

## LEGAL ANALYSIS OF THE REJECTION REGISTRATION INTERFAITH MARRIAGES

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### **Abstract**

*The purpose of this journal is to find out about the problem of the legal position of interfaith marriage which shows that interfaith marriage is prohibited or normatively not regulated and is not recognized by the state and cannot be registered based on positive law. Research method uses a normative juridical approach, secondary data types, data collection methods that are carried out by literature, and the internet. While the data analysis method was analyzed descriptively qualitatively. The research results obtained indicate that the legal provisions of marriage, either express or implicitly, do not regulate the granting of marriage between followers of different religions. This is because marriage is prohibited between two people who have a relationship which by their religion or other regulations prohibited from marriage does not mean that the provisions in Islam prohibit interfaith marriage, so interfaith marriage is prohibited so that marriages that are carried out under religious law are not legitimate*

**Keyword:** *Interfaith Marriages; Legal Analysis; Rejection Registration;*

### **A. INTRODUCTION**

Marriage is the union of two souls between a man and a woman into one unit in a harmonious household. A household that is fostered with the same vision and mission to create a life that is *sakinah, mawaddah* and *rahmah*. In a simple society the culture of marriage is in a simple, narrow and even closed form, while in a modern society the culture of marriage is advanced, broad and open.<sup>1</sup> This conjugal bond will not last if it is built

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<sup>1</sup> Hilman Hadikusuma, *Hukum Perkawinan Indonesia menurut Perundangan, Hukum Adat, Hukum Agama*, Mandar Maju, Bandung, 2003, Page.1

without having the same vision and mission or perspective. The purposes of marriage are: to appease (calm) the soul, to preserve offspring, to meet biological needs and to carry out practical exercises in assuming responsibility.<sup>2</sup>

The interfaith marriage eventually became a polemic alone. Proper social dynamics get attention in case interfaith marriage.<sup>3</sup> In Islam there are 4 factors that need to be considered in finding a mate, namely having to pay attention to religion, lineage, property, and face. Among these four the main principles are religious issues. In Indonesia, the marriage law adheres to religious law. We can read this in Article 2 paragraph (1) of Law no. 1 of 1974 concerning Marriage as amended by Law No. 16 of 2019, which reads: "Marriage is valid if it is carried out according to the law of each religion and belief". This implies that this marriage must use the provisions of their respective religions. The provisions of Article 2 paragraph (1) are in line with Article 29 of the 1945 Constitution, namely: 1) The country is based on the One Godhead, 2) The state guarantees the freedom of every citizen to embrace his own religion and to worship according to his religion and belief. In other words, Article 29 of the 1945 Constitution is the basis for the philosophy of the birth of the Marriage Law. In addition, Article 29, if understood, implies that for religious believers to believe in and practice the teachings of their religion properly (*kaffah*).

Interfaith marriage is a physical and spiritual bond between a man and a woman of different religions and countries causes the union of two different regulations regarding terms and procedures for implementation according to their respective religious laws, to form a happy family and eternal based on God Almighty.<sup>4</sup> Apart from Article 2 paragraph (1), we can also read in Article 8 letter (f) which states that: "marriage is prohibited between two people who have a relationship which is prohibited by their religion or other applicable regulations". Observing Article 2 paragraph (1) and Article 8 letter (f), marriage in Indonesia must adhere to religious provisions, meaning that if religion prohibits something from being done then it becomes a legal provision that must be obeyed by its adherents. Thus normatively interfaith marriages are not regulated in the Marriage Law.

Apart from the marriage, it must fulfill the validity of the marriage as regulated in Article 2 paragraph (1), it must also be registered (Article 2 paragraph (2)). These records are administrative in nature but have important legal consequences. For Muslims, the recording is done at the Indonesian religious Affairs office, while for religions other than Islam, the registration is done at the Civil Registry Office. Therefore, based on the provisions of the two articles, a marriage between two people of different types of different religions is considered invalid. Apart from that, does the

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2 Maria Ulfah, Wanita Hamil Di Luar Nikah (Status Anak), *Jurnal Pembaharuan Hukum, Volume II No.3 September-Desember 2015*, Page.329-334

3 Ahmad Hasanudin Dardiri, Muhammad Irham Roihan, Weddings of Different Religion In View of Islam and Human Right Perspective, *Khazanah, Volume 6 No. 1, June 2013*, Page.100

4 Nur Asiah, Legal Review Of Different Religious Marriage Laws And Islamic Law, *Samudera Keadilan Journal*, Volume 10, No. 2 December 2015, Page.206

Civil Registry Office want to record marriages with different religions, as the Surakarta Civil Registry Office has refused to register marriages because the files are incomplete? Why is it not complete? because one of the requirements for a marriage registration application must include a marriage blessing certificate or a marriage certificate from a religious leader. This of course cannot be fulfilled by the parties because they have to include proof of marriage from religious leaders, so by law, the parties must apply for permission to marry between religions in court. This has become a separate polemic in marriage law, and it is interesting to study from a legal perspective.

The purpose of this journal is to find out about the problem of the legal position of interfaith marriage which shows that interfaith marriage is prohibited or normatively not regulated and is not recognized by the state and cannot be registered based on positive law.

## **B. RESEARCH METHODS**

Research method uses a normative juridical approach, secondary data types, data collection methods that are carried out by literature, and the internet. While the data analysis method was analyzed descriptively qualitatively. Secondary data obtained in this study will be analyzed in a descriptive qualitative manner, namely the data are arranged systematically as a composition of facts to build arguments whether or not interfaith marriage is regulated in positive law in Indonesia.

## **C. RESULT AND DISCUSSION**

### **1. The Legal Position of Marriages with Different Religions in Indonesia**

Indonesian people realize the nature of their humanity, that is, as intelligent beings, the understanding of the values of God, religion and theology is not based on dogma, force or pressure, but is a rational understanding. Indonesian people always use their minds to the maximum in order to be able to understand the nature of God, nature, and humans. It is the result of thinking that gives birth to philosophy. Thus, the philosophy of jurisprudence is a part of Indonesian jurisprudence which examines truth and ultimate truth on the basis of ratio. It is this philosophical truth and justice that further drives the emergence of various ideas, concepts or ideas in the Indonesian people concerned. An Indonesian legal ideology is an ideology rooted in the value of Godhead.<sup>5</sup>

In interfaith marriages, the methods achieved include one of the partners following the partner's religious beliefs and getting married according to the partner's religion. The forms of conversion of religious beliefs that can be carried out by a couple can marry their partner, namely: 1). Conversion of religion is only in the form of proforma to fulfill the requirements so that the marriage can be carried out and legally

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5 Dini Amalia Fitri, Pancasila As A Legal Science Paradigm, *International Journal of Law Reconstruction*, Volume 3, Issue II, September 2019, Page.123-133

disfigured, but then after the marriage takes place one goes to his original religious belief and continues to observe the rules of his religion. Cases of interfaith marriage in a way that happens to many people, causing disruption to household and family life in the future; 2). Truly sincere marriages convert their religious beliefs and carry out their teachings permanently in their married and family life; and 3). Each partner still maintains his religious beliefs. Marriage is carried out according to each religion, it could be that in the morning the wedding takes place according to the religious belief of one of the partners, and in the afternoon or evening there is another marriage according to another religion.<sup>6</sup> Marriage in this way is also widely carried out with the risk that each partner living together in the marriage continues to practice their respective religious beliefs. The absence of a strict and explicit religious marriage regulation in the Marriage Law, including its registration, has resulted in legal uncertainty. If such a case actually occurs, the legal status of the marriage will be unclear.<sup>7</sup>

In accordance with the foundation of the Pancasila philosophy and the 1945 Constitution and the ideals for the development of national law, it is necessary to have a law on marriage. This is because before Law No.1 of 1974 was promulgated, in Indonesia regarding pluralistic marriage regulations (marriage is regulated at *Burgerlijk Wetboek, Huwelijk Ordonnantie Christen Inlanders, Staatsblad 1929 Number 348* concerning Marriage and Divorce for Muslims in Java and Madura). Based on this, efforts towards the unification of national law were carried out until finally on January 2, 1974, Act No. 1 of 1974 on Marriage with State Gazette 1974 Number 1, TLN Number 3019 was promulgated.

With the announcement of Act No.1 of 1974, the existing marriage regulations are no longer enforced. This statement is regulated in Article 66 of Law No. 1 of 1974. Thus Law No. 1 of 1974 as amended by Law No. 16 of 2019 is a positive law currently in effect in Indonesia and for Indonesian citizens.

In Article 1 of Act No.1 of 1974 concerning Marriage as amended by Law No. 16 of 2019, (here in after referred to as the Marriage Law) it is stated that: "Marriage is a physical and mental bond between a man and a woman as husband and wife with the goal of forming a happy and eternal family (household) based on the One Godhead." Based on the definition of marriage, marriage is a physical and mental bond, not just a physical bond and not just a mental bond, but must be both, and has the goal of forming a happy and eternal family based on God Almighty, which implies that marriage is not limited time and based on one God, in other words, the same religion. This can be read in the explanation of Article 1 of the Marriage Law, that: "As a country based on Pancasila,

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6 Abdul Rahman, *Kompendium Bidang Hukum Perkawinan Perkawinan Beda Agama dan Implikasinya*, Badan Pembinaan Hukum Nasional, Kementerian Hukum dan HAM, Yogyakarta, 2011, Page.12.

7 Muhammad Ashsubli, Undang-Undang Perkawinan Dalam Pluralitas Hukum Agama (Judicial Review Pasal Perkawinan Beda Agama), *Jurnal Cita Hukum, Vol.3 No.2(2015)*, Page.289-302

where the precepts which are the first is the divinity of the Almighty, then marriage has a very close relationship with spirituality so that marriage not only has a physical or physical element, but an inner or spiritual element also has an important role”.

Also, the above understanding is related to Article 2 paragraph (1) which reads: "Marriage is valid, if it is carried out according to the law of each religion and belief". This means that the marriage is valid according to their respective religions. For example: for a person who is Muslim, his marriage uses the provisions of the Islamic religion, which is carried out with the consent of the Kabul and the terms of marriage are fulfilled so that the marriage is valid according to Islam as well as for a Christian whose marriage is carried out by sacraments in the Church, so the marriage is valid according to religion. Christian. Thus Article 2 paragraph (1), apart from containing the validity of marriage, also implies that the marriage is carried out with one religion.

Whereas in Hinduism, interfaith marriages are not allowed, if one of the prospective brides is non-Hindu then he must convert to Hinduism before the marriage is carried out.<sup>8</sup> Another case with Buddhism, interfaith marriage in Buddhist teachings is not prohibited, as long as the marriage is legalized according to Buddhist procedures. In this case, the non-Buddhist party is not required to convert to Buddhism first, but in the marriage ceremony, the bride and groom are required to say the sentence "in the name of the Buddha, the Dharma and the Sangha" which are Buddhist deities.<sup>9</sup> Based on the explanation above, the validity of interfaith marriage depends on whether or not religion allows interfaith marriage.

Meanwhile, if the marriage is carried out abroad, usually the countries chosen as the place to conduct the marriage are Australia, Singapore, Hong Kong, and the United States. These countries are countries that adhere to the Common Law legal system, which in matters of personal status uses the principle of domicile. With this principle, a citizen of any country, if he is domiciled in these countries in terms of personal status, must comply with the laws of the country of domicile.<sup>10</sup>

In their marriage law, these countries do not adhere to religious law but civil law. Arriving in Indonesia, the marriage must be registered at the Civil Registry Office, in this case the civil registry office does not issue a marriage certificate, because the marriage certificate has been issued by the country where the marriage took place.<sup>11</sup> This fulfills the provisions in Article 56 paragraph (2) which basically states that within 1 (one) year after returning to the territory of Indonesia, proof of marriage must be registered at the Marriage Registration Office. In accordance with the duties of the civil registry office, which only registers and

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8 Sri Wahyuni, *Pernikahan Beda Agama Kenapa Keluar Negeri*, Pustaka Alvabet, Jakarta, 2016, Page.121

9 *Ibid.*

10 *Ibid.*

11 *Ibid.*

records all legal events experienced by Indonesian citizens, interfaith marriages are included in the overseas marriage registration data. Interfaith marriages held abroad can be said to be an act of smuggling of the law, meaning that they are looking for laws in other countries that provide more convenience because to avoid laws in Indonesia which are considered to complicate the implementation of the marriage and its registration.

Interfaith marriages that are carried out abroad will also cause a separate legal polemic. Based on Article 2 paragraph (1) of the Marriage Law, marriage law in Indonesia is based on religious law, so marriages that are carried out abroad which are not based on religious law, upon arrival in Indonesia, will present their own legal problems. We can read this in the provisions of Article 56 paragraph (1) of the Marriage Law: "A marriage carried out outside Indonesia between two Indonesian citizens or an Indonesian citizen and a foreign citizen is legal if it is carried out according to the laws in force in the country. where the marriage takes place and for Indonesian citizens, it does not violate the provisions of this law". This means that interfaith marriages that are carried out abroad should not conflict with the law of marriage in Indonesia.

Alternatively, the parties can request a court order, this solution is provided by Article 35 letter (a) of Law No. 23 of 2006 as amended by Law Number 24 of 2013 concerning Population Administration which reads as follows: "The registration of marriage as referred to in Article 34 also applies to marriages determined by the court". In the elucidation of Article 35 letter a, it reads: "What is meant by a marriage determined by the court is a marriage between people of different religions". Thus the parties who are going to get married while sticking to their respective religions (different religions) must submit an application to the court first.

In the Compilation of Islamic Law, the prohibition of interfaith marriage is strictly regulated in Article 40 (c) and Article 44. Article 40 letter (c) regulates the prohibition of marriage between a Muslim man and a woman who is not a Muslim (non-Muslim), while Article 44 of the KHI reads: "A Muslim woman is prohibited from getting married to a man who is not a Muslim". Considering that the issue of interfaith marriage is very sensitive and especially for the Muslim religion which views marriage as a sacred or sacred bond and has religious values, the Supreme Court feels the need to issue a circular dated 30-1-2019 number 231 / PAN / HK05 / 1 / 2019 which in point 2 describes the matter of recording interfaith marriages: "Interfaith marriage is not recognized by the state and cannot be registered, but if the marriage is carried out based on the religion of one partner and the other partner submits to the religion of his partner, then the marriage can be registered.

## **2. Reasons for the rejection of registration of marriages with different religions by the Civil Registry Office**

General Law No. 24 of 2013 states that: The Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia is essentially obliged to provide protection and recognition of legal status for Population Events and Important Events experienced by residents. Law No. 23 of 2006 which has been amended by Law No. 24 of 2013 concerning Population Administration is an elaboration of the mandate of Article 26 paragraph (3) of the 1945 Constitution of the Republic of Indonesia and also as a philosophical basis aimed at realizing an orderly Population Administration by establishing a national population database as well as the validity and truth of published population documents.

Based on the basic philosophy of the birth of Law no. 23 of 2006, which wants to realize an orderly administration and protection as well as recognition of status for the Indonesian population, then in Part Three Paragraph I of Law No. 23 of 2006 as amended by Law No. 24 of 2013 concerning the Registration of Marriage in the Territory of the Unitary State of the Republic of Indonesia. Article 34 paragraph (1) states that "a marriage which is legal based on the provisions of the statutory regulations must be reported by the population to the Implementing Agency at the place where the marriage took place no later than 60 days from the date of marriage".

Meanwhile, Article 34 paragraph (2) states that: "Based on the report as referred to in paragraph (1) Civil Registration Officials shall record the marriage certificate register and issue the Marriage Certificate Quotation".

In conclusion, every important event experienced by the population must be reported or recorded at the Implementing Agency, namely the Civil Registry Office. The duties of the civil registry office according to Article 1 letter (15) of Law No. 24 of 2013 Amendments to Law Number 23 of 2006 concerning Population Administration are : "Disabling an important event experienced by a person in the Civil Registration register at the Implementing Agency.

In the case of a marriage and divorce registration for a Muslim person, it is no longer registered at the civil registry office. This provision is regulated in Chapter II Marriage Registration Article 2 paragraph (1) Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning Implementation of Law Number 1 of 1974 concerning Marriage which reads :

"Registration of marriage of those who are married according to the Islamic religion is carried out by the Registrar as referred to in Law No 32 of 1954 concerning Registration of Marriage, Divorce, and Reconciliation".

The provisions for this record are also regulated in Article 5 paragraph (1) of the Compilation of Islamic Law, which reads: "To

ensure orderliness of marriage for Muslims, every marriage must be recorded".

Based on the normative study above, it is clear that the civil registry office only must record important events experienced by Indonesian citizens, regardless of their legal status of marriage, nor as an institution for getting married. However, the reality is that the Department of Population and Civil Registration of Surakarta City has refused to register interfaith marriages.

The reason for the refusal given by the Department of Population and Civil Registration of the City of Surakarta when we examine it is only as a mechanism that is deliberately made to become material for filing requests in court. This is in response to Article 35 letter (a) of Law No. 23 of 2006 as amended by Law Number 24 of 2013 concerning Population Administration which reads as follows: "The registration of marriage as referred to in Article 34 also applies to marriages established by the court".

In general, interfaith marriages are very problematic in legal matters in good condition, both within the husband and wife pair themselves and with external / third parties, including the inheritance rights of children born from interfaith marriages. The validity of marriage which will give rise to rights and obligations between husband and wife. The right of the wife to support and share assets depends on the existence of a legal marriage as a legal basis, as well as from a legal marriage that will give birth to legitimate children. This is because children born from illegal marriages only have a legal relationship with their mother. As regulated in Article 43 paragraph (1) of the Marriage Law, the child who is outside of marriage only has a civil relationship with the mother so that all rights of the child towards the father will be lost and will be invalid by law. The right to care for children owned by the parents, will only be approved by the parents with a legal marital status.<sup>12</sup>

Responding to the reality of interfaith marriage, the solution provided by Article 35 letter (a) of Law No. 23 of 2006 as amended by Law Number 24 of 2013 concerning Population Administration which reads as follows: "The registration of marriage as referred to in Article 34 also applies to marriages determined by the court". Meanwhile, the elucidation of Article 35 letter reads "What is meant by a marriage determined by the court is a marriage between people of different religions".

Thus, based on the elucidation of Article 35 letter (a) for couples of different religions to be able to carry out their marriage, they are required to submit an Application for Marriage with Different Religions to the Court.

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12 Mardalena Hanifah, Perkawinan Beda Agama Ditinjau dari Undang-undang Nomor 1 Tahun 1974 Tentang Perkawinan, *Soumatara Law Review*, Volume 2, Nomor 2, 2019, Page.297-308



### **3. Judge's decision regarding interfaith marriage**

The judge has to accept, examine and decide every case brought to him. From this provision, the judge may not reject it because the law does not exist or the law is vague. The judge must decide objectively and fairly on the cases brought to him. Likewise, the application for refusal to register interfaith marriage was made by the civil registry office.

As stated in Article 35 letter (a) of Act No. 23 of 2006 as amended by Law Number 24 of 2013 concerning Population Administration which reads as follows: "The registration of marriage as referred to in Article 34 also applies to marriages determined by the court". Marriages determined by this court are interfaith marriages, thus the prospective bride and groom must first apply for permission to marry between religions to the court.

In this case, the Petitioner has applied for permission to marry between religions to the Chairperson of the Surakarta District Court, dated December 4, 2013, the applicant has submitted the following reasons:

- a. that the applicants have agreed with each other to carry out the marriage which is planned to be held before the staff of the Surakarta City Civil Registry Service;
- b. that the respective applicants remain in their position to carry out the marriage while remaining in their respective beliefs, by submitting an application for permission to the Surakarta District Court which refers to Article 1 of Law Number 1 of 1974 in conjunction with Article 35 letter (a) of Law -Law Number 23 of 2006 concerning Population Administration and its explanations;

Based on the reasons submitted, the applicant requests the Chairperson of the Surakarta District Court to accept, examine, and issue the following decisions:

- a. grant the petitioners' petition;
- b. permit the applicants to have interfaith marriages at the Office of Population and Civil Registry of Surakarta City;
- c. ordered the Department of Population and Civil Registry of the City of Surakarta to record the interfaith marriages of the aforementioned applicants into the Marriage Registration Register used for this.

After going through the stages of the trial process, the judge granted the applicant's application with Stipulation Number: 481 / Pdt.P / 2013 / PN.Ska. The legal considerations in Stipulation number: 481 / Pdt.P / 2013 / PN.Ska is as follows:

Considering, that according to the judge's observations during the trial, there were facts that the petitioners had agreed to marry to form an eternal and eternal household;

Considering, whereas the petitioners' intentions have been corroborated by documentary evidence and witnesses, only that the

marriage cannot be carried out immediately before the authorized official, due to religious differences, namely Petitioner I is Muslim while Petitioner II is Christian;

Considering, that both Petitioner I and Petitioner II remain in the establishment of their respective religions and still wish to marry to form an eternal and eternal family or household, but according to the Marriage Law it is impossible to implement, but if the purpose and objective of the applicant is if it is not implemented, there will be a life together as husband and wife without any marriage ties, aka "cohabitation";

Considering, that to avoid "cohabitation" and legal vacuum in the Marriage Law, it is necessary to establish an emergency exit to fill the legal vacuum;

Considering, that judges have the right and need to find laws by following the decision of the Supreme Court of the Republic of Indonesia dated January 20, 1989, No.1400 K / Pdt / 1986, which says "..... granted the petition of the petitioners (husband and wife candidates) ..... "; Considering, that to support an orderly administration and so that there is no legal vacuum in the Marriage Law, applicants are given dispensation to carry out marriage without being based on the provisions of religion, both Applicant I and Petitioner II (Circular of the Minister of Home Affairs No. 477 / 2535 / POUD, dated 25 July 1990); Considering, whereas based on the above considerations, the petitioners' petition should be granted; Based on the judge's consideration, the judge subsequently stipulated in the Letter of Decision as follows:

- a. Granted the Petitioners' petition;
- b. Give permission or dispensation or approval to the Petitioners to get married without being based on the provisions of a religion;
- c. Permit the Petitioners to be able to get married at the Office of Population and Civil Registry of Surakarta City;
- d. Instructing the Employees of the Office of Population and Civil Registration of the City of Surakarta to marry the Petitioners and record them in the Marriage Book that is currently running;

The Marriage Law does not specifically regulate interfaith marriage, but the prohibition is contained in Article 2 paragraph (1), Article 8 letter (f), Article 20, Article 21 paragraph (1) of the Marriage Law. However, the reality is that many interfaith marriages are practiced in the community. This is a social problem in society that must find a way out. The Marriage Law provides a solution through Article 21 paragraph (3), namely that parties whose marriage is rejected by a marriage registrar, have the right to apply to the court. Why in Court? because a court is a place where people seek justice for the case at hand, thus a judge may not reject a case brought to him because the law does not exist or the law is vague. Although it is clear that interfaith marriages are prohibited (in principle all religions in Indonesia prohibit

interfaith marriages), judges must try and resolve interfaith marriage cases using judges having to find the law.<sup>13</sup>

Thus in Stipulation Number 481 / Pdt.P / 2013 / PN.Ska, the judge based / found the law on the Supreme Court decision number: 1400K / PDT / 1986 which stated that the Civil Registration Office was allowed to carry out interfaith marriages, after fulfilling these conditions. the terms of marriage according to the law. Judges' considerations in the decision of the Supreme Court Reg. Number 1400 K / Pdt / 1986 in deciding the application for interfaith marriage between Andi Vonny and Andrianus Petrus, among others, is because the Marriage Law has a legal vacuum. Referring to Article 2 paragraph (1) in conjunction with Article 10 paragraph (2) Government Regulation no. 9 of 1975, which states "the procedure for marriage is carried out according to the law of each religion and belief", only applies to marriages that are conducted by 2 people of the same religion.

Thus, the judges of the Supreme Court think that it is not justified in the absence of a legal vacuum and thus leave these social problems not legally resolved. If it is left unchecked, it will cause negative impacts in social and religious life in the form of smuggling of social and religious values and / or positive law. Thus, the law must be found and determined. Resolved the legal vacuum through the legislative process will obviously require a very complicated, expensive and time-consuming process. That situation is where the position and position of the judge is very important. Judges act as interpreters, inventors, as well as breakers in a legal case. In the context of the application of customary law by judges, the education system and the national transfer system that move from one region to another with different customary laws directly and indirectly affect the way judges perceive them in formulating court decisions.<sup>14</sup>

Also, the judge considered the provisions of Article 10 paragraph (3) of the Government Regulation of the Republic of Indonesia Number 9 of 1975 which reads: "With due observance of the marriage procedure according to the respective laws of religion and belief, the marriage shall be carried out in front of a Registry Officer and attended by two witnesses" . In this case, the registrar in question is a marriage registrar at the Civil Registry Office, because the woman (who is Muslim) applies to the Civil Registry Office, it can be interpreted that she does not use Islamic religious procedures. This is based on Article 2 paragraph (2) Government Regulation Number 9 of 1975.

If the marriage is carried out in front of a marriage registrar employee (in this case at the civil registry office) the marriage is carried

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13 Wedya Laplata, Implementation of Different Religious Marriage in a Juridic Perspective (Case Study In Surakarta State Court), *Jurisprudence Journal*, Volume 4, No. 2, September 2014. Page.75-84.

14 Budi Suhariyanto, Problema Penyerapan Adat oleh Pengadilan dan Pengaruhnya Bagi Pembaruan Hukum Pidana Nasional, *Mimbar Hukum*, Volume 30, Nomor 3, Oktober 2018, Page.421-436

out in what manner? Is it enough to collect administrative requirements and record and create a marriage certificate? or using a blessed wedding at church, if this is what is being done, why not initially subject one of the partners to the religion of the other. Why do laws and courts provide the solutions described above? because our country is based on law, all the activities of its citizens must be organized so that it is orderly, and the court is an institution for citizens to seek solutions to problems at hand, judges may not reject cases brought to them. In this case the judge is required to find, construct, create and interpret the law, as in completing the application for interfaith marriage as described above.

In the concept of human rights, it means to give freedom to marry regardless of religion. This is contrary to Law no. 1 of 1974, which states that it must be done in accordance with their respective religions. The explanation of this law was further strengthened by the existence of Law No. 39 of 1999. In article 50 of this Law, a clause states that "Women who are adults and / or who have been married have the right to carry out legal actions themselves, unless stipulated otherwise by their religious law."<sup>15</sup>

The implementation of interfaith marriage in Indonesia is contrary to human rights values, namely regarding freedom of religion and freedom to form a family with a legal marriage. In fact, the difficulty in implementing interfaith marriage in Indonesia is not due to strict prohibition, but rather at the level of interpretation and technical procedures among marriage registrars. Therefore, the procedures for implementing interfaith marriage should be strictly regulated, to accommodate human rights regarding religious freedom and freedom to form a family with a legal marriage.<sup>16</sup>

The legal consequences that arise in interfaith marriages in Indonesia are viewed in psychological and juridical aspects. The psychological aspects that occur are the waning of households that have been fostered for dozens of years, the emergence of differences of opinion in fostering a happy household, which becomes tenuous due to the problem of differences that come and go. A child's mental disruption due to confusion about which religion to follow due to parental competition in influencing the child. And in terms of juridical aspects, the legal consequences of interfaith marriages are seen from the juridical aspect, namely the legality of interfaith marriages and the status of children in interfaith marriages. Likewise, divorce that occurs due to problems of differences of opinion and belief in the household and inheritance that occurs in interfaith marriages cannot be accepted by the heirs due to the relationship between religious differences.

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15 Ahmadi Hasanuddin Dardiri, Marzha Tweedo, Muhammad Irham Roihan, *Pernikahan Beda Agama Ditinjau Dari Perspektif Islam dan HAM, Khazanah, Vol. 6 No.1 Juni 2013*, Page.99-117.

16 Sri Wahyuni, *Perkawinan Beda Agama di Indonesia dan Hak Asasi Manusia, In Right: Jurnal Agama dan Hak Azazi Manusia, Vol 1, No 1 (2011)*, Page.131-151

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#### **D. CONCLUSION**

The purpose of this journal is to find out about the problem of the legal position of interfaith marriage which shows that interfaith marriage is prohibited or normatively not regulated and is not recognized by the state and cannot be registered based on positive law. The research results obtained indicate that the legal provisions of marriage, either express or implicitly, do not regulate the granting of marriage between followers of different religions. This is because marriage is prohibited between two people who have a relationship which by their religion or other regulations prohibited from marriage does not mean that the provisions in Islam prohibit interfaith marriage, so interfaith marriage is prohibited so that marriages that are carried out under religious law are not legitimate. Marriage is prohibited between two people who have a relationship which is prohibited by their religion or other applicable regulations". This implies that if the provisions in Islam prohibit interfaith marriage, interfaith marriage is prohibited, it can be concluded that marriages in Indonesia adhere to religious law, this means that marriages which are not carried out based on religious law are considered invalid. The reasons for refusing to register interfaith marriages can be summarized that a marriage registrar is not allowed to enter into or help to marry if he is aware of a violation.

#### **BLIBIOGRAPHY**

##### **Books:**

Abdul Rahman, 2011, *Kompendium Bidang Hukum Perkawinan Perkawinan Beda Agama dan Implikasinya*, Badan Pembinaan Hukum Nasional, Kementerian Hukum dan HAM, Yogyakarta;

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17 Jane Marlen Makalew, Akibat Hukum Dari Perkawinan Beda Agama di Indonesia, *Lex Privatum*, Vol.I No.2 Apr-Jun 2013, Page.131-144

Hilman Hadikusuma, 2003, *Hukum Perkawinan Indonesia menurut Perundangan, Hukum Adat, Hukum Agama*, Mandar Maju, Bandung;

Sri Wahyuni, 2016, *Marriage with Different Religions Why Abroad*, Pustaka Alvabet, Jakarta;

**Journals:**

Ahmad Hasanudin Dardiri, Muhammad Irham Roihan, Weddings of Different Religion In View of Islam and Human Right Perspective, *Khazanah, Volume 6 No. 1, June 2013*;

Ahmadi Hasanuddin Dardiri, Marzha Tweedo, Muhammad Irham Roihan, Pernikahan Beda Agama Ditinjau Dari Perspektif Islam dan HAM, *Khazanah, Vol. 6 No.1 Juni 2013*;

Budi Suhariyanto, Problema Penyerapan Adat oleh Pengadilan dan Pengaruhnya Bagi Pembaruan Hukum Pidana Nasional, *Mimbar Hukum, Volume 30, Nomor 3, Oktober 2018*;

Dini Amalia Fitri, Pancasila As A Legal Science Paradigm, *International Journal of Law Reconstruction, Volume 3, Issue II, September 2019*;

Jane Marlen Makalew, Akibat Hukum Dari Perkawinan Beda Agama di Indonesia, *Lex Privatum, Vol.I No.2 Apr-Jun 2013*;

Mardalena Hanifah, Perkawinan Beda Agama Ditinjau dari Undang-undang Nomor 1 Tahun 1974 Tentang Perkawinan, *Soumatera Law Review, Volume 2, Nomor 2, 2019*;

Maria Ulfah, Wanita Hamil Di Luar Nikah (Status Anak), *Jurnal Pembaharuan Hukum, Volume II No.3 September-Desember 2015*;

Muhammad Ashsubli, Undang-Undang Perkawinan Dalam Pluralitas Hukum Agama (Judicial Review Pasal Perkawinan Beda Agama), *Jurnal Cita Hukum, Vol.3 No.2 (2015)*;

Nur Asiah, Legal Review Of Different Religious Marriage Marriage Laws And Islamic Law, *Samudera Keadilan Journal, Volume 10, No. 2 December 2015*;

Sri Wahyuni, Perkawinan Beda Agama di Indonesia dan Hak Asasi Manusia, *In Right: Jurnal Agama dan Hak Azazi Manusia, Vol 1, No 1 (2011)*;

Wedya Laplata, Implementation Of Different Religious Marriage in a Juridic Perspective (Case Study In Surakarta State Court), *Jurisprudence Journal, Volume 4, No. 2, September 2014*;

**Legislation:**

1945 Constitution of the Republic of Indonesia.

Act Number 1 of 1974 concerning Marriage

Act Number 16 of 2019 Amendment to Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage