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Interfaith Marriage and the Religion–State Relationship: Debates between Human Rights Basis and Religious Precepts

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Abstract: Following the Constitutional Court's dismissal of the judicial review of Article 2, Paragraph 1 of the Marriage Law, the Jakarta Central District Court granted approval for the registration of inter-religious marriages. The issue of inter-religious marriage has once again become a hot topic of social discussion. Following the controversy, the Supreme Court issued a circular ordering the court not to grant marriage registration applications for interfaith couples. This study draws on normative legal research and empirical analysis of interfaith marriages to answer the question of how states (through courts) view and negotiate interfaith marriages from state, legal, and religious perspectives. The objective of this study is to examine the arguments presented by proponents and opponents of interfaith marriage in Indonesia, particularly focusing on the discourse surrounding human rights principles and the adherence to religious teachings within the realm of marital practices. The study concluded that Islamic law remains one of the most fundamental elements of contemporary Muslim family life practices in Indonesia. All religions, including government officials and judges, generally consider interfaith marriages illegal and prohibit them under the Marriage Act. The Constitutional Court's decision to deny judicial review of the provisions governing interfaith marriage reinforces the argument that, in terms of the relationship between religion and the state, Indonesia falls into the category of countries with religiously governed enclaves.

Keywords: Constitution, interfaith marriage, Islamic law, marriage law, religion–state relationship

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Abstrak: *Menyusul penolakan Mahkamah Konstitusi terhadap uji materi Pasal 2 Ayat 1 UU Perkawinan, Pengadilan Negeri Jakarta Pusat memberikan persetujuan pencatatan perkawinan beda agama. Isu pernikahan beda agama kembali menjadi perbincangan hangat di masyarakat. Menyusul kontroversi tersebut, Mahkamah Agung mengeluarkan surat edaran yang memerintahkan pengadilan untuk tidak mengabulkan permohonan pencatatan perkawinan bagi pasangan beda agama. Kajian ini berangkat dari kajian yuridis normatif dan analisis empiris tentang perkawinan beda agama untuk menjawab pertanyaan bagaimana negara (melalui pengadilan) memandang dan menegosiasikan pernikahan beda agama dalam hubungannya dengan negara, hukum, dan agama. Studi tersebut termasuk kajian perundang-undangan dengan menganalisis undang-undang, aturan hukum dan putusan mahkamah konstitusi dan lembaga peradilan. Penelitian ini bertujuan untuk mengulas alasan yang diajukan pihak yang pro dan kontra atas pernikahan beda agama di Indonesia, terutama perdebatan antara alasan-alasan HAM dan pelaksanaan ajaran agama bidang perkawinan. Penelitian ini menemukan bahwa hukum Islam tetap menjadi salah satu elemen yang paling mendasar dalam praktik kontemporer kehidupan keluarga Muslim di Indonesia. Ada asumsi dalam masyarakat, termasuk aparat pemerintah dan hakim, yang terkait anggapan tidak sahnya perkawinan beda agama, dan bahwa Undang-Undang Perkawinan telah melarangnya karena semua agama melarangnya. Putusan Mahkamah Konstitusi yang menolak judicial review atas pasal nikah beda agama memperkuat argumen bahwa negara Indonesia termasuk ke dalam kategori negara dengan religious jurisdictional enclaves dalam hal hubungan agama dan negara.*
Kata Kunci: *Konstitusi, pernikahan beda agama, hukum Islam, hukum perkawinan, hubungan agama-negara,*

Introduction

Marriage is a human right guaranteed by the Constitution and international treaties. In the contemporary era characterized by the influence of democratic political modernization, the advent of free expression, including the liberty to choose a life partner, has become a prominent aspect. Nevertheless, this newfound freedom may engender tensions that can potentially jeopardize both social harmony and national cohesion.[1] The present epoch, often referred to as the

[1] Mohamad Abdun Nasir, "Religion, Law, and Identity: Contending Authorities on Interfaith Marriage in Lombok, Indonesia," *Islam and Christian-Muslim Relations* 31, no. 2 (2020), Y Sonafist and H Yuningsih, "Islamic Law, the State, and Human Rights: The Contestation of Interfaith Marriage Discourse on Social Media in Indonesia," *Juris: Jurnal Ilmiah Syariah* 22, no. 2 (2023), p. 381–91. Article 28B Paragraph (1) of the 1945 Constitution of the Republic of

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millennial era, is marked by an undeniable surge in diversity due to the rapid process of globalization. Consequently, societies are now susceptible to external influences that challenge their traditional norms and values. The wave of globalization will inevitably bring us into the era of society 5.0. During this period, social meanings and concepts have undergone some changes. Society 5.0 is a people-centered, technology-based era without racial, ethnic or even religious barriers. Millennials see diversity as a combination of different backgrounds, experiences and perspectives, and they believe that accepting differences can help them understand the positive values of those around them. Diversity issues are therefore the defining and most inclusive characteristic of millennials.[2] Unlike millennials, however, Indonesia's elite seeks to uphold old values, especially conservative religious teachings, while blocking more new values from the outside, such as diversity and multiculturalism. Bourchier believes that Indonesia's ideological development in the past two decades has experienced a shift from democratic norms in the early days of the Reformation to an inward-looking ideology of conservative religious nationalism.[3] Even the Indonesian government often uses bureaucracy and state power to control the interpretation of Islam.[4] This may be observed, for example, in the numerous denials of interfaith marriages by the elites of the majority religion, Islam, which is supported by the state bureaucracy.[5]

Interfaith marriage is once again a prominent topic of discussion in society.[6] Not long ago (end of June 2023), the Central Jakarta District Court's decision to grant permission for interfaith marriages sparked a public debate because it was challenged by the Deputy Chairman of the Indonesian People's

Indonesia: "Every person has the right to form a family and continue offspring through a legal marriage"; and Article 16 Paragraph (1) of the Universal Declaration of Human Rights (UDHR).

[2] Antonina A Bauman and Nina V Shcherbina, "Millennials, Technology, and Cross-Cultural Communication," *Journal of Higher Education Theory and Practice* 18, no. 3 (2018), p. 75–85.

[3] David M Bourchier, "Two Decades of Ideological Contestation in Indonesia: From Democratic Cosmopolitanism to Religious Nationalism," *Journal of Contemporary Asia* 49, no. 5 (2019), p. 713–33.

[4] Tim Lindsey, "Islamization, Law, and the Indonesian Courts in *Routledge Handbook of Contemporary Indonesia* (Routledge, 2018), p. 226–36.

[5] Mursyid Djawas and Nurzakia Nurzakia, "Perkawinan Campuran Di Kota Sabang (Studi Terhadap Faktor Dan Persepsi Masyarakat Tentang Dampak Perkawinan Campuran)," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 2, no. 2 (2019), p. 307–34. Mochammad Rizky Eka Aditya, et.al., "The Problem of Interfaith Marriage in Indonesia: A Juridical-Normative Approach," *El-Usrah: Jurnal Hukum Keluarga* 6, No. 2 (2023).

[6] Khasan Alimuddin, "Praktik Perkawinan Beda Agama Di Indonesia Dalam Tinjauan Fenomenologi Sosial," *ADHKI: Journal of Islamic Family Law* 4, no. 2 (2022), p. 171–80.

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Consultative Assembly (*Majelis Permusyawaran Rakyat*/MPR), Yandri Susanto.[7] The decision was stated in case decision number 155/Pdt.P/2023/PN.Jkt.Pst (*Anthony & Wulandari vs. the State*). Susanto highlighted that the judgment should be reversed because it involved serious issues that jeopardized the future of the nation's youth. He requested that the Supreme Court immediately annul the decision of the Central Jakarta District Court granting interfaith marriages on the grounds that it differed from the Constitutional Court's decision and contradicted the fatwa of the Indonesian Ulema Council (*Majelis Ulama Indonesia*/MUI), which prohibited interfaith marriages.[8] He believed that the Central Jakarta District Court verdict violated Pancasila, particularly the first precept, which was the basis for the regulation that all citizens must belong to a religion.[9]

Surahman Hidayat, a member of the House of Representatives from the Prosperous Justice Party (*Partai Keadilan Sejahtera*/PKS) faction, has criticized the decision made by the Central Jakarta District Court. He believes that the court's decision should have been in line with the decision of the Constitutional Court (*Mahkamah Konstitusi*/MK), which rejected a judicial review on interfaith marriages. Hidayat argues that the judges of the Central Jakarta District Court should have considered the provisions of the Constitution as well as the decision of the Constitutional Court, which rejected the judicial review on interfaith marriages. According to Hidayat, these references should have guided the court's decision-making process regarding interfaith marriages. Hidayat asserts that matters relating to marriage should be guided by the Marriage Law (No. 1 of 1974). He specifically highlights Article 2 Paragraph 1 of the law, which states that a marriage is considered valid if it is conducted in accordance with the religious and belief systems of the individuals involved. Hidayat believes that this provision should have been taken into account when making decisions regarding interfaith marriages.[10]

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[7] Sekretariat Jenderal MPR RI, "Yandri Susanto: MA Harus Batalkan Putusan PN Jakarta Pusat Yang Membolehkan Nikah Beda Agama," *Berita MPR*, June 29, 2023, https://www.mpr.go.id/berita/Yandri-Susanto-:-MA-Harus-Batalkan-Putusan-PN-Jakarta-Pusat-yang-Membolehkan-Nikah-Beda-Agama.

[8] Ansori Ansori, "Position of Fatwa in Islamic Law: The Effectiveness of MUI, NU, and Muhammadiyah Fatwas," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 1 (2022), p. 53–72.

[9] Wahyu Suryana, "Putusan Nikah Beda Agama Digugat Ke MA," *Republika*, July 11, 2023, https://rejabar.republika.co.id/berita//rxmal4396/putusan-nikah-beda-agama-digugat-ke-ma.

[10] Hedi Malliwang, "Putusan PN Jakpus Kabulkan Nikah Beda Agama Picu Polemik," *Kumparan News*, July 2, 2023, https://kumparan.com/kumparannews/putusan-pn-jakpus-kabulkan-nikah-beda-agama-picu-polemik-20iKWNNTzhL/full.

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The Central Jakarta District Court granted Anthony, a Christian, and Wulandari, a Muslim, an interfaith marriage request to have their marriage registered at the Central Jakarta Civil Registry Office. In that judgement, the judge determined that the marriage performed by the two of them met the conditions, and that both of them had decided to marry. The judge also believed that everyone has the right to build a family and have children of their own free will, as stated in Article 10 paragraph (1) of Law number 39 of 1999 on Human Rights. The court further indicated that the decision was made in accordance with Article 35 letter (a) of Civil Administration Law Number 23 of 2006, and was based on Supreme Court decision Number 1400K/PDT/1986 (*Andi Vony vs. the State*), which allowed the appeal request for interfaith marriage licences. Furthermore, judges based their conclusions on social considerations, including the diversity of society. According to the judgment, interfaith marriages are objectively and sociologically reasonable and quite likely to occur, given Indonesia's geographical position, the heterogeneity of the Indonesian population, and the numerous religions that are legally recognized as existing in Indonesia.[11]

The issue of interfaith marriages has been a subject of debate since the 1980s. During that time, the Supreme Court of Indonesia issued Decision No. 1400 K/Pdt/1986 in the case of *Andi Vony vs. the State*. The ruling stated that interfaith marriages have been recognized as lawful in Indonesia, although they necessitate a court order. It is noteworthy that this ruling has fueled the ongoing dialogue and controversy regarding interfaith unions in Indonesia. Following the court's decision, the civil registry office has been able to legally register interfaith marriages with the requirement of a court order. However, in 2014, the Constitutional Court made a ruling on interfaith marriage in Decision No. 68/PUU-XII/2014 (*Yuvenus et al. vs. the State*), where it dismissed the judicial review of Article 2 (1) of the Marriage Law. In 2022, following that, the Constitutional Court received a subsequent application for the judicial review of Article 2 (1) of the Marriage Law. In Decision Number 24/PUU-XX/2022 (*Petege vs. the State*), the Constitutional Court once again rejected the petitioner's request in its entirety. Thus, through these two decisions, a constitutional basis has been established for the relationship between religion and the state in the context of marriage law in Indonesia. According to these decisions, religion plays a crucial role in determining the validity of a marriage, while the state focuses on the administrative validity of marriage within the legal framework. This approach aims to strike a balance between religious principles and the legal framework of the state when it comes to marriages.

[11] Editor, "Hakim PN Jakarta Pusat Kabulkan Pernikahan Pasangan Beda Agama," *CNN Indonesia*, June 25, 2023, https://www.cnnindonesia.com/nasional/20230625112541-12-966266/hakim-pn-jakarta-pusat-kabulkan-pernikahan-pasangan-beda-agama.

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Numerous scholarly inquiries investigate interfaith marriages in Indonesia, particularly those between Muslims and non-Muslims. For instance, research conducted by Nasir delves into interfaith marriages from a legal standpoint, analysing historical and empirical data sourced from the island of Lombok, located in eastern Indonesia. Nasir's study positions interfaith marriage as the focal point of discursive conflicts involving religion, law, and local customs, serving as a locus for contention and negotiation among governmental authorities, communities, religious leaders, as well as the couples themselves and their extended familial and communal networks.[12] Similarly, the findings of Fitrawati's study scrutinized the entitlement to interfaith marriage freedom in Indonesia through the lens of universal human rights and cultural relativism.[13] Other scholarly inquiries also explore the debate surrounding interfaith marriage discourse on social media platforms, often employing a human rights perspective.[14] Additionally, numerous other scholarly investigations delve into court rulings that legalize interfaith marriages, a departure from the provisions outlined in Article 1 and Article 2, Paragraph (1) of Law Number 1 of 1974 concerning Marriage, despite the recognition among judges and all involved parties that the tenets of each religion and belief system prohibit such unions.[15]

As the title suggests, this research departs from normative juridical studies and empirical analysis of interfaith marriages. This study answers the following questions: What are the legal arguments for interfaith marriage in Indonesia? How do states, specifically the courts, view and negotiate interfaith marriages? Do interfaith marriages reflect the state-, law-, and religion-related nature of contemporary Indonesian family law? In this research, the main focus is on marriages between Muslims and non-Muslims. In particular, there is interest in determining state attitudes towards non-state normative orders, especially Islamic teachings, given the enormous influence on Muslim majority populations. Therefore, the purpose of this study is to examine the arguments presented by proponents and opponents of interfaith marriage in Indonesia, particularly focusing on the debate between human rights considerations and the application of religious teachings in the context of marriage.

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[12] Mohamad Abdun Nasir, "Religion, Law, and Identity," p. 131–50.

[13] Fitrawati Fitrawati, "Diskursus Perkawinan Beda Agama Di Indonesia Dalam Tinjauan Universalisme HAM Dan Relativisme Budaya," *Juris: Jurnal Ilmiah Syariah* 20, no. 1 (2021), p. 131–45.

[14] Y Sonafist and H Yuningsih, "Islamic Law, the State, and Human Rights," p. 381–91.

[15] M. Yakub Aiyub Kadir and F Rizki, "Interfaith Marriage in Indonesia: A Critique of Court Verdicts," *Yuridika* 38, no. 1 (2023), p. 171–90. K M Gemilang, et. al., "Discussing the Phenomenon of the Appointment of Judges in District Courts Regarding Interfaith Marriages from a Legal Logic Perspective," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 2 (2023), p. 307–24.

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This study draws on normative legal research and empirical analysis of interfaith marriages to answer the question of how states (through courts) view and negotiate interfaith marriages from state, legal, and religious perspectives. This study includes legislative studies by analyzing laws, legal regulations and decisions of the constitutional court and judicial institutions.[16] Legal data are laws regarding marriage provisions, whether they are regulations, court rulings, or *fiqh* provisions regarded as appropriate by Indonesian Muslims. It consists of primary legal material, including District Court decisions, Constitutional Court decisions, as well as current marriage laws and regulations, such as Law No. 1 of 1974, Government Regulation No. 9 of 1975, and the Compilation of Indonesian Islamic Law (*Kompilasi Hukum Islam*/KHI).[17] Furthermore, there are secondary legal materials that provide additional data, including *fiqh* books, which contain the beliefs of the Indonesian Muslim community when it comes to marriage, scientific publications about interfaith marriages and legal provisions, as well as opinions of legal experts. In addition, tertiary legal materials, such as legal dictionaries and encyclopaedias, are included. Data analysis is qualitatively described using legal, philosophical, and sociological methods. By applying the inductive method, conclusions are drawn and described in a descriptive and prescriptive manner.

Interfaith Marriage According to Islamic Law and Positive Law

Interfaith marriage has been a longstanding issue within society and is by no means a recent development. Similarly, such unions are not infrequent within Indonesian society.[18] The practice of interfaith marriage has deep historical roots in Indonesia, though it encountered complexities during the Suharto regime's pursuit of harmonizing marriage laws through the legal unification policy, wherein a singular law was imposed upon all citizens.[19] In order to address this intricate situation, subsequent to the implementation of the marriage law in 1974, numerous avenues have been made available for Indonesians to pursue interfaith marriages. These approaches encompass petitioning for interfaith marriages through legal channels, conducting marriages outside the country, or performing unions in accordance with the religious customs of both the

[16] Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum: Normatif Dan Empiris* (Yogyakarta: Pustaka Pelajar, 2015), 70-71. Idham Idham, et.al., "Dynamic Development of Family Law in Muslim Countries," *Al-'Adalah* 19, no. 1 (2022), p. 161–78.

[17] Law, No.1 of 1974 concerning Marriage. Presidential Instruction No. 1 of 1991 concerning the Compilation of Indonesian Islamic Law.

[18] Abdul Qodir Zaelani and Edward Rinaldo, "Larangan Pernikahan Beda Agama Di Indonesia Dan Relevansinya Dengan Fatwa Majelis Ulama Indonesia," *ADHKI: Journal of Islamic Family Law* 4, no. 2 (2023), p. 149–55.

[19] Ratno Lukito, "The Enigma of Legal Pluralism in Indonesian Islam: The Case of Interfaith Marriage," *Journal of Islamic Law and Culture* 10, no. 2 (2008), p. 179–91.

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prospective husband and wife, entailing the execution of two marriage contracts—one aligned with the religion of each party. Moreover, in numerous instances, individuals may opt for temporary compliance with one of the religious laws by undergoing a change in belief prior to marriage.[20] This practice is pursued due to the legal framework of marriage in Indonesia, which mandates that unions, must adhere to the religious doctrines of each individual citizen. Article 2, paragraph 1 of Law Number 1 of 1974 specifies that a marriage is deemed valid when conducted in accordance with the regulations of each respective religion and belief. Additionally, Article 8, letter (f) of the Marriage Law enforces a prohibition on marriages between individuals whose religion or other relevant regulations forbid such unions.[21]

According to Article 4 of the Compilation of Indonesian Islamic Law (KHI), marriage is considered valid when conducted in accordance with Islamic law as outlined in Article 2, Paragraph (1) of Law No. 1 of 1974 on Marriage. Furthermore, Article 40, subsection (c) of the KHI asserts that certain circumstances prohibit the marriage between a man and a non-Muslim woman. Additionally, Article 44 of the KHI declares that a Muslim woman is not allowed to marry a non-Muslim man. Moreover, according to Article 61 of the KHI, the notion of inequality (*kufū'*) cannot be invoked to impede a marriage, except when the inequality stems from differences in religious beliefs or *ikhtilāf al-dien*.[22]

The verses of the Qur'an, in fact, do not categorically proscribe or endorse interfaith marriages. Notably, within QS. Al-Maida [5]: 5, there exists a verse permitting Muslim men to marry women who belong to the community of the people of the book (*ahl al-kitāb*). However, conversely, a verse found in QS. Al-Baqarah [2]: 221 within the Quran explicitly forbids Muslims from marrying polytheists, while another verse in QS. al-Mumtaḥana [60]: 10 prohibits the act of returning Muslim wives to their non-believing husbands. It is worth noting that unlike the Qur'an, the topic of interfaith marriage receives comparatively less attention in the hadiths (traditions and sayings of the Prophet). The scarcity of hadith references pertaining to interfaith marriage is indeed uncommon, as it is customary to find an abundance of hadiths elucidating matters for which Qur'anic verses exist. It is expected that if there are specific Qur'anic verses addressing a particular subject, there would be a multitude of corresponding hadiths providing

[20] Ermi Suhasti, et.al., "Polemics on Interfaith Marriage in Indonesia between Rules and Practices," *Al-Jami'ah: Journal of Islamic Studies* 56, no. 2 (2018), p. 367–94.

[21] Suud Sarim Karimullah, "Pursuing Legal Harmony: Indonesianization of Islamic Law Concept and Its Impact on National Law," *Mazahib: Jurnal Pemikiran Hukum Islam* 21, no. 2 (2022), p. 213–44.

[22] Ahmad Rajafi, "Larangan Muslimah Menikah Dengan Ghair Al-Muslim (Suatu Kajian Interdisipliner)," *Al-'Adalah* 10, no. 2 (2017), p. 473–84.

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further insights into the matter. Nevertheless, when it comes to interfaith marriages, there appears to be a dearth of relevant hadiths on this matter. This normative textual context has considerably influenced discussions concerning interfaith marriages within the realm of Islamic scholarship, engaging the Muslim scholars (‘*ulamā’*) in intricate debates.[23]

However, this matter continues to be a subject of ongoing deliberation among Muslim scholars, who hold at least three distinct perspectives on the issue.[24] The first viewpoint staunchly prohibits, or at the very least, discourages (considered *makrūh*), the union between a Muslim and a non-Muslim. This stance strictly disallows both Muslim men and women from marrying non-Muslim individuals. The proponents of this perspective during the era of the Prophet’s companions include Umar ibn Khattab, Ali ibn Abi Talib, and Abdullah ibn Umar. In the subsequent generation of the companions’ followers (*tābi’īn*), Atā’ ibn Abi Rabah is known to uphold this view.[25] The first viewpoint has garnered significant endorsement, even from Muslim scholars in Indonesia, such as the Indonesian Ulema Council (MUI). During the Second National Conference in 1980, the MUI issued a fatwa emphasizing the illegitimacy of marriages between Muslim women and non-Muslim men. Similarly, the union of Muslim men with non-Muslim women is also prohibited.[26] The stipulations of this fatwa are reiterated in the Fatwa of the Indonesian Ulema Council Number 4/MUNAS-VII/MUI/8/2005.[27]

The second perspective espouses the permissibility of Muslim individuals marrying non-Muslims under specific conditions, specifically allowing Muslim men to marry women from the people of the book (*ahl al-kitāb*). Conversely, this stance prohibits Muslim women from marrying non-Muslim men, including those who belong to the people of the book. This perspective finds support from eminent scholars spanning various generations, including those from the era of the Prophet’s companions like Ibn Abbas, scholars from the *tābi’īn*

[23] Mohamad Abdun Nasir, “Negotiating Muslim Interfaith Marriage in Indonesia: Integration and Conflict in Islamic Law,” *Mazahib: Jurnal Pemikiran Hukum Islam* 21, no. 2 (2022), p. 155–86.

[24] Danial Danial, Munadi Usman, and N Sari Dewi, “The Contestation of Islamic Legal Thought: Dayah’s Jurists and PTKIN’s Jurists in Responding to Global Issues,” *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 1 (2022), p. 19–36.

[25] Muhammad Ali Al-Sabuni, *Rawâi’ Al-Bayân Tafsîr Âyât Al-Ahkâm Min Al-Qur’ân*, Vol. 1 (Damascus: Maktabah al-Ghazali, 1980), p. 287-289.

[26] Majelis Ulama Indonesia, *Himpunan Keputusan Dan Fatwa Ulama Indonesia* (Jakarta: Sekjen MUI-Masjid Istiqlal, 1995), p. 91. Rahmawati Rahmawati, “Kontestasi Pemikiran Ulama Dalam Pembaruan Hukum: Studi Pada Fatwa MUI Tentang Perkawinan Beda Agama,” *Al-Manahij: Jurnal Kajian Hukum Islam* 10, no. 1 (2016), p. 31–42.

[27] Zaelani and Rinaldo, “Larangan Pernikahan Beda Agama Di Indonesia Dan Relevansinya Dengan Fatwa Majelis Ulama Indonesia.” Fatwa of the Indonesian Ulema Council Number 4/MUNAS-VII/MUI/8/2005.

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generation such as Said ibn Musayyab, as well as proponents of the Hanbali school of thought. Early exegetes of the Qur'an, exemplified by Muhammad Ibn Jarir al-Tabari, underscored that the permissibility of interfaith marriages was confined to the union with women from the people of the book, as explicitly mentioned in the QS. al-Ma'idah (5) verse 5.[28]

The third standpoint advocates for the permissibility of interfaith marriages between Muslims and non-Muslims. Notable Muslim figures within this group include the modern Islamic scholars Muhammad Abduh (1849-1905) and his student Rashid Ridha (1865-1935). Their interpretation of the Surah al-Baqarah (2) verse 221, which prohibits Muslims from marrying polytheists, hinges on considering these polytheists as specific to the time of the Prophet, particularly linked to the institution of slavery (*'abd*) prevalent during that era. Abduh argues that since slavery no longer exists, the verse is to be understood within the confined context and temporal framework of its revelation, rendering it applicable only to that particular period.[29]

The regulations outlined in Article 2 of the Marriage Law in Indonesia specify that marriage is considered lawful if conducted in accordance with the customs and beliefs of each religion. Additionally, every marriage must be officially registered in compliance with the relevant laws and regulations. This article underscores the notion that marriage can be legally recognized only when performed in accordance with the tenets of each respective religion and belief system. The explanation of Article 2 of the Marriage Law explicitly asserts that any marriage conducted outside the purview of individual religious and belief systems, as outlined in the Constitution, cannot be deemed valid. The Constitution, particularly in Article 29, establishes the foundation for the State, affirming its belief in the existence of a single divine entity, while simultaneously safeguarding the freedom of all citizens to adopt their preferred religion and engage in worship in alignment with their personal convictions and faiths.[30]

Prior to the enactment of Law No. 1 of 1974, the matter of interfaith marriages was governed by the *Regeling op de Gemengde Huwelijken* (GHR), *Staatsblad* 1898 No. 158. According to Article 1 of the GHR, the union of individuals subject to different laws in the Dutch East Indies was referred to as "Mixed Marriages". Regarding Article 6, paragraph (1) of the GHR, it stipulates

[28] Abdur-Rahman Al-Jaziri, *Kitāb Al-Fiqh 'ala Al-Mazahib Al-Arba'ah*, 4th ed. (Beirut: Dār al-Kutub al-Ilmiyyah, 1990), p. 196.

[29] Muhammad Abduh, *Islam Wa Al-Nasraniyyah Ma'a Al-'Ilm Wa Al-Madaniyyah* (Cairo: Dār al-Manār, 1373), p. 97.

[30] M Hasyim Syamhudi, "Konstruksi Sosial Pernikahan Beda Agama Dikalangan Muslim Tionghoa Di Probolinggo," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 11, no. 2 (2011), p. 127–43. Ramdani Wahyu Sururie and Dio Ashar Wicaksana, "Legal Protection of Women In Unregistered Inter-Citizen Marriage," *Al-'Adalah* 16, no. 2 (2019), .p. 355–74.

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that "Mixed marriages shall be conducted in accordance with the laws applicable to the husband, with the sole exception being the necessary consent of the prospective partners". Meanwhile, Article 7, paragraph (2) of the GHR declares that "Disparities in religion, social status, ethnicity, or lineage shall not serve as impediments to the continuation of the marriage". These provisions underscore the regulation of interfaith marriages and explicitly state that religious disparities cannot be employed as a justification to impede the occurrence of marriages. This particular regulation was promulgated explicitly by the Dutch Colonial Government as a pre-emptive measure to address class distinctions outlined in the *Indische Staatsregeling* (IS), the constitution of the Dutch East Indies. Article 163 of the IS categorized citizens into three distinct groups: the European group (including the Japanese), the indigenous population of Indonesia, and the oriental or foreign East group (comprising individuals not falling within the European or indigenous categories, thereby ensuring comprehensive classification). Nevertheless, the enactment of Law Number 1 of 1974 has nullified the legality of interfaith marriages as previously stipulated in *Staatsblad* 1898 No. 158, rendering it inoperative within the present legal framework in Indonesia.

Three perspectives from legal authorities in Indonesia exist concerning the stipulations found in Article 2, paragraph 1, of the Marriage Law.[31] The first viewpoint asserts that interfaith marriage lacks justification and represents a contravention of both Article 2, paragraph (1), and Article 8, letter (f), of the Marriage Law. On the other hand, the second perspective maintains that interfaith marriages are permissible, lawful, and valid, as they fall within the purview of "mixed marriage", as articulated in Article 57 of the Marriage Law, referring to the union of two individuals in Indonesia subject to distinct legal systems. As per the second standpoint, Article 57 not only governs marriages involving individuals of different nationalities but also encompasses unions between individuals of different faiths. In light of this interpretation, given that the Marriage Law does not specifically address the procedures for such cases, reference is made to Article 66 of the Marriage Law,[32] thereby deferring to the procedures stipulated in Article 6, paragraph (1) of the GHR. This entails conducting mixed marriages in accordance with the laws applicable to the husband unless both the prospective bride and groom grant their explicit consent

[31] Aulil Amri, "Perkawinan Beda Agama Menurut Hukum Positif Dan Hukum Islam," *Media Syari'ah: Wahana Kajian Hukum Islam Dan Pranata Sosial* 22, no. 1 (2020), p. 48–64.

[32] Article 66 Law no. 1 of 1974 concerning Marriage: "With the implementation of this Law, all matters pertaining to marriage, as well as any regulations concerning marriage found in the Civil Code (*Burgerlijk Wetboek*), the Indonesian Christian Marriage Ordinance (*Huwelijks Ordonantie Christen Indonesiers* S.1933 No. 74), Mixed Marriage Regulations (*Regeling op de Gemengde Huwelijken* S. 1898 No. 158).

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to alternative arrangements. The third perspective posits that interfaith marriages remain unaddressed in the Marriage Law. Consequently, with reference to Article 66 of the Marriage Law, it renders other marriage-related regulations null and void to the extent that they have been encompassed by this new law. Nevertheless, due to the absence of specific provisions in the Marriage Law concerning interfaith marriages, the re-enforcement of previous regulations becomes plausible, leading to the guidance of mixed marriage regulations (GHR, *Staatsblad* 1898 No. 158) to govern matters pertaining to interfaith unions.

Initially, the resolution of these debates centered around MA Decision No. 1400 K/Pdt/1986 (the case of *Andi Vony vs. the State*) rendered by the Supreme Court of Indonesia. This decision has attained the status of jurisprudence. It unequivocally established the legality of interfaith marriages in Indonesia, subject to a court order. The case that led to this landmark decision involved an application for an interfaith marriage between Adrianus Petrus Hendrik Nelwan, a Protestant Christian man, and Andi Vony Gani Parengi, a Muslim woman. In 1986, the legal proceedings commenced when Andi Vony and Adrianus pursued official validation of their union in a district court, despite the disparity in their religious beliefs. Due to the prior denials of their marriage requests by the Office of Religious Affairs (KUA) and the Office of Civil Registry (KCS), they sought marriage authorization from a judge. In accordance with her Muslim faith, Andi Vony applied to the KUA for the marriage to be conducted in adherence to Islamic law. However, the application was declined by the KUA on the grounds that the prospective groom was not of the Muslim faith. Similarly, the KCS declined the couple's plea to register their marriage based on the same rationale. Subsequently, the bride and groom lodged an appeal with the Central Jakarta District Court, seeking to overturn the decisions of both marriage registration offices and requesting the court to facilitate the registration of their marriage at the KCS office.

Furthermore, the initial court, in its ruling numbered 382/PDT/P/1986/PN.JKT.PST, dismissed their application citing two primary reasons: firstly, the Marriage Law (UU No. 1 of 1974) does not encompass provisions regarding marriages between individuals of divergent religious beliefs; Secondly, the judges opined that the refusals by both the KUA and the KCS were not in violation of the marriage law, according to their assessment; and thirdly, impediments to conducting interfaith marriages in Indonesia are evident in the provisions of Article 2 of Law Number 1 of 1974 and elaborated upon in Article 8 of Government Regulation Number 9 of 1975. The panel of judges holds the view that Article 2 of the Marriage Law should be interpreted as a prohibition on interfaith marriages, implying that such unions fundamentally lack recognition

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within the nation. Consequently, they deemed the decisions of the KUA and the KCS as justified on these grounds.

Following the dismissal of the application at the court of first instance, Andi Vony subsequently lodged an appeal with the Supreme Court. She contends that the Marriage Law does not explicitly forbid interfaith marriages. She contended that the interpretation of the Marriage Law by the first instance court judges was unfounded since there exists no statutory prohibition against interfaith marriage, and their unfavourable ruling lacked adequate legal justification. Based on this rationale, Andi Vony petitioned the judge at the Supreme Court to nullify the initial court's decision and validate the interfaith marriage. Three years thereafter, on 20 January 1989, the Supreme Court issued Decision Number 1400 K/Pdt/1986, acceding to Andi Vony's request and recognizing the legality of the interfaith marriage.

In their ruling, the judges at the Supreme Court concurred in overturning the District Court's decision and annulling the KCS letter, which had previously denied the registration of Andi Vony and Adrianus' marriage. The decision in favour of the appellant is fundamentally founded on the subsequent arguments. Firstly, the Supreme Court acknowledged that both individuals involved in the case shared a profound affection for each other and, despite coming from different religious backgrounds, their bond was nurtured on mutual love. Furthermore, the parents of both parties were supportive of their intention to marry. Firstly, as per the perspective of the panel of judges at the Supreme Court, Law no. 1 of 1974 does not specifically address interfaith marriages. Nonetheless, the court opined that prohibiting such marriages would run counter to Article 27 of the Constitution. This constitutional article establishes that every citizen possesses an equal right to enter into marital unions, irrespective of the religious beliefs held by the parties involved. Thirdly, upholding the principle of national law and considering that previous colonial regulations concerning mixed marriages no longer held authority in adjudicating cases of interfaith marriages, the panel of judges at the Supreme Court reached a consensus that, fundamentally, a legal void existed regarding regulations pertaining to interfaith marriages. The Supreme Court took cognizance of the prevalence of interfaith marriages in society, which indicated their viability. In light of the KCS (civil registry office) being the sole state institution authorized to acknowledge such unions, the Supreme Court issued a directive to the KCS to accept interfaith marriages involving Andi Vony and Adrianus.

The Supreme Court's ruling, No. 1400 K/Pdt/1986, established the legal foundation for the registration of interfaith marriages. Nonetheless, with the enactment of Law Number 23 of 2006 on Civil Administration (several articles were amended by Law No. 24 of 2013), the prospect of legitimizing interfaith

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marriages appears to have been made more feasible. Under the law, individuals who engage in interfaith marriages are afforded the opportunity to submit an application to the District Court. Upon review, the court is empowered to issue an official decree authorizing interfaith marriages and instructing the Civil Registry Office to duly record such unions in the Marriage Registration Register.[33]

Typically, judges take into account various factors when evaluating requests for the registration of interfaith marriages. Foremost among these considerations is the absence of any prohibition on interfaith unions as stipulated in Law Number 1 of 1974. Consequently, due to the legal vacuum in the Marriage Law concerning this matter, the application for registering interfaith marriages may be approved. The second aspect taken into account pertains to the provisions outlined in Article 21, paragraph (3) of Law no. 1 of 1974, as well as Article 35, letter (a) of Law no. 23 of 2006. Nevertheless, it is noteworthy that certain courts continue to reject applications for interfaith marriage registration despite established legal precedents from the Supreme Court, exemplified by cases such as the Ungaran District Court Decision Number 08/Pdt.P/2013/PN.Ung (*Ary Jokopriyanto vs. the state*) and the Blora District Court Decision Number 71/Pdt.P/2017/PN Bla (*Neneng Oktora vs. the State*), strengthened by an appeal decision from the supreme court with decision number 1977 K/Pdt/2017.[34]

As per Article 21, paragraph (3) of the Marriage Law, individuals whose marriage proposals face rejection possess the right to file an application with the court where the marriage registrar, who issued the denial, is situated. The court will then render a decision based on the presented statement of refusal. This article suggests that the responsibility for reviewing and adjudicating matters concerning interfaith marriages rests with the Court. Article 35, letter (a) of the Civil Administration Law establishes that the registration of marriages, as mentioned in Article 34, also encompasses marriages determined by the Court. The explication of Article 35, letter (a), offers a clear delineation of the matter concerning interfaith marriages by explicitly defining it as "marriages conducted between individuals of diverse religious affiliations". Furthermore, Article 36 of the Civil Administration Law stipulates that "When a marriage lacks evidence in the form of a marriage certificate, the registration of said marriage is conducted subsequent to the issuance of a court order". Despite the primary intention behind the formulation of the article being the registration of marriages, the inclusion of Article 35, letter (a), in the Civil Administration Law significantly broadens the

[33] Islamiyati Islamiyati, "Analisis Putusan Mahkamah Konstitusi No. 68/PUU/XII/2014 Kaitannya Dengan Nikah Beda Agama Menurut Hukum Islam Di Indonesia," *Al-Ahkam* 27, no. 2 (2017), p. 157–78.

[34] Ayub Mursalin, "Legalitas Perkawinan Beda Agama: Mengungkap Disparitas Putusan Pengadilan Di Indonesia," *Undang: Jurnal Hukum* 6, no. 1 (2023), p. 113–50.

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scope for recognizing interfaith marriages, which would otherwise be deemed invalid under the Marriage Law.

Nevertheless, the jurisprudence established by the 1986 Supreme Court decision appears to be drawing to a close and will no longer serve as a point of reference. This is due to the issuance of Circular Letter (*Surat Edaran Mahkamah Agung*/SEMA) Number 2 of 2023 by the Supreme Court on July 17, 2023, which provides specific instructions for judges when adjudicating cases concerning applications for the registration of marriages between individuals of distinct religious and belief backgrounds. Through the issuance of this circular letter, the Supreme Court has instructed the judges in the courts to refrain from approving requests for the registration of marriages involving couples from different religious backgrounds. The Supreme Court maintains that the objective behind this circular letter is to establish legal certainty and consistency in court rulings concerning interfaith marriages, given that the Marriage Law does not explicitly forbid such unions.[35]

Constitutional Court Decisions on Interfaith Marriages

In June 2015, the Constitutional Court issued its ruling in response to the petition presented by the applicants, wherein they sought the judicial evaluation of Article 2 paragraph 1 of Law no. 1 of 1974, as per Decision No. 68/PUU-XII/2014. Central to the applicants' argument was their claim that the prevailing interpretation of the aforementioned law encroached upon the fundamental entitlement of interfaith couples to contract marriage. However, the Constitutional Court ultimately rejected the applicants' request for a judicial review. Subsequently, in 2022, the provisions encompassing Article 2, paragraph 1 and paragraph 2, along with Article 8, letter (f) of the Marriage Law, underwent a fresh round of examination for potential judicial review. Nonetheless, the Constitutional Court adhered to its established position and once again denied the petitioner's request, as evident in Decision Number 24/PUU-XIX/2022. The ensuing analysis presents a comparative overview of the two Constitutional Court decisions concerning interfaith marriages.

[35] Fitria Chusna Farisa, "Larang Hakim Kabulkan Nikah Beda Agama, MA Klaim Jalankan Fungsi Pengawasan," *Kompas.Com*, July 20, 2023, https://nasional.kompas.com/read/2023/07/20/15400441/larang-hakim-kabulkan-nikah-beda-agama-ma-klaim-jalankan-fungsi-pengawasan.

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Table 1: Comparison of Constitutional Court decisions regarding the judicial review of the Marriage Law in the case of interfaith marriages

No.	IRAC	No. 68/PUU-XII/2014	No. 24/PUU-XIX/2022
1.	Petitioner	4 people	1 person
2.	Issues	Article 2 paragraph (1) of the Marriage Law	Article 2 paragraph (1) and (2), and Article 8 letter (f) of the Marriage Law
3.	Rules	Articles 27 (1), 28B (1), 28D (1), 28E (1) (2), 28I (1), 29 (2) of the Constitution	Articles 27 (1), 28B (1), 28D (1), 28E (1) (2), 28I (1), 29 (1) (2) of the Constitution
4.	Arguments of Petitioners	The provisions in Article 2 paragraph (1) of the Marriage Law have implications for the state "forcing" every citizen to submit to one interpretation of religious teachings adopted by the state.	Article 2 paragraph (1) and paragraph (2) as well as Article 8 letter (f) of the Marriage Law reduces and mixes the meaning of marriage and freedom of religion, and the state interferes in the private affairs of citizens through its authority to determine whether or not marriage is legal administratively only from the sameness of religion of the bride and groom.
5.	Consideration of Judges	Marriage forms a family based on religion; and religion determines the legality of marriage, while the state determines administrative legality.	The validity of marriage is the domain of religion through religious institutions that have the authority to provide religious interpretations, and the registration of marriages is the duty of the state.
6.	Judgment	Dismiss the petitioners' plea in its entirety.	Dismiss the petitioner's plea in its entirety.

The petitioners involved in the judicial review case before the Constitutional Court, docketed as Number 68/PUU-XII/2014, encompass a group of five individuals identified as Damian A. Yuvenus, Rangga S. Widigda, Varida M. Simarmata, Anbar Jayadi, and Luthfi Saputra. All of these applicants are Indonesian citizens who harbour concerns regarding the potential infringement upon their constitutional rights as outlined under Article 2, paragraph (1) of Law Number 1 of 1974 ("marriage is legal if it is performed according to the laws of

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each religion and belief"). The applicants contend that the compulsion imposed by the state, requiring each citizen to enter into matrimony in accordance with their respective religious beliefs as stipulated in Article 2, paragraph (1) of the Marriage Law, constitutes a contravention of the constitutionally acknowledged freedom of religion. Moreover, they argue that this coercive provision has encroached upon the petitioners' entitlement to exercise their right to marry without undue restrictions. The petitioners argued that the constraints imposed by Article 2, paragraph (1) of the Marriage Law do not align with the principles of limitations on rights and freedoms enshrined in the subsequent Articles of the Constitution: Article 27 (1),[36] Article 28B (1),[37] Article 28D (1),[38] Article 28E (1) and (2),[39] Article 28I (1),[40] and Article 29 (2).[41] Furthermore, the implementation of Article 2, paragraph (1) of the Marriage Law has engendered diverse forms of legal circumvention within the realm of marriage law. The petitioners advocate for an alteration of Article 2, paragraph (1) of Law No. 1 of 1974 to the following proposed version: "Marriage shall be deemed valid if conducted in accordance with the regulations of each religion and belief, provided that the interpretation of such religious and belief systems remains within the purview of each prospective bride and groom".[42]

Decision No. 68/PUU-XII/2014 centers its attention on the aspect of legality, emphasizing that marriages in Indonesia must align with the religious laws and beliefs adhered to by the parties involved. Regarding interfaith marriages, legal permissibility or legalization is contingent upon the presence of religious or belief congruence between both partners. The Court's perspective

[36] Article 27 Paragraph (1) of the Constitution: "All citizens have the same position before law and government and are obliged to uphold that law and government without exception".

[37] Article 28B Paragraph (1) of the Constitution: "Every person has the right to form a family and continue offspring through a legal marriage".

[38] Article 28D Paragraph (1) of the Constitution: "Every person has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law".

[39] Article 28E Paragraph (1) of the Constitution: "Everyone has the right to embrace a religion and worship according to his/her religion, obtain education, have a job, choose citizenship, choose a place to live in the territory of the country and leave it, and has the right to return". Article 28E Paragraph (2): "Everyone has the right to freedom of belief, express thoughts and attitudes, according to his/her conscience".

[40] Article 28I Paragraph (1) of the Constitution: "The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of a retroactive law are human rights that cannot be reduced under any circumstances".

[41] Article 29 Paragraph (2) of the Constitution: "The state guarantees the freedom of each citizen to embrace their own religion and to worship according to their religion and beliefs".

[42] Constitutional Court Decision Number 68/PUU-XII/2014, dated 18 June 2015.

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posits that marriage falls within the purview of the legal framework in Indonesia and is accordingly subject to regulation. The formulation of laws and regulations pertaining to marriage serves the dual purpose of governing and safeguarding the rights and responsibilities of all citizens, while the institution of marriage itself is oriented towards establishing familial units founded on the principle of belief in a singular, supreme deity. Consequently, religion constitutes the cornerstone for individual communities in navigating the intricacies of married life. Marriage, in this context, warrants a perspective that extends beyond its formal aspects to encompass its spiritual and societal dimensions. Religion assumes a pivotal role in determining the legitimacy of marriages, while administrative legality is a domain governed by the state.[43]

The Constitutional Court Case Number 24/PUU-XX/2022 pertains to a judicial review filed by E. Ramos Petege, an Indonesian citizen who adheres to Catholicism and seeks to marry a Muslim woman. Nonetheless, due to the constraints imposed by the Marriage Law, the marriage could not be solemnized, leading to its eventual annulment. The Petitioner concedes that the implementation of Article 2, paragraphs (1) and (2), alongside Article 8, letter (f), of the Marriage Law has placed him in a position of constitutional disadvantage. This legal arrangement prohibits the Petitioner from contracting a marriage with a partner of a dissimilar religious affiliation, despite both parties sharing a mutual intention to enter into matrimony. These articles are perceived to have diminished and conflated the significance of marriage and the freedom of religion.[44] Furthermore, they have raised concerns about the state's discretionary involvement in the personal matters of citizens, wherein the administrative validity of marriage is contingent solely upon the religious similarity between the prospective spouses. In contrast to the preceding 2014 judicial review, the petitioner of the 2022 judicial review introduced an additional pivotal element in the form of Article 29, Paragraph (1) of the Constitution. As a result, the applicant asserts that this particular petition cannot be categorized under the principle of *ne bis in idem*.[45]

In addressing the petitioner's requests, the Constitutional Court underscored the interconnectedness of religion and the state concerning marital affairs, wherein each entity reinforces the other. In this context, religion establishes the legality of marriage, while the state assumes the responsibility of determining the administrative validity of marriage within the framework of the

[43] Constitutional Court Decision Number 68/PUU-XII/2014, dated 18 June 2015.

[44] Diana Farid, et. al., "Interfaith Marriage: Subjectivity of the Judge in Determination of No. 454/Pdt.p/2018 Surakarta District Court," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 (2022), p. 347–62.

[45] Constitutional Court Decision Number 24/PUU-XX/2022, dated 31 January 2023.

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established legal parameters. Concerning the legitimacy of marriage, as per the pronouncement of the Constitutional Court, the state's function primarily involves implementing the outcomes of interpretation provided by religious institutions or organizations. This entails that the authenticity of marriage falls under the purview of religion, specifically through religious institutions or organizations vested with the authority to furnish religious interpretations. On the other hand, the responsibility of registration lies with the state, carried out by the marriage registrar's office, with the aim of ensuring civil administrative certainty and adherence to the principles enshrined in Article 28D, paragraph (1) of the Constitution.[46]

Furthermore, variations exist in the manner of safeguarding rights between the Universal Declaration of Human Rights (UDHR) and the Indonesian Constitution. Article 16, Paragraph (1) of the UDHR affirms that "Men and women of full age, without any limitation due to race, nationality, or religion, have the right to marry and to found a family". The UDHR explicitly ensures the preservation of the right to enter into matrimony. In contrast, the Indonesian Constitution adopts a distinct formulation, as articulated in Article 28B, paragraph (1), which proclaims, "Every person has the right to establish a family and procreate offspring through lawful marriage". Notably, this constitutional provision safeguards two distinct rights, namely, "the right to establish a family" and "the right to procreate offspring". The subsequent statement signifies that the fulfilment of a "legal marriage" is a prerequisite for safeguarding the two aforementioned rights. In essence, marriage is not positioned as an independent right but rather as a condition for the exercise of the right to establish a family and the right to procreate offspring. Accordingly, as per the Constitutional Court's standpoint, an individual is unable to participate in forming a family and ensuring the continuity of offspring unless they undergo the process of a legal marriage.[47]

Interfaith Marriage in the Discourse of Religion-State Relations

The discussions concerning the interplay between religion and the state in the regulation of matrimonial unions have garnered increasing attention in recent times. Indonesian couples involved in interfaith relationships, irrespective of their religious affiliations, typically encounter formidable obstacles emanating from their families, religious authorities, societal norms, and governmental authorities.[48] Similar to numerous nations with a Muslim-majority population,

[46] Constitutional Court Decision Number 24/PUU-XX/2022, dated 31 January 2023.
[47] Constitutional Court Decision Number 24/PUU-XX/2022, dated 31 January 2023.
[48] Wildani Hefni, et.al., "Reinventing the Human Dignity in Islamic Law Discourse: The Wasatiyah Approaches from Khaled Abou El-Fadl to the Interreligious Relation," *Al-Manahij: Jurnal Kajian Hukum Islam* 16, no. 2 (2022), p. 239–54.

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religion assumes a pivotal role in governing the institution of marriage and significantly influences Indonesia's enduring customs of religious endogamy. The country's religious and ethnic diversity poses a challenge for couples engaged in interfaith marriages, particularly as a majority of such unions involve partners from distinct ethnic backgrounds.[49] The current laws and regulations pertaining to marriage in Indonesia act as a deterrent for interfaith unions. Article 2, paragraph 1 of the 1974 law stipulates that a marriage is considered legally valid only if it adheres to the regulations of each respective religion or belief held by the individuals involved. Consequently, this legal provision effectively restricts the possibility of interfaith marriages for the majority of followers of officially recognized religions in Indonesia.

Although interfaith marriages are not subject to direct legal penalties, the challenges associated with registering such unions carry profound legal ramifications. For instance, the absence of a marriage certificate hinders the couple from registering the birth of their child. Consequently, the child is unable to obtain a birth certificate, leading to further complications such as enrollment difficulties in educational institutions and potential inheritance-related complications. It can be logically posited that the growing attention given by civil society to the debate on interfaith marriage serves as evidence of the transformative influence wielded by modernity and globalization.[50] The theories originating from Western perspectives regarding assortative marriages suggest that as societies undergo development and experience associated processes, there is a decline in religious, racial, ethnic, and kinship endogamy.[51] The proliferation of education, heightened geographical mobility, and reduced influence of parental and extended familial determinations in the choice of marriage partners will foster social interaction among diverse groups, facilitate the development of romantic relationships, and ultimately contribute to an increase in inter-group marriages.

Indonesia does not operate as a secular state, nor does it function as an exclusively Islamic country. As delineated in its constitution, Indonesia's foundation rests upon the belief in a single, omnipotent deity (Article 29 of the Constitution). As a result, the country incorporates certain elements of sharia law into its legal framework. The implementation of the marriage law indicates that the institution of marriage falls under the jurisdiction of both religion and the state. Despite Law no. 1 of 1974 being formulated as a comprehensive national law, applicable across various ethnic, cultural, and religious boundaries, it remains

[49] Noryamin Aini, et.al., "Interreligious Marriage in Indonesia," *Journal of Religion and Demography* 6, no. 1 (2019), p. 189–214.

[50] Noryamin Aini, et.al., "Interreligious Marriage".

[51] Michael J Rosenfeld, "Racial, Educational and Religious Endogamy in the United States: A Comparative Historical Perspective," *Social Forces* 87, no. 1 (2008), p. 1–31.

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closely connected and generally in alignment with the principles of Islamic marriage law (*fiqh munakaḥa*).[52] The incorporation of *fiqh* principles into the national marriage law demonstrates the establishment of a harmonious relationship between state law and Islamic law. This integration is intrinsically connected to the fact that the majority of Indonesia's populace adheres to the Islamic faith, wherein personal and family matters, including marriage law, are inseparable from religious considerations.[53]

Regarding the subject of the interplay between Islam and the state, Indonesia exhibits distinctive attributes in the realm of state-religion relations, positioning itself in an intermediary stance between secularism and Islamism.[54] According to Stahnke and Blitt, countries with a Muslim majority can be classified into four distinct categories. The first category comprises countries that assert themselves as Islamic nations, while the second category includes countries that designate Islam as their official state religion. In the third category, there are states that declare themselves as secular entities, and finally, the fourth category consists of states that neither make constitutional declarations about the nature of Islam or secularism nor designate Islam as their official state religion.[55] Indonesia falls within the aforementioned last category. In an alternate classification proposed by Ran Hirschl, the examination of patterns in the relationship between religion and the state involves consideration of eight distinct models, as follows: (1) atheist state; (2) assertive secularism; (3) separation as state neutrality toward religion; (4) weak religious establishment; (5) formal separation with de facto pre-eminence of one denomination; (6) separation alongside multicultural accommodation; (7) religious jurisdictional enclaves; and (8) strong establishment.[56] Among the eight models, Indonesia can be classified under category number 7. This model centers on the accommodation of religion within specific domains. While the legal system maintains a secular framework, certain

[52] Nasir, "Negotiating Muslim Interfaith Marriage in Indonesia."

[53] Nasir, "Negotiating Muslim Interfaith Marriage in Indonesia."

[54] Ratno Lukito, "State and Religion Continuum in Indonesia The Trajectory of Religious Establishment and Religious Freedom in the Constitution," *The Indonesian Journal of International & Comparative Law* 5, no. 4 (2018), p. 645.

[55] Tad Stahnke and Robert C Blitt, "The Religion-State Relationship and the Right to Freedom of Religion or Belief: A Comparative Textual Analysis of the Constitutions of Predominantly Muslim Countries," *Georgetown Journal of International Law* 36 (2004), p. 947–1078.

[56] Ran Hirschl, "Comparative Constitutional Law and Religion," in *Comparative Constitutional Law*, ed. Tom Ginsburg and Rosalind Dixon (Cheltenham: Edward Elgar, 2011), p. 422–40.

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areas, particularly private law and education, grant autonomy to a specific religion.[57]

Furthermore, Durham Jr. and Scharff have identified ten distinct categories to characterize the relationship between the state and religion, which are as follows: (1) Absolute Theocracy; (2) Established Churches; (3) Religious Status Systems; (4) Historically Favoured and Endorsed Churches; (5) Preferred Set of Religions; (6) Cooperationist Regimes; (7) Accommodationist Regimes; (8) Separationist Regimes; (9) Secular Control Regimes; and (10) Abolitionist States.[58] As a nation that acknowledges and upholds religious practices, Indonesia appears to align with the characteristics of categories (3), (5), and (9). This is attributed to the following factors: Firstly, Indonesia qualifies as a "religious" country, recognizing numerous officially sanctioned religions and enforcing specific aspects of religious law that apply to their respective adherents. Secondly, the country prioritizes the predominant religious tradition (i.e., Islam), which significantly influences policy formulation. Lastly, the government employs religion as a tool for bureaucratic governance objectives.[59] As a consequence of its constitutional foundation, which centers on the belief in a single deity and the acknowledgment of religious freedom, Indonesia does not conform to the characteristics of either a secular or an Islamic state. Rather, its distinctive constitutional framework has elevated religion to a significant position in national affairs, including government policies and legislative endeavors. As a result, considerable discussions often arise concerning the incorporation of Islamic sharia principles as national legal norms through legislative means. The state has consistently been perceived as granting precedence to Islam over other religions coexisting within Indonesia.

The constitution serves as the supreme law, serving as the guiding reference for all laws and regulations formulated by the legislative and executive branches. The Constitution of the Republic of Indonesia refrains from explicit mention or preference for any specific religions. Consequently, the delineation of religion-state relations in this nation often remains ambiguous and intricate, particularly concerning policies and laws that govern religious affairs. It appears that these policies lean towards favoring the dominant religion and its followers, namely Islam and Muslims. The ambiguous constitutional provisions concerning Islam in the Indonesian Constitution create room for interpretation, suggesting

[57] Ran Hirschl, "Comparative Constitutional Law and Religion.

[58] W. Cole Durham Jr and Brett G Scharffs, *Law and Religion: National, International, and Comparative Perspectives* (New York: Wolters Kluwer, 2019), p. 118-122.

[59] Alfitri, "Religion and Constitutional Practices in Indonesia: How Far Should the State Intervene in the Administration of Islam?," *Asian Journal of Comparative Law* 13, no. 2 (2018), p. 389–413.

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that the state bears a constitutional responsibility to involve itself in religious affairs and apply religious doctrines, particularly in the case of Islam where the implementation of sharia is "bureaucratized". This intricacy further blurs the demarcation between religious doctrines that necessitate state intervention and those that do not.[60]

Ran Hirschl introduced the concept of constitutional theocracy, wherein the constitution and the Constitutional Court assume a crucial role in countering secularism, pragmatism, and relative moderation. Consequently, this arrangement effectively safeguards against the propagation of secular and liberal ideologies in state affairs, bolstering support for theocratic governance principles. In the specific context of examining the constitutionality of provisions in Indonesian marriage law, deeply influenced by Islamic legal doctrines, the Constitutional Court, as a secular institution, is expected to fulfill the responsibility of safeguarding human rights and individual freedoms through a rigorous process of judicial review.[61] Nevertheless, this study reveals that two rulings rendered by the Constitutional Court pertaining to interfaith marriages fail to uphold the fundamental rights of citizens in marital affairs. The Constitutional Court asserts that a lawful marriage should be founded on religious precepts, thereby asserting the inseparability of marriage from religious considerations within society. Consequently, the Constitutional Court deems marriage as an integral aspect of religious teachings, affirming that the constitutional guarantee of the human right to religion encompasses this realm. This case highlights the Constitutional Court's steadfastness as a guardian of the constitution in addressing legal matters while applying distinct constitutional norms as appropriate.

The issue of state intervention in religious affairs is a subject of frequent debate not only within the legislative domain (*Dewan Perwakilan Rakyat*/DPR) but also throughout Indonesian society. This becomes evident when policies and laws are perceived to favor the majority religion or when they pertain to matters affecting Muslims or the implementation of sharia in Indonesia. The primary factor lies in the continuous efforts by Muslims, being the predominant religion, to assert dominance in the country amidst the presence of other minority religions. The state, however, consistently appears ineffective in countering this prevailing trend.[62] Following the inception of the Constitutional Court in 2003, Indonesian citizens gained the opportunity to subject laws enacted by the legislature to examination of their constitutionality before the Court through the process of

[60] Melissa Crouch, *Law and Religion in Indonesia: Conflict and the Courts in West Java* (London: Routledge, 2014), p. 27.

[61] Ran Hirschl, *Constitutional Theocracy* (Cambridge: Harvard University Press, 2011), p. 13.

[62] Lukito, "State and Religion Continuum in Indonesia."

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judicial review. Concerning cases related to the Islamic religion, three distinct categories can be identified for judicial review of state engagement in Islamic religious matters. These categories are as follows: (1) when state legislation conflicts with the interpretation of a particular issue under sharia; (2) when there is interference in Islamic administration; and (3) when there is interference in the overall administration of religious affairs in Indonesia.[63] The initial category primarily pertains to the examination of provisions within the Marriage Law, specifically addressing the issue of not recognizing interfaith marriages. The second category encompasses inquiries concerning the scope of authority of Religious Courts, the institutionalization of hajj, administration of zakat, and the certification of halal products. As for the third category, it involves the legislation on blasphemy, which remains highly contentious and serves as a test of the Constitution's impartiality towards all religions in Indonesia.[64]

This progress prompts a fundamental inquiry into whether the ambiguous constitutional acknowledgment of Islam, as stated in the Indonesian Constitution, has incentivized the state to formulate policies or pass laws that grant privileges to Islam while discriminating against other religions and their followers. Academic experts have noted that the state, particularly during the authoritarian Suharto regime (1966-1998), has been involved in activities that result in discrimination against various groups, including officially recognized religions,[65] minority communities such as unacknowledged religions, adherents of traditional or mystical beliefs, and religious sects perceived as deviant.[66] It has been contended that Islamist groups have utilized sharia law as a means to advocate Islamization in Indonesia, seeking to integrate sharia principles into state policies and legislation.[67]

The prevailing tendency from the post-1998 reform era to the present depicts numerous instances of state involvement in Islamic religious matters, to the extent that the distinction between state affairs and religious affairs appears to have blurred. Religious matters, particularly those pertaining to Islam, are increasingly subject to state regulation and administration. Moreover, scholars perceive that constitutional practices in Indonesia tend to lean towards being more Islamic or, at the very least, exhibit a tendency to give precedence to Islam over other religions. Throughout the history of independent Indonesia, the association

[63] Alfitri, "Religion and Constitutional Practices in Indonesia."
[64] Alfitri, Religion and Constitutional Practices in Indonesia."
[65] Crouch, *Law and Religion in Indonesia*.
[66] Alfitri, "Religious Liberty in Indonesia and the Rights of 'Deviant' Sects," *Asian Journal of Comparative Law* 3, no. 1 (2008), p. 1–27.
[67] Robert W. Hefner, *Civil Islam: Muslims and Democratization in Indonesia* (Princeton, New Jersey: Princeton University Press, 2000).

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between the state and religion has consistently been influenced by the state's favoritism towards the majority religion. This is due to the fact that the framework established in this context stems from the fundamental configuration wherein the state's identity is positioned between the two stances of Islamism and secularism. This path represents the middle ground chosen by the nation's founders during the process of gaining independence, as they engaged in discussions with both the Islamic-nationalist and secular-nationalist factions to establish the foundation of the state.[68]

The concise elucidation provided above outlines the dynamics of state-religion interactions in Indonesia, and its repercussions are evidently reflected in the realm of religious freedom, particularly in the freedom to exercise one's own beliefs. Irrespective of the broader jurisdiction, the Constitutional Court has emerged as the primary judicial body responsible for addressing Islamic issues. Its jurisdiction even encompasses diverse aspects of sharia that are officially recognized and governed by the state, which includes decisions concerning marriage as an integral religious practice and the determination of permissible and prohibited unions.[69]

Certain experts view the evolution of this legislation as problematic in a pluralistic nation like Indonesia. Salim, for instance, contends that any endeavor to enact sharia-based laws will likely lead to additional legal and political disparities, spanning from minor tensions to outright contradictions in the formal application of sharia within Indonesia. According to certain experts, this approach concerning the implementation of sharia in Indonesia is likened to a re-adoption of the Dutch colonial reception theory. Salim and Azra, for instance, draw the conclusion that the Indonesian state has effectively established a novel 'reception theory' by specifying which Islamic laws can be applied and which cannot. According to this theory, the implementation of sharia is deemed permissible only if it has been officially ratified as national positive law.[70] This is evident from the substance of sharia provisions incorporated into the marriage law as a bureaucratic procedure, and their effective enforcement is solely contingent on the political determination of the state, including the recognition of a specific interpretation regarding interfaith marriages.

[68] Lukito, "State and Religion Continuum in Indonesia."

[69] Tamyiz Mukharrom and Supriyanto Abdi, "Harmonizing Islam and Human Rights Through the Reconstruction of Classical Islamic Tradition," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (2023), p. 40–57.

[70] Arskal Salim and Azyumardi Azra, "Introduction: The State and Shari'a in the Perspective of Indonesian Legal Politics," in *Shari'a and Politics in Modern Indonesia* (Singapore: ISEAS, 2003), p. 13.

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Conclusion

This study reveals that Islamic law continues to serve as a fundamental element in the present-day practice of Muslim family life in Indonesia. Consequently, certain societal assumptions prevail, including among government officials and judges, that interfaith marriages are deemed unlawful, as they are believed to be explicitly prohibited by the Marriage Law due to the prohibition found in all religious doctrines. If marriage registrars and judges solely rely on the provisions of the Marriage Law, it fails to offer legal certainty. Moreover, the legitimacy of interfaith marriages, as stipulated in the Marriage Law, has been a subject of ongoing scrutiny for quite some time. Within Islamic discourse, numerous diverse viewpoints exist concerning the marriage between a Muslim and a non-Muslim. Nevertheless, Indonesia, being a Muslim-majority nation, adheres to the stance that prohibits interfaith marriage, as explicitly stated in the Compilation of Indonesian Islamic Law. The phenomenon of interfaith marriage in Indonesia fundamentally arises from the complex interplay of social, cultural, and political dynamics among its citizens. As a result, Article 2 Paragraph 1 and Article 8 letter (f) of the Marriage Law serve as a contentious battleground where the state and its citizens engage in a contestation of views and interests. The stipulations outlined in Article 2 Paragraph (1) and Article 8 letter (f) of the Marriage Law, along with the two Constitutional Court Decisions dismissing the judicial review of these articles, reinforce the notion that the Indonesian state falls under the classification of countries with religious jurisdictional enclaves concerning the interaction between religion and state affairs. Furthermore, the Constitutional Court has assumed the role of a protective barrier against secularism, pragmatism, and relative moderation, effectively safeguarding the state from the proliferation of secular and liberal ideologies and garnering increased support for theocratic principles of governance.

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