

**JUDGES' RATIO DECIDENDI TO ACCEPT AND REJECT INTERFAITH  
MARRIAGE IN THE PERSPECTIVE OF INDONESIAN POSITIVE LAW**

**THESIS**

**BY:**

**ELMIRA QURROTA A'YUNINA**

**SIN 19210123**



**ISLAMIC FAMILY LAW STUDY PROGRAM**

**FACULTY OF SHARIA**

**ISLAMIC STATE UNIVERSITY OF MAULANA MALIK IBRAHIM**

**MALANG**

**2022**

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## STATEMENT OF THE AUNTENTICITY

In the name of Allah,

With consciousness and responsibility toward the development of science, the writer declares that thesis entitled:

### **JUDGES' RATIO DECIDENDI TO ACCEPT AND REJECT INTERFAITH MARRIAGE IN THE PERSPECTIVE OF INDONESIAN POSITIVE LAW**

Is truly writer's original work which can be legally justified. If this thesis is proven result of duplication or plagiarism from another scientific work, it as precondition of degree will be stated legally invalid.

Malang, 14 November 2022

Writer,



Elmira Qurrota A'yuniha

SIN 19210123

## APPROVAL SHEET

After reading and correcting thesis of Elmira Qurrota A'yunina Student ID 19210123, Department of Islamic Family Law, Syari'ah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang entitled:


**“JUDGES’ RATIO DECIDENDI TO ACCEPT AND REJECT  
INTERFAITH MARRIAGE IN THE PERSPECTIVE OF INDONESIAN  
POSITIVE LAW”**

the supervisor stated that this thesis has met the scientific requirements to be proposed and to be examined on the Assembly Board of Examiners.

Malang, 14 November 2022

Acknowledge by,  
The Head Departmen of Islamic Family Law

Supervisor



ERIK SABTI RAHMAWATI, MA, M.Ag  
NIP. 197511082009012003



SYABRUL BACHRI, M.H  
NIP. 198505052018011002

## LEGITIMATION SHEET

The Assembly Board of Thesis Examiners of Elmira Qurrota A'yunina  
(19210123), Studeny of Islamic Family Law Department, Syari'ah Faculty of  
The State Islamic University Maulana Malik Ibrahim of Malang entitled:

### “JUDGES’ RATIO DECIDENDI TO ACCEPT AND REJECT INTERFAITH MARRIAGE IN THE PERSPECTIVE OF INDONESIAN POSITIVE LAW”

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Dean  
Dr. SUDIRMAN HASAN, MA  
NIP 197708222005011003

MOTTO

لَكُمْ دِينُكُمْ وَلِيَ دِينِ

“For you your religion and to me mine”

## ACKNOWLEDGMENT

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Alhamdulillahirabbil'alamin, have given His rahmat and servan , so we can finish this thesis entitled ” JUDGES’ RATIO DECIDENDI TO ACCEPT AND REJECT INTERFAITH MARRIAGE IN THE PERSPECTIVE OF INDONESIAN POSITIVE LAW ”. Peace be Upon into The Rasulullah Prophet Muhammad SAW who has taught us guidance (*uswatun hasanah*) to do activity correctly in our life. By following Him, may we belong to those who believe and get their intercession on the last day of the end. Amien.

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10. My comrades in arms who became my motivator as well as my race in completing this research
11. Mark Lee which has become one of my best support systems, and one of my best motivators

With the completion of this thesis report, the hope that knowledge which we have gained during our studies can provide the benefits of life in the world and the hereafter. As a human who has never escaped fault, the author is very hopeful for the forgiveness, criticism and suggestions from all parties for future improvement efforts.



## TRANSLITERATION GUIDENCE

The Latin Arabic Transliteration Guidelines which are the result of a joint decision decision (SKB) of the Minister of Religion and the Minister of Education and Culture of the Republic of Indonesia. Number: 158 of 1987 and Number: 0543b/U/1987.

### A. Consonants

A list of Arabic letters and their transliteration into Latin letters can be seen on the following page:

Arab Letters	Name	Lattin Letters	Name
ا	Alif	Not Symbolized	Not Symbolized
ب	Ba	B	Be
ت	Ta	T	Te
ث	S/a	Š	Es (with the dot above)
ج	Jim	J	Je
ح	Ha	Ĥ	Ha (with the dot above)
خ	Kha	Kh	Ka and Ha
د	Dal	D	De
ذ	Z/al	Ž	Zet (with the dot

Arab Letters	Name	Lattin Letters	Name
			above)
ر	Ra	R	Er
ز	Zai	Z	Zet
س	Sin	S	Es
ش	Syin	Sy	Es and Ye
ص	Shad	Ṣ	Es (with the dot below)
ض	Dhad	Ḍ	De (with the dot below)
ط	Tha	Ṭ	Te (with the dot below)
ظ	Za	Ẓ	Zet (with the dot below)
ع	‘Ain	‘	Apostrof backwards
غ	Gain	G	Ge
ف	Fa	F	Ef

Arab Letters	Name	Lattin Letters	Name
ق	Qaf	Q	Qi
ك	Kaf	K	Ka
ل	Lam	L	El
م	Mim	M	Em
ن	Nun	N	En
و	Wau	W	We
هـ	Ha	H	Ha
ء / أ	Hamzah	‘	Apostrof
ي	Ya	Y	Ye

Hamzah (ء (which is located at the beginning of the word follows the vowel without any marking. If it is in the middle or at the end, it is written with a sign (‘).

## B. Vocal

Arabic vowels, like Indonesian vowels, consist of a single vowel or monophonic and multi vowels or dhipthongs. The Arabic single vowel whose symbol is a sign or vowel, the transliteration is as follows:

Sign	Name	Latin Letters	Name
اَ	Fathah	A	A
اِ	Kasrah	I	I
اُ	Dhammah	U	U

Arabic double vowel whose symbol is a combination of vowels and letters, the transliteration is a combination of letters, namely:

Sign	Name	Latin Letters	Name
اِ & اَ	Fathah and ya	Ai	A and I
اِ & اَ	Fathah and wau	Au	A and U

Example:

كَيْفَ : *kaifa*

حَوْلَ : *hauLa*

### C. Maddah

Maddah or long vowels whose symbols are vowels and letters, transliteration in the form of letters and signs, namely:

Harakat and Letters	Name	Letters and Sign	Name
اَ & / اِ ي	Fathah and alif or ya	ā	a and the line above
اِ & ي	Kasrah and ya	ī	i and the line above
اُ & و	Dammah and wau	ū	u and the line above

Example:

مَاتَ : *māta*

رَامَ : *rāma*

قِيلَ : *qīla*

يَمُوتُ : *yamūtu*

#### D. Ta'Marbutah

There are two transliterations for ta' marbutah, namely ta' marbutah who live or get the letters fathah, kasrah, and dammah, the transliteration is [t]. While ta' marbutah who dies or get a sukun harakat, the transliteration is [h].

If the word ending with ta' marbutah is followed by a word that uses the article al- and the reading of the word is separate, then ta' marbutah is transliterated with [h].

المَدِينَةُ : *al-madinah*

#### **E. Syaddah (Tasydid)**

Syaddah or tasydid which in the Arabic writing system is denoted by a tasydid sign (ّ), in this transliteration it is symbolized by a repetition letters (double consonants) marked with a syaddah. Example:

رَبَّنَا : *rabbana*

الْحَقُّ : *al-haqq*

If latter i there is tasydid at the end of a word and preceded by the letter kasrah, then it is transliterated like the letter maddah (i). Example:

عَلِيٍّ : *'Ali (not 'Aliyy or 'Aly)*

عَرَبِيٍّ : *'Arabi (not 'Arabiyy or 'Araby)*

#### **F. Sandang Word**

Sandang word in the Arabic writing system are denoted by letters (alif lam ma'arifah). In this transliteration guide, the article is transliterated as usual, al-, both when is is followed by letter syamsiah and the letter

qamariah. The article does not follow the sound of the direct letter that follows it. The article is written separately from the word that follows it and is connected by a horizontal line (-). Example:

الشَّمْسُ : *al-syamsu* (not *asy-syamsu*)

الزَّلْزَلَةُ : *al-zalzalāh* (not *az-zalzalāh*)

الْفَلْسَفَةُ : *al-falsafah*

الْبِلَادُ : *al-bilādu*

#### G. Hamzah

The rule for transliterating the letter hamzah into an apostrophe (‘) only applies to hamzah which is located in the middle and end of the word. However, if hamzah is at the beginning of a word, it is not symbolized, because in Arabic it is an alif. Example:

تَأْمُرُونَ : *ta’ murūna*

سَيِّئٌ : *syai’un*

أَمْرٌ : *umirtu*

#### H. Writing Arabic words commonly used in Indonesian

Transliterated Arabic words, terms or sentences are words, terms or sentences that have not been standardized in Indonesian. Words, terms or

sentences that are commonplace and become part of the Indonesian vocabulary, or have often been written in Indonesian writing, are no longer written according to the transliteration method above. For example the word Al-Qur'an (from the Qur'an), *Sunnah*, *khusus and umum*. However, if these words are part of a series of Arabic texts, then they must be transliterated in their entirety. Example:

*Fī zilāl al-Qur'an*

*Al-Sunnah qabl al-tadwīn*

*Al-'Ibārat bi 'umūm al-lafz bi khusūṣ al-sabab*

#### 1. *Lafz al-Jalalah*

The word Allah which is preceded by a particle such as the letter jarr and other letters or is located as a mudlaf ilaih (nominal phrase), is transliterated without the letter hamzah. As for the ta' marbutah at the end of the word that is attributed to al-jalalah, it is transliterated with the letter [t]. Example:

دِينُ اللَّهِ : dinullah

رَحْمَةِ اللَّهِ : rahmatillah

#### 2. Capital

Although the Arabic writing system does not recognize capital letters (All Caps), in its transliteration these letters are subject to provisions regarding the use of capital letters based on the applicable Indonesian spelling guidelines (EYD). Capital letters, for example, are used to write the first letter of a personal name is preceded by an



article (al-), then what is written in capital letters remains the initial letter of the personal name, not the initial letter of the article. If it is located at the beginning of the sentence, then the letter A of the article uses a capital letter (Al-). The same provisions also apply to the initial letter of the reference title preceded by the article al-, both when it is written in the text and in the reference notes (CK, DP, CKD, and DR).

Example:

وما محمد إلا رسول : Wa mâ Muhammadun illâ

Rasûl

إن أول بيت وضع للناس : Inna Awwala baitin wuḍi'a linnâsi

شهر رمضان الذي أنزل فيه القرآن : 'Syahru Ramaḍān al-laẓī

unzila fih

al-Qur'an

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## ABSTRAK

Elmira Qurrota A'yunina, 19210123, Ratio Decidendi Hakim Dalam Putusan Kabul dan Tolak Pernikahan Beda Agama di Indonesia Perspektif Hukum Positif Indonesia, Skripsi, Program Studi Hukum Keluarga Islam, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang, Pembimbing Syabbul Bachri, M.H.

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Kata Kunci: Ratio Decidendi, Pernikahan Beda Agama

Ratio decidendi merupakan sebuah alasan atau argument yang digunakan oleh hakim dalam memberikan putusan pada setiap perkara. Pada setiap putusan yang diberikan oleh hakim selalu berdasarkan alasan-alasan yang dipertimbangkan berdasarkan peraturan yang berlaku. Pada penelitian ini membahas tentang pernikahan beda agama yang terjadi di Indonesia.

Terdapat perbedaan pendapat hakim pada pemberian putusan pernikahan beda agama yang menimbulkan kebingungan dikalangan masyarakat. Belum adanya regulasi yang mengatur secara jelas membuat masyarakat semakin bingung terkait legalisasi pernikahan beda agama di Indonesia. Pada penelitian ini juga berisi tentang analisis terkait legalisasi pelaksanaan beda agama berdasarkan perspektif hukum positif Indonesia.

Tujuan dari penelitian ini adalah untuk menganalisis ratio decidendi dari hakim pada setiap pemberian putusan, baik putusan tolak maupun putusan kabul. Serta menganalisis perspektif hukum positif Indonesia terkait pelaksanaan pernikahan beda agama di Indonesia. Pada penelitian ini menggunakan jenis penelitian normative yang menggunakan pendekatan kasus (case approach) dan juga menggunakan pendekatan komparatif.

Hasil dari penelitian ini adalah secara garis besar, sebenarnya pernikahan beda agama tidak dapat dibenarkan terhadap pelaksanaannya, karena terdapat beberapa Undang-Undang yang sebenarnya sudah mengatur perihal pernikahan yang dilaksanakan oleh dua orang yang memiliki perbedaan agama dan keyakinan. Ditinjau dari beberapa pendapat majelis agama, dapat diketahui bahwa tidak semua hukum agama di Indonesia yang menolak dan menyetujui pernikahan beda agama. Maka dari itu pelaksanaan pernikahan beda agama juga bukan hal yang idela untuk dilakukan setelah melihat akan ada banyak konflik yang timbul akibat pernikahan beda agama.

## ABSTRACT

Elmira Qurrota A'yunina, 19210123, Judges' Ratio Decidendi To Accept And Reject Interfaith Marriage In The Perspective of Indonesian Law, Thesis, Islamic Family Law Study Program, Faculty of Sharia, State Islamic University Maulana Malik Ibrahim Malang, Supervisor Syabbul Bachri, M .H.

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Keywords: Ratio Decidendi, Interfaith Marriage

Ratio decidendi is a reason or argument used by judges in making decisions in each case. In every decision given by the judge, it is always based on the reasons considered based on the applicable regulations. This study discusses interfaith marriages that occur in Indonesia.

There are differences of opinion among judges regarding the awarding of interfaith marriage decisions which cause confusion among the public. The absence of regulations that clearly regulate makes people even more confused regarding the legalization of interfaith marriages in Indonesia. This research also contains an analysis related to the legalization of the implementation of different religions based on the perspective of Indonesian positive law.

The purpose of this study is to analyze the ratio decidendi of the judge in each decision giving, both the decision to reject and the decision to accept. As well as analyzing the positive legal perspective of Indonesia regarding the implementation of interfaith marriages in Indonesia. This study uses a normative type of research that uses a case approach and also uses a comparative approach.

The results of this study are broadly speaking, interfaith marriages cannot be justified in their implementation, because there are several laws that actually regulate marriages carried out by two people who have different religions and beliefs. Judging from the opinions of several religious assemblies, it can be seen that not all religious laws in Indonesia reject and approve interfaith marriages. Therefore, the implementation of interfaith marriages is also not an ideal thing to do after seeing that there will be many conflicts that arise due to interfaith marriages.

## ملخص البحث

أمر قرّة أعينينا، 19210123، Ratio Decidendi، القضاة في قرارات كابل ورفض الزواج بين الأديان في إندونيسيا منظور القانون الإندونيسي الإيجابي، أطروحة، برنامج دراسة قانون الأسرة الإسلامي، كلية الشريعة، مولانا مالك إبراهيم الدولة الإسلامية جامعة مالانج، المشرف سيابول بشري، الماجستير

الكلمات المفتاحية: نسبة القرار، الزواج بين الأديان

نسبة القرار هي سبب أو حجة يستخدمها القضاة في اتخاذ القرارات في كل قضية. في كل قرار يصدره القاضي، يستند دائمًا إلى الأسباب التي يتم النظر فيها بناءً على اللوائح المعمول بها. تناقش هذه الدراسة الزيجات بين الأديان التي تحدث في إندونيسيا.

اختلفت آراء القضاة حول إصدار قرارات الزواج بين الأديان مما أدى إلى إرباك الجمهور. يزداد الخلط بين غياب اللوائح التي تنظم بشكل واضح الجمهور فيما يتعلق بإضفاء الشرعية على الزواج بين الأديان في إندونيسيا. تحتوي هذه الدراسة أيضًا على تحليل يتعلق بإضفاء الشرعية على تنفيذ الأديان المختلفة بناءً على منظور القانون الإندونيسي الوضعي.

الغرض من هذه الدراسة هو تحليل نسبة قرار القضاة في كل قرار، سواء تم رفض القرار أو منح القرار. وكذلك تحليل منظور القانون الإندونيسي الإيجابي فيما يتعلق بتنفيذ الزواج بين الأديان في إندونيسيا. تستخدم هذه الدراسة نوعًا من البحث المعياري الذي يستخدم نهج الحالة ويستخدم أيضًا نهجًا مقارنًا.

نتائج هذه الدراسة بشكل عام، لا يمكن تبرير الزواج بين الأديان في تنفيذها، لأن هناك العديد من القوانين التي تنظم بالفعل الزيجات التي يقوم بها شخصان لديهما ديانات ومعتقدات مختلفة. انطلاقًا من آراء العديد من التجمعات الدينية، يمكن ملاحظة أنه ليس كل القوانين الدينية في إندونيسيا ترفض وتوافق على الزواج بين الأديان. لذلك، فإن تنفيذ الزيجات بين الأديان ليس بالأمر المثالي الذي يجب القيام به بعد رؤية أنه سيكون هناك العديد من النزاعات التي تنشأ بسبب الزواج بين الأديان.

# CHAPTER I

## INTRODUCTION

### A. Research Background

Indonesia is a plural country, namely a country that has diversity, which is built from a variety of ethnicities, cultures, races and religions. One of the characteristics or key aspects of Indonesian pluralism is the religious diversity of its population. The religions recognized by the government in Indonesia are not just a single religion or one religion. There are six religions recognized by the government including Islam, Christianity, Catholicism, Hinduism, Buddhism and Confucianism. Each religion has a guaranteed existence and has been regulated by the State in Article 29 paragraph (1) and paragraph (2) of the 1945 Constitution which states that "(1) the State is based on Belief in the One and Only God, (2) the State guarantees the freedom of every citizen to embrace their own religion and to worship according to their religion and belief"

The diversity of religions that exist in Indonesia has an impact or possibility of interfaith marriages and also beliefs. The phenomenon of interfaith marriage is not a new thing that has happened in Indonesia. Interfaith marriage is still a polemic that occurs in the middle of society. One of the factors that causes interfaith marriages to become polemic is the differences in opinion leaders from various religions. In addition, the laws and regulations also seem to have not really provided an explanation regarding the regulations for interfaith marriage. With a number of things that cause a legal



vacuum regarding regulations governing interfaith marriages,

Interfaith marriages Indonesia does not yet have a definite law to regulate interfaith marriages. This causes the interfaith marriage to become complex, causing every couple who will carry out an interfaith marriage to make more efforts to obtain legality in their marriage.<sup>1</sup>One way to do this is by submitting an application to the competent court. Regarding marriage, it has been regulated in the Marriage Law Number 1 of 1974 which states that "Marriage is valid, if it is carried out according to the laws of each religion and belief".<sup>2</sup>

Based on the contents of Law Number 1 of 1974 concerning Marriage, a marriage can be considered valid if it is carried out according to the laws of each partner's religion and beliefs. However, the provisions of whether or not interfaith marriages are permissible are not emphasized in it. If indeed the State opposes the implementation of interfaith marriages, then regulations must be made as clear as possible which do not raise any doubts for every member of the community.<sup>3</sup>

In Article 35 of Law Number 23 of 2006 concerning Population Administration which states that "Recording of marriages as referred to in article 34 also applies to: (1) Marriages determined by the Court, (2) Marriages of Foreign Citizens conducted in Indonesia at the request of a

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<sup>1</sup>Nadzirotus Sintya Falady, "Konflik Norma Perkawinan Beda Agama dalam Undang-Undang", Sept 20, 2022, <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/nadzirotus-sintya-falady-s-h-cpns-analis-perkara-peradilan-calon-hakim-2021-pengadilan-agama-probolinggo>

<sup>2</sup>Law Number 1 of 1974 concerning Marriage

<sup>3</sup>Made Prilita Saraswati dan I Gede Artha, "Pengaturan Perkawinan Beda Agama di Indonesia", *Universitas Udayana*: 4

Foreign Citizen.”<sup>4</sup>

The existence of Law Number 23 of 2006 opens opportunities for couples who wish to carry out interfaith marriages to submit an application to the Court to obtain permission regarding the registration of their interfaith marriage to the civil registration officer in order to legalize their marriage. This interfaith marriage results in a different decision from the competent judge. There are judges who grant the request and also refuse to grant the implementation of interfaith marriages.

Against this incident the judges have their own views in giving their decision, which must also be based on the applicable law. There have been several requests for interfaith marriages that have been granted, such as recently at the Surabaya District Court which granted the request and has been stipulated in decision Number 916/Pdt.P/2022/PN.Sby. However, there are also those who reject the application for interfaith marriage, one of which is the decision of the Blora District Court, namely decision Number 71/Pdt.P/2017/PN.Bla.

Based on the events that occurred, it can be seen that arrangements related to interfaith marriages are still experiencing a legal vacuum. Regulations regarding interfaith marriages must be clarified so as not to cause confusion among the public. Therefore, this research was conducted to find out for sure about the arrangements for implementing interfaith marriages in Indonesia.

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<sup>4</sup>Law Number 23 of 2006 concerning Population Administration.

## **B. Statement of The Problem**

1. What is the judge's ratio decidendi in giving a decision to accept interfaith marriages?
2. What is the judge's ratio decidendi in giving a decision to reject interfaith marriages?
3. What is the analysis of interfaith marriage from a positive legal perspective in Indonesia?

## **C. Research Purposes**

1. To analyze the ratio decidendi of judges in giving Kabul decisions on interfaith marriages
2. To analyze the ratio decidendi of judges in giving a decision to reject interfaith marriages
3. To explain the legal position of interfaith marriage in the perspective of positive law in Indonesia.

## **D. Benefits of Research**

1. Theoretical Benefits

This research is expected to be additional knowledge for readers on insights related to interfaith marriage. This research is also expected to be a consideration for the urgency of the legal vacuum regarding interfaith marriages, so that the implementation of interfaith marriages is no longer an ambiguous and taboo matter among the people.

## 2. Practical Benefits

- a. Can add knowledge about the urgency of the legal vacuum of interfaith marriages
- b. Can add to the literature for both readers and writers.

## **E. Operational Definition**

To make it easier for readers to understand what the author wants to convey in the research entitled "Judges' Ratio Decidendi To Accept and Reject Interfaith Marriage In The Perspective of Indonesian Positive Law", the author will explain the important definitions contained in the title as following:

### 1. Judges' Ratio Decidendi

Ratio decidendi can also be interpreted as a rationale for a judge in making a decision before passing a decision in a case. Every decision handed down by a judge must have considerations that are used as reasons when determining and establishing a decision. Judges also always consider the basic foundations that are related or related to the basis of laws and regulations that are relevant to the subject matter being handled. The laws and regulations that apply and relate to the subject matter of the case are made by judges to uphold and provide justice for the parties concerned.<sup>5</sup>

### 2. Interfaith Marriage

Literally interfaith marriages are marriages carried out by men and

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<sup>5</sup>Komisi Yudisial RI, "Peranan Putusan Pengadilan Dalam Program Deradikalisasi Terorisme di Indonesia", *Jurnal Yudisial*, no. 2(2010): 117-118

women who have different religions or beliefs. In the community, interfaith marriage is also often known as another term, namely mixed marriage. This mixed marriage is a marriage carried out by couples who not only have different religions or beliefs, but can also be carried out by couples who have differences in ethnic origin or customs. There are also some people who say that interfaith marriage is not part of a mixed marriage, but rather the meaning or term of interfaith marriage itself.<sup>6</sup>

### 3. Positive Law

Positive law is also known by another term, namely *ius constitutum* which means a collection of rules and principles of written law that apply today and are universally and specifically binding. Positive law is also enforced by the government and courts within the Indonesian state.<sup>7</sup>The positive law used in this study originates from the Marriage Law, the Book of Compilation of Islamic Law and also the Population Administration Law.

## F. Research methods

The method is also referred to as a way, technique, or way to do something in an easier or more organized way. This research method is used by the author in order to make it easier for the writer to conduct research. The research method is also a tool to facilitate the steps taken by researchers to

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<sup>6</sup>Hilman Hadikusuma, *Hukum Perkawinan Indonesia Menurut Perundangan, Hukum Adat, Hukum Agama*, (Bandung: Mandar Maju, 1990),

[https://www.google.co.id/books/edition/Hukum\\_perkawinan\\_Indonesia\\_menurut\\_perun/LrB5HAACA AJ?hl=id](https://www.google.co.id/books/edition/Hukum_perkawinan_Indonesia_menurut_perun/LrB5HAACA AJ?hl=id)

<sup>7</sup>I Gede Pantja Astawa, *Dinamika Hukum dan Ilmu Perundang-Undangan di Indonesia*, (Bandung: PT.Alumni, 2008), <https://opac.perpusnas.go.id/DetailOpac.aspx?id=632637>

process the data in this study. So that in each process of collecting and analyzing data can be arranged neatly and efficiently.

### **1. Types of Research**

In this study, the authors used normative juridical research or also known as document study research. This research is classified as normative juridical research because all the processes carried out in making this research use written legal sources and literary sources. Researchers do not use field study research or empirical research because researchers only process data obtained from books, documents and applicable laws and regulations that are in accordance with the themes used in this research.

Normative juridical research can also be referred to as research whose object of study originates from documents, regulations and library materials. In this research, the object of his research is an analysis of the judge's decisions cited in decisions that have permanent legal force regarding the decision to apply for interfaith marriages.

### **2. Research Approach**

The research approach is also one of the tools for compiling material used to strengthen the author's opinion in writing this research. The approach used in this research is a case approach. The author uses this research approach because it is suitable for use in finding conclusions in this study based on cases that occur in the community.

In addition, in this study, the authors also use a comparative approach.

The author uses this approach because as mentioned in the title of this research is "judges' ratio decidendi" which means the author will use a comparison of the reasons why a judge may refuse or grant a request for the implementation of interfaith marriages, which in this case will use a positive law comparison. in Indonesia.

### **3. Legal Material**

The type of data or often called legal material in normative juridical research must be chosen correctly in order to find appropriate research results. Therefore researchers must really know the legal materials used in this research.

This normative juridical research uses secondary data, because the data used in this research has been written in the form of literature and does not use data from the field directly. The legal materials used in this study are:

- a. Primary legal material, is legal material which is the main reference or reference in a study. This research refers to several data, including:
  1. Law Number 1 of 1974 concerning Marriage
  2. Determination of the Surabaya District Court Number 916/Pdt.P/2022/PN.Sby
  3. Determination of the Blora District Court Number 71/Pdt.P/2017/PN.Bla
  4. Law Number 23 of 2006 concerning Population Administration
- b. Secondary legal material, also referred to as the second source of law after the primary legal source. In this secondary legal source, comes

from books, journals, articles, research results, and other written documents that are used as explanations on related issues and topics.

The secondary legal sources used in this study are:

1. Ermi Suhasti, Siti Djazimah, and Hartini, "Polemics On Interfaith Marriage In Indonesia Between Rules And Practices"
  2. Erwin Setyo Nugroho, "Marriage of Different Religions in Indonesia in the Interfaith Fiqh Perspective (Building a Pluralist Inclusive Perspective)"
  3. Syabbul Bachri and Mohammad Wildan Raja Mahasina, "Ratio Decidendi of Religious Court Judges On Rejection of Application for Interfaith Marriage Preventaion"
- c. Tertiary Legal Materials, are supporting legal materials from primary legal materials as well as secondary legal materials which can be sourced from dictionaries, encyclopedias and the like. Terser legal materials also serve as reinforcement and explanation of primary legal materials and secondary legal materials, such as the use of the Complete Indonesian Language Dictionary.

#### **4. Method of Collecting Data**

At the data collection stage to conduct this research, the authors used the library study method. This method is used to collect data sourced from existing documents. This method is also carried out by analyzing documents containing facts and data needed by the author to complete this research.



The documents collected for use in this research are in the form of constitution, expert literature, and KHI books. In addition, the approach used in this study is a case approach and a comparative approach, so in accordance with this, the author also collects the necessary data in the form of cases that have occurred and makes comparisons between one case and another.

## **5. Data Processing Methods**

This stage is carried out after the writer goes through the data collection stage. After the writer collects the required data, the data obtained is processed using qualitative methods. Technically, this qualitative method examines the data obtained and is described in the form of analysis. To describe the method for processing this data, the author performs several necessary steps, including:

### **a. Classification**

At this stage the researcher classifies or arranges the data obtained based on the problems that have been formulated in the problem formulation. This is done with the aim of making it easier to read and check data and documents if there are errors. So that the data obtained can be in accordance with what is needed.

### **b. Inspection**

This stage is carried out to re-examine the data and documents that have been obtained which are then reviewed and analyzed. This is done to avoid errors that may occur in the research process.

c. Conclusion

The conclusion is the last stage which contains the steps or stages of collecting or unifying data and documents that have been analyzed and studied in a conclusion. At this stage the writer makes a conclusion that contains the answers to the formulated problems.

## **G. Previous Research**

One of the objectives of conducting this research is to find a fact or something that is still ambiguous. In order for this research to be completed properly, it definitely requires references related to this research. In this section the author will describe previous studies that have been carried out previously with the same theme.

This previous research is needed by the writer as a comparison with previous research on the same topic or theme, and can make it easier for the writer to determine the differences in the research that the writer has with previous research. Some of the previous studies include:

1. Ratio Decidendi Hakim Pengadilan Agama Perkara Pencegahan Nikah Beda Agama (Analisis Putusan Nomor 3358/Pdt.G/2018/PA.JS). This thesis was written by Mohammad Wildan Raja Mahasina. In the research written by Mohammad Wildan, it contains the ratio decidendi of judges who decide to reject the applicant's request in the act of preventing interfaith marriages. The judge rejected the petition because of several things mentioned therein. Mohammad Wildan also analyzed the contents

of the decision Number 3358/Pdt.G/2018/PA.JS and also the implications of this decision. The similarities in this study are that they both discuss the ratio decidendi of a judge in every decision making. However, the difference with the research that will be written by the author is that the author will discuss how the ratio decidendi of a judge in giving a decision to reject and grant a decision in interfaith marriage cases, whereas in previous research written by Mohammad Wildan discussed the ratio decidendi of judges in refusing prevention of interfaith marriages. In addition, there are other differences found by the author, namely, in previous research written by Mohammad Wildan only based on the analysis of the decision No. 3358/Pdt.G/2018/PA.JS, while in this study the author not only used decision analysis but also used perspective of positive law in Indonesia. whereas in the previous study written by Mohammad Wildan discussed the ratio decidendi of judges in refusing to prevent interfaith marriages. In addition, there are other differences found by the author, namely, in previous research written by Mohammad Wildan only based on the analysis of the decision No. 3358/Pdt.G/2018/PA.JS, while in this study the author not only used decision analysis but also used perspective of positive law in Indonesia. whereas in the previous study written by Mohammad Wildan discussed the ratio decidendi of judges in refusing to prevent interfaith marriages. In addition, there are other differences found by the author, namely, in previous research written by Mohammad Wildan only based on the

analysis of the decision No. 3358/Pdt.G/2018/PA.JS, while in this study the author not only used decision analysis but also used perspective of positive law in Indonesia.

2. Analisis Perkawinan Beda Agama (Studi Terhadap Putusan Pengadilan Negeri Terkait dengan Izin Perkawinan Beda Agama). This thesis was written by Lysa Setia Budi. The research written by Lysa contains the results of interviews with judges at the Magelang District Court regarding permission to hold interfaith marriages. From the results of this interview conducted by Lysa, she found a conclusion that could be drawn regarding the reasons and causes for judges rejecting an application to perform interfaith marriages. The similarities that can be found by the authors from the results of the research written by Lysa are that they both discuss and search for reasons and causes for judges rejecting and granting requests for interfaith marriages.
3. Perkawinan Beda Agama Dalam Prespektif Hukum Islam di Indonesia, this thesis was written by Anggin Anandia Putri. In this research written by Anggin, it discusses how to organize the implementation of interfaith marriages that often occur in Indonesia. He used a data collection technique based on data collection from the dossier of interfaith marriage decisions at the Magelang District Court. The research equation written by the author with this research is that they both discuss the same theme, namely interfaith marriage in Indonesia. Meanwhile, the difference is that the research written by Anggini discusses how the

systematics or mechanism for implementing interfaith marriages that occur in Indonesia, and how the implementation of different religions in Indonesia according to Islamic law which also applies in Indonesia. Meanwhile, this study discusses the causes and reasons why there can be differences in decisions on applications for the implementation of interfaith marriages, and this study will also analyze how interfaith marriages are carried out in the perspective of positive law in Indonesia, not only in the law Just Islam.

To clarify and make it easier for the reader to read and understand some of the differences and similarities in this study and previous studies, the authors will also present tables from the results of previous studies.

The following is a table from previous studies:

**Table 1. Previous Research**

<b>NO</b>	<b>Researcher Identity</b>	<b>Title</b>	<b>Difference</b>	<b>Equality</b>
1.	Mohammad Wildan Raja Mahasina, State Islamic University (UIN) Maulana Malik Ibrahim	Ratio Decidendi of Religious Court Judges Cases of Prevention of Interfaith Marriage (Decision Analysis Number	a. Judge's ratio decidendi research in refusing to prevent interfaith marriages	a. Research discusses the ratio decidendi of a judge in every decision

NO	Researcher Identity	Title	Difference	Equality
	Malang, Thesis	3358/Pdt.G/2018/PA. JS)	b. The research is based on the analysis of the decision No. 3358/Pdt.G/2018/PA.JS	making
2.	Lysa Setiabudi, Semarang State University, Thesis	Analysis of Interfaith Marriage (Study of District Court Decisions Related to Interfaith Marriage Permits)	a. The research uses Empirical Jurisdiction conducted at the Semarang District Court b. Collecting data used using the interview method	a. The study discusses the reasons and judges' considerations in granting or rejecting the stipulation of interfaith marriage permits.
3.	Anggin Anandia Putri, Indonesian	Interfaith Marriage in the Perspective of Islamic Law in	a. The research contains the mechanism or	a. The research uses the same theme,

NO	Researcher Identity	Title	Difference	Equality
	Islamic University, Thesis	Indonesia	systematics of interfaith marriage b. Research using empirical juridical research methods	namely interfaith marriage

Through the presentation of the table, it can be found and concluded several points of difference and similarities between previous research and research by authors who have similar themes or topics but have different objects for research focus. In several previous studies, there was more focus on legalization issues regarding the legal vacuum of interfaith marriages alone, and there was one of the previous studies which discussed the ratio decidendi of a judge in making a decision to reject interfaith marriage prevention. These things are clearly different from what the author will discuss in this study, which is the focus point of this research is a judge's ratio decidendi or the reasons of a judge who has different decisions, some decide to reject interfaith marriage applications, some decide to grant

interfaith marriage requests. From this, this research is a topic that is rare but interesting to discuss.

## **H. Structure of Discussion**

The writing of this research is divided into several chapters, which consist of 4 chapters, which in each chapter are related or interconnected with each other, the following is the systematics of writing in this research:

**CHAPTER I:** In this chapter I is an introduction which contains the background of the problem. This background explains the reasons why this research was conducted, namely regarding the differences in decisions given by judges on interfaith marriage applications. In this study, it refers to the judge's decision by rejecting the decision number 71/Pdt.P/2017/PN.Bla and the judge's decision by granting the decision to grant the decision number 916/Pdt.P/2022/PN.Sby. Next, it is explained about the formulation of the problems that will be sought in this study, the research objectives, and also the benefits obtained from the results of this study. In addition, chapter I also describes or conveys the research method used in this research. Contains what methods were used in this study, what approach is used and also what legal materials are used as a reference source in this research. After explaining the research method, chapter I describes previous research that is related to this research, has the same theme but has differences in each study. In this previous study, it also became a reference or reference in writing this research. And finally, it is followed by a writing systematics,



which briefly explains what was written in this study. In this previous study, it also became a reference or reference in writing this research. And finally, it is followed by a writing systematics, which briefly explains what was written in this study. In this previous study, it also became a reference or reference in writing this research. And finally, it is followed by a writing systematics, which briefly explains what was written in this study.

**CHAPTER II:** This chapter contains the theories used in research, regarding the definition of marriage, interfaith marriage, interfaith marriage rules based on a positive law perspective, according to the Compilation of Islamic Law, as well as provisions for recording interfaith marriages.

**CHAPTER III:** Chapter III contains the descriptions of the research results obtained by the researchers along with the analysis of the themes discussed in this study.

**CHAPTER IV:** Closing, in this chapter the researcher will provide conclusions about the results of the analyzes that have been presented and briefly described in the previous chapter. Besides that, the researcher will also write down suggestions if it is deemed necessary to give them.

## CHAPTER II

### LITERATURE REVIEW

#### A. Judges' Ratio Decidendi

##### 1. Definition of Ratio Decidendi

Ratio Decidendi is a term that comes from Latin which means "reason for a decision". In other words, the ratio decidendi is the reason or reasoning that forms the basis of a decision. The term ratio decidendi is a term that is well known in the context of the common law legal system.

According to Michael Zander in his book "The Law Making Process", ratio decidendi is a legal consideration made by a judge in giving a decision on a case that is seen from the perspective or context of material facts. In addition, Sir Rupert Cross also conveyed the meaning of ratio decidendi, namely a judge's consideration that originates from legal rules, both express and implied, as a necessary step before reaching a conclusion.<sup>8</sup>

It can be concluded from several definitions of the previous ratio decidendi, this ratio decidendi is a theory of thought and consideration of judges based on legal philosophy and by seeking the basics of positive law that are relevant to the subject matter or subject matter being disputed. The existence of this ratio decidendi has its own benefits, namely that it can be used as a method for describing the

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<sup>8</sup>Shidarta, "Ratio Decidendi dan Kaidah Yurisprudensi", November 08, 2022, <https://business-law.binus.ac.id/2019/03/04/ratio-decidendi-dan-kaidah-yurisprudensi/>

essence of thoughts about the subject matter of a case. In addition, through a judge's ratio decidendi, it can be used as a benchmark for the quality of a decision from the consideration of a judge. These considerations will later become more easily understood by various groups of people, including people who are still new to legal terms.

## 2. Methods of Legal Interpretation

In connection with the ratio decidendi of judges, this method of legal interpretation is carried out to find out the principles and principles contained in an applicable law. Legal interpretation or what is commonly known as interpretation is an approach to every legal discovery. What is meant by the discovery of the law is that there is a regulation that has been established but is not clear enough to be applicable to a particular problem that is possible to occur in everyday life. When this event occurs, the judge must examine and review these regulations before finally being able to adjudicate cases that do not have specific governing regulations.

The absence of regulations governing the case specifically is the responsibility of the judge to fill in the legal void and resolve cases that occur, because a judge is not allowed to refuse to examine and adjudicate a case that has been filed simply on the grounds that there is no law or regulation governing it. specifically. This legal interpretation is an important step for the judge to create a law that is needed to resolve the case. This legal interpretation is also a method used to

understand the intent contained in every legal context used to settle cases and make actual decisions.

There are several opinions regarding various methods of legal interpretation put forward by several legal figures. According to Arief Sidharta, this legal interpretation method is divided into 9 of them are:

a) *Letterjick* Or Literal Interpretation Theory

This theory uses the method of interpretation by emphasizing the meaning of each word that has been written.

b) Theory of Grammatical Interpretation or Language Interpretation

This theory uses legal interpretation or interpretation by emphasizing the meaning of the text in which there are stated legal rules.

c) Theory of Historical Interpretation

In this theory the legal interpretation method historically has 2 meanings, namely:

1) Interpretation of the history of the formulation of the Act

That is an interpretation that focuses on the background of the history of the formulation of the manuscript, starting from how the debate occurred when making the manuscript that was to be formulated until finally the manuscript was actually ratified.

2) Historical interpretation of Law

Looking for meaning from the social context associated

with the past. When searching for meaning in the context of that meaning, in the process it will refer to opinions from experts in the past, including referring to regulations that were in force in the past and are still relevant today.

d) Theory of Sociological Interpretation

Namely the context of social meaning that can be drawn or inferred and can be used as a center for interpreting the text in question.

e) Theory of Socio-historical Interpretation

This theory is different from the previous social theory, which in the previous theory was taken from its social meaning. Meanwhile, this socio-historical theory focuses on the history of society which influences the process of formulating legal texts.

f) Philosophical Interpretation Theory

The method of interpretation or legal interpretation with a philosophical aspect, namely regarding the philosophical theory behind the ideas included or formulated in the text.

g) The Theological Interpretation Theory

In this method, interpretation is focused on the elaboration of legal principles according to their purpose.

h) Holistic Interpretation Theory

This method connects legal texts with the context of the meaning of the soul which originates from the text itself.

i) Thematic-Systematic Holistic Interpretation Theory

The theory used in this method focuses on the theme it has. Describe how to systematically understand a text according to its formulation grouping.<sup>9</sup>

Apart from Arief Sidharta's opinion, there is also a quote from Visser't Hoft. In Visser't Hoft's opinion, he put forward 7 methods of legal interpretation, including:

- 1.) Grammatical Interpretation or Language Interpretation.
- 2.) Systematic Interpretation

According to Visser't Hoft herself, a legal system that focuses on grouping or codification, it will refer to statutory regulations or the Code, in which the statutory regulations themselves are a system in which they are mutually sustainable and at the same time have mutually exclusive meanings. relate.

- 3.) Historical Interpretation of Laws

Interpretation is done by reading, analyzing and understanding starting from the history of its preparation, existing treatises, notes on discussions by the commission concerned, and other texts that have a relationship with each other.

- 4.) Interpretation of Legal History

Interpretation is done by looking for links with people's lives in the past with a draft legal norm which is also taken into account from

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<sup>9</sup>Alif Khalid, "Penafsiran Hukum Oleh Hakim Dalam Sistem Peradilan Di Indonesia", *Al'adl*, no. 11(2014): 11-15 <https://media.neliti.com/media/publications/225122-penafsiran-hukum-oleh-hakim-dalam-sistem-f0c52582.pdf>

the history of the making of a norm.

5.) Theological Interpretation

A method of legal interpretation that focuses on facts about the making of a legal norm itself has a goal that must be realized.

6.) Anticipatory Interpretation

This method is carried out by looking at the future or in the future, which means that a judge may determine his stance on the interpretation of new legal norms based on the perspective of the new law.

7.) Evolutionary-Dynamic Interpretation

This interpretation is carried out because it has a specific purpose for the community, in order to form a new change among the community. This interpretation is also carried out because of changes in people's perspectives and situations that occur in society.

From several methods of legal interpretation that have been put forward by experts, it can be concluded that the method of legal interpretation or legal interpretation has several methods including:

- a.) Grammatical
- b.) Historical
- c.) Systematic
- d.) Sociological theologian
- e.) Authentic

f.) extensive

g.) Restrictive

The existence of a method of legal interpretation or legal interpretation aims to facilitate judges in legal renewal in line with developments in society. This legal interpretation itself is a way for judges to understand the meaning contained in legal texts to be used in solving the cases they face. Methods of legal interpretation can also facilitate judges in fulfilling the obligations of judges in accordance with applicable laws. In Article 5 paragraph (1) of the Law on Judicial Powers it is stated that: "Judges and constitutional judges are obliged to explore, follow and understand legal values and a sense of justice that lives in society"

Based on the Judicial Law, it can be seen that legal interpretation is something that must be done by judges to ensure legal credibility is in accordance with community development. Legal interpretation carried out by judges must also be carried out based on certain principles and principles which form the basis as well as the limitations of judges in exercising their freedom to discover and create law.

## **B. Interfaith Marriage**

### **1. Definition of Marriage**

Marriage comes from the Arabic language, namely النكاح (An-



*Nikaah*), marriage in terms of fiqh is also called *zawaj* which can be interpreted as a sacred activity carried out by mankind as a form of worship. Marriage is also a nature that is carried out by human beings.<sup>10</sup> Marriage or what is commonly referred to by some other writers as marriage comes from the word "married" which means a man and a woman form a family, have a relationship like husband and wife and have intercourse. However, the phrase "marry" is not only used for humans, but also for animals and plants.

Unlike the case with marriage which comes from the word marriage which is only used in humans. Marriage is a process carried out by humans of the opposite sex with the validity of the process both in national law, customary law, and especially according to religion.

Marriage is an activity that has the goal of binding and formalizing the relationship between a man and a woman. According to Abdurrahman Al-Jaziri, marriage is a sacred agreement with a sacred process between a man and a woman to form a family.<sup>11</sup> According to Donald Light "a family as two or more people living together and related by blood, marriage or adoption"<sup>12</sup>

The meaning of marriage from the two figures' opinions can be concluded that marriage is an agreement or a form of attachment based

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<sup>10</sup>Wahyu Wibisana, "Pernikahan Dalam Islam", *Jurnal Pendidikan Agama Islam-Ta'lim*, no. 2(2016): 186

<sup>11</sup>Santoso, "Hakekat Perkawinan Menurut Undang-Undang Perkawinan, Hukum Islam, dan Hukum Adat", *Jurnal Pemikiran dan Penelitian Sosial Keagamaan (Yudisial)*, no. 2(2016): 415

<sup>12</sup>Lindha Pradipti Oktarina, Mahendra Wijaya, dan Argyo Demartoto, "Pemaknaan Perkawinan: Studi Kasus Pada Perempuan Lajang Yang Bekerja Di Kecamatan Bulukerto Kabupaten Wonogori", *Jurnal Analisa Sosiologi*, no. 2(2015): 76

on consensual or something that is lived without coercion. In Islam, the agreement in marriage is known as "*ijab*" and "*qabul*" which are pronounced by both men and women.<sup>13</sup>

Apart from the definition and understanding of marriage above, marriage is also a way to maintain and maintain the continuity of human life while on earth. In every layer of society, starting from a society that is simple, narrow and even tends to be closed, to a layer of society that is quite modern which tends to be open, has its own customs and ways of carrying out and holding a marriage. A marriage implementation is definitely not far from cultural and environmental influences wherever the community is located. Marriage can also be influenced by other factors, such as science, developments in the times, experience, to the beliefs and religions adopted by each society itself.<sup>14</sup>

## 2. Interfaith Marriage

If understood in language, interfaith marriage is a marriage bond carried out by two people who have different religions or beliefs from each of which they adhere to. Regarding interfaith marriage, there is no classic literature that uses or recognizes the term interfaith marriage. No one discusses interfaith marriage literally and no one gives clear definitional restrictions. However, in the literature related

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<sup>13</sup>Beni Ahmad Saebani, *Fiqh Munakahat*, (Bandung: Pustaka Setia, 2009), 18..

<sup>14</sup>Abd.Rozak dan Tim, *Pengkajian Hukum Tentang Pernikahan Beda Agama (Perbandingan Beberapa Negara)*, (Jakarta: Badan Pembinaan Hukum Nasional (BPHN) Kementrian Hukum dan Hak Asasi Manusia, 2011), 1-2.

to Islamic religious beliefs, this is discussed in the chapter on women who are forbidden to marry. Among the known women who are forbidden to marry are marriages to women of the people of the book or commonly known as Jewish or Christian women, marriages to polytheistic women, and marriages to non-Muslim women.

From the previous understanding that has been described, it can also be interpreted that interfaith marriage is a physical and spiritual bond between a man and a woman who, because they have different religions and beliefs, causes two different regulations to arise. Starting from the aspect of regulations, requirements to procedures for implementation that must be adjusted according to the religious law of each partner with the aim of forming a family based on Belief in the One and Only God.<sup>15</sup>

The frequent occurrence of interfaith marriages in Indonesia does not mean that interfaith marriages in Indonesia do not cause debate. A number of researchers often discuss the issue of interfaith marriage. Gianluca P. Parolin raised the issue of different religions and discussed the problem with the Muslim community in Scotland. According to him, Islamic restrictions on marriages conducted with someone of a different faith have somehow guaranteed the principle of religious endogamy in the context of the Muslim majority. This was conveyed by Gianluca P. Parolin who also exploited the adaptation and

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<sup>15</sup>Aulil Amri, "Perkawinan Beda Agama Menurut Hukum Positif dan Hukum Islam", *Media Syari'ah*, no. 1(2020): 51.

transmigration of Islamic regulations regarding interfaith marriages among Muslim communities in Scotland.

There is also an opinion from Alex Minichele Sewenet, who argues that a woman who is Muslim or called a Muslim woman is not allowed to marry a man other than a variety of Islam or a Muslim man. This limit is made to prevent the negative impact that will affect the children who will be born from interfaith marriages. Children born from interfaith marriages will certainly experience difficulties when they have to choose which religion to adhere to based on the religion adhered to by their parents. If seen according to the jurisdiction of Islamic law, in fact a child will follow the religion adhered to by his father as well as matters of citizenship.<sup>16</sup>

### **C. Interfaith Marriage Rule in Positive Law**

Regarding marriage in Indonesia, it has been regulated in Law Number 1 of 1974 concerning marriage. Everything has been regulated in it, starting from the procedures for carrying out marriages, to the custody of a child when their parents experience a divorce.

From the definition contained in Law Number 1 of 1974 there are several aspects found therein. The first is regarding the juridical aspect, in which in a marriage there is an attachment by birth or formally which

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<sup>16</sup>Ermi Suhasti, Siti Djazimah, and Hartini, "Polemics On Interfaith Marriage In Indonesia Between Rules And Practices", *Al-Jami'ah: Journal of Islamic Studies*, no.2(2018): 369-370 [https://scholar.google.com/scholar?cites=9355723645720969036&as\\_sdt=2005&scioldt=2007&hl=en](https://scholar.google.com/scholar?cites=9355723645720969036&as_sdt=2005&scioldt=2007&hl=en)

gives birth to a legally bound relationship between a man and a woman who is referred to as husband and wife. The second is the social aspect, namely in a marriage there is a bond that does not only involve the husband and wife, but also involves ties with the community. The third is the religious aspect, this aspect can be seen from the definition of marriage which has the goal of building a family based on Belief in the One and Only God.

Prior to the enactment of Law Number 1 of 1974 concerning marriage, interfaith marriage was known by another term contained in an Act issued specifically by the Dutch Colonial Government known as the "Mixed Marriage Regulation" which was first regulated in the *regeling op de gemengde Huwelijken Staatblad 1898 No. 158*. This Mixed Marriage Regulation was formed to prevent or anticipate the existence of marriages from different groups. However, the regulations contained in Mixed Marriages are not recognized in Law Number 1 of 1974 concerning Marriage which is currently used as the basis for marriage regulations.<sup>17</sup>

In Article 2 paragraph (1) and paragraph (2) of Law Number 1 of 1974 concerning marriage it is stated that "(1) Marriage is legal, if it is carried out according to their respective laws, (2) Each marriage is recorded according to statutory regulations applicable laws". It can be concluded from the two verses that a marriage where the two prospective brides have different religions should not be desired to be carried out. Apart from that,

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<sup>17</sup>Aulil Amri, "Perkawinan Beda Agama Menurut Hukum Positif dan Hukum Islam", *Media Syari'ah*, no. 1(2020): 57-58

this is also related to and also spelled out in Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage. Article 1 paragraph (1) and paragraph (2) Government Regulation Number 9 of 1975 which contains:

“(1) The registration of marriages for those who enter into marriages according to the Islamic religion is carried out by the Registrar as referred to in Law Number 32 of 1954 concerning the Registry of Marriages, Divorces and Reconciliation, (2) The registration of marriages for those who enter into marriages according to their religion and the belief that other than the Islamic Religion is carried out by Marriage Registrars at the Civil Registry Office as referred to in various laws regarding marriage registration”

Through the explanation of Law Number 1 of 1974 concerning Marriage along with Government Regulation Number 9 of 1975 concerning Implementation of Law Number 1 of 1974 concerning marriage, it can be formulated that interfaith marriages should not take place when the two prospective bride and groom have different religions and beliefs. different.<sup>18</sup>

#### **D. Interfaith Marriage Rules in the Compilation of Islamic Law (KHI)**

Marriage is a form of legality for a man and a woman to live together and gather together in the same place or house to be able to build and form

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<sup>18</sup>Budiarti, “Analisis Yuridis Perkawinan Beda Agama Dengan Pendektan Maqashid Al-Syari’ah Dalam Konteks Negara Hukum Pancasila”, *Justicia Islamica*, no. 1(2018): 30.

a peaceful family. In Islamiyati's opinion after analyzing the Constitutional Court decision No. 68/PUU/XII/2014, she emphasized that the application for interfaith marriage should not be granted because it contradicts the prevailing religious norms which are also guaranteed in the constitution. Apart from that, according to Muhammad Ashubi, after a judicial review of the Marriage Law was carried out, which made religion a stipulation that required the implementation of marriages to be followed, interfaith marriages should not be justified.<sup>19</sup>

In the book *Compilation of Islamic Law (KHI)* it has been explained about the prohibition of marriage in Chapter IV. Meanwhile regarding the implementation of interfaith marriages, it has been clearly stated in Article 40 KHI, which reads:

"It is prohibited to enter into a marriage between a man and a woman due to certain circumstances: (a) because the woman concerned is still bound by a marriage with another man, (b) a woman who is still in her iddah period, (c) a woman who is not Muslim .<sup>20</sup>

Through the contents of Article 40 of the KHI it is clear that the implementation of interfaith marriage according to the KHI is prohibited. This is also in accordance with what has been prescribed in Islam. In addition to what has been regulated in the KHI, regarding the implementation of different religions it is also strengthened by a fatwa issued by the Indonesian Ulema Council (MUI). At the VIIth MUI

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<sup>19</sup>Muhammad Ashubi, "Undang-Undang Perkawinan Dalam Pluralitas Hukum Agama (Judicial Review Pasal Perkawinan Beda Agama), *Jurnal Cita Hukum*, no.2(2016): 289.

<sup>20</sup>Article 40 *Compilation of Islamic Law (KHI)*.

National Conference which was held on 26-29 July 2005 in Jakarta, the MUI issued a fatwa which ruled that: "(1) Interfaith marriage is illegal and invalid, (2) Marriage between Muslim men and women is our expert. according to qaulul mu'tamad it is unlawful and illegitimate". This fatwa was issued by the MUI because it has considered several things that are happening among the community. MUI sees and realizes that there have been many interfaith marriages that have taken place in the community, where the implementation of interfaith marriages has not only caused unrest among fellow Muslims but has also caused unrest among other communities. Another factor that was considered until the fatwa finally appeared was because more and more people believed that the implementation of inter-religious or different-religious marriages was correct using pretexts or reasons as one of human rights, namely the right to build a family and use the pretext of benefit. Until finally this fatwa was issued by the MUI which had the aim of realizing and maintaining peace and tranquility in household life. where the implementation of interfaith marriages does not only cause unrest among fellow Muslims but also creates unrest among other communities. Another factor that was considered until the fatwa finally appeared was because more and more people believed that the implementation of inter-religious or different-religious marriages was correct using pretexts or reasons as one of human rights, namely the right to build a family and use the pretext of benefit. Until finally this fatwa was issued by the MUI which had the aim of



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<sup>21</sup>Aulil Amri, “Perkawinan Beda Agama Menurut Hukum Positif dan Hukum Islam”, *Media*

## **E. Provisions for Registration of Interfaith Marriages**

When viewed from Article 2 paragraph (1) and paragraph (2) of Law Number 1 of 1974 concerning Marriage which explains that "(1) Marriage is legal, if it is carried out according to the law of each religion and belief, (2) Each -every marriage is recorded according to the applicable regulations" so there is no specific matter explained regarding the registration of interfaith marriages. Because actually every religion in Indonesia does not allow interfaith marriages to occur.

Marriage registration is actually not the only benchmark for whether or not a marriage is valid. The registration of this marriage is only as an administrative fulfillment in accordance with applicable regulations, besides that it is also concrete evidence that a marriage has occurred and is carried out. With this registration, the marriage becomes clearer and has real legality.<sup>22</sup>

Based on the provisions of existing regulations, a marriage carried out by a Muslim, the marriage must be carried out before the Marriage Registration Officer from the Office of Religious Affairs. However, if the couple carrying out the marriage is not a Muslim, then the registration of the marriage can be done at the Civil Registry Office. This is in accordance with what has been written in Law Number 23 of 2006

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*Syari'ah*, no. 1(2020): 58.

<sup>22</sup>Raja Inal Siregar, "Putusan Mahkamah Agung Reg. No.1400 K/Pdt/1986 Tentang Pencatatan Perkawinan Beda Agama di Indonesia Ditinjau Dari Prespektif Undang-Undang Nomor 1 Tahun 1974 Dan Kompilasi Hukum Islam", (Skripsi, Institut Agama Islam Negeri Padangsidimpulan, 2015), <http://etd.iain-padangsidimpunan.ac.id/3519/>

concerning Population Administration. Through this it can be concluded that the rules for registering interfaith marriages are not specifically regulated in the law, both in terms of the Marriage Law and the Population Administration Law.

## CHAPTER III

### RESULTS AND DISCUSSION

#### A. Judges' Ratio Decidendi in Giving a Decision To Accept Interfaith Marriage

One of the decisions that granted the request for the implementation of interfaith marriages was issued by the Surabaya District Court. This interfaith marriage application case was registered in Case Number 916/Pdt.P/2022/PN.Sby. In essence, the Petitioners filed a petition, which is summarized as follows:

1. That the applicants have agreed to carry out the marriage which is planned to be held in the presence of the Surabaya City Population and Civil Registry Service Employees.
2. Whereas on the date stated in the application letter, the applicants have notified the Surabaya City Population and Civil Registration Office that the marriage will take place but due to religious differences, namely:
  - a. Petitioner I is Muslim, and
  - b. Petitioner II is a Christian

So the Office of Population and Civil Registration of the City of Surabaya refused to register the marriage and recommended that the District Court determine the legal domicile of the Petitioners.

3. Whereas the Petitioners remain in their stance to enter into a marriage while remaining true to their respective beliefs by submitting an a quo petition to the Surabaya District Court.

Based on the petition, the Petitioners requested the Surabaya District Court judge to issue the following determination:

1. Granted the petition of the Petitioners in its entirety
2. Granted permission to Applicants of different religions to hold interfaith marriages at the Surabaya City Population and Civil Registry Service Office
3. Ordered the Employees of the Surabaya City Population and Civil Registration Service Office to record the marriages of the different religions of the Petitioners mentioned above in the marriage registration register
4. Charge the application fee to the Petitioners.

After reading and examining the petitions filed by the Petitioners, the judge finally gave an acceptance decision on the petition filed. In giving this decision, the judge has a ratio decidendi or legal reasons in it. As is well known, in Law Number 1 of 1974 concerning marriage, it is stated in Chapter II regarding the conditions for marriage in Article 6 paragraph (1), namely that marriage must be based on the consent of the two prospective bride and groom. The bride and groom have agreed and agreed to carry out a marriage. Therefore, the marriage that will be held fulfills the requirements as referred to in Article 6 paragraph (1) of Law Number 1 of 1974 concerning marriage.

Another requirement stated in Law Number 1 of 1974 concerning marriage is regarding the age limit. It is stated in Article 7 paragraph (1) of

the 1974 Law concerning Marriage that a marriage will be permitted or permissible if the prospective groom has reached a minimum age of 19 years and the prospective bride has reached a minimum age of 16 years. Pursuant to Article 7 paragraph (1) the age of the Petitioners or the bride and groom has reached the specified minimum age limit. So that both of them have fulfilled the conditions for marriage. In addition, Article 8 letter (f) of Law Number 1 of 1974 concerning Marriage also states that a marriage between 2 people is prohibited if they have a relationship that is prohibited by their religion or other regulations that apply are prohibited from marrying.

The next reason used by the judge in granting the request for this case was that the judge referred to Law Number 23 of 2006 concerning Population Administration. The judge referred to the rules written in Article 34 paragraph (1) which states that a marriage that is valid according to the Laws and Regulations is one that is reported and registered in accordance with the authority of the Marriage Registration Officer. However, because the two bride and groom have different religions, the registration of their second marriage must be with permission from the competent court. In this regard, the judge also referred to the next article, namely Article 35 letter (a) which states that the registration of marriages also applies to marriages determined by the Court.

After weighing in terms of the Marriage Law and the Population Administration Law, the judge also considered it based on the Human Rights possessed by the Petitioners as citizens. It is stated in Article 28B

paragraph (1) of the 1945 Constitution, that every citizen has the right to form a family and continue offspring through a legal marriage. Article 28B paragraph (1) is also in line with Article 29 of the 1945 Constitution which states that the State has guaranteed the freedom for every citizen to embrace their own religion. Bearing in mind that the Petitioners after carrying out interfaith marriages, will still adhere to their respective religions.

Through several ratio decidendi it can be seen that the judge who granted the request for the implementation of the interfaith marriage was based on the applicable laws and regulations. In addition, the existence of this stipulation is also due to the absence of a law that regulates exactly the implementation of interfaith marriages in Indonesia

#### **B. Judges' Ratio Decidendi In Giving A Decision To Reject Interfaith Marriage**

The implementation of interfaith marriages does not have specific laws in the regulations. Some decisions were granted and some were rejected. One of the decisions that were rejected was a decision issued by the Blera District Court with Case Register Number 71/Pdt.P/2017/PN.Bla. Which in essence is summarized as follows:

1. Petitioner I, who is a Muslim, wants to submit an application to carry out an interfaith marriage with Petitioner II, who is a Christian. Both applicants have obtained permission or blessing from their respective families. Petitioner I has been given verbal permission by his mother,

while Petitioner II has also received the blessing of his brother as another member of the family, because both parents of Petitioner II have died.

2. Regarding the intention of the Petitioners to hold interfaith marriages, the Civil Registry could not immediately approve it because of differences in religious beliefs held by the Petitioners, which meant that the implementation of the Petitioners' marriages had to be approved by the Blora District Court.
3. The Petitioners, who have received the blessing of their respective families, will only carry out their applications officially after obtaining a decision from the Blora District Court regarding interfaith marriage permits.

Based on the principal case filed by the Petitioners, they request that the Blora District Court judge render a decision containing the following:

1. Granted the petition of the Petitioners to carry out interfaith marriages.
2. Give orders to the Civil Registry office to register the interfaith marriage in the Civil Registry register at the Population and Civil Registry Office in accordance with the applicable regulations.
3. Charge court fees to the Petitioners in accordance with the applicable laws and regulations.

The matters presented by the Petitioners became the judge's consideration in making a determination. After examining several considerations, the judge at the Blora District Court finally rejected the



application to carry out the interfaith marriage. The rejection in the determination is based on several reasons or ratio decidendi owned by the judge which refers to the applicable regulations. Law Number 1 of 1974 concerning Marriage is the first thing to be considered by the Judge.

Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage states that marriage is valid if it is carried out according to the laws of each religion and belief. Based on the contents of Article 2 paragraph (1) the Judge finally considers the legality of a marriage according to the religion of the bride who is Muslim and also considers the legality of marriage from the religion of the bridegroom who is Christian. Actually, if interpreted literally, the meaning contained in Article 2 paragraph (1) has returned arrangements related to marriage to each religion of the prospective bride and groom, which means that the marriage to be carried out must be in accordance with what has become the teachings or rules in the religion itself. .

In Islam, arrangements regarding interfaith marriage are explained in Surah Al-Baqarah verse 221 which reads:

"And do not marry polytheistic women, before they believe. Indeed, a servant woman who believes is better than a polytheist woman even though she attracts your heart. And do not marry polytheists (men) before they believe."

It is also explained that Article 44 of the Compilation of Islamic Law states that a Muslim woman is prohibited from marrying a man who is not Muslim. So from what has been explained in QS Al-Baqarah verse 221 and regulated in Article 44 of the Compilation of Islamic Law, it is very clear

that Islam opposes or does not allow the implementation of interfaith marriages.

After reviewing the legality of interfaith marriage in Islamic religious law, the judge then also reviewed the legality of interfaith marriage in Christian religious law because the groom is a Christian. One of the witnesses in the trial who was a priest at the GBI Arumdalu Church in Blera explained that Christianity also does not allow interfaith marriages. Through this, the parties from the GBI Arumdalu Church conveyed that they would allow interfaith marriages to be carried out at the GBI Arumdalu Church if the bride wants to give up all attributes that show her identity as someone who is Muslim in another sense, namely if the bride wants to change religion from Islam to Christianity. This is also what ultimately causes the Judge to consider licensing for the implementation of interfaith marriages, because the Petitioners have stated that either before marriage or later when they are married both of them will still adhere to their respective religions. These factors ultimately became the judge's *ratio decidendi* at the Blera District Court in giving a rejection decision in the case of the application for the implementation of interfaith marriages.

Based on the reasons given by the judge in every decision making, it is known that every decision is always based on the applicable laws. To make it easier for the reader to understand the differences in decisions and their legal basis, the author will also present a comparative table. Here is a comparative table:

**Table 2. Comparative Table**

NO	Agency Decision Number	Judge's Ratio Decide
1.	Surabaya District Court (916/Pdt.P/2022/PN.Sby)	<ul style="list-style-type: none"> <li>a. Article 6 paragraph (1) Law Number 1 of 1974 concerning Marriage</li> <li>b. Article 7 paragraph (1) Law Number 1 of 1974 concerning Marriage</li> <li>c. Article 8 letter (f) Law Number 1 of 1974 concerning Marriage</li> <li>d. Article 34 paragraph (1) of Law Number 23 of 2006 concerning Population Administration</li> <li>e. Article 35 letter (a) Law Number 23 of 2006 concerning Population Administration</li> <li>f. Article 28 B of the 1945 Constitution</li> <li>g. Article 29 of the 1945 Constitution</li> </ul>
2.	Blora District Court (71/Pdt.P/2017/PN.Bla)	<ul style="list-style-type: none"> <li>a. Article 2 paragraph (1) of the 1974 Law concerning Marriage</li> <li>b. QS Al-Baqarah: 221</li> <li>c. Article 44 KHI</li> <li>d. Statement from the Pastor of GBI Arumdaluh Church, Blora Regency.</li> </ul>

Through the things that have been described in the comparative table, it can be concluded that every decision issued by a judge is based on the

applicable laws and regulations. The judges used the method of anticipatory legal interpretation in formulating their decisions. This Anticipatory Interpretation is used by the Judges because there is no regulation that regulates exactly the implementation of interfaith marriages, so that the stipulation issued is intended to be a reference in making laws in the future. This interpretation is based on a new point of view from a judge that allows something like this to happen again in the future.

### **C. Analysis of Interfaith Marriage According to Positive Legal Perspectives in Indonesia.**

#### **1. Interfaith Marriage in Law Number 1 of 1974 Concerning Marriage.**

Prior to the creation of Law Number 1 of 1974 in Indonesia, there was an applicable regulation made by the Government during the Dutch colonial period. The regulations made regulate the issue of mixed marriages. This regulation is contained in Staatsblad 1898 Number 158 concerning *Regeling op de Gemengde Huwelijken (GHR)* or commonly known as the Regulation on Mixed Marriages. In Article 1 of the GHR it is stated that this regulation was made to regulate people in Indonesia who are faced with different laws. An example is the existence of a marriage between an Indonesian citizen who is about to marry a person with Dutch or European citizenship, or a marriage that occurs between an Indonesian citizen and a person with Chinese or other Eastern nationality.

After the creation and enactment of Law Number 1 of 1974

concerning Marriage, all arrangements concerning interfaith marriages became conflicts that often occurred. This event was caused by several reasons, namely:

- a. Given the history of the formation of the Marriage Law in 1973, prior to the enactment of Law Number 1 Year 1974, Article 11 paragraph (2) contained "Differences due to nationality, ethnicity, country, origin, place of origin, religion, beliefs and descent is not a barrier to marriage. This article was previously seen as a regulation that supports the existence of interfaith marriages. Which in the end this article is no longer valid after the change and enactment of Law Number 1 of 1974 concerning Marriage.
- b. There are several articles which form the basis for the prohibition of interfaith marriages in Law Number 1 of 1974 concerning marriage. One of them is contained in Article 2 paragraph (1) which contains "Marriage is valid if it is carried out according to the laws of each religion and belief", and in the explanation of Article 2 paragraph (1) it has also been explained that no marriage is carried out outside the law of each religion and belief of each adherent. From this it can be concluded that the regulations that have been included in Article 2 paragraph (1) have submitted regulations related to marriage starting from the requirements to the procedure for carrying out a marriage to the regulations of each religion of the prospective bride and groom.

Meanwhile, there is no single religious law in Indonesia that justifies the existence of interfaith marriages in Indonesia.

- c. In Article 66 of Law Number 1 of 1974 concerning Marriage it is stated that:

"For marriage and everything related to marriage based on this Law, with the enactment of this Law the provisions regulated in the Civil Code (Burgelijks Wetboek), Indonesian Christian Marriage Ordinance (Huwelijks Ordinantie Christen Indonesiers S. 1933 Number 74), Mixed Marriage Regulations (Regeling op de Gemengde Huwelijken S. 1989 Number 158), and other regulations governing marriage insofar as they have been regulated in this Law, are declared no longer valid."

Thus it can be understood that all regulations related to marriage arrangements that were previously in force, are no longer valid after the existence and enactment of Law Number 1 of 1974 concerning Marriage.

The existence of Law Number 1 of 1974 concerning Marriage is one manifestation of the existence of rules regarding the order of conduct of marriages made by the Government. In addition to Law Number 1 of 1974 concerning Marriage, this Marriage Law is also supplemented by Government Regulation Number 9 of 1975 concerning Implementation of Law Number 1 of 1974 concerning Marriage and other regulations. However, with the existence of Law Number 1 of 1974 concerning Marriage regarding interfaith marriages, there is still a legal vacuum in it.

Many people in society still question whether or not a marriage is "legal" in which the partner adheres to a different religion. The word "legal" in a marriage, means that a marriage is carried out in accordance with applicable regulations. Which means when a marriage is carried out not in accordance with Law Number 1 of 1974 concerning Marriage, then the marriage is not valid according to law. When marriage is not in accordance with religious law, then the marriage is not valid religiously. And when a marriage is carried out not in accordance with applicable customary law, then the marriage is also invalid according to applicable customary law.

In Article 2 of Law Number 1 of 1974 concerning Marriage, it is stated that a marriage is valid if:

1. The marriage was carried out according to the laws of each religion and belief.
2. A legal marriage is a marriage that is registered according to the applicable laws and regulations.

Apart from what has been stated in Article 2 of Law Number 1 of 1974 concerning Marriage, it is also explained that no marriage is carried out outside the law of each religion and belief. What has been explained is actually also in accordance with what has been described in the 1945 Constitution, which contains: (1) The state is based on Belief in the One and Only God, (2) The state guarantees the independence of each resident to embrace their own religion. and worship according to

their religion and beliefs. From this it can be seen that actually the arrangement regarding interfaith marriage has been regulated in Article 2 of Law Number 1 of 1974 concerning marriage which states that what determines the validity of a marriage is if the marriage is carried out in accordance with the religion of each individual. However, in interfaith marriages where a couple consisting of a man and a woman have different religions and beliefs, so the arrangements are different in each religion.

When a marriage is carried out legally in force, then the marriage that is carried out will have legal consequences that arise afterwards. There are 3 main cases that will arise as a result of the law from the implementation of the legal marriage, including:

1. The existence of a new status in a relationship that is the relationship of husband and wife.
2. The emergence of property in a marriage
3. The emergence of another new relationship after the husband and wife relationship, namely the relationship between parents and children
4. There are rights and obligations that must be completed between husband and wife, as well as between parents and children.

It is different with marriages carried out by couples who have different religions. Every event that occurs will definitely have legal consequences, as well as the existence of interfaith marriages. Some of



the legal consequences arising from interfaith marriages include:

1. The legitimacy of children which is based on Article 42 of Law Number 1 of 1974 concerning Marriage states that "A legitimate child is a child born in or as a result of a legal marriage" and also stated in Article 43 paragraph (1) that "a child born outside A valid marriage only has civil relations with the mother and the mother's family. From the two articles above, a child born from an interfaith marriage will be considered valid if the child is born from a marriage whose marriage is registered either at the Office of Religious Affairs or the Civil Registry Office, then the child will be considered valid in the eyes of the law and has the same rights and obligations. the same as stated in Article 45 to Article 49 of Law Number 1 of 1974 concerning Marriage.
2. Inheritance Rights. Regarding inheritance, it has been regulated in the Book II of the Civil Code concerning Materials. However, the matter of inheritance caused by interfaith marriages is not regulated therein. If the problem of inheritance is viewed from the aspect of justice, then the prohibition to carry out interfaith marriages aims to protect the inheritance rights of each person, especially children. Because there is only a small possibility in an interfaith marriage in which there are adherents of the same religion, because it returns again that religion is a matter of belief that cannot be forced. Which means that a child born in an interfaith marriage is likely to follow

the religion of his mother only or may only follow the religion of his father, or may even have a different religion from his parents. So therefore, if a child has the same religion as his father or mother, that child will only get inheritance rights from the father or mother who has the same religion. This is very possible for the emergence of other conflicts between siblings who have different religions in the family. Regarding fairness in the distribution of inheritance for children who have the same religion as one of their parents will get their inheritance rights, while children who are not of the same religion as one of their parents will not get their inheritance rights.<sup>23</sup>

## 2. Interfaith Marriage in Compilation of Islamic Law (KHI)

As stated in Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage "Marriage is valid if it is carried out according to the laws of each religion and belief", it can be understood that the provisions concerning interfaith marriage regulations are adjusted to the regulations of the law. each religion adhered to by the prospective bride and groom. For the Islamic religion, regulations governing marriage procedures are sourced from the Compilation of Islamic Law (KHI). Regarding Interfaith Marriage is not regulated in one chapter directly, but in a different chapter. Namely in Article 40 KHI and also Article 44 which is written in the Chapter on Prohibition of Marriage, Article 61 KHI which is written in the Chapter on Prevention of Marriage and in

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<sup>23</sup>Anggraeni Carolina Palandi, "Juridical Analysis of Interfaith Marriage in Indonesia", *Lex Privatum*, no. 2(2013): 200-207 <https://media.neliti.com/media/publications/149025-ID-none.pdf>

Article 161 KHI which is written in the Chapter on Dissolution of Marriages.

In Article 40 KHI several things have been explained that are the reasons why someone is prohibited from getting married. The prohibitions that have been written in this article certainly do not conflict with what has been prescribed in Islam. There are 3 prohibitions written in it, including women who are still other people's wives or women who are still bound in a marriage with another man, women who are still in the iddah period or mourning period after the death of their husband, and women who do not Muslim. This third prohibition is closely related to the issue of interfaith marriage, namely the prohibition against marrying women who are not of the same religion or women who are not Muslim.

As has been explained in the Qur'an Surah Al-Baqarah: 221, which means:

"And do not marry polytheistic women, before they believe. Indeed, a servant woman who believes is better than a polytheist woman even though she attracts your heart. And do not marry polytheists (men) before they believe."

The existence of this verse is also supported by Surah Al-Mumtahanah which means:

"Allah knows better their faith. If you know that they (really) believe, then do not return them to the disbelievers (their husbands). They are not lawful for those disbelievers and those who disbelieve are not lawful for them."

From these two verses it can be understood that marrying someone who is not of the same religion is absolutely forbidden in Islam.

In Article 44 KHI it is clarified regarding the subject of *kufu*. *Kufu* itself means equal or the same. According to some scholars, in their opinion, what is meant by *sekufu* or the same here is in the context of their religion, namely having the same religion and beliefs. So that when a woman marries a man who does not share the same religion, the two of them will not be considered compatible or suitable.<sup>24</sup>

In Article 61 KHI it is explained again regarding *kufu*. *Kufu* referred to here is about the degree of family, wealth and so forth. So it is stated in Article 61 KHI "Not being in confederation cannot be used as a reason to prevent marriage, unless not in confederation because of religious differences or *ikhtilafu ad-diin*".

Article 116 KHI discusses the reasons for breaking up a marriage. This article has explained that there are 8 reasons that cause a marriage to break up, including:

- a. One of the parties commits adultery or becomes a drunkard, addict, gambler, and so on which is difficult to cure
- b. One of the parties leaving the other party for 2 consecutive years without the permission of the other party without a valid reason or for other reasons beyond his control.

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<sup>24</sup>Erwin Setyo Nugroho, "Marriage of Differences Religion in Indonesia in the Interfaith Fiqh Perspective (Building a Pluralist Inclusive Perspective), Indonesian Journal of Islamic Law, no. 2(2019): 70-73 <http://jurnalpasca.iain-jember.ac.id/ejournal/index.php/IJIL/article/view/404>

- c. One of the parties gets a prison sentence of 5 years or a heavier law after the marriage takes place
- d. One of the parties commits cruelty or severe abuse that endangers the other party
- e. One of the parties gets a disability or illness with the result that they cannot carry out their obligations as husband or wife
- f. Between husband and wife there are constant disputes and fights and there is no hope of getting back together in the household
- g. Husband violates the taklik divorce
- h. Conversion of religion or apostasy which causes disharmony in the household.

In this article it is clearly stated that the existence of religious differences is one of the reasons for the cancellation of a marriage. If the previous articles discussed how things were before marriage with someone of a different religion, this article explains the breakup of a marriage that has occurred as a result of one of the partners changing his religion to non-Muslim. So it can be concluded that the prohibition to carry out interfaith marriages is not solely based on the regulations that govern it, but also in the interest of protecting justice that will arise as a result of interfaith marriages.

### 3. Interfaith Marriage in Law Number 23 of 2006 concerning Population Administration

In Indonesia in Law Number 23 of 2006 concerning Population

Administration are all forms of activities carried out aimed at structuring and controlling in terms of population documents and data through registration and population data collection, civil registration, management of population information, and utilization of the results for public services and other sectors. Regarding the registration of marriages carried out by Civil Registry Employees, it is regulated in Article 34, Article 35, and Article 36. As regulated in Article 34 paragraph (1) it is stated that a marriage that is valid according to Legislation must be reported by residents to the implementing agency at the place where the marriage took place no later than 60 days from the date of marriage. Arrangements regarding the registration of marriages are also regulated in accordance with the authority based on the religion of the bride and groom. In Article 34 paragraph (2) it is stated that the intended marriage reporting is by registering a marriage certificate recorded by the Civil Registry Officer and issuing a marriage certificate excerpt. Meanwhile, in Article 34 paragraph (4) for Muslim brides, registration is carried out at the Sub-District Office of Religious Affairs as previously regulated in Article 8 paragraph (2).

Through these two articles it is clear that when a marriage of different religions is carried out, especially one of the bride and groom is Muslim, the registration of the marriage cannot be carried out in accordance with the applicable laws and regulations. The Civil Registry Officer has the right to refuse to register the marriage. However,

interfaith marriages can be registered and registered at the Civil Registry Office if referring to Article 35 letter (a) which states that the registration of marriages as referred to in Article 34 also applies to marriages determined by the Court. Therefore, when the bride and groom want to register an interfaith marriage, they must have a permit issued by the Court. The existence of Article 35 letter (a) is the legal basis used by judges to allow interfaith marriages to be carried out. However, the existence of Article 35 letter (a) contradicts the explanation contained in Article 2 paragraph (2) of Law Number 1 of 1974 concerning Marriage that there is no marriage that is contrary to or outside the law of each religion and belief. .

The existence of Law Number 23 of 2006 concerning Population Administration is like giving a choice to the community to take legal or illegal routes in order to obtain legality in the marriages of different religions carried out by them. The existence of Article 35 letter (a) of Law Number 23 of 2006 concerning Population Administration clearly provides a loophole for the public to obtain legality from interfaith marriages which actually contradicts Law Number 1 of 1974 concerning Marriage which prohibits interfaith marriages.<sup>25</sup>

Through some of the analyzes presented by the author in this study, it can be understood that a judge who gives legality to this interfaith marriage has a ratio decidendi which is based on the applicable laws and regulations. Starting from

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<sup>25</sup>Fakhurrazi M. Yunus and Zahratul Aini, "Inter-religious Marriage in Law Number 23 of 2006 Concerning Population Administration (Review of Islamic Law), Media Syari'ah, no.2(2018): 148,<https://jurnal.ar-raniry.ac.id/index.php/medsyar/article/view/6512>

Article Article 6 paragraph (1) of Law Number 1 of 1974 concerning Marriage, Article 7 paragraph (1) of Law Number 1 of 1974 concerning Marriage, Article 8 letter (f) of Law Number 1 of 1974 concerning Marriage , Article 34 paragraph (1) of Law Number 23 of 2006 concerning Population Administration, Article 35 letter (a) of Law Number 23 of 2006 concerning Population Administration, Article 28 B of the 1945 Constitution, to Article 29 of the Law Basic 1945.

However, in practice, of course there are also judges who refuse to grant requests for interfaith marriages. This is also of course the judge has a ratio decidendi or reasons that are considered beforehand. Starting from the rules stipulated in Article 2 paragraph (1) and interpreted using grammatical interpretation methods, a legal formulation can be found that in Article 2 paragraph (1) of Law Number 1 Year 1974 concerning Marriage it has been emphasized that regarding the implementation of marriage has returned to the arrangements in accordance with the laws of each religion. So that when there is a request for the implementation of interfaith marriages it cannot be granted considering that most religions in Indonesia also disagree about the existence of interfaith marriages.

Through the analysis carried out by the Judge and used as a ratio decidendi for his decision, both of them used Law Number 1 of 1974 concerning marriage. If it is based on Law Number 1 of 1974 concerning marriage, a marriage will be valid if the marriage does not conflict with applicable regulations, including customary law and also religious law. This statement is further strengthened by



the existence of Article 2 of Law Number 1 of 1974 concerning Marriage, which states that marriage is valid if:

- (1) The marriages carried out were carried out according to each religion and belief
- (2) Legal marriage is a marriage that is registered according to the applicable laws and regulations.

First, if the implementation of interfaith marriages is based on Article 2 paragraph (1), then interfaith marriages are not justified. Because in each religion there are many who do not approve of the implementation of interfaith marriages. As stated by the Indonesian Ulema Council (MUI) which argues that interfaith marriages may be legal in the eyes of civil law, but will not turn out to be legal in the eyes of religious law. Secondly, it is seen from Article 2 paragraph (2) that it opens opportunities for people to carry out interfaith marriages, because this article is also supported by Article 35 letter (a) which states that marriage registration can also be carried out at marriages determined by the Court.

From these two opinions, when viewed through Article 28B paragraph (1) of the 1945 Constitution which states that every citizen has the right to form a family and continue offspring through legal marriage, interfaith marriage is not an obstacle for every citizen to do it. However, when referring to the purpose of doing a marriage, namely to continue offspring, to build a family in peace, then interfaith marriage is not an ideal thing to carry out because if in a family there are 2 different beliefs, it will be difficult to achieve a common goal. Apart from

all the regulations governing marriage, the prevention of the implementation of interfaith marriages is felt to be very necessary because it considers the after-marriage impacts that will be caused, such as the position of children, distribution of inheritance, and also social impacts in society.

## CHAPTER IV

### CLOSING

#### A. Conclusion

Each judge has their own reasons for making a decision. The judge at the Surabaya District Court who decided to grant the request for interfaith marriage conveyed some of the ratio decidendi he had. The judge considers the existence of the right of every citizen to marry in order to build a family and continue their offspring as conveyed in Article 28B paragraph (1) of the 1945 Constitution. In addition, the judge also considers the existence of a regulation mentioned in Article 2 paragraph (2) which states that a legal marriage is one that is registered at the Civil Registry Office, whereas in the case of interfaith marriage,

As is the practice in daily life, not all judges can give the same decision in the implementation of interfaith marriages. The judge at the Blora District Court decided to refuse to grant the request for an interfaith marriage. This decision to reject is based on Article 2 paragraph (1) which states that a marriage is valid if it is carried out in accordance with the laws of each religion and belief. If the two prospective bride and groom have different religions, then this causes a conflict of religious law in it. This is the ratio decidendi of the Blora District Court Judge to reject the application for the implementation of interfaith marriages.

According to the Judge's opinion, interfaith marriage is actually not something that can be justified in its implementation. The existence of

prevention of interfaith marriages is not solely due to the regulations that govern it, but also in view of the legal impact that will arise after the implementation of interfaith marriages. The absence of regulations that clearly state the implementation of interfaith marriages creates a legal vacuum among the community. From the provisions of Law Number 1 of 1974 concerning Marriage to Law Number 23 of 2006 concerning Population Administration, all are still interpreted grammatically by the Judges as a reference in making decisions.

#### **B. Suggestion**

Indonesian regulations governing marriage must evaluate and emphasize the legalization of interfaith marriages. So as not to cause public unrest and confusion as a result of the existing legal vacuum.

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**KEMENTERIAN AGAMA REPUBLIK INDONESIA UNIVERSITAS  
ISLAM NEGERI MAULANA MALIK IBRAHIM MALANG  
FAKULTAS SYARIAH**

Jl. Gajayana 50 Malang 65144 Telepon (0341) 559399 Faksimili (0341) 559399  
Website fakultas: <http://syariah.uin-malang.ac.id> atau Website Program Studi: <http://hk.uin-malang.ac.id>

**CONSULTATION PROOF**

Name : Elmira Qurrota A'yunina  
Student Number : 19210123  
Department : Islamic Family Law  
Supervisor : Syabbul Bachri, M.H  
Thesis Title : Judges' Ratio Decidendi To Accept And Reject Interfaith Marriage  
In The Perspective of Indonesian Law

No.	Day/Date	Subject of Consultation	Signature
1.	Thursday, 15 September 2022	Consultation Chapter I	
2.	Monday, 26 September 2022	ACC Chapter I	
3.	Monday, 24 Oktober 2022	Consultation Chapter II	
4.	Monday, 31 Oktober 2022	ACC Chapter II	
5.	Tuesday, 4 November 2022	Consultation Chapter II	
6.	Tuesday, 4 November 2022	ACC Chapter II	
7.	Wednesday, 9 November 2022	Consultation Chapter IV	
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Malang, 14 November 2022  
Acknowledged by,  
Head Department of Islamic Family Law

Erik Sabti Rahmawati, M.A., M.Ag  
NIP.197511082009012003



## CURICULUM VITAE



- Name : Elmira Qurrota A'yunina
- Place, Date of Birth : Malang, 1<sup>st</sup> November 2000
- Address : Jl. Kol. Sugiono 7/B,23. RT.07 RW.02, Malang
- Email : [elmiraqurrotal1@gmail.com](mailto:elmiraqurrotal1@gmail.com)
- Educational Background : SDN Ciptomulyo 1 (2008-2009)  
SDN Regol XIII (2009-2010)  
SDN Wandanpuro 1 (2010-2012)  
PP Al-Mawaddah Ponorogo (2012-2019)  
UIN Maulana Malik Ibrahim Malang (2019-2022)
- Organizational Experiences :
- Secretary of Library Department in PP Al-Mawaddah
  - Secretary of Social Development in UKM Kommust UIN Maulana Malik Ibrahim Malang
  - Finance of Social Development in UKM Kommust UIN Maulana Malik Ibrahim Malang