

REGISTRATION AND RECOGNITION OF INTERFAITH MARRIAGE IN INDONESIA

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ABSTRACT

Marriage is an important institution in society, which has a function to legalize the legal relationship between a man and a woman. To achieve a marriage that is considered legal, a marriage requires a recognition from the religion of each wedding couple. However, because Indonesia's population is diverse and plural in nature, the laws and religious norms that are expected to regulate these matters are still not unified and plural. On the other hand, to reduce the number of illegal marriages, courts in Indonesia allow interfaith marriages based on the Population Administration Law of Indonesia.

Keywords: *Interfaith marriage, Religious law, Positive law*

1. PREFACE

The right to marry and have children is a human right regulated in The 1945 Constitution of the Republic of Indonesia in Article 28B paragraph (1) which reads " Every person shall have the right to establish a family and to procreate based upon lawful marriage."

To mandate Article 28B paragraph (1) of The 1945 Constitution of The Republic of Indonesia mentioned above, a 'recognition' is needed so that a marriage can be considered valid. There needs to be definite laws and norms to regulate so that they can remain in line with the original goals and can be recognized by the society where these norms were born, in addition to being able to be registered, also to avoid unwanted social stigma in the future.

Recognition of a marriage that is considered valid is obtained in a form of religious recognition of each bride and groom's religion, which has the following functions: First, to confirm the existence of an agreement without duress between the bride and the groom concerned; Second, for the sake of announcing the marriage and obtaining proof of the marriage ceremony. The marriage ceremony above is also an exact time to explain to the wedding couple who bind the marriage bond about the legal rights obtained by each of them, as well as the legal obligations they have.

In what we see today, in Indonesia, the laws and norms that are expected to regulate the validity of marriages are still not fully unified and are still plural, resulting in confusion and confusion over these laws and norms. Frequently the laws and norms governing such marriages (including but not limited to religious laws and norms) clash and are out of sync with one another.

In Article 2 paragraph (1) of Law of The Republic of Indonesia Number 1 of 1974 on Marriage, it is stated that: " A marriage is legitimate, if it has been performed according to the laws of the respective religions and beliefs of the parties concerned." From this paragraph, the thing that determines whether a marriage is legal is the recognition of the religion adopted by the prospective bride.

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In Indonesia's positive law, it does not explicitly prohibit interfaith marriages. However, from the law of existing religions and Indonesia's position as a non-secular country, it can be interpreted that in Indonesia interfaith marriages cannot be held.

On the other hand, in Article 35 paragraph (1) in relation with the Elucidation of the Article 35 paragraph (1) of the Law of The Republic of Indonesia Number 23 of 2006 on Population Administration, it is possible to register interfaith marriages on condition that the court orders to legalize the marriage, so that then it can be concluded that to register interfaith marriages, specific court order from the local court judge is needed.

In fact, the determination of the judge's order cannot always please various parties, which then presents certain parties to then file a lawsuit against the judge's order that recognize interfaith marriages, such as in lawsuit case Number 658/Pdt.G/2022/PN Sby.

Nevertheless, judges must be free from the influence of powers outside the judiciary, including executive, legislative, and even powers outside the judiciary in society, such as the press. Judges, when examining and adjudicating, shall be free to determine their own methods of examining and adjudicating, freedom of judges means freedom of judicial institutions. The purpose of this research is to find out how registration and recognition of interfaith marriages in Indonesia.

2. RESEARCH METHODS

This study uses a juridical-normative approach. The legal materials used are primary, secondary, and tertiary legal materials. This research uses data collection techniques through law books or looking for related laws and regulations, collecting written materials, and collecting related court decisions.

3. RESULTS AND DISCUSSION

Interfaith marriages from the views of religions in Indonesia

The religions recognized in Indonesia are those under the auspices of the Ministry of Religion of the Republic of Indonesia, which consist of Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism. The Ministry of Religion of the Republic of Indonesia conducts functions including formulation, determination, and implementation of policies in the field of guidance for the Islamic, Protestant, Catholic, Hindu, Buddhist, and Confucian communities.

Law in Indonesia places religions in a hierarchical status. Currently Islam, Buddhism, Hinduism, Catholicism, and Protestantism and since January 2006, Confucianism, is recognized as a religion by the Ministry of Home Affairs. However, several other religions, which have met this criterion, such as Judaism and Sikhism, have not been recognized, although they are still legally allowed to operate, and the government can provide assistance.

The branches/flows of beliefs have the same equality as religions that are recognized in Indonesia so that the branches/flows of beliefs have the right to a place of worship, to carry out marriage rituals, to receive education about their beliefs, etc. to be fulfilled.

Those who adhere to branches/flows of beliefs outside the six recognized religions known to the general public in Indonesia such as Christianity, Catholicism, Islam, Hinduism, Buddhism and Confucianism are called "Penghayat Kepercayaan" or believers of branches/flows of beliefs.

In Islam, in Surah Al-Baqarah verse 221, it is explicitly explained that marriage between a

Muslim man and an idolatrous woman is unlawful or absolutely prohibited: " Do not marry polytheistic women until they believe; for a believing slave-woman is better than a free polytheist, even though she may look pleasant to you. And do not marry your women to polytheistic men until they believe, for a believing slave-man is better than a free polytheist, even though he may look pleasant to you. They invite 'you' to the Fire while Allah invites 'you' to Paradise and forgiveness by His grace.¹ He makes His revelations clear to the people so perhaps they will be mindful." (Surah Al-Baqarah: 221)

In Surah Al-Maidah 5 verse 5, Allah SWT gives a dispensation in the form of the right for Muslim men to marry women from the People of the Book, because that these women are actually the same as the arrival of the Divine Book as well as Muslims. However, Hazairin argues that the dispensation given has conditions, including in a situation where it is difficult to find Muslim women around the Muslim man who want to build a family, while in the situation in Indonesia, it is difficult for Muslims to use the dispensation in Surah Al-Maidah 5 verse 5, because it is not difficult to find and marry a Muslim woman in Indonesia, as the majority of the population is Muslim.

The Indonesian Ulema Council expressly issued a fatwa on June 1, 1980, that forbids the marriage of Muslim men with non-Muslim women (including women from the People of the Book), with the consideration that the damage incurred is greater than that for family life, especially for the lives of children born from the marriage of people of different religions.

In the Compilation of Islamic Law, which applies to Muslims in Indonesia based on the Instruction of the President of the Republic of Indonesia Number 1 of the year 1991 dated June 10, 1991 and the Decree of the Minister of Religion of The Republic of Indonesia Number 154 of 1991 concerning the Implementation of the Instruction of the President of The Republic of Indonesia Number 1 of 1991 dated June 10, 1992, explicitly provides an explanation of the prohibition of interfaith marriages. This can be seen in Article 40 letter c of the Compilation of Islamic Law which can be translated as "It is prohibited to perform marriage between a man and a woman under specific conditions: ...a woman who is not Muslim" and Article 44 letter c of the Compilation of Islamic Law which can be translated as "A Muslim woman is prohibited from marrying a man who is not Muslim."

In Protestantism, the law that still applies is HOCI (*Huwelijk Ordonantie Christen Indonesiers*), S. 1933 No.74. Article 75 which reads "Marriage between a non-Christian man and a Christian woman can be carried out according to the law of the bride at the request of the bride and groom."

The views from the Communion of Churches in Indonesia (Persekutuan Gereja-gereja Indonesia or PGI) towards marriages of citizens of different religions, as stated in the Decree of the MPL-PGI Session No. 01/MPL-PGI/1989 concerning the Understanding of Churches in Indonesia regarding the Legality of Marriage and Marriage of Citizens of Different Religions, can bless interfaith marriages. This means that the Christian church provides marriage blessings for prospective couples of different religions. This is applied to eliminate friction between potential couples of interfaith marriages.

In the result of the dialogue between the Bishops' Conference of Indonesia and the Indonesian Communion of Churches, in Malang on 12 to 14 March 1987, the Catholic Church views interfaith marriages as one of the obstacles to a legal marriage, as stated in Canon 1086.

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Marriage between Catholics and people who are not baptized as Catholics is invalid, except by dispensation.

What is meant by dispensation is that in a state of necessity, the Catholic Church can grant dispensation if a non-Catholic party is willing to promise to: accept a Catholic marriage, will not divorce the Catholic side, will not prevent the Catholic side from practicing their faith, and is willing to educate their children are Catholic. On the other hand, the Catholic bride or groom must also promise to: remain faithful to the Catholic faith and strive to bathe and educate all their children in a Catholic way.

In Hinduism, marriage can only be legalized according to Hindu law, which means that both the wedding couple or one of them are not yet Hindu, so the marriage cannot be legalized. To legitimize someone to enter Hinduism, they must be performed *sudhi wadani* or *disudhikan*.

If the wedding couple who want to conduct the marriage are not purified first by entering Hinduism, and then they continue to carry out the marriage, then they will violate the provisions in *Seloka V89* of the *Manawadharmasastra* book which reads:

“Purification water cannot be given to those who do not pay attention to the ceremonies that have been determined, so that it can be considered that their birth was in vain, nor can it be given to those born from mixed caste marriages informally, to those who become ascetics. from the apostates and to those who die by suicide.”

Buddhism never taught the necessity or prohibition, especially in marriage. Based on the teachings of freedom, Buddhists are not prohibited from binding marriages with non-Buddhists.

Sangha Agung Indonesia allows interfaith marriages, as long as the marriage is legalized according to the Buddhist method. Thus, prospective brides who are not Buddhist are not required to enter Buddhism first. Then in the marriage ritual the wedding couple need to say, "in the name of the Buddha, Dharma and Sangka." The pronouncement does not mean that the prospective wedding couple who is not Buddhist becomes a Buddhist.

In Confucianism, according to the vice chairman of the Supreme Council for the Confucian Religion in Indonesia (MATAKIN), Uung Sendana, differences in understanding, class, nation, culture, ethnicity, politics, or religion, do not become a barrier to prevent a marriage, even though a blessing ceremony (*Li Yuan*) cannot be held.

Religious blessing ceremonies (*Li Yuan*) for different religion wedding couple will not be carried out by the Supreme Council for the Confucian Religion in Indonesia (MATAKIN), because this has been stipulated in the *Aturan Dewan Rohaniwan Agama Konghucu* and in the *Matakin Marriage Law*. Although the religious blessing ceremony (*Li Yuan*) cannot be carried out, the Confucian High Council of Religion will not hinder the marriage, on the contrary, the Supreme Council for the Confucian Religion in Indonesia (MATAKIN) will issue an official marriage acknowledgement.

Registration of Interfaith Marriage

Interfaith marriages under positive law of Indonesia are not expressly prohibited, moreover, interfaith marriages are allowed to be recorded at the Population and Civil Registration Office as stated in Article 35 and the Elucidation of Article 35 of Law of The Republic of Indonesia Number 23 of 2006 on Population Administration.

In contrast to the requirements for registration of same-religious marriages which require an official marriage acknowledgement from a religious leader/pastor or an acknowledgement from Penghayat Kepercayaan (branches/flows of beliefs) signed by the beliefs' leader, the requirement for registration of interfaith marriages is different.

The requirements for registering interfaith marriages require a legalized copy of a court order, as stated in Article 50 paragraph (3) of the Regulation of the Minister of Home Affairs of The Republic of Indonesia Number 108 of 2019 concerning implementation of Regulations of Presidential Regulation Number 96 of 2018 concerning Requirements and Procedures for Population Registration and Registration Civil.

4. CONCLUSION AND RECOMMENDATIONS

The meaning of the validity of marriage in Indonesia is closely related to the religious law of each bride, as stated in Article 2 paragraph (1) of Law of The Republic of Indonesia Number 1 of 1974 on Marriage. This causes religions that do not approve of interfaith marriages to prevent interfaith marriages.

Most religions in Indonesia, namely Islam, Hinduism, and Confucianism cannot approve interfaith marriages, while the Communion of Churches in Indonesia and the Sangha Agung Indonesia state that Christianity and Buddhism do not prohibit interfaith marriages. The views from the Bishops' Conference of Indonesia does not accept interfaith marriages, but the Catholic Church can provide dispensation for interfaith marriages.

Although it can be rejected by religion, interfaith marriages can be registered at the local Department of Population and Civil Registration Office on a condition that they receive a local court order.

RECOMMENDATIONS

Positive law in Indonesia should have only one way or one rule to unify existing marriage regulations that tend to vary, including religious law and law between groups inherited from the Dutch colonial era.

The existence of religious norms and legal norms in the same legislation has the potential to weaken each other and even contradict each other. Therefore, it is necessary to synchronize the laws and regulations relating to religious law or belief with the construction of state law regarding marriage.

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