

THE LEGAL AND HUMAN RIGHTS CHALLENGES OF INTERFAITH MARRIAGE IN INDONESIA turnitin

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THE LEGAL AND HUMAN RIGHTS CHALLENGES OF INTERFAITH MARRIAGE IN INDONESIA

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Abstract

Objective: This research aims to analyze the legal rules on interfaith marriage in Indonesia in relation to human rights, and whether there are any aspects of human rights violations or conflicts arising from the absolute prohibition of interfaith marriage without exception, as clarified by the Supreme Court Circular (SEMA) No. 2 of 2023, which provides a more detailed interpretation of the rules in the Marriage Act No. 1 of 1974 and the Compilation of Islamic Law (KHI) No. 1 of 1991

Methodology: The study employs a normative legal research approach coupled with a descriptive methodology. Data is acquired through an extensive review of relevant legal frameworks, doctrines, and pertinent literature. The acquired data is then subject to qualitative analysis techniques for thorough examination and interpretation, ensuring a comprehensive understanding of the subject matter..

Results: The results of the study show that the legal rules on interfaith marriage in Indonesia are in conflict with human rights, especially the right to freedom of religion and the right to form a family. This is because these rules restrict the individual's freedom to choose a religion and form a family with someone of a different religion without exception.

Conclusion: Drawing insights from the study's findings, it is evident that a conclusive inference can be made that the legal rules on interfaith marriage in Indonesia have the potential to cause several aspects of human rights violations or conflicts. Therefore, further research is needed to find solutions to overcome this problem.

Keywords: *Interfaith Marriages, Islamic Law in Indonesia, Human Rights and Supreme Court Circular*

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1. INTRODUCTION

Indonesia is a country with a large religious diversity, with five official religions: islam, christianity, catholicism, hinduism, and buddhism. However, the majority of the population is muslim (87.2%). This diversity poses a challenge to balancing religious values and human rights, particularly in the context of interfaith marriage.

Interfaith marriage presents a multifaceted and contentious quandary within Indonesia. Among its most contentious facets is the stipulation necessitating non-Muslim partners to undergo a conversion to Islam before marrying a Muslim individual. This stipulation has raised concerns from certain quarters, contending that it infringes upon the individual's fundamental right to select their faith. Conversely, proponents of restrictions on interfaith marriage assert that such restrictions are necessary to safeguard the integrity of religious tenets and the identity of the familial unit.

There have been 1,425 interfaith marriages in Indonesia between 2005 and early March 2022, according to data from the Indonesian Conference on Religion and Peace (ICRP). This suggests that interfaith marriage is difficult to prohibit, as some indonesians still marry without regard to religion, ethnicity, or skin color.

In addition to the requirement for conversion, interfaith marriage in indonesia is also subject to a complex and bureaucratic licensing and registration process. This process can be a barrier to interfaith marriage, especially for couples who face opposition from their families or communities.

The legal controversy surrounding interfaith marriage in indonesia is complex and multifaceted. It reflects the tension between religious values, human rights, and the interests of the family. Furthermore, the religious convictions of Indonesian Muslim society are stronger than engaging in interfaith dialogue (Van Niekerk & Verkuyten, 2018). Further research is needed to develop policies that balance these competing interests in a fair and equitable manner.

1.1 Research Question

This article delves into the intricate legal and human rights ramifications associated with interfaith marriage within the Indonesian context. The study is grounded in the pursuit of answering two pivotal research inquiries:

- A. What constitutes the regulatory framework governing interfaith marriage in Indonesia?
- B. To what extent, if any, does the legal framework concerning interfaith marriage in Indonesia intersect with potential human rights infringements?

2. METHODOLOGY

This study is a normative legal study with a descriptive approach that examines the legal norms contained in the regulations and laws in force in Indonesia, especially the Supreme Court Circular (SEMA) No. 2 of 2023, Law No. 1 of 1974 on Marriage, and the Compilation of Islamic Law (KHI) 1991, as well as the Universal Declaration of Human Rights (UDHR) in relation to the issue of prohibiting interfaith marriage.

The research methodology involved an in-depth exploration and meticulous analysis of the legal tenets and provisions within legislations that impose restrictions on interfaith marriages. Moreover, the investigation encompassed the scrutiny of the ensuing implications for human rights, taking into account the intricacies of legal statutes and their corresponding interpretations.

The study adopts a descriptive analytical approach, primarily aimed at elucidating the distinct standpoints and rationales underlying the prohibition of interfaith marriages as stipulated by extant legal norms. Subsequently, these perspectives are subjected to comprehensive review and analysis from the vantage point of human rights, facilitated through an exhaustive examination of pertinent literature sources.

3. RESULT AND DISCUSSION

3.1 Interfaith Marriage in the Views of Indonesian Law and Religions

The legal regulation of interfaith marriage in Indonesia is a complex, sensitive, and challenging topic. It involves the balancing of individual rights to choose a life partner with the values of religion and culture. Indonesia is a Muslim-majority country with five recognized religions: Islam, Christianity, Catholicism, Hinduism, and Buddhism. Therefore, the law on interfaith marriage is regulated strictly in order to maintain harmony among the different religious groups.

The initial regulations governing interfaith marriage date back to the Regulation on Mixed Marriages (GHR) of 1896, promulgated during the era of Dutch colonial governance. Within the GHR framework, a pivotal provision was established, asserting

that disparities encompassing religion, race, nationality, or origin must not serve as impediments to matrimony. Notably, the GHR also outlined the parameters of mixed marriages, deeming them as unions between individuals governed by distinct legal jurisdictions, arising from variations in citizenship or religious affiliation (Octavianus Eoh, 1996).

The Marriage Law of 1974 effectively prohibited interfaith marriage, although the prohibition was not explicit. The law stated that a marriage is valid only if it is conducted in accordance with the laws of each partner's religion or belief. This effectively nullified the Government Regulation No. 10/1965 on Mixed Marriages (GRH), which had allowed for interfaith marriages between Indonesian citizens.

The Indonesian Compilation of Islamic Law (KHI), enacted in 1991, further reinforced the prohibition on interfaith marriage. According to the KHI, a marriage is deemed valid solely if it adheres to the tenets of Islamic law. Several legal provisions within Indonesia contribute to justifying the prohibition of interfaith marriage:

- A. Article 2(1) of the Marriage Law of 1974 asserts that "A marriage is valid if it is conducted in accordance with the laws of each partner's religion or belief." The interpretation of this provision can be pivotal; some legal scholars construe it to signify that the legitimacy of interfaith marriage hinges on the religious laws of each respective partner. Given that many Islamic scholars disapprove of interfaith marriage, this interpretation effectively entails the prohibition of such marriages among Muslims.
- B. Article 8(f) of the Marriage Law of 1974 stipulates that "A marriage is invalid if one of the parties does not meet the requirements for marriage under the laws of his or her religion." This provision could also be leveraged to proscribe interfaith marriage when one of the partners does not fulfill the prerequisites for marriage according to their respective religious laws.
- C. Article 4 of the KHI states that "A marriage is valid if it is conducted in accordance with Islamic law in accordance with Article 2(1) of the Marriage Law of 1974." This provision reiterates the prohibition on interfaith marriage for Muslims.
- D. Article 44 of the Indonesian Compilation of Islamic Law (KHI) prohibits the marriage of a Muslim woman to a non-Muslim man.

- E. Article 61 of the KHI states that a man and a woman who are not of the same religion are considered to be unequal, which could be used to justify the prohibition on interfaith marriage.
- F. Article 116(h) of KHI, which states that divorce can occur due to a change of religion or apostasy that causes marital discord.
- G. Article 29(2) of the 1945 Constitution of Indonesia underscores that "The state guarantees the freedom of each citizen to embrace his or her own religion and to worship according to his or her own religion and belief." This stipulation can likewise be invoked to bolster the right of every individual to enter into marriage in alignment with their religious convictions..

The legal provisions outlined earlier indicate that the legitimacy of interfaith marriage hinges upon the regulations of each partner's respective religion or belief system. Broadly, numerous Islamic scholars oppose interfaith marriage, citing various verses from the Quran, notably Surah al-Baqarah, verse 221, and Surah Mumtahanah, verse 10.

In 2005, a significant development occurred when the Indonesian Ulema Council (MUI) issued a fatwa explicitly forbidding interfaith marriage. This fatwa categorically deemed interfaith marriages as not only prohibited but also invalid. Its foundation rested upon various verses from the Quran, notably including verses 221 and 10 from Surah al-Baqarah, which specifically proscribe Muslim men from marrying non-Muslim women

However, a closer examination of Islamic teachings reveals that the Quran also permits interfaith marriage, particularly for Muslim men who are allowed to marry Jewish, Christian, and other women of the book, as explained in verse 5 of Surah al-Maidah. Therefore, interfaith marriage is not absolutely prohibited in Islamic teachings, and there is still the possibility of it being performed, especially if it is beneficial and prevents greater harm.

Christian teachings do not explicitly prohibit interfaith marriage too. However, there are several passages in the Bible that can be interpreted as prohibiting interfaith marriage, such as:

- A. Corinthians 7:12-13 states, "For the wife does not have authority over her own body, but the husband does. Likewise, the husband does not have authority over his own body, but the wife does. Do not deprive each other except perhaps by mutual consent and for a time, so that you may devote

yourselves to prayer. Then come together again so that Satan will not tempt you because of your lack of self-control"

- B. Corinthians 6:14-15 advises, "Do not be unequally yoked with unbelievers. For what partnership has righteousness with lawlessness? Or what fellowship has light with darkness? What accord has Christ with Belial? Or what portion does a believer share with an unbeliever? What agreement has the temple of God with idols? For we are the temple of the living God."

These verses have been interpreted by certain religious leaders as discouraging interfaith marriage due to the potential conflicts and disagreements that may arise within the family due to differing beliefs and values

However, the prohibition against interfaith marriage is not absolute, as some religious leaders also endorse interfaith unions, particularly if the couple is willing to honor and appreciate each other's beliefs. This perspective is grounded in passages from the Bible that underscore the significance of love and compassion in marriage, as exemplified in Corinthians 13:4-8: "Love is patient, love is kind. It does not envy, it does not boast, it is not proud. It does not dishonor others, it is not self-seeking, it is not easily angered, it keeps no record of wrongs. Love does not delight in evil but rejoices with the truth. It always protects, always trusts, always hopes, always perseveres." Certain clergy members interpret these verses to support the idea that interfaith couples can maintain a harmonious marriage by emphasizing love, respect, and understanding, even if their religious beliefs differ.

Christian teachings on interfaith marriage are complex and nuanced. While there are some passages that can be interpreted as prohibiting interfaith marriage, there are also passages that support it. Ultimately, the decision of whether or not to marry someone of a different religion is a personal one that should be made on a case-by-case basis.

In Hindu teachings, there is no explicit prohibition on interfaith marriage. However, there are some views that argue that interfaith marriage can lead to problems, such as: differences in beliefs and values can lead to conflict in the household, It can be difficult for couples to practice their respective religions and It can lead to children being confused about their religion. Therefore, some people believe that couples who want to marry someone of a different religion should carefully consider all the potential consequences.

Nevertheless, within the Hindu community, there are also leaders who hold the perspective that interfaith marriages can be both permissible and successful, provided that both individuals demonstrate a deep reverence for one another's beliefs and are devoted to cultivating a harmonious household. This standpoint finds its foundation in the teachings of Hinduism, which underscore the significance of love and empathy in life. Notably:

- A. The PHDI (Parisada Hindu Dharma Indonesia), a prominent Hindu organization in Indonesia, maintains the standpoint that interfaith marriage is not sanctioned within the faith.
- B. Prof. Dr. Ida Pedanda Gede Made Sidemen, a distinguished Hindu scholar in Indonesia, contends that interfaith marriage can indeed be embraced if both partners hold a profound respect for each other's beliefs.
- C. I Gusti Ngurah Rai, a Balinese Hindu leader, believes that interfaith marriage is acceptable if both partners have a strong commitment to building a happy household.

This demonstrates the diversity of thought within the Hindu leadership on the matter of interfaith marriage, with some leaders advocating for flexibility and understanding in the pursuit of harmonious marital relationships across differing religious backgrounds.

In Buddhist teachings, there is no explicit prohibition on interfaith marriage also. However, some Buddhist leaders believe that interfaith marriage can lead to problems, such as: differences in beliefs and values can lead to conflict and division in the household, It can be difficult for couples to practice their respective religions and It can lead to children being confused about their religion. As a result, some Buddhist leaders believe that couples who want to marry someone of a different faith should carefully consider all the potential consequences.

Some Buddhist monks also believe that interfaith marriage can be allowed and successful if both partners respect each other's beliefs and are committed to building a happy household. This view is based on the Buddhist teachings that emphasize the importance of love and compassion in life. They have divergent views:

- A. Bhikkhu Buddhadasa, a Buddhist leader in Thailand, believes that interfaith marriage can be successful if both partners respect each other's beliefs.

- B. Bhikkhu Bodhi, a Buddhist leader in the United States, believes that interfaith marriage can be a challenge, but it can also be an opportunity to learn and grow.
- C. Bhikkhu Thanissaro, a Buddhist leader in Thailand, believes that interfaith marriage can be successful if both partners have a strong commitment to building a happy household.

Therefore, there is still room for the permissibility of interfaith marriage in Buddhist teachings, even though there are differences of opinion among Buddhist leaders.

Hence, based on the legal regulations that determine the validity of interfaith marriages according to the religion and beliefs of the individuals involved, it becomes apparent that the doctrines of the major religions officially recognized by the Indonesian government still provide room for the possibility of interfaith unions. However, in practice, interfaith marriages are frequently met with refusal and encounter challenges when attempting to be registered at the Civil Registry Office.

Due to the contentious debates and divergent interpretations, the Indonesian government reintroduced Law No. 23 of 2006 on Population Administration, which provides an avenue for legitimizing interfaith marriages. This is achieved through the provision of an option to file an application for an interfaith marriage with the District Court, seeking an issuance of a decree authorizing the interfaith union and instructing the Civil Registry Office to record the Interfaith Marriage in the Marriage Record Register.

Within the judicial assessment of permitting interfaith marriages, several factors come under the scrutiny of judges. Primarily, it is observed that interfaith marriage finds no explicit prohibition within the ambit of Law No. 1 of 1974. Delving further, the conjunction of Article 21 paragraph (3) of the Marriage Law No. 1 of 1974 with Article 35 letter a of Law No. 23 of 2006 on Population Administration warrants attention. This conjunction articulates that individuals encountering marriage denials possess the prerogative to petition the court situated within the jurisdiction of the marriage registrar issuing the refusal. This petition must be accompanied by the formal denial letter. This arrangement solidifies the judicial domain in which cases concerning interfaith marriage are examined and adjudicated—the District Court.

As a result of this legislation, from 2019 to 2023, numerous District Courts in Indonesia have granted petitions to validate and record interfaith marriages in civil

registries. For instance, the South Jakarta District Court approved a claim by an interfaith couple seeking the Court's recognition of their marriage's validity. While this ruling brings hope to interfaith couples in Indonesia, it is important to note that its legal binding is yet to extend universally.

However, in July 2023, the Indonesian Supreme Court issued a circular letter, SEMA No. 2 of 2023, which states that judges are prohibited from granting the registration of interfaith and belief-based marriages. This circular letter has again closed the door to the legality of interfaith marriage between religious communities in Indonesia.

3.2. Navigating Interfaith Marriage Challenges within the Framework of Human Rights: An In-depth Exploration

Human rights are fundamental rights inherent to every individual as an inseparable part of their human dignity. The concept of human rights encompasses a set of universal principles aimed at safeguarding the freedom, dignity, and equality of each individual, regardless of their background, identity, religion, social status, or gender.

Both women and men are equally human beings; thus, "women's rights" and "men's rights" are both expressions of human rights, that is, the rights inherent to humanity. Human rights establish the values of humanity. When someone loses their rights as a human being, they lose their entire values. Individuals who are deprived of their human rights cease to be humans and become akin to animals (Bich Phuong, 2023).

In the context of interfaith marriages, human rights issues play a crucial role in ensuring that individuals have the freedom to practice their beliefs and religion. The freedom to choose a life partner from a different faith is a reflection of human rights, particularly the rights to freedom of thought, religion, and expression. However, interfaith marriages can also present challenges and potential conflicts between the human rights of individuals and the values held by certain communities or religious institutions.

The following are the legal grounds that allow interfaith marriage under the Universal Declaration of Human Rights (UDHR):

- A. Article 3, paragraph 3, which grants the right to life, liberty, and security of person, which cannot be reduced or restricted on the basis of religion, including in marriage.
- B. Article 10 guarantees every individual the right to receive full equality in a just and open hearing by an autonomous and unbiased tribunal in the adjudication of their rights and responsibilities.
- C. Article 16, paragraph 1 underscores that individuals of mature age, without any limitations based on race, nationality, or religion, possess the entitlement to enter into marriage and establish a family. They possess equal rights in relation to marriage, during the marriage, and in the event of its dissolution.
- D. Article 16, paragraphs 2 and 3, emphasize that marriage should only transpire with the voluntary and complete consent of the individuals intending to marry. The family, considered the intrinsic and foundational unit of society, holds the right to protection from both the society and the state.
- E. Article 18 reiterates the right of every individual to freedom of thought, conscience, and religion, which can be interpreted to encompass the right to select a life partner in alignment with their religious convictions and individual viewpoints.

Similarly, the Republic of Indonesia Law No. 39 of 1999 on Human Rights, Article 10 paragraphs (1) and (2), which governs the freedom of every individual to form a family and choose a life partner of their own free will (without coercion from others), can be considered a legal foundation for legitimizing interfaith marriages..

An analysis of the articles in the UDHR reveals a contradiction between the UDHR and the laws in force in Indonesia. Made Widya and colleagues argue that the prohibition of interfaith marriage in Indonesia is discriminatory because it is not in line with the basic principles of human rights, which do not restrict the religion of citizens. (Made Widya Sekarbuana et al.) Article 28E (1) and (2) of the Indonesian Constitution also guarantee freedom of religion. Similarly, the Human Rights Act of 1999, Article 4 and 10, guarantee freedom of religion and the right to form a family and choose a partner. This freedom must be understood as a fundamental freedom, so there is no interference from the state. Therefore, from a philosophical perspective, the regulation of fundamental rights in the field of marriage must be aligned with Indonesian legislation and the goal of upholding human rights. (Made Widya Sekarbuana et al.)

The normative conflict that arises between Article 16 of the UDHR, Article 3 (3) of the UDHR, Article 18, Article 28E (1) of the Indonesian Constitution, Article 4 and 10 of the Human Rights Act of 1999, and Article 2 (1) of the Marriage Law is that one of the prospective spouses of an interfaith marriage must convert to the religion of the other spouse for the marriage to be considered valid. This can be interpreted as a violation of the fundamental right to freely choose one's own religion and beliefs. (Usman, 1989)

The challenges encountered in facilitating interfaith marriages in Indonesia present a conflict with the principles of human rights, particularly the freedom to practice religion and the liberty to establish a legitimate family through marriage. These challenges arise not from explicit prohibitions but rather stem from the construal and procedural intricacies as enforced by marriage registration officials. (Sri Wahyuni, 2011)

In addition, the technical procedures applied by marriage registrars can also make it difficult to implement interfaith marriage. For example, a marriage registrar may ask one of the spouses to sign a document stating that they have left their religion. This can create pressure and discrimination against the couple.

Therefore, there needs to be an effort to align the interpretation and technical procedures for implementing interfaith marriage with the values of human rights. This can be done by providing training to marriage registrars on the values of human rights, as well as clarifying the legal provisions on interfaith marriage.

Nevertheless, Asrul Sani, a member of the Indonesian House of Representatives), asserts that the state does not prohibit individuals from marrying freely. However, the state only records marriages that are that are valid according to the religion of the couple.

Moreover, some scholars argue that the Human Rights existing in Indonesia are not of a secular nature, which would separate religion from the state. The Human Rights in Indonesia are rooted in Pancasila, the first principle of which emphasizes that Indonesia is a state founded on the belief in One Supreme God (Daeng & Ariga, 2017).

Considering a comprehensive examination and elucidation of interfaith marriage under the scope of Marriage Law No. 1 of 1974 and other pertinent regulations in Indonesia, interfaith unions should ideally remain permissible, albeit with specific exemptions. This stance is rooted in the fact that the doctrines and tenets of

all officially recognized religions within the country still acknowledge the possibility of interfaith marriage. Notably, Article 2(a) of the Marriage Law No. 1 of 1974 defers to the religious principles of each individual to validate their marriage.

Consequently, the recent directive by the Supreme Court, as outlined in Circular Letter No. 2 of 2023 released in July, imposing a blanket prohibition on interfaith marriages, significantly diverges from the interpretation of Law No. 1 of 1974 pertaining to Marriage, specifically Article 2. This interpretation extends citizens the autonomy to evaluate the legitimacy of interfaith marriages based on their respective religious regulations. Nevertheless, Islamic teachings permit interfaith marriages only within a certain context, namely Muslim men marrying non-Muslim women (individuals of the book, including Jews and Christians).

The Secretary General of the Communion of Churches in Indonesia (PGI), Reverend Jacky Manuputty, has conveyed his dismay regarding the issuance of Supreme Court Circular Letter (SEMA) Number 2 of 2023, which enforces a prohibition on interfaith marriage. This sentiment arises as the PGI has persistently advocated for the amendment of the Marriage Law No. 1 of 1974 for a span of 15 years

Ahmad Nurcholis, the Program Director of the ICRP Center for Religious Studies and Peace, also expressed regret over the issuance of SEMA No. 2 of 2023. The ICRP has advocated or assisted at least 1,655 interfaith couples since 2005. On average, there are 12-15 interfaith marriages per month. Nurcholis is confident that the SEMA issued by the MA will not affect the practice of interfaith marriage in Indonesia. He also suggested that the Marriage Law in Indonesia be revised as it has led to multiple interpretations regarding interfaith marriage.

4. CONCLUSION

In conclusion, the Supreme Court Circular Letter No. 2 of 2023, which prohibits interfaith marriage outright, should be thoroughly and comprehensively reviewed, especially with consideration of religious norms recognized in Indonesia. This is to avoid the violation of the rights of some citizens who wish to marry someone of a different religion as a last resort due to certain circumstances or emergencies.

The implementation of human rights and the interpretation of the law can vary among state officials, legal experts, and the public. Therefore, the recognition and protection of the personal rights of individuals in the context of interfaith marriage should be reviewed by involving a deeper understanding of religious values, religious

norms, family law norms, and social norms in each place. This review should also consider emergency situations that can be exceptions for the greater good.

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LEGISLATION

Circular Letter Of The Supreme Court Number 2 Of 2023

Compilation of Islamic Law 1991

Republic of Indonesia Law No. 1 of 1974 concerning Marriage

Republic of Indonesia Law No. 16 of 2019 Concerning Amendments To Law Number
1 Of 1974 Concerning Marriage

Republic of Indonesia Law No. 39 of 1999 concerning Human Rights

The 1945 Constitution of the Republic of Indonesia

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