

Disparity in Interfaith Marriage: Legal Conflicts on Marriage Regulations and Population Administration

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abstract

This research is a study of regulations regarding marriage with population administration or the disparity of interfaith marriages. The importance of this research is because there are disparities (legal conflicts) that regulate interfaith marriage issues. The existence of regulation article 2 in Law Number 1 of 1974 concerning the Basic Marriage Law is implicitly clear that it is illegal according to religion and state. Unlike the case with article 35 letter a in Law Number 23 of 2006 concerning Population Administration, it has opened opportunities or opportunities for couples who want to get married but have different religions. The emergence of this legal conflict has opened up opportunities for judges to determine interfaith marriages. Judges in dealing with interfaith marriages have different views, some of them grant the request but some reject the application of interfaith marriages. Against this difference, of course, raises multiple interpretations or legal uncertainty in society. The results of this study, of course, need to be discussed in depth, namely the existence of legal certainty against legal conflicts from the two regulations

Keywords: Disparity, Different Religions, Legal Conflicts, Marriage, Population Administration

Introduction

In Indonesian society, marriage is the only institution that justifies the association between a man and a woman. Marriage is regulated and protected not only by customary law but also by state law which involves the wider community, both from the families of the married brides, their neighbors, and relatives.

Based on Law Number 1 of 1974 concerning the Principles of Marriage, in particular, article 1 it is stated that: Marriage is a physical and spiritual bond between a man and a woman as husband and wife, to form a happy and eternal family (household) based on the Supreme God. Almighty. The existence of bonds in marriage should indeed be carried out based on love both psychologically, and biologically, fulfilling socio-economic for the continuation of the journey of human life.

The marriage that will be carried out is the choice of a life partner from a sincere heart. However, it does not rule out the possibility that before the marriage takes place, there are many challenges, including from the two prospective brides of different religions who will formalize their relationship as husband and wife. It is not simple to complete by brides of different religions. Social friction, culture, customs, and especially the bureaucracy that must be passed where Indonesia does not recognize interfaith marriage as a rule, so often the prospective bride and groom carry out their marriage abroad. After their overseas marriage, they will later receive a marriage certificate from the country concerned where the marriage took place or from the local representative of the Republic of Indonesia. The next step after the procedure has been passed, then returning to Indonesia, they register their marriage at the Civil Registry office to obtain a Certificate of Foreign Marriage Reporting.

Explicit regulations regarding interfaith marriages have not been regulated in Indonesia because the problems are very complex. It is often found in couples of different religions, apart from getting married as mentioned above, also getting married twice, the first marriage according to the religion of the bride who is Muslim, for example, and the next, on the same day at a different time, they hold a wedding blessing in the church according to Christian religious law. or any other religion professed by one of the spouses. However, this method still raises debate or controversy because of violations of legal rules.

Even though it has not been explicitly regulated, positive legal regulations regarding marriage in Indonesia have been regulated in Law Number 1 of 1974 concerning Marriage, then underwent changes with Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. ratified by President Joko Widodo on October 14, 2019 in Jakarta.

Consideration of the changes made regarding the increase in the age limit for marriage for a woman who was originally 16 years old for women to marry to a minimum of 19 years. The need to change the age by increasing the age of marriage for women with the intention of avoiding negative impacts on the growth and development of children or non-fulfillment of children's basic rights such as the right to education, health rights and other rights. Looking at and reviewing changes to existing regulations, there has not been any discussion through the necessary articles or verses alluding to the issue of interfaith marriages.

According to Law Number 1 of 1974 in article 2 it is stated that "Marriage is legal, if it is carried out according to the laws of each religion and belief." If we examine from article 2, it means that a marriage is categorized as valid if it is carried out according to the respective religious laws and beliefs of the person who entered into the marriage. Religious provisions determine whether or not a marriage is permissible, meaning that a marriage is invalid if religious law declares it invalid and this is followed by state law.

The provisions of article 2 have become multi-interpreted since the stipulation of Law Number 23 of 2006 concerning Population Administration. This has an impact on disparity because regulations related to interfaith marriages have resulted in a legal conflict. The determination of interfaith marriages is widely open, especially the existence of article 35 letter a which opens opportunities for the determination of interfaith marriages which implicitly clearly contradicts Article 2 of the Marriage Law which stipulates that interfaith marriages are illegal in the eyes of religion and the state. The logical consequence of this juridical conflict is the emergence of disparity opportunities for judges in determining interfaith marriage applications.

Departing from the background above, the researcher is interested in raising the theme of Disparity in Interfaith Marriage: Legal Conflicts on Marriage Regulations with Population Administration.

Methods

The research method uses qualitative research, namely research that produces descriptive data regarding spoken and written words and observable behavior of the humans who have been studied. The approach used is a descriptive qualitative approach, namely research that intends to understand the phenomenon of what is experienced by research subjects, for example behavior, perceptions, motivations, actions and others in a holistic manner and by way of descriptions in the form of words and language in a special natural context and by utilizing various methods. In the data collection methods that the authors use include observation, interviews and documentation.

Findings and Discussion

The pluralism of religions embraced by the people of Indonesia is one of the most basic manifestations of the pluralism of the Indonesian nation because Indonesia is recognized as a plural country that is built from a diversity of cultures, customs, languages, ethnicities, races and religions. Even though there are various religions in Indonesia, this does not make the people divided. The sense of oneness and unity is still instilled and well instilled in the Indonesian people.

The existence of religion and belief has regulations stipulated in the 1945 Constitution Article 29 paragraph (1) that: "*The state is based on Belief in the One and Only God*" and paragraph (2) that: "*The state guarantees the independence of each resident to embrace their own religion. each and to worship according to his religion and belief.*" *The existence of this regulation, of course, provides protection and guarantees of legal certainty for adherents of religions in Indonesia. Freedom of religion is a manifestation of the guarantee given by the Government of Indonesia which recognizes the existence of six religions in Indonesia, namely Islam, Christianity, Catholicism, Hinduism, Buddhism and Confucianism. Even the flow of belief or annism that is still alive and developing in society is still recognized in Indonesia.*

The diversity of religions and beliefs in Indonesia, which the Government gives freedom to its adherents, does not rule out the possibility of having implications for marriages between adherents of religions and beliefs

that cause problems and even controversy among the people. Interfaith marriage is a physical and spiritual bond between a man and a woman of different religions and countries, causing the union of two different regulations regarding the requirements and procedures for implementation in accordance with the laws of their respective religions, with the aim of forming a happy and eternal family based on God Almighty. (Asia, 2015). When examined from this understanding, the regulations used are two different regulations where the requirements and procedures for implementation are adjusted to the respective religious laws. The determination of this marriage is also solely aimed at forming a happy and eternal family and still guided by Belief in the One and Only God.

1. Interfaith Marriage According to Islamic Law

Regarding the limitation of understanding of interfaith marriage in writing it is not found in classical literature or modern literature to date. Nonetheless, discussing interfaith marriages always correlates with discussions regarding marriages that are forbidden or categories of women who are forbidden to marry (Amri, 2020), namely:

- a. az-zawaj bial-kitabiyat; marriages with women of the People of the Book, namely marriages with Jewish and Christian women
- b. az-zawaj bi al-musyrika; marriages with Muslim women
- c. az-zawaj bi ghair al-muslimah; marriage to a non-Muslim.

In essence, marriage is a place of worship and da'wah that calls people to the right path to legitimize the relationship between a woman and a man, which originates from the Qur'an and Hadith. Because through marriage a person gets guidance and teachings from his partner who has first embraced Islam and hopes in the future to understand Islam as a whole.

Interfaith marriages in classical fiqh literature are divided into three categories, namely (Masjfuk, 1994):

Marriage between a Muslim man and a polytheist woman;

This has been agreed upon by scholars to prohibit marriage between a Muslim man and a polytheist woman based on QS. Al-Baqarah (2) verse 221 which means: *"And do not marry polytheist women before they believe. Truly, a believing woman is better than a polytheist woman even if she attracts your heart. And do not marry (men) polytheists (with believing women) before they believe Truly, my servant, a man who believes is better than a polytheist man, even if he attracts your heart, they invite you to hell, while Allah invites you to heaven and forgiveness with His permission. (Allah) explains His verses to people so that they take lessons."*

In line with the verse, there is also a rule that prohibits marriage between a Muslim woman and a Muslim man as mentioned in QS. Al-Mumtahanah (60) verse 10, which means: *"O you who believe, when believing women come to migrate to you, then you should test, then God knows better about their faith, if you have known that they are (true -true) believers, then do not return them to the disbelievers (their husbands). They are not halal for the infidels, and the infidels are not halal for them. And give them (husbands) the dowry they have given. And there is no sin for you to marry them if you pay them their dowry. And do not hold on to the rope (of marriage) with unbelieving women and ask for the return of the dowry that you have given and (if the husband remains an unbeliever) let them ask for the return of the dowry that they have paid to their ex-wives who have believed. Such is the law of God that He has established between you, and God is All-Knowing, All-Wise)."*

Based on the interpretation of Ath-Tabari, this verse contains a prohibition for Muslim men to marry polytheist women (infidel women who worship idols). And when a marriage has taken place, God orders to divorce them.

- a. Marriage between a Muslim man and a woman of the book;

Regarding this marriage there are differences of opinion, some reject it and some scholars agree on the basis of QS Al Maidah verse (5) which reads: *"Today everything that is good has been made lawful for you, the food (slaughter) of the People of the Book is lawful for you and your food is lawful for them. And (lawful for you to marry) women who guard honor among women who believe and women who guard honor among those who were given the book before you, if you pay their dowry to marry them, not by adultery and not to make women pet. Whoever disbelieves after having believed, then indeed, their deeds will be in vain and in the hereafter he will be among the losers."*

There is an illegal punishment for the marriage of a Muslim man with a woman of the book from most scholars based their decision by considering:

- 1) According to the Syafi'i school of thought, "min qablikum" is a category of scribes who can be married, namely the ancestors of scribes before the time of the apostleship of the Prophet Muhammad SAW. The Christian and Jewish scholars who are still around today cannot be said to be pure scholars because they have passed the time of apostleship and have found the teachings of Islam brought by the Prophet Muhammad SAW. Then their original book has not changed at all or there are no more pure people of the book who really hold fast to the heavenly religion and women who are good people of the book.
- 2) According to a study by the Indonesian Ulema Council and facts on the ground, it has been shown that interfaith marriages cause far more harm than good. If interfaith marriages are implemented, then the mafsadat that we can see is the non-fulfillment of the task and purpose of preserving the religion and its descendants, not effectively running the mission of preaching and learning through marriage, even interfaith marriages that have been carried out by the couple for many years, the more and more his spouse who converted again, especially the children of their marriage. Furthermore, the Majelis Ulama Indonesia as a community organization that has always been a reference for solutions for every Muslim problem, in the VIIth MUI National Conference on July 26-29, 2005 in Jakarta decided and established that:
 - a. Interfaith marriage is illegal and invalid
 - b. the marriage of Muslim men to women of the people of the book is illegitimate and illegal.
- 3) According to Bible experts (Jews and Christians) , interfaith marriages today can be categorized as polytheists , because Jewish and Christian doctrine and worship practices clearly contain elements of shirk (trinity), in which the Jews consider Uzair the son of God and worship the Haikal Prophet. Sulaiman, while Christians regard Isa Al-Masih as the child of God and worship his mother Maryam (Amir, 2006).

2. Interfaith Marriage According to Law No. 1 of 1974

Regulation of interfaith marriages before the birth of the Marriage Law Number 1 of 1974, Indonesia first used the *Regeling op de Gemengde Huwelijken (GHR) Koninklijk Besluit van 29 December 1896 No.23, Staatblad 1898 regulation No. 158*, which is the Mixed Marriage Ordinance (PPC). In the PPC issued specifically by the Dutch Colonial Government, there are several provisions regarding mixed marriages, one of which is in Article 7 paragraph (2) which stipulates that: "*Differences of religion, class, population or origin cannot constitute an obstacle to continuing marriage.*"

However, this regulation was revoked since the enactment of Law Number 1 of 1974 concerning Marriage, so that the legality of mixed marriages as referred to in PPC S. 1898 No. 158 above, does not apply in the legal system currently in force in Indonesia. Mixed marriages legalized by the Marriage Law Number 1 of 1974 are only found in Article 57, namely: "*What is meant by mixed marriages in this Law is marriage between two people who in Indonesia are subject to different laws, because of differences in nationality and wrongdoing. one party is an Indonesian citizen.*" Thus it can be concluded that the factor of different religions is no longer included in mixed marriage regulations based on the Marriage Law, but mixed marriages, namely marriages that occur between Indonesian citizens and foreigners.

The presence of Law Number 1 of 1974 and Presidential Instruction Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law are two regulations that regulate marriage issues, but have not clearly and concretely regulated interfaith marriages. In other words, there are no explicit phrases regulating, legalizing or prohibiting interfaith marriages in the two regulations. Furthermore, Law Number 1 of 1974 adheres to a system of norms

pointer (*verwijzing*) on the laws of religion and belief respectively. The emergence of complex legal consequences is one of the implementations of marriages that have been carried out, so that anyone involved in organizing a marriage that is carried out, of course, must be carried out as well as possible in accordance with applicable regulations.

The requirements for the validity of a marriage which have been formulated in Article 2 of Law Number 1 Year 1974 are: (1) *Marriage is valid, if it is carried out according to the law of each religion and belief;* (2) *Every marriage is recorded according to the applicable laws and regulations,*" *contrario* the formulation of Article 2 paragraph (1) if it is reviewed, it is found that the marriage being held is not in accordance with the laws of each religion and belief of the bridal couple, then it can be said that the marriage is invalid. The

implementation of six religions in Indonesia that are recognized by the Government, the issue of interfaith marriage has its own regulations. Even strictly each religion tends to prohibit interfaith marriages. Islamic law is clearly against interfaith marriage, even if it is forced it is commonly known in society as "lifelong adultery."

Christianity / Protestantism basically forbids its followers to enter into interfaith marriages, because in Christian doctrine, the purpose of marriage is to achieve happiness between husband, wife and children within the scope of an eternal and eternal household. Catholic law prohibits interfaith marriage unless it is permitted by the church under certain conditions. Buddhist law does not regulate interfaith marriages and returns to the customs of each region, while Hinduism strictly prohibits interfaith marriages.

With the formulation in Article 2 paragraph (1) especially in the Elucidation of Article 2 paragraph (1) of the Marriage Law, it is clearly emphasized again that there is no marriage outside the law of each religion and belief. The implementation of Article 2 of the Marriage Law must be interpreted cumulatively, meaning that the components in Article 2 paragraph (1) and Article 2 paragraph (2) are parts that cannot be separated from one another. Thus it can be concluded that even though a marriage has been carried out legally based on religious law, if it has not been registered with the competent authority, either the Religious Affairs Office for those who are Muslim or the Civil Registry Office for non-Muslims, then the marriage has not been recognized as valid by the state.

Interfaith marriages regulated in Law Number 1 of 1974, it is deemed necessary to make changes again even though the first changes have been made by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, which regulates the issue of the age limit for marriage, improvement in norms reaches by increasing the minimum marriage age for women . This is because even though the Compilation of Islamic Law (KHI) has regulated interfaith marriages, it does not have hierarchical power because KHI is contained in the form of a Presidential Instruction, and is not an Act or its derivatives, so it cannot be included in the hierarchy of Legislation as stipulated. in Article 7 of Law Number 12 of 2011 concerning Formation of Legislation. So that in order to have more binding power, the Marriage Law should be amended. Mainly in Article 8 of the Marriage Law which regulates the prohibition of marriage to add interfaith marriages as prohibited marriages. Because until now Article 8 letter f of the Marriage Law only implicitly states that: "*Marriage is prohibited between two people who have a relationship whose religion or other applicable regulations prohibit marriage.*"

In contrast to the Marriage Law No. 1 of 1974 which does not explicitly regulate interfaith marriages, KHI which is regulated in the Presidential Instruction of the Republic of Indonesia No. 1 of 1991, from several articles there are allusions to the problem of interfaith marriages, namely:

a . Article 4

Marriage is legal, if it is carried out according to Islamic law in accordance with article 2 paragraph (1) of Law No. 1 of 1974 concerning Marriage .

b . Article 40 letter c

It is prohibited to enter into a marriage between a man and a woman due to certain circumstances:

- 1) *because the woman concerned is still married to another man;*
- 2) *a woman who is still in her iddah period with another man;*
- 3) *a non-Muslim woman.*

This article is closely related to Article 18 which regulates:

For prospective husbands and prospective wives who are going to marry, there are no obstacles to marriage as stipulated in chapter VI.

c. Article 44:

A Muslim woman is forbidden to marry a non-Muslim man.

d. Article 61:

Non-sekufu cannot be used as a reason to prevent marriage, except non-sekufu due to religious differences or ikhtilaafu al dien.

Article 61 is an action to prevent marriage that is filed before the marriage takes place, so this article has no legal consequences for the validity of the marriage because the marriage contract has not yet taken place. Prevention is submitted to the Religious Court in the legal district where the marriage will take place by notifying the local PPN.

e. Article 116 letter h:

Divorce can occur for reasons or reasons : h . conversion of religion or apostasy which causes disharmony in the household.

3. Interfaith Marriage According to Law Number 23 of 2006 concerning Population Administration

After the enactment of Law Number 23 of 2006 concerning Population Administration, the opportunity to legalize it seems to be wide open, due to the availability of options to apply for interfaith marriages to the District Court to issue a stipulation permitting interfaith marriages and order the employees of the Records office Civilian to register interfaith marriages in the Marriage Registration Register. This opportunity is given with several considerations that are the background of the judge in granting the request for a determination of different religions. Interfaith marriage is not prohibited under Law Number 1 of 1974, therefore the application for interfaith marriage was granted to fill the void in the rules of the Marriage Law and Article 21 paragraph (3) of the Marriage Law Number 1 of 1974 jo. Article 35 letters a Law Number 23 of 2006 concerning Population Administration, namely: Article 21 paragraph (3) of Marriage Law Number 1 of 1974: "*Parties whose marriage has been rejected have the right to submit an application to the court in the territory where the marriage registrar who held the refusal is domiciled to make a decision, by submitting the statement of rejection referred to above.*" It can be concluded that the authority to examine and decide on interfaith marriage issues lies with the District Court.

Furthermore, in Article 35 letter a of Law Number 23 of 2006 concerning Population Administration, namely *the registration of marriages as referred to in Article 34 also applies to: a. marriage determined by the Court*; Then the Elucidation of Article 35 letter a provides an explicit *exit way* for the issue of interfaith marriage because it defines: "*What is meant by "Marriage stipulated by the Court" is a marriage carried out between people of different religions.*" Furthermore, Article 36 stipulates that: "*In the event that a marriage cannot be proven by a marriage certificate, the registration of the marriage is carried out after a court decision has been made.*"

In principle, the formulation of the article is for the registration of marriages. Still, Article 35 letter a of the Population Administration Law provides wider space to allow interfaith marriages, which are considered invalid based on the Marriage Law. The provisions of this article are contrary to Article 2 of the Marriage Law, which states that a marriage is considered valid if it is carried out according to the laws of each religion and belief. Article 2 of this Marriage Law is the basis for prohibiting interfaith marriages because in essence, no recognized religion in Indonesia freely allows its followers to marry adherents of other religions. Thus it can be concluded that there is a juridical conflict (legal conflict) between Article 35 letter of the Population Administration Law and Article 2 of the Marriage Law. Interfaith marriage.

As we know, the judicial system in Indonesia applies the principle of "*Ius Curia Novit*" which requires judges to accept all cases that go to court even though there is no unclear legal regulation, including the issue of interfaith marriages. The demand for judges here is that judges should not rush into stipulating legalizing interfaith marriages based solely on Article 35 letter of the Population Administration Law. But 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 rejected the application for a *judicial review* of Article 2 of the Marriage Law and reaffirmed the prohibition on interfaith marriages because this act is the legalization of an act of adultery.

With regard to the nature of this marriage, a judge must also understand that the nature of marriage according to Article 1 of Law Number 1 of 1974 concerning Marriage is defined as: "*physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a family (home) ladder) who are happy and eternal based on Belief in the One and Only God.* The birth bond is a formal relationship that is real in nature, which not only binds the person personally, but also impacts the family, other people, or society. Meanwhile, as an inner bond, marriage is a soul bond that is intertwined because of the same 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 Belief in One Almighty God means that the family must be based on one God. Marriage should not only be viewed from a purely formal aspect but also from a spiritual and social aspect. Religion determines the legality of marriage, while the Law determines the legality of the administration carried out by the State (second; nd).

Interfaith marriage is contrary to the constitution that applies in Indonesia, which is regulated in Article 28B paragraph (1) of the 1945 Constitution:

"*Everyone has the right to form a family and continue offspring through a legal marriage.*" Regarding the phrase "legal" marriage, it is regulated in Article 2 paragraph (1) of the Marriage Law that marriage is legal if it is carried out according to the religious law of both spouses. Meanwhile, Islam regulates the invalidity of interfaith marriages.

Interfaith marriages should not be interpreted as a violation of human rights. Because as stipulated in Article 28J paragraph (2) of the 1945 Constitution: " *In exercising their rights and freedoms, each person is obliged to comply with **the restrictions** determined by law with the sole purpose of guaranteeing the recognition and respect for the rights and freedoms of person others and to meet just demands in accordance with considerations of morality, religious values, security and public order in a democratic society.* " It is clear to us that there are no human rights violations here because the implementation of human rights in Indonesia is not liberal. However, the implementation of human rights in Indonesia is not liberal but acknowledges that there are restrictions on human rights practices in the framework of respecting the human rights of others, including the right to marry, one of which takes into account religious values. Human rights, essentially natural rights given by God to humans, are therefore irrational if these natural rights deviate from God's rules and provisions. Indonesia as a country based on the belief in the One and Only God makes religious values one of the foundations in the life of the nation.

Therefore, the prohibition of interfaith marriage fulfills the value of justice because of the moral values shared by the majority of Muslims in Indonesia and is oriented towards a relationship with God, but it also provides opportunities for the faith of children born from interfaith marriages. Justice that fulfills positive divine law (*ius divinum positivum*) and that is accessible to human reason/human positive law (*ius positivum humanum*).

Interfaith marriage should also not be legalized because it creates many negative implications in the future. One of the implications is that the status of children born through an illegal marriage process (because of the prohibition on interfaith marriages) is the recognition that the child is born outside of a legal marriage. As a consequence, the child does not have a family relationship with his biological father, is not entitled to maintenance and maintenance from the father, then the father also cannot be the guardian of his daughter's marriage, and has no right to inherit if he does not share the same religion as the heir (in the case of This heir is Muslim).

Conclusion

Interfaith marriage is not a simple problem to solve. There needs to be strict regulation so that problem-solving can be carried out properly because there are positive legal guidelines that regulate it and do not cause multiple interpretations. The complexity of interfaith marriages means that it is necessary to amend the Marriage Law, such as the existence of certain articles that regulate interfaith marriages in Article 8.

Then to solve the dualism problem of interfaith marriage arrangements, where the Marriage Law prohibits the practice of interfaith marriages, while the Population Administration Law actually opens up opportunities for the legalization of interfaith marriages, in the opinion of the author's Articles 35 and 36 of the Population Administration Law should be repealed, because it creates a conflict of norms. The occurrence of a legal vacuum in the regulation of interfaith marriages cannot be allowed to continue because if interfaith marriages are allowed and no legal solutions are provided, they will have a negative impact in terms of social and religious life. The negative impact is in the form of smuggling social and religious values and positive laws.

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