



INTERRELIGIOUS MARRIAGES IN INDONESIA: From Legal Disharmony to Legal Conflict

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Abstract: This article explores legal conflicts regarding the legality of interfaith marriages in Indonesia. There was a legal conflict between the provisions in Article 2 paragraph (1) of Law No. 1 of 1974 concerning Marriage, which determines the validity of marriages based on religious law, with Articles 34 and 35 of Law No. 23 of 2006 concerning Citizenship Administration, which states that a valid marriage is reported and registered. Article 35, letter (a) says that the court determines a legal marriage. Disharmony of laws and regulations concerning interfaith marriage regulations has influenced the interpretation of legal provisions, resulting in differences in judges' decisions. This raises the question of harmonizing the legal provisions between these laws and regulations. Analysis of the problem of the legality of interfaith marriage law is carried out using a normative juridical approach by using Soerjono Soekanto's theory of legal effectiveness. The results of this study indicate that the disharmony of interfaith marriage law causes multiple interpretations for judges in determining the legality of interfaith marriages. Unclear regulations cause the legal rules of interfaith marriages in Indonesia to cause conflicts between legal institutions. The legal substance factor is the main root of the ineffectiveness of the regulations on interfaith marriages in Indonesia. Disharmony between legal authorities impacts conflicts between legal institutions and influences the practice of interfaith marriages in society.

Keywords: Interfaith Marriage; Conflict; Disharmony

Abstrak: Artikel ini bertujuan untuk mengeksplorasi konflik hukum tentang legalitas perkawinan beda agama di Indonesia. Terjadi benturan hukum antara ketentuan dalam Pasal 2 ayat (1) Undang-Undang No. 1 Tahun 1974 tentang Perkawinan, yang menetapkan

keabsahan perkawinan berdasarkan hukum agama, dengan Pasal 34 dan 35 Undang-Undang No. 23 Tahun 2006 tentang Administrasi Kependudukan, yang menyatakan bahwa perkawinan yang sah adalah yang dilaporkan dan dicatatkan. Dalam pasal 35 huruf (a) dinyatakan bahwa perkawinan yang sah adalah perkawinan yang ditetapkan oleh pengadilan. Disharmoni peraturan perundang-undangan tentang peraturan perkawinan beda agama telah mempengaruhi penafsiran ketentuan hukum, sehingga pada praktiknya mengakibatkan terjadinya perbedaan putusan hakim. Hal ini menimbulkan pertanyaan bagaimana menyelaraskan ketentuan hukum yang berbeda antara peraturan perundang-undangan tersebut. Analisis terhadap masalah legalitas hukum perkawinan beda agama dilakukan dengan menggunakan pendekatan yuridis normatif dengan memanfaatkan teori efektifitas hukum pemikiran Soerjono Soekanto. Hasil dari penelitian ini menunjukkan bahwa disharmoni hukum perkawinan beda agama menyebabkan terjadinya multi interpretasi bagi hakim dalam menetapkan keabsahan perkawinan beda agama. Regulasi yang tidak jelas menyebabkan aturan hukum perkawinan beda agama di Indonesia menimbulkan konflik antar lembaga hukum. Faktor aturan hukum menjadi akar utama tidak efektifnya aturan tentang perkawinan beda agama di Indonesia. Disharmoni antar aturan hukum berdampak pada konflik antar lembaga hukum dan berpengaruh terhadap praktik perkawinan beda agama di masyarakat.

Kata Kunci: Perkawinan Beda Agama; Konflik Hukum; Disharmoni



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INTRODUCTION

Interfaith marriages often cause problems and even tend to reap conflict in society.¹ The Indonesian Conference on Religion and Peace (ICRP) stated that 1,425 pairs of people of different religions in Indonesia married from 2005 to March 2022.² According to Wahyono Darmabrata, there are four ways: partners, husband, and wife. Other religions legalize marriage: through decision court, outside the marriage country, the marriage is carried out according to each religion, and subjugation is temporary on Wrong One religious law.³ This shows the complexity faced by

¹ Patrick Humbertus, "Fenomena Perkawinan Beda Agama Ditinjau Dari UU 1 Tahun 1974 Tentang Perkawinan," *Law and Justice* 4, no. 2 (October 10, 2019): 101-11, <https://doi.org/10.23917/laj.v4i2.8910>.

² Nuriyah Nofasari, "Ternyata, Sudah Banyak Di Indonesia Pasangan Beda Agama Menikah, ICRP Telah Mencatat Sejak 2005, Sudah Ada...," accessed November 10, 2022. <https://populis.id/>

³ Djawara Putra Petir, "4 Cara Penyelundupan Hukum Pasangan Beda Agama," accessed November 2, 2022, <https://www.kompasiana.com/>.

partners marrying different faiths in the administrative processes of marriage.⁴ This reality shows that there is a legal vacuum regarding interfaith marriages.⁵

The Marriage Law states that a marriage is valid if carried out according to the legal rules of each religion and belief.⁶ However, the Population Administration Law allows interfaith marriages if carried out based on a court order.⁷ Based on the court's decision, couples who enter into interfaith marriages can apply for marriage registration at the Civil Registry Office.⁸ These differences in legal regulations indicate a legal conflict regarding the validity of interfaith marriages. This requires a study of how to harmonize the various legal provisions.

Disharmony in the regulations for interfaith marriages results in differences in judges' decisions.⁹ There are 199 copies of District Court decisions regarding interfaith marriages, as found on the Directory of Decisions of the Supreme Court of the Republic of Indonesia page.¹⁰ In the decision granting the applicant for an interfaith marriage, the judge only assigned the Civil Registry and Population Service to register the marriage. The Civil Registry Office has no right to refuse to register an interfaith marriage approved by the court.¹¹ According to Bayu, the Civil Registry Office only has the authority to register interfaith marriages rather than to legalize them.¹²

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- ⁴ Ahmad Nurcholish, "Interfaith Marriage In The Constitution And The Islamic Law Dynamics In Indonesia," *Al-Mawarid: Jurnal Hukum Islam* 15, no. 1 (August 2015): 123-42.
- ⁵ Ermi Suhasti, Siti Djazimah, and Hartini, "Polemics on Interfaith Marriage in Indonesia between Rules and Practices," *Al-Jami'ah: Journal of Islamic Studies* 56, no. 2 (December 6, 2018): 367-94, <https://doi.org/10.14421/AJIS.2018.562.367-394>.
- ⁶ Mardalena Hanifah, "Perkawinan Beda Agama Ditinjau Dari Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Soumatara Law Review* 2, no. 2 (November 20, 2019): 297-308, <https://doi.org/10.22216/soumlaw.v2i2.4420>.
- ⁷ Hukumonline.com, *Tanya Jawab Tentang Nikah Beda Agama Menurut Hukum Di Indonesia*, 1st ed. (Tangerang: Penerbit Literati, 2014)
- ⁸ M Ryan Dhermawan, Henry Aspan, and Yasmirah Mandasari Saragih, "Pelaksanaan Fungsi Dinas Kependudukan Dan Catatan Sipil Kota Binjai Dalam Pencatatan Perkawinan Beda Agama," *Jurnal Rectum: Tinjauan Yuridis Penanganan Tindak Pidana* 4, no. 2 (July 31, 2022): 421-29, <https://doi.org/10.46930/jurnalrectum.v4i2.1994>
- ⁹ Fathol Hedi, Abdul Ghofur Anshori, and Harun, "Legal Policy of Interfaith Marriage in Indonesia," *Hasanuddin Law Review* 3, no. 3 (December 26, 2017): 263-76, <https://doi.org/10.20956/halrev.v3i3.1297>.
- ¹⁰ "Direktori Putusan Mahkamah Agung Republik Indonesia," accessed December 17, 2022, <https://putusan3.mahkamahagung.go.id/>.
- ¹¹ Prasetyo Ade Witoko and Ambar Budhisulistiyawati, "Penyelundupan Hukum Perkawinan Beda Agama Di Indonesia," *Jurnal Hukum Dan Pembangunan Ekonomi* 7, no. 2 (August 2, 2019): 251-57, <https://doi.org/10.20961/hpe.v7i2.43015>.
- ¹² Bayu Dwi Widdy Jatmiko, Nur Putri Hidayah, and Samira Echaib, "Legal Status of Interfaith Marriage in Indonesia and Its Implications for Registration," *Journal of Human Rights, Culture and Legal System* 2, no. 3 (2022): 167-77, <https://doi.org/10.53955/jhcls.v2i3.43>.

This legal conflict over the legality of interfaith marriages has attracted many researchers. Zulfadhli and Muksalmina highlighted that interfaith marriages carried out by Muslims do not have legal legitimacy.¹³ Sonny concluded that Indonesia prohibits interfaith marriages because it is considered to violate existing regulations.¹⁴ This differs from Fajar's findings that the legal status of interfaith marriages granted by the court is valid according to state law. This is because the judge considers the wedding proper according to the law.¹⁵ Rosdiana found that the Indonesian Religious Council had no role in forming legal policies regarding interfaith marriage regulations because the Marriage Law was created before the Religious Council was established. Most religious leaders prohibit interfaith marriages due to popular religious traditions and constitutional reasons.¹⁶ In her research, Rosdalina concluded that interfaith marriages are common in Manado society because they uphold the "*torang samua basudara*" principle, meaning we are all brothers. This principle binds people to respect each other based on a kinship system, not religion.¹⁷

In North Lombok, women who wish to enter an interfaith marriage must change their religion to follow the religion of their future husbands. North Lombok Traditional Leaders stated that interfaith marriages are acceptable if they follow the customary provisions that apply in society.¹⁸ The regulations for interfaith marriages in Indonesia have yet to reach an ideal legal system.¹⁹ There is a legal vacuum in interfaith marriages, so interfaith marriages can only be carried out by registration

¹³ Zulfadhli and Muksalmina, "Legalitas Hukum Perkawinan Beda Agama Di Indonesia," *Jurnal Inovasi Penelitian* 2, no. 6 (November 21, 2021): 1851-62, <https://doi.org/10.47492/jip.v2i6.1014>.

¹⁴ Sonny Dewi Judiasih, Nazmina Asrimayasha Nugraha, and Luh Putu Sudini, "Prohibition of Intera Religion Marriage in Indonesia," *Jurnal Dinamika Hukum* 19, no. 1 (2019): 186-203, <https://doi.org/10.20884/1.jdh.2019.19.1.2462>.

¹⁵ Raphon Fajar RHR, "Keabsahan Perkawinan Warga Negara Indonesia Yang Berbeda Agama (Analisis Pasal 2 Ayat (1) Undang-Undang Nomor 1 Tahun 1974 Dengan Pasal 35 Huruf (a) Undang-Undang Nomor 23 Tahun 2006 Studi Penetapan No. 92/Pdt. p/2010/P.N. Surakarta)" (Disertasi, Universitas Brawijaya, 2013).

¹⁶ Rosdiana, Ummu Hanah Yusuf Saumin, and Masayu Mashita Maisarah, "Legitimacy On Inter-Faith Marriages: An Analysis Of The Role Of Religious Councils On The Legal Policy in Indonesia," *Ahkam: Jurnal Ilmu Syariah* 19, no. 1 (2019): 81-96, <https://doi.org/10.15408/ajis.v19i1.11710>.

¹⁷ Rosdalina Bukido et al., "Negotiating Love and Faith: Interfaith Marriage in Manado, Indonesia," *Wawasan: Jurnal Ilmiah Agama Dan Sosial Budaya* 6, no. 1 (2021): 67-76, <https://doi.org/10.15575/jw.v6i1.11299>.

¹⁸ Khairul Hamim, Muhammad Iskandar, and Muhammad Azizurrohman, "Interfaith Marriage in North Lombok: Sociological Perspective of Islamic Law," *Khazanah Hukum* 4, no. 2 (2022): 129-38, <https://doi.org/10.15575/kh.v4i2.19657>.

¹⁹ Dwi Ratna Chinthya Dewi, "Inconsistency Norm Peraturan Perkawinan Beda Agama (Studi Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan Dan Undang-Undang No. 23 Tahun 2006 Tentang Administrasi Kependudukan)," *Al-Aqwal: Jurnal Kajian Hukum Islam* 1, no. 1 (June 2, 2022): 1-16, <https://doi.org/10.53491/alaqwal.v1i1.259>.

at the Civil Registry Office.²⁰ Therefore, an in-depth study of the regulations for interfaith marriages is needed so that disharmony does not occur.²¹

The article examines the disharmony in the legal regulations for interfaith marriages in Indonesia, resulting in conflicts in aspects of its legal structure, especially conflicts of authority between the courts and the Civil Registry Office. The analysis uses Soerjono Soekanto's theory of legal effectiveness to find the factors that cause the ineffectiveness of interfaith marriage laws in Indonesia. The study uses the *content analysis method* by examining the provisions of marriage law in the Marriage Law, Population Administration Law, and Court Determinations.

INTERRELIGIOUS MARRIAGES IN THE FRAMEWORK OF RELIGIOUS LAW

The legality of marriage in Indonesia is regulated based on the provisions of religious law, namely rules originating from spiritual teachings officially recognized by the state, such as Islam, Christianity, Catholicism, Buddhism, Hinduism, and Confucianism.²² A marriage is considered invalid if it is carried out inconsistently or violates the provisions of religious law. This shows that the religious legal system, including Islamic law, is recognized for its position and is a source of state law.

In Islamic law, interfaith marriages are prohibited because they conflict with legal norms in the Koran, namely the provisions in the QS. Al-Baqarah (2) verse 221 and QS. Al-Mumtahanah (60) verse 10. In both verses, there is a prohibition on marriage between believers and unbelievers or polytheists. However, scholars have different opinions about what is meant by infidels and polytheists and whether non-Muslims fall into that category.²³ On the other hand, interfaith marriages will create complications in the family environment, for example, in carrying out worship, developing children's traditions, children's education, and so on.²⁴ Through its fatwa, the Indonesian Ulema Council (MUI) prohibits Muslim men from marrying women from people of the book.²⁵

²⁰ Sri Wahyuni, "Kontroversi Perkawinan Beda Agama Di Indonesia," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 14, no. 2 (December 1, 2014): 293–306, <https://doi.org/10.30631/alrisalah.v14i02.452>.

²¹ Bintang Ulya Kharisma, "Polemik Putusan PN Surabaya Terkait Pernikahan Beda Agama Dengan Hukum Keluarga (UU Perkawinan Dan UU Administrasi Kependudukan)," *Jurnal Pro Hukum: Jurnal Penelitian Bidang Hukum* 11, no. 1 (July 31, 2022): 162–74.

²² Sri Wahyuni, *Nikah Beda Agama Kenapa Ke Luar Negeri?*, 1st ed. (Tangerang: PT. Pustaka Alvabet, 2016).

²³ Aulil Amri, "Perkawinan Beda Agama Menurut Hukum Positif dan Hukum Islam," *Media Syari'ah*, Vol. 22 (1), 2020: 48–64.

²⁴ Nurcahaya, Mawardi Dalimunthe, and Srimurhayati, "Perkawinan Beda Agama Dalam Perspektif Hukum Islam," *Hukum Islam* 18, no. 2 (August 1, 2019): 141–56.

²⁵ MUI Fatwa No. 4/MUNAS VII/MUI/8/2005 Concerning Interfaith Marriages.

According to Christianity, the requirement for marriage is by religious law, namely that the bride and groom are Christians. From this, it can be concluded that interfaith marriages are also not permitted according to Christian understanding.²⁶ In Catholicism, religious differences in marriage cause the wedding to be invalid. The Catholic Church says it is not ideal if marriage is between a Catholic and a non-Catholic because marriage is considered sacred.²⁷

According to Buddhist teachings, marriage can only be carried out between two people who believe in the truth of Buddhist teachings. Weddings in Buddhism must be from the same religion. Buddhist teachings only allow marriage between Buddhists, not between people of different beliefs. Thus, Buddhist followers can only marry people with the same ideas.²⁸

Hindu religious teachings emphasize that legal ceremonies are invalid if they do not carry out a marriage. According to Balinese customary law, a marriage must be based on the Marriage and Hindu religious laws. Hindu spiritual teachings do not allow its adherents to marry partners outside the Hindu religion.²⁹ Confucian religious teachings also prohibit marriage between couples of different faiths. The Indonesian Confucian High Council (Matakin) announced that only Confucian people can carry out marriage confirmation rituals. As a result, marriages between various religions are not accepted because they are not approved according to Confucian teachings. In the marriage ritual, adherents are required to declare their beliefs and swear to take Confucianism as their religion.³⁰

Of the six religions recognized in Indonesia, all religions do not allow interfaith marriages because they damage the faith of adherents of that religion's teachings.³¹ This is what underlies the regulations in the Marriage Law regarding the validity of marriage by religious law. However, in its implementation, there are legal conflicts between marriage law regulations in Indonesia, especially regarding the legality of

²⁶ Hanum Farchana Devi and Mastur, "Tinjauan Hukum Perkawinan Beda Agama Dan Akibat Hukumnya Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Jurnal Ilmiah Ilmu Hukum Qistie* 11, no. 1 (May 1, 2018): 137-49, <https://doi.org/10.31942/jqi.v11i1.2221>.

²⁷ Devi and Mastur.

²⁸ Laily Dwi Setiarini, "Perkawinan Beda Agama Dalam Perspektif Hak Asasi Manusia," *Al Qodiri: Jurnal Pendidikan, Sosial Dan Keagamaan* 19, no. 1 (April 1, 2021): 45-55.

²⁹ I Gusti Ayu Kireina Evarini Satriawan and Anak Agung Sri Indrawati, "Pengaturan Hukum Perkawinan Beda Agama Ditinjau Dari Undang Undang Perkawinan," *Jurnal Kertha Negara* 10, no. 1 (2022): 1-10.

³⁰ Agustin Sukses Dakhi, *Perkawinan Beda Agama Suatu Tinjauan Sosiologi* (Yogyakarta: Deepublish, 2019).

³¹ Arianty Anggraeny Mangarengi and Yuli Adha Hanza, "The Position of the Marriage Law on Interfaith Marriages Abroad," *SIGn Jurnal Hukum* 3, no. 1 (September 18, 2021): 65-83, <https://doi.org/10.37276/sjh.v3i1.127>.

registering interfaith marriages. This is because interfaith marriages have yet to be explicitly regulated in Law No. 1 of 1974.³²

VARIETIES OF DIFFERENT RELIGIOUS MARRIAGE ARRANGEMENTS

The birth of Law No. 1 of 1974 concerning Marriage has fulfilled the great need for legal regulations relating to marriage. This law is national and applies to all levels of society in Indonesia. Law No. 1 of 1974 concerning Marriage proves that in Indonesia, a law relating to marriage is valid as a legal and sovereign state. Government Decree No. 9 of 1975, which regulates the implementation of Law Number 1 of 1974 concerning Marriage, complements this law. Apart from marriage laws set by the state, there are also other marriage rules and regulations, such as religious and customary law.

Marriage is a legal act that has legal consequences. Whether a marriage is legal in Indonesia is determined by state law, namely Marriage Law No. 1 of 1974.³³ Customary and religious law rules are complementary, perfecting a marriage's validity. This is because, substantially, the legal regulations for marriage according to religious law and customary law have been adopted and integrated into state law. Several articles in this Law are considered by experts to need clarification, giving rise to different understandings and interpretations.³⁴ Article 2, paragraph (1) reads, "Marriage is valid if it is carried out according to the laws of each respective religion and belief." This article states that a marriage is valid if it is based on the laws of each religion and belief. If a marriage is performed according to the rules of any religion or belief or one of the marriage laws is violated, the marriage is invalid.³⁵

The provisions of Article 2 paragraph (1) of Law no. 1 of 1974 show the adoption and integration of religious law provisions as a condition for the validity of a marriage. If a marriage fulfills the requirements and is harmonious according to religious law, such as a marriage agreement has been carried out (for Muslims), a priest or priest has received a blessing or other ritual in the church. The marriage is

³² Andi Syamsulbahri and Adama, "Akibat Hukum Perkawinan Beda Agama Menurut Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan," *Al-Syakhshiyah Jurnal Hukum Keluarga Islam Dan Kemanusiaan* 2, no. 1 (July 25, 2020): 75-85, <https://doi.org/10.35673/as-hki.v2i1.895>.

³³ Anggreini Carolina Palandi, "Analisa Yuridis Perkawinan Beda Agama Di Indonesia," *Lex Privatum* 1, no. 2 (May 8, 2013): 196-210.

³⁴ Muchammad Ichsan, "The Legality of Interreligious Marriage in the Perspective of Islamic Law and Indonesian Positive Law," *Profetika: Jurnal Studi Islam* 17, no. 2 (October 12, 2017): 82-92, <https://doi.org/10.23917/profetika.v17i02.5300>.

³⁵ Novita Lestari, "Legalitas Perkawinan Beda Agama Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dan Undang-Undang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan," *Jurnal Hukum Sehasen* 1, no. 2 (December 21, 2017): 141-78.

legally valid by religion and community beliefs.³⁶ However, Article 2, paragraph (2) of the Marriage Law, regarding registration of marriages, stipulates that the State must re-validate marriages based on religion and belief.³⁷

Marriages must follow the laws of each religion and belief and not violate applicable state laws. Marriage is considered invalid according to Indonesian positive direction, even though it has been carried out according to their respective religions and beliefs, if it violates Law No. 1 of 1974 concerning Marriage.³⁸ This is stated in Article 2, paragraph (2): "Applicable laws and regulations record every marriage." However, this article must explain the registration provisions, including the legal regulations for registering interfaith marriages.

The Marriage Law also needs to explain further regarding the purpose of this registration. In more detail, it is stated that the registration of each marriage is the same as the registration of Article 2 paragraph (2) of Law no. 1 of 1974 concerning Marriage. The state considers marriage a crucial legal act in a person's life, such as death and birth, so it must be recorded in a certificate or an official deed in the registration register.³⁹

Based on Article 2 paragraph (2) of the Marriage Law, there are three possible legal statuses for interfaith marriages in Indonesia, namely:

1. Marriages of different religions and beliefs are permitted and legal;
2. Marriages of other faiths and ideas can be performed but are not valid;
3. Marriages of people of other religions and opinions are not allowed or valid.

Based on the possibilities above, the position of interfaith marriages returns to individual interpretation and understanding of each religious law and belief.⁴⁰

Marriage registration is one of the essential things in the marriage process because husband and wife get legal certainty through marriage registration. To create legal certainty and have binding legal force for those concerned, deeds are

³⁶ Indri Dwi Cahyani and Munjir Tamam, "Dualisme Hukum Pernikahan Di Indonesia," *Al-Ikhtisar: The Renewal of Islamic Economic Law* 2, no. 2 (December 1, 2021): 71-76.

³⁷ Sindy Cantonia and Ilyas Abdul Majid, "Tinjauan Yuridis Terhadap Perkawinan Beda Agama Di Indonesia Dalam Perspektif Undang-Undang Perkawinan Dan Hak Asasi Manusia," *Jurnal Hukum Lex Generalis* 2, no. 6 (July 17, 2021): 510-27, <https://doi.org/10.56370/jhlg.v2i6.122>.

³⁸ Akhmad Munawar, "Sahnya Perkawinan Menurut Hukum Positif Yang Berlaku Di Indonesia," *Al-Adl: Jurnal Hukum* 7, no. 13 (June 1, 2015): 21-31, <https://doi.org/10.31602/al-adl.v7i13.208>.

³⁹ Bing Waluyo, "Sahnya Perkawinan Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Jurnal Media Komunikasi Pendidikan Pancasila Dan Kewarganegaraan* 2, no. 1 (April 14, 2020): 193-99, <https://doi.org/10.23887/jmpppk.v2i1.135>.

⁴⁰ Moh Syamsul Maarif, "Legalitas Perkawinan Beda Agama Dalam Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dan Undang-Undang Nomor 23 Tahun 2006 Tentang Perkawinan" (Thesis, UIN Maulana Malik Ibrahim, 2015).

registered, drawn up, and issued by the Civil Registry Office.⁴¹ If marriage registration is ignored, the civil rights of people in interfaith marriages will not be fulfilled, such as inheritance rights, child care status, and other rights.⁴² On the other hand, registering a wedding at the Civil Registry Office does not determine whether the marriage is valid but merely has an administrative nature showing that the marriage has occurred.⁴³

In this context, whether a marriage is valid is not determined by the wedding registration. Many choose not to register for Muslims at the Civil Registry Office or Religious Affairs Office (KUA). On the other hand, this provision is an entity whose effectiveness cannot be chosen. If a marriage only fulfills one of the requirements, then the union does not meet the legal requirements stipulated in the law. If a dispute arises between a couple who has not registered their marriage, then one of the disputing parties cannot file a lawsuit in court.⁴⁴

Nevertheless, Law No. 23 of 2006 concerning Population Administration (UU Adminduk), significantly Articles 34 and 35, is often mentioned as the legal basis for couples wishing to enter an interfaith marriage. According to Article 34 of the Law, unions that have been reported and registered are valid. However, the law does not explicitly regulate interfaith marriages. In Article 35 letter (a), marriages that the court has determined are also considered valid. This contradicts the provisions of the Marriage Law, which states that the validity of a marriage is if a husband and wife of different religions follow one of their partner's religions. Thus, one partner must change religion according to the wife's or husband's faith.⁴⁵

If the provisions in Law No. 23 of 2006 relating to the validity of marriage are faced with the requirements in Marriage Law No. 1 of 1974 will give rise to legal conflicts. According to the Marriage Law, marriage is based on the similarity of religion, so marriages between different faiths are invalid. Meanwhile, in the

⁴¹ Muh Rasya Karim, Said Aneke, and Revy Korah, "Perkawinan Beda Agama Ditinjau Dari Undang-Undang Perkawinan Dan Hukum Islam," *Lex Crimen* 11, no. 4 (July 22, 2022).

⁴² Budiarti, "Analisis Yuridis Perkawinan Beda Agama Dengan Pendekatan Maqashid Al-Syariah Dalam Konteks Negara Hukum Pancasila," *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial* 15, no. 1 (December 29, 2018): 27-48, <https://doi.org/10.21154/justicia.v15i1.1362>.

⁴³ Abu Yazid Adnan Quthny, Ahmad Muzakki, and Zainuddin, "Pencatatan Pernikahan Perspektif Hukum Islam Dan Undang-Undang Nomor 1 Tahun 1974," *Asy-Syari'ah: Jurnal Hukum Islam* 8, no. 1 (February 7, 2022): 25-40, <https://doi.org/10.55210/assyariah.v8i1.765>.

⁴⁴ Dyah Ochtorina Susanti and Siti Nur Shoimah, "Urgensi Pencatatan Perkawinan (Perspektif Utilities)," *Rechtidee* 11, no. 2 (January 18, 2016): 166-81, <https://doi.org/10.21107/ri.v11i2.2428>.

⁴⁵ Fakhurrrazi M.Yunus and Zahratul Aini, "Perkawinan Beda Agama Dalam Undang-Undang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan (Tinjauan Hukum Islam)," *Media Syari'ah: Wahana Kajian Hukum Islam Dan Pranata Sosial* 20, no. 2 (February 28, 2018): 138-58, <https://doi.org/10.22373/jms.v20i2.6512>.

Population Administration Law, similarity of religion is not a requirement for validity. Interfaith marriages are considered reasonable and can be registered through a court order.

Article 35, letter (a) of the Population Administration Law only provides a unique method for carrying out and registering interfaith marriages through a court decision because the court is one of the birthplaces of law. However, not all requests for interfaith marriages are granted by judges; some recommendations are rejected. The phrase "give permission" in the judge's decision means that couples in interfaith marriages can register their wedding at the Population and Civil Registration Office.

Due to the legal vacuum in interfaith marriages, Supreme Court Decision No. 1400K/Pdt/1986 was used as jurisprudence for Judges in Court. Based on the Supreme Court's decision, interfaith couples can request confirmation from the court. This Supreme Court's decision has important implications for interfaith marriages in Indonesia. As the highest law in Indonesia, the Supreme Court is the reference and point of contact for judges in deciding marriages between people of different religions or beliefs.⁴⁶ Many District Courts in Indonesia have issued similar decisions, taking into account the Supreme Court Decision so that they finally allow interfaith marriages. According to this provision, interfaith marriages can be recorded by the civil registry office because the civil registry office's job is to document, not validate.⁴⁷ In practice, marriage registrars continue to register interfaith marriages without looking further into the legal status of the couple's wedding. This was done because of a marriage certificate from the church and a decision letter from the District Court.⁴⁸

The Civil Registry Office's authority in the marriage law field is changing due to the ratification of the Marriage Law. The Civil Registry Office is no longer responsible for determining the validity of a marriage. The fact of a marriage depends on whether the marriage is legal or not according to religious law. The Civil Registry Office now only has the authority to register marriages between non-Muslim husband and wife after first obtaining approval from their religion. Law no. 1 of 1974 firmly states that to form an eternal and happy household or family based on belief in the Almighty God. According to Article 2, paragraph (1) of the Marriage

⁴⁶ Karina Lizwary and Wahyuni Safitri, "Kajian Hukum Terhadap Perkawinan Beda Agama Dengan Adanya Yurisprudensi Mahkamah Agung No. 1400K/PDT/1986," *Yuriska: Jurnal Ilmiah Hukum* 8, no. 1 (September 6, 2016): 1-17, <https://doi.org/10.24903/YRS.V8I1.24>.

⁴⁷ Imam Wahyujati, "Pengaturan Perkawinan Beda Agama Di Indonesia," *'Aainul Haq: Jurnal Hukum Keluarga Islam* 2, no. 1 (June 27, 2022): 49-63.

⁴⁸ Suhasti, Djazimah, and Hartini, "Polemics on Interfaith Marriage in Indonesia between Rules and Practices."

Law, marriage must be based on each person's religion and belief. Then Article 2, paragraph (2), regulates that applicable laws and regulations must register all marriages. In this context, the Civil Registry Office is the institution that has the authority to issue copies of marriage certificates.⁴⁹

When the Marriage Law was passed, the function and authority of the Civil Registry Office in terms of legalizing and assisting in the implementation of marriages still existed. According to Article 20 of the Marriage Law, marriage registrar employees are prohibited from performing or administering in marriage. In Article 21, if the marriage registrar thinks that the marriage is not permitted according to the law, the marriage registrar may perform the wedding after a court decision has been issued. However, after the issuance of Presidential Decree No. 12 of 1983 concerning Structuring and Improving Development of the Administration of Civil Registry, previously, the authority of the Civil Registry Office was to organize marriages. Still, now it has changed to only recording and issuing Excerpts from Marriage Certificates.⁵⁰

DETERMINANTS OF THE EFFECTIVENESS OF INTERRELIGIOUS MARRIAGE LAWS

In social life, a legal system is needed to regulate life to become orderly and harmonious. Legal vacancies can arise due to legal events not held in statutory regulations. Even though it has been handled in statutory regulations, it will create a legal vacuum if the rules are not detailed. Legal vacancies occur due to circumstances or things not yet to be regulated by the state. This can result in legal chaos caused by legal regulations or legal uncertainty.⁵¹

Soerjono Soekanto stated that whether a law is effective or not is determined by five factors, namely:⁵²

1. The legal factor itself (regulation).
2. Law enforcement factors, namely the parties who form and implement the law.

⁴⁹ Hardio A. V. Rompas, "Sahnya Perkawinan Beda Agama Ditinjau Dari Sudut Pandang Undang-Undang Nomor 1 Tahun 1974 Khususnya Perkawinan Beda Agama Yang Dilakukan Di Luar Negeri," *Lex Privatum* 6, no. 9 (November 2018): 76-83.

⁵⁰ Decision President (Keppres) No. 12 of 1983 concerning Structuring and Upgrading Coaching Maintenance Notes Civil, Article 5.

⁵¹ Moh. Imron Rosyadi, "Judge Made Law: Fungsi Dan Peranan Hakim Dalam Penegakan Hukum Di Indonesia," *Al-Hukama'* 3, no. 1 (June 1, 2013): 96-123, <https://doi.org/10.15642/al-hukama.2013.3.1.96-123>.

⁵² Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum* (Jakarta: PT. Raja Grafindo Persada, 2008); See also Agus Riyanto, "Penegak Hukum, Masalahnya Apa?," accessed November 15, 2022, <https://business-law.binus.ac.id/2018/12/26/penegakan-hukum-masalahnya-apa/>.

3. Facilities or facilities factors that support law enforcement.
4. Community factors, namely the environment in which the law applies or is applied.
5. Cultural factors believe that it is the result of work, creativity, and feelings that are based on human intention in social life.

These five factors are comprehensive benchmarks for assessing the effectiveness of enforcement of a legal rule, where the law enforcement factor is the central point. This is because law enforcers drafted the law and law enforcers implemented it. Law enforcement is also a role model in the community, so its position is decisive in law enforcement. Although Soerjono Soekanto did not explain which factor has the most significant influence on all of these factors, what needs to be taken into account is that one of these factors can support the formation of legal effectiveness in law enforcement. Law enforcement will be more effective if these five factors complement each other. In the context of Indonesian society, one of the factors that is in the spotlight of the community is law enforcement.⁵³ This results in a low level of public trust in law enforcement.

Soerjono Soekanto's theory of legal effectiveness emphasizes the importance of understanding and applying the law clearly and consistently. In the context of interfaith marriages, the rules governing marriage must be clear and can be applied consistently to ensure legal certainty for couples who wish to marry. If there is ambiguity or disharmony in the law on interfaith marriages, this can reduce the effectiveness of the law and cause difficulties in carrying out legal marriages. In this way, the law can provide certainty and security for the couple and encourage the creation of a balanced and harmonious marriage bond. This theory also emphasizes the importance of legal awareness in society. In the context of interfaith marriages, the effectiveness of the law can be influenced by the level of public legal awareness regarding the marriage process and the legal protection provided to interfaith couples. Suppose people must be aware of interfaith marriage's legal rights and obligations. In that case, this can hamper the effectiveness of the law in protecting the rights of couples and overcoming potential conflicts or legal difficulties.

Soerjono Soekanto also emphasized the importance of fulfilling justice in the law. In the context of interfaith marriages, effective laws must be able to consider and maintain justice between interfaith couples. This can include protecting individual rights, resolving disputes, and providing mechanisms or regulations that facilitate interfaith marriages without discrimination.

⁵³ Andrew Shandy Utama, "Kepercayaan Masyarakat Terhadap Penegakan Hukum Di Indonesia," *Ensiklopedia Social Review* 1, no. 3 (November 9, 2019): 306-13.

INTERRELIGIOUS MARRIAGE ARRANGEMENTS IN INDONESIA: FROM DISHARMONY TO CONFLICT

Until now, there are no implementing regulations relating to the legality of interfaith marriages, even though these regulations are needed to guarantee legal certainty. The unclear meaning of the words in the Marriage Law and the Population Administration Law needs to be clarified for their interpretation and application. Apart from that, there needs to be more clarity in the wording of specific articles. This is due to the use of words that have multiple interpretations, giving rise to differences in decisions issued by law enforcers, namely district court judges.⁵⁴

In Surabaya District Court Determination No. 916/Pdt.P/2022/PN.Sby The judge granted the request for interfaith marriage. The judge's considerations in this determination are based on formal reasons. *First*, a logical, systematic interpretation, namely by considering Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage in conjunction with Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, the judge finds the law by linking the Jurisprudence of Supreme Court Decision Number 1400/Pdt/1986 and systematically considering Law Number 23 of 2006 concerning Population Administration. However, the judge ignored Constitutional Court Decision Number 68/PUU-XII/2014, rejecting interfaith marriages. This Constitutional Court decision has a more robust existence than the Supreme Court Decision Number 1400/Pdt/1986. A Constitutional Court judge is a judge with a high position in reviewing the material of applicable laws, and decisions of the Constitutional Court are final and cannot be appealed or cassated. *Second*, Valid or Authentic Interpretation, namely interpreting the meaning of the words given by the legislator in Article 35 letter (a) of Law Number 23 of 2006 concerning Population Administration, so that the judge orders the Official of the Population and Records Service Civil to register interfaith marriages of applicants.⁵⁵

Materially, the judge finds the law using *the first three methods, subsumptive* interpretation, namely the judge's considerations based on witness statements and evidence obtained in the trial by comparing the juridical facts with the concrete text of the statutory regulations. *Second*, a logical, systematic interpretation links

⁵⁴ Dewi, "Inconsistency Norm Peraturan Perkawinan Beda Agama (Studi Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan Dan Undang-Undang No. 23 Tahun 2006 Tentang Administrasi Kependudukan)."

⁵⁵ Irwan Ramadhani and Nahrowi, "Penemuan Hukum Hakim Terhadap Pemberian Izin Pernikahan Beda Agama," *Al-Syakhsyiyah Journal of Law and Family Studies* 5, no. 1 (2023): 36-52, <https://doi.org/10.21154/syakhsyiyah.v5i1.6297>.

principles regarding the rights of applicants and marriage procedures with the relevant laws and rules for the *quo application*. *Third*, teleological or sociological interpretation, namely that the judge considers the benefit of the case regarding the applicant's differences in religion, not a prohibition on getting married. Many interfaith marriages occur, so in this phenomenon, the judge sees a way out of this problem.⁵⁶

The consequence of the existence of regulations containing articles with words that have multiple interpretations and cause confusion in their interpretation or application results in legal conflicts. Legal factors, namely constraints containing unclear wording in the preparation of the articles, apparently influence law enforcement on the issue of interfaith marriages in Indonesia. In such circumstances, law enforcement agencies face the dilemma of enforcing legal provisions.⁵⁷ The rules of the Marriage Law that are not in harmony with the Population Administration Law cause differences in the decisions of District Court judges between those who grant and those who reject requests for the legality of interfaith marriages.

Judges' decisions, which in legal effectiveness theory occupy the position of law enforcement actors, are influenced by their interpretation of statutory provisions.⁵⁸ If viewed from the perspective of the structure of legal institutions in the judicial system in Indonesia, the Supreme Court is the highest court for plaintiffs at the cassation level. The Supreme Court is also responsible for supervising the performance under its auspices, namely the High Court, in appeal cases. To ensure no party is harmed, the judge in an interfaith marriage must have a sense of justice so that no party feels hurt, trustworthy, fair in speaking, honest in anger or joy, and honorable in all taboo matters. So, Supreme Court decision no. 1400K/Pdt/1986, which states that interfaith marriages are permitted to be registered at the Civil Registry Office, is the legal jurisprudence that is the basis for determining the legality of interfaith marriages.

The Supreme Court, in its decision, stated that there was a legal vacuum in the law on interfaith marriages. But on the other hand, the Constitutional Court judges have a different opinion from the Supreme Court. In Constitutional Court Decision No. 68/PUU-XII/2014 Concerning Interfaith Marriage, the Judge rejected all the

⁵⁶ Irwan Ramadhani and Nahrowi.

⁵⁷ Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*.

⁵⁸ Agus Riyanto, "Penegak Hukum, Masalahnya Apa?," accessed November 15, 2022, <https://business-law.binus.ac.id/2018/12/26/penegakan-hukum-masalahnya-apa/>. Accessed November 15, 2022. <https://business-law.binus.ac.id/2018/12/26/penegakan-hukum-masalahnya-apa/>.

applicants' arguments and thought that Article 2 paragraph (1) of Law no. 1 of 1974 concerning Marriage gives rise to the possibility of multiple interpretations. It is limited in nature, so the right to legal certainty cannot be implemented fairly, and this article is contrary to the 1945 Constitution. According to the Constitutional Court judges, this right is not limited. They cannot do anything related to administration and do not force interpretation of the Marriage Law.

This decision from the two highest legal institutions in Indonesia has an impact on the diversity of opinions of the judges below. In applications for determining interfaith marriages, the judges often have different ideas, some granting and others refusing. This difference is caused by the provisions in Article 35 letter (a), which only states the authority of the Civil Registry Office to register interfaith marriages determined by the court but does not mention conditions, procedures, and matters relating to implementation. Interfaith marriage.⁵⁹ So, in this case, judges must make decisions according to their respective understandings when handling applications for the determination of interfaith marriages. This means that problems related to the ambiguity of interfaith marriages do not only exist in statutory regulations but also at the level of implementation by law enforcers. This fact can be found in differences in judge decisions in handling cases regarding determining interfaith marriages. The conclusion of the Supreme Court Decision allows marriages between couples of different religions to be registered and recorded at the Civil Registry Office. However, not all judges in district courts use the Supreme Court's decision as the basis for granting requests for interfaith marriages.

The position of the judge is in a very determining role in a legal decision. On the one hand, judges' decisions are expected by interfaith marriage couples, but on the other hand, judges are required to be independent. The task of law enforcers is to convince and explain legal issues so they can make fair and wise decisions. However, the problem is more complex because each law enforcer faces operational and technical challenges. After all, law enforcement is not running according to its direction. In circumstances like this, law enforcers who cannot implement the law will negatively impact law enforcement.⁶⁰

The decisions of judges as law enforcers influence societal factors. Indonesian society is a plural society in terms of religion and belief. This reality makes interfaith

⁵⁹ Kadek W. Indrayanti, Aloysius R. Entah, and Mochtar Dewi Astutty, "Perkembangan Peran Negara Dalam Memberikan Perlindungan Hukum Bagi Pasangan Kawin Beda Agama (KBA) Di Indonesia," *Seminar Nasional Hasil Penelitian*, 2016.

⁶⁰ Riyanto, "Penegak Hukum, Masalahnya Apa?"

marriages in society unavoidable. A law enforcer must know the social stratification in his environment, status/position, and roles that apply. All social stratification must have a basis. Another thing that needs to be understood and known is the social institutions that exist and are highly respected by the majority of existing community members. Understanding and knowing these things will help law enforcers identify the values and rules or norms that apply in their environment.⁶¹

Judges' granting of some requests for interfaith marriages has given rise to different societal perceptions. Those involved in interfaith marriages feel that the judge's decision is fair and realistic and provides legal certainty. Judges are considered to be responsive to legal developments and social realities, thereby providing progressive choices. This view has resulted in people's courage to carry out interfaith marriages, which have always faced legal obstacles.

On the other hand, society has a negative view of accepting interfaith marriages. Judges are seen as unable to understand legal rules and do not respect religious law, which is an element in forming national law. The judge's decision is considered to open up opportunities for violations of the rules regarding interfaith marriages. Ignoring religious legal norms by law enforcers is deemed to harm the religiosity of Indonesian society.

Thus, law enforcement factors, which can be read from the judge's decision to grant the request for interfaith marriage, give rise to social conflict in society. The public is divided between those who are pro and those who are against the judge's decision. From the perspective of legal effectiveness theory, this gives rise to legal and social conflicts. Legal rules must be horizontally harmonious to become a tool for exercising social control. On the other hand, law enforcers who structurally have different decisions also increase the sharpness of legal conflicts in regulating interfaith marriages.

Supreme Court Circular Letter Number 2 of 2023 shows the judiciary's positive response to legal conflicts over interfaith marriages. As the highest judicial institution, the Supreme Court issues regulations to provide legal certainty and unified application of the law on interfaith marriages. Through this circular, the Supreme Court gives legal assurance to interfaith marriages regarding validity and registration. In point (1), the Supreme Court confirmed that the reality of marriages in Article 2 paragraph (1) and Article 8 letter f of Law Number 1 of 1974 concerning

⁶¹ Dewi Atiqah, "Peran Hakim Dalam Mewujudkan Asas Keadilan, Kepastian Hukum dan Kemanfaatan Putusan," <https://pa-purwodadi.go.id/> accessed October 20, 2023.

Marriage are those carried out according to the laws of each religion and belief. Therefore, in point (2), the Supreme Court prohibits courts from requesting marriage registration between people of different faiths and beliefs. Issuing this Supreme Court Circular Letter ends the legal conflict over interfaith marriages that occurred in Indonesia, both in terms of the validity of the wedding and its registration.

CONCLUSION

There is legal disharmony between the provisions in Article 2 paragraph (1) of Law no. 1 of 1974 concerning the validity of marriage, article 35 letter (a) of Law no. 23 of 2006 concerning Population Administration regarding the registration of interfaith marriages at the Civil Registry Office, with a Judge's Decision regarding requests for the legality of interfaith marriages. The disharmony in these regulations results in ineffectiveness in implementing the rules for interfaith marriages. When these regulations contradict each other, the result is a contestation of authority between legal institutions. This reality has resulted in confusion and difficulties for the community regarding which rules should be used as a reference in determining interfaith marriages.

In a situation like this, the government must take steps to harmonize regulations regarding interfaith marriages in Indonesia. One way to do this is to consider the legal institutions' authority and seek harmony between them. The presence of Supreme Court Circular Letter Number 2 of 2023 is a firm and wise step to end the polemic and ambiguity of the law on interfaith marriages in Indonesia. Judges must strictly guide this Supreme Court Circular Letter to avoid dualism and legal conflicts in interfaith marriages.

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