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## The analysis of interfaith marriage was reviewed by Law Number 1 of 1974 (as amended by Law Number 16 of 2019) and Law Number 23 of 2006

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### ABSTRACT

Marriage of different religions in Indonesia is not a new phenomenon anymore. At first, these marriages were referred to as mixed marriages. However, after the enacting of Law No. 1 of 1974 on Marriage the meaning of mixed marriage is marriage between two different nationalities, not marriages of different religions. The issues raised are how the arrangement of marriages is different religions according to Law No. 1 of 1974 (as amended by Law No. 16 of 2019) on marriage and how the recording of marriages of different religions according to Law No. 23 of 2006 concerning population administration. The purpose of the authorship of scientific work in the form of this journal is to understand the arrangement of marriages of different religions reviewed by Law No. 1 of 1974 (as amended by Law No. 16 of 2019) on Marriage and to analyze the recording of marriages of different religions according to Law No. 23 of 2006 on Population Administration. The method used in the writing of this research is the method of normative juridical approach. The types of data sources used are primary and secondary data. The method of data collection used is the collection of data by interviews and data collection from literature, and data analysis using qualitative descriptive methods. The results obtained in this study showed that, in Law No. 1 of 1974 on Marriage prohibits the existence of religious groups. Law No. 23 of 2006 concerning population administration of the implementation of marriages of different religions can be done in two ways. Namely, the determination of the court and marriage is carried out abroad but after returning to Indonesia must be recorded in the Civil Records Office. However, not all Civil Records Offices want to record marriages of different religions. The Office of Population and Civil Registration will ask for the subjugation of one of the religions to be recorded.

**Keywords:** *Marriage of different religions,, Marriage Law, Population Administration Law*

## A. Introduction

### a. Background

Indonesia is a legal country that recognizes various religions, namely Islam, Hinduism, Buddhism, Christianity, and Catholicism. Interestingly, various religions have their own procedures or rules, including in terms of marriage. Each religion embraced by Indonesian citizens regulates also about the intricacies of marriage in accordance with its teachings.

According to Article 1 of Law No. 1 of 1974, Devinisi marriage is the inner birth bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Supreme Deity.

Along with the development of society, the problems that occur are increasingly complicated. Related to marriage. If two people who love each other but they have different religions still maintain each other's faith. They eventually decided to marry a different religion.

Interfaith marriage before the birth of Law Number 1 of 1974 (Marriage Law) was dubbed mixed marriage. Before the birth of the Marriage Law, interfaith marriage in Indonesia was declared legal.

After the release of Law No. 1 of 1974 on marriage, the definition of mixed marriage is contained in Article 57, namely marriage between two people who in Indonesia are subject to different laws, because of differences in citizenship and one of the parties has Indonesian citizenship.

In Article 2 Paragraph (1) of Law No. 1 of 1974 states that "marriage is valid, if it is performed according to the law of each religion and belief". With the formulation in Article 2 Paragraph (1), there is no marriage outside the law of each religion and belief. That means there is a prohibition to perform interfaith marriages according to the article.

In practice, there are many who practice interfaith marriages. According to Ahmad Nurcholish from the Indonesian Conference on Religion and Peace (ICRP), their organization provides counseling for 3000 interfaith couples and has facilitated about 827

interfaith couples in Indonesia.<sup>1</sup>

There are several ways to get married in different religions. One of them is the determination by the court. The court may decide whether the couple is allowed to enter into an interfaith marriage.

Other problems can also be encountered after the occurrence of interfaith marriages. One of them is the issue of administrative registration of marriage by the Civil Registry Office and the Office of Religious Affairs. Marriage is registered in order to obtain a marriage certificate. A marriage certificate is evidence that a marriage has occurred or is taking place, not that it determines whether or not a marriage is valid. In fact, a marriage that is only performed under religious law can be equated with a serial marriage.

In Article 2 Paragraph (2) of Law No. 1 of 1974 states that "every marriage is recorded according to applicable laws and regulations" marriage registration is a marriage Administration data collection handled by the Registrar of marriages (VAT) with the aim to create legal order.

In Article 35 of Law No. 23 of 2006 concerning Population Administration, marriage registration also applies to: marriages determined by the court; and marriages of foreign citizens conducted in Indonesia at the request of the foreign citizen concerned.

This shows a gap in Indonesian law, one of which is Article 35 of Law No. 23 of 2006 on Population Administration which states that marriage registration can be done if it meets the determination of the court. From the explanation of the law, the registration in question is interfaith marriage. So often in the application for marriage of different religions, the article is used as a basis for submitting the application.

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<sup>1</sup> Arzia Tivany Wargadiredja, "said Who in Indonesia can not marry different religions", [https://www.vice.com/id\\_id/article/wjpb4q/kata-siapa-di-indonesia-tak-bisa-menikah-beda-agama](https://www.vice.com/id_id/article/wjpb4q/kata-siapa-di-indonesia-tak-bisa-menikah-beda-agama) accessed on August 8, 2021 at 23:55

To prevent the complexity of interfaith marriages, usually the parties perform marriages abroad, in countries that do not prohibit the existence of interfaith marriages so that this gives rise to legal smuggling in marriage law in Indonesia.

Law No. 24 of 2013 on amendments to Law No. 23 of 2006 on Population Administration which indirectly provides opportunities for interfaith marriage. Because couples who perform interfaith marriages abroad, upon returning to Indonesia, register the marriage with the occupation and Civil Registration Office.<sup>2</sup>

This is also regulated in the provisions of Article 56 paragraph (2) of the Marriage Law which states that in order for a marriage outside the territory of the Republic of Indonesia to be valid and recognized under Indonesian law, the proof of marriage from abroad must be registered at the Department of Population and civil registration of the place of residence of the husband and wife, as stipulated in Article 37 paragraph (4) of the Population Administration Law.

A couple who recently had an interfaith marriage abroad is Dimas Anggara (Muslim) with Nadine Candrawinata (Catholic). The wedding, which took place in 2018, was held in the country of Bhutan.

Because of the inconsistency between Article 2 Paragraph (1) and Paragraph (2) of Law No. 1 of 1974 on marriage with Article 35 of Law No. 23 of 2006 on Population Administration, it can be an incentive for researchers to conduct research by examining more deeply which later the results of the study will be applied in a thesis entitled “analysis of interfaith marriage reviewed according to Law No. 1 of 1974 (as amended by Law No. 16 of 2019) and Law No. 23 of 2006”.

#### **b. Problem Formulation.**

1. How is the regulation of interfaith marriage reviewed according to Law Number 1 of 1974 (as amended by Law Number 16 of 2019) on marriage?

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<sup>2</sup> Novita Lestari, The Legality Of Interfaith Marriage According To Law Number 1 Of 1974 On Marriage And Law Number 23 Of 2006 On Population Administration, Vol.2 No.2 Years2017 accessed from <https://jurnal.unived.ac.id/index.php/jhs/article/view/421/356>, pasa on August 9, 2021 at 00: 00 wib

2. How is the registration of interfaith marriages according to Law Number 23 of 2006 on Population Administration?

## **B. Research Methods**

Legal research is a know-how activity in legal science, not just know-about. As a know - how activity, legal research is carried out to solve the legal content faced.<sup>3</sup>

The method of approach used in this study is a method of normative juridical approach, namely legal research that prioritizes how to research library materials or so-called secondary data materials, in the form of positive law and how its implementation in practice<sup>4</sup>.

The specification of the study was conducted in a descriptive analytical. As well as data sources that will be used in this study include primary data in the form of interviews and secondary data obtained from library studies or Document Archive data related to the study.

This study also uses a data analysis method which is a stage of the research process where the data that has been collected will be used as a qualitative descriptive analysis method. Using descriptive qualitative because it describes the problem being investigated by logic-based truth.<sup>5</sup>

## **C. Research Results And Discussion**

### **1. Overview of interfaith marriage in Indonesia.**

The phenomenon of religious diversity is one of the problems in the concept of marriage in Indonesia. Interfaith marriage is juridically formal, regulated in the law of the Republic of Indonesia Number 1 of 1974 on marriage and instructions of the president of the Republic of Indonesia Number 1 of 1991 on the compilation of Islamic law. Both products of this legislation regulate issues related to marriage including interfaith marriage.

Based on Law No. 1 of 1974 on marriage, interfaith marriage is prohibited in

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<sup>3</sup> Soerjono Soekanto, 2012, introduction to legal research (jakarta: Universitas Indonesia press), P. 264

<sup>4</sup> Ibid, P.67

<sup>5</sup> Ronny Hanitijo Soemitro, 1990, Jakarta, Legal and Jurimetric Research Methodology, Ghalia Indonesia, P.108

Indonesia. With the unification of the law on marriage, in Law No. 1 of 1974 confirmed implicitly that marriages performed on different backgrounds can occur due to differences in nationality (nationality). This means that marriage laws exclude the possibility of religious differences in marriage. In addition, Law No. 1 of 1974 states that, “a marriage must be based on the Supreme Deity and performed according to the religion practiced.”

The provision lays down the provisions of the same religious norms adopted by married couples in the implementation of interfaith marriages in Indonesia can occur both domestically and abroad.

Domestic marriage arrangements are contained in Article 35 of Law No. 23 of 2006 on Population Administration which states that the registration of marriage as referred to in Article 34 also applies to: marriages determined by the court; and marriages of foreign citizens conducted in Indonesia at the request of the foreign citizen concerned.

The explanation of Article 35 letter A states that what is meant by marriage determined by the court is marriage between people of different religions.

Law No. 23 of 2006 on Population Administration as amended by Law No. 24 of 2013 on Population Administration which indirectly provides opportunities for interfaith marriage. Because couples who perform interfaith marriages abroad, upon returning to the country of Indonesia are required to register the marriage with the occupation and Civil Registration Office.

Interfaith marriages abroad became a contrast occurred among Indonesian artists such as Marcell Siahaan (Buddha) with Rima Melati Adams (Islam) which took place in Singapore in 2009, Ari Sihasale (Christian) and Nia Zulkarnaen (Islam) married in Australia in 2003, Rio Febrian (Christian) and Sabrina Kuno (Islam) married in Thailand in 2010, Frans Mohede (Christian) and Amara (Islam) married in Hong Kong 1991, Neil G Furuno (Christian) Islam) married in the United States in 2015 and Dimas Anggara (Islam) and Nadine Chandrawinata (Catholic) married in Nepal in 2018.<sup>6</sup>

One of the reasons for the Indonesian citizens who marry different religions abroad is

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<sup>6</sup> Stella Azasya, 6 Indonesian artist who married abroad because of different religions. [idntimes.com](https://www.idntimes.com), accessed December 10, 2021, at 09: 23 WIB.

the complexity of the procedure for filing for different religions in Indonesia. Because when applying for interfaith marriage in Indonesia, it is not uncommon for the court to reject the marriage application. And if the application for interfaith marriage in Indonesia has been accepted by the court and legalized for marriage, another problem occurs at the time of marriage registration. Population and civil registration offices in some cities do not want to register interfaith marriages before one party submits one of its religions.

## **2. Analysis Of Interfaith Marriage Arrangements Reviewed According To Law Number 1 Of 1974 As Amended By Law Number 16 Of 2019 On Marriage.**

Before the enactment of Law No. 1 of 1974 on marriage, interfaith marriage was included in the type of mixed marriages.

Meanwhile, in Article 57 of Law No. 1 of 1974 on marriage, mixed marriage is a marriage between two people who in Indonesia are subject to different laws, because of differences in citizenship and one of the parties is a foreign citizen and one of the parties is an Indonesian citizen. So, mixed marriages are not interfaith marriages.

Regarding the system of marriage law, namely Law Number 1 of 1974 on marriage that is desired at the time of its formation process is divided into three streams : the first stream requires a law that applies to all (unification); the second stream requires that each group has its own law (differentiation); the third stream that wants there is a basic law that is generally accepted, then for each group held Organic Law (differentiation in unification)

In Indonesia, juridically, marriage in Indonesia is regulated in Law Number 1 of 1974 on marriage and instruction of the president of the Republic of Indonesia Number 1 of 1991 on the compilation of Islamic law. Both products of this legislation regulate issues related to marriage including interfaith marriage. In the law of the Republic of Indonesia Number 1 of 1974 on marriage Article 2 Paragraph (1) stated: "Marriage is valid, if it is carried out according to the law of each religion and belief".

In this formulation it is known that there is no marriage outside the law of each religion and belief. Based on the above explanation, marriages performed in the territory of Indonesian law must be carried out with one religion, meaning that interfaith marriages are

not allowed to be carried out and if they are still forced to carry out interfaith marriages, it means that the marriage is invalid and violates the law.

So, according to the applicable positive law, namely Law Number 1 of 1974 on marriage does not recognize interfaith marriage.

### **3. Registration Of Interfaith Marriages According To Law No. 23 Of 2006 On Population Administration.**

Marriage between two different brides is not a simple thing in Indonesia. In addition to having to go through many convoluted procedures. No wonder that many couples with differences in beliefs end up choosing to marry abroad. Couples who decide to marry abroad will get a marriage certificate from the country concerned or from the local representative of the Republic of Indonesia (embassy). After returning to Indonesia, they can register their marriage at the civil registry office to get a Certificate of reporting of Foreign Marriage.

However, this does not mean that marriage with religious differences cannot be realized in the country. In fact, based on the Supreme Court Decision No. 1400 K/Pdt/1986, different-faith couples can request a court determination. The jurisprudence states that the registry office may perform interfaith marriages, because the duty of the registry office is to record, not legalize. However, not all registry offices are willing to accept interfaith marriages. Civil registry offices that are willing to accept interfaith marriages will later record the marriage as a non-Islamic marriage. Couples can still choose to marry under the terms of their respective religions. The trick is to look for religious leaders who have different perceptions and are willing to marry couples according to their religious teachings, for example Islamic-style marriage contracts and Christian blessings.

Department of Population and civil registration of Pekalongan through Tocok Tri Hariyanto, AP. As the head of Civil Registration Service gave an opinion on interfaith marriage in Pekalongan city. He confirmed that so far in the city of Pekalongan, no community has applied for the registration of interfaith marriages. Because according to him article 34,35, and 36 of Law Number 23 of 2006 means that the marriage may be performed in a different religion according to the religious decision of each party, but the marriage

registration is still subject to one religion.<sup>7</sup>

In practice in Indonesia, Interfaith Marriage can be carried out by adhering to either the religious law or the beliefs of the husband or future wife. This means that one of the other candidates follows or submits to one of the religious laws or beliefs of his partner.<sup>8</sup>

And for interfaith marriages performed abroad by spouses of Indonesian citizens, after returning from abroad, they can be reported to the Department of Population and civil registration by subordinating one of the religions.

For example in Pekalongan city, if interfaith marriage has been carried out, then the next step is to report the marriage registration to the Department of Population and civil registration of Pekalongan city.

According to Article 35 of the Population Administration Law, marriages established by the court are required to be reported. As explained in the elucidation of Article 35 letter A of the Population Administration Law, marriages established by the court are marriages performed between people of different religions.

The reporting procedure is regulated in Article 34 of the Administrative Law. Mandatory reporting is carried out no later than sixty days from the date of marriage. Then, based on the report, the Civil Registration Officer records the marriage certificate Register and issues an extract of the marriage certificate. Meanwhile, residents who are Muslims report it to the Office of Religious Affairs (KUA). The article stipulates that interfaith marriages that can be registered in the civil registry office are only those outside the Islamic religion.

Because of these regulations, the Department of Population and civil registration does not record interfaith marriages that have not been determined by the court, even though all the requirements are complete and there is already a blessing letter from religious leaders as proof of the validity of marriage based on religion. This is because the interpretation of the civil registry that interfaith marriage can not be implemented and is not valid under

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<sup>7</sup> Results of an interview with Tocok Tri Hariyanto, AP (head of Pekalongan city Civil Registration Service), accessed on Tuesday, December 28, 2021, at 10:30 WIB

<sup>8</sup> Soedharyo Soimin, 2002, Law of Persons and families, Jakarta: Sinar Grafika, P.95.

Article 2 Paragraph (1) of Law No. 1 of 1974 on marriage.

In the event of a refusal by an employee of the Civil Registration Office, Article 21 paragraph (1) to Paragraph (4) of Law No. 1 of 1974 on Marriage explains that if the employee of the marriage registrar is of the opinion that the marriage is prohibited under this law, then he will refuse to perform the marriage. In the event that the refusal occurs, the request of one of the parties wishing to perform the marriage by the marriage registration officer will be given a written statement of the refusal accompanied by the reasons for the refusal. The parties to whom the marriage has been refused shall have the right to apply to the court in whose jurisdiction the employee of the Registrar of marriages conducting the management is domiciled to render a decision with the submission of the above-mentioned certificate of refusal.

Next, the court will examine the case with a brief and will give a determination, whether he will strengthen the refusal or order that the marriage be carried out <sup>9</sup>.

Because if the marriage registration of a couple of different religious marriages is rejected, then it will also give legal consequences to the status of children born in marriage. Or the child will only have a civil relationship with the mother and the mother's family.

Department of Population and civil registration of Pekalongan through Tocok Tri Hariyanto, AP as head of Civil Registration Service provides information about the terms and process to obtain a court ruling.<sup>10</sup>

The requirements that must be met are as follows: attach Identity Card (KTP), Family Card, Application Letter for determination of marriage registration from Disdukcapil, certificate from village head, and Witness 2 (two) people. These letters in accordance with the Stamp Duty Act must be affixed with a stamp duty of Rp.6000, -, signed and stamped by The Post Office.

The letters are then attached to the application as a means of evidence in the civil

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<sup>9</sup> Results of an interview with Tocok Tri Hariyanto, AP (head of Pekalongan city Civil Registration Service), accessed on Tuesday, December 28, 2021, at 10:35 WIB

<sup>10</sup> Results of an interview with Tocok Tri Hariyanto, AP (head of Pekalongan city Civil Registration Service), accessed on Tuesday, December 28, 2021, at 10:37 WIB

case in court. Usually for this application, an administrative fee is charged, not more than 500 thousand rupiah. Excess costs can be requested back after the application is completed and it is known the amount of costs incurred that is listed at the end of the court determination.

After the application is registered in the civil section of the relevant District Court, the interfaith marriage partner will receive a subpoena that has been determined date and time. Before coming to the place of trial, the opposite sex couple is asked to bring the original papers attached to the application, as well as 2 (two) witnesses to the court. Usually, if the papers are considered complete and the testimony of witnesses is considered sufficient, in one trial the case can be decided by a single judge, and then given a determination letter. After receiving a letter of determination of the court then taken to Disdukcapil at the place of domicile of interfaith marriage couples.

#### **D. Conclusion**

1. The regulation of interfaith marriage in Indonesia is contained in Law Number 1 of 1974 on marriage. According to the explanation of the provisions of Article 2 Paragraph (1) of Law Number 1 of 1974 on marriage, there is no marriage outside the law of his religion and beliefs. So it can be concluded that interfaith marriage is prohibited in positive law in Indonesia.
2. Registration of interfaith marriages is regulated in Law Number 23 of 2006 concerning Population Administration. Interfaith marriages can occur if a court ruling is obtained and if the marriage is carried out abroad. However, not all population and civil registry offices want to register interfaith marriages. For example, the Pekalongan city population and Civil Registration Office will only register the interfaith marriage if the parties first submit one of their religions or if they have received a court decision.

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