
THE LEGAL FORCE OF INTERFAITH MARRIAGE IN INDONESIA

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ABSTRACT

Interfaith marriage is an increasingly common phenomenon in Indonesia, a country known for its religious and cultural diversity. This study aims to investigate in depth the legality and social impact of interfaith marriage in Indonesia. In the face of the country's unique religious diversity, the study focuses on key questions regarding marriage law, individual rights, as well as the influence of interfaith marriage on families and society. The methodology of this study includes analysis of legal documents, and interviews with interfaith married couples, their families, as well as relevant stakeholders. The results of this study highlight the legal challenges faced by interfaith married couples, especially in terms of official recognition and protection of their marital rights. In addition, the study revealed various social impacts, such as stigmatization and social pressure that may be faced by the couple. The study also proposes recommendations for legal improvements that could improve protection and equality for interfaith married couples. In addition, this study illustrates the important role of education in facilitating interfaith understanding and tolerance in society.

INTRODUCTION

Indonesia is a plural country built from ethnic, cultural, racial, and religious diversity. One of the most fundamental aspects of Indonesian pluralism is the pluralism of religions adopted by its population. The religions and streams of belief that live and develop in Indonesia are not singular but diverse. The Indonesian government has recognized six religions, namely Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism (Syah, 1992). In addition, it is also recognized the flow of beliefs or animism that is still alive and developing in society. The guarantee of the existence of religion and belief has been regulated by the State in Article 29 paragraph (1) and paragraph (2) of the 1945 Constitution which states that:

The state is based on the One True Godhead. (2) The State shall guarantee the freedom of every citizen to profess his or her religion and to worship according to his religion and belief.

The diversity of religions and creeds in Indonesia can have implications for marriages between followers of religions and creeds (Sezgin & Künkler, 2014). Interfaith marriage is

not new and has been going on for a long time in Indonesia's multicultural society. However, this does not mean that cases of interfaith marriage do not cause problems, even tend to always reap controversy among the public. Based on data compiled by the Indonesian Conference On Religion and Peace (ICRP), from 2005 to early March 2022 there have been 1,425 interfaith couples married in Indonesia (Nugroho Dwi Yanto, 2022). Interfaith marriage is an inner birth bond between a man and a woman of different religions and countries causing the union of two different regulations regarding the terms and procedures of implementation according to their respective religious laws, intending to form a happy and eternal family based on God Almighty (Syarifuddin, 1993).

Indonesia does not yet have an explicit legal umbrella regulating the issue of interfaith marriage which is very complex. So far, interfaith marriage couples have to fight more, both through legal and illegal efforts so that their marriages get legality in Indonesia (Ford et al., 2015). Various efforts that are often taken by interfaith marriage couples are to marry twice with the provisions of each party's religion, for example in the morning to hold a contract according to Islamic law adopted by one bride, then on the same day also hold a marriage blessing in the church according to Christian religious law adopted by the other bride (Zuhdi, 1997). However, this effort also raises the question of which marriages are considered valid. Another way is that in the meantime one party pretends to convert, but this is also prohibited by any religion because it is considered to be playing religion. The last effort that is also widely taken is to carry out weddings abroad as many artists do in Indonesia (The Lancet Global Health, 2023). However, this effort also caused controversy because it was considered legal smuggling. The large number of interfaith marriage phenomena in Indonesia has resulted in the need for explicit regulation related to the issue so that in the future there will no longer be a vacuum or legal bias that confuses society (Arifin, 2019).

Positive law in Indonesia has provided a legal umbrella regarding marriage which is manifested in the existence of Law No. 1 of 1974 concerning Marriage and Government Regulation No. 9 of 1975. Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage has stipulated that:

“Marriage is valid if it is performed according to the laws of each religion and belief.”

This means that a marriage can be categorized as a valid marriage if it is carried out according to the laws of each religion and the beliefs of the couple who carried out the marriage (Hedi et al., 2017). Thus, the determination of whether or not marriage is permissible depends on religious provisions, because the basis of religious law in carrying out marriage is very important in Law Number 1 of 1974. If religious law declares a marriage invalid, so is the law of the country that marriage is also invalid (Hanifah, 2019).

However, since the enactment of Law Number 23 of 2006 concerning Population Administration, regulations related to interfaith marriage have occurred a legal conflict (Payapo et al., 2023). The existence of Article 35 Letter A of the Population Administration Law has opened up opportunities for the determination of interfaith marriages which contradicts Article 2 of the Marriage Law which implicitly stipulates that interfaith marriages are invalid in the eyes of religion and the state. The logical consequence of this juridical conflict is that there is an opportunity for disparity for judges in determining applications for interfaith marriage. Regarding this phenomenon, judges have different views, some refuse to

grant applications for the determination of interfaith marriage, but on the other hand some grant requests for the determination of interfaith marriage. If this multi-interpretation problem continues to be allowed, it will cause legal uncertainty in society. Seeing the urgency of this problem, there needs to be a more in-depth discussion (Payapo et al., 2023).

Indonesia has a variety of cultures, customs, and religions as well as different beliefs including marriage. The wedding procession that is packed with various varieties cannot be separated from the important influence of religion, beliefs, and knowledge from the community and religious leaders in the environment in which the community is located. To harmonize these diverse legal rules, a national marriage law was made as the legal basis and main rules in marriage in Indonesia, namely Law Number 1 of 1974 concerning marriage. Article 1 of the Law explains the definition of marriage, namely "Marriage is an inner birth bond between a man and a woman as husband/wife to form a family (household) that is part and eternal based on the One and Only Godhead".

Marriage is a sacred thing and a reflection of a religious person, where a relationship between two human beings, namely a man and a woman who has grown up, has a desire to unite and pledge in a sacred bond as husband and wife to form a happy family and multiply offspring.

The Marriage Law does not expressly provide space for marriage of different religions to obtain legality, but the existence of the lives of people of different religions like husband and wife is an undeniable reality and in fact, many couples who want to live together as husband and wife but are constrained by different religions or beliefs. Some choose the way of life to be together without the bond of marriage or "kumpul kebo" while maintaining their respective religions and beliefs. This situation is still allowed to exist without a solution or their behavior is considered as the garbage of society that must be approached with a regulatory approach. So what about the consequences of their relationship that are not protected by the laws in force in this country, such as the existence of offspring born, property caused, and other rights? The problem will not be resolved if the marriage of interfaith couples is not registered by the competent institution.

Interfaith marriage is a marriage between a man and a woman who both have different religions or beliefs with each other. Our laws and regulations only give legitimacy to marriages of the same religion, as stated in Article 2 paragraph (1) of Law 1 of 1974 as follows:

"Marriage is valid if it is performed according to the law of each religion and belief", while what is meant by the law of each religion and belief in the explanation of the article includes statutory provisions that apply to the group of his religion and belief as long as it does not contradict or is not otherwise specified in the law.

As an example of case No. 24/PUU-XX/2002 filed by E. Ramos Petege to the Constitutional Court as the applicant. E Ramos Petege submitted the right of judicial review to the Constitutional Court over Law Number 1 of 1974 concerning Marriage on Wednesday, June 15, 2022. The petitioner postulates that Article 2 paragraph (1) and paragraph (2) and Article 8 (f) of the Marriage Law are contrary to Article 28D paragraph (1) as well as Article 29 paragraph (1) and paragraph (2) of the 1945 Constitution. Please note that E Ramos Petege is a Catholic who wants to marry a Muslim woman. However, the marriage had to be annulled

because interfaith marriages were not accommodated by the Marriage Law. The petitioner felt that his constitutional rights were harmed by not being able to consummate the marriage.

The purpose of this study is to investigate in depth the legality and social impact of interfaith marriage in Indonesia.

METHOD RESEARCH

This research is focused or focused on normative legal research, which analyzes the substance of law so that it cannot be separated from the normative method of analysis, departing from laws and regulations that have authority as primary legal material. The approach used in this study is the statute approach, namely by using Law Number 1 of 1974 and Law Number 16 of 2019 concerning Marriage, The case approach, is by analyzing cases of interfaith marriage in Indonesia, including the Constitutional Court Decision Number 24 / PUU-XX / 2022 and the conceptual approach. Examining the nature of interfaith marriage in Indonesia.

RESULTS AND DISCUSSION

A. The legal force of interfaith marriage according to the view of Religious Law in Indonesia. In the Qur'an there is an affirmation:

- a. Prohibition of marriage between a Muslim man and a polytheistic woman:

Letter al-Baqarah verse 221 reads :

"And do not marry idolatrous women until they have believed. Indeed, a believing female servant is better than a polytheist even if she attracts you. And do not marry polytheists (to women who believe) before they have believed."

- b. Article 44 Compilation of Islamic Law (KHI) which reads:

"A Muslim woman is forbidden to marry a man who is not Muslim".

B. Marriage between a Muslim man and a woman of the Bible

Surah Al-Ma'idah verse 5 which reads:

"On this day, it is lawful to you all that is good. The food (slaughter) of the Book is halal to you and your food is halal to them. And the women who guard their honor among the believing women and the women who guard the honor among those who were given the scriptures before you, when you paid their dowry to marry them, not with the intention of adultery and not to make a priestess. Whosoever disbelieves after belief, then it is in vain for their deeds, and in the Hereafter he is among the losers.

C. It is forbidden for the unbelievers to be the guardians of the marriages of the believers of the Letter of Al-Imran 3:28 which reads:

"Let not believers make unbelievers guardians by abandoning believers. Whoever does so will gain nothing from Allah except to guard against something you fear from them. And God warns you of Himself (torment) and to God the place of return."

D. According to the rule of Uhul fiqh "It is not the law ordained, but in it there is benefit – benefit for mankind."

- a. According to Christianity

In principle, Protestant Christianity requires its adherents to marry people of the same religion, because the purpose of marriage is to achieve happiness so it will be difficult to achieve if the husband and wife do not share the same faith

b. According to the Canon Law of the Catholic Church, several obstacles prevent the purpose of marriage from being realized. For example, the existence of marriage bonds (Canon 1085), the existence of pressure/coercion both physically, psychologically, and socially / communally (Canons 1089 and 1103), and also because of differences in church (Canon 1124) and religion (canon 1086).

c. Buddhism

Interfaith marriages where one of the bride and groom is not Buddhist, according to the decree of the Supreme Sangha of Indonesia, is permissible, as long as the legalization of the marriage is according to the Buddhist way. In this case, the bride and groom who are not Buddhist, are not required to convert to Buddhism first. However, in the ritual marriage ceremony, the bride and groom are required to say "in the name of the Buddha, Dharma, and Sangka" who are Buddhist gods.

d. Hinduism

The marriage of an ineligible Hindu can be annulled. A marriage is void because it is ineligible if it is performed according to Hindu Law but does not qualify for its validation, i.e. they did not profess the same religion at the time the marriage ceremony was performed, or in the case of interfaith marriages or the case of interfaith marriages cannot be performed according to Hindu religious law.

E. The Legal Power of Interfaith Marriage in the View of Positive Law

Positive Law is defined as applicable law. Positive law in this paper is Indonesian Positive law, which is a collection of principles and rules of written and unwritten law that are currently in force and binding in general or specifically, and are enforced by or through the government or courts in the State of Indonesia".

Religious law as positive law is the law of a religion recognized according to applicable laws and regulations, or based on a government policy that recognizes all belief systems that its followers consider to be religion. At present, there are various religious laws expressed through law = law as positive law, for example, Law Number 1 of 1974 concerning marriage as amended by Law Number 16 of 2019. Incorporating religious law into positive law occurs also through judges' rulings. Within the Religious Court, guidelines for the application of law for Muslims have been held such as the "Compilation of Islamic Law" stipulated in Presidential Instruction Number 1 of 1991.

Thus, Law Number 1 of 1974 concerning Marriage is a positive law that applies generally to every citizen in Indonesia. While the Compilation of Islamic Law is a Positive Law that applies specifically to Muslims.

Since the enactment of the Marriage Law on January 2, 1974, along with its derivative laws and regulations related to marriage, all citizens must submit and obey these provisions and make them the legal basis for marriage for all groups, tribes, and religions in Indonesia. For those who perform marriages according to Islam, registration is carried out at the Office of Religious Affairs (KUA), while for Catholics, Protestants, Buddhists, and Hindus, the registration is carried out at the Population and Civil Registration Office to

record marriages that are carried out by couples of different religions. However, in 1989 the Supreme Court through its jurisprudence Number: 1400 K / Pdt / 1986 dated January 20, 1989 with consideration filled the legal vacuum because Law Number 1 of 1974 concerning Marriage did not expressly regulate interfaith marriage, providing legal solutions for interfaith marriages could be accepted at the Civil Registration Office as the only agency authorized to carry out or assist in carrying out marriages that both prospective spouses are not of the same Muslim faith must accept the Applicant's application.

According to the Compilation of Islamic Law Article 40 paragraph (c), which reads "It is forbidden to marry between a man of Muslim faith and a woman who is not Muslim." and Article 44 of the Compilation of Islamic Law confirms that it reads: "A Muslim woman is prohibited from marrying a man who is not Muslim." In essence, the Compilation of Islamic Law states unequivocally that interfaith marriages should not be performed by Muslims in Indonesia.

The stipulation of the prohibition of interfaith marriage in the Compilation of Islamic Law is based on strong reasons, among others: Law Number 1 of 1974 concerning marriage, Chapter I Article 2 paragraph (1): "Marriage is valid if it is carried out according to each religion and belief." The aforementioned article becomes the basis of "basis of marriage" for Indonesian citizens which is a generally accepted provision of state law, binding, and eliminates dissent. By legal rules:

"The government's decision is binding to implement and eliminates dissent."

The prohibition of interfaith marriage in the Compilation of Islamic Law is in line with the fatwa of the Indonesian Ulema Council (MUI) issued on June 1, 1980, in response to increasing public attention to the increasing frequency of interfaith marriages. The fatwa contains two clear statements on the subject of interfaith marriage. First, Muslim women are not allowed (haram) to marry non-Muslim men. Secondly, a Muslim man is forbidden to marry a woman of the Bible, because it is considered that his mafsadat (damage) is greater than his benefit. According to the author, the ban on interfaith marriage in Indonesia is relatively strong. In mid-June 2015, the Constitutional Court issued a ruling rejecting the right to judicial review of several articles in Law Number 1 of 1974 concerning Marriage based on the Constitutional Court decision Number 68/PUU-XII/2014. Likewise, the plenary session of Case number 24/PUU-XX/2022 filed by E. Ramos Petege was presided over by Chief Justice Anwar Usman accompanied by eight other constitutional judges, MUI asked the Constitutional Court to Reject Interfaith Marriage. E. Ramos Petege postulated that Article 2 paragraph (1) and paragraph (2), as well as Article 8 letter f of the Marriage Law, contradicted Article 28D paragraph (1) and Article 29 paragraph (1) and paragraph (2) of the 1945 Constitution. On the same occasion, Deputy Secretary of the MUI Law and Human Rights Commission Arofah Windiani in the view of the MUI that the desire for interfaith marriage as postulated by the Petitioner (E. Ramos Patege) in this case is a potential loss. According to MUI, the Applicant is unaware of the provisions of the existing legislation. Because the proposition "want to perform a marriage," means that the marriage in question has not yet taken place MUI questions the marriage that should be annulled and considers the applicant's reason as fabricated.

The decision of the Constitutional Court stated that Law Number 1 of 1974 concerning Marriage can realize the principles contained in Pancasila and the 1945 Constitution and can accommodate all the realities of life in society. Moreover, Article 28J paragraph 2 of the 1945 Constitution states that in exercising their rights and freedoms, every citizen must be subject to restrictions set by law. According to the Constitutional Court ([Ratnaningsih, 2016](#)), marriage is one of the problem areas regulated in the legal order in Indonesia. For this reason, all actions and deeds carried out by citizens, including matters related to marriage, must be obedient and submissive and not contradict the applicable laws and regulations.

The lawsuit numbered 24/PUU-XX/2022 related to interfaith marriage was filed by a Catholic man, Ramos Petege who wanted to marry a Muslim woman. Ramos' claim was rejected, according to Islamic law in carrying out worship, then the protection of Islamic law in Article 28E paragraph (1) of the 1945 Constitution is:

"Everyone has the right to profess religion and worship according to his religion, to choose education and teaching, to choose employment, to choose citizenship, to choose residence in the territory of the country and to leave it, and the right to return.

According to ([Jubaedah & Parnadi, 2021](#)), the marriage must be of the same religion, so that there is no coercion on one another to practice the other religion, or marriage registration, he emphasized that the relationship between marriage and civil interfaith marriages is also different. He gave an example, the relationship with the father is only a civil relationship.

Juridically formally, marriage is regulated in Law Number 1 of 1974 concerning marriage and Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law. This means that various provisions must be by Article 29 of the 1945 Constitution which is an absolute requirement.

In terms of divorce, the Marriage Law, and the Constitutional Court ruling, it is clear that interfaith marriage is no longer valid. So the child is declared illegitimate, that is a matter of fate but adheres to the father's religion if the marriage is carried out by religious provisions.

According to ([Jubaedah & Parnadi, 2021](#)), he considered the court's decision to certify or ratify or give a determination to applicants for interfaith marriage including unlawful acts.

In the same place in the same case, the trial of a lawsuit or determination of interfaith marriage at the Surabaya District Court (PN) entered a new phase. PN Surabaya as the defendant submitted evidence that strengthened the determination or legalization of interfaith marriage that had already been given, that the judge had issued a court decision that could not be convicted or sued civilly. PN Surabaya as the defendant submitted that the evidence of the Supreme Court Circular (SEMA) Number 9 of 1976 was a trial fact. In SEMA it is stated that judges cannot be held legally responsible for decisions that have been made. That way, in carrying out their duties, judges cannot be convicted or sued civilly. In SEMA, it is explained that the Supreme Court requests that the PN (District Court) or PT (High Court) in facing a lawsuit in the performance of its duties be rejected. However, it is only necessary to wait for responses and evidence from the parties who are

also other defendants. Especially from Dispendukcapil Surabaya City. Meanwhile, PN Surabaya itself did not respond in detail about it. His party only presented SEMA evidence in the trial held in the Tirta Room, Surabaya.

Previously, PN Surabaya gave a determination or granted the request of interfaith couples RA and EDS on April 26, 2022, with Number 916/Pdt.P/2022/PN Sby. This was done after the applicant applied for interfaith marriage on April 13, 2022.

Based on the confessions of the two in the trial at the Surabaya District Court, the application was filed after the education and civil registration office rejected the submitted file. This is a factor that is considered by the judge in Surabaya PN in the trial. The decision drew mixed responses and rejections from several parties. Including the emergence of lawsuits regarding alleged unlawful acts.

Based on data obtained by Detikjatim, there is a lawsuit with Case Number 658 / Pdt. G / 2002 / PN Sby. The lawsuit was registered on June 23, 2022, by 4 (four) plaintiffs with the sole defendant PN Surabaya. This matter was confirmed by the Public Relations Officer of PN Surabaya, Suparno. He invited anyone to take legal action if they felt aggrieved.

Based on the above policy, many couples want to marry different religions, one of which is Kriss Hatta who is rumored to be marrying his underage and different-religious lover. The controversial news immediately received a special response. Moreover, he said he wanted to hold a wedding and complete the administration at the Surabaya District Court. Kriss Hatta admits that he has a girlfriend who is only 14 years old, and will continue to get married, while they are both of different religions. Kriss Hatta was not worried and had mentioned that now in Indonesia there are already in PN Surabaya that can marry interfaith couples. In response to this, the Public Relations of PN Surabaya Anak Agung Gede Agung Pranata invited Kriss Hatta's wishes. He said the Surabaya District Court would accept all applications for interfaith marriage. The question is whether it can be processed to marry a child under the law and whether it is religiously married.

There are several rules in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning marriage that must be fulfilled. One of them is Article 7 paragraph (1) of Law Number 16 of 2019 which mentions the prohibition of marriage for couples under the age of 19 years. However, in practice, underage marriages can still be carried out by fulfilling several requirements. One that must be fulfilled is the application for marriage dispensation. The application for this underage marriage dispensation can be done at the local office or Religious Court, with conditions according to existing provisions that must be met while the flow or stage of submitting marriage administration is the same as other brides in general. Priority is especially for residents who have ID cards or live in Surabaya.

Formally, an application for interfaith marriage should indeed be filed in the place where the person concerned is domiciled. According to him, this is not just a priority, because the provisions are already like that.

Unlike overseas as an Australian control, it does not make religion the basis for the legalization of marriage. They only see that a marriage is a contract between individuals.

After the marriage, the two men returned to Indonesia and fought for their rights as citizens to get legal legalization in the country, so that when it was legalized abroad, the

evidence of wetness was brought to Indonesia and in Indonesia was recorded, then it became official their marriage without going through a stage of validity. This kind of thing, according to the author, is legal smuggling.

If we look at it from the point of view of the Indonesian Ulema Council (MUI), the Surabaya PN decision that grants interfaith marriage, the determination oversteps the law of the Central MUI Law and Human Rights Commission Dr. Fal. Arovah Windiani stated that she was present at the hearing because she had prepared the duplex. However, the hearing was adjourned because Defendant I of the Supreme Court was not present.

According to (Windiani, 2017) we want to convey (views) regarding the permission given by PN Surabaya for interfaith marriage. In this case, the MUI has made a fatwa declaring interfaith marriage haram. We remain Istiqomah because this is by Islamic law. According to Arovah, The terminology of marriage is transcended by two things: legal and official. That is, it is legitimate it is based on religion and officially it is recorded (by the civil registry). With the determination of PN Surabaya, there is a new terminology added, namely permits" (Windiani, 2017).

We should understand together that Indonesia is a State of Law, so our *founding fathers* affirmed and gave marriage guidelines that must be based on it must be based on validity according to religion, not merely official, but legal and official It must be surpassed. That is why many parties reacted to the Surabaya PN ruling.

The trial of the interfaith lawsuit resumed in the Surabaya District Court. This session was different because it was attended by representatives of the Supreme Court of the Republic of Indonesia. The hierarchy of legal rules is much higher than SEMA Number 9 of 1976 and the Jurisprudence of the Supreme Court of the Republic of Indonesia as a defendant I came to give good to this civil law enforcement process.

According to Sutanto, politically and psychologically, the law sets a good precedent for the law enforcement process. The Supreme Court of the Republic of Indonesia has given answers in its duplicity and entering the subject matter. So, it's not just a rebuttal or exception. Let the Supreme Court's answer be a stance, a reference to the lower court on this interfaith marriage license. Religion has prohibited interfaith marriage as stipulated in the effectiveness of the Marriage Law and Constitutional Court rulings. On the contrary, the Surabaya District Court granted the request for interfaith marriage despite the Population Administration Law.

Regarding the principle of *Lex Specialist*, we question whether it is still adopted by our laws. This is because the legal event of marriage is valid but is used to prosecute with the Population Administration Law (recording). We see, are the disciplines of Law and Legal Theory that have been adopted so far still maintained or used casuistic only? It is not only the reappropriation outside the subject matter that only discusses the inherent rights of the court that cannot be prosecuted civilly or criminally (SEMA) even though it violates the law and gives rise to new legal norms to the contrary.

After the birth of Law Number 23 of 2006 concerning Population Administration, the opportunity to legalize interfaith marriage seemed to be increasingly wide open. That is, with the option of applying for interfaith marriage to the District Court to issue an order

permitting interfaith marriage and instruct Civil Registry office employees to register the interfaith marriage in the Marriage Registration Register.

There are several considerations behind the judge in granting the request for a determination of different religions. First, interfaith marriage is not a prohibition under Law Number 1 of 1974 concerning Marriage. Therefore, this petition was granted to fill the void in the rules of the Marriage Act. The next consideration is Article 21 paragraph (3) of the Marriage Law Number 1 of 1974 jo. Article 35 letter a of Law Number 23 of 2006 concerning Population Administration is:

Article 21 paragraph (3) of Marriage Law Number 1 of 1974:

The parties whose marriage is rejected have the right to apply to the court in the territory where the registrar of marriages who made the refusal is domiciled to give a decision, by submitting the certificate of refusal mentioned above.

It can be concluded that the authority to examine and decide the issue of interfaith marriage lies with the District Court.

Article 35 letter a of Law Number 23 of 2006 concerning Population Administration Marriage registration as referred to in Article 34 also applies to:

a. marriage established by the Court;

Then the Explanation of Article 35 letter a provides *an explicit exit way* for the issue of interfaith marriage because it defines :

What is meant by "Marriage determined by the Court" is a marriage between people of different religions. Furthermore, Article 36 stipulates that:

If the marriage cannot be proven by a Marriage Certificate, the marriage registration is carried out after a court determination. Although the purpose of the formulation of the article is for marriage registration, the existence of Article 35 Letter A of the Population Administration Law provides wider space to allow interfaith marriages which under the Marriage Law are considered invalid. The provisions of this article contradict Article 2 of the Marriage Law which states that a marriage is considered valid if it is carried out according to the laws of their respective religions and beliefs. Article 2 of the Marriage Law is the basis for prohibiting interfaith marriage because no recognized religion in Indonesia freely allows its citizens to marry followers of other religions. Thus, it can be concluded that there is a juridical conflict (legal conflict) between Article 35 Letter A of the Population Administration Law and Article 2 of the Marriage Law. Related to the same issue, the court has given different determinations, either granting or rejecting applications for interfaith marriage determination.

In the author's view, although the "*Ius Curia Novit*" principle applies in the Indonesian judicial system which requires judges to accept all cases that go to the Court even though there is no or unclear legal arrangement, including the issue of interfaith marriage, judges should not rush to decide that legalizes interfaith marriage based only on Article 35 letter a of the Population Administration Law. Instead, it must also consider the perspective of the Marriage Law and the Compilation of Islamic Law. The judge should also consider the Constitutional Court Decision Number 68/PUU-XII/2014 which essentially rejected the application for *judicial review* of Article 2 of

the Marriage Law and reaffirmed the prohibition of interfaith marriage because the act constitutes the legalization of adultery.

The judge must also understand that the nature of marriage according to Article 1 of Law Number 1 of 1974 concerning Marriage is defined as the inner birth bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the One and Only Godhead.

The birth bond is a formal relationship that is real, which not only binds the self but also has an impact on family, other people, or society. While as an inner bond, marriage is a soul relationship that is established because of the same and sincere will between a man and a woman to live together as husband and wife. Furthermore, the life of the nation and state is carried out based on Pancasila and the 1945 Constitution. Therefore, marriage based on the One True Godhead means that the family must be based on one God. Marriage should not only be viewed from a formal aspect but also must be viewed from a spiritual and social aspect. Religion stipulates the validity of marriage, while the Law establishes administrative validity carried out by the State.

Therefore, in the author's opinion, the judge's decision to legalize interfaith marriage should be canceled, because the marriage is contrary to the provisions of the Marriage Law, the Compilation of Islamic Law, and even the 1945 Constitution of the Republic of Indonesia. Interfaith marriage is contrary to the constitution in force in Indonesia, which is regulated in:

b. Article 28B paragraph (1) of the 1945 Constitution:

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

Regarding the phrase "valid" marriage, it is stipulated in Article 2 paragraph (1) of the Marriage Law that marriage is valid if it is carried out according to the religious law of both spouses. Meanwhile, Islam regulates the invalidity of interfaith marriages. Nor should interfaith marriage be interpreted as a violation of human rights. Because as stipulated in Article 28J paragraph (2) of the 1945 Constitution:

In exercising his or her rights and freedoms, everyone shall be subject to restrictions established by law for the sole purpose of ensuring recognition and respect for the rights and freedoms of others and of meeting just demands by considerations of morals, religious values, security, and public order in a democratic society.

The prohibition of different religions is not a violation of the enforcement and protection of human rights in Indonesia (Hakim, 2020). Because it is clear that the implementation of human rights in Indonesia is not liberal, but recognizes the restrictions on human rights practices to respect the human rights of others, including the right to marry, one of which considers religious values. Human rights, which are essentially natural rights given by God to man, are irrational if these natural rights deviate from God's rules and regulations. Indonesia as a country based on the Almighty God makes religious values one of the foundations of state life.

In the author's opinion, judging from the complexity of the problem of interfaith marriage, regarding the non-regulation of interfaith marriage concretely in Law Number 1 of 1974 concerning Marriage which causes multiple interpretations of several articles in it, it is necessary to make changes to the Marriage Law. For example, by inserting a

rule prohibiting interfaith marriage in Article 8 of the Marriage Law. Then to solve the problem of dualism in interfaith marriage arrangements, where the Marriage Law prohibits the practice of interfaith marriage, while the Population Administration Law opens up opportunities for the legalization of interfaith marriage, in the opinion of the author Articles 35 and 36 of the Population Administration Law should be repealed, because it causes conflict of norms. The occurrence of a legal vacuum in the regulation of interfaith marriage cannot be allowed to continue because interfaith marriage if allowed and not given a legal solution will have a negative impact in terms of social and religious life. The negative impact can occur in the form of smuggling of social and religious values and positive laws. Therefore, the prohibition of interfaith marriage has fulfilled the value of justice because:

1. First, it has been in line with the moral values espoused by the majority of Indonesian Muslims, in this case, it has fulfilled the sense of justice of the majority;
2. Second, it is oriented towards a relationship with God, but also provides opportunities for the creed of children born from interfaith marriages. Justice that satisfies positive divine law (*ius divinum positivum*) and that reaches human reason/positive human law (*ius positivum humanum*) Interfaith marriage should also not be legalized because it has many negative implications in the future. One implication is that the status of a child born through an illegal marriage process (due to the prohibition of interfaith marriage) is the recognition that the child is a child born outside of legal marriage. Consequently, the child has no sexual relationship with his biological father and is not entitled to the father's livelihood and maintenance, then The father also cannot be the guardian of marriage for his daughter and does not have the right to inherit property if he is not of the same religion as the heir (in this case the heir is Muslim).

CONCLUSION

The legal force of interfaith marriage according to the view of Islamic Law in Indonesia has no legal force because the Qur'an clearly explains through its postulates that interfaith marriage is prohibited and indisputable.

The legal force of interfaith marriage according to the view of Positive Law, relatively according to Law Number 1 of 1974, and the Compilation of Islamic Law, MUI Fatwas, and Constitutional Court decisions, interfaith marriage has no legal force, this is indicated by the denial of the right to judicial review from the Constitutional Court, and in Law Number 1 of 1974 there is not a single article that allows interfaith marriage, This law only contains mixed marriages, that is, marriages between citizens. The MUI also strongly rejects interfaith marriage. The provisions of Article 2 paragraph (1), Article 2 paragraph (2), and Article 8 point f, the Marriage Law are constitutional and do not contradict the 1945 Constitution. Because it has obtained *strong authoritative sources*, namely based on the Third Paragraph and Fourth Alenia of the Preamble to the 1945 Constitution and Article 29 paragraph (1) and paragraph (2) of the 1945 Constitution.

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