Children’s Position from Interfaith Matrimony Following the Issuance of the Supreme Court Circular No. 2 of 2023

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Matrimony, in Islamic law, has a close and inseparable relationship with religion. In fact, almost all religions regulate the issue of matrimony between a man and a woman of the same religion as the most important and highly crucial basis for determining the success of a person’s domestic life because of the birth of a child. The reasons for a child’s position and status are determined based on whether or not their parents’ matrimony is valid. Matrimony between different religions causes problems related to parenting patterns until the children grow up and get married, receiving inheritance and so on. This research aims to find out what the position of children from interfaith matrimony was before and the position after the issuance of Supreme Court Circular No. 2 of 2023. This research used a statutory approach with the normative legal method, and the data analysis method used is qualitative juridical. The results revealed that the position of the child before the issuance of the Supreme Court Circular No. 2 of 2023 is valid and recorded because the parents granted the matrimony petition through the court and the position of the child following the issuance of the Supreme Court Circular No. 2 of 2023 is invalid and is not recorded because it is prohibition on accepting inter-religious matrimony, but special regulations are still needed to determine the position and children resulting from inter-religious matrimony.
I. Introduction

Indonesia is renowned for its extensive array of diversities, encompassing cultural, tribal, and religious facets. This has a consequential effect on pre-existing matrimonial unions as well. It is not an infrequent occurrence for us to be apprised of interfaith unions. An interfaith matrimony is a matrimonial union wherein a male adherent of the Islamic faith enters into matrimony with a female individual who does not profess the Islamic faith, and conversely. Article 2 of Matrimony Law No. 1 of 1974 explicitly stipulates that the credibility of matrimony is contingent upon adherence to the respective religious and faith systems, and it becomes evident that the contentious nature surrounding interfaith matrimony in Indonesia arises from an erroneous interpretation of the article. The occurrence of interfaith matrimony in Indonesia is not limited to isolated instances or infrequent occasions. The absence of specific regulations pertaining to interfaith matrimony gives rise to a legal void, thereby creating an imbalance in the legal framework. Pursuant to the esteemed decision No. 1400K/PDT/1986, the Supreme Court, in its wisdom, did indeed bestow its gracious approval upon the sacred institution of interfaith matrimony. In the course of their deliberations, the esteemed Justices of the Supreme Court have opined that the Matrimony Law No. 1 of 1974 does not encompass any provisions that expressly proscribe interfaith matrimony, thereby aligning with the tenets enshrined within Article 27 of the 1945 Constitution, which guarantees the equal standing of all citizens in the eyes of the law. Pursuant to the Decision No. 916/Pdt.P/2022/PN.Sby rendered by the esteemed Surabaya District Court, it is duly acknowledged that interfaith matrimony have been lawfully granted. The aforementioned rulings have served as the foundation for interfaith couples to present applications to the court for the purpose of registering their interfaith matrimony, thereby ensuring the acquisition of legal recognition and status for their offspring.

Article 35, letter a of Law Number 23 of 2006 on Population Administration stipulates that the Office of Population Affairs and Civil Registration can record matrimony that has been established by the Court. Moreover, the elucidation of the aforementioned article explicitly confirms that the term 'matrimony determined by the Court' pertains specifically to matrimonial unions between individuals professing divergent religious beliefs. This correspondence is made in strict adherence to the fatwa, which unequivocally declares that interfaith matrimony is prohibited. The user's statement acknowledges the existence of certain provisions but it is important to highlight that within the Supreme Court fatwa No. 231/PAN/HK.05/1/2019 pertaining to civil registration, exceptions have been duly recognized. According to the current legal framework, it is regrettable to note that interfaith matrimony does not receive official recognition from the state and, as a result, is unable to be duly registered. Notwithstanding, in the event that the matrimonial union is solemnized in compliance with the religious beliefs of one party, and the other party willingly accedes to the religious beliefs of the former, it is thereby admissible to duly record the said matrimony. In the event that the matrimonial union is solemnized in accordance with
the principles and tenets of Christianity, it shall be duly recorded and registered at the esteemed Population and Civil Registration Office. Similarly, should the nuptial bond be formed in accordance with the sacred customs and practices of Islam, the matrimonial registration shall be effectuated at the esteemed Office of Religious Affairs, commonly referred to as the “KUA”.

A legitimate child is one who is born from a lawful matrimony and results from the actions of a husband and wife outside the womb and is birthed by said wife in accordance with Article 99 of Presidential Instruction Number 1 of 1991 on the Dissemination of Compilation of Islamic Law. Matrimony registration is a requisite procedure aimed at establishing and safeguarding the legal safeguards pertaining to the civil relations that ensue subsequent to the solemnization of matrimony. Upon the completion of the registration of matrimony, it is duly recognized and endowed with the full force and effect of the law. Children born from registered matrimony will be entitled to the utmost legal protection and assurance of their rights and obligations, and conversely, vice versa. Indeed, it is the primary impetus for interfaith couples to pursue the process of matrimony registration, as it serves to confer legal recognition upon the progeny borne of their union.

In light of recent developments, it is pertinent to note that Circular No. 2 of 2023 has been duly promulgated, thereby imparting crucial instructions to judges with respect to the adjudication of applications for matrimony registration involving individuals of divergent religious, and belief systems. The said circular aims to establish a harmonious and definitive framework for the application of the law in cases pertaining to interfaith matrimony, which are recognized as valid unions in accordance with the provisions set forth in Article 2, paragraph (1), and Article 8, letter (f) of Law No. 1 of 1974 concerning matrimony. It is imperative to underscore that the Court, in adherence to the aforementioned circular, refrains from granting matrimony registration between individuals of dissimilar religious and belief systems. The issue at hand pertains to the placement of offspring arising from matrimonial unions between individuals of distinct faiths subsequent to the promulgation of Supreme Court Circular No. 2 of 2023.

In order to ascertain the veracity of the aforementioned study, a thorough examination was conducted, wherein a meticulous comparison was undertaken compared to prior studies. First, the position of children from different religious matrimony, according to Indonesian Matrimony Law, focuses on the issue of the children’s position in the matrimony of their parents who are of different religions, and the interrelation between the children with their parents’ names if children choose different religions from both parents. Second, interfaith matrimony and child matrimony whose main problem is how the provisions for interfaith matrimony correspond to the Compilation of Islamic Law and how the children of the matrimony are. Third, the position of children of different religions with parents on heritage in fulfilment of the Inheritance Law System in Indonesia, which focuses on the position of children of different religions corresponding to the traditional inheritance law system, the inheritance law system of the Civil Code or ‘Burgelijk Wetboek’ (BW), and the Islamic inheritance law system.
2. Research Method

The research methodology employed in this study entails the utilization of normative legal research, wherein the law is employed as a normative system. The normative framework under scrutiny encompasses the underlying principles, norms, legal statutes, regulations, judicial precedents, contractual arrangements, and established doctrines, specifically pertaining to the context of matrimonial unions involving individuals of differing religious affiliations. The present research is primarily centred on the examination of library materials or secondary data, specifically Law No. 1 of 1974 pertaining to the institution of matrimony and Supreme Court Circular No. 2 of 2023. The present study employed a methodology of qualitative juridical analysis. Based on the aforementioned exposition of prior research, the formulation of the issue pertains to the determination of the legal status and rights of offspring born from interfaith unions prior to the promulgation of the Supreme Court Circular No. 2 of 2023. Regarding the matter of the position of children born from interfaith matrimony subsequent to the issuance of Supreme Court Circular No. 2 of 2023, it is imperative to analyse the legal implications and ramifications thereof.

3. Results and Discussion

The Position of Children of Interfaith Matrimony Prior to the Issuance of Supreme Court Circular No. 2 of 2023

The rising diversity of Indonesian culture, along with rapid technological advancements, has facilitated human interactions and fostered a sense of unity and acceptance, enabling individuals to form connections based on love and disregarding any existing distinctions. Interfaith matrimony encompasses the fundamental components inherent in matrimony as a whole. However, it diverges in terms of religious and belief disparities, thereby leading to legal implications within the context of matrimony. These legal consequences primarily manifest in the establishment of a legally recognized relationship between the husband and wife. Consequently, interfaith matrimony grants the same rights and obligations as a conventional matrimony, wherein both partners assume balanced positions and corresponding responsibilities. In the event that a matrimony is not officially registered, there may arise challenges in the equitable division of shared property and potential adverse consequences for children involved.\(^1\) The legal bond between parents and their children is a significant aspect of familial connections. Offspring represent the succeeding generation within a family unit. Accordingly, the birth of a legitimate child through a valid matrimony holds administrative significance, as it necessitates proper documentation. Failure to record such a birth may lead to complications regarding inheritance and the child’s entitlement to certain rights. When a matrimony is not officially recorded, it is not identified legally. Consequently, this lack of recognition poses challenges when seeking to initiate legal proceedings for the distribution of inheritance through the court system.\(^2\)

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Children are highly valued by couples, who view them as the ultimate aspiration of matrimony. It is crucial, however, that the matrimony adheres to the established regulations, as outlined in Articles 42 to 43 of the Matrimony Law No. 1 of 1974, in order for the kid to be recognized as a legitimate progeny. In agreement with the provisions of the Law, children possess the entitlement to engage in religious worship in alignment with their own faith. Offspring of interfaith spouses do not inherently possess a dual religious identity, so affording them the autonomy to select their religious affiliation as they mature. In the context of interfaith matrimony, the determination of inheritance is typically based on the presence or absence of children resulting from the marital union of the parents. Matrimony that are sanctioned by a particular religious institution are deemed valid, whilst matrimony that lack the endorsement of that institution are ineligible for official registration. The process of matrimony registration serves as a reliable means of obtaining legal assurance regarding the occurrence of a matrimony. This documentation is crucial in establishing the legal status of children, ensuring their recognition as legitimate offspring, and securing their entitlement as heirs. The legal status of children born to interfaith couples might be considered a legal derivative since it arises from the registration of weddings conducted in conformity with the separate religious enactments and recognized by the state. From a legal standpoint, it can be argued that children who are born and raised in a legally recognized matrimony but with parents practicing different religions possess the ability to autonomously make decisions pertaining to the religion they wish to accept and practice. The regulations pertaining to minors and the presence of offspring are inherently interconnected and intricately linked to the legal frameworks of matrimonial, familial, and inheritance matters. The legal status of children as outlined in Chapter 9, Articles 42 to 44 of Law No. 1 of 1974 is as follows:

1. a legitimate child as one born within the bounds of a legal and officially recognized matrimony (in Article 42);
2. a child born out of matrimony is only legally connected to their mother and her family (in Article 43, paragraph (1));
3. If a husband can prove his wife’s unfaithfulness and demonstrate that the child was conceived from such infidelity, he has the right to challenge the child’s legitimacy;
4. The court will decide on the child’s legal status upon receiving an application from an interested party.

Interfaith matrimony presents a complex predicament as it brings together two sets of regulations in accordance with the procedures outlined by their respective religious doctrines. The primary objective of matrimony is to facilitate procreation, thereby ensuring the perpetuation of the human species in an uninterrupted manner. The legal ramifications of the position of children born to parents in interfaith matrimony mostly revolve around the validity of their parent’s marital union. Moreover, it is stipulated in Article 99, Letter (a) of the Compilation of Islamic Law that a legitimate kid refers to a child who is born within the confines of lawful matrimony or as a consequence thereof. The legitimacy or illegitimacy

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of the marital union might impact the legitimacy or illegitimacy of the offspring's legal status. Therefore, offspring resulting from unions deemed illegitimate, such as interfaith matrimony in the present scenario, will inherit the status of illegitimacy or be born out of matrimony. The outcome of an interfaith matrimony led to the child establishing a civil relationship solely with their mother and her family, while not establishing a civil contact with their father. Another additional issue emerges with the placement of the child, specifically concerning their future destination, whether it be a temple, mosque, church, or no specific location. It is important to acknowledge that Indonesia's foundation is rooted in Pancasila, hence implying limited inclusion for residents who do not adhere to religious beliefs. Thus, even if both prospective spouses endeavour various means to conduct an interfaith marriage, such a marriage will still be disallowed and considered invalid according to religious law in Indonesia.

Furthermore, the status of children resulting from interfaith marriages also influences matters concerning inheritance. In cases where a child is deemed illegitimate, their civil relationship is limited to their mother and maternal family, whereas their father is not recognized as having a civil relationship with the child. The matter of inheritance is impacted by the recognition of interfaith matrimony. If the legitimacy of interfaith matrimony is not contested, the matrimony itself, as well as the status of their offspring, is deemed valid. However, interfaith matrimony may result in the loss of inheritance rights between spouses and their children. In the context of inheritance, when a child's religious beliefs diverge from those of their parents, the child's entitlement to inherit property from their parents is forfeited.

According to Article 1 of Law No. 23 of 2006, population management encompasses a range of activities aimed at organizing and overseeing population documents and data. These activities include population registration, civil registration, information management of population, and the utilization of the resulting data by public servants and other sectors. The Indonesian legal framework encompasses provisions pertaining to matrimony registration, specifically outlined in Articles 34, 35, and 36. According to Article 34, residents are required to report a legally recognized matrimony to the relevant implementing body within 60 days of the matrimony taking place. According to the study, the civil registration official is responsible for documenting and maintaining records in the matrimony certificate register, as well as issuing an extract of the Matrimony Certificate. The matrimony certificate citation is issued to both the husband and wife. Additionally, it was elucidated that the task of documenting matrimony for Muslim inhabitants is undertaken by the Religious Affairs Office at the sub-district level. Subsequently, the sub-district Religious Affairs Office is required to promptly transmit the data pertaining to the outcomes of the matrimony registration process to the relevant civil registration authority, ensuring that this is done within a maximum period of ten days following the completion of said registration. Therefore, the findings of the recording do not necessitate the issuing of a citation pertaining to the Civil Registration Deed.

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According to Article 36, in the absence of a matrimony certificate as proof, a court ruling is required for the registration of the matrimony. Article 35 Letter (a) of Law No. 23 of 2006 establishes the legal framework for conducting interfaith matrimony in Indonesia. The interpretation of this article suggests that such court-sanctioned matrimony can occur between individuals belonging to different religions. This provision supersedes Articles 2 and 8 of Law No. 1 of 1974 concerning Matrimony, which implicitly discourages interreligious matrimony due to each religion’s prohibition against such unions in Indonesia. This is further supported by Article 2 Paragraph 2’s explanation in Law No. 1 of 1974 regarding Matrimony, which asserts that no matrimony can exist outside each religion’s laws and beliefs. However, this contradicts with the explanation provided by Article 35 from Law No. 23 of Year 2006 which permits interfaith matrimony. In light of these conflicting provisions, the Supreme Court of the Republic of Indonesia affirmed through fatwa No. 231/PAN/HK.05/1/2019 that the state does not recognize interfaith matrimony unless they are conducted according to one party’s religious customs – similar to how Islamic matrimony are registered at the Office for Religious Affairs and non-Islamic ones at Office for Population and Civil Registration. Henceforth, without approval from a religious institution, no matrimony registration can be performed by the Office for Population and Civil Registration.

According to Islamic jurisprudence, it is impermissible for an individual of a different religious affiliation to inherit from an heir. This ruling is derived from Article 171, specifically letter (c), of the Compilation of Islamic Law. The aforementioned article stipulates that an heir is defined as an individual who, at the time of the deceased’s passing, shares a blood or marital connection with the heir, adheres to the Islamic faith, and is not legally prohibited from assuming the role of an heir. Therefore, if an individual who is designated as the heir possesses a religious affiliation that differs from that of the heir, they will forfeit their entitlement to inherit, unless they revert back to their adherence to Islam prior to the demise of the heir. Nevertheless, this particular stipulation exclusively pertains to Muslim heirs and does not extend to other religions such as Hinduism or Catholicism. In this scenario, the issue of whether a kid with a religious affiliation distinct from that of their parents will be entitled to inherit one-third of the parental estate can be addressed through the implementation of grants and wills. Wills play a significant role in judicial determinations pertaining to the allocation of inherited assets. In accordance with civil law, the absence of provisions within the Civil Code pertaining to religious disparities as a hindrance to the acquisition of inheritance rights by heirs is evident. This holds true as long as the child shares a biological connection with the heir, whether they are born within or out of matrimony, in accordance with the stipulations outlined in Article 832 of the Civil Code. The significance of religion in the allocation of inheritance is explicitly emphasized.
In the context of children born from matrimony involving individuals of various religious affiliations, it is important to consider that, in accordance with religious doctrine, unions between individuals of differing faiths are deemed invalid. Consequently, the offspring resulting from such unions are likewise regarded as illegitimate. However, it remains imperative that each newborn is duly registered in the civil registration in order to acquire a birth certificate. The regulation pertaining to this matter can be found in Article 27 of Law No. 23 of 2006, which specifically addresses Population Administration. The birth registration process in Indonesia is regulated by Articles 51 to 54 of the Presidential Regulation No. 25 of 2008. These articles specifically address the requirements and procedures related to population registration and civil registration. Therefore, the legal status of children born to interfaith marriages can be seen as a legal consequence, as these unions have been officially documented by the government in accordance with the relevant religious protocols. The child’s legal status is that of a legitimate child, provided that the matrimony has been duly registered in compliance with statutory regulations. In the context of children born to legally married parents of different religious backgrounds, it is important to recognize the kid’s entitlement to exercise autonomous decision-making in matters pertaining to religion. Specifically, the child should have the freedom to choose and practice a religion without being subjected to any form of religious coercion imposed by their parents.

The Status of Offspring from Interfaith Matrimony Following the Enactment of Supreme Court Circular No. 2 of 2023

The phenomenon of interfaith matrimony in Indonesia persists despite the explicit prohibition of such unions by both state and religious laws. The Compilation of Islamic Law serves to strengthen the prohibition of interfaith matrimony by incorporating clauses that explicitly forbid, hinder, and invalidate matrimony among individuals with divergent religious beliefs. According to Article 42 of Law No. 1 of 1974 and Article 99 of the Compilation of Islamic Law, the legitimacy of a child is contingent upon the marital status of their parents. According to the Compilation of Islamic Law, interfaith matrimony is deemed invalid, thereby rendering a kid produced from such a union similarly invalid or comparable to a child resulting from adultery. The offspring of adultery only lusts on his mother, not on his father.

Due to this rationale, there exists a necessity for legal certainty, which serves as the fundamental premise guiding a judge’s deliberation in rendering a verdict inside a court of law. In the realm of legal certainty, it is imperative that the law is effectively enforced, as individuals seek assurance of legal certainty in situations where a lack of specific legal provisions exists. The objective for the community is to have legal certainty. The absence of

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certainty in the realm of law results in a loss of significance, as it renders law ineffective as a guiding principle for societal behaviour. The concept of legal certainty is intricately linked to the maintenance of societal order, since it serves as the fundamental pillar of order. The establishment of order enables individuals to lead a life characterized by certainty, since it facilitates the execution of essential actions required for communal existence. The objective at hand encompasses not only the establishment of justice, but also the provision of legal clarity, specifically pertaining to the effectiveness of legal measures. Furthermore, the assurance of legal certainty can be ensured when a nation possesses sufficient and efficient mechanisms to enforce prevailing legislation.

However, the issue of the validity of interfaith matrimony and their registration is not only a legal issue, but also a socio-religious issue. Must dare to take concrete steps to make revisions or changes in the law so that the vagueness or even confusion of legal rules in cases of matrimony validity of different recording rules can be synchronized or reinforced. The state must not allow issues that always give rise to polemics. Taking into account the fact that almost all applications for interfaith matrimony registration permits were granted by the District Court.17

Therefore, interfaith matrimony in Indonesia have become a subject of intense debate, revolving around whether they can be carried out or not, whether they meet valid requirements or not, and whether they hold legal force or are void by law. This is due to the Civil Code serving as the legal umbrella for the Matrimony Law that handles issues related to interfaith matrimony. Misinterpretation of laws pertaining to interfaith matrimony has occurred within Indonesian society. While matrimony law does not regulate interfaith matrimony, on the other hand, population administration law opens up opportunities for legalization through manipulation of interfaith matrimony laws. The government needs to re-evaluate regulations that open possibilities related to differing faiths in a matrimony. The government must create new strategies to address each need and problem faced by society so that if this issue of legal manipulation can be resolved it will certainly strengthen both religious and legal sciences.18

Therefore, the issuance of Circular No. 2 of 2023 from the Supreme Court could impede the enforcement of decisions to grant applications for interfaith couples. This document serves as a comprehensive reference and set of instructions for judges when presiding over issues pertaining to applications for the registration of interfaith matrimony.19 The reason for this is due to the provision outlined in Article 35 letter an of Law No. 23 of 2006 on Population Administration, which stipulates that the registration of marriages, as mentioned in Article 34, is applicable to marriages solemnized by a court. In this context, it specifically pertains to marriages between individuals of differing religious beliefs. Regarding the position and status of children, the Ministry of Home Affairs states that children born from interfaith matrimony can obtain official state documents, namely a mother’s certificate. This certificate functions like an ordinary certificate, which means if

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there is no matrimony certificate then there will be a mother’s child certificate. However, it seems that Circular No. 2 from the Supreme Court dated 2023 may not be sufficient due to the need for other regulations related to the fate of children born from parents who marry across different religions.

4. Conclusion

Interfaith matrimony is prevalent, particularly among prominent individuals in the nation, prior to the issuance of Supreme Court Circular No. 2 of 2023. Subsequently, a formal request is submitted to the court to get legal identification and registration of the marital union. Following the court’s approval of the application, the matrimony can be officially registered, resulting in the child's legal status as stipulated by Article 35 of Law No. 23 of 2006 on Population Administration. The absence of a definitive protocol governing the decision-making process of judges in interfaith matrimony disputes creates a legal void. Subsequent to the promulgation of Supreme Court Circular No. 2 of 2023, the act of a judge granting applications for matrimony involving individuals of different religious affiliations has been proscribed. Consequently, the registration of such matrimony cannot be conducted, leading to the non-recognition of offspring born from these unions under legal provisions due to their classification as invalid matrimony. However, it is widely believed that the introduction of the Supreme Court Circular No. 2 of 2023 alone does not suffice in effectively reducing the prevalence of interfaith weddings in Indonesia. Consequently, the implementation of specific legislation pertaining to interfaith matrimony remains imperative to establish legal protection and predictability for the status and position of children resulting from interfaith matrimony.

References


