

Prohibition of Interfaith Marriage in Indonesia: A Study of Constitutional Court Decision Number 24/PUU-XX/2022

Imaro Sidqi

Faculty of Sharia and Law, Universitas Islam Negeri Sunan Kalijaga Yogyakarta, DI Yogyakarta, Indonesia, Jl. Laksda Adisucipto, Papringan, Caturtunggal, Kec. Depok, Kabupaten Sleman, Daerah Istimewa Yogyakarta 55281
E-mail: imarosidqi@gmail.com

Mhd. Rasidin

Faculty of Sharia, Institut Agama Islam Negeri Kerinci, Jambi, Indonesia, Jl. Pelita IV, Sumur Gedang, Kec. Pesisir Bukit, Kabupaten Kerinci, Jambi 37112
E-mail: mhd.rasidin@gmail.com

ABSTRACT

This article aims to analyze the decision of the Constitutional Court Number 24/PUU-XX/2022 concerning interfaith marriage from a philosophical, juridical, and empirical-sociological perspective so that it is more comprehensive because it covers various aspects, including religious views, law, interreligious communication, change law, human rights perspective, and polemic in society. This research is juridical-normative research, which uses a statutory approach, a concept approach, and a case approach through descriptive-qualitative analysis. The study results show that interfaith marriages are not permitted in Indonesia, both from the point of view of Islamic Law, the laws of other religions, the sociocultural community, and the Marriage Law. Therefore, the Constitutional Court issued several decisions to prohibit interfaith marriages, one of which was the Constitutional Court Decision Number 24/PUU-XX/2022, which completely rejected interfaith marriages. In its decision, the Constitutional Court does not allow interfaith marriages for three simple reasons: *First*, philosophically, interfaith marriages do not represent Pancasila and the essence of the formation of the Constitution. *Second*, juridically, interfaith marriages have no place in the Marriage Law because the state protects religion, so society remains following its corridors. *Third*, sociologically, interfaith marriage violates many norms, both local religion and custom. Therefore, from the perspective of religion, law, and sociocultural norms, interfaith marriages are generally not permitted in Indonesia so this research can formulate a balanced policy between individual rights and religious values in interfaith marriages.

Keywords: Constitutional Court Decision; Interfaith Marriage; Marriage Law.

How to Cite: Sidqi, I., & Rasidin, Mhd. (2023). Prohibition of Interfaith Marriage in Indonesia: A Study of Constitutional Court Decision Number 24/PUU-XX/2022. *Jurnal Ilmiah Al-Syir'ah*, 21(1), 154–172. <https://doi.org/10.30984/jis.v21i1.2337>
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INTRODUCTION

In Indonesia, the issue of interfaith marriage is a hot topic of conversation. This was proven by one of the Tangerang District Courts (PN) granting an interfaith marriage application, where the union of the person concerned was carried out in Singapore with the initials AD and CM (Hidayat, 2022). The trial of interfaith marriage lawsuits at the Surabaya District Court continued with Prof. Dr. Neng Djubaidah from Universitas Indonesia as an expert witness. According to Prof. Neng, based on Article 28 J paragraph (2) of the 1945 Constitution, the stipulation of interfaith marriage by the Surabaya District Court should not be allowed. The article emphasizes respecting individual rights and freedoms and considering morals, religious values, security, and public order. As contained in the decision of the Surabaya District Court Number 916/Pdt.P/2022/PN.Sby (Maulana & Hidayat, 2022). Then the Decision of the Surakarta District Court Number 186/Pdt.P/2018/PN.Skt permitted applicants to hold marriages with different religions at the Surakarta City Population and Civil Registry Service Office. Ordered the Population and Civil Registry Office of Surakarta City to record marriages with a different religion from those of the applicants mentioned above in the Register of Marriages designated for this purpose (Mursalin, 2023).

These phenomena always arise because the Marriage Law (UUP) does not provide strict rules and clarity for interfaith marriages, so interfaith marriages are very difficult to implement in this country. Article 2 of Law Number 1 of 1974 concerning Marriage explains that a marriage will be categorized as valid when its implementation is carried out following the religion and beliefs of each party. This means that religious corridors guide the essence of marriage in Indonesia. Therefore when a marriage does not have a religious basis, the marriage is declared legally invalid. This follows the rules described in every religion, so it is considered invalid. Just as existing religions do not allow interfaith marriages, positive law also prohibits their existence. This article, in reality, also means that marriages for each religion are regulated separately, such as Muslims getting married at the Religious Affairs Office (KUA), Christians getting married at the Church and recording at the Civil Registry Office, and so on. This proves that interfaith marriages need a proper portion in this country (Syamsulbahri, 2020).

Based on the context above, Indonesia has a heated debate regarding interfaith marriages. Some parties consider that the Marriage Law (UUP) needs to provide clear and firm rules regarding interfaith marriages, making it difficult to implement (Saputra, 2022). They have been busy submitting several judicial reviews to the Constitutional Court, one of which was on Constitutional Court decision Number 24/PUU-XX/2022. However, unfortunately, the decision was rejected in its entirety, and the Constitutional Court, in its legal considerations, also stated that in the institution of marriage, there is a close relationship between the interests of religion and the state. Through Decision Number 68/PUU-XII/2014 and Decision Number 46/PUU-VIII/2010, the Constitutional Court has explained the constitutional basis for the relationship between religion and the state in marriage law. According to the decision, religion is responsible for determining the validity

of a marriage. At the same time, the state is responsible for determining the administrative validity of a marriage by applicable legal regulations. This statement raises arguments that interfaith marriage is believed to violate the constitution as contained in Article 28 J paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Human Rights (HAM), in the view of the constitution, are not defined as meaning liberal, but there are several considerations such as morals, religious values, public order, and security.

The considerations above follow those described in Article 2, paragraph (1) of Law Number 1 of 1974 concerning Marriage which, in essence, is that marriage is considered valid legally when it is carried out according to each religion and belief and continued through article 2 that every marriage must be carried out recording. In addition, Article 8 Letter f of the Marriage Law openly provides rules if the marriage of both parties will be prohibited when they have ties from their religion or other rules that prohibit a marriage. Interfaith marriage contradicts the constitution, laws, and regulations and is not aligned with the Islamic religion. The Qur'an prohibits marrying people of different religions, described in Surah al-Baqarah verse 221 and Surah al-Mumtahanah verse 10. Likewise, the Compilation of Islamic Law (KHI) embodies Islamic law in Indonesia, which prohibits different marriages religion contained in Article 44 KHI (Riadi, 2011; Bilalu et al., 2022)

In addition, reflecting on several countries which also prohibit interfaith marriages, including; Several countries such as Saudi Arabia, Qatar, and Yemen (the first group), apply family law based on Islamic schools of thought such as Hambali and Zaidi. Meanwhile, countries such as Turkey and Albania (the second group) have adopted civil codes to replace Islamic law. In countries with minority Muslim populations, such as Tanzania, Zanzibar, and Kenya, they apply modern Western family laws without disputing religion in marriage. Several countries, including Cyprus, Brunei, Malaysia, and Indonesia, have legislated and codified Islamic marriage and divorce laws (Bahri & Elimartati, 2022).

Applying interfaith marriage laws in Muslim countries, which are included in the first group, tends to limit marriage between a Muslim and a non-Muslim unless the non-Muslim spouse is a person in the book. *Ahl al-Kitab* refers to those who, during the life of the Prophet Muhammad Saw. Still, embrace Judaism or Christianity because their religious teachings are considered pure. This means that interfaith, marriages are not permissible because they are considered contrary to religious norms and even in Muslim countries that strictly emphasize the rule of law, such as Arab, Indonesian, and others (Bahri & Elimartati, 2022). Based on this description, it means that interfaith marriage violates religious norms and state law, so its existence is strictly prohibited.

Several studies discuss the prohibition of interfaith marriages; for example, Hermawan's research aims to understand Muhammad Quraish Shihab's view of the concept of *Ahl al-Kitab*, his argument in the legal context, and how it relates to interfaith marriages in Indonesia (Hermawan, 2018). Moreover, Watowai's research aims to describe and tell how husbands and wives in interfaith marriages

try to apply the values of interfaith communication. The author wants to highlight the importance of listening to each other without being pushed to maintain the superiority of each other's religious traditions, as well as propose the idea that through interfaith marriages, the couple can learn from each other and celebrate unity through sharing different liturgical and theological backgrounds (Watowai, 2022).

In addition, Santoso & Zeinudin (2021) discusses the dynamics of interfaith marriage arrangements according to Law Number 1 of 1974 concerning Marriage (UUP) and Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration. This research will examine how interfaith marriage law is treated in Indonesia's context of national marriage law. Jatmiko et al. (2022) research aims to determine the legal status of marriage from different religions and how the registration provisions apply in the eyes of the law. Fitrawati (2021) examines the right to freedom of interfaith marriage in Indonesia from the perspective of Human Rights Universalism and Cultural Relativism perspective. This paper aims to explain the views of universalism and cultural relativity toward interfaith marriage in Indonesia. This research is normative legal research. Siregar (2023) examines the concept of interfaith marriage in theory and practice in society by taking the thoughts of M. Quraish Shihab and Nurcholis Madjid as theoretical analyses and taking several court decisions as objects.

Although there have been many studies related to interfaith marriages, this study focuses on the decisions of the Constitutional Court in depth from a philosophical, juridical, and empirical-sociological perspective so that they are more comprehensive because the decisions of the Constitutional Court are decisions that have a very big influence on other laws and become a very big consideration for society as explained in Article 24 C paragraph (1) of the 1945 Constitution. Therefore, this research will provide great benefits regarding public knowledge and understanding so that polemics such as those above will no longer arise.

METHODS

This research is juridical-normative research which uses a statutory approach, a concept approach, and a case approach which is analyzed descriptively-qualitatively. Some of the data used in this study include; primary and secondary data. Primary data is in Constitutional Court Decisions, Laws, Compilations of Islamic Law, and Islamic Law Sources, while secondary data is in the form of commentaries, books, journal articles, and other written sources related to the theme of interfaith marriage. Data analysis used content analysis techniques. Operationally, the analysis technique begins by first elaborating on the concept of interfaith marriage from various perspectives. Next, the researcher analyzes interfaith marriages against the decision of Constitutional Court Number 24/PUU-XX/2022, and finally, an analysis of the legal consequences of the decision.

RESULTS AND DISCUSSION

Views of Religious Law and Positive Law Against Interfaith Marriage

Interfaith marriage is a problem that needs to be resolved explicitly and clearly. Even though in the Indonesian context, marriage already has a legal umbrella, namely Law Number 1 of 1974 concerning marriage, from an implementation standpoint, it still has many things that could be improved. This means that even though there is a law that regulates marriage, the law needs to provide clear and specific explanations regarding several important aspects of marriage (Syamsulbahri, 2020). The condition of Indonesian society is very diverse, especially in terms of religion, so special and detailed arrangements are needed so that they can represent all religions. Based on this, various legal views exist on each religion and state law.

Islamic Law

Interfaith marriage is not explained clearly by definition from the classical view. However, the explanation relating to the problem in question is included the realm of women who are not allowed to marry or unlawful marriages, such as marrying women of the scriptures, marrying polytheists, and marrying non-Muslim women (Amri, 2020).

In the view of the Majelis Tarjih and Tajdid Muhammadiyah, a decision was made which explains if interfaith marriage is defined as a marriage between one religion and another, meaning that it is a marriage carried out by the Islamic religion with a non-Muslim religion or the like (Pimpinan Pusat Muhammadiyah, 1989). Interfaith marriage is a marriage carried out by someone with a different religion, for example, someone with a Muslim religion with a non-Muslim (Syarifuddin, 2006). From this explanation, it can be concluded that interfaith marriage is a relationship between men and women who have different religions, so the rules of each religion differ.

In the context of Islamic law, specifically from references to classical fiqh if interfaith marriages are classified into 3, namely: *first*, marriage between a man and a polytheist woman; *second*, marriage between a man and a woman of the scribe (*ahli kitab*); *third*, marriage between a man and a woman who is not Muslim (Zuhdi, 1994; Syarifuddin, 2007). The classification is described as follows:

First, marriage between a man and a polytheist woman, or vice versa. The majority of scholars agree that this act is unlawful. The argument is based on Q.S. al-Baqarah (2) verse 221. In Qatadah's view, the meaning of the verse "and do not marry polytheistic women, before they believe" is given to polytheistic women who are not in the category of a scribe. There is no legal text where the verse includes a general part and is internally spelled out specifically (At-Thabari, 2000). This prohibition is also explained by another verse, namely in Q.S. al-Mumtahanah (60), verse 10.

The interpretation described by Imam Ath-Tabari is “*if you already know that they (really) believe, then do not return them to the disbelievers (their husbands)*” If women who have confessed and provided proof of their faith and Islam when given a test, then they should not be returned to their disbelieving husbands, even though the contents of a Hudaibiyah agreement that existed with the Prophet and the Quraysh polytheists had an obligation to return those who were present to the Prophet Muhammad, where the agreement is shown to men who have faith. Therefore, the conditions in the agreement do not apply to women who migrate (At-Thabari, 2000). In this verse, there is also firmness in the law relating to interfaith marriages. In the interpretation described by Ath Tabari that Allah in that verse prohibits people who have faith from marrying infidel women, and Allah gives orders for them to divorce when a marriage contract has taken place (At-Thabari, 2000).

In these verses, it is explained that there is a prohibition to maintaining marital ties with infidel women until they have faith in Allah, where the agreement of all scholars has carried out the prohibition. Because in these verses, it has been emphasized that a Muslim man with a polytheistic woman or vice versa. Although, in reality, some scholars still have different interpretations of the meaning of polytheistic women who are forbidden to marry.

Second, the marriage of a man who has the Islamic religion to a woman who is in the category of Ahl al-Kitab, from classical references, it is explained that most scholars tend to allow such marriages. Several other scholars judge such marriages as makruh. The basis for their foothold is in QS. al-Maidah (5) verse 5. Scholars give an interpretation of the verse that marrying women of the scribe, namely Jews or Christians, is lawful. According to Al-Qurtubi, it is explained that if Ibn Abbas stated that the women of the scribe in question are people who live in Muslim areas, not those who live in areas that are not Muslim (Al-Qurthuby, 1993). Most scholars believe that the verse “*and do not marry polytheistic women before they believe*” indicates that it is forbidden for Muslim men to marry Zoroastrian women and those who worship idols. Then women who are scribes are categorized as halal to marry, as described in Surah al-Maidah verse 5. The argument is that the word *mushrikah* in verse al-Baqarah does not include scribe. There is a history related to Hudzaifah, who married a Jew (As-Shabuni, 1980).

Then there is another basis which is the basis of the Prophet Muhammad and some of his friends. The Prophet had married a woman of the scribe (Maria al-Qibthiyah). Usman bin Affan had married a Christian woman (Nailah bint al-Qarafisah al-Kalabiyah), and Huzaifah bin al-Yaman had married a Jewish woman, which at that time, there was not a single friend who forbids such actions. However, some scholars prohibit marrying scribes because they are considered in the polytheist category, especially in the doctrines and practices of the people classified as shirk (At-Thabari, 2000).

Third, marriage between a Muslim woman and a non-Muslim man (mushrik). Scholars believe that their religion prohibits the marriage in question.

Same with prospective husbands who come from people of the Bible or who embrace other religions, for example, Hindus and Buddhists or those who embrace other religions. Where is the intended meaning in verse “*and do not marry polytheistic women, before they believe,*” namely all non-Muslims whose religion is not Islam, such as Watsani, Jews, Zoroastrians, Christians, and some people who apostate from Islam? Everything described above is forbidden for marrying Muslim women (As-Shabuni, 1980).

Based on the explanation above, marrying people of different religions in the view of Islamic law is not permissible except for marrying a scribe, although some scholars prohibit such marriages. However, marriage with a scribe is not allowed in the current era because the book’s purity cannot be compared to the purity of the ancient era (Madsuri & Mukhlisin, 2020). This means that interfaith marriages are not allowed.

Catholic Christian Law

In the view of the Catholic religion, marriage is a relationship between a man and a woman who has love and love through a mutual agreement until death. This means that marriage, in the view of religion, is an act that represents the nature of God, who is full of love and love, and even in marriage, one cannot be divorced. The marriage is said to be valid when both parties are baptized (Hadikusuma, 2007). Before the Second Vatican Council in the 1960s, the Catholic Church was strictly against interfaith marriage. In the Catholic Church, marriage is considered a sacred bond that the couple’s faith will strengthen. Decades ago, interfaith marriages took place outside parish churches. In addition, interfaith couples must promise they will be raised Catholic if they have children. Some Catholics who marry outside their religion risk being exiled from the Church (Rosdiana et al., 2019).

From this description, it can be understood that marriage, in the view of the Catholic religion, is believed to be very sacred and holy. Therefore, marriage must follow a mutual agreement without coercion to enter a united agreement on a sacred bond. In the context of interfaith marriages, the religion strictly prohibits it. However, in this religion, interfaith marriages can be carried out through a dispensation given by the bishop through the Catholic diocesan institution. The dispensation has many conditions, especially when the family hopes to raise their family well, then it is permissible. The dispensation only applies to not baptized religions, such as Islam, Hinduism, and Buddhism. Then when both are baptized, only permission from the bishop is required.

The method of validation must be carried out by baptism in the Catholic church, meaning that in the process of blessing, both parties must agree with how the religion plays (Hadikusuma, 2007). This means that, in principle, the Catholic religion prohibits interfaith marriages because the rules made by that religion can make marriages invalid (Baso, 2005).

Protestant Christian Law

In principle, given Protestant Christianity, interfaith marriages also do not allow interfaith marriages. Because in their religion, the goal of marriage is to create a feeling of happiness between husband and wife, then several children in the household eternally and eternally. Therefore, when interfaith marriages are implemented, creating a sense of happiness in the family will be difficult. The basis accompanying it is in 2 Corinthians Article 6 verse 14, which has a sound: “*Do not be unequally yoked with unbelievers, for what equality is there between truth and lawlessness, or how light can unite with darkness.*”

This description forms the basis for the prohibition of Christianity and non-Christian religions because interfaith marriages are considered to have no balance. The Christian couple represents Christ's bond with the church. The bond between the two has a sacred and exclusive nature. In the statement of the Bible, it is described that a husband is obliged to give his love and love to his wife as giving love and love to Christ, and the wife should submit to her husband, as she is subject to Christ. The description is very clear when husband and wife must have the same love and love for Christ (Syamsulbahri, 2020). Therefore, Protestant Christianity also prohibits interfaith marriages.

Hindu Law

In Hinduism, marriage is defined as a bond between a woman and a man who becomes husband and wife in regulating sexual relations and obtaining a generation to replace them, namely children. Where marriage must be carried out through ritual ceremonies in Hindu religious beliefs. The marriage bond is invalid if the ritual is not carried out (Hadikusuma, 2007). In the context of interfaith marriages, when one of them has a religion other than Hinduism, then one of them must be Hinduized (into Hinduism) through the Sudhi Waddani ceremony. The Sudhi Waddani ceremony is a ceremony for his belief as an endorsement of people who will become part of the Hindu religion without any coercion (Asmin, 1986).

Prohibition of interfaith marriages can be found in Hindu Brahmin families, the highest caste group in the caste system, still maintaining the tradition of marrying their children only to Hindu Brahmin partners. This is done to maintain the lineage's sanctity and maintain the continuity of the Brahmin tradition (Hedi et al., 2017). Based on this description, it is very clear that Hinduism prohibits the presence of interfaith marriages.

Buddhist Law

In the view of Buddhism that marriage is not a matter that is considered important. This religion does not impose coercion to carry out marriages because marriage is sacred, so it must be done carefully to create a happy marriage based on the Adi Buddha. In the context of interfaith marriages, Buddhists are allowed to do so. However, non-Buddhist parties must follow the culture and rules of their

religion even if they do not join their religion. This means that a marriage's validity must follow the rules of Buddhism, such as pronouncing some of its promises, conditions must be fulfilled, and several other things (Hadikusuma, 2007).

One example of a group that still prohibits interfaith marriage in Hinduism is some conservative or orthodox groups in India. Some of these groups adhere to religious traditions and beliefs that require members to marry people with the same religious beliefs. They argue that interfaith marriages can disrupt family unity, the continuation of religious traditions and affect religious practices within the family (Djawas et al., 2022). Following this statement, according to the author's opinion, it is very difficult for a party of a different religion to follow the rules of Buddhism because the other religion also has its own rules. Automatically when following the rules, it will be the same as embracing that religion, meaning that, in principle, Buddhism does not want interfaith marriage because any religion marries Buddhists will be part of their faith. Therefore, Buddhism, in principle, prohibits interfaith marriages, although this is not stated explicitly.

Confucian Law

Given the Confucian religion (Khonghucu), it was explained in the trial of the Constitutional Court on 24 November 2015 with No. Case register 68/PUU-XII/2014 points out that a marriage between a man and a woman, namely the word "*Tian*," different views, nation, class, religion, and several other things, does not make it an obstacle in carrying out a marriage. Therefore, according to the Confucian religious tradition, interfaith marriage is permitted, even though it is *li yuan*. *Li Yuan* is a marriage that can only be carried out by two people who have the Confucian religion (Budiarti, 2016). This means that the Confucian religion is explicitly permissible. Still, both parties cannot abandon the *Li Yuan* tradition, meaning that the other religion is indirectly encouraged to believe in it. That religion implicitly prohibits so interfaith marriage.

One example of a group that adheres to the Confucian religion is the Chinese community in various parts of the world, especially in China, Taiwan, Hong Kong, Singapore, and Indonesia. Chinese people often practice Confucian teachings as part of their culture and traditions. In China, Confucianism is considered a traditional religion and is one of the "Three Major Religions" along with Buddhism and Taoism. Many Chinese people in China maintain Confucian beliefs and practices in everyday life, including at weddings and other family ceremonies (Lubis & Muhawir, 2023).

Marriage Law Number 1 of 1974

Marriage in Indonesia is described in special regulations, namely Law Number 1 of 1974 concerning Marriage. Whereas in the UUP, it is not explicitly described concerning interfaith marriages. The marriages regulated in it only discuss mixed marriages, not religious differences. So far, interfaith marriages are interpreted through Article 2 of the UUP, which at this point, marriage will be

considered valid if it is based on religious law and the beliefs of each party. Then the next verse explains that every marriage must be recorded.

So, the explanation implies that marriage will be declared valid when enforced according to their respective religious and legal beliefs. At the same time, the state provides legality to marriages that are regulated separately (Syamsulbahri, 2020). Based on this explanation, interfaith marriages are not allowed because they have different beliefs between one religion and another and cannot be legalized legally, except when one party adheres to the other party's religion.

Interfaith Marriage in the Context of Human Rights Universalism

Universality believes that human rights are rights that are inherent in every individual, regardless of time, place, or their initial condition as human beings. All humans have inherent rights and are entitled to belong to and be respected in the context of human rights (Matondang, 2008). The Universal Declaration of Human Rights (UDHR) articles reflect the view of universality regarding interfaith marriage. Article 16 of the UDHR states the right to freedom of marriage, which includes the right to marry someone of a different religion. Article 18 of the UDHR states the right to freely choose a belief or religion, including the right to change or choose a religion. Countries such as Tunisia and Pakistan fully recognize this decision of the Universal Declaration of Human Rights. Western countries also have a role in formulating human rights, including freedom of religion and marriage, without certain restrictions (Matondang, 2008).

The view of cultural relativity theory states that humans are products of the social and cultural environment. Cultural traditions that exist in society impact thoughts and views about humans, including in the context of human rights. The cultural relativity approach rejects the idea that human rights are universal. Rather, human rights must be understood and applied in the specific cultural context of each country. Culture is considered a single source that validates moral rights and norms. Every culture has an equal right to life and dignity and must be respected. Therefore, in applying human rights, each country's characteristics and historical, cultural, and religious differences must still be considered (Fitrawati, 2021). Implementing Human Rights (HAM) in Indonesia must follow the prevailing values and culture in Indonesia, known as "cultural relativism." This is done as a form of respect for the Indonesian state in various international law conventions and instruments, including human rights. Such implementation must also be based on history, philosophy, culture, and the constitution of the Unitary State of the Republic of Indonesia. For example, when implementing freedom of belief, religion, and marriage, attention must be paid to the Indonesian cultural context (Jaya & Arafat, 2018).

Therefore, in applying human rights, especially in interfaith marriages, it is important to consider history, culture, and other relevant factors. The same applies to applying the right to freedom of marriage, where social and cultural conditions must be considered. In this context, human rights universalism and cultural

relativism provide appropriate rights for individuals who wish to marry with the same or different beliefs, as long as they do not violate the rules of each individual's religion. However, it is important to note that in Indonesia's context of human rights and culture, the prohibition against interfaith marriages indicates that such marriages do not represent human rights.

Analysis of Constitutional Court Decision Number 24/PUU-XX/2022 in Prohibiting Interfaith Marriage in Indonesia

The validity of marriage becomes the authority of religion through a religious institution or organization that can interpret certain religious norms (Putri, 2021). The state only plays a role in following up on the results of interpretations from the institution or organization (Idawati, 2016). Then concerning the implementation of the registration of marriages originating from the state, the goal is to have certainty and order in population administration in line with the embodiment of Article 28 D paragraph (1) of the 1945 Constitution. The Constitutional Court, when conducting legal considerations, stated that marriage has a responsibility and interest from religions and countries that collaborate. Several decisions that have stated this are Decision Number 68/PUU-XII/2014 and Decision Number 46/PUU-VIII/2010, where the Constitutional Court has distributed the constitutional basis of the relationship between religion and the state in the context of marriage law. Religion provides provisions for the validity of a marriage, and then the state provides certainty in the form of administrative, legal provisions in the domain of positive law (Zubaidah, 2020).

The new decision, namely Decision Number 24/PUU-XX/2022, which is the Judge of the Constitutional Assembly (MK), in the decision on case Number 24/PUU-XX/2022, which was read out by the Chief Justice of the Constitutional Court, Prof. Anwar Usman, rejected the lawsuit filed by E. Ramos Petege against Law Number 1/1974 concerning Marriage. The lawsuit was filed after Petege's efforts to legalize his marriage to a woman of a different religion were unsuccessful. Petege, a Catholic, wants to marry a Muslim woman. However, based on the Constitutional Court's decision, Petege's application was entirely rejected. One of the MK judges, Prof. Enny Nurbaningsih, explained that human rights are recognized in Indonesia and regulated in the 1945 Constitution as constitutional rights of citizens.

In this decision, the Constitutional Court emphasized respecting human rights, including marriage and freedom of religion. Nevertheless, the Constitutional Court considers that Law Number 1/1974 concerning Marriage is a legal umbrella regulating the marriage process in Indonesia, which requires agreement between parties of different religions. In this case, the Constitutional Court's decision shows that even though human rights are recognized as constitutional rights, Law Number 1/1974 remains valid as the legal basis governing marriage in Indonesia. In this context, the Constitutional Court rejected Petege's lawsuit to recognize marriages between Catholics and Muslims. Based on this explanation, the reasons for the Constitutional Court's overall rejection of interfaith marriages are the following:

Philosophical Framework: Human Rights in Marriage

Regarding the constitutionality of Article 2 paragraph (1) in conjunction with Article 8 letter f and Article 2 paragraph (2) of Law Number 1 of 1974, the Constitutional Court considers that human rights are a right that has been recognized by Indonesia, where it is enshrined in the constitution as a constitutional right. Indonesian citizens The human rights enforced in this country must, of course, be in harmony with the philosophy of Pancasila, which is the identity of the nation (Ceswara & Wiyatno, 2018).

Human rights protection guarantees are more broadly included at the Universal Declaration of Human Rights (UDHR) level. Even though a declaration has been made, which is a form of mutual agreement from all countries in the world, the implementation of human rights in each country is aligned with the ideology, then religion, and socio-culture of the local community. Following the description of Article 28 B paragraph (1) of the 1945 Constitution, several rights are firm, namely “the right to form a family” and the right to continue offspring. Then in the next phrase, it gives instructions if “legal marriage” is a requirement before entering into a marriage to protect both parties described earlier. This means that marriage is not categorized as a right but is a prerequisite for exercising the right to form a family and continue the regeneration of offspring, as stated in the Constitutional Court Decision Number 24/PUU-XX/2022.

Therefore, it is already clear if there is a fundamental difference between the UDHR and the 1945 Constitution in protecting the right to marry. As the embodiment of a constitutional state that enforces the constitution without prejudice to universal human rights in the UDHR, it is mandatory. The Constitutional Court has placed the 1945 Constitution as the basis for evaluating Indonesian citizens’ constitutional rights.

Even though Article 28B paragraph (1) of the 1945 Constitution outlines that a valid marriage is a requirement in protecting the right to form a family and the right to continue regeneration, the condition in question has a mandatory nature because one cannot form a family and continue offspring when not carried out through legal marriage. There is a rule of law that says that something that is a requirement for an obligation is mandatory (*ma la yatimmu al-Wajib illa bihi fahuwa al-Wajib/that which is the way of attaining obligatory is also obligatory*), meaning that a legal marriage is also a constitutional right that must be given protection. Following the existing considerations, it shows clarity if an interfaith marriage is considered unconstitutional, meaning that it does not reflect the religious domain, which is the essence of the presence of a legal marriage.

Juridical Framework: Marriage Regulations

Further legal considerations have been decided in Decision Number 56/PUU-XV/2017. Concerning religion, the division is divided into two: first, religion is the definition of belief in a particular religion, which is the realm of the

internal forum where coercion cannot be carried out so that no trial can be made. *Second*, religion is the definition of religious expression by implementing statements and attitudes that harmonize with a conscience before the public, where this becomes the realm of the external forum. However, it was also emphasized in the Constitutional Court Decision Number 24/PUU-XX/2022.

Marriage is a category of worship that is external or in various expressions. So, in this case, the state can intervene, such as managing zakat or pilgrimage. The state's role is not to restrict people's beliefs but the aims and objectives so that religious expression does not deviate from the teachings of their respective religions. Marriage is one of the religious expressions described in Law Number 1 of 1974 (Usman, 2017). All actions carried out by citizens, including those related to marriage, must submit and not conflict with applicable regulations. Regulations related to marriage regulate and protect the rights and obligations of each citizen-related marriage (Anshary, 2010). The emergence of the regulations in question aligns with Article 28J of the 1945 Constitution. When exercising the rights guaranteed by the 1945 Constitution, each citizen must comply with the limitations determined by the law, which intends to guarantee recognition and respect for rights and freedoms. Other people provide a sense of justice that aligns with moral values, religion, security, and public order in a democratic society by the law.

Following the description of the argument above, the state's goal is to regulate several marriage norms so that the nature and protection of religion are realized in harmony with the regulations of each religion itself because all religions do not approve of the presence of interfaith marriages. Therefore these marriages are prohibited. It aims because the state wants to protect so that the constitutional mandate can be maintained.

State Guarantees in Organizing Marriages

In addition to being based on statutory regulations that the state intervenes in organizing marriages, it does not touch the boundaries of interpreting religion in providing marriage validity. However, what is meant here is that the state follows up on the results of interpretations from each religious institution or organization to provide certainty if marriage is obligatory in harmony with the religion and beliefs of each religion. Where the state enacts the implementation of the interpretation results in the form of laws and regulations (Humbertus, 2019). Therefore, religious leaders determine whether interfaith marriages are legal or not, not the state. This interpretation is not made by individuals but by religious institutions or organizations to not create legal uncertainty.

The existence of Article 2 paragraph (1) junction Article, eight letter f of Law Number 1 of 1974 is in line with the essence of Article 28 B paragraph (1) and Article 29 of the 1945 Constitution, which relates to the state's obligation to provide guarantees for the realization of religious rules. Marriage, in Law Number 1 of 1974, is defined as a physical and spiritual relationship between a man and a woman tied through marriage and the consequences resulting from them becoming husband

and wife. Marriage aims to create a family in a household that is harmonious and lasts forever.

Regarding marriage, Article 28 B paragraph (1) of the 1945 Constitution describes not only marriage but more than what is meant by “legal marriage.” It means that when the marriage is carried out according to the law of every religion and belief, it can be said to be valid. In the view of the Constitutional Court that the rules in Article 2 paragraph (1) of Law Number 1 of 1974 provide rules if a marriage is believed to be valid when it is carried out following the law and the beliefs of each religion. The enactment of the rules in this article does not mean to impede the freedom of each person to choose their religion and belief. The rules in these rules are matters of marriage that are considered legal in terms of religion and belief, not related to choosing religion and belief. These choices remain the right of every person, regulated in Article 29, paragraph (2) of the 1945 Constitution.

Article 34 of Law Number 23 of 2006 affirms that each citizen who has legally married according to the regulations has the right to register a marriage at the Religious Affairs Office (KUA) for Muslims while at the civil registry for non-Muslims. A court decision can also implement this guarantee. Although in the description, it is explained that marriages that the court determines are marriages that are carried out between people who have different religions. Because the state or organization in question follows the interpretation of the religious institution or organization that has the power to present its interpretation, when there is a difference in interpretation, then an institution or organization has the authority to resolve it, as explained in Article 29 paragraph (2) of the 1945 Constitution.

Being a population event, the state's interest *in casu* the government is to record according to the rules of changing individual population status; therefore, it can obtain legal certainty. The Constitutional Court gave an opinion that the regulations in question must be understood as regulations in the population administration sector of the state because they are related to the validity of permanent marriage; it must follow the norms of Article 2 paragraph (1) of Law Number 1 the Year 1974, namely marriages that are categorized as valid when carried out in the view of the laws of every religion and belief that it adheres to.

Based on this argument, implementing the marriage described above does not indicate a constitutional problem in Article 2, paragraph (2) of Law Number 1 of 1974. On the contrary, the presence of regulations related to the registration of marriages for each citizen who carries out a marriage legally provides clues if the state has a role and a function in protecting, promoting, upholding, and fulfilling human rights, which are the responsibility of the state and must be implemented through the principles of statutory regulations. -statute according to what is guaranteed in Article 28 I, paragraph (4) and paragraph (5) of the 1945 Constitution.

In the context of enforcing the Marriage Law, it is clear that there is a phenomenon of interfaith marriage. After all, the state does not seem to perceive and acknowledge the invalidity of interfaith marriage from a religious standpoint

because most people believe that the legality of marriage is only in the form of administrative records. Therefore, there is a form of legal uncertainty, resulting in new problems, such as interfaith marriages. The existence of amendments for the sake of changes to the Marriage Law is a representation that the law is dynamic, such as changes to the Marriage Law in Law Number 16 of 2019 only providing changes in norms relating to the age limit for marriage according to the consequences of the presence of the Constitutional Court decision Number 22/PUU-XV/2017.

Therefore, in the future, when revising the Marriage Law, it must be comprehensive, especially including cases of interfaith marriages so that they are not only administratively legal but legal according to their respective religions and beliefs. Thus, the state needs to consider interfaith marriage cases in the Marriage Law so that it is more comprehensive and adjusts the rules of each religion and belief so that there is no such thing as multiple interpretations.

CONCLUSION

Interfaith marriages are not permitted in Indonesia, both from the point of view of Islamic law, the laws of other religions, the sociocultural community, and the marriage law. The Constitutional Court issued decisions prohibiting interfaith marriages, one of which was the Constitutional Court Decision Number 24/PUU-XX/2022, which completely rejected interfaith marriages in its decision that the Constitutional Court does not allow interfaith marriages for three reasons, namely: *First*, philosophically, interfaith marriages do not represent Pancasila and the essence of the formation of the constitution. *Second*, juridically, interfaith marriages have no place in the Marriage Law because the state protects religion, so society remains following its corridors. *Third*, sociologically, interfaith marriage violates many norms, both local religion and custom. Based on this argument, it is very reasonable when the Constitutional Court rejects interfaith marriages in its Decision of Constitutional Court Number 24/PUU-XX/2022. However, what needs to be considered in the future as a result of the presence of this decision is that the state needs to revise the UUP, which specifically prohibits interfaith marriages, so that it does not become a matter of controversy and the District Court is not easy to give the decision to allow interfaith marriages, where the prohibition is not only administratively, but has a broad scope. So that the legal objectives that provide certainty, justice, and benefits can be realized.

ACKNOWLEDGMENTS

Thank you to all who have contributed to this research so it can be completed as a scientific article. This research was not funded by any institution but purely on the author's initiative.

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