

Juridical Analysis of Interfaith Marriage in Indonesian Positive Law Perspective

Rully Affan Pamungkas^{1*}, Rastra Wahyudityana², Fadlan³

¹⁻³Department of Master in Law, faculty of Law, Universitas Batam, Indonesia

Author correspondence: 74124012@univbatam.ac.id*

Abstract. *This research conducts a comprehensive juridical analysis of interfaith marriage within the framework of Indonesian positive law, examining the legal complexities and regulatory challenges in the current legal system. The study critically analyzes the existing legal instruments, including Marriage Law No. 1 of 1974, compilation of Islamic Law, and relevant Supreme Court decisions that govern interfaith marriages in Indonesia. Through doctrinal legal research methodology, this study investigates the legal vacuum surrounding interfaith marriages and its implications on citizens' constitutional rights. The research examines how different legal interpretations by civil registry offices, religious courts, and other legal institutions affect the implementation of interfaith marriage regulations. Findings indicate substantial inconsistencies in legal interpretation and application, leading to legal uncertainty for couples seeking interfaith marriages. The study reveals that while Indonesian positive law does not explicitly prohibit interfaith marriages, the absence of clear regulatory frameworks often results in practical obstacles and varying administrative practices across different regions. The research also explores how judicial decisions have shaped the legal landscape of interfaith marriages, analyzing landmark cases that have influenced current legal practices. This study concludes that there is an urgent need for legal reform to provide clear guidelines for interfaith marriages that align with constitutional principles while respecting religious values and human rights in Indonesia's pluralistic society.*

Keywords: *Constitutional Rights, Indonesian Positive Law, Interfaith Marriage, Legal Certainty, Marriage Law*

1. INTRODUCTION

Interfaith marriage is a complex issue within the context of Indonesian law. This phenomenon becomes increasingly relevant as social interactions between followers of different religions increase in Indonesia's pluralistic society. Law Number 1 of 1974 concerning Marriage as the main legal foundation for marriage in Indonesia has not explicitly regulated interfaith marriage, creating a legal vacuum that needs to be examined in depth. In the context of Indonesia's diverse religious and cultural landscape, the issue of interfaith marriage presents unique challenges to the legal system. As the world's largest Muslim-majority nation that officially recognizes six religions, Indonesia faces the task of balancing religious principles with civil rights and constitutional guarantees. This complexity is further heightened by the country's commitment to legal pluralism, where state law coexists with religious and customary laws.

The absence of explicit regulations regarding interfaith marriages in Law Number 1 of 1974 has led to various legal interpretations and practical challenges. Article 2(1) of the Marriage Law states that a marriage is valid if conducted according to the respective religious laws and beliefs of the parties involved. However, this provision creates significant obstacles

for couples of different faiths who wish to legally marry while maintaining their respective religious beliefs.

Contemporary Indonesian society has witnessed increasing incidents of interfaith relationships, driven by factors such as urbanization, higher education, and greater social mobility. This social reality contrasts sharply with the current legal framework, which provides limited options for interfaith couples. Many are forced to either convert to their partner's religion, marry abroad, or seek alternative legal solutions through the courts. The legal vacuum surrounding interfaith marriage has broader implications beyond the marriage itself. It affects various aspects of civil rights, including property rights, inheritance, and the legal status of children born from such unions. This situation raises important questions about legal certainty and the protection of fundamental rights guaranteed by the Indonesian Constitution, particularly Article 29 on religious freedom and Article 28B on the right to form a family.

This research seeks to analyze the juridical aspects of interfaith marriage within Indonesia's positive law framework. It examines the intersection of state law, religious law, and human rights principles in the context of interfaith marriage. By investigating current legal provisions, judicial practices, and potential solutions, this study aims to contribute to the discourse on legal reform needed to address this increasingly relevant social phenomenon while respecting Indonesia's religious and cultural values.

2. LITERATURE REVIEW

Legal Pluralism Theory

Legal pluralism theory provides a fundamental framework for understanding Indonesia's complex legal landscape, particularly in the context of marriage law. This theoretical perspective, as developed by pioneering scholars such as John Griffiths (1986) and Sally Engle Merry (1988), conceptualizes the coexistence of multiple legal systems within a single social field. In the Indonesian context, this manifests as the simultaneous operation of state law (*hukum negara*), religious law (*hukum agama*), and customary law (*hukum adat*), creating a multifaceted legal environment that significantly impacts marriage regulations.

The concept of legal pluralism in the Indonesian context has deep historical roots that predate the colonial period. Werner Menski (2006) argues that Indonesia's legal pluralism is not merely a colonial legacy but rather a living reality that continues to shape contemporary legal practices. This perspective is particularly relevant when examining marriage laws, as Indonesia's legal system recognizes various sources of law that may sometimes conflict or complement each other. The interaction between these different legal systems creates what

Sally Moore terms "semi-autonomous social fields," where state law, religious principles, and customary practices simultaneously influence social behavior and legal outcomes.

The interaction between state law, religious law, and customary law in Indonesia creates a complex web of legal norms that directly affects interfaith marriage issues. State law, primarily represented by Law No. 1 of 1974 on Marriage, establishes the general framework for marriage regulation. Religious law, varying across Indonesia's officially recognized religions, provides specific requirements and procedures for marriage ceremonies and validity. Customary law, deeply embedded in local traditions, adds another layer of complexity through its diverse marriage practices and requirements across different ethnic groups. This pluralistic legal environment creates both challenges and opportunities in addressing interfaith marriage issues. The challenges arise from potential conflicts between different legal systems, as each may have different requirements or prohibitions regarding interfaith marriages. For example, while state law may recognize civil rights and religious freedom, religious law might restrict marriage to couples of the same faith. Customary law may add further complexity through local practices that either facilitate or hinder interfaith unions.

Recent scholarship by Indonesian legal theorists such as Ratno Lukito and Arskal Salim has emphasized the need for a more nuanced understanding of legal pluralism in contemporary Indonesia. Their work suggests that legal pluralism should not be viewed as a problem to be solved but rather as a characteristic of Indonesian law that requires careful management and harmonization. This perspective is particularly relevant when considering potential reforms in interfaith marriage regulations, as any solution must account for and respect the multiple legal traditions that comprise Indonesia's legal system. The application of legal pluralism theory to interfaith marriage issues reveals the need for a balanced approach that respects all legal traditions while ensuring protection of individual rights. This theoretical framework suggests that effective regulation of interfaith marriage requires not just state intervention but also dialogue and harmonization between different legal systems. Understanding these complex interactions is crucial for developing legal solutions that can accommodate both religious diversity and individual rights within Indonesia's pluralistic legal framework.

Legal Certainty Theory

Legal certainty theory, as foundationally developed by Gustav Radbruch and refined by modern legal scholars, establishes that law must provide clear, consistent, and predictable rules to effectively govern society. This theoretical framework emphasizes that legal certainty (*kepastian hukum*) serves as one of the three fundamental pillars of law, alongside justice (*keadilan*) and utility (*kemanfaatan*), as articulated by prominent Indonesian legal scholar

Sudikno Mertokusumo (2010). In the context of marriage law, legal certainty becomes particularly crucial as it directly affects individuals' fundamental rights and family relationships.

The principles of legal certainty in marriage law demand clear and unambiguous regulations regarding the validity, registration, and legal consequences of matrimonial unions. Hans Kelsen's Pure Theory of Law contributes significantly to this understanding through his concept of the "grundnorm" or basic norm, from which all other legal norms derive their validity. In Indonesian marriage law, this hierarchical structure is reflected in how various regulations must align with constitutional principles and the Marriage Law of 1974. However, as noted by Satjipto Rahardjo, the current framework presents significant gaps when addressing interfaith marriages, creating uncertainty that affects both the procedural and substantive aspects of such unions.

The protection of citizens' fundamental rights forms a crucial component of legal certainty theory. As elaborated by legal theorist Lon Fuller, law must meet certain criteria to provide adequate protection, including clarity, non-retroactivity, and consistency in application. In the context of interfaith marriage, these requirements become particularly significant as they intersect with constitutional guarantees of religious freedom and the right to form a family. The current legal framework's ambiguity regarding interfaith marriages potentially compromises these fundamental rights, creating what legal scholars term a "legal vacuum" that affects citizens' ability to make informed decisions about their marital choices.

Contemporary Indonesian legal scholars, including Mahfud MD and Maria Farida Indrati, have emphasized that legal certainty must be understood within Indonesia's unique constitutional framework. Their work suggests that while legal certainty is essential, it must be balanced with other constitutional values, particularly in cases involving religious and cultural diversity. This perspective is crucial when examining interfaith marriage regulations, as it highlights the need for clear legal provisions that respect both individual rights and religious principles. The application of legal certainty theory to interfaith marriage reveals several critical gaps in the current regulatory framework. The absence of explicit provisions regarding interfaith marriages in Law No. 1 of 1974 creates uncertainty in various aspects, including marriage registration procedures, the legal status of such unions, and the rights of spouses and children. This situation contradicts the basic principles of legal certainty, which require that laws should be clear, accessible, and provide predictable outcomes for citizens planning their lives. Recent judicial decisions and legal practices demonstrate the practical implications of this theoretical framework. Court decisions regarding interfaith marriages often vary, reflecting the

tension between maintaining legal certainty and accommodating religious diversity. This variation in judicial interpretation further underscores the need for clear legal provisions that can provide certainty while respecting Indonesia's pluralistic nature.

Human Rights Theory

Human rights theory, as developed through international instruments and scholarly work, establishes fundamental freedoms that are inherent, inalienable, and universal to all human beings. The theoretical framework, articulated by scholars such as Jack Donnelly and Martha Nussbaum, provides essential insights into understanding the intersection of religious freedom and family rights in the context of interfaith marriage. This intersection becomes particularly significant when examining the legal challenges faced by interfaith couples in Indonesia's religious-pluralistic society. The freedom of religion and belief, as interpreted by Manfred Nowak in his analysis of Article 18 of the International Covenant on Civil and Political Rights (ICCPR), encompasses not only the right to hold religious beliefs but also the freedom to manifest these beliefs in both private and public spheres. This interpretation gains particular relevance in Indonesia, where Article 29 of the 1945 Constitution guarantees religious freedom while simultaneously acknowledging the role of religion in public life. Scholars such as Todung Mulya Lubis have noted that this creates a complex dynamic between individual religious rights and communal religious values, especially in matters of marriage.

The right to form a family, established in Article 16 of the Universal Declaration of Human Rights and elaborated by scholars like Frans Viljoen, represents another crucial dimension of human rights theory. This right is reflected in Indonesia's constitutional framework through Article 28B, which guarantees every person the right to form a family and continue their lineage through legitimate marriage. However, as noted by Indonesian constitutional law expert Jimly Asshiddiqie, the implementation of this right becomes complicated when it intersects with religious considerations in cases of interfaith marriage.

Contemporary human rights discourse, as developed by scholars such as Abdullahi An-Na'im and Mashood Baderin, emphasizes the need to harmonize universal human rights principles with religious and cultural values. Their work is particularly relevant to Indonesia's context, where the state must balance its international human rights obligations with respect for religious laws and cultural traditions. This theoretical perspective suggests that protecting both religious freedom and the right to form a family requires careful consideration of how these rights can be implemented within Indonesia's unique religious and cultural context. The practical application of human rights theory to interfaith marriage reveals several tensions between individual rights and religious community rights. While international human rights

law emphasizes individual choice in matters of religion and family formation, religious laws often place restrictions on interfaith marriages. This creates what legal anthropologist Sally Engle Merry terms "vernacularization" of human rights, where universal principles must be translated into local contexts while maintaining their essential protective functions.

Recent scholarship by Indonesian human rights experts, including Siti Musdah Mulia and Yusril Ihza Mahendra, suggests that a progressive interpretation of human rights theory could provide a framework for resolving the challenges of interfaith marriage. Their work proposes that religious freedom and the right to form a family can be harmonized through legal reforms that respect both individual rights and religious values, while ensuring legal certainty for interfaith couples.

3. METHODS

Research Approach

This research employs a dual methodological approach combining normative juridical and empirical juridical methods to comprehensively analyze interfaith marriage in Indonesian positive law. The normative juridical approach examines legal principles, statutory regulations, and court decisions related to interfaith marriage, focusing particularly on Law No. 1 of 1974 on Marriage, relevant Constitutional Court decisions, and religious laws affecting marriage validity. Complementing this, the empirical juridical approach investigates the practical implementation and social impact of these legal frameworks through analysis of court decisions, marriage registration practices, and legal solutions adopted by interfaith couples. This combined methodology enables a thorough examination of both the theoretical legal framework and its practical application, providing insights into the gaps between legal provisions and social realities regarding interfaith marriage in Indonesia.

Data Sources

This research draws upon both primary and secondary data sources to ensure a comprehensive analysis of interfaith marriage in Indonesian law. Primary data sources comprise authoritative legal materials, including the 1945 Constitution of the Republic of Indonesia, Law No. 1 of 1974 on Marriage, relevant Constitutional Court decisions (particularly Decision No. 68/PUU-XII/2014), Supreme Court rulings on interfaith marriage cases, and various District Court decisions regarding marriage registration applications. Secondary data sources encompass scholarly works, including academic books on Indonesian marriage law and religious law, peer-reviewed journal articles examining legal pluralism and interfaith marriage, research papers analyzing judicial practices in marriage cases, and scientific articles discussing contemporary developments in Indonesian family law. This

combination of primary and secondary sources enables a thorough examination of both the formal legal framework and scholarly interpretations surrounding interfaith marriage in Indonesia.

Data Collection Methods

In the realm of legal research, comprehensive data collection requires a multifaceted approach that integrates several robust methodological strategies. A comprehensive methodology begins with an extensive literature review, which systematically examines existing scholarly publications, academic journals, legal treatises, and prior research to establish a foundational understanding of the research topic and identify existing knowledge gaps. Complementing this approach, legal document analysis provides critical insights by meticulously examining primary legal sources such as court judgments, statutory texts, regulatory frameworks, and legal precedents, enabling researchers to extract nuanced contextual information and track legal developments over time. To enrich the research with practical perspectives and ground theoretical findings in real-world experiences, interviews with legal practitioners—including judges, lawyers, legal scholars, and professional experts—offer invaluable qualitative data, providing insider perspectives, professional interpretations, and contextual understanding that cannot be gleaned solely from documentary sources. By triangulating these three diverse data collection methods, researchers can develop a comprehensive, multi-dimensional understanding of complex legal phenomena, ensuring a rigorous and holistic approach to legal research that balances theoretical analysis with practical insights.

4. RESULTS AND DISCUSSION

Legal Status of Interfaith Marriage

In the comprehensive examination of the legal status of interfaith marriage in Indonesia, the analysis reveals a complex and nuanced landscape shaped by Law No. 1 of 1974 on Marriage, which presents significant challenges for couples seeking to formalize their union across religious boundaries. The research findings demonstrate that the current legal framework predominantly restricts interfaith marriage, with the law's provisions primarily recognizing marriages between individuals of the same religious background, thereby creating substantial bureaucratic and administrative hurdles for interfaith couples. An in-depth investigation of marriage registration practices uncovers a systematic approach where religious institutions and civil registrars consistently apply stringent interpretations of the existing legal statutes, often requiring couples to convert to a single religion or seek alternative legal

mechanisms such as civil registration abroad. The analysis of jurisprudence further illuminates the judicial perspective, revealing a pattern of court decisions that largely uphold the restrictive interpretation of marriage laws, with few landmark cases challenging the established legal norm. These findings not only highlight the current legal constraints but also underscore the tension between constitutional guarantees of religious freedom and the practical implementation of marriage regulations, suggesting a critical need for legal reform that can accommodate the evolving social dynamics and diverse relationship structures in contemporary Indonesian society.

Juridical Implications

The juridical analysis of interfaith marriage reveals a multifaceted and intricate legal landscape with profound implications for marital status, spousal rights, and familial legal standing. The research uncovers significant challenges in establishing the legal status of marriages contracted across religious boundaries, where existing legal frameworks create substantial ambiguity and potential legal vulnerabilities for interfaith couples. Critically, the examination of spousal rights and obligations demonstrates that these couples often face complex legal uncertainties, with traditional legal mechanisms struggling to provide comprehensive protections and clearly defined rights within the current juridical system. Of particular concern are the implications for children born from such marriages, who frequently encounter complex challenges regarding their legal status, inheritance rights, and civil recognition, often existing in a legal liminal space that compromises their fundamental legal and social entitlements. The civil registration process further compounds these challenges, with administrative procedures predominantly designed around traditional, religiously homogeneous marriage models, thereby creating additional bureaucratic barriers that effectively marginalize interfaith couples and their offspring. These findings ultimately expose a critical gap between evolving social realities and the existing legal infrastructure, highlighting an urgent need for comprehensive legal reforms that can adequately address the nuanced legal complexities of interfaith marriages and ensure equitable legal protections for all individuals, regardless of their religious differences.

Legal Harmonization

The investigation into legal harmonization surrounding interfaith marriage reveals a complex interplay between national legal frameworks and the imperative of protecting civil rights in a pluralistic society. The research uncovers ongoing efforts to reconcile existing legal statutes with the constitutional principles of religious freedom and individual rights, highlighting the challenging process of creating a more inclusive legal environment. National

legal harmonization attempts demonstrate a gradual, yet often inconsistent, approach to addressing the intricate legal challenges posed by interfaith marriages, with policymakers struggling to balance traditional religious norms with contemporary social realities. The analysis reveals that while there is a growing recognition of the need to respect pluralism, the current legal landscape remains largely fragmented, failing to provide comprehensive protection for interfaith couples' civil rights. Efforts towards legal harmonization are characterized by incremental and tentative steps, with significant resistance from conservative legal and religious institutions that continue to prioritize traditional interpretations of marriage and religious uniformity. These findings underscore the critical need for a more holistic and progressive legal framework that can effectively recognize and protect the rights of individuals in interfaith relationships, ultimately promoting a more inclusive and equitable approach to marriage and civil rights in a diverse society.

5. CONCLUSION AND RECOMMENDATION

Conclusion

1. Interfaith marriage remains in a legal grey area within Indonesian positive law

The research unequivocally demonstrates that interfaith marriage in Indonesia remains entrenched in a profound legal grey area within the current positive law framework, characterized by complex regulatory ambiguities and systemic legal uncertainties. Existing legal provisions fail to provide clear, comprehensive guidelines for interfaith couples, creating a challenging landscape where marriages across religious boundaries encounter significant legal obstacles and administrative barriers. This legal liminal space not only compromises the legal status of interfaith couples but also exposes fundamental gaps in the current juridical system, highlighting the urgent need for legislative reform that can adequately address the nuanced complexities of marriage in a diverse and pluralistic society. The research reveals that the current legal framework, rooted in traditional interpretations and restrictive regulatory approaches, effectively marginalizes interfaith couples, denying them full legal recognition and protection, and underscoring the critical disconnect between evolving social realities and existing legal infrastructure.

2. There is an urgent need for clearer regulations

The research emphatically underscores the critical and urgent necessity for developing clearer, more comprehensive regulations surrounding interfaith marriage in Indonesia. The current regulatory landscape is characterized by ambiguity, inconsistency, and a profound lack of explicit legal guidance, which creates significant challenges for interfaith couples seeking

to formalize their unions and secure their legal rights. This regulatory vacuum not only impedes the legal recognition of interfaith marriages but also generates substantial administrative, social, and personal complications for individuals attempting to navigate the complex intersections of marriage, religion, and civil rights. The pressing need for well-defined, nuanced, and inclusive regulations is evident, requiring a sophisticated legislative approach that can effectively balance respect for religious diversity, cultural traditions, and fundamental human rights principles. By developing clear, comprehensive, and adaptable legal frameworks, policymakers can address the existing regulatory gaps, provide legal certainty for interfaith couples, and create a more just and equitable legal environment that reflects the complex social realities of contemporary Indonesian society.

3. Harmonization between national law, religious law, and human rights is necessary

The research compellingly demonstrates the critical necessity of achieving comprehensive harmonization among national law, religious legal frameworks, and fundamental human rights principles in addressing the complexities of interfaith marriage in Indonesia. This intricate process of legal reconciliation requires a nuanced and sophisticated approach that transcends traditional regulatory boundaries, seeking to create a cohesive legal ecosystem that respects religious diversity while simultaneously protecting individual civil rights. The proposed harmonization must carefully balance the deeply entrenched religious normative systems with contemporary human rights standards, recognizing the fundamental need to create a legal framework that is both culturally sensitive and progressively inclusive. By bridging the existing gaps between national legislative provisions, religious interpretations, and universal human rights principles, policymakers can develop a more adaptive and comprehensive legal approach that acknowledges the complex social realities of a pluralistic society, ultimately promoting legal certainty, social justice, and individual dignity for interfaith couples and their families.

Recommendation

1. Development of specific regulations on interfaith marriage

The research strongly recommends the comprehensive development of specific, detailed regulations addressing interfaith marriage that can provide clear legal guidance and comprehensive protection for couples navigating complex religious and legal boundaries. These proposed regulations should encompass a holistic approach that systematically defines legal procedures for interfaith marriage registration, establishes clear mechanisms for civil documentation, and provides explicit protection of spousal and children's rights across religious differences. The regulatory framework must balance constitutional principles of religious

freedom with practical administrative requirements, creating a transparent and accessible process that respects individual choice while maintaining legal integrity. Specifically, the regulations should include precise provisions for marriage validation, civil registration protocols, inheritance rights, child legitimacy, and mechanisms for resolving potential legal disputes, thereby eliminating the current ambiguities that marginalize interfaith couples. By developing such targeted and nuanced regulations, Indonesia can create a more inclusive legal environment that recognizes the evolving social dynamics of marriage, promotes individual rights, and provides a robust legal foundation for interfaith families in a diverse and pluralistic society.

2. Strengthening the capacity of marriage registration institutions

The research strongly recommends a comprehensive approach to strengthening the capacity of marriage registration institutions to effectively handle the complexities of interfaith marriages. This capacity-building initiative should focus on multifaceted professional development strategies, including specialized training programs that equip registration officers with advanced legal knowledge, cultural sensitivity, and comprehensive understanding of the nuanced legal frameworks surrounding interfaith marriages. The proposed capacity-building efforts must encompass comprehensive education on constitutional rights, updated legal interpretations, and practical administrative protocols that can navigate the intricate challenges of interfaith union documentation. Institutions should develop specialized units with expertise in handling diverse marriage scenarios, implement robust technological infrastructure to streamline registration processes, and create standardized guidelines that ensure consistent, transparent, and equitable treatment of interfaith couples. Moreover, these capacity-building initiatives should include ongoing professional development, cross-institutional collaboration, and regular legal update training to ensure that marriage registration institutions remain adaptive, responsive, and capable of addressing the evolving social and legal landscapes of marriage in a diverse and dynamic society.

3. Harmonization of related legislation

The research strongly recommends a comprehensive and systematic harmonization of related legislation to address the complex legal challenges surrounding interfaith marriages in Indonesia. This legislative harmonization must involve a multi-stakeholder approach that critically examines and reconciles existing legal frameworks across national laws, religious regulations, and human rights statutes to eliminate contradictory provisions and create a coherent, inclusive legal ecosystem. The proposed harmonization strategy should focus on identifying and resolving legislative inconsistencies, particularly in areas such as marriage

registration, civil documentation, spousal rights, inheritance, and child legitimacy, ensuring that legal provisions across different regulatory domains are mutually supportive and aligned with constitutional principles of religious freedom and individual rights. By developing a holistic legislative approach that bridges existing legal gaps and creates a more unified regulatory framework, policymakers can provide clearer legal guidance, reduce administrative barriers, and establish a more equitable legal environment that respects the diverse social realities of interfaith couples while maintaining the integrity of legal and cultural traditions.

4. Enhancement of public legal awareness

The research strongly recommends a comprehensive strategy for enhancing public legal awareness regarding interfaith marriage, focusing on multifaceted educational initiatives that can effectively inform and empower citizens about their legal rights, challenges, and available mechanisms. This public awareness campaign should leverage diverse communication channels, including targeted media programs, community workshops, digital platforms, and collaborative partnerships with educational institutions, legal organizations, and community leaders, to disseminate accurate, nuanced information about the legal complexities of interfaith marriages. The proposed awareness enhancement should address critical aspects such as legal procedures, constitutional rights, potential administrative challenges, and the importance of understanding legal frameworks in navigating interfaith marital contexts. By developing an inclusive, accessible, and culturally sensitive approach to legal education, the initiative aims to demystify legal complexities, reduce societal stigma, and empower individuals with the knowledge necessary to make informed decisions about interfaith marriages. Furthermore, this comprehensive awareness strategy should prioritize creating platforms for dialogue, promoting understanding, and fostering a more inclusive social environment that respects individual choice, religious diversity, and fundamental human rights.

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