

***EXAMINATION OF DISTRICT COURT JUDGE'S
DECISION ON REGISTRATION OF INTER-RELIGIOUS
MARRIAGES IN INDONESIA***

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ABSTRACT

Marriage is one of the most important worship and human rights, Indonesia must make absolute laws governing marriage. This will change the marriage law that has been held for years by various community groups in Indonesia. Marriage is regulated by law because it is important and sacred. In terms of marriage law, differences of opinion are still referred to as a legal vacuum because most of the judges' considerations in various District Courts are centered on the following matters: (1) there are still legal limitations; (2) they have not been regulated, and (3) the law does not explicitly regulate this. This shows that the legal understanding and beliefs of judges at the first level are different from the considerations of the Constitutional Court's decision. Not only are there legal limitations, but there is also an inequality in the treatment of judges who approve interfaith marriages in certain cases, but reject other cases, which causes this unequal treatment. This shows that judges do not have specific regulations when considering marriage registration or marriage applications in court. This can lead to different interpretations. Judges who uphold marriages must have the same integrity, conviction, and understanding of the law, religion, or belief so that they do not misinterpret or misunderstand marriages from different religions.

Keywords: *Examination, Marriage, Inter-Religious, Registration.*

1. INTRODUCTION

In human life, there is a life cycle that involves various important events. such as birth, marriage, divorce, and death. These events need to be recorded because they have a significant impact on the individual's life experience and legal consequences for them and society.¹ To maintain order and legal certainty. regulations are needed regarding civil registration implemented by the Civil Registry Office. Civil registration includes documentation of important events that affect a person's civil status including changes or elimination of civil rights with the aim that these events can be officially and clearly recognized.

Civil registration is the right of every citizen to obtain an authentic certificate from a state official. Although important, many people are still unaware of the benefits of certificates, such as birth certificates that are needed for education, as well as marriage and death certificates that function in determining status and inheritance rights. These certificates have significant legal consequences in a person's life. However, the implementation of civil registration is still less than optimal. and the community does not fully understand the importance of certificates in their lives. Therefore, the role of the government is very important to increase socialization regarding the benefits of civil registration. Marriage is regulated by law in the 1945 Constitution, Article 288, which states: "everyone has the right to form a family and continue their lineage through a legal marriage."

Law Number 1 of 1974 concerning Marriage, which has been amended by Law Number 16 of 2019 concerning Marriage. This provides clear regulations on how marriage is carried out. Paragraph 1 of Article 2 of the Marriage Law in its current wording, states that:

"Marriage is valid, when it is done according to the religious laws and beliefs of each."

This is related to the values of worship related to marriage, which are related to aspects of religion and belief. The regulation was challenged in 2014. Because the understanding of a person's religion or belief in his language can be interpreted individually or institutionally.²

Not only are there legal limitations, but there is also unequal treatment. Judges approve interfaith marriages in certain cases. However, reject other cases. which

¹ Hilman Hadikusuma, , *Hukum Perkawinan Indonesia Menurut Perundangan*, Bandung, Mandar Maju, 2003, hlm. 1

² Sukirno Sukirno, "Diskriminasi Pemenuhan Hak Sipil Bagi Penganut Agama Lokal," *Administrative Law and Governance Journal* 1, no. 3, 5 Desember 2018, hlm. 231-239.

causes this unequal treatment such as, in Decision Number 916 / Pdt.P / 2022 / PN.Sby that the judge granted the application for interfaith marriage. However, in Decision Number 71 / Pdt.P / 2017 / PN the judge rejected the application for interfaith marriage. This shows that judges do not have specific regulations when considering marriage registration or marriage applications in court. This can lead to different interpretations. Judges who determine someone's marriage must have the same integrity, beliefs, and understanding of the law, religion, or beliefs so that they do not misinterpret or misunderstand marriages of different religions. With this background, the author wants to conduct further research on the Examination of District Court Judges' Decisions Regarding the Registration of Interfaith Marriages in Indonesia.

2. GENERAL REVIEW OF INTER-RELIGIOUS MARRIAGE REGULATIONS IN INDONESIA

2.1. Legal Regulations for Interfaith Marriage in Indonesia

In 1958-1959, the Indonesian government attempted to create its own draft law (RUU).³ The aim is for Indonesia to no longer adopt laws inherited by the Dutch colonial government. The bill was then discussed in the DPR session but did not succeed in becoming law. Then in 1967-1971 the DPR again discussed the Marriage Bill which contained a Bill on Muslim Marriage which came from the Ministry of Religion and a Bill on Basic Marriage Provisions from the Department of Justice. However, discussion of these two bills ultimately experienced a breakdown because the Catholic faction refused to discuss a bill that concerned religious law, because at that time there were very few representatives from the Catholic group.⁴ In 1973 the government again submitted a bill to the DPR through four-level discussions.

The first level is the government's explanation of the bill. The second level is the general view of each faction on the bill and the government's response to that general view. The third level is a commission meeting (a combination of Commission III and Commission IX) to discuss the bill, which in this case is handed over to a committee called the Marriage Bill Working Committee. The fourth level, decision making (ratification of the Marriage Bill) preceded by the final opinion (stemmotivering) from each faction. After going through four levels of discussions between the DPR and the Government, the bill was forwarded to the DPR RI Plenary Session to be ratified into law. After all factions including the Minister of Justice were given the opportunity to express their opinions, on that day the Marriage Bill was

³ A Basiq Djalil, *Peradilan Agama di Indonesia*, Penada Group, Jakarta 2006, hlm. 83.

⁴ Taufiqurrohman Syahuri, *Legislasi Hukum Perkawinan di Indonesia (Pro - Kontra Pembentukannya Hingga Putusan Mahkamah Konstitusi)*, Kencana Prenada Media Group, Jakarta, 2013, hlm. 106.

passed by the DPR RI and became law. Exactly on January 2 1974 it was promulgated, with Law Number 1 of 1974 concerning Marriage, State Gazette Number 1 of 1974, additional State Gazette Number 3019/1974.⁵

The validity of a marriage is a very principled matter, because it is closely related to the consequences of the marriage, both in relation to children (offspring) and in relation to property. Law Number 1 of 1974 concerning Marriage has formulated the criteria for the validity of a marriage, which are regulated in article 2, as follows: (1) Marriage is valid if it is carried out according to the laws of each respective religion and belief. (2) Every marriage is recorded according to the applicable laws and regulations. Article 2 of Law Number 1 of 1974 stipulates two legal lines that must be obeyed when carrying out a marriage. Paragraph (1) regulates firmly and clearly regarding the validity of a marriage, namely that the only condition for the validity of a marriage is if the marriage is carried out according to the religious rules of those who will carry out the marriage. The religious provisions for the validity of a marriage for the Muslim community in question are those relating to the terms and pillars of marriage.⁶

The explanation of Paragraph (1) states that there is no marriage outside the law of each religion and belief in accordance with the 1945 Constitution. The meaning of the law of each religion and belief is as long as it does not conflict with or is not otherwise specified in the law. legislate this. From these provisions, it can be seen that marriage is closely related to each religion adhered to by the prospective bride and groom. Thus, a marriage can only be said to be a legally valid marriage if the marriage is carried out according to the religion of the person carrying out the marriage. Paragraph (2) regulates the registration of marriages, that a marriage must be registered according to the applicable laws and regulations.

2.2. Regulation of Marriage in the Compilation of Islamic Law (KHI)

Marriage or marriage in Arabic fiqh literature is referred to by two words, namely *nikah* and *zawaj*. These two words are used in the daily life of Arabs and are widely found in the Qur'an and the hadith of the Prophet Marriage according to Islam is a strong and solid sacred agreement to live together legally between a man and a woman to form a family eternal, polite, loving, peaceful, happy and eternal.⁷

Article 2 of the Compilation of Islamic Law (KHI) defines marriage according to Islamic law as marriage, namely a very strong contract or *mitsaagan ghaliizhan* to

⁵ Jamaluddin, *Hukum Perkawinan dalam Pendekatan Normatif*, Pustaka Bangsa Press, Medan, 2009, hlm.75.

⁶ Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia*, Kencana, 2006, hlm 59.

⁷ M. Idris Ramulyo, *Tinjauan Beberapa Pasal Undang-Undang Nomor 1 Tahun 1974 dari Segi Hukum Perkawinan Islam*, Ind-Hillco, Bengkulu, 1985, hlm. 147.

obey Allah's command and carrying it out is an act of worship. This means that marriage is a physical and spiritual bond between a man and a woman as husband and wife, with the aim of forming a family that is *sakinah, mawaddah, and warahmah*.

In the compilation of Islamic law (KHI) in Indonesia, the rules regarding marriage are listed in Book I, which regulates Marriage and Family. These rules refer to the basic principles of Islamic law, but are also adapted to the social and legal context in Indonesia. The following are several marriage rules regulated in the Compilation of Islamic Law (KHI), including:

1. Marriage Requirements
 - a. Age The prospective bride and groom must have reached the age specified in Islamic law, namely 19 years for men and 16 years for women.
 - b. Mental Ability The prospective bride and groom must have the skills to carry out the marriage, both physically, mentally and economically.
2. There are no syar'i obstacles
Marriage may not occur if there are obstacles, such as a mahram (close relative) relationship, or still being married to someone else.
3. Marriage Contract A valid marriage in Islamic law begins with a "marriage contract", namely a statement of *ijab* (offer) and *kabul* (acceptance) witnessed by two fair witnesses. The marriage contract is an act that is legally and religiously binding.
4. Guardian A woman who is getting married must have a guardian, who is usually the woman's father or close male relative. If there is none, then the marriage guardian can be represented by the court.
5. *Mahar* (Dowry)
A dowry is something given by a husband to his wife as a right that must be fulfilled in marriage. The amount can be agreed upon by both parties, but it must be reasonable and not burdensome.
6. Marriage Registration
Every marriage must be registered at the Office of Religious Affairs (KUA) or at an authorized institution to ensure that the marriage is legally valid under state law.
7. Divorce
Divorce (*talak*) is something that is regulated in Islamic law if there is a problem in marriage. Divorce can only be done by the husband, but under certain conditions, the wife can also file for divorce to the religious court. Islamic law teaches divorce as a last resort, after mediation and peace efforts have been made.

2.3. Marriage Regulations in Customary Law

The definition of marriage according to customary law is that marriage is one of the most important events in the lives of indigenous peoples, because marriage not only concerns the bride and groom, but also the parents of both parties, their siblings, and even their respective families. In customary law, marriage is not only an important event for those who are still alive. But marriage is also a very meaningful event and one that receives full attention and participation from the spirits of the ancestors of both parties. The following will explain the definition of marriage according to customary law put forward by experts:

1. Hazairin According to Hazairin, marriage is a series of magical acts, which aim to ensure peace, happiness and fertility.
2. A. Van Gennep Marriage is a rites de passage (transitional ceremony) to change the status of the bride and groom. The transition consists of three stages:
 - a. Ritesdeseperation
 - b. Ritesdemerge
 - c. Ritesdeaggregation
3. Djojodegoeno Marriage is a community or somah and is not a relationship based on an agreement. The relationship between husband and wife is so close that it is a single thing.

3. ANALYSIS OF DECISION NUMBER 916/PDT.P/2022/PNL.SBY FACTS OF THE CASE IN DECISION NUMBER 916/PDT.P/2022/PN.SBY CONCERNING INTERFAITH MARRIAGE AT THE SURABAYA

Application On April 8, 2022, it was registered at the Surabaya District Court clerk's office with registration number 916/Pdt.P/2022/PN.Sby submitting a marriage application determination. The applicants are individuals domiciled in Surabaya who wish to register their marriage to each other before the Surabaya City Population and Civil Registry Office. In this regard, applicant I is Muslim and applicant II is Christian, who wish to register their marriage at the Civil Registry Office but were rejected, and were advised to submit a determination to the Surabaya District Court.

Furthermore, the applicants filed an application for interfaith marriage, by submitting a basis on the provisions regulated in Article 21 of the Marriage Law in conjunction with Article 35 of Law No. 23 of 2006 concerning Population Administration. Article 21 of the Marriage Law:

- (1) If the marriage registrar is of the opinion that the marriage is prohibited according to this Law, he will refuse to perform the marriage.
- (2) In the case of a refusal, the request of one of the parties wishing to enter into marriage will be given by the marriage registrar in writing a statement of the refusal accompanied by the reasons for the refusal.

- (3) Parties whose marriage has been rejected have the right to submit an application to the Court in the jurisdiction where the marriage registrar who issued the rejection is based to issue a decision, by submitting a letter of notification of the rejection.
- (4) The court will examine the case in a brief manner and will issue a decision as to whether it will uphold the refusal or order that the marriage take place.
- (5) This ruling loses its power, if the obstacles that resulted in the rejection disappear and the parties who want to marry can repeat the notification of their intention.

Article 35 paragraph (1) of the Population Administration Law states that marriage registration can be carried out upon a court order. Based on these grounds, the applicant requested that his application to carry out an interfaith marriage be granted at the Surabaya City Population and Civil Registry Office, and requested that the Surabaya City Population and Civil Registry Office staff be ordered to register the interfaith marriage. The judge determined and granted the application submitted by the applicant.

4. DISCUSSION

In 1974 and in the Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law. These two regulations regulate all matters relating to marriage, including interfaith marriage."⁸ According to Article 1 of Law No. 1 of 1974, marriage is a physical and spiritual bond between a man and a woman who become husband and wife with the aim of forming a happy family or household based on the One Almighty God. Based on Presidential Instruction Number 1 of 1991, the Compilation of Islamic Law was formed as a positive law that applies to Muslim communities. The Compilation of Islamic Law states in Article 40 paragraph (c) "marriage is not permitted between a Muslim man and a non-Muslim woman", in Article 44 "marriage is not permitted between a Muslim woman and a non-Muslim man".¹⁰ It can be concluded that the Compilation of Islamic Law determines that interfaith marriage is prohibited for every Muslim. Article 61 "not being equal cannot be used as an excuse to prevent marriage, unless it is not the same due to religious differences".

Based on the explanation above, marriages conducted in the jurisdiction of Indonesia must be conducted through one religious path, meaning that religious marriages are not allowed to involve interfaith marriages, meaning that the marriage is invalid and violates the law. So according to the applicable positive

⁸ Nur Asiah, "Kajian Hukum Terhadap Perkawinan Beda Agama Menurut Undang-Undang Perkawinan Dan Hukum Islam," *Jurnal Hukum Samudra Keadilan* Vol. 10, No. 2 (Juli 2015): hlm. 208.

law, namely Law No. 1 of 1974 concerning marriage, interfaith marriages do not recognize, so interfaith marriages cannot be legalized in Indonesia. Article 35 letter a of Law Number 23 of 2006 concerning Population Administration, where in the explanation of article 35 letter a it is emphasized that "what is meant by a marriage determined by the Court is a marriage carried out between people of different religions". This provision is basically a provision that provides the possibility of registering a marriage that occurs between two people of different religions after a court ruling on the matter.

5. CONCLUSION

Based on the description above, it can be taken conclusion that the determination of Number 916/Pdt.P/2022/PN.Sby which granted it application from the applicant for carrying out interfaith marriages and ordered the relevant agencies in this is the Civil Registry Office for register the marriage. Between consideration of the determination in the case it is stated that it does not exist specific rules regarding marriage different religions, as a legal basis the applicant referred to Article 21 of the Law No. 1 of 1974 concerning Marriage, as well referring to Article 35 of Law no. 23 of 2006 concerning Administration Population. In general regarding marriage in Indonesia is regulated in Marriage Law no. 1 of 1974. Although the UUP does not specifically state this does not regulate interfaith marriages. It should be when looking at marriage Different religions must also consider the applicable (religious) norms and related regulations such as KHI (Article 40, 44, 61). So the legal meaning in Article 2 UUP no. 1 of 1974 is valid if implemented according to respective laws his religion, interpreted and understood that marriage is only valid if it is carried out by couples who share the same beliefs.

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