

Legal Certainty of Interfaith Marriage in Relation to Civil Registration Legislation as an Effort to Develop Indonesian Marriage Law

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ABSTRACT

The enactment of Law No. 16 of 2019 concerning amendments to Law No. 1 of 1974 on Marriage represents a significant legislative development and addresses the need for uniform marriage legislation applicable to all Indonesian citizens. However, in practice, the implementation of this law continues to present legal challenges for certain segments of society, particularly those seeking to enter into interfaith marriages. This study employs a qualitative and descriptive-analytical approach, examining the issue of legal certainty in interfaith marriage in relation to civil registration legislation. The research adopts a normative juridical method, drawing upon the theories of the welfare state, justice, and legal development. Data analysis was conducted qualitatively, systematically, holistically, and comprehensively, incorporating a comparative analysis of interfaith marriage regulations in other countries. The findings of this study are as follows: (1) The issue of interfaith marriage in Indonesia under Law Number 16 of 2019, which amended Law Number 1 of 1974, is neither clearly nor definitively regulated; consequently, parties who intend to contract an interfaith marriage are left with limited options, namely marriage abroad, conversion to their partner's religion, or obtaining a judicial determination. (2) Interfaith marriage intersects with the civil registration function in Indonesia, whereby civil registration as the administrative mechanism for marriage recording does not itself confer legal validity upon a marriage, given that the validity of a marriage is ultimately governed by the religious law of each individual, in accordance with Article 2 Paragraph 1 of the Marriage Law, which stipulates that a marriage is legally valid only if it is solemnized in accordance with the religious law and beliefs of the parties concerned.

Keywords: Marriage; Interfaith; Civil Registration.

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INTRODUCTION

The promulgation of Law Number 16 of 2019, amending Law Number 1 of 1974 concerning Marriage, was intended to unify and modernize marriage regulations for all Indonesian society. This legislation represents a significant effort by the state to provide a comprehensive legal framework for one of the most fundamental aspects of human life. However, the mere existence of a law does not automatically guarantee that it addresses every nuance of social reality. In a nation as pluralistic as Indonesia, characterized by its immense diversity of ethnicities, cultures, and religions, the application of a uniform law often encounters friction with specific societal practices, revealing gaps and ambiguities that require further scholarly attention (Hariri & Babussalam, 2024; Hutabarat, 2023; Pedersen, 2016). One of the most persistent and contentious issues is that of interfaith marriage, a union between a man and a woman of different religious backgrounds.

According to Subekti, the sentence that reads "according to the laws of each religion and belief" is not clear in its meaning. Whether both parties to the prospective husband and wife must be of the same religion or once according to the religious law (belief) of one candidate, and again according to the religious law (belief) of the other candidate (Nugraheni, 2019). Even if in practice the same interpretation of the same religion has been taken, this can cause legal uncertainty.

Furthermore, in Article 8 (f) of Law Number 16 of 2019, amendments to Law Number 1 of 1974 concerning marriage are stated, "marriage is prohibited between two people who have a relationship that is prohibited by their religion or other applicable regulations."

Formulation of Article 8 (f) of Law Number 16 of 2019 Amendments to Law Number 1 of 1974 concerning Marriage also give rise to a different interpretation of the sentence "who has a relationship that is due to their religion or applicable regulations" because the sentence can be interpreted as having a family relationship and not because of the prohibition of religious differences.

On the other hand, Law Number 16 of 2019 amends Law Number 1 of 1974 concerning marriage also regulates marriages carried out abroad (Article 56) and mixed marriages (Article 57). In Article 56 paragraph 1 it is stated: "A marriage solemnized outside Indonesia between two Indonesian citizens, or an Indonesian citizen with a foreign citizen is valid if it is carried out in accordance with the applicable law of the country where the marriage takes place, and for Indonesian citizens it does not violate the provisions of this law"

Then it is followed by paragraph 2 which reads: "Within one year after the husband and wife return to Indonesian territory, their marriage certificate must be registered at the marriage registration office where they live."

With the enactment of Law Number 24 of 2013 concerning amendments to Law number 23 of 2006 concerning Population Administration, this period was shortened to 30 days (Article 37 paragraph 4).

The provisions of Article 56 do not impose religion as a condition for the validity of marriage; rather, validity is determined solely on the basis of civil relations or the *lex loci celebrationis* the law of the country in which the marriage is solemnized. By contrast, Article 57 governs mixed marriages, defined as marriages between two individuals who, within Indonesia, are subject to different laws by virtue of differences in nationality, where at least one party holds Indonesian citizenship. Based on the provisions of Article 57, a mixed marriage is therefore distinct from an interfaith marriage: mixed marriages regulated under Article 57 arise from differences in nationality specifically, between Indonesian citizens and foreign nationals. In this context, mixed marriage and interfaith marriage are legally distinct categories, though it is not impossible for a marriage to simultaneously constitute both, given that cross-national couples may also be interfaith couples (Hikmah et al., 2025; Setiawan et al., 2024).

Many countries including Australia, Singapore, Canada, and the United Kingdom — do not prohibit interfaith marriages (Aftab, 2019; Hidayatullah et al., 2023; Mangarengi & Hamzah, 2021). As a consequence, Indonesian couples frequently solemnize their marriages abroad and subsequently register them at the Civil Registry Office (*Kantor Catatan Sipil*) upon their return to Indonesia. This practice has been pursued by several prominent public figures. Additionally, there are instances of couples seeking judicial recognition of interfaith marriages within Indonesia, such as the case of Rizal Adikara and Eka Debora Sidauruk, in which the Surabaya District Court granted the application on the basis of Article 21 of the Marriage Law and Article 35 of the Population Administration Law (Hermanto, 2018; Wulandari, 2023; Zeinudin & Santoso, 2021).

However, normatively Law Number 16 of 2019 concerning Marriage does not expressly regulate whether or not interfaith marriage is allowed. The provisions of Article 2 paragraph (1) which require the validity of marriage according to their respective religious laws give rise

to various interpretations, while the Population Administration Law actually opens up opportunities for marriage registration based on court determinations. This creates legal uncertainty and uncertainty regarding the legality of interfaith marriage in Indonesia.

In the context of a pluralistic Indonesian society, religious differences are often an inevitable social reality and can lead to a desire to marry (Platt, 2017). Therefore, a more in-depth legal study is needed to realize the certainty of interfaith marriage law, especially related to the role of civil records and synchronization between laws and regulations as an effort to develop national marriage laws (Dahwal, 2016).

The primary objective of this research is to analyze and propose a concept for achieving legal certainty in interfaith marriages within the Indonesian marriage law system, specifically in relation to civil registration legislation. The theoretical contribution of this research lies in its application of welfare state theory, justice theory, and legal development theory to the specific problem of interfaith marriage, enriching the academic literature on legal pluralism and family law. Practically, the research aims to provide a valuable reference for policymakers, legislators, and judges in their efforts to reform and harmonize marriage laws. The intended benefit is to contribute to the development of a more just, certain, and inclusive national marriage law that respects both religious values and the constitutional rights of all Indonesian citizens.

METHOD

Approach method

This dissertation constitutes a normative juridical legal research study with a descriptive-analytical specification, aimed at examining and analyzing the issue of interfaith marriage in relation to the principle of legal certainty within the context of the development of marriage law in Indonesia. The research was conducted through qualitative juridical analysis, drawing upon justice theory, legal certainty theory, utility theory, and legal development theory, accompanied by an in-depth examination of the norms, rules, and legal principles embedded in the relevant laws and regulations — encompassing *civil law (hukum perdata)*, Islamic law (*hukum Islam*), customary law (*hukum adat*), and the practice of their application in judicial proceedings. Research data were obtained through a literature study encompassing primary, secondary, and tertiary legal materials, which were subsequently collected systematically, classified, verified, processed, and analyzed rationally and logically, culminating in reasoned conclusions to produce a comprehensive account of the legal certainty of interfaith marriage in Indonesia.

Data collection techniques

Technique is defined as the application of methods to cause a desired result, while tools are means used. From the above limitations, it can be stated that the techniques and data collection tools carried out depend on the approach taken. Considering that this research is a library research, and supported by field research, the data collection technique is carried out through the study of data that can be obtained through secondary data such as, legal materials that are binding on the problems to be researched, in the form of;

- a. Primary legal materials;
- b. Secondary legal materials;
- c. Tertiary legal materials.

The data collection technique was carried out for two activities, namely:

1. In library research, document studies are carried out, namely by studying legal materials relevant to the problem being studied, as secondary data related to the principles of civil law, Islamic law and customary inheritance law. The researcher collected several literatures in the form of books, laws and regulations and scientific papers in the form of journals and papers, research reports, or legal dictionaries and documents, as well as electronic media in the form of the internet. Its activities include:
 - a. Inventory, which is collecting legal materials related to the problem being researched;
 - b. Classification, namely by processing and selecting the data collected into primary, secondary, and tertiary laws;
 - c. Systematic, namely compiling the data obtained and classified into an orderly and systematic description.
2. In the field research (primary) it was carried out by observation and interview techniques. The data collection technique through interviews is the communication process to collect information and obtain data directly from respondents or sources relevant to the topic and object of the problem which is carried out through face-to-face and direct questions and answers with interviewers, or communication through online and communication using other electronic media.

Data Analyses Techniques

The analytical approach employed in this research is juridical-qualitative in nature. The juridical dimension signifies that the research is grounded in existing regulations as positive legal norms (*hukum positif*), while the qualitative dimension denotes that the subject matter is examined systematically, thoroughly, and holistically. This analytical approach yields descriptive data analysis that is complete, comprehensive, systematic, and coherent; where quantitative data in the form of mathematical formulas or statistical presentation may appear, such data serve solely as supplementary support for the qualitative findings. Data analysis and conclusions derived from this study are drawn from three categories of legal materials namely primary, secondary, and tertiary legal materials processed through qualitative methods. This entails that data obtained in the course of this research are first presented systematically and thoroughly in the form of a comprehensive descriptive account.

The qualitative method, as applied in this research, refers to a research methodology that produces descriptive data analysis in the form of written or oral responses from research subjects, who are examined and studied as a whole. This qualitative method does not seek empirical truth in isolation; rather, it also aims to comprehend the substantive meaning underlying that truth. In this context, the data obtained from the three categories of legal materials are analyzed through the lens of three theoretical frameworks: the grand theory (*grand theory*) as the primary theoretical foundation, the middle-range theory (*middle range theory*) as the intermediate theoretical framework, and the applied theory (*applied theory*) as the operationally grounded theoretical instrument.

RESULTS AND DISCUSSION

Problems that arise in interfaith marriage in Indonesia

Marriage is an innate bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the One Godhead. Marriage is also a form of manifestation of the constitutional rights of citizens that must be respected by everyone in the orderly life of society, nation and state. The constitutional right to marriage contains the obligation to respect the constitutional rights of others. Therefore, to avoid clashes in the implementation of the constitution, it is necessary to have a constitutional implementation arrangement carried out by the State. Marriage is also a legal event that is always closely related to various applicable rules. Indonesia as a country of formal and material law contains the consequence that the state is obliged to protect and protect all its citizens with a law, especially to protect and guarantee human rights for the sake of common welfare.

Therefore, in 1974 Law Number 1 of 1974 concerning Marriage was formed, now it has been amended through Law Number 16 of 2019 concerning Marriage, which is expected to accommodate various principles and provide a legal basis in the field of marriage that previously applied to various groups in society.

The establishment of the Marriage Law is an effort to create a codification and unification of the law that applies in society, especially those related to marriage, so that it can create justice and legal certainty. So with the establishment of the Marriage Law to regulate the actions of its citizens, especially in the field of marriage, it is very appropriate for the state of Indonesia as a legal country that prioritizes legal certainty for all its citizens. The formation of these laws and regulations is also an effort by the government to move towards legal development and is an effort to realize a state of law.

Indonesia as a Pancasila Country which means that it is not a secular country and not a religious country. This means that Indonesia does not strictly separate the state and religion, but does not make one religion the basic law in the life of the nation and state. One of the state's positions on religion in the context of the Pancasila State is that the State must not form a regulation that is contrary to the rules of religious law in Indonesia. The regulation of marriage in Law Number 1 of 1974 which connects the implementation of marriage with religion, so that marriage and religion have a very close relationship, is in line with Pancasila which is the basis for the Indonesian state.

The State of Indonesia is a Unitary State, consisting of thousands of large and small islands, consisting of various ethnic groups, groups, cultures and traditions, languages, religions and beliefs. In a country that consists of various tribes, nations, groups, cultures and traditions, languages, religions and beliefs, of course, people cannot be separated based on their groups, but they blend and interact with each other in the life of society, nation and state, so that with the condition of the multicultural and multireligious nation, it is very possible for interfaith marriages to occur. Interfaith marriage is not a new thing for Indonesian people. The marriage has occurred among people in various social dimensions and has been going on for a long time. Although different religions are not ideal, marriage between people of different ethnicities, races or religions is not impossible and even often happens in society, especially in this era of modern society which is increasingly multicultural.

Meanwhile, the Marriage Law itself does not regulate interfaith marriage. There is not a single article in the Marriage Law that discusses interfaith marriage, so the provision expressly

prohibiting or not prohibiting interfaith marriage, cannot be found in the Marriage Law and Government Regulations as its implementing regulations. This is what makes there are many polemics and controversies related to interfaith marriage to this day. The Marriage Law, which is a national marriage rule, should be able to accommodate all the realities that live in today's society, while still realizing the principles contained in Pancasila and the 1945 Constitution. By accommodating events that develop in society, including the problem of interfaith marriage as an undeniable reality.

Marriage Law Number 1 of 1974 as a whole does not regulate interfaith marriage and this creates a legal vacuum so that it creates legal uncertainty for interfaith marriage, while on the other hand in reality there are many citizens who establish relationships and form families with citizens of different religions or beliefs. This can be evidenced by the many cases of legal smuggling carried out by citizens related to the implementation of interfaith marriages. In general, there are two ways of legal smuggling that are carried out, namely:

- a. Setting aside national law, by carrying out a marriage abroad and then registering it at the Marriage Registration Office in Indonesia, or by carrying out a customary marriage that is usually not followed by registration;
- b. Setting aside religious law, namely by submitting to the law of marriage and the beliefs of one of the parties, or changing one's religion and beliefs temporarily before holding a marriage and afterwards returning to the original religion and belief.

On the one hand, legal smuggling is considered as "deviant" behavior, a form of legal non-compliance of citizens with laws that have been made by the state. When this disobedience is committed, the law that should be the commander in chief of this country has lost its authority. In fact, as a state of law, Indonesia bases everything on the law and it is the law that is sovereign for the life of the nation and state. Thus, it is appropriate that the law must be obeyed and upheld in this country. But on the other hand, the rampant smuggling of law is a clear marker of the existence of community needs that are not met by the existing laws in the issue of interfaith marriage, the applicable laws are not in accordance with the needs and desires of the community.

In addition, with the non-regulation of interfaith marriage in the Marriage Law specifically, there are three understandings of interfaith marriage in Indonesia, namely:

- a. Interfaith marriage is not justified and is a violation of the marriage law based on Article 2 paragraph (1) and Article 8 letter (f).
- b. Interfaith marriage is permissible and valid and therefore can be carried out, because the marriage is included in mixed marriage. According to this opinion, the pressure point of Article 57 on mixed marriage lies in the word "two people who in Indonesia are subject to different laws". Because the article not only regulates marriage between two people who have different nationalities but also regulates marriage between two people of different religions. According to this opinion, the implementation of interfaith marriage is carried out according to the procedures regulated by Article 6 of the Mixed Marriage Regulations.
- c. The marriage law does not regulate the issue of interfaith marriage. Therefore, by referring to Article 66 of the marriage law, the old regulations as long as the marriage law has not regulated them can be enforced. Thus, the issue of interfaith marriage must be guided by the regulations of mixed marriage.

Although there is not a single article in the Marriage Law that specifically discusses the issue of interfaith marriage, but related to the validity of a marriage, the basis is Article 2 paragraph (1), which states that the validity of marriage is left to the laws of religion and their respective beliefs. So that for the issue of interfaith marriage, whether it is legal or not, whether it is recognized or not is also returned to their respective religions and beliefs.

The Marriage Law does not prohibit marriage between people of different religions but does not regulate it. That is, as long as religious law allows marriage between people of different religions, then the Marriage Law is not a clash. In principle, the Marriage Law leaves the validity of marriage to religious law so that when religious law allows interfaith marriage, it means that the marriage can also be legalized by State law, and vice versa, if religious law prohibits interfaith marriage, then the marriage cannot also be legalized by State law. The religions embraced by Indonesian society all consider same-sex marriage to be an ideal marriage. However, in practice, certain religious laws still open the possibility of interfaith marriage with certain dispensations accompanied by very strict requirements.

However, the problem of interfaith marriage cannot be solved simply by the rules in Article 2 paragraph (1). Article 2 paragraph (1) of the Marriage Law which in its implementation has given rise to various interpretations, especially for prospective bride and groom who are of different religions. The problem concerns the validity of the marriage based on the religion and beliefs of the bride-to-be and the administrative obligations related to its registration. The formulation of Article 2 paragraph (1), which states that marriage can only be said to be valid if it is carried out in accordance with the laws of each religion and the beliefs of the two brides, provides a very wide interpretation gap, especially regarding who is the party who has the right to interpret religious laws and beliefs in the field of marriage and regarding when the marriage that is carried out is declared valid, This can cause legal uncertainty because it is multi-interpreted.

In general, what is required from Article 2 paragraph (1) is the absence of marriage outside the laws of each religion and belief. That is, all marriages must be within the legal corridor of their respective religions and beliefs. However, because the interpretation of religious values and beliefs is the exclusive domain of each individual, its application will vary from one individual to another. Thus, the validity of a marriage becomes highly dependent on the interpretation of the marriage law of each individual based on his religion and beliefs. So based on Article 2 paragraph (2) of the Marriage Law, there are 3 (three) possibilities for interfaith and belief marriage, namely:

- a. Marriage of different religions and beliefs is permissible and legal;
- b. Interfaith and belief marriages are permissible but not legal;
- c. Interfaith and belief marriages are not allowed and are not legal.

Referring to the above possibilities, the position of marriage between different religions and beliefs even depends greatly on each individual's interpretation of his religious laws and beliefs. Thus, the applicability of the norms that govern interfaith marriage and beliefs also depends on each individual's interpretation of his religion and beliefs.

In accordance with Article 2 paragraph (1), interfaith marriage is allowed or prohibited depending on the way each individual interprets the laws of their respective religions and beliefs. In other words, the content of the legal norms in Article 2 paragraph (1) is unclear, because it is not an order, prohibition or ability. As a result, problems arise in its

implementation. Judging from its nature, legal norms are divided into 2 (two), namely imperative legal norms (legal norms that contain commands and prohibitions), and legal norms that are facultative (legal norms that contain abilities). So that if it is related to the legal norms in Article 2 paragraph (1) of the Marriage Law, from the perspective of interfaith marriage, it is a mixture of commands, prohibitions and abilities. Therefore, in the lens of the nature of legal norms, Article 2 paragraph (1) of the Marriage Law has united 2 (two) characteristics of existing legal norms, namely imperative and facultative. In this case, the regulations contained in the legislation should be made to solve problems that exist in society, but Article 2 paragraph of the Marriage Law does not solve problems regarding interfaith marriage, but instead creates new problems.

Meanwhile, in relation to Article 66 which can be concluded that if there is no legal provision in Law Number 1 of 1974, it can be used to enforce the old regulations. However, because of these regulations, there is a very far difference in principles and philosophies between Law No. 1 of 1974 and these regulations, where the Marriage Law lays down the principle that the validity of marriage is dependent on the laws of each religion and belief which is one of the manifestations of Pancasila as well as the philosophy of the State. Marriage is seen not only in civil relations, but also in a very close relationship with religion/spirituality. Meanwhile, in the old regulations, all of them viewed marriage only in civil relations. So that these regulations can no longer be applied for now.

The absence of interfaith marriage arrangements also gives rise to a different interpretation of Article 2 paragraph (1) and results in the following:

- a. There are Civil Registration Offices (KCS) that do not want to carry out or register interfaith marriages because they think it will violate the provisions of Article 2 paragraph (1) of the Marriage Law and therefore reject the applications of parties who want to hold their marriages at KCS.
- b. There are KCS that still hold or record interfaith marriages based on Article 1 of the GHR, Staatsblad 1989 Number 158 which has not been expressly revoked.
- c. There are KCS who only want to hold a marriage or record interfaith marriages after the party concerned with a notary deed voluntarily submits to the law imposed on Christian marriage.

Regarding the existence of legal vacancies and legal uncertainties related to interfaith marriage in Indonesia, it is also supported by a step from the Supreme Court by sending a letter from the Chief Justice of the Republic of Indonesia Number KMA/72/4/1981 concerning Mixed Marriage addressed to the Minister of Religion and the Minister of Home Affairs, which is basically aimed at eliminating or at least reducing the existence of marriages that are carried out illegally or secretly, and ensure legal certainty.

The Supreme Court in its decision Number 1400/K/Pdt/1986 reaffirmed that Article 2 paragraph (1) of Law Number 1974 concerning Marriage does not regulate interfaith marriage, so there is a legal vacuum. As a result of this legal vacuum, the smuggling of social, religious, and positive laws is smuggling.

The step taken by the Supreme Court is very appropriate, because in the face of a legal vacuum, the judge should not reject a case on the grounds that the law does not exist or is unclear, he must not refuse to issue a verdict on the grounds that the law is incomplete or unclear, the judge must adhere to the principle of *ius curia novit*, where the judge is considered

to know the law. In this case, the Supreme Court has created a breakthrough in filling the legal void regarding the issue of interfaith marriage. So that the Supreme Court's decision, which already has permanent legal force, is used as jurisprudence for subsequent court decisions.

In a state of law, for the fulfillment of human rights and freedoms, each party that is side by side with fundamental obligations in order to realize the general welfare of all citizens, all actions of the government and citizens must be in accordance with and based on the applicable legal regulations, must obtain legal legality which means that there are legal regulations that regulate it and in accordance with the applicable legal regulations and can be returned to the law. Of course, for one reason or another, all of them have their exceptions or dispensations, but the implementation of the excluded things must also be based on the law, not arbitrary or arbitrary. This means that in a legal state that prioritizes legal certainty, there should be no legal vacuum in an event that occurs in society, there must be legal rules that can be used as guidelines.

Indonesia also guarantees the right to legal certainty as one of the constitutional rights of its citizens through Article 28D paragraph (1) of the 1945 Constitution which states: "Every prang has the right to fair legal recognition, guarantee, protection, and certainty and equal treatment before the law."

The element of legal certainty in laws and regulations is indicated by the existence of regulatory provisions that do not give rise to multiple interpretations of grammatical formulations and antinomies between regulations, thus creating a legal state that does not bring confusion when it is to be applied or enforced by law enforcement officials. The Constitutional Court has also given an interpretation of the right to legal certainty through the Constitutional Court Decision Number 53/PUU-VI/20085, which is when the provisions in a law and regulation are not multi-interpreted and/or do not contradict each other. Not multi-interpreting means that the meaning of a norm is singular. This means that the norm in question does not give rise to various interpretations in its implementation. Meanwhile, what is meant by non-contradictory is the absence of norms that collide either in one Law or with norms in other Law.

So, if it is concluded, it means that there is a legal vacuum regarding the issue of interfaith marriage in Indonesia is not at all in accordance with the concept of the state of law that upholds the principle of legal certainty. Indonesia as a country of law, as stated in the formulation of Article 1 paragraph (3) of the 1945 Constitution, should guarantee legal certainty for all its citizens without exception, including for citizens who want to carry out interfaith marriages. The state must treat all its citizens equally before the law without distinction of social, economic, ethnic, religious, racial, gender and gender status. Because one of the most essential characteristics of the state of law, according to both Julius Stahl and A.V. Dicey, is equal treatment before the law. In addition, the importance of equality before the law is recognized and explicitly stated in Article 27 paragraph (1) of the 1945 Constitution which states: "All citizens of the State have the same position in the law and government and are obliged to uphold the law and government properly without exception." Thus, if there are a legal vacuum and legal uncertainty in the existing rules, it means that it is contrary to the provisions in the two Articles.

The government's efforts to fill the legal void related to interfaith marriage have actually been carried out with the birth of Law Number 23 of 2006 concerning Population

Administration, one of which contains provisions regarding the registration of interfaith marriages, namely in Article 35 letter (a) which reads: "Marriage registration as referred to in Article 34 also applies to marriages determined by the Court. Then in the explanation of Article 35 letter (a) it is stated: "What is meant by "Marriage determined by the Court" is a marriage that is performed between people of different religions".

Through this article and its explanation, positive law in Indonesia opens up the possibility of recognizing interfaith marriage in Indonesia, by requesting a court determination that is the basis for interfaith marriage to be registered at the Civil Registry Office. The validity of the marriage will be assessed by the District Court Judge where the application is submitted. Law Number 23 of 2006 concerning Population Administration, especially in Article 35, contains a new provision that has caused debates that until now have been pros and cons, because it is considered contrary to religious values, but on the other hand the birth of this article is considered as a solution and answer to the problem of the implementation of interfaith marriage which has never received legal certainty in laws and regulations in Indonesia.

The matter that many parties have debated is related to whether the marriage registered with a court determination in accordance with Article 35 letter (a) of Law Number 23 of 2006 is valid according to the Marriage Law Number 1 of 1974. In this problem, to see which rules should be enforced and whether there are contradictions, we must relate them to the principles of the formation of regulations so that the problem points can be seen systematically.

According to Van Der Vlies, a regulation that will be made must have a clear purpose, with a clear purpose, a rule that answers the problem will be achieved. In the technical formation of laws and regulations, a clear description of the objectives is included in the consideration section (considering) as well as the explanation section. In the consideration contained in the Population Administration Law, it emphasizes the implementation of civil registration and population registration which is closely related to efforts to protect the legal status of every population event and other important events. Residents have the right to obtain population documents in accordance with the mandate of the Constitution of the Republic of Indonesia in 1945 where these rights are related to population events and important events experienced by a person without any discrimination. In the fulfillment of the rights of the population, especially in the field of civil registration, there is still a classification of the population based on discriminatory treatment that distinguishes ethnicity, descent, and religion as regulated in various regulations of Dutch colonial products.⁸ Therefore, the existence of Article 35 related to interfaith marriage is an effort to eliminate discrimination and efforts to enforce Human Rights (HAM), so that the emergence of Article 35 is considered as a human rights advancement, especially the right of citizens to be recorded. With the intention that religion is no longer a crucial issue so that a marriage can be recorded.

A good law and regulation must be based on the principle of good regulation formation, namely clarity of the purpose, institution or proper organ of formation, suitability between the type and material of the content, enforceability, usefulness and effectiveness, clarity of formulation and openness not in conflict with rules of higher position. This is in accordance with the explanation of Undang_undang Number 12 of 2011 concerning the Establishment of Article 5 Laws and Regulations. A law and regulation must be analyzed first, to see the efficiency and effectiveness of the regulation, whether it causes new problems or there is an interest in the formation of the regulation.

If analyzed by the Population Administration Law according to Law Number 12 of 2011 concerning the Formation of Laws and Regulations, in terms of the technical aspects of the formation of laws and regulations, the Population Administration Law itself is in accordance with the applicable rules, both in terms of writing and technical formation. Bias is seen in terms of the systematics of the writing, namely the existence of a clear title, opening, trunk, closing, explanation and appendix. The preamble itself contains a consideration/consideration that contains a brief description of the main idea of the Population Administration Law, namely the existence of efforts to protect and recognize the determination of the status of the law and the legal status so that if interpreted the making of this law aims to overcome problems and fill legal gaps so that justice can be achieved. So it is clear that the inclusion of Article 35 related to interfaith marriage is one of the efforts to eliminate differences and an effort to fill the legal void where previously there were no clear rules governing interfaith marriage.

The legal basis used as a reference in the formation of the Population Administration Law itself is in accordance with Law Number 12 of 2011 concerning the Establishment of Laws and Regulations Article 7 related to the type and hierarchy of laws and regulations, namely the highest order must be based on the 1945 Constitution, while the social problems that are to be overcome by themselves from the Population Administration Law can be seen in the explanatory chapter, which is related to the fulfillment of rights population, especially in the field of Civil Registration, which is still found to be a population classification based on discriminatory treatment that discriminates against ethnicity, descent, and religion as regulated in various applicable regulations. And that is the background for the birth of Article 35 of the Population Administration Law regarding the determination of courts for interfaith couples. However, the reality in the article is that it is very contrary to religious values that emphasize a marriage on a sacred bond.

Religious law is one of the laws that lives and animates all mankind, and is believed to be true so that it has a sociological effect on all aspects of life, including special laws, namely the law of marriage, therefore a marriage should be in accordance with the rules of religion and the nation. Indonesia itself is a monotheistic nation and not an atheist, therefore religion is used as the foundation of the philosophy of the Indonesian nation and can be seen in the first precept in Pancasila, namely "The One Godhead". This understanding is the basis for the birth of the Marriage Law where religion is used as the main thing in determining the validity of a marriage. As Bustanul Arifin said, in our current marriage system there is no longer a place for secular marriages like civil marriages in the past, because Pancasila does not accommodate secular things.

Furthermore, if it is associated with Article 2 paragraph (1) of the Marriage Law, Article 35 of the Population Administration Law regarding the determination of courts for interfaith couples, both articles related to spiritual issues where in the Marriage Law prioritizes religion as the main source in the legalization of marriage, while in the Population Administration Law it emphasizes more on human rights or more precisely religion is not a crucial issue. The birth of the Marriage Law is to minimize conflicts in religious issues so that interfaith marriage is not accommodated in the Law. Meanwhile, the problem in the Population Administration Law is more emphasis on what problem the Population Administration Law itself wants to overcome. It turns out that there is a lot of material content that is contrary to the provisions that are still in force today and the norms that live in society, especially in articles that highlight

the problem of faith or spirituality. This in the formation of the law is called legal disharmony. Legal disharmony usually arises due to differences between various laws or laws and regulations, it can also be due to conflicts with implementing regulations and so on. For example, a conflict between a law that has an equal position or a difference with the implementing regulation so that the purpose of making the law is not suitable.

The Marriage Law, which has underpinned the marriage law until now, is juridically the highest provision in regulating marriage in Indonesia, including in giving validity to a marriage for the people in Indonesia. However, with the birth of the Population Administration Law in 2006, from a juridical point of view, it became the highest legal provision in the settlement of population administration, so that the previous provision, which was only in the form of a Presidential Decree, was in a position to become law. This causes other provisions that are under it, namely provisions that are plurality to refer to this rule. While the Marriage Law is considered to have a plurality of legal provisions and discriminatory provisions, especially in terms of marriage registration, it can be seen from the many pros and cons in society regarding the validity and registration of those who have religious differences so that the existence of the Population Administration Law is considered as a solution or accommodating for those who want to be registered and recognized. But many consider interfaith marriage to be a very sensitive matter because it concerns the religious context, no longer related to Human Rights, but a belief that concerns the masses. Although Article 29 paragraph 2 states "The State guarantees the freedom of each citizen to embrace his own religion and to worship according to his religion and belief", in other words, it does not mean that we can violate religious provisions that can cause more conflicts. So that the position of the Population Administration Law itself on the Marriage Law must be seen in terms of the principles contained in the law, this serves to see the position of each one.

To resolve juridical conflicts, namely conflicts between legal norms (legal antinomy) related to Article 35 letter (a) of the Population Administration Law and the Marriage Law Article 2 paragraph (1), the legal system generally uses three principles of conflict resolution (reference principle), namely:

- a. The principle of *Lex Specialist Derogat Lex Generalis*, the intention of this principle is that special events must be treated by the law that mentions the event, although for such special events it can also be treated general or more broadly which can also include special events. This principle is more often interpreted as a rule that is specific to override more general rules.
- b. The principle of *Lex Posteriore Derogat Lex Priori*, which is meant by this principle, is that other laws (which are more applicable) that govern a certain thing, no longer apply if there is a new law (which comes into force later) that regulates that particular thing as well, but that its meaning or purpose is different or contrary to the old law (the tacit repeal of the law). This principle is often interpreted as that the provisions made and later cancel the laws that were previously in force.
- c. The principle of *Lex Superiori Derogat Legi Inferiori*, what is meant by this principle is a rule that is made and its position is higher than the lower provision.

These three principles can be used if there is a disharmony or conflict between norms in a law and regulation, and determine which rules are prioritized and enforced. Given that the Population Administration Law and the Marriage Law have the same and equal position in the

hierarchy of laws and regulations, and if examined using the above principles, it is very clear that the principle of *Lex Superiori Derogat Legi Inferiori* cannot be used. Since the issue under study is related to interfaith marriage where the Population Administration Law emphasizes on marriage registration, the principle of *Lex Posteriori Derogat Lex Priori* cannot be used in this matter either, because the content of the Population Administration Law is clearly different from the Marriage Law. Population Administration emphasizes more on population issues and population administration while the Marriage Law discusses the essence of marriage as a whole, so these two rules are certainly very different because not all the substance of one law is part of the other. However, the existence of one of the articles in the Population Administration Law that concerns marriage, especially about interfaith marriage, which previously there was no rule that regulated it, became a problem.

Therefore, related to Article 35 letter (a) of the Population Administration Law contained in chapter V concerning civil registration related to interfaith marriage and the Marriage Law Article 2 paragraph (1) concerning the validity of marriage, so that it is biased to be studied using the principle of *Lex Specialist Derogat Lex Generalis*, namely looking at the special general relationship between Registration and the validity of marriage. This principle explains that specific legal rules can override general rules. The principle of *lex specialist derogate lex generalis* only applies to two hierarchically equivalent rules.

The Marriage Law regulates marriage and the substance of the basis of marriage, prohibitions, conditions, prevention, annulment of marriage and others. Meanwhile, the Population Administration Law regulates the substance of the population administration or the recording of important events, namely, death, birth, marriage, divorce, child recognition, child legalization, change of citizenship status, population registration and others. Marriage registration itself is one of the articles in the Marriage Law Article 2 paragraph (2) which reads: "each marriage is recorded according to the applicable laws and regulations", as well as in the Population Administration Law, marriage registration is included in important events that must be recorded. Therefore, in determining a special general position, it must be seen in terms of its substance or material, it cannot be seen only from the title.

If in terms of recording in the Population Administration Law itself is regulated in general, while in the Marriage Law it is specifically regulated, because in the Population Administration Law the recording of important events covers many things and marriage is one of them. Therefore, marriage is included in the important event that must be recorded, so the emergence of the Marriage Law becomes a rule that determines how marriages can be recorded.

If seen from the substance of the marriage, this is related to the validity of a marriage. In the Marriage Law, the validity of a marriage is determined according to religion and belief, Article 2 paragraph (1), so that the rules on the validity of marriage in the Marriage Law apply in general and the Population Administration Law applies in particular.¹⁴ Article 35 letter (a) only serves as a legal interpretation that underlies the registration of interfaith marriages. Although interfaith marriages can be recorded, it does not necessarily mean that the marriage is immediately considered valid. The validity of marriage remains based on Article 2 paragraph (1) of the UUP. The existence of article 35 letter (a) is only a special route to register interfaith marriages.

Law Number 23 of 2006 does not further regulate how the procedure or process of marriage between people of different religions takes place. So that the conditions, procedures, and prohibitions on marriage in Law Number 1 of 1974 remain valid. Law Number 1 of 1974 is also one of the bases for the formation of Law Number 23 of 2006. Therefore, the provisions in Law Number 1 of 1974, including regarding the requirements for the validity of marriage, cannot be separated from the authority of the Civil Registry Office to register marriages.

The birth of Article 35 letter (a) of the Population Administration Law only provides a special way to carry out and register the marriage, namely through the determination of the court, which is known that the court is one of the birthplaces of law. The existence of a requirement for the court to register interfaith marriages gives great authority to judges to determine whether an interfaith marriage is valid or not.

The judge in this case has the authority to assess the validity of marriage between people of different religions. Meanwhile, the Civil Registry Office only has the authority to register marriages between people of different religions according to the Court's order. It should be emphasized that the authority of the Civil Registry Office only records, not marries because the Civil Registry Office is not an institution that functions to marry.

Judges in assessing the validity of marriage between people of different religions must still pay attention to the validity of marriage according to Law Number 1 of 1974. The Civil Registry Office is only an institution that is authorized to register marriages, while those who carry out marriages are still religious leaders according to their respective religious laws. So the existence of Article 35 letter a of Law Number 23 of 2006 does not mean that civil marriage can be held. Marriage must still be held according to religious law to be judged by the Judge on its validity.

Law Number 1 of 1974 does not prohibit marriage between people of different religions but does not regulate it. This means that as long as religious law allows marriage between people of different religions, Law Number 1 of 1974 is not a clash. This is what the Judge must consider because certain religious laws still open the possibility of marriage between people of different religions with certain dispensations.

The judge must look at the possibility of marriage between people of different religions according to the religious law of each party. If there is indeed a provision in religious law that allows marriage between people of different religions, then the Judge can decide that the marriage is valid and can be registered at the Civil Registry Office.

After the enactment of Law Number 23 of 2006 concerning Population Administration, especially the provisions in Article 35 letter (a), the practice of determining interfaith marriage through the courts is a reasonable practice and occurs in many places in Indonesia. Among them is the case of the application for the determination of interfaith marriage that the author stated in chapter IV which occurred in Malang and Bogor, besides that there are still other cases of the determination of interfaith marriages that occurred in Surakarta, and Lumajang which all of them have permanent legal force through the determination of the District Court. However, from the cases of applications for the determination of interfaith marriages, not all of them were granted by the judge, there were also those whose applications were rejected by the judge so that interfaith marriages should not be carried out.

In general, the judge's consideration grants the determination of interfaith marriage on the basis of the following considerations:

- a. There is a void in the law on interfaith marriage in Law Number 1 of 1974 concerning Marriage. The provisions of Article 2 paragraph (1) of Law Number 1 of 1974 cannot be used as a basis for prohibiting interfaith marriage because the provision only applies to marriage between two people who embrace the same religion.
- b. Religious differences are not included in the prohibition of marriage in Law Number 1 of 1974,
- c. By submitting an application to the Civil Registry Office, the applicant has decided not to carry out a marriage based on his religion so that he is considered to no longer be ignoring his religious status.
- d. In addition, the judge also referred to Article 35 letter a of Law Number 23 of 2006 which has regulated it.

As for judges who reject interfaith marriage applications, the reasons that are generally used are:

- a. Religion is an element of marriage that cannot be separated,
- b. Article 35 letter a of the Population Administration Law only regulates the authority of Civil Registry Officials to record marriages determined by the court, while regarding the conditions, prohibitions and procedures for the implementation of marriage still refers to the provisions in Law Number 1 of 1974.

From the information mentioned above, it can be concluded that the judges in handling the case of applying for the determination of interfaith marriage still have differences of opinion, some grant and some refuse. The difference is actually caused by the provisions contained in Article 35 letter (a) which only mentions the authority of the Civil Registry Office to register interfaith marriages determined by the court, while the conditions, procedures and matters related to the implementation of interfaith marriage are not mentioned in it. So in this case, the judge who handles the case of applying for the determination of interfaith marriage is required to give a verdict according to their respective understandings. So it means that the problem of unclarity regarding interfaith marriage does not only occur in laws and regulations, but also at the level of implementation that can be found in various different judges' determinations in handling cases of determining interfaith marriage.

In the application for the determination of interfaith marriage granted by the court, the judge did not explain the procedure for the implementation of the interfaith marriage, whether it was carried out according to the religion of one party or carried out according to the religion of both parties. The judge only ordered the Marriage Registrar to register the marriage. Even though this is very important, considering that the Civil Registration Office, after a change in its authority, is only tasked with registering, not holding marriages, while for its implementation it is left to their respective religions.

If what the judge wants in his decision is to register and carry out the marriage between the bride-to-be, then this has exceeded the authority of the Civil Registry Office. The Civil Registry Office is only authorized to register marriages as stipulated by Law Number 23 of 2006. The court also does not have the authority to marry. The court only assesses whether the marriage can be carried out according to the provisions of Law Number 1 of 1974.

If what the judge wants in his decision is that the implementation of marriage that is limited to administrative nature is recorded at the Civil Registry Office without being preceded by the religious implementation of the marriage, then this is clearly contrary to the principles

of the Marriage Law, because the decision interprets marriage as only limited to civil relations without any religious/spiritual element.

Because Article 35 huruf (a) of Law Number 23 of 2006 does not further regulate the process of interfaith marriage, the process of marriage both regarding the conditions, prohibitions and procedures for the implementation of marriage still refers to the provisions in Law Number 1 of 1974 and Government Regulation Number 1975 as its implementing regulations.

Based on this, it can be seen that interfaith marriages are still considered invalid marriages, because the court itself does not mention in its determination that the marriage they perform is valid, the court only issues a determination for the ability to be recorded in order to get evidence and legal protection. To be able to carry out a valid marriage, the marriage must meet the conditions for the legality of marriage contained in the Marriage Law.

Accepting and registering marriage is only a concept of the Civil Registry Office, and basically in registering interfaith marriages the Civil Registry Office is only passive, in the sense that it does not provide rejection but gives suggestions or solutions with the determination of the court, so that the registration and legalization of interfaith marriage only concerns two elements, namely juridical issues, especially evidentiary issues and administrative issues. Government policies, including the regulations that are enacted, must accommodate the interests of all its people. This includes regulations related to interfaith marriage issues that are stipulated in Indonesia. Government policies in setting rules related to interfaith marriage must be oriented towards the benefit of all its people.

The issue of interfaith marriage to this day still continues to leave polemics and pros and cons in the midst of society. This is none other than because there is no regulation that completely regulates interfaith marriage.

Law Number 1 of 1974, which is not the National Marriage Law, does not accommodate interfaith marriage. Indeed, in one of the articles there is a general rule regarding the validity of a marriage, namely Article 2 paragraph (1), which means that even though interfaith marriage is not specifically described in it, its validity can be ascertained from the provisions in the article. However, the rule that is still general has not been able to solve the problem of interfaith marriage. As a result of the non-regulation of interfaith marriage in the Marriage Law, it has caused various interpretations from several circles that make the law of interfaith marriage in Indonesia uncertain. Such conditions have led to various acts of misappropriation and legal smuggling carried out by perpetrators of interfaith marriages.

Actually, the void in the law on interfaith marriage can be overcome with the birth of Law Number 23 of 2006 concerning Population Administration, namely Pass 35 letter (a), which in one of its articles specifically regulates interfaith marriage. However, in this article, interfaith marriage has not been fully regulated, which also results in uncertainty in its implementation.

Such conditions should encourage the government to create a regulation related to interfaith marriage that can bring benefits to all its people, meaning that the regulation does not harm any party and also brings benefits to the Indonesian people as a whole. A rule that does not only accommodate one or part of religions and beliefs, but all religions and beliefs in Indonesia.

Marriage in Indonesia is closely related to religious laws and beliefs, so the validity of a marriage is determined based on the laws of religion and belief. All religions and beliefs in Indonesia consider same-sex marriage to be an ideal marriage, but from some of these religions there are still religions that can provide dispensation or allow interfaith marriage. In addition, seeing the heterogeneous condition of Indonesia with various ethnicities and religions is not impossible and even interfaith marriages often occur in society. Therefore, it is urgently needed that a regulation that regulates the issue of interfaith marriage completely and completely that can guarantee legal certainty and resolve polemics related to interfaith marriage that has been happening. A rule that of course also brings benefits to all Indonesian citizens who can accommodate all realities living in society and still realize the principles contained in Pancasila and the 1945 Constitution.

For Muslims in Indonesia, there are actually laws that can be used as a reference related to interfaith marriage, namely the Compilation of Islamic Law (KHI) and the Fatwa of the Indonesian Ulema Council (MUI). Although KHI cannot be called a positive law, and the MUI Fatwa also does not have a binding law. Both KHI and the MUI Fatwa absolutely prohibit interfaith marriages between Muslims and non-Muslims.

Interfaith marriage is associated with the function of civil registration in Indonesia

Marriage registration is the most important thing of the marriage procession, because through marriage registration, husband and wife get legal certainty as Indonesian citizens. The legal certainty provided by the government for married couples is proven through marriage documents, in Article 2 of Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning the implementation of Law Number 1 of 1974 marriage documents can be proven through a marriage certificate intended for married couples other than believers of Islam and issued by the Civil Registry Office, then for married couples who are Muslims as evidenced by a marriage book issued by Office of Religious Affairs (KUA).

Regulations related to marriage registration are contained in Articles 34, 35, 36 of the Population Administration Law in which the article states that:

Article 34

- 1) A valid marriage according to the Laws and Regulations must be reported by the public to the Implementing Agency at the place where the marriage occurred no later than 60 (sixty) days from the date of the marriage.
- 2) Based on the report as intended in paragraph (1), the Civil Registration Officer records in the Marriage Certificate Register and issues a Marriage Certificate Citation.
- 3) The Marriage Certificate Citation as intended in paragraph (2) is given to the husband and wife respectively.
- 4) Reporting as intended in paragraph (1) for Muslim residents is carried out in KUA Kec.
- 5) The data on the results of recording the event as referred to in paragraph (4) in Article 8 paragraph (2) must be submitted by the District KUA to the implementing agency no later than 10 (ten days) after the marriage registration is carried out.
- 6) The results of data recording as intended in paragraph (5) do not require the issuance of a citation of the Civil Registration deed.
- 7) At the sub-district level, the report as intended in paragraph (1) is carried out at the UPTD of the Implementing Agency.

Article 35

The marriage registration contained in Article 34 also applies to:

- 1) Court-sanctioned marriage; and
- 2) Marriage of foreign nationals carried out in Indonesia at the request of the foreign citizen concerned.

Article 36

In the event that the marriage cannot be proven by a marriage certificate, the marriage registration is carried out after a court determination. Marriage registration plays a very important role in marriage, because marriage registration is a prerequisite for whether or not a marriage is recognized by the state. If the marriage is not recorded, the state does not recognize the marriage, nor do the consequences of the marriage. The importance of marriage registration is that the marriage document can be a guarantee for children to get their rights in the event of divorce.

The Population Administration Law in an effort made to address the legal vacuum of interfaith marriage by granting it national legal status, so that interfaith marriage is not only related to the arrangements regulated by religious law. Namely Article 35 (a) about "court-ordered marriage". This can be seen in the explanation of Article 35 (a), where it is explained that the purpose of Article 35 (a) is to allow interfaith marriage.

In contrast to the validity of interfaith marriage according to the Marriage Law which emphasizes more on the validity of marriage according to religion, in the Population Administration Law there is more emphasis on marriage registration, where in this Law there is an effort so that interfaith marriages can be registered, namely by submitting an application for determination in the District Court and being disqualified in the Civil Registry.

The purpose of registering this marriage is to provide guarantees and protection to the parties who carry out the marriage so that there is valid evidence of the existence of the marriage and the pihak can defend their marriage in front of anyone legally. On the other hand, if the marriage is not recorded, then the marriage made by the parties has no legal force and cannot be proven to be a marriage. It can be noted that in the Population Administration Law, marriage registration is the obligation of every Indonesian citizen who wants to build a household. Interfaith marriages or marriages in general must be registered in accordance with the applicable laws in Indonesia.

The concept of certainty and justice in the law of interfaith marriage is associated with civil registry laws and regulations as an effort to develop Indonesian marriage law.

In order to carry out a legal reconstruction that will be offered as a solution to the phenomenon of interfaith marriage that continues to occur in Indonesia, it is still necessary to study it in perspective based on the UUP, Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage (PP UUP) and Law Number 23 of 2006 concerning Population Administration (Aminduk Law), as amended by Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration as a positive law in Indonesia. In Article 2 paragraph (2) of the UUP it is stated that: "Every marriage is recorded in accordance with laws and regulations". Article 2 paragraph (2) of the UUP clearly emphasizes that "every marriage" can be registered to obtain legal certainty based on applicable laws and regulations. At this point, the author argues that the choice of diction "each marriage" refers to marriages that are general, both marriages that

are solemnized according to Islam which prohibits interfaith marriages, and marriages that are solemnized according to one's religion and beliefs according to other religions of Islam. By interpreting this, the author also argues that implicitly, in fact, interfaith marriage is recognized in the UUP and can be categorized as a marriage that takes place according to their religion and beliefs according to other than Islam, as stipulated in Article 2 paragraph (2) of the PP UUP as a legal rule implementing the UUP which reads: "The registration of marriages from those who direct their marriage according to their religion and beliefs is other than Islamic religion, carried out by the Marriage Registrar at the Civil Registration Office as referred to in various laws regarding marriage registration". The implicit recognition in the UUP and PP UUP about the existence of interfaith marriage as part of the category of marriages that are carried out according to other than Islam and can be recorded in order to obtain legal certainty is also regulated by the Aminduk Law. Article 35-point a of the Administrative Law actually emphasizes the authority for the Civil Registry Office to hold interfaith marriages. In the article, it is stated that the registration of marriages in Indonesia regulated in Article 34 also applies to marriages determined by the Court. The explanation of Article 35-point a of the Administrative Law also emphasizes that what is meant by "Marriage determined by the Court" is "a marriage carried out between people of different religions who have received a determination from the Court". With this clear and firm legal arrangement, the author argues, that the law on interfaith marriage can still be legally reconstructed and can be given legal certainty, as has also been emphasized above that the theory of dignity justice requires the existence of legal discoveries to provide legal certainty for concrete cases that are not or have not been clearly and firmly regulated in positive law. If examined at a glance, it seems that there is a conflict of legal norms regarding the implementation of interfaith marriage as regulated in Law Number 1 of 1974 concerning Marriage (UUP) with the Administrative Law as a positive law. On the one hand, interfaith marriage based on the UUP is not regulated clearly and firmly and is interpreted as prohibited and considered invalid as described above, but on the other hand its implementation is given a way out in the Administrative Law (Azzam, 2015; Payapo & Imam, 2023; Setiawan et al., 2024). Therefore, the conflict of legal norms regarding the implementation of interfaith marriage in the two laws will be studied using the principles of principles in the theory of dignified justice.

Interfaith marriage is in principle not mentioned in the UUP. Materially, interfaith marriage is considered not to meet the aspects of marriage that the UUP aspires to, especially regarding the legality of marriage which, according to the dominant legal interpretation, states that the principle of marriage in Indonesia prioritizes same-sex marriage, and prohibits interfaith marriage. Therefore, interfaith marriage is considered incompatible with the UUP and cannot be implemented. The regulation of the implementation of interfaith marriage actually emerged from the Administrative Law which basically regulates civil registration of population.

The problem of regulating the implementation of interfaith marriage in the Administrative Law can give rise to a new discourse on the law on interfaith marriage which based on the previous description has concluded that the UUP, KHI, Fatwa MUI, and the Constitutional Court Decision have prohibited interfaith marriage, because it is considered contrary to religious law and the principle of the One Godhead. The existence of Article 35-point a of the Administrative Law which clearly and firmly regulates can be recorded

Interfaith marriage gives rise to a conflict of legal norms between the provisions regulated under the *Undang-Undang Perkawinan* (UUP, Marriage Law) and the Population Administration Law (*Undang-Undang Administrasi Kependudukan*, Aminduk Law) with respect to the implementation of interfaith marriage. To resolve this conflict of legal norms governing the implementation of interfaith marriage under the UUP and the Aminduk Law, the theory of dignified justice (*keadilan bermartabat*) which operates through a systematic working procedure may be invoked. According to the theory of dignified justice, legal working procedures must operate systematically and without internal contradiction; moreover, divergent legal systems may be reconciled and harmonized on the basis of legal and moral values as the *Volksgeist* of the Indonesian people. It is therefore the author's contention that the regulation of interfaith marriage under the UUP and the Aminduk Law must be reconciled, and a middle ground must be identified by examining the general and specific relationship between the validity of marriage and its registration as governed by both instruments.

The author's position is further consonant with the principle of *lex specialis derogat legi generali*, which holds that special legal rules may derogate from general legal rules. This principle governs the relationship between specific laws and their principal or general counterparts as illustrated, for instance, by the relationship between Law Number 4 of 1992 concerning Housing and Settlements (*Undang-Undang Perumahan dan Permukiman*, UUPP) and Law Number 5 of 1960 concerning Basic Agrarian Principles (*Undang-Undang Pokok Agraria*, UUPA). The UUPA constitutes a law that regulates only foundational matters in the field of agrarian affairs, while the UUPP, as a derivative instrument of the UUPA, governs specific matters that are in principle part of the agrarian domain itself; accordingly, the principle of *lex specialis derogat legi generali* applies to govern the relationship between the two.

However, the relationship between the UUP and the Aminduk Law is of a different character, insofar as the substantive scope of one law is not entirely subsumed within that of the other. The UUP regulates marriage comprehensively, with substantive provisions addressing the legal basis of marriage, the conditions for marriage, the prevention of marriage, and the annulment of marriage. The Aminduk Law, by contrast, regulates the recording of vital events (*peristiwa penting*), encompassing births, deaths, stillbirths, marriages, divorces, child acknowledgment, child legitimation, child adoption, name changes, and changes of citizenship status. Marriage registration is one of the matters regulated under both instruments: under the UUP, it is addressed in Article 2 Paragraph (2), while under the Aminduk Law, marriage constitutes one category among the various types of vital events that must be recorded in order to produce legal certainty.

Therefore, in determining the general position, in particular, it cannot be done just by looking at the title of the law, but must be seen in terms of the substance to be studied. If studied in terms of registration, marriage registration is generally regulated in the Administrative Law and specifically regulated by the UUP (Hanapi & Yuhermansyah, 2020; Van Huis & Wirastri, 2012; Yunus & Fajar, 2025). In terms of recording, the Administrative Law stipulates what types of important events can be recorded and marriage is one of them. Because marriage is one of the important events that are set to be recorded, the emergence of the UUP is a rule that determines how marriages can be recorded. However, if studied in terms of marriage, the validity of marriage is generally regulated in the UUP and specifically regulated by the

Administrative Law. In terms of the legality of marriage in general, it has been stipulated in Article 2 paragraph (1) of the UUP, namely that marriage is considered valid if it is carried out according to the religious law adhered to.

According to the author, the emergence of Article 35-point a of the Administrative Law provides an exception for the implementation of interfaith marriage, which must be with the determination of the Court. Therefore, the validity of marriage based on the Administrative Law only applies to interfaith marriages, thus the Administrative Law is more specific. Based on this explanation, the UUP has a position as a general regulation, while the Administrative Law has a position as a special regulation that can deviate from the general legal rules.

Article 35 point a of the Administrative Law basically does not explicitly mention the validity of interfaith marriage, but the article only stipulates that interfaith marriages that have obtained a Court determination can be registered at the civil registry institution with provisions such as marriages in Indonesia in general in accordance with Article 34 of the Administrative Law. Implicitly, it can be interpreted in two senses.

First, that interfaith marriage has been considered valid after obtaining a Court determination. This definition implies that there is another form of marriage legalization other than what is stipulated in Article 2 of the UUP, namely the legalization of marriage according to the Court. From this implication, the meaning can also be drawn, namely that the Court's determination has been considered the same as the determination based on religious law.

Second, the meaning is narrower, which simply shows that Article 35-point a of the Administrative Law places interfaith marriages as "recordable". Meanwhile, the validity of marriage is not clearly determined/regulated, and can be returned to the legal provisions of the validity of marriage according to the UUP.

CONCLUSION

The Marriage Law in Indonesia has yet to explicitly regulate interfaith marriage, thereby generating legal uncertainty and compelling individuals to pursue alternative legal avenues such as solemnizing marriages abroad, converting to their partner's religion, or obtaining a judicial determination. Civil registration, in this regard, functions solely as an administrative recording mechanism and does not confer legal validity upon a marriage, given that the validity of any marriage remains fundamentally governed by the religious law of each respective party. In light of these normative gaps, it is recommended that the government undertake a comprehensive review and establish clear, explicit legal provisions concerning interfaith marriage in order to safeguard legal certainty and protect the constitutional rights of all citizens. For future research, scholars are encouraged to conduct comparative legal studies examining the regulatory frameworks of interfaith marriage in other jurisdictions particularly those with similarly pluralistic societies so as to generate empirically grounded legislative recommendations that may inform the reform and development of a more just and inclusive national marriage law in Indonesia.

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