

Legal Study of Interfaith Marriage According to Positive Law and Religious Law Regarding the Practice of Interfaith Marriage in Indonesia

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ABSTRACT

Interfaith marriage raises legal issues that require special attention, even though they are considered sacred in religious communities in Indonesia. The study aims to determine how Indonesia's positive laws and religion view marriage between people of different religions. Normative juridical and descriptive-analytical were used to conduct this research. After being obtained from library materials and secondary data, the data is analyzed qualitatively to obtain deductive conclusions. The study found that Law No. 1 of 1974 on Marriage stipulates marriage rules in Indonesia. It states that each spouse's religious beliefs determine whether the marriage is valid or not. Furthermore, Law Number 16 of 2019, which amends Law Number 1 of 1974, sets the age limit at which a person can marry. However couples with different religious backgrounds often face problems. Religions have different views on marriage. These concepts affect the legal status of marriage. The law affects the status and position of children, marital status, and administration of residence. Therefore, a deep understanding of positive religious and legal perspectives is necessary to resolve these legal issues in a fair and balanced manner.

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1. INTRODUCTION

The theme of marriage is always interesting. The subject of marriage is related to human life and social institutions such as family and household. Marriage has legal and sociological consequences, namely making a person who was previously considered immature into a legal adult through marriage.

One of the goals of human life is marriage. Men and women usually marry to have children, with the main purpose of marrying is to have children and grandchildren. Marriage also comes from

custom which becomes the rule of law in a society that can no longer be separated. The knowledge, experience, beliefs, and religion of the people concerned influence this custom [1]. The demands of marriage arise not only from the family but also from the pressures that exist in society as if marriage were a symbol of maturity and success in life.

Law Number 16 of 2019 modifies Law Number 1 of 1974 on Marriage by introducing a clause that sets a minimum age for couples to get married. Previously, the minimum age requirement for males was 19 years, while for

females it was 16 years. The most recent revised legislation sets the minimum age for marriage at 19 years for both males and females.

Regarding marriage, it is exclusively permitted for those who have the same religious beliefs. Indonesian marriage law says the same thing. Indonesia's marriage law also supports restrictions on those who wish to marry but is prohibited due to religious differences. But in society, the opposite is true, despite laws prohibiting marriage for interfaith couples, some couples in Indonesia still hold interfaith marriages. This interfaith marriage is feared to cause problems related to religious beliefs in the marriage in the future.

Interfaith marriage is nothing new in Indonesia. Various social dynamics about its implementation, especially the perpetrators such as public figures or public figures, widely spread the news through the mass media. The implementation of interfaith marriages always includes the opinions of experts and even bases the news on public perceptions. This discussion will explain interfaith marriage from different perspectives [2].

Retno Eno, in the Blog of the University of Muhammadiyah Yogyakarta (2012) explained the results of a survey she conducted in the Special Region of Yogyakarta about the number of interfaith marriages. That in 1980, 15 out of 1000 marriages were interfaith marriages. 10 years later, exactly in 1990, there was an increase in interfaith marriages, from the original 15 out of 1000 interfaith marriages to 19 out of 1000 interfaith marriages.

Ahmad Nurcholish is an activist for the non-governmental organization Indonesian Conference on Religion and Peace (ICRP). On BBC Indonesia's media page entitled Ahmad Nurcholish and Interfaith Marriages (2015), he explained that he is a counselor, advisor, and advocate for couples who want to hold interfaith marriages. As of 2015, she has married 638 interfaith couples in Indonesia, a real phenomenon that despite legal provisions for interfaith marriages, Indonesians still perform interfaith marriages based on their wants and needs.

Abraham Maslow, a humanist psychologist, had a theory of human needs called the hierarchy of needs [2]. Maslow divided basic human needs into 5 levels, namely:

1. Self-Actualization Needs
2. The need to be valued
3. The Need for Love and Affection
4. The Need for Security and Comfort
5. Physiological needs.

Interfaith marriage refers to a union between a male and female who follow distinct religious doctrines. Santoso (2016) said that marriage is a significant facet of human existence universally, so it is not surprising that religion also regulates marital problems [3].

The regulation of marriage in Indonesia is governed by Law Number 1 of 1974, which incorporates a religious component in its provisions. Law Number 16 of 2019 modifies Law Number 1 of 1974 by especially focusing on the age criteria for couples to get into marriage. The problem that arises with this decision is the redaction that a marriage is considered void if it is prescribed or there is a prohibition in religion, as stated in Article 8. This article is considered a form of discrimination, considering that in some religions there is a legal basis that does not allow interfaith marriage, which has long-term consequences concerning various aspects of life, including children's rights, inheritance, etc [4].

Researchers are interested in discussing interfaith marriage in Indonesia because of Indonesia's background as a legal state with diverse religious communities. Researchers also noticed inconsistencies in laws and regulations on marriage and the practice of interfaith marriage in Indonesia.

2. LITERATURE REVIEW

Interfaith marriage has been a topic of complex debate in various legal and religious literature. In the context of Islamic law in Indonesia, interfaith marriage is regulated by applicable law but still causes differences of views.

2.1 *First Literature*

The definition of interfaith marriage according to Rusli and R. Tama states that an interfaith marriage is a union between a man and a woman who come from different religious backgrounds. This leads to different rules and procedures for getting married, as dictated by their respective religious laws. The ultimate goal is to create a joyful and everlasting family based on the belief in a higher power. Another understanding comes from I Ketut Mandra and I Ketut Artadi who stated that an interfaith marriage is a sacred union between a man and a woman who follow different religions. Despite their religious differences, they strive to keep their own beliefs while creating a harmonious and everlasting household centered around a singular divine entity. Meanwhile, Abdurrahman, states that marriage between religions is a marriage carried out by people who embrace different religions and beliefs from one another. From the formulation of the definition of interfaith marriage by the scholars mentioned above, it can be concluded that what is meant is a marriage between two people of different religions and each still maintains the religion he adheres to [5].

2.2 *Second Literature*

The Republic of Indonesia's Supreme Court has issued Supreme Court Circular (SEMA) Number 2 of 2023, outlining instructions for judges when deciding matters about petitions for inter-community marriage registration. This circular affirms that interfaith marriages are haram and invalid according to Islamic law and the laws of the land.

2.3 *Third Literature*

According to the Qur'an, interfaith marriage is forbidden and considered haram. This is stated in

Surah Al-Baqarah verse 221 which means, "Furthermore, you must refrain from entering into matrimony with women who adhere to polytheistic beliefs until they have embraced the faith. Undoubtedly, the faithful female servant is superior to the lady who practices idolatry, regardless of her physical attractiveness". In the Qur'an other verses explain interfaith marriage. In the book *Interfaith Marriage in the Qur'an* written by Isnawati, it is explained that three verses of the Qur'an pertain to interfaith marriage. In addition to Surah Al-Baqarah verse 221, there are also Surah Al-Maidah verse 5 and Surah Al-Mumtahanah verses 10-11. In the Islamic view, interfaith marriages are considered invalid and haram. Nevertheless, there exist divergent viewpoints about the legality of interfaith marriages between Muslim men and women. Thus, according to the Qur'an, interfaith marriage is forbidden and considered haram. This view is also shared by most Islamic scholars and organizations in Indonesia.

3. METHODS

This study aims to determine how Indonesia's positive laws and religious views view marriage between people of different religions. The research methods used are juridical normative and descriptive analysis. The following are details of the research method used in the study, namely Normative Juridical, this method is used to analyze applicable legal regulations related to interfaith marriage in Indonesia, such as Law Number 1 of 1974 concerning Marriage and changes regulated in Law Number 16 of 2019. The juridical normative approach allows researchers to understand the legal framework governing interfaith marriage. Descriptive Analysis, this study also uses a descriptive analysis approach to describe religious views related to interfaith marriage

in Indonesia. With this approach, researchers can decipher different religious views on interfaith marriage and how this affects the legal status of such marriages. Qualitative Analysis: Data obtained from library materials and secondary data are analyzed qualitatively to obtain deductive conclusions. The qualitative approach allows researchers to understand the nuances and complexity of legal and religious issues related to interfaith marriage in Indonesia.

4. RESULTS AND DISCUSSION

4.1 *Interfaith Marriage in Positive Law in Indonesia*

The institution of marriage is a crucial component in establishing a happy and affectionate family. Consequently, the process of getting married necessitates the presence of legal regulations to govern it. The use of legal norms in the management of marriage is particularly essential to govern the entitlements, duties, and obligations of each member of the family to achieve a contented and prosperous family unit. Marriage is both a religious and legal act. When we get married, we are required to comply with the marriage regulations established by the State. These regulations are outlined in the Marriage Law, specifically Law Number 1 of 1974, which was enacted on January 2, 1974. The law is further supported by its implementing regulations, such as Government Regulation Number 9 of 1975, which details the implementation of Law Number 1 of 1974, and Law Number 16 of 2019, which amends certain provisions of Law Number 1 of 1974, particularly those related to the minimum age requirement for couples to marry.

legislation Number 16 of 2019 modifies Law Number 1 of 1974 on Marriage by introducing a clause that sets the minimum age for couples to get married. Under the previous legislation, males were required to be

at least 19 years old and women at least 16 years old to enter into marriage. In the most recent revised legislation, the minimum age for marriage is set at 19 years for both men and women. Marriage, as defined by Article 1 of Law Number 1 of 1974 concerning Marriage, is a sacred union between a man and a woman. It happens when they enter into the marital union, aiming to create a joyful and lasting family, founded on the faith in a singular heavenly being.

From the definition of marriage according to Article 1 of Law Number 1 of 1974 concerning Marriage, the elements of marriage can be formulated, namely:

1. Marriage is the innate bond between a man and a woman.
2. Marriage aims to form an eternal and happy family (household).
3. Marriage based on the One True Godhead.

Based on the elements of the definition of marriage above, the implementation of marriage must be carried out based on the Almighty Godhead having a direct effect on the validity of a marriage. Marriage is fundamentally intertwined with religion or spirituality, encompassing not just physical aspects but also serving a crucial function in establishing a joyful and everlasting family centered around the divine being [4].

Saleh (1992) further explained that the bond of birth and mind in the sense of marriage according to Article 1 of Law Number 1 of 1974 concerning Marriage is not only bound outwardly or only mentally, but both. The birth bond in question is that the bond is born as a formal bond which means binding between the two parties and that the inner bond is an informal relationship, a bond that is not visible

or exists in each party who enters marriage [6].

So, it can be said that marital commitment also means a willingness to accept some aspects behind it, such as legal, social, and religious aspects. Legal aspects in formal legal relationships, social aspects in personalities that become families in society, and religious aspects in building happy and prosperous families.

The objective of marriage, as inferred from the aforementioned comprehension, is to establish an everlasting union and a profound connection between a husband and wife, rooted in the manifestation of the divine being. Marriage encompasses religious elements that are intricately connected to the doctrines of his professed faith. The validity of marriage is contingent upon the regulations and pillars set out by each religion since it is subject to the rules and beliefs of that particular faith.

Law No. 1 of 1974, which pertains to Marriage, clearly states the conditions for a lawful marriage in Article 2, paragraph (1): "Marriage is considered valid when it adheres to the regulations of each respective religion and belief." [7].

Religion necessitates that the prospective husband and prospective bride share the same religious beliefs. The rules of each religion serve as the foundation for the legitimacy of a marriage, implying that the execution of marriage is exclusively governed by the laws of a single faith. Hence, the validity of marriage is contingent upon adherence to religious and belief-based rules, as well as compliance with the relevant legal statutes and regulations. Put simply, the union of marriage cannot be conducted under the jurisdiction of two distinct religious legal systems.

An act, in this case, a marriage, is said to have legal legality if its validity is not questioned by law, i.e., positive law or religious law. Based on the provisions of the law that apply positively in Indonesia, it has been clearly and unequivocally stated that interfaith marriage is not desirable, because it is contrary to the applicable law in Indonesia. However, it turns out that interfaith marriages still occur in practice.

4.2 Views of Religions in Indonesia Regarding Interfaith Marriage

Islamic View: Regarding the validity of interfaith marriage, Islam as the religion adopted by most of the Indonesian population strongly opposes the existence of interfaith marriage in Indonesian society. However, Islam forbids couples from wanting to marry in the context of interfaith marriage. It is not lawful for a Muslim to marry off his infidel daughter, and it is not permissible for an infidel to marry off his Muslim daughter because the guardianship relationship between the two has been broken [8].

Marriage between a Muslim man and a non-Muslim woman is permissible if the woman is a member of the Book. That is, the woman learned about the Bible and the Torah sent down by Allah Almighty where the arrangement of the Bible and the Torah was perfected in the Quran. Thus, according to some scholars, the marriage may take place because the woman of the book will submit to the arrangements in her book which, according to the scholars, women will adhere to Islam, thus a man will easily guide his wife to build a household ark following Islamic religious arrangements. However, there is a prohibition on interfaith marriage between Muslim women and non-Muslim men. Because there is a concern that a woman will follow a man's religion, in this case, a man as

the head of the household, there is great potential to invite his partner to follow the religion he believes in.

According to Catholic Christianity, marriage is an act that is not only a bond of love between husband and wife but should reflect the unbreakable nature of God's love and faithfulness. Marriage is valid when the bride and groom are baptized. In principle, Catholic Christianity does not allow interfaith marriage. Yet every Catholic Church has a process of approval and dispensation that allows interfaith marriages, granted by bishops through Catholic dioceses only if there is hope of building a good, intact family after marriage. This exception applies to marriages between unbaptized Catholics and non-Catholics, i.e., Islam, Hinduism, and Buddhism. Marriage between a Catholic and a baptized non-Catholic requires the bishop's approval only. In fact, according to Catholicism, religious differences can result in a marriage being invalid. And the Catholic Church argues that marriage between a Catholic and a non-Catholic is not an ideal marriage, because marriage is considered a sacrament [9].

Protestant Christian View: According to Protestant Christianity, interfaith marriages are not allowed. This is found in the Bible, stated in 2 Corinthians Chapter 6 verse 14 which reads: "Do not be unequal partners with unbelievers, for what similarity is there between righteousness and iniquity, or how light can unite with darkness". The Bible tells us that husbands should love their wives as they love Christ and wives should submit to husbands as they submit to Christ. That is, husband and wife must both love Christ and make Christ the leader of their marriage ark.

According to Hinduism, marriage is an agreement between a man and a woman as husband and wife to establish proper sexual relations and have children. According to Hindus, a couple must save the souls of their parents from hell by performing the ritual of the sacrament ceremony to be purified before marriage, if no ritual is performed according to Hindu law, the marriage is invalid [10]. In Hinduism, interfaith marriages are not permitted according to the Manawa Dharmasastha book III chapter 27 states that "a Hindu marriage must first be established and thereafter respect the parents before the Vedas who are virtuous of good language". Dirias in the statement means that the couple has received a good education or is educated in religious teachings, the couple must be ethical, and have good manners so that they can always be peaceful and happy in their family life.

Buddhist View: According to Buddhism, the Supreme Decree of January 1, 1977, Article 1 says " Marriage is a natural and inherent connection between a man, who assumes the role of husband, and a woman, who assumes the role of wife. This link is founded upon love, affection, and shared accountability, intending to create a joyous family that is blessed by the Buddha." Buddhism does not dispute interfaith marriage, but in practice, non-Buddhists must be willing to abide by the conditions of marriage, such as making vows in the name of Buddha, Dharma, and Prejudice. Performing a marriage ritual according to the teachings of this religion is considered to have converted to Buddhism without the non-Buddhist converting to Buddhism, even if it is subject to the ritual of performing the marriage only.

Confucian Religious View: According to the Confucian religion in its statement before the Constitutional Court decision dated November 24, 2015, with Case Registration number 68 / PUU-XII / 2014, essentially, it was stated that according to the word of God, marriage is intended to be between a man and a woman. Differences in comprehension, social status, nationality, culture, ethnicity, socio-political views, and religion should not hinder marriage. In Confucianism, Li Yuan (Blessing Ceremony) cannot be performed if one of the spouses is not Confucian. Even so, interfaith marriages can be given the blessing of *matakin*, in the form of recognition and notification of the existence of marriage [11].

4.3 *Legal Conflict Against the Practice of Interfaith Marriage in Indonesia*

Marriage in its implementation has 2 (two) aspects of legality that must be met, namely the legality of state law and the legality of religious law [12]. Different perceptions around the world portray marriage as a private affair, considering it directly related to one's happiness and life path. Therefore, marriage cannot be governed by differences in beliefs. Some cases of interfaith marriages are performed abroad to avoid the enactment of the laws of the country of origin [13]. In line with this, from a sociological view, interfaith marriage is a form of sociological jurisprudence, where there is a tendency for society to go outside the applicable law [14]. A law that is shaped by morals and values that prevail in a society, but is violated by society itself. There is a moral dimension in aspects of Indonesian law that has the potential to have negative consequences for individuals, groups, or countries.

Interfaith marriage is rife today, although it is still considered

taboo in social circles.[15] In addition, it is said that there are at least 4 (four) reasons why interfaith marriage has no place in society, namely: First, the community is still strong in carrying out religious teachings; second, religionists who mention religious rules in interfaith marriages on various occasions; third, the basic and common understanding, espoused by groups, organizations and communities, that interfaith marriages are prone to conflict and are likely to have negative impacts in the future; and fourth, more provisions prohibiting interfaith marriage.

According to Article 40 of the Compilation of Islamic Law (KHI), it is forbidden for men to marry women who are not Muslims. Article 2 of Law Number 1 of 1974 respecting Marriage affirms that a marriage is considered legal when it is founded upon the shared values and teachings of both individuals involved. Violation of religious rules can affect the individual life of the perpetrator and the environment. Furthermore, Article 100 of the KHI states that children born to interfaith couples cannot be legally recognized, because the marriage of their parents is no longer legally valid [16]. As a result, the child has a legal relationship only with his mother and not with his father. However, children have administrative rights according to law to be recognized in the civil registry.

The Civil Code considers marriage as a civil relationship only, as stipulated in Article 26 of the Civil Code [17]. The absence of a clear definition of religion in terms of marriage allows interfaith marriages to take place.

Indonesia's positive law, on the one hand, does not clearly describe interfaith marriage due to the large potential or negative

impacts that may arise. Although there was the possibility of interfaith marriage through Dutch East Indies regulations, Indonesian state regulations declared the impossibility of interfaith marriages through the Marriage Law. This reflects the example of Indonesian law that still relies on religious teachings.

From the perspective of human rights, marriage does not violate the laws or religious regulations adopted by the perpetrator [18]. This is because marriage considers aspects of future consequences, including child status, inheritance rights, and marital custody. In other words, from a human rights point of view, the prohibition of interfaith marriage is not a form of discrimination, but rather the freedom to accept and practice religious teachings by one's beliefs. From a human rights point of view, interfaith marriage is imposed on every perpetrator, given the possibility of negative consequences in the future [19]. From a sociological perspective, interfaith marriage is a form of collective consciousness that arises from individual relations in society [20]. In society, interfaith marriage is mechanical in the sense that it involves the decision of society, not only the individual who marries but the community is involved in determining what should be in a marriage, including considering the religion of the man and woman who will carry out the marriage. From an anthropological perspective, interfaith marriage arises based on consideration of various opinions that exist in society. The individual receives all the information available in society until finally the individual decides what decision to make. In the sense that individuals learn from the experiences of others entering into interfaith marriages, including full awareness of potential conflicts and

dilemmas that may arise. From a psychological perspective, interfaith marriage has the potential to cause several behavioral disorders, one of which is resilience, which refers to a person's ability to face or see problems [21]. Apart from the view that interfaith marriage is not allowed, there is a view that allows interfaith marriage, this view comes from *Regeling op de Gemengde Huwelijken (GHR)* is a regulation enacted before Law Number 1 of 1974 concerning Marriage. Mixed marriages themselves are said by some opinions to use GHR as their legal basis [22]. This shows that before the emergence of Law Number 1 of 1974 concerning Marriage, interfaith marriages could be carried out in Indonesia and were legally valid.

The permissibility of interfaith marriage is grounded on Article 57 of Law Number 1 of 1974, which includes a provision stating that marriage can be conducted and considered lawful even if it is governed by various legal systems. This facilitates unions between individuals of diverse nations and varying religious beliefs. Furthermore, Article 66 is regarded as a legal void, which may result in the non-application of the *Regeling op de Gemengde Huwelijk (GHR)*, which in Article 1 states that there are mixed marriages between Indonesians. This indicates the existence of marriages that differ culturally, religiously, territories, groups, and so on [23].

The Indonesian Ulema Council (MUI) through its fatwa No. 4/Munas/VII/MUI/2005 on Interfaith Marriage states that interfaith marriage is considered invalid under formal law or Islamic law [24]. The large number of opinions about the prohibition of interfaith marriage has led to different views on its legality. However, if examined further, those

that prohibit interfaith marriage are always based on religious teachings, as stated in the fatwas of the MUI and KHI [25]. Meanwhile, differences in interfaith marriage laws continue to this day.

4.4 Legal Effects of Interfaith Marriage

Legal Implications on the Status and Position of Children. According to Article 42 of Law No. 1 of 1974, a legal child refers to a kid who is born within a recognized marriage or as a consequence of it. Article 99 of the Compilation of Islamic Law (KHI) stipulates that a legitimate kid is born as a result of a valid marriage. That is, whether or not children are valid based on whether or not the marriage was carried out by their parents.

Offspring resulting from unions between individuals of various religious backgrounds are sometimes referred to as illegitimate or adulterous offspring. The aforementioned provision is stipulated in Article 43 paragraph 1 of Law No. 1 of 1974 and Article 100 of the KHI. It elucidates that in cases when parents of different religions are married, children will only have legal ties with their mother and her family, while their relationship with their father will not be recognized.

Legal Effects on Marital Status The implementation of marriage and whether or not it is permissible to hold interfaith marriages, the law leaves its provisions based on each party's religion. This complies with the provisions stated in Article 2, paragraph 1 of Law No. 1 of 1974. Essentially, interfaith marriage is universally forbidden by all religions in Indonesia. For the Muslim-majority State of Indonesia, after the enactment of INPRES Number 1 of 1991, Article 44 states that marriage between Muslim men and non-Islamic women is prohibited.

Similarly, Christianity and other religions in Indonesia prohibit interfaith marriage. Because religion prohibits interfaith marriage, interfaith marriage is also prohibited by Law No. 1 of 1974, and this results in interfaith marriage not being ideal and invalid.

Legal Effects in Administrative Status of Residence. Referring to Article 37(1) of the Population Law Number 23 of 2006 concerning Population Administration, Indonesian citizens who hold interfaith marriages abroad, then marriage registration is carried out in the country where the marriage took place. Later the marriage was reported in Indonesia. Interfaith marriages for Indonesian citizens are recognized by state law when registered or reported at the civil registry office.

In essence, Law Number 1 of 1974 concerning Marriage confirms that marriage is left to the religious law of each party. This means that Indonesia's marriage law does not specifically regulate the marriage of interfaith couples [25]. In practice, there are still many who in various ways carry out and legalize interfaith marriages to take the road abroad. But again, basically, interfaith marriage in Indonesia is prohibited. Their marriage is not valid under religious law in Indonesia.

5. CONCLUSION

According to the preceding chapters, the author concludes that the legal foundation for marriage in Indonesian positive law is outlined in Law Number 1 of 1974 concerning Marriage. Article 2, paragraph (1) of this law states that the validity of a marriage is determined by the religious teachings followed by the individuals involved. Additionally, Law Number 16 of 2019, which amends Law Number 1 of 1974, includes a specific provision regarding age requirements

for couples to marry. The former law said that the minimum age for marriage was 19 years for males and 16 years for women. In the most recent revised legislation, the minimum age for marriage is set at 19 years for both men and women. Under those circumstances, a marriage is considered lawful if it complies with the legal framework for marriage under Indonesian positive law and adheres to the religious advice followed. But concerning

interfaith marriage, each religion has a different view. If a religion allows interfaith marriage, then the marriage is considered valid. However, when a religion prohibits interfaith marriage, it is considered invalid. In practice, interfaith marriage will have legal consequences on the status and position of children, legal consequences on marital status, and legal consequences on the administrative status of residence.

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