

Interreligious Marriage in Indonesia and Malaysia: Strict and Loose Legal Policy

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ABSTRACT

In practice, marriages do not always occur between individuals of the same religious background. Interfaith marriages take place when partners of different religions marry without requiring one partner to convert. This study aims to examine the legal issues surrounding interfaith marriages in Indonesia and Malaysia through a comparative analysis. It adopts a normative legal research methodology, incorporating both comparative and case-based approaches. Data were obtained from literature and other secondary sources. The findings indicate that Indonesian marriage law does not explicitly regulate interfaith marriages, and the Law on Population Administration does not require that registered marriages be between individuals of the same religion. In contrast, Malaysian law strictly prohibits interfaith marriages, and any violation results in the annulment of the marriage's legal status.

[Dalam praktiknya, perkawinan tidak hanya terjadi antara pemeluk agama yang sama. Perkawinan beda agama terjadi ketika pasangan yang berbeda agama menikah tanpa mengharuskan salah satu pasangannya berpindah agama. Penelitian ini bertujuan untuk mengetahui permasalahan hukum pada perkawinan beda agama di Indonesia dan Malaysia secara komparatif. Penelitian ini merupakan penelitian hukum normative dengan pendekatan komparatif dan pendekatan kasus. Data dalam penelitian ini diperoleh melalui literatur atau data sekunder. Hasil dari penelitian ini menunjukkan bahwa UU Perkawinan di Indonesia tidak secara tegas mengatur perkawinan beda agama, dan dalam UU Administrasi Kependudukan, tidak ada ketentuan yang mengatur mengenai perkawinan yang dicatatkan harus menganut agama yang sama. Sedangkan di Malaysia, pernikahan beda agama dilarang keras dalam Hukum Malaysia. Pelanggaran atas ketentuan ini akan mengakibatkan penolakan pengesahan perkawinan.]

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Introduction

Marriage is a bond between a man and a woman after which they become husband and wife and establish a connection between their respective families. The significance of the concept of marriage has necessitated the establishment of legislation governing marriage in several domains, encompassing societal customs, religious practices, and governmental organizations. When getting married, it is important to consider the legal requirements of marriage as dictated by the current laws of the nation where the marriage is taking place. Prospective married individuals seeking matrimony must possess knowledge of the legal prerequisites for marriage. According to Islamic law, marriages between individuals of different religions are considered illegitimate, as mentioned in Al Baqarah Verse 221:

Do not marry polytheistic women until they believe; for a believing slave-woman is better than a free polytheist, even though she may look pleasant to you. And do not marry your women to polytheistic men until they believe, for a believing slave-man is better than a free polytheist, even though he may look pleasant to you. They invite (you) to the Fire while Allah invites (you) to Paradise and forgiveness by His grace. He makes His revelations clear to the people so perhaps they will be mindful.

The verse gives a clear meaning regarding the issue of interfaith marriage for Muslims who are forbidden to marry someone outside of their religion. In reality, marriages in society are not limited to those who share the same religious views. These marriages can also involve two individuals who follow different religions or hold distinct ideas.¹ The question of whether a marriage between individuals of different religions is legally lawful is a subject of controversy. While Indonesia does

¹ Ana Laela, Ken Ismi Rozana, and Shilfa Khilwiyatul Mutiah, "FIQH PERKAWINAN BEDA AGAMA SEBAGAI UPAYA HARMONISASI AGAMA (Studi Perkawinan Beda Agama Di Kota Jember)," *FIKRAH* 4, no. 1 (June 30, 2016): 117.

not explicitly forbid interfaith marriages, the Supreme Court, in its Circular Letter of the Chief Justice of Supreme Court number 2 of 2023 on Guidelines for Judges in Adjudicating Cases of Application for Registration of Marriages between People of Different Religions and Beliefs, aims to restrict the existing loopholes in the marriage legislation. This directive prohibits courts from approving requests for the registration of marriages between individuals of different religions and beliefs.

Prior studies examined the religious validity of marriages done by Sekarbuana, et. al., Suyaman and Alfiany, Witoko and Budhisulistiyowati,² the validity of interfaith marriage in Indonesia conducted abroad as a mean to outsmart the regulation in Indonesia³ as well as the legal implications of inter-faith marriages on children and the ownership of shared assets.⁴ However, there is a limited resources of study on the legal aspects of inter-religious marriages in Indonesia, particularly in the realm of comparative studies. Especially when a country's legal system does not adhere to Islamic law, such as in the case of Indonesia. Hence, this study will examine the comparison of marriage legislation in Indonesia and Malaysia. Both Indonesia and Malaysia are states in Southeast Asia where Islam is the majority religion. However, when it comes to regulating marriage, both countries show a significant distinction related to the development of Islamic Family Law, especially in the discussion of interfaith marriage. This study aims to offer suggestions for addressing the legal void in Indonesia concerning the recognition of inter-religious marriages.

Interfaith Marriage Regulations in Indonesian Law: A Loose Legal Policy

In Indonesia, the institution of marriage is governed by many rules, such as the Civil Code, Marriage Law, Population Administration Law, Compilation of Islamic Law, and the most recent Supreme Court Circular Letter number 2 of 2023. In Indonesia, according to Article 2 Paragraph (1) of the Marriage Law, a marriage is considered legal when it is conducted in accordance with the religious and belief systems followed by the individuals involved. The definition of marriage in Indonesia is outlined in Article 1 of Law Number 1 of 1974 as amended by Law Number 16 of 2019 on the Amendment of Law Number 1 of 1974 on Marriage (hence referred to as "Marriage Law"), "Marriage is a relationship of body and soul between a man and a woman as husband and wife with the purpose of establishing

² Made Widya Sekarbuana, Ida Ayu Putu Widiawati, and I Wayan Arthanaya, "Perkawinan Beda Agama Dalam Perspektif Hak Asasi Manusia Di Indonesia," *Jurnal Preferensi Hukum* 2, no. 1 (2021): 16–21; Prahasti Suyaman and Temmy Fitriah Alfiany, "Polemics of Interfaith Marriage Reviewed from the Perspectives of Marriage Law and the Compilations of Islamic Law," *KnE Social Sciences* 2022 (2022): 537–49; Prasetyo Ade Witoko and Ambar Budhisulistiyawati, "Penyelundupan Hukum Perkawinan Beda Agama Di Indonesia," *Jurnal Hukum Dan Pembangunan Ekonomi* 7, no. 2 (2019): 251.

³ Sri Wahyuni et al., "The Registration Policy of Interfaith Marriage Overseas for Indonesian Citizen," *BESTUUR* 10, no. 1 (August 6, 2012): 12.

⁴ Desimaliati Desimaliati, "LEGALITY OF REGISTRATION FOR INTERNATIONAL RELIGIOUS MARRIAGE BASED ON COURT DECISIONS ACCORDING TO LAW AND REGULATIONS IN INDONESIA," *Cepalo* 6, no. 2 (November 15, 2022): 77–90.

a happy and lasting family (household) founded on belief in God Almighty". From the definition, it can be concluded that the purpose of marriage is to establish a happy and lasting household based on the belief of the spouse. So basically, the foundation of a happy family according to Marriage Law is when a man and a woman enter into marriage are both believing God Almighty.

Besides Marriage Law, Indonesian Civil Code also governs marriage, but it specifically states that it governs marital concerns only within civil relationships. Pursuant to the Civil Code, both spouses must meet the legal age requirements for marriage. According to the rules of the Civil Code, the absence of religious compatibility between the intending spouses does not render a marriage unlawful. In addition to the Marriage Law, another authoritative source is the Compilation of Islamic Law, which serves as a guide for Muslims in Indonesia to promote and implement Islamic Law in the country.

According to Article 40 letter c of the Compilation of Islamic Law, it is forbidden to marry a non-Muslim man and woman. Similarly, Article 44 of the Compilation of Islamic Law, it is forbidden for a Muslim woman to marry a non-Muslim man. The Compilation of Islamic Law explicitly stipulates that interfaith marriages are prohibited, hence disallowing Muslims from marrying individuals of different faiths. In addition, the Indonesian Ulema Council issued a *fatwa* on June 1, 1980, declaring that marriages between individuals of different religions were forbidden due to the council's belief that the potential harm (*mafsadah*) outweighed the potential benefit (*maslahah*).

First interfaith marriages were legally recognized according to the Supreme Court's jurisprudence in the Supreme Court Decision No. 1400K/PDT/1986. This decision clarified that the Civil Registry Office had the authority to solemnize interfaith marriages at that period. The Supreme Court ruled that the applicant, by seeking marriage registration at the Civil Registry Office, had deliberately opted against having her marriage officiated in accordance with Islamic customs. Consequently, the applicant disregarded her religious affiliation (Islam), leading the Civil Registry Office to carry out and officially document the marriage due to its interfaith nature.⁵

The legality of marriage in Indonesia as regulated in the Marriage Law states that; *first*, a marriage is considered valid if it adheres to the legal requirements of each respective religion or belief system or to be legally married in Indonesia requires a religious ceremony. *Second*, all marriages must be officially recorded in line with the current laws and regulations. In the event that the Civil Registry Office declines to register a marriage solemnization between individuals of different religious beliefs, the couple has the option to request a court ruling in order to proceed with the marriage.

Multiple cases have arisen about the registration of interfaith marriages in Indonesia. According to the data from the Indonesian Conference on Religion and Peace (ICRP), from 2005 to 2023 there were 1655 registrations of interfaith

⁵ Nafiatul Munawaroh, "Can People of Different Religions Marry in Indonesia? This Is the Law," 2023.

marriages in Indonesia.⁶ A notable case is the marriage of Jamal Mirdad and Lidya Kandau, a renowned Indonesian artist who is recognized for holding different views. Upon attempting to register their marriage at the civil registry office, the Civil Registry Office declined to proceed with the registration. Consequently, Jamal Mirdad proceeded to file an application for a marriage registration determination with the South Jakarta District Court. In his petition, Jamal Mirdad, a practicing Muslim, expressed his intention to officially register his marriage at the Civil Registry Office. He argued that the applicant had disregarded Islamic marriage regulations, implying his desire for the marriage to be conducted in accordance with Islamic customs. Since the individuals' religious affiliation is not Muslim, the Civil Registry Office is obligated to proceed with the mentioned marriage.⁷ In Decision Number 238/Pdt/P/1986/PN Jkt.Sel., issued on 29 May 1986, the judge approved Jamal Mirdad's request based on the fulfillment of regulations pertaining to women, including the legal requirements and formalities, and the absence of any hindrances to interfaith marriages.

Furthermore, in 2021, the Bandung District Court issued decisions in number 495/Pdt.P/2021/PN.Bdg on 24 June 2021. The Petitioner, who practices Islam, and his wife, who practices Buddhism, have informed the Bandung City Population and Civil Registration Department of their intention to get married. Nevertheless, due to their different religious affiliations, the Bandung City Population and Civil Registry Office declined their marriage application. The Petitioners subsequently requested the Bandung District Court to approve their desire to have a marriage ceremony that would be officially recorded by the Bandung City Population and Civil Registry Office. The Bandung District Court approved the applicant's request for marriage, taking into account that the Marriage Law does not contain any provisions that restrict interfaith marriages.

Different viewpoints arise from the Marriage Act's lack of religious marriage regulation. Indonesian law does not accept interfaith marriages. This means that Indonesia considers interfaith marriages immoral. Second, Indonesia does not forbid interfaith marriages, thus *contra legem* must be interpreted against Article 57 of the Marriage Act. Based on the Supreme Court Directory of Decisions 2000-2022, there have been over 118 decisions on requests for marriage registration permission in the State Courts. There are two distinct patterns of marriage registration. Initially, the applicant, after undergoing a religious marriage ceremony and acquiring a marriage certificate from the church, proceeds to the Civil Registry Office in order to officially record their marriage. In the event that Civil Registry Office rejects the application, the applicant must then make a request to the District Court for authorization to register the marriage. Upon receiving approval from the District Court to register their interfaith marriage, the couple proceeds to Civil Registry to complete the marriage registration process. Next, the soon-to-be bride and groom inform Civil Registry Office about their intentions to

⁶ Indonesian Conference on Religion and Peace (ICRP), "Data Perkawinan Beda Agama Di Indonesia," 2023.

⁷ Desimaliati, "LEGALITY OF REGISTRATION FOR INTERNATIONAL RELIGIOUS MARRIAGE BASED ON COURT DECISIONS ACCORDING TO LAW AND REGULATIONS IN INDONESIA."

have an interfaith wedding. After Civil Registry Office declined the proposal, the potential bride and groom proceeded to file an application with the District Court seeking authorization to officially register their marriage. Upon approval of the request, the interfaith couple will proceed to solemnize their marriage in accordance with the religious practices of one of the partners, followed by the official registration of the marriage with Civil Registry Office.⁸

The Constitutional Court of the Republic of Indonesia has made two rulings that are *erga omnes*, meaning they are enforceable for all Indonesian citizens, in relation to the common occurrence of interfaith marriages,⁹ specifically, Decision Number 68/PUU-XII/2014 and Number 24/PUU-XII/2022. The Constitutional Court has so dismissed the plea for a legal examination of Article 2 paragraph (1) of the Marriage Law. The Constitutional Court affirmed the constitutionality of Article 2, paragraph (1) of the Marriage Law. The connection between religion and the state is mutually reinforcing in the context of marriage. Specifically, religious law defines the legitimacy of the marriage, while state law determines its administrative legality.¹⁰

In accordance with Indonesian law, marriage holds great significance and is required to be officially recorded, since the government upholds the principle of legal certainty. This is due to its potential influence on divorce legislation (in the event of a couple's separation), the acknowledgment and authentication of children, the adoption of children, and future regulations pertaining to inheritance. The Supreme Court has issued Supreme Court Circular Letter Number 2 of 2023, which establishes regulations prohibiting the Court from approving applications for the registration of marriages between individuals of different religions and beliefs. Nevertheless, the Circular Letter does not have legal force on the broader society. The jurisdiction of Supreme Court Circular Letter is limited to judges in Indonesian courts that handle applications for marriage registration presented to the court. Therefore, the presence of the Circular lacks sufficient authority to govern interfaith marriages in Indonesia.

Many couples of different religions in Indonesia use legal loopholes by marrying overseas and thereafter seeking registration of their marriage at the Civil Registry Office.¹¹ Upon closer examination, the norms of International Private Law encompass the principle of *lex loci celebrationis*. This principle stipulates that a marriage is considered legally legitimate if it adheres to the laws of the jurisdiction where the marriage took place.¹²

⁸ Ayub Mursalin, "Legalitas Perkawinan Beda Agama: Mengungkap Disparitas Putusan Pengadilan Di Indonesia," *Undang: Jurnal Hukum* 6, no. 1 (2023): 113–50.

⁹ M Beni Kurniawan, Dinora Refiasari, and Sri Ayu Ramadhani, "Disparitas Putusan Pengadilan Terkait Legalisasi Nikah Beda Agama," *Jurnal Yudisial* 16, no. 3 (2023).

¹⁰ Ayub Mursalin, "Legalitas Perkawinan Beda Agama: Mengungkap Disparitas Putusan Pengadilan Di Indonesia," *Undang: Jurnal Hukum* 6, no. 1 (2023).

¹¹ Wahyuni et al., "The Registration Policy of Interfaith Marriage Overseas for Indonesian Citizen."

¹² Sekarbuana, Widiawati, and Arthanaya, "Perkawinan Beda Agama Dalam Perspektif Hak Asasi Manusia Di Indonesia."

When considering vested rights, it is important for Indonesia to uphold the rights of individuals to foreign laws, as long as these laws do not contradict the *lex fori*. If Indonesia has explicitly rejected the laws of a foreign nation, then Indonesian law does not have jurisdiction in that country. The recognition of a marriage conducted outside of one's home country can be determined by examining the material and legal prerequisites that govern the validation of the marriage in accordance with the rules of international civil law.¹³ Consequently, if the legislation on marriage in a certain jurisdiction permits marriages between individuals of different faiths, then the legislation in Indonesia must recognize and authorize such weddings through official registration at the Civil Registry Office. In accordance with Article 56 paragraph (1) of the Marriage Law, the marriage is considered valid if it is carried out in accordance with the applicable laws in the country where the marriage is taking place and, for Indonesian citizens, does not violate the provisions of the applicable laws and regulations in Indonesia.

From a legal perspective, marriage is under the broad category of obligations (*verbinten*). Where the obligation is encompassed under a civil obligation. Nevertheless, marriage entails more complexity as it also serves as an expression of religious obligation. The Marriage Law in Indonesia aligns with the objective of marriage, which is to establish a joyful and everlasting family in accordance with God Almighty.¹⁴ There is a lack of harmony in the laws of Indonesia, since they do not adequately address the restriction of interfaith marriages. In fact, several court rulings have even granted permission for couples of different faiths to marry. The ambiguity surrounding the restrictions pertaining to interfaith marriages in the Marriage Law has led to legal loopholes that allow for the execution of marriages between individuals of different religions.¹⁵ The ambiguity in rules concerning interfaith marriages poses challenges in establishing legal certainty regarding the legitimacy of such marriages.¹⁶

However, the lack of clarity in the provisions pertaining to interfaith marriages under the Marriage Law does not hinder couples from proceeding with their marriages. This is because other methods still exist to facilitate such marriages. The Marriage Law does not explicitly forbid marriage between individuals of differing religious backgrounds. Legally, the Marriage Law allows for the possibility of interfaith marriages. From a philosophical standpoint, religious rights are fundamental since even the act of discriminating against marriages between individuals of different religions may be classified as a violation of human rights. In this scenario, the state is prohibited from engaging in discriminatory practices towards state services, such as the legislation that affects married couples of different religious backgrounds. This is because Indonesia, as a nation,

¹³ Ade Witoko and Budhisulistiyawati, "Penyelundupan Hukum Perkawinan Beda Agama Di Indonesia."

¹⁴ Pujiono Pujiono, Arif Hidayat, and Dewi Sulistianingsih, "Understanding and Litera Legis of Marriage Law in the Millennial Era for School Children," *Indonesian Journal of Advocacy and Legal Services* 3, no. 2 (July 28, 2021): 183–94.

¹⁵ Dhiya Fahira, *Perkawinan Beda Agama Di Indonesia*, vol. 3, 2021.

¹⁶ Fahira.

fundamentally maintains the ideal of religious freedom, which is enshrined in both the legal system and Pancasila.¹⁷ According to Darmabrata, when it comes to legalizing weddings of various religions, there are typically two commonly employed methods that are utilized to circumvent current rules.¹⁸

- a) Convert/Revert method. After the marriage is legally recognized, one of the couples reverts to their original faith, while ensuring that both partners share the same religion. The marriage is legally lawful since it is recognized by the law due to its adherence to the religious institution's marriage legality. The objective is to identify legal gaps in the absence of explicit regulations regarding marriage.
- b) Celebrating marriage abroad. By conducting a marriage ceremony in a foreign nation that recognizes and approves marriages between individuals of different religious backgrounds, according to the principle of *lex loci celebrationis*, where the governing legislation is determined by the location of the marriage, and the marriage is considered legally legitimate. Typically, if the marriage has been in existence for a minimum of one year, then Indonesian law allows for registration at the Civil Registry Office. The primary role of the Civil Registry Office office is not to annul a marriage, as it lacks the jurisdiction to do so. Its main job is to only legalize marriages.

One interesting letter came from Directorate General of Population and Civil Registry of the Ministry of Home Affairs No.472.2/3315/DUKCAPIL dated 3 May 2019 which allows the registration of marriages between different religions. It contains a description of civil registration, which include the registration of interfaith marriages where both partners willingly adopt one other's religious beliefs based on human rights argument. This letter is based on the request made by the Directorate General of Population and Civil Registry, Ministry of Home Affairs on October 10, 2018, as advised by the Supreme Court Registrar's Letter.

The Supreme Court Registrar's Answer Letter No.231/PAN/HK.05/1/2019, issued January 30, 2019, clarifies that interfaith marriages are not acknowledged by the government and hence cannot be officially registered. However, if the marriage is conducted according to the religious beliefs of one person, and the other partner willingly embraces the faith of their partner, then the marriage can be officially recorded. For instance, if the marriage is conducted in accordance with the Christian faith, it is officially recorded at the Population and Civil Registration Office. Similarly, if the marriage is performed in accordance with the Islamic faith, the couple's marriage is registered at the Religious Affairs Office (KUA).¹⁹

¹⁷ Sekarbuana, Widiawati, and Arthanaya, "Perkawinan Beda Agama Dalam Perspektif Hak Asasi Manusia Di Indonesia."

¹⁸ Wahyono Darmabrata and Suruni Ahlan Sjarif, *Hukum Perkawinan Dan Keluarga Di Indonesia*, First Edit (Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2015).

¹⁹ Ferinda K. Fachri, "Sejak 1986 MA Legalkan Kawin Beda Agama, Bagaimana Dengan MK?," 2022.

It can be inferred that married couples of different religions can legally marry in Indonesia by exploiting existing legal gaps. This is because Indonesia does not explicitly forbid such marriages and permits the registration of marriages that take place outside of Indonesian law, as long as they do not contravene Indonesian legislation.

The Role of Islamic Organization in Governing Marriage Law In Indonesia

The Indonesian Ulema Council (“MUI”) is a non-governmental organization in Indonesia that serves as a support system for Ulama, and Islamic scholars. Its primary purpose is to offer advice, counsel, and safeguard the interests of the Muslim community in Indonesia, which constitutes the majority of the population. The MUI possesses the jurisdiction to issue *fatwas* to Muslims in Indonesia, offering direction and assistance to individuals in realizing their aspirations, moral compass, and requests. In addition, the MUI advocates for and actively supports the desires and goals of the populace and the state in relation to governance. Meanwhile, the primary role of the MUI is to serve as a protector and advisor for the Islamic community. It aims to recruit and train qualified individuals, address religious issues on a global scale, develop the framework for Islamic education, and oversee the content produced by mass media and organizations that work in collaboration with religious institutions. One of the responsibilities of the MUI is to support the government in addressing situations that concern the welfare of Muslims. This includes issuing rulings or views, known as *fatwas*, on issues affecting the lives of Muslims.²⁰

In Indonesian law, the *fatwa* holds a stance that encompasses Islamic law, which is applicable in Indonesia. However, it is important to note that the *fatwa* is not legally binding and is regarded as a legal opinion. The MUI *fatwa* lacks punishments and is not obligatory for all Indonesian nationals to adhere to. The MUI *fatwa* is exclusively enforceable and adhered to by Muslim organizations that are affiliated with the relevant MUI.²¹

Rejection to interfaith marriages in Indonesia is also evident within Muslim community organizations, such as Muhammadiyah and Nahdhatul Ulama, the largest non-governmental Islamic community organizations in the country. Representatives from both organizations hold positions in the Indonesian Council of Ulama (MUI). Both groups forbid interfaith marriages. Muhammadiyah holds the view that interfaith marriages should be prohibited due to *sadd al-dzarai'* reason. *Sadd al-dzarai'* is an Islamic legal concept that refers to the prohibition of permissible things as a precautionary measure to prevent potential harm or negative consequences. This approach utilizes the principles of *fiqh*, specifically the

²⁰ Mustori Mustori, “Analisis Deskriptif Metode Istinbat Hukum Majelis Ulama Indonesia (MUI),” *Hikmah: Journal of Islamic Studies* 17, no. 2 (2022): 86.

²¹ Ahmad Badrut Tamam, “Kedudukan Fatwa Majelis Ulama Indonesia (MUI) Dan Fatwa Dewan Syariah Nasional (DSN) Dalam Sistem Hukum Indonesia,” *Al-Musthofa: Journal Of Sharia Economics* 4, no. 2 (2021): 172–81.

concept of *Dar'u al-mafasid muqaddam 'ala jalb al-mashalih*, which emphasizes the prioritization of preventing harm above seeking advantages. This principle was established by the Muhammadiyah Central Leadership Team Majelis Tarjih in 1995. According to Decision No. 03/MNU-28/1989 of the NU in Congress, dated 28 November 1989, it was declared that marriages between individuals of different religions in Indonesia are considered legally invalid. This ruling is consistent with the decisions made during the 1962 NU Congress and the 1968 Thariqah Muktabarah Congress.

In addition, Indonesian Ulema Council Fatwa Number 4 of 2005 emphasized that interfaith marriage is haram (forbidden). This demonstrates that if Muslims engage in interfaith marriages, the union is deemed illegitimate. In Islam, it is prohibited to enter into a marriage if there exist religious disparities between the two individuals involved.²²

Interfaith Marriage Regulations in Malaysian Law: Strict Legal Policy

Malaysia is a federal state, where states collaborate and unite under a government system that grants each state specific responsibility in governance. Malaysia comprises thirteen states. The following states are included: Johor Bahru, Kedah, Kelantan, Melaka, Negeri Sembilan, Pahang, Perak, Perlis, Penang Island, Sabah, Sarawak, Selangor, and Terengganu. The federal states of Malaysia are Kuala Lumpur, Labuan, and Putrajaya.

Malaysia is a nation characterized by a predominant population of ethnic Malays and a significant majority of Muslim nationals. The Malaysian state considers that all Malays are Muslim, this is in accordance with Article 160 of the Constitution of the Federal States of Malaysia which explains that a Malay is someone who is Muslim, habitually speaks Malay, and follows Malay *resam* customs. Malaysia is a diverse nation with a multitude of ethnicities, tribes, and religions. The Malaysian state ensures the freedom of its citizens to practice their chosen religion under their personal beliefs. Malaysia guarantees religious freedom for its citizens. However, in the context of marriage, the Malaysian legal system stipulates that citizens who adhere to Islam must marry a partner who is also Muslim. This provision requires individuals who are not Muslim to convert to Islam before marrying a Muslim. If the conversion does not take place, the marriage will not be legally recognized under Malaysian law.²³

Malaysia has a dual legal system for marriage, which consists of both Sharia law and civil law. The application of Sharia law in Malaysia is based on the fact that the majority of Malays are adherents of Islam. Additionally, Sharia law is applicable to all Muslims in the country. The marriage law in Malaysia is categorized into two main acts: Act 303 Islamic Family Law (Federal Territory) 1984, which governs

²² Anggin Anandia Putri, "Perkawinan Beda Agama Dalam Prespektif Hukum Islam Di Indonesia," *World Development* 1, no. 1 (2018): 1–15.

²³ Suraya Sintang et al., "Interfaith Marriage and Religious Conversion : A Case Study of Muslim Converts in Sabah , Malaysia," no. NOVEMBER 2011 (2011): 1–12.

marriage for Muslim populations, and Act 164 Marriage and Law Reform 1976, which controls civil marriages.

The restrictions outlined in Act 164 Law Reform, 1976 were established based on English law and are applicable to all individuals in Malaysia who are not of the Muslim faith. Communities in Malaysia, such as the Orang Asli, Sabah and Sarawak Bumiputera, and the Hindu community, have the option to marry according to their customary laws. However, in order for the marriage to be considered genuine and legally recognized, they must also register it under the Marriage and Divorce Act 1976 (Act 164).²⁴ The regulation of Muslim marriages in Malaysia is governed by Islamic Law. In cases where there is a marriage between individuals of different religions, with one partner being Muslim, Islamic Law is applicable. The Malaysian Syariah Court oversees the implementation of Islamic Law. The Syariah Court is a specialized court in Malaysia that exclusively deals with disputes, both civil and criminal, pertaining to citizens who practice Islam. The Sharia Court in Malaysia is commonly referred to as the “Mahkamah Kadi”.²⁵ The Act 164 Marriage and Law Reform 1976 explicitly stipulates in Part I Section 3 (3) that its jurisdiction is limited to non-Muslim people, as stated:

This Act shall not apply to a Muslim or to any person who is married under Islamic law and no marriage of one of the parties which professes the religion of Islam shall be solemnized or registered under this Act; but nothing herein shall be construed to prevent a court before which a petition for divorce has been made under section 51 from granting a decree of divorce on the petition of one party to a marriage where the other party has converted to Islam, and such decree shall, notwithstanding any other written law to the contrary, be valid against the party to the marriage who has so converted to Islam.

According to Article 51 of Act 164, if one person embraces Islam and the other party does not, they have the right to seek a divorce. If the other party wants to continue the marriage within a timeframe of 3 months, they must also undergo a conversion to Islam. If the other partner continues to practice their faith for a consecutive period of 3 months, the marriage will be terminated in accordance with Islamic law. The purpose of the 3-month requirement, after one partner converts to Islam, is to observe the iddah period for women. This waiting period allows for the determination of whether the woman in question is pregnant or not. This statement elucidates that Act 164 exclusively pertains to adherents of religions that are not Islam. Indeed, the conversion of one of the individuals involved in the marital union to Islam might serve as grounds for divorce. This is due to the fact that in Malaysia, Muslim Malaysian nationals are rigorously bound by the regulations of sharia law.

²⁴ Mohd Al Adib bin Samuri and Azlan Shah NAbees Khan, “Legal Implications of Conversion to Islam on Civil Marriage : Narrative of Converts in Malaysia,” *Islamiyyat* 42, no. 2 (2020): 103–11.

²⁵ Kholis Bidayati Kholis, Muhammad Alwi Al Maliki Alwi, and Suci Ramadhan Suci, “Dinamika Pembaharuan Hukum Keluarga Islam Di Negara Muslim,” *ADHKI: Journal of Islamic Family Law* 3, no. 1 (2021): 51–68.

In Malaysia, interfaith marriage frequently results in the non-Muslim spouse converting to Islam if they choose to marry a Muslim.²⁶ One real case in Malaysia is in the matter of *Pedley V Majlis Agama Islam Pulau Pinang & Anor* ([1990] 2 MLJ 307) under the Law (Marriage and Divorce) 1976 (Act 164). There was a couple who were both Christians and was married in 1966 according to civil law in Penang. Nevertheless, on January 12, 1987, the wife converted to Islam at the Pulau Pinang Islamic Affairs Department without her husband's awareness. The Penang State Kadi, who is in charge, informed the husband that his wife had officially embraced Islam. The husband was then cautioned that in order for their marriage to continue to be recognized under Malaysian law, he was required to convert to Islam within 90 days from the date of his wife's legal conversion. If either party does not adhere to the principles of Islam, their marriage will be terminated in accordance with Islamic law. The plaintiff initiated a legal action challenging the legitimacy of their civil marriage. Subsequently, the Penang High Court determined that the civil marriage remained legally legitimate, notwithstanding the wife's conversion to Islam. The court ruled that the civil marriage remained intact since the husband, who is not a Muslim, did not seek a divorce following his wife's conversion to Islam, as stipulated in Section 51 (1) of Act 164. Prior to 2017, individuals who converted to Islam (referred to as converts to Islam) were not allowed to seek divorce in civil court. Section 51 only granted this option to non-Muslim partners, but only if the application was submitted within three months of their conversion to Islam.

In Malaysia, despite explicit regulations prohibiting interfaith marriages, there are still a significant number of individuals who engage in such marriages, particularly in rural areas. Inland communities in Malaysia engage in interfaith marriages by relying on customary marriages as the foundation, rather than adhering strictly to established religious regulations.

This phenomenon arises from the development of a shared affection or a lack of religious understanding, enabling interfaith marriages to take place in Malaysia. Interfaith marriages are permissible in Malaysia because of its pluralistic nature, which encompasses several ethnic groups.²⁷ In contrast to the regulations in Indonesia which are still vague regarding registration of marriages for people of different religions, Act 164 clearly regulates the legalization of marriages conducted abroad as follows:

For Malaysian citizens who are in Malaysia and outside Malaysia, if they want their marriage to be recognized by Malaysian law, the marriage must be registered under this law. (Section 27)

If a Malaysian citizen marries abroad, within 6 months after the marriage takes place, it must be reported to the nearest registrar. Registrar, in this case also includes the Embassy of Malaysia. If within that time period the marriage is not registered due to negligence of the parties, according to the conviction will be

²⁶ (Sintang, 2011)

²⁷ (Sintang, 2011)

given a maximum prison sentence of 1 year or a maximum fine of 1,000 Malaysia ringgit or both penalties for violations. Applicants who register their marriage more than 6 months after it occurs are obligated to pay a penalty for the delayed reporting. If the parties fail to register a marriage due to negligence, Act 164 imposes severe penalties.

In Malaysia, registrars are explicitly forbidden from registering a marriage that is deemed null and invalid according to the terms of Act 164. Upon thorough examination, it becomes evident that the rules outlined in Article 51 of Act 164 serve as a definitive foundation for the Registrar to decline the application for marriage registration. This is because marriages between individuals of different religions are unequivocally considered invalid and unenforceable under the current legislation in Malaysia.

According to Malaysian legislation, non-Muslims are not subject to Islamic law, as Islamic law only applies to Malaysian people who practice Islam. Non-Muslims in Malaysia are required to adhere to Islamic law, particularly in cases when one spouse converts to Islam, as Malaysian law prohibits interfaith marriages. Converts to Islam are compelled to convert their spouse to Islam as well, as failure to do so would result in the termination of their marriage.

Interfaith Marriage Provisions in Indonesia and Malaysia: Normative Comparison

Based on the aforementioned discussion related to interfaith marriages regulation, the differences between Indonesian law and Malaysian law in interfaith marriage are shown below.

Table 1. Comparison of Indonesian law and Malaysian law on interfaith marriage

No.	The difference	Indonesia	Malaysia
1.	Legal basis	Law Number 1 of 1974 concerning Marriage j.o Law Number 16 of 2019 concerning Marriage, Civil Code	Act 164 Marriage and Law Reform 1976 and Act 303 Islamic Family Law 1984.
2.	Substance of the Law	The current legislation do not provide definitive rules on the prohibition of interfaith marriages. The Civil Code explicitly states that religious differences should not hinder a marriage, emphasizing that marriage is solely a civil partnership	In the Section 51 Act 164 Law Reform, 1976 the prohibition of interfaith marriages is written as follows; If one of the parties to a marriage has converted to Islam, the other party who has not converted to Islam can file for divorce. Further, in the Section 10 of Act 303 states that. Persons of other religions. (1) No man shall marry a non-Muslim except a Kitabiyah. (2) No woman shall marry a non-Muslim. The section can be translated as:

			marriage of different religions for Muslims is not allowed
3.	The Applicability of the Law	The Marriage Law regulates the legality of a marriage and what things can cancel a marriage. It is applied comprehensively to Indonesian citizens, especially those who embrace Islam because non-Muslims can still use Civil Law.	Act 164 Law Reform, 1976 applies to all Malaysian citizens even though there is Islamic law that regulates Islamic communities regarding marriage which is contained in Act 303 Islamic Family Law 1984

The table clearly illustrates substantial disparities in the regulation of interfaith marriages between the two countries. Marriage between individuals of different religions is generally prohibited in both countries. However, in Indonesia, there exists a legal loophole that allows couples to marry across different religions due to the absence of clear regulations in the Marriage Law. In contrast, Malaysia has explicitly regulated marriages between individuals of different religions. Religion is forbidden under the current legislation of Malaysia.

Every nation possesses distinct legal attributes. Law does not emerge in a void without any background, but rather originates and develops from the consciousness of the general population. Laws are established by embracing the evolving values present in society, which encompass customary, traditional, and religious principles. Every legal product is inevitably shaped by the socio-cultural and economic-political forces of its period, making it challenging to dissociate from these factors.²⁸

Fundamentally, law is subject to change and is influenced by specific circumstances. The impermanence and mutability of the law are attributed to both the political dynamics inside the legal system and the evolving nature of society. According to the norms of fiqh, it has been said that "*Taghayyur al-ahkam bi taghayyur al-makan wa al-zaman*" which means that changes in place and time always lead to changes in rulings. This rule demonstrates that the need for legislative reform arises from the constant evolution of events and contexts. The legal system should possess the capacity to adapt to evolving circumstances by establishing a framework of principles that align with the prevailing societal values.²⁹

The legality of interfaith marriages in Indonesia differs from that of other nations. In a secular country, differences in religion do not hinder a marriage. However, in an Islamic country, marriages between individuals of different religions are allowed and can be officially recognized, as long as the husband is a Muslim man and the wife is a non-Muslim woman who is "kitabiyah" or

²⁸ Islamil Keri, "Legislasi Hukum Keluarga Islam Berdasarkan Kompilasi Hukum Islam," *Ekspose* 16, no. 2 (2017): 361–75.

²⁹ A. Djazuli, *Kaidah-Kaidah Fikih : Kaidah-Kaidah Hukum Islam Dalam Menyelesaikan Masalah-Masalah Yang Praktis*, 1st ed. (Jakarta: Kencana Prenada Media Group, 2006).

knowledgeable about the Islamic holy book.³⁰ It is widely recognized that the Imam Syafi'i school of thought permits marriage with women who are followers of the Abrahamic religions. The term "women who are people of the book" refers only to Jewish and Christian women who are descendants of the Israelites. It does not encompass women from other nations, even if they are Jewish or Christian. This *madzhab* argues that the Prophets Moses and Isa were specifically sent to the Israelites and not to any other countries.³¹ In Malaysia, interfaith marriages between Muslim males and non-Muslim women from people of the book are allowed and can be officially recognized, provided that the people of the book in question are direct descendants of the Prophet Ya'qub.³²

In Indonesia, marriage rules are governed by both civil law and officially recognized religion laws, but in Malaysia, Islamic law takes precedence in regulating marriage and other family concerns. In both Indonesia and Malaysia, Islamic law strictly forbids the marriage of Muslims with non-Muslims unless the non-Muslim individuals convert to Islam. Indonesia possesses a legal system that is more diverse and inclusive compared to Malaysia. Indonesia maintains a robust legacy of religious plurality by actively promoting inter-religious tolerance. This strategy is employed in efforts by individuals to facilitate interfaith marriages with the aim of fostering unity amongst different religious communities. Malaysia adopts a more restrictive stance compared to Indonesia when it comes to interfaith marriages. In Malaysia, non-Muslim spouses are required to convert to Islam before marrying a Muslim.

The differences in legal views in Indonesia and Malaysia regarding interfaith marriages can be analyzed in several ways, such as the form, nature and factors of family law reform in these countries. According to Mahmood,³³ there are three distinct approaches to family law reform and practice in Muslim nations. The first approach is shown in countries like Saudi Arabia, Yemen, Bahrain, and Kuwait, where classical legal products are mostly used as positive law without undergoing any reform or codification. Countries using this system often forbid marriage between a Muslim and a non-Muslim, save for those who belong to the "people of the book." This term refers to Jews or Christians who, at the time of the Prophet Muhammad SAW, were deemed to have maintained the authenticity of their religious beliefs. In Islam, it is permissible for Muslim men to marry a woman who is knowledgeable in religious scripture. However, Muslim women are not allowed

³⁰ Mursalin, "Legalitas Perkawinan Beda Agama : Mengungkap Disparitas Putusan Pengadilan Di Indonesia."

³¹ Islamiyati Islamiyati, "Analisis Putusan Mahkamah Konstitusi No. 68/PUU/XII/2014 Kaitannya Dengan Nikah Beda Agama Menurut Hukum Islam Di Indonesia," *Al-Ahkam* 27, no. 2 (2017): 157-78.

³² Mursalin, "Legalitas Perkawinan Beda Agama : Mengungkap Disparitas Putusan Pengadilan Di Indonesia."

³³ Ahmad Tholabi Kharlie, Asep Syarifuddin Hidayat, and Muhammad Hafiz, *Kodifikasi Hukum Keluarga Islam Kontemporer: Pembaruan, Pendekatan, Dan Elastisitas Penerapan Hukum*, 1st ed. (Jakarta: Kencana, 2020).

to marry a guy who is well-versed in religious scripture.³⁴ Second, countries that fully disregard and substitute traditional family law with modern legislation that is universally enforced for all citizens, like Turkey. Turkey is a country that has modernized its legal system by updating classical law, yet it prohibits marriages between people of different faiths. According to the Cyprus Marriage and Divorce Law of 1951, it is forbidden to conduct weddings between Muslim women and non-Muslim males.³⁵ Third, countries like Indonesia, Malaysia, Egypt, Tunisia, and Morocco typically modify traditional family laws through legislation with the guidance of jurist (*fuqaha*). Indonesia and Malaysia both have strict laws that forbid and refuse to acknowledge weddings between individuals of different faiths.

Indonesia and Malaysia are countries in Southeast Asia that have similarities and differences. Both have a majority Muslim population. The main school of thought adhered to by the Syafi'i school of thought. However, the two of them have differences in the development of Islamic family law, especially in discussing interfaith marriages.

As has been explained regarding the nature of family law reform in Muslim countries. There are two characteristics of family law reform in Muslim countries, namely intra-doctrinal and extra-doctrinal.³⁶ The intra-doctrinal traits refers to the endeavor of reforming Islamic family law by incorporating viewpoints from different schools of thought or considering perspectives from schools other than the primary one endorsed by the state. As an illustration, the predominant school of thought in Turkey is the Hanafi school. However, when it comes to family law, Turkey not only follows the Hanafi school, but also incorporates the Maliki, Syafii, or Hanbali schools. Meanwhile, extra-doctrinal refers to the process of implementing legal change by offering a wholly new understanding of current legal principles.

In addition to the previously mentioned aspects of family law change, the response to interfaith marriages is also impacted by human rights discourse and the impact of the women's movement in that particular nation. This was confirmed by Abdullah Ahmed al-Na'im,³⁷ The previous scholars' interpretation of the restriction of interfaith marriages can be supported by the historical background, which lacked recognition of human rights. Currently, nearly every country follows a nation-state model that supports and protects the principles of human rights. The challenge of conducting interfaith marriages in Indonesia is deemed to conflict with both human rights and religious freedom.³⁸ The challenge of interfaith marriages in Indonesia arises from the fact that human rights are based on the idea

³⁴ Abd Rozak, et al, A Sastra, "Pengkajian Hukum Tentang Perkawinan Beda Agama (Perbandingan Beberapa Negara)," *Badan Pembinaan Hukum Nasional (BPHN) Kementerian Hukum Dan Hak Asasi Manusia* (Jakarta, 2011).

³⁵ Abd Rozak A Sastra.

³⁶ Kharlie, Hidayat, and Hafiz, *Kodifikasi Hukum Keluarga Islam Kontemporer: Pembaruan, Pendekatan, Dan Elastisitas Penerapan Hukum*.

³⁷ Ali Mutakin, "Fiqh Perkawinan Beda Agama Di Indonesia: Kajian Atas Fatwa-Fatwa NU, MUI Dan Muhammadiyah," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14, no. 1 (2021): 11.

³⁸ Sri Wahyuni, "Perkawinan Beda Agama Dan Hak Asasi Manusia Di Indonesia," *In Right: Jurnal Agama Dan Hak Asasi Manusia* 1, no. 1 (2011).

of particularity rather than universality. Consequently, human rights in Indonesia must align with the country's intellectual framework, which is rooted in Pancasila as the national identity.³⁹

Conclusion

The Indonesian Marriage Law does not explicitly regulate marriages of different religions, while the Population Law does not require that registered marriages be of the same religion, and the Civil Code does not prohibit religious differences. This generates legal confusion and allows interfaith marriages. In Malaysia, Law Reform, 1976 and Act 303 Islamic Family Law, 1984 prohibit interfaith marriages. Even if a marriage between different religions is lawful in another country, the Malaysian constitution will not authorize it. Different schools of thought affect circumstances in this scenario. Even though the Supreme Court ordered SEMA prohibiting courts from granting weddings between various religions, Indonesian marriages under multiple religions remain uncertain.

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³⁹ Mursalin, "Legalitas Perkawinan Beda Agama : Mengungkap Disparitas Putusan Pengadilan Di Indonesia."

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