International Conference on Health Science, Green Economics, Educational Review and Technology| ISSN (e): 2986-1985
Volumes 7 No. 1 (2025)

Interfaith Marriage Between Human Right and State Law

Dhiyaul Habib Ifham[1]*,Rosnidar Sembiring[2],Utary Maharani Barus[3]
Universitas Sumatra Utara / Master of Law, Medan[123]
Corresponding Email: Habibdhiyaul@gmail.com[1]*

Received	: 21 April 2025	Published	: 11 June 2025
Revised	: 30 April 2025	DOI	: https://doi.org/10.54443/ihert.v7i1.449
Accepted	: 15 May 2025	Link Publish	: https://proceeding.unefaconference.org/index.php/IHERT

Abstract

Indonesia is not a religious country but Indonesia is also not a secular country, Indonesia does not make any religion the basis of the state, but all activities and behavior of Indonesian citizens cannot be related to religious matters. As this is supported by the first principle, namely "Belief in One Almighty God", this means that even though Indonesia is not a religious country, all behavioral norms of Indonesian citizens must not conflict with the norms of God. The polemic about interfaith marriages has been going on for a long time. Apart from the fact that there is a feeling of love between men and women, it is also because society in Indonesia is heterogeneous. Article 10 paragraph (2) of the Human Rights Law states that a valid marriage can only be carried out with the free will of both parties. This article contains the principle of the free will of the partner in the marriage bond. The meaning of free will is a will that is born on the basis of sincere, holy intentions without any coercion, deception or pressure. The Human Rights Law only looks at the civil aspect that there is no element of religion that takes precedence in a valid marriage bond. Article 28B paragraph (1) of the 1945 Constitution states "Everyone has the right to form a family and continue their offspring through legal marriage". Interfaith marriages carried out secretly are still valid according to those who carry them out, but as long as they live in Indonesia the marriage must be registered so that it is recognized by the state. On the other hand, how can interfaith marriages be considered valid when there are several religions that prohibit it, such as Islam, Protestant Christianity, etc. The presence of Law Number 1 of 1974 concerning Marriage cannot yet be convincing as a prohibition on Indonesian people wishing to carry out interfaith marriages, even though it is quite clear that Article 2 paragraph (1) states that "Marriage is valid if it is carried out according to the laws of each religion and belief. That". Then the Constitutional Court required that people who wanted to carry out interfaith marriages must ask permission from their respective religious leaders, so that the presence of religious leaders here greatly influences whether or not the interfaith marriage is valid. Not only that, some time ago, on July 17 2023, the Supreme Court issued SEMA Number 2 of 2023 concerning Instructions for Judges in Adjudicating Applications for Registration of Marriages Between People of Different Religions and Beliefs. The issuance of SEMA Number 2 of 2023 has a fundamental spirit to provide certainty and unity in the application of the law, so that there are no more loopholes for Indonesian people who wish to carry out interfaith marriages in Indonesia.

Keywords: ***Marriage, Religion, Interfaith Marriage, Human Rights.***

INTRODUCTION

The smallest social group of society is an individual in a family, all starting from home in the sense of a small family, for that humans have the right to determine happiness and are free to determine choices including in terms of life partners who will later live together in a family. The birth of a small family begins with a legal event called marriage, so the bond of marriage is considered an institution that determines a person's position before the eyes of the law, because events that are classified as legal events will have legal consequences in the form of rights and obligations.

The issue of interfaith marriage in Indonesia is not a new problem in society, this is because Indonesia is not a religious state, but also not a secular state. Interfaith marriage can be complex because it involves two different legal aspects, namely religious law and state law. The Republic of Indonesia has its own regulations and legal norms regarding marriage, and in some cases, these rules can conflict with the teachings of certain religions. So in terms of administrative registration, interfaith marriages are not recognized in Indonesia.

Article 1 of the Marriage Law Number 1 of 1974 states that marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Almighty God. Then Article 2 of the Marriage Law Number 1 of 1974 states that a marriage is valid if it is carried out according to each person's religion and belief. The absence of special regulations regarding interfaith marriages in the Marriage Law Number 1 of 1974 is one of the weapons for Indonesian citizens to carry out interfaith marriages.

Meanwhile, Article 28b of the 1945 Constitution on Human Rights (HAM) states that everyone has the right to form a family and continue their descendants through a legal marriage, for the Indonesian people, the 1945 Constitution on Human Rights is the reason and also the umbrella of justice that initially had a romantic relationship and then wanted to continue their relationship to a more serious level, namely marriage. There are no specific rules regarding interfaith marriage in Law Number 1 of 1974 on Marriage as a guideline or regulation for people in Indonesia who want to get married and they (people who want to get married) still think that if there are no special rules regarding interfaith marriage in Law Number 1 of 1974 on Marriage, then it is still possible to get married because everyone has the right to form a family and continue their descendants through a legal marriage, said Article 28b of the 1945 Constitution on Human Rights.

Moreover, the consequences of interfaith marriages are contrary to religious law. If the religions of both parties are different, various difficulties will arise in the family environment, in carrying out worship, educating children, arranging food, fostering religious traditions, and so on. The social aspects of interfaith marriages will also arise. Interfaith marriages can face several negative social aspects, including religious tensions between family members and the community, as well as potential conflicts of religious values that can affect social relationships. In some cases, there is the possibility of rejection or disapproval from family, friends, or the community who base their attitudes on religious differences. In addition, children from interfaith marriages may have difficulty identifying themselves with a particular religious belief.

Pancasila as the state ideology, the key and focal point of thought of the five principles lies in the first principle, which is about "resilience". This means that all forms of activities, behavior and actions of the people in Indonesia must not conflict with aspects of God and all teachings brought by God.

FORMULATION OF THE PROBLEM

Based on the background above and to provide research limitations, several problems are formulated, as follows:

1. How is interfaith marriage from a human rights perspective?
2. How is interfaith marriage considered under state law?

RESEARCH METHODS

The writing in this study uses normative legal research, which discusses doctrines or principles in legal science, which aims to find the legal principles or positive legal doctrines that apply. Research on legal synchronization, this study uses data sources obtained from primary legal materials including the 1945 Constitution, Marriage Law Number 1 of 1974 and Law Number 39 of 1999 concerning Human Rights. Legal materials in this study include books, journals, articles and research results. Data collection techniques are carried out by tracing, examining and collecting literature which will then be used as material for analyzing a problem so that conclusions can be drawn as a form of consistent object interpretation so that suggestions can be provided according to related problems. Then the research data that has been collected will be analyzed using descriptive analysis methods.

RESULTS AND DISCUSSION

Interfaith marriage from a human rights perspective

Marriage is a right for every Indonesian citizen, which right can be accepted by doing or not doing it. Article 10 paragraph (2) of the Human Rights Law states that a valid marriage can only be carried out based on the free will of both parties, this article contains the principle of the free will of the couple in the marriage bond. The meaning of free will is a will that is born on the basis of sincere pure intentions without any coercion, deception and pressure. The Human Rights Law only looks at the civil aspect that there is no religious element that is prioritized in a valid marriage bond. The Marriage Law until now still conceptualizes the validity of marriage on the basis of religion. The right to have a family and continue offspring through a valid marriage bond should be carried out based on Article 10 paragraph (2) and Article 3 paragraph (3) which may not be reduced or reduced on religious grounds. In reality, the religious status of each interfaith couple can be seen based on the way the couple carries out the marriage.

Rights in the Big Indonesian Dictionary (KBBI) are defined as the power to do something. In historical chronology, the development of these rights is what then triggered the emergence of human rights based on liberalism. Recognition of rights in the context of history cannot be separated from the theory of the formation of the State, which includes the theory of divinity, the theory of power, the theory of agreements, and the theory of sovereignty. Each of these theories has its own view on the nature of the rights themselves.

In terms of the theory of Divinity, the holder of the highest rights is God, so that all human activities are directed to God. While in the theory of power, the holder of the highest rights is the ruler. The emergence of the theory of power and its practice which is very miserable for the party being controlled, gave rise to the theory of social agreement in the empirical realm. This theory formulates rights and obligations on the basis of an agreement between the controlled party and the ruled. However, in the empirical realm, it turns out that this theory is unable to accommodate other parties who do not participate in the agreement, especially when the agreement has been going on for a long time so that the parties who made the agreement are no longer able to make the agreement.

It can be seen from the historical facts, the theory of sovereignty emerged which views full rights as being in the hands of the people while the ruler is obliged to provide them. The view on these rights then did not stop, the strength of the liberal understanding in the development of history gave rise to two schools of liberalism, namely classical and modern. The two branches of understanding do not change the substance that humans are the main thing. This view then triggered the development of thought, that human rights are the main thing so that they cannot be taken away by anyone. In classical thought, several doctrines such as John Locke state that human rights (HAM) include the right to life, the right to freedom, and the right to property.

Freedom of Religion in International Human Rights According to Jan Materson of the UN Commission on Human Rights, human rights are rights inherent in humans without which humans cannot live as humans (Human could be defined as those rights which are inbernt in our nature and without which we can not live as human beings). The concept and idea of human rights were influenced by British and French thinkers in the 18th century (since the Enlightenment), which were then established in the American Declaration of Independence in 1776, the Declaration of Rights in Virginia in 1776, and the Bill of Rights which was added to the United States Constitution in 1791 and so on.

In contrast to John Locke, Thomas Hobbes only stated that there is only one human rights, namely the right to life. One thing that is worth noting from this difference, John Locke also said that this right comes from God which is natural in nature. This means, according to John Locke, human rights exist because they are given by God. John Locke's theory of human rights based on God's gift is actually based on the theory of natural law proposed by Grotius (Hugo de Groot). In contrast to John Locke, Thomas Hobbes only stated that there is only one human rights, namely the right to life. One thing that is worth noting from this difference, John Locke also said that this right comes from God which is natural in nature. This means, according to John Locke, human rights exist because they are given by God. John Locke's theory of human rights based on God's gift is actually based on the theory of natural law proposed by Grotius (Hugo de Groot). Jeremy considers that the concept of human rights as natural rights that are naturally inherent in humans does not have relevant parameters. In reality, the objection to Jeremy was refuted by history. The international world has once again turned to the natural theory which states that human rights are inherent, not given by any ruler, but exist because humans are human.

The development of human rights in Indonesia is also legally influenced by the development of the world of international law. It is a logical consequence that Indonesia's independence, which began with centuries of colonization, resulted in a nationalist attitude to defend the rights of its people. In addition, the influence of western doctrine on human rights at that time also played a role, resulting in the foundation of the Indonesian state, namely the 1945 Constitution, which in its preamble explicitly recognizes the existence of human rights. Based on the foundation of the state, recognition of human rights primarily includes freedom, namely responsible freedom. Furthermore, the foundation of the state states the state's obligation to fulfill the welfare of its people, fulfill the welfare of its people, and protect all its people. It is a logical consequence that the emergence of obligations will include the rights of other parties, which in this context are the people. This is then able to equate the spirit of the constitution as the spirit in establishing a welfare state, namely a state whose goal is to prosper its people. It should be remembered that in the foundation of this state, the anchoring of these rights is based on the five principles of the state ideology as stated in the fourth paragraph. Thus, whatever rights are owned, cannot be separated from their implementation and accountability in the context of Pancasila.

Indonesia then ratified the UN charter as a law that is valid in Indonesia. The ratification was realized in law number 39 of 1999. This ratification was carried out primarily not because Indonesia was a member of the UN at that time, but rather because of the revelation of several cases of gross human rights violations during the Soeharto government. This ratification then gave rise to legal consequences that all articles in the UDHR became applicable in Indonesia. However, in law 39 of 1999, the concept of divinity was added in article 1 concerning

general provisions regarding the understanding of human rights itself. This then limited the implementation of human rights which must be based on divinity.

In fact, Western theories related to human rights cannot all be adopted or implemented in Indonesia. This is because Indonesia is a country of law where every citizen's activity cannot be separated from religious or divine teachings. If all Western theories are adopted by Indonesia and used, it will violate the divine norms in Indonesia and everything will be freely done because of human rights interests including interfaith marriage, LGBT and others.

Interfaith marriage in state law

Indonesia is a pluralistic country built on the diversity of ethnicities, cultures, races, and religions. One of the most fundamental aspects of the pluralism of the Indonesian nation is the existence of religious diversity practiced by its people. The religions and beliefs that live and develop in Indonesia are not singular but diverse. The Indonesian government has recognized six religions, namely Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism. In addition, it also recognizes beliefs or animism that still live and develop in society. The guarantee of the existence of religion and belief has been regulated by the State in Article 29 paragraph (1) and paragraph (2) of the 1945 Constitution which states that: (1) The State is based on the One Almighty God. (2) The State guarantees the freedom of each resident to embrace their respective religions and to worship according to their religion and beliefs.

The diversity of religions and beliefs in Indonesia can have implications for interfaith marriages. Interfaith marriages are indeed not something new and have been going on for a long time for the multicultural Indonesian society. However, this does not mean that cases of interfaith marriages do not cause problems, in fact they tend to always reap controversy in society. Based on data collected by the Indonesian Conference on Religion and Peace (ICRP), from 2005 to early March 2022 there have been 1,425 interfaith couples married in Indonesia. Interfaith marriage is a physical and spiritual bond between a man and a woman of different religions and countries, causing the unification of two different regulations regarding the requirements and procedures for implementation according to the laws of their respective religions, with the aim of forming a happy and eternal family based on God Almighty.

In general, human rights in Indonesia include many things, one of which is the right of every citizen to get married. Article 28B paragraph (1) of the 1945 Constitution states "Everyone has the right to form a family and continue their lineage through a legal marriage". A legal marriage is a marriage that is in accordance with Law Number 1 of 1974 concerning Marriage.

Based on the formulation of Article 2 paragraph (1), it can be concluded a contrario that a marriage that is not carried out in accordance with the laws of each religion and the beliefs of the bride and groom, then it can be said that the marriage is invalid. Meanwhile, in Indonesia, the six recognized religions have their own regulations and tend to strictly prohibit the practice of interfaith marriage. Islamic law clearly opposes interfaith marriage, even if it is forced, it is commonly known in society as "lifelong adultery." The Christian/Protestant religion basically prohibits its followers from carrying out interfaith marriages, because in Christian doctrine, the purpose of marriage is to achieve happiness between husband, wife, and children in the scope of an eternal and everlasting household. Catholic law prohibits interfaith marriage unless permission is obtained from the church with certain conditions. Buddhist law does not regulate interfaith marriage and returns to the customs of each region, while Hinduism strictly prohibits interfaith marriage. In the Explanation of Article 2 paragraph (1) of the Marriage Law, it is also reaffirmed that with the formulation in Article 2 paragraph (1), there is no marriage outside the laws of each religion and its beliefs. The implementation of Article 2 of the Marriage Law must be interpreted cumulatively, meaning that the components in Article 2 paragraph (1) and Article 2 paragraph (2) are parts that cannot be separated from each other. Thus it can be concluded that even though a marriage has been carried out legally based on religious law, if it has not been registered with the authorized agency, either the Office of Religious Affairs for Muslims or the Civil Registry Office for non-Muslims, then the marriage has not been recognized as valid by the state.

In fact, Indonesia does not yet have an explicit legal umbrella that regulates the very complex issue of interfaith marriage. So far, interfaith couples have had to struggle more, both through legal and illegal efforts, so that their marriages are legalized in Indonesia. The validity of marriage is the domain of religion through religious institutions or organizations that are authorized or have the authority to provide religious interpretations. The role of the state in this case is to follow up on the results of the interpretations provided by these institutions or organizations. Regarding the implementation of marriage registration by state institutions, it is in order to provide certainty and order in population administration in accordance with the spirit of Article 28D paragraph (1) of the 1945 Constitution. This was expressed by Constitutional Justice Enny Nurbaningsih when reading out the legal

considerations of the Constitutional Court in Decision Number 24/PUU-XX/2022, the case of testing Law Number 1 of 1974 concerning Marriage (Marriage Law) as amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. The application was submitted by E. Ramos Petege, a Catholic who wanted to marry a Muslim woman.

The verdict hearing was held at the Constitutional Court (MK) on Tuesday (31/1/2023). In the verdict, the Constitutional Court rejected the Petitioners' petition in its entirety. "The verdict, adjudicates, rejects the Petitioners' petition in its entirety," said Chief Justice Anwar Usman who read out the verdict accompanied by eight other Constitutional Justices in the Constitutional Court Courtroom. The Constitutional Court in its legal considerations also stated that in marriage there are interests and responsibilities of religion and state that are closely related. "Therefore, through Decision Number 68/PUU-XII/2014 and Decision Number 46/PUU-VIII/2010, the Constitutional Court has provided a constitutional basis for the relationship between religion and state in marriage law that religion determines the validity of marriage, while the state determines the administrative validity of marriage within the legal corridor,"

Regarding the constitutionality of Article 2 paragraph (1) in conjunction with Article 8 letter f and Article 2 paragraph (2) of Law 1/1974, the Constitutional Court considers that human rights (HAM) are rights recognized by Indonesia which are then stated in the constitution as the constitutional rights of Indonesian citizens. However, the HAM that applies in Indonesia must be in line with the philosophy of Indonesian ideology which is based on Pancasila as the nation's identity. The guarantee of universal protection of HAM is stated in the Universal Declaration of Human Rights (UDHR). Although it has been declared as a form of mutual agreement between countries in the world, the implementation of HAM in each country is also adjusted to the ideology, religion, social and culture of the people in each country.

It is important to note that the role of religious leaders is very important in deciding an interfaith marriage in Indonesia. For Muslims, it is mandatory to ask permission from the MUI (Indonesian Ulema Council), for Christians/Protestants, it is mandatory to ask permission from a priest, for Catholics, a priest or pastor, for Hindus, it is mandatory to ask permission from a pandita, sulinggih, or pinandita, for Buddhists, it is mandatory to ask permission from a monk or nun to conduct an interfaith marriage.

Apart from that, recently the Supreme Court of the Republic of Indonesia finally prohibited court judges from granting applications for the determination of interfaith marriages. The prohibition is stated in the Supreme Court Circular (SEMA) Number 2 of 2023 concerning Guidelines for Judges in Adjudicating Cases of Applications for Registration of Interfaith Marriages of Different Religions and Beliefs. SEMA Number 2 of 2023 was issued after there was pressure from many groups who highlighted the frequent granting of applications for the determination of interfaith marriages by the District Court (PN). The determination of the court judge is considered to reduce the marriage law in force in Indonesia, although in his considerations the judge in deciding the case used the legal basis, namely Law Number 23 of 2006 concerning Population Administration.

SEMA Number 2 of 2023 explains that in order to provide certainty and legal unity in adjudicating applications for registration of marriages between religious communities of different religions and beliefs, judges must be guided by the following provisions:

a. A valid marriage is one that is carried out according to the laws of each religion and belief, in accordance with Article 2 paragraph 1 and Article 8 letter f of Law Number 1 of 1974 concerning Marriage.
b. The court did not grant the request to register marriages between people of different religions and beliefs.

These instructions for judges who are trying applications to determine the registration of interfaith marriages provide sufficient answers to the public's concerns.

CONCLUSION

Western theories related to human rights cannot all be adopted or implemented in Indonesia. This is because Indonesia is a country of law where every citizen's activity cannot be separated from religious or divine teachings. If all Western theories are adopted and used by Indonesia, it will violate the divine norms in Indonesia and everything will be freely done because of human rights interests including interfaith marriages, LGBT and others. Marriage Law Number 1 of 1974 has provided guidelines/instructions for those who wish to have interfaith marriages. Then the Constitutional Court requires people who wish to have interfaith marriages to ask permission from their respective religious leaders, so that the presence of religious leaders here greatly influences the validity or otherwise of the interfaith marriage. Not only that, the presence of SEMA Number 2 of 2023 concerning Instructions for Judges in Adjudicating Cases of Applications for Registration of Interfaith Marriages of Different

Religions and Beliefs as the final step for now issued by the Supreme Court to provide legal certainty for Indonesian citizens who wish to have interfaith marriages.

REFERENCES

Anna Elizabeth Mayer, Islam and Human Rights: Tradition and Politics, San Fransisco, Westview Press, 1991.

Burhanuddin Loppa, Al-Qur'an dan Hak Asasi Manusia, Yogyakarta, Dana Bakti Prima Yasa, 1996..

Deni K. Yusup, Kodifikasi UU No.39 Tahun 1999, dimuat dalam http://dkyusup. blogspot.com/2008/04/kodifikasi-uu-no39-tahun-1999.html, Diakses 4 Juni 2024. Pukul 14.35 WIB.

Dimuat dalam artikel berjudul Pendapat Para Ahli Tentang HAM di website http:// nalhackerblog.blogspot.com/2010/03/ pendapat-para-ahli-tentang-ham.html. Diakses 4 Juni 2024. Pukul 14.35 WIB.

Jeremy Bentham dikutip dalam buku nya K.M Smith Rhona dan Njal Hostmaelingen, Hukum HAM, Yogyakarta, PUSHAM UII, 2008.

Kamus Besar Bahasa Indonesia Offline Versi 1.1 Freeware, 2010 by Ebta Setiawan dengan mengacu pada data dari KBBI Daring (edisi III) di ambil dari http:// pusatbahasa.diknas.go.id/kbbi/. Diakses 4 Juni 2024. Pukul 14.35 WIB.

Made Widya Sekarbuana, DKK. Perkawinan Beda Agama Dalam Perspektif Hak Asasi Manusia Di Indonesia, Jurnal Prefensi Hukum, Vol. 2, No. 1 Februari 2021.

Made Widya Sekarbuana, Ida Ayu Putu Widiawati, I Wayan Arthanaya. Perkawinan Beda Agama Dalam Perspektif Hak Asasi Manusia Di Indonesia. Jurnal Preferensi Hukum. Vol. 2, No. 1, 2021.

Mahkamah Konstitusi Republik Indonesia, https://www.mkri.id/index.php?page=web.Berita&id=18870. Diakses pada tanggal 4 Juni 2024 Pukul 16:02 WIB.

Muhammad Amin Suma, Kawin Beda Agama Di Indonesia Telaah Syariah Dan Qanuniah, Tangerang, Lentera Hati, 2015.

Nurcahaya, Mawardi Dalimunthe, Srimurhayati, Perkawinan Beda Agama Dalam Perspektif Hukum Islam, Jurnal Hukum Islam, Vol. XVIII. No. 2 Desember 2018.

Prima Roza, Abdul Gani Jusuf, Dicky R Munaf, Memahami Dan Memakai Pancasila Sebagai Ideologi Dan Dasar Negara, Jakarta, PT. Gramedia Pustaka Utama, 2015.

Undang-U ndang Nomor 1 Tahun 1974 Tentang Perkawinan.

Wikipedia, Pemikiran Tokoh Klasik dalam Kelahiran dan Perkembangan Liberalisme Klasik, di muat dalam http://id.wikipedia. org/wiki/Liberalisme, Diakses 4 Juni 2024. Pukul 14.35 WIB.

Zainuddin Ali, Metode Penelitian Hukum, Jakarta, Sinar Grafika, 2009.