



Legal Analysis of the Prohibition of Interfaith Marriages Based on Pancasila and the State Constitution Republic of Indonesia in 1945

Muhamad Aksan Akbar^{1*}

¹Universitas Sembilanbelas November, Kolaka, Indonesia

*Korespondensi: akbaraksan53@gmail.com

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Abstrak

The existence of Law no. 1 of 1974 concerning Marriage still leaves problems for couples of different religions who want to get married. Some groups view the prohibition of interfaith marriages as contrary to human rights. This research aims to find out whether the prohibition on marriage between interfaith couples in Indonesia is contrary to the values of Pancasila and the provisions in the 1945 Constitution and what the legal implications are for marrying interfaith couples in Indonesia. This research method is normative. The results of the research are that the prohibition on marriage between interfaith couples in Indonesia does not conflict with the values of Pancasila and human rights in the 1945 Constitution. State intervention in the implementation of marriage is carried out to ensure that the implementation of marriage is in accordance with the provisions of each religion and belief, so that the rights of citizens in worshipping according to one's religion and beliefs can be protected. The enactment of Article 2 of the Marriage Law is not intended to hinder the freedom to embrace religion and belief, freedom to embrace religion and belief remains the right of every citizen as stipulated in the 1945 Constitution. Psychologically, interfaith marriages can have implications for household happiness, while from a legal aspect they have implications for the validity of marriage, the status of children and inheritance issues.

1. Introduction

Indonesia is one of the largest countries in the world which has a diversity of ethnicities, cultures, customs, languages and religions. Currently there are 6 (six) religions that are officially recognized by Indonesia, namely Islam, Christianity, Catholicism, Hinduism, Buddhism and Confucianism. The diversity of religions in Indonesia turns out to give rise to its own legal problems among society, one of which is interfaith marriage. The 1945 Constitution protects the right of every

citizen to form a family and continue their offspring by means of a legal marriage. These provisions were further strengthened by the enactment of Law Number 1 of 1974 concerning Marriage which provides legal certainty in carrying out marriages in Indonesia. The existence of the Marriage Law apparently still leaves problems for couples of different religions who want to get married, because couples with different religions will have problems when they want to get married legally in Indonesia. This is because the rules in Article 2 of the Marriage Law require that a marriage be said to be valid if it is carried out based on the laws of each religion and belief, then the marriage that can be registered is a marriage that was legally solemnized. Furthermore, Article 8 of the Marriage Law basically states that a marriage is prohibited between a man and a woman if their religion or other regulations prohibit the marriage. Even though there is a ban on interfaith marriages in certain religious teachings, in practice interfaith marriages in Indonesia are still carried out. (Wildan Habib Azhari, 2022).

Marriage is in the private realm, which is a religious issue and is closely related to state responsibility. Therefore, if religious law prohibits marriage due to differences in religion or belief, then the marriage may not be carried out. In this regard, the government as the party responsible for protecting its people has enacted the Marriage Law to regulate and provide protection for the implementation of marriage in Indonesia. Some groups view that the prohibition on marriage between couples who have different religions in the Marriage Law could hinder the freedom to embrace religion and the freedom to form a family which is guaranteed in the 1945 Constitution as the highest source of national law and the Universal Declaration of Human Rights (UDHR), which is an international legal instrument. What has become a topic of conversation recently that has attracted public attention is the publication of Supreme Court Circular Letter Number 2 of 2023, which basically directs judges not to grant requests to register marriages between people who have different religions and beliefs. Prior to the issuance of SEMA Number 2 of 2023, couples who had religious differences were based on Article 35 letter a of Law No. 23 of 2006 concerning Population Administration, can register their marriage after obtaining a court order. After the publication of the SEMA, it was no longer possible for the court to grant the application for registration of marriages of couples of different religions which had previously been carried out based on Supreme Court jurisprudence Number 1400/K/Pdt/1986. In principle, all religions in Indonesia require that marriages be carried out within 1 (one) religion, but it turns out that there are several religions that provide dispensations for interfaith marriages (Hartanto, 2019).

There are 2 (two) different views regarding interfaith marriage in Indonesia, namely, some prohibit it and some allow it. Provisions prohibiting marriage between couples of different religions are not actually stated expressly in the Marriage Law, however the prohibition on marriage for couples of different religions can be implicitly found in Article 2 paragraph (1) and Article 8 letter f of the Marriage Law, while for Muslims the prohibition on marriage between people of different religions Religion is explicitly mentioned in Article 40 letter c and Article 44 of the Compilation of Islamic Law. This rule is considered to prevent interfaith couples from entering into a legal marriage. Then on February 4 2022, this legal norm was submitted for judicial review at the Constitutional Court by the applicant on behalf of E. Ramos Petege in case no. 24/PUU-XX/2022, on the grounds that

the implementation of Article 2 and Article 8 letter f of the Marriage Law means that applicants who are Catholics cannot marry women who are Muslim. Furthermore, the Constitutional Court in this case decided to reject the applicant's application. Thus, couples of different religions cannot legally marry in Indonesia. Interfaith couples who want to get married can only carry out their marriage abroad or change their religion to their partner's religion, because marriages between couples of different religions in Indonesia do not receive state recognition and cannot be registered. If couples from different religions continue to marry in Indonesia, this will have implications for the validity of the marriage. Based on this description, the problem that will be answered in this research is whether the prohibition on marriage between interfaith couples in Indonesia is contrary to the values of Pancasila and the provisions in the 1945 Constitution and what are the legal implications of interfaith marriage in Indonesia.

2. Methods

This research uses normative research methods by conducting research on library materials or secondary data.(Maiyestati, 2022) The data sources for this research are secondary data in the form of statutory regulations, court decisions, agreements/contracts, various legal theories, textbooks, research results, magazines, opinions expressed by legal scholars, legal dictionaries and legal encyclopedias and other legal materials. The approaches used in this research are the statutory approach and the case approach. The legislative approach is carried out by analyzing several laws and regulations related to the legal issues being researched. Meanwhile, the case approach is carried out by analyzing several court decisions that have permanent legal force relating to the case or problem being studied. The data collection technique used by the author is literature study (library research) is carried out by reviewing various written legal information from several published sources. The collected data was analyzed using qualitative analysis methods, which were carried out by interpreting legal materials that had been processed to provide arguments and answers to the research conducted.(Muhaimin, 2020)

3. Findings and Discussions

3.1 Findings

Analysis of the Prohibition of Interfaith Marriages Based on Pancasila and the 1945 Constitution

Forming a household through marriage is the nature of every human being who has reason and feelings. A life partner is actually a complement to the human self who provides inner peace, creates a feeling of love and affection. Love is a gift from God Almighty which is manifested in the form of sacrifice, just like the love of a servant for his God, the love of husband and wife and their family, the love of their nation and country, and the love of anyone, all of which are manifested in the form of sacrifice. In accordance with the provisions of the Shari'a, when a man and woman want to have sexual relations or have a biological relationship, they are first obliged to enter into a valid marriage.(Anam, 2019) As a legal act, marriage must be carried out in accordance with the requirements of the statutory regulations. applicable. The Marriage Law determines the validity of a marriage in Article 2 paragraph (1), namely that marriages are carried out according to the laws of their respective religions and beliefs. Furthermore, Article 8 letter f of the Marriage Law

prohibits marriage between men and women who, according to their religious beliefs or other applicable regulations, are prohibited from entering into marriage. Based on these provisions, it can be understood that apart from being a legal event, marriage is also a religious event, so that there is no marriage outside the laws of each religion and belief. The purpose for marriages to be registered is as stated in Article 2 paragraph (2) of the Marriage Law, namely that marriage registration is an administrative activity carried out by the state to ensure legal certainty and for orderly population administration.

Marriage registration is an important event, such as the birth or death of a person which is stated in the form of an authentic certificate or other certificate. The definition of marriage according to Law no. 1 of 1974 is a physical and spiritual bond between a man and a woman as husband and wife to form an eternal and happy family based on the belief in the Almighty God. What is meant by the physical and spiritual ties, is that in a marriage it is not enough to only have a physical bond or an internal bond, but there must be both, namely the presence of an external bond and an internal bond. According to Wantjik Saleh, birth bonds are visible bonds, namely Between a man and a woman there is a legal bond to live together as husband and wife, this legal bond binds themselves, other parties and society. Meanwhile, inner ties are bonds that are invisible, but must be there because without inner ties, the bonds born in a marriage relationship will be fragile.(Saleh, 1992) Based on this explanation, it can be stated that apart from having a juridical aspect, marriage also has a social aspect. and religious. The juridical aspect of marriage can be seen from the birth bond which provides a legal bond or relationship between husband and wife, while the relationship that binds themselves, other parties and society is the social aspect of a marriage. The religious aspect is the presence of the phrase the first principle of Pancasila based on belief in the Almighty God, which means that marriage has a close relationship with religion which is the basis for forming an eternal, happy and prosperous household.(Wahyuni, 2011)

An interfaith marriage is defined as a marriage between a man and a woman, both of whom adhere to different religions and beliefs. Interfaith marriages can occur between fellow Indonesian citizens who both adhere to different religions and beliefs and can also occur between men and women of different nationalities, namely one of whom is a foreign citizen and also one of whom adheres to a different religion and belief.(Abd. Rozak A. Sastra, 2011) Based on the analysis of the Marriage Law, every man and woman who wishes to marry is required to be of the same religion or not of a different religion because marriages of different religions are not valid according to law and also cannot be registered unless one of the parties changes religion to follow partner's religion. The marriages carried out are then recorded by state agencies based on the religion adhered to by the husband and wife, for Muslim couples the marriage is registered by the Religious Affairs Office and for those other than Muslim the marriage is recorded by the Civil Registry Office.(Made Widya Sekarbuana, Ida Ayu Putu Widiawati, 2021) Regarding the validity of marriage, the Constitutional Court in decision Number 68/PUU-XI/2014 has explained that the validity of a marriage is not only viewed formally but also needs to be viewed spiritually and socially. Religion plays a role in determining the validity of a marriage, while the state plays a role in determining the administrative validity of a marriage through law. Furthermore, consideration of

the Constitutional Court decision Number 46/PUU-VIII/2010 states that the registration of a marriage is not a determining factor in the validity of a marriage but is only an administrative obligation carried out by state agencies with the aim of providing certainty and order in population administration based on the spirit of legal certainty as stated in referred to in the 1945 Constitution. So even though the marriage is not registered based on statutory regulations, as long as the marriage is carried out based on the laws of each respective religion and belief, the marriage will still be valid.(Majid, 2021).

The following are several views of religious organizations in case Number 68/PUU-XII/2014 concerning the review of Article 2 paragraph (1) of Law no. 1 of 1974 at the Constitutional Court. Muhammadiyah Central Leadership, that the ulama have agreed to declare that it is haram for a Muslim woman to marry a non-Muslim man and that it is haram for a Muslim man to marry a non-Muslim woman. The Indonesian Ulema Council concluded that the provisions of Article 2 paragraph (1) of Law no. 1 of 1974 does not conflict with the 1945 Constitution. The Nahdlatul Ulama Executive Board stated that the ulama agreed that it was forbidden for Muslim men and women to marry with polytheists. The Fellowship of Churches in Indonesia, stated that Article 2 paragraph (1) of Law no. 1 of 1974 needs to be amended or replaced with more democratic regulations because they violate the human rights of citizens and are discriminatory against women. Representatives of Indonesian Buddhists stated that Buddhists comply with Law no. 1 of 1974 in terms of providing religious services related to wedding ceremonies. The Indonesian Catholic Bishops' Conference, in its statement stated that Article 2 paragraph (1) of Law no. 1 of 1974 is flawed because it often makes it difficult for citizens to enter into a marriage between people of different religions. Parisada Hindu Dharma Indonesia, states that in the view of the Hindu religion, marriage between different religions is contrary to the provisions of Vedic literature so it is impossible to carry out. The High Confucian Religious Council stated that Li Yuan carries out a marriage only for two brides and grooms who adhere to the Confucian religion, while brides and grooms of different religions do not carry out Li Yuan marriages but only give blessings as a form of acknowledgment and notification that a marriage has been carried out. Based on information from several religious organizations, it can be seen that the religions that strictly prohibit interfaith marriages are Islam and Hinduism, while several other religions still provide opportunities for interfaith marriages.

Furthermore, the prohibition on interfaith marriages is considered by some groups to be contrary to human rights. It can be explained that marriage as an embodiment of human rights, in its implementation, is obliged to respect and respect the human rights of other people and is subject to the limitations specified in statutory regulations. One of the international instruments that is the legal basis for regulating human rights is the Universal Declaration of Human Rights (UDHR), while in Indonesian national law the basis for protecting human rights is regulated in the 1945 Constitution. There are differences in the marriage guarantee provisions regulated in the UDHR and the 1945 Constitution. That the UDHR guarantees the protection of a person's right to marry as stated in Article 16 paragraph (1), namely "men and women who are adults, without restrictions on nationality, nationality or religion, have the right to marry and to form a family". Meanwhile, the provisions in the 1945 Constitution are contained in Article 28B

paragraph (1), namely "every person has the right to form a family and continue their offspring through a legal marriage". The difference between the two provisions can be explained, that although the UDHR has been declared and agreed upon with several countries in the world, the regulation of human rights in each country needs to be adjusted to the ideology, religion, culture and customs found in each country, without exception in Indonesia. The 1945 Constitution expressly guarantees the protection of citizens' rights to form a family and the right to continue their offspring, while the phrase marriage referred to in Article 28B paragraph (1) of the 1945 Constitution is only a prerequisite for realizing these two rights. A legal marriage is a mandatory requirement that must be carried out first to be able to form a family and continue offspring. A marriage is said to be valid if it is carried out according to the laws of each respective religion and belief. Thus, legal marriage is also a part of human rights which must be guaranteed and protected by the state. (Konstitusi, 2023)

The role of the state in regulating marriage through regulations is not intended to limit a person's beliefs, but so that a person's manifestation of religion does not conflict with the teachings of each religion. State intervention in the implementation of marriages is not to determine the validity of the marriage, but to ensure that the implementation of the marriage is in accordance with the legal provisions of each religion and belief. The enactment of Article 2 paragraph (1) of the Marriage Law is not to prevent the freedom of citizens to embrace the religion and belief they believe in, the freedom to embrace religion and belief remains the right of every citizen as determined in the 1945 Constitution. Meanwhile, marriage registration is only carried out on valid marriages as intended. Article 2 paragraph (2) of the Marriage Law shows that the state has played a role in providing guarantees, protection and fulfillment of human rights as stated in the 1945 Constitution. Furthermore, the first principle of Pancasila states "Belief in One Almighty God", and Article 29 paragraph (1) The 1945 Constitution states "The State is based on the belief in One Almighty God". This provision implies that Indonesia is not a country that adheres to the ideology of secularism which separates state and religion. The role of the state in the Marriage Law is limited to facilitating the registration of marriages, while the process of whether a marriage is valid or invalid is based on the laws of each religion that exists and is recognized in Indonesia. Provisions stating that a marriage can only be declared valid if its implementation is carried out according to the laws of each religion and belief and marriage registration is only carried out on marriages that are legally conducted as intended in Article 2 paragraphs (1) and (2) of the Marriage Law, implies that the state has actually protected the rights of citizens in carrying out worship according to their religion and beliefs. Because marriage is a form of worship carried out by religious people. Thus, the prohibition on interfaith marriages as implied in the meaning of Article 2 paragraph (1) and Article 8 letter f of the Marriage Law and for Muslims regularly written found in Article 40 letter c and Article 44 Compilation of Islamic Law, does not conflict with Pancasila and also does not conflict with human rights guaranteed in the 1945 Constitution.

Implications of Interfaith Marriage in Indonesia

Marriage is a worship that aims to form a happy and eternal family based on the belief in Almighty God. In order for the purpose of marriage to be realized, the man and woman who will marry must be truly mature in body and soul because

marriage is intended for long-term life. As a legal act, the implementation of marriage must fulfill the requirements as determined by religious law and positive law. Religion is a very important thing in human life which is the basis and determinant in thinking and acting. Couples who decide to have an interfaith marriage have actually shown from the start that it is indeed difficult to be united in a marriage bond. An interfaith marriage between two human beings can cause problems both psychologically and juridically. Psychologically, interfaith marriages can result in the fading of happiness in the family because of differences in principles and views in building household relationships. Children who are born will hesitate in choosing which religion to follow, whether to follow the religion of their father or mother. Meanwhile, parents sometimes have to be willing to sacrifice their own feelings in order to maintain the integrity of the household. Religious differences also often cause difficulties in the household, including those related to the implementation of worship, children's education, and religious traditions such as celebrating Eid al-Fitr, Christmas, Nyepi and others. (Jalil, 2018)

Juridically, Law no. 1 of 1974 determines that the validity of a marriage is determined by the laws of each religion. A marriage is considered invalid if its implementation is not based on religious law. In principle, all religions require that marriages be carried out in 1 (one) religion. For those who are Muslim, a man or woman is not allowed to marry someone who does not follow the Islamic religion, as well as several other religions which also do not allow the marriage of couples of different religions. Marriages between couples of different religions result in the marriage being invalid, (Bahri, 2020) this is based on the provisions of Article 2 paragraph (1) of Law no. 1 of 1974 which basically leaves the validity of marriage to the laws of each religion to determine whether interfaith marriages are permissible or not. Apart from that, marriages of different religions will also affect the status and position of the children born, this is explained in Article 42 of Law no. 1 of 1974 that a child is said to be a legitimate child if the child is born in or as a result of a valid marriage. Based on these provisions, it can be seen that the legitimacy of a child is determined by the validity of the marriage between his parents. Because the marriage of an interfaith couple is not legal according to religion and state law, the child born from that marriage has the status of an illegitimate child or illegitimate child. Children born from interfaith marriages have a civil relationship with their mother and their mother's family, (Satriawan, 2022) and can have a civil relationship with their father and their father's family after proving it through science and technology. However, even though illegitimate children have a civil relationship with their biological father, according to Islamic teachings, illegitimate children do not have a family relationship with their biological father. Interfaith marriages also have implications for inheritance in the family, namely Husband, wife and children cannot inherit from each other because of religious differences, this is based on Article 171 letter c of the Compilation of Islamic Law.

Furthermore, interfaith marriages will also have implications for population administration status, namely based on the provisions contained in Article 37 paragraph (1) of Law no. 23 of 2006, interfaith marriages carried out outside Indonesia are registered by the competent authority in the country where the marriage is carried out, after which the marriage is reported in Indonesia. For Indonesian citizens who marry abroad, if the marriage has been reported at the civil registry office then the marriage has received state recognition. However, if you refer back to Article 2 paragraph (1) of Law no. 1 of 1974 determines the

validity of a marriage based on the laws of each religion that adheres to it. That even though various methods have been implemented to allow the implementation of interfaith marriages by carrying out marriages abroad, still a marriage entered into by an interfaith couple based on religious law is not permitted, meaning that the marriage is invalid according to religious law, because of the method used to holding a marriage outside Indonesia is exempt from religious law. If based on religious law, a marriage between an interfaith couple is invalid, so that children born in such marriages are legally illegitimate children. However, the birth of each child must be registered at the civil registration office in order to obtain a birth certificate. (Mashudi, 2023)

3.2 Discussions

Marriage is part of the implementation of worship carried out by humans based on religious teachings and beliefs. The prohibition on interfaith marriages in Indonesia does not conflict with Pancasila and also does not conflict with human rights guaranteed in the 1945 Constitution. As an embodiment of human rights, the implementation of marriage is obliged to respect and respect the human rights of other people and is subject to the restrictions specified in the law. The validity of a marriage is left entirely to the laws of each religion, which means that a marriage is declared valid if its implementation is carried out according to the laws of each religion based on belief in the Almighty God. (Karim, 2017) Because marriage is a form of worship carried out by every religious community, the state is obliged to protect it. Allowing the implementation of interfaith marriages in Indonesia is the same as the government not respecting religious teachings. The role of the state in registering marriages is intended to guarantee legal certainty and ensure orderly population administration. Interfaith marriages can have psychological implications in marriage and legally also have implications for the validity of the marriage, the legal status of children and inheritance issues. There is previous research that also examines interfaith marriages, including: First, Daeng (2017), his research examines the prohibition on interfaith marriages from a human rights perspective. Kadua, Sekarbuana, et al (2021), this research examines interfaith marriages from a human rights perspective in Indonesia. Third, Bahrudin (2021), also examines interfaith marriages in legal and human rights studies. The difference between this research and the three studies is that this research provides a different study focus regarding the prohibition on marriage between interfaith couples in Indonesia which is based on the values of Pancasila and the provisions in the 1945 Constitution.

4. Conclusion

The prohibition on interfaith marriages does not conflict with Pancasila or the 1945 Constitution. The first principle of Pancasila and Article 29 paragraph (1) of the 1945 Constitution shows that Indonesia is not a country that adheres to secularism. Marriage is a religious event whose validity is determined by the laws of each religion and its belief in God Almighty. The enactment of the provisions of Article 2 of the Marriage Law does not hinder the freedom of citizens to embrace religion and belief, freedom to embrace religion and belief remains the right of every citizen as stipulated in the 1945 Constitution. The activity of registering a marriage carried out by a state agency is an administrative obligation which aims to provide legal certainty for a marriage and orderly population administration. So even if the marriage is not recorded, the marriage will still be valid as long as it is carried out based on the laws of each respective religion and belief. The

implications that arise from interfaith marriages are that psychologically, interfaith marriages can result in the fading of happiness in the household due to differences in opinions and views. Meanwhile, legally speaking, interfaith marriages in Indonesia are invalid and will result in the status of children being born illegitimate. Apart from that, marriage between different religions will also cause problems in inheritance, namely if the husband, wife and children have different religions, they cannot inherit from each other.

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