

P ISSN: 2528-2638

E ISSN: 2580-5460

JJIH

JUSTISI: JURNAL ILMU HUKUM

Volume 9 No.1 Maret 2024



PUBLISHED BY
FACULTY OF LAW
UNIVERSITY BUANA PERJUANGAN KARAWANG

DAFTAR ISI

THE APPLICATION OF DIFFERENT CRIMINAL SANCTIONS AGAINST DRUG ABUSERS IS CONNECTED WITH ARTICLE 112 PARAGRAPH (1) OF LAW NUMBER 35 OF 2009 CONCERNING NARCOTICS (Study of Decision No. 203/Pid.Sus/2021/Pn.Blt and 295/Pid.Sus/2021/Pn.Blt) Tira Habibah, Anwar Hidayat, Sartika Dewi..... 1-19

JURIDICAL REVIEW OF MARRIAGE ANNULMENT DUE TO IDENTITY FORGERY ACCORDING TO ARTICLE 27 OF LAW NUMBER 1 OF 1974 CONCERNING MARRIAGE (STUDY JUDGMENT NO. : 1767/PDT. G/2017/PA. KRW) Rd.N.Sayyidatussa'adah. S.A, Muhamad Abas, Sartika Dewi 20-40

JURIDICAL REVIEW OF THE MARRIAGE BAN OF INDIGENOUS PEOPLES OF MIRAH VILLAGE AND GOLAN VILLAGE, SUKOREJO DISTRICT, PONOROGO REGENCY IS REVIEWED FROM LAW NUMBER 1 OF 1974 CONCERNING MARRIAGE Amanda Salsabila, Yuniar Rahmatiar, Farhan asyahadi 41-60

THE JURIDICAL REVIEW OF INTERFAITH MARRIAGE IS LINKED TO LAW NUMBER 1 OF 1974 CONCERNING MARRIAGE AS AMENDED BY LAW NUMBER 16 OF 2019 CONCERNING MARRIAGE (Determination Study Number 916/Pdt.P/2022/PN. Sby) Adinda Silvia Febrianty, M. Gary Gagarin Akbar, Muhamad Abas 61-83

JURIDICAL REVIEW OF THE WITHDRAWAL OF PARENTAL GRANTS TO THEIR CHILDREN IS REVIEWED BY THE COMPILATION OF ISLAMIC LAW (KHI) (STUDY OF DECISION NUMBER 89/Pdt.G/2019/PA. TALU) Banny Abdillah, Anwar Hidayat, Sartika Dewi 84-105

Universitas Buana Perjuangan Karawang

Vol. 9 No.1 (2024)

Submit: 10-Marc-2024

Revised: 15-Marc-2024

Published: 20-Marc-2024

THE JURIDICAL REVIEW OF INTERFAITH MARRIAGE IS LINKED TO LAW NUMBER 1 OF 1974 CONCERNING MARRIAGE AS AMENDED BY LAW NUMBER 16 OF 2019 CONCERNING MARRIAGE

(Determination Study Number 916/Pdt.P/2022/PN. Sby)

Adinda Silvia Febrianty¹, M. Gary Gagarin², Muhammad Abas³

¹Faculty Of Law, University Buana Perjuangan, Karawang.

²Faculty Of Law, University Buana Perjuangan, Karawang.

³Faculty Of Law, University Buana Perjuangan, Karawang.

* Correspondence email: hk19.adindafebrianty@mhs.ubpkarawang.ac.id

Abstract: Indonesia is known for its diverse cultural customs that have been embedded from their previous ancestors and different religions and beliefs. Of course, each has different rules. Similar to marriage, the variety of religions and streams of belief in Indonesia does not rule out the possibility of interfaith marriage. Interfaith marriages are marriages performed by people of different religions or different beliefs. The issues raised in this study are how the validity of interfaith marriage according to Law Number 1 of 1974 concerning Marriage has been amended by Law Number 16 of 2019 concerning Marriage and how the judge's consideration in granting requests for different religions in the study of decision number 916 / Pdt.P / 2022 / PN. Sby. The purpose of this study is to determine the validity of interfaith marriage according to Law Number 1 of 1974 concerning Marriage and to find out the judge's consideration in granting an interfaith marriage request in the study of decision Number 916/Pdt.P/2022/PN. Sby. This research is a type of qualitative research that uses a normative juridical approach method, namely the approach of research by researching and reviewing the object of research through literature study. The author's conclusion to the decision is that there is an imbalance or inconsistency with Law Number 1 of 1974 concerning Marriage, that in article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage states that marriage is valid, if it is carried out according to the laws of each religion and belief.

Universitas Buana Perjuangan Karawang

Vol. 9 No.1 (2024)

Submit: 10-Marc-2024

Revised: 15-Marc-2024

Published: 20-Marc-2024

Keywords : *Indonesia, Interfaith Marriage, Validity*

1. Introduction

Marriage is an indispensable part of human life. Having a high value as worship, marriage plays an important role in creating serenity, peace, and well-being of individuals. In addition, marriage is also the basis for the formation of families, communities, and even nations. Religions around the world, societal customs, and state institutions play a role in regulating aspects of marriage. In this whole context, marriage has a very important dimension in human life, where religion, customs, and state institutions play a role in creating order and harmony in family life and society at large.¹

Indonesia is a country rich in cultural diversity and customs that have been part of the heritage of ancestors since time immemorial. In addition, diverse religions and beliefs are also an important factor in shaping the diverse marriage culture in Indonesia. Each marriage culture has different rules and procedures, which are influenced by religion, beliefs, and knowledge of the community and religious leaders in the environment. Through this influence, various marriage practices and norms were formed that reflect the diversity of cultures and local identities in Indonesia.²

As an effort to regulate the diversity of marriage law rules in Indonesia, Law No. 1 of 1974 concerning Marriage has been established as the legal basis and basic rules in marriage in this country. In Article 1 of the Law, it is defined that "marriage is an inner birth bond between a man and a woman as husband / wife, with the aim of

¹ Abdulkadir Muhamad, *Indonesian Civil Law*, Bandung : PT Citra Aditya Bakti, 2014

² O.S.Eoh, *Interfaith Marriage in Theory and Practice*, Jakarta: PT. Raja Grafindo Persada, 1996

Universitas Buana Perjuangan Karawang

Vol. 9 No.1 (2024)

Submit: 10-Marc-2024

Revised: 15-Marc-2024

Published: 20-Marc-2024

forming a happy and eternal family (household), based on the One True Godhead". Through this provision, the Marriage Law attempts to bridge the differences in rules and beliefs in the practice of marriage in Indonesia, by affirming the principles that form the basis for a legally recognized and sustainable marriage in the formation of a happy family.³

With the birth of Law Number 1 of 1974 concerning Marriage, it has been relatively able to answer the need for laws and regulations that regulate marriage uniformly and for all groups of society in Indonesia. Nevertheless, it does not mean that this Law has regulated all aspects related to marriage. One of the things that is not expressly regulated in this Law is the issue of interfaith marriage³. Law No. 1 of 1974 does not regulate marriages performed by interfaith couples. However, Article 2 paragraph (1) of Law Number 1 of 1974 reads that "marriage is valid, if it is carried out according to the law of each religion and belief". From this article it can be concluded that marriage is valid if it is carried out in the same religion and belief between the two spouses⁴. Therefore, although interfaith marriage is not significantly regulated in Law Number 1 of 1974 concerning Marriage, the phenomenon of interfaith marriage continues to occur in Indonesian society.⁴

Interfaith marriage, also known as "interfaith marriage," has become a known phenomenon in Indonesia. It refers to a marriage between a Muslim (man or woman) and a non-Muslim, be it a polytheist or a man of the book. The phenomenon of interfaith marriage is often a topic of debate among scholars, because of differences in perspectives in understanding religious verses or texts that prohibit marriage between a Muslim and a polytheist. This difference of opinion arises because of

³ K. Wantjik Saleh, Indonesian Marriage Law, Jakarta: Ghalia, 1992

⁴ Octavianus Eoh, Interfaith Marriage in Theory and Practice, Jakarta: Sri Ginting, 1996

Universitas Buana Perjuangan Karawang

Vol. 9 No.1 (2024)

Submit: 10-Marc-2024

Revised: 15-Marc-2024

Published: 20-Marc-2024

diverse interpretations of religious teachings and Islamic law related to interfaith marriage. Some scholars argue that such marriages should not be performed because they are considered contrary to the tenets of Islamic teachings that emphasize the importance of shared beliefs in marriage. Meanwhile, there are also other opinions that allow interfaith marriage with certain conditions, such as consent from Muslims and respect for the religion of non-Muslim couples.

The different religions referred to here are Muslim women with non-Muslim men and vice versa Muslim men with non-Muslim women. Both may marry if the non-Muslim has converted to Islam. The prohibition of interfaith marriage is stated in Article 40 of the Compilation of Indonesian Islamic Law enforced based on Presidential Instruction Number 1 of 1991 stated that:

"It is forbidden to enter into a marriage between a man and a woman, because the woman is not Muslim"

Under the provision, interfaith marriages are not allowed. If there are couples of different religions (e.g. Islam and Christianity) who want to get married, they must choose one of the religions that the couple will follow. There are two options that can be taken: first, the future wife declares to follow the religion professed by the future husband; Second, each party maintains their religion and applies to the District Court to perform interfaith marriages and register the marriages at the Civil Registry Office.⁵

The phenomenon of interfaith marriage still occurs in society, as can be seen in several court rulings. For example, there is a Surabaya District Court decision Number 916/Pdt.P/2022/PN. It was Sby who granted the request for interfaith marriage

⁵ Khoirul Abror, Marriage and Divorce Law, Yogyakarta: Kata Farm, 2020 Kamarusdiana, Philosophy of Law, Jakarta : UIN Jakarta press, 2018.

Universitas Buana Perjuangan Karawang

Vol. 9 No.1 (2024)

Submit: 10-Marc-2024

Revised: 15-Marc-2024

Published: 20-Marc-2024

between the applicant who is Christian and Muslim. In the ruling, the judge ruled that the marriage could be performed and registered at the civil registry office. However, some opinions state that the ruling may not be in accordance with Law Number 16 of 2019 concerning marriage.

Article 2 paragraph (1) of Law Number 16 of 2019 concerning marriage "marriage is valid, if it is carried out according to the laws of each religion and belief"

Based on the background mentioned above, the author is interested in conducting research entitled **JURIDICAL REVIEW OF INTERFAITH MARRIAGE CONNECTED WITH LAW NUMBER 1 OF 1974 CONCERNING MARRIAGE AS AMENDED BY LAW NUMBER 16 OF 2019 CONCERNING MARRIAGE (Study of Determination Number 916 / Pdt.P / 2022 / PN. Sby)**

2. Method

In this study the author used the normative juridical approach method. The reason the author uses the motede is because the main data used is secondary data, which is in the form of data obtained based on legal materials obtained from literature studies by trying to analyze a legal problem through laws and regulations, literature and other relevant materials.

The specification in this study is descriptive analytical. The reason for choosing this specification is that it aims to provide an overview of interfaith marriage problems.

Universitas Buana Perjuangan Karawang

Vol. 9 No.1 (2024)

Submit: 10-Marc-2024

Revised: 15-Marc-2024

Published: 20-Marc-2024

3. Analysis or Discussion

3.1. The validity of interfaith marriage according to Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Marriage and the Compilation of Islamic Law

In the legal context prior to the enactment of Law Number 1 of 1974 concerning Marriage, GHR provided a legal framework to regulate mixed marriages, including interfaith marriages. However, after the enactment of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Marriage, regulations regarding interfaith marriage are regulated in the law, so GHR is no longer the main reference in this regard.⁶ Law Number 16 of 2019 provides more comprehensive and contemporary provisions in regulating marriage in Indonesia, including interfaith marriages.⁷

After the enactment of Law Number 16 of 2019 which amended Law Number 1 of 1974 concerning Marriage, mixed marriage is expressly defined in Article 57. Mixed marriage refers to a marriage between two people who in Indonesia are subject to different laws, provided that one of the parties has Indonesian citizenship. In this context, interfaith marriages are no longer included in the category of mixed marriages. With the affirmation in Article 57 of Law Number 16 of 2019, interfaith marriages are regulated separately and have more specific arrangements in accordance with applicable regulations. The law provides more comprehensive and time-appropriate guidelines in regulating marriage, including interfaith marriage. Thus, after the enactment of Law Number 16 of 2019, interfaith marriages are

⁶ Jane Marlen Makalew, Legal Effects of Interfaith Marriage, Journal Lex Privatum, Vol.1, 2013.

⁷ Bagir Manan & Kuntana Magnar, some constitutional law issues, Bandung :P T. Alumni, 2017

Universitas Buana Perjuangan Karawang

Vol. 9 No.1 (2024)

Submit: 10-Marc-2024

Revised: 15-Marc-2024

Published: 20-Marc-2024

regulated separately in the provisions governing marriage, and are no longer included in the category of mixed marriages as stated in Article 57 of the Law.⁸

Article 1 of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Marriage states that "Marriage is an inner bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One and Only Godhead". According to Wantjik Saleh, the concept of "inner birth bond" in marriage refers to the importance of attachment both physically and emotionally between husband and wife. That is, marriage is not only limited to formal, legally visible bonds, but also requires a deep and inner relationship between married couples".⁹ In this context, "birth bond" refers to a bond that is visible and physically visible, such as the legal relationship that binds a man and woman to live together as husband and wife. This bond has a binding effect both for the individual himself and for others and society in general. On the other hand, "inner bond" refers to relationships that are not formal and cannot be seen physically, but must be present for the external bond to last and be strong. It includes a deep emotional, spiritual, and shared connection between married couples. 31 In the context of marriage, the importance of the inner bond is to create solidity and wholeness in the relationship between husband and wife. Marriages based on birth or formal ties alone may be prone to fragility and imbalance. Therefore, the existence of strong and mutually reinforcing inner bonds is important in building and maintaining happiness and stability of the household based on belief in God Almighty.

⁸ Hilman Hadikusuma, Indonesian marriage law according to legislation, customary law, religious law, Bandung: Mandar Maju, 2007

⁹ Jamaluddin &; Nanda Amalia, Textbook of Marriage Law, Sulawesi: Unimal Press, 2016

Universitas Buana Perjuangan Karawang

Vol. 9 No.1 (2024)

Submit: 10-Marc-2024

Revised: 15-Marc-2024

Published: 20-Marc-2024

Based on this understanding, marriage has three main aspects, namely juridical, social, and religious aspects. The juridical aspect is related to the birth or formal bond in marriage, which is the legal relationship that binds husband and wife. This includes the requirements, procedures, and legal consequences associated with marriage. The social aspect of marriage involves a binding relationship not only for the couple themselves, but also for other individuals and society at large. Marriage has an important social role in forming families, expanding social relationships, and building larger communities.¹⁰

The religious aspect of marriage is related to the clause "Based on the One and Only Godhead" as the basis for the formation of a happy and eternal family. In this context, religion and spirituality play a central role in marriage. Article 1 of the Marriage Law recognizes the importance of the religious dimension in marriage by explaining that the Indonesian state, based on Pancasila, pays great attention to divine values. Therefore, marriage not only involves physical or physical aspects, but also involves an inner or spiritual dimension that has an important role in forming and maintaining marital relationships. Thus, marriage involves a complex interaction between juridical, social, and religious aspects. Recognition of these three aspects is important to understanding the complexity and significance of marriage as an institution that affects the lives of individuals, families, and society at large.³²

In Article 2 paragraph 1 of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, it is stated that "Marriage is valid, if it is carried out according to the laws of each religion and belief." The explanation of this article explains that no marriage is considered valid outside the legal provisions applicable

¹⁰ Moh.Ali Wafa, Marriage Law in Indonesia, South Tangerang: Yasmi, 2018

Universitas Buana Perjuangan Karawang

Vol. 9 No.1 (2024)

Submit: 10-Marc-2024

Revised: 15-Marc-2024

Published: 20-Marc-2024

in the religion and beliefs of each individual, in accordance with the principles contained in the 1945 Constitution. The 1945 Constitution contains provisions relevant to marriage. Article 29 of the 1945 Constitution explains that the Indonesian state is based on the Supreme God and guarantees the freedom of every citizen to profess their own religion and worship in accordance with the individual's own religion and beliefs.

Thus, Law Number 16 of 2019 recognizes the importance of freedom of religion and worship and respects the principles in the 1945 Constitution. In the context of marriage, this means that the validity of a marriage is determined by conformity with the laws applicable in the religion and beliefs of each individual involved. In this regard, the state has a role to guarantee and protect the freedom of religion and belief of individuals in carrying out marriages in accordance with the principles stated in the 1945 Constitution.¹¹

According to Hazairin, it is impossible for a person of Muslim faith to enter into a marriage that violates the laws of his own religion. The same is true for individuals who are Christians, Hindus, or Buddhists, such as those in Indonesia. Hazairin explained that every religion has provisions and rules governing marriage, and as a follower of that religion, one is expected to abide by the applicable religious law in performing marriage. 33 In this context, Hazairin said that in Islam, one is not allowed to marry in violation of the provisions of one's religion.

Similarly, for individuals who are Christians, Hindus, or Buddhists, they are also expected to abide by the laws and rules of their religion in consummating marriages.

¹¹ Moch Anwar, *Fundamentals of Islamic Law in Determining Decisions in Religious Courts*, Bandung: Dipenogoro, 1991

Universitas Buana Perjuangan Karawang

Vol. 9 No.1 (2024)

Submit: 10-Marc-2024

Revised: 15-Marc-2024

Published: 20-Marc-2024

Hazairin asserted that there is no room for a person to perform marriage outside the limits set by the laws of his religion. This view underscores the importance of respecting and adhering to the religious principles believed by individuals in the context of marriage. By following the applicable religious laws, a person can ensure that the marriage he performs is in accordance with the beliefs and principles of the religion he adheres to.¹²

Hilman Hadikusumo also argued that the validity of marriage in accordance with the provisions of the law is regulated in Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Marriage. The article states that "marriage is valid, if it is performed according to the laws of each religion and belief". In this view, marriages that are considered valid according to national marriage law are marriages that are carried out in accordance with the rules of law applicable in religions such as Islam, Christianity, Catholicism, Hinduism, and Buddhism. Hilman Hadikusumo explained that the use of the phrase "the law of each religion" in the article refers to the laws that apply in each religion individually, not referring to the religious laws adopted by the bride and groom or their families. In this regard, each religion has its own rules and regulations governing marriage in accordance with the principles and provisions of that religion

Thus, according to Hilman Hadikusumo's view, a marriage that is considered valid is a marriage that is carried out in accordance with the religious law adopted by each individual who will marry. It emphasizes the importance of abiding by and respecting the religious rules applicable in the context of marriage, so that the

¹² Candra Refan & Ismail Marzuki, Interfaith Marriage in Indonesia; Juridical Perspectives, Religions and Human Rights, Journal of Sharia and Islamic Law, Vol.8,2023

Universitas Buana Perjuangan Karawang

Vol. 9 No.1 (2024)

Submit: 10-Marc-2024

Revised: 15-Marc-2024

Published: 20-Marc-2024

marriage is legally recognized and in accordance with the religious beliefs and principles espoused by both parties

In the context of interfaith marriage, a marriage that is considered valid is a marriage that is carried out in accordance with the rules of one religion, whether it is the religion of the prospective husband or the religion of the prospective wife. This means that in interfaith marriage, one of the religions adopted by one of the spouses will be the legal basis governing the implementation of the marriage. It is important to note that in this situation, it is not permissible for a couple who has entered into a marriage according to Islamic law, for example, to later enter into another marriage according to Christian, Hindu, or Buddhist law, and vice versa. Such an act would be considered invalid.³⁴

In this case, interfaith marriages that are recognized as valid are marriages that are carried out by following the religious rules adopted by one of the spouses. This shows that in the context of interfaith marriage, it is important to abide by and respect the provisions of the religion chosen by the couple in performing the marriage, so that the marriage is recognized as legally valid and in accordance with the beliefs and principles of the religion chosen by the couple.¹³

In Christianity, the term "marriage" is often referred to as "marriage" or "marriage". Marriage has two important aspects. First, marriage is a relationship between husband and wife that is regulated and legalized by law. That is, there are legal rules and provisions governing the procedures for conducting marriage, its registration, and legal protection for married couples.

¹³ Auril Amri, Interfaith Marriage According to Positive Law and Islamic Law, Journal of Sharia Media, Vol.22, 2020

Universitas Buana Perjuangan Karawang

Vol. 9 No.1 (2024)

Submit: 10-Marc-2024

Revised: 15-Marc-2024

Published: 20-Marc-2024

Second, however, marriage is also considered a relationship based on God's decree or ordinance. This means that marriage is seen as a sacred institution commanded and arranged by God. In the view of Christianity, the spiritual and religiosity aspects of marriage are considered more important than the juridical or legality aspects. This shows that it is important for married couples to carry out their marital relationship by adhering to the principles and rules established by God. In this view, marriage is not only seen as a juridically valid legal bond, but also as a bond that is sacred and has high spiritual values. Therefore, in the context of Christianity, couples are expected to prioritize aspects of religiosity and respect the provisions set by God in carrying out their marital relationship.

According to Catholic teaching, a marriage that is considered valid is one that is performed, confirmed, and blessed by a church official who has authority in the marriage ceremony. The marriage must also involve the presence of two witnesses who witnessed the marriage bond. In addition, brides-to-be must meet the requirements set by the Catholic Church to obtain legal recognition of their marriage. In the view of Catholicism, interfaith marriages are considered invalid. This is due to the belief that marriage in Catholicism is considered a sacrament pledged with a pledge of allegiance to Jesus Christ. Therefore, in the view of Catholicism, marriage is considered a sacred bond and can only take place between two people who are Catholic. 36 In this context, interfaith marriage is considered contrary to Catholic beliefs and principles that promote fidelity and unity in religious life. Therefore, in Catholicism, interfaith marriage is not allowed because it is considered incompatible with the principles and values held by the church

In Hinduism, marriage is considered as a bond between a man and a woman who become husband and wife. The main purpose of this marriage is to organize a

Universitas Buana Perjuangan Karawang

Vol. 9 No.1 (2024)

Submit: 10-Marc-2024

Revised: 15-Marc-2024

Published: 20-Marc-2024

proper and legal sexual relationship, as well as to realize the birth of offspring that are considered important. In addition, marriage in Hinduism is also considered as a man's obligation to save the spirits of his parents from hell. Marriage in Hinduism is carried out through ritual ceremonies that are adapted to the teachings and procedures of Hinduism. The ceremony has an important role in legally binding the marital relationship according to Hindu law. In this context, it is important for couples who wish to marry in Hinduism to perform the marriage ceremony in accordance with the ordinances and provisions of Hinduism. This is because, according to Hindu belief, marriages that are not performed through ritual ceremonies in accordance with Hindu teachings are considered invalid.

According to the Buddhist view, marriage is not very important. Buddhists do not force or forbid a person to marry or not. Because marriage for Buddhists is something that must be carefully thought out and must be consequent and faithful to their choice, in order to achieve a happy family based on the Buddha.

Basically, in Khonghucu teachings, interfaith marriage is not allowed. According to Candra Setiawan as the former chairman of the Indonesian Khonghucu Religious Council (Matakin) said that the marriage inauguration ceremony can only be done for those who are Khonghucu.

The prohibition of marriage between a Muslim woman and a non-Muslim or infidel man in Islamic law is based on the aim of maintaining harmony and harmony in the marital relationship, as well as to protect the integrity of a Muslimah's faith and religious practice. In this view, the unity of religious belief is considered an important factor in building mutually supportive and harmonious conjugal relationships. Therefore, in the context of a marriage between a Muslim woman and a non-Muslim

Universitas Buana Perjuangan Karawang

Vol. 9 No.1 (2024)

Submit: 10-Marc-2024

Revised: 15-Marc-2024

Published: 20-Marc-2024

or infidel man, Islamic jurists generally consider such marriages to be incompatible with Islamic religious principles and prohibited by Islamic teachings.¹⁴

Marriage between a Muslim woman and a non-Muslim or infidel man, in the view of Islamic jurists, is considered impermissible in Islam. This applies both to husbands who come from among the People of the Book (Jews and Christians) and to those who follow other religions that have scriptures such as Hinduism and Buddhism, as well as followers of religious beliefs that do not have scriptures. This view is based on interpretations and principles of Islamic law governing marriage. In Islam, marriage is considered a covenant built on a foundation of faith and adherence to the teachings of Islam. According to this understanding, marriage is a bond between a Muslim woman and a Muslim, where both have the same religious beliefs and practices. 43

The prohibition of interfaith marriage in Islamic law in Indonesia is regulated in the Compilation of Islamic Law. Article 40 paragraph (c) states that "marriage between a man of Muslim faith and a woman of non-Muslim faith is prohibited." Furthermore, article 44 states that "marriage between a woman of Muslim faith and a man of non-Muslim faith is prohibited." In the Compilation of Islamic Law, it is expressly stated that a person of Muslim faith is not allowed to perform interfaith marriages. This prohibition aims to maintain the integrity and sanctity of Islamic religious teachings and to maintain harmony and unity of belief in the marital relationship. In this view, marriage between a Muslim woman and a non-Muslim or infidel man is considered to disturb the harmony and integrity of the family and can affect the implementation of a Muslimah's religious practice. In this context, the

¹⁴ Abd.rozak A, Legal Studies on Interfaith Marriage (Comparison of Several Countries), Jakarta, 2011

Universitas Buana Perjuangan Karawang

Vol. 9 No.1 (2024)

Submit: 10-Marc-2024

Revised: 15-Marc-2024

Published: 20-Marc-2024

prohibition of interfaith marriage in Islam is affirmed with the aim of preserving the identity and integrity of Muslims, as well as to ensure harmony in religious practice and domestic life.¹⁵

At the VII National Conference of the Indonesian Ulema Council (MUI) held on 26-29 July 2005 in Jakarta, MUI produced a fatwa that had relevance to the issue of interfaith marriage. In the fatwa, the MUI ruled and determined that interfaith marriages are considered haram and invalid according to Islamic religious views. In this context, the MUI also explicitly explains that marriage between a Muslim man and a woman of the People of the Book (Jewish or Christian) according to qaul mu'tamad (deeply held opinion) is also considered haram and invalid. This fatwa reflects the attitudes and interpretations of Indonesian scholars who underscore the importance of religious conformity in the context of marriage. 44 In addition, as for the decision of the Constitutional Court Number 68 / Puu-XII / 2014 which rejected the examination of Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage regarding the legal requirements of marriage related to interfaith marriage, the Constitutional Court considered that Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage did not at all contradict the Constitution of the Republic of Indonesia 1945 45 . Then SEMA Number 2 of 2023 concerning Guidelines for Judges in Adjudicating Cases of Marriage Registration Applications Between People of Different Religions and Beliefs confirms that a valid marriage is a marriage carried out 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 and the court may not grant applications for registration of inter-marriages

¹⁵ Andi Susanto & Nurul Bisyaroh, Interfaith Marriage According to the Perspective of Islamic Law and Law Number 1 of 1974, Journal of Islamic Family Law, Vol.2, 2022

Universitas Buana Perjuangan Karawang

Vol. 9 No.1 (2024)

Submit: 10-Marc-2024

Revised: 15-Marc-2024

Published: 20-Marc-2024

3.2. The judge's consideration in granting the application for interfaith marriage in the study of decision number 916/Pdt.P/2022/PN. Sby

The court considered witness testimony and letter evidence showing the consent and blessing of both parents of the petitioners to enter into interfaith marriages. The court also observed that freedom of religion and the right to form a household through marriage are fundamental rights of every individual guaranteed by law and constitution. In this context, the Court recognized that Law No. 1 of 1974 on Marriage does not prohibit interfaith marriage. Article 2 paragraph (1) of the law states that marriage is valid if it is carried out in accordance with the religious procedures or beliefs adopted by the prospective married couple. However, in this case, the petitioners are not allowed to perform marriage procedures according to their respective religions due to their religious differences. In this case, the Court refers to Article 10 paragraph (3) of Government Regulation Number 9 of 1975 which provides the possibility to carry out interfaith marriages by taking into account the marriage procedures according to the laws of their respective religions and beliefs. This provision allows marriages to be performed in the presence of a registrar in the presence of two witnesses.

The court observed that the petitioners had reached an agreement and obtained consent from both their parents to perform the marriage before officials of the Surabaya City Population and Civil Registration Office. In this case, the Court concluded that the petitioners did not renounce their religious beliefs prohibiting interfaith marriage, but they agreed to form a happy and eternal home based on the One True Godhead. Taking into account all the arguments and facts revealed in the trial, the Court decided to grant permission to the petitioners to enter into a marriage between applicant I who is Muslim and applicant II who is Christian at the Surabaya

Universitas Buana Perjuangan Karawang

Vol. 9 No.1 (2024)

Submit: 10-Marc-2024

Revised: 15-Marc-2024

Published: 20-Marc-2024

City Population and Civil Registration Office. The court also ordered the registration of the marriage in the Marriage Register after fulfilling the requirements stipulated in the prevailing laws and regulations. Thus, the petitioners' application was legally well-founded and the judge decided to grant the application.¹⁶

Considering, that the decision of the Judge is based on considerations covering legal aspects, namely the interpretation of relevant laws and regulations. The Court observed that Law No. 1 of 1974 and Government Regulation No. 9 of 1975 provided a legal basis that allowed interfaith marriage by taking into account the marriage procedures according to the religion and beliefs held by the prospective spouse.¹⁷

In addition, the court also considered the constitutionality aspect in its ruling. The judge referred to article 29 of the 1945 Constitution which guarantees freedom of belief in God Almighty and article 28B paragraph (1) of the 1945 Constitution which gives every individual the right to form a family and continue offspring through legal marriage. In this context, the Judge recognized that the petitioners have the right as citizens to profess their respective religions and to form families. The court affirmed that religious differences should not be an obstacle to exercising these rights. Therefore, the Judge decided to grant permission to the petitioners to be able to hold their marriages in accordance with their religious beliefs.¹⁸

In his ruling, the Judge also directed the Surabaya City Population and Civil Registration Office to record the marriages of the applicants in the Marriage Register in accordance with the requirements stipulated by laws and regulations. This aims to

¹⁶ Sri Wahyuni, *Interfaith Marriage: Why Go Abroad*, Jakarta: PT. Alvabet Library, 2016

¹⁷ Tihami and Sohari Sahrani, *Fikih Munahakat*, Jakarta: Rajawali Pres, 2013

¹⁸ Luqman, *Interfaith Marriage According to Fuqaha Perspective*, *Journal of Da'wah and Communication Science*, Vol.17, 2022

Universitas Buana Perjuangan Karawang

Vol. 9 No.1 (2024)

Submit: 10-Marc-2024

Revised: 15-Marc-2024

Published: 20-Marc-2024

provide legal certainty and legal protection for applicants as legal married couples. Thus, the Judge's decision is a form of legal protection and protection of the rights of the applicants. The decision is not only based on legal considerations, but also respects constitutional rights and freedom of religion guaranteed by the constitution. Thus, the judge's decision is expected to provide justice, legal certainty, and benefits for the petitioners in continuing their married life while still practicing their respective religious beliefs.¹⁹

As for the basis of the judge's legal consideration in granting interfaith marriage, referring to article 8 letter (f) of the Marriage Law which states that religious differences do not constitute a prohibition to carry out marriage, then the judge refers to the provisions of article 35 letter (a) of Law Number 23 of 2006 concerning Population Administration which allows interfaith marriage, article 6 paragraph (1) of Law Number 16 of 2019 amending the Law No. 1 of 1974 regarding the consent of the bride and groom and article 7 regarding the age limit for marriage, in addition the judge referred to article 28 B paragraph (1) of the 1945 Constitution which affirmed that everyone has the right to form a family and continue offspring through legal marriage, while according to the judge interfaith marriage is not a prohibition under Law Number 1 of 1974 and considering that the formation of a household through marriage is a right The human rights of the petitioners as citizens as well as the human rights of the petitioners to maintain their respective religions.²⁰

According to the author, in legal considerations, the judge only focuses on material requirements regarding the implementation of marriage, the human rights of applicants to form families, continue offspring and to maintain their religion, as

¹⁹ Sution Usman Adji, *Elopement and Interfaith Marriage*, Yogyakarta: Liberty, 1989.

²⁰ Hilman Hadikusuma, *Customary Marriage Law*, Bandung: Alumni, 1977

Universitas Buana Perjuangan Karawang

Vol. 9 No.1 (2024)

Submit: 10-Marc-2024

Revised: 15-Marc-2024

Published: 20-Marc-2024

well as the possibility of registering interfaith marriages which are in accordance with laws and regulations. The author argues that the judge's consideration is not appropriate because the judge does not meet the formal requirements of marriage, namely the legal requirements for marriage where the implementation must be in accordance with the laws of each religion and belief.²¹

Juridically formally, marriage in Indonesia is regulated in Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Marriage and Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law. Although Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Marriage does not expressly regulate interfaith marriage, article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Marriage states that " Marriage is valid, if it is done according to the laws of each religion and belief." In this article it can be seen that the validity of marriage is carried out according to each religion and belief, as in the explanation of article 2 of the Marriage Law that there is no marriage outside the law of each religion and belief.²²

Regarding the judge's consideration that the human right of everyone to form a family and continue offspring in Article 28B paragraph (1) of the 1945 Constitution which is in line with Article 29 of the 1945 Constitution concerning the guarantee by the State of freedom for every citizen to embrace his belief in God Almighty and worship according to his religion and belief. If we look again at Article 29 of the 1945 Constitution, there is the word "worship according to religion and belief" which means that in the State of Indonesia there must be no rules that conflict with Islamic

²¹ Zakiyah Darajat et al, Jurisprudence, Jakarta: Depag RI, 1985

²² Sirman Dahwal, Interfaith Marriage Law in Theory and Practice in Indonesia, Bandung: Mandar Maju, 2016

Universitas Buana Perjuangan Karawang

Vol. 9 No.1 (2024)

Submit: 10-Marc-2024

Revised: 15-Marc-2024

Published: 20-Marc-2024

teachings for Muslims, Christian teachings for Christians, and so on. Thus, in terms of determining the licensing of interfaith marriages, it must first look at the religious law of the Petitioners, in this case the religion of Islam clearly prohibits its people from performing interfaith marriages in accordance with Article 40 letter c and Article 44 of the Compilation of Islamic Law and Surah Al-Baqarah Verse 221.²³

4. Conclusion

1. The validity of interfaith marriage according to Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Marriage, interfaith marriage is considered invalid. The law stipulates that a valid marriage must be performed according to the laws of each religion and belief held by the couple to be married. In the explanation of article 2 of the Marriage Law, it is affirmed that no marriage is recognized outside the legal framework applicable in the religion and beliefs held by the individual. Thus, interfaith marriages are not considered valid according to Law Number 16 of 2019, because the provision requires marriages to be carried out in accordance with the religious laws of each individual.
2. The basis for the consideration of the Panel of Judges at the Surabaya District Court in allowing or determining interfaith marriage refers to article 8 letter (f) of the Marriage Law which states that religious differences do not constitute a prohibition to carry out marriage, then the judge refers to the provisions of article 35 letter (a) of Law Number 23 of 2006 concerning Population Administration which allows interfaith marriage, article 6 paragraph (1) of Law Number 16 of 2019 amending Law Number 1 of 1974

²³ Lysa Setiabudi, Analysis of Interfaith Marriage (Study of District Court Decisions Related to Interfaith Marriage Permits), Semarang, 2016.

Universitas Buana Perjuangan Karawang

Vol. 9 No.1 (2024)

Submit: 10-Marc-2024

Revised: 15-Marc-2024

Published: 20-Marc-2024

concerning the consent of the bride and groom and article 7 regarding the age limit for marriage, in addition the judge referred to article 28 B paragraph (1) of the 1945 Constitution which affirmed that everyone has the right to form a family and continue offspring through legal marriage, Meanwhile, according to the judge, interfaith marriage is not a prohibition under Law Number 1 of 1974 and considering that the establishment of a household through marriage is the human right of the petitioners as citizens and the human rights of the applicants to maintain their respective religions. According to the author, the judge's consideration is not appropriate because the judge only focuses on material requirements and does not meet the formal aspect, namely the legal requirements for marriage where the implementation must be in accordance with the laws of each religion and belief.

References

Book:

Abdulkadir Muhamad, Indonesian Civil Law, Bandung : PT Citra Aditya Bakti, 2014

Bagir Manan & Kuntana Magnar, some constitutional law issues, Bandung :P T. Alumni, 2017

Hilman Hadikusuma, Customary Marriage Law, Bandung: Alumni, 1977

Hilman Hadikusuma, Indonesian marriage law according to legislation, customary law, religious law, Bandung: Mandar Maju, 2007

Jamaluddin & Nanda Amalia, Textbook of Marriage Law, Sulawesi: Unimal Press, 2016

Universitas Buana Perjuangan Karawang

Vol. 9 No.1 (2024)

Submit: 10-Marc-2024

Revised: 15-Marc-2024

Published: 20-Marc-2024

Khoirul Abror, Marriage and Divorce Law, Yogyakarta: Kata Farm, 2020
Kamarusdiana, Philosophy of Law, Jakarta : UIN Jakarta press, 2018.

K.Wantjik Saleh, Indonesian Marriage Law, Jakarta: Ghalia, 1992

Moh.Ali Wafa, Marriage Law in Indonesia, South Tangerang: Yasmi, 2018

Moch Anwar, Fundamentals of Islamic Law in Determining Decisions in Religious Courts, Bandung: Dipenogoro, 1991

Mahmud Janus, Marriage Law in Islam, Jakarta: Al-Hidayah, 1964

Mukti Akto, Civil Case Practice in Religious Courts, Yogyakarta: Student Library, 2004

O.S.Eoh, Interfaith Marriage in Theory and Practice, Jakarta: PT. Raja Grafindo Persada, 1996

Octavianus Eoh, Interfaith Marriage in Theory and Practice, Jakarta: Sri Ginting, 1996

Sirman Dahwal, Interfaith Marriage Law in Theory and Practice in Indonesia, Bandung: Mandar Maju, 2016

Sution Usman Adji, Elopement and Interfaith Marriage, Yogyakarta: Liberty, 1989.

Sri Wahyuni, Interfaith Marriage: Why Go Abroad, Jakarta: PT. Alvabet Library, 2016

Tihami and Sohari Sahrani, Fikih Munahakat, Jakarta: Rajawali Pres, 2013

Zakiyah Darajat et al, Jurisprudence, Jakarta: Depag RI, 1985

Journal Article:

Syamsul Bahri & Adama, Legal Effects of Interfaith Marriage According to Law No.1 of 1974 concerning Marriage, Journal of Islamic Family Law and Humanity, Vol.2, 2020

Universitas Buana Perjuangan Karawang

Vol. 9 No.1 (2024)

Submit: 10-Marc-2024

Revised: 15-Marc-2024

Published: 20-Marc-2024

Andi Susanto & Nurul Bisyaroh, Interfaith Marriage According to the Perspective of Islamic Law and Law Number 1 of 1974, Journal of Islamic Family Law, Vol.2, 2022

Abd.rozak A, Legal Studies on Interfaith Marriage (Comparison of Several Countries), Jakarta, 2011

Auril Amri, Interfaith Marriage According to Positive Law and Islamic Law, Journal of Sharia Media, Vol.22, 2020

Candra Refan & Ismail Marzuki, Interfaith Marriage in Indonesia; Juridical Perspectives, Religions and Human Rights, Journal of Sharia and Islamic Law, Vol.8, 2023

Jane Marlen Makalew, Legal Effects of Interfaith Marriage, Journal Lex Privatum, Vol.1, 2013.

Lysa Setiabudi, Analysis of Interfaith Marriage (Study of District Court Decisions Related to Interfaith Marriage Permits), Semarang, 2016.

Luqman, Interfaith Marriage According to Fiqah Perspective, Journal of Da'wah and Communication Science, Vol.17, 2022

Legislation:

Constitution of the Republic of Indonesia 1945 Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Marriage