

**MARRIAGE REGISTRATION IN INTERRELIGIOUS
MARRIAGES IN INDONESIA**

**(Analysis of Decision Number 1139/Pdt.P/2018/PN.Jkt.Sel and
Decision Number 916/Pdt.P/2022/PN.Sby)**

THESIS

By:

Alifya Rahma Hayuningtyas

19210125



ISLAMIC FAMILY LAW STUDY PROGRAM

SHARIA FACULTY

STATE ISLAMIC UNIVERSITY

MAULANA MALIK IBRAHIM MALANG

2023

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2023

STATEMENT OF THE AUTHENTICITY OF THESIS

Bismillahirrahmannirrahim

On behalf of Allah SWT, with full awareness and full responsibility for scientific development, the author declares that the thesis with the title:

MARRIAGE REGISTRATION IN INTERRELIGIOUS MARRIAGES IN INDONESIA

**(Analysis of Decision Number 1139/Pdt.P/2018/PN.Jkt.Sel and Decision
Number 916/Pdt.P/2022/PN.Sby)**

Truly a scientific work that is compiled by itself, not a duplicate or transfer of someone else's data. If it is found at a later date that it is proven that this thesis has similarities in content, logic and data, in whole or in part, then the thesis and bachelor's degree obtained are therefore automatically null and void.

Malang, 12 Mei 2023
Writer,



Alifya Rahma Hayuningtyas

CONSENT PAGE

After reading and correcting your thesis Alifya Rahma Hayuningtyas NIM 19210125 Islamic Family Law Study Program, Faculty of Sharia, State Islamic University of Maulana Malik Ibrahim Malang with the title:

MARRIAGE REGISTRATION IN INTERRELIGIOUS MARRIAGES IN INDONESIA

(Analysis of Decision Number 1139/Pdt.P/2018/PN.Jkt.Sel and Decision
Number 916/Pdt.P/2022/PN.Sby)

then the supervisor declares that the thesis has fulfilled the scientific requirements to be submitted and tested at the Board of Examiners.

Malang, 12 Mei 2023

Know,

Head of The Study Program
Islamic Family Law

Supervisor



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



Dr. Sudirman, M.A
NIP. 197708222005011003

ENDORSEMENT PAGE

Alifya Rahma Hayuningtyas' thesis examiner, NIM 19210125, Student of the Islamic Family Law Study Program, Faculty of Sharia, State Islamic University of Maulana Malik Ibrahim Malang with the title:

MARRIAGE REGISTRATION IN INTERRELIGIOUS MARRIAGES IN INDONESIA

(Analysis of Decision Number 1139/Pdt.P/2018/PN.Jkt.Sel and Decision
Number 916/Pdt.P/2022/PN.Sby)

Has been declared Passed with the value of: A

Examiner Board,

1. Iffaty Nasyi'ah, M.H.
NIP. 197606082009012007
2. Dr. Sudirman, MA.
NIP. 197708222005011003
3. Jamilah, MA.
NIP. 197901242009012007


Chief Examiner


Examiner Secretary


Main Examiner

Malang, 12 Mei 2023


Dean
Dr. Sudirman, MA
NIP. 197708222005011003

MOTTO

“لَكُمْ دِينُكُمْ وَلِيَ دِينِ”

“For you your religion and to me mine”

FOREWORD

Alhamdulillah, praise be to God for the abundance of grace and guidance from Allah SWT, the thesis entitled "Recording of Marriage in Interfaith Marriage in Indonesia (Analysis of Decision Number 1139/Pdt.P/2018/PN.Jkt.Sel and Decision Number 916/Pdt.P/ 2022/PN.Sby)" can be completed as a requirement for good graduation. Blessings and greetings are always bestowed upon the Prophet Muhammad, who has guided mankind to the path of truth through the revelations given to him and is the best creature who has always been used as a role model. May we be classified as believers as well as people who are loved by him and get his intercession later in the afterlife.

The theme of interfaith marriage became a reflection for the writer, especially after the application was granted at the South Jakarta District Court and the Surabaya District Court, it reaped so much controversy. Likewise based on the provisions of the applicable laws and regulations, Law Number 1 of 1974 concerning Marriage which in the author's view is so contextual in reading the situation and conditions of the rise of interfaith marriages in Indonesia. These decisions and provisions have driven the author's enthusiasm to make them the analytical knife in this study. During the years of lectures up to the stage of completing this thesis, with all humility, the author would like to thank:

1. Prof. Dr. H. M Zainuddin, MA, as Rector of the State Islamic University of Maulana Malik Ibrahim Malang.
2. Dr. Sudirman, MA, as the Dean of the Faculty of Sharia.

3. Erik Sabti Rahmawati, MA, M.Ag as Head of the Islamic Family Law Study Program
4. Dr. Sudirman, MA, as the guardian of the lecturer who has provided motivation and lots of directions and knowledge while the writer was studying at university.
5. Dr. Sudirman, MA, as the thesis supervisor who has provided a lot of input, knowledge, and motivation to the author up to the point of completing this research.
6. All lecturers of the Faculty of Sharia who have provided a lot of insight into the science of law and sharia which is so broad to the writer and motivated the writer to become a critical and thirsty academic for knowledge, as well as all the staff and employees who have helped a lot.
7. Friends of Islamic Family Law students Batch 2019, especially ICP class friends who happily fought together in studying and studying at the Islamic Family Law Study Program and fighting together for 4 years to get a bachelor's degree.
8. Abc friends, Fina and Faras, Admin lambe turah, Yaris, Cici, and Risma, Makan Teros, Elmira and Via, and Altavi, Vivi and Shinta who patiently listened to the author's complaints and provided support during the completion of this research.
9. To my mentor friends who have struggled together in completing the thesis research for almost a year.

10. To Choi Wooshik and his seven favorite bachelors, Kim Namjoon, Kim Seokjin, Min Yoongi, Jung Hoseok, Park Jimin, Kim Taehyung, and Jeon Jungkook, who always cheer me up when writers lose heart, and are the best support system and motivation in completing research.
11. All Gus and Ning at the Student Research and Development Study Institute (LKP2M) UKM who have provided the opportunity to study together at Kedai Sinau and many Malang coffee shops as well as a place for the author's dedication as LKP2M administrators, especially administrators during the Productive Cabinet period, especially BPH and also Fatim. The author does not forget to thank the seniors of LKP2M as teachers of writing, studies and research.
12. Finally, the beloved, special, and special people in the writer's life, the writer's parents, Mr. Basuki and Mrs. Muji, who always provide moral and material support, motivation, and many prayers for the smoothness of the writer in completing this research. Not forgetting the entire writer's family, Sister Tiffany, as well as the writer's extended family who have contributed in providing support and encouragement to the writer to complete the research as soon as possible, I hope that blessings and grace will always be poured out.

The author with full awareness and humility, agrees that this thesis is far from perfection. Therefore, the authors always expect criticism and critical suggestions from all walks of life. Jaza kumullahu khair.

Malang, 12 Mei 2023
Writer,

A handwritten signature in black ink, consisting of a stylized 'A' followed by a cursive 'R' and a trailing flourish.

Alifya Rahma Hayuningtyas
NIM. 19210125

TRANSLITERACY GUIDELINES

A. General

Transliteration is the transfer of Arabic script into Indonesian (Latin) writing, not the translation of Arabic into Indonesian. Included in this category are the Arabic names of Arab nations, while the Arabic names of non-Arabic nations are written as the spelling of the national language, or as written in the book that is the reference. Writing book titles in footnotes and bibliography, still uses this transliteration provision.

There are many choices and provisions for transliteration that can be used in writing scientific papers, both those with international, national standards and provisions specifically used by certain publishers. The transliteration used by the Sharia Faculty of the State Islamic University (UIN) Maulana Malik Ibrahim Malang uses EYD plus, which is a transliteration based on the Joint Decree (SKB) of the Minister of Religion and the Minister of Education and Culture of the Republic of Indonesia, January 22, 1998, No. 158/1987 and 0543.b/U/1987, as stated in the Arabic Transliteration Guide (A Guide Arabic Transliteration), INIS Fellow 1992.

B. Consonant

| Arab | Latin | Arab | Latin |
|------|----------------|------|-------|
| ا | Not symbolized | ط | T{ |
| ب | B | ظ | Z{ |
| ت | Q | ع | ' |
| ث | S | غ | G |
| ج | J | ف | F |
| ح | H{ | ق | Q |
| خ | Kh | ك | K |
| د | D | ل | L |
| ذ | Z | م | M |

| Arab | Latin | Arab | Latin |
|------|-------|------|-------|
| ر | R | ن | N |
| ز | Z | و | W |
| س | S | ه | H |
| ش | sy | ء/أ | ' |
| ص | S{ | ى | Y |
| ض | D{ | | |

Hamzah (ء) which is often symbolized by an alif, if it is located at the beginning of a word then in transliteration it follows the vowel, it is not symbolized, but if it is located in the middle or at the end of a word, then it is symbolized by a comma above ('), reversed by a comma (') to replace the symbol “ع.”

C. Vowels, Length and Diphthongs

Every Arabic writing in the Latin written form of the vowel *fathah* is written with "a", *kasrah* with "i", *dlommah* with "u", while each long reading is written in the following way:

Long (a) vowel = â eg قال becomes *qâla*

Long (i) vowel = î for example قيل becomes *qîla*

Long (u) vowel = û for example دون becomes *dûna*

Specifically for reading the *nisbat*, it cannot be replaced with “i”, but it should still be written with “iy” so that it can describe the *nisbat* at the end. Likewise for the sound of diphthongs, wawudanya' after *fathah* is written with “aw” and “ay”. Consider the following examples:

Diphthong (aw) = او for example قول becomes *qawla*

Diphthong (ay) = اي for example خير becomes *khayrun*

In this thesis the vowels "a" (*Fathah*), "i" (*Kasroh*), and "u" (*Dlommah*) are not used nor are they used with length and diphthongs.

D. Ta' marbûthah (ة)

Ta' marbûthah transliterated with "t" if it is in the middle of a sentence, but if *ta' marbûthah* is at the end of the sentence, then it is transliterated using "h" for example المدرسة الرسالة becomes *al-risalat li al-mudarrisah*, or when it is in the middle of a sentence consists of the *mudlaf* and *mudlaf ilayh* arrangements, then it is transliterated using t which is connected with the next sentence, for example في لارحمة becomes *fi rahmatillâh*. In this thesis Ta' Marbuthah is found in the middle of the sentence وَلَأَمَّةٌ مُؤْمِنَةٌ located in the introduction to sura al-Baqoroh verse 221.

E. Article and Lafdh al-Jalâlah

The article in the form of "al" (ال) is written in lower case, unless it is located at the beginning of the sentence, while "al" in the word *jalâlah* which is in the middle of the sentence it leans on (*idhafah*) is omitted. Consider the following examples:

1. Al-Imâm al-Bukhâriy said...
2. Al-Bukhâriy in his muqaddimah book explains ...
3. *Masyâ' Allâhkânawamâ lam yasya' lam yakun.*
4. *Billâh 'azzawajalla.*

This thesis does not use the article and Lafdh al-Jalâlah.

F. Indonesianized Arabic names and words

In principle, every word of Arabic origin must be written using the transliteration system. If the word is the Arabic name of an Indonesian or Indonesianized Arabic, there is no need to write it using the transliteration system. Consider the following examples:

“...Abdurrahman Wahid, the fourth former President of the Republic of Indonesia, and Amin Rais, former Chairman of the MPR at the same time, have made an agreement to eradicate nepotism, collusion and corruption from the face of Indonesia's earth, one way is by intensifying prayers in various government offices. , However ...”

Pay attention to the writing of the names "Abdurrahman Wahid," "Amin Rais" and the word "salat" written using the Indonesian language writing procedure which is adapted to the writing of his name. Even though these words come from Arabic, they are in the form of Indonesian names and people and are Indonesianized, therefore they are not written in the way "Abd al-RahmanWahîd," "AmînRaîs," and not written with "shalât".

In this thesis, Indonesianized Arabic names and words are not used.

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ABSTRAK

Alifya Rahma Hayuningtyas, 19210125, *Pencatatan Perkawinan Pada Pernikahan Beda Agama di Indonesia (Analisis Putusan Nomor 1138/Pdt.P/2018/PN.Jkt.Sel dan Putusan Nomor 916/Pdt.P/2022/PN.Sby)*, Skripsi, Program Studi Hukum Keluarga Islam, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing Dr. Sudirman, M.A.

Kata Kunci: Pencatatan Pernikahan, Pernikahan Beda Agama, Putusan Pengadilan Negeri

Pernikahan beda agama marak terjadi di Indonesia. Kasus pernikahan ini sangat menarik diteliti karena perkawinan yang dilakukan oleh pasangan suami istri dengan beda keyakinan mendapatkan izin untuk tetap melangsungkan pernikahannya. Faktor terjadinya perkawinan berbeda agama dapat dilangsungkan dan dicatatkan di Kantor Dinas Kependudukan dan Catatan Sipil karena menurut Pasal 28 B ayat (1) UUD 1945 semua orang berhak untuk membentuk keluarga dan melanjutkan keturunan melalui perkawinan yang sah. Tujuan dari penelitian ini untuk mengkaji kekosongan hukum atas adanya pernikahan beda agama yang terjadi di Indonesia. Sesuai dengan peraturan yang telah ditetapkan, perkawinan beda agama di Indonesia tidak dapat dilaksanakan, namun beberapa pengadilan setempat mengizinkan adanya pernikahan beda agama dan mencatatkan perkawinan tersebut pada pegawai Kantor Dinas Kependudukan dan Catatan Sipil.

Metode penelitian ini menggunakan jenis yuridis normatif dengan pendekatan kasus. Adapun data yang diambil dari putusan yang telah ditetapkan oleh Pengadilan Negeri Jakarta Selatan dan Pengadilan Negeri Surabaya. Kemudian pengumpulan data menggunakan analisis putusan dengan dasar hukum yang berkaitan. Dasar hukum yang digunakan untuk menganalisis penelitian ini menggunakan Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.

Hasil dari penelitian ini menunjukkan bahwa 1) perkawinan beda agama dapat dilangsungkan dan dicatatkan oleh Kantor Dinas Kependudukan dan Catatan Sipil dengan penetapan yang dikeluarkan oleh Pengadilan Negeri setempat. Alasan hakim dalam menetapkan perkawinan tersebut mempertimbangkan adanya Pasal 28 B ayat (1) tersebut didukung dengan adanya Pasal 29 UUD 1945 yang menjelaskan bahwa dijaminnya oleh negara kemerdekaan setiap warga dalam memeluk agamanya masing-masing. 2) Selain itu pernikahan yang sah ialah pernikahan yang dicatatkan dihadapan pegawai pencatatan, hal tersebut dijelaskan oleh Pasal 2 ayat (2) Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan.

ABSTRACT

Alifya Rahma Hayuningtyas, 19210125, *Marriage Registration in Interfaith Marriages in Indonesia (Analysis of Decision Number 1138/Pdt.P/2018/PN.Jkt.Sel and Decision Number 916/Pdt.P/2022/PN.Sby)*, Thesis, Program Islamic Family Law Studies, Faculty of Sharia, State Islamic University of Maulana Malik Ibrahim Malang. Advisor Dr. Sudirman, M.A

Keywords: Registration of Marriages, Interfaith Marriages, Court Decisions Country

Interfaith marriages are rife in Indonesia. The case of this marriage is very interesting to study because marriages carried out by married couples with different beliefs get permission to continue their marriage. The factor in the occurrence of marriages of different religions can take place and be registered at the Office of the Population and Civil Registry Service because according to Article 28 B paragraph (1) of the 1945 Constitution everyone has the right to form a family and continue offspring through a legal marriage. The purpose of this study is to examine the legal vacuum of interfaith marriages that occur in Indonesia. In accordance with the regulations that have been stipulated, interfaith marriages in Indonesia cannot be carried out, but several local courts allow interfaith marriages and register these marriages at the Office of the Population and Civil Registry Service. The purpose of this study is to examine the legal vacuum of interfaith marriages that occur in Indonesia. In accordance with the regulations that have been stipulated, interfaith marriages in Indonesia cannot be carried out, but several local courts allow interfaith marriages and register these marriages at the Office of the Population and Civil Registry Service.

This research method uses a normative juridical type with a case approach. The data is taken from the decisions that have been determined by the South Jakarta District Court and the Surabaya District Court. Then data collection uses decision analysis with related legal basis. The legal basis used to analyze this research uses Law Number 1 of 1974 concerning Marriage.

The results of this study indicate that 1) interfaith marriages can take place and be registered by the Population and Civil Registry Office with a stipulation issued by the local District Court. The reason for the judge in determining the marriage to consider the existence of Article 28 B paragraph (1) is supported by the existence of Article 29 of the 1945 Constitution which explains that the state guarantees the independence of every citizen in embracing their respective religions. 2) In addition, a valid marriage is a marriage that is registered before a registration officer, this is explained by Article 2 paragraph (2) of Law Number 1 of 1974 concerning Marriage.

مستخلص البحث

ألفيا رحمة هيونيجتياس، 19210125، تسجيل الزواج في اختلاف الدين في إندونيسيا (تحليل الفتوى رقم *1138/Pdt.P/2018/PN.Jkt.Sel* والفتوى رقم *916/Pdt.P/2022/PN.Sby*)، بحث العلمي، قسم أحوال الشخصية، كلية الشريعة، جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج. المشرف سوديرمان الماجستر.

الكلمة الأساسية: تسجيل الزواج، زواج المختلف في الدين، حكم المحكمة أهلية

مؤخراً، اختلاف الدين في الزواج شائع في اندونيسيا. هذا الحال الفتان للبحث لأن الزواج الذي يختلفان في الدين جائز لأتم زواجه. حدث اختلاف الدين في الزواج هو جواز ويستطيع أن المسجل في السجل للمدني بسبب في الفصل ب آية (1) قانون أساسي 1945 قالاً كل الشخص يحق له لكون الأسرة واستمر ذريته. غرض الباحثة في هذا البحث هو لبحث في فراغ القانون على موجود زواج المختلف في الدين في اندونيسيا. طبعاً، بحسب قانون المثبت في إندونيسيا أن اختلاف الدين في الزواج لا يجوز. ولكن في بضع المحكمة المحلية يجوز على زواج المختلف في الدين ويسجله في مكتب المصلحة السكانية والسجل للمدني.

أما في هذا البحث تستخدم الباحثة منهج البحث بالنوع قانوني معياري ومدخل القضية. وبياناته تأخذ من حكم المحكمة المثبت على محكمة أهلية بجاكرتا الجنوبية ومحكمة أهلية سورابايا. ثم استخدمت الباحثة في جمع البيانات تحليل القضي مع أساس حكمية المرتبط. وتحليل في هذا البحث باستخدام مبدأ القانون بحسب القانون رقم 1 في عام 1974.

نتائج في هذا البحث هو كان (1) اختلاف الدين في الزواج يستطيع أن مسجل على مكتب السجل للمدني بإذن المحكمة الأهلية المحلية. وأما حجة القاضي في يثبت أن يجوز على اختلاف الدين في الزواج لأن راجع إلى الفصل ب آية (1) قانون أساسي 1945 ثم يؤيد بالفصل 29 قانون أساسي 1945 الذي بين أن بلد الاستقلال يضمن كل الرعية في يعتنق الدينه الافراي. (2) وأيضاً، الزواج الصخ هو الزواج الذي مسجل أمام موظف التسجيل، ذلك يُشرح في الفصل 2 آية (2) القانون رقم 1 عام 1974 عن الزواج.

CHAPTER I

INTRODUCTION

A. Background

Marriage should be carried out by a husband and wife who have the same beliefs. Because marriages are carried out without the same belief, failure often occurs in a relationship. It is stated that in the Indonesian state interfaith marriage is not allowed. So that marriage is carried out not only temporarily subject to one belief only.

The prohibition of interfaith marriage is contained in Surah al-Baqarah verse 221 which reads:

وَلَا تَنْكِحُوا الْمُشْرِكَةَ حَتَّىٰ يُؤْمِنَ ۚ وَلَآئِمَةٌ مُّؤْمِنَةٌ خَيْرٌ مِّنْ مُّشْرِكَةٍ وَلَوْ
أَعْبَبَتْكُم ۚ وَلَا تَنْكِحُوا الْمُشْرِكِينَ حَتَّىٰ يُؤْمِنُوا ۚ وَلَعَبْدٌ مُّؤْمِنٌ خَيْرٌ مِّنْ مُّشْرِكٍ وَلَوْ
أَعْبَبَكُمْ ۚ أُولَٰئِكَ يَدْعُونَ إِلَى النَّارِ ۚ وَاللَّهُ يَدْعُو إِلَى الْجَنَّةِ وَالْمَغْفِرَةِ بِإِذْنِهِ وَيُبَيِّنُ
آيَاتِهِ لِلنَّاسِ لَعَلَّهُمْ يَتَذَكَّرُونَ

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

Furthermore, Article 44 of the Compilation of Islamic Law confirms that it reads: "A Muslim woman is prohibited from marrying a man who is not Muslim."

There is disagreement among scholars about whether interfaith marriages are permissible or not. Consideration of maslahat and mafsada is the basis for

determining the legal status of interfaith marriages. The potential for conflict and tension within the family, as well as the many stories of failures of interfaith marriage actors in maintaining domestic harmony are also the basis for legal determination. From here too, regulations were born which related to interfaith marriage rules in Indonesia.¹

Many cases of interfaith marriages have occurred in Indonesia. Based on data compiled by the Indonesian Conference On Religion and Peace (ICRP), from 2005 to early March 2022 there have been 1,425 couples of different religions getting married in Indonesia.² However, there are also some couples who choose to carry out interfaith marriages by having the marriage held in another country. This can happen because interfaith marriages in other countries are still permitted, such as in England, Singapore, the Netherlands, Canada, and even Tunisia, so that these marriages are still carried out legally even though they are not recognized by the Indonesian state. One of the cases of interfaith marriage that occurred in Indonesia was found in a married couple in Wonosari District. Husband is Muslim and wife is Christian. This husband and wife couple had married at the Wonosari Christian Church which was married by a priest, which later the marriage of this husband and

¹ Abdul Jalil, "Pernikahan Beda Agama Dalam Perspektif Hukum Islam Dan Hukum Positif Di Indonesia", *Andragogi Jurnal Diklat Teknis*, Vol. VI No.2(2018), p. 46-69

² Published by PA Probolinggo on 15 July 2022, <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/nadzirotus-sintya-falady-sh-cpns-analis-perkara-peradilan-calon-hakim-2021-pengdinding-agama-probolinggo> accessed on February 26 at 21.10

wife was recorded by the Civil Registry Office with a quote from the Marriage Certificate No. 18/CS.P.5/1999.³

In addition to the cases described earlier, there are cases that are almost similar, namely that there was a husband and wife having an interfaith marriage in a country outside Indonesia who then returned to Indonesia to print (issue) the marriage certificate book for their marriage, but the judge did not decide the case on the couple's marriage. Then when this couple asked for a marriage certificate book from the Civil Registry Office, the Civil Registry Office published the marriage certificate book, and the interfaith marriage by this couple was registered with a valid marriage.

In addition, there are also interfaith marriages that have been legalized and implemented in Indonesia. The judges of the South Jakarta District Court and the Surabaya District Court decided directly on interfaith marriages that occurred in Indonesia in Decision number 1139/Pdt.P/2018/PN.Jkt.Sel and Decision Number 916/Pdt.P/2022/ PN. Sby. The decision has allowed both couples to be able to get married by sticking to their respective religions, Christianity and Islam.

The Decision Number 1139/Pdt.P/2018/PN.Jkt.Sel allows marriages with different beliefs to be recorded at the Office of the Population and Civil Registry Office of the City of Jakarta. Marriages that take place follow and comply with the procedures for carrying out Protestant Christian marriages, in accordance with the

³ Syarifah Sofwah Yahya, Ramdan Fawzi, Muhamad Yunus, "Tinjauan Fatwa MUI Nomor 4 Tahun 2005 dan Fikih Munakahat terhadap Praktik Perkawinan Beda Agama di Kecamatan Wonosari Kabupaten Gunung Kidul", Vol. 1 No. 1(2021), p. 43-46

religion believed by the wife. However, even so, the formal requirements are not fulfilled, such as on the identity card (KTP) the husband still adheres to the religion he believes in, namely Islam.

Decision Number 916/Pdt.P/2022/PN.Sby also allows marriages with different beliefs held by husband and wife. And with the same case as in the previous decision, the marriage carried out by this husband and wife according to the formal requirements was also not fulfilled, but the marriage may still be carried out and registered at the Surabaya City Population and Civil Registry Service Office. The difference with the previous decision is that marriages are carried out according to each other's beliefs, carried out according to Christian religious procedures according to the beliefs held by the wife and with marriage procedures according to the husband's religion, namely Islam.

Law Number 1 of 1974 Article 2 paragraph (1) which states about "Legitimate marriage, if it is carried out according to the laws of each religion and belief". With this statement it can be seen clearly that interfaith marriages in Indonesia are not justified. Not only that, in the MUI fatwa Number 4/MUNAS VII/MUI/8/2005 a statement has also been stipulated that 1) Interfaith marriages are unlawful or invalid, and marriages between Muslim men and women of the people of the book are unlawful or invalid. However, in Article 10 of Law Number 39 of 1999 concerning Human Rights which supports the stipulated mandate,⁴

⁴ Article 10 of Law Number 39 of 1999 concerning Human Rights

With the regulations that have been set, interfaith marriages that occur in Indonesia should never be implemented legally. Laws up to the MUI Fatwa have been passed, but cases of interfaith marriages that have occurred in Indonesia are still more than 1,000 interfaith marriages. In fact, many interfaith marriages are carried out with a judge's decision stating that the contained law does not clearly explain interfaith marriage. As is the case in Article 2 paragraph (1) of Law Number 1 of 1974 Concerning Marriage which confirms that marriage is valid if it is registered. After the marriage is registered, this marriage is legal according to law. It is in this matter that is emphasized by the law that legal smuggling cases of interfaith marriage often occur.⁵ Because in accordance with the laws and regulations that marriage is valid and implemented if the couple follows the rules of marriage for each of them, so if viewed according to religion, interfaith marriages have never happened.

As is known, marriage is a religious order, with the aim of forming a harmonious and good family. The influence of religious teachings in Indonesia, especially Islam and Christianity, is very visible in a marriage. Marriage in Islam or Christianity does not give broad authority for family, alliance or relative intervention as in customary law. This means that Islam and Christianity provide a great opportunity to get married without the interference of other parties. In fact, a marriage can be called valid if it has fulfilled the applicable provisions based on its beliefs/beliefs, because the pillars of a marriage must carry out consent granted,

⁵ Albert Tanjung, "Legalitas Penyelundupan Hukum Pada Pernikahan Beda Agama Berdasarkan Hukum Positif Dan *Receptio A Contrario*", p. 49-64

blessings or rituals as a manifestation that they have become husband and wife according to their respective religions. However, Indonesia is a constitutional state, and everything must be based on written law, so to get state recognition that a man and a woman are husband and wife, they must first register at the Office of Religious Affairs (KUA) or what is called *Isbath*. marriage, and this provision is contained in Article 2 paragraph (2) in the marriage law. This article indicates that a marriage is also considered valid by the state if the marriage is registered. and this provision is contained in Article 2 paragraph (2) in the marriage law. This article indicates that a marriage is also considered valid by the state if the marriage is registered. and this provision is contained in Article 2 paragraph (2) in the marriage law. This article indicates that a marriage is also considered valid by the state if the marriage is registered.⁶

According to Lawrence M. Friedman, a law must be based on several components of the legal system, which include the Components of Legal Structure, Substantial Components of Law, and Components of Community Legal Culture. In these three components must be tied to one another. The attachment of these three must be connected like a machine, so that what and how the results will be produced by the machine. Apart from that, how does the machine decide the end result, as well as who is involved in the machine.⁷The quest for responsive law has been the continuing concern of modern legal theory, to make law more responsive to social

⁶ Iswandi, Misbahuddin, Ilham, “Isbat Nikah Muallaf Dalam Konteks Pluralisme (Analisis Putusan Nomor 0062/Pdt.P/2016/PN.Jr)”, *Al-Qadha: Jurnal Hukum Islam dan Perundang-Undangan*, Vol. 7 No. 1(2020), p. 29-42

⁷ Abdul Halim Barkatullah, “Budaya Hukum Masyarakat Dalam Perspektif Sistem Hukum”, p.11

needs and to account more fully and more intelligently about the social facts on which law is based and intended for application and enforcement.⁸

Thus it is clear that the state law that is currently enforced in Indonesia is actually closer to the type of autonomous law, where in the type of autonomous law the system of government is run based on the law (rule of law) and the interpretation of law enforcement is carried out according to what is stated in the regulations. the law. However, there are times when Indonesian law is also close to a repressive type of law where the role of people in political power can influence the law according to what they want.⁹The tendency of negotiating the legal system from various social institutions around it has had an impact on decreasing the social legitimacy of the law itself. This raises the need for a responsive legal order

Through a closed logic system, conclusions can be obtained immediately. The conclusion must be something that can be predicted, so that everyone must adhere to it. With this handle, society becomes orderly. Therefore, certainty will lead society to order.¹⁰In addition, legal certainty will guarantee a person to carry out behavior in accordance with applicable legal provisions, otherwise without legal certainty, a person does not have standard provisions in carrying out behavior.

Thus, the issue of interfaith marriage which has been determined and allowed by the court is deemed very necessary to be reviewed. So that research on marriage

⁸ Sulaiman, "Hukum Responsif: Hukum Sebagai Institusi Sosial Melayani Kebutuhan Sosial Dalam Masa Transisi", p.4

⁹ Henry Arianto, "Hukum Responsif Dan Penegakan Hukum Di Indonesia", *Lex Jurnalica*, Volume 7 Number 2, (2010), p.115-123

¹⁰ Sidharta Arief, "Meuwissen Tentang Pengembangan Hukum, Ilmu Hukum, Teori Hukum dan Filsafat Hukum", *PT Refika Aditama, Bandung*, (2007), p. 8.

registration for interfaith marriages was carried out to find out more clearly the reasons for the establishment of interfaith marriages. In this study, researchers are supported by an analysis of decisions to facilitate and better explain the reasons for judges deciding and allowing interfaith marriages to be registered at the Office of the Population and Civil Registry Service.

B. Formulation of the problem

1. What are the reasons for the judge in deciding Decision Number 1139/Pdt.P/2018/PN.Jkt.Sel and Decision Number 916/Pdt.P/2022/PN.Sby Regarding Interfaith Marriage?
2. What is the registration process of interfaith marriages in accordance with the Decisions of the South Jakarta District Court and the Surabaya District Court?

C. Research purposes

1. To explain the reasons for judges in deciding interfaith marriage cases in decision Number 1139/Pdt.P/2018/PN.Jkt.Sel and decision Number 916/Pdt.P/2022/PN.Sby Concerning Interfaith Marriage
2. To explain the registration process of interfaith marriages in accordance with the Decisions of the South Jakarta District Court and the Surabaya District Court.

D. Benefits of research

Broadly speaking, the benefits of this research can be drawn into two outlines, namely:

1. Theoretical Benefits

Theoretically, this research is expected to be able to help the development of science and apart from that, this research is also expected to be of benefit as a lesson for other researchers.

2. Practical Benefits

- a. Provide understanding and explanation to readers regarding the registration of marriages that occur in interfaith marriages in Indonesia according to court decisions.
- b. Can provide an explanation to the institution regarding the registration of marriages carried out by interfaith marriage couples in accordance with existing law.

E. Operational definition

To make it easier to understand the discussion that will be carried out in this study, it is necessary to explain keywords related to "Recording of Marriages in Cases of Interfaith Marriage that Occur in Indonesia (Analysis of Decision Number 1139/Pdt.P/2018/PN.Jkt.Sel and Decision Number 916/Pdt.P.2022/PN.Sby)" as follows:

1. Marriage Registration

Marriage registration is a marriage application to the Religious Court so that a marriage that has been implemented can be registered as a legal marriage according to religion and has permanent legal status of the marriage. Marriage registration is the validity of a marriage held by a

husband and wife before the Religious Courts and the Office of Religious Affairs (KUA).

2. Interfaith Marriage

Interfaith marriage is a marriage that is carried out by sticking to the beliefs of each husband and wife. Interfaith marriage is a husband and wife who are married while still believing in their respective religions. Usually interfaith marriages can still be carried out even with different beliefs, with the couple submitting to one of the religions or beliefs of their partner.

F. Research Methods

The method is a reference point used to facilitate researchers in conducting a study. By using this research method, researchers can easily carry out the steps to be carried out in a study. This research method also helps researchers in the data collection process, which can then be more efficient so that the data can be arranged neatly.

1. Types of research

This type of research in research uses normative juridical research or it can also be called a type of literature research. In this study the researcher used this type of research because in the process the researcher used the document study method, namely sources of law with legislation, a decision, legal theory or opinions of figures. In addition, the researcher used this type of research because the research was

conducted by analyzing Decision Number 1139/Pdt.P/2018/PN.Jkt.Sel and Decision Number 916/Pdt.P/2022/PN.Sby Regarding Interfaith Marriage which was legalized by the Court the country.

In this study, the normative research method was used because the researcher conducted a study of the decisions of judges who had been stipulated regarding interfaith marriages that occurred in Indonesia, which were then analyzed by referring to existing legal sources.

2. Research Approach

The research approach is carried out in order to obtain information on what has been studied, in this research approach the researcher uses a case approach or approach by examining cases related to issues that have occurred and have been decided by the court and have had permanent legal remedies. Cases related to issues to be examined by researchers are related to the existence of marriage registration in interfaith marriages, therefore researchers use a case approach to examine this issue.

In addition, the researcher also uses an analytical approach, in which with this approach the researcher obtains new meanings contained in the rule of law and examines the new terms contained in the decisions that have been stipulated.

3. Research data

Research data or so-called data sources in normative research. In this study using secondary research data, because the data taken is in written

form so it requires literature analysis and needs to be studied. Secondary research data consists of primary legal materials and secondary legal materials.

a. Primary Legal Materials

Primary legal materials are legal materials that are binding and consist of basic norms or basic rules, namely the Preamble to the 1945 Constitution of the Republic of Indonesia, Decrees of the People's Consultative Assembly (Tap. MPR RI), statutory regulations, legal materials that are not codified and jurisprudence. With regard to basic norms or basic rules, researchers focus their research on District Court Decisions related to the Law. In addition, researchers will also use decisions related to the research object, namely Decision Number 1139/Pdt.P/2018/PN.Jkt.Sel and Decision Number 916/Pdt.P/2022/PN.Sby.

b. Secondary Legal Materials

Secondary legal materials are materials that provide an explanation of primary laws, such as draft laws, research results, works from legal circles, and opinions of legal scholars. In this study, researchers used secondary materials in the form of book references, journal references, theses, previous studies to support the research object, and also Law no. 23 of 2006 concerning population administration, as well as Law no. 30 of 2014 concerning Government Administration. In addition to referring to journals,

books, laws, and previous research as a support for the researcher's analysis of the Decision that has been determined by the Court.

4. Data Processing Methods

The data that has been collected completely is then processed and analyzed to answer the research problem. In concluding facts and also reality in answering a problem. The data collection method was carried out by means of a literature study in order to obtain primary legal materials and secondary legal materials in the form of laws and regulations, books, articles and journals related to the object of research.

5. Data analysis

This analysis can be formulated as a systematic and consistent process of decomposing certain symptoms. Analysis of legal materials is how to utilize the sources of legal materials that have been collected to be used in solving the problems in this research. The basis for the use of normative analysis is because the legal materials in this study lead to theoretical studies in the form of legal principles, legal concepts, and legal principles. Legal materials that have been successfully collected are analyzed namely description, interpretation, evaluation and systematization. The description technique is describing (abstracting) a phenomenon as it is or the position of the legal and non-legal propositions encountered.

G. Previous Research

One of the objectives of conducting this research is to find a fact or something that is still ambiguous. In order for this research to be completed properly, it definitely requires references related to this research. In this section the author will describe previous studies that have been carried out previously with the same theme. This previous research is needed by the writer as a comparison with previous research on the same topic or theme, and can make it easier for the writer to determine the differences in the research that the writer has with previous research. Several previous studies include the following:

1. Interfaith Marriage in View of Law Number 1 of 1974 Concerning Marriage. This journal written by Mardalena Hanifah discusses the unwanted existence of interfaith marriages to take place in Indonesia because the emergence of interfaith marriages is caused by a person's lack of strength in upholding the beliefs taught by their religion. In addition, the author also does not want interfaith marriages to be caused by weak faith so that they temporarily submit to only one belief. However, in this study the authors only refer to and examine the law on marriage, while the researcher refers to other laws and also analyzes of decisions issued by courts.
2. Marriage Registration and Requirements for Legal Marriage in the Constitutional Order. The journal written by Marwin discussing marriage registration is not the basis for determining whether a marriage

is valid or not. Determining the validity of a marriage is the domain of rules outlined by each religion and belief system held by the prospective bride and groom. Marriage is valid if it is carried out according to the conditions set by religion, and will have more legal certainty if the marriage is recorded according to applicable regulations. So in fact, the registration of marriages is carried out on the basis of the provisions of Article 43 paragraph (1) of the UUP which states: "Children born out of wedlock only have civil relations with their mothers and their mothers' families.

3. Marriage Sirri and the Urgency of Marriage Registration. The journal written by Shofiyah discusses syar'i as well as Law Number 1 of 1974 concerning Marriage, that whether a marriage is legal or not is determined by religious teachings by fulfilling the conditions and pillars that become stipulations. However, the registration of marriages becomes a necessity and becomes a very important thing as legalization of marriage according to state law by looking at the value of the benefits, so that no parties are harmed from a marriage.
4. Analysis of Decision Number 959/Pdt.P/2020/PN.Bdg. About Interfaith Marriage. The journal written by Rizki, Berlian Ananda, Dandi Bangun discusses the author analyzing a District Court decision that legalizes interfaith marriages. However, in his research analyzing a Court Decision, the author does not mention the law or the legal basis for a

valid marriage is a marriage that is carried out subject to one of the beliefs between the husband and wife.

5. Analysis of Decision No. 04/Pdt.P/2012/PN.Mgl Concerning Inter-Religious Marriage Perspective of Maqashid al-Syari'ah. This thesis was written by Elok Rofiqoh discussing research on the analysis of decisions regarding the legalization of interfaith marriages in Indonesia. In this study the authors refer to the analysis of decisions based on Maqashid al-Syari'ah which also uses the Law as a benchmark.

Table 1 Previous Research

| No. | Author Identity | Title | Equality | Difference |
|-----|--|---|---|--|
| 1. | Mardalena Hanifah, Journal, Sumatera Law Review, Vol. 2 No. 2(2019) | Interfaith Marriage in View of Law Number 1 of 1974 Concerning Marriage | <ul style="list-style-type: none"> - Researchers do not want interfaith marriages to take place in Indonesia because the emergence of interfaith marriages is caused by a person's lack of strength in upholding the beliefs taught by his religion. - The author also does not want interfaith marriages to be caused by weak faith so that they temporarily submit to only one belief | <ul style="list-style-type: none"> - The author only refers and examines the law on marriage, while the researcher refers to other laws and also analysis of decisions issued by courts |

| No. | Author Identity | Title | Equality | Difference |
|-----|---|--|--|--|
| 2. | Marwin, Journal, Principles, Vol. 6 No. 2(2014) | Marriage Registration and Requirements for Legal Marriage in the Constitutional Order | <p>- Research in the journal discusses the registration of marriages to obtain validation of their marriages</p> | <p>- Marriage registration is carried out to obtain legal status for their children, because this is regulated in Article 28 B paragraph (10 and paragraph (2), as well as in Article 43 paragraph (1) of the UUP it is explained "a child born out of wedlock only has blood relations with his mother and his mother's family", so in order to have a clear legal status for his child, the applicant requests to register his marriage.</p> <p>- The registration of marriages that have been examined in the journal discusses the birth of children out of wedlock so that they ask to register their marriages in order to obtain a clear legal status</p> |

| No. | Author Identity | Title | Equality | Difference |
|-----|---|---|---|--|
| | | | | for the child. While research in this thesis discusses the registration of marriages on marriages carried out with different beliefs. |
| 3. | Shofiyah, Journal, Medina: Journal of Islamic Studies, Vol. 1 No. 2(2014) | Marriage Sirri and the Urgency of Marriage Registration | - Research in the journal discusses the provisions of marriage which have been regulated in Law Number 1 of 1974, that marriage can be called valid if it is carried out based on the provisions of its religious teachings and fulfills the requirements and marriage rules. | - Research on the thesis written by the researcher discusses the registration of marriages carried out by the Office of the Population and Civil Registry Office at the request of a husband and wife to enter into an interfaith marriage which is then registered by a Civil Registry employee, as stipulated in Article 35 letter (a) Law Number 23 of 2006 concerning Population Administration. |

| No. | Author Identity | Title | Equality | Difference |
|-----|--|---|--|---|
| 4. | Rizki, Berlian Ananda, Dandi Bangun, Journal, Unes Law Review, Vol. 4 No. 2 (2022) | Analysis of Decision Number 959/Pdt.P/2020/PN.Bdg. About Interfaith Marriage | - The author analyzes a District Court decision which legalizes the existence of interfaith marriages. | - The author does not mention the law or the legal basis for a valid marriage is a marriage that is carried out by submitting to one of the beliefs between the husband and wife. |
| 5. | Elok Rofiqoh, Syarif Hidayatullah State Islamic University Jakarta, Thesis, (2020) | Analysis of Decision No. 04/Pdt.P/2012/PN.Mgl Concerning Inter-Religious Marriage Perspective of Maqashid al-Syari'ah | - Research on decision analysis regarding the legalization of interfaith marriages in Indonesia. | - The author refers to the analysis of decisions based on Maqashid al-Syari'ah |

From the previous research, it can be concluded that the registration of marriages carried out in Indonesia has not been fully implemented. In addition, the registration of marriages occurs because there are marriages that are carried out in sirri and need justice so that these marriages need to be registered with the Religious Courts and also the Office of Religious Affairs (KUA). Not only that, nowadays interfaith marriages are very common in Indonesia. The marriage is also carried out with adherence to

the beliefs that have been professed by each without or by submitting to one of the beliefs, and this is still permitted by the District Court and the marriage is registered by the Office of the Population and Civil Registry Service.

H. Structure of Discussion

Systematics in the discussion of this study includes 4 discussions. The discussion is in CHAPTER I Introduction, CHAPTER II Literature Review, CHAPTER III Discussion, and CHAPTER IV or the last CHAPTER closing. The systematic discussion, if explained in more detail, is as follows:

Chapter I Introduction

Chapter I Introduction discusses several related matters, namely: Problem Background, Problem Formulation, Research Objectives, Research Benefits, Operational Definitions, Research Methods, Discussion Systematics. This chapter mentions several issues about why different marriages can be permitted and carried out in Indonesia. In addition, chapter I discusses research methods to facilitate researchers in conducting their research. In his research, the researcher uses a normative research type with a case approach, because the analysis of decisions regarding interfaith marriage in Decision Number 1139/Pdt.P/2018/PN.Jkt.Sel and Decision Number 916/Pdt.P/2022/PN.Sby can easy to do with this type of research and approach.

CHAPTER II Literature Review

The Literature Review chapter discusses several sub-sections including previous research and also the theoretical framework. In this chapter, some of the core discussion points will be explained in the next chapter later, in the discussion chapter. In chapter III, it will be explained briefly what are the meanings and what are the conditions for marriage and the requirements regarding the legalization and registration of marriages. Apart from that, the theoretical framework also explains what it means to register marriages and interfaith marriages. In addition, previous studies that discussed almost the same matter will also be touched on in this chapter III, so that an update can be taken from the research that will be explained by the researcher.

CHAPTER III Discussion

Chapter III This discussion discusses what are the problems that led to this research being conducted. Problems regarding the registration of marriages in interfaith marriages can occur and are allowed by the district court, in particular, it is felt that they need to be explained and explained in more detail, so it is in this chapter that these things will be explained and explained to make it easier for the reader to understand this.

CHAPTER IV Closing

Chapter IV contains conclusions and suggestions. It explains the conclusions from the analysis regarding Decision Number 1139/Pdt.P/2018/PN.Jkt.Sel and Decision Number 916/Pdt.P/2022/PN.Sby Concerning Interfaith Marriage. In addition, it also contains related

suggestions that can be suggestions for the issues discussed and also suggestions for subsequent research that discusses the same research object.

CHAPTER II

LITERATURE REVIEW

A. Marriage Conditions

Terms are the basis that must be met to determine whether it is valid or not. As with the conditions in marriage must also be met because it will lead to the obligations and rights of husband and wife to establish household life in the future. This requirement must be obeyed by the bride and groom and the bride's family. If there are conditions that do not exist then the contract will be broken. There are three conditions for marriage, namely: the existence of a witness, not a mahrom and the existence of a marriage contract. The marriage contract is the main thing that requires witnesses who are legally valid according to the Shari'a. Witnesses in marriage aim to remember so as not to forget in the future.¹¹

Imam asy-Shafi'i stated that there are five pillars of marriage, namely the prospective husband, the prospective wife, the guardian, two witnesses and sighat. According to Imam Malik, the pillars of marriage are the guardian, the future husband's dowry, the prospective wife's dowry. Dowry/dowry is a woman's right. Because by accepting the dowry, it means that she likes and is willing to be led by the man who just married her. Expensive is something that Islam hates, because it will complicate the marriage relationship between human beings.

¹¹ Aisyah Ayu Musyafah, "Perkawinan Dalam Perspektif Filosofis Hukum Islam", *Jurnal Crepido*, Vol. 02 No. 02(2020): p. 111-122

In the case of giving a dowry, it is basically just a commendable deed (istishab), even though it is a condition for a valid marriage. As a witness is a condition for the validity of a marriage according to Imam ash-syafi'i. As-Sayyid Sabiq in this case is of the opinion that Ahmad Atabik and Khoridatul Mudhiiah the marriage contract is a consent qabul that fulfills the following conditions:¹²

1. The party making the contract has the skills, namely intelligence, maturity, and independence.
2. Each party has full authority to enter into a contract.
3. The qabul may not violate the consent, except if the wali benefits the party giving the consent.
4. Both parties to the contract should be in one majlis and understand each other's words.

In Indonesia, Islamic jurists agree that the marriage contract only takes place after the pillars and conditions of marriage are fulfilled, namely:

1. The bride and groom are both mature and wise (akil balig).
2. There must be a guardian for the bride and groom.
3. There must be a dowry (dowry) from the groom who is given after officially becoming husband and wife to his wife.
4. Must be attended by at least 2 (two) witnesses who are just and independent Muslim men

¹² Hari Widiyanto, "Konsep Pernikahan Dalam Islam (Studi Fenomenologis Penundaan Pernikahan di Masa Pandemi)", *JurnalIslam Nusantara*, Vol. 04 No. 01(2020), p. 103-110

5. There must be a consent qabul ceremony, consent is an offer from the prospective wife or her guardian or representative and qabul acceptance by the prospective husband by stating the amount of dowry (dowry) given.
6. As a sign that the marriage contract (marriage) has officially taken place, a walimah (wedding party) should be held.
7. As authentic proof of the occurrence of marriage, in accordance with the analogy of Ali-Imran verse 282, I'lan an-nikah (marriage registration) must be held, to the Marriage Registrar, in accordance with Law no. 22 of 1946 in conjunction with Law No. 32 of 1954 in conjunction with Law No. 1 of 1974 (see also Article 7 KHI Presidential Instruction No. 1 of 1991).

The conditions for the necessity of marriage mean conditions that give rise to the continuity and continuity of marriage and there is no choice for one of them to avoid it. If one of these conditions is defective, the contract is broken. The Fuqaha' requires a marriage contract with several conditions.

In Islamic Law a marriage can be carried out if it fulfills the Pillars and Conditions of marriage. What is meant by the pillars of marriage is the essence of the marriage itself, so without one of the pillars, the marriage is impossible to carry out. While what is meant by conditions is something that must exist in marriage but does not include the essence of the marriage itself. If one of the conditions is not met then the result is an invalid marriage.

In Chapter I Article 2 paragraph (1) of the Marriage Law it is emphasized that: "Marriage is legal, if it is carried out according to the laws of each religion and belief". In the explanation of Article 2 paragraph (1) it is stated that: "no marriage is outside the law of each religion and belief". Everyone from the Indonesian nation, including Muslims who wish to enter into a marriage, must comply with the marriage provisions of their religion. So for Muslims there is no possibility to get married by violating the laws of their own religion.

Article 2 paragraph (1) firmly defends the interests of people who are religious, so that they can enter into marriages according to the laws of their respective religions and beliefs. Furthermore, the Marriage Law stipulates that for a marriage to be valid, apart from having to follow religious provisions, the parties who will carry out the marriage must fulfill the conditions stated in the Marriage Law and its explanation.¹³

B. Marriage Registration

Controversy regarding the understanding of the provisions of Law Number 1 of 1974 Article 2 paragraph (2) regarding the registration of marriages as one of the legal marriages will continue, therefore many people do not see the need for their marriages to be registered because registration is not a requirement for a legal marriage. In the elucidation of Article 2 paragraph (2) it states "Recording of each marriage is the same as recording

¹³ Rizky Perdana Kiay Demak, "Rukun dan Syarat Perkawinan Menurut Hukum Islam di Indonesia", *Lex Privatum*, Vol. VI No. 6(2018): p. 122-129

important events in a person's life, for example births and deaths". Registration of births, registration of deaths, as well as registration of marriages is only seen as an important event, not a legal event. Weddings are also important events but not legal events.¹⁴

Article 5 paragraph (1) KHI also stipulates that in order to ensure orderliness of marriage for the Islamic community. The registration of marriages is carried out by designated employees as contained in Article 1 of Law Number 22 of 1946 Concerning the Registration of Marriages, Divorces and Referrals to Law 32 of 1954. Every marriage must be carried out in the presence of a religious leader and then registered to the marriage registration officer. This is stated in Article 6 paragraph (1) KHI "Every marriage must take place before and under the supervision of a Marriage Registration Officer." Marriages that are not carried out in accordance with established regulations are considered to have no legal force, because the registration of marriages has also been regulated in Government Regulation Number 9 of 1975 which is an implementing regulation of the Marriage Law.¹⁵

Based on some of the regulations previously explained, it is possible that the rise of unrecorded marriages is due to the understanding and presumption that registration is not a legal event so that marriages are

¹⁴ Edi Gunawan, Budi Rahmat Hakim, "Pelaksanaan Itsbat Nikah Pasca Berlakunya UU No. 1 Tahun 1974 Tentang Perkawinan di Pengadilan Agama", *Syariah: Jurnal Hukum dan Pemikiran*, Vol 18 No. 2(2018), p. 258-283

¹⁵ Prof. Dr. Jamaluddin, S.H., M.Hum dan Nanda Amalia, S.H., M.Hum, *Buku Ajar Hukum Perkawinan*, (Unimal Press: Kampus Bukit Indah, 2016): p. 36-39

sufficiently carried out according to religious provisions, they do not take into account the legal consequences of not registering the marriage in the future. When their marital status intersects with other civil rights, many of them resort to filing cases of itsbat marriage at the Religious Courts.

If we look at the implementing regulations of Law Number 1 of 1974 Concerning Marriage, namely Government Regulation Number 9 of 1975 in Article 2, it states that:

1. Registration of marriages for those who enter into marriages according to the Islamic religion, is carried out by marriage registrars, as referred to in Law Number 32 of 1946 concerning Registration of Marriages, Divorces and Reconciliation, namely the local Religious Affairs Office (KUA area where the marriage is held).
2. Registration of marriages for those who enter into marriages according to their religion and beliefs other than Islam, shall be carried out by employees of the marriage registrar at the Civil Registry Office, as referred to in the laws and regulations concerning marriage registration.

With the regulations mentioned above, marriage registration should be carried out by 2 government agencies, namely the Office of Religious Affairs for those who are Muslim and the Civil Registry Office for those who are of a non-Muslim religion.

Marriage registration is regulated in Article 5 KHI, with the aim of:

1. In order to guarantee the orderliness of marriage for the Islamic community, every marriage must be recorded.
2. The registration of the marriage referred to in paragraph (1) is carried out by the Marriage Registrar as stipulated in Law Number 22 of 1946 in conjunction with Law Number 32 of 1954.

Therefore, the term "must be recorded" in Article 5 Paragraph (1) KHI also only aims to ensure orderliness of marriage for the Islamic community alone. Based on this, it is appropriate for Indonesian Muslims to realize that the registration of a marriage is a very important aspect because it is a direct religious teaching as an order from Allah SWT, and has been championed by Indonesian Muslims as positive law so that it has binding power and compels to be obeyed and run by all Muslims.¹⁶

Marriage registration is very important because it has juridical implications in various aspects as a result of the implementation of a good marriage regarding the status of husband and wife, status of children born, status of assets, and other civil aspects. Therefore, the registration of marriage is not a requirement for the validity of a marriage. However, this is done so that neither party feels disadvantaged because their marriage is

¹⁶ Prof. Dr. Jamaluddin, S.H., M.Hum dan Nanda Amalia, S.H., M.Hum, *Buku Ajar Hukum Perkawinan*, (Unimal Press: Kampus Bukit Indah, 2016): p. 36-39

not registered. By registering the marriage, the marriage will get legal certainty, from the regulations contained in Law Number 1 of 1974.

The consequence of a marriage being registered with a child is that it will create a legal relationship or give rise to rights and obligations between parents and children in accordance with the applicable laws and regulations. This provision regarding the registration of marriages is an administrative requirement in order to live a good life as a nation, because it cannot be denied that at present all policies are being tightened so that no party feels disadvantaged. Through the registration of marriages followed by the issuance of a marriage certificate, it can prove that a person is indeed bound in a marriage bond, so that the parties can claim their rights and be required to fulfill their obligations. Thus this recording is to prove a person's identity that he is a husband and wife,¹⁷

Regarding the requirements for registering a marriage, it is not explained clearly in classical or contemporary fiqh books. However, the conditions for registration of this marriage can be analogous to the conditions for marriage. This is because the registration of marriage is basically the validation or determination of a marriage that has been carried out in accordance with the provisions contained in Islamic law, that the marriage has been carried out legally, that is, in accordance with the terms and pillars of marriage but has not been registered with the authorized

¹⁷ Imam Faishol, "Pencatatan Perkawinan Dalam Hukum Kekeluargaan Di Indonesia", *Jurnal Ulumul Syar'i*, Vol. 8 No. 2(2019): p. 1-25

official, namely the Registrar. Marriage (PNN). So to get a determination, you must first file a case for isbath marriage to the Religious Court.

The decision regarding whether or not a marriage that took place prior to the enactment of the Marriage Law is regulated in Article 64 of the Marriage Act "For marriages and everything related to marriages that took place before this Act came into effect which were carried out according to the regulations are valid. Article 7 of the Compilation of Islamic Law (KHI) states that:

1. Marriage can only be proven by a marriage certificate made by a Marriage Registration Officer.
2. In the event that a marriage cannot be proven by a marriage certificate, a marriage registration stipulation can be submitted to the Religious Court.
3. The determination of marriage registration that can be submitted to the Religious Courts is limited to matters relating to:
 - a. There is a marriage in the framework of divorce settlement;
 - b. Loss of marriage certificate;
 - c. There is doubt about whether or not one of the conditions of marriage is valid;
 - d. The existence of marriages that occurred before the enactment of Law no. 1 year 1974; And

- e. Marriages carried out by those who do not have marital obstacles according to Law no. 1 year 1974.¹⁸

C. Interfaith Marriage

Based on Islamic teachings, the description of a peaceful husband and wife life will be realized if the husband and wife have the same religious beliefs, because both of them adhere to one religion, namely Islam. But on the other hand, if the husband and wife have different religions, various difficulties will arise in the family environment, for example in carrying out worship, educating children, regulating eating and drinking manners, fostering religious traditions, and many other things.¹⁹ Prior to the existence of the Marriage Law, the state of marriage law in Indonesia varied. Each population group applies different marriage laws to other population groups. This issue raises the issue of inter-group marriage law, namely regarding which marriage law will apply to marriages between two people from different groups. In order to solve this problem, the Dutch East Indies government issued a King Decree dated 29 December 1896 No. (Stb. 1898 No. 158) which is a regulation on mixed marriages (Regeling op de Gemengde Huwelijken).²⁰

¹⁸ Edo Septario, "Pengesahan Perkawinan Untuk Perkawinan yang Tidak Dicatatkan (Studi Penetapan Nomor XXX/Pdt.P/2013/PA.Ktbm)", Thesis, Faculty of Law University of Jember (2016), p. 17-18

¹⁹ Ahmad Ziat, "Analisis Usul Fikih Terhadap Fatwa Majelis Ulama Indonesia (MUI) Nomor: 4/MUNAS VII/MUI/8/2005 Dan Pemikiran M. Quraish Shihab Tentang Perkawinan Beda Agama", Sharia Faculty, State Islamic University Maulana Malik Ibrahim, Malang (2011)

²⁰ Sri Wahyuni, "Kontroversi Perkawinan Beda Agama di Indonesia", *Jurnal Hukum Islam (JHI)*, Vol. 8, No. 1 (2010): p. 64-78

The law of marriage between a believer and an infidel is the same as the law of a Muslim's marriage to a polytheist, which is haram. So the wisdom in making marriage relations forbidden is the same as the wisdom in prohibiting a Muslim from marrying a polytheist, namely because there is a fear that there will be a process of apostasy against Muslims and their children, or at least there will be a shallowing of faith, the goal of marriage will not be achieved and it will cause family disharmony and it will even lead to divorce. ^{.21}

A valid marriage is if the ancestors of the women of the unbelievers of the people of the book have never embraced the religion of the people of the book after the copying, it is the same whether they have known about the situation beforehand or doubted it, given their firmness with that religion. Thus it is legal to marry non-Israeli women, if their ancestors are known to have embraced that religion before the marriage is invalid based on a firmer opinion in the event that their adherence to that religion is in doubt.

Interfaith marriages are regulated in Surat Al-Baqoroh: 221 which explains the prohibition against marrying polytheists until they believe. In addition, in Surah Al-Mumtahanah verse 10 there is a prohibition against returning Muslim women who migrated from Mecca to Medina to their husbands in Makkah and continuing household relations with infidel women. Although strictly speaking in Islam there is a prohibition on

²¹ Durotun Nafisah, "Perkawinan Beda Agama Dalam Perspektif Historis Normatif dan Filosofis", *An-Nidzam*, Vol. 6 No. 1(2019), p. 37-52

interfaith marriage in theory, in theory there is a theory that raises the opportunity for non-class marriages to occur, namely between Muslims and women who are people of the book, the permissibility of marriage with people of the book is contained in Surat al-Maidah verse 5 which explains that there is legalization of marriage with women of the people of the book for Muslims.²²

According to Article 1 of Law no. 1 of 1974, marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on the Godhead of the Almighty. The word "outward and inner bond" in this sense means that marriage is not enough just to have an external bond, or only to have an inner bond, but both must be present in the marriage. The birth bond can be interpreted that marriage is a bond that can be seen, meaning: there is a legal relationship between a man and a woman to live together, as husband and wife. This bond can also be referred to as a "formal bond", namely a formal relationship that binds himself, others and society.²³

Given the religious function in marriage, the existence of marriage cannot be separated from religious aspects, especially when Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning marriage also emphasizes the importance of religious aspects in the legal requirements of marriage as stipulated in the Article 2 paragraph (1). The

²² Ahmadi Hasanuddin Dardiri, Marzha Tweedo, Muhammad Irham Roihan, "Pernikahan Agama Ditinjau Dari Perspektif Islam dan HAM", *Khazanah*, Vol. 6 No. 1(2013): p. 99-117

²³ Aulil Amri, "Perkawinan Beda Agama Menurut Hukum Positif dan Hukum Islam", *Media Syari'ah*, Vol. 22 No. 1(2020): p. 48-64

article states that a marriage is valid if it is in accordance with the laws of each religion, both on the part of the husband or wife who will carry out the marriage. Thus, religious law also has an important role in determining the validity of marriage, in addition to statutory regulations as Indonesian positive law.²⁴

Interfaith marriages in KHI are specifically regulated in Article 40 letter (c) which states that it is prohibited to enter into a marriage between a man and a woman due to certain circumstances; among others, because of a woman who is not Muslim. Article 44 states that a Muslim woman is prohibited from marrying a man who is not Muslim. Based on these two articles, it can be said that according to KHI, a non-Muslim woman, regardless of the religion she adheres to, cannot be married to a man who is Muslim, and a Muslim woman cannot be married to a non-Muslim man, either from the category of people of the book or not a scribe.²⁵

²⁴ Sindy Cantonia dan Ilyas Abdul Majid, "Tinjauan Yuridis Terhadap Perkawinan Beda Agama Di Indonesia Dalam Perspektif Undang-Undang Perkawinan Dan Hak Asasi Manusia", *Rewang Rencang: Jurnal Hukum Lex Generalis*, Vol. 2 No. 6(2021): p. 510-527

²⁵ Aulil Amri, "Perkawinan Beda Agama Menurut Hukum Positif dan Hukum Islam", *Media Syari'ah*, Vol. 22 No. 1(2020)

CHAPTER III

ANALYSIS OF DECISION NUMBER 1139/Pdt.P/2018/PN.Jkt.Sel AND DECISION NUMBER 916/Pdt.P/2022/PN.Sby

A. Description of the Case in the Judgment

1. Decision Number 1139/Pdt.P/2018/PN.Jkt.Sel

In this study, researchers conducted a study by analyzing the decisions that had been determined by the South Jakarta District Court and the Surabaya District Court. The cases that have been determined in the two decisions are cases of interfaith marriages carried out by a husband and wife with different religions, namely Islam and Christianity.

Decision Number 1139/Pdt.P/2018/PN.Jkt.Sel the judge granted the husband and wife's request to register their case at the Civil Registry Office. In this decision the judge has considered that regarding marriage in Indonesia is regulated in Law Number 1 of 1974 and Government Regulation Number 9 of 1975, where in Article 2 paragraph (1) of Law Number 1 of 1974 in conjunction with Article 10 paragraph (2) Government Regulation Number 9 of 1975 has explained that a valid marriage can be carried out based on the laws of each religion and belief.

The provisions contained in these regulations are provisions that apply to two people who adhere to the same religion or belief. That way, husband and wife who have different religions or beliefs cannot be determined based on these provisions. Marriages that occur between two people of different religious status are only regulated in the elucidation

of Article 35 letter a of Law Number 23 of 2006 concerning Population Administration. The provisions in Article 35 letter a of Law Number 23 of 2006 explain that "what is meant by marriages determined by the Court are marriages carried out between people of different religions". The judge considers his decision based on the decision by stating that basically what gives the possibility of registering a marriage that occurs between two people or a husband and wife with different beliefs after a court decision regarding this matter. So with these considerations the judge granted the husband and wife's request to the Civil Registry Office to register the marriage.

The decision 1139/Pdt.P/2018/PN.Jkt.Sel states that the husband and wife insist on maintaining their respective religious beliefs and have agreed to have the marriage process based on Protestant Christianity or on the wife's religion.

In addition to the matters previously mentioned, the judge in deciding the case also took into account Article 28 B paragraph (1) of the 1945 Constitution. Based on Article 28 B paragraph (1) of the 1945 Constitution it is emphasized that "everyone has the right to form a family and continue offspring through legal marriage", where this provision is in line with Article 29 of the 1945 Constitution concerning the guarantee by the State of independence for every citizen to embrace their respective religions. Based on these provisions the judge decided

that he could not prohibit the beliefs held by the husband and wife, so the judge gave his permission.

Basically the desire of the husband and wife to enter into a marriage of different religions is not a prohibition based on Law Number 1 of 1974. The judge stated that the formation of a household through marriage is a basic right of the Petitioners as citizens and a basic right of the Petitioners to maintain their religion. each. So with this in mind the provisions in Article 2 paragraph (1) of Law Number 1 of 1974 concerning the validity of a marriage if it is carried out according to the religious or belief procedures adhered to by the prospective husband and wife which in this case this cannot be done by the applicants who have different beliefs. by him, because previously the petitioners had stated in their petition that they agreed to carry out their marriage based on Protestant Christianity or the religion professed by the wife, legally the petition was granted. The next one is for the South Jakarta City Population and Civil Registry Service Office employees to record the marriages of the applicants in the marriage register after fulfilling the conditions for marriage according to the applicable laws and regulations.

2. Decision Number 916/Pdt.P/2022/PN.Sby

Furthermore, the judge's considerations in deciding cases with the same case, namely interfaith marriage in Decision Number 916/Pdt.P/2022/PN.Sby. The petition case that occurred in Surabaya

was not much different from what had occurred in South Jakarta previously.

In Decision Number 916/Pdt.P/2022/PN the applicants wished to obtain a decision from the District Court to obtain permission to hold interfaith marriages at the Surabaya City Population and Civil Registry Office. The judge considered marriage in Indonesia regulated in Law Number 1 of 1974 and Government Regulation Number 9 of 1975, where in Article 2 paragraph (1) of Law Number 1 of 1974 in conjunction with Article 10 paragraph (2) of Government Regulation Number 9 In 1975 it was emphasized that a marriage is valid if it is carried out according to the laws of each religion and belief.

The provisions of Article 2 paragraph (1) of the 1974 Law are provisions that apply to marriages between two people who adhere to the same religion, so that marriages between two people of different religions are not determined based on these provisions. This is in line with the judge's considerations in the previous Decision Number 1139/Pdt.P/2022/PN.Jkt.Sel. The judge decided to grant the request to register her marriage at the Surabaya City Population and Civil Registry Office.

In addition to this, the judge's consideration in deciding the case application can be granted considering that regarding the procedure for marriage according to religion and belief that it is not possible for the applicants to carry out because of religious differences, then the

provisions in Article 10 paragraph (3) of Government Regulation Number 9 Year 1975 affirmed "by heeding the procedures for marriage according to each respective religious law and belief, the marriage is carried out before the Registry Officer in the presence of 2 (two) witnesses".

B. Reasons for Judges in Deciding Cases Regarding Interfaith Marriage

1. Decision Number 1139/Pdt.P/2018/PN.Jkt.Sel

The reason for the judge in deciding a case is included in the judicial power regulated in Law number 48 of 2009 concerning Judicial Power.²⁶ The judicial power referred to includes in granting rights and obligations in society and how to exercise rights and maintain obligations.²⁷

The marriage law states that marriage can be carried out based on each other's beliefs and beliefs.²⁸ In Law Number 1 of 1974 concerning marriage does not regulate marriages with different beliefs or beliefs. Article 6 to Article 12 of law no. 1 of 1974 has explained the conditions for carrying out a marriage and does not mention that different beliefs can be given permission for a valid marriage to be carried out.

The judge granted interfaith marriages with various considerations.

The judge's reason for granting the marriage was to prevent adultery and

²⁶ Law Number 48 of 2009 concerning Judicial Powers

²⁷ Pepy Nofriandi, Development of Civil Law Through Jurisprudence, <https://www.mahkamahagung.go.id/id/artikel/4206/pemkembangan-Hukum-perdata-melalui-yurisprudensi> accessed on 10 February 2023 at 20.34

²⁸ Law Number 1 of 1974 concerning Marriage

prevent children from being born out of wedlock due to adultery committed by the couple because they were not given permission to marry with different beliefs. In granting this matter the judge set aside the provisions of Article 2 paragraph (1) of the marriage law.²⁹

Interfaith marriage actors usually do several ways to get married. The couple usually marries two different religions (still in their respective beliefs), for example a Muslim wife and a Christian husband. However, in this kind of implementation, it is not known which religious marriage is considered valid. As for interfaith marriage couples who perform marriages by submitting to one religion. In this case, it is actually prohibited by religion, because it is included in making fun of religion. Apart from these two methods, interfaith marriage actors usually carry out their marriages in countries that allow these marriages to be carried out. In this case, it is actually not permissible because it is included in legal smuggling.

With the elaboration of the implementation or methods used by interfaith marriage actors, it is clear that interfaith marriages should not take place. However, based on the principle of "Ius Curia Novit" in which the judge must accept all cases that enter the court even though there is no legal basis.³⁰ Because on the principle of "Ius Curia Novit" the judge is considered to know all forms of law so that the court may

²⁹ Law Article 2 Paragraph 1 of 1974 Concerning Marriage

³⁰ Yuristyan Pambudi Wicaksana, "Implementasi Asas Ius Curia Novit Dalam Penafsiran Hukum Putusan Hakim Tentang Keabsahan Penetapan Tersangka", *Lex Renaissance*, No. 1 Vol. 3(2018): p. 86-108

not refuse to examine and adjudicate a case. The existence of this principle is also the case regarding applications for registration of marriages carried out by couples of interfaith marriages that must be accepted by the judge. However, the judge has the right to reject and not grant the case.

In Decision Number 1139/Pdt.P/2018/PN.Jkt.Sel, the judge granted the case by giving several considerations. One of the judge's considerations in deciding the case refers to the provisions of Article 35 letter a of Law Number 23 of 2006 concerning Population Administration. It has been emphasized in Article 35 letter a that "what is meant by a marriage determined by the Court is a marriage between people of different religions". So based on this decision, the judge legally granted the husband and wife's request to the Population and Civil Registry Office to register their second marriage.

However, based on the provisions of Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage it has also been emphasized that "Marriage is legal, if it is carried out according to the laws of each religion and belief".

2. Decision Number 916/Pdt.P/2022/PN.Sby

The reason for the judges in granting the petition of the applicants to give the decision of the District Court refers to the provisions of Article 29 of the 1945 Constitution concerning freedom to embrace belief in the One and Only God. In addition to these provisions, based

on Article 28 B paragraph (1) of the 1945 Constitution it is emphasized that "every person has the right to form a family and continue offspring through a legal marriage".

Law Number 1 of 1974 concerning marriage has stated that a valid marriage is a marriage that is carried out according to each other's beliefs, this is contained in Article 2 paragraph (1). It is not clearly stated that there is a prohibition against marrying people with different beliefs. Likewise, an explanation regarding a valid marriage must be based on the same belief. However, the provisions contained in Article 2 paragraph (1) state that a valid marriage is a marriage with the same beliefs, nor is it temporarily subject to one of them or remains in their respective beliefs.

In addition to this, the judge in deciding the petition filed by the husband and wife refers to the stipulation contained in Article 29 of the 1975 Constitution, which in this regulation does not limit adherence to religion and beliefs that have been adhered to. The judge also considered his decision in accordance with Law Number 1 Year 1974 which explains that marriages carried out with different beliefs are not prohibited or permissible.

Given the religious function in marriage, the existence of marriage cannot be separated from its religious aspects, especially when Law Number 16 of 2019 which is an amendment to Law Number 1 of 1974 concerning marriage also emphasizes the importance of religious

aspects in the legal requirements of marriage as stipulated in the Article 2 paragraph (1). This article explains that marriage is valid if it is in accordance with the laws of each religion, both from the man and the woman who will marry. Thus, religious law also has an important role in determining marriage, in addition to legislation as Indonesian positive law.³¹

Table 2 Similarities of the Judge's Reasons

| NO. | ELEMENT | CASE I | CASE II |
|-----|-----------------------|---|--|
| 1. | Petitum | In the decision 1139/Pdt.P/2018/PN.Jkt.Sel stated that the petitum submitted by the applicant was requesting permission to enter into a marriage with a different belief, and requesting a stipulation for officers from the Population and Civil Registry Office to register their marriage. | The second decision, Decision Number 916/Pdt.P/2022/PN.Sby has the same petitum as the first decision, namely asking to give permission to the applicant, a married couple, to hold interfaith marriages and asking the Office of the Population and Records Office Civilian to register his marriage. |
| 2. | Judge's Consideration | The judge weighed based on Article 35 letter a of Law Number 23 of 2006 concerning Population Administration which explained that marriages determined by the Court were marriages carried out between people of different religions. this provides a provision that marriages carried out by married | The judge in deciding this second decision also considered the same matter, and with the addition to the provisions of Article 10 paragraph (3) of Government Regulation Number 9 of 1975 which confirms that by observing the marriage procedure |

³¹ Sindy Cantonia dan Ilyas Abdul Majid, "Tinjauan Yuridis Terhadap Perkawinan Beda Agama di Indonesia dalam Perspektif Undang-Undang Perkawinan dan Hak Asasi Manusia", *Rewang Rencang: Jurnal Hukum Lex Generalis*, Vol. 2 No. 6(2021), p. 510-527

| NO. | ELEMENT | CASE I | CASE II |
|-----|--------------|--|---|
| | | couples of different religions can be registered after a court decision has been made. | according to each of the laws of his religion and belief, the marriage is carried out before the Registry Officer in the presence of two witnesses, because the material requirements for the husband and wife have been met, the judge decided to grant the husband and wife's request to register their marriage at the Office of Population and Civil Registry. |
| 3. | Verdict Rule | <ol style="list-style-type: none"> 1. Granted the Petitioners' Petitions; 2. Granted permission to the Petitioners to enter into interfaith marriages before the Office of the Office of the Population and Civil Registry of the Municipality of South Jakarta; 3. Ordered the Officers of the Office of Population and Civil Registry Office of the City of South Jakarta to record the interfaith marriages of the Petitioners in the Marriage Registration Register used for this purpose and immediately issue the Marriage Certificate; | <ol style="list-style-type: none"> 1. Granted the Petitioners' Petitions; 2. Granting permission to the Petitioners to enter into interfaith marriages before the Office of the Surabaya City Population and Civil Registry Office; 3. Ordered the Surabaya City Population and Civil Registry Service Office officials to record the interfaith marriages of the Petitioners into the Marriage Registration Register used for this purpose and immediately issue the Marriage Certificate |

The explanation from the table can be concluded that the judge's reasons in deciding the case on a marriage application submitted by a husband and wife to enter into a marriage with a different belief are considered based on Article 35 letter a Law Number 23 of 2006. However, this decision is different from the judge's considerations in Decision Number 916/Pdt.P/2022/PN.Sby which states that in accordance with Article 10 paragraph (3) of Government Regulation Number 9 of 1975 confirms that marriages can be carried out according to the marriage procedure of each religion and in the presence of registration officials and attended two witnesses. In fact, according to these conclusions, the two decisions that have been determined equally grant and allow the existence of interfaith marriages.

Table 3 Differences in Judge's Reasons

| NO. | ELEMENT | CASE I | CASE II |
|-----|-----------------------|---|--|
| 1. | Judge's Consideration | In the first decision, Decision Number 1139/Pdt.P/2018/PN.Jkt.Sel the judge in deciding a case submitted by a husband and wife to obtain permission to marry with a different religion, the judge considers the application with several provisions stipulated in the Laws and regulations, and in their consideration the judge decides to grant and allow the husband and wife's request to be able to get married in the presence of a | In the second decision, the Surabaya District Court, Decision Number 916/Pdt.P/2022/PN.Sby the husband and wife filed the same application as contained in the decision that was determined by the South Jakarta District Court in 2018, namely the applicant or husband's partner the wife asked for permission to have her marriage with a |

| NO. | ELEMENT | CASE I | CASE II |
|-----|---------|--|--|
| | | registration officer, then the marriage can be registered. | different religion and asked the registration clerk to register her marriage. However, in the decision stipulated by the Surabaya District Court, the judge granted the couple's request to register their marriage at the Population and Civil Registry Office, but the judge could not grant that marriages performed by different religions could be legalized. |

From the table of differences, it can be concluded that from the two decisions that have been determined, the judge decides on the case filed by the husband and wife against the local District Court where the couple will marry. The first decision the judge considers several rules and regulations that have been in effect in deciding the application. One of the judges' considerations in deciding cases filed by husband and wife is contained in the regulations of Article 35 letter a of Law Number 23 of 2006 concerning Population Administration. The judge's considerations in this regulation are the same as the judge's considerations in deciding case Number 916/Pdt.P/2022/PN.Sby, but the decision that has been determined by the Surabaya District Court is not entirely granted.

C. The process of registering marriages that occur in interfaith marriages is in accordance with the decisions of the South Jakarta District Court and the Surabaya District Court

1. South Jakarta District Court Decision

Marriage Registration in Law Number 22 of 1946 explains that marriages are supervised by marriage registration employees. Supervision is carried out by employees appointed by the Minister of Religion or other officials appointed by him. For couples who carry out marriages without the supervision of marriage registration officials, they are subject to punishment because it is a violation. Marriage registration is addressed to all Indonesian citizens, whether they are in Indonesia or outside Indonesia. for Indonesian citizens who marry abroad, it is regulated in Article 56 of Law Number 1 of 1974 that within one year the husband and wife return to Indonesia, their proof of marriage must be registered at the marriage registration office where they live.³²

Article 3 paragraph (1) Government Regulation No. 9 of 1975 states "Every person who is going to get married shall notify his wish to the registration clerk at the place where the marriage is held".³³ Registration of marriages is important to carry out considering that this has been

³² Dwi Arini Zubaidah, "Pencatatan Perkawinan Sebagai Perlindungan Hukum Dalam Perspektif *Maqasid asy-Syari'ah*", *Al-Ahwal*, Vol. 12 No. 1(2019): p. 15-28

³³ Government Regulation Number 9 Article 3 Paragraph 1 of 1975 concerning Implementation of Law Number 1 of 1974 concerning Marriage

regulated in Article 2 paragraph (2) of the Marriage Law "Every marriage is recorded according to the applicable laws and regulations".³⁴

In a decision issued by the South Jakarta District Court in 2018 and the Surabaya District Court in 2022, the judge granted and accepted the case filed. In this decision the judge asked the Population and Civil Registration Service to register the marriage carried out by the couple, even though the marriage was carried out based on their respective beliefs.

In Decision Number 1139/Pdt.P/2018/PN.Jkt.Sel, the judge in deciding to consider Article 28 B paragraph (1) of the 1945 Constitution, which in the Article emphasizes that every citizen has the right to form a family and continue offspring through marriage law and the decision is in line with Article 29 of the 1945 Constitution concerning the guarantee by the State of Independence for every citizen to embrace their respective religions.

Through this, the judge considers that every citizen has the right or obligation to adhere to their respective religions. However, this is inconsistent with the provisions in Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage which states that "every marriage is valid if it is carried out according to the laws of each religion and belief". It is clear that in the provisions of this Article marriage is

³⁴ Law Article 2 Paragraph 2 of 1974 Concerning Marriage

valid and can be carried out based on the same religion between husband and wife.

Prior to the enactment of law number 1 of 1974 concerning marriage, this interfaith marriage was included in the mixed marriage category. Mixed marriages are regulated in GHR regulations (Reglement op de Gemengde Huwelijken), S. 1898 No. 158 provides an understanding that "The continuation of marriages between people, which in the Dutch East Indies were subject to different laws, was called mixed marriages. Wives who enter into mixed marriages follow the status of their husbands in public law and civil law, as long as the marriage lasts."

The purpose of mixed marriages regulated in the regulations above does not differentiate between nationality, religion, position, and domicile background.³⁵ However, after the enactment of law number 1 of 1974 concerning marriage, Article 57 has regulated mixed marriages. Article 57 of law number 1 of 1974 explains that "What is meant by mixed marriage in this law is a marriage between two people who in Indonesia are subject to different laws, because of differences in nationality and one of the parties is an Indonesian citizen."³⁶ It is very clear that mixed marriages do not include marriages with different beliefs, hereinafter referred to as interfaith marriages.

³⁵ Muhammad Romli, Nurul Huda, Aspandi, "Pencatatan Perkawinan Beda Agama di Indonesia, *Al-Adalah: Jurnal Syariah dan Hukum Islam*, Vol. 7 No. 2(2022): p. 377-405

³⁶ Law Article 57 Number 1 of 1974 Concerning Marriage

Interfaith marriages in Indonesia are very difficult to do, because in fact there are no regulations that regulate this matter. Not a few couples of interfaith marriages apply to the KUA or the Civil Registry Office to get married. Differences of opinion on this matter also make it difficult for husband and wife to register their marriage. Meanwhile, marriages that are not registered at the KUA or the Civil Registry Office are deemed to be "underhand marriage" or "Sirri marriage".³⁷ Marriages that are not registered based on the applicable legal regulations as referred to in Article 2 Paragraph (2) of Law Number 1 of 1974, have legal implications for the wife, children, and the wife's family who will legally claim their rights against the husband. This happens because marriages that are not registered are considered to have never existed.

2. Surabaya District Court Decision

Marriage registration plays a very decisive role in a marriage because marriage registration is a condition for whether or not a marriage is recognized by the state. If a marriage is not registered, then the marriage is not recognized by the state, as well as the consequences arising from the marriage. Those concerned (bridegroom and bride) and religious officials who carry out the marriage can be subject to criminal provisions as stipulated in Article 45 of Government Regulation Number 9 of 1975.

³⁷ Muhammad Romli, Nurul Huda, Aspandi, "Pencatatan Perkawinan Beda Agama di Indonesia, *Al-Adalah: Jurnal Syariah dan Hukum Islam*, Vol. 7 No. 2(2022): p. 377-405

Saidus Syahar stated that in essence the purposes of registering marriages include:

1. So that there is legal certainty with the existence of strong evidence for those who have an interest in their marriage, so that it makes it easier for them to have relations with third parties.
2. In order to better ensure public order in family relations in accordance with the morals and ethics that are upheld by society and the state.
3. So that the provisions of the law aimed at fostering social improvement are more effective.
4. So that the values of religious norms and customs as well as other public interests in accordance with the Pancasila state foundation can be more upheld.

Based on the purpose of registering the marriage, the community must register the marriage it does to obtain legal certainty in accordance with the applicable laws and regulations. The registration of marriages expected by these laws and regulations is not effective. This can be seen by many people who are reluctant to register their marriages.³⁸

Marriage registration is considered important because based on Article 2 paragraph (2) explains that every marriage is recorded according to the applicable laws and regulations. This has clearly stated

³⁸ Dewa Putu Tagel, "Pelaksanaan Pencatatan Perkawinan Pada Dinas Kependudukan dan Catatan Sipil", *Vyavahara Duta*, Vol. XIV No. 2(2019): p. 84-98

that a valid marriage is a marriage that is registered in the presence of a registration officer at the Office of the Population and Civil Registry Office for marriages carried out by non-Muslim couples and at the Office of Religious Affairs for Muslim couples. In the two decisions that have been analyzed previously, it is the case of marriages where the marriage registration is recorded at the Office of the Population and Civil Registry Service, because marriages are carried out with different beliefs. In this case the registration staff at the Population and Civil Registry Office did not give permission directly to the couple to register their marriage. The couple is required to bring a determination that they have married by the local District Court which is then handed over to the registrar so that the marriage can be registered and considered valid. The process of registering a marriage is through asking for a determination from the local District Court which then the District Court gives permission and a determination to the registration staff to register the marriage by the couple.

Table 4 Similarities of the Process for Registration of Interfaith Marriages

| NO. | ELEMENT | CASE I | CASE II |
|-----|---------|---|--|
| 1. | Petitum | Decision Number 1139/Pdt.P/2018/PN.Jkt.Sel the husband and wife submitted an application to the South Jakarta District Court to issue a stipulation to employees of the Population and Civil Registry Service Office to register interfaith marriages | Decision Number 916/Pdt.P/2022/PN.Sby has the same case, in which case the husband and wife filed an application to the Court after the husband and wife appeared before the registrar to register their marriage, but the |

| NO. | ELEMENT | CASE I | CASE II |
|-----|---------|--|---|
| | | carried out by husband and wife, because the Registrar employee Marriage will register the marriage if the Court has issued the said decision. | registrar refused so the couple was required to file application to the District Court to issue its stipulation, this is in line with the regulations stipulated in Article 2 paragraph (2) of Law Number 1 of 1974 concerning Marriage which explains that each marriage is recorded according to the applicable laws and regulations. |

Based on the description in the table above, it can be concluded that the process of registering interfaith marriages by officials at the Population and Civil Registry Office must be based on a letter from the district court. Accordingly, the husband and wife who are going to get married request the local district court to reduce or issue the stipulation so that the marriage can take place and be registered. Because basically the registration of marriages must be done to obtain legal recognition of the marriage in the state. According to the judge's considerations according to the two decisions, namely Decision Number 1139/Pdt.P/2018/PN.Jkt.Sel and Decision Number 916/Pdt.P/PN.Sby, article 2 paragraph (2) of law number 1 of 1074 concerning marriage has clearly stated that each marriage is recorded according to the applicable laws and regulations.

In addition, requests for interfaith marriages to obtain a decision from the Court refer to the provisions of Law no. 23 of 2006 concerning Population Administration in Articles 34 and 35. It can be said to be valid if interfaith marriages get a stipulation from the Court. This should not be justified even if there is a legal vacuum, if this social reality and need is allowed to go unresolved legally, because letting the problem drag on will inevitably have negative impacts on the social and religious aspects of life in the form of smuggling of social values, religion, and positive law.

Table 5 Differences in the Process for Registration of Interfaith Marriages

| NO. | ELEMENT | CASE I | CASE II |
|-----|------------|--|--|
| 1. | Location | In Decision Number 1139/Pdt.P/2018/PN.Jkt.Sel, the decision was stipulated and granted by the judge at the South Jakarta District Court | The second decision, Decision Number 916/Pdt.P/2022/PN.Sby, was determined by a judge at the Surabaya District Court, and the decision was granted by the judge of that court. |
| 2. | Year | Decision Number 1139/Pdt.P/2018/PN.Jkt.Sel has been made in 2018. The application for the decision was filed in the same year which then went on for 48 days | Decision Number 916/Pdt.P/2022/PN.Sby has been stipulated in 2022. The Petitioner, a husband and wife filed their application in the same year in April, which during the stipulation process was 13 days faster than the previous decision. |
| 3. | Submission | Decision Number 1139/Pdt.P/2018/PN.Jkt.Sel the husband and wife filed an application to perform an interfaith marriage and asked for a determination to register their marriage to | Decision Number 916/Pdt.P/2022/PN.Sby the husband and wife submitted an application to enter into an interfaith marriage and asked for a determination to register |

| NO. | ELEMENT | CASE I | CASE II |
|-----|---------|---|--|
| | | employees of the Population and Civil Registry Service Office. The application is Muslim and Christian with the husband being Muslim while the wife is Christian. | their marriage to the employees of the Office of Population and Civil Registry. The application is Muslim and Christian with the husband being Christian while the wife is Muslim. |

Based on the description in the table above, there are several differences between the decisions made by the South Jakarta District Court and the Surabaya District Court. Especially in the year the filing and decision was determined. The decision of the South Jakarta District Court was stipulated in South Jakarta in 2018. The petition filed by the husband and wife was requested by the husband who is Muslim to the panel of judges to grant his request, allow interfaith marriages to be held and issue a stipulation to the registration staff to register their marriage. In the decision stipulated by the Surabaya District Court, the applicant who submitted his application to the panel of judges at the Surabaya District Court was also a husband, but a Christian.

The problem of registering marriages is at the forefront of modern fiqh thinking, bearing in mind the many practical problems that arise from not registering marriages related to important issues such as the origin of children, inheritance and maintenance. The emergence of modern administrative order in this regard has brought ease in recording contracts and transactions related to immovable property and companies. There is no

impossibility for someone to understand the side of benefit in the registration of marriages, contracts and transactions.

Registration of marriages is aimed at realizing orderly marriages in society, both marriages carried out based on Islamic law and marriages carried out by people who are not based on Islamic law. The realization of marriage registration will give birth to a marriage certificate owned by each husband and wife. The marriage certificate is signed by the two witnesses, the Marriage Registrar who attended the ceremony and the marriage guardian or his representative. With the signing of the marriage certificate, the marriage has been registered in a normative juridical manner based on Article 11 of Government Regulation Number 9 of 1975 and has legal force based on Article 6 paragraph (2) of the Compilation of Islamic Law.³⁹

³⁹ Imam Faishol, "Pencatatan Perkawinan Dalam Hukum Kekeluargaan Di Indonesia", *Jurnal Ulumul Syar'i*, Vol. 8 No. 2(2019): p. 1-25

CHAPTER IV

CLOSING

A. Conclusion

From the presentation of the discussion analysis that has been previously described above, the following conclusions can be drawn:

1. The judge's reasons for deciding on the application were based on considerations in Article 2 paragraph (2) of Law Number 1 of 1974 which explains that every marriage is registered by a registrar in accordance with applicable laws and regulations. However, in fact according to the provisions of Law Number 1 of 1974 that a valid marriage is a marriage that is carried out based on their respective beliefs and religions. With this regulation it is clear that marriages carried out with different religions cannot be allowed and recorded, but the court still granted the request. The acceptance of this request is not in accordance with the laws and regulations in force in Indonesia, this has resulted in a legal vacuum in interfaith marriages that have been carried out by many couples in Indonesia. It is in this matter that is emphasized by the law that legal smuggling cases of interfaith marriage often occur. Because in accordance with the laws and regulations that marriage is valid and implemented if the couple follows the marriage rules for each, so that if viewed according to religion, interfaith marriages have never happened. In addition, the judge's reasons for deciding a case submitted by a husband and wife to carry out an

interfaith marriage refer to the provisions of Article 10 paragraph (3) of Government Regulation Number 9 of 1975 which confirms that by observing the marriage procedure according to each religious law and belief, the marriage was carried out before the Registry Officer in the presence of two witnesses, because the material requirements for the husband and wife had been met, the judge decided to grant the husband and wife's request to register their marriage before the Population and Civil Registry Service Office Employees.

2. The process of registering interfaith marriages by registrars at the Population and Civil Registry Office must be based on a district court order. Therefore, married couples who are going to get married and their marriages can be registered in front of the registration staff ask the District Court to reduce their decision to grant permission to register the marriage carried out by the married couple and to give permission to carry out the marriage to be held by the couple. Basically, the registration of marriages must be carried out in order to obtain legal recognition of the marriage in the state. According to the judge's considerations in determining the application in accordance with Decision Number 916/Pdt.P/2022/PN.Sby Article 2 paragraph (2) of Law Number 1 of 1974 concerning Marriage, it has been clearly stated that each marriage is recorded according to statutory regulations. - applicable invitations. However, today many applications for

registration of marriages are approved and permitted by the district court where the husband and wife apply.

B. Suggestion

Interfaith marriages in Indonesia are not regulated in any regulatory provisions. In Law number 1 of 1974 concerning marriage, especially in Article 2 it has been explained that marriage can be carried out and is valid if it is carried out according to each other's beliefs. Through these regulations it is certain that marriages can be legal and can be registered if they are carried out with the same religion or belief between the husband and wife who will carry out the marriage. However, several District Courts have legalized and allowed interfaith marriages, which are then registered before the Office of the Population and Civil Registry Office. For several reasons, the judge decided that the application caused a legal vacuum in the implementation of interfaith marriages that occurred in Indonesia. Thus, regulations regarding interfaith marriages in Indonesia should be explicitly and clearly stipulated so that there is no legal vacuum regarding this matter. Likewise, the judge can strictly refuse and not grant the request of a husband and wife who will enter into an interfaith marriage in Indonesia or have an interfaith marriage outside the country of Indonesia, which then asks the Office of the Population and Civil Registry Service to register their marriage so that proof of a marriage certificate can be issued.

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Law Article 57 Number 1 of 1974 Concerning Marriage

CURRICULUM VITAE



PERSONAL DATA

Name : Alifya Rahma Hayuningtyas
 Place and Date of Birth : Blitar, 12 August 2000
 Gender : Woman
 Religion : Islamic
 Address : Dsn. Krajan, Ds. Pagerwojo,
 Kec. Kesamben, Kab. Blitar
 No. tel : 085230908652

E-mail : alifyarahma1208@gmail.com

EDUCATIONAL BACKGROUND

2006-2012 Elementary School Kesamben 01
 2012-2015 Junior High School 1 Selorejo
 2015-2018 MAN 2 Blitar
 2019-2023 UIN Maulana Malik Ibrahim Malang

ORGANIZATIONAL HISTORY

2019-2021 Secretary II of IPPNU Ranting Pagerwojo
 2020-2021 Member of the Social Division of IKAMAHALITA
 UIN Maulana Malik Ibrahim Malang
 2021 Chief Executive of IKAMAHALITA Orphanage Compensation
 UIN Maulana Malik Ibrahim Malang
 2021-2023 Member of the Islamic Boarding School and Commissariat
 Network Department PAC Kesamben
 2020-2021 Active member of UKM LKP2M UIN Malang
 2022 General Secretary of UKM LKP2M UIN Malang



MINISTRY OF RELIGION OF THE REPUBLIC OF INDONESIA
MAULANA MALIK IBRAHIM STATE ISLAMIC UNIVERSITY
MALANG

SHARIA FACULTY

Jl. Gajayana 50 Malang 65144 Telephone (0341) 559399 Facsimile (0341) 559399
Faculty websites: <http://www.fakultas-syaria.unma.ac.id> for Study Program Website: <http://ba.unma.ac.id>

CONSULTATION PROOF

Name : Alifya Rahma Hayuningtyas
Student Number : 19210125
Department : Islamic Family Law
Supervisors : Dr. Sudirman, M.A
Thesis Title : MARRIAGE REGISTRATION IN INTERRELIGIOUS
MARRIAGES IN INDONESIA
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Acknowledged by,
Head of Department of Islamic Family Law

Erik Sabti Rahmatwati, MA, M.Ag
NIP.197511082009012003