

## CONTEMPORARY INDONESIAN INTERFAITH MARRIAGE BASED ON THE POINT OF VIEW OF ISLAMIC LAW AND LEGISLATION

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### **Abstract**

*This study aims to describe the factors causing interfaith marriages in Indonesia. The research method used is qualitative with a literature approach, where all data is obtained from relevant written materials. The research results show that the factors causing interfaith marriages in Indonesia include unharmonized regulations regarding interfaith marriages, differences in judges' perspectives when deciding cases, and the role of facilitators who provide a platform for couples wishing to marry across religions. This study emphasizes that interfaith marriages do not occur without cause but are supported by several factors that enable their occurrence. The implications of this study indicate the need for harmonizing regulations and increasing legal understanding related to interfaith marriages to reduce the incidence of such cases in the future. This is important to create harmony in law enforcement and provide legal certainty for the community.*

**Keywords:** *Interfaith marriage, Indonesian Islam, Islamic law*

### **Abstrak**

Penelitian ini bertujuan untuk mendeskripsikan faktor-faktor yang menyebabkan terjadinya pernikahan beda agama di Indonesia. Metode penelitian yang digunakan adalah kualitatif dengan pendekatan kepustakaan, dimana seluruh data diperoleh dari bahan-bahan tertulis yang relevan dengan topik yang dibahas. Hasil penelitian ini menunjukkan bahwa faktor penyebab terjadinya perkawinan beda agama di Indonesia antara lain adalah peraturan yang belum harmonis mengenai perkawinan beda agama, perbedaan pandangan hakim dalam memutus perkara, dan peran fasilitator yang memberikan wadah bagi pasangan yang ingin menikah beda agama. Penelitian ini menekankan bahwa perkawinan beda agama bukanlah sesuatu yang terjadi tanpa sebab, melainkan didukung oleh beberapa faktor yang memungkinkan terjadinya perkawinan tersebut. Implikasi dari penelitian ini menunjukkan bahwa perlu adanya harmonisasi peraturan dan peningkatan pemahaman hukum terkait pernikahan beda agama untuk mengurangi terjadinya kasus pernikahan beda agama di masa yang akan datang. Hal ini penting agar tercipta keselarasan dalam penegakan hukum dan memberikan kepastian hukum bagi masyarakat.

**Kata kunci:** *Pernikahan beda agama, Islam Indonesia, Hukum Islam*

## INTRODUCTION

This study aims to describe the factors causing interfaith marriages in Indonesia. The writings depart from the phenomenon of marking the practice of different religious marriages in Indonesia and contrivers about its legality. In Central Java alone, for example, there are 1,424 marriages performed by couples of different religions.<sup>1</sup> In February 2022 another case that tells of a man who is a Catholic named Ramos Petege filed an application for a material Test against the Marriage Law Number 1 of 1974 to the Constitutional Court (MK). This is loaded through digital News published by KOMPAS Media, that the man failed to marry his lover because he is Muslim. In the lawsuit, stating that the romance ran aground because both parties have different religions and beliefs.<sup>2</sup>

This phenomenon is interesting to note because it is primarily related to the considerations used by judges in making decisions on applications for interfaith marriages submitted by both spouses, whereas according to Islamic religious law and Christian religious law, marriages carried out by parties of different religions are prohibited.

Marriage is a lawful union intended to cultivate a prosperous household and a harmonious family, where both partners share the duties and responsibilities. Article 1 of Law No. 1 of 1974 on marriage defines marriage as a natural union between a man and a woman as husband and wife, aiming to create a happy and lasting family (household) based on the Almighty God.<sup>3</sup> Article 2 of the Marriage Act states that *marriage is valid if it is done according to the laws of each religion and belief* (Verse (1)).<sup>4</sup> Additionally, Article 2 of Government Regulation No. 9 of 1975, which implements Law No. 1 of 1974 on marriage, specifies that marriage procedures for Muslims are conducted by Registrar employees as outlined in Law No. 32 of 1954 on the registration of marriage, divorce, and referrals. For non-Muslims, these procedures are carried out by marriage registrar employees at the Civil Registry Office.<sup>5</sup>

Interfaith marriage has been a long-standing debate seen in various Islamic legal literature. Among scholars the debate stems from differences in interpreting the context of Q.S al-Baqarah: 221 dan Q.S al-Maidah: 5 about who is meant infidels and people of the book in both verses and whether the prohibition in the verse is still relevant to the current condition of

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<sup>1</sup> Syahdan Nurdin, [https://www.viva.co.id/trending/1455416-viral-wanita-berjilbab-jalani-pemberkatan-nikah-di-gereja?page=all&utm\\_medium=all-page](https://www.viva.co.id/trending/1455416-viral-wanita-berjilbab-jalani-pemberkatan-nikah-di-gereja?page=all&utm_medium=all-page), di akses 23 Maret 2022

<sup>2</sup> Tsarina Maharani, <https://nasional.kompas.com/read/2022/02/08/12111101/batal-menikah-karena-beda-agama-seorang-pria-gugat-uu-perkawinan-ke-mk?page=all#page2>. Di akses 23 Maret 2022

<sup>3</sup> Undang-Undang Nomer 1 Tahun 1974, Pasal 1 tentang Perkawinan

<sup>4</sup> UU No. 1 Tahun 1974 Pasal 2 Ayat (1,2)

<sup>5</sup> Peraturan Pemerintah Nomor 9 Tahun 1975 Pasal 2 tentang Pelaksanaan Undang- Undang Nomor 1 Tahun 1974

the people.<sup>6</sup> This is a problem in its application because the marriage law does not provide regulatory space for couples who will marry with different religions.

Interfaith marriages were prohibited on the grounds that a marriage was entered into in the hope of the birth of a happy family. A new marriage will be happy and peaceful if there is a harmony of views on life between husband and wife, because religious differences often lead to failure in marriage. Interfaith marriages give birth to offspring whose fate is unclear, making uncertainty in choosing a religion. The impact of interfaith marriage that the parenting of children against their religion tends to be authoritarian, has an impact on religious conversion and children tend to be confused in choosing a religion that is believed. The role of parents in the upbringing of children tends to be less. Parents also play less of a role in the child's decision-making involvement in choosing a religion.<sup>7</sup>

According to Ramos, the article is used as a foundation that the rules regarding different religious marriages are not expressly regulated, but if viewed from the point of view of another article, namely, Article 8 letter F of Law No. 1 of 1974 States, *marriage is prohibited between two people have a relationship that by religion or other applicable regulations prohibited marriage.*<sup>8</sup>

The Compilation of Islamic Law (KHI), as a derivative regulation of the Marriage Act, explicitly prohibits interfaith marriages between Muslims and non-Muslims. This prohibition is clearly stated in Article 40 letter c, which declares: "marriage between a man and a woman is prohibited due to certain circumstances: c. 44 it is forbidden for a Muslim woman to marry a man who is not a Muslim," and Article 44"<sup>9</sup> This prohibition is reinforced by the Fatwa of the Indonesian Ulema Council number: 4/MUNAS/VII/MUI/8 / 2005 on interfaith marriage.<sup>10</sup> Therefore, interfaith marriages are deemed invalid according to Islamic law as agreed upon by Indonesian Ulema and cannot be registered with the Office of Religious Affairs

Likewise, as well as Dnature of Islam interfaith marriage or interfaith marriage is a problem that is quite old, but always warm to talk about until now. In reality, interfaith marriage in the community is still happening, here there are differences of opinion among the scholars on the issue of halal and haram marriage. The majority of scholars since the time of Sahaba

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<sup>6</sup> Muhammad Amin Suma, *Kawin Beda Agama di Indonesia Telaah Syariah dan Qanuniah*, (Tangerang : Lentera Hati, 2015), h. 105.

<sup>7</sup> Eoh, O.S. *Perkawinan Antar Agama dalam Teori dan Praktek*, (Jakarta: Raja Grafindo Pesada, 2015), h. 73.

<sup>8</sup> Undang-Undang Nomer 1 Tahun 1974, Pasal 8 Huruf F tentang Perkawinan

<sup>9</sup> Direktorat Pembinaan Peradilan Agama, *Kompilasi Hukum Islam*, (Jakarta: Departemen Agama, 2001), h. 6.

<sup>10</sup> Fatwa Majelis Ulama Indonesia Nomor: 4/MUNAS VII/MUI/8/2005 Tentang Perkawinan Beda Agama

until now agree that it is haram for a Muslim woman to marry a non-muslim man, and vice versa, a man is prohibited from marrying a non-muslim woman, based on the Quranic verse surat Al-Baqarah (2) verse 221.

وَلَا تَنْكِحُوا الْمُشْرِكَاتِ حَتَّى يُؤْمِنَنَّ ۚ وَالْمُؤْمِنَةُ خَيْرٌ مِنْ مُشْرِكَةٍ وَلَوْ أَعْجَبَتْكُمْ ۗ وَلَا تُنكِحُوا الْمُشْرِكِينَ حَتَّى يُؤْمِنُوا ۚ وَلَعَبْدٌ مُؤْمِنٌ خَيْرٌ مِنْ مُشْرِكٍ وَلَوْ أَعْجَبَكُمْ ۗ أُولَٰئِكَ يَدْعُونَ إِلَى النَّارِ ۗ وَاللَّهُ يَدْعُو إِلَى الْجَنَّةِ وَالْمَغْفِرَةِ بِإِذْنِهِ ۗ وَيُبَيِّنُ آيَاتِهِ لِلنَّاسِ لَعَلَّهُمْ يَتَذَكَّرُونَ

Artinya : *"And do not marry polytheistic women until they believe. A believing slave woman is better than an idolater, even if she pleases you. Do not marry polytheists until they have believed. A believing slave is better than an idolater, even if he pleases you. They invite to the fire, but Allah invites to paradise and forgiveness by his leave. And Allah expoundeth his signs unto men that haply they may take heed."*<sup>11</sup>

From this verse it can be understood that Allah forbids marriage between muslim men and polytheistic women, and vice versa, your womensare prohibited from marrying polytheistic men. However, the existence of all the laws that explain the ban has not been able to stop the practice of interfaith marriage in Indonesia which is seen as a need of today's society. Because in practice interfaith marriage can still be done with legal smuggling efforts.<sup>12</sup>

## METHOD

This study follows a pure literature design, which means that all data sources are written materials about the topic under consideration. We employed a qualitative approach to literature as our strategy. Data analysis of the conversation utilizes an inductive approach, i.e., drawing general conclusions from specific conclusions. The research draws all arguments supporting the development of this paper from books, journals, newspapers, and scientific writings that are relevant to the object under investigation.

## THEORETICAL CONCEPTS

The Ministry of Religious Affairs has a long history of preparing Islamic law for religious tribunals. One piece of evidence was the issuance of the head of the Bureau of Religious Justice's circular No. B/1/735, dated February 18, 1958, on the implementation of

<sup>11</sup> Kementrian Agama RI, *Al-Qur'an dan Terjemahannya*, h.105.

<sup>12</sup> Wahyono Darmabrata, *Tinjauan Undang-Undang No.1 Tahun 1974 Tentang Perkawinan beserta Undang-Undang dan Peraturan Pelaksananya*, (Jakarta : CV. Gitama Jaya, 2016), h. 102.

Government Regulation Number 45 of 1957, which governs the construction of religious courts or Syar'iyah courts outside of Java and Madura. In terms of the dimensions of the ideal law, the compilation of Islamic law is a series of national legal histories that can reveal the range of meanings in Indonesian society.<sup>13</sup>

Officially, the compilation of Islamic law is a masterwork by experts in identifying rules with qualities that correspond to Indonesian culture.<sup>14</sup> The Compilation of Islamic Law unequivocally prohibits interfaith marriage. This is stated clearly as: "Marriage between a man and a woman is strictly forbidden under certain circumstances: a) if the woman is already in a relationship with another man; b) if the woman is still in her iddah period with another man; c) if the woman is not a Muslim." Additionally, Article 44 of the Compilation of Islamic Law specifically prohibits a Muslim woman from marrying a non-Muslim man.

From this article, it can be concluded that the agreement of Indonesian ulama after reviewing at the academic level the various opinions of ulama and considerations in terms of social culture of Indonesian society, interfaith marriage is considered contrary to these two aspects so that ulama agree to prohibit it.

In relation to the issue of interfaith marriage, the MUI, identified as Fatwanya in Munas II year 1400/1980 and reinforced with Fatwanya number: 4/MUNAS VII/MUI/8/2005, affirms that interfaith marriage is haram and invalid. The MUI, referred to as Fatwanya in Munas II year 1400/1980 and reinforced with Fatwanya number 4/MUNAS VII/MUI/8/2005, affirms that interfaith marriage is haram and invalid. According to Qaul Mu'tamad, a Muslim man's marriage to a woman of the people of the book is haram and invalid.<sup>15</sup>

MUI agrees that there is indeed a difference of opinion about marriage between muslim men and women of the people of the book in contrast to the absolute prohibition of marriage between muslim women and non-Muslim men, but MUI considers that the mafsadah of interfaith marriage is greater than the problem, so the Ulema Council declares that marriage is haram.<sup>16</sup>

It is in this detail that his absolute testimony, that is, in one place halal and in another not halal, is directed. While people who convert from one religion to another, such as Jews or pagans convert to Christianity, the redaction is more common than the redaction of the book of

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<sup>13</sup> M. Thahir Azhary, "Kompilasi Hukum Islam Sebagai Alternatif Suatu Analisis Sumber sumber Hukum Islam" dalam *Mimbar Aktualisasi Hukum Islam*, No. 4 Tahun 2015, h. 15- 16.

<sup>14</sup> Cik Hasan Basri, *Kompilasi Hukum Islam dan Peradilan Agama dalam Sistem Hukum Nasional*, (Jakarta: Logos, 2013), h. 9.

<sup>15</sup> Fatwa Majelis Ulama Indonesia Nomor: 4/MUNAS VII/MUI/8/2005 tentang Perkawinan Beda Agama.

<sup>16</sup> Fatwa Majelis Ulama Indonesia dalam Munas II Tahun 1400/1980 tentang Perkawinan Campuran.

Genesis: “the Jews convert to Christianity and vice versa.” , then only his Islam is accepted. He has acknowledged the falsehood of his abandoned religion and has acknowledged the falsehood of his new religion. And a Muslim woman is not lawful for a non-muslim man, whether the woman is free or a slave with the agreement of the ulama. While the apostate woman is not lawful for anyone. It is not halal for a muslim man because he is a non-muslim woman who is not allowed (like a real non-muslim) and it is not halal for a non-muslim man because there is still an Islamic relationship with him.<sup>17</sup>

After the conversion of the Jews and the Christians, muslim men should not marry their free women and should not have sex with their slave women, because they have converted to a false religion, like the apostate Muslims. The Jews and Christians who did not know that they had embraced it before the change or after it, like the Arabs, such as the Tanuchs, the Taghlibs and the Bahra'is, did not have the right to marry their free women and did not have the right to have sex with their slaves. Because the original law in the matter of farji is haram, which cannot be lawful when there is doubt.<sup>18</sup>

## RESULTS AND DISCUSSION

The variety of religions and beliefs in Indonesia can influence the prevalence of religious marriages. Interfaith marriages are not a new occurrence in Indonesia's diverse society. According to the Indonesian Conference on Religion and Peace (ICRP), 1,425 interfaith couples got married in Indonesia from 2005 to early March 2022.<sup>19</sup> Therefore, the author tries to analyze from several sources about what are the factors of interfaith marriage, and one of them is a factor related to this problem.

### 1. Dissonance of laws

The state must develop national law in a planned, integrated, and sustainable manner to realize Indonesia as a state of law, ensuring the protection of all Indonesian people's rights and obligations in accordance with the Republic of Indonesia's 1945 Constitution.<sup>20</sup>

National law is developed by legislation. laws establishment is the process of creating laws, which includes planning, preparation, discussion, ratification or determination, and

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<sup>17</sup> KH. M. Cholil Nafis, *Terjemahan Al-Muadzdzab*, <https://islam.nu.or.id/nikah-keluarga/hukum-nikah-beda-agama-AJkWC>

<sup>18</sup> KH. M. Cholil Nafis, *Terjemahan Al-Muadzdzab*, <https://islam.nu.or.id/nikah-keluarga/hukum-nikah-beda-agama-AJkWC>

<sup>19</sup> <https://populis.id/read13644/jangan-kaget-ini-jumlah-pasangan-nikah-beda-agama-di-indonesia>, Populis, *Jumlah Pasangan Pernikahan Beda Agama Di Indonesia*, di akses 24 Desember 2014.

<sup>20</sup> Menimbang huruf a Undang Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan.

dissemination.<sup>21</sup> Meanwhile, state institutions or authorized authorities establish the law, a written rule that includes generally binding legal standards, using procedures outlined in the legislation.<sup>22</sup>

From here, the author tries to classify the laws related to interfaith marriages that have not been harmonized into two, namely norms that allow interfaith marriages and norms that do not allow interfaith marriages.

a. Norms that allow interfaith marriage

1) Law No. 23 of 2006 on Population Administration.

The norm that governs the law of interfaith marriage stipulates in Article 2 that every resident has the right to obtain: a. residence documents; b. the same service in population and civil registration; c. personal data protection; and d. legal certainty of document ownership.<sup>23</sup>

Similarly, Article 34 of the law accommodates various religious marriages that previously lacked legal certainty, making it difficult to obtain state marriage approval. Article 34's definition of marriage registration also includes the following: a. marriage approved by the court.<sup>24</sup> Furthermore, as mentioned in Article 35 letter A, "what is meant by 'marriage established by the court is a marriage between people of different religions'.<sup>25</sup>

Therefore, for the state to register a couple of different religions, they must first obtain court permission. Once granted, the Civil Registry Office is obligated to record the marriage. The author argues that since the enactment of Law No. 23 of 2006 on Population Administration, regulations regarding interfaith marriage have become legally contentious. Article 35 letter A of the Population Administration Law has provided openings for interfaith marriages, directly conflicting with Article 2 of the Marriage Law, which implies that interfaith marriages are invalid religiously and legally. This legal contradiction creates unequal opportunities for courts to approve interfaith marriage applications, leading to varying judicial interpretations. Without addressing this issue, the community will face legal uncertainty due to conflicting interpretations

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<sup>21</sup> Pasal 1 angka 1 Undang Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan.

<sup>22</sup> Pasal 1 angka 2 Undang Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan.

<sup>23</sup> Pasal 2 Undang-Undang Nomor 23 Tahun 2006 tentang Administrasi Kependudukan.

<sup>24</sup> Pasal 34 Undang-Undang Republik Indonesia Nomor 23 Tahun 2006 tentang Administrasi Kependudukan.

<sup>25</sup> Pasal 35 Huruf (a) Undang-Undang Republik Indonesia Nomor 23 Tahun 2006 tentang Administrasi Kependudukan.

b. Norms that do not allow interfaith marriage

1. Law No. 01 Tahun of 1974 on marriage

Here it is explained in Article 2 Paragraph 1 that *marriage is valid, if it is carried out according to the laws of each religion and belief.*<sup>26</sup>

In this article, people often interpret that interfaith marriage is allowed, because this article regulates that legal marriage is carried out using two 2 ways, namely using the customs of each religion for prospective spouses. For example, the couple of the Christian groom and the Muslim woman, the bride and groom are married to Islamic customs and Christian customs.

When researchers delve deeper into the same regulation, they discover that Article 8 letter (f) effectively forbids interfaith marriage, as it prohibits marriage between two individuals who are in a relationship due to their respective religions or relevant regulations.<sup>27</sup>

After analyzing the original article-Pasal, the author concludes that marriages must align with the laws of the respective religions and beliefs of the couple to be considered valid. In Indonesia, six recognized religions each have their own strict prohibitions against interfaith marriage. Article 2 Paragraph 1 of the Marriage Law clarifies that marriages are governed by the laws of each religion and belief. Article 2 must be interpreted holistically, indicating that Paragraph 1 and Paragraph 2 are integral parts. Therefore, even if a marriage is legally conducted under religious law, it is not recognized as valid by the state unless registered with the appropriate authority—either the Office of Religious Affairs for Muslims or the Civil Registry Office for non-Muslims. This regulation explicitly prohibits interfaith marriage due to the diverse regulations of each religion.<sup>28</sup>

2. KHI or Compilation Of Islamic Law

In KHI it is explained in Article 40 letter (c) that *it is not permissible to marry a woman who is not a Muslim.*<sup>29</sup> In this article it is clear that if a woman who is not a Muslim then it can not be married by a muslim man. Likewise, Article 44 explained *that Muslim women should not marry men who are not Muslims,*<sup>30</sup> then explained Article 116 letter (k)

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<sup>26</sup> Pasal 2 Angka 1 dan Angka 2 Undang-Undang Nomor 01 Tahun 1974 tentang Pernikahan.

<sup>27</sup> Pasal 8 Huruf (f) Undang-Undang Nomor 01 Tahun 1974 tentang Pernikahan.

<sup>28</sup> Wantjik K Shaleh, *Hukum Perkawinan Di Indonesia*, (Ghalia Indonesia, Jakarta, 1982), h. 6.

<sup>29</sup> Pasal 40 Huruf (c) Kompilasi Hukum Islam.

<sup>30</sup> Pasal 44 Huruf (c) Kompilasi Hukum Islam.



which is the transition of religion or apostasy that causes disharmony in the household,<sup>31</sup> this can make a reference not to marry different religions.

The compilation of Islamic law has regulated interfaith marriages. However, the next issue arises from the fact that the compilation of Islamic law (KHI) only exists in the form of presidential instructions, not as a law or its derivatives, and therefore cannot be included in the hierarchy of legislation. From this problem, the author argues that there is a need for improvement efforts related to interfaith marriage in Law No. 1 of 1974 on marriage.

## **2. Differences in Judges ' decisions in establishing interfaith marriages**

There are several cases that become differences in the decision of the judge in deciding the case. One of these cases the researchers took the case to the Blora District Court with decision Number No.71 / Rev.P / 2017 / PN.Blah,<sup>32</sup> sit the case that is used as a consideration for the judge in resolving the case of interfaith marriage between applicant I (NOBA) who is Muslim and applicant II (yes) who is Christian, that they have been in a loving relationship, there is already a compatibility and mutual understanding because they have been dating since 2004 to 2017 (more less than 13 years).

Furthermore, researchers tried to take the second case at the Surakarta District Court with decision Number No. 46 / Rev.P / 2016 / PN.Skt,<sup>33</sup> by sitting the case that was used as a consideration for the judge in resolving the case of interfaith marriage between applicant I (AVR) who is Catholic and applicant II (DF) who is Muslim, has submitted an application to carry out the marriage to the Office of Population and civil registration, but the application was rejected on the grounds of religious differences, in accordance with the provisions of Article 2 Paragraph (1) and (2) of Law No. 1 of 1974 on marriage jo. Article 35 Of Law No. 23 Of 2006.

Then it is also mentioned in Article 1 of Law No. 1 of 1974 on jo marriage. Article 35 of Law No. 23 of 2006 on Population Administration, that the marriage can be registered after obtaining a determination from the District Court.<sup>34</sup> Furthermore, the applicants apply for permission to the Surakarta District Court to enter into a marriage with a fixed stance adheres

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<sup>31</sup> Pasal 116 Huruf (k) Kompilasi Hukum Islam.

<sup>32</sup> Salinan Penetapan Nomor: 71/Pdt.P/2017/PN.Bla, Direktori Putusan Mahkamah Agung Republik Indonesia, di akses 27 Desember 2022.

<sup>33</sup> Salinan Penetapan Nomor: 46/Pdt.P/2016/PN.Skt, Direktori Putusan Mahkamah Agung Republik Indonesia, di akses 27 Desember 2022.

<sup>34</sup> Pasal 35 Undang-Undang Nomor 23 Tahun 2006 tentang Administrasi Kependudukan.

to their respective beliefs. Because based on the subject of the case, in principle religious differences are not a barrier to marriage based on the principles of law in force in Indonesia.

Furthermore, researchers tried to take the same case and highlighted the South Jakarta District Court in September 2022 yesterday with Decision number 508/Pdt.P/2022/PN JKT.Cell.<sup>35</sup> The case was handled by the sole judge of PN South Jakarta Arlandi Triyogo who granted the applicant's application for part of the applicant who is an interfaith couple with the initials DRS who is Christian and his partner, Jn who is Islamic.

In filing a lawsuit, one of the evidence attached RA and EDS is a photocopy of marriage certificate No.1.433/HMM/III/2022 dated March 23, 2022 and a photocopy of the ecclesiastical marriage charter number 373/NIK/GKN-RAEDS/III / 2022 dated March 23, 2022. From the testimony of two witnesses presented, the applicants were recorded to have married religiously each.<sup>36</sup>

In addition, the Imam judge also determined to order the officials of the Dukcapil Office to register the applicants ' interfaith marriages into the marriage registration register used for it and immediately issue the marriage certificate.

From these four cases, the author tries to analyze the verdict-of each judge who-is different, as for the analysis of the verdict:

- a. The Blora District Court judge ruled that the petitioners ' application was not granted, so the application for an interfaith marriage license was rejected, taking into account that in the teachings of Islam contained in surat Al-Baqarah verse 221 it is stated that a muslim woman is not allowed to marry a man who is not a muslim. It is clarified again in the compilation of Islamic Law Article 44 states that *“a Muslim woman is prohibited from entering into marriage with a man who is not a Muslim”*.<sup>37</sup> According to this, the teachings of Islam do not allow interfaith marriage.
- b. The Surakarta District Court judge ruled that the petitioners ' request was granted to perform an interfaith marriage with their respective teachings, considering that Law No. 1 of 1974 on marriage does not contain any provision that states that differences in religion and / or belief between the prospective husband and prospective wife constitute a prohibition on marriage.

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<sup>35</sup> Salinan Penetapan Nomor: 508/Pdt.P/2022/PN JKT.SEL, Direktori Putusan Mahkamah Agung Republik Indonesia, di akses 27 Desember 2022.

<sup>36</sup> Salinan Penetapan Nomor: 916/Pdt.P/2022/PN Sby, Direktori Putusan Mahkamah Agung Republik Indonesia, di akses 30 Desember 2022.

<sup>37</sup> Pasal 44 Kompilasi Hukum Islam.

In this instance, in accordance with Article 27 of the 1945 Constitution, every citizen has the legal right to marry their fellow citizens, regardless of their religious or personal beliefs, as long as the law does not forbid marriage, and in accordance with Article 29 of the same 1945 Constitution, which asserts the state's guarantee of each citizen's independence.<sup>38</sup>

As previously stated, Law No. 1 of 1974 has no provisions governing interfaith marriages. The Supreme Court ruling number 1400 K/Pdt/ 1986, dated January 20, 1989, stresses interfaith marriage by stating that "the religious differences of the prospective husband and wife do not constitute a ban on marriage for them."<sup>39</sup> Similarly, Government Regulation No. 9 of 1975 does not include a single provision governing how to marry people of various religions or views.

Judge PN Surakarta also argued because there are no rules governing, while in Article 14 of Law No. 14 of 1970 amended by Law No. 35 of 1999 amended and supplemented by Law No. 4 of 2004 amended and supplemented by Law No. 48 of 2009 on Judicial Power determined that "The court shall not refuse to examine and adjudicate a case brought against it under the pretext that the law does not exist or is less clear".

- c. The South Jakarta District Court Judge tried to take decisions from both PN Brola and also PN Surakarta cases which in their decisions decided to give permission to register their marriages at the Tribal Office of the population and Civil Registration Office of the city of South Jakarta administration. The judge did not give the judge rejected the petitions of the petitioners number I who requested that interfaith marriage be legalized, taking into account the law (UU) Number 1 of 1974 and government regulation (PP) number 9 of 1975, to be precise Article 2 Paragraph 1 of law 1/1974 jo Article 10 paragraph 2 PP 9/1975 confirms that a marriage it is lawful to do so according to the laws of one's religion and belief.<sup>40</sup>

The provisions in Article 2 Paragraph 1 of law 1/1974 are provisions that apply to marriage between two people who profess the same religion as according to the explanation of the law. With the formulation of Article 2 Paragraph 1, there is no marriage outside the law of each religion and belief in accordance with the 1945 Constitution.

Then why did the judge give permission to register his marriage in Dukcapil because the judge judged that although the applicants were different religions, the lovers

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<sup>38</sup> Pasal 29 Undang-Undang Dasar Tahun 1945.

<sup>39</sup> Putusan Mahkamah Agung RI Nomor.1400 K/Pdt/1986, Direktori Putusan Mahkamah Agung Republik Indonesia, di akses 24 Desember 2022.

<sup>40</sup> Pasal 2 Angka (1) Undang-Undang Nomor 01 Tahun 1974 tentang Pernikahan.

had married. From the decision, the judge took reference from Article 2 Paragraph (2) of law 1/1974 on marriage, it was stated that, *each marriage was recorded according to the prevailing laws and regulations.*<sup>41</sup> The marriage, which was held on May 31, 2022 at the Nusantara Christian Church, has not been recorded at the South Jakarta population and Civil Registry Office. As for Article 9 paragraph (2) Kepmendagri number 131 of 1997 states that reporting/recording must receive permission/determination from the District Court.

- d. The Surabaya District Court judge decided to grant the applicants permission to perform an interfaith marriage in front of officials from the Office of Population and Civil Registry of the municipality of Surabaya. The judge instructed the officials of the Office of Population and Civil Registry in the municipality of Surabaya to record the applicants' interfaith marriages in the Register of Marriage Registration and promptly issue the marriage certificate. In light of this, the applicants have consented, with approval and permission from both parents, for the marriage process to take place at the official Civil Registration and Occupation Service of Surabaya City, and have pledged to establish a joyful and enduring family unit under the guidance of God Almighty.

The judge also considered the marriage procedure based on religion and belief, which is not possible for the applicants due to religious differences; however, the provisions in Article 10 paragraph (3) of government regulation (PP) No. 9 of 1975 provide for the implementation of the marriage. The regulation cites Article 10 paragraph (3) of Government Regulation No. 9 of 1975, which stipulates that the Registrar's employee and two witnesses observe the marriage procedure in accordance with each religious law and belief.

### **3. The existence of facilitators who help the course of interfaith marriage**

A few months ago, exactly March 7, 2022, one of the Radio broadcasts in Indonesia, namely Radio Katolikana made a Program in its broadcast a kind of talk show which discussed interfaith marriage. In the event contains good stories in order to become friends of the story and counseling for couples of different religions can be played, especially marrying different

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<sup>41</sup> Pasal 2 Angka (2) Undang-Undang Nomor 01 Tahun 1974 tentang Pernikahan.

religions is still a taboo and full of pros and cons of course so that efforts to get out of the problem must be sought together.<sup>42</sup>

On that occasion, Radio Katolikana called the speaker who is currently a counselor and Founder of Smartmumsid, namely Vibriyanti, S.Si., MM, even this resource person is the perpetrator of beda an interfaith marriage and has been undergoing interfaith marriage for 10 years, she is muslim and her husband is Christian.

At the event Vibriyanti told about himself who had difficulty in dealing with interfaith marriage then armed with the information available made him choose to become a counselor in order to find a way out of problems as he experienced with a partner and based on the experience of difficulties that he experienced first as well. Being a counselor is certainly not an easy job, he said many questions were asked by interfaith couples who came to him. Usually asked about the blessing of parents, both on how to take care of the letters, procedures, technical matters to mental health. This is the most frequently asked question in a consultation.<sup>43</sup>

Nurcholish also explained that from our society there are various responses, for example when my viral post is a lot of cons, but there are also those who provide support. Therefore, I invite those who have become perpetrators of marriage to *speak up*. Because if we always hide, it certainly will not have a positive impact on the life of the nation and society. Therefore, their voice can become a reality and the fact that there is such a thing and has existed for a long time in Indonesia.<sup>44</sup>

## **FACTORS CAUSING INTERFAITH MARRIAGE IN INDONESIA BASED ON THE POINT OF VIEW OF ISLAMIC LAW AND LEGISLATION**

Analysis of interfaith marriage according to positive law and Islamic law in Indonesia means explaining the legal basis of interfaith marriage according to legislation, then analyzing it according to positive law and Islamic law. The history of family law in Indonesia initially referred to interfaith marriages as mixed marriages, and the provisions of Article 1 GHR (Regeling of de Gemengde Huwalijen Staatsblaad 1898 No.158) provided the legal basis. This provision explains that mixed marriages, including interfaith marriages due to different

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<sup>42</sup> Katolikana, *TalkShow Pernikahan Beda Agama*, [www.youtube.com/watch?v=QN7xu8\\_QND3g](https://www.youtube.com/watch?v=QN7xu8_QND3g), di akses 1 Desember 2022.

<sup>43</sup> Rio Pratama, *Kabar Damai*, <https://kabardamai.id/fasilitator-nikah-beda-agama-menjadi-teman-dan-tempat-konseling-pasangan-beda-agama/>, di akses 2 Desember 2022.

<sup>44</sup> Sigit Aulia Firdaus, *JPNN.COM JATENG*, <https://jateng.jpnn.com/jateng-terkini/1566/viral-video-pernikahan-beda-agama-nurkholish-saya-ajak-teman-teman-speak-up?page=2>, di akses 2 Desember 2022.

religions, are subject to different laws in Indonesia. Article 7 Paragraph (2) GHR explains that the regulation of religion, nation, or origin does not hinder marriage in any way.<sup>45</sup>

Based on the above article, it can be understood that mixed marriages according to the marriage law refer to differences in Indonesian citizenship with foreign citizenship, not religious differences. This resulted in that since the release of the Marriage Law No.1 of 1974, the rules on the non-permissibility of interfaith marriage apply.<sup>46</sup> The enforcement of interfaith marriage is then contained in the respective religious laws, as explained in the Marriage Law Article 2 Paragraph (1) explaining that “*marriage is valid, if it is carried out according to the laws of each religion and belief*”.<sup>47</sup>

Although the issue of interfaith marriage in the Marriage Act is not explained textually, but if understood the article explains that the role of religious law is a pre-parameter, so that the determination of whether marriage is allowed depends on religious law. If the marriage is valid, then it is valid according to the law of the land. Positive law and Islamic law have regulated marriage for adherents of the Islamic religion, regarding interfaith marriage.<sup>48</sup> The emergence of legal issues regarding interfaith marriage is addressed in Marriage Law No. 1 of 1974, specifically in Article 8 letter (f), which states that “marriage is prohibited between two people who have a relationship that is prohibited by religion or applicable regulations.” According to this law, interfaith marriage is considered a prohibited marriage. Additionally, Article 40 point (c) and Article 44 of KHI inpres No.1/1991 refer to interfaith marriage as marriage between believers. Article 40 point (c) of KHI states that it is forbidden for a Muslim woman to marry a non-Muslim. Furthermore, Article 116 of KHI explains that apostasy can be a ground for divorce, implying that apostasy may result from an interfaith marriage. The formulators of KHI, who are mujtahids, argue that the prohibition of interfaith marriage is intended to promote religious benefit and maintain religious integrity. They prioritize the interests of religion over personal enjoyment and uphold the maintenance of religious interests as an inviolable right.<sup>49</sup>

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<sup>45</sup> Pasal 1 dan 2 Regeling of de Gemengde Huwalijen Staatsblaad 1898 No.158.

<sup>46</sup> Muhammad Anshary, *Hukum Perkawinan di Indonesia (Masalah–Masalah)*, (Yogyakarta: Pustaka Pelajar, 2010), h. 49-51.

<sup>47</sup> Pasal 2 Ayat 1 Undang – Undang No.1 Tahun 1974.

<sup>48</sup> Islamiyati, *Analisis Yuridis Nikah Bedaagama Menurut Hukum Islam Di Indonesia*, Jurnal Masalah - Masalah Hukum, Jilid 45 No. 3, Juli 2016, h. 247.

<sup>49</sup> Faiq Thobroni, “Kawin Beda Agama Dalam Legeslasi Hukum Perkawinan Indonesian Perspektif HAM”, *Al-Mawardi Journal Islamic Law*, Vol.XI. No.2, September-Januari 2011, Yogyakarta h. 169.

1. The decision of the 22nd Muhammadiyah Tarjih Council in 1989 in Malang, East Java, explained that according to Islamic law, the marriage of non-Muslim women with Muslim men is haram. This implies that it is not permissible to marry different genders in any form.<sup>50</sup>
2. The Nahdlatul Ulama (NU) decision also established a fatwa regarding different religious marriages. The 28th Congress in Yogyakarta enacted the Fatwa at the end of November 1989. NU scholars, in their fatwas, confirmed that marriage between two people of different religions in Indonesia is not legal.

According to Islamic law, marriage is not permissible because of differences in faith. Based on the MUI fatwa number: 4 / MUNAS VII / MU/8/2005 which was issued on the results of the second national consultation on May 26 to June 1, 1980 which determined that interfaith marriage is illegal, the reasons are:<sup>51</sup>

1. al-Qur'an surat Al-Baqarah verse 221 which explains that it is forbidden for muslim men to marry non-muslim women so that they believe. In addition, it also explains that it is haraam for a wali to marry a woman who is under his responsibility to a non-Islamic man
2. al-Qur'an surat Al-Mumtahanah verse 10 explains, that believing men do not maintain their marriages with non-Muslim women, as well as non-muslim women to be returned to muslim men, because their marriages are forbidden by Allah
3. al-Qur' Surah Al-Tahrim verse 6 commands that believers guard themselves and their families from the fire.
4. Prophet Muhammad (peace and blessings of Allaah be upon him) taught that marriage is half of the religion. And we are commanded to watch out for the rest
5. The word of the Prophet Muhammad narrated by Ibn. Al-Sura'i who taught about the importance of teaching religious education for parents to their children.

Researchers in this study look at Islamic law as described in the theoretical basis of how the differences in the opinions of scholars in interfaith marriage conducted by a muslim man wants to marry a woman of the people of the book. The difference is divided into three groups, namely permissible, haram and opinions that are more mudorat find the original law halal. According to the number of scholars who allow muslim men to marry women of the people of the book absolutely, both women from the Children of Israel and not the Children of Israel, as for those who confirm the opinion of the number, there are arguments as follows The arguments

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<sup>50</sup> Pimpinan Wilayah Muhammadiyah Jawa Tengah, Dokumen Himpunan Majelis Tarjih Muhammadiyah 22 di Malang Jawa Timur, h. 8.

<sup>51</sup> Jaih Mubarak, *Pembaharuan Hukum Perkawinan di Indonesia*, (Bandung : Simbiosis Rekatama Media, 2015), h. 119.

in this matter are absolute and do not impose any specific conditions or limitations. The evidence allowing men to marry women from the People of the Book does not specify that these women must be descendants of the Children of Israel. This is clarified in the Book of Revelation 5, which indicates that the People of the Book include not only the descendants of the Children of Israel but also anyone who is Jewish or Christian, regardless of their lineage. Additionally, the actions of the Prophet Muhammad, such as applying the obligation of paying jizya to the People of the Book, show that the criteria for being classified as a member of the People of the Book is based on religion, not ancestry. The Qur'anic verses addressing Jews and Christians during the Prophet's time used the term "People of the Book" for them. These individuals are not those who have deviated from their original religion, nor are they those who are still adhering to the teachings of their pure or original scriptures.

Based on the three arguments above, it is clear that the number of scholars who allowed muslim men to marry women from the people of the book, both from the Children of Israel and not from the Children of Israel. But what researchers need to emphasize is that something that contains a lot (mubah) is clearly not something that is recommended (sunnah) or required (obligatory). Even cases in which the law is permissible in certain cases can be suppressed by Syar'i'i if they cause harm (mudhorot), although the basic law that is permissible remains and does not disappear. So it can be concluded that a man marrying a woman of the people of the original law is permissible but in the case of certain laws it becomes haram.

## **CONCLUSION**

After the assessment and observation of the analysis of the factors that cause interfaith marriage in Indonesia, it can be concluded that the occurrence of religious marriage in Indonesia that occurred until now is not a thing without a cause. This problem occurs because of several factors that support it to happen. One of the first factors, the regulations that have not been aligned, although interfaith marriage regulations do not allow but there are regulations that make a gap to legalize religious marriage. The second is the difference between judges in deciding cases of interfaith marriages, which sometimes judges take into consideration the regulations that become gaps in the legalization. Third, there is a facilitator who makes a forum for couples who want to marry a different religion, in this case the facilitator really helps the couple to take care of all the administration of the interfaith marriage.

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