

RELIGIOUS NATIONAL LAW BASED ON PANCASILA ON INTERRELIGIOUS MARRIAGE IN INDONESIA

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Submitted: July 2022, Revision: December 2022, Accepted: May 2023

ABSTRACT

Marriage is essentially a citizen's right which is guaranteed by Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The dynamics of law in the field of marriage in Indonesia continue to develop along with the progress of civilization. Since the colonial era, which imposed the division of community groups, legal pluralism, including provisions for interfaith/interfaith marriages, was still possible. Then Law No. 1/1974 on marriage was issued as an effort to codify and unify the national marriage law. With this new rule, it does not explicitly regulate interfaith marriages, so in society, there is a paradigm shift towards the permissibility of interfaith marriages. Therefore, this study seeks to examine how the legal aspects of interfaith marriages in Indonesia are based on applicable positive law. For this reason, this research uses normative juridical research with a statutory and conceptual approach. The data is used in the form of secondary data that is processed qualitatively, based on content analysis with legal reasoning and interpretation. The results of the study indicate that the legal requirements for marriage in Indonesia are carried out according to the laws of their respective religions and beliefs and the marriage must be registered. The Marriage Law implicitly does not allow the holding of interfaith marriages which is confirmed by the Constitutional Court Decision Number 68/PUU-XII/2014 because it is contrary to the principles of the Pancasila state law based on Indonesia Constitution. However, there are still legal remedies for couples to carry out interfaith marriages. by holding it abroad which recognizes interfaith marriages and registers them in Indonesia, or requests a court order to carry out interfaith marriages. This is a form of smuggling and legal alienation which results in the loss of the authority of national law. Efforts to overcome this are by reforming or improving the national marriage law (especially interfaith marriage) and harmonizing laws and regulations to avoid the void, ambiguity, and legal antinomy in the field of marriage.

Keyword: Indonesia, interfaith marriage, law and regulations

1. PREFACE

Marriage is one of the dimensions of life that is essential for human life anywhere. The importance of marriage cannot be separated from the role of the state, religion, and customs in society. The importance of marriage for the state is reflected in the recognition of the constitutional rights of citizens as stipulated in Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), which states that "everyone has the right to form a family and continue offspring through legal marriage". The birth of state recognition of the freedom to marry cannot be separated from the mono dualistic nature of human beings who tend to want to live together and gather with other humans. According to Wirjono Prodjodikoro, marriage is a condition of living together of a man and a woman who meets certain conditions, and basically, marriage is an agreement that binds physically and mentally based on faith. In line with that, Sayuti Talib also stated that marriage is a sacred agreement between a man and a woman to form a family [1].

As a consequence of the adoption of the Pancasila state law, all aspects of people's lives must be regulated based on applicable laws, one of which is related to the aspect of marriage [2]. The Indonesian nation as a country based on Pancasila has its characteristics in regulating marriage which is lifted from the values of customs, culture, and religious values crystallized in the

Pancasila value system. With such a value system, the Indonesian nation has the characteristics of togetherness, kinship, and religious nature so that it reflects a state that has one Godhead as contained in the preamble to the 1945 Constitution of the Republic of Indonesia which reflects that the Indonesian nation is not a secular state that separates religion and the state. nor is it a religious state that exercises state power based on a particular religion [3]. In essence, marriage is a legal act that is closely related to religious values, but given the pluralism of religion in Indonesia, it is not possible to make marriage law rules that are solely based on one particular religious value by ignoring the values that exist. exist in other religions. In the context of marriage, there is legal and religious pluralism including the heterogeneity of the Indonesian nation experiencing dynamics over time. So it is undeniable that there are contacts between ethnicities, tribes, and religions. This is what then underlies the existence of interfaith marriages.

During colonialism which applied the division of community groups based on Article 131 and Article 163 of the Indische Staatsregeling (IS), there were several rules in the field of marriage law based on the group, as follows: [4] (a) For native Indonesians who are Muslims, the religious law as presupposed in customary law applies; (b) For native Indonesians, customary law applies; For Indigenous Indonesians who are Christians, the *Huwelijks Ordonnantie Christen Indonesia* (*Statesblad* 1933 Number 74) applies; (c) For East Chinese Foreigners, Indonesian Citizens, the Civil Code with amendments applies; (d) For other foreigners and Indonesian citizens of foreign descent, their customary law applies; (e) For Europeans and Indonesian Citizens of European descent, the Civil Code applies; (f) For people who are going to do mixed marriages apply *Regeling od de Gemende Huwejlken (GHR)*, *staatsblad* 1989 Number 158 [5]. In the provisions of Article 7 paragraph (2) the GHR states that "Differences in religion, ethnicity, descent, are not a barrier to the occurrence of a marriage".

In Article 26 of the Civil Code, it is stated that "the law views marriage only in relationships"[6]. According to Subekti, the provisions in Article 26 are meant to state that a valid marriage is only a marriage that fulfills the conditions stipulated in the Civil Code, while the conditions according to religious law are set aside [7]. Then in its development, the government issued Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 (hereinafter referred to as the Marriage Law). Article 1 of the Marriage Law states that "Marriage is an inner and outer bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the One Godhead". In the explanation of the article it is emphasized that as a country based on Pancasila, where the first precept is God Almighty, marriage has a very close relationship with religion/spirituality, so marriage not only has physical/physical elements, but also spiritual/religious elements. has an important role.

With the new norm, there is a paradigm shift in the validity of the marriage. This is also following the opinion of Sidi Gazalba who said that it is not a marriage if the inner and outer bond is not happy or the marriage is not eternal and is not based on the One Godhead [8]. With the enactment of the Marriage Law, the previous Law is no longer valid unless the norms related to marriage that has not been regulated in the Marriage Law are still valid based on Article 66 of the Marriage Law that:

"For marriage and everything related to marriage based on this Law, with the enactment of this Law the provisions stipulated in the Civil Code (*Burgerlijk Wetboek*), Indonesian Christian Marriage Ordinance (*Huwelijks Ordonantie Christen Indonesiers*) S.1933 No. 74), Mixed Marriage Regulations (*Regeling op de gemengde*

Huwelijken S. 1898 No. 158), and other regulations governing marriage to the extent that it has been regulated in this Law, are declared null and void”.

However, the previous law was not completely invalid, only the articles that had been regulated in the Marriage Law were abolished so that later there was a gap that in the context of interfaith marriages it had not been or was not regulated in the Marriage Law so that the regulation regarding interfaith marriages still refers to Article 7 paragraph (2) of the GHR which does not stipulate a prohibition on interfaith marriages.

Along with the development of society, the problems that occur are increasingly complex. Regarding interfaith marriages, there are still pros and cons in society. One opinion says that religious matters are individual problems so the state does not need to make arrangements that include religious elements. However, on the other hand, some argue that inter-religious marriage is prohibited by religion so it cannot be accepted. In addition, there are also problems from the aspect of recognition from the state and religion of the marriage. [9]. To overcome such conditions, it is not uncommon for people to carry out legal smuggling. Legal smuggling or fraudulent Legis (Latin) is an act carried out by a person to obtain certain legal consequences (rights) based on foreign law which is based on national law the legal consequences will not be realized [10].

So that according to Wahyono Darmabrata, there are 4 (four) ways that couples who will marry of different religions, as follows: [11]

- a) Interfaith marriages are carried out by requesting a court order in advance based on the provisions of Article 35 of Law Number 23 of 2006 concerning Population Administration (hereinafter referred to as the Population Law).
- b) Interfaith marriages are carried out according to the laws of each religion. Marriage is carried out first according to the religious law of a bride (usually the husband), followed by marriage according to the religious law of the spouse of the bride. This marriage raises the issue of which marriage is considered valid and registered at the marriage registration office.
- c) Both partners make choices of law, one of which states that they are subject to the law of their partner's religion. In this way, one of the spouses "changes religion" as a form of legal submission.
- d) Interfaith marriages conducted abroad are based on Article 57 of the Marriage Law.

Given the reality and the phenomenon of problems in holding interfaith marriages, it is necessary to study the regulation of interfaith marriages based on positive legal provisions that apply in Indonesia, especially in terms of the Marriage Law. This is due to the ambiguity and ambiguity of the law in the regulation of interfaith marriages. On the one hand, normatively, the Marriage Law seeks to limit and prevent interfaith marriages. However, on the other hand, in practice, the government still accepts and registers at the office of religious affairs and the civil registration office for marriages held by different religions.

Based on the phenomena that develop in today's society as described previously, marriage as a sacred event for the Indonesian people is closely related to the religious aspect (religion and belief) and the juridical aspect (recognition by the state through marriage registration) so it is necessary to raise the subject matter of how Indonesia's positive law regulates and recognizes interfaith marriages?

2. RESEARCH METHOD

Research is a means to find new findings, in the form of correct knowledge, which is used to answer questions or solve a problem, including means to identify and select problems and conduct investigations on these problems freely [12]. Therefore, the research conducted is based on the point of view of legal science which according to Morris L. Cohen, "legal research is the process of finding the law that governs activities in human society" [13]. This legal research uses normative legal research that examines law based on principles, norms, legal rules of applicable laws and regulations, court decisions, agreements, or the doctrine of legal experts [14]. In line with that, the research approach that will be used to examine the problems of interfaith marriage in Indonesia is in the form of a statutory approach and a conceptual approach to be able to produce a prescriptive answer to provide an overview and solution to problems regarding the implementation of interfaith marriages in terms of legal aspects. positivist in the laws and regulations in Indonesia. The data used was obtained through library research in the form of secondary data consisting of primary legal materials in the form of the 1945 Constitution of the Republic of Indonesia, the Marriage Law, the Population Administration Law, and the Marriage Regulation. Secondary and tertiary legal materials are obtained from various books, journals, papers, dictionaries, encyclopedias, and other supporting literature regarding aspects of marriage [15]. Data is obtained by qualitative analysis based on substantial analysis using various legal interpretations and deductive reasoning [16].

3. RESULT AND DISCUSSION

The state of law Pancasila is a concept of a state of law based on 3 (three) pillars in the form of recognition and protection of human rights, an independent and impartial judiciary, and the principle of legality in the material and formal sense which is equipped and perfected with Indonesian aspirations crystallized in 5 (five) fundamental values based on the unique perspective and integralistic of the Indonesian nation [17]. In line with that, Mahfud MD pointed out the peculiarity of the Indonesian legal system which has a prismatic nature, namely a state of law that takes a certain side of another legal state and compares it with certain sides of another legal state into a new legal system. The principle of a prismatic rule of law is the basis for the establishment of a legal system based on Pancasila. The reasons for using this legal system are due to 2 (two) things, including (1) the sociological condition of the Indonesian nation which is different from other nations that adhere to secularism and religious beliefs, with the legal system of *rechtsstaat*, the rule of law, the Islamic legal system, and the state. authoritarian law; and (2) the pluralism of Indonesian society which consists of various religions and ethnic groups [18]

Along with the development of people's increasingly modern lives, advances in technology, transportation, and communication are increasingly opening up wide opportunities for people to establish relationships with each other, both between ethnic groups, races, religions, and certain groups. Pluralistic and pluralistic characteristics of the Indonesian nation like this result in socio-cultural interactions which in turn give rise to the phenomenon of cross-marriage between different religions, cultures, ethnicities, and/or groups [19].

About the state of Pancasila law related to the phenomenon of interfaith marriage, Mahfud MD stated the following characteristics: (a) It is familial by upholding human rights and prioritizing national interests; (b) Contains certainty and justice; (c) Reflecting on Indonesia as a Religious Nation State that the Indonesian nation is a nation that has divinity; (d) Law as a means of changing society and law as a reflection of society's culture; (e) The making and formation of national law is based on neutral and universal legal principles based on Pancasila.

Thus, the values in Pancasila become the principles, guidelines, philosophy, and ideas for the formation of law in the field of marriage in which the law formed based on Pancasila provides valid power whose legitimacy is perfect in regulating the life of the community, nation and state.

In the context of developing national law, according to Satjipto Rahardjo, one of the conflicts or tensions that arise is religious/religious interests. Based on the argument of Indonesia's diversity (diversity), various calls have emerged for the use of religiously based laws to be avoided. Instead, it is the call for the use of Pancasila as a guideline for national development that must be used. It seems that there is a paradox, considering that the first principle of Pancasila is "Belief in One Supreme God", which is the basis of the religiosity of the Indonesian nation. The extreme point occurs, because there is tension between those who seek to attract the development of a national law that separates religion from the state (secularism) purely, and conversely there is an attempt to attract the development of a national law that is the same as the teachings of a particular religion (religious state) [20].

In Indonesia, the law in the field of national marriage has been stipulated in Law Number 1 of 1945 concerning Marriage which explains the conditions for carrying out a marriage in Article 6 - Article 12 which includes substantial (material) and procedural (formal) requirements including:

- a. Material requirements regarding the personal self of the bride and groom who will carry out the marriage. The material requirements are generally regulated in Articles 6-11 of the Marriage Law as follows:
 - a) There is agreement from the two prospective brides (Article 6 paragraph (1));
 - b) There is permission from parents/guardians for prospective brides who are not yet 21 years old (Article 6 paragraph (2));
 - c) The age of the prospective bride and groom is 19 years old, both the groom and the bride (Article 7 paragraph (1));
 - d) Between the two prospective bride and groom are not bound by blood relations, family relations, relationships that are prohibited from marriage by religion and other applicable regulations (Article 8);
 - e) Not bound by marital relations with other people (Article 9);
 - f) Not divorced a second time with the same husband or wife, who is about to be married (Article 10); and
 - g) For a woman (widow) cannot remarry before the waiting time has passed (Article 11).
- b. Formal requirements are requirements concerning formalities or procedures that must be met before and at the time of the marriage as regulated in Article 12 of the Marriage Law jo. Article 10-11 of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage (PP No. 9 of 1975), which includes:
 - a) Notification of the will to enter into marriage to the Marriage Registrar;
 - b) Announcement by the Marriage Registrar;
 - c) Marriage research;
 - d) Implementation of marriage according to the law of each religion and belief;
 - e) Marriage registration by the Marriage Registrar.

However, for the material and formal requirements to be fulfilled, the essential requirements for the validity of a marriage (for those who wish to enter into an interfaith marriage) are regulated in Article 2 of the Marriage Law which states that:

Section 2

- (a) Marriage is legal, if it is carried out according to the law of each religion and belief.
- (b) Each marriage is recorded according to the prevailing laws and regulations.

What is meant by the law of each religion is rigidly regulated in the explanation of Article 2 paragraph (1) of the Marriage Law that with the formulation in Article 2 paragraph (1), there is no marriage outside the law of each religion and belief, by the Constitution. NRI of 1945. What is meant by the law of each religion and belief includes the provisions of the legislation that apply to their religious group and belief as long as they are not contradictory or otherwise stipulated in this Law. In this provision, it is interesting to understand that the Marriage Law does not explicitly regulate the permissibility of interfaith marriages, but leaves it up to religious institutions and beliefs to determine their permissibility. This is then confirmed by the provisions of Article 8 letter f which states that "Marriage is prohibited between two people who: f. have a relationship which by their religion or other applicable regulations, marriage is prohibited".

Problems that arise later regarding the recognition of the validity of marriage in the aspect of religion and beliefs that are submitted to religious institutions or institutions are the differences in paradigms or views of legal experts or religious leaders regarding the existence of interfaith marriages. The following tries to describe the views of several recognized religions in Indonesia regarding interfaith marriages:

Islamic View

In Islamic law interfaith marriage is prohibited, this is contained in the Qur'an which is the source of Islamic law. The prohibition of interfaith marriage is written in Q.S. Al-Baqarah verse 221: "And do not marry polytheist women until they believe. Verily, a believing slave woman is better than a polytheist woman, even if she attracts your heart. And do not marry the polytheists (to believing women) until they believe. Verily, a believing slave is better than a polytheist, even if he attracts your heart." This is emphasized again in the Compilation of Islamic Law (KHI) in Articles 40 and 44, which state that a Muslim woman is not allowed (haram) to be married to a non-Muslim man and similarly a Muslim man is not allowed to marry a non-Muslim woman [21]. Meanwhile, according to the Nahdatul Ulama Executive Board that Muslim women can only be married to men who are Muslim and not to non-Muslims because it is forbidden by all scholars, while for Muslim men marrying non-Muslim women (ahlul Kitab), the opinions of scholars are divided into 3 (three) namely stating that it is permissible, makruh, and unlawful. However, it is forbidden for Muslim men to marry women from religious adherents who are not people of the scriptures (MK Decision Number 68/PUU-XII/2014).

Christian View

According to Protestant Christianity, the Protestant Church avoids interfaith marriages. Only in unavoidable circumstances will the Church allow it under certain conditions. Meanwhile, according to the Association of Indonesian Churches (PGI) it is stated that the prohibition of interfaith marriages due to the implementation of Article 2 paragraph (1) of the Marriage Law has deviated from the sense of justice because it results in many interfaith couples being trapped in options that may not be desired, such as living together without marry. A narrow interpretation of the article creates moral and spiritual deviations and is unfair for those who cannot afford to marry abroad (MK Decision Number 68/PUU-XII/2014).

Catholic Religion View

According to Catholic Christianity, avoid religious differences as much as possible. Only in certain cases, in cases of unavoidable circumstances, can the Church allow interfaith marriages [22]. In line with that, the Indonesian Bishops' Conference (KWI) stated that the prohibition of interfaith marriages due to the enactment of Article 2 paragraph (1) of the Marriage Law shows that the state has exceeded its authority because it has entered the realm of salvation which is believed to be a personal relationship between a person and God which is fully a human right. Each person. It is often found that couples who marry of different religions and whose marriage has been confirmed according to a certain religion have difficulty in civil registration and one of the parties is "forced" to change religions so that civil registration services can be provided. According to KWI, Article 2 paragraph (1) of the Marriage Law needs to uphold the right to freedom of conscience to choose life or religion and the right to marry. In the case of marriage, the applicable provisions must allow these two things to be respected and defended (MK Decision Number 68/PUU-XII/2014).

Hindu Religion View

According to Hinduism, Hinduism prohibits interfaith marriages, especially if the men are Hindus because different religions mean different principles. However, if the two prospective brides still insist on getting married, the effort taken is to purify one of the prospective brides who are not Hindu [23]. According to the information from Parisada Hindu Dharma Indonesia, it is impossible for interfaith marriages to be carried out because they are contrary to the provisions of the Vedic literature. (MK Decision Number 68/PUU-XII/2014).

Buddhist View

According to the teachings of Buddhism, every religion is good and every human being is free to embrace their own religion, so it is not a problem if someone who is Buddhist wants to marry someone who is not Buddhist [24]. In line with that, the Indonesian Buddhist Representative (WALUBI) also revealed that someone from a different religion could follow Buddhism by practicing dharma in daily life while still stating their original religion. In Buddhist law, marriage is seen as a very strong and very deep past mate (MK Decision Number 68/PUU-XII/2014).

Confucian Religion View

In principle, the Kong Hu Chu religion is the same as Buddhism, meaning that it can allow interfaith marriages [25]. The statement made by the Indonesian Confucian High Council of Religion that differences in religion, class, nation, culture, ethnicity, social, political, or religious beliefs are not a barrier to marriage. For brides of different religions, Li Yuan marriage cannot be carried out, but only giving a blessing as an acknowledgment and notification that the marriage has been carried out.

Aspects of religious law and belief in interfaith marriages are very diverse, including the teachings of the same religion. In addition, problems can also occur related to the administrative process of registering marriages where according to Article 2 paragraphs (1) and (2) of the Marriage Regulations marriage registration for Muslims is carried out at the Office of Religious Affairs and for those who carry out marriages according to religions and beliefs other than Islam registers marriages at the Civil Registry Office. Meanwhile, Article 6 of the Government Regulation (PP) on Marriage requires a marriage study by a Marriage Registrar to accept or ratify a marriage administratively. So in this case sometimes couples who hold interfaith marriages cannot be legally registered.

Such conditions contain a dilemma where if the state imposes its will by making positive legal norms that allow interfaith marriages to be strictly enforced on the community, there will be strong rejection from people who are devout in religion, especially Islam and Christianity as the majority religion. Then the treatment of community members to interfaith married couples including their children will be different because interfaith marriage is considered by the community to be a disgraceful act. Meanwhile, if the norms that are included in the group of positive moral norms want to be used as positive legal norms by packaging them into law it can cause symptoms of "legal morality" (the law that is pretentiously moralist), If there is "legal moralism", with Incorporating the assessment of the validity of interfaith marriages in the legislation and there has not been a common view among the public regarding interfaith marriages that have been ratified as positive legal norms, it is not impossible that there will be coercion of the beliefs of the ruling group, namely the state and the government, to parties who hold this view. which is different from being legal [25].

To overcome various problems regarding the position of religion and the state within the legal framework of Pancasila, it is necessary to state the opinion of Moh. Hatta related to the development of Pancasila ideology that if you pay close attention, Pancasila consists of two fundamental layers, namely political fundamentals and moral (religious) fundamentals. The precepts of the One Godhead are moral fundamentals, while other precepts are political fundamentals. Thus, as a philosophy grondslag, Pancasila should be embodied in all aspects of the nation's life, including the field of law. Therefore, it is a necessity and necessity that the national law of Pancasila contains religious content as the embodiment of the precepts of the One Godhead, as the moral foundation of the national legal system. This may be in line with the prismatic legal view, which views the Indonesian legal value system based on Pancasila as accommodating the many social values of society, including religion, as a reflection of prismatic society. This is in line with the views of various thinkers who state that "a good law is a law that contains moral (ethical) values. Some even state that a law without moral values is not a law" [27]. With this view, it is clear that in the context of interfaith marriages it must be based on the moral values contained in the teachings of their respective religions and beliefs and it is fitting for every citizen to implement and obey these religious teachings as an integral part of family life, society, and society. nation and state.

Regarding the provisions in Article 2 paragraph (1) of the Marriage Law which is considered to limit freedom of religion and to carry out marriages across or between religions, a constitutional review has been carried out to the Constitutional Court based on Decision Number 68/PUU-XII/2014, which in its ruling rejected the application for interfaith marriages. The reasons for the refusal are based on the balance that the 4th Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia states that:

“Whereas in exercising their rights and freedoms, every citizen is obliged to comply with the restrictions stipulated by law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill fair demands in accordance with considerations of morals, values, and values. -religious values, security, and public order in a democratic society as stipulated in Article 28J of the 1945 Constitution of the Republic of Indonesia. This results in that marriage as one of the problems regulated in the national legal order must be obedient and submissive and not contradict the laws and regulations.”

According to the Court, in the life of the nation and state based on Pancasila and the 1945 Constitution of the Republic of Indonesia, religion is the basis and the state has an interest in marriage. Religion is the basis for individual communities that become a forum for personal togetherness in their relationship with God Almighty and is also responsible for the realization of God's will to continue and ensure human survival. The role of the state is to provide guidelines to ensure the legal certainty of living together in the marital bond. In particular, the role of the state is to provide protection to form a family and continue offspring through legal marriage which is a manifestation and guarantee of human survival. Marriage should not only be seen from the formal aspect but also must be seen from the spiritual and social aspects. Religion stipulates the validity of marriage, while the law stipulates the administrative legitimacy carried out by the state.

Meanwhile, a somewhat different consideration by Prof. Maria Farida in her dissenting opinion, which states:

"The State of Indonesia is a unitary state, consisting of thousands of large and small islands, consisting of various ethnic groups, groups, cultures and traditions, languages, religions, and beliefs, which is symbolized by Garuda Pancasila with the motto *Bhinneka Tunggal Ika* ... of course the people cannot be separated or divided according to their group, but they mingle and interact with each other in the life of society, nation and state so that the relationship that exists between them often ends in a marriage.

That the effort to carry out a codification and unification in the field of marriage law cannot create justice and legal certainty for all citizens, especially for couples who will carry out marriages of different religions and beliefs. In a marriage, there are two interested parties, namely the religious interest, marriage is a very important element and all religions place it under the auspices of the Absolute, meaning that it has rites and teachings that must be followed so that the marriage is valid for the sake of achieving its full potential. From the aspect of state interests, marriage is the most core social space of society which if it is not organized it will not be able to guarantee good new citizens and easily cause conflict.

The formation of the Marriage Law should be able to formulate provisions that provide solutions to facts that may occur, both for couples who have different customs, religions, or different state laws. In addition, because the state does not take care of the religious life of the community, the state has no right to oblige people/people to marry according to one religion. Moreover, the state has no right to force people to marry, only following a number of religions recognized by the state. The Marriage Law should provide a solution for those who because of a compulsion to carry out marriages of different religions and beliefs, both for the validity of the marriage and for its registration because marriage is a legal event that gives rise to rights and obligations for those who are married. Because the Marriage Law is a law that was formed 41 years ago, it should be reviewed and considered for changes in order to protect and guarantee the constitutional rights and human rights of all citizens".

Different arrangements related to interfaith marriages in Indonesia are contained in Article 35 of Law Number 23 of 2006 concerning Population Administration (UU Adminduk), which confirms that:

“The marriage registration as referred to in Article 34 also applies to: (a) Marriage determined by the Court (In the Elucidation of Article: Marriage between people of different religions); and (b) Marriage of a foreign citizen carried out in Indonesia at the request of the foreign citizen concerned”.

Regarding the status of religion in the Population Administration Law, a constitutional review has been carried out in the Constitutional Court Decision Number 97/PUU-XIV/2016 which confirms that the basic right to religion including the right to believe in God Almighty is part of human rights that are derived from or sourced from on the natural rights that are inherent because of one's existence as a human being, not a gift from the state. Population administration is part of one form of fulfilling the needs of public services as an inherent right for every citizen so it has become an obligation of the state to guarantee and fulfill it. The implementation of public services must be based on the principles of equal rights and equal treatment/non-discrimination without distinction of ethnicity, race, religion, class, gender, and social status. Previously, in another decision, the Constitutional Court has given limitations in Decisions Number 070/PUU-II/2004 and Number 27/PUU-V/2007 which state that discrimination occurs when there is different treatment without reasonable ground for making that difference. In fact, if things that are actually different are treated uniformly, it will lead to injustice or treating the same thing differently. On the other hand, according to the Constitutional Court, it is not discrimination if it treats differently towards things that are indeed different. In an effort to carry out an orderly population administration, it is absolutely not permissible to reduce the rights of citizens, including the right to freedom of religion and belief.

Viewed from the aspect of legislation, citing what was conveyed by Lon Fuller regarding 8 (eight) moral requirements to avoid the failure of laws and regulations, which include: [28] (a) There must be rules of a general nature as a guide in making decisions by the authorities (rulers/government); (b) Regulations must be announced or published so that they can be known by the person who is the target of the law; (c) Regulations may not apply retroactively (non-retroactive); (d) Regulations must be formulated in a formula that can be understood by the people; (e) Regulations must not conflict with each other, either vertically or horizontally; (f) Regulations must not contain demands beyond what can be done by the person affected by the law; (g) Regulations must not change frequently and are constant so as to provide legal certainty and firmness; (h) There must be consistency between the regulations and their actual implementation.

By paying attention to these requirements, it can be concluded that there are inconsistencies and incoherence between the Marriage Law which limits and minimizes interfaith marriages, while the Administrative Law opens a gap for interfaith marriages to take place. In this regard, it is necessary to make improvements including affirmations related to the possibility of holding interfaith marriages. One of the efforts that can be done is to make changes or revisions to the Marriage Law in regulating interfaith marriages so that it is hoped that various forms of legal smuggling and legal evasion that have consequences for the humiliation of the dignity and sovereignty of national law can be avoided with new arrangements in order to provide certainty, justice, and justice. and the benefits of the law for society, religion, nation, and state.

4. CONCLUSIONS AND RECOMMENDATIONS

Based on the description above, it can be concluded that normatively the regulation of interfaith marriage is not found explicitly in the Marriage Law. However, marriage between a man and a woman in Indonesian positive law must meet 2 (two) requirements that must be carried out under Article 2 paragraphs (1) and (2) of the Marriage Law, namely carried out according to the laws of

their respective religions and beliefs. and the marriage must be registered or registered. The construction of the applicable national law does not allow couples of different religions to marry, which is also confirmed in the decision of the Constitutional Court Number 68/PUU-XII/2014 which does not allow the holding of interfaith marriages because it is contrary to the values of Pancasila and the Constitution of the Republic of Indonesia. 1945. The Indonesian nation as a state based on Pancasila law, which is based on the values of the One and Only Godhead, guides every believer to carry out and practice religious teachings (including marriage with a partner of the same religion).

However, Article 56 of the Marriage Law and Article 35 of the Population Administration Law provide space for couples who wish to have interfaith marriages without subjecting the law to one religion by conducting marriages abroad or requesting a court order. These two methods are commonly practiced by Indonesian people today, which has implications for law smuggling and overriding the enforcement of national laws. Therefore, Indonesian national law as an instrument that regulates the life of society, nation and state, does not trigger ambiguity, emptiness or legal antinomy and should have sovereignty and empowerment that binds the Indonesian people. In future legal developments, it is necessary to revise or renew the Marriage Law on provisions that are unclear, incomplete, or no longer relevant to the culture of Indonesian society, including reinforcing the regulation of interfaith marriages, state and religious authorities related to marital affairs, and harmonization of laws and regulations that regulate the possibility of interfaith marriages.

Acknowledgement

Researchers thanked participants who had provided the necessary data in the study.

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