

## **Problems of Different Religion Marriage in Indonesia Attached to Positive Law**



**Sri Ahyani<sup>1</sup>, Endang Pujiastuti<sup>2</sup>**

<sup>1,2</sup>Department of Law, Sekolah Tinggi Hukum Bandung

**ABSTRACT:** Interfaith marriages are indeed not a new thing for the multicultural Indonesian society. The marriage has occurred in the community (in various social dimensions) and has been going on for a long time. However, this does not mean that the issue of interfaith marriage is not an issue, in fact it tends to always be controversial among the people. There is an assumption that the cause is the existence of Law no. 1 of 1974 which does not accommodate the issue of interfaith marriages. Therefore, it is interesting to analyze interfaith marriages according to Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage and the regulation of interfaith marriages based on positive law.

The specifications of this research are descriptive, the type of research is normative juridical, the method of approaching the law. The technique of collecting data is through document study, as well as the analysis is carried out in a qualitative normative manner.

Based on the results of the analysis, it is concluded that interfaith marriages in Indonesia are still not regulated with certainty in the laws and regulations in Indonesia, but there are several articles related to interfaith marriages such as Article 2 Paragraph (1) and Article 8 letter (f) of the Law. Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, Article 35 of Law Number 23 of 2006 concerning Population Administration and Articles 40 and 44 of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law. Interfaith marriages based on positive law provide several interpretations, due to the fact that life in Indonesia is a pluralistic society, so that there are not a few interfaith marriages, therefore through Law Number 23 of 2006 concerning Population Administration, the government seeks to fill the legal vacuum by including the authority of the Civil Registry Office to register interfaith marriages after obtaining a decision from the court as regulated in Article 35 letter (a).

**KEYWORDS:** Marriage, Interfaith, Positive Law

### **A. INTRODUCTION**

Regulations regarding marriage are indeed very interesting to discuss, especially when viewed from the point of view that Indonesia is a diverse country, the various ethnicities, cultures, races and religions provide an interesting aspect to study because in social conditions it is very possible for a relationship between two people who are related to each other to occur. different religions and want to get married but still want to uphold their own religion in accordance with the right to religion in Article 28E of the 1945 Constitution, this is where research related to legal aspects is carried out.<sup>1</sup>

In the explanation of Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage, it is stated that there is no marriage outside the law of each religion and belief, in accordance with the 1945 Constitution. From this it can be concluded that Marriage absolutely must be carried out according to the law of each religion and belief, otherwise the marriage is invalid

Especially when this incident has legal issues related to the wider community. In the end, interfaith marriages have always been a separate polemic, especially in the Marriage Law in Indonesia which currently adheres to the principle that the Positive State Law, namely the Marriage Law, submits the validity of a marriage performed by everyone to the law of their respective religions, this is stated in Article 2 Paragraph (1) Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage as follows, "Marriage is legal, if it is carried out according to the law of each religion and belief.", from the article it can be interpreted that a marriage is to adhere to the religion of the person who will perform the marriage, this means that Article 2 Paragraph (1) of the Marriage Law is a "blanconorm" or Empty Rule, according to A. Pitlo Blanconorm itself is a norm that provides discretion (discretion) for the Panel of Judges. to assess the substance of a legal event or action<sup>2</sup>

<sup>1</sup>Wantjik Saleh, *Marriage Law in Indonesia* (Jakarta: Ghalia Indonesia, 1982), p. 16.

<sup>2</sup>Soerjono Soekanto and A. Pitlo, *Chapters on Legal Inventions*, (Bandung: PT. Citra Aditya Bakti, 2013), p. 103.

## Problems of Different Religion Marriage in Indonesia Attached to Positive Law

In practice, there are a lot of interfaith marriages. According to Ahmad Nurcholish from the Indonesian Conference on Religion and Peace (ICRP), that their organization provides counseling for 3000 interfaith couples and has facilitated around 827 interfaith couples in Indonesia<sup>4</sup>. This shows that there is a gap in Indonesian law, one of which is Article 35 of Law Number 23 of 2006 concerning Population Administration which states that marriage registration can be carried out if it fulfills a court order. From the explanation of the Law, the recording in question is interfaith marriages. So often in applications for interfaith marriage, the article is used as the basis for submitting the application.

Based on the description above, it is interesting to study about:

1. How is interfaith marriage according to Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage?
2. How are interfaith marriage arrangements based on positive law?

### B. RESEARCH METHOD

The problem of this research which is also an important object of research is described, considering that its actuality has a significant correlation with the phenomena that occur in the present. The specification which is also the nature of this research is descriptive. According to Moh. Nazir, the descriptive method is:

“A method of examining the status of a group of people, namely an object, a set of conditions, a system of thought, or a class of events in the present. While the purpose of this descriptive research is to make a systematic, factual and accurate description, picture or painting of the facts, characteristics, and relationships between the phenomena being investigated”<sup>3</sup>

This type of research is juridical normative and philosophical, therefore the type of data used is secondary data obtained from the literature, so that the type of data is sourced from library materials, in the form of primary, secondary and tertiary legal materials. In order to solve research problems, a statutory approach is used. The legislation referred to as has been mentioned in the secondary data types of primary legal materials.

In this study, the data collection method was carried out by literature study, because the research was normative legal research or library law research, namely research carried out by researching library materials.<sup>4</sup>

The data analysis method used is qualitative, meaning that the data obtained which leads to a theoretical study in the form of principles, conceptions, legislation, legal doctrines and the content of legal rules are first described systematically, then analysis is carried out. qualitatively.

### C. DISCUSSION

#### 1. Interfaith Marriage in Indonesia

Interfaith Marriage in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage Interfaith marriages in Indonesia have actually existed for a long time, since ancient times there have also been people who have had interfaith marriages. Over time, interfaith marriages in Indonesia are also regulated in the HCR which categorizes interfaith marriages in mixed marriages in accordance with Article 7 Paragraph (2) of the GHR. The definition of mixed marriage according to Article 1 of the GHR is "marriage between people in Indonesia who are subject to different laws". Indonesia is a diverse country, since long ago, various ethnic groups, religions and races have lived in Indonesia, with this diversity, conflict is also inevitable.<sup>5</sup>

One of them is the discussion regarding the formation of laws governing marriage. At that time there was a lot of political pressure from the parties, especially from the majority group, namely the Islamic community, therefore Law Number 1 of 1974 can be said to have a lot of influence from Islamic law. Interfaith marriage itself is not specifically regulated in the laws and regulations in Indonesia.

In Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, Article 2 Paragraph (1) states that a marriage is considered valid if it is carried out according to their respective religions and beliefs and Article 8 letter (f) also provides confirmation, namely " Marriage is prohibited between two people who have a relationship whose religion or other applicable regulations are prohibited from marrying. The article in the law clearly states that whether a marriage is legal or not depends on the respective religions adopted by the parties to the marriage. Therefore the role of a religion in marriage in Indonesia is very important, of course because Indonesia is a country that upholds religious values. Regarding interfaith marriages, it can be interpreted that it is permissible or not to do this, depending on the religion of the two parties who want to carry out the marriage. One of the positive laws in Indonesia that relates to religious matters is Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law. In connection with the topic raised by the author, Article 44 of Presidential Instruction Number 1 of

<sup>3</sup> Moh. Nazir, *Research Methods* (Jakarta: Ghalia Indonesia, 2003), p.54.

<sup>4</sup> Soerjono Soekanto and Sri Mamudji, *An Introduction to Normative Legal Research* (Jakarta: Raja Grafindo Persada, 2001), p.14.

<sup>5</sup> Soetojo Prawirohamidjojo, *Pluralism in Marriage Invitation Laws in Indonesia Indonesia* (Surabaya: Airlangga University Press, 1986), p.32.

## Problems of Different Religion Marriage in Indonesia Attached to Positive Law

1991 concerning the Compilation of Islamic Law states that a Muslim woman is prohibited from marrying a man who is not Muslim and also in Article 40 letter (c) states that it is forbidden to marry between a man with a woman because of certain circumstances, one of which is a woman who is not Muslim.

Interfaith marriages are also mentioned in the explanation of Article 35 of Law Number 23 of 2006 concerning Population Administration, in the explanation of the Law, interfaith marriages are one of the marriages that can be legalized through court decisions. A marriage that can be applied to the court is a marriage that is rejected by the local regional civil registry office, in accordance with Article 21 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. In the application used as a case study in this research, some of the positive laws contained in this case are:

1. Article 29 paragraph (2) of the Constitution of the Republic of Indonesia
2. Article 28B (second amendment) of the 1945 Constitution of the Republic of Indonesia
3. Article 21 paragraph (3) of Law Number 1 of 1974
4. Article 35 of Law Number 23 of 2006 concerning Population Administration and its Elucidation.

The author in the application contained several regulations related to interfaith marriages but they were not listed, namely Article 8 letter (f) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 and Article 44 of Presidential Instruction Number 1 of 1991 concerning Compilation Islamic law. Article 2 Paragraph (1) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 states that whether or not a marriage is legal is left to their respective religions, in this case the woman is Muslim, then she should also consider the Compilation of Islamic Law as regulations for people who are Muslim in Indonesia are considered in the determination.

The author assumes that Article 8 letter (f) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 is an article relating to interfaith marriages, the article states that a marriage is prohibited between two people who have a relationship that by their religion or regulations If one of the bride and groom is Muslim, the author assumes that the judge should have included Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law as a consideration. Article 44 of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law clearly states that "Muslim women may not marry men who are not Muslim."

Regulations on interfaith marriages in Indonesia are not in accordance with these theories, if they are related to the 1945 Constitution of the Republic of Indonesia after the amendment which stated that marriage and forming a family are human rights 28B Paragraph (1) of the Constitution of the Republic of Indonesia Year 1945 and is the basic concept of marriage in Indonesia, the author feels that legal certainty regarding interfaith marriages in Indonesia is still not implemented, the author feels that there is no positive law in Indonesia that clearly regulates interfaith marriages and does not include justice that represents all the interests of citizens. the Indonesian state regarding interfaith marriages.

## 2. Arrangements for Interfaith Marriages Based on Positive Law

Marriage is already a sunnatullah that applies in general and the behavior of God's creatures, so that with marriage life in this natural world can develop to enliven this vast realm 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 truly convinced, they are those who want to immediately formalize the bond in a valid marriage bond. legitimate in the eyes of religion and state.

Contemporary human development in formalizing a life partner has been regulated in Law Number 1 of 1974 concerning Marriage, but the development of the times has led to a new problem, namely interfaith marriage. The discussion about 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. In Article 1 of the GHR it is stated that mixed marriages are marriages between people who in Indonesia are subject to different laws.

According to Sudargo Gautama, the article has the meaning as a difference in legal or different legal treatment, in which, among other things, is caused by differences in nationality, population in religion, groups of people, place of residence or religion.<sup>6</sup>

In the Marriage Law, it is stated that a valid marriage is a marriage based on their respective religions and beliefs.<sup>2</sup> Not only that, the implementation of interfaith marriages sometimes creates other problems such as the validity of marriages which result in conflicts of rights and obligations of husband and wife; the right of inheritance to inherit husband and wife and children; Court problems to resolve interfaith marriages".<sup>7</sup>

A judicial review on the regulation of interfaith marriages has also been submitted by applicants who feel aggrieved by the existence of the Marriage Law in Article 2 paragraph (1). The case has also been decided by the Constitutional Court (MK) and

<sup>6</sup>Sudargo Gautama, *International Civil Law* (Bandung: Alumni, 1998), p.42.

<sup>7</sup>M. Kasayuda, *Interfaith Marriage Measuring Justice Values Compilation of Islamic Law*, (Yogyakarta: Total Media, 2006), p. 89-90.

## Problems of Different Religion Marriage in Indonesia Attached to Positive Law

the Court declared a complete rejection of the judicial review of the UUP submitted by the applicant. The applicant's application was completely rejected by MK5 because it was considered unreasonable according to law".<sup>8</sup>

Based on Article 2 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, the author argues that if legal marriage matters are returned to their respective religions, it means that interfaith marriages are implicitly not justified both in religion and positive Indonesian law. For example:

### 1. Islam

The view of Islam on inter-religious marriages, in principle, does not allow it. In the Qur'an it is expressly prohibited marriage between Muslims and polytheists as written in the Qur'an which reads:

"Do not marry polytheist women before they believe. Verily, believing slave women are better than polytheist women, even though she is attractive. And do not marry polytheists (to believing women) before they believe. Verily, believing slaves are better than the polytheists, even if he attracts your heart." (Al-Baqarah [2]:221).

### 2. Christianity

In general, interfaith marriages are not required in the Old Testament (OT). An explicit prohibition is found in Deut. 7:3-4, It reads: "You shall not marry them either: you shall not give your daughters to their sons, nor shall you take their daughters for your sons; for they will turn your sons away from Me, so that they may worship you. against other gods. Then the anger of the LORD will rise against you and he will destroy you immediately."

### 3. Hindus

In Hinduism in Bali the term marriage is usually called Pawiwahan. Wiwaha or marriage in Hindu society has a very important position and meaning, in chess, the Wiwaha hostel is included in the Grenhastha Asrama. Besides, in Hinduism, wiwaha is seen as something that is very noble, as explained in the book Manawa Dharmasastra that wiwaha is sacred which is obligatory. The conditions for wiwaha in Hinduism are:

- a. Marriage is said to be valid if it is carried out according to the provisions of Hindu law.
- b. Marriage ratification must be carried out by a priest / clergy or religious official who is qualified to carry out the act.
- c. A marriage is said to be valid if both the bride and groom have embraced Hinduism.
- d. Based on the prevailing tradition in Bali, marriage is said to be valid after carrying out the byakala/biakaonan ceremony as a series of wiwaha ceremonies.

### 4. Buddha

Inter-religious marriages in which one of the prospective brides are not Buddhists, according to the decision of the Indonesian Supreme Sangha, are allowed, as long as the marriage is legalized according to the Buddhist method. In this case the prospective bride who is not Buddhist, is not required to convert to Buddhism first. However, in the marriage ritual ceremony, the bride and groom are required to say "in the name of the Buddha, Dharma and Sangka".

### 5. Confucianism

The terms of marriage for Confucians related to inter-religious issues:

- a. There is agreement from the bride and groom without any element of coercion.
- b. Both prospective bride and groom are required to carry out a confession of faith. The confirmation was carried out in a Confucian place of worship (Lithang).
- c. Obtain approval from both parents, both male and female parents or guardians.
- d. Witnessed by two witnesses
- e. Based on the explanation above, the author is of the opinion that in essence interfaith marriages are not permitted by any religion (religion recognized in Indonesia) although some religions such as Buddhism still allow it, but in the procession of marriage it is still Buddhist.

The legal basis of marriage in Indonesia currently in force there are several regulations, including:

1. Book I of the Civil Code
2. Law Number 1 of 1974 concerning Marriage
3. Law Number 7 of 1989 concerning Religious Courts
4. Government Regulation Number 9 of 1975 concerning Implementing Regulations of Law Number 1 of 1974 concerning Marriage
5. Presidential Instruction No. 1/1991 on the Compilation of Islamic Law in Indonesia

---

<sup>8</sup>Anshary, *Marriage Law in Indonesia: Crucial Issues*, (Student Library: Yogyakarta, 2010), p. 50.

## Problems of Different Religion Marriage in Indonesia Attached to Positive Law

The Compilation of Islamic Law categorizes marriages between adherents of religions in the chapter on the prohibition of marriage. Article 40 point c states that it is forbidden to marry a man and a woman who is not Muslim. Then in article 44 it is stated that a Muslim woman is prohibited from marrying a man who is not Muslim.

KHI is in line with the opinion of Prof. Dr. Hazairin S.H., who interprets Article 2 paragraph (1) along with his explanation that there is no possibility for Muslims to marry in violation of their religious law. In the KHI it has been clearly stated that interfaith marriages cannot be carried out unless the two prospective husbands and wives are Muslim. So that there is no opportunity for people who embrace Islam to carry out interfaith marriages.

The fact that occurs in the Indonesian legal system, interfaith marriages can occur. This is because the legislation on marriage provides an opportunity for this to happen, because the regulation can provide several interpretations in the event of an inter-religious marriage.

Based on Article 66 of Law Number 1 of 1974 concerning Marriage, all regulations governing marriage as long as it has been regulated in Law Number 1 of 1974 concerning Marriage, are declared no longer valid, namely marriages regulated in the Civil Code/ BW, Christian Indonesian Marriage Ordinance and mixed marriage regulations. In a contrario, it can be interpreted that some of these provisions are still valid as long as they are not regulated in Law Number 1 of 1974 concerning Marriage. Regarding interfaith marriages carried out by prospective husband and wife pairs, it can be seen in Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage, that marriage is legal, if it is carried out according to the law of each religion and belief. Article 10 of PP No. 9/1975 states that a marriage is only valid if it is carried out in front of a registrar and attended by two witnesses. And the marriage procedure is carried out according to the law of each religion and belief.

With the non-regulation of interfaith marriages in Law Number 1 of 1974 concerning Marriage and in the GHR and HOCl it cannot be used because there are very wide differences in principles and philosophy between Law Number 1 of 1974 concerning Marriage and the two ordinances. So that in inter-religious marriages there is a legal vacuum.

### D. CONCLUSION

Interfaith marriages in Indonesia are still not regulated with certainty in the laws and regulations in Indonesia, but there are several articles related to interfaith marriages such as Article 2 Paragraph (1) and Article 8 letter (f) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, Article 35 of Law Number 23 of 2006 concerning Population Administration and Articles 40 and 44 of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law. Interfaith marriages based on positive law provide several interpretations, due to the fact that life in Indonesia is a pluralistic society, so that there are not a few interfaith marriages, therefore through Law Number 23 of 2006 concerning Population Administration, the government seeks to fill the legal vacuum by including the authority of the Civil Registry Office to register interfaith marriages after obtaining a decision from the court as regulated in Article 35 letter (a).

It is hoped that the government will review the regulations regarding marriage, especially interfaith marriages, because the values of today's society have developed and in order to fulfill the sense of justice and certainty in society. It is necessary to establish special regulations governing interfaith marriages. There is a need for implementation instructions from authorized agencies, such as the Supreme Court, the Ministry of Religion, and the Ministry of Home Affairs regarding interfaith marriages.

### REFERENCES

- 1) Anshary, Marriage Law in Indonesia: Crucial Issues. Student Library: Yogyakarta, 2010.
- 2) Gautama, Sudargo. International Civil Law. Bandung: Alumni, 1998.
- 3) Indonesia, the 1945 Constitution of the Republic of Indonesia
- 4) Code of Civil law
- 5) Law Number 23 of 2006 concerning Population Administration.
- 6) Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage
- 7) Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage.
- 8) Kasayuda, M. Interfaith Marriage Measuring Justice Values Compilation of Islamic Law. Yogyakarta: Total Media, 2006.
- 9) Prawirohamidjojo, Soetojo. Pluralism in Marriage Invitation Laws in Indonesia. Surabaya : Airlangga University Press, 1986.
- 10) Saleh, Wantjik. Marriage Law in Indonesia. Jakarta: Ghalia Indonesia, 1982.
- 11) Soekanto, Soerjono and A. Pitlo, Chapters on Legal Inventions. Bandung: PT. Image of Aditya Bakti, 2013.



There is an Open Access article, distributed under the term of the Creative Commons Attribution–Non Commercial 4.0 International (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>), which permits remixing, adapting and building upon the work for non-commercial use, provided the original work is properly cited.