

Analysis of Regulations Regarding Interfaith Marriages According to a Religious Perspective, Marriage Law and Decision No. 916/Pdt.P/2022/Pn.Sby

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Abstract

Marriage in Indonesia is carried out by obtaining legal recognition from religion and the state. The Marriage Law stipulates that a legal marriage must follow the religious beliefs that are believed in. In Indonesia, the practice of interfaith marriage that is not allowed is Islam and Hinduism, while Catholicism and Protestantism, Buddhism and Confucianism are four religions that allow marriage with different religions. The Compilation of Islamic Law and SEMA dated January 30, 2019 number 231/ PAN/HK.0 1/2019 also regulates not recognizing interfaith marriages so that such marriages cannot be registered. However, Court Decision No. 916/Pdt.P 2022 /PN.Sby granted the applicants' request to legalize and register and record the marriage of the parties. Thus, for the parties who are married of different religions in the case. Have a valid marriage before the law and the state for interfaith marriages. However, in 2023, SEMA Number 2 of 2023 was issued on July 17, 2023 concerning Instructions for Judges in Adjudicating Cases of Applications for Marriage between People of Different Religions and Beliefs, which are prohibited from being granted by the court.

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1. INTRODUCTION

The concept of marriage is likened to an actual and real human action based on existing legal regulations, to establish family relationships, give birth to children, and produce assets or money that support household life so that happiness can be realized (Bahri & Elimartati, 2022). Furthermore, marriage is defined as a man establishing a physical and spiritual relationship with a woman of his choice to become a husband-and-wife couple for the purpose of building a long-lasting and happy domestic life on the basis of the Almighty God. This understanding is as interpreted in the regulations in Article 1 of Law No.1 of 1974 concerning Marriage ("Marriage Law"). A marriage in Indonesia is carried out by obtaining legal recognition from religion and the state. The Marriage Law stipulates that a legal marriage must follow one's religious beliefs. From the phrase "on the basis of Almighty God", it can be concluded that the marriage taking place cannot be separated from the religious side. Religion plays an important role in the context of Indonesian society's life. Indonesia is famous for the diversity of religions adhered to by its citizens. Freedom of religion and embracing one's own beliefs is also supported in the regulations of the 1945 Constitution (hereinafter referred to as the "1945 Constitution"). This fact means that Indonesian society is not immune to marriages with different religious beliefs.

In a marriage between a man and a woman, where both parties do not believe in the same religion and beliefs, this is said to be an interfaith marriage. Marriages with different religions can also occur between fellow Indonesian citizens (WNI), namely an Indonesian man and an Indonesian woman with different religions, or between different nationalities, namely one Indonesian woman/man and her partner who is a foreign citizen and both have

different religions (Rozak, 2011). However, interfaith marriage is often a social issue discussed by various parties, including legal practitioners, religious leaders and the community. This is because the concept of marriage to a different religion in some religions is not permitted, plus marriage to a different religion in Indonesia is also not supported by state regulations. Marriages with different religions are seen as illegal, which makes registering marriages with different religions very difficult. However, in 2022, the Surabaya Court Judge issued a court decision regarding the registration of interfaith marriages through Decision Number 916/Pdt.P/2022/PN.Sby on April 26 2022. The granting of the related decision raised hope for couples with different religions, however At the same time, it also sparked debate among religious leaders and legal practitioners in Indonesia because it was deemed not in accordance with religious guidelines.

In connection with the many debates that have occurred regarding this issue, the author wants to research the regulation of interfaith marriages based on religious perspectives, the Marriage Law, and Judge's Decision Number 916/Pdt.P/2022/PN.Sby. Based on the explanation in the background as previously explained, there are 2 (two) issues that will be raised in writing this article, namely: (1) What are the legal regulations regarding interfaith marriages according to a religious perspective and the Marriage Law? (2) What are the legal regulations regarding interfaith marriages according to Judge's Decision Number 916/Pdt.P/2022/PN.Sby?

2. RESEARCH METHOD

Articles are created using normative legal research methods, or what are called doctrinal research methods. The author chose this method because the process of conducting this research was closely related to statutory regulations, especially Law No.1 of 1974 concerning Marriage and Law No.16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage as positive law. Apart from that, to enrich references, the author also collects data from various reading materials, such as books, research reports, journals, articles, thesis research results, and court decisions. In this research process, we will use the statutory approach method (*statute approach*) which uses positive legal aspects as research material

3. RESEARCH RESULTS AND DISCUSSION

3.1 Legal Arrangements About Marriage of Different Religions According to Religious Perspectives and Marriage Laws

The phenomenon of interfaith marriage is not something new in social life in Indonesia. Even though it has happened frequently, up to now it is still a contentious issue and there is no absolute solution regarding this matter. Examining the issue of marriages with different religions, it is mandatory to rely on the main legal basis, namely Law No.1 of 1974 concerning Marriage (hereinafter referred to as "Marriage Law") and its amendments, namely Law No.16 of 2019. Based on Article 2 paragraph (1) The Marriage Law has regulated that marriage will be recognized and said to be legal if its implementation is carried out based on the religious teachings and beliefs of each individual. The article explains explicitly that marriage does not exist apart from each person's beliefs and religion. This provision is strengthened by PP No. 9 of 1975 concerning the Implementation of the Marriage Law, specifically Article 10 paragraph 2 states that the process of implementing a marriage is carried out with reference to the rules of religious law and the beliefs of each individual. In these conditions, it is clear that apart from being guided by state regulations, the regulations for the implementation of a marriage in Indonesia are also very closely dependent on each religion. So, whether a marriage is permissible or not, apart from having to refer

to the provisions of the Marriage Law along with Law No. 16 of 2019 concerning Amendments to the Marriage Law, at the same time it is also necessary to refer to the provisions of the religious law of the parties who will carry out the marriage (Cantonia & Ilyas Abdul, 2021).

From the perspective of religious law in Indonesia, there are 6 (six) types of religions known, consisting of Islam, Catholicism, Protestant Christianity, Buddhism, Hinduism and Confucianism. Each law in each religion also has different provisions regarding the concept of interfaith marriage. For example, according to Islamic teachings, in principle interfaith marriages are not permitted (Witoko & Ambar Budhisulistiyawati, 2019). In the Compilation of Indonesian Law (later called "KHI"), in particular Article 40 letter c regulates the prohibition of marriage for a Muslim man with a non-Muslim woman (Department of Religion of the Republic of Indonesia, 2000). In addition, Article 44 of the KHI also regulates the prohibition of marriage between Muslim women and men who are not Muslim. Likewise, in Catholicism, marriage to people of different religions is not permitted. This is different from the perspective of Christian religious law, Christians and non-Christians are allowed to marry under certain conditions (Azhari & Fauziah Lubis, 2022), for example the marriage process between the prospective bride and groom must take place in church and children born to the couple The person will receive upbringing/education according to the teachings of the Christian religion. This means that interfaith marriages are permitted as long as the method of carrying out the marriage meets the conditions required by Christian religious teachings.

In Hindu religious teachings, the practice of marriages with different religions is not justified because based on Hindu legal regulations, a marriage can only be legalized if the bride and groom are both Hindus. There is a special ritual known as the Sudhiwadani ceremony for the bride and groom who will convert to Hinduism so that their marriage can be legally validated. In the context of Buddhism, there are no provisions that prohibit the practice of interfaith marriages, as long as the non-Buddhist bride and groom are willing to follow the marriage process based on Buddhism even though the bride and groom are not Buddhists. Meanwhile, in Confucian religious teachings, the view is that differences in nationality, ethnicity, culture and religion are not considered an obstacle/problem to marriage. In other words, interfaith marriages according to the Confucian religion are permitted.

As a result of the various obstacles mentioned above, many interfaith couples tend to be forced to give up their religion and follow their partner's religion so that their marriage can be registered. This practice is contrary to the basic human rights regarding freedom of religion which are regulated in Article 29 of the 1945 Constitution (hereinafter referred to as the "1945 Constitution") and Article 28E paragraph (1) of Law Number 39 of 1999 concerning Human Rights (hereinafter referred to as the "Human Rights Law"). Basically, Human Rights (HAM) are rights given as recognition of the essential value of humans which cannot be contested or taken away by other people, and cannot be limited by external forces (Suadi, 2019). The right to freedom of religion is an example of a fundamental human right, however the implementation of this right has not yet been implemented comprehensively and effectively. This can be seen because in the case of interfaith marriages in Indonesia there are still challenges, both in terms of law and social and religious norms. One example is expulsion Supreme Court letter dated 30 January 2019 number 231/PAN/HK.05/1/2019 ("SEMA 2019"), which essentially states that the Indonesian State does not recognize the existence of interfaith marriages so that these marriages

cannot be registered. Except, a marriage can be registered if one of the partners gives in to converting to the other's religion and the marriage is performed according to the religion of the person being converted.

Based on these provisions, often one of the prospective bride and groom must submit themselves to converting to the religion of their husband/wife so that the marriage can be registered religiously because there are conditions that must be met (Ministry of Religion of the Republic of Indonesia, 2024). It is not uncommon that even though religious matters can be registered, civil registration is also made difficult and requires interfaith couples to first obtain a court order. This fact is basically quite confusing because it does not comply with the provisions of Law Number 23 of 2006 concerning Population Administration ("UU Adminduk"), especially Article 35 letter a, which provision does not prohibit the registration of marriages for couples of different religions. Civil registration of marriages is a formal requirement for the validity of a marriage in Indonesia, so that legal certainty can be realized and legal protection can be obtained for the marriage (Ukhuwah, 2021). As a result, it is not enough if a marriage is only considered valid based on religious rules, because the marriage is not legally recognized as valid if it has not been civilly registered with the competent authority. These risks resulting in other civil problems arising for husbands and wives of different religions, such as the legal status of children born from the marriage not being recognized as legitimate children, and the implementation of marital rights for couples of different religions also becoming difficult to enforce, such as regarding joint property claims and division of inheritance rights. This reality is quite sad because it violates the provisions of Article 28I paragraph (1) of the Human Rights Law to be free to choose one's own beliefs and seems to make it difficult for couples of different religions, even though "Bhinneka Tunggal Ika" as the motto of the Indonesian nation means "even though they are different, they are still considered one."

Legal perspectives on the concept and implementation of interfaith marriage in Indonesia are very diverse. The implementation of interfaith marriages according to the basic interpretation of the Marriage Law and the Administering Law is still permitted. However, the procedures for implementing and permitting interfaith marriages are not clearly regulated. Despite this lack of clarity, supporting the implementation of universal human rights as regulated in the 1945 Constitution and the Human Rights Law regarding religious freedom was also taken into consideration by the judge so that there was a breakthrough in the law regarding the granting of requests for interfaith marriages. However, this is contrary to the view from the perspective of religious teachings which do not allow marriage between people of different religions. This has become a reference for religious leaders and several civil registration offices not to allow interfaith marriages to take place. Moreover, the publication of SEMA 2019 and SEMA 2023 is the basis for supporting this ban. However, civil registration of marriage is required as proof of a legal marriage. Proof of marriage is important, especially as a form of protection and ensuring certainty of the civil rights of each bride and groom and the offspring born from the marriage.

Different religions and actual reality conditions, this issue often becomes a social debate due to inconsistent state legal regulations and unclear regulations regarding interfaith marriages. Not only discussing religious teaching guidelines, but it is also necessary to pay attention to all aspects that are factors in the occurrence of interfaith marriages in Indonesia. It is very strange that carrying out a marriage in Indonesia, which should be a happy event, is instead filled with various obstacles, starting from religious recognition, the difficulty of the registration process in civil authorities and

now there are obstacles for the courts to approve dispensations for interfaith marriages. This is actually unnatural considering the geographical conditions of Indonesia which is inhabited by people with various religions, so in principle it is very possible for couples of different religions to love each other and want marriage. Therefore, it is very ironic that interfaith marriages in Indonesia are not permitted, and are not even recognized because the legal umbrella in this country does not yet regulate it.

Plus, from the perspective of universal human rights, The Indonesian state's opposition to interfaith marriage is also a form of discrimination, because contrary to the foundation of Human Rights which limits the religious freedom of its citizens. Although, in principle, people are not explicitly forced to change religions, but based on the interpretation of the 2019 SEMA provisions, it has been indicated that one partner must give in to their partner's religion so that their marriage can be registered civilly. This includes indirect coercion and discrimination because of the possibility that people are actually not willing, but are forced to convert their religion in order to fulfill the requirements so that the marriage can be solemnized and registered in Indonesia. This condition is not a good sign in social life, which can trigger young generations to become increasingly distant from religion, because they see religion as an obstacle. To find a solution to the description of the matters above, officials who have the authority to formulate laws and regulations are expected to reconsider the regulations for the implementation of interfaith marriages and regulate them in an explicit and clear manner so that there is no misinterpretation within society. Apart from that, it is also hoped that the Supreme Court can withdraw or revise the 2019 SEMA and 2023 SEMA to ensure human rights.

3.2 Legal Regulation Regarding Interfaith Marriages According to Judge's Decision Number 916/Pdt.P/2022/PN.Sby

On April 26 2022, there was a case that was in the spotlight among the public because through the Judge's Decision in Surabaya Number 916/Pdt.P/2022/PN.Sby the application for an interfaith marriage case was legalized. In this decision, the parties involved, namely Petitioner I on behalf of Rizal Adikara, born in Surabaya on April 28 1986, have Indonesian citizenship, Muslim religion, and live at Jalan Ketintang Baru 8/6 Surabaya, and Petitioner II on behalf of Eka Debora Sidauruk, born in Simalungun on May 12 1991, is an Indonesian citizen, Christian, and lives at Jalan Ketintang Baru 8/6 Surabaya (hereinafter collectively referred to as the "Applicants"). The bride and groom requested a decision from the judge at the Surabaya District Court for the implementation of an interfaith marriage. Some of the judge's considerations regarding the main points of the Petitioner's petition as stated in the decision are as follows: (a) Article 28B paragraph (1) and Article 29 of the 1945 Constitution. Based on Article 29 of the 1945 Constitution, it is regulated that citizens can freely choose and adhere to their religion in accordance with the belief they choose and Article 28B paragraph (1) of the 1945 Constitution regulates that every person after entering into a legal marriage has the right to form family relationships and continue their offspring, so that the Petitioners who embrace different religions want to maintain their religious beliefs and carrying out marriage is a legal thing and allowed. (b) Explanation of Article 35 letter a of the Population Administration Law. The explanation of this article emphasizes that the court actually has the authority to determine marriages between people of different religions. This provision is a solution for interfaith marriages so that marriage registration can be carried out after a court decision is obtained. (c) Article 6 paragraph (1) and Article 7 of the Marriage Law. Based on Article 6 paragraph (1) which regulates the agreement between the two prospective bride and

groom to get married and the provisions of Article 7 regarding the age of marriage as regulated in the Marriage Law, the Petitioners' conclusions are drawn. have fulfilled the material requirements for marriage. (d) Article 8 letter f of the Marriage Law and Article 35 letter a of the Administering Law. Based on the provisions of Article 8 letter f of the Marriage Law and Article 35 letter a of the Administering Law, differences in religion are not an obstacle to the implementation of marriage and regarding the issue of interfaith marriages it is the authority of the District Court to examine and decide.

Based on the judge's considerations above, the Petitioners' demand to be able to carry out their marriage based on their respective beliefs and religious beliefs before an official at the Surabaya City Population and Civil Registry Office, was ultimately granted by the judge. At the same time, the Judge also instructed Surabaya City Population and Civil Registry Disdukcapil officials to register the Applicants' interfaith marriages in the Marriage Registration Register and also issue their Marriage Certificates. The decision was made based on the judge's consideration of the interpretation of the articles in the Marriage Law and the Administering Law as basic regulations for marriage, taking into account the concept of human rights based on the 1945 Constitution. This decision has opened up opportunities for interfaith couples in Indonesia to have their marriages recognized as valid. and officially registered by the state, so that prospective brides and grooms who adhere to different religions do not have to be forced to change religions in order to legalize their marriage.

However, this hope was again dashed after the publication of Circular Letter of the Supreme Court of the Republic of Indonesia Number 2 of 2023 on 17 July 2023 regarding Instructions for Judges in Adjudicating Marriage Applications Between People of Different Religions and Beliefs (hereinafter referred to as "SEMA 2023"). Based on the instructions in SEMA 2023, requests regarding the registration of marriages between couples with different religions and beliefs are prohibited from being granted by the court (Kharisma, 2023). This prohibition has become an obstacle for judges and has even decided on their authority to accept requests for interfaith marriages in the future (Hermanto, 2024). For couples whose religions are different to be able to get married, the only option left is to change religions because interfaith marriages are not recognized according to existing law in this country. Such conditions are not in line with the spirit espoused in the motto "Bhinneka Tunggal Ika" and clearly violate the concept of guaranteeing freedom of human rights in religion according to their respective beliefs.

4. CONCLUSION

Indonesia recognizes the existence of six religions which are included in civil records. Of the six religions, the practice of interfaith marriages that are not permitted are Islam and Hinduism, while Catholic and Protestant Christianity, Buddhism and Confucianism are the four religions that allow marriages with different religions. In the Compilation of Islamic Law and Supreme Court letter dated 30 January 2019 number 231/PAN/HK.05/1/2019 also does not recognize the existence of interfaith marriages so that the marriage cannot be registered. However, court decision No. 916/Pdt.P/2022/PN.Sby granted the petitioners' request to legalize and register and record the parties' marriage. Thus, for parties who marry of different religions in this case. Having a valid marriage before the law and the State for an interfaith marriage. However, in 2023, Circular Letter from the Supreme Court of the Republic of Indonesia was issued Number 2 of 2023 on July 17 2023 regarding Instructions for Judges in Adjudicating Marriage Applications between People of Different Religions and Beliefs to be prohibited from being granted by the court. This prohibition has become

an obstacle for judges and has even decided on their authority to accept requests for interfaith marriages in the future

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