use to make their marriages take place, namely:

Request a court order;

Marriages are carried out according to their respective religions;

Temporary submission to one religion; and Married abroad.

These four steps can be taken if the prospective bride and groom want to choose one of them, even though Law Number 16 of 2019 concerning marriage prohibits interfaith marriages, but there are ways that can be taken on the basis of the view that marriage is a human right. The Supreme Court's decision No.1400 K/Pdt/1986 became jurisprudence on legal interfaith marriages through court decisions. Likewise with the emergence of the Letter of the Directorate General of Dukcapil of the Ministry of Home Affairs No. 472.2/3315/DUKCAPIL dated May 3, 2019 which allows the registration of interfaith marriages. The issue of interfaith marriage has become a hot topic of discussion in the community. Recently, a viral photo of a couple's interfaith wedding in Semarang became a hot topic of conversation on social media.

A Muslim bride is married to a Christian groom. Finally, the Presidential Special Staff, Ayu Kartika Dewi, who is a Muslim, married her husband, Gerald Bastian, who is a Catholic, who married at the Cathedral Church, Jakarta, last Friday 18/3/2022.

If you look at its history, the polemic of interfaith marriages has occurred since the 1980s. The Supreme Court (MA) has issued Supreme Court Decision No.1400 K/Pdt/1986 which states that interfaith marriages are legal in Indonesia by way of a court order.

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After decades later, a letter from the Directorate General of Office Of Population And Civil Record of the Ministry of Home Affairs appeared No. 472.2/3315/DUKCAPIL dated May 3, 2019. The letter signed by the Director General of Office Of Population And Civil Record of the Ministry of Home Affairs, Prof. Zudan Arif Fakrulloh contains an explanation of civil registration, one of which is the registration of interfaith marriages when one spouse and the other partner submit to the religion of their partner. This letter is guided by the Supreme Court Registrar's letter which was requested by the Directorate General of Office Of Population And Civil Record, Ministry of Home Affairs on October 10, 2018.

Through the Supreme Court Registrar's Response Letter No.231/PAN/HK.05/1/2019 dated January 30, 2019 point 2 explains the registration of interfaith marriages which reads:

"Interfaith marriages are not recognized by the state and cannot be registered. However, if the marriage is carried out based on the religion of one partner and the other partner submits to the religion of his partner, then the marriage can be registered. For example, if the marriage is based on Christianity then registered at the Office of Population and Civil Registration, as well as if the marriage is based on Islam, the marriage of the couple is registered at the Office of Religious Affairs (KUA).

This submission, judging from the practice in 1986 until the fatwa was issued, does not mean to change religion. So they persist in their respective religions, but in marriage they submit to themselves," [Normand Edwin Elnizar (Assistant Editor of Hukumonline) Talks Premium Stories entitled "Marriage of Different Religions Has Long Been Legalized by the State, How come?", quoted from: <https://www.hukumonline.com/berita/a/since-1986-ma-legalkan-kawin-beda-agama-how-with-mk-lt6241ddb28a/> Monday (28/3/2022). Accessed 01 September 2022 at 16.27 WIB] Edwin explained that since 1986 there have been attempts to request a marriage dispensation for people of different religions through Supreme Court Decision No.1400 K/Pdt/1986 which was led directly by the then Chief Justice of the Supreme Court, Ali Said. The Supreme Court canceled the decision of the Central Jakarta District Court (PN) which rejected interfaith marriages.

Interfaith marriages in the Marriage Law are clearly prohibited, as well as the MUI fatwa regarding the prohibition of interfaith marriages, but there are other laws and regulations that allow interfaith marriages by way of marriage abroad, subject to one of the religious laws, requesting a court ruling, marriage is carried out according to their respective religions.

This shows that the marriage law can still be overridden by other laws and regulations, the specificity of the marriage law should be based on the principle of *lex specialis derogat legi generali*, so that the provisions regarding marriage are only regulated by the Marriage Law. In addition, interfaith marriages can also be considered contrary to the first principle of Pancasila, namely God Almighty (the constitution), and does not provide legal certainty in interfaith marriages.

The description above shows that interfaith marriages need to be studied in depth to find a clear legal status regarding whether or not it is permissible for legal certainty and justice. Therefore, the author feels that this is quite important to be studied scientifically by referring to the laws and regulations and provisions of the books, as well as the opinions of scholars relating to the issue of interfaith marriages.

2. Literature Review

Title: Implementation Of Different Religion And Marriage The Legal Due To In The Relationship

By Law-Law Number 1 1974 Concerning Marriage

Author: Adi Hendro Prasetyo

Abstract: A marriage is one of events which very important for each human life. The marriage which held according to the prevailed regulation will generate the consequence of law, for example, the lawful marriage, borne child become both existing property within marriage. According to Article 2 Law No. 1 Period 1974 is mentioned that: "A marriage is lawful, if it is being done accord to the jurisdiction of each religion". If Law No. 1 Period 1974 be paid attention, there is no article regulating the divergent religion marriage. Even within article 8 the character-f is mentioned that: "Marriage is prohibited between two having relation which by their religion or other prevailed regulation is prohibited to marry". Therefore, the divergent religion marriage shall be avoided; the author's concept for this is government need to work along with religion figures in constructing their each member of religious.

The research was done in Salatiga, the location is selected because as according to the progress of development and the city have caused the occurred society integration from various areas, ethnics and religions within any activities of life. The research method which used in the research is Empirical Juridical, which is a research of law by the existing fact approach by performing an observation an research in field then to be studied and analyzed based on the rule of the related legislation as reference to resolve problems. The used data is primary data that is data which obtained from field directly by using questionnaire and interview, and also secondary data in the form of literature study. Data analysis which used is qualitative analysis that the conclusion drawing is deductively.

The research result which obtained: 1). The divergent religion marriage was generally carried out by the parties, after submitting a petition to the local District Court and furthermore based on the decision is registered on local Civil Notation marriage is not according to Islam law, so that article 8 Sub f Law No. 1 Period 1974 about marriage is no longer a barrier to be held the marriage that be bent down under Islam law, so that Civil Notation Office shall receiving and noting the marriage. 2). Marriage law is emphasizing the lawful of marriage on both elements, which are; the marriage should be performed as according to terms and procedures which determined by Law (State Law) and Religion Law. It is means if the marriage is only held according to the State Regulation Stipulation without pay

attention the regulation stipulations of the marriage is invalid, nevertheless conversely. Any reasons which told and however the way is done, and then as according to Article 2 clause (1) the Marriage Law No. 1 Period 1974 of the divergent religion marriage does not be agreed and invalid.

II: Title: Different Religion Marriage (Case study on inter-Catholic and Muslim interfaith marriage couples in Surabaya Diocese)

Author: Andre Jonathan

Abstract: Marriage in a society comes with social norms in its society. Religions have clear and strict rules on how marriage is done-Islam forbids certain form of interfaith marriage and so as Catholic, in which written on Code of Canon Law, forbids certain form of interfaith marriage. The teaching on both Islam and Catholic has a contradictory tendency which leads marriage of both partners cannot be done. In spite of that, several couples decided to marry even though both religions forbid interfaith marriage, especially in Diocese of Surabaya. This research focuses on the tendencies of social action of interfaith marriage couple of Islam and Catholic in Diocese of Surabaya. The theory used in this research is social action theory from Max Weber, with the support of matchmaking theory with qualitative approach. Informants in this research are Catholic and Islam interfaith marriage couples in the area of Diocese of Surabaya and couples in which one of them have converted. Informants are determined purposively. The data will be collected by in-depth interview method. The results of this research are: 1. Interest found in matchmaking is the result of a long term acquaintanceship. 2. The rite of marriage is done according to one side that has a tendency of value in which the person does not want to violate the teachings of his religion. 3. Couple (wife), who converted from Islam to Catholic, has an affectual tendency in conversion-the person converted doesn't want her children be confused in determining the religion. 4. Couple (wife), who converted from Catholic to Islam, has an instrumental rational tendency in conversion-the person wants to have an economically adequate family.

III: Title: Law Of Different Religion Marriage According To Islamic Law And Formal Law

Author: Sumriyah Sumriyah

Abstract: This study aims to determine the views of Islamic law and formal law regarding the existence of interfaith marriages, and to find out whether interfaith marriages are legal or only allowed. The research was conducted because there are people who do interfaith marriages in Indonesia. Whereas in the marriage law number 1 of 1974 article 2 paragraph 1 explains that marriage is legal, if it is carried out according to the law of each religion and belief. The article implies that marriage is considered valid when the marriage is carried out according to its religion, whether it is Islam, Christianity, Buddhism, Hinduism, Confucianism, and other religions. According to the compilation of Islamic law contained in articles 2 & 3 which reads marriage according to Islamic law is marriage, namely a very strong contract or miitsaaqan ghaliizhan to obey Allah's commands and carry it

out is worship, marriage aims to realize a sakinah mawadah and warohmah household life. According to the compilation of Islamic law, the conditions for a valid marriage are regulated in Article 4 which reads "marriage is legal, if it is carried out according to Islamic law in accordance with Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage", Article 5 paragraph (1) which Article 7 paragraph (1) which reads "Marriage can only be proven by a Marriage Certificate made by a Marriage Registrar" and paragraph (2) which reads "In the event that the marriage is not can be proven by a marriage certificate, the marriage certificate can be submitted to the Religious Court. In this study using normative legal research methods.

Research Methods

The term research is a translation from English which means to return to search. Literally, the term research is then translated into an attempt to re-search. The research method is a procedure or way of obtaining correct knowledge or truth through systematic steps. Using thoughts carefully by taking notes, formulating, and compiling reports. This research approach is a normative juridical approach, principles, or dogmas. The normative approach is also known as normative. normative juridical approach is used to examine Laws and regulations related to interfaith marriages are based on theories, principles, expert opinions, and jurisprudence.

3. Result and Discussion

A. Overlapping Legislation Related to Interfaith Marriage



In the scheme above, it can be seen that there are regulations that allow interfaith marriages and some do not. In the provisions of Article 2 of the Marriage Law, it is stated that "Marriage is valid if it is carried out according to the law of each religion and belief". The same thing is explained in

several articles in the Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law. Article 4 explains that, "Marriage is legal, if it is carried out according to Islamic law in accordance with Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage". Article 40 states that it is prohibited to carry out a marriage between a man and a woman due to certain circumstances; a non-Muslim woman.

The sentence according to the law of each religion can be interpreted that:

- 1) The marriage process can be carried out according to the marriage procedure according to the religion of each bride. This means that if the man is Muslim, then the marriage procedure is according to Islam or vice versa.
- 2) If the man is a Christian, then the marriage procedure is according to Christianity, or vice versa.
- 3) For couples who want to get married, but adhere to a different religion, then they can hold their marriage abroad, after returning they must register their marriage at the civil registry office for non-Muslims, while for Muslims, register at the sub-district Religious Affairs Office (KUA).

B. Legal certainty of interfaith marriages in Indonesia

The regulation regarding interfaith marriage is regulated in Article 2 paragraph (1) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage which affirms "Marriage is legal if it is carried out according to the law of each religion and belief." . In addition to Article 2 paragraph (1), there are other provisions that also prohibit interfaith marriages, namely Article 8 letter f of the Marriage Law which states that marriage is prohibited if religious rules prohibit and other applicable regulations.

The regulation regarding interfaith marriages in the two articles emphasizes that interfaith marriages cannot be carried out unless the religious law of each partner allows it. In Islam, the prohibition of interfaith marriage is contained in the Qur'an SuratAl-Barbara verse 221:

And do not marry polytheist women until they believe. Indeed, a believing female slave is better than a polytheist woman even if she attracts your heart. And do not marry polytheist (men) polytheists (to believing women) until they believe. Indeed, a believing male slave is better than a polytheist male even if he attracts your heart. They invite to hell, while Allah invites to heaven and forgiveness with His permission. (Allah) explains His verses to people so that they may take lessons.

The provisions of articles 2 and 8 of the Marriage Law are in accordance with the contents of paragraph 221 which prohibits believers (Muslims) from marrying couples of different religions. So that people who do not obey the rules of their religion are considered as people who have sinned, thus interfaith marriage is an act of sin. At the end of verse 221 Al-Baqarah it is stated "they invite to hell while Allah invites to heaven".

The regulation regarding interfaith marriages in the laws and regulations as described above, there is still legal uncertainty

about interfaith marriages in Indonesia, there are still overlapping laws and regulations, namely there are regulations that prohibit, there are those that allow, so there is no firmness and legal certainty for interfaith marriages in Indonesia. Based on the provisions of the legislation currently in force, some people have taken the permitted path under certain conditions to get married. Therefore, in this section, we will describe the reasons for the need for legal certainty over interfaith marriages in Indonesia.

First, interfaith marriage is clearly contrary to Islamic law, as stated in the prohibition in the Qur'an SuratAl-Barbara verse 221. Article 2 of the Compilation of Islamic Law (KHI) states that marriage according to Islamic law is a marriage, which is a very binding contract. strength or misaqaan galizan to obey Allah's commands and carry them out is worship.

Second, the Indonesian people recognize Pancasila as a philosophy of life or a fundamental norm of the state/abstract/source of law (Statsfundamentalnorm) so that a person's behavior, perspective, and actions should not conflict with Pancasila. In the case of interfaith marriages, it can be considered contrary to Pancasila because in the first precepts of Pancasila it is stated "Belief in One Supreme God". According to Jimly Asshiddiqie in the article Indonesia with the Godhead by Arief Hidayat, the encouragement of faith and piety to God Almighty determines the quality and degree of human beings. Therefore, this Precept invites the public to develop social ethics.

The meaning of this first precept is that in social life, everyone has the right to choose and determine their own religion and beliefs. And do not impose beliefs and religions on each other. In another sense, mutual respect between beliefs and religions for the sake of a peaceful life. In addition, the first precept is also a basis for people to behave well as instructed by their beliefs and religion.

God Almighty also implies that everyone who claims to be religious must obey the rules of that religion. In Islam, the prohibition of interfaith marriages is emphasized in the Qur'an SuratAl-Barbara verse 221: "And do not marry polytheist women until they believe. Verily, a believing slave woman is better than a polytheist woman, even though she is attractive."

Imam as-Shafi'i asserted: "It is not lawful for a man who still holds the status of kufr to marry a Muslim woman, and even a Muslim female slave forever. In this case there is no difference between infidels from the people of the book and infidels from other groups."

Third, in Indonesian law, the principle of lex specialist derogateleggy generally applies, which means that special legislation overrides general legislation.

Based on this principle, the law that should apply absolutely in marital affairs is the Marriage Law, because it has a special nature that regulates marital problems in Indonesia. Although marriage is a human right as contained in Article 28 B paragraph (1) of the 1945 Constitution, everyone has

the right to form a family and continue their offspring through a legal marriage.

Based on this article, some researchers consider that the prohibition of interfaith marriages is contrary to the 1945 Constitution because marriage is the right of every citizen to form a family and continue offspring. However, it should be understood that as a religious nation, of course, upholding religious values in the form of commands and prohibitions, so that these rights can be limited by religious law.

The marriage rights regulated in Article 28 B must comply with the religious rules recognized in the Marriage Law. Therefore, with the acknowledgment of the Marriage Law against the prohibition of interfaith marriage, every citizen who wants to carry out a marriage must comply with the provisions of the Marriage Law. What needs to be seen is the marriage process, because the Marriage Law does not prohibit marriage, but only strengthens the prohibition on interfaith marriages in the legislation, because in the legal system in Indonesia, the recognition of statutory regulations is higher than religious law, that's why the prohibition of interfaith marriages Religion in religious law needs to be included in the Marriage Law, so that it can be enforced in Indonesia.

Fourth, the law must provide certainty, both in terms of substance and enforcement. In terms of substance, there should not be two or more laws and regulations that contradict each other or overlap. Meanwhile, if you look at the scheme described previously, it is clear that there is an overlap between the Marriage Law and the Population Administration Law and the Supreme Court Decision. In addition, there are inconsistent articles in the Marriage Law, namely Article 40 which contains interfaith marriages abroad. What needs to be underlined is that people who marry outside cannot just let go of their religious law, even though the law of their country allows it, but religious law must be a consideration and reference, because the marriage will be held accountable before Allah swt. The state should be firm, that for the sake of legal certainty, interfaith marriages abroad cannot be recognized in Indonesia.

Therefore, there is a need for legal certainty regarding interfaith marriages, all current regulations governing interfaith marriages must be subject to the Marriage Law. In Islam, for example, the Indonesian U lama Council (MUI) in the Second National Deliberation in 1980 had issued a fatwa on interfaith marriages. In the fatwa, the scholars decided that the marriage of a Muslim woman with a non-Muslim man was haram. It is also forbidden for a Muslim man to marry a non-Muslim woman.

According to Sudikno Mertokusumo, legal certainty is a guarantee that the law must be implemented in a good way. Legal certainty requires efforts to regulate law in legislation made by authorized and authoritative parties, so that these rules have a juridical aspect that can guarantee certainty that the law functions as a regulation that must be obeyed.

From this expert's opinion, it can be understood that the laws and regulations made by the competent and authorized institution must create certainty, ensure that there are no

opportunities for clashes, and no conflict between regulations with one another.

4. Conclusion

Based on the analysis and discussion in this study, the authors conclude the following:

- 1) There are overlapping laws and regulations governing interfaith marriages in Indonesia, namely Law no. 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration Article 35 (marriage registration), Supreme Court Decision Number 1400 K/PDT/1986 (requesting registration at the Civil Registry Office), Article 56 paragraph (2) of Law no. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning marriage (marriage abroad) which is contrary to the marriage law.
- 2) Interfaith marriage is against religion and Pancasila. The implementation of other rules besides the Marriage Law ignores the principle of *lex specialist derogate leggy* generally. There is no legal certainty regarding interfaith marriages in Indonesia.

5. Future Scope

Research is research in the field of marriage law that is in direct contact with people's lives, that is, everyone will marry to continue their offspring and to form a happy family. Therefore, this study will be a reference for future researchers whose research objects are related to interfaith marriages both in Indonesia and in other countries, because in this study religion is used as a source of law that should not be violated, both in everyday life. days as well as in the making of laws and regulations. In this study also, the authors use laws and regulations as the main material in analyzing the implementation of interfaith marriages in Indonesia, so that researchers can refer to the results of research to examine a statutory regulation that is considered not to provide legal certainty on an issue.

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Author Profile



Hidayat Rumatiga was born in Tunas (Ambon), on December 1, 1990. He is Muslim, completed his basic education at SDN Mida Pulau Gorom, Central Maluku, SMP Negeri 3 Seram Timur, Ondor, Central Maluku, SMA Negeri 2 Pulau Gorom, East Seram Regency, S1 IAIN Ambon, S2 Djuanda University Bogor. Currently, he works as a Lecturer in the Faculty of Law, Djuanda University, Bogor and has work & organizational experience, including Staff of the Islamic Economics Department of IAIN Ambon 2014-2015, Darul Hidayah Plus Middle School Teacher 2017-2022, Darul Hidayah Plus High School Teacher 2017-2022, Pondok Tahfidz Teacher Koran Goran Riun 2017-present. Chairman of the BEM of the Sharia Faculty of IAIN Ambon for the period 2011-2012, Secretary of Advocacy and Law of GMNI Ambon Branch 2013-2015, Secretary of GMNI Branch of Kab. SBT (CARATEKER) 2016, PMR Management IAIN Ambon 2012. Won the award as the best Bachelor 1 IAIN Ambon in 2013, Master with honors for the Postgraduate Program in Law, Djuanda University, Bogor in 2020, 2nd place in the competition for writing scientific papers at the Sharia Faculty level of IAIN Ambon in 2013, 2nd place in scientific writing competition at IAIN Ambon Campus in 2013, 1st place in Al-Qur'an scientific writing competition at MTQ at Maluku Province level in 2014, 1st place in Al-Qur'an scientific writing competition at Kab. Eastern Seram in 2015, 3rd place in the Al-Qur'an scientific writing competition at MTQ Maluku Province in 2015.