



## LEGALITY OF REGISTRATION FOR INTERNATIONAL RELIGIOUS MARRIAGE BASED ON COURT DECISIONS ACCORDING TO LAW AND REGULATIONS IN INDONESIA

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### **Abstract**

*Law Number 1 of 1974 concerning Marriage (Marriage Law) as a guideline for norms (verwijzing) does not recognize interfaith marriages, but the Marriage Law itself provides a legal loophole in legalizing interfaith marriages. Many applications for interfaith marriage licenses that have been granted through Court Decisions and have been successfully registered at the Population and Civil Registry Office, are declared valid along with all their legal consequences in state administration and are legally binding on civil law. The purpose of this research is to explain application of legal theory and identify laws and regulations that form the legal basis for judges considerations in ratifying applications for registration of interfaith marriages through Court Decisions. The writing of this article uses normative legal research method. Data processing and library research using primary, secondary and tertiary legal sources. The results showed that the ratification of interfaith marriages through a Court Decision was born from another interpretation of Article 66 of the Marriage Law which was interpreted by the method of applying the principle of conflict of norms using the principle of legal logic (rechtslogische principes) or presumption of rules (vermutingsregelen), so that the Marriage Law seems to have multiple interpretations. There are several other laws and regulations that underline the legalization of the registration of interfaith marriages in Indonesia. There are two views on the basis of the legal considerations of the Panel of Judges in accepting, examining and deciding cases of interfaith marriage applications through Court Decisions. To ensure legal protection and certainty for the parties and children born in a marriage, marriages need to be administratively registered in the state even though each marriages consist of different religions.*

**Keywords:** Court Determination, Interfaith Marriage, Ratification

### **A. Introduction**

The Marriage Law as a legal umbrella for marriages to be held in Indonesia does not know marriage different religions, while fact social facing Indonesian people demand validity marriage different religions they live. Sociologically, interfaith marriages are very numerous and will often occur in the lives of Indonesian people. Philosophically, rights related to religion are fundamental rights and cannot be reduced. Social reality like this will certainly be a separate legal problem in the life of the Indonesian people. Because marriage itself is not only a private legal act, but also has a public aspect.<sup>1</sup>

According to the GHR arrangements during the colonial period if two people of different religions want to get married, the Civil Registry Office will immediately register the marriage,

<sup>1</sup> Herman M. Karim, "The Legality of Interfaith Marriages in Indonesia in the Perspective of the Ideals of Pancasila Law", *Adil: Jurnal Hukum* 8, No. 2 (2016), p. 1-23.

but after the enactment of the Marriage Law, especially after 1983, the implementation of interfaith marriages became difficult to carry out. Article 2 of the Marriage Law states that marriage is legal if it is carried out based on their respective religions and beliefs <sup>2</sup>, so that from the article it is often interpreted in the field by the community that Muslims perform marriages with Muslims, based on the religion of Islam Catholics marry Catholics based on the Catholic religion, and so on. Thus, marriage between two people of different religions after the Marriage Law is relatively difficult to implement.

The birth of the Marriage Law, interfaith marriages are not recognized, and the definition of mixed marriage is formulated in Article 57 of the Marriage Law What is meant by mixed marriage in this law is a marriage between two people who in Indonesia are subject to different laws <sup>3</sup>, due to differences in citizenship and one of the parties is an Indonesian citizen. The definition of Mixed Marriage according to the Marriage Law is narrower than the definition formulated by the GHR because interfaith marriages are not included in the meaning of Mixed Marriage according to the Marriage Law. The Marriage Law and the Human Rights Law which regulate articles on marriage are very different from the Population Administration Law which openly provides legal opportunities or loopholes for interfaith couples to be able to carry out their marriages by submitting an application to the Court. <sup>4</sup> In Article 35 letter of Law no. 23 of 2006 concerning Population Administration explains that the registration of marriages as referred to in Article 34 also applies to marriages determined by the Court, and what is meant by “by the Court” in Article 35 letter is marriage different religion.

Marriage different religion is not it including stinky right for entrenched Indonesian society. Marriage different religions have happening among Public (in various social the culture and Sudan there is long ago.<sup>5</sup> Marriage different religions are wedding done among followers of different religions , however both of them permanent embrace their respective religions and wedding ithas validated by court countryand also recognized by country.<sup>6</sup>

Different religions through court decisions are currently considered the cheapest and easiest for the Indonesian people to do so that the marriages of interfaith couples get legitimacy from the state. The following is the data that the author takes inventory from several First Level Courts in Indonesia that accept cases of Applications for Determination of Interfaith Marriages in period time only 2 ( two ) years :

**Table 1. Data on Court Decisions on Applications for Interfaith Marriages in Indonesia in 2019 - 2020**

Not	Case number	Applicants	Determination/ Submission	Decision
1.	454/ Pdt.P /2018/PN Skt. (PN Surakarta)	Woman : Islam man : catholic	January 2019 After married	<b>given</b>
2.	8/ Pdt.P /2019/PN Skt. (PN Surakarta)	Woman: Catholic man : christian	January 2019 After married	<b>given</b>

<sup>2</sup> Anggreini Carolina Palandi, “Juridical Analysis of Interfaith Marriages in Indonesia”, *Lex Privatum I*, No. 2 (2013), p. 196–210.

<sup>3</sup> Dionni Ditya Perdana and Wahyu Widiastuti, “Construction of Reporting on Interfaith Marriages,” *Professional: Journal of Communication and Public Administration* 7, no. 2 (2020): 40–48.

<sup>4</sup> Nur Asiah, “Interfaith Marriage According to the Marriage Law and,” *Journal of Samudra Kadilan Law* 10, no. 2 (2015): 204–14.

<sup>5</sup> Aulil Amri, “ *Interfaith Marriage According to Positive Law and Islamic Law* ,” *Media Syari'ah* 22, no. 1 (2020): 48, <https://doi.org/10.22373/jms.v22i1.6719>.

<sup>6</sup> Nur Cahaya, "Interfaith Marriage in the Perspective of Islamic Law," *Islamic Law* 18, no. 2 (2019): 141, <https://doi.org/10.24014/hi.v18i2.4973>.

3.	54/ Pdt.P /2019/PN Pwt. (PN Purwokerto )	Woman: Catholic man : islam	March 2019 After married	<b>given</b>
4.	29/ Pdt.P /2019/PN Gin. (PN Gianyar )	Woman: Catholic man : islam	March 2019 After married	<b>given</b>
5.	278/ Pdt.P /2019/PN Skt. (PN Surakarta)	Woman : Islam man : catholic	August 2019 After married	<b>given</b>
6.	367/ Pdt.P /2019/PN Skt. (PN Surakarta)	Woman: Christian man : islam	October 2019 <b>Pre Wedding</b>	<b>given</b>
7.	878/ Pdt.P /2019/PN Dps . (Denpasar District Court)	Woman: Christian Man: Buddha	October 2019 After married	<b>given</b>
8.	1213/ Pdt.P /2019/PN Bdg (PN Bandung)	Woman : Islam man : christian	December 2019 After married	<b>given</b>
9.	1386/ Pdt.P /2019/PN Jkt.Br . (West Jakarta District Court)	Woman: Christian Man: Buddha	January 2020 After married	<b>Rejected</b>
10.	26/ Pdt.P /2020/PN Pwt. (PN Purwokerto )	Woman: Christian man : islam	February 2020 <b>Pre Wedding</b>	<b>given</b>
11.	87/ Pdt.P /2020/PN Mks . (PN Makassar)	Woman: Christian man : islam	March 2020 <b>Pre Wedding</b>	<b>given</b>
12.	209/ Pdt.P /2020/PN Kds (Holy District Court)	Woman: Buddha man : islam	October 2020 <b>Pre Wedding</b>	<b>given</b>
13.	959/ Pdt.P /2020/PN Bdg . (PN Bandung)	Woman: Catholic man : islam	December 2020 After married	<b>given</b>

**Source : Directory Decision Supreme Court 2020.**

Amount application determination marriage proposed different religion to various First Instance Court, fine before as well as after the marriage takes place, shows the need for Indonesian people to have legal instruments for marriage that can provide solutions to different religions. Marriage enough, and almost all applications have a legal basis. Approved by The panel of judges handled it.

Based on description the novelty in article this that is existence two allowable view marriage different religions in Indonesia were born from Another interpretation of Article 66 of the Marriage Law which is interpreted with apply the principle contradiction norm made base for prioritize something rule law above others with see three criteria, namely hierarchy, chronology, and specificity . And there is consequence law in marriage different religion, from side notes civil, position children, as well treasure family or treasure inheritance.

Article this will explain by normative who studies document with use various secondary data decision court. Article this give explanation about how and what just regulation the legislation in Indonesia that is used as the basis for ratifying the registration of interfaith marriages through Court Decisions, and what legal theory is used in this context? What are the opinions and legal considerations of the Panel of Judges in granting and refusing the application for registration of interfaith marriages through a Court Decision? What are the legal consequences of registering interfaith marriages for the parties to marital status, civil status and the relationship between children and parents, as well as the status of joint property in marriage. The method used in this study is a normative legal research method.

## B. Discussion

### 1. Approval Recording Interfaith Marriage Based on Decision Court

#### a. Based on Law Number 1 of 1974 concerning Marriage and Regulation Government Number 9 of 1975 concerning Implementation Constitution Marriage .

The Marriage Law as a legal unit of marriage in Indonesia does not explicitly regulate interfaith marriage, but implicitly there are two perspectives on interfaith marriage in the construction of the Marriage Law.

The first perspective that interfaith marriages are prohibited under Article 2 paragraph (1) and Article 8 letter of the Marriage Law. Article 2 paragraph (1) of the Marriage Law states that marriage is legal if it is carried out according to the laws of each religion and belief, then in the explanation of Article this is also mentioned that no there is outside marriage law marriage each religion and trust . Opinion from the second perspective that interfaith marriages in Indonesia are allowed. This is because the Marriage Law does not contain strict and clear prohibitions or rules for interfaith marriages. Before the Marriage Law Number 1 of 1974, Indonesia is still set rule long marriage , that is *Regeling op de Gemengde . Huwelijken* or more known as *Gemengde Huwelijken Regeling* (GHR) made by the Dutch government.<sup>7</sup>

Responding to the problem of interfaith marriages whose rules are not yet clear in the Marriage Law and to avoid a legal vacuum in Indonesia, the “principle of norm conflict” is applied to determine the existence of legal norms for interfaith marriages in marriage. Law, deep Thing this could seen as principle logic law (*rechtslogische principes*) or something method interpretation law (*rule of interpretation/interpretsregeln*) or presumption rules (*vermutungsregeln*) or *rule applicable law conditional* (*beddingtanwendbare Rechtsregeln*) or law adat (*Gewohnheitsrecht*).

Registration of interfaith marriages through a Court Determination as one of the four ways (legal loopholes) proposed by Prof. Wahyono Darmabrata to be able to carry out and register interfaith marriages is part of the “adaptation” by *Talcott Parsons* <sup>8</sup>, for the sake of legal certainty and protection according to *Gustav Radbruch 's theory* <sup>9</sup>.

According to the author, the second view that allows interfaith marriages in Indonesia was born from another interpretation of Article 66 of the Marriage Law which is interpreted by applying the principle of conflicting norms which is used as the basis for prioritizing one legal rule over another by looking at three criteria, namely hierarchy, chronology, and specificity.

<sup>7</sup>Abdul, Rozak A. Sastra, 2011, *Study of Interfaith Marriage Law (Comparison of Several Religions)*, (Jakarta: National Legal Development Agency (BPHN) Ministry of Law and Human Rights), p. 53.

<sup>8</sup> Wedya Laplata, “Implementation Of Different Religion Marriage In A Jurisdictional Perspective (Case Study At The Surakarta State Court),” *Jurisprudence* 4, No. 2 (2014): 75–84.

<sup>9</sup>E. Utrecht , 1959, *Introduction To Indonesian Law*, (Jakarta: Pt. Balai Buku Publisher Ichtar, Sixth Printing), P . 26.

Based on these three criteria, it is known the principle, principle or rule of law <sup>10</sup>(*legal maxim*) namely : “ *lex superior derogat legitimate inferiori* ” (law/norm more law tall negate validity law/norm more law), “ *lex posterior derogat legi priori*” (law/norm law new invalidate the law) law/norm old law), and “ *lex specialist insulting legitimate generali* ” (law/norm laws that specifically negate the validity of laws/legal norms of a general nature).<sup>11</sup>

#### **b. Based on Law Number 23 of 2006 concerning Administration Population**

On Article 35 letter a of the Law Administration Population is a article that gives base law implementation marriage different religions in Indonesia. On Article 35 letter a states that fixed marriage by court is marriage done between people of different religions, can registered at the Agency Executor that is Service Population and Recording Civil. Law Number 23 of 2006 concerning Population Administration Article 35 letter (a) implies that interfaith marriages must obtain a decision from the District Court.<sup>12</sup>

Since moment In addition, many court decisions granting interfaith marriage licenses and ordering marriage registration by the competent Population and Civil Registry Office, based their decisions on the existence and enforcement of Law Number 23 of 2006 concerning Population Administration. hereinafter referred to as State Administrative Law. Residents Article 35 letter. The ratification of the registration of interfaith marriages based on Court Decisions is also accommodated by the Population Administration Law, which is shown through:

1. Article 35 letter (a) which states that; Marriage registration as referred to in Article 34 also applies to: (a). marriage determined by the Court.
2. Article 36 which states that; In the event that the marriage cannot be proven by a marriage certificate, the registration of the marriage is carried out after determination Court .

#### **c. Based on Law Number 48 of 2009 concerning Power Justice and Jurisprudence , Judgment Supreme Court Number 1400K/ Pdt /1986.**

Principle *Ius Curia Novit* gives understanding and become the basis for the Court not to reject a case on the pretext that the law is unclear or there is no legal norm that regulates it. Principle *Ius Curia Novit /Curia Novit Juice* set in Article 10 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power (Law of Justice) which states that Courts are prohibited from refusing to examine, try, and decide on a case that is submitted on the pretext that the law does not exist or is unclear, but it is obligatory to examine and judge it. Based on *Ius Curia Novit The principle* The judge accepts all cases that go to court even though the legal basis is unclear, including cases of interfaith marriages. <sup>13</sup>Including dig jurisprudence or *ius caution* which is source law formal, which is also formed from previous judges decisions that have been justified by the Supreme Court as a court of cassation and become a decision of the Supreme Court, which can then be used as a reference for other parties judge to decide the case similar.

The issue of interfaith marriages that do not have strict normative legal arrangements, along with the dynamics of pluralistic Indonesian society, has demanded the fulfillment of guarantees of justice and legal certainty so that the system functions as *Oliver Wondel's legal theory*.

<sup>10</sup>Nurfaqih Irfani, “The Principles Of Lex Superior, Lex Specialis, And Lex Posterior: Meaning, Problems And Their Use In Legal Reasoning And Argumentation”, *Indonesian Legislation Journal*, Vol.16, No.3, (September 2020), P. 81.

<sup>11</sup>Zainal Arifin, “Interfaith Marriage”, *Lantern Journal: Studies Of Religion, Science And Technology*, Vol.18, No.1, (2019), P. 144.

<sup>12</sup>Fakhrurrazi M. Yunus And Zahratul Aini, “Interfaith Marriage In Law Number 23 Of 2006 Concerning Population Administration (Review Of Islamic Law)”, *Media Syari'ah* 20, No. 2 (2020): 138, <https://doi.org/10.22373/jms.v20i2.6512>.

<sup>13</sup>Yahya Harahap, 2016, *Civil Procedure Law on Lawsuits, Trials, Confiscations, Evidence and Court Decisions*, (Jakarta: Sinar Grafika), p. 821.

*Holmes*<sup>14</sup> which supports this theory freedom of judges in the face of a legal vacuum where the rule of law is positive cannot be relied upon to answer the increasingly complex problems of social life as stated by *Savigny* that the law continues to evolve from a simple level to a complex level in accordance with the growth of an organic society. So that the resolution of interfaith marriage problems whose norms have not been formulated in state laws and regulations, by taking alternative paths through Court Decisions which from time to time experience continuity to overcome legal and social problems of Indonesian society shows that the law is *customary*, because according to *Theodor Geiger*.<sup>15</sup>

One of the jurisprudence that provides a solution to the problem of interfaith marriage in Indonesia which in at first considered vacancy law is Jurisprudence Decision Supreme Court No.1400K/ Pdt /1986. According to the Supreme Court, this is considered a legal vacuum because interfaith marriages are not explicitly regulated in the Marriage Law, and cannot be justified because interfaith marriages that continue to take place in Indonesian society without a clear legal status can have consequences law and its negative impacts, both in terms of social life and religious life. The negative impact can be in the form of smuggling of positive social, religious or legal values. Decision Supreme Court No.1400K/ Pdt /1986 provides solution law for marriage different religions by stating that the application for interfaith marriage can be accepted at the Civil Registry Office as the only agency authorized to carry out the application where the two prospective husband and wife are located no muslims.

## 2. Legal Basis and Judges' Considerations in Cases of Application for Registration of Interfaith Marriages

Although in deciding cases of interfaith marriage registration, judges refer to the same source of law or legal provisions, but not all courts produce the same decision, because one judge and another judge have different beliefs and interpretations on religious law and national law. The following is a summary of some data from the many applications for interfaith marriages received, examined and decided by several district courts in Indonesia:

Not	Assignment Number	Year Determination	Legal Basis in Consideration	Before/after Marriage	Accepted/Rejected
1.	17/ Pdt.P /2014/ PN problem PN Probolinggo	08/04/2014	Woman : Islam man : christian - Article 29 paragraph (2) of the 1945 Constitution - Law No.1 of 1974 concerning Marriage - Law No.23 of 2006 concerning Population Administration - Universal declaration of human rights - Law No.12/2005 concerning Ratification of the International Covenant on Civil and Political Rights - Law No.11/2005 concerning Ratification of the International Covenant	Before	given

<sup>14</sup> M. Alvi Syahrin, 2013, "Symptoms of Legal Society In Theory Law", *Norma Petak*, 24 July 2013.

<sup>15</sup> Dr. Bernard L. Tanya, SH, MH, Markus N. Simanjuntak, 2010, *Theory Law Strategy Orderly Man Cross Space and Generation*, (Yogyakarta: Genta Publishing).

			on Economic, Social and Cultural Rights - Law No.48/2009 on Judicial Power		
2 .	03/ Pdt.P /2015/ PN Lg.  PN Lubuklinggau	27/02/2015	Woman: Catholic Man: Buddha - Article 27 of the 1945 Constitution - Article 29 paragraph (2) of the 1945 Constitution - Law No.1 of 1974 concerning Marriage - Law No.23 of 2006 concerning Population Administration - Law No.39/1999 on Human Rights - PP No. 9 of 1975 concerning the Implementation of the Marriage Law.	Before	given
3.	23/ Pdt.P /2016/ PN Tbh .  PN Tembilahan	19/12/2016	Woman : Islam man : catholic - Article 29 paragraph (2) of the 1945 Constitution - Law No.1 of 1974 concerning Marriage - Law No.23 of 2006 concerning Population Administration - Mixed Marriage Regulations ( Regeling op de Gemengde Huwelijke / GHR Stbl.1898 No.158)	After	given
4.	333/ Pdt.P /2018/ PN Skt.  Surakarta District Court	02/11/2018	Woman: Catholic man : islam - Article 28 B of the 1945 Constitution - Article 29 paragraph (2) of the 1945 Constitution - Law No.1 of 1974 concerning Marriage - Law No.23 of 2006 concerning Population Administration	Before	given
5...	54/ Pdt.P /2019/ PN Pwt.  PN Purwokerto	06/03/2019	Woman: Catholic man : islam - Law No.1 of 1974 concerning Marriage - Law No.23 of 2006 concerning Population Administration	After	given
6.	1213/ Pdt.P /2019 PN Bdg .  PN Bandung	10/12/2019	Woman : Islam man : christian - Law No.1 of 1974 concerning Marriage - Law No.23 of 2006 concerning Population Administration	After	given

			- Mixed Marriage Regulations (Regeling op de Gemengde Huwelijke /GHR Stbl.1898 No.158)		
7.	209/ Pdt.P /2020/ PN Kds .  Holy PN	29/10/2020	Woman: Buddha man : islam - Law No.1 of 1974 concerning Marriage - Law No.23 of 2006 concerning Population Administration - Jurisprudence Supreme Court Decision No.1400K/ Pdt /1986	Before	given
8.	959/ Pdt.P /2020/ PN Bdg .  PN Bandung	23/12/2020	Woman: Catholic man : islam - Article 28 B of the 1945 Constitution - Article 29 paragraph (2) of the 1945 Constitution - Law No.1 of 1974 concerning Marriage - Law No.23 of 2006 concerning Population Administration - Jurisprudence Supreme Court Decision No.1400K/ Pdt /1986 - PP No.9 of 1975 concerning the Implementation of the Marriage Law	After	given
9.	71/ Pdt.P /2017/ PN Bla .  PN Blora	18/04/2017	Woman : Islam man : christian - Law No.1 of 1974 concerning Marriage - Compilation of Islamic Law (KHI) - Surah Al- Baqarah : 221 - Prohibition of Interfaith Marriage in Christian Teachings Based on Information from Indonesian Bethel Church Pastor's Witness	Before	Rejected

#### **Edited by the authors of the 2020 Supreme Court Judgment Directory**

There have been many cases of applications for registration of interfaith marriages that have been submitted to the local District Court by parties who want or have a partner of a different religion and belief. For these submissions, almost all of them were granted by the Court to be recorded as legal marriages in accordance with the laws and regulations in force in Indonesia.



## 1. Legal Basis and Judges' Considerations in Granting Applications for Registration of Interfaith Marriages through Court Decisions.

The considerations used by the judge in granting an interfaith marriage permit application include several aspects:

### a. Juridical Aspect

1. Article 5 and Article 10 of Law Number 48 of 2009 concerning Judicial Power, which states that "Judges may not reject cases on the grounds that there are no or unclear laws and Judges as law and justice enforcers are obliged to explore, follow, and understand the law and a sense of justice that lives in society", where this provision mandates that judges must continuously study and acknowledge legal developments in society as a source of law in making decisions on concrete cases that are being handled law.
2. Article 28 B of the 1945 Constitution Amendments. The article clearly states that everyone has the right to form a family and continue their offspring through a legal marriage.
3. Article 29 paragraph (2) of the 1945 Constitution states that the state guarantees the independence of every citizen to embrace their own religion and to worship according to their religion and belief. Thus, everyone gets a guarantee from the state to embrace and practice his religion so that no one is justified in imposing his will on others to embrace a religion he does not want, including the freedom to defend his religion, in this case including the parties; prospective husband and wife in an application for a permit for interfaith marriage which is submitted to the Court for determination.
4. Article 7 paragraph (2) of Staatblad No.158 of 1898 (GHR) that differences in religion, population group, or origin cannot be a barrier to marriage. The implementation of the GHR is based on the method of legal interpretation using the function of the principle of "conflict of norms". Article 66 of the Marriage Law as described in Chapter III, Sub Chapter A, part 1), pages 72-75 of this thesis.
5. Article 2 paragraph (1) of the Marriage Law defines marriage as an "inner and outer bond" not only based on the worldly dimension or horizontal relationship between a pair of human beings, but also regulates marriage in an atmosphere of vertical relationship with God Almighty. Several Judges, through a Court Decision that granted the application for a permit for interfaith marriage, considered that the application submitted to the District Court while maintaining their respective religions was in accordance with Article 29 paragraph (2) of the 1945 Constitution, but in forming a household like husband and wife it can be interpreted that the special applicant in terms of binding himself to form a household with all the legal consequences is only based on horizontal relations or civil relations. The judge decides in carrying out his function so that there is no legal vacuum in the case that has been submitted to him, because in Indonesia there is no positive law that regulates interfaith marriages.
6. Referring to the Jurisprudence of the Supreme Court Decision Number 1400K/Pdt/1986, Article 8 of the Marriage Law is no longer an obstacle to holding interfaith marriages, including for applicants who are Muslim if the person concerned has neglected his religious status. In some cases, before the application for a permit for interfaith marriage is submitted to the Court, the applicant who is Muslim first submits an application to the Civil Registry Office, this must mean that the applicant has neglected his religious status because he wants to carry out his marriage illegally Islam.
7. Article 60 paragraph (3) of the Marriage Law is also used as the basis for judges considerations in accepting and examining applications for interfaith marriage permits that are submitted to the court, because in some cases the Civil Registry Office refuses to provide a certificate of fulfillment about the conditions of mixed marriages then the

interested party can ask the Court to give a decision without going through a court process and no appeal can be filed whether the refusal is justified or not.

8. Universal Declaration of Human Rights (UDHR) which was confirmed by the birth of the International Covenant on Civil and Political Rights (ICCPR) which was ratified through Law Number 12 of 2005 and the International Covenant on Economic, Social and Cultural Rights (ICESCR) which was ratified through Law Number 11 of 2005, which in Article 16 of the UDHR mentions the problem of marriage by stating that men and women who have grown up, without being limited by nationality, citizenship, or religion, have the right to marry and form a marriage family, both have the same rights marriage, during marriage and at the time of divorce. The terms of marriage are only seen from the approval factor.

#### **b. Social aspect**

1. Marriage is a form of human rights. Every human being has the right to form a family life, so that the state or other people cannot prohibit or prevent someone from getting married as long as it does not conflict with the provisions of the applicable laws and regulations.
2. The judge is of the opinion, if the application for a permit for interfaith marriage is not granted, there will be negative impacts in terms of social life, religion and positive law in the form of smuggling of social values such as fear of cohabitation and pregnancy out of wedlock. Then there can also be smuggling of religious values couples of different religions can try to temporarily convert to their partner's religion, and will return to their original religion after the wedding procession is over with the sole purpose of getting the approval of one of them religion as a condition registration by the Office of Religious Affairs or the Office of Civil Registry so that the marriage is legalized by the state and is legal along with all the legal consequences for the sake of civil law status for the spouse and children who will be born from the marriage.

#### **2. Legal Basis and Judges' Considerations in Rejecting Applications for Registration of Interfaith Marriages through Court Decisions.**

Several Court Decisions have rejected applications for permission to enter into and register the marriages of interfaith couples prior to their marriage, or requests to register their marriages administratively by the state for married interfaith couples. The legal basis and reasons for the judge's refusal are reviewed from several aspects:

##### **a. Juridical Aspect**

1. Based on Article 1 and Article 2 paragraph (1) of the Marriage Law as a state legal norm, it formulates marriage and the purpose of marriage that in order to form a happy and eternal family or household based on the One Godhead, the marriage that is carried out must not conflict with the teachings of God and the marriage is valid if it is carried out according to the laws of each religion and belief. If the religion concerned clearly and unequivocally prohibits interfaith marriage, then marriage with a partner of a different religion, even if carried out by means of legal smuggling, is still invalid according to the law of his religion, and thus cannot be legalized by state law.
2. Overall, the Marriage Law does not regulate interfaith marriages. Articles 6 to 12 of the Marriage Law which regulates the terms of marriage also do not regulate the granting of permits for interfaith marriages, so that interfaith marriages cannot be carried out.
3. Whereas several applications for permits to carry out and/or register interfaith marriages are not in accordance with the procedures or statutory regulations, especially because they have ignored the elements of Article 3 paragraph (1) of Government Regulation Number 9 of 1975 (abbreviated PP 9 of 1975) concerning the Implementation The Marriage Law

which resulted in Article 8 of PP No. 9 of 1975 was also not implemented, so the Judge also refused to grant the request.

Against the argument of the petition containing Law Number 23 of 2006 concerning Population Administration. Article 35 letter that the registration of marriages as referred to in Article 34 also applies to marriages determined by the Court) and Article 36 (that in the event that a marriage cannot be proven by a Marriage Certificate, the registration of the marriage is carried out after the Court's Decision), then it must be It is also guided by the provisions stipulated in the implementation of the Marriage Law, namely Government Regulation Number 9 of 1975 (PP Number 9 of 1975), where Article 3 paragraph (1) of PP No. 9/1975 stipulates that every person who will enter into a marriage must notify his will to the Registrar at the place where the marriage took place, and in accordance with Article 6 paragraph (1) PP No. 9/1975 the Registrar who receives the notification of the intention to marry must check whether the conditions for marriage have been met and whether there are no obstacles to marriage according to the Constitution.

Thus, before submitting an application to the Court to give permission to carry out and/or register their marriage, parties or couples of different religions may not ignore the elements of Article 3 paragraph (1) PP No said the parties or couples of different religions, the Registrar must notify the Registrar at the place where the marriage took place, so that the provisions for the announcement of a marriage will in Article 8 PP No. 9 of 1975 can also be implemented. The notice of will is also related to Article 21 of the Marriage Law.

#### **b. Social aspect**

1. Because it does not meet religious law, interfaith marriages are not valid. If the judge grants a different marriage request, then it is the same as legalizing adultery because the relationship between the two is not valid.
2. If the interfaith marriage is carried out and produces offspring, then the child can be said to be an illegitimate child because the relationship between the two parents is a forbidden relationship.

#### **c. Religious Aspect**

Basically all religions do not want interfaith marriages and also prohibit their followers from marrying in other religious ways.

#### **d. Legal Consequences of Registered and Unregistered Interfaith Marriages.**

The validity of Article 2 of the Marriage Law Number 1 of 1974 is cumulative in order to fulfill the requirements for the validity of a marriage, meaning that the marriage must be carried out based on religious law and the marriage must also be registered formulated in paragraph (1) and paragraph (2) his. The Marriage Law not only stipulates that a marriage must be carried out according to the laws of their respective religions and beliefs, but also requires the marriage to be registered by the Marriage Registrar.

The purpose of recording a marriage is to clarify the marriage event for the parties in the marital relationship and also for other people in social life. Marriage registration is contained in a special list provided so that it can be read at any time in an official letter and can be used as written evidence or as authentic evidence in case of problems in marriage<sup>16</sup>, for example; death or divorce. Divorce or termination of marital relations has legal consequences for the status of husband and wife, distribution of joint property, maintenance and care for the survival of the children of the marriage.<sup>17</sup>

<sup>16</sup> Harahap , M. Yahya, 1975, Discussion *Law Marriage* , (Jakarta: CH. Zahir Trading Co.), p . 25.

<sup>17</sup> Miss Rodliyah , 2014, "Legal Consequences of Divorce Based on Law Number 1 of 1974 concerning Marriage", *Progressive Justice Journal, Volume 5 Number 1, March 2014*, p.124.

**a. Legal consequences on marital status.**

Marriage Law in Indonesia tends to leave the parameters of the validity of marriage to the law or religious rules, this refers to Article 2 paragraph (1) in conjunction with Article 8 letter (f) of the Marriage Law. The justification and legalization of interfaith marriages is actually also contrary to the Marriage Law which applies to every citizen and resident of Indonesia.<sup>18</sup>

Interfaith marriages that have been taken in various ways to be carried out but have not been recorded or reported to the Marriage Bureau in Indonesia, include:

1. marriage or "sirrun"<sup>19</sup>; marriages based on religious or customary rules are considered valid, but are not registered with the Office of Religious Affairs or the Office of Civil Registry.
2. Interfaith marriages that have taken place abroad but have not been reported and registered in accordance with the reporting procedures regulated in Article 70 of Presidential Regulation Number 25 of 2008 (regarding Requirements and Procedures for Population and Civil Registration);

status does not carry any legal responsibility for husband and wife when facing legal problems. Interfaith marriages that have been successfully carried out and have been successfully registered by the state administration in the Indonesian civil registry are marriages that have been recognized by the law of the country where the marriage took place, giving rise to legal consequences for the civil relationship. between husband and wife. It's just that it will become a new problem if there is a divorce or death, which country's law and/or which religious law will regulate divorce and joint property as well as regarding husband and wife's inheritance.

However, although interfaith marriages have been successfully implemented and have been successfully registered in any way, including through a Court Decision, they are not legally valid for religions in Indonesia, especially religions that clearly regulate it in written regulations such as Islam. in Indonesia. Compilation of Islamic Law, Christian and Catholics as well as Hindus.

**b. Legal consequences on the status and civil relationship of children with their parents.**

Based on Article 42 of the Marriage Law and Article 99 of the Compilation of Islamic Law, a legitimate child is a child born in or as a result of a legal marriage. Children born from interfaith marriages between their parents are illegitimate children or children out of wedlock, especially in Islam, so the consequence is Islamic law in accordance with Article 100 of the Compilation of Islamic Law. The child only has kinship with his mother and his mother's family. However, legally, since the Jurisprudence of the Constitutional Court Decision Number 46/PUU-VIII/2010 an illegitimate child or born outside a legal marriage, in addition to having a civil relationship with the mother and her mother's family, also has a civil relationship with the biological father and the family of the biological father as long as it can be proven based on science and technology or other evidence according to law he child is related by blood to his biological father. <sup>20</sup>It means After the Constitutional Court Decision Number 46/PUU-VIII/2010 the rights of children born from unregistered marriages (including *unregistered marriages* ) to obtain legal protection from the state are also fully protected in Islamic law, but

<sup>18</sup> Mohammad Daud Ali, 2002, *Islamic Law and Religious Courts*, (Jakarta: Raja Grafindo Persada ) , p. m . 70.

<sup>19</sup>Edi Gunawan, "Siri Marriage and Its Legal Consequences According to Marriage Law", *Al-Syir'ah Scientific Journal*, Vol.11, No.1, (2013), p. 57.

<sup>20</sup>Habib Sulton Asnawi, "Legal Politics Of Constitutional Court Decision No.46/Puu-Viii/2010 Concerning The Status Of Out-Of-Marriage Children: Efforts To Unravel Legal Positivism Towards The Protection Of Human Rights", *Constitutional Journal*, Vol. 10, No. 2, (June 2013), P. 24. <https://jurnalkonstansi.Mkri.Id/Index.Php/Jk/Article/Download/103/102>

the Constitutional Court's decision has not been fully implemented because it does not followed by special regulations that become positive law.<sup>21</sup>

Based on Article 27 of Law Number 23 of 2006 concerning Population Administration; Every child born must still be registered in the Civil Registry to obtain a Birth Certificate, even though the child is an illegitimate child resulting from an interfaith marriage. Regarding the procedure for registering births, it is regulated in article of Presidential Regulation of the Republic of Indonesia Number 25 of 2008 concerning Requirements and Procedures for Population Registration and Civil Registration.

### c. Legal Consequences of Joint Property Status in Marriage.

Marriage is legal if it is carried out according to the laws of each religion and belief, and the marriage is registered at the Civil Registry Office according to the applicable regulations. Although a marriage is considered valid according to religion and belief, but if the marriage is not registered or in other words carried out outside the knowledge and supervision of the Marriage Registrar, then the marriage does not have permanent legal force and is not recognized by state law.<sup>22</sup> Wives in marriages that are not administratively registered by the state; are not entitled to a living and inheritance from their husbands if they die. In addition, the wife is also not entitled to joint property or other assets in the event of a divorce, because legally the state of marriage is considered to have never existed .

### C. Conclusion

Based on the description above, in this study the authors conclude that: Law Number 1 of 1974 concerning Marriage (Marriage Law) normatively ( *verwijzing* ) does not recognize interfaith marriages, but the Marriage Law itself provides a legal loophole in legalizing interfaith marriages. Many applications for interfaith marriage licenses that have been granted through Court Decisions and have been successfully registered at the Population and Civil Registry Office, are declared valid along with all their legal consequences in state administration and are legally binding on civil law.

There are two views regarding the basis for the legal considerations of the Panel of Judges in accepting, examining and deciding cases of interfaith marriage applications through Court Decisions Whereas based on the principle of *Ius Curia Novit*, in order to answer legal issues regarding the social needs of interfaith marriages in a pluralistic Indonesian society, so as not to cause negative impacts in the form of smuggling of social, legal and religious values, the judge decided to grant the application for a marriage permit different religions through a Court Determination.

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<sup>21</sup>Amnawaty, Ade Oktariatas K., "Reform Of The Legal System Of Muslim Marriage Registration And Legal Protection Of Children From Sirri Marriages", *Nizham* , Vol. 07, No. 01, (January-June 2019), P. 32-33.

<sup>22</sup>Raymond Ginting, I Ketut Sudantra, "Consequences Of Unregistered Marriage Law At The Civil Registry Office On Joint Assets, Business Law, Udayana Faculty Of Law, <https://ojs.unud.ac.id/index.php/kerthasemaya/article/unduh/10348/7523/>

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