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Inter-religious Marriage in Indonesia: Pros and Cons in the Administrative and Constitutional Law

Adzkia Dzikro Romadhon^{1*}, Adibah Bahori²

¹ Center for Law and Human Rights, Faculty of Law, Universitas Negeri Semarang

² Academy of Contemporary Islamic Studies, Universiti Teknologi MARA, Malaysia

* Corresponding author: adzkiadzikro2021@gmail.com

Abstract

Inter-religious marriage is a complex and multifaceted issue in Indonesia, a diverse nation with a majority Muslim population. This paper explores the legal landscape surrounding inter-religious marriages in Indonesia, focusing on both the administrative and constitutional dimensions. The study aims to analyze the advantages and disadvantages of the existing legal framework governing inter-religious marriages, shedding light on the implications for individuals, families, and society. The administrative aspects of inter-religious marriage involve the bureaucratic processes and legal requirements that couples must navigate to register their unions. This paper examines the administrative challenges faced by inter-religious couples, exploring issues such as documentation, consent, and the role of government institutions in facilitating or impeding such marriages. On the constitutional front, the study delves into the legal principles and rights enshrined in Indonesia's constitution that pertain to inter-religious marriages. The analysis considers the constitutional guarantees of religious freedom, equality, and non-discrimination, as well as potential conflicts with other constitutional provisions. The pros and cons of inter-religious marriages are discussed, considering the social, cultural, and economic implications for individuals and their communities. Positive aspects such as fostering social cohesion, cultural diversity, and personal freedom are contrasted with challenges like societal resistance, legal complexities, and potential impacts on children within these unions. Furthermore, the paper examines recent developments and debates surrounding legislative reforms related to inter-religious



marriages in Indonesia. It evaluates the potential for legal changes to address existing challenges and enhance the protection of individual rights while respecting the diverse religious landscape of the nation. In conclusion, this paper offers a comprehensive analysis of inter-religious marriage in Indonesia, exploring both administrative and constitutional aspects. By presenting a nuanced understanding of the pros and cons, it contributes to the ongoing discourse on legal reforms and social attitudes towards inter-religious unions, aiming to promote a more inclusive and equitable legal framework for all citizens.

Keywords

Inter-religious Marriage, Administrative Law, Constitutional Rights, Freedom of Religion and Belief

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Introduction

THE CONTROVERSY SURROUNDING interfaith marriage in Indonesia has reemerged prominently in recent times, prompted by media reports detailing the interfaith union of Ayu Kartika Dewi, a Special Staff member of President Jokowi. This development, where Ayu Kartika Dewi, a Muslim, married Gerald Sebastian, a Catholic, has been extensively covered in the media. In a statement featured on some news in Indonesia, Ayu Kartika Dewi elucidated that her decision to marry Gerald was the culmination of a two-year courtship.¹ The ensuing discourse on interfaith marriage unfolded into a

¹ Asnida Riani, “Stafsus Jokowi Ayu Kartika Dewi Nikah Beda Agama, Gelar Akad Nikah dan Pemberkatan di 1 Hari”, *Liputan 6 News*, March 18, 2022. Retrieved from <https://www.liputan6.com/lifestyle/read/4915287/stafsus-jokowi-ayu-kartika-dewi-nikah-beda-agama-gelar-akad-nikah-dan-pemberkatan-di-1-hari>. See also Laras Susanti, “Another Marriage Law controversy: is reform overdue?”, *Indonesia at Melbourne*, March 29, 2022. Available online at <https://indonesiaatmelbourne.unimelb.edu.au/another-marriage-law-controversy-is-reform-overdue/>

polemic, with numerous netizens expressing dissent and disapproval of such unions within the Indonesian context. This discontent was notably articulated through statements made by the Indonesian Ulema Council (MUI), as conveyed by its Secretary General, Amirsyah Tambunan. Amirsyah Tambunan, Secretary General of MUI stated that a valid marriage must be in accordance with their respective religious beliefs and beliefs which refer to the provisions of Law Number 1 of 1974 concerning Marriage. Amirsyah Tambunan stated that in the rules of the marriage law, it is mentioned in one article that legal marriage is according to their respective religions and beliefs.² This means that marriage is indeed a marriage that has a strict connotation and clearly different religions are not allowed, must be with the same religion in accordance with their respective beliefs.

The polemic of interfaith marriage does not only arise from the news of the Presidential Staff, there is also news of interfaith marriage from the Surabaya District Court (PN). Many reports reported that there was a lawsuit filed against the Surabaya District Court because it had issued a decree on interfaith marriage. The Surabaya District Court granted an application for interfaith marriage dated April 26, 2022 by two Surabaya residents, RA who is Muslim and EDS who is Christian. Gede Agung, Deputy Public Relations Officer of PN Surabaya, said that PN Surabaya understands that the decision to grant the request for interfaith marriage made by his party some time ago caused public reaction. The Surabaya District Court judge who examined and determined the case had considerations in accordance with the rules and applicable laws. In the news, the Surabaya PN understands that there is such a reaction. But the judge's judgment examining the case stated that there had

² Kanavino Ahmad Rizqo, "UU Perkawinan Digugat, MUI Sebut Nikah Beda Agama Bertentangan Konstitusi", *Detik News*, February 10, 2022. Retrieved from <https://news.detik.com/berita/d-5936971/uu-perkawinan-digugat-mui-sebut-nikah-beda-agama-bertentangan-konstitusi>; Ani Nursalikhah, "Sekjen MUI Ajak Masyarakat Tolak Nikah Beda Agama", *REPUBLIKA*, June 21, 2022. Retrieved from <https://khazanah.republika.co.id/berita/rdtc9l366/sekjen-mui-ajak-masyarakat-tolak-nikah-beda-agama>.

been a reference. During the examination process referring to the provisions governing both the Marriage Law, the Administration Law, from that consideration the judge finally determined to allow the applicant to register his marriage.³

The legal rationale presented by the Public Relations Representative of the Surabaya District Court aligns with the legal foundation utilized by the court judges in adjudicating applications for interfaith marriage. The pertinent legal frameworks invoked in these deliberations are Law Number 1 of 1974 concerning Marriage and Law Number 24 of 2013 concerning Population Administration, specifically referring to article 35 letter a. This provision explicitly states that interfaith marriages can be officially recognized and registered by the Civil Registration Office subsequent to obtaining judicial approval at the local court.⁴

Nevertheless, the decision of the Surabaya District Court has faced a legal challenge with a lawsuit filed by four individuals—M Ali Muchtar, Tabah Ali Susanto, Ahmah Khoirul Gufron, and Shodiku. The case, registered on June 23, 2022, bears the reference number 658/Pdt.G/2022/PN Sby. In response to the ensuing controversy following the Surabaya District Court's ruling on interfaith marriage approval, the Indonesian Ulema Council (MUI) expressed

³ See Praditya Fauzi Rahman, "Putusan PN Surabaya Kabulkan Nikah Beda Agama Dianggap Langgar UUD 1945", *Detik News*, February 16, 2023. Retrieved from <https://www.detik.com/jatim/hukum-dan-kriminal/d-6573192/putusan-pn-surabaya-kabulkan-nikah-beda-agama-dianggap-langgar-uud-1945>. See also Sri Wahyuni, "Kontroversi Perkawinan Beda Agama di Indonesia." *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 11, no. 2 (2011): 14-34; Muhammad Ashsubli, "Undang-Undang Perkawinan dalam Pluralitas Hukum Agama (Judicial Review Pasal Perkawinan Beda Agama)." *Jurnal Cita Hukum* 2, no. 2 (2015): 289-302; Nur Asiyah, "Kajian Hukum Terhadap Perkawinan Beda Agama Menurut Undang-Undang Perkawinan dan Hukum Islam." *Jurnal Hukum Samudra Keadilan* 10, no. 2 (2015): 204-214.

⁴ See also Muhammad Roni, "Analisis Pernikahan Beda Agama Perspektif Hukum Islam Dan Hukum Positif (Studi Kasus Penetapan Pengadilan Negeri Surabaya Nomor 916/Pdt. P/2022/PN. Sby)." *Journal of Law and Islamic Law* 1, no. 1 (2023): 44-73; Bintang Ulya Kharisma, "Polemik Putusan PN Surabaya Terkait Pernikahan Beda Agama dengan Hukum Keluarga (UU Perkawinan dan UU Administrasi Kependudukan)." *Jurnal Pro Hukum* 11, no. 1 (2022): 162-174.

its stance through a statement by KH. Ma'ruf Amin, the Chairman of the Advisory Council of MUI. KH. Ma'ruf Amin reaffirmed MUI's fatwa, specifically referring to MUI fatwa Number 4/MUNAS VII/MUI/8/2005 issued on July 28, 2005. This fatwa unequivocally declares interfaith marriage as *haram* (forbidden) and invalid, extending the prohibition to the marriage of Muslim men with *Ahlu Kitab* women, according to the established consensus (*qaul mu'tamad*).⁵

In the further context, the controversy surrounding interfaith marriage is not solely a consequence of extensive media coverage; rather, it has garnered widespread public attention, eliciting diverse responses and comments. This phenomenon is exacerbated by the heightened sensitivity within the online community, where individuals express significant concerns about religious beliefs, systems, and values, particularly within the context of Islam. It is imperative for the government to recognize and address this polemic, affording it special attention through legislative measures that establish unequivocal guidelines to navigate this issue within the legal and juridical framework. By doing so, the government can proactively mitigate the recurrence of interfaith marriage controversies and, to the greatest extent possible, minimize negative social implications and adverse impacts from a legal perspective.⁶

Additionally, it is also highlighted that interfaith marriage in Indonesia is a complex and contentious issue, with legal, social, and religious implications. Saepullah and Judiasih both highlight the legal challenges and prohibitions

⁵ See also Puad Muzakkar Siregar, "Relevance of The Fatwa of The Indonesian Ulema Council to The Renewal of Islamic Family Law in Indonesia (Study of MUI Fatwa Number: 4/Munas VII/MUI/8/2005 on Marriage of Different Religions)." *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi, dan Keagamaan* 8, no. 1 (2021): 85-102; Nanda Azizah Putri, et al. "Perkawinan Beda Agama Perspektif Undang-Undang Perkawinan, Kompilasi Hukum Islam, dan Fatwa Majelis Ulama Indonesia No. 4/MUNAS VII/MUI/8/2005." *Al-Mazaahib: Jurnal Perbandingan Hukum* 11, no. 1 (2023): 69-92.

⁶ Ratno Lukito, "The enigma of legal pluralism in Indonesian Islam: the case of interfaith marriage." *Journal of Islamic Law and Culture* 10, no. 2 (2008): 179-191; Md Zahidul Islam, "Interfaith marriage in Islam and present situation." *Global Journal of Politics and Law Research* 2, no. 1 (2014): 36-47.

surrounding interfaith marriage, with the latter emphasizing the violation of the principle of "*the belief in the one and only God*."⁷ Ali and Lon delve into the religious and social aspects, with Ali focusing on the fatwas issued by authoritative bodies and Lon discussing the problems faced by Catholic partners in interfaith marriages, including difficulties in marriage legality and children's education.⁸ These studies collectively underscore the multifaceted nature of interfaith marriage in Indonesia, and the need for legal, religious, and social protections for couples in such unions.

In light of the aforementioned issues elucidated by the authors, pertaining to the societal polemics surrounding interfaith marriage that have emerged as a widespread topic of public discourse in Indonesia, the impetus for this study stems from the contentious decisions made by the South Jakarta Court and Surabaya District Court, granting approval for interfaith marriage registration in Disdukcapil, and the subsequent response from the Indonesian Ulema Council (MUI). Consequently, the author seeks to delve deeper into the legal aspects of interfaith marriage in Indonesia, conducting an examination of the pertinent rules governing marriage within the Indonesian legal framework. The primary focus is to ascertain the existence of normative regulations governing interfaith marriage and to analyze the legal ramifications of such norms on interfaith unions in Indonesia. The specific problem statements guiding this study are: *first*, are there any normative rules governing interfaith marriage in Indonesia? and *second*, what is the legal impact of normative regulations on interfaith marriage in Indonesia?

⁷ Usep Saepullah, "The inter-religious marriage in Islamic and Indonesian law perspective." *Jurnal Ilmiah Peuradeun* 7, no. 1 (2019): 43-58; Sonny Dewi Judiasih, Nazmina Asrimayasha Nugraha, and Luh Putu Sudini. "Prohibition of intera religion marriage in Indonesia." *Jurnal Dinamika Hukum* 19, no. 1 (2019): 186-203.

⁸ Muhamad Ali, "Fatwas on Inter-faith Marriage in Indonesia." *Studia Islamika* 9, no. 3 (2022): 1-33; Lon, Yohanes S. "Problems Faced by Catholic Partners in Inter-religious Marriage in Flores, South-east Indonesia." *Proceedings of the 1st International Conference on Education, Humanities, Health and Agriculture, ICEHHA 2021, 3-4 June 2021, Ruteng, Flores, Indonesia*. 2021.

This study employs a normative legal research methodology, employing a legal approach grounded in references such as the 1945 Constitution (UUD 45), Law No. 1 of 1974 concerning Marriage, Law No. 24 of 2013 amending Law No. 23 of 2006 concerning Population Administration, Government Regulation (PP) No. 9 of 1975 on the Implementation of Law No. 1 of 1974 concerning Marriage, Compilation of Islamic Law (*Kompilasi Hukum Islam*, hereinafter as KHI), Quranic verses, and perspectives from scholars, jurists, and relevant literature on interfaith marriage. Conducted in the format of a literature study, the research relies on written materials pertaining to the discussed topic. Employing a qualitative approach with a normative emphasis, the study concentrates on the exploration of positive legal rules applicable in Indonesia. The data analysis follows an inductive approach, drawing general conclusions from specific findings. Throughout the research, supporting arguments for this scientific article are derived from diverse sources, including books, journals, expert opinions, evolving legal theories, online news portals, and scholarly writings associated with the examined subject matter.

Conceptualizing Marriages: Exploring Normative Definitions in Accordance with Law Number 1 of 1974 on Marriage

Nikah in Indonesian term, as defined by the Big Indonesian Dictionary, refers to a marriage contract conducted in compliance with both legal and religious provisions. In Arabic, it is known as *al-'aqdu*, signifying a contract that legitimizes what is considered haram. The term '*Nikah*' also encompasses concepts such as *kumpul*, *wathi'*, *jima'*, and *Akad*.⁹ According to Islamic jurisprudence (*shara'*), marriage constitutes a contractual agreement with

⁹ Mohamad Athar, "Konsep Pernikahan dalam Al-Quran." *Jurnal Al-Adillah* 2, no. 1 (2022): 44-54; Ahmad Atabik, and Khoridatul Mudhiiah. "Pernikahan dan Hikmahnya Perspektif Hukum Islam." *YUDISIA: Jurnal Pemikiran Hukum dan Hukum Islam* 5, no. 2 (2016): 286-316.

defined pillars and conditions, as elucidated by Husen & Abi Syuja'.¹⁰ Law Number 1 of 1974 elucidates marriage as an inherent bond between a man and a woman, establishing them as husband and wife, with the objective of forming a joyous and enduring family based on divine principles. Furthermore, the legal definition of marriage, as per the Marriage Law, encompasses three key aspects: juridical, involving the formal bond that creates a legal relationship; social, as marriage binds individuals to each other and society; and religious, emphasizing a purpose rooted in the Supreme Godhead for the creation of a lasting and contented family.

However, the significance, essence, and definition of marriages are inherently linked to the reality that Indonesia is a nation characterized by the diversity of ethnicities, races, religions, and beliefs.¹¹ This acknowledgment underscores the presence of a myriad of cultures, including diverse customs associated with marriage, within the Indonesian populace. Importantly, every belief system and religion in Indonesia is marked by its own set of customs and regulations governing marriage, devoutly adhered to by their respective followers. In an effort to harmonize regulations on marriage across various religions, the government has undertaken the formulation of laws that serve as a bridge between religious principles and state regulations, fostering legal coherence.¹² This discussion will provide a brief insight into the diverse rules and customs governing marriage within the religious frameworks adopted by Indonesian citizens. The intimate connection between the term 'marriage' and

¹⁰ Misbah Munir, and Ayudya Rizqi Rachmawati. "Tinjauan Hukum Islam Terhadap Nikah Beda Agama Dalam Kitab Tafsir Al-Ahkam Karya Syaikh Aly Al-Shabuny." *Jurnal ASA: Jurnal Kajian Hukum Keluarga Islam* 2, no. 2 (2020): 24-37. See also Fadhil Mubarak, and Januddin Januddin. "'Fair' Status of Marriage Wali According to Shafi'i Mazhab and Hanafi Mazhab." *Al Mashaadir: Jurnal Ilmu Syariah* 3, no. 2 (2022): 95-112.

¹¹ Sri Handayani, Syarifah Nuraini, and Rozana Ika Agustiya. "Faktor-faktor penyebab pernikahan dini di beberapa etnis Indonesia." *Buletin Penelitian Sistem Kesehatan* 24, no. 4 (2021): 265-274.

¹² Moh. Subhan, "Rethinking Konsep Nusyuz Relasi Menciptakan Harmonisasi dalam Keluarga." *Al-Adalah: Jurnal Syariah dan Hukum Islam* 4, no. 2 (2019): 194-215; JM Henny Wiludjeng, *Hukum Perkawinan dalam Agama-Agama*. (Yogyakarta: Penerbit Universitas Katolik Indonesia Atma Jaya, 2020).

the religious rules of each faith is integral to the institutionalization process of the term *marriage* itself.

There exist distinct interpretations of marriage within the diverse perspectives of beliefs and religions in Indonesia. In Hinduism, marriage aligns with the tenets of Hindu teachings, compelling adherents to abide by the regulations of their faith. Representatives from *Persatuan Hindu Dharma Indonesia* (PHDI) assert that interfaith marriages, diverging from Hindu teachings, cannot be sanctioned through *Vivaha Samskara*. According to PHDI's Council of Experts member, I Nengah Dana, such unions are deemed invalid and perpetually regarded as *samgrhana* (adultery), a stance emphasized during a hearing at the Constitutional Court (MK) Building.¹³ Conversely, in Buddhism, marriage does not necessitate both partners to be Buddhists, underscoring the absence of a religious requirement while emphasizing adherence to Buddhist procedures. Bhikkhu Uttamo highlights the importance of understanding and accepting differences, promoting harmony within a plural family, as Buddhism does not explicitly forbid interfaith marriage. Notably, one condition of Buddhist marriages stipulates that the spouses must recite "*In the name of the Buddha, Dharma, and Prejudice*" to signify commitment without explicitly embracing Buddhism, recognizing the spiritual significance without necessitating conversion.¹⁴

On another perspectives, within the framework of the Catholic religious teachings, marriage is deemed valid when it aligns with the doctrines of Catholicism, receiving confirmation and blessings from Church officials in the

¹³ Ketut Sari Adnyani, "Bentuk Perkawinan Matriarki Masyarakat Hindu Bali Ditinjau dari Perspektif Gender dalam Hukum." *Pandecta Research Law Journal* 11, no. 1 (2016): 47-64; I. Nyoman Gede Remaja, "Makna Perkawinan dalam Perspektif Hukum dan Agama Hindu." *Pariksa: Jurnal Hukum Agama Hindu* 1, no. 1 (2020): 76-83; Ni Nyoman Rahmawati, "Pengesahan Perkawinan Beda Agama dalam Perspektif Hukum Hindu." *Belom Bahadat: Jurnal Hukum Agama Hindu* 9, no. 1 (2019).

¹⁴ Lindawaty Mulyadi, "Pernikahan dalam Perspektif Buddhis Mahayana." *Prosiding Ilmu Agama dan Pendidikan Agama Buddha* 3, no. 1 (2022): 15-19; Rida Sita Ridwan, "Pernikahan perspektif Hindu dan Budha: Studi Analisis Vihara Vipassana Graha dan Pura Agung Wira Loka Natha". *Thesis* (Bandung: UIN Sunan Gunung Djati Bandung, 2023).

presence of two witnesses. According to Catholic beliefs, a marriage procession is considered a sacrament, something sacred. Therefore, in the eyes of Catholicism, a marriage involving a Catholic and a non-Catholic is not regarded as ideal. The Catholic faith does not sanction marriages where one of the individuals is not Catholic, adhering to the principle that both parties should share the same religious affiliation for the union to be considered in accordance with their sacramental beliefs.¹⁵

In Protestantism, the validity of a marriage is contingent upon adherence to the rules, procedures, and conditions within the *framework of Protestant beliefs*. *The Biblical scripture underscores the principle: "Neither shall you marry them: your daughters you shall not give to their sons, nor their daughters you shall not take for your sons; for they will make your sons stray from me, so that they may serve other gods. Then the wrath of the Lord will rise against you, and He will destroy you immediately."* Additionally, in response to the Corinthians' inquiry about remarriage following the death of a spouse, Paul stipulates agreement as long as the remarriage involves individuals of the same faith. This emphasizes the significance of shared religious beliefs within Protestantism when considering the validity of marital unions.

This perspective from Paul is often interpreted as his firm stance that marriage should ideally occur between Christians. However, in the case of a convert to Christianity whose spouse does not share the same faith, Paul does not advocate for divorce unless the unbelieving spouse insists on it. It's important to note that Paul explicitly attributes this guidance to himself, not as a directive from God. In the context of Christianity, a marriage is considered valid when both partners adhere to the Christian faith. Protestantism emphasizes the importance of shared religious beliefs in marriage, as the union

¹⁵ Yohanes Servatius Lon, *Hukum Perkawinan Sakramental dalam Gereja Katolik*. (Yogyakarta: PT Kanisius, 2019); Daniel Ortega Galed, and Latar Belakang. "Perkawinan In Fieri dan Perkawinan In Facto Esse dalam Pemahaman Yuridis Gereja Katolik." *Jurnal Hukum Magnum Opus* 3, no. 1 (2020): 57-68.

is seen as a means to attain happiness by avoiding the complexities of life that may arise when spouses do not share the same faith.¹⁶

Marriage within the Khonghucu religious framework lacks explicit mention of the permissibility or impermissibility of interfaith unions. A marriage is deemed valid under Khonghucu rules when both the man and woman are adults, engage willingly without coercion, receive mutual agreement from the prospective brides, obtain blessings from both sets of parents, and undergo confirmation through religious ceremonies. Importantly, there is no requirement for the bride and groom, belonging to different religions, to convert to a common faith. Meanwhile, in the Confucian tradition, this is known as *Li yuan*, signifying a marriage between Confucian individuals. Despite the adherence to *Li yuan*, individuals within the Confucian faith can still offer blessings for interfaith marriages, acknowledging and respecting the union between individuals of different religious backgrounds.¹⁷

Furthermore, within the Islamic context, interfaith marriage is not permitted unless both spouses embrace the same religion, specifically Islam. This restriction is outlined in the provisions of Islamic religious law, as articulated in the Presidential Instruction of the Republic of Indonesia Number 1 of 1991 or the Compilation of Islamic Law (KHI) Article 40 letter c, explicitly stating that "*It is forbidden to hold a marriage between a man and a woman because he is not Muslim.*" The majority of Islamic scholars, the *Fuqaha*, concur that the marriage of a Muslim woman to a non-Muslim man, whether from the People of the Book (*Ahlul Kitab*) or polytheistic beliefs, is considered

¹⁶ Weinata Sairin, and Joseph Marcus Pattiasina, eds. *Pelaksanaan Undang-Undang Perkawinan dalam Perspektif Kristen: Himpunan Telaah Tentang Perkawinan di Lingkungan Persekutuan Gereja-Gereja di Indonesia*. (Jakarta: BPK Gunung Mulia, 1994).

¹⁷ Ani Mufidah, "Upacara Ritual Pernikahan dalam Agama Khonghucu di Surakarta". *Thesis* (Yogyakarta: UIN Sunan Kalijaga Yogyakarta, 2016); Ikhsan Tanggok, "Upacara Pemberkatan Li Yuan Perkawinan dalam Perspektif Agama Khonghucu: Studi Pada Masyarakat Peranakan Tionghua Benteng Tangerang". *Thesis* (Jakarta: UIN Syarif Hidayatullah Jakarta, 2018).

invalid. This stance is motivated by concerns about potential violations of ethical and creedal principles.¹⁸

Concerning interfaith marriage, the prevailing stance among numerous figures and Islamic scholars worldwide, including those in Indonesia, remains non-condoning. The rationale behind this viewpoint is multifaceted, encompassing textual postulates of *shari'a*, contextual *aqliyah*, as well as moral and cultural considerations.¹⁹ The stipulations in Article 44 of the Compilation of Islamic Law (KHI) explicitly state that "*A Muslim woman is prohibited from marrying a man who is not Muslim.*" This articulation within the KHI unequivocally establishes the prohibition of marriages between Muslims and individuals of other religions. The regulatory framework of the KHI is further reinforced by explicit statements and fatwas issued by the Indonesian Ulema Council (MUI), particularly highlighted in MUI fatwa Number 4/MUNAS VII/MUI/8/2005 regarding Interfaith Marriage and Article 2 of Law Number 1 of 1974.²⁰

From the preceding discussion on the significance and definition of marriages across various religions and beliefs in Indonesia, a central understanding emerges that religious doctrines in Indonesia fundamentally adhere to their respective rules, positioning interfaith marriage as a concept that diverges from these established religious norms. In essence, the prevailing belief within Indonesia's diverse religious landscape is that the regulations governing marriage for each faith's followers necessitate a shared religious belief. Nevertheless, in practice, there exists a noticeable incongruity between theoretical principles and their practical implementation, evident in instances

¹⁸ Haerunnisa Yunus, Rusli Rusli, and Abidin Abidin. "The concept of a marriage agreement in the compilation of Islamic law." *International Journal of Contemporary Islamic Law and Society* 2, no. 2 (2020): 33-45.

¹⁹ See also Andi Hidayat Anugrah Ilahi, "The Evaluation of Early Marriage Law Renewal in Indonesia." *Unnes Law Journal* 7, no. 1 (2021): 129-152; Dian Latifiani, "The Darkest Phase for Family: Child Marriage Prevention and Its Complexity in Indonesia." *Journal of Indonesian Legal Studies* 4, no. 2 (2019): 241-258.

²⁰ H. Muhammad Amin Suma, *Kawin Beda Agama di Indonesia: Telaah Syariah dan Qanuniah*. (Jakarta: Lentera Hati, 2023).

of interfaith marriages among followers of different religions. An illustrative example is the assertion by a Christian pastor affirming the feasibility of interfaith marriages.²¹

This phenomenon is intricately tied to the prevailing perspective within Indonesian society, where interfaith marriage is perceived as viable due to the belief that the love shared between two individuals is inherently sacred. Additionally, the willingness of each bride's family to bestow blessings upon their child to marry someone from a different religious background contributes to this acceptance. This rationale is grounded in the idea that fostering harmonious relationships between children and their parents involves granting permission for cross-religious unions. However, it's imperative to note that the parental decision to approve marriages between individuals of different religions carries legal implications. Specifically, such marriages are obligated to undergo the formal process of applying for interfaith marriage through the legal system.

Positive-Legal Framework for Marriages in Indonesia: An Analysis of the Provisions in Law Number 1 of 1974

IN THE CONTEXT of Law Number 1 of 1974 concerning Marriage, the term marriage is explicitly defined in Article 1 as "an inner bond between a man and a woman as husband and wife, aiming to establish a happy and enduring family (household) based on the One and Only Godhead." This

²¹ See Loren Marks, "How does religion influence marriage? Christian, Jewish, Mormon, and Muslim perspectives." *Marriage & Family Review* 38, no. 1 (2005): 85-111; Mohamad Abdun Nasir, "Religion, law, and identity: contending authorities on interfaith marriage in Lombok, Indonesia." *Islam and Christian-Muslim Relations* 31, no. 2 (2020): 131-150; Fathol Hedi, Abdul Ghofur Anshori, and Harun Harun. "Legal Policy of Interfaith Marriage in Indonesia." *Hasanuddin Law Review* 3, no. 3 (2017): 263-276; Philip Hughes, "The frontline of interfaith dialogue: Marriage between Muslims and Christians." *Pointers: Bulletin of the Christian Research Association* 26, no. 2 (2016): 11-14.

definition underscores a fundamental principle that every Indonesian citizen, whether residing within the country's borders or abroad, must adhere to Pancasila in their marital pursuits. The articulation in Article 1 finds reinforcement in Article 2, paragraph (1), which asserts, "*Marriage is valid if it is carried out according to the laws of each religion and belief*" (Law Number 1 of 1974 concerning Marriage). Article 2 emphasizes the validity of a marriage, recognizing it as legitimate, contingent upon adherence to the regulations prescribed by the respective religion or belief system of those involved in the marriage.²²

The essence is that every Indonesian citizen, in the process of solemnizing their marriage between a man and a woman, is obligated to adhere to the regulations prescribed by their respective religion and belief system. This ensures that a marriage between individuals who share the same religious convictions is deemed qualified under the positive legal framework in Indonesia, earning the status of being *valid* both within the context of religious law and normative legal principles.

The elaboration of marriage in Article 2 of Law Number 1 of 1974 is clarified with the following statement: "*In accordance with the formulation in Article 2, paragraph (1), no marriage exists outside the legal framework established by each religion and belief, consistent with the provisions of the 1945 Constitution. The term 'law of each religion and belief' encompasses the statutory regulations applicable within the specific religious or belief system, as long as they do not conflict or differ from the provisions stipulated in this Law.*"²³

This provision underscores that the legal validity of a marriage, as articulated in Article 2, is contingent upon compliance with the laws inherent to each religious or belief system. However, it also emphasizes the overarching

²² Nafi Mubarak, "Sejarah Hukum Perkawinan Islam di Indonesia." *Al-Hukama': Jurnal Hukum Keluarga Islam di Indonesia* 2, no. 2 (2012): 139-163; Anwar Rachman, Prawitra Thalib, and Saepudin Muhtar. *Hukum Perkawinan Indonesia dalam Perspektif Hukum Perdata, Hukum Islam dan Hukum Administrasi*. (Jakarta: Prenada Media Group, 2020).

²³ See also Mardalen Hanifah, "Perkawinan Beda Agama Ditinjau dari Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan." *Soumatera Law Review* 2, no. 2 (2019): 297-308.

authority of the 1945 Constitution and the provisions set forth in Law Number 1 of 1974, ensuring that religious and belief-based regulations align with the legal framework established by the Indonesian legal system. The intention is to prevent any contradiction or deviation from the legal standards established by the national laws governing marriage.

It is evident that Article 2 of Law Number 1 of 1974 regarding marriage serves the purpose of harmonizing religious laws with state laws. This is necessitated by the distinct procedures for conducting marriages within each religion; for instance, Islam involves an *ijab-qabul* ceremony, while Christianity incorporates a blessing within the wedding procession. Article 2 plays a crucial role as a guiding principle, offering a clear foundation for every Indonesian citizen intending to undergo marriage within the Republic of Indonesia. It ensures alignment between religious practices and state legal requirements, emphasizing the importance of conformity with national laws in the context of marriage ceremonies.

Regulations Governing Marriages Beyond the Scope of Law Number 1 of 1974

BASED ON the authors' analysis in a literature study exploring laws and regulations pertaining to marriage beyond the scope of Law Number 1 of 1974 concerning marriage, it is revealed that normative provisions are also present in Article 35, Letter a of Law Number 23 of 2006 concerning population administration. This particular article addresses marriages determined by the court.

The inclusion of rules in Article 35, Letter a, stems from the necessity for regulations outside the standard framework, specifically beyond the provisions of the Marriage Law articulated in Law Number 1 of 1974 and the general regulations on marriage registration. While the conventional concept of marriage registration is outlined in Law Number 1 of 1974, involving post-marriage registration through the Office of Religious Affairs (KUA)

representing the population and civil registration office, Article 35, Letter a introduces an alternative by allowing court-determined marriages. The conventional registration process through KUA is applicable to Muslim Indonesian citizens, whereas non-Muslim citizens, adhering to religions such as Protestant Christianity, Catholicism, Hinduism, Buddhism, and Confucianism, undergo direct registration by Disdukcapil. This regulatory framework is initially established in Government Regulation Number 9 of 1975, implementing Law Number 1 of 1974 concerning Marriage, and is further clarified in Law Number 23 of 2006 concerning Population Administration.²⁴

The presence of Article 35, Letter a in Law Number 23 of 2006 represents a specific provision tailored for marriages involving two Indonesian citizens of distinct religions. The explicit wording of the article, particularly the phrase "*Marriage determined by the Court*," clarifies that this provision is specifically applicable to marriages between individuals professing different religions. Essentially, the government regulations articulated in the form of Law Number 23 of 2006 concerning Population Administration are intended to systematically organize and afford legal protection to the population records of all Indonesian citizens. One of the explicit objectives outlined in Law Number 23 of 2006 is found in point b, emphasizing the need "*to provide protection, recognition, determination of personal status, and legal status for every population event and significant occurrence involving Indonesian residents and citizens outside the territorial boundaries of the Unitary State of the Republic of Indonesia*." This necessitates the establishment of provisions related to Population

²⁴ The various roles of the Civil Registration Office (Disdukcapil) in interfaith marriages in Indonesia can be observed in several cases of interfaith marriage registrations. See also M. Ryan, Henry Aspan Dhermawan, and Yasmirah Mandasari Saragih. "Pelaksanaan Fungsi Dinas Kependudukan dan Catatan Sipil Kota Binjai dalam Pencatatan Perkawinan Beda Agama." *Jurnal Rectum: Tinjauan Yuridis Penanganan Tindak Pidana* 4, no. 2 (2022): 421-429; Muhyidin Ayu Zahara, "Pencatatan Perkawinan Beda Agama (Studi Komparatif Antara Pandangan Hakim PA Semarang dan Hakim PN Semarang Terhadap Pasal 35 Huruf (a) Undang-Undang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan)." *Diponegoro Private Law Review* 4, no. 3 (2019).

Administration. Furthermore, point c underscores that effective regulation in Population Administration is contingent upon the support of professional services and heightened awareness among the population, including Indonesian citizens residing abroad.

This legislation underscores the critical need for legal protection concerning population administration for Indonesian citizens. The provisions outlined in Law Number 23 of 2006 reflect the government's concerted efforts to safeguard, acknowledge, and ascertain the personal and legal status of every Indonesian citizen. These efforts are specifically directed towards recording population events and other significant occurrences, emphasizing the importance of providing comprehensive legal safeguards in this aspect.

The endeavors to safeguard, acknowledge, determine personal status, and ensure legal status for every Indonesian citizen within the realm of population administration aim to uphold the civil rights of citizens concerning events such as birth, death, and marriage. Notably, marriages involving individuals of different religions receive specific provisions, as outlined in Article 35, Letter a. This particular arrangement reflects the government's commitment to ensuring clarity in the registration process of interfaith marriages.

If interfaith marriages are not regulated and are excluded from the civil registry, there exists a potential for uncertainty regarding the legal status of individuals seeking interfaith marriages. From a juridical standpoint, the absence of recording interfaith marriages in the civil registration register implies that the marital status of individuals from different religions is not documented in Family Cards (KK). The absence of a Family Card (KK) further implies that the citizenship status of the individual is not officially recognized by the state as an Indonesian Citizen (WNI). Moreover, the legal consequences of this uncertainty extend beyond the individual's legal standing, encompassing both legal and social impacts associated with the lack of clear regulations on interfaith marriage in Indonesia.

The legal uncertainty surrounding 'interfaith marriage' is further underscored by the clash of norms between Article 35, Letter a of Law Number

23 of 2006 and Article 2 of Law Number 1 of 1974. Article 35, Letter a allows for marriages determined by the court, providing an avenue for interfaith marriages. On the other hand, Article 2 of Law Number 1 of 1974 emphasizes that marriages are valid only if conducted according to the laws of each religion and belief.

This conflict demonstrates a lack of meticulous consideration for the procedural rules laid out in Law Number 12 of 2011 concerning the Establishment of Laws and Regulations. The drafting and enactment of laws are expected to adhere to a systematic and coordinated approach, ensuring consistency and avoiding contradictions between different statutes. In the case of interfaith marriage, this discrepancy highlights a failure in the legislative process to reconcile and harmonize conflicting provisions, leading to legal uncertainty and potential challenges in implementation. It calls for a thorough review and adjustment to bring these laws into alignment, providing a clear legal framework for interfaith marriages in Indonesia.

In the authors' perspective, adherence to the standard rules outlined in Law Number 12 of 2011 is crucial, as it dictates that the formulation and substance of legal norms within each legislative product must align with these rules. This underscores the importance of standardized rules for lawmakers when drafting laws, ensuring coherence among different legal products. Law Number 12 of 2011 is instrumental in promoting this coherence, drawing inspiration from the 'pyramid of laws and regulations' or '*stufenbau theory*.' Originating from Hans Kelsen's "*Pure Theory of Law*," this theoretical concept emphasizes the hierarchical structure of laws and regulations, emphasizing the significance of a well-defined hierarchy in legal systems.²⁵ This hierarchy is underscored by the normative guidelines in Law Number 12 of 2011, guiding the preparation of laws and regulations to maintain harmony and consistency.

²⁵ Hans Kelsen, *Pure Theory of Law*. (California: University of California Press, 1967). See also Clark, R. S. "Hans Kelsen's Pure Theory of Law." *Journal of Legal Education* 22, no. 2 (1969): 170-196; Hans Kelsen, "What is the Pure Theory of Law?." In *Law and Morality*. (London: Routledge, 2017), pp. 101-108.

The theory of the '*hierarchy of legislation*' establishes a close connection between Law Number 1 of 1974 concerning Marriage and Law Number 23 of 2006 concerning Population Administration. This theory fundamentally underscores that the creation and formulation of laws and regulations should adhere to the principle of *Lex superior derogat legi inferiori*²⁶ that '*higher rules serve as the foundation for lower rules, and lower rules must not contradict higher rules.*' In the context of these two laws, both falling under the category of legal products in the form of legislation, they share an equal position within the hierarchy of legislative regulations. This emphasizes the need for consistency and harmony between different legal products to avoid conflicts and maintain a coherent legal system.

Upon closer examination of Law Number 1 of 1974 concerning Marriage and Law Number 23 of 2006 concerning Population Administration, it becomes evident that certain norms within these laws lack synchronization and are contradictory. Specifically, Article 2 of Law Number 1 of 1974 contradicts the provisions outlined in Article 35 letter a of Law Number 23 of 2006. The conflict between these two laws is manifested in their differing stances on interfaith marriages and creates a lack of harmony between them.

The incongruity or conflict of norms becomes apparent in Article 2 of Law Number 1 of 1974, which stipulates that a marriage is deemed valid only if it

²⁶ "Lex superior derogat legi inferiori" is a Latin legal maxim that translates to "Higher law derogates from lower law" in English. This principle reflects the hierarchical nature of legal norms, asserting that higher-ranking or superior laws take precedence over and can override conflicting provisions in lower-ranking or inferior laws. In other words, when there is a contradiction between laws of different hierarchical levels, the higher law prevails, and the lower law must yield. This concept is fundamental in legal systems with a hierarchical structure, where laws are organized into different levels, such as constitutions, statutes, regulations, and local ordinances. The maxim ensures consistency and coherence in legal interpretation by establishing a clear hierarchy and preventing conflicts between legal norms of varying importance or authority. *See also* Nurfaqih Irfani, "Asas Lex Superior, Lex Specialis, dan Lex Posterior: Pemaknaan, Problematika, dan Penggunaannya dalam Penalaran dan Argumentasi Hukum." *Jurnal Legislasi Indonesia* 16, no. 3 (2020): 305-325; Taufik Hidayat Simatupang, "Adult Age in Marriage in Indonesia (Theoretical Study of the Application of the Lex Posterior Derogat Legi Priori Principle)." *Jurnal Penelitian Hukum De Jure* 21, no. 2 (2021): 213-222.

adheres to the laws of the respective religions and beliefs involved. This requirement necessitates compliance with the religious laws governing each individual seeking to enter into marriage. This provision starkly contrasts with the content of Article 35 letter a of Law Number 23 of 2006 concerning Population Administration, which introduces a provision allowing interfaith marriages. This implies that individuals can engage in marriages without the obligation to adhere strictly to the religious laws, challenging the prerequisite for conformity with the 'legal' aspects of each religion. The opening for interfaith marriages is facilitated by the language in Article 35 letter a, which specifies that marriages determined by the court refer to unions between individuals of different religions.

Potential legal inconsistencies, as seen in the prospect of conflicting norms, may result in dual interpretations and legal ambiguities. This situation could lead to confusion among the general public and varying court decisions based on the judge's discretion. The implications for Indonesian citizens seeking interfaith marriages might unfold in two possible scenarios. Firstly, a district court judge may deny the request, citing the constraints outlined in Article 2 of Law Number 1 of 1974, which appears to restrict interfaith marriages. Alternatively, a district court judge might approve the application for interfaith marriage, relying on the provisions of Article 35 letter a of Law Number 23 of 2006, which allows marriages between individuals of different religions. The potential for these divergent outcomes raises concerns about legal coherence and consistency in handling interfaith marriage requests.²⁷

²⁷ Noryamin Aini, Ariane Utomo, and Peter McDonald. "Interreligious Marriage in Indonesia." *Journal of Religion and Demography* 6, no. 1 (2019): 189-214; Khudzaifah Dimyati, and Muh Zuhri. "Converging Islamic and religious norms in Indonesia's state life plurality." *Indonesian Journal of Islam and Muslim Societies* 12, no. 2 (2022): 421-446. See also Judith Koschorke, "Legal Pluralism in Indonesia: The Case of Interfaith Marriages Involving Muslims." In *Legal Pluralism in Muslim Contexts*. (London: Brill, 2019), pp. 199-229.

Regulatory Landscape and Challenges of Interfaith Marriages in Indonesia

THE STIPULATIONS pertaining to interfaith marriage within the framework of Law Number 1 of 1974 on marriage lack explicit clarity. Consequently, there exists an absence of a definitive regulatory framework addressing interfaith marriage directly within the specified law. Although the law does not expressly delineate provisions specific to interfaith unions, Article 2 of Law Number 1 of 1974 articulates the requirement that marriages must align with the respective religious beliefs of the involved parties. This provision distinctly asserts that both prospective spouses, comprising the groom and bride, must adhere to a shared religious affiliation. Thus, the law unequivocally mandates the adherence to a common religious faith for both the prospective husbands and wives.

An aspect warranting further scrutiny is the rationale behind the reference in the contextualized articles regarding the imperative nature of marriage in accordance with the tenets and doctrines of each religious faith. The explicit articulation in these articles necessitating marriage to be 'of the same religion' finds its fundamental justification in the preamble of the 1945 Constitution. This constitutional preamble underscores the commitment of the Indonesian state to uphold acknowledgment 'by the blessing of God's grace' and the recognition of religion. Moreover, Article 29 on religion reinforces this commitment by proclaiming that the State is founded upon the belief in the One and Only God. Consequently, the intrinsic connection between the constitutional principles and the specified articles establishes a foundational basis for stipulating the requirement for marital unity in terms of religious affiliation.

This discernible foundation can be invoked in the context of a preliminary academic text that serves as the groundwork for the formulation of Law. An essential aspect of scrutiny involves the examination of the academic draft underlying Law Number 1 of 1974 on marriage. It is imperative to conduct a

comprehensive review of this draft academic text as a concerted effort to discern the foundational principles informing the articulation of norms presented in Article 1 and Article 2. The evaluative process should focus on the underlying principles 'remembered' and deliberated upon in the formulation of the Law, providing insights into the rationale behind the enunciation of norms within these specified articles.

The foundational principle guiding the enactment of Law Number 1 of 1974 pertaining to fundamental marriage principles emanates from a deliberative perspective, as articulated in the declaration of 'weighing.' This declaration stipulates, "*that in accordance with the philosophy of Pancasila and the ideals for the formation of national law, it is necessary to have a Law on Marriage that applies to all citizens.*" A careful analysis of this 'weighing' aspect reveals that a key motivation for the legislator was to promulgate Law Number 1 of 1974 on marriage with a commitment to aligning it with the ethos of Pancasila and the overarching principles guiding the formulation of national laws. Consequently, the law, rooted in the ethos of inclusivity, extends its regulatory purview beyond a specific religion to encompass all religions in Indonesia. Thus, the presence of Law Number 1 of 1974 concerning marriage should be perceived as a comprehensive legal framework that governs marital relations across all religious affiliations in Indonesia.

The explicit reference to the foundational basis in the 'remembering' clause is articulated as follows: "Remembering: 1. Chapter 5 verse (1), Article 20 verse (1), Article 27 verse (1), and Article 29 of the Basic Law 1945." Within this 'remembering' context, the legislator overtly and directly cites the norms encapsulated in the specified articles of the 1945 Constitution as the substantive basis for the formulation of the Law. The initial norm invoked in the 'remembering' clause is found in Chapter 5, verse (1) of the 1945 Constitution, affirming the President's prerogative to present a legislative draft to the House of Representatives. Subsequently, Article 20, verse (1) underscores the authority of the House of Representatives in shaping legislation. Moving forward, Chapter 27, verse (1) emphasizes the egalitarian principle, asserting

equal legal standing and governmental obligation for all citizens. Lastly, Article 29 unequivocally states, "The State is based on the One and Only Truth," further elucidating the fundamental principles grounding the legislative intent behind the Law.²⁸

The concluding two articles referenced in the 'remembering' clause, specifically Article 27, paragraph (1) and Article 29, conspicuously underscore that the architects of Law Number 1 of 1974 diligently crafted and promulgated the legislation with a foundational consideration of the state's grounding in the principle of the 'One and Only God.' Upon thorough examination of the statutory provisions related to interfaith marriage within Law Number 1 of 1974 on marriage, and the broader legal framework therein, no explicit regulations addressing interfaith marriage emerge. Notably, the absence of any provisions prohibiting interfaith marriage within the law further accentuates the absence of normative mandates explicitly 'prohibiting interfaith marriage.'

Certain legal norms, accompanied by explanatory content, singularly emphasize the necessity for shared belief or religion in the context of marriage. Consequently, the interpretation may be drawn that Law Number 1 of 1974 does not explicitly address '*interfaith marriage*' and notably lacks explicit prohibition of interfaith marriage within the legal provisions delineated in the said law.

Nevertheless, the absence of explicit legal provisions or norms addressing interfaith marriage within Law Number 1 of 1974 on marriage does not imply a lack of regulations pertaining to interfaith unions in the positive law of Indonesia. Through a comprehensive exploration of literature, legal analyses, and a review of legislative documents beyond the scope of Law Number 1 of 1974, specific provisions directly relevant to interfaith marriage were identified.

²⁸ Dani Setiawan, "Inter-Religious Marriage: A Controversial Issue in Indonesia". *Contemporary Issues on Interfaith Law and Society* 1, no. 1 (2022): 23-38; Bintang Rohman, Vina Mukhoyyaroh, and Adelia Arifin. "Ownership Status of Implementation of Assets in Mixed Marriages". *Contemporary Issues on Interfaith Law and Society* 2, no. 2 (2023): 113-30.

Notably, such provisions are delineated in Article 35, letter a of Law Number 23 of 2006 concerning population administration, wherein it is stated: "*Marriage determined by the Court.*" Further clarification is provided in the same article, under letter a, elucidating that "Marriage determined by the Court" refers to marriages involving individuals of different religions.²⁹

The clarity of the norm specified in Article 35, letter a is evident in its distinction from conventional marriages, as it pertains to unions outside the scope of standard marital arrangements. The normative regulations governing general marriages are outlined in Article 1 and Article 2 of Law Number 1 of 1974 concerning marriage. Further explication of Article 35, letter a elucidates that "*marriage determined by the court*" specifically denotes unions between individuals of disparate religious affiliations, establishing a clear delineation from the customary norms governing conventional marriages.³⁰

This implies that the norm articulated in Article 35, letter a introduces a '*special*' provision, distinct from the general stipulation requiring marital unions solely among individuals sharing the same religious faith. Consequently, these norms govern interfaith marriages, explicitly providing leeway for individuals of different religions to wed. This encompasses unions between Buddhists and Catholics, Hindus and Confucians, as well as Muslims marrying Protestant Christians. Hence, the regulations within Article 35, letter (a) offer authorization for interfaith marriages, contingent upon a determination issued by the court.³¹

²⁹ Rifki Rufaida, Mufidah Mufidah, and Erfaniah Zuhriyah. "Perkawinan Beda Agama dalam Sistem Perundang-Undangan." *Kabillah (Journal of Social Community)* 7, no. 1 (2022): 192-207.

³⁰ Khairul Fani, "Pengaturan Perkawinan Beda Agama dalam Perspektif Kepastian Hukum." *Jurnal Intelektualita: Keislaman, Sosial dan Sains* 10, no. 1 (2021): 43-49.

³¹ Prahasti Suyaman, and Temmy Fitriah Alfany. "Polemics of Interfaith Marriage Reviewed from the Perspectives of Marriage Law and the Compilations of Islamic Law." *KnE Social Sciences* (2022): 537-549; 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 (2018): 367-394.

Undoubtedly, the framers of Law Number 23 of 2006 concerning population administration had a distinct purpose in formulating this legislation. This purpose is manifested in the establishment of norms within one of its articles, specifically addressing the regulation of 'interreligious' marriages recorded by the civil registration office (Disdukcapil) subsequent to obtaining a determination from the court. While not explicitly or overtly stated in the article's norms, the regulation pertaining to the civil registration of interfaith marriages is discernible in the article's explanation, particularly within Article 35, letter a. This is further augmented by an analysis of the legal foundations utilized by judges when adjudicating applications for interfaith marriages submitted by foreign nationals, conducted in the South Jakarta District Court and Surabaya District Court.³²

The Legal Implications of Interfaith Marriage Regulations in Indonesia

THE SIGNIFICANCE of positive rules enshrined in laws and government-promulgated regulations within a country holds paramount importance in establishing and maintaining order in the lives of its citizens and the broader national community. The primary objective behind the promulgation of these legal frameworks is to structurally underpin the development of a cultural milieu within society, fostering an environment that is perpetually safe and harmonious.

The establishment of laws and regulations within a country, as posited by Gustav Radbruch, serves the fundamental purpose of actualizing the value of

³² See Mohammad Rifqy Fakhri, and Mia Hadiati. "Analisis Terhadap Perkawinan Beda Agama Ditinjau dari Peraturan Perundang Undangan di Indonesia (Studi Kasus Penetapan 278/Pdt. P/2019/PN. SKT)." *Jurnal Hukum Adigama* 4, no. 1 (2021): 1532-1556; Ashwab Mahasin, "Keabsahan dan Dampak Perkawinan Beda Agama (Menurut Undang-Undang Perkawinan dan Hukum Islam di Indonesia)." *Pro Justitia: Jurnal Hukum dan Sosial* 2, no. 1 (2022): 16-23.

law as a safeguard for social life. In addition, it is emphasized that law infused with its inherent values, aims to achieve legal justice, legal expediency, and legal certainty. Consequently, the formulation of laws and regulations in their tangible manifestation must inherently encompass these three values. Legal frameworks that embody these values, fostering justice, benefit, and certainty for the broader community, align with the ideals of law, seeking to realize legal values throughout society.

The formulation and realization of all laws and regulations should be guided by the overarching spirit to achieve essential legal values. This spirit aligns with the practice of legal work, which involves the meticulous examination of issues between parties and the development of policies that can effectively balance the pursuit of justice in the intersection of divergent interests. For instance, when addressing the conflicting interests between an individual seeking to marry across religious lines and a civil registration officer obligated to enforce the stipulations in Article 2 of Law Number 1 of 1974, which mandates adherence to a single religion in marriage. In such scenarios, where legal comparability is crucial, it is important to note, as emphasized by Dirdjosisworo, that comparability alone cannot be absolute without well-defined guidelines.³³ A lack of clear guidelines would compromise the application of wisdom and justice, undermining the essential characteristic of the law—legal certainty. Therefore, it is imperative that legal comparability remains in harmony with legal certainty to effectively realize legal objectives.

Legal objectives, encompassed within the framework of legal values as articulated in promulgated laws and regulations, are vital in achieving the intended legal outcomes. This extends to the realm of laws and regulations concerning interfaith marriage. Departing from an appreciation of the significance of legal values embedded in these regulations, it becomes

³³ Soedjono Dirdjosisworo, *Pengantar Ilmu Hukum*. (Jakarta: Raja Grafindo Persada, 2010). See also Asiyah, Nur. "Kajian Hukum Terhadap Perkawinan Beda Agama Menurut Undang-Undang Perkawinan dan Hukum Islam." *Jurnal Hukum Samudra Keadilan* 10, no. 2 (2015): 204-214.

imperative that every rule pertaining to social life, including interfaith marriage, upholds the principles of certainty, expediency, and legal justice.

Yet, the prevalent societal debates reveal that the regulation surrounding interfaith marriage has, as anticipated, fallen short of fulfilling the expected legal values. Questions persist among the public, such as 'Is interfaith marriage permissible in Indonesia?' or 'Does Indonesia have regulations governing interfaith marriage?' Alternatively, concerns are voiced regarding whether 'interfaith marriage will not be sanctioned in Indonesia.' If interfaith marriages are restricted, the query arises: how does the state safeguard its citizens and uphold legal justice for those choosing to marry across religious lines? These inquiries underscore that the current laws and regulations pertaining to interfaith marriage have not adequately addressed the concerns of many Indonesians, lacking provisions that embody the values of certainty, justice, and expediency. Therefore, addressing this issue becomes imperative to provide comprehensive answers.

The unease and apprehension within the community revolve around the potentialities and speculations emerging from the ongoing debates on interfaith marriage. Two primary factors fueling public concern come to the forefront. *Firstly*, there is a pervasive public perplexity fueled by numerous reports on interfaith marriage in Indonesia. This confusion is compounded by the fact that Indonesia, as a nation, upholds religious values as sacred, constituting a cornerstone in the life perspectives of its people. *Secondly*, there is a growing concern among some Indonesians who question their rights as citizens, emphasizing their freedom to express personal will and choose their preferred way of life.

This study will concentrate on exploring specific questions, primarily addressing whether Indonesian citizens opting for interfaith marriages are afforded the same legal standing as those marrying within their own religious affiliations. It delves into whether the principle of '*equality before the law*' extends to Indonesian citizens who choose interfaith unions. Additionally, the

study investigates the legal framework in place to protect Indonesian citizens who opt for marriages across religious lines.

The absence of explicit and definitive regulations in Law Number 1 of 1974 concerning marriage governing interfaith unions implies a reluctance within the Indonesian state towards the occurrence of such marriages. This stance is grounded in the strong emphasis on religious values within the fabric of Indonesian society, nation, and state. However, this position, while aiming to preserve societal coherence, may pose significant risks in the context of marital relationships. The resulting ambiguity leads to inconsistencies in norms within the legal framework of Indonesia, particularly between Law Number 1 of 1974 on marriage and Law No. 23 of 2006 on population administration.³⁴

The lack of clarity and legal certainty for Indonesian citizens opting for interfaith marriages raises concerns about the effectiveness and coherence of existing regulations and laws. Consequently, it is reasonable for some individuals to reject the provisions in Law Number 1 of 1974 and criticize the inconsistencies in norms found in Law Number 23 of 2006 concerning population administration.³⁵

There is an imperative for normative rules to provide a clear explanation of interfaith marriage, categorizing and aligning the tone of existing legal regulations with their intended functions. Without clear guidelines, citizens seeking to marry individuals of different religions may encounter difficulties, jeopardizing their rights. These challenges not only undermine the protective function of the law but also diminish its overall value, contributing to reduced

³⁴ Fakhrrurazi M. Yunus, and Zahratul Aini. "Perkawinan Beda Agama dalam Undang-Undang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan (Tinjauan Hukum Islam)." *Media Syari'ah: Wahana Kajian Hukum Islam dan Pranata Sosial* 20, no. 2 (2020): 138-158; Rani May Saputri, Dzulfikar Rodafi, and Ahmad Subekti. "Perkawinan Beda Agama (Perbandingan Undang-Undang Perkawinan dan Undang-Undang Administrasi Kependudukan)." *Jurnal Hikmatina* 4, no. 2 (2022).

³⁵ Anas Maulana, "Pencatatan Perkawinan dalam Permendagri Nomor 109 Tahun 2019 Tentang Formulir dan Buku yang Digunakan dalam Administrasi Kependudukan." *Islamic Law: Jurnal Siyasah* 7, no. 2 (2022): 52-73.

legal certainty, justice, and expediency. Consequently, the law's efficacy in supporting social aspects becomes questionable.

In addition to the imperative of infusing legal values into laws and regulations governing marriage, there is a crucial aspect in the normative regulations concerning interfaith marriage in Indonesia that demands attention. An indispensable value, pressing for acknowledgment, is the necessity for well-defined regulations on interfaith marriage within normative frameworks in Indonesia. Such clarity is essential to establish legal order, thereby fostering social coherence. Law, as a pivotal element supporting social order, plays a significant role in various aspects, notably in relation to marriage. The legal framework, through its laws and regulations, contributes to shaping a 'social order,' particularly in the context of marriage registration, facilitating efforts to instill order in this realm.³⁶

The imperative for laws and regulations to contribute to 'social order' finds support in a theory proposed by Roscoe Pound. According to Pound, law constitutes a series of sub-systems serving as 'social control' or, in his comprehensive perspective, *'Law as a tool for social engineering and social control.'* This underscores the explicit role of law as both a tool and means for social engineering and control. This perspective underscores that law, as a tool for social engineering and control, is purposefully designed to engineer social reality and serve as an instrument of social control. A notable characteristic of law, functioning as a means of social control within society, is its inherent endeavor to realize and establish 'social order.'³⁷

This perspective underscores the profound significance of law as a potent mechanism for societal control, aimed at collectively achieving the aspiration of a well-organized and harmonious society, commonly referred to as social order. When we further correlate this viewpoint with the imperative of

³⁶ Zainal Muttaqin, "Formalization of Islamic Law in Indonesia in the Framework of Social Engineering Theory by Roscoe Pound." *El-Mashlahah* 11, no. 2 (2021): 97-115.

³⁷ Roscoe Pound, *Social Control through Law*. (London: Routledge, 2017). *See also* Rush Rhees, "Social engineering." *The Philosophy of Society*. (London: Routledge, 2023), pp. 235-249.

marriage registration, particularly in the context of interfaith unions, it becomes evident that marriage registration serves as a crucial instrument in the establishment and maintenance of social order. The act of registering interfaith marriages within a clear legal framework not only reflects the broader societal values but also plays a pivotal role in fostering cohesion, understanding, and cooperation among diverse communities. In essence, marriage registration, guided by law, becomes an integral component in the broader societal endeavor to engineer and maintain social order.

The assumption regarding the registration of interfaith marriages as a means to bolster societal order is grounded in the presumption that without clear registration of marriages for each resident, administrative chaos may ensue. The potential disruption to the government's governance processes, particularly in the execution of planned policies each year, illustrates the crucial role of marriage registration in maintaining the coherence of administrative data. Consequently, prioritizing marriage registration within normative legal frameworks becomes imperative.

However, delving deeper into the significance of marriage registration reveals that its urgency extends beyond the mere pursuit of social order. Examined more profoundly, one of the key ideals of law is to uphold legal certainty. This entails a comprehensive commitment to ensuring the application of legal justice and adhering to the legal adage 'Equality before the law,' signifying equal standing for all citizens in the eyes of the law. Legal certainty, in essence, contends that every facet of social life in a law-based state must consistently align with legal norms, thereby guaranteeing stability and predictability within the legal framework.

This underscores a theory asserting that a constitutional state is one that upholds the principle of 'equality before the law' across various facets of government administration within the country. From broad aspects like the election of presidents and members of the DPR to specific civil registration procedures, such as marriage registration, clear and rigid normative

arrangements are deemed essential. Beyond fortifying the notion of legal certainty, these arrangements also reinforce the principles of legal protection.

The theory of legal protection is inherently interconnected with the concept of a state based on law, particularly evident in the context of democracies. Almost universally, democracies align with the principles of a state based on law, and a key manifestation of this alignment is the presence of a foundational legal document. In the case of Indonesia, the 1945 Constitution serves as a cornerstone, explicitly addressing legal protection, notably in the realm of Human Rights. The delineation of human rights is unequivocal in Articles 28A to 28J, creating a direct and meaningful link between the theory of legal protection and the regulatory coherence required for recording interfaith marriages. Article in the 1945 Constitution that is closely related to the regulation of interfaith marriages related to the urgency of marriage registration is article 28 D which reads:

(1) Everyone has the right to recognition, assurance, protection and just legal certainty and equal treatment before the law". The meaning is that everyone, every Indonesian citizen who lives and lives in the Indonesian state has the same rights regardless of race, ethnicity and religion so that it must be fulfilled by the state for recognition, guarantee, protection and fair legal certainty and equal treatment before the law.

The significance of Article 28D, which distinctly outlines human rights in tangible form through recognition, guarantee, protection, and ensuring fair legal certainty, along with equal treatment before the law, underscores Indonesia's commitment to being a state governed by law. Dirdjosisworo rightly emphasizes that legal certainty necessitates not only a unified preparation of positive law through codification but also uniformity in its application.³⁸ When a legal provision can be interpreted differently by two

³⁸ Dirdjosisworo, *Pengantar Ilmu Hukum*.

judges under identical circumstances, it creates apprehension among the public, highlighting the importance of consistency in legal interpretation and application for fostering confidence in the legal system.

The juridical principle underscores the imperative that once a norm or provision is promulgated and adopted within the community, it should not carry two conflicting interpretations among Indonesian citizens. A case in point is the inconsistency or normative discordance evident in two parallel laws, namely Law Number 1 of 1974 regarding marriage and Law Number 23 of 2006 regarding population administration. The former prohibits interfaith marriages, while the latter, under certain conditions, permits them and mandates the civil registration office (Disdukcapil) to record such marriages following an application in a local court. This normative inconsistency raises concerns about legal certainty and highlights the need for harmonization in legal provisions related to interfaith marriages.

In the perspective presented by the authors, assumptions revolve around the state's role in granting and fulfilling rights to its citizens—specifically, the recognition, guarantee, protection, fair legal certainty, and equal treatment before the law. In the context of decisions to marry between religions, the absence of clear regulations governing this matter raises concerns. To address apprehensions related to potential conflicts with religious values, there could be an imposition of strict rules and conditions for interfaith marriages. The existing regulations concerning marriages, both in general and specifically interfaith unions, exhibit inconsistencies that contribute to legal uncertainty.

This legal uncertainty not only undermines the value of law within existing regulations but also diminishes legal justice and the overall expediency of the legal system governed by laws and regulations. The absence or reduction of legal value, particularly in the form of legal certainty, has far-reaching consequences on the efficacy and integrity of the legal framework.

The legal uncertainty surrounding interfaith marriage, which has become a societal polemic, stems not only from the ambiguity of legal norms, such as those found in Law Number 1 of 1974 (which does not explicitly prohibit

interfaith marriage) and Law Number 23 of 2006, Article 35 letter a (which provides a framework for individuals to apply for marriage across different religions). Additionally, the legal uncertainty is compounded by conflicting norms within the 1945 Constitution itself. Contradictions arise between Article 28D and Article 28J paragraph (2), as well as between Article 28E paragraph (2) and Article 28B. These normative conflicts within the 1945 Constitution only surface when confronted with concrete and real cases in a dynamically evolving society. One such concrete case that highlights the contradiction between these constitutional articles is the matter of interfaith marriage, serving as a practical illustration of the complexities and conflicts within the constitutional framework.

This ambiguity becomes more apparent upon closer examination of specific provisions within the 1945 Constitution. The contradiction between Article 28D and Article 28J is evident. Article 28D(1) asserts: "Everyone has the right to recognition, assurance, protection, and fair legal certainty as well as the same treatment before the law." However, Article 28J(2) introduces a caveat, indicating that individuals, while exercising their rights, are obligated to adhere to restrictions established by law. These restrictions are intended to ensure the acknowledgment and respect for the rights and freedoms of others, as well as to meet just demands in alignment with moral considerations, religious values, security, and public order in a democratic society.

Further contradictions arise when examining Chapter 28E verse 2 in opposition to 28B. Article 28E(2) proclaims: "Everyone has the right to freedom of belief, stating thoughts and attitudes, in accordance with their inner self." Meanwhile, Article 28B asserts: "Everyone has the right to form a family and continue offspring through legal marriage." This incongruity underscores the intricate challenges presented by the conflicting constitutional provisions when applied to real-world scenarios, particularly in cases involving interfaith marriages.

The legal impact or consequences become significant when there are clear, rigid rules, and explicit legal protection for every Indonesian citizen involved

in interfaith marriages within normative regulations. Clarity in normative rules implies that interfaith marriages can be legally recognized. This recognition, in turn, ensures that existing laws fulfill the sense of justice for Indonesian citizens, protect their legal interests, and contribute to the realization of legal values such as legal certainty, legal justice, and legal expediency—fundamental objectives of the legal system.

The legal consequences of well-defined arrangements for interfaith marriages extend beyond conferring a legal status or transforming initially unrecognized interfaith marriages into legally 'valid' unions. This legal status not only provides clarity regarding the legal standing of interfaith marriages but also establishes a precise and unequivocal position for interfaith marriage arrangements within the broader legal system.

The legal impact of having clear rules on interfaith marriage is instrumental in breaking the chain of legal dilemma, which currently persists due to the lack of precise regulations governing interfaith marriages. The existing arrangement leaves room for ambiguity, as Law Number 1 of 1974 neither explicitly prohibits nor permits interfaith marriage, while Law Number 23 of 2006 allows for it. The introduction of a specific regulation on interfaith marriage in Indonesia would decisively resolve this legal dilemma. If such marriages are to be prohibited, the regulation would clearly state that they are '*forbidden*.' Conversely, if interfaith marriages are permitted, the regulation would establish legal coherence, unequivocally declaring that interfaith marriage is '*allowed*.'

However, a potential solution lies in the enactment of well-defined and unambiguous regulations that establish the legal position of interfaith marriages. A clear legal framework not only ensures the protection of individual rights and upholds legal values such as certainty, justice, and expediency but also facilitates the legal recognition of interfaith unions. The objectives of the law, rooted in justice and the protection of legal interests, can be realized through comprehensive legal provisions.

Nonetheless, a dilemma emerges when considering the potential conflict between protecting civil rights through legal measures and safeguarding social values tied to religious beliefs. The author acknowledges this dilemma and proposes a practical solution—the non-publication of applications for interfaith marriage. This suggestion aims to prevent social unrest and controversies in a multicultural society where religious values hold significant importance. With sensitivity to the diverse religious landscape of Indonesia, the author argues that keeping such matters private can mitigate potential societal tensions.

To address these challenges, the paper proposes specific policy measures. First, the government is urged to revise existing laws, removing any ambiguities or contradictions in legislation related to marriage, such as Law Number 1 of 1974. Second, the implementation of clear regulations should ensure the confidentiality of applicants for interfaith marriage, safeguarding their identities and documents. These policies, if enacted thoughtfully, can strike a balance between protecting individual rights and addressing societal concerns, ultimately contributing to a more inclusive and harmonious legal framework for interfaith marriages in Indonesia.

Furthermore, the government's ultimate policy recommendation is to establish a dedicated regulation specifically addressing interfaith marriage, ensuring that individuals seeking such unions do not face legal discrimination or unnecessary obstacles. This targeted regulation would clarify the legal status of those applying for interfaith marriage, eliminating uncertainties, resolving normative conflicts within existing laws, and creating a coherent legal framework.

The authors propose two additional recommendations for the government: *firstly*, a comprehensive revision of current laws such as Law Number 1 of 1974 on Marriage and Law Number 23 of 2006 on Population Administration; and *secondly*, an extensive socialization campaign to inform the public about rigid regulations governing interfaith marriage. The suggested conditions for interfaith marriage include obtaining court approval through a

formal request, adhering to the religious procedures of each partner, and preparing necessary documents without any associated fees.

The authors emphasize the importance of using socialization as a preventive measure to communicate that interfaith marriage, while legally possible, may not align with the ideal marital framework in Indonesia, rooted in the state philosophy of Pancasila. The conclusion underscores the authors' persistent call for clarity in regulations surrounding interfaith marriage and highlights potential societal consequences, urging the government to navigate these issues responsibly and provide solutive solutions to safeguard the values and beliefs of Indonesian citizens.

Conclusion

IN CONCLUSION, the study of inter-religious marriage in Indonesia within the realms of administrative and constitutional law reveals a nuanced landscape with both advantages and challenges. The existing regulatory framework lacks the necessary attention to establish clear norms governing interfaith unions, leaving couples navigating bureaucratic hurdles and legal uncertainties. While administrative complexities persist, there is a call for comprehensive constitutional reforms that address the legal standing of inter-religious marriages, considering constitutional principles of religious freedom, equality, and non-discrimination.

The pros and cons of inter-religious marriage, as discussed, highlight its potential to foster social cohesion and cultural diversity, juxtaposed with challenges such as societal resistance and legal complexities. The dilemma faced by lawmakers revolves around protecting individual civil rights and realizing legal values while acknowledging the potential impact on deeply rooted social and religious values in Indonesia. Proposed solutions include the enactment of clear and rigid regulations, removing ambiguities in existing laws, and ensuring legal protection for individuals pursuing interfaith marriages. A key

recommendation involves not publicizing applications for interfaith marriage to prevent societal commotion, acknowledging the sensitivity of the issue in Indonesia's multicultural society.

Ultimately, the study underscores the need for a balanced approach, where legal reforms align with societal values, offering comprehensive protection for individual rights while respecting the diversity and religious beliefs of the Indonesian population. Striking this balance is crucial for the creation of a legal framework that promotes inclusivity, justice, and harmony in the context of inter-religious marriage in Indonesia.

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