LEGAL RECONSTRUCTION OF REGULATIONS MARRIAGE DIFFERENT RELIGIONS IN INDONESIA

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Abstract
This research aims to find the proper legal reconstruction regarding interfaith marriages in Indonesia. Article 2, paragraph (1) of the Marriage Law states that marriage is valid if performed according to the laws of each religion and BeliefBeliefBelief. Meanwhile, the content of the explanation of Article 35 of the Population Administration Law allows interfaith marriages. With this, the legal rules regarding interfaith marriages need to be reconstructed clearly and firmly so that there is the same understanding and implementation in the community because it will cause legal uncertainty. This research is a normative legal research with a statutory approach. The method of collecting secondary data is done through a literature study. The data obtained is analyzed qualitatively. The results of this study indicate that the regulation of marriage in Indonesia does not recognize the existence of interfaith marriages; it relies on the laws of each religion, so marriage marriage becomes invalid. The consequences impact the status of children as illegitimate or outside of marriage and the status of inheritance. Furthermore, related to the regulation of interfaith marriages, there is disharmony in the rules of the Marriage Law and the Population Administration Law; the provisions of Articles 35 and 36 of the Population Administration Law should be revoked because they cause a conflict of norms with the Marriage Law. This will provide legal certainty to the community.

I. Introduction

In the Islamic view, marriage is an act of worship, the sunnah of Allah SWT, and the Sunnah of the Prophet Muhammad SAW. According to Qudrat And Iradat, Sunnah Allah means God in the creation and natural universe. This while the sunnah of the Messenger means following habits carried out by the Prophet Muhammad SAW, which was done by himself and for his people.[1] Definition of Marriage According to provision Article 1 of the Law Number 1 1974 Law on Marriage (from now on referred to as Marriage Law), Marriage Law) is A connection physical and mental attached to a person woman and a man man to build a House full of stairs with happiness with based on faith to Allah.[2]

Based on the understanding above, the purpose of the event was held. A marriage is a form of bond born between the inner husband and the eternal wife based on aspects of BeliefBeliefBeliefBeliefBelief in the one and only God. It means a marriage contains related religious aspects that are close to his spiritual teachings. Every religion has its terms and conditions for arranging and implementing a marriage. The validity of a marriage is determined by the laws of their respective faiths and beliefs. This is a provision in Article 2, paragraph (1) of the Marriage Law, which states that Marriage is valid according to each religion's laws and beliefs.[3] A marriage depends on the conditions and pillars regulated in the religion and beliefs that are adhered to.

Law No. 1 of 1974 concerning Marriage in Indonesia forbids weddings of different religions, so Every Indonesian citizen (WNI) who will Marry must pass the institution of their respective faiths and submit to the rule of wedding religion. A parabola, both of them have different religions, so religious institutions cannot marry off them except for one following another religion.[4] Providing applicable laws and regulations in a positive way in Indonesia has clearly and firmly stated that marriage inter-religious marriage is not desired because it contradicts the laws in force in Indonesia. But it turns out Marriage interfaith still happens and will Keep happening as a consequence of the interaction between all Indonesian citizens in pluralist religion.

This study uses previous or *state-of-the-art* research as a comparison and study material. First, the research written by Ayu Ferlina and I Made Dedy Priyanto (2022) entitled "Legal Consequences of Marriage Between Muslims and Non-Muslims Based on Islamic Law".According to Islamic law, if a Muslim marries a non-Muslim, the marriage is void (as stated in Articles 40 and 44 KHI). As a result, any children born to the marriage are also regarded as non-legitimate children born outside of marriage. This study examines the legal ramifications of this situation.Marriage, which affects relationships in civil lawChild's law with his father.[5]

Second, research was written by Anisah Daeng Tarring (2022) with the title " Interfaith Marriage in Positive Legal Perspective in Indonesia ". This study examines the validity of Marriage in Indonesia, which Can be separated from religious Law, where

[1] Karim, K., & Syahril , MAF (2022). Marriage Confirmation in Marriage Law. Journal Litigation Amsir, 9(2), 137-145.
[2] Candra Refan Daus and Ismail Marzuki . (2023). Interfaith Marriage in Indonesia; Perspectives Jurisprudence, Religions and Human Rights Human. Journal of Sharia and Islamic Law, Vol. 8 . No. 1, 40-64.
[3] Achmad Hartanto, D. (2019, December 2). Interfaith Marriage: Legal Perspective Positive and Religious Law in Indonesia. *10*, 2477-5339.
[4] Hanifah, M. (2019). Interfaith Marriage Reviewed from Constitution Number 1 of 1974 Concerning Marriage. *Soumatera Law, 2* , 297-308.
[5] Ayu Ferlina and I Made Dedy Priyanto . (2022). LEGAL CONSEQUENCES OF MARRIAGE BETWEEN MUSLIMS AND NON-MUSLIMS BASED ON ISLAMIC LAW. Journal Kertha Negara, Vol. No . 12, 1346-1354.

Marriage in different religions is seen from Islamic, Christian, and other faiths. Basically, No allowed implementation; if there is marriage marriage, different religions are practised, then marriage marriage marriage is considered not valid. Consequently, the Law that arises from Marriage in different religions results from juridical aspects. If marriage is a distinct religion, its legality is not acknowledged legally, formally, or religiously.[6]

Third, research written by Raden Muhammad Mihradi, Dinalara, Mustaqim, et al. (2023), " Legal Reconstruction Relating to Interfaith Marriages Post -Decision Court Constitution Number 68/PUU-XII/2014 ". The focus of this research discusses the prohibition of marrying different religions and to fulfil justice Because marriages of other faiths also should not legalized. Because it can cause Lots of negative implications later day. One of the consequences is that the child born during the process of marriage has an existing confession stating that they are a child born outside of a valid marriage, which makes their status as a child invalid due to religious prohibitions against marriage. Therefore, modifications must be made to Law Number 1 of 1974 regarding marriage in order to reinforce the ban on marriages between people of different religious beliefs.[7]

This research will describe the legal reconstruction of interfaith marriage restrictions in Indonesia; multiple interpretations of the Law exist in society. This is how this research differs from the three (three) prior studies. The 2006 Administrative Population Law Number 23 allows for the recognition of interfaith unions. The ambiguous understanding of marriage's legality will have an impact on society. Additionally, the Administrative Law Population's Article 35 letter (a) clarifies that recording weddings with a determination court entails implementing unions between partners who have different religious beliefs. The chapter's validity naturally conflicts with The Marriage Law, which forbids it, and all six of Indonesia's recognized religions oppose marriage.

2. Research Method.

In order to reach a conclusion, the researcher gathers, collects, and analyzes the data. It also examines how rule legislation affects interfaith marriage and its legal ramifications. It gives a general summary of how Indonesian laws pertaining to marriage arrangements were constructed for various religions. The document/literature study approach will be used to gather the data you wish to use in the study. Secondary data collection is done with this strategy.

Data obtained in the study was arranged logically and systematically, then analysed using method analysis, and then served qualitatively. Secondary data sources used in writing this are material primary Law, which is a norm law mandatory and has a strong tie (regulation legislation). [8]In addition, there are material laws that are not own strength binding and are only used to clarify material primary Law (books, documents, scientific writings, etc.).[9] Legal materials contain information and explanations of primary and secondary legal data (dictionaries, encyclopedias, etc.).[10]

[6] Anisah Daeng Tarring . (2022). Interfaith Marriage in Positive Legal Perspective in Indonesia. Amsir Litigation Journal, 9(4), 269-277.
[7] Raden Muhammad Mihradi , Dinalara D Butar-Butar , Mustaqim , et al. (2023). LEGAL RECONSTRUCTION RELATING TO INTER-RELIGIOUS MARRIAGE AFTER THE DECISION OF THE CONSTITUTIONAL COURT NUMBER 68/PUU-XII/2014. Pakuan Law Review Journal , Vol . 9, No. 4 , 77-83 .
[8] Meray Hendrik Mezak, "Types, Methods and Approaches in Legal Research," *Law Review*, 5.3 (2006), 85 - 97.
[9] Khudzaifah Dimyati, *Methodology Legal Research*, 2014.
[10] Muhaimin, *Legal Research Methods* (Mataram University Press, 2008).

3. Results and Discussion

Based on the Koran in Islam, three verses touch on interfaith Marriage between Muslims and non-Muslims.[11] First, Surah Al-Baqarah: 221 explains that it prohibits marrying/marrying a polytheist (a person who associates partners with Allah SWT) until they believe (worship) for man Muslim or woman Muslimah. If you see an explanation of the Qur'an in Surah Al-Nisa: 59, which reads, " *O you who believe, obey to Allah and obey to the Apostle and the ulil amri among you ...* " then with the presence of This Compilation of Islamic Law (KHI) made into guidelines fiqh in Indonesia. According to expert scholars of interpretation, the meaning of the word "until" amri "is First as holder regarding religion, namely the ulama, and the second meaning is as holder regarding mundane, umara or government.[12]

Second, in Surah Al-Mumlahanah: 10, which implies the existence of prohibition, men Muslim to marry women polytheists as well as infidels. Third, Surah Al-Ma'idah: 5 explains that women Muslimah are not allowed For married to a man non-muslim even though they are classified as Ahl al-Kitab. On the other hand, male Muslims also are not allowed to marry female polytheists and infidels but are allowed To marry Ahl al-Kitab women (adherents Jews and Christians) [13]Which is one of the groups of infidels. [14]In this surah, that's fine for a Muslim man to marry a woman of the People of the Book accompanied condition when a man is Muslim the pious or character faith, and his Islam is Good because Marriage has consequences, such as a change in religion or even until the divorce. Marriage between male Muslims and women of the People of the Book is the only behaviour that is considered " mubah " (doing something) or leaving it), but No recommendation or even an order.

Foundation religious law at the moment, Marriage is the primary thing in Constitution Number 1 1974 on Marriage, so certainty for mayor whether or not to carry out marriage Marriage depends on religious decisions. In addition to regulatory laws like LawLaw Positive Indonesia, religious law also plays a part in establishing the validity of marriage. If a country's religious law forbids marriage, that law is put into effect and administered accordingly. Similarities exist with the Compilation of Islamic Law and Beyond (commonly referred to as the KHI), which categorizes interfaith marriage under the KHI's Chapter on Prohibition of Marriage. The KHI's Article 40, letter (c), states that it is forbidden and does not permit marriages between non-Muslim men and women.

Since the ratification of Constitution Number 23 of 2006 concerning Administration Population, regulations related to Marriageto different religions have a conflict law. Existence Article 35 letter a of the Law Administration Population has an opportunity to determine Marriage according to a different religion. Article 35 Letter A of the Law Administration Population explains that recording Marriage with a determined court means implementing Marriage with other religious beliefs between partners.[15] The article contradicts Article 2 of the Marriage Law, which specifically implicitly arranges

[11] Nasution, Syamruddin . *Interfaith Marriage in the Qur'an: A Comparative Study of the Pros and Cons* (Pekanbaru: Riau Heritage Foundation), 267.
[12] Ayu Ferlina and I Made Dedy Priyanto . (2022). *Op.cit*
[13] Faridl, Miftah. *Marriage and Family Problems* (Jakarta: Echo Human Press), 21.
[14] Shihab, M. Quraish. *Tafsir al- Mishbah* , j.1, c.5 (Jakarta: Lentera Hati), 475.
[15] Fidela, P. A., & Martinelli, I. (2023). Draft validity Article 2 Paragraph (1) of the Marriage Law regarding Marriage of different religions based on permission from determination court. *NUSANTARA: Journal Knowledge Knowledge Social*, *10* (6), 2936– 2942.

that Marriage between different religions is legitimate in the eyes of religion and the state. [16] The following justification challenges the requirement that marriages, including those decided by the court, be officially recorded in civil law under Article 35 Letter an of the Law Administration Population. This marriage was performed between individuals of various religious backgrounds.

In Article 2, paragraph 1 of the Marriage Law, If associated with Article 35, Letter A of the Law Administration Population, both intersect aspects of spirituality. Suppose the marriage law is based on religious norms in conditions of legitimate Marriage. In that case, it differs from the Constitution Administration Population originating from a human rights perspective, or valid religious norms do not forbid Marriage between different religions.[17] Consideration of *the principle of lex specialis derogate legi generalist,* where legal formal in Constitution Administration Population namely recording Marriage as incident critical is not set aside the Marriage Law as legal material positional marriage special because if MarriageMarriage That has legitimate material, new mechanism recording by the state to maintain his MarriageMarriage legally and formally.

The problem is that Marriage is already a different religion. Once, an application for *judicial review* of the Court Constitution was submitted in 2014; however, the Court Constitution, through Decision Number 68/PUU-XII/2014, rejected the application *for judicial review*. The Court Constitution argues that Marriage can only be seen as formal but must also be seen as aspects of social and religious aspects. This is remembering that religion has a vital role in determining the validity of a marriage. In contrast, the Constitution is important in determining the validity of state administrative activities. Then, the problem of Marriage. This difference in religion also comes back in the submitted application *for judicial review* to the Court Constitution in 2022. However, through Decision Number 24/PUU-XX/2022, the Court Constitution again rejects the application *for judicial review* to quote return consideration law on the decision Court Constitution Number 68/PUU-XII/2014. Court Constitution, in a way, firmly, state that the validity of Marriage is determined by religion because the state only plays a role. Setting the validity of administrative Marriage in the frame gives certainty and order administration as set up in Article 28D Paragraph (1) of the 1945 Constitution.[18]

With the exception of Buddhism, all religions strictly restrict marriage between people of different faiths. No, control it. The Supreme Court (MA) released a Circular Supreme Court (SEMA) Number 2 of 2023 about Instructions for Judges To judge Case Application Registration of Interfaith Marriages in response to the ambiguous regulations on religious marriage. Religions and Beliefs by the Supreme Court are expected to become instruction certainty laws related to the Marriage of different faiths. SEMA is to explain ambiguous things or existing differences between theory and practice in litigation in court. [19]SEMA Number 2 of 2023 Article (2), namely " Court The ratification of SEMA Number 2 of 2023 was delayed due to laws that do not specifically

[16] Rinaldi, AP, Fahmi, & Azani, M. (2023). Authority notes civil take notes marriage different religion after coming into effect Article 35 Letter A of the Law Number 23 of 2006 Concerning Administration Population in Surabaya City, Province East Java—the *Law Journal Republic Faculty of Law, Lancang Kuning University*, *1* (1).

[17] Saputri , AMW, Sutarni , N., & Sholikah , DI (2023). Legality marriage differs from religions in the corner view of marriage laws and laws administration. The population is associated with the right essential human. *Journal Legal Analysis of the Faculty of Law, Boyolali University*, *7* (1), 98–120.

[18] Airis Aslami, Djanuardi , and Fatmi Utarie Nasution . (2023). The Validity of Interfaith Marriages Judging from the Marriage Law and Islamic Law. Journal Scientific Multidisciplinary. Vol. 2, No. 10 , 4572- 4583 .

[19] Kharisma, BU (2023). Circular Letter Supreme Court (SEMA) Number 2 of 2023, end from polemic MarriageMarriage different religion? *Journal of Science and Development (JSRD)*, *5* (1), 477– 482.

address the ban on marriages between people of different religions. As a result, no grant application registering marriages between people of different religions and beliefs was received. On the other hand, marriages between people of different religious beliefs may be permitted in accordance with law and rights, subject to the court's decision. As previously mentioned, his marriage was arranged under Law Administration Population Article 35, letter (a).

In this case, the second Constitution is the cause of the problem, conflict, norm, or opposition juridical. [20]This triggers multiple interpretations of the validity of Marriage in different religions in Indonesia, where the judge is entitled to decide on Marriage. Different religions produce disparity in the judge's determination, where part of the determination is rejected, and part is not. Again, its determination is granted, which creates uncertainty law. [21]So, the issuance of SEMA Number 2 of 2023 is an acceleration from MA as holder power judiciary based on the Constitution For stand firm forbid the existence of Marriage different religions previously considered legitimate with gap law based on provision Constitution Administration Population. Kiramya must also be understood as a circular fibre, strengthening the laws that SEMA has lowered the hierarchy from LawLaw. [22]It is concluded that there are provisions in the Administering Law No. It can amended by SEMA Number 2 of 2023. However, SEMA Number 2 of 2023 influences instruction for judges no grant case application marriage different religions.

The matter still needs to be resolved in light of the Supreme Court's Supreme Court Circular, which forbade courts from granting applications to record marriages between individuals of different religions and beliefs. First, there is inconsistency between the regulations of the Population Administration Law and the Marriage Law. The Law Administration Population's Articles 35 and 36 ought to be repealed since they conflict with the provisions of Law Number 1 of 1974. Furthermore, it is impossible to ignore the existence of emptiness laws in various religions' arrangement marriages. Continue because marriage has a variety of religious beliefs; if this is ignored or not addressed in some way, the law will negatively impact social and religious facets of life. Second, regulation policy (beleids regels) rather than regulation legislation is included in the MA Circular Letter Number 2 of 2023 and Instructions President Number 1 of 1991 concerning the Compilation of Islamic Law in knowledge legislation. In Indonesia, laws governing interfaith marriages are more stringent, powerful, and binding.

Controversy about Marriage between different religions in UUP is not off from the historical context, where the process of compiling and formulating the UUP resulted from various interests between existing factions . The aspiration public has not yet had an adequate response, although it has tried to minimize the choice system unification limited; that is, with stage unity, the provisions in MarriageMarriage will give place to the specificities permitted by each religion. However, in practice, Still, just Indonesian citizens who are carrying out marriages of different religions abroad can register for Marriage in Indonesia. The Marriage Law has No firmly arranged marriages between

[20] Widiantika , K., Adnyani , NKS, & Sanjaya, DB (2023). Review legal Marriage, different religious laws, and Balinese customs. *Journal Sui Generis Jurisprudence* , 3 *(* 3), 158–168.
[21] Kasdi , KB, Tampanguma , MY, & Karundeng , MS (2023). Analysis about determination Surabaya District Court Number 916/ Pdt.P /2022/ PN.Sby. I reviewed the Marriage Laws and Laws Administration Population. *Lex Privatum* , *11* (4).
[22] Situmorang , F., Lina, R., & Mohamad, S. (2022). Legal study about the position of SEMA Number 1 of 2022 above Constitution Bankruptcy Number 37 of 2004. *INTERDISCIPLINARY STUDIES JOURNAL PERSPECTIVE*, *22* (July 2023).
[24] Aulil Amri. (2020). Interfaith Marriage According to Positive Law and Islamic Law. Jurnal Media Syari'ah , Vol. 22, No. 1, 48-64.

different religions, and There is a gap in Indonesian society's marriages between different religions.[23]

4. Conclusion

The Causal Factors That Underlie Someone Committing Premeditated Murder, If Connected With Moral Development Theory, namely regarding Moral Development Validity marriage when viewed from Constitution Number 1 1974 depends on the validity of Marriage according to religion and BeliefBeliefBeliefBeliefBelief. If a marriage is invalid according to religious Law, then the state will evaluate the Marriage as invalid. Interfaith marriages have legal ramifications that include the legal standing of the marriage between the husband and wife, the status and position of any children they may have, and the effect on the children's inheritance status. The birth of the Law Administration Population has opened the opportunity to determine marriage in different religions contradictory to the Marriage Law, which specifically implicitly arranges that marriage in other religions is not legitimate in the eyes of faith and the state. Therefore, this regulatory disharmony needs to be solved by revoking Articles 35 and 36 of Law Administration Population; further, in overcoming the vacancy law, Marriage to different religions requires more legislation firm, solid and binding in regulating interfaith marriages in Indonesia.

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