

Inter-Religious Marriage: A Controversial Issue in Indonesia

Dani Setiawan^a✉

^a Center for Religious Justice and Law Semarang,
Indonesia

✉ Corresponding email: danisetiawan318@yahoo.com

Abstract

Different religious marriages we often encounter during society especially among the affluent and celebrities. This kind of marriage has been done by Muslim men married to non-Muslim women or otherwise Muslim women married to non-Muslim men. Sometimes in response we only follow the understanding of some people who greatly glorify freedom in all fields (Liberal), although it is in terms of a very private as well as religion. In a liberal sense the beliefs of religious differences in marriage are not a problem. Liberalism is a notion that requires the freedom of individuals in all fields. This study is intended to analyze the legal basis of inter-religious marriage or mixed marriage in Indonesia. This study highlighted and found that inter-religious marriage is become complicate problem when trying to determine some basic rights, including the property, child, and the others.

KEYWORDS *Inter-religious marriage, Family law, Controversial issue, Legal Discourse, Legal Basis*



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Introduction

Indonesia is a pluralistic nation, there is diversity in it whether it is race, race, or religion. Especially religion, the issue of inter-religious relations is the concern of various circles, not only the government but also other components of this nation for example: religious institutions (both Islamic and non-Islamic). Marriage is the inner and outer bond between a man and a woman as husband and wife in order to form a happy and eternal family (household) based on the omniscient divinity. Marriage can also be interpreted as a legitimate relationship between a man and a woman for a long time.¹

Marriage is done with the aim to continue the offspring. Marriage can be said to be valid if it meets the following requirements:

1. Both parties must reach the age stipulated in the law, namely for a 19-year-old man and for a 16-year-old woman.
2. There shall be free agreement between the parties.
3. For a woman who has dairy marriage must pass 300 days afterward decision of first marriage.
4. There is no prohibition in the law for both parties
5. For a minor, there must be a consent from the parent or guardian.²

That is the usual marriage terms contained in the Law No.1 of 1974 about marriage. The marriage itself apart from being regulated in law is also governed by religious law, religious law here according to the religion embraced by a person. There are differences in marriage arrangements as we know there are five religions recognized in Indonesia. Here I will not discuss about marriage seen from the standpoint of religious law but how

¹ Anisyah Anisyah, "Makna Pernikahan dalam Perspektif Tasawuf." *Refleksi: Jurnal Filsafat dan Pemikiran Islam* 20, No. 1 (2020): 101-113; Khoirul Anam, "Studi Makna Perkawinan dalam Persepektif Hukum di Indonesia." *Yustitiabelen* 5, No. 1 (2019): 59-67.

² Trusto Subekti, "Sahnya Perkawinan Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Ditinjau dari Hukum Perjanjian." *Jurnal Dinamika Hukum* 10, No. 3 (2010): 329-338; Tinuk Dwi Cahyani, *Hukum Perkawinan*, (Malang: UMM Press, 2020); Abdul Hadi Ismail, "Pernikahan dan Syarat Sah Talak." *Intiqad: Jurnal Agama dan Pendidikan Islam* 11, No. 1 (2019): 1-22.

the marriage of different religions seen from the law in Indonesia either PP, Act, or the Civil Code law.

Furthermore, inter-religious marriage, the union between individuals of different religious affiliations, stands as a contentious and multifaceted issue in the Indonesian context. Indonesia, renowned for its rich tapestry of cultural and religious diversity, grapples with the complexities inherent in navigating relationships that transcend religious boundaries. Against the backdrop of pluralistic society, inter-religious marriages are imbued with profound implications, touching upon legal, social, cultural, and religious dimensions. This paper aims to explore the intricate dynamics surrounding inter-religious marriage in Indonesia, delving into the legal frameworks, societal attitudes, and cultural underpinnings that shape perceptions and practices related to this phenomenon.

As a nation guided by the principles of Pancasila, which espouse unity in diversity, Indonesia embraces a spectrum of religious beliefs, including Islam, Christianity, Hinduism, Buddhism, and Confucianism. However, amidst this religious pluralism, inter-religious marriages often provoke debate and controversy, reflecting broader societal tensions and ideological divides. The legal landscape governing inter-religious marriage is equally complex, with divergent interpretations and applications of civil and religious laws across different regions and communities. This paper seeks to navigate these complexities, shedding light on the legal frameworks governing inter-religious marriage, as well as the societal and cultural factors that influence individuals' decisions to enter into such unions. Furthermore, it aims to critically examine the challenges and opportunities posed by inter-religious marriages in Indonesia, offering insights into the evolving dynamics of identity, belonging, and coexistence in a diverse and dynamic society.

Different religious marriages often encounter in the midst of society especially among the affluent and celebrities. This kind of marriage has been done by Muslim men married to non-Muslim women (Hindu, Christian, or other religions) or otherwise Muslim women married to non-Muslim men (Hindu, Christian, or other religions). Sometimes in response we only follow the understanding of some people who greatly glorify freedom in all fields (Liberal), although it is in terms of a very

private as well as religion. In a liberal sense the beliefs of religious differences in marriage are not a problem. Liberalism is a notion that requires the freedom of individuals in all fields.

This notion is not true if we embrace in addressing religious issues as we know Indonesia is not a liberal state, this kind of understanding can lead to a new mindset that will eventually lead to the mindset of the communist nation. Our country is also a free country in this case freedom of religion but freedom here is the limit because if freedom is interpreted as freedom as freely it will disturb the human rights of others. Religion in this case is something very private then it is not allowed to interfere religious affairs between one religion with another religion. In practice we still often encounter friction between religious people due to participate in religious interference. Though we ourselves know that religion is the relationship between man and his god, then we should not interfere in the affairs of others in religion.³

Marriage, as a sacred union, is governed not only by civil law but also by religious precepts. Individuals typically adhere to the religious laws corresponding to their faith as an act of devotion and obedience. While inter-religious marriages are permissible in some countries, Indonesia presents unique challenges in this regard. Couples desiring an inter-religious union often resort to marrying abroad and then returning to Indonesia with their marital status recognized. However, the legal status of individuals engaging in inter-religious marriages and the permissibility of such unions under Indonesian law remain subjects of scrutiny. In this context, it becomes essential to examine the prevailing legal perspectives in Indonesia regarding inter-religious marriages and whether they are sanctioned by the state. Thus, this paper aims to elucidate the complexities

³ M. Nur Kholis Al Amin, "Perkawinan Campuran dalam Kajian Perkembangan Hukum: Antara Perkawinan Beda Agama dan Perkawinan Beda Kewarganegaraan di Indonesia." *Al-Ahwal: Jurnal Hukum Keluarga Islam* 9, No. 2 (2017): 211-220; Mardalena Hanifah, "Perkawinan Beda Agama Ditinjau dari Undang-undang Nomor 1 Tahun 1974 Tentang Perkawinan." *Soumatara Law Review* 2, No. 2 (2019): 297-308; Muhammad Ashsubli, "Undang-Undang Perkawinan Dalam Pluralitas Hukum Agama (Judicial Review Pasal Perkawinan Beda Agama)." *Jurnal Cita Hukum* 3, No. 2 (2015): 289-302.

surrounding inter-religious marriages within the Indonesian legal framework, particularly exploring the differences in marital laws across religious traditions and their implications for individuals seeking such unions.

To identify and explain their everything related to the subject matter required a study guide called research methods, namely, how to describe something by using a carefully thought to achieve a purpose. The method used in this paper is a normative legal research methods by linking the issue with the provisions contained in the legislation concerned. Also used other written materials, such as journals and articles related to inter-religious marriage in Indonesia.⁴

Guba and Lincoln define a paradigm as a set of basic beliefs or metaphysical relating to fundamental principles. These beliefs are basic in the sense simply to be accepted solely on faith alone, it is because there is not a way to determine an ultimate truth. Paradigm is a perspective to understand the complexities of the real world.⁵ The paradigm that I use is the paradigm of qualitative research which is descriptive and accurate analysis to achieve the purpose of writing. Various theoretical basis is used as a reference in solving problems. Strategy Research: by examining the issue that is expected to find a major foundation conducted a literature study, which collects materials in the form of reliable literature. Followed by systematically analyzing activity journals, legislation, scientific articles, and other materials related to the material covered in this paper.

Marriage Policy In Indonesian Legal System

To deal with a problem arising from a diverse Indonesian society. Problems both in terms of culture and religion, it is important for the

⁴ Zainuddin Ali, *Metode Penelitian Hukum*. (Jakarta: Sinar Grafika, 2021); Kornelius Benuf, and Muhamad Azhar. "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer." *Gema Keadilan* 7, No. 1 (2020): 20-33.

⁵ Egon G. Guba, and Yvonna S. Lincoln. "Competing paradigms in qualitative research." *Handbook of Qualitative Research* 2 (1994), pp. 163-194; John W. Creswell, and Dana L. Miller. "Determining validity in qualitative inquiry." *Theory into Practice* 39, No. 3 (2000): 124-130.

government to regulate certain regulations in order to overcome the problems that arise. The marriage of different religions becomes a new phenomenon that arises in society.⁶ The government in this case has also established rules on marriage. The legal basis of marriage in Indonesia is applicable include:

1. Book I Book of the Civil Code
2. Law No. 1/1974 on Marriage
3. PP. 9/1975 on the Implementing Regulation of Law No. 1/1974

Based on Law No. 1/1974 article 66 for marriage and all things related to marriage based on this Law, then with the coming into effect of this Law the provisions set forth in the Civil Code (*Burgelijk Wetboek*), Indonesian Christian Marriage Ordinance (*Huwelijk Ordonantie Christen Indonesia* 1933 No. 74), Mixed Marriage Regulation (*Regeling op gem de Huwelijken* S.1898 No. 158)⁷, and other Regulations governing marriage to the extent provided for in this Law shall be declared null and void. From that article, all regulations governing marriage to the extent have been regulated in Law no. 1/1974, is declared no longer valid, namely marriage regulated in the Civil Code / BW, Indonesian Christian marriage ordinance and mixed marriage rules. In a *contrario*, it can be interpreted that some of the provisions are still valid as long as it is not regulated in Law no. 1/1974.

Regarding the marriage of religious differences conducted by the couple of husband and wife can be seen in the Law No. 1/1974 concerning marriage in article 2 verse 1 "*Marriage is lawful if done according to the law of their respective religions and beliefs*". From the sound of the article can be

⁶ Patrick Humbertus, "Fenomena Perkawinan Beda Agama Ditinjau dari UU 1 Tahun 1974 Tentang Perkawinan." *Law and Justice* 4, No. 2 (2019): 101-111; Kadek Wiwik Indrayanti, and Aloysius R. Entah. "Peran Negara dalam Memberikan Perlindungan Hukum Bagi Calon Pasangan Kawin Beda Agama (KBA) di Indonesia." *Jurnal Cakrawala Hukum* 6, No. 1 (2015): 56-66.

⁷ Nani Soewondo, "The Indonesian Marriage Law and its Implementating Regulation." *Archipel* 13, No. 1 (1977): 283-294; Adriaan Bedner, and Stijn Van Huis. "Plurality of marriage law and marriage registration for Muslims in Indonesia: a plea for pragmatism." *Utrecht Law Review* 6, No. 2 (2010): 175-191.

known that marriage can be said to be legal if done in accordance with the law of their respective religion. In article 10 of PP No.9 / 1975:

- [1]. Marriage is held after the tenth day since the announcement the wish of marriage by the Registrar Officer as referred to in Article 8 of this Government Regulation.
- [2]. The marriage ceremony is done according to the law of each religion and that belief.
- [3]. Paying attention to the marriage procedure according to each his religious law and his beliefs, marriage is exercised in front of the Registrar Officer and attended by two witnesses.⁸

The article states that a new marriage is valid if it is performed in front of the recording officer and attended by two witnesses. Then the ordinances of marriage are done according to their respective religious law.

In the Civil Code the marriage is arranged in the book into a fourth chapter on marriage. Article 30 and Article 31 of the Civil Code:

Article 30

Marriage is prohibited between them, whichever one relates to one another in straight line up and down, whether by legitimate or illegitimate, or by marriage, and in the perverse line, between brother and sister, legitimate or invalid.

Article 31

Marriage is also prohibited:

1e. Between brother-in-law and sister-in-law, because marriage is lawful or illegitimate, except that the husband or the wife causing the cessation has died or, if due to the absence of the

⁸ Yasin Yasin, "Pencatatan Nikah, Talak dan Rujuk Menurut Undang-Undang No. 1/1974 dan PP. No. 9/1975." *Jurnal Ilmiah Al-Syir'ah* 13, No. 2 (2015); Sakirman Sakirman, "Akibat Hukum dalam Praktik Nikah Sirri Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan." *Muslim Heritage* 2, No. 1 (2017): 63-86.

husband or the wife, to the wife or husband left by the judge allowed to mate with others.

2e. Between your uncle or his parents 'uncle and your sister's or granddaughters' daughter, like any aunt or parent aunt and sibling's son or grandson, legitimate or illegitimate.

In the case of important reasons, the president has the power to abolish the restrictions contained in this article by granting a dispensation.

Based on the sounds of the two articles it can be concluded in the Civil Code only prohibits marriage based on blood relations or kinship. In the Civil Code there is also no clause which clearly regulates the prohibition of marriage of different religions, if referring to the Civil Code then the marriage of different religions is allowed but we cannot use this KUHPerdata as the basis because there is already a special law regulating the marriage as *lex specialist derogat legi generali* then we use as the basis is UU 1/1974.⁹

In understanding the marriage of different religions, we must refer to Law 1/1974. According to Prof. H. Hilman Hadikusuma, S.H, there are three different interpretations in the Act 1/1974 namely:

1. The marriage of religious difference is a violation of the Law 1/1974 article paragraph 1 jo article 8 f.
2. Inter-marriage marriage is lawful and may take place, as it is emblazoned in mixed marriages, with arguments in article 57 of mixed marriages which focus on two persons in Indonesia subject to different laws, which means that this article governs the marriage between two persons Different citizens are also two people of different religions.
3. Inter-marriage marriage is not regulated in Act No. 1/1974, therefore, based on Article 66 of Law 1/1974, the issue of marriage of different

⁹ Tengku Erwinsyahbana, "Sistem Hukum Perkawinan Pada Negara Hukum Berdasarkan Pancasila." *Jurnal Ilmu Hukum* 3, No. 1 (2012); Retna Gumanti, "Syarat Sahnya Perjanjian (Ditinjau dari KUHPerdata)." *Jurnal Pelangi Ilmu* 5, No. 01 (2012).

religions may refer to the mixed marriage regulation, because it has not been regulated in marriage law.¹⁰

Marriage in Some Legal & Historical Contexts

According to Goldberg marriage is a popular institution in the community, but at the same time also not a test-resistant institution. Marriage as a unit continues to promise a lasting and even lasting friendship and cultural preservation and the fulfillment of inter-personal needs.¹¹

According to Kartono, understanding marriage is a social institution that is recognized in every culture or society. Although the meaning of marriage is different, but the practice of marriage in almost all cultures tends to be the same as marriage shows at an event when a pair of husband and wife is formally brought together in front of religious lord, witnesses, and a number of attendees to be officially ratified by ceremony and ritual specific.¹² Furthermore, according to Saxton marriage has two meanings:

1. As a social institution

A collective solution to social needs. The existence of the marriage provides the ultimate function for the survival of a group in this case is society.

2. Marriage as a form of legitimacy of the role as an individual, but especially, marriage in the view as a source of personal satisfaction.¹³

According to Subekti marriage is a legitimate relationship between a man and a woman for a long time.¹⁴ According to Wirjono Prodjodikoro

¹⁰ Hilman Hadikusuma, *Hukum Perkawinan Indonesia*. (Bandung: Mandar Maju, 2007).

¹¹ Suzanne B. Goldberg, "Marriage as Monopoly: History, Tradition, Incrementalism, and the Marriage/Civil Union Distinction." *Connecticut Law Review* 41 (2009): 1397.

¹² Kartini Kartono, *Psikologi Wanita*. (Bandung: Mandar Maju, 2006).

¹³ Lloyd Saxton, *Individual, Marriage, and the Family*. (California: Wadsworth Publishing Co., 1986).

¹⁴ R. Subekti, *Pokok-Pokok Hukum Perdata*. (Jakarta: Penerbit Intermasa, 1985).

marriage is a coexistence of a man and a woman, who meet the requirements that are included in the law of marriage law.¹⁵

According to Soetoyo Prawirohamidjojo, the definition of marriage is a living alliance that occurs between a man and woman, formally endorsed by law (juridical).¹⁶ According to Kaelany HD marriage is a marriage contract between the prospective husband and the prospective wife to fulfill its kind in accordance with the provisions regulated by sharia.¹⁷ With this contract, both candidates will be allowed to mingle as husband and wife.

Based on the various definitions of marriage above, it can be concluded that marriage is an inner bond between men and women as husband and wife who have the power of law and is recognized socially with the aim of forming a family as a unity that promises cultural preservation and fulfillment of inter-personal needs

Furthermore, marital terms are stipulated from article 6 to article 12 of Act 1/1974. Article 6 through Article 11 contains the terms of marriage of a material nature, while article 12 regulates the terms of formal marriage. Marital requirements of material (chapters 6-11)

A formal marriage requirement can be described according to Article 12 of Law 1/1974 realized in article 3 to article 13 PP 9/1975. Briefly the formal requirements can be described as follows:

1. Any person wishing to marry a marriage must notify the marriage registry officer where the marriage will take place, made at least 10 days before the marriage is held. Notice may be made oral / written by the bride / parent / representative. The notice includes, among other things, the name, age, religion, place of residence of the prospective bride (Chapters 3-5).

¹⁵ Wirjono Prodjodikoro, *Hukum Perkawinan di Indonesia*" (Bandung: Sumur Bandung, 1991).

¹⁶ R. Soetoyo Prawirohamidjojo, "Pluralisme dalam Perundang-Undangan Perkawinan di Indonesia", *Dissertation* (Surabaya: Universitas Airlangga, 1986).

¹⁷ Kaelany HD, *Islam & Aspek-Aspek Kemasyarakatan*. (Jakarta: Bumi Aksara, 2005).

2. After the requirements are accepted by the marriage recording officer then it is investigated whether it has fulfilled the requirement. The results of the study are written in a special list for that (Article 6-7)
3. Where all conditions are met the marriage registry officer makes an announcement signed by the marriage registry employee which includes among others:
4. Name, age, religion, occupation, and work of the bride
5. Day, date, time and place of marriage will be held (chapters 8-9)
6. Not until marriage takes place after the tenth day according to the law of each religion and belief. The two brides-to-be signed a marriage certificate in front of the registering officer and attended by two witnesses, the marriage was officially registered. The marriage certificate is made in duplicate, one for the registrar and another stored on the court clerks. To husbands and wives each is given a quotation of marriage certificate (Chapters 10-13).

Conclusion

Based on the formulation of the above problem it can be concluded that Law No.1 / 1974 on Basic Provisions of Marriage, does not regulate the marriage of different religions. Therefore, intermarriage marriages can not be made in accordance with article 2, paragraph 1 of Law No.1 / 1974, that marriage is lawful, if done according to the law of each religion and belief. And in article 10 PP No.9 / 1975 stated that, a new marriage valid if done in front of the clerk employee and attended by two witnesses. And the ordinances of marriage are done according to the laws of their respective Religions and beliefs. In filling the legal void because in Law No. 1/1974 does not explicitly set about interfaith marriages, the Supreme Court in its jurisprudence dated January 20, 1989 Number: 1400 K / Pdt / 1986, providing a legal solution to interfaith marriage is that interfaith marriages may be accepted at the Civil Registry as one only authorized institution to carry out a petition that both husband and wife candidates are not Muslim to be obliged to accept intermarriage application. In the interfaith marriage process the petition for interfaith marriage may be submitted to the Civil Registry Office. And for Muslims to be interpreted

for themselves as one such couple is willing to marry not Islam. And thus, also interpreted that by filing the petition the petitioner no longer ignores his religious status. So that article 8-point f Law no. 1/1974 is no longer an obstacle to marriage, assuming that both husband and wife are no longer Muslim. Thus, the Civil Registry Office is obliged to accept such applications not because of the two potential spouses in a capacity as those of a different religion, but in the religious or belief status of one of their potential partners. The marital status of a person who makes a religious marriage is recognized by the state because of the jurisprudence of the Supreme Court of 20 January 1989 Number: 1400 K / Pdt / 1986 stating that the request for a religious marriage can be filed in the civil registry.

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I believe in recognizing every human being as a human being--neither white, black, brown, or red; and when you are dealing with humanity as a family there's no question of integration or intermarriage. It's just one human being marrying another human being or one human being living around and with another human being."

Malcolm X, *The Autobiography of Malcolm X*

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