

Interfaith Marriage and the Submission of One Spouse: Should District Courts Legalize It?

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Abstract

This research investigates the legal complexities surrounding interfaith marriages in Indonesia, particularly focusing on the concept of self-submission as outlined in the Supreme Court's fatwa Number 231/PAN/HK.05/1/2019. The study explores the validity of interfaith marriages from the perspective of Islamic, Christian, Catholic, Buddhist, Hindu, and Confucian religious laws. It also examines the role of district court judges in determining the validity of such marriages based on self-submission. The findings reveal significant disparities in legal interpretations, with judges who support the legalization of interfaith marriages considering them valid when conducted according to religious procedures that permit interfaith unions. However, judges opposing such marriages reference the prohibitions inherent in the religious laws of one of the spouses. The novelty of this research lies in its analysis of the



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intersections between religious law and civil law in determining the validity of interfaith marriages in Indonesia, especially the concept of self-submission. The study underscores the urgency of creating a clear, unified legal framework that addresses interfaith marriages, balancing respect for religious beliefs with the need for legal certainty. Nationally, this research contributes to ongoing debates about religious freedoms, marriage equality, and the role of the judiciary in interpreting religious norms within the broader legal system. Globally, it adds to the discourse on how countries with diverse religious populations navigate the intersection of tradition, modernity, and legal recognition of interfaith unions, offering comparative insights into the challenges faced by similar jurisdictions.

KEYWORDS *Interfaith Marriage, Submission, Authority, District Court Determination*

I. Introduction

Law Number 1 of 1974 concerning Marriage (Indonesian Marriage Law) establishes the legal framework for marriage in Indonesia, regulating the conditions and procedures for marriage, as well as the rights and responsibilities of married individuals. This law aims to provide legal certainty and order in marital relations, ensuring that marriages are conducted in accordance with Indonesian law. However, despite its comprehensive scope, the law has faced challenges in addressing complex social issues, particularly those related to interfaith marriages. The legal framework does not offer clear provisions for marriages between individuals of different religions, which has led to ongoing debates and legal uncertainties regarding the validity of such marriages in the country.¹ The provisions on the implementation of interfaith marriages are regulated

¹ Sirman Dahwal, *Hukum Perkawinan Beda Agama dalam Teori dan Praktiknya di Indonesia* (Bandung: Mandar Maju, 2016): 9.

by Supreme Court Circular Letter Number 231/PAN/HK.05/1/2019 that the marriage is solemnized based on the procedures of one of the couple's religions and the other couple submits themselves. The reason is because interfaith marriages are not recognized by the state and cannot be registered. The submission in question is a voluntary submission to a legal provision outside the religious law that he believes in.² This means that when someone of a different religion wants to carry out a marriage, they must choose and follow the religious procedures of one of their partners as a form of marriage that is valid according to religion. The effect of this submission is that if he submits himself to one religion then he can be said to have released himself from his previous religion.³

Registration of interfaith marriages must be based on a decision of the District Court in accordance with the provisions in Article 35 letter a of Law Number 23 Year 2006. The content of the application for marriage registration is essentially a request to the judge to order the Population and Civil Registry Office of the district or city to register the marriage of a couple of different religions that has been carried out and issue a marriage certificate. In practice, the researcher finds that in the application for marriage registration submitted to the District Court, there is a request to legalize the marriage of interfaith couples that has been carried out by submitting themselves to the religious procedures of one of the partners. Based on the results of the search for District Court Stipulations from 2019 to 2022, the researcher found four stipulations containing requests for marriage registration of interfaith couples along with requests to legalize the marriages of interfaith couples.

² The notion of voluntary submission is based on Staatsblad 1917:12 regarding the submission of private law regulations (Western Civil Law) in *Burgerlijk Wetboek* (BW) for the Foreign East and Bumi Putera groups. See Riana Susmayanti, "Bahan Ajar Perluasan Berlakunya Hukum Perdata."

³ Consideration of the Surabaya District Court Judge in the decision of Stipulation Number 916/Pdt.P/2022/PN.Sby dated 26 April, 2022.

Three stipulations contain stipulations legalizing marriages and granting marriage registration permits, including Purwokerto District Court Stipulation Number 54/Pdt.P/2019/PN.Pwt, District Court Stipulation Number 878/Pdt.P/2022/PN.Dps and District Court Stipulation Number 351/Pdt.P/2022/PN.Sda.⁴ The stipulation that rejects the legalization of interfaith marriages but still gives permission for marriage registration is District Court Stipulation Number 508/Pdt.P/2022/PN.Jkt.Sel on the basis of the judge's consideration that interfaith marriages according to Islamic law are not known. In addition, the MUI fatwa states that interfaith marriages performed by Muslims are illegal and are forbidden acts.

Previous research on interfaith marriages by Novina Eky Dianty discusses marriage registration in Surakarta City which concludes that the implementation of marriage registration at the Surakarta Civil Registry Office is carried out based on the determination of the District Court which shows that this registration is administrative and ignores the legal requirements of religious marriage.⁵ Another study by Megawati on the legal provisions of interfaith marriages and their legal consequences

⁴ The respective rulings that are granted:

- a. Determining the validity of the Marriage of the Applicant (JESICA KACYTA RIONA) with the Applicant's Husband (ARI YUNIARSO) which was conducted on February 23, 2019 at di Santo Yoseph Church Purwokerto, in the presence of the Parish Priest RP.A.MKRISTIADJI R, MSC.”;
- b. Stipulation of the District Court Number 878/Pdt.P/2022/PN.Dps number 2 "Declaring valid the religious marriage of the Plaintiffs which was held on Tuesday, September 10, 2019 at Trans Hotel, Sunset Road, Kerobokan Bali.”;
- c. Stipulation of the District Court Number 351/Pdt.P/2022/PN.Sda number 2 "Declaring valid the marriage between the Applicant and VIOLA CHRISWENITHA on September 10, 2022 at Gereja Katolik Keuskupan Surabaya “Paroki Sakramen Mahakudus” as per the Church Marriage Certificate Number 646/II/2022 dated September 10, 2022.”

⁵ Novina Eky Dianti, “Sinkronisasi Peraturan Perundang-Undangan tentang Pencatatan Perkawinan Beda Agama di Kota Surakarta” (Thesis, Yogyakarta, Universitas Gadjah Mada, 2016).

conclude that interfaith marriages are not allowed according to positive law in Indonesia, especially for Islam which is regulated in Article 40 to Article 44 KHI, the legal consequences of interfaith marriages can psychologically lead to the destruction of household happiness and juridically children born from registered marriages remain legal children, while the validity of the marriage is determined by each partner's religion.⁶

In a study by Bayu Widdy Dwi Jatmiko, Nur Putri Hidayah, and Samira Echaib, it is concluded that interfaith marriages are considered invalid legally. However, couples can seek a court determination to marry according to their beliefs. Regarding marriage registration, interfaith marriages are recorded with the civil registry office as non-Islamic marriages.⁷ In a study on interfaith marriages conducted in 2024, M. Thahir Malokoa, Sippah Chotbana, Muhammad Ikram Nur Fuadya, and Hasdiwati found that the Supreme Court rejected a review of the law regarding interfaith marriage that was submitted by a Muslim-Christian couple. The Supreme Court stated that the law violated Human Rights Law, Marriage Law, the Compilation of Islamic Law, and the Fatwa of the Indonesian Ulama Council. As a result, many interfaith couples chose to have unregistered marriages abroad before officially registering with the Civil Registry Office in Indonesia. This is seen as a form of legal evasion in the country and has led to significant confusion on this issue.⁸

⁶ Megawati, "Ketentuan Hukum Positif Indonesia dalam Mengatur Perkawinan Beda Agama dan Akibat Hukumnya," *Journal of Legal Research* 4, no. 4 (2021), <https://doi.org/10.15408/jlr.v4i4.28234>.

⁷ Bayu Dwi Widdy Jatmiko, Nur Putri Hidayah, dan Samira Echaib, "Legal Status of Interfaith Marriage in Indonesia and Its Implications for Registration," *Journal of Human Rights, Culture and Legal System* 2, no. 3 (November 2022): 167–77, <https://doi.org/10.53955/jhcls.v2i3.43>.

⁸ M. Thahir Maloko dkk., "Analyzing the Prohibition of Interfaith Marriage in Indonesia: Legal, Religious, and Human Rights Perspectives," *Cogent Social Sciences, Law, Criminology & Criminal Justice*, 10, no. 1 (2024): 1–12, <https://doi.org/10.1080/23311886.2024.2308174>.

Iwan Setiawan, Tajul Arifin, Usep Saepullah, and Abdullah Safei conducted a study on interfaith marriage in 2024. They discovered that the prohibition of interfaith marriages often contradicts principles of justice, religious freedom, and human rights. Despite this, some scholars stress the importance of taking into account the social context and justice in marital regulations. It is crucial to formalize Islamic law by integrating sociological and cultural aspects and aligning it with the national constitution.⁹

This research is juridical normative research, namely research dominated by secondary data, one of which is the District Court's decision regarding the legalization of interfaith marriages and is complemented by interviews with informants. The informants in this research were religious leaders, judges and academics. The data obtained was then analyzed using qualitative methods and presented descriptively. Methods and data analysis were chosen according to the research objectives, namely exploring and analyzing the concept of submission to one of the married partners in Point 2 of the Supreme Court Fatwa Number 231/PAN/HK.05/1/2019 seen from the validity of marriage according to Islamic, Christian, Catholic, Buddhist, Hindu and Confucian religious law and the considerations of District Court judges thus giving rise to disparities in determining whether or not interfaith marriages for a couple that have submitted themselves to one of the married partners are valid or not. The basis for the judge's considerations is then analyzed based on the Marriage Law, general court procedural law, as well as Circular Letter (*Surat Edaran Mahkamah Agung/SEMA*) Number 2 of 2023 concerning Instructions for Judges in adjudicating Applications for Registration of Marriages Between People of Different Religions and Beliefs.

⁹ Iwan Setiawan dkk., "Reforming Marriage Law in Indonesia: A Critical Examinations of Islamic Law on the Ban of Interfaith Marriages," *Al-Manāhij: Jurnal Kajian Hukum Islam* 18, no. 20 (2024): 179–98, <https://doi.org/10.24090/mnh.v18i2.11134>.

II. The Concept of Submission in Supreme Court Fatwa Number 231/PAN/HK.05/1/2019: Marriage Legality Across Islamic, Christian, Catholic, Buddhist, Hindu, and Confucian Laws

A. The Concept of Submission in Supreme Court Fatwa Number 231/PAN/HK.05/1/2019

Letter of the Registrar of the Supreme Court Number 231/PAN/HK.05/1/2019 issued on January 30, 2019 is an answer to a problem submitted by the civil registration office that requires an explanation from the Supreme Court. One of the questions concerns marriages of different religions, namely can the marriage of a couple of different religions be recorded if the couple already has proof of a marriage certificate from one of the religious leaders? For example, the applicant brings a Certificate of Marriage from a Christian religious leader but the religion in the applicant's Family Card and electronic ID card is Christian and Islam. To this question the Supreme Court gave an answer which read: *"Marriages of different religions are not recognized by the state and cannot be registered. However, if the marriage is performed based on the religion of one of the spouses and the other spouse submits to the religion of the other spouse, the marriage can be registered, for example, if the marriage is performed based on the Christian religion, it is registered at the Population and Civil Registration Office, and if the marriage is performed based on the Islamic religion, the marriage of the couple is registered at the Religious Affairs Office."*

The Supreme Court did not provide an explanation regarding this conception of submission. Submission can be interpreted in two ways, namely submission to the partner's religious ordinances without having to

convert to their partner's religion or submission to their partner's religion in the sense that they convert to their partner's religion. According to Agus Triyanto, submission is not just submitting to a certain religious marriage procedure but must change religions following the procedure in which he will carry out the marriage.¹⁰ In legal terminology, there are two types of self-submission, including voluntary self-submission, namely someone who submits himself of his own free will (*Vrijwillige Onderwerping*) and tacit self-submission, namely self-submission on the basis of statutory orders or known as presumptive self-submission (*Verorderstelde Onderwerping*). The concept of submission in the legislation on marriage is not explicitly mentioned. However, the practice that occurs if you want to enter into a marriage of different religions, one of the partners must submit themselves to the other partner to fulfill the conditions of marriage in Article 2 of Law Number 1 Year 1974 which stated that:

- 1) A marriage is legal if performed according to the laws of each religion and belief.
- 2) Every marriage shall be recorded in accordance with the applicable laws and regulations.

On this basis, the expert says that marriage for people of different religions is not intended by the legislator. The prohibition of marriage in Article 8 letter f of Law Number 1 Year 1974 also states "*Marriage is prohibited between two people who have a relationship that is prohibited by their religion or other applicable regulations.*" The marriage recognized by this law is an inter-state marriage in Article 57 which states: "*What is meant by mixed marriage in this law is marriage between two people who in Indonesia are subject to different laws, due to differences in citizenship and one of the parties has Indonesian citizenship.*" This is in contrast to the provisions stipulated in Articles 1 and 7 of the *Regeling op de Gemengde Huwelijken* (GHR), which essentially guarantees that there are no

¹⁰ Interview with Agus Triyanto, Hakim Pengadilan Negeri Sleman on September 8, 2023.

obstacles for people who marry different religions. But with the enactment of Law Number 1 Year 1974, these provisions no longer apply.¹¹

After the issuance of the fatwa, the Supreme Court issued Circular Letter No. 2 of 2023 concerning Guidelines for Judges in adjudicating Cases of Requests for Registration of Marriages between People of Different Religions and Beliefs. The content of the SEMA reads:

- 1) A legal marriage is one that is conducted according to the laws of each religion and belief, in accordance with Article 2 paragraph (1) and Article 8 letter f of Law Number 1 of 1974 concerning Marriage.
- 2) The court does not grant a request for registration of marriage between people of different religions and beliefs.

The enactment of this SEMA does not make the provisions of Law 23/2006 no longer applicable. It is just that the application for marriage registration can no longer be submitted to the District Court. The only way this can be done is for the couple to change religions before the marriage or before registering the marriage because the civil registry office does not accept the registration of marriages of different religions without a District Court decision. If after the enactment of this SEMA it is known that there is still a District Court decision allowing the registration of an interfaith marriage, the civil registry office cannot refuse to register the marriage.¹²

The term submission in Point 2 of Supreme Court Circular Letter Number 231/PAN/HK.05/1/2019 if it is interpreted as requiring the couple to change religions is not appropriate. According to the researcher, the meaning of submission is that the couple makes a legal choice to carry out a marriage following one of their partner's religious procedures. Which

¹¹ Sirman Dahwal, *Hukum Perkawinan Beda Agama dalam Teori dan Praktiknya di Indonesia*, pp. 57-62.

¹² Interview with Trisminingsih, Analisis Kebijakan Ahli Muda Kelompok Kerja Perkawinan Perceraian, Status Anak dan Perkawinan Dinas Kependudukan dan Catatan Sipil Kota Yogyakarta on September 5, 2023.

religious law is agreed upon by the couple for the marriage to take place. If the religious law has been agreed upon, then couples of different religions are willing to submit themselves to the procedures of the religion they choose. This submission must also take into account whether the law of the chosen religion allows interfaith marriages to take place.

The legality of marriage by one religion for couples of different religions is not necessarily valid according to the religion of the other spouse because there are religions that do not allow marriage by submission. The judge in determining the application must pay attention to the religious law of the applicants if the religion of one of the applicants does not recognize the existence of an interfaith marriage, then the validation of the marriage is rejected. The practice that occurs is that there are still judges who legalize interfaith marriages even though the religion of one of the spouses prohibits marriage by submission. The researcher assumes that if the judge is guided by the clerk's letter, then the judge must also look at the religious law of the applicants.

B. The Concept of Submission to One of The Married Couples in Supreme Court Fatwa Number 231/PAN/HK.05/1/2019 Viewed from the Legality of Marriage According to Islamic Law

The legality of marriage according to Islam is that the marriage must be carried out according to Islamic religious procedures and the bride and groom must be Muslims. If a couple of different religions want to marry in the Islamic manner but do not say the word of *Syhadah* or stick to their religion, the marriage is declared illegal and cannot be registered at the KUA.¹³ The Indonesian Ulema Council based on Fatwa No. 4/MUNAS

¹³ Interview with Ustadz Muhammad Anis Sumaji, Leader of the Tarjih and Tajdid Council of Muhammadiyah Surakarta on September 2, 2023.

VII/MUI/8/2005 explicitly states that interfaith marriage for Muslims is haram. The fatwa reads:

- 1) Interfaith marriages are haram and illegal;
- 2) Marriage between a Muslim man and a woman of the Book according to *qaul mu'tamad* is *haram* and illegal.

Based on the above description, it can be said that marriage between different religions and subjugating oneself to the religion of one's partner is not allowed. If they want to get married in the Islamic manner, then the couple must convert to Islam first.

The Supreme Court Fatwa that previously provided a way of marriage by submitting to the procedures of one religion cannot be done if the submission is subject to Islamic procedures because Islam prohibits interfaith marriages. This prohibition then makes Muslims who want to marry a partner of a different religion choose a religion that still provides a loophole to marry without having to change religions such as Christianity, Catholicism, Buddhism or Confucianism. Nonetheless, a marriage for a Seasonal believer that takes place in accordance with the procedures of another religion is only valid according to that religion but under Islamic law, the marriage is illegal and is a forbidden act.

C. The Concept of Submission in Supreme Court Fatwa Number 231/PAN/HK.05/1/2019: A Christian Law Perspective on Marriage Legality

Marriage according to Christianity is a union entered into by baptized persons as a sacred relationship of love that must be consecrated as a mirror of the indissoluble communion between Christ and the church.¹⁴ Christianity holds the view that a valid marriage is one that is performed

¹⁴ Soetojo Prawirohamidjojo, *Pluralisme dalam Perundang-undangan Perkawinan di Indonesia* (Surabaya: Airlangga University Press, 1986): 34.

in a Christian marriage following the provisions of the church where the marriage is to be performed because the church has its own authority regarding the requirements of marriage. Before performing a marriage blessing, the church requires pre-marital catechization or marriage catechization as well as the obligation of the church council to conduct Pastoral conversations.

Each church has different views and rules regarding marriage, so that whether a marriage is valid must be seen from whether the requirements required by the church are met. Similarly, the validity of interfaith marriages, each church has a different view. There are churches that allow interfaith marriages and some that do not allow them. GPIB is one of the churches that can provide a loophole for interfaith marriages to take place by fulfilling the requirements for marriage in GPIB, namely following pre-marital catechization and pastoral conversations. This pastoral conversation is a form of shepherding for prospective brides and grooms of different religions to provide an explanation of the procedures for Christian marriage and the consequences of the marriage itself.¹⁵

The submission in Supreme Court Registrar Letter Number 231/PAN/HK.05/1/2019 can be done if the church provides space for different religious marriages to take place. However, in order to be able to carry out the marriage, the prospective bride and groom must previously take part in pre-marital catechization and pastoral conversation by the congregation and pastor. If the bride and groom meet the requirements of both church and state administrations, the marriage are able to take place. For churches that do not accept interfaith marriages by submitting themselves to Christian ordinances, it is considered that the similarity of faith makes the family live in the same stance and not be divided by other views. If the prospective bride and groom wish to perform the Christian ordinance then the prospective bride and groom must basically accept and

¹⁵ Interview with Pastor Abraham Ruben Persang, Chairman of the Assembly of GPIB Immanuel Jakarta, on August 8, 2023.

recognize Christ in the family. The acceptance of Christ in the family means that he must become a Christian, so that in order to be able to perform a Christian marriage he must not only submit to the marriage ordinance but must submit to the Christian faith in other words must become a Christian.

D. The Concept of Submission to One of The Married Couples in Supreme Court Fatwa Number 231/PAN/HK.05/1/2019 Viewed from the Legality of Marriage According to Catholic Religious Law

Catholicism holds that marriage is a covenant (*foedus*) between a man and a woman to form a union.¹⁶ For Catholics, marriages that are not performed with Catholic sacraments are not recognized by the church and are considered invalid. The Catholic Church recognizes marriage dispensation for couples where one of them is not Catholic. Although the Catholic church makes room for interfaith marriages, such marriages cannot simply be performed. The main requirement that must be met is that the prospective bride and groom who are of different religions must first obtain a d.05/1/2019 can be applied because the Catholic church provides space for marriages of different religions to take place. Therefore, so that its people do not play with religion, the Catholic religion provides marriage dispensation for couples of different religions and couples who want to enter into a Catholic marriage must submit themselves to follow the procedures of the Catholic marriage sacrament. If a person wants to embrace Catholicism then he must be willing to carry out the obligations as a Catholic, Catholic baptism which is recognized for life, so he cannot

¹⁶ Paul VI, *GAUDIUM ET SPES: Konstitusi Pastoral tentang Tugas Gereja dalam Dunia Dewasa Ini Dokumen Konsili Vatikan II*, Seri Dokumen Gerejawati Nomor 19 (Jakarta: Departemen Dokumentasi dan Penerangan Konferensi Waligereja Indonesia, 1965): 48.

play with religion just for the reason of marriage dispensation letter, namely the Marriage Preparation Course and follow the canonical investigation.¹⁷ The Church can refuse an interfaith marriage if the canonical investigation shows that the couple is not truly capable of practicing Catholic marriage or there are conditions that cannot be met. In addition, couples who enter into a Catholic marriage must also be willing to educate their children in a Catholic manner. Even when the child grows up, he or she can choose his or her own religion.¹⁸

Based on the above description, a Catholic marriage is valid if the requirements are fulfilled and the marriage is ordained by the sacrament of Catholic marriage. The dispensation for interfaith marriage is granted because the requirements to convert to Catholicism take a long time and must be based on the ability of each person's heart. To avoid people who play with religion just to get married, this dispensation is given.

The submission in the Registrar's Letter Number 231/PAN/HK.05/1/2019 can be applied because the Catholic church provides space for marriages of different religions to take place. Therefore, so that its people do not play with religion, the Catholic religion provides marriage dispensation for couples of different religions and couples who want to enter into a Catholic marriage must submit themselves to follow the procedures of the Catholic marriage sacrament. If a person wants to embrace Catholicism then he must be willing to carry out the obligations

¹⁷ There are two types of marriage dispensation in the Catholic Church:

1. Dispensation for marriage between different churches (*Mixta Religio*), namely marriage between a Catholic who has been baptized as a Catholic and a Christian who has been baptized as a Christian.
2. Dispensation for marriage between different religions (*Disparitas Cultus*), namely marriage between baptized Catholics and people of other religions who are not baptized.

See Code of Canon Law 1086 § 1-2 and Code of Canon Law 1124.

¹⁸ Interview with Romo Yohanes Deodatus SJ., Pastor Rekan Paroki Santa Maria Diangkat Ke Surga Jakarta on July 28, 2023.

as a Catholic, Catholic baptism which is recognized for life, so he cannot play with religion just for the reason of marriage.

E. The Concept of Submission to One of The Married Couples in Supreme Court Fatwa Number 231/PAN/HK.05/1/2019 Viewed from the Legality of Marriage According to Buddhist Law

Buddhism views marriage as a physical and mental bond between a man as husband and a woman as wife based on love (*metta*), compassion (*karuna*) and mutual support (*mudita*).¹⁹ Buddhism has no specific requirements or restrictions on marriage so Buddhists are allowed to marry partners of different religions. Buddhism teaches tolerance, therefore Buddhists can freely choose their life partner in marriage regardless of religion. Interfaith marriages can only be performed for monasteries that allow such marriages.

The monastery will grant marriage dispensation so that before carrying out the marriage ceremony the bride and groom will be examined first by participating in marriage counseling. In addition, the non-Buddhist bride and groom must make a statement that they are willing and not coerced by any party to participate in the marriage ceremony at the monastery.²⁰ As religion is a personal matter, Buddhism basically discourages people from converting to other religions just because of marriage requirements. Therefore, interfaith marriages are still allowed because a person can only embrace Buddhism if they are willing to practice Buddhism.

¹⁹ Kementerian Agama, "Syarat Daftar Nikah Buddha," *Bimbingan Perkawinan Kementerian Agama Republik Indonesia*, 2021.

²⁰ Interview with Bhikku Atthadiro Thera, as Dewan Pimpinan Ketua Bidang Antar Lembaga di Pusdiklat Buddhis Sikkhadama Santhibhumi Tangerang Selatan on July 27, 2023.

Based on this statement, the researcher concludes that the submission in Supreme Court Registrar Letter Number 231/PAN/HK.05/1/2019 can be applied in Buddhist procedures. This is an effort to avoid people who play with religion. If he enters Buddhism only for the requirements of marriage then the act is considered inappropriate. Interfaith marriages can be performed if the prospective bride and groom have obtained a marriage dispensation letter from the Vihara. In addition, the prospective bride and groom must also fulfill administrative requirements which will later become a requirement for marriage registration at the Population and Civil Registry Office and must first attend marriage guidance.

F. The Concept of Submission to One of The Married Couples in Supreme Court Fatwa Number 231/PAN/HK.05/1/2019 Viewed from the Legality of Marriage According to Hindu Religious Law

The legality of marriage according to Hinduism is a marriage that is carried out under Hindu law with a marriage ceremony with *mantram* chanting. This is regulated in Article 227 Chapter VIII of the Manawa Dharmasastra which translated reads: "*The marriage mantram is a sure proof that the girl becomes a legitimate wife, but experts must know that the perfection of a marriage is after the completion of sapta padi around the sacred fir*". Hinduism in Indonesia does not recognize interfaith marriages. If the bride and groom are of different religions then the Sudhiwadani ceremony must be performed first. The priest will not perform the marriage if the couple of different religions do not perform Sudhiwadani. Sudhiwadani is a ceremony performed by people who are not Hindu to officially embrace

Hinduism. After Sudhiwadani is performed, a statement letter will be given that someone has converted to Hinduism.²¹

The reason that interfaith marriages are prohibited in Hinduism is because they are related to the purpose of marriage to continue offspring, get a child who is sons and a form of penance for parents. Children who are sons are children who have noble character, intelligent and wise who can raise the dignity of parents, family and society. Hinduism believes that the birth of a child in the family will save the spirit of the parents from sin. It is mandatory for Hindu husband and wife to educate their children with Hinduism. Children have the obligation to pay the parents' debt after their parents die by purifying their parents or returning the elements of the five *mahabuta* to the creator.²²

Based on the description above, the Hindu submission referred to in the Registrar's Letter Number 231/PAN/HK.05/1/2019 cannot be enforced. Marriage cannot be carried out if the bride and groom who are not Hindu have not performed the Sudhiwadani ceremony. *The* validity of a Hindu marriage is only a marriage performed by a Hindu bride and groom. Therefore, if a couple of different religions is not willing to follow the Sudhiwadani ceremony, the couple will choose their partner's religion that allows interfaith marriages. But there are also couples who continue to follow the Sudhiwadani ritual and marry in the Hindu manner after the marriage is carried out and has been registered, the couple of different religions returns to their original religion. This is no longer the responsibility of religious leaders or temples but the moral responsibility of the individual.

²¹ Sirman Dahwal, *Perbandingan Hukum Perkawinan* (Bandung: Mandar Maju, 2017): 142-143.

²² Interview with Pinandita Jero Mangku Ketut Suarna, Pinandita Pura Parahyangan Jagad Guru BSD South Tangerang on July 18, 2023.

G. The Concept of Submission to One of The Married Couples in Supreme Court Fatwa Number 231/PAN/HK.05/1/2019 Viewed from the Legality of Marriage According to Confucian Law

Confucianism basically teaches ethics and morals concerning personal and social morals that are not related to divinity. However, because the main teachings of Confucianism concern good morals that are attached to religious teachings, this teaching is considered as a carrier of religion. Confucianism basically does not question religion in marriage because *Confucianism* is a religion that originated from Chinese culture. Confucian teachings provide freedom for its followers to determine the choice of their respective spouses.²³ The meaning of marriage in Confucianism is found in the Book of Li Ji XLI on Hun Yi (*The Truth of the Meaning of Religious Ceremonies*) which reads: "*The marriage ceremony intends to integrate kindness/love between families of different clans; upwards to realize devotion to religion and the ancestral temple (Zong Miao) and downwards to continue the generation*". Before carrying out the marriage ritual, the prospective bride and groom must first attend guidance/counseling. The marriage ritual in Confucianism is known as the Li Yuan ceremony.

The purpose of marriage according to Confucianism is to continue the generation. Chinese tradition is very identical to the patrilineal kinship line that men have an important position in the family because they are the successor to the family name or clan lineage. The importance of sons in the family as a determinant of whether or not the clan of his father's family continues. There is no prohibition of interfaith marriage in Confucian religious law. According to Ws. Gunadi Prabuki, Confucianism basically does not bother with the prohibition of interfaith marriages because the premise of the Chinese tradition that draws a

²³ Sirman Dahwal, *Perbandingan Hukum Perkawinan*, p. 148.

patrilineal lineage is that if the groom who marries is Confucian, the bride follows her husband. Conversely, if the bride is Confucian and the groom is of another religion then the bride will follow her husband.²⁴ Couples who are of different religions but wish to perform a marriage according to the Confucian religion do not have to convert because religion is the personal right of each citizen. If a couple of different religions want to get married in the Confucian manner, they can do so by submitting themselves to the required procedures and rituals without having to convert. The requirements for marriage are the same as for other Confucian couples, and couples of different religions must follow the same stages of the ritual procession. The only difference is that before performing the marriage, couples who are not Confucian are required to make a statement stating that they are willing to perform the marriage in the Confucian manner without coercion from any party.

Based on this statement, it can be concluded that interfaith marriage is allowed according to the Confucian religion. The submission in Supreme Court Registrar Letter Number 231/PAN/HK.05/1/2019 can be applied in the Confucian religion. This is because Confucian teachings are based on morality where embracing Confucianism is the right of each individual so there is no need for someone to embrace Confucianism just because he wants to get married. However, in order to enter into a legal marriage, the couple must follow a series of Chinese marriage rituals without having to convert.

²⁴ Interview with Wen Shi Gunadi Prabuki, Chairman of Higher Education of the Indonesian Confucian High Council, Jakarta on August 18, 2023.

III. Basis for District Court Judges' Considerations Leading to Disparity in Determining the Legality of Religious Marriages with Submission to One Partner

A. Stipulations of the District Court Approving and Rejection a Non-Religious Marriage

Based on the findings of the decisions of the District Court from 2019 to 2022, there were three decisions that in their rulings declared the validity of interfaith marriages and one decision that refused to legalize the marriage but still gave permission for marriage registration, among others:

TABLE1. List of District Court Stipulations Related to Requests for Legalization of Non-Religious Marriages

Case Number	Position Case	Verdict
54/Pdt.P/2019/PN. Pwt	Marriage between a Muslim man and a Catholic woman based on Catholic ordinances.	legalizing the applicants' interfaith marriage and grant permission for the registration of the marriage at the civil registry office.
878/Pdt.P/2019/PN .Dps	Marriage between a Buddhist man and a Christian woman.	legalizing the applicants' interfaith marriage and grant permission for the registration of the marriage at the civil registry office.
351/Pdt.P/2022/PN .Sda	Marriage between a Christian man and a Catholic woman based on Catholic ordinances.	legalizing the applicants' interfaith marriage and grant permission for the registration of the marriage at the civil registry office.

Case Number	Position Case	Verdict
508/Pdt.P/2022/PN .Jkt.Sel	Marriage between a Muslim man and a Christian woman	Refusing to legalize the applicants' interfaith marriage but still granting permission for marriage registration at the civil registry office.

Source: Directory of Supreme Court Decisions 2019-2022.

Based on the table above, the basis of consideration used by the judge in granting permission to register an interfaith marriage is based on Article 2 and Article 8 letter f of Law Number 1/1974 and Article 35 letter a of Law Number 23/2006. The essence of the judge's consideration is that the validity of a marriage according to Law 1/1974 if the marriage is carried out according to the religion of the spouse and registered. Because the couple had different religions, the registration of interfaith marriages as stipulated in Law 23/2006 had to obtain a stipulation from the District Court. The judge considers that with the issuance of a letter stating that a marriage has taken place, the marriage must be recorded as a form of legal certainty for the marriage.

For the stipulation of marriage authorized by the judge, the judge did not use the Supreme Court Registrar's Letter Number 231/HK.05/1/2019 as a basis for consideration. This means that judges see that the provisions of interfaith marriages have not been specifically regulated so that with this legal vacuum, judges look for other laws. For judges who declare the validity of interfaith marriages, it is entirely based on a letter of statement that a marriage has been held by a religious leader. The first stipulation number 54/Pdt.P/2019/PN.Pwt made the letter granting dispensation to prohibit marriage as a basis for consideration that with the issuance of the letter and the marriage had been carried out, the marriage was declared valid.

Based on the religious view, the marriage is only valid in Catholicism while in Islam it is not valid because Islam prohibits interfaith marriage

and is a forbidden act. The judge in determining the application should have looked at the applicants' religious viewpoints as well because the two religious laws of the applicants differed in their opinions regarding interfaith marriage.²⁵

The second stipulation No. 878/Pdt.P/2019/PN.Dps does not mention the manner in which they entered into the marriage. However, with a certificate that the marriage took place without coercion made by the applicant and the marriage was known by the applicant's parents, the judge declared it valid. The applicant did not attach a statement of marriage issued by a religious leader but the marriage was still declared valid by the judge. In fact, the requirement for registration at the civil registry office was that there should be a marriage certificate. In addition, it was not stated in what manner the marriage was conducted, it was only said that the marriage had been witnessed by the *lurah* and family. However, the judge judged that the marriage was validated by the conduct of the marriage.

Stipulation Number 351/Pdt.P/2022/PN.Sda used the Catholic church's marriage certificate as the basis for determining the validity of the interfaith marriage. The judge was also of the opinion that the applicants' marriage did not constitute a marriage ban. Although Christianity and Catholicism are based on the same beliefs and scriptures, they are not one religion administratively in Indonesia. The authorities of Christianity and Catholicism are different so if it was known that the marriage was performed in a church that prohibits interfaith marriages then the applicants' marriage would be invalid. But because the marriage was

²⁵ Documents required for marriage registration at the Population and Civil Registry Office include: *Letter of blessing/consecration from a religious leader ...* See, Kementerian Pendayagunaan Aparatur Negara dan Reformasi Birokrasi, "Proses Pencatatan Perkawinan dan Penerbitan Akta Perkawinan," <https://sippn.menpan.go.id/pelayanan-publik/7942973/pemerintah-kab-banjarnegara/proses-pencatatan-perkawinan-dan-penerbitan-akta-perkawinan>, accessed on September 25, 2023.

performed in a Christian church that allows interfaith marriages and the Catholic religion still provides dispensation for the marriage of baptized couples, the marriage was valid.

In contrast to the consideration of judges who refuse to legalize interfaith marriages in determination Number 508/Pdt.P/2022/PN.Jkt.Sel where the judge rejects the validity of the marriage. The judge considered that the marriage was invalid under the provisions of the Marriage Law because Islam prohibits interfaith marriages. The provision that the judge took into consideration was the MUI fatwa Number 4/MUNAS VII/MUI/8/2005. Although the judge rejected the application for the validity of the marriage, because the marriage had been carried out and obtained a marriage charter issued by the Nusantara Christian Church in Central Jakarta, as a form of legal certainty, the registration was still given. It should be noted that this marriage is only valid according to Christianity, while in Islam this marriage is not valid.

B. Causes of Disparity in District Court Stipulations Related to Requests for Determination of the Marriages of Interfaith Marriages

The judge accepted the application for registration of an interfaith marriage because of the mandate of Article 35 letter a in conjunction with the explanation of Article 35 letter a of Law Number 23 Year 2006 that marriage registration also applies to marriages determined by the court, namely marriages between people of different religions.²⁶ The opinions

²⁶ The implementation of marriage registration is further regulated in *Pasal 50 ayat (3) Peraturan Menteri Dalam Negeri Nomor 108 Tahun 2019 tentang Peraturan Pelaksana Peraturan Presiden Nomor 98 Tahun 2018 tentang Persyaratan dan Tata Cara Pendaftaran Penduduk dan Catatan Sipil* which reads:

of District Court judges regarding interfaith marriages are in two camps, namely there are judges who approve and legalize interfaith marriages and there are judges who reject interfaith marriages. The reason why judges agree with interfaith marriages is because there is no clear legal basis so that there is a legal vacuum in it.²⁷ The judge is also of the view that to fulfill human rights in Article 10 paragraph (2) jo. Explanation of Article 10 paragraph (2) of Law Number 39 Year 1999 which provides freedom to enter into marriage for prospective spouses. Free will means a will that arises not because of coercion, deception or pressure from anyone against the couple.

Previously, it was said that marriage registration is the authority of the District Court, but there is no further provision regulating the validity of a marriage between different religions. This is because the validity of marriage is the domain of each religious leader, not the domain for judges to determine. If we look at Book II of the Supreme Court of 2007 which details the types of petitions that can be accepted by the District Court,

In the case of marriages between people of different religions and marriages that cannot be proven by a marriage certificate, marriage registration is carried out based on a Court Determination by fulfilling the requirements:

- a. A copy of the court order;
- b. ID cards of husband and wife;
- c. A passport photograph of the husband and wife;
- d. Travel document for foreign husband or wife.

²⁷ Referring to the principle of *Ius Curia Novit* in Article 10 of Law Number 48 of 2009 which reads: (1) Courts are prohibited from refusing to examine, hear and decide a case filed on the pretext that the law does not exist or is unclear, but are obliged to examine and hear it. (2) The provisions as referred to in paragraph (1) shall not close the settlement of civil cases by way of peace. Yahya Harahap argues that judges as organs of the court who know the law so that they must provide services to justice seekers who ask for justice. If the judge does not find written law, then the judge must explore unwritten law to decide the case based on the law as a wise and fully responsible person to God Almighty, self, community, nation and state. See Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian dan Putusan Pengadilan* (Jakarta: Sinar Grafika, 2019): 821.

there is nothing in the form of declaring the validity of an act of marriage between different religions.²⁸

If we look at this provision, then actually the validity of marriage is not the realm of judges but the validity of marriage is determined by religion which refers to Article 2 paragraph (1) of Law 1/1974. Marriages that occur by couples of different religions are only valid according to one religion, while according to the religion of the partner, the marriage may not be valid. Therefore, what should be issued by the judge in the application for marriage registration is to declare that the marriage has taken place, not to declare the validity of the marriage because the religious law of the couple is different, there are religions that allow interfaith marriages and some that prohibit interfaith marriages.

Over time, the Supreme Court issued Supreme Court Circular Letter Number 2 of 2023 concerning Instructions for Judges in Adjudicating Cases of Application for Registration of Marriages between People of Different Religions and Beliefs as a form of solving the problem of interfaith marriages. This is an effort for the judicial environment to maintain the principle of marriage in Article 2 paragraph (1) jo. Article 8 letter f of Law Number 1 Year 1974. This SEMA stipulates that the court will not grant a request for marriage registration between people of different religions and beliefs. The impacts arising from the issuance of this SEMA include:²⁹

- a. The existence of certainty, legal unity towards the handling of interfaith marriages in Indonesia;

²⁸ Mahkamah Agung Republik Indonesia, *Pedoman Teknis Administrasi dan Teknis Peradilan Perdata Umum dan Perdata Khusus Buku II* (Jakarta: Mahkamah Agung Republik Indonesia, 2007): 43-47.

²⁹ Nurhasan Abdurahman, "Dampak Pra dan Pasca SEMA Nomor 2 Tahun 2023 Terhadap Perkawinan Beda Agama" in Mudzakarah Seminar on National Law and Islamic Law on Interfaith Marriage and its Implications after SEMA No. 2 of 2023 on September 13, 2023.

- b. The firmness of the Supreme Court to provide sanctions for judges who do not implement SEMA Number 2 Year 2023;
- c. There is no room for interfaith marriages so that now there are citizens of different religions marrying;
- d. SEMA No. 2 of 2023 is considered a regulation that upholds religious values so as to ensure that marriage must be in accordance with religious rules;
- e. The protection of legal protection to the existence of religious values and religious rights of citizens.

Although the SEMA has come into effect, Law 23/2006 still applies. However, with the existence of SEMA, the registration of marriages of different religions cannot be done because the District Court closes the door to accepting applications for registration of marriages of different religions. The problem that occurs is that for couples who are of different religions and want to get married, the way that can be done is that they must first convert to their partner's religion. This conversion can be done before or after the marriage. For example, to become a Catholic takes a long time in order to arrive at baptism which states that he or she already holds the Catholic faith. If the prospective bride and groom are Muslims and will convert to Catholicism, the couple can enter into marriage by being granted a marriage dispensation first and then the registration is carried out if the spouse has been baptized and with the baptismal certificate and marriage certificate from the Parish is submitted to the Population and Civil Registry Office for data updating as well as marriage registration and the issuance of a marriage certificate. If the bride and groom who are of different religions convert before the marriage then the marriage can be registered immediately, but the marriage is not an interfaith marriage but a marriage of the same religion because the bride and groom have the same religion/belief.

IV. Conclusion

Based on the research objectives, several conclusions can be drawn regarding the validity of interfaith marriages and judicial considerations in Indonesia. The concept of one partner submitting to the religious marriage procedures of the other, as outlined in Point 2 of the Supreme Court Fatwa Number 231/PAN/HK.05/1/2019, cannot be implemented within the frameworks of Islamic and Hindu religious law. Both religions do not recognize interfaith marriages, meaning that submission to marriage procedures alone, without religious conversion, is not legally or religiously acceptable. In contrast, Christian, Catholic, Buddhist, and Confucian marriage laws allow for the possibility of one spouse adhering to the marriage procedures of the other without requiring conversion. However, some religious traditions impose additional requirements, such as premarital counseling or a formal declaration of willingness to follow the religious procedures of the spouse. Ultimately, the validity of marriage is determined by the religious law under which the couple chooses to formalize their union.

Judicial disparities in determining the validity of interfaith marriages arise from the varying interpretations of judges in district courts. A key factor influencing these discrepancies is the religious background of the couple involved. When the submitting spouse is Muslim or Hindu, judges tend to reject the legalization of the marriage, adhering to the strict doctrinal prohibitions within these religions. However, such restrictions are not consistently applied to interfaith marriages involving other religious traditions, leading to differing judicial outcomes. These variations highlight the complex interplay between religious doctrine, legal interpretation, and judicial discretion in interfaith marriage cases in Indonesia.

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DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no conflict of interest in the publication this article.

FUNDING INFORMATION

None.

ACKNOWLEDGMENT

None.

HISTORY OF ARTICLE

Submitted : March 30, 2024

Revised : July 11, 2024; October 6, 2024

Accepted : October 30, 2024

Published : December 5, 2024