

THE LEGALITY OF INTERFAITH MARRIAGE CONDUCTED ABROAD IN THE PERSPECTIVE OF INDONESIAN LAW

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Abstract

Based on the provisions of the legislation that applies positively in Indonesia, it is stated that interfaith marriages cannot be carried out. However, it turns out that interfaith marriages still occur as a result of social interaction among all Indonesian citizens, so the interfaith couples carry out their marriages abroad. Interfaith marriages are implicitly not specifically regulated in the Marriage Law. The problem studied in this paper is how the legality of interfaith marriages abroad in the perspective of Indonesian law. The purpose of this study is to find out the legality of interfaith marriages abroad in the perspective of Indonesian law. This research uses a normative method by reviewing the laws and regulations related to the legal issues under study. The results of the study concluded that the legitimacy of interfaith marriages outside the jurisdiction of Indonesia was invalid because it violated several articles in the Marriage Law. If interfaith marriages abroad still occur, then the marriage is a violation of the law.

Keywords: Abroad, Interfaith Marriage, Validity

1. INTRODUCTION

Humans are considered social beings because they need to interact with each other to feel mutual care, love, respect, and the desire to live and be happy. God created humans in pairs, male and female, and everyone has the same position and rights before the law, including the right to form a family in a legal marriage bond. Marriage is not only a personal matter but also an institution or social agent called the household and family. Marriage has both juridical and sociological consequences. For instance, when a person who was previously considered immature enters into a marriage, they will be considered an adult and change their legal status (Humbertus, 2019).

This concept is explained in the 1945 Constitution of the Republic of Indonesia in Article 28B paragraph (1). Based on this concept, Law No. 1 of 1974 concerning Marriage regulates the marriage of Indonesian citizens conducted outside the jurisdiction of Indonesia. Forming a family means forming a small community unit consisting of a husband, wife, and children. Forming a household means forming a husband and wife relationship in one container, which is called a shared residence.

Previously, Law No. 1 of 1974 stipulated that mixed marriages were based on Hukum Adat (customary law), except for marriages between Indonesian citizens and foreigners (Undang-undang Republik Indonesia Nomor 16, 2019). However, in marriages between Indonesian citizens and foreigners, religious differences may arise. This means that such marriages are subject to the same rules as mixed marriages under Hukum Adat, but they are carried out abroad. This is possible because Article 56 paragraph (1) of the Marriage Law states that "Marriage in Indonesia between two Indonesian citizens or an Indonesian citizen and a foreign national is legal if it is carried out according to the law in force in the country where the marriage took place." Moreover, the principle of *lex loci celebrationis* in Private International Law states that every civil law act, including

marriage, is subject to the legality of the rules under which the act was committed. Both of these rules determine the law in the country where the act takes place, rather than the parties' country of origin. Indonesian citizens use this as a basis for marrying abroad, even when they have different religions (which may be an obstacle under the Marriage Law).

However, the elucidation of Article 2 of the Marriage Law states that no marriage should be carried out outside the regulations of one's own religion and beliefs, regardless of citizenship. Additionally, the second phrase of Article 56 paragraph (1) of the Marriage Law states that marriages carried out by Indonesian citizens abroad should not violate the provisions of the law. This creates a problem for Indonesian citizens who marry abroad, particularly those of different religions.

Currently, mixed marriages involve not only partners of different religions but also different nationalities, leading to the classification of mixed marriages into two categories: (1) mixed marriages due to religious differences and (2) mixed marriages due to differences in nationality. The Marriage Law provides not only principles but also the basis for marriage law, which has been a guideline for all Indonesian people since its promulgation (Indrawan & Artha, 2019). This shows that the practice of mixed marriages has evolved beyond the classical view, which tends to understand mixed marriages solely in terms of religious differences (Amin, 2016). Interfaith marriage remains a classic issue whose legal status has not yet been agreed upon (Mutakin, 2021).

Thus, if a marriage is carried out by a person who is not of the same religion where each religion or one of these religions prohibits the marriage, then the Marriage Law is prohibited from carrying out the marriage. In the provisions of Article 8 letter (f) of the Marriage Law it has been regulated regarding the prohibition of marriage which reads, that: "Marriage is prohibited between two people who have a relationship whose religion or other applicable regulations prohibit marriage".

With this article, it should be a consideration for carrying out interfaith marriages. People in Indonesia have different beliefs. This diversity has made the Indonesian nation a nation rich in culture and it is not impossible that interfaith marriages occur from social interaction in Indonesian society. Marriage between two people, men and women who are subject to different laws because of different religions is called interfaith marriage (M. D. Ali, 2017). In this diverse condition of Indonesian society, both in terms of culture, ethnicity, race, religion, contact between one community group and another is certainly unavoidable. This contact between people with different backgrounds later gave rise to a phenomenon in society, namely in the form of interfaith marriages.

One of the most debated issues regarding mixed marriages is when partners have different religions. The problem with interfaith marriages is that there is a fundamental difference in the marriage that may cause various complicated problems to arise in the future (Hanifah, 2019). Therefore, many oppose such marriages, not only within the wider community but also by positive laws in our country and the religious laws they profess. Although it cannot be denied that there are parties who support the existence of interfaith marriages.

At present, society still applies customary law to provide an illustration that the existence of customary law is still recognized and implemented as a compliance with the values and norms that apply in society. In the Hindu religion, marriages for Hindus who do not meet the requirements can be annulled. A marriage is void if it does not meet the requirements to be legalized, for example if it is performed according to Hindu law but

does not meet the requirements, such as those who do not adhere to the same religion at the time of the marriage ceremony cannot be carried out according to Hindu religious law. If one of the bride and groom is not Hindu, they are required to convert to Hinduism, because the prospective groom who is not Hindu is not purified first and then the marriage is carried out, violating the provisions in sloka V89 of the Manawadharmaśāstra book. Thus, according to the explanation, every marriage carried out within the jurisdiction of Indonesia must be carried out within one religious line, and marriages of different religions are not allowed to take place. If this happens, it is a violation of the constitution.

In this paper, we conducted a literature review and found that it contains elements of originality, indicating that there is no plagiarism involved. However, to provide a comparison, the author reviewed two other articles discussing similar issues. The first article, written by Soebandi & Haryono (2020), explores the legal consequences of interfaith marriages abroad based on Indonesian positive law. The second article, written by Fans (2021), analyzes the laws and regulations regarding marriage in the perspective of legal certainty. These articles reveal that the focus of this paper is on the legality of interfaith marriages abroad from the perspective of Indonesian law, offering a unique perspective compared to the broader issues discussed in the two journals.

Based on the background above, this research focuses on one problem formulation that will be studied further, namely how the legality of interfaith marriage abroad is viewed from the perspective of Indonesian law. The aim of this paper is to understand and analyze the legality of interfaith marriages abroad from the perspective of Indonesian law.

2. RESEARCH METHODS

The problems studied in this legal journal are approached through doctrinal legal research, which focuses on analyzing legal texts and principles to answer legal questions (Z. Ali, 2021). Specifically, the research examines the rules and norms that apply to the research object, including legal principles, systematics, and vertical and horizontal synchronization. To do this, the study employed a statutory and conceptual approach, which involved reviewing the legal concepts in theory or doctrine relevant to the problems studied (Rismajayanti & Santosa, 2022). For example, the research analyzed the legal principles related to marriage and population administration in Indonesia.

The study used secondary data, consisting of primary legal materials, such as official documents like Law No. 1 of 1974 jo. Law No. 16 of 2019 concerning Marriage, Law Number 23 of 2006 jo. Law Number 24 of 2013 concerning Population Administration, and secondary legal materials like relevant books, journals, information media on the internet, and other sources related to the research problem (Undang-undang Republik Indonesia Nomor 24, 2013).

The data collection method utilized library research techniques to collect primary and secondary legal materials, which were then analyzed using thematic analysis. Specifically, the data and legal materials were coded based on their relevance to the research problem, and then analyzed to identify patterns and themes. The results were presented by describing the data and legal materials, and providing an analysis of the findings.

3. RESULTS AND DISCUSSION

3.1. Legality of Interfaith Marriage Abroad in the Perspective of Indonesian Law

In Article 1 of the Marriage Law, it can be seen that marriage is a physical and spiritual bond between a man and a woman based on the belief in one Almighty God. Therefore, every aspect of marriage must involve religious values. While marriages conducted abroad may not necessarily follow the same procedures as those in Indonesia, such as being carried out according to religious procedures, for example, Hindus performing a series of Manusa Yadnya ceremonies in front of religious leaders, Muslims obtaining consent from an authorized priest, Christians promising allegiance before their pastor, and other religions before their respective religious leaders. Marriages performed abroad may be recorded at the local Civil Registry Office, which means that when a marriage has been registered by an authorized state institution, the marriage is considered legally valid even though the process was not carried out according to the respective religious procedures. Interfaith marriage in Indonesia continues to be a polemic that serves as a legal guideline regarding marriage. There is still controversy when discussing this marriage. If you look at positive law alone, you will not gain clarity regarding marriages like this. This marriage is complicated because to determine its validity, one has to look at the religious law recognized in Indonesia. Marriage cannot be separated from the element of religion (Sunu, 2021). In this case, we will discuss two conflicting rules regarding the legality of interfaith marriages abroad according to Indonesian law.

3.1.1. The legality of interfaith marriages abroad according to Law no. 1 of 1974 jo. Law No. 16 of 2019 concerning Marriage.

Prior to the enactment of Law no. 1 of 1974 concerning Marriage, the Dutch East Indies government, through the King's Decree dated 29 December 1896 No. (Stb. 1898 No. 158) concerning Mixed Marriages, which was later called GHR, regulates interfaith marriages where if two people of different religions want to get married, the civil registry office will register the marriage. However, according to Rismawati (2019), "in the political context of state law in Indonesia, the state has regulated marriage in Law Number 1 of 1974, hereinafter referred to as the Marriage Law, and other implementing legal regulations". The presence of the Marriage Law became the starting point for renewal, codification and unification of marriage law in Indonesia after the enactment of Law no. 1 of 1974, especially after 1983, the implementation of interfaith marriages became difficult (Wahyuni, 2016) The marriage law is seen from the plurality of religious laws by analyzing the Judicial Review (Ashsubli, 2015). The Marriage Law through Article 57 regulates mixed marriages, namely marriages 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. If examined the provisions of Article 57, it means that marriages caused by differences in nationality are not differences in religion or belief. Mixed marriage regulations have not provided a way out for parties who carry out interfaith marriages, so that prospective husband and wife couples who have different religions carry out marriages abroad with the aim of obtaining marriage validity.

Interfaith marriages carried out by citizens abroad will also intersect with provisions in International Private Law. The principles of international private law used to regulate the formal validity of marriages are based on the principle of *locus regit actum*, it is accepted the principle that the validity/formal requirements of a marriage are determined

based on *lex loci celebrationis*. In addition, the principles used to regulate the material validity of marriage are:

- 1) The principle of *lex loci celebrationis*, that is, the material validity of a marriage must be determined based on the legal rules of the place where the marriage was made official/conducted.
- 2) The material validity of a marriage is determined based on the legal system where each party becomes a citizen before the marriage takes place.
- 3) The material validity of a marriage must be determined based on the legal system of the place where each party is domiciled before the marriage takes place.
- 4) The material validity of a marriage must be determined based on the legal system of the place where the marriage took place (*locos celebrationis*), without neglecting the marriage requirements in force in the legal system of the parties before the marriage took place (Seto, 2013).

The principles of civil international law on marriage as mentioned above, the fourth principle is in line with the provisions of Article 56 paragraph (1) of the Marriage Law which states that formally the validity of a marriage conducted abroad between two Indonesian citizens who have different beliefs must be based on the law of the place where the marriage took place. However, according to Seto (2013), “materially the place of the country where the marriage took place must also pay attention, namely: First, the law of the place where each party became a WN before the marriage took place. Second, the legal system from where each party was domiciled before the marriage took place. Third, the marriage requirements that apply in the legal system of the parties before the marriage takes place”.

Reviewing the theories of international private law in the field of marriage, it is for prospective husband and wife couples who marry abroad which gives freedom to each partner to carry out the marriage without questioning religion. However, the country where the marriage is held must also pay attention to the material legal system of each spouse domiciled or the marriage requirements of the parties' legal system, in this case the Marriage Law, especially in Article 2 paragraph (1). In the explanation above, interfaith marriages conducted abroad can be considered as a form of legal smuggling carried out by Indonesian citizens to avoid provisions in the Marriage Law, one of which is the obligation to have the same religion before marriage. Legal smuggling which in Dutch is known as "*Wetsontduiking*", the French term, "*fraude a la loi*", the Latin term, "*Gesetzesumgehung*", and the English term, "fraudulent creation of point contact", namely the method carried out by couples who have religious differences to obtain the legality of marriage in a country that does not question religious differences, but by violating the rules of national law. In this case the rules in Article 2 paragraph (1) of the Marriage Law regarding the validity of marriage. As a result of the smuggling of the marriage law, it is null and void by law, known as the principle of *fraus omnia corrumpit*. Listyawati (2020) explain that “the provisions of marriage law, whether express or implied, do not regulate the granting of marriages between adherents of different religions. This is because marriage is prohibited between two people who have a relationship that by their religion or other regulations prohibiting marriage does not mean that provisions in Islam prohibit interfaith marriage”.

3.1.2. The legality of interfaith marriages abroad according to Law Number 23 of 2006 jo. Law Number 24 of 2013 concerning Population Administration.

Population administration is regulated in Law No. 23 of 2006 which was subsequently amended by Law No. 24 of 2013. This law states that registration of marriage as a right is the same as registration of births and deaths because marriage registration is the right of a married couple, which in turn is the obligation of the state and the authorities to fulfill these rights. Therefore, Article 35 letter a states that “The registration of marriages as referred to in Article 34 also applies to: Marriages determined by the Court”. Explanation of Article 35 letter a is what is meant by “marriage determined by the court” namely marriages carried out between people of different religions. The court's decision is the basis for registering the marriage. Then, in Article 34 paragraphs (1) and (2) it states that (1) Marriages that are legal based on statutory provisions must be reported by residents to the implementing agency at the place where the marriage took place no later than 60 (sixty) days from the date of the wedding. (2) Based on the report referred to in paragraph (1). Based on Article 35 letter a Law No. 23 of 2006 jo. UU No. 24 of 2013 above, the Civil Registry Office now has the authority to record interfaith marriages that have received a stipulation from the court. The court in question is the District Court and not the Religious Court and the explanation does not find the competence of the Religious Courts in recording different religions except for *itsbat* marriage.

After the marriage takes place abroad, the couple registers their marriage at the local civil registry. Deeds issued by the local state Civil Registry are universally applicable, but in order to have legal consequences in Indonesia, the marriage must be registered in the registration book at the Indonesian representative and reported to the Indonesian Civil Registry, namely in the area of origin of the Indonesian citizen. Marriage reporting is usually done within a year after the spouse returns to Indonesia to the place of origin of the Indonesian citizen. UU No. 23 of 2006 which was amended by Law No. 24 of 2013 concerning Population Administration, in paragraph 2 of the registration of marriages outside the territory of the Unitary State of the Republic of Indonesia in Article 37. If the marriage abroad is not registered in Indonesia, then the consequence is that the marriage is deemed to have never existed. The legal basis is the Supreme Court Circular No. 3 of 2015 as a guideline for carrying out tasks for the court.

3.1.3. Legality of interfaith marriages abroad according to Supreme Court Jurisprudence.

Furthermore, Supreme Court Decision Number 805 K/Pdt/2013 dated 27 June 2013 (Mahkamah Agung Republik Indonesia Nomor 805, 2013). In this decision, there was a husband and wife couple who married in Hong Kong in 1993 in January. The marriage is then proven by a marriage certificate issued by a local official. Furthermore, after marriage, the couple returned to Indonesia and lived in Central Java. From that marriage two children were born, with this birth they asked for a court ruling regarding the validity of their marriage in Hong Kong and in order to change the birth certificates of their two children. Based on the request, the court stated that the request for determination was unacceptable. Then came the decision of the Supreme Court also stating that the application could not be accepted because the marriage of the applicants was carried out abroad, namely Hong Kong and was not reported to the Representative of the Republic

of Indonesia in Hong Kong as in accordance with Article 37 paragraph (2) of the Population Administration Law.

Differences of opinion regarding the legality of interfaith marriages should also be taken into consideration, namely the decision of the Supreme Court Number 1400 K/Pdt/1986 (Mahkamah Agung Republik Indonesia, 1986). The Civil Registry Office is permitted to enter into and register interfaith marriages. This case stems from the marriage that Ani Vonny Gani P (female and Muslim) wanted to register with Petrus Hendrik Nelwan (male and Christian). The decision stated that at that time the Civil Registry Office was allowed to enter into interfaith marriages. This case began with a marriage that was about to be registered by a Muslim female applicant with her Protestant Christian partner. In its decision, the Supreme Court stated that by submitting a marriage registration at the Civil Registry Office, the marriage had chosen not to take place according to the Islamic religion. Thus, the applicant no longer cares about his religious status (Islam), the Civil Registry Office must carry out and register the marriage as a result of interfaith marriages being held.

From the two jurisprudences of the Supreme Court above, when compared with interfaith marriages conducted abroad, the two couples do not wish to marry according to their respective religious procedures as stated in the Marriage Law but to do so according to local state procedures.

4. CONCLUSION

The status of interfaith marriages conducted abroad is still a legal problem. On the other hand, from the Indonesian legal system, the marriage is valid by basing the argument on the first phrase in Article 56 paragraph (1) of the Marriage Law and in Article 35 letter a of the Population Administration Law and the Supreme Court Jurisprudence, namely the Supreme Court decision No. 1400 K/Pdt/1986. Whereas in Article 2 paragraph (1) and the second phrase in Article 56 paragraph (1) of the Marriage Law, interfaith marriages abroad are invalid because they violate these two articles. If interfaith marriages abroad still occur, the marriage is a violation of the law in the form of law smuggling which can result in the cancellation of all actions and legal consequences.

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