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### **Criticism of District Court Decisions Regarding the Registration of Interfaith Marriages in Indonesia in the Perspective of Islamic Law**

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#### **Abstract**

One of the most basic aspects of the pluralism of the Indonesian nation is the existence of a plurality of religions embraced by its population. Guarantees for the existence of religion and belief have been regulated by the State in Article 29 paragraph (1) and paragraph (2) of the 1945 Constitution. The diversity of religions and beliefs in Indonesia can have implications for the occurrence of marriages between adherents of religions and beliefs. Law Number 1 of 1974 concerning Marriage jo. Government Regulation no. 9 of 1975. Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage clearly stipulates that "Marriage is legal, if it is carried out according to the laws of each religion and belief. This research is classified as normative legal research. Research Results Interfaith marriage is something that cannot be justified based on the Marriage Law and the Compilation of Islamic Law, with the consideration that the issuance of these rules is to avoid the occurrence of greater harm/loss (mafsadat) in addition to the good/gain

(*maslahat*) that arise. Articles 40 (c) and 44 of the Compilation of Islamic Law (KHI) clearly prohibit the marriage of people who are Muslim to people who are not Muslim as also stated in the 1945 Constitution article 20 paragraph 2, that there is no marriage outside the law of each his religion and beliefs.

### **Keywords**

Determination, Marriage, Different Religions, Islamic Law.

### **Introduction**

Today, the conversation about Human Rights (HAM) is very intensively discussed. This started from the strong understanding of liberalism that was carried around by Western nations. Even though human rights values are universal, several things are still being debated regarding the implementation of these human rights (Nandapratwi et al., 2022; Wahyuni et al., 2022; Nofrizal et al., 2022). One of them is the right to enter into a marriage with the condition that the partner has a different religion. In simple terms, in the Big Indonesian Dictionary (KBBI), marriage/marriage is defined based on the basic words to form a family with the opposite sex (Listyawati et al., 2020; Sudiatmaka et al., 2023). This understanding is not a problem if it does not touch the foundation of idealism, when a person on the basis of his beliefs does not make a marriage permissible on the basis of religion.

According to the ideas of human rights promoted by the West, a person should not be judged solely on the basis of his beliefs, including in matters of marriage (Alam & Idris, 2022; Nasir, 2020). Thus, the notion of human rights is fundamentally at odds with the notion of human rights in Islam. Islam generally permits or prohibits interfaith unions by giving believers the titles *infidel*, *dhimmi*, and *polytheist* (Setiyanto et al., 2022; Jatmiko et al., 2022). This has led to a general rejection of the prohibition of interfaith marriage. In the social context, especially in Indonesia where the majority of the population is Muslim, it is a social dynamic that deserves attention in cases of interfaith marriages. Indonesia has diversity from various aspects, including religion which causes the possibility of the continuation of interfaith marriages.

Indonesia is a plural nation consisting of various races, cultures, beliefs, and ethnicities. The fact that Indonesian society adheres to various religions is one of the most fundamental features of this country's pluralism. Indonesia is home to various religions and beliefs, not just one (Handayani et al., 2022; Bachtiar et al., 2022). Six religions—Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism have been recognized by the Indonesian government. In addition, it is acknowledged that adherents of belief still exist and are developing in society (Imron et al., 2022; Rezky & Yulianingsih, 2022). The guarantee for the existence of religion and belief has been regulated by the State in Article 29 paragraph (1) and paragraph (2) of the 1945 Constitution which states that: (1) the state is based

on Belief in One Supreme God. (2) The state guarantees the freedom of each resident to embrace their own religion and to worship according to their religion and beliefs.

The diversity of religions and beliefs in Indonesia can have implications for the occurrence of marriages between adherents of religions and beliefs. Interfaith marriage is not a new thing and has been going on for a long time for the multicultural Indonesian society. Even so, it does not mean that cases of interfaith marriages do not cause problems, in fact they tend to always generate controversy among the public. Based on data compiled by the Indonesian Conference on Religion and Peace (ICRP), from 2005 to early March 2022 there have been 1,425 couples of different religions getting married in Indonesia (Fakhriza et al., 2022; Aini et al., 2019; Yolanda & Fajarianto, 2021). Interfaith marriage is a physical and spiritual bond between a man and a woman of different religions and countries, causing the union of two different regulations regarding the requirements and procedures for implementation according to the laws of their respective religions, with the aim of forming a happy and eternal family based on God Almighty (Kadriah et al., 2021; Upik, 2021).

Indonesia does not yet have legal instruments that specifically regulate interfaith marriage issues. Therefore, interfaith couples have to fight longer, using legal and illegal methods, so that their marriage is recognized in Indonesia. Couples of different religions often make efforts to marry twice, following the provisions of each party's religion (Rizki et al., 2021; Arwinilita et al., 2021; Arsyita et al., 2021). For example, one bride might have an Islamic wedding ceremony in the morning while another bride might have a Christian wedding ceremony in a church on the same day. The last effort made by many people is to marry abroad, as is done by many public figures in Indonesia. There are quite a number of interfaith marriage phenomena in Indonesia which have consequences for the need for explicit regulation regarding this issue so that in the future there will be no void or legal bias which results in confusion in society.

Positive law in Indonesia has provided a legal umbrella regarding marriage which is embodied in the existence of Law Number 1 of 1974 concerning Marriage jo. Government Regulation no. 9 of 1975. Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage clearly stipulates that: "Marriage is legal, if it is carried out according to the laws of each religion and belief".

This means that a marriage can be categorized as a valid marriage if it is carried out according to the laws of each religion and belief of the couple who entered into the marriage. Thus, the determination of whether or not a marriage is permissible depends on religious provisions, because the basis of religious law in carrying out a marriage is very important in Law Number 1 of 1974. If religious law declares a marriage invalid, so does according to the law of the country the marriage is also invalid.

Rules regarding interfaith marriages have given rise to juridical disputes since Law Number 23 of 2006 concerning Population Administration was enacted.

Article 2 of the Marriage Law which implicitly states that interfaith marriages are invalid according to religion and the state has been sidelined by Article 35 letter a of the Population Administration Law which provides an opportunity to determine invalid interfaith marriages clearly against the law. The clear result of this legal battle is that judges now have less opportunity to consider applications for interfaith marriages. If the problem of multiple interpretations is allowed to continue, it will lead to legal uncertainty in society. Seeing the urgency of this problem, it is necessary to have a deeper discussion.

In Islam, marriage is a *sunnatullah* that applies in general and the behavior of God's creatures, so that with marriage life in the natural world can develop to enliven this vast universe from generation to generation. Talking about true marriage in principle will talk about the choice of a life partner who is truly from the most sincere heart even though in the selection there are many challenges but for those who are really sure are those who want to immediately formalize the bond in a strong marriage bond, lawful in the eyes of religion and the State. Apart from having to be ready for conflict with their families, couples of different religions also need to discuss which religion to teach their children in the future (Allagan, 2019; Cammack, 2009).

Marriage between two different brides is not a simple matter in Indonesia. Besides having to go through social and cultural friction, the bureaucracy that must be passed is complicated. It's no wonder that many couples with different beliefs end up choosing to marry abroad. Couples who decide to marry abroad will later receive a marriage certificate from the country concerned or from the local representative of the Republic of Indonesia (KBRI). Upon returning to Indonesia, they can register their marriage at the civil registry office to obtain a Certificate of Foreign Marriage Reporting (Triger, 2012).

The Tangerang and South Jakarta District Courts some time ago legalized the marriage of a Muslim and Christian couple. After marriage, the two of them lived in the same house in Serpong, South Tangerang. The two then asked for a ruling from the court so that the Dukcapil would record their interfaith marriages. Tangerang District Court Decision "Giving Permission to Petitioners of different religions to legalize interfaith marriages according to applicable laws and regulations," The judge ordered the husband and wife to report the registration of the legalization of interfaith marriages to the City Population and Civil Registry Service Office South Tangerang to be recorded and registered in accordance with the applicable laws and regulations.

The judge's consideration stated that the determination was based on Article 2 of Law No. 1 of 1974, which contained: Article 2 (1) Marriage is legal, if it is carried out according to the laws of each religion and belief. (2) Each marriage is recorded according to the applicable laws and regulations "Considering, that based on the revealed facts, the marriage of the Petitioners if connected with Article 2 of Law No. 1 of 1974 concerning marriage, the marriage of the Petitioners is valid according to law. In the decision, the couple was asked to pay court costs in the

amount of Rp. 235 thousand. "Because of the petition of the Petitioners requesting that the marriage of the Petitioners be declared valid according to law, based on Article 3 of Law Number 23 of 2006 concerning Population Administration, the Petitioners are required to report the incident population and the important events he experienced and subsequently based on the provisions of Article 40 paragraph (1) of Law Number 23 of 2006 Concerning Population Administration, the Petitioner is obliged to report the determination of this case to the Civil Registry Office of Tangerang City where the Applicant lives, no later than 60 days from the date of determination it has permanent legal force uk is recorded in a predetermined register.

Interfaith marriage is still something that is considered controversial in Indonesian society. This polemic is not only discussed from a religious point of view, but also norms or state legislation. Along with the progress of the times, deviations from religious rules are increasingly being carried out by the community. One of the deviations that often occurs in society is the problem of marriage, where the matter of faith is often underestimated in the process of choosing a life partner (Smith et al., 2006; Lerner, 2014). Most people actually put forward feelings of love and worldly criteria, the impact that we are feeling right now is the increasing number of household rifts caused by behavior which, if we want to admit it more honestly, is the culprit is weak faith. The irony is that nowadays there are even more cases of inter-religious marriages, namely marriages between a man and a woman who are subject to different religions (Inrahim, 2022; Blecher, 2014).

The demand for marriages between couples of different religions to be legalized in Indonesia seems to be getting stronger lately. Moreover, this is generally done by public figures who incidentally are witnessed by the public because their marriages are usually blown up by the media (Prempeh et al., 2020; Suyaman & Alfiany, 2022). This is what can then form public opinion that interfaith marriage is a common thing, because sociologically, it is a mistake, even if you get used to it too often, over time it can be considered good. When these new cases of interfaith marriage emerged, many people or some people were still debating the issue of interfaith marriage. So, what is the law on interfaith marriage according to the Qur'an and the laws and regulations regarding marriage that apply in Indonesia?

### **Literature Review**

The family is the smallest unit of society which at least consists of husband and wife. In verse 221 of the Qur'an Surat al-Baqarah, Allah SWT provides guidance on how to choose a partner, husband or wife who is the forerunner of a family. The selection of a partner, husband or wife, is an important matter to be considered in forming a household, because the strength of the household building is highly dependent on the husband and wife as the main pillars. This pillar must be strong so that the household building can stand firmly in facing life's problems. That strength lies not in beauty and good looks, because both of them will fade with

time and are also relative, nor in wealth, because wealth comes and goes very easily, and not because of position and social status, because this will also change according to changes in society. The strength of the main pillars will be found in the strength of faith and obedience in carrying out God's guidance (Grinjs & Horri, 2018; NeJaime, 2014). Therefore, the first and main guidance given by Allah to humans to establish a household is faith.

Rasulullah PBUH reminded that a Muslim in determining the choice of a mate is not deceived by worldly matters, but must pay attention to his faith. Ibn Majah narrated the Hadith from Abdullah bin 'Amr: "Abdullah bin 'Amr said, that the Messenger of Allah said, "Do not marry women because of their beauty, their beauty may invite disaster. Don't marry a woman because of her wealth, it could be that her wealth will make her act arbitrarily. Marry a woman because of her religion. Really black slaves who are religious are better (Ibn Katsīr, Tafsīr Al-Qur'ān al-'Azhīm, p. 560). In writing this work is based on the arguments of the Koran, namely:

"(And it is lawful to marry) women who protect honor among women who believe and women who protect honor among people who were given the Al-Kitab before you, if you have paid their dowry with the intention of marrying them, no with the intention of committing adultery and not (also) making him concubines..." (QS Al-Maidah: 5)

"And do not marry polytheistic women, before they believe. Verily, the believing slave woman is better than the mushrik woman, even if she attracts your heart. I am better than a polytheist, even if he tempts your heart. They invite them to hell, while Allah invites them to heaven and forgiveness with His permission..." (QS. Al-Baqoroh: 221).

"O you who believe, when women who emigrate to you who believe, then you should test their (faith). Allah knows better about their faith; so if you already know that they (really) believe, then do not return them to (their husbands) disbelievers. They are not lawful for those who disbelieve and those who disbelieve are not lawful for them either. And give to their (husbands) the dowry they have paid. And there is no sin on you marrying them if you pay them the dowry. And do not stick to ropes (marriage) with disbelieving women; and you should ask for the dowry that you have paid; and let them ask for the dowry they have paid. This is the law of Allah which He has established among you. And Allah is All-Knowing, All-Wise." (QS. Al-Mumtahanah: 10)

In addition to the basis of the Qur'an above, this writing also contains the theoretical basis of human rights, namely: Hugo de Groot's theory which states that: a). Basically humans have society, namely humans are willing to sacrifice their own interests for the benefit of others; c). there are 4 things that need to be considered in social life, namely: avoid belonging to other people, fulfill promises, pay for losses caused by yourself, and give appropriate laws (Shermer & Johnson, 2010).

## Method

This research is classified as normative legal research, namely research that examines laws and regulations in a coherent legal system. (Wignjosoebroto, 1995). In this case positive law that applies at a certain time and is issued as a product of certain political power that has legitimacy. Normative Juridical Research, namely an approach based on the main legal material by examining the theories, concepts, legal principles and laws and regulations related to this research. This approach is also known as the library approach, namely by studying books, laws and regulations and other documents related to gaps in this research (Iram & Chakraborty, 2021).

## Result and Discussion

### Interfaith Marriage According to Islamic Law

Marriage in Indonesia is regulated in Law Number 1 of 1974 concerning Marriage and Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning Compilation of Islamic Law. These two legislative products regulate issues related to marriage, including interfaith marriages. In the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage article 2 paragraph (1) it is stated: "Marriage is legal, if it is carried out according to the laws of each religion and belief". Whereas the law in the Compilation of Islamic Law (KHI) articles 40 (c) and 44 clearly prohibits the marriage of people who are Muslim to people who are not of the Muslim religion as also stated in the 1945 Constitution article 20 paragraph 2, that there is no marriage outside the law each religion and belief (Tankard & Paluck, 2017; Elmali, 2022). Law is not only a reflection of the incarnation of social life, which is solely subject to the behavior that exists in that society, but is also subject to the creator of human beings who is the source of life and the source of all sources of law.

In addition to having to pay attention to social norms, good rules must also maintain transcendental dogmas as outlined in the binding rules. Contemporary human developments in formalizing life partners have been regulated in Law Number 1 of 1974 concerning Marriage, but the development of the times has led to new problems, namely interfaith marriages. The discussion on interfaith marriage in Indonesia is a complicated one. Prior to the enactment of Law Number 1 of 1974 concerning Marriage, interfaith marriages were included in the type of mixed marriage. As for mixed marriages, it is regulated in the *Regeling op de Gemengde Huwelijk stbl. 1898 number 158*, which is usually abbreviated as GHR. Article 1 of the GHR states that mixed marriages are marriages between people who are subject to different laws in Indonesia.

Since ancient times until now, there is no known explicit definition of the phrase interfaith marriage in classical literature and no clear definitions of definition are found. Discussions that have a correlation with these problems are commonly

included in discussions related to illegitimate marriage or categories of women who are illegitimate to marry, namely:

- a. az-zawaj bi al-kitabiyat; marriages with women of the People of the Book, namely marriages with Jewish and Christian women
- b. az-zawaj bi al-musyrika; marriages with musyrik women
- c. az-zawaj bi ghair al-muslimah; marriage to a non-Muslim (Jawad, 2020; Hamim et al., 2022).

Islam teaches that if a polytheist has faith then a Muslim is allowed to marry him. Because the essence of marriage is one of the media for lifelong worship and preaching calls people to the right path in accordance with teachings that originate from the Qur'an and Hadith. Through marriage and with an emotional approach, it is hoped that those who have believed will receive guidance and teachings from their partners who first embraced Islam, so that in the future they are expected to understand Islam as a whole.

In classical fiqh literature, interreligious marriages can be divided into three categories (Jtmiko et al., 2022; Budidarmo, 2022):

1. Marriage between a Muslim man and a polytheist woman; Scholars agree that it is forbidden for a Muslim man to marry a polytheist woman.

This opinion is based on:

"And do not marry polytheistic women, before they believe. Indeed, a servant woman who has faith is better than a polytheist woman, even though she attracts your heart. And do not marry polytheists (men) (with believing women) before they believe. Truly, believing male slaves are better than polytheist men even though he attracts your heart, they invite you to hell, while Allah invites to heaven and forgiveness with His permission. (Allah) explains His verses to people so that they will learn a lesson." (QS. Al-Baqarah (2) verse 221).

"O you who believe, when believing women come to emigrate to you, then you should test them, then Allah knows better about their faith, if you already know that they (really) believe, then do not return them to people - disbelievers (their husbands). They are not lawful for those disbelievers, and those who disbelieve are not lawful for them. And give their (husbands) the dowry they have been given. And there is no sin for you to marry them if you pay them the dowry. And do not stick to the rope (marriage) with disbelieving women and let them ask back the dowry you have given and (if the husband remains an infidel) let them ask back the dowry they have paid to their ex-wives who have believed. Such is the law of Allah which He decreed among you, and Allah is All-Knowing, All-Wise) (QS. Al-Mumtahanah (60) verse 10).

Based on the interpretation of Ath-Tabari, this verse contains a prohibition for Muslims to marry polytheistic women (pagan women who worship idols). And when a marriage has taken place, Allah orders them to divorce them.) Similarly, a Muslim man is prohibited from maintaining his marriage to a polytheist woman who does not move with her husband. Indeed, the marriage bond has been broken due to disbelief, because Islam does not allow polytheists to marry women.



2. Marriage between a Muslim man and a woman of the Bible.

Based on classical literature, it was found that scholars have different opinions on this issue, some scholars tend to allow such marriages and most of them punish makruh and even unlawful.

Those who allow them refer to: "On this day everything is lawful for you, the food (slaughter) of the People of the Book is lawful for you and your food is lawful for them. And (lawful for you to marry) women who guard honor among women who believe and women who guard honor among those who were given the book before you, if you pay their dowry to marry them, not by adultery and not to make women pet. Whoever disbelieves after having believed, then indeed, their deeds will be in vain and in the hereafter he will be among the losers." (QS. Al-Maidah (5) verse5).

Most of the scholars who punish the prohibition of marriage base their decisions on considerations, namely: (At-Thabari, Ibn Jarir, 2010).

- a. Based on the Syafi'i School, which is the largest school of thought adhered to by the Indonesian nation, argues that the category of ahl al-Kitab who may be married must be "min qablikum", namely the ancestors of the Ahl al-Kitab before the Prophet Muhammad SAW's apostolate. Based on this criterion, Christians and Jews who still exist today cannot be said to be people of the book purely because they have gone through the apostolic period and have encountered Islamic teachings brought by the Prophet Muhammad SAW. In addition, now there are no pure Ahl al-Kitab (whose original book has not changed at all) and really adhere to the divine religion and women of the Ahl al-Kitab who are Muhsonat.
  - b. Based on the study of the Indonesian Ulema Council and the facts on the ground which show that interfaith marriages have far greater meanings than the benefits. Among them, the duties and objectives of maintaining religion and its offspring are not fulfilled; the mission of preaching and learning through marriage is not running effectively; and ironically, more and more couples are changing religions, especially the children of the marriage.
  - c. Based on the opinion that the people of the book (Jews and Christians) today can be categorized as polytheists. Because the doctrines and practices of Jewish and Christian worship clearly contain elements of shirk (trinity), in which the Jews consider Uzair the son of God and cult the Haikal of the Prophet Sulaiman, while the Christians regard Isa Al-Masih as the son of God and worship his mother Maryam.
3. Marriage of Muslim women and non-Muslim men (both polytheists and people of the book).

Whether the prospective mate comes from a group of people who follow the scriptures (Jews and Christians), adherents of other religions who follow the scriptures (such as Hinduism and Buddhism), or adherents of other religions, all experts agree that marriage is prohibited by Islam. At the VII 2005 MUI National Conference in Jakarta, the Indonesian Ulama Council, a social organization that has

always been a source of solutions to every problem faced by Muslims, decided and determined that interfaith marriages are haram and illegal; and the marriage of Muslim men to women of the people of the book according to qaul mu'tamad is illegitimate and invalid.

### **Interfaith Marriage According to Positive Law in Indonesia**

The juridical basis of marriage in Indonesia is contained in Law Number 1 of 1974 concerning Marriage and Presidential Instruction Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law. However, Law Number 1 of 1974 does not clearly and concretely regulate interfaith marriages, in the sense that there are no explicit phrases that regulate, legitimize, or prohibit interfaith marriages. In addition, Law Number 1 of 1974 adheres to a system of indicating norms (*verwijzing*) on the respective religious laws and beliefs (Budidarmo & Sara, 2022). Marriage as a legal action will of course also have complex legal consequences, so that whether the legal action is legal or not must be considered carefully (Jawad, 2022). In Article 2 of Law Number 1 of 1974 concerning Marriage, it is stated that the conditions for a valid marriage are:

- 1) Marriage is valid if it is carried out according to the laws of each religion and belief.
- 2) Each marriage is registered according to the applicable laws and regulations.

Based on the formulation of Article 2 paragraph (1) it can be concluded a *contrario* that the marriage held is not in accordance with the laws of each religion and belief of the bride and groom, so it can be said that the marriage is invalid. Meanwhile, in Indonesia, six recognized religions have their own regulations and tend to strictly prohibit the practice of interfaith marriages. Islamic law is clearly against interfaith marriage, even if it is forced it is commonly known in society as "lifelong adultery." Christianity/Protestantism basically forbids its followers to enter into interfaith marriages, because in Christian doctrine, the purpose of marriage is to achieve happiness between husband, wife and children within the scope of an eternal and eternal household. Catholic law prohibits interfaith marriage unless it is permitted by the church under certain conditions. Buddhist law does not regulate interfaith marriages and returns to the customs of each region, while Hinduism strictly prohibits interfaith marriages. In the Elucidation of Article 2 paragraph (1) of the Marriage Law it is also reiterated that with the formulation in Article 2 paragraph (1) there is no marriage outside the law of each religion and belief. The implementation of Article 2 of the Marriage Law must be interpreted cumulatively, meaning that the components in Article 2 paragraph (1) and Article 2 paragraph (2) are parts that cannot be separated from one another. Thus it can be concluded that even though a marriage has been carried out legally based on religious law, if it has not been registered with the competent authority, either the Religious Affairs Office for those who are Muslim or the Civil Registry Office for non-Muslims, then the marriage has not been recognized as valid by the state.

The existence of the Marriage Law Number 1 of 1974, the legality of mixed

marriages as referred to in PPC S. 1898 No. 158, becomes repealed and no longer valid in the legal system currently in effect in Indonesia. Mixed marriages legalized by the Marriage Law Number 1 of 1974 are only found in Article 57, namely:

What is meant by mixed marriage in this Law is a marriage between two people who in Indonesia are subject to different laws, because of differences in nationality and one of the parties is an Indonesian citizen.

Thus it can be concluded that the factor of different religions is no longer included in mixed marriage regulations based on the Marriage Law. But mixed marriages are marriages that occur between Indonesian citizens and foreigners. In contrast to the Marriage Law Number 1 of 1974 concerning Marriage, several articles in the Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law actually dared to make a new breakthrough to regulate the issue of interfaith marriages, namely:

1. Article 4, Marriage is legal, if it is carried out according to Islamic law in accordance with Article 2 paragraph (1) of Law No. 1 of 1974 concerning Marriage.
2. Article 40 letter c

It is prohibited to enter into a marriage between a man and a woman due to certain circumstances: a) Because the woman concerned is still married to another man; b) woman who is still in her iddah period with another man; c) a non-Muslim woman. This article is closely related to Article 18 which regulates: For husband-to-be and wife-to-be who are going to get married there are no marital obstacles as stipulated in chapter VI.

3. Article 44, A Muslim woman is prohibited from marrying a man who is not Muslim.
4. Article 61, not being in confederation cannot be used as an excuse to prevent marriage, except for not being in confederation because of religious differences or ikhtilaafu al dien.

Seeing the "lagging" of the Marriage Law in regulating interfaith marriage issues compared to the Compilation of Islamic Law, it is necessary to make improvements related to interfaith marriages in Law Number 1 of 1974 concerning Marriage, even though the Islamic Law Compilation has regulated interfaith marriages, but what becomes a further problematic is that the Compilation of Islamic Law (KHI) is only contained in the form of a Presidential Instruction, and is not an Act or its derivatives, so it cannot be included in the hierarchy of Legislation as stipulated in Article 7 of Law Number 12 of 2011 concerning Establishment Legislation. (Zainuddin. 2012). So that in order to have more binding power, the Marriage Law should be amended. Mainly in Article 8 of the Marriage Law which regulates the prohibition of marriage to add interfaith marriages as prohibited marriages. Because until now Article 8 letter f of the Marriage Law only implicitly states that:

Marriage is prohibited between two people who have a relationship whose religion or other applicable regulations prohibit marriage.

After the enactment of Law Number 23 of 2006 concerning Population Administration, the opportunity to legalize interfaith marriages seems to be wide open. Namely with the availability of the option of submitting an application for an interfaith marriage to the District Court to issue a stipulation permitting interfaith marriage and instructing Civil Registry office employees to register the said interfaith marriage into the Marriage Registration Register.

There are several considerations behind the judge in granting the application for the determination of different religions. First, interfaith marriage is not prohibited under Law Number 1 of 1974 concerning Marriage. Therefore this application was granted to fill the void in the provisions of the Marriage Law. The next consideration is Article 21 paragraph (3) of the Marriage Law Number 1 of 1974 in conjunction with Article 35 letter a of Law Number 23 of 2006 concerning Population Administration, namely:

Article 21 paragraph (3) of the Marriage Law Number 1 of 1974:

The parties whose marriage was rejected have the right to submit an application to the court in the territory where the marriage registrar employee who made the refusal is domiciled to make a decision, by submitting the statement of refusal mentioned above.

So it can be concluded that the authority to examine and decide on interfaith marriage issues lies with the District Court. Article 35 letter a Law Number 23 of 2006 concerning Population Administration:

Marriage registration as referred to in Article 34 also applies to:

A marriage determined by the Court; then the Elucidation of Article 35 letter a provides an explicit exit way for the issue of interfaith marriage because it defines: What is meant by "Marriage stipulated by the Court" is a marriage between people of different religions.

Furthermore, Article 36 stipulates that:

In the event that a marriage cannot be proven by a marriage certificate, the registration of the marriage is carried out after a court decision has been made.

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

The author argues that judges should exercise caution in making decisions, even though the Indonesian justice system follows the "Ius Curia Novit" principle,

which requires them to accept all cases that come before them even if there are no legal implications or are ambiguous. Including cases of interfaith marriage. This only refers to Article 35 letter a of the Population Administration Law which legalizes interfaith marriages. But it also has to pay attention to the Marriage Law and Compilation of Islamic Law. Because the Marriage Law is the ratification of interfaith marriages, the judge should also consider the Constitutional Court Decision Number 68/PUU-XII/2014 which essentially rejects the application for review of Article 2 of the Marriage Law and reaffirms the Marriage Law so as to avoid adultery. (Amir, 2006).

The judge must also understand that the essence of marriage according to Article 1 of Law Number 1 of 1974 concerning Marriage is defined as: an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on Belief in One Almighty God.

The birth bond is a formal relationship that is real in nature, which not only binds the person personally, but also has an impact on the family, other people or society. Meanwhile, as an inner bond, marriage is a soul bond that is intertwined because of the same and sincere will between a man and a woman to live together as husband and wife. Furthermore, the life of the nation and state is carried out based on Pancasila and the 1945 Constitution. Therefore, marriage based on Belief in One Almighty God means that the family must be based on one God. Marriage should not only be viewed from a purely formal aspect, but also from a spiritual and social aspect. Religion stipulates the legality of marriage, while the law determines the administrative legality carried out by the state (Hamim et al., 2022).

Therefore, in the opinion of the author, the judge's decision to legalize interfaith marriages should be annulled, because these marriages are actually contrary to the provisions of the Marriage Law, the Compilation of Islamic Law, and even the 1945 Constitution of the Republic of Indonesia. Interfaith marriages are clearly contrary to the constitution in force in Indonesia, which is regulated in Article 28B paragraph (1) of the 1945 Constitution:

Everyone has the right to form a family and continue offspring through a legal marriage.

Regarding the phrase "legal" marriage, it is clearly regulated in Article 2 paragraph (1) of the Marriage Law that marriage is valid if it is carried out according to the religious law of both spouses. Meanwhile, Islam regulates the invalidity of interfaith marriages. Interfaith marriages should not be interpreted as a violation of human rights. Because as regulated in Article 28J paragraph (2) of the 1945 Constitution:

In exercising his rights and freedoms, everyone is obliged to comply with the restrictions determined by law with the sole purpose of guaranteeing the recognition and respect for the rights and freedoms of others and to fulfill just demands in accordance with moral considerations, religious values, security, and

public order in a democratic society.

The prohibition of different religions is not a violation of the enforcement and protection of human rights in Indonesia. Because it is clear that the implementation of human rights in Indonesia is not liberal, but acknowledges that there are restrictions on human rights practices in order to respect the human rights of others, including the right to marry, one of which takes into account religious values. Human rights, which are essentially natural rights given by God to humans, are therefore irrational if these natural rights deviate from God's rules and provisions. Indonesia as a country based on the belief in the One and Only God makes religious values one of the foundations in the life of the nation.

The complexity of the problem of interfaith marriage, regarding the non-regulation of interfaith marriage concretely in Law Number 1 of 1974 concerning Marriage which has led to multiple interpretations of several articles in it, it is necessary to amend the Marriage Law. For example, by inserting a regulation prohibiting interfaith marriage into Article 8 of the Marriage Law. Then to solve the dualism problem of interfaith marriage arrangements, where the Marriage Law prohibits the practice of interfaith marriages, while the Population Administration Law actually opens up opportunities for the legalization of interfaith marriages, in the opinion of the authors Articles 35 and 36 of the Population Administration Law should be repealed, because it creates a conflict of norms. The occurrence of a legal vacuum in the regulation of interfaith marriages cannot be allowed to continue because if interfaith marriages are allowed and no legal solutions are provided, they will have a negative impact in terms of social and religious life. The negative impact is in the form of smuggling of social and religious values and positive law. Therefore, the prohibition on interfaith marriages fulfills the value of justice because:

1. First, it is in line with the moral values espoused by the majority of Indonesian Muslims, in this case it has fulfilled the majority's sense of justice
2. Second, it is oriented towards a relationship with God, but also provides opportunities for the faith of children born from interfaith marriages. Justice that fulfills positive divine law (*ius divinum positivum*) and that is accessible to human reason/human positive law (*ius positivum humanum*).

Interfaith marriage should also not be legalized because it creates many negative implications in the future. One of the implications is that the status of children born through an illegal marriage process (because of the prohibition on interfaith marriages) is the recognition that the child is a child born outside of a legal marriage. As a consequence, the child does not have a family relationship with his biological father, is not entitled to maintenance and maintenance from the father, then the father also cannot be the guardian of his daughter's marriage, and does not have the right to inherit if he does not share the same religion as the heir (in the case of This heir is Muslim).

Interfaith marriage is not only a religious prohibition, but has also been prohibited by law, however, not a few Indonesian Muslims, for various reasons,

have married people who do not share their religion. Because the state does not facilitate marriages that are not in accordance with the provisions of the law, some of them go abroad to get married or use the services of certain institutions in Indonesia that do facilitate interfaith marriages.

Actually, Allah SWT in His words listed in the Qur'an has explained the law of marriage between a Muslim and a non-Muslim, or in short it is called interfaith marriage. Justifiable, why? For at least three reasons:

1. Violating Religious Laws The Qur'an strictly prohibits the marriage of a Muslim / Muslim woman to a polytheist / infidel, in accordance with the word of Allah SWT which means: "And do not marry polytheistic women until they have faith. Indeed, a believing slave girl is better than a mushrik woman even if she attracts your heart and do not marry mushrik men (to Muslim women) until they believe. Indeed, a believing slave boy is better than a polytheist even if he attracts your heart. They invite them to hell, while Allah invites them to heaven and forgiveness with His permission, and Allah explains the verses to humans so that they take lessons "(QS. Al-Baqarah: 221). The word *al-musyrikāt* (المُشْرِكَاتُ) which means polytheistic women and the word *al-mushrikīn* (المُشْرِكِينَ) which means polytheistic men, is the plural form of *al-mushrikīn* (المُشْرِكِ) which means people who associate partners with Allah SWT with other than Him or people who carry out an activity with a dual main purpose, to Allah and to other than Him, for example Ahlul Kitab. In Q.S. Al-Taubah (9): 29-30 explained that among the Ahlul Kitab are Jews and Christians. The Jews believe that Uzair is the son of God, so do the Christians who believe Isa al-Masih is the son of God too. This is the basis for a group of scholars to say that what is meant by *المُشْرِكَاتُ* and *المُشْرِكِينَ* in this verse includes the People of the Book.
2. Violating the Marriage Law, marriages between religious adherents are not regulated in the Marriage Law. In the Marriage Law No. 1 of 1974 the term interfaith marriage is not recognized as in Article 2 paragraph 1, namely "Marriage is legal if it is carried out according to the laws of each religion and belief". The Marriage Law only regulates marriages outside Indonesia and mixed marriages. In this case, the Compilation of Islamic Law (KHI), which is the result of Presidential Instruction (Inpres) No. 1 of 1991 which was signed by the President on 10 June 1991 and 22 July 1991, was strengthened by KMA No. 154 of 1991 concerning the implementation of the Presidential Instruction. The KMA is even stricter by categorizing inter-religious marriages into the chapter on the prohibition of marriage as contained in Article 40 (c), Article 44, Chapter X Prevention of Marriage, Article 61 KHI. Article 40 (c) reads:

"It is prohibited to enter into a marriage between a man and a woman under certain circumstances: c. a woman who is not a Muslim." Whereas Article 44 KHI reads: "A Muslim woman is prohibited from marrying a man who is not Muslim," and Article 61 KHI reads: "Not being equal cannot be used as an excuse to prevent

marriage, unless not being equal because of differences in religion or ikhtilaf al-dien" . The Compilation of Islamic Law in Indonesia is the result of ijtihad or legal innovation in interpreting the provisions of the Koran which are collective in nature, it is a law that must be followed by Indonesian Muslims. As a result, marriage between adherents of religions is legally prohibited, because it is clearly a form of obstruction of marriage and it must be prevented from happening.

3. The goal of marriage will not be achieved. Every marriage must aim to achieve happiness, peace, blessings, to gain inner peace which in the Qur'an is referred to as sakinah. According to Prof. Dr. Quraish Shihab, the background to the prohibition of interfaith marriages is the hope that sakinah will be born in the family. New marriages will be lasting and peaceful if there is compatibility in the views of life between husband and wife, because not only are differences in religion, cultural differences, social backgrounds or even differences in educational levels often result in failure in marriage.

Based on this, marriages carried out according to Indonesian law must follow a single religious path; therefore, interfaith marriages are not allowed, and if forced to do so, the marriage is invalid and void. Therefore interfaith marriages cannot be legally recognized in Indonesia because Law Number 1 of 1974 concerning Marriage, the relevant positive law, does not regulate it. Marriages between non-Muslim couples are registered at the Civil Registry Office, while Muslim couples are registered at the Office of Religious Affairs (KUA) (KCS). This proves that marriages carried out by people of different religions and beliefs clearly violate the law and cannot be carried out in the Republic of Indonesia and there should be no tolerance or defense for those who do so either by individuals or by any institution.

As a government agency authorized to register marriages, the Office of Religious Affairs and Civil Registry will not register marriages as long as the prospective husband and wife adhere to a different religion. Society is also required to adhere to these standards, meaning that they should not fall for gimmicks such as confessing to their partner's religion just to fulfill formalities and then reverting to their original religion after marriage. In Indonesia, it is difficult to marry two brides of different faiths. Along with social and cultural barriers, there is also a challenging bureaucracy to overcome. It makes sense that many couples with different ideas eventually decide to do it overseas. Couples who decide to marry abroad will later receive a marriage certificate from the country concerned or from the local representative of the Republic of Indonesia (KBRI), then the couple registers their marriage at the civil registry office to obtain a Letter of Reporting on Foreign Marriage.

Jurisprudence Supreme Court Decision No. 1400 K/Pdt/1986 regarding couples of different faiths can request a court order stating that the civil registry office can carry out interfaith marriages, because the civil registry office's job is to record, not legalize. However, not all civil registry offices accept interfaith



marriages. Civil registry offices that are willing to accept interfaith marriages will later register the marriage as non-Islamic. Couples can still choose to marry with the provisions of their respective religions. Members of his family experienced obstacles in achieving his religious observance. Because when carrying out religious teachings, he will consider the feelings of other family members. Indeed, so far there has also been an attitude of tolerance from couples of different religions, but that is only in religious symbols, for example at Christmas or Eid al-Fitr celebrations, not in the essence of religious teachings.

Interfaith marriage is prohibited by law and religion in Indonesia, although many Indonesian Muslims marry people who are not of the same religion for various reasons. Some of them travel abroad to get married or hire the services of certain institutions in Indonesia that allow interfaith marriages because the state does not support marriages that are not in accordance with the law. Interfaith union will produce a number of excesses that will last a very long time, despite the fact that true happiness will not be attained at home, like:

1. Produce children whose offspring are not clear. Children born to such couples are referred to as children from the mother's line because interfaith marriage is illegal under Islamic law, meaning that their lineage is cut off from their fathers who processed them biologically. If a daughter is finally born as a result of their marriage, she will become a Muslim and her father will not represent her religion. The child's marriage is invalid if the biological father is made the guardian. And marriages that are not only legal but also successful will result in adultery—a relationship between a husband and wife who are not legally married. Disruption of inheritance rights In Islam, one of the reasons why a person cannot get an inheritance is the religious difference between the heir and the heir. As a result, this can lead to prolonged conflicts (fighting over inheritance) if there are several heirs of different religions in a family.
2. It makes it difficult to decide on a belief. Because most parents of different religions like to give their children the opportunity to choose their religion. This independence will actually put psychological pressure on children because. Children who lack religious understanding and mental maturity will actually cause them to hesitate in choosing their beliefs. As a result, they are forced to live in ambiguity and in constant doubt.
3. Children of couples of different religions will also experience significant psychological pressure when deciding whether to follow their father's or mother's religion. Even if parents allow their children freedom, they will still feel doubts when making decisions. What worries me the most is that, because they are always filled with confusion and uncertainty, in the end their children don't care about religion, they choose to live freely like people who have no religion.

### **Conclusion**

Interfaith marriage is something that cannot be justified based on the

Marriage Law and the Compilation of Islamic Law, with the consideration that the issuance of these regulations is to avoid the emergence of greater harm/loss (mafsadat) in addition to the good/gain (maslahat) that arise. However, the presence of the Population Administration Law, especially in Article 35, opens up opportunities to legalize interfaith marriages. The legal conflict between these two laws naturally creates multiple interpretations among the public, especially judges in determining interfaith marriages. As a consequence, there is a disparity in the determination of judges. Interfaith marriage is still something that is considered controversial in Indonesian society. This debate involves various points of view, both customs, laws, and religious regulations. Society is increasingly violating religious laws, and the issue of marriage is one that often arises in society. This is at least the result of a lack of understanding of religion, as well as the effects of acculturation and cultural assimilation processes, which cause the influence of "modern" culture to be greater than religious teachings. Therefore, marriage or marriage for Muslims is only valid if it is carried out in accordance with Islamic law, and its existence needs to be protected by state law in order to maintain the sanctity of the marriage institution. How is it possible for a family or between couples to have a happy relationship while husband and wife, or between families have different beliefs and even the values that they adhere to are not only different but contradict each other.

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