

**LEGAL VALIDITY OF INTERFAITH MARRIAGE ON POPULATION
RECORDS (CASE STUDY: SURABAYA JUDGEMENT COURT DECISION
NO.916/PDT.P/2022/PN.SBY)**

THESIS

by:

SALSABILA KHAIRUNNISA

SIN 19210130



**ISLAMIC FAMILY LAW DEPARTMENT
SHARIA FACULTY
STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM MALANG
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MALANG
2023**

STATEMENT OF THE AUTHENTICITY

STATEMENT OF THE AUNTENTICITY

In the name of Allah,

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

LEGAL VALIDITY OF INTERFAITH MARRIAGE ON POPULATION RECORDS (CASE STUDY: SURABAYA JUDGEMENT COURT DECISION NO.916/PDT.P/2022/PN.SBY)

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, 24 Mei 2023

Writer,



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APPROVAL SHEET

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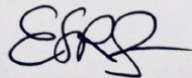
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The supervisor stated that this thesis has met the scientific requirements to be proposed and to be examined by the Assembly Board of Examiners.

Malang, 24 Mei 2023

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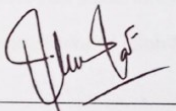
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
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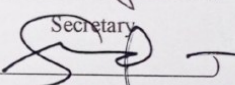
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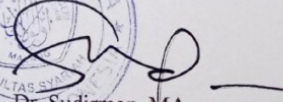

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MOTTO

وَاللّٰهُ جَعَلَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا وَجَعَلَ لَكُمْ مِنْ أَزْوَاجِكُمْ بَنِينَ وَحَفَدَةً وَرَزَقَكُمْ مِنَ الطَّيِّبَاتِ
أَفَبِالْبَاطِلِ يُؤْمِنُونَ وَبِنِعْمَتِ اللّٰهِ هُمْ يَكْفُرُونَ

“And Allah made for you a partner (husband or wife) from your own kind, made children and grandchildren for you from your partner, and gave you sustenance from good things. Why do they believe in the false and deny the favor of Allah?”

ACKNOWLEDGEMENT

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Alhamdulillahirabbil'alamin, have given His rahmat and servan, so we can finish this thesis entitled "LEGAL VALIDITY OF INTERFAITH MARRIAGE ON POPULATION RECORDS (CASE STUDY: SURABAYA DISTRICT COURT DECISION NO.916/PDT.P/2022/PN.SBY)". 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 belive and get their intercession on the last day of the end. Amien.

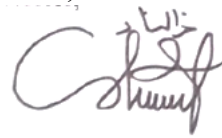
From all the teaching, advice, guidance, and helps of service for us to finish this thesis, then with all humility the writer will expresses the gratitude which is unequaled to:

1. Mr. Prof. Dr. H. M. Zainuddin, MA, as the Rector of The State Islamic University Maulana Malik Ibrahim of Malang.
2. Mr. Dr. Sudirman, MA, as the Dean of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
3. Mrs. Erik Sabti Rahmawati, MA, as the Head of Islamic Family Law Department of Syariah Faculty of The State Islamic university Maulana Malik Ibrahim of Malang.
4. Mrs. Jamilah, MA, as my thesis supervisor. The writer thanks for her spending time to guide, direct, and motivate to finish writing this thesis. The writer hopes that she and her family will be blessed bu Allah.
5. Mr. Dr. Zaenul Mahmudi, MA, as supervisor lecture of the witer during his study at Islamic Family Law Department of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
6. All lecture at Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang who have provided learning to all us. Whith sincere intentions, may all of their charity be part of worship to get the pleasure of Allah SWT.
7. Staff of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang

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.

Malang, 24 Mei 2023

Writer,

A handwritten signature in black ink, appearing to be 'Salsabila Khairunnisa', written in a cursive style.

Salsabila Khairunnisa

NIM 19210130

TRANSLITERATION GUIDANCE

Transliteration transfers Arabic script into Indonesian (*Latin*) writing, not Arabic translation into Indonesian. Included in this category are Arabic names from Arabs, while Arabic words from nations other than Arabic are written as the spelling of the national language or as written in the reference book. Writing the text's title in the footnotes and bibliography still uses the provisions of this transliteration.

There are several provisions in transliteration that can be used in writing scientific papers. Whether it is national or international standards or requirements specifically used by certain sharia students of UIN Malang are based on the provisions of the 2019 thesis writing guidelines for the Faculty of Sharia, State Islamic University Maulana Malik Ibrahim Malang, namely transliteration based on the *Surat Keputusan Bersama* (SKB) of the Minister of Religion and the Minister of Education and Culture of the Republic of Indonesia, January 22, 1998, No. 159/1987 and 0543.b/U/1987, as stated in the A Guide Arabic Transliteration, INIS Fellow 1992.

A. Consonant

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

Arabic	Indonesian	Arabic	Indonesian
أ	‘	ط	t
ب	b	ظ	z
ت	t	ع	‘
ث	th	غ	gh
ج	j	ف	f
ح	h	ق	q
خ	kh	ك	k

د	d	ل	l
ذ	dh	م	m
ر	r	ن	n
ز	z	و	w
س	s	هـ	h
ش	sh	ء	‘
ص	s	ي	Y
ض	d		

Hamzah (ء) which is located at the beginning of the word follows the vocal without being marked anything. If hamzah (ء) is in the middle or at the end it is written with a sign (‘).

B. VOCAL

Arabic vocals, like Indonesian vocals, consist of a single vocal or monophthong and a double diphthongal vocal.

A single Arabic vocal whose symbol is a sign or a value, the transliteration is as follows:

Arabic Font	Name	Latin Letters	Name
	Fathah	A	A
ا	Kasrah	I	I
و	Dammah	U	U

A double Arabic vocal whose symbol is a combination of vocal and letters, the transliteration of which is a combination of letters, i.e:

Sign	Name	Latin Letters	Name
اي	Fathah dan ya	Ai	A dan I
او	Fathah dan wau	Iu	A dan U

C. MADDAH

Maddah or long vocals whose syllables are in the form of vocals and letters, the transliteration is in the form of letters and signs, i.e:

Harkat and Letter	Name	Font dan Sign	Name
َ dan ا	Fathah and alif or ya	<u>a</u>	a and the line above
ِ dan ي	Kasrah and ya	<u>i</u>	i and the line above
ُ dan و	Dammah and wau	<u>u</u>	u the line above

D. TA MARBUTAH

There are two transliterations for *ta marbutah*, namely: *ta marbutah* which lives or gets the Harkat *fathah*, *kasrah*, and *dammah*, transliteration is [t]. While the *ta marbutah* who died or received the title of breadfruit, the transliteration is [h].

If a word that ends with *ta marbutah* is followed by a word that uses the article al- and the readings of the two words are separate, then the *ta marbutah* is transliterated with ha (h).

E. SYADDAH

Syaddah or *tasydid* which in the Arabic writing system is symbolized by a *tasydid* (ّ), in this transliteration is symbolized by a repetition of letters (double consonants) which are marked *syaddah*. If the letter (ّ) has *tasydid* at the end of a word and is preceded by a letter with the letter kasrah (ِ), then a is transliterated like the letter *maddah* (ٲ).

F. ARTICLE

The article in the Arabic writing system is denoted by a letter (alif lam ma'arifah). In this transliteration guide, the article is transliterated as usual, al-, both when it is followed by a syamsiah or qamariah letter. 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 (-).

G. HAMZAH

The rules for transliterating hamzah letters into apostrophes (‘) only apply to hamzahs that are in the middle and at the end of a word. However, if the hamzah is at the beginning of a word, it is not denoted, because in Arabic it is an alif.

H. WRITING OF ARABIC WORDS COMMONLY USED IN THE INDONESIAN LANGUAGE

Arabic words, terms, or sentences that are transliterated are words, terms, or sentences that have not been standardized in Indonesian, have been written frequently in Indonesian, and are no longer written according to the transliteration method above. For example, the word Alquran (from *al-Qur’an*), sunnah, hadis, special, and general. However, if these words form part of a series of Arabic texts, they are transliterated as a whole. Example:

Fi zilal al-Qur’an

Al-Sunnah qabl al-tadwin

Al-Ibarat Fi ‘Umum al-Lafz la bu khusus al-sabab

I. LAFZ AL-JALALAH (الله)

The word “Allah” which is preceded by the letters jar and other letters or has the position of mudaf ilaih (nominal phrase), is transliterated without the letter hamzah.

As for the *ta marbutah* at the end of the word which is based on *lafz al-jalalah*, it is transliterated with the letter [t].

J. CAPITAL LETTERS

Even though 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 initial letters of personal names (person, place, month) and the first letter at the beginning of a sentence. If the self-name is preceded by the article (al-), then what is written in capital letters is still the initial letter of the self, 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 a reference title preceded by the article al-, both when it is written in the text or in the reference notes (CK, DP, CDK, and DR).

Example:

Wa ma Muhammadan illa rasul

Inna awwala baitin wudi'a linnasi lallazi bi Bakkata mubarakan

Syahru Ramadan al-lazi unzila fih al-Qur'an

Nasir al-Din al-Tus

Abu Nasr al-Farabi

Al-Gazali

Al-Munqiz min al-Dalal

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ABSTRAK

Salsabila Khairunnisa, 19210130, 2023. Keabsahan Hukum Perkawinan Beda Agama Terhadap Pencatatan Kependudukan (Studi Kasus: Nomor 916/Pdt.P/2022/PN.SBY). Skripsi. Program Studi Hukum Keluarga Islam. Fakultas Syariah. Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Jamilah, MA.

Kata Kunci: Keabsahan Hukum, Perkawinan Beda Agama, Putusan Perkara.

Fenomena perkawinan beda agama dalam pandangan hukum maupun pandangan masyarakat mengalami beragam penafsiran. Seperti halnya pada Undang-Undang Nomor 16 tahun 2019 tentang Perkawinan dan Undang-Undang No 23 tahun 2006 tentang Administrasi Kependudukan. Menimbulkan berbagai penafsiran terkait perizinan perkawinan beda agama di Indonesia. Sehingga beberapa kalangan dari masyarakat mengkhawatirkan terjadinya perkawinan tersebut. Seperti pada Putusan PN Surabaya dengan No. 916/Pdt.P/2022/PN.SBY yang memberikan izin untuk pencatatan pernikahan pasangan yang berbeda agama. Putusan tersebut merujuk pada Yurisprudensi (Putusan Mahkamah Agung Nomor 1400/Pdt/1986) serta ICRP atau *Indonesian Conference on Religion and Peace* mencatat terdapat 1.425 pasangan beda agama sejak 2005 melangsungkan pernikahan di Indonesia. Hak memeluk agama dan kepercayaan masing-masing merupakan hak setiap individu, namun menegakkan hak asasi manusia wajib menghargai hak orang lain. Seperti larangan menikah beda agama pada agama Islam dan beberapa agama lain. Dengan perizinan perkawinan beda agama maka akan menimbulkan pelanggaran hukum baru dikemudian hari. Oleh karena itu, dibutuhkan proses pengkajian secara komprehensif dengan seluruh elemen baik pemerintah maupun organisasi agama di Indonesia.

Metode Penelitian menggunakan pendekatan terhadap peraturan perundang-undangan. Metode pengumpulan data melalui studi dokumen dalam penelitian yakni studi perkara kemudian dianalisa dengan menggunakan metode editing serta deskripsi kualitatif terhadap Putusan No. 916/Pdt.P/2022/PN.SBY melalui UU No. 16 tahun 2019 dan UU No. 23 tahun 2006.

Hasil penelitian ini adalah Pertama, bahwa putusan tersebut absah secara hukum merujuk pada beberapa dasar hukum yang ditafsirkan bahwa “perkawinan sah apabila dilakukan menurut hukum Agama dan Kepercayaan masing-masing” dan dikuatkan oleh Yurisprudensi (Putusan Mahkamah Agung Nomor 1400K/Pdt/1986), namun terdapat dasar hukum lain yang juga memiliki ketetapan hukum di Indonesia yakni pasal 40 dan 44 KHI dan pandangan MUI. Kedua, perkawinan beda agama berpotensi melahirkan persoalan hukum di kemudian hari, terlebih persoalan kedudukan anak yang dilahirkan. Pertama, soal keabsahan perkawinan yang akan menimbulkan hak dan kewajiban antara suami istri. Kedua, hak warisan antara suami istri dan anak-anaknya. Sedangkan dalam Katolik, waris adalah sesuatu yang mutlak tergantung keinginan sang pewasiat.

ABSTRACT

Salsabila Khairunnisa, 19210130, 2023. Legal Validity of Interfaith Marriage Law Against Recording Population (Study Case: Number 916/ Pdt.P /2022/PN.SBY). Thesis. Islamic Family Law Study Program. Faculty of Sharia. State Islamic University of Maulana Malik Ibrahim Malang. Advisor: Jamilah, MA.

Keywords: Legal Validity, Interfaith Marriage, Decision case.

Phenomenon marriage significant religious differences view law nor view public experience diverse interpretation. Like matter it on the law Number 16 of 2019 concerning Marriage and Law No. 23 of 2006 concerning Administration Population. Raises various performances related to licensing marriage in different religions in Indonesia. So that some circles from public worrying happening marriage the. As in the Surabaya District Court Decision with No. 916/ Pdt.P /2022/PN.SBY permitted the recording of the wedding of different religious couples. A decision to refer to Jurisprudence (Judgment Supreme Court Number 1400/ Pdt /1986) and the ICRP or The Indonesian Conference on Religion and Peace noted that 1,425 pairs of different religions since 2005 held marriage in Indonesia. The right to embrace each religion and belief is the right of every individual. However, man must value other people's rights to enforce fundamental rights. Like prohibition, Marry different religions in Islam and several other religions. Licensing marriage in different faith then will raise violation laws new later day. Because therefore, a review process is needed in a manner comprehensive with the whole element of good government and religious organizations in Indonesia.

The methodology research uses an approach to regulatory legislation. Method data collection through studies document in the study, i.e., studies case Then analyzed using editing method as well description qualitative to Verdict No. 916/ Pdt.P /2022/PN.SBY through Law no. 16 of 2019 and Law no. 23 of 2006.

Research results This is Firs, that decision the valid in a manner law refers to some base interpreted law that "marriage legitimate if done according to religious law and their respective beliefs" and confirmed by Jurisprudence (Decision Supreme Court Number 1400K/ Pdt /1986), however, there is base other laws that also have decree law in Indonesia namely articles 40 and 44 KHI and MUI views. Second, marriage potentially different religions give birth to problem law later, especially problem position born child. First, the questionable validity of the upcoming marriage raises rights and obligations between husband and wife. Second, rights inheritance between husband, wife, and children. Whereas in Catholicism, inheritance is something that absolutely depends on the will of the testator.

ملخص البحث

سلسبيلا خير النساء, 19210030, 2023. صحة قانون الزواج بين الأديان بتسجيل السكان (دراسة حالة: الرقم PN.SBY/2022/Pdt.P/916. البحث. القسم الأحوال الشخصية. الكلية الشريعة. الجامعة الإسلامية الحكومية مولانا مالك إبراهيم مالانج. المشرفة: جميلة الماجستر.

الكلمات الرئيسية: صحة القانون, الزواج بين الأديان, قرار القضية.

كانت في ظاهرة الزواج بين الأديان في نظر القانون والمجتمع التفسيرات المختلفة. كما في القانون رقم 16 سنة 2019 عن أمور الزواج والقانون رقم 23 سنة 2006 عن إدارة السكان. لقد تطورت تفاسير مختلفة فيما يتعلق بإذن الزواج بين الأديان في إندونيسيا. حتى يخشى بعض المجتمع بحدوث ذلك الزواج. كما في قرار المحكمة الكمية بمقاطعة سورابايا برقم PN.SBY/2022/Pdt.P/916 الذي يؤذن تسجيل الزيجات للأزواج من ديانات مختلفة.

وأشار القرار إلى الفقه القضائي (قرار المحكمة العليا رقم 1400/Pdt/1976) ولاحظ المؤتمر الإندونيسي حول الدين والسلام أن هناك 1425 زوج من ديانات مختلفة منذ سنة 2005 تزوجوا في إندونيسيا. الحق في اختيار الدين والعقيدة هو حق لكل فرد، ولكن إقامة حقوق الإنسان تجب أن تحترم حقوق الآخرين. مثل تحريم الزواج بين الأديان في الإسلام وديانات أخرى. سوف يؤدي السماح بالزواج بين الأديان إلى انتهاكات قانونية جديدة في المستقبل. لذلك، هناك حاجة إلى المراجعة الشاملة من جميع العناصر، سواء كانت الحكومية أو المنظمات الدينية في إندونيسيا.

منهج البحث المستخدم يعني باقتراب القوانين. طريقة جمع البيانات هي من خلال دراسات التوثيق في البحث وهي دراسات الحالة ثم تحليلها بطريقة التحرير والوصف النوعي للقرار رقم PN.SBY/2022/Pdt.P/916 من خلال القانون رقم 16 سنة 2019 والقانون رقم 23 سنة 2006. نتائج هذه الدراسة هي أولاً، اعتبارات القاضي عند تحصيل القرار بناء على القانون رقم 16 سنة 2019، المادة 35 من القانون رقم 23 سنة 2006، المادة 28 b من القانون الأساسي 1945، مادة 10 PP No 9 سنة 1975 وبإفادة الشهود والأدلة أثناء المحاكمة. ثانيًا، كان القرار صالحًا من

الناحية القانونية اعتماداً على عدة أسس قانونية التي يتم تفسيرها على أن "الزواج صحيح إذا تم فعله وفقاً بقوانين لكل دين وعقيدة" وأكدته الفقه القضائي (قرار المحكمة العليا رقم (1986/Pdt/1400K), ولكن هناك أساس آخر من القرار في إندونيسيا, أي المادتين 40 و 44 من KHI ووجهات نظر MUI. ثالثاً, يحتفل أن تؤدي الزيجات بين الأديان إلى المسئلة الحكيمة في المستقبل, لا سيما مسألة وضع الأطفال المولودين. أولاً, حول صحة الزواج التي ستنشأ عنها حقوق و واجبات بين الزوج والزوجة. ثانياً: حقوق الميراث بين الزوج والزوجة وأولادهما.

CHAPTER I

INTRODUCTION

A. Background

Marriage is a firm contract commanded by Allah to be obeyed, and doing so is worship for Muslims.¹ Marriage can be categorized in *mitsaqan ghalidzan*, defined as a very strong, noble, and earnest agreement where the agreement is made not to be used as a game. A marriage agreement is made based on an agreement between a man and a woman as husband and wife to formalize the bond of the relationship according to legal and religious norms. Marriage has existed since even a simple society because it was maintained as one of the ways ordered by God to sustain human glory and honor.

Even though it is a promise, marriage cannot be equated with an agreement as known in the *Burgerlijk Wetboek voor Indonesie*, commonly referred to as BW or *Kitab Undang-Undang Hukum Perdata*.² This is because marriage touches on and involves a religious concept in it. Every agreement always has a relationship with good faith or good faith. This principle provides guidelines that every promise is made based on trust in their partner forever. In the past, determining ways to get married was based on religion. Then these rules continued to develop rapidly in society, both

¹ Article 2 Compilation of Islamic Law

² Staatsblaad number 23 of 1847 concerning burgerlijk wetboek voor Indonesia. "Marriage is a bond between a man and a woman to form a harmonious, happy, prosperous and lasting family between men and women.

in terms of customary law and government power, which were manifested in the form of statutory regulations.

Laws or legislation in a country, especially regarding marriage, can't be separated from the influence of culture and the community environment in that region. The people concerned build it based on knowledge, habits, and religion. In this case, the rules for marriage in Indonesia are contained in Law Number 1 of 1974 concerning marriage which took effect officially from the date of promulgation, namely January 2, 1974. However, in 2019 the regulation changed, namely law Number 16 of 2019 concerning marriage which has been in effect officially since October 14, 2019. That the law regulates the principles of marriage itself, which relate to joint property of husband and wife, *ruju'*, divorce, and the relationship between parents and children, including inheritance, grants, and so on. The promulgation of the Marriage Law has become the legal basis for implementing marriage in Indonesian people. In addition, determining a marriage law for Muslims in Indonesia also refers to the Compilation of Islamic law (KHI) Number 1 of 1991.

The background for issuing KHI is to consider the validity and complexity of Islamic law in society. Therefore, it is embodied in a concrete and systematic formulation of Islamic law for all Muslims in Indonesia. KHI is expected to be a guide or reference for Muslims in Indonesia in solving marriage problems.

religion of each partner, quoting Law Number 16 of 2019.² The six religions recognized by Indonesia do not facilitate such marriages. Therefore, it is impossible to take place in Indonesia based on faith. Based on this impossibility, interfaith marriages become invalid from a religious point of view, and finally, the state also adopts this point of view.

Several of these cases were welcomed as a gateway for solutions to policy changes related to the permissibility of interfaith marriages. Some parties consider it as a form of the human right to right to form a household and the right to freedom to embrace their respective beliefs. Even so, there are consequences for family relationships, especially when facing problems that require a religious orientation to solve them, such as inheritance, lineage, and so on. It is believed that this has gone through a long process so that a couple of lovers bring their families together in interfaith marriage bonds. However, not a few various objections were raised by the community to stop the process of interfaith marriages, which were carried out legally by the administration and officially permitted by the state. Because basically, the limitation of realizing human rights is by considering other human rights.

Interfaith marriage is a case that has gone through various long debates, both from the religious side and from the side of official statehood. Talking about marriage cannot be separated from the presence of religion because, in essence, each religion orders its followers to live in the world in

² Law Number 16 of 2019 concerning Marriage, "The validity of marriage depends on each partner".

pairs. As it is, in Q.S Az-Zariyat: 49, "*And everything We created in pairs so that you remember the greatness of Allah.*" Likewise, other religions have their own rules for carrying out marriages. Especially the Islamic faith, which has agreed after the results of the national deliberation, namely the prohibition on interfaith marriages, but still there are many different views, so some parties (Muslims) are trying to ensure that the wedding can still take place by recording it at the local DIPENDUKCAPIL (*Dinas Kependudukan Sipil*). For example, the permit to register interfaith marriages at the Surabaya District Court allows interfaith married couples to get married in front of DISPENDUKCAPIL officials and then be registered administratively. Based on ruling Number 916/Pdt.P/2022/PN.SBY.

Departing from the elucidation of Law Number 23 of 2006 concerning Population Administration, it is stated that DISPENDUKCAPIL officials can register interfaith marriages based on a district court decision.³ However, in interpreting legal systematics, this rule exceeds the regulatory context, which should only regulate population administration. This rule has created a new model of marriage concept that contradicts the substance regulations as in Law Number 16 of 2019 concerning marriage. This has led to a disparate determination of judges in several cases. This means it is difficult for the community to obtain legal certainty regarding licensing for interfaith marriages. The juridical meaning contained in the regulations on

³ Article 35 paragraph (1) of Law Number 23 of 2006 concerning Population Administration

the prohibition of marriage, talak, and raju' above gives the value of whether a marriage is valid or not to each religion and belief in society to judge it. The construction of interfaith marriage rules from the perspective of *hifdzun nasab maqashid syariah* must immediately obtain legal certainty materially and formally. The occurrence of interfaith marriages has the potential to give birth to legal problems in the future. The many negative impacts of interfaith marriage on children cause losses (*mafsadah*) more significantly than benefits (*maslahah*), so it is not feasible and appropriate to do.

To answer these problems, this study intends, in general, as a means of perspective to gain benefit in society and aims explicitly to carry out juridical research regarding the position of interfaith marriages in official civil registration in Indonesia. The place of interreligious marriage in this study is studying Indonesian laws to obtain proper legal validity. Its main task is to discover with certainty gaps in legal regulations, principles, and institutions related to interfaith marriage issues.

A. Statement of Problem

Based on the explanation of the background above, the formulation of the problem can be taken as follows:

1. How is the decision of the judge at the Surabaya City District Court regarding interfaith marriages reviewed from the marriage law?
2. What are the juridical implications of the decision of the Surabaya City Judgement Court judge on the registration of interfaith marriages in the case study of Decision No. 916/Pdt.P/2022/PN.SBY?

B. Objective of Research

Based on the three formulations of the problem above, the following research objectives can be obtained:

1. To explain and analyze how the decision of the Surabaya District Court judge regarding interfaith marriage reviewed from the marriage law.
2. To explain and analyze the juridical implications of the Surabaya City District Court judge's decision on registering interfaith marriages in the case study of Decision No. 916/Pdt.P/2022/PN.SBY.

C. Benefit of Research

Based on the research objectives above, the following research benefits can be obtained:

1. The theoretical benefits of this research are as a development of knowledge and add insight to both writers and readers, especially to find

answers to the problems raised in formulating the problem above. In addition, this research can be an additional reference for studies in future research, especially legal analysis on the registration of interfaith marriages (Study of decision No. 916/Pdt.P/2022/PN.SBY).

2. Practical benefits for the government and for the community, namely a true understanding of legal needs that are currently experiencing a vacuum. So, in the future, if the same case occurs, it will get the point of justice and prosperity in society, only those that intersect with individual human rights, but human rights for all Indonesian people.

D. Definisi Operasional

1. Legal Validity

Keabsahan hukum in the English translation will read Legal validity. The Oxford Legal Validity dictionary defines it as a justification for recognizing legal reality/certainty following trust in accurate/factual sources. It further examines the other difficulties of justifying the view of legal systems and includes discussing the validity of the law in a positivist context.⁴

2. Interfaith Marriage

Interfaith Marriage according to the marriage law dictionary, interfaith marriage means a marriage carried out by people of different

⁴ Joseph Raz, Legal Validity, Oxford Scholarship online, accessed via www.OxfordScholarship.com on 22 October 2022

religions. The definition of marriage needs to be quoted in this paper to complete the purpose of interreligious marriage.⁵

3. Population Registration

Population registration is collecting data and recording population incident reports in the context of issuing resident identity documents (KK, KTP) or other residence certificates issued by the Regional Government.⁶

E. Method of Research

Legal research is a scientific activity based on methods, systematics, and laws and regulations aiming to study one or several specific legal phenomena.⁷ In this case, regarding the discussion of interfaith marriage. A legal researcher must understand legal issues and legal research methods that will be used to analyze data obtained systematically to reveal or provide conclusions from the results of his research. This study used research techniques and methods which include:

a) Type of Research

This research uses various laws and regulations that are correlated with legal issues, namely interfaith marriages. Therefore, this

⁵ Kamujudi.web.id, Indonesian Online Legal Dictionary, (Zhamrawut Corps, 2016)

⁶Administration, Concerning Population Administration, Disdukcapil Can be accessed via <https://dukcapil.kalbarprov.go.id/post/about-administration-kependudukan> on October 22, 2022.

⁷ Soerjono Soekanto, Introduction to Legal Research (Jakarta: UI Press, 2007), 43. Normative legal research is library law research.

research is called normative juridical or literature (law) study. Based on the problems, it was found that in-laws and regulations related to marriage, there is legal ambiguity (vague of a norm). Examine the theories, concepts, legal principles, and statutory rules article by article about interfaith marriages in Indonesia. The author aims to describe and explain legal certainty, which several literature materials.⁸

b) Research Approach

The approach method used in this research is the statute approach and the case approach.⁹ The statutory approach using Law Number 1 of 1974 concerning Marriage, Compilation of Islamic Law, and the construction of the views of contemporary fiqh scholars as contained in the MUI Fatwa. In normative legal research, it is necessary to use a statutory approach, and this is because the problems to be examined are the focus, and the central themes in this research are various legal rules. The case approach was obtained from the Surabaya District Court with a decision to register marriages of different religions with Number 916/Pdt.P/2022/PN.SBY.

c) Law Material

⁸ Soerjono Soekanto and Sri Mamudji, *Normative Legal Research A Brief Overview* (Jakarta: PT Raja Grafindo Persada, 2004), 23-24. Normative Juridical Research is a legal research method that is carried out by examining library materials or mere secondary materials. This research approach is also known as the library approach, namely by studying books, laws and regulations and other documents related to interfaith marriages.

⁹ Peter Mahmud Marzuki, *Legal Research*, (Jakarta: Kencana Prenada Media Group, 2005) p.133. This statute approach is an approach that is carried out by examining all laws and regulations that are related to the legal issues being handled.

These types of data are legal materials the author uses to meet the reference needs in research. In this study, there are three types of data ¹⁰:

- a. Types of Primary Data include Law Number 16 of 2019 concerning Marriage as a juridical research analysis, Compilation of Islamic Law, the construction of views from contemporary fiqh scholars as contained in the MUI Fatwa and Decision No. 916/Pdt.P/2022/PN.SBY is the primary material for conducting research case studies.
- b. Types of Secondary Data include previous research such as theses, theses, and journals intended to be able to see updates and supported by several expert books and mass media YouTube channels.
- c. Types of Tertiary Data include KBBI and legal dictionaries as adjustments to the truth of a meaning or language structure, both in Indonesian, Latin, and legal language.

d) Law Material Collection

¹⁰ Peter Mahmud Marzuki, page. 141-169. Primary legal materials⁸⁸, namely legal materials consisting of laws and regulations, official treatises, court decisions and official state documents. Meanwhile, Peter Mahmud explained that primary legal material is legal material that is authoritative, meaning it has authority, which consists of; legislation, official records or treatises in making laws and judges' decisions. Secondary legal materials, legal materials consisting of; law books, legal journals containing basic principles (legal principles), views of jurists (doctrine), results of legal research, legal dictionaries, legal encyclopedias. Interviews with legal expert sources to provide legal opinions about an event or legal phenomenon can be interpreted as secondary legal material, however, it is necessary to look at scientific capacity and should not be involved with the incident so that the comments given are objective. Non-legal materials, namely research materials consisting of non-law text books, related to research such as political books, economics books, census data, company annual reports, language dictionaries, general encyclopedias. Non-legal materials are important because they support the process of analyzing legal materials.

Collecting legal materials is intended to obtain legal materials in research. The technique of collecting legal material that supports and relates to the presentation of this research is document study (literary study). Document study is a tool for managing legal materials through written legal materials using content analysis. This technique helps obtain a theoretical basis by studying and studying books, laws and regulations, decision documents, reports, archives, and other printed and electronic research results related to interfaith marriages.

The technique for collecting legal materials is to determine legal materials, inventory legal materials related to research, and study legal materials.

e) Analysis of Law

In this study, the technique used for processing legal materials is editing, namely, a re-examination of legal materials obtained, especially from completeness, clarity of meaning, suitability, and relevance to one another. Some legal materials that will be processed using editing techniques are Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. After editing, the next step is Systematic. Namely, the author will select legal materials, then classify the legal materials according to the classification of legal materials and compile the research data

systematically and logically, meaning that there is a relationship and connection between one legal material and another. Other legal materials. The author will describe the results of his research based on the legal material obtained and then analyze it.

f) Previous Research

Previous research was intended to examine renewal aspects in the study the authors adopted. To avoid similarities with existing research, the author tries to provide previous research on interfaith marriage, including five theses with a juridical, legal, socio-juridical, and psychological study approach, as well as two theoretical studies. Then there is one thesis with a juridical study approach and three journals with an academic study approach. Nine previous studies became the author's reference in this study. The research that has ever existed is as follows.

1. Thesis entitled "Analysis of Interfaith Marriage (Study of District Court Decisions Related to Interfaith Marriage Permits)" by Lysa Setiabudi, 2016, Semarang State University. This study explains that there are no regulations governing interfaith marriages, so judges granting interfaith marriages assume there is a legal vacuum, and judges rejecting the application because they understand Article 2 paragraph (1)

have given firmness that it is not permissible to carry out marriages unless it is following his religion.

2. Thesis entitled "Interreligious Marriage in Indonesia (Case Study at the Harmoni Mitra Madania Foundation)" by Dhiya Fahira, 2021, UIN Syarif Hidayatullah. This research shows the practice of interfaith marriage at the Harmoni Mitra Madania Foundation and its legality according to Islamic law and positive law. In the Foundation, marriages are carried out in two religious processions for each bride and groom to be considered valid according to two different religions.
3. Thesis entitled "Problematics of Family Life of Different Religions (Case Study in Tritih Kulon Village, North Cilacap District, Cilacap Regency)" by Irvan Evendi, 2019, IAIN Purwokerto. This research shows that in different religious families, couples experience problems, including the first, related to the status of legal validity where one of the husband and wife is an apostate. And regarding children where children must follow their father, but from the wife's side, it is not allowed. Then regarding the relationship between husband and wife, the husband does not want to accompany his wife when worshiping at church. The above problems produce negative impacts that cause households to become less harmonious and not achieve desired results.

4. Thesis entitled "Interreligious Marriage in the Perspective of Islamic Law in Indonesia" by Anggin Anandia Putri, 2018, UII Yogyakarta. This research attempts to explain to the reader elaboration of interfaith marriage rules that apply in Indonesia and concludes that the Islamic religion has regulated it in such a way in the Qur'an and Hadith as well as the Ijtihad of the scholars who state that interfaith marriage is illegal. Still, some scholars say that it is legal. Still, with particular criteria and conditions that must be met, even though, at this time, it isn't effortless to meet the specific standards and requirements referred to.
5. The thesis entitled "Interreligious Marriage in Indonesia Viewed from Islamic Law and Human Rights" by Rahma Nurlinda Sari, 2018, UIN Raden Intan Lampung. This study explains that interfaith marriage, in the view of Islamic law, is not allowed or prohibited because it involves differences in faith, belief, and beliefs. Whereas HAM also prohibits interfaith marriages because all the rights and freedoms formulated in the declaration are subject to sharia or Islamic law, the only measure of human rights is Islamic sharia.
6. Thesis entitled "Interreligious Marriage in the Napu Valley, Poso Regency (Case Study of Guardianship and Inheritance from the Perspective of Islamic Law)" by Basrin Ombo, 2011,

UIN Alauddin Makassar. This study explains the main issues discussed: First, what is the process of guardianship and inheritance in cases of interfaith marriages? Second, what is the status of control in matters of interfaith marriages? Third, how is the law of inheritance in cases of interfaith marriages? These three community problems occur in the Napu Valley, Poso Regency.

7. Journal entitled "Interreligious Marriage Measures the Values of Justice Compilation of Islamic Law" by Husain Insawan, 2008, Islamic Social Institutions. This research explains that in M. Karsayuda's work, we hone our academic insights by providing a study of the measure of justice values that are accommodated in the KHI when responding to interfaith marriages while at the same time offering the government to reposition KHI so that it is more flexible and "peeks" at its legislative opportunities.
8. Journal entitled "Interreligious Marriage According to Positive Law and Islamic Law" by Aulil Amri, 2020, UIN Ar-Raniry Banda Aceh. This research explains the existence of Law no. 1 of 1974, which does not accommodate the issue of interfaith marriages. The problem that has arisen lately is the large number of people who have believed but have yet to embrace Islam. This is, of course, a problem besides the many opinions of the fuqaha regarding this interfaith marriage. The basic concept in Islam is

that if the polytheists have faith, it is permissible for Muslims to marry them. Furthermore, KHI, based on the 1991 Presidential Decree, no longer has legal force in the hierarchy of legislation. The Marriage Law also does not explicitly regulate the prohibition of interfaith marriages. Marriage is one of the da'wah media calling people to the right path following teachings from the Qur'an and Hadith. With such opportunities, through marriage, it is hoped that the candidate with faith will receive guidance and education from his Muslim partner.

9. Journal entitled "Different Religious Marriage in a Normative and Philosophical Historical Perspective" by Durotun Nafisah, 2019, IAIN Purwokerto. This study explains the law and wisdom of interfaith marriages, namely those carried out by Muslims and non-Muslims (mushrik, infidel, and ahl al-Kitab). Marriage between a Muslim and a polytheist or infidel is haram based on the text of the Qur'an. That is a fundamental difference in Aqidah, the silver lining is that Muslim women are worried they cannot protect their religion (hifz ad-din) and offspring (hifz an-nasl) and do not achieve household harmony. Marriage between Muslims and women of the people of the book is permissible based on the text of the Qur'an. The illat is the absence of worries about apostasy and the shallowing of the

creed for their husbands and children because the husband is the head of the household.

Table 1.

Previous Research

No	Title	Equity and Legal Issues	Difference
1.	Analysis of Interfaith Marriage (Study of District Court Decisions Regarding Interfaith Marriage Permits)	- Interfaith Marriage - From the determination No: 04/Pdt.P/2012/PN.Mgl and No: 06/Pdt.P/2014/PN.Mgl, an application for a permit for interfaith marriage was granted by the Magelang District Court. With the granting of the marriage application, the judge assumed that there had been a legal vacuum. Because the law does not explicitly prohibit interfaith marriages. This gives rise to different interpretations in society. Then the legal implications of the stipulation No:	The research explains the comparison of legal validity or juridical implications between District Court decisions No: 04/Pdt.P/2012/PN.Mgl, No: 06/Pdt.P/2014/PN.Mgl, and No: 08/Pdt.P/2013/PN.Ung for granting an application for permission to get married in front of a marriage registrar. While the research written by the researcher is the validity of registering marriages through a juridical study of Law No. 16 of 2019 amendments to Law No. 1 of 1974

		<p>04/Pdt.P/2012/PN.Mgl and 06/Pdt.P/2014/PN.Mgl were decided to be valid because there were no legal issues including later in the relationship between husband, wife and children their children are regulated by law and have permanent legal force. As for the decision No: 08/Pdt.P/2013/PN.Ung it is invalid and all legal consequences arising from marriage are not recognized due to negligence of one of the parties.¹¹</p>	<p>concerning marriage, Law no. 32 of 1954 concerning registration of marriages, divorces and reconciliation, and Supreme Court Decision No. 1440 K/Pdt/1986.</p>
2.	<p>Interfaith Marriage in Indonesia (Case Study at the Harmoni Mitra</p>	<p>Interfaith marriages in the perspective of Islam are illegal because there are many similarities between polytheists and today's people of the book. This opinion is adopted in Article 40 letter c and</p>	<p>This research explains that interfaith marriages are adopted in Article 40 letter c and Article 44 KHI, then Article 21 of Law no. 1 of 1974 concerning Article 35</p>

¹¹Lysa Setiabudi, Analysis of Interfaith Marriage (Study of District Court Decisions Related to Interfaith Marriage Permits), (Semarang: UNS, 2016).

	Madania Foundation)	Article 44 KHI. Also legally positive to obtain legality for interfaith marriages should be preceded by an application for a marriage license through a court order in accordance with Article 21 of the mandate of Law no. 1 of 1974 concerning Marriage and Article 35 of Law no. 23 of 2006 concerning Population Administration. Therefore the practice of interfaith marriage at the Harmoni Mitra Madania Foundation is not valid according to Islamic law or positive law.	of Law no. 23 of 2006 concerning Population Administration which means that the practice of interfaith marriage at the Harmoni Minta Madania Foundation is not valid according to Islamic law and positive law. While the research written by the researcher is the validity of registering marriages through a juridical study of Law No. 16 of 2019 amendments to Law No. 1 of 1974 concerning marriage, Law no. 32 of 1954 concerning registration of marriages, divorces and reconciliation, and Supreme Court Decision No. 1440 K/Pdt/1986.
3.	Problems of Family Life with Different Religions	The problems that occur in families of different religions in the village of Tritih Kulon are related to the status of the validity of	In this study, it shows the life of a family in the status of the validity of marriage where after the

	(Case Study in Tritih Kulon Village, North Cilacap District, Cilacap Regency)	marriage, where after the marriage one of the spouses becomes an apostate. Then where one of the husband and wife asked the child to follow his father but his mother did not allow it. To address problems related to the status of the validity of marriage, children, and husband and wife relations, husbands are indifferent to their husbands, and vice versa, there are also those who respond in a way that respects and respects each other.	marriage one of the partners is an apostate. Then where one of the husband and wife asked the child to follow his father but his mother did not allow it. While the research written by the researcher is the validity of registering marriages through a juridical study of Law No. 16 of 2019 amendments to Law No. 1 of 1974 concerning marriage, Law no. 32 of 1954 concerning registration of marriages, divorces and reconciliation, and Supreme Court Decision No. 1440 K/Pdt/1986.
4.	Interfaith Marriage in the Perspective of Islamic Law in Indonesia	The permissibility of marrying a biblical woman as stated by Allah SWT in Q.S Al-Ma'iddah: 5 is in the form of a dispensation. And after considering that the mafsadah (damage) is	In this study, it was shown that marriages with religious women used dispensations in Q.S Al-Maidah verse 5. However, the MUI ruled that these

		<p>greater than the benefits, the MUI issued a fatwa that the marriage is unlawful. In the context of KHI, the writer has weaknesses both in terms of legal material and the existence of formal law. Legally speaking, there is an unsystematic and logical frame of mind, bearing in mind that on one hand articles (41, 44, and 61) strictly prohibit interfaith marriages, however, in Article 116 KHI it seems that it does not appear to make the element of different religions an important element in deciding a decision. marriage bond, but instead only see harmony or not in the household.</p>	<p>marriages were unlawful. Then in the KHI, there are inconsistencies considering that on one side articles (41, 44, and 61) strictly prohibit the existence of interfaith marriages, but in article 116 the KHI does not seem to make the element of different religions an important element in breaking up a marriage bond, instead it only sees household harmony or not. While the research written by the researcher is the validity of registering marriages through a juridical study of Law No. 16 of 2019 amendments to Law No. 1 of 1974 concerning marriage, Law no. 32 of 1954 concerning registration of marriages, divorces and reconciliation, and</p>
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			Supreme Court Decision No. 1440 K/Pdt/1986.
5.	Interfaith Marriage in Indonesia in View of Islamic Law and Human Rights	Interfaith marriage in the view of Islamic law is forbidden, and some scholars agree to prohibit interfaith marriage because it involves differences in faith. Then the view of human rights regarding interfaith marriages also prohibits and does not provide a place for interfaith marriages, because all rights and freedoms formulated in the declaration are subject to shari'ah or Islamic law, the only criterion regarding human rights is Islamic shari'ah.	This research shows that related to the view that Islamic law is forbidden, and several scholars agree to prohibit interfaith marriages because it involves differences in faith. And in view of human rights, religion also prohibits and does not provide a place for interfaith marriages, because all the rights and freedoms formulated in the declaration are subject to shari'ah or Islamic law, the only criterion regarding human rights is Islamic shari'ah. While the research written by the researcher is the validity of registering marriages through a juridical study of Law No. 16 of 2019

			<p>amendments to Law No. 1 of 1974 concerning marriage, Law no. 32 of 1954 concerning registration of marriages, divorces and reconciliation, and Supreme Court Decision No. 1440 K/Pdt/1986.</p>
6.	<p>Interfaith Marriage in the Napu Valley, Poso Regency (Case Study of Guardianship and Inheritance from the Perspective of Islamic Law)</p>	<p>The results of the author's study say that the guardianship process is divided into three including: marriages that occur in the condition of one religion (using a judge's guardian), marriages occur by maintaining their respective religious beliefs using guardians from the government, and marriages through customary institutions, the guardian is from the person's side. old woman who is a non-Muslim religion.</p> <p>The status of guardianship in interfaith marriages,</p>	<p>This research shows that the legality of Islamic law views interfaith marriages from the point of view of guardianship to inheritance. While the research written by the researcher is the validity of registering marriages through a juridical study of Law No. 16 of 2019 amendments to Law No. 1 of 1974 concerning marriage, Law no. 32 of 1954 concerning registration of marriages, divorces and reconciliation, and Supreme Court</p>

		<p>whether the marriage is through the Civil Registry Office or a customary institution, is attended by a nasab guardian or a guardian from the government, so the guardianship from an Islamic legal perspective is invalid.</p> <p>The practice of dividing inheritance even though deliberation is the best way, but in the perspective of Islamic law it is not permissible, because there are different religions between the inheritor and the inheritor.</p>	<p>Decision No. 1440 K/Pdt/1986.</p>
7.	<p>Interfaith Marriage Measuring the Values of Justice Compilation of Islamic Law</p>	<p>In the case of interfaith marriages, the scholars are guided by the verses of the Koran, such as QS. Al-Baqarah: 221 and QS. Al-Mumtahanah: 10.</p> <p>However, on the basis of literacy and the author's analysis, there are several values of justice in the Compilation of Islamic Law, especially Interfaith</p>	<p>In this research, it shows related thoughts on an attitude of tolerance that takes into account the values of justice of the Compilation of Islamic Law through the works of M. Karsayuda. While the research written by the researcher is the</p>

	<p>Marriage. First, in a number of verses, the Qur'an distinguishes between polytheists and people of the book. What is meant by polytheists are Arab polytheists who do not have holy books. Second, the prohibition against marrying polytheists because it is feared that mushrik women or muysrik men will fight Muslims. Third, in Arab society there are three groups of people (al-akhar), namely polytheists, Christians, and Jews. Fourth, the quite fundamental reason for the permissibility of interfaith marriages, especially with non-Muslims (QS. Al-Maidah: 5). So the issue of marriage between non-Muslim men and Muslim women is an area of ijtiḥad and is related to a certain context, among the contexts of Islamic da'wah at that time. Where the</p>	<p>validity of registering marriages through a juridical study of Law No. 16 of 2019 amendments to Law No. 1 of 1974 concerning marriage, Law no. 32 of 1954 concerning registration of marriages, divorces and reconciliation, and Supreme Court Decision No. 1440 K/Pdt/1986.</p>
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		<p>number of Muslims is not as big as it is today, so interfaith marriage is something that is prohibited. Because of its position as a law that was born from the process of ijtihad, it is very possible that new opinions will be sparked, that Muslim women may marry non-Muslim men, or interfaith marriages more broadly are very permissible.</p>	
8.	<p>Interfaith Marriage According to Positive Law and Islamic Law</p>	<p>Rationalization of interfaith marriage problems in accordance with the times. The legal status of interfaith marriages requires re-reading of texts that have the potential to strengthen and enrich decisions to be taken using a comprehensive, contextual and multi-analytic approach. Besides paying attention to the results of research on couples of different religions, so that the decision can meet the</p>	<p>In this study, it shows that interfaith marriage is related to the perspective of positive law and Islamic law combined with multiculturalism in Indonesia. While the research written by the researcher is the validity of registering marriages through a juridical study of Law No. 16 of 2019 amendments to Law No. 1 of 1974 concerning marriage,</p>

		needs of a multicultural society without denying the doctrines and truths of religion and existing local wisdom.	Law no. 32 of 1954 concerning registration of marriages, divorces and reconciliation, and Supreme Court Decision No. 1440 K/Pdt/1986.
9.	Interfaith Marriage in Normative and Philosophical Historical Perspective	The scholars identified the meaning of polytheists with infidels and agreed to forbid marriage between Muslims and polytheists based on QS. (2): 221 and between Muslims and infidels based on QS. (60): 10. 'Ilat prohibits the marriage of a believer with an infidel or a Muslim with a polytheist based on the textual sound of the verse, namely the fundamental aqidah reason. Meanwhile, the silver lining is not achieving household harmony and the worry of not being able to protect one's own religion (hifz ad-Din) and offspring (hifz an-Nasl). The scholars agreed to allow	This research shows that interfaith marriages are related through normative historical studies that consider Islamic law originating from the Qur'an and Hadith, and ijtiihad. Then it is equipped with a philosophical review of studies through several reasons as a tool for analyzing previous normative studies. While the research written by the researcher is the validity of registering marriages through a juridical study of Law No. 16 of 2019 amendments to Law No. 1 of 1974

	<p>Muslims to marry women of the people of the book based on QS (60): 10. The ritual is that the Muslim husband as the head of the household has no worries following his wife's religion. Likewise, their children are still Muslims, following their father's religion, not following their mother's religion.</p>	<p>concerning marriage, Law no. 32 of 1954 concerning registration of marriages, divorces and reconciliation, and Supreme Court Decision No. 1440 K/Pdt/1986.</p>
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g) Structure of Discussion

In the research classification, the researcher divides the sections into four chapters, and each chapter is divided into several sub-sections. Chapter I explains the background for giving the research title, the main idea, the formulation of the problem, aims, and objectives academically.

Chapter II contains several previous studies in the presentation of the thesis that is still related to the topic of discussion of researchers and also various theoretical frameworks related to legal validity, interfaith marriage both in terms of legislation, Compilation of Islamic Law, views of contemporary fiqh scholars, and human rights.

Chapter III is a discussion that contains the results of the research and discussion, namely the breakdown of articles and data obtained from the effects of literature research, which are then

processed to answer the formulation of the problem that has been determined.

Chapter IV in this research is closing, and the last chapter contains conclusions and suggestions. The decision here is a brief answer to the formulation of the problem that has been determined. At the same time, the requests are recommendations or advice addressed to relevant agencies or for research.

CHAPTER II

LITERATURE REVIEW

A. Decision Interfaith Marriage at the Surabaya City District Court

Justice is similarity right for everyone gets certainty law ahead Court. Including in one objective enforced something law, adhere to draft base from Gustaf Radbruch that law can function as regulation with objective reach justice, certainty law, and expediency. To quote Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia a firm state that: The State of Indonesia is a state of law". So right Indonesia put forward the element of justice in every problem below shade regulation legislation. Because that, all authorized Institutions in scope Judicial required competent in correlating between the third aspect of objective law. Certainty law will law can function as mandatory regulations adhered to and implemented. Regulation legislation as norm law written, in the context of the Indonesian legal state to be the base for state administrators and government. Every regulation must become a reflection of Pancasila and the Constitution.

System law in Indonesia admitted the existence of regulation legislation occupies order First in the application as well as enforcement law. Provision Article 7 of the Law Related Number 12 of 2011 Formation Regulation Legislation determines that regulation legislation made wasilah law according to types and hierarchies. But, the rules legislation No only described inside Article 7 paragraph 1 of the Law Number 12 of 2011

course, will also exist in Article 8 paragraph 1 of the Law Number 12 of 2011, also contains regulations Supreme Court and Regulation Court Constitution as something type regulation legislation.

Scope judiciary consisting of the Supreme Court, Court Constitution, and the Commission judicial is enforcement agencies law that has objective realize something justice with certainty law through regulation legislation. The 1945 Constitution and Law Number 4 of 2004 which is now Already replaced with Constitution Number 48 of 2009 concerning Power Justice outlined that power justice will realize the enforcement nature of law free, independent, and independent. Including one desired goal achieved by the rule of law and democracy framework. UUD 1945 as well as Constitution Number 48 of 2009 concerning Power Justice has to give base footing for power justice for enforce justice. However, several factors resulted exists distrust public because the perceived judge's decision did Not yet reflect mark justice and coveted by seekers justice.

One big challenge that continues continuously shadow the development power judiciary in Indonesia. Like matter, his effort put the judge's proper role in realizing certainty of law, justice, and expediency, as well as position the interaction with society and country. Judges, as one apparatus enforcer law, have the task of determining something decision case from moderate parties dispute. Inside, judges make a decision only tied to events or facts and rules law that becomes or made base juridical. To get

the finish problem or the conflict encountered to him in the decision process, the judge must be independent and free from the influence party anywhere.

Law without existence marks certainty law, which means lost meaning because no can become guidelines behavior for subject law. Because that's important for a judge to give the correct decision certainty law and produce justice and expediency for society. Justice is the fruit of the judicial process. At the same time, practicality is a tool for measuring the success of enforcement law. So that side-by-side correlation is something challenges faced by judges.

On Verdict Surabaya District Court Number 916/ Pdt.P /2022/PN.SBY decided to marry different religions from couple Rizal Adikara and Eka Debora Sidauruk Surabaya residents. That content application, in essence, the applicant wishes to get a determination District Court for permission to carry out weddings of different religions at the Population and Records Service Office Civilian City of Surabaya. And as an amplifier theorem petition, petitioners submit a proof letter marked P.1 to P.9 and two witnesses.

After the judge looked at the applicants' petition connected with proof letters and statements from witnesses, they can conclude the problem law in connection with gift permission Marry different religions because each does not intend to release belief in his religion. Marriage in Indonesia is regulated in Constitution Number 1 of 1974 and Regulations Government Number 9 of 1975, where Article 2 paragraph (1) of Law Number 1 of 1974

and Article 10 paragraph (2) of Regulations Government Number 9 of 1975 confirmed that marriage legitimate if done according to their respective religions and beliefs. The provision in Article 2 paragraph (1) of the Law The number 1 of 1974 is applicable conditions for marriage between two people who embrace the same religion, so too marriage between two people of different religious status no can be applied, as well quote based on conditions (Decision Supreme Court Number 1400K/Pdt/1986 dated 20 January 1986).

Then based on facts juridical as revealed at trial as follows: First, connected with the provision about conditions Marriage in Constitution Number 1 of 1974 concerning Marriage in article 6 paragraph (1) regarding agreement second candidate the bride and groom and article 7 regarding age marriage, then they fulfill condition material for carry out Marriage. Second, religious differences do not prohibit for carry out Marriage refers to Article 8 letter (f) of the law marriage and Article 35 letter (a) of the Law Number 23 of 2006 concerning Administration Population. Marriage between different religions has become the authority District Court to check and disconnect it. Third, the applicant has the right to maintain their belief in his faith as well as form House intended ladder in Article 29 of the 1945 Constitution concerning freedom hugging belief to Almighty God Esa and Article 28 B paragraph (1) of the 1945 Constitution is affirmed that everyone is entitled to form family and move on descent through legal Marriage. Third, about procedures Marriage in Article 10 paragraph (3) of

the Regulations Government Number 9 of 1975 gives the possibility can implement Marriage that, where confirmed: "with respect the rules marriage according to each law his religion and beliefs that is, Marriage held in front of Employee Registrar with attended by 2 (two) witnesses." Fourth, based on statements of witnesses and Evidence, the applicants Already know each other love and get agreement from both parents.

Based on the consideration described above, the Judge can permit the applicants for marriage between Applicant I, a Muslim, and Applicant II, a Christian, before the Office of Population Affairs Officer and the Records Civilian City of Surabaya.

Following is exposure from one of the judges who had to give the decision to case different marriage religions at the Surabaya District Court. He is one of the judges serving at the Surabaya District Court with class accreditation IA Special. View of the Judge below This is a reinforcing argument during the interview process at the Surabaya District Court. The Judge granted the application submitted by the spouse, husband wives of different religions, with the verdict:

1. Grant petition of the applicants
2. Give permission to the applicants For carry out marriage different religions before Officer of the Office of Population Affairs and Records Civil Surabaya Municipality
3. Instruct to official office service population and records civil municipality Suarabaya For do recording marriage different

- religions of the applicants the to in the Registration Register Marriage used for it and immediately publish Deed Marriage the
4. Charge cost application to the applicants an amount of Rp. 120,000.00 (one hundred and twenty thousand rupiahs).

The foundation used in the case above is Then opening cross-case marriage difference between religion and human rights human. The judge believes giving certainty law to everyone who does a wedding with give Book Quote Marriage Certificate is mandatory. Thus, a marriage that is legal and registered by the state will give birth to rights as well as obligations new given to the party concerned.¹

Based on credibility as well as the responsibility of the judge. The verdict given was built on rights in Human Rights human. Adhere to Article 16, paragraph 1 of the Universal² Declaration of Human Rights says that "men and women who have adult, with No restricted nationality, citizenship or religion, have the right to married and for form family. They have the same rights in question marriage, during marriage and at the time divorce." Then each Indonesian people have the right and freedom to build A family. Especially independence for can continue descendants and look after the House ladder based on their respective religions and beliefs.

Human Rights Men and Constitutional Rights are rights attached to loyalty appropriate citizens and guaranteed by the state. It is stated in

¹ Imam Supriyadi, interview, (Surabaya, 2 March 2023)

² Article 16 paragraph 1 of the Universal Declaration of Human Rights

Chapter XA of the 1945 Constitution concerning Human Rights Man

Articles 28 A – 28 I include:

1. Right to maintain life and life
2. Right to get education and acquire benefit from knowledge science and technology, art, and culture
3. Top rights acknowledgment, guarantee, protection, and certainty fair laws as well as the same treatment before law
4. Right to Work as well as get fair and proper compensation and treatment in connection Work
5. Right to embrace religion and worship according to religion, choose education and teaching, choose work
6. Entitled on freedom associate, assemble, and issue opinion
7. Right to cultured as identity public traditional

Then in Article 28 J of the 1945 Constitution, it reads related limitations on Constitutional Rights as following :

1. Everyone is obliged honor right basic other people inside orderly life society, nation and state
2. In operate rights and freedoms, everyone is obliged submit to the restrictions set with law with Meaning solely For ensure confession as well as respect on the rights and freedoms of others and for fulfil fair demands in accordance with moral considerations, religious values, security, and order general in something public democratic.

A. Legal Validity

Validity law in translation Language English will be *Legal Validity*. In the dictionary, *Oxford Legal Validity* is interpreted as follows:

For a rule to become a legal rule, it has to be legally valid. For a law to become a legal law, it has to be legally valid. Similarly, a good rule is a rule, and an invalid rule is not a rule. This chapter discusses the legal validity of regulations. The first section explains the nature of legal and laws' validity. The chapter also discusses systemic validity, showing that the justification view of legal validity is compatible with the dependence on authentic sources. It further examines the other difficulties of the justification view found in the interpretation of detached legal systems and includes a discussion of legal validity within the context of positivism.³

(To A rule become rule law, then That must become *valid* for something law to become legal rule law, then that must become good law or sure. In the equation, a validity rule is a rule, and a legitimacy No is the rule. This chapter discusses legitimacy rules. Sexy First, explain kalian from certainty law and legitimacy rules. This chapter also discusses validity systemically, showing that justification views know legitimacy/certainty law following trust in sources

³Joseph Raz, *Legal Validity*, *Oxford Scholarship online*, accessed via www.OxfordScholarship.com on October 22 2022.

real/factual. More Far Again test other difficulties of justification views found on interpretation systems law, and included on the talk legitimacy law with context positivist.)

See translation from oxford dictionary; validity law almost means the same as theory positivism adhered to in Indonesia. That law passed and declared legitimate is a law poured into Constitution or a rule written. Although in Indonesia, there are law No written like law recognized customs.

Definition-related validity law is essential in the definition operational Because it becomes the object of more research Formerly understood in writing to correlate with the problem. Then No gives birth to failure, an understanding that dissolves in the discussion next.

Legitimacy is the quoted word from the law in the Netherlands, "*recht matig*" translated as (something valid on regulation). If interpreted in Language English, Legitimacy is called "*legality*" meaning "*lawfulness*" or legitimate based on law. Meaning the originate from the formation rule of law concept (*Rechtsstaat*), ie, action government must based on to strength the law governing “ *recht matig van het bestuur* ”,⁴ It is centered on the application principle of legality in whole deed law government. Indeed draft the born as business For limit the power of the King / Leader at the time was absolute as holder sovereignty (*prince legibus solutus est*). At that time, the

⁴Philipus M. Hadjon, 1987, Legal Protection for the People in Indonesia, Surabaya, Science Development, p. 23.

famous term *adenum*, "the *king can do no wrong*." From its law born as a barrier power, so when a deed from the government No refers to a statute or exceeds regulations that have strength law, the act becomes disabled law (*Onrechtmatig*) or No valid.⁵

Understand the definition above that validity law is a limitation deed for the government. The King won power in ancient times, and not few do arbitrariness. So limitations like matter his law the entered in this paper for clarification position from validity law as tool help analysis For object research.

Likewise, draft validity/legality is very tight related to protecting people's rights from action government. According to Kuntjoro Purbopranoto, for a decision to be made to become a good decision, two prerequisites are fulfilled: condition material and formal. More carry on Kunjoro Purbopranoto state, terms material legit something decision is as following:⁶

- a. The government tool that makes decisions must authorized (entitled)
- b. In will tool government makes decision No can There is lack juridical (*geen juridische gebreken in de welsvorming*)
- c. The decision must be given a specified shape in the rules to be its foundation and formation must also pay attention to procedure and

⁵ Tomy Michael, " *Principles Validity In Determination of State Administrative Decisions*," Vol 5, No. 2, (Faculty of Law, University of 17 August 1945 Surabaya: 2017), pp. 3-4

⁶Philipus M. Hadjon, 1997, Concerning Authority, YURIDIKA No. 5&6 Year XII, September-December, accessed on 1 January 2019 via <https://e-journal.unair.ac.id>.

make a decision when the method set with the firm in regulation it
(*rechtmating*)

- d. Content and purpose decisions must follow the mission and goals you want to be attained (*Doelmatig*)

Whereas condition formal legit decisions, including:⁷

- a) Terms determined to relate to the preparation he made decisions and relationships with the method he made the decision must be fulfilled
- b) Must be given a form that has determined
- c) Terms related to implementation decision fulfilled
- d) Period time must be determined between the emergence of causative rights made and announced the decision, and no can forgotten.

B. Interfaith Marriage

Marriage is a bond born inner between a man and a woman as husband and wife, to form a happy and eternal family based on Supreme Godhead One. Meanwhile, according to the Big Indonesian Dictionary, religion is a system or principle of trusting to Lord with teachings, service, and related obligations with trust. So that is meant marriage in different religions is marriage between a man and woman with both religious

⁷Philipus M. Hadjon, 1994, The Normative Function of Administrative Law in Creating Clean Government, Speech was delivered at the inauguration of the acceptance of the position of Professor in Law at the Faculty of Law, Airlangga University.

differences or trust each other. However, it becomes something awkwardness moment in Indonesia.

Marriage law, including in-law family, governs law about relationships between member families. Connection: This covers the relationship between husband and wife, parents and their children, and relationships between family and government. So, coverage is a regulation about marriage, divorce, rights material from a spouse, parenting a child, the obedience of the child to parents and intervention government to connect children and parents, as well violation parent and child relationship through adoption as well as several cases like inheritance, waqf, and others.

At the very least, three functions of the law family is protecting an individual from violence in the family to providing settlement If a connection between member family happen to conflict. as one reference, law marriage, in particular for people Muslims in Indonesia, namely Compilation of Islamic Law (KHI).

KHI, or length from Compilation of Islamic Law, is expected to achieve the highest law Islam moment, especially in Indonesia. Although it gives place dynamics thinking law Islam, and its positive impact Good for public nor constitution, with KHI is still there bring polemic. Start from a naming compilation that brings debate among scholar Muslims and during the implementation process.

Appear compilation word debate in terms of Compilation of Islamic Law due to the word being less popular, used daily, studied, or even

practiced law. In Language English, the compilation is taken from *compile* and *compile*, and in Dutch is taken from *compile*, which means gather together, for example, For gather, scattered rules everywhere.⁸ Referring to the Big Indonesian Dictionary, the compilation is an organized group in a manner regularly (about lists of essays, information, and so on).⁹ Meanwhile, in the dictionary English-Indonesian Indonesian-English, essay S. Wojowasito, and WJS Poerwada Minta, *the complication* has a meaning composed and cited essays and other¹⁰ books.

Reviewed from facet Language based on the information above, that compilation can be interpreted as business gathering sources (writing, knowledge, and so on) from several types of literature and collected become one to make things easier search.

Term compilation is seldom heard in context discussion law, though relatively easy to search in a dictionary, book, or encyclopedia related to several language meanings scope law. However, the explanation for understanding compilation is No something specific. the cause is A little use of the word compile at the time of application. Society more know his with term codification.

Further, again Abdurrahman explained,¹¹ in the KHI context, the compilation is interpreted as an effort To collect ingredients required for law

⁸ Abdurrahman, *Compilation of Islamic Law in Indonesia* . Jakarta: Akademika Presindo, 1992, p. 9 and 10.

⁹ Dictionary Compilation Team, Big Indonesian Dictionary. Jakarta: Balai Pustaka, 2002, p. 584.

¹⁰ WJS Poerwada Minta and A. Wojowasito , *Complete Dictionary English -Indonesian Indonesian- English* , (Jakarta: 1982, Hasta), p. 88.

¹¹ Abdurrahman , " *Compilation of Islamic Law in Indonesia*," (Jakarta: 1992, Akademika Presindo), page 9.

so guidelines in field law material judges in the environment Religious Court. Lifted materials from as many books as possible used as sources taking in determination laws carried out by judges and related materials.

Because its, Compilation of Islamic Law can Be interpreted as a gathering or summary of various opinion laws taken Islam from various mu'tabar sources of legal books (*fiqh*), which were made as source reference or For developed in the Religious Courts consisting of from chapters on marriage, inheritance, and endowments.

To look after the actualization and relevance law of family Islam in Indonesia. Before stipulated regulation, in the case of marriage, Indonesia used Constitution, valid marriage for the whole city, that is, Constitution Number 1 in 1975, before changing Constitution Number 16 of 2019, promulgated on January 2, 1975. With Constitution, the fundamental rule in particular regulation legislation about existing marriage before so far has arranged in new law this, no apply again.

Either regulation of marriage according to the Constitution this, as well Constitution religious court that gives authority on case inheritance, testaments, grants, endowments, and sadaqah, not yet all substance law according to Islam written in the Constitution, however Still spread in classical Arabic language and letters, consequently Not yet There is provision law Islamic can be made as guidelines together in questions law family above. With circumstances thus, the Supreme Court, together Ministry of Religion 1985 respectively, gradually invited scholars from all

flow and organizations Islamic, for compile codification for law Islam with source fiqh law about marriage, inheritance, and endowment, which was later named project development law Islam through jurisprudence or project Islamic Law Compilation. Project This was formed based on a letter decision with (SKB) chairman Supreme Court and Minister of Religion No. 07/KMA/1985 and No. 25 of 1985 dated May 25, 1985, with chairman Prof. Dr. Bhutanul Arifin, SH.

Kind general provisions about arranged marriages in KHI are an affirmation of things organized in Constitution Number 16 of 2019; however, at times accompanied by an explanation of provisions. This aim is To bring provisions Constitution marriage to in-room scope that breathes and is of value law islamic.

Base philosophical marriage, like called in Article 2 KHI, is: marriage solely obeys God's command, carries out it is worship and bonding marriage This characteristic *Mitsaqan ghalizaan* (strong bond). Besides provisions, KHI also contains the following rules ¹²

- a. Legit marriage must be done according to the law of Islam
- b. Man Muslim is forbidden to marry with non- Muslim women
- c. Every marriage must be noted
- d. Legal marriage recorded directly to Employee Marriage Registrar
- e. Marriage only can be prove with a marriage certificate made by the VAT.

¹² Articles 4, 5, 6 and 7 of the Compilation of Islamic Law concerning marriage .

The above requirements are juridical in that marriage must be recorded and performed according to religious law applicable laws and regulations (article 2 paragraph 2 UUP). Because that is, marriage No noted No including legal marriage according to law/law.

One of the problems listed in the Compilation of Islamic Law (KHI) is the prohibition of marriage, the so-called *many al-marriage* in fiqh terms. Articles 39-44 KHI read related prohibition marriage good character temporary nor forever. Then in the Qur'an, it is emphasized that the problem prohibition of marriage This found in verses 22-24 of surah An- Nisa, and verse 221 of sura Al-Baqarah.¹³ Including to in prohibition the is marriage different religion.

Article 40 letter (c) KHI prohibits marriage between a Muslim man Muslim with a non-Muslim woman. So vice versa, article 44 KHI contains prohibition marriage between a muslim woman with non a Muslim man.¹⁴ Under two conditions that, interpreted referring to KHI, non-Muslim women, whatever their beliefs, are No allowed married by one religious man Islam and women holy Islam No allowed married by a non-Muslim man, either including inscribe or not from the expert book. Article 40 letter (c) and article 44 KHI annul interpreted permissions in verse 5 of surah Al-Maidah becomes prohibition on base situations, conditions, and benefits.

¹³Ministry of Religion of the Republic of Indonesia , *Translated Al-Quran* , (Bandung: CV Darus Sunnah , 2015) .

¹⁴ Articles 40 and 44 of the Compilation of Islamic Law about prohibition married .

God sent down Islamic law with his main goal, i.e., as a Grace to the natural universe. To quote from study proposal fiq, that objective from sharia or Islamic law uses the designation *Maslahah*, that in determination sharia is a neutralizer benefit and avoid ugliness or *mafsadah*.

Allah SWT revealed the Qur'an through the Prophet Muhammad SAW, which contains guiding norms and rules of life human, purpose shows kind to man both in this world and the hereafter.

The objective of Islamic law is to use *Maslahah* to achieve the life of a preserved and awake man. Hadith and the Koran, with various regulations as well as sanki law, present for a violation to provision law that aims to avoid adversity and closer benefit. Based on the objective of Islamic law as an enforcer benefit, man is taught to develop knowledge to understand Meaning from shaped law *mashed sharia*.

Referring to expert proposal jurisprudence, The Maliki school of thought, namely Imam Asy-Syaitibi, five points must be followed, carried out, and maintained to realize benefit in this world and the hereafter. The fifth tree are:¹⁵

- 1) Religion is the core thing to lowered sharia as maintenance of religion. In explanation, religion consists of whole morals, creeds, and sharia, which are needed essence of the primary human. Everyone who has a doctrine has an obligation from religious enforcement. Because That

¹⁵Moh. Daud Ali, " *Introduction to Islamic Law and Legal Studies in Indonesia* " , Ctk. Sixth, (Jakarta: PT. Raja Grafindo Utama, 1998,) h. 61-62

is, in Islamic law, the law must protect and maintain the religion that is believed in.

- 2) Soul, save a soul. It means to look after the right To life with respect and guarantee spared from Good murder or persecution.
- 3) Intellect, sense, or thought is an essential thing for humans. Damage sense The same matter is with a failed man in looking afterlife. With existing sense, man can differentiate between the good and the bad that is not owned by others.
- 4) Descendants (honor), Islam has deep concern related to maintenance descent. Because when a generation of man is damaged will result in the damage of man entirely. Like the prohibition of adultery, besides because of big sins, the affair has an impact bad for descendants.
- 5) Treasure, Islam is like that protects treasure riches individual. The law has determined and assessed since obtaining the prize until spending it on everyone. Because of that, to guarantee the so prohibited theft, giving a penalty to thieves, forbidding deceive, destroying other people's property is not permitted usury, and so on.

Reviewed from corner view *maqashid sharia* , religious marriage contradicts all concepts. First, maintenance of religion. Care of religion for people man is tree most important For objective primary Islamic law. Thus because religion is a milestone main life human. Prohibitions against marriage and religious differences are obviously explained in the Koran. Objective prescribed his marriage as guidelines; family forms House ladder

based on spiritual values to achieve happiness and well-being, *sakinah mawaddah warrahmah* as loaded in QS. Ar-Rum: 21 as well objective marriage in Constitution Marriage Number 16 of 2019.

Realization family is happy if formed a mutual relationship of respect, love, understanding, harmony, and work the same as well as own shared vision and responsibility between the whole member family. The objective is easy to achieve when the entire member family agrees to view life in the same direction and the same; however, if every member still has a different vision, then it will raise opportunity in something problems. Besides set terms and conditions for marriage, Islam also provides tips for looking for a couple. The Hadith of the Prophet mentions that there are four criteria in choosing a partner that is, based on lineage or descent, religion, beauty, and wealth. However, the essential criterion, i.e., the religious factor, religion plays a significant role in realizing family *sakinah mawaddah warrahmah*. When a pair of husband and wife are Incapable of maintaining and caring for their faith Alone, No There is more can make role models at home stairs. Inner limit does deed Good nor evil No reached. it causes man vulnerable increasing distance Far with essence objective his life.

Second. Marriage of different religions is against draft maintenance soul, almost the same with draft maintenance of faith. Allah creates man in a pure and natural state. The principle of marriage is bringing together two different souls and melting to make One same goal. ¹⁶ It will be different

¹⁶In the Compilation of Islamic Law, marriage aims to create a household life that is *sakinah, mawaddah and rahmah*. Not much different from what is regulated in the Basic Marriage Law, namely Law Number 1 of

when partnering with Different religions. Maybe soul No can melt down Because the principle from the second is already different. Codes that will give birth to conflict along walk time. So, If objective marriage is not fulfilled, then the soul and each other 's faith will weaken and quickly leave Islam (apostasy) or other religions. Indeed, obsolescence will have more Lots than benefits. ¹⁷

Third. Marriage of different religions contradicts maintenance since. The mind is an essential organ distinguishing human man from a creature other. Grace is the mind that God gave to humans to use maximum maybe. However, when the sense is contaminated with lust and doctrine (love), the substance will be problematic used with Good For think clear.

Fourth. Marriage in different religions is challenged with maintenance descent. One objective of marriage is to continue generation by giving birth to destruction. With descendants, the so successor people man will be sustainable and confident hope big is to give birth to more successors ok. Besides that, prayer child is a charity that will Keep going connected and come to nature's tomb for both parents, as the hadith of the Prophet Muhammad SAW reads. If a son of Adam dies, cut off the charity except for three things: sadaqah jariyah, helpful knowledge, and pious children who will pray to both parents his.

1974, the purpose of marriage is to form a happy and eternal family (household) based on Belief in One Almighty God.

¹⁷Mega Rani Tiara S., Discourse on Interfaith Marriage (AL Maqashid Assyariah Study), Banjarmasin, Journal of Al 'adl UNISKA, Volume VIII No. 1, Year 201

Then the Fifth. Marriage of different religions contradicts the maintenance of treasure. Couples who are wedding different religions no can each other inherit. With so, no happen maintenance on treasure them. Because that is, neither can they inherit heredity to parents her, except with a religion. In Islam, religious differences can abort the right each other inherit. So No will achieve justice if a spiritual child gets inheritance while those who don't have the same religion No get legacy.¹⁸

Based on mqashid sharia theory, marriage in different religions includes dangerous attitudes to benefit Good family, ancestry, and religion. Likewise, things the No following objective Islamic law in marriage. Some scholars are worried happening weddings of different faiths, such as Quraish Shihab. According to him, "union of people of other religions is more deliver to disaster from benefit so that must be avoided. Such a marriage can be punished as unlawful because it causes significant loss. Based on mqashid sharia theory, marriage in different religions includes dangerous attitudes to benefit Good families, ancestry, and religion. Likewise, things the No following objective Islamic law in marriage. Some scholars are worried happening weddings of different faiths, such as Quraish Shihab. According to him, "union of people of other religions is more deliver to disaster from benefit so that must be avoided. Such a marriage can be punished as unlawful because it causes significant loss."¹⁹

¹⁸ M. Karsayuda, *Interfaith Marriage Measuring the Values of Justice Compilation of Islamic Law* , Ctk. First, (Yogyakarta: Total Media, 2006,) h. 90.

¹⁹Verse 221 QS Al-Baqarah in the interpretation of the Quraish is explained as follows: Do not you, O Muslim men, marry, that is, enter into marriage ties with polytheistic women, idol worshipers before they

C. Regulation Legislation about Marriage

Administration, Law Number 16 of 2019 concerning Marriage This share become Indonesian citizens religious citizens other than Islam and citizens of an Islamic state. Group anywhere will be entered in the class citizen of the same country based on religion, the group in question, i.e., origin from law marriage moment Still validity Act (European, Foreign East, resident Native) moment do marriage according to Islamic law. So from that is, recording a wedding recorded at the KUA. While residents who are non-Muslims, do marriage according to respective religious rules and records at the official Dispopdukcapil local.²⁰

Article 1 of the Law Number 16 of 2019 concerning marriage beeps that objective of A marriage, i.e., form a family (home stairs) eternal and happy based on the Supreme Godhead One by bond born inner between a Woman and one man as a couple. So refer to the regulation of the above legislation. This marriage acknowledged if done agreement between a woman and one man. And not recognized when a union is committed by *two men (homosexual)* or *two women (lesbians)*.

Many men and lots Woman not marriage, like Group marriage in the Masai community in Africa do marriage. Found five men at a time do

truly believe in Allah SWT, Quraish Shihab , Tafsir *al -Misbah: messages, impressions, and harmony of the Qur'an* , (Ciputat: 2000, Lantern Hati,) h. 442.

²⁰Saefuddin Afief, *Sharia Notary in the Practice of Volume I of Islamic Family Law* , (Jakarta: Darunnajah Publishing, 2011) , h. 13

marriage with you her daughter like Tribe Margisan in Tibet and maybe among ethnic group Yadaan Kanaits in India..

According to the law, marriage is legitimate if held to adhere to law, belief, and religion. Every from marriage noted in accordance with trust regulation applicable laws.

There are six principal principles in the Constitution of marriage:²¹

1. Marriage aims for each partner to develop character and identity and for each other to be responsible for reaching happiness House stairs and well-being Good materially and spiritually. So from That, husband and wife needed each additional help and complemented to form an eternal and happy family.
2. One category said legitimate something marriage, besides done according to religious laws and beliefs of each party is, must record wedding the in accordance with regulations and applicable laws.
3. In Constitution, marriage believes the principle of monogamy. However, because the law and religion of the party's wish have allowed, then a husband is entitled to marry more than one.
4. Principles adhered to by law marriage is partner husband and wife must have a ripe physical spirit so that you can carry out marriage, so reach an objective union, OK in a manner get good breeds and avoid divorce.

²¹ Wienarsieh, Imam Subekti and Sri Soesilowati, Mahdi , *Western Civil Individual and Family Law*. Print 1. (Jakarta: Gitama Jaya,) 2005, p. 43.

5. Forming a resident family that is prosperous and happy eternal is a dream of all partners, husband, and wife, and then the Constitution's marriage principle For complicating the divorce process.
6. In law marriage, the rights, and status husband are balanced with the rights and position wife, fine in connection husband, wife, family, or social socialize. So, every happen problem will be unraveled with negotiated and decided second split party without There is each other outperforming.

Before it existed, Constitution Number 1 of 1974 in Indonesia applied various marriage laws for multiple classes of citizens and different areas. Take note explanation of general Article (2) of Law Number 1 in the Year 1974 and remember anyway that inside Indiesche Staats Regeling (ISR), i.e., Regulation Article 163 of India's state administration makes a difference between class residents in three sorts, that is class Europe (incl Japan), class native (Indonesian) and Eastern Asinf group, except for those who are Christians.²²

Various laws valid marriage before validity Constitution Number 1 of 1974 for multiple class citizens and different areas, is as follows:²³

1. For native Indonesians who are Muslim, this applies religious law that has the reception to in-law custom.
2. Native Indonesian people other apply law custom. For example, for the Balinese, who are diverse Hindus where customs and religion have been

²² *Ibid.*

²³Zainuddin Ali, *Islamic Civil Law in Indonesia* , Cet. 2nd, (Jakarta: Sinar Graphics, 2007) , h. 8

merged, then implementation his marriage held according to frequent law customs the ceremony with the Hindu-Balinese religious ceremony he adheres to.

3. For native Indonesians who are Christians, it applies *Huwelijks Ordonnantie Christen Indonesia* (HOCl) S. 1933 number 74. Rules This Now is already arranged in Constitution Number 1 of 1974. No, use it again.
4. For Foreign Easterners China Indonesian citizens of descent, China applies provisions in the Civil Code (KUHPperdata) with A bit of change. Rule this too. No use Again so far already set in Law no. 1 the year 1974.
5. For Foreign Easterners and citizens of Indonesian descent, foreigners apply the law customs them.
6. For Europeans and Indonesian citizens of descent from Europe (Indo) and equivalent to the Civil Code, that is *Burgelijk Wetbank* (BW). The class includes Japanese people or other adherents of the principles of law, the same family with guides of a Dutch law family.

In regulation laws in force in Indonesia in connection with This Constitution Republic of Indonesia Number 1 of 1974 concerning Marriage, and Instruction President Number 1 of 1991 concerning Compilation of Islamic Law which formulates thus: " Marriage is bond born inner between a man with a woman as husband wife with objective form family (home stairs) that is happy and everlasting based on Supreme Godhead One.

D. Regulation Legislation about Recording Marriage

In the fiqh books classic, someone's talking about the importance recorded by the assigned officer power by the government (*uili al-Amr*), Employee Marriage Registrar (VAT) for Muslims, and Registry Office Civil for non-Muslims. There is a possibility of fiqh books That are written, stage awareness of religion and stage honesty and sincerity clan Muslims still high, so possibility happen abuse institution very few marriages. Reality general This does No mean consider stage awareness religious as well as honesty and sincerity current Muslims This has faded.²⁴

There are several provocative reasons back Why recording marriage does Not get attention seriously by fiqh. Even the Qur'an has recommended always recording all forms of activity *muamalah*. Following This, several framework reasons his:²⁵

- 1) In ancient times, because scared produced other laws, there was prohibition written besides from the Koran. Thus, a growing culture is a culture of memorization, and writing write becomes so not enough developed.
- 2) Built culture strong is activity memorize, then for remember happening A marriage is No something difficult.
- 3) *Walima al-urusy* is the tradition of cutting one goat as a witness on the side. There is a witness in a manner syar'i in A marriage.

²⁴Masruhan, November, " *Law Renewal of Marriage Registration in Indonesia Maqāsid Al-Shari'ah Perspective* ", Al-Tahrir, Volume 13, Number 2, (Shari'ah Faculty, Sunan Ampel State Islamic University, Surabaya, 2013), p. 235.

²⁵ *Ibid.*

- 4) Initially, his religion was Islam, and marriage did not need a proof tool to marry besides a witness because inter people No such separate regions of the country prone to distance away. The wedding took place at the venue where the candidate's husband and the candidate's wife were in the same area.

Because of that, some point background behind on top of that being origin Why recording marriage No too needed and considered necessary, as well No made tool authentic evidence to incident marriage. Eat with corner view this, wedding Enough done in unregistered and unregistered marriages records by officials Because considered something reasonable or following habit.

However, according to a view from Lots of academics, Islamic law, and strict practice interpret recording marriage as one factor strongly to the validity of the marriage because it's essential For the regulation and control of incident marriage. Recording marriage in a manner explicit No put forward matter the become A order origin. Marriage registration is born after effort *qiyas* on surah Al-Baqarah verse 282 related to recording debt receivables.²⁶ So from that, recording marriage occupies the position *furu'* (branch) of *asl* (the theme of a native), in verse previously discussed recording debt receivables. Using the law, such as recording debt receivables, be in position *nadh*. Then *illat* his, i.e., contract. As seen from the position recorder, marriage need confession, which is the outside inside marriage contract context knowledge fiqh

²⁶ *Ibid*.

However, based on the level of its urgency and nature, then recording marriage No can be made as another part of the marriage contract because it can become defining trait so that potentially become element intrinsic and marital.

Recording marriage according to the view from jurisprudence conventional is evident contrary and not following applicable state law, actually is from Islamic rule. Marriage, besides No, will obtain confession law, also problem Good For moment This or in the future that gave birth problem difficult for customized. because that, for the sake of uncovering purpose and essence marriage in Islamic law is needed theory perspective jurisprudence related marriage. So that public hope with the theory that, no Again found dichotomy between state law and relevant Islamic law with marriage.

Based on theory fiction conventional, discussion recording marriage No Once talked about. A different matter is with provision from regulation legislation that is not only given to marriage to something important, however with explicit mention technical carry out recording marriage. Many life changes, and man, along with continuous dynamic development, experience change. Characteristics from modern society shifted from rote culture to writing culture until pushed to make deeds and letters as proof of authentic.²⁷ Writing culture will become witness life that can be dependable When just and can be saved Where just. Because humans potentially lose

²⁷A. Sukris Sarmadi, Format of Marriage Law in Islamic Civil Law in Indonesia” and Roihan A. Rasyid, “Law of Procedure in the Religious Courts” as quoting Rasyid Rizani, undated, Fiqhiyyah Rules concerning Marriage Registration at the KUA and Divorce at the Religious Courts , www.badilag.go.id. (accessed March 28, 2017, p. 6).

witnesses living in the arena of death or when witnesses experience mistakes and forgetfulness. Based on things lacking from man, That itself needed goods proof eternal with designation contract. Implementation contract noted through register book and deed will become proof of authentic.

As protector of honor and dignity, holy his bond marriage (*misaq al-galidhan*) and women in life home stairs, then recording marriage is a working medium for arrange with an official in manner legislation. Deed marriage will be given to each pair husband and wife as a proof contract, then if there is a problem or dispute between both or one of them leaves the responsibility.²⁸ So the other party will use effort law to recover, acquire, or maintain each other's rights. Because of deeds law before (bond marriage) have Accurate and written evidence.

The government has made an effort to record this for a long time because marriage also saves civil, besides forming a holy rope contract. Following Constitution Number 16 of 2019 concerning Marriage, that sounds that “since promulgated Constitution, This is a new era for interest Muslims in particular and Indonesian society in general. Regulation of marriage is the unification and codification of characteristic law marriage national with Islamic law as owner existence without must sip from customary law. So from that, many argue opinion Constitution marriage This born become event theory promoted *receptivity* Snouck Hurgonje.

²⁸Compare Mohd. Idris Ramulyo, " *Islamic Marriage Law: An Analysis of Act No. 1 of 1974 and Compilation of Islamic Law* ", Bumi Aksara, (Jakarta, 1999) p. 241.

Since 1975, registration has been announced in a manner firm; however, Lots of prolonged obstacles. In the implementation of marriage according to Constitution Number 1 of 1974, and rules implementation form Regulation Government Number 9 of 1975, and elaborated in Inpres Number 1 of 1991 dissemination Compilation of Islamic Law in Indonesia, arrived moment This Still often heard and known exists deviations or consequential violations aware or No aware has done temporarily community whose postscript is Muslims.

Part of Muslims himself understands regulations related to marriage adhere to corner view jurisprudence centric, so Lots of rejection of the elite people happen. According to the view perspective of jurisprudence centric This understand that, marriage Enough done with complete terms and conditions. They No need something institution-authorized. For record marriage, even A uses a marriage certificate. Unions that believe in Marry Enough consent accept Still just maintained by some public until this moment, with finding practice procession so-called marriage as a *sirri* marriage without presenting officer marriage registrar, as well as the headman on duty official from the country.

Because That needed serious analysis considering right several elements and aspects of Marriage, there is three side/aspect as a base do it Marriage, namely: social, legal, and religious. Three aspects there are also in Islamic law. If only use one or remove from One part, so will be No balanced. Al-Qur'an and Hadith already arranged A little many related

Marriages. Marriage is so sacred Because it contains religious and philosophical elements; however, of course, No There is based in a manner clear through the text ordered for recording. Post-issued Constitution Number 16 of 2019 concerning Marriage, registration marriage through Employee The Marriage Registrar by the Office of Religious Affairs was introduced to society. So is recording Marriage for non-Muslims conducted by the Office of Disability civil.

Because of that, those who want to carry out a wedding must notice the procedures law marriage contract, the fine determined in fiqh books classic, or even provisions law imposed on society Indonesian Muslims. one provision is that every marriage contract must be in front of and supervised in a manner direct as well as recorded by the employee Marriage Registrar. Implementing the marriage contract that is not notice specified procedure No can be proven through the marriage certificate, and finally, No's strength law. After the validity of Constitution Number 1 of 1974 concerning Marriage, that Marriage must be noted according to applicable regulation laws. This can be seen in Article 2 paragraph (2) of Law Number 1 of 1974: " Each Marriage noted according to regulation applicable laws. "²⁹

²⁹See Constitutional Court Decision Number 46/PUU-VIII/2010 dated 13 February 2012, p. 26 and 27.

CHAPTER III

DISCUSSION OF RESEARCH FINDINGS

A. Validity Decision Case Interfaith Marriage Reviewed From Marriage Law

a. Validity Interfaith Marriage According to Law No. 16 of 2019

Marriage different gamma is frequent discussion and studied by various elements of society. Especially between circles, academics, and theorists based on religion, rules, legislation, or sociological become the primary focus assessment. If mirrored to surahs in the Koran, there is no found prohibition, so its nature is allowed when That intersects with field muamalah. However, when in the surah of the Qur'an, it is not found prohibited, so it's unlawful to face to face with problem fiqh. So as mentioned not in the Qur'an, there is a form of prohibition to marriage different religion is something form ban. However, in part big from Muslims understand that the absence of prohibition is equally suitable with law muamalah.

Fiqh explained that laws related to marriage in different religions are allowed people Muslim man married Women with the status of people in the book. Whereas no allowing a muslimah to Marry with man No Muslim although have the status of Ahl al-kitab. This No is in line with the above statement. Because there is in surah Al-Maidah verse 5, Islam will not discriminate against any gender. So that in interpreting the marriage religion above, he allowed good man married

muslim women people of the book and enabled women muslimah married by a man people of the book. However, despite so, what does the meaning of people in this book also have a different sense in each person? This Then becomes a question that continues to accompany the statement's existence.

Circumstances law civil law in Indonesia during the colonial period was Still characteristic pluralistic. It says pluralistic Because The rules that apply in Indonesia are different from public One with another society. Divided become various tribes, regions, customs, and six official religions by the state. The time difference causes it to happen in classification residents in Indonesia, evidenced in Article 131 IS and Article 163 IS. Marriage law includes, in part, civil law, which also has a nature pluralistic and based on division class residents. Laws of marriage in effect at the time are:

- 1) The Civil Code (*Burgelijk Wetboek*) that apply for class Europe.
- 2) Marriage for foreign easterners descendants Chinese apply law marriage as set out in Civil Code except part second and part the three titles IV
- 3) Customary law of each non- Chinese Eastern Foreign group
- 4) Islamic law and law custom for Muslim Bumiputera group
- 5) *Huwelijks Ordonantie Christen Indonesia* (HOCl) *Staatsblad* 1933 Number 1974 for the Bumiputera group living in Java, Minahasa, and Ambon are Christians

6) *Regeling op de Gemengde Huwelijken (GHR) Staatsblad 1898*

Number 158 for those who do marriage mixture

After free and with the law of the 1945 Constitution then, the above rules Already No apply Again Because regulation of the Already No Again following circumstances in Indonesian society now this, where the Indonesian nation at that time This Already No Again know exists classification resident as listed in Article 163 IS. So that's why Indonesia unified the law of Marriage through Constitution Number 1 of 1974 to now changed to Constitution Number 16 of 2019 concerning Marriage.

Constitution marriage experience changes from Constitution Number 1 of 1974 concerning Marriage to Constitution Number 16 of 2019 concerning Marriage with several experienced article development discussions. Several objectives formed his change regulation, i.e., realizing unification guidelines rule valid Marriage national, creating certainty law to guarantee existing well-being in House ladder and getting proper certainty law form recording marriage in a manner state administration. Besides that, the change in Constitution above Marriage creates social space and gender justice as a form of change and accommodates equality and emancipation. So that with Constitution Number 16 of 2019, the position held by husband and wife occupies the same degree of Good related equality position and rights within the family or House ladder nor inside the scope of society.

In Civil Code, understanding marriage only see from the side civil course. It is different in law Number 16 of 2019. Quoting Constitution Number 16 of 2019 concerning marriage, understanding marriage taken based on elements religious or religion, which contains A bond between boy and girl as husband and wife in a manner born mind, purpose reach House ladder or eternal and happy family based to Almighty God One.

Thus, obtained most elements fulfilled in building House stairs, like following:

a) Inner Bonding

From the second bond outwardly and inwardly, the No balanced when only One side, bond inner just or born course, second his most balanced and unified tightly. A connection law between living men and women can be seen and disclosed, i.e., a bond held. At the same time, no adhesive can be seen and perceived by the parties' subject law, the so-called bond inner. The bond will become the base amplifier formed and build the House ladder or happy family. Marriage positions the husband-wife bond as holy and proper as regulated by the religion of each husband and wife. So that can be seen in a manner clearly that marriage This not only a visible element but also tied with elements existing in mind in sublime.

b) Between One Man and a Woman

Another kind, a man with a man or a Woman with a girl, can do Marriage No. Marriage can only be done by one man married to a girl, where marriage only contains monogamy bound to Article 3, paragraph 1 of Law Number 16 of 2019 concerning Marriage. This reads that, in essence, is something marriage own principle, i.e., a man is only allowed to own a wife, so do women only let own a husband.

c) As Husband Wife

A woman and one man considered their bond as partner husband and wife through legal bond marriage according to religion and also religion. One his, i.e., considered legitimate if done following law from the faith and beliefs of each party. A provision in line with what is explained by law applies to use their respective religions during No contain conflict above specified in the law.

d) Objective Marriage For forming Family or House Happy and Eternal Ladder

A family is an association consisting of children, mothers, and fathers. Family including to in organization or scope smallest from a country. Immortality means building a family that starts with a happy marriage and not will There is divorce or end connection forever except separate because one died.

e) Based on Supreme Godhead One

In Civil Code, understanding marriage only see from the side civil course. It is different in law Number 16 of 2019. You are quoting Constitution Number 16 of 2019 concerning marriage, understanding marriage taken based on elements religious or religion. Hope from pregnant marriage element Supreme Godhead One will give birth to A sakinah, mawaddah, warrahmah family. So, in life, society can be arranged in a manner regular in frame peaceful feel.

See the explanation related marriage through the above elements, can pull A conclusion that draft marriage inside Constitution Number 16 of 2019 concerning Marriage and the concept of marriage in the Civil Code. According to the Constitution, marriage is not only limited to civil or administration but also bonds religion based on religion must aspect For noticed statement is in line with Pancasila philosophy that puts Supreme Godhead One as a priority above everything.

Marriage can be considered legitimate if held to fulfill provisions or conditions from the law, individual beliefs, and religio Thusus. The Act Number 16 of 2019 concerning Marrigives give religious elements to a significant position in marriage. Proved in Article 2, paragraph 1 of the Law Number 16 of 2019 concerning Marriage as follows:

“Marriage is legitimate if done according to laws of each religion and belief it”

It can interpret more deeply that explanation about the law, their respective beliefs, and religions is a condition from applicable laws. For class belief and faith during the marriage, the no contrary with law.

Suppose marriage held No follow provisions or conditions, law, beliefs, and religion of each party or with on purpose. In that case, one prohibition violated marriage, so marriage punished No lawful, and conditions contained in Article 2 paragraph 1 of the law marriage.

To quote Constitution Number 16 of 2019 concerning Marriage, Subsection 3 explains related the principles become a tree in marriage, divided become several points as follows:

- a) There is element belief and religion in Constitution Number 16 of 2019 concerning Marriage adopted by society.
- b) Principle *Equilibrium* own objective in marriage to be successful reach happy and everlasting family, combined from element spiritual and temporal.
- c) Principle obey to administration. Described in the Act Number 16 of 2019 concerning Marriage that obey administration marriage with do record keeping official recognized by the state as deed marriage loaded in the note list government.
- d) Principle monogamous, have only One couple. If in something trust or a particular religion allow for polygamy, then marriage

furthermore can done. However, the implementation still adhere from contained regulations in state laws.

- e) Principle readiness physical and spiritual from each candidate partner your husband wife .
- a. Validity Interfaith Marriage According to Compilation of Islamic Law No. 1 of 1991

At the moment entered century 19, Islamic law in Indonesia reached the highest expectations with the designation Compilation of Islamic Law or KHI. The compilation is the fresh air of certainty law for Muslims, fine from facet dynamics thinking Islam, life society, and facet constitution That alone. Although this, KHI still needs to improve. Several problems have started popping up since the gift term and give birth debate among scholars.

Appear compilation word debate in terms of Compilation of Islamic Law due to the word being less popular either used daily, study, or even practice law. In Language English, the compilation is taken from *compile* and *compile*, and in Dutch is taken from *compile*, which means gather together, for example For gather scattered rules everywhere.¹ Referring to the Big Indonesian Dictionary, the compilation is an organized group in a manner regularly (about lists of essays, information, and so on).² Meanwhile, in the dictionary English-

¹ Abdurrahman, *Compilation of Islamic Law in Indonesia* . Jakarta: Akademika Presindo, 1992, p. 9 and 10.

² Dictionary Compilation Team, Big Indonesian Dictionary. Jakarta: Balai Pustaka, 2002, p. 584.

Indonesian Indonesian-English, essay S. Wojowasito, and WJS Poerwada Minta, *the complication* has a meaning composed and cited essays and other books .

Reviewed from facet Language based on the information above, that compilation can be interpreted as business gathering sources (writing, knowledge, and so on) from several types of literature and collected become one to make things easier search.

Term compilation is seldom heard in context discussion law, though relatively easy to search in a dictionary, book, or encyclopedia related to several language meanings scope law. However, explanation understanding compilation No something specific. The cause, i.e., A little use of the word compiles at the time of application. Society more know his with term codification.

Because its, Compilation of Islamic Law can Be interpreted as a gathering or summary of various opinion laws taken Islam from various mutable sources of legal books (*fiqh*), which were made as source reference or For developed in the Religious Courts consisting of from chapters on marriage, inheritance, and endowments.

Role and presence Religious Courts are increasingly emphasized with existing Constitution Number 14 of 1970 concerning Provision tree Power Justice. There are four scopes of the judiciary in Indonesia according to Article 10 of the law, namely: religious courts, courts general administration, state administrative justice, as well as

Justice military. Kindly structure the judiciary by firm Constitution, and align the position of religious court with Justice others before That, including in shade Ministry of Religion. So from that, the strength obtained from internal religious court enforcement of Indonesian jurisdictional laws is the same as other courts.

Although its rapid development as one holder power judiciary, the No is in line with source references own law religious court. Referring to the Circular Letter of the Religious Courts Bureau number B/1/1735 letter B which reads, Religious Court/Sharia Court judges can obtain unity law For decide and check case through guidebooks below this:³

- a) Al- Bajuri
- b) Fathul Muin with The syarah
- c) Syarqawi Tahrir tool
- d) Qulyubi / Muhalli
- e) Fathul Wahab with The syarah
- f) Tuhfah
- g) Targhibul Musytaq
- h) Qawaninusy Syar'iyah Lissayyid Usman bin Yahya
- i) Qawaninusy Syar'iyah Lissayyid Sadaqah Dahlan
- j) Syamsuri Lil Fara'idh

³ Edaran Biro Peradilan Agama No. B/1/1735 tanggal 18 Februari 1958. Tentang pembentukan Pengadilan Agama/Mahkamah Syariah di luar Jawa dan Madura.

k) Al Fiqh ' alal Muadzahibil Arba'ah

l) Mughnil Muhtaj

Really in discussion fiqh, we always just experience pull hold out of the equation. This is Because exclusivity flow exists, like matter the reference book above. All reference laws of the sect from Imam Asy-Shafi'i. Only book number 12 comes from the comparative book or comparison sect, as well as number 8, which is not written in Language Arabic and is a written book in Language Arabic Malay.⁴ References the Still belong represent One intended flow need exists coherence in assessment Islamic law more carry on Good in scope constitution.

Based on the social circumstances above, then flat behind the team's formulator, a Compilation of Islamic Law argues is needed for making protective rules circumstances. Because of that, the government also looked at how formulating Islamic Law Compilation is a current need. This is important for the certainty of Islamic law whole.

On March 21, 1985, there considered pointing somebody to carry out the project Compilation of Islamic Law in Indonesia. Specifically, in Decree No. 07/KMA/1989 and No. 15 of 1985 concerning the Appointment of executor Islamic Law Development Project through jurisprudence, the Chairman's Joint Decision Consideration of The Supreme Court and the Minister of Religion also

⁴ Suparman Usman, *Islamic Law Principles and Introduction to the Study of Islamic Law in Indonesian Legal System*, (Jakarta: Gaya Media Pratama, 2001), p. 22.

mentioned two consideration processes reason held project formulation Compilation of Islamic Law, namely:

- a) Supreme Court of the Republic of Indonesia has shade to whole road his judiciary in Indonesia. So with function regulation to Justice in particular environment Religious Court. Need exists procurement Compilation of Islamic Law that lasts This become need Religious Court for made as law positive.
- b) In order to aim above achieved intents and purposes his. Therefore for the sake of synchronization, orderly administration, and improve success carry out task project development Islamic law through jurisprudence. So considered important for form team the together with Officials Supreme Court as well Ministry of Religion of the Republic of Indonesia.⁵

Look after relevant law Islamic families in Indonesia are in line with actualized Islamic law against civil law positive. However, according to Munawir Sjadzali, Indonesia is the majority country Islam has carried out business big. First, it gave birth to Constitution Number 7 in the 1989 mid-Religious Court.⁶ Then the Second work tried the

⁵ Joint Decree of the Chief Justice of the Supreme Court and the Minister of Religion dated March 21, 1985 No. 07/KMA/1989 and No. 25 of 1985 concerning the Appointment of Executors for Islamic Law Development Projects through Jurisprudence

⁶ Abdul Aziz Thaha, *Islam and the State in New Order Politics*, (Jakarta: Gema Insani Press, 1996), p. 282-285.

Compilation of Islamic Law project, which discusses inheritance, waqf, and marriage.⁷

Marriage law in Indonesia has especially Formerly There is before determination regulation the. Indonesia has Constitution Number 1 of 1975 concerning Marriage as law valid marriage for whole citizens who were inaugurated on January 2, 1975. Then experience change became Constitution Number 16 of 2019 concerning Marriage. With Constitution, the so regulation related to the previous marriage set No will apply again.

However, see the reality in society, regulations well that set related case marriage, will, waqf, grants, inheritance, and sadaqah, below Constitution no religious courts represent the whole element from Islamic law. Understanding Islamic law still spreads universally in letter nor classical Arabic, yet some provisions are Certain made as guidelines in overcoming every problem law family based on Islamic law.⁸

With circumstances thus, the Supreme Court, together Ministry of Religion since 1985 respectively, gradually invited scholars from all Islamic streams and organizations to compile codification for Islamic law with source fiqh law about marriage, inheritance, and waqf, which was later named project development Islamic law through

⁷Amrullah Ahmad, et al., *Dimensions of Islamic Law in the National Legal System*, (Jakarta: Gema Insani Press, 1996), p. 223.

⁸Akhmad Kamil Rizani, "Different Religious Marriage Arrangements (Critical Study of Article 35 of Law Number 23 of 2006 concerning Population Administration)", (Thesis, IAIN Palangka Raya, 2020), p. 62.

jurisprudence or project Islamic Law Compilation.⁹ Project This formed based on a letter decision with (SKB) chairman Supreme Court and Minister of Religion No. 07/KMA/1985 and No. 25 of 1985 dated May 25, 1985, with chairman Prof. Dr. Bhutanul Arifin, SH.¹⁰

In terms of provisions about arranged marriages in KHI, in essence, it is an affirmation of things that have been placed in Law No. 16 of 2019 concerning Marriage, however, at a time accompanied with an explanation of provisions. This aim is to bring provisions Constitution marriage to in-room scope that breathes and is of value to Islamic law.¹¹

Base philosophical marriage like referred to in Article 2 KHI: “Sasama- mata marriage obey Allah, carry it out is worship and bonding marriage This characteristic *Mitsaqan ghaliizaan* (strong bond). Besides provisions, Articles 4, 5, 6, and 7 KHI also contain rules:

- a. Legitimate marriage must done according to Islamic law
- b. Man Muslim forbidden marry with non-Muslim women
- c. Every marriage must noted
- d. Marriage new legitimate if held in front Employee Marriage Registrar
- e. Marriage only can proven with marriage certificate made by VAT.

⁹ Sudinnan Tebba, et al., *Recent Developments in Islamic Law in Southeast Asia*, (Bandung: Mizan, 1993), p. 63.

¹⁰ Amrullah Ahmad, et al., *Dimensions of Islamic Law in the National Legal System*, (Jakarta: Gema Insani Press, 1996), p. 224.

¹¹ Mahfud MD, et al., *Religious Courts and Compilation of Islamic Law in the Indonesian Legal System*, (Yogyakarta: UII Press, 1993), p. 79.

This is based juridical that marriage must be done according to religious law and recorded according to applicable laws and regulations (Article 2 paragraph 2 UUP). Thus, weddings are not noted. No is legal marriage according to law marriage this.

Between regulated issues in the Compilation of Islamic Law (KHI) is the prohibition of marriage, a deep term jurisprudence called *mawani al-marriage*. Articles 39-44 KHI is put forward about prohibition marriage good character eternal nor while. Problem prohibition marriage This is confirmed in the Qur'an, among others, in An-Nisa verses 22-24 and Al-Baqarah verses 221. A marriage of different religions is included in the prohibition of marriage in KHI.¹²

In Article 40, letter c, KHI prohibits marriage between an Islamic man and a woman who isn't Muslim. Whereas Article 44 KHI prohibits marriage between Islamic women and men who aren't Muslim. According to KHI, according to the two articles above, non-Muslim women, whatever religion one adheres to No, can be married by one Muslim man, and a woman Muslim No can be matched by one non-Muslim man, fine category scribe or not scribe. Article 40 letter c KHI and Article 44 KHI annuls defined ability in Al- Maidah paragraph 5 as a prohibition on reasonable conditions, situations, and benefits.¹³

¹²Akhmad Kamil Rizani, "Different Religious Marriage Arrangements (Critical Study of Article 35 of Law Number 23 of 2006 concerning Population Administration)", (Thesis, IAIN Palangka Raya, 2020), p. 64.

¹³ Mahfud MD, et al., Religious Courts and Compilation of Islamic Law in the Indonesian Legal System, (Yogyakarta: UII Press, 1993), p. 81.

b. Inter-religious Marriage Perspective of Classical and Contemporary Fuqaha

Al-Qur'an, for Muslims, are the primary source. For all sides of life, all at once explain various principles, both related to the vertical connection individual and with Lord and the horizontal relationship between the individual in society. When the Prophet Muhammad was still alive, all associated issues with two problems with ease could be resolved. Circumstances it is very different in the aftermath. Concerning the most complex issues faced, Muslims continue to try to understand and explain the content of the Qur'an for alignment with the situation there until the moment. This is the modern-contemporary era.

No one can deny that the public is constantly growing (changing) because the matter of the is reasonable in society. Change social only Can be observed, known, or put forward by someone through observation about composition, structure, and institutions, something life specific in Century then, and at the same time, compare them with design, construction, and institutions, something life in the present, no There is a society that doesn't change, all public characteristic dynamic, only rate different dynamics between One with the others, though Also known as a static institution and association activities.¹⁴

¹⁴Sabian Utsman, *Fundamentals of Sociology of Law The Meaning of Dialogue between Law and Society*, (Yogyakarta: Student Library, 2009), p. 201.

One problem is people who become controversial moment. This is the phenomenon of marriage from a different religion. Practice marriage, be aware or not, it is a social problem in society that has become a reality empirical with chart increasing quantity rise. Phenomenon such, on one side, is part of the demanding problem solution in Islamic law. On the other hand, it is also a crucial problem that always persists, expecting to demand answers from scholars.

Leave from reality this, then born interpretation of the jurisprudence of the scholars regarding law marriage that invites polemic and controversy. Three opinions developed among the scholars in interpreting the paragraph above, i.e., about man Muslim married women of the Book.¹⁵ Opinion First states that Muslims are forbidden to marry women of the Book. Statement Abdullah bin Umar states this with the use of interpretation against QS. Al-Baqarah verse 221 says that women of the Book from Christians and Tahudis include class polytheists Because they deified Isa ibn Maryam and Uzer. With so, they are not lawful to marry because polytheists are forbidden.

Opinion second put forward by Atha' bin Rabbah. He states that marrying People of the Book is *Rukhsa* because of the moment. Very few Muslim women are. Whereas Now Muslim women have many, match Women of the People of the Book are not needed again and automatically go away *rukhsah* to marry her. Opinion third was stated

¹⁵Abd. Salam Arief, *Renewal of Islamic Law Thought*, (Yogyakarta: LESFI, 2003), p. 122.

by Jumhur Ulama, who allowed it to marry women of the People of the Book based on the word of God in QS. Al-Maidah verse 5, while those belonging to the People of the Book are ladies from circles of Jews and Christians.

Based on the opinion above, the need exists to identify who is categorized by the Qur'an as a polytheist and forbidden to marry a Muslim. It says polytheist No only associates partners with Allah but also does not trust one from the sacred books, both of which have been there is a deviation or still original, as well No they are even prophets believe. As for the People of the Book, they believe in one person prophet from the prophets and one of the books of the sacred books, either already have a deviation in them in the field of faith and behavior.¹⁶

In modern scholars' view, an expert such as Rasyid Rida, a disciple of Imam Muhammad Abduh, asserted that Magi, Shabi'un, Hindu, Buddhist, Confucian, Shinto, and other religions could be categorized as People of the Book. Ridha fatwa that man-Muslim marriage is forbidden by Allah with girls polytheist in QS. Al-Baqarah verse 221 is Woman past Arab polytheists. That's the opinion of Mufasir Ibn Jarir at Tabari. Meanwhile, the Magi, Shabi'un, devotees idols in India, China, and such, like the Japanese, are the People of the Book,

¹⁶Nurcholis Madjid, et al., *Interfaith Fiqh*, (Jakarta: Paramadina, 2004), p. 159.

who conceived and understand monotheism until now. Therefore, it is lawful to marry girls them.¹⁷

As for making it lawful, marry the woman of the People of the Book. Her goal is To show characteristic love Darling to them so that they Can see beauty mu'amalah Muslims and convenience shari'ah his. This Can materialize with marriage with women. Because man is holder authority and power over a woman. If mua'malah, the husband (male Muslims) good against the wife (the woman of the People of the Book), then That is a sign that the husband's religion is a religion that invites truth and the straight path, religion teaches her adherents For behave fair to fellow Muslim and non-Muslims, the religion that teaches deep chest mu'amalah with different people.¹⁸

Current scholars, this is merged in a manner institutional in the Indonesian Ulema Council through decision, confirmed the prohibition of marriage different religions in Indonesia through fatwas in 1980 and 2005 to the level of the ban. The Indonesian Ulema Council (MUI), on June 1, 1970, issued fatwa Number 05/ Krp / Munas II/MUI/1980 as a response to increasing attention public to the more often happen marriage of different religions.¹⁹ The fatwa contains two related problems understood differently. First, an Islamic woman is not

¹⁷Ahmad Nurcholish, *My Love Memoirs The Empirical Experience of Interfaith Marriage*, (Yogyakarta: LKS, 2004), p. 153..

¹⁸Desri Ari Enghariano & Amaruiddin Asra, "Interpretation of Legal Verses Regarding Interfaith Marriage According to Rashid Ridha and al-Maraghi", *Syahadah Journal*, vol V, no. 1, (2017):10.

¹⁹M. Atho Mudzhar, *Fatwas of the Indonesian Ulema Council*, (Jakarta: INIS, 1993), p. 99..

permitted (haram) to marry a man who isn't Muslim. Second, a Muslim man No allowed Marry a woman No Muslim. Important To note that this fatwa was discussed and decided at the annual conference in 1980 instead of meetings the average fatwa commission. This shows MUI's attention to the problem of marriage in different religions.

The VII th MUI National Conference on 26-29 July 2005 in Jakarta decided and determined that: 1) Marriages of different religions are haram or not valid; 2) Marriage man Muslim with women of the People of the Book according to strong opinion (*qaul mu'tamad*) is haram and not legitimate the law. The decision of the fatwa based on the considerations: a) That lately, This Lots happen different marriage religions; b) That marriages this different religions No just contain debate between fellow Muslims will but also contain restlessness in the midst society; c) in the middle public has appeared justifying thought marriage different religion with right basic human and benefit, and; d) That For create and maintain peace life home stairs, MUI looked necessary and mandatory establish a fatwa about different marriage religions for made guidelines as mentioned above.²⁰

From the explanation above, the MUI fatwa regarding marriage in different religions is detailed in two, i.e., marriage in Different religions is haram and not legitimate without *qayyid*, while the second remarkable marriage man Muslim with the People of the Book who are

²⁰Indonesian Ulema Council, MUI Fatwa Association Since 1975, (Jakarta: Erlangga Publisher, 2011), p. 472-477.

judged illegitimate and not valid. This is the authentic double fatwa Lots questionable because in the Qur'an, hadith, or literature jurisprudence classic, this style of marriage is in a manner detail has discussed, and jumhur scholars allow it. Following the Decree of the MUI Leadership Council in 1997 namely, every fatwa decision must have based on The *Mu'tabar* Book of Allah and the Sunnah of the Prophet, no contrary with benefits people, ijma', qiyas that is *mu'tabar*, and is based on the arguments Other laws, such as *istisan*, *Maslahah mursalah*, and *sadz al- dzari'ah*.²¹ Thus, in establishing fatwa, MUI is based on procedures determination of the fatwa that has been set. In selecting a fatwa about marriage in different religions, MUI also refers to procedures determination of the fatwa. This is solely To guard that the fatwa issued by the MUI clearly can be a known source or the arguments used through the rules book in issuing a fatwa.

In applying the procedure fatwa regarding marriage in different religions, MUI bases it on the Qur'an and Hadith verses and uses the rule *fiqhiyyah* and *ushuliyah*. Before the issuance of the 1997 MUI SK, MUI in establishing a fatwa often just included conclusion law without There is inclusion of the Qur'an, Hadith, and even rule *fiqhiyyah*. Therefore, in National Conference VII in 2005, MUI experienced progress in using the basics law in a more detailed and

²¹ Decree of the Leadership Council of the Indonesian Ulema Council concerning Guidelines for the Determination of Fatwa of the Indonesian Ulema Council Number: U-596/MUI/X/1997

systematic inappropriate fatwa with rules that the MUI Leadership Council has determined.

The basis used in the determination of marriage fatwas for different religions at the VII National Conference in Jakarta is the Al-Qur'an: QS. An-Nisa verses 3 and 25, QS. Ar-Rum verse 30, QS. At-Tahrim paragraph 6, QS. Al-Maidah paragraph 5, QS. Al-Baqarah verse 221 and QS. Al-Mumtahanah verse 10.

Besides using the verses of the Qur'an, MUI also bases the fatwa on the hadith of the Prophet, narrated by Imam Bukhari and Muslims about the importance of a candidate's religious qualities of a wife who can bring good luck and safety. As for the rules *ushuliyah* used is *sadz al-dzari'ah*. Hasbi as-Shiddiqi defines that *sadz al-dzari'ah* as preventing something from being road damaged. For reject damage or clogged road, convey someone on the breakdown.²²

All religions refuse marriage of different religions. All religions want a wedding and must have faith (one religion). Islam teaches people to live straight in God's guidance, far from error, because of temptation from demons, jinns, and so on to humans. For that's so a Muslim is forbidden to marry a non-Muslim person, as explained in QS. Al-Baqarah verse 221. In Islam, the only possibility is because a permissible opinion exists in marriage between a Muslim man and a non-Muslim woman. Statements that allow it requires that her marriage be held with something contract. Ibn Rushd

²²Indonesian Ulema Council, MUI Fatwa Association Since 1975, (Jakarta: Erlangga Publisher, 2011), p. 473-476..

wrote a contract with *ma'rifah* (using alif lam), which shows that a contract is a marriage contract taught by Islam. The consequence of marriage This puts biblical party wife get all right as a wife. However, the second split party does No have the right each other inherit. Because of rights inheritance in Islam must be the same religion between the expert legacy and his heir.

In a manner firm, Catholic Christianity stated, "Marriage between a Catholic with adherents of other religions are No legitimate." (Canon; 1086). The church gives dispensation with specified requirements law church. (canon; 1125). Dispensation in the realization given by the bishop after fulfilling condition particular and second split party made an agreement written containing: First, the religious Catholic promised it would still be faithful to the faithful Catholics, try to bathe and educate children in a manner Catholic. Second, which is not holy, Catholics promised to accept marriage in a Catholic form; no will divorce religious party Catholic, not obstruct religious party Catholic from carrying out their faith, and be ready to educate children in a manner Catholic.

Protestant Christianity teaches its people to look for a partner's religious life. Realize life exists together with other people, then the church. No, forbid adherents to marry people who aren't Christian. Marriages of different religions can be held in the church according to the law Christian church when the party that is not religious Christian

states No object in a manner written. The Indonesian Christian Church has arranged marriages of different religious nature detail, with the willingness party not Christian to marry in church and children educated in a Christian way.

In Hinduism, a marriage can be legalized If the bride Follows the same religion, Hinduism. Marriage with other religions is prohibited in Hinduism. According to Hindu law, a marriage is only legitimate if the held ceremony is sacred by *the pedende*, and *the pedende* only Wants to carry out the ceremony wedding If the second candidate bride is Hindu. Hindu marriages that do not fulfill conditions can be canceled. If the second bride is of a different religion *pedende* No can bless, except non-Hindu parties have been in *suddhi* right (legalized) as adherents of Hinduism and signed *Sudi Vadhani* (letter statement converted to Hinduism).

Buddhism has more teachings. Lots notice moral teachings and practices focusing on perfection self-human, not arranging in a manner extraordinary marriage different religion. Buddhism does not limit its people to marrying adherents of other religions according to applicable law. In practice, adherents of buddhism follow provisions applicable law local (law custom or applicable state law).²³

²³ M. Karsayuda, *Interfaith Marriage Measuring the Values of Justice Compilation of Islamic Law*, (Yogyakarta: Total Media, 2006), pp. 84-87.

Observation writer that marriage between different religions should not be legalized in Indonesia, especially post-decision Court Constitution decision Number 68/PUU-XII/2014. Also strengthened by the Indonesian Ulema Council (MUI) in the resulting fatwa from The Second National Conference on 11-17 Rajab 1400 H. Coincided with 26 May–1 June 1980 AD, with consideration *mafsadat* bigger than *good luck*, man Muslim, especially in Indonesia is prohibited marry with women of the Book.

Condition public becomes important For considered Because marriage in Islam is not just a connection between husband and wife, but also impacts the future and education of their children and even involves and influences the surrounding community. Condition social Keep growing because the law that determines it related to the development life public must dynamic so objective law can be reached.

A. Implications Related Juridical Judges Verdict No. 916/ Pdt.P /2022/PN. SBY

The law has placed a strategic and dominant position in life in public nations and states. Law is something the system got a role with well and right in the middle public. Suppose implementation instruments be equipped with powers in field enforcement law. Enforcement law is business To embody ideas and concepts expected in law and needed by society. In line with developing his condition society, then established law related to the

development of life public must dynamic, fine concerned with law positive nor Islamic law.

All things Islam prescribes to have goals, at least, contain certain wisdom, except marriage. Objective Islamic marriage cannot be released from the statement of the Qur'an, sources his first teachings. A peaceful life (*sakinah*) wrapped in feeling Love, love, and support each other understanding between husband and wife because of the "clothing" for a partner whose truth is objective primarily it is prescribed marriage in Islam. Atmosphere the life that marriage leads to similar That will can achieved with easy if marriage built on top solid foundation, among other things, between husband and wife There is in *sekufu (kafa'ah)*.²⁴

The importance of draft secure (*kafa'ah*) inside marriage is very harmonious with the objective above marriage. Something life, husband real wife, *sakinah*, and happy. Husband *sakinah* and happy wife will capably develop intimate and full relationship love dear. This will give birth to a generation of a good and righteous successors, who will become a leader of the pious (*lil muttaqina priest*). Conserving descendants is the objective prescribed in his marriage. Besides, he aims to preserve the excellent breed and educate people to grow in love. Sadly, it increases the softness of the soul and love. Every child born into the world status clean, holy, and pleasing to Islam child a Muslim or non-Muslim. Then parents his it nourishes and strengthens his Islam.

²⁴Akhmad Kamil Rizani, "Different Religious Marriage Arrangements (Critical Study of Article 35 of Law Number 23 of 2006 concerning Population Administration)", (Thesis, IAIN Palangka Raya, 2020), p. 102.

Observe the draft objective marriage above, and then with exists, wedding different religions will give birth to problems Good from facet social nor religion. Marriage potentially other religions give birth to problem law later, especially problem position born child. First, the questioned validity of the upcoming marriage raises rights and obligations between husband and wife. Wife rights in livelihood and wealth together entirely depend on. There is nope A legal marriage base on the law. Executed marriage in a legitimate manner will give birth to legitimate children. So a born child from a marriage that is not legit only has a connection law with his mother. Therefore, all rights child to his father will be lost and not recognized by state law. Maintenance rights to a child owned by his parents only will be obtained if have legal marital status.

On the other hand, marriages of different religions that have their proof of original form marriage book got filed cancellation because their marriage is invalid. Because no following religious provisions (Islamic law) as arranged in Article 40 letter c KHI. Annulment, though No applied to recede, will cause major mental problems for the born child from the annulled marriage.

Second, rights inheritance between husband, wife, and children. Religious differences abort the right each other inherit. If the problem of inheritance is seen from the aspect of justice, then the prohibition of marriage in different religion protects the right to each other's heritage. Religion is a problem belief consequence of a child only will the same

religion the religion of both parents or adhering to another religion from both parents. Appear problem when a religious child gets a legacy, temporary you whose biological is not the same religion no get inheritance.

Regarding position law, born child from partner marriage different religions, us can refer to conditions Article 42 of the Law mentioned marriage that legitimate child is born child in or as a consequence executed marriage in a manner valid. A child born from legal marriage and registered at the Office of Religious Affairs (for Muslims) and the Office of Records Civil (for religions other than Islam), then positioned child the is child legal in the eyes of state law and own rights and obligations children and parents as mentioned in Article 45-49 of Law no. 16 of 2019 concerning Marriage. Besides that, parents of different religions need to notice provision Article 43 Law no. 35 of 2014 concerning Child Protection, which reads:

1. State, Government, Local Government, Community, Family, Parents, Guardians, and Social Institutions ensure protection child in hugging his religion
2. Protection child in hugging his religion as referred to in paragraph (1) includes coaching, mentoring, and practice religious teachings for child.

Inside explanation Article 43 paragraph 2 UUPA explained that a child could determine their religion of choice if child the has reasonable and responsible, as well as fulfill conditions and procedures following the

provisions of the faith he chooses, and provisions regulation applicable laws.

Another problem that will arise inside different family religions is the hope that will birth family sakinah will be challenging to achieve partner husbands and wives of other faiths and how to educate children them. A child will experience confusion About following father or Mother. Marriage new will be lasting and serene If there is suitability view of life between husband and wife because, let alone religious differences, differences in culture, or even different levels of education between neither husband and wife seldom result in failure marriage.

The amount of impact unfavorable marriage affects different religions against a child. So that raises losses (*mafsadah*) bigger than benefits (*maslahah*).²⁵ Approach maqashid sharia *hifdzun lineage* is approach holistic, which is not limited to one history hadith and law partial, but more refers to principles common and basic together. So that proper for stay away from executing marriage because of different religions No following draft *hifdzun lineage*.

In the Old Testament Torah people Bible Scholar, found on the Bible Number refers to displacement ownership of the deceased's assets to the heirs in the Israelite family, there are descendants boys block girls get the inheritance from their parents. When there are no sons, then inheritance is given to children Woman. This is the story in the Torah.

²⁵ Jasser Auda, *Grounding Islamic Law through Maqasid Sharia*, (Bandung:PT Mizan Pustaka, 2008), p. 315.

In Letter Number 27:

Chapter 8: And to your Israelites should say: When someone dies by not having male offspring, then you must transfer inheritance rights to female offspring.

Article 9: If he does not have offspring of women, then you shall give his inheritance to his male siblings.

Article 10: And if he does not have brothers, then it must be you give him his inheritance to his father's brothers.

Article 11: And if the father is not have brothers, then you must give possession his inheritance to his relatives closest of his family, so has. That's what it has to be legal provisions for the Israelites, such as that the Lord commanded the Prophet Moses.

CHAPTER IV

CLOSING

A. Conclusion

Judging from Legal Legitimacy, Decision No. 916/Pdt.P/2022/PN.SBY is a legally correct decision based on jurisprudence (Supreme Court Decision Number 1400K/Pdt/1986) as well as several regulations which are interpreted that "marriage is valid if it is carried out according to the laws of each religion and belief" as in Law no. 16 of 2019 concerning Marriage. However, serious consideration is needed because it results in one regulation colliding with another. The legal basis in question is contained in 3 discussions as follows; First, in Law no. 16 of 2019 concerning Marriage. At the same time, the laws and regulations do not clearly explain the desire of Indonesian legal products to prohibit or allow interfaith marriages. Second, they refer to the Compilation of Islamic Law (KHI) as a reference for agreed legal outcomes for Muslim communities. Whereas in Article 40, letter c KHI prohibits Marriage between a Muslim man and a woman who is not Muslim. Vice versa, it is stated in Article 44 KHI. Third refers to the views of contemporary fiqh scholars included in the Indonesian Ulema Council (MUI). Whereas in the Constitutional Court decision Number 68/PUU-XII/2014. Also strengthened by the Indonesian Ulema Council (MUI) in its fatwa resulting from the Second National Conference on 11-17 Rajab 1400 H. Coinciding with 26 May – 1 June 1980 M, with consideration,

that the mafsadat is greater than the benefit, Muslim men, especially in Indonesia, are prohibited from marrying with women of the People of the Book.

The existence of interfaith marriages will give birth to problems in society and religion. Interfaith marriages have the potential to give birth to legal problems in the future, especially the issue of the position of the children born. First, the case of the validity of Marriage, which will give rise to rights and obligations between husband and wife. Second, inheritance rights between husband and wife and their children. Religious differences abort mutual inheritance rights. Even though it's actually an inner will Christianity/Catholicism is something Absolutely depending on the desire to sing a bequest, because in Christianity/Catholicism, A will that has passed, even if it is from humans, it cannot be canceled or added by anyone.

A. Suggestion

Creating comprehensive discussion forums for all fields related to interfaith Marriage, both held within government agencies and in the official religious compilation in Indonesia. An evaluation of statutory regulations was held, including the prohibition of interfaith marriages in article 8 of the Marriage Law.

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Law Number 23 of 2006 concerning Population Administration

Law Number 16 of 2019 concerning Marriage

Universal Declaration of Human Rights

APPENDIXES

A. Documentation



B. Research Certificate



PENGADILAN NEGERI SURABAYA KELAS I A KHUSUS
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Saya yang bertanda tangan di bawah ini:

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 Jabatan : Sekretaris Pengadilan Negeri Surabaya Kelas 1A Khusus

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 “ *The Legality of Interfaith Marriage Law Against Population Registration (Case Study :
 No.916/Pdt.P/2022/PN.SBY)*.”

Demikian surat keterangan ini dibuat untuk dipergunakan sebagaimana mestinya.

Surabaya, 2 Maret 2023
SEKRETARIS




JITU NOVE WARDOYO
 NIP. 19711125 199203 1 002

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









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C. Consultation Proof

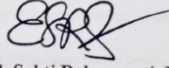

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CONSULTATION PROOF

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 Thesis Title : LEGAL VALIDITY OF INTERFAITH MARRIAGE ON
 POPULATION RECORDS (CASE STUDY: SURABAYA
 JUDGEMENT COURT DECISION
 NO.916/PDT.P/2022/PN.SBY)

No	Day/Date	Subject of Consultation	Signature
1	10 Oktober 2022	Latar belakang dan titik fokus	
2	25 Oktober 2022	Metodologi Penelitian	
3	10 November 2022	ACC Proposal dan finishing	
4	13 Januari 2023	Revisi dan diskusi pembahasan	
5	27 Januari 2023	Menambahkan satu rumusan	
6	4 Februari 2023	Bab pembahasan dan metpen	
7	28 Februari 2023	Fokus regulasi dalam skripsi	
8	2 Maret 2023	Penambahan legal standing	
9	6 Maret 2023	Cek penulisan dan bahasa	
10	20 Maret 2023	Finishing pembahasan	

Malang, 25 Mei 2023
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PENETAPAN

Nomor 916/Pdt.P/2022/PN.Sby.

DEMI KEADILAN BERDASARKAN KETUHANAN YANG MAHA ESA

Pengadilan Negeri Surabaya yang memeriksa dan mengadili perkara perdata permohonan pada peradilan tingkat pertama, telah memberikan Penetapan sebagai berikut dalam perkara Pemohon:

1. **Rizal Adikara**, Surabaya, 28 April 1986, Laki-Laki, Warga Negara Indonesia, Agama Islam, Pekerjaan Wiraswasta, beralamat di Jl. Ketintang Baru 8/6 - Surabaya;
 2. **Eka Debora Sidauruk**, Simalungun, 12 Mei 1991, Perempuan, Warga Negara Indonesia, Agama Kristen, Pekerjaan Wiraswasta, beralamat di Jl. Ketintang Baru 8/6 - Surabaya;
- Selanjutnya disebut sebagai **Para Pemohon** ;

Pengadilan Negeri tersebut;

Telah membaca surat - surat dalam berkas perkara permohonan ;
Telah meneliti surat-surat bukti yang diajukan di persidangan ;
Telah mendengar keterangan para saksi yang diajukan dipersidangan ;
Telah pula mendengar keterangan Para Pemohon sendiri;

TENTANG DUDUK PERKARA

Menimbang, bahwa Para Pemohon dalam surat permohonannya tertanggal 08 April 2022, yang terdaftar dikepaniteraan Pengadilan Negeri Surabaya dibawah register Nomor 916/Pdt.P/2022/PN.Sby, telah mengajukan permohonan yang pada pokoknya adalah sebagai berikut :

- I. LEGAL STANDING;
 1. Bahwa PARA PEMOHON adalah perseorangan yang berkedudukan di Kota Surabaya dan berkeinginan untuk mencatatkan perkawinan satu sama lain di hadapan Pegawai Dinas Kependudukan dan Catatan Sipil Kota Surabaya;
- II. KEWENANGAN PENGADILAN NEGERI DALAM MEMERIKSA PERMOHONAN A Quo ;
 2. Bahwa tempat kedudukan hukum dicatatkannya Perkawinan adalah Pegawai Dinas Kependudukan dan Catatan Sipil Kota Surabaya, sehingga menurut Pasal 21 ayat (3) Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan ("UU Perkawinan") yang menyebutkan bahwasanya :
"Para pihak yang perkawinannya ditolak berhak mengajukan permohonan

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kepada Pengadilan di dalam wilayah mana pegawai pencatat perkawinan yang mengadakan penolakan berkedudukan untuk memberikan putusan, dengan menyerahkan surat keterangan penolakan tersebut di atas.”

Maka berdasarkan Pasal 21 ayat (3) UU Perkawinan, Pengadilan Negeri Surabaya yang berhak memberikan suatu Penetapan atas Permohonan a quo ;

III. DASAR-DASAR DAN ALASAN PARA PEMOHON MENGAJUKAN PERMOHONAN a quo ;

3. Bahwa Para Pemohon telah sepakat satu sama lain untuk melaksanakan perkawinan yang rencananya dilangsungkan di hadapan Pegawai Dinas Kependudukan dan Catatan Sipil Kota Surabaya ;
4. Bahwa pada tanggal, PARA PEMOHON telah memberitahukan kepada Kantor Dinas Kependudukan dan Catatan Sipil Kota Surabaya tentang akan dilaksanakannya perkawinan tersebut tetapi oleh karena adanya perbedaan agama yaitu :
 - a. PEMOHON I beragama Islam, dan ;
 - b. PEMOHON II beragama Kristen.

Maka oleh Kantor Dinas Kependudukan dan Catatan Sipil Kota Surabaya perkawinan PARA PEMOHON tersebut ditolak dan dianjurkan untuk mendapat Penetapan Pengadilan Negeri tempat kedudukan hukum PARA PEMOHON ;

5. Bahwa merujuk pada ketentuan-ketentuan di dalam Pasal 21 UU Perkawinan juncto Pasal 35 Undang-Undang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan (“UU Adminstrasi Kependudukan”) yang mengatur sebagai berikut :

“Pasal 21 UU Perkawinan

- (1) *Jika pegawai pencatat perkawinan berpendapat bahwa terhadap perkawinan tersebut ada larangan menurut Undang-undang ini, maka ia akan menolak melangsungkan perkawinan.*
- (2) *Di dalam hal penolakan, maka permintaan salah satu pihak yang ingin melangsungkan perkawinan yang oleh pegawai pencaatat perkawinan akan diberikan suatu keterangan tertulis dari penolakan tersebut disertai dengan alasan-alasan penolakannya.*
- (3) *Para pihak yang perkawinannya ditolak berhak mengajukan permohonan kepada Pengadilan di dalam wilayah mana pegawai pencatat perkawinan yang mengadakan penolakan berkedudukan untuk memberikan putusan, dengan menyerahkan surat keterangan penolakan tersebut di atas.*



- (4) Pengadilan akan memeriksa perkaranya dengan acara singkat dan akan memberikan ketetapan, apakah ia akan menguatkan penolakan tersebut ataukah memerintahkan, agar supaya perkawinan dilangsungkan.
- (5) Ketetapan ini hilang kekuatannya, jika rintangan-rintangan yang mengakibatkan penolakan tersebut hilang dan pada pihak yang ingin kawin dapat mengulangi pemberitahuan tentang maksud mereka.

Juncto

Pasal 35 ayat (1) UU Adminstrasi Kependudukan

Pencatatan perkawinan sebagaimana dimaksud dalam Pasal 34 berlaku pula bagi:

- a. perkawinan yang ditetapkan oleh Pengadilan; dan
- b. perkawinan Warga Negara Asing yang dilakukan di Indonesia atas permintaan Warga Negara Asing yang bersangkutan.”

Merujuk pada ketentuan-ketentuan peraturan perundang-undangan di atas, perkawinan yang akan dilangsungkan antara PEMOHON I dengan PEMOHON II dapat dicatatkan setelah mendapat Penetapan dari Pengadilan Negeri Surabaya;

6. Bahwa PARA PEMOHON masing-masing tetap pada pendiriannya untuk melangsungkan perkawinan dengan tetap pada kepercayaannya masing-masing, dengan cara mengajukan Permohonan *a quo* kepada Pengadilan Negeri Surabaya;
7. Bahwa asas hukum yang berlaku di negara Indonesia menyatakan pada prinsipnya perbedaan agama bukanlah menjadi halangan untuk melangsungkan perkawinan ;
8. Bahwa berdasarkan Yurisprudensi Penetapan Nomor : 421/Pdt.P/2013/PN.Ska tertanggal 21 Agustus 2013 dan Penetapan Nomor : 3/Pdt.P/2015/PN Llg. tertanggal 27 Februari 2015 yang pada intinya menyatakan :

" Menimbang, bahwa UUD 1945 Pasal 27 menentukan bahwa seluruh Warga Negara bersamaan kedudukannya dalam hukum, tercakup di dalamnya kesamaan hak asasi untuk melangsungkan perkawinan dengan sesama Warga Negara sekalipun berlainan agama, sedangkan Pasal 29 UUD 1945 mengatur bahwa negara menjamin kemerdekaan warga negara untuk memeluk agamnya masing-masing;

Menimbang, bahwa dengan berdasarkan kepada Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia (HAM), Pasal 10 ayat (1) menyatakan bahwa setiap orang berhak membentuk suatu keluarga dan



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melanjutkan keturunan melalui perkawinan yang sah dan atas kehendak yang bebas;

Menimbang, bahwa perkawinan beda agama tidak diatur secara tegas di dalam Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan, akan tetapi keadaan tersebut adalah merupakan suatu kenyataan yang terjadi dalam masyarakat dan sudah merupakan kebutuhan sosial yang harus dicarikan jalan keluarnya menurut hukum agar tidak menimbulkan dampak negatif dalam kehidupan bermasyarakat dan beragama.”

Oleh karena dasar-dasar tersebut maka PARA PEMOHON memohonkan permohonan *a quo* kepada Pengadilan Negeri Surabaya agar dapat memberikan suatu penetapan demi terjaminnya asas-asas hukum yaitu keadilan, kepastian dan kemanfaatan.

Bahwa berdasarkan dasar-dasar serta alasan-alasan sebagaimana terurai di atas, PARA PEMOHON mohon agar Pengadilan Negeri Surabaya berkenan memeriksa dan selanjutnya menjatuhkan Penetapan sebagaimana berikut :

1. Mengabulkan permohonan PARA PEMOHON untuk seluruhnya ;
2. Memberikan izin kepada PARA PEMOHON yang berbeda agama untuk melangsungkan pernikahan berbeda agama di Kantor Dinas Kependudukan dan Catatan Sipil Kota Surabaya;
3. Memerintahkan kepada Pegawai Kantor Dinas Kependudukan dan Catatan Sipil Kota Surabaya untuk melakukan pencatatan tentang Perkawinan Beda Agama PARA PEMOHON tersebut di atas ke dalam Register Pencatatan Perkawinan ;
4. Membebaskan biaya permohonan kepada PARA PEMOHON.

Menimbang, bahwa pada hari sidang yang ditentukan, Para Pemohon hadir menghadap sendiri di persidangan dan setelah surat permohonannya dibacakan, Para Pemohon menyatakan tetap pada permohonannya ;

Menimbang, bahwa untuk menguatkan permohonannya Para Pemohon telah mengajukan bukti surat, berupa:

1. Fotocopy Kutipan Akta Kelahiran Nomor : 8305/1986 tertanggal 23 Mei 1986 An. Rizal Adikara, yang diterbitkan oleh Kantor Dinas Kependudukan dan Catatan Sipil Kota Surabaya, diberi tanda P-1 ;
2. Fotocopy Kartu Tanda Penduduk NIK. 3578222804860003 An. Rizal Adikara, diberi tanda P-2 ;
3. Fotocopy Kartu Keluarga No.3578222509120001 tanggal 05-03-2022 An.Kepala Keluarga Rizal Adikara, diberi tanda P-3 ;
4. Fotocopy Kutipan Akta Kelahiran Nomor : 1413/Dis-2/Dispencapil/96 tertanggal 3 Desember 1996 An. Eka Debora Sidauruk, yang diterbitkan oleh Kantor Dinas

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Kependudukan dan Catatan Sipil Kab. Simalungun, diberi tanda P-4 ;

5. Fotocopy Kartu Tanda Penduduk NIK. 3509215205910009 An. Eka Debora Sidauruk, diberi tanda P-5 ;
6. Fotocopy Bukti Surat Pendataan Penduduk Nonpermanen NIK. 3509215205910009 An. Eka Debora Sidauruk, diberi tanda P-6 ;
7. Fotocopy Kartu Keluarga No.3509210504130001 tanggal 10-04-2013 An.Kepala Keluarga Eka Debora Sidauruk, diberi tanda P-7 ;
8. Fotocopy Surat Keterangan Nikah No.1.433/HMM/III/2022 tertanggal 23 Maret 2022, diberi tanda P-8 ;
9. Fotocopy Piagam Pernikahan Gerejawi Nomor 373/NIK/GKN-RAEDS/III/2022 tertanggal 23 Maret 2022, diberi tanda P-9 ;

Dimana surat-surat bukti diatas telah sesuai dicocokkan dengan aslinya, dan semuanya telah bermaterai cukup sehingga sah diterima sebagai alat bukti;

Menimbang, bahwa dipersidangan Para Pemohon telah pula mengajukan 2 (dua) orang saksi yang telah memberikan keterangan dibawah sumpah, masing-masing pada pokoknya sebagai berikut :

1. Saksi Kristiana Eka Wulandari, menerangkan :

- Bahwa saksi kenal dengan Para Pemohon ;
- Bahwa Para Pemohon bertempat tinggal di Jl. Ketintang Baru 8/6 - Surabaya, sebelumnya di Siwalankerto Surabaya ;
- Bahwa saksi mengerti Para Pemohon mengajukan permohonan ijin menikah berbeda agama karena oleh Kantor Dinas Kependudukan dan Catatan Sipil Kota Surabaya perkawinan Para Pemohon tersebut ditolak dan dianjurkan untuk mendapat Penetapan Pengadilan Negeri;
- Bahwa Pemohon I beragama Islam dan Pemohon II beragama Kristen ;
- Bahwa Para Pemohon sudah menikah secara agamanya masing-masing ;
- Bahwa menikahnya bulan Maret 2022 di Surabaya ;
- Bahwa keluarga Para Pemohon hadir di pernikahannya ;

2. Saksi Jessica Sidauruk, menerangkan :

- Bahwa saksi kenal dengan Para Pemohon ;
- Bahwa Para Pemohon bertempat tinggal di Jl. Ketintang Baru 8/6 - Surabaya, sebelumnya di Siwalankerto Surabaya ;
- Bahwa saksi mengerti Para Pemohon mengajukan permohonan ijin menikah berbeda agama karena oleh Kantor Dinas Kependudukan dan Catatan Sipil Kota Surabaya perkawinan Para Pemohon tersebut ditolak dan dianjurkan untuk mendapat Penetapan Pengadilan Negeri;
- Bahwa Pemohon I beragama Islam dan Pemohon II beragama Kristen ;

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- Bahwa Para Pemohon sudah menikah secara agamanya masing-masing ;
- Bahwa menikahnya bulan Maret 2022 di Surabaya ;
- Bahwa keluarga Para Pemohon hadir di pernikahannya ;

Menimbang, bahwa terhadap keterangan para saksi diatas Para Pemohon menyatakan semua yang diterangkan adalah benar dan Para Pemohon tidak keberatan ;

Menimbang, bahwa selanjutnya Para Pemohon menyatakan sudah tidak akan mengajukan hal lain lagi dan mohon Penetapan;

Menimbang, bahwa untuk menyingkat uraian penetapan ini, maka segala sesuatu yang terjadi dipersidangan sebagaimana termuat didalam Berita Acara Persidangan dianggap telah termuat dan menjadi bagian yang tidak terpisahkan dengan penetapan ini;

TENTANG HUKUMNYA

Menimbang, bahwa maksud dan tujuan permohonan Para Pemohon sebagaimana terurai diatas;

Menimbang, bahwa isi permohonan Para Pemohon, pada pokoknya Para Pemohon berkeinginan mendapat Penetapan Pengadilan Negeri untuk mendapatkan ijin melangsungkan pernikahan berbeda agama di Kantor Dinas Kependudukan dan Catatan Sipil Kota Surabaya ;

Menimbang, bahwa untuk menguatkan dalil permohonannya, Para Pemohon mengajukan bukti surat bertanda P.1 sampai dengan P.9 dan 2 (dua) orang saksi bernama Kristiana Eka Wulandari dan Jessica Sidauruk ;

Menimbang, bahwa dengan memperhatikan bukti surat-surat dan keterangan saksi-saksi yang diajukan oleh Para Pemohon, telah nyata bahwa Para Pemohon sungguh-sungguh berkehendak untuk melangsungkan pernikahan mereka secara sah namun mereka terbentur oleh keyakinan / agama masing-masing yang berbeda yakni Pemohon I (Rizal Adikara) beragama Islam sedangkan Pemohon II (Eka Debora Sidauruk) beragama Kristen;

Menimbang, bahwa sebelum mempertimbangkan materi permohonan Para Pemohon terlebih dahulu Pengadilan Negeri mempertimbangkan formalitas pengajuan permohonan a quo;

Menimbang, bahwa dari bukti surat bertanda P.2 (berupa KTP), terbukti Pemohon I adalah penduduk bertempat tinggal di Jl. Ketintang Baru 8/6 - Surabaya. Kenyataan ini membuktikan pengajuan permohonan oleh Para Pemohon telah tepat diajukan ke Pengadilan Negeri Surabaya dalam wilayah Hukum tempat tinggal Para Pemohon, sehingga permohonan a quo formil dapat diterima;

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Menimbang, bahwa setelah Hakim mencermati permohonan Para Pemohon dihubungkan dengan bukti surat-surat dan keterangan saksi-saksi, maka dapat disimpulkan permasalahan hukum sehubungan permohonan ini adalah “Apakah Pengadilan Negeri Surabaya dapat memberikan izin kepada Para Pemohon yang berbeda agama karena masing-masing tidak berniat melepaskan keyakinan agamanya, mereka dapat melangsungkan perkawinan di hadapan pejabat pencatat perkawinan pada Kantor Dinas Kependudukan dan Catatan Sipil Kota Surabaya ;

Menimbang, bahwa mengenai perkawinan di Indonesia diatur dalam Undang-Undang Nomor 1 tahun 1974 dan Peraturan Pemerintah Nomor 9 tahun 1975, dimana dalam pasal 2 ayat (1) Undang-Undang Nomor 1 tahun 1974 jo pasal 10 ayat (2) Peraturan Pemerintah Nomor 9 tahun 1975 ditegaskan kalau suatu perkawinan sah apabila dilakukan menurut hukum Agama dan Kepercayaannya masing-masing. Ketentuan dalam pasal 2 ayat (1) Undang-Undang Nomor 1 tahun 1974 tersebut merupakan ketentuan yang berlaku bagi perkawinan antara dua orang yang memeluk agama yang sama, sehingga terhadap perkawinan di antara dua orang yang berlainan status agamanya tidaklah dapat diterapkan berdasarkan ketentuan tersebut (Putusan Mahkamah Agung Nomor 1400 K/ Pdt/ 1986 tanggal 20 Januari 1989);

Menimbang bahwa perkawinan yang terjadi di antara dua orang yang berlainan status agamanya hanya diatur dalam penjelasan pasal 35 huruf a Undang-Undang Nomor 23 Tahun 2006 Tentang administrasi Kependudukan, dimana dalam penjelasan pasal 35 huruf a ditegaskan kalau “yang dimaksud dengan perkawinan yang ditetapkan oleh Pengadilan adalah Perkawinan yang dilakukan antar umat yang berbeda agama”. Ketentuan tersebut pada dasarnya merupakan ketentuan yang memberikan kemungkinan dicatatkannya perkawinan yang terjadi diantara dua orang yang berlainan Agama setelah adanya penetapan pengadilan tentang hal tersebut;

Menimbang, bahwa dari surat-surat bukti dan keterangan saksi-saksi serta keterangan dari Para Pemohon, maka diperoleh fakta yuridis secara kronologis sebagai berikut :

- Bahwa benar Para Pemohon bertempat tinggal di Jl. Ketintang Baru 8/6 – Surabaya ;
- Bahwa benar Para Pemohon telah bersepakat untuk melangsungkan perkawinan berdasarkan rasa cinta kasih sayang, namun masing-masing bersikukuh mempertahankan keyakinan agamanya ;
- Bahwa baik dari kedua orang tua Para Pemohon telah menyetujui serta memberikan izin kepada Para Pemohon untuk melangsungkan perkawinan

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dengan cara beda agama, yang akan dilakukan dengan proses perkawinannya dihadapan Pejabat Kantor Dinas Kependudukan dan Catatan Sipil Kota Surabaya ;

Menimbang, bahwa berdasarkan fakta yuridis sebagaimana terungkap dipersidangan tersebut diatas dihubungkan dengan ketentuan tentang syarat-syarat perkawinan dalam Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan pada pasal 6 ayat (1) mengenai persetujuan kedua calon mempelai dan ketentuan pasal 7 mengenai usia perkawinan, maka Para Pemohon telah memenuhi syarat materiil untuk melangsungkan perkawinan;

Menimbang, bahwa perbedaan agama tidak merupakan larangan untuk melangsungkan perkawinan sebagaimana dimaksud dalam pasal 8 huruf (f) undang-undang perkawinan dan merujuk pada ketentuan pasal 35 huruf (a) Undang-Undang Nomor 23 Tahun 2006 Tentang administrasi kependudukan, maka terkait dengan masalah perkawinan beda agama adalah menjadi wewenang Pengadilan Negeri untuk memeriksa dan memutusnya;

Menimbang, bahwa dari fakta yuridis tersebut diatas bahwa Pemohon I memeluk agama Islam, sedangkan Pemohon II memeluk agama Kristen adalah mempunyai hak untuk mempertahankan keyakinan agamanya, yang dalam hal untuk bermaksud akan melangsungkan perkawinannya untuk membentuk rumah tangga yang dilakukan oleh calon mempelai (Para Pemohon) yang berbeda agama tersebut, sebagaimana dimaksudkan dalam pasal 29 UUD 1945 tentang kebebasan memeluk keyakinan terhadap Tuhan Yang Maha Esa;

Menimbang, bahwa selain itu berdasarkan pasal 28 B ayat (1) UUD 1945 ditegaskan kalau setiap orang berhak untuk membentuk keluarga dan melanjutkan keturunan melalui perkawinan yang sah, dimana ketentuan ini pun sejalan dengan pasal 29 UUD 1945 tentang dijaminnya oleh Negara kemerdekaan bagi setiap Warga Negara untuk memeluk Agamanya masing-masing;

Menimbang, bahwa berdasarkan keterangan para saksi dan Surat Bukti telah diperoleh fakta-fakta yuridis bahwa Para Pemohon sendiri sudah saling mencintai dan bersepakat untuk melanjutkan hubungan mereka dalam perkawinan, dimana keinginan Para Pemohon tersebut telah mendapat restu dari kedua orang tua Para Pemohon masing-masing;

Menimbang, bahwa oleh karena pada dasarnya keinginan Para Pemohon untuk melangsungkan perkawinan dengan berbeda agama tidaklah merupakan larangan berdasarkan Undang-Undang Nomor 1 tahun 1974, dan mengingat pembentukan suatu rumah tangga melalui perkawinan adalah merupakan Hak Asasi Para Pemohon sebagai Warganegara serta Hak Asasi Para Pemohon untuk tetap

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mempertahankan Agamanya masing-masing, maka ketentuan dalam pasal 2 ayat (1) Undang-Undang Nomor 1 tahun 1974 tentang sahnya suatu perkawinan apabila dilakukan menurut tata cara Agama atau kepercayaan yang dianut oleh calon pasangan suami isteri yang in casu hal ini tidak mungkin dilakukan oleh Para Pemohon yang memiliki perbedaan Agama;

Menimbang, bahwa tentang tata cara perkawinan menurut Agama dan Kepercayaan yang tidak mungkin dilakukan oleh Para Pemohon karena adanya perbedaan Agama, maka ketentuan dalam pasal 10 ayat (3) Peraturan Pemerintah Nomor 9 tahun 1975 memberikan kemungkinan dapat dilaksanakannya perkawinan tersebut, dimana dalam ketentuan pasal 10 ayat (3) Peraturan Pemerintah Nomor 9 tahun 1975 ditegaskan "dengan mengindahkan tata cara perkawinan menurut masing-masing hukum Agamanya dan Kepercayaannya itu, perkawinan dilaksanakan dihadapan Pegawai Pencatat dengan dihadiri 2 (dua) orang saksi";

Menimbang, bahwa dari fakta yuridis yang terungkap dipersidangan bahwa Para Pemohon telah bersepakat dan telah mendapat persetujuan dan ijin dari kedua orang tuanya mereka bahwa proses perkawinannya dihadapan Pejabat Kantor Dinas Kependudukan dan Catatan Sipil Kota Surabaya dan selanjutnya mereka telah sepakat untuk membentuk rumah tangga yang bahagia dan kekal berdasarkan Ke-Tuhanan Yang Maha Esa, maka Hakim Pengadilan menganggap Para Pemohon melepaskan keyakinan agamanya yang melarang adanya perkawinan beda agama ;

Menimbang, bahwa berdasarkan pertimbangan sebagaimana diuraikan tersebut diatas, maka Hakim dapat memberikan izin kepada Para Pemohon untuk melangsungkan perkawinan antara Pemohon I yang beragama Islam dengan Pemohon II yang beragama Kristen dihadapan Pejabat pada Kantor Dinas Kependudukan dan Catatan Sipil Kota Surabaya, dan oleh karena itu Permohonan Para Pemohon secara hukum beralasan dikabulkan. Selanjutnya kepada Pegawai Kantor Dinas Kependudukan dan Catatan Sipil Kota Surabaya untuk mencatat perkawinan Para Pemohon dalam Register Perkawinan setelah dipenuhi syarat-syarat perkawinan menurut peraturan perundang-undangan yang berlaku;

Menimbang, bahwa oleh karena Permohonan dari Para Pemohon dikabulkan, maka segala biaya yang timbul dalam permohonan ini wajib dibebankan kepada Para Pemohon yang jumlahnya akan disebutkan dalam amar penetapan ini;

Meningat dan memperhatikan ketentuan pasal-pasal undang-undang Nomor 1 Tahun 1974 tentang Perkawinan dan Pasal 35 huruf (a) UndangUndang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan serta ketentuan Peraturan perundang-undangan lainnya yang bersangkutan;

Halaman 9 Penetapan Nomor 916/Pdt.P/2022/PN.Sby.

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MENETAPKAN :

1. Mengabulkan Permohonan Para Pemohon;
2. Memberikan ijin kepada Para Pemohon untuk melangsungkan perkawinan beda agama dihadapan Pejabat Kantor Dinas Kependudukan dan Catatan Sipil Kotamadya Surabaya;
3. Memerintahkan kepada Pejabat Kantor Dinas Kependudukan dan Catatan Sipil Kotamadya Surabaya untuk melakukan pencatan perkawinan beda agama Para Pemohon tersebut kedalam Register Pencatan Perkawinan yang digunakan untuk itu dan segera menerbitkan Akta Perkawinan tersebut;
4. Membebankan biaya permohonan kepada Para Pemohon sejumlah Rp120.000,00 (seratus dua puluh ribu rupiah);

Demikian ditetapkan dan diucapkan di muka persidangan yang terbuka untuk umum pada hari **Selasa**, tanggal **26 April 2022** oleh **Imam Supriyadi, S.H., M.H.** Hakim Pengadilan Negeri Surabaya dengan dibantu oleh **Fitri Indriaty, S.H., M.H.** Panitera Pengganti pada Pengadilan Negeri tersebut serta dihadiri oleh Para Pemohon;

Panitera Pengganti,

Hakim,

TTD

TTD

Fitri Indriaty, S.H., M.H.

Imam Supriyadi, S.H., M.H.

Biaya - Biaya :

1. Biaya Pendaftaran	Rp. 30.000,-
2. Biaya Proses (ATK)	Rp. 60.000,-
3. Biaya PNPB Panggilan Pemohon	Rp. 10.000,-
4. Materai	Rp. 10.000,-
5. Redaksi	Rp. 10.000,- +

Jumlah **Rp. 120.000,-**

(seratus dua puluh ribu rupiah) ;

Halaman 10 Penetapan Nomor 916/Pdt.P/2022/PN.Sby.

CURRICULUM VITAE



Name : Salsabila Khairunnisa
SIN : 19210130
Place, Date of Birth : Jombang, May 25th 2001
Address : RT 3 RW 2 Desa Brodot, Kecamatan Bandar
Kedungmulyon, Kabupaten Jombang.
Phone Number : +62 812 4657 0689
Email : salsabila.khairunnisa.8f@gmail.com
Religion : Islam
Gender : Female

FORMAL EDUCATION

No.	School/Institute	Major	Period
1	TK Dharma Wanita Brodot	-	2005-2007
2	SDN Brodot I	-	2007-2013
3	SMPN 3 Peterongan RSBI	-	2013-2016
4	MAN 3 Jombang	Science	2016-2019
5	Strata 1 (S-1) UIN Malang	Islamic Family Law	2019-2023

NON-FORMAL EDUCATION

No.	School/Institute	Major	Period
1	Arama Queen Al-Azhar PP Darul 'Ulum - Jombang	-	2013-2016
2	Happy English Course - Pare Kediri	-	2018
3	Pondok Ad-Damanhuri - Malang	-	2019
4	MAPABA - Malang	-	2019
5	Sekolah Islam dan Gender - Malang	-	2020
6	Pelatihan Kader Dasar - Malang	-	2020
7	SKPP Bawaslu - Jombang	-	2020
8	Sekolah Kader Putri - Malang	-	2020
9	Sekolah Kader Kopri - Malang	-	2021

ORGANIZATIONAL EXPERIENCE

Period	Position
2020-2021	Community Organizer of PSDKP (Pengembangan Sumber Daya Kader Putri) Kopri PMII Rayon "Radikal" Al-Faruq
2020	Treasurer of Himpunan Mahasiswa Jurusan Hukum Keluarga Islam (HMJ HKI) UIN Maulana Malik Ibrahim Malang
2020	Community Organizer of Gender Bidang Kajian UKM LKP2M
2021-2022	Chairman of PMII Rayon "Radikal" Al-Faruq
2022	The Field of Gender Studies UKM LKP2M
2021-2022	Kelompok Kuliah Kerja Mahasiswa (KKM-DR) UIN Malang – Pujon – Kota Batu
2022	Internship Study on Malaysia – ICP Program
2022	Supervisor of Kongres Ulama Perempuan Indonesia

CREATION

Period	Result
2020	Contributor to the book anthology “Merawat Daya Diantara Luka.”
2021	Magazine Writer of “Kilas Balik Kopri” KOPRI PMII Rayon “Radikal” Al-Faruq
2022	Runner up of Sayembara Menulis by PB PMII with title “Transformasi Perilaku Beragama Masyarakat Urban Menjadi Senjata Baru Propaganda Politik di Era Digital