

Granting Permission for Registering Interfaith Marriage in Indonesia: The Marriage Law and The Human Rights Law Perspective

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Abstract

Interfaith marriage always controversial in Indonesia. The granting of permission to register interfaith marriages has been rampant in the District Court before the existence of Supreme Court Circular Letter No. 2 of 2023 concerning the prohibition of registering interfaith marriages. The granting of permission to register interfaith marriages is very controversial because it is not clearly regulated in the marriage law. Surabaya District Court with Number: 916/Pdt.P/2022/PN.Sby has given permission for registering interfaith marriages. This research aims to find out the legal considerations of the judge in granting permission for registering interfaith marriages, and to analyze the decision in terms of the Marriage Law and the Human Rights Law. This study is a library study with a normative juridical approach. It uses the legality theory and the universality and relativity theory of human rights. This study concludes that the judge has considered the human rights of the petitioners to grant the registration of marriage between different religions. In terms of the Marriage Law, the legal considerations used by the judge are not quite right, because the article explains that marriage is prohibited if it is prohibited by religion, and all religion in Indonesia prohibit interfaith marriage. In terms of the Human Rights Law, it is explained that a marriage is valid if it is in accordance with the provisions of the applicable laws and regulations, so that the legalization of marriage should refer to the Marriage Law.

Keywords: *Interfaith Marriage; Human Rights; Marriage Law.*

Introduction

Indonesia is recognized as a country with a wide array of religions. According to Presidential Decree No. 1/PNPS/1965 on the Prevention of Religious Abuse and/or Blasphemy, the state officially acknowledges six religions: Islam, Protestantism, Catholicism, Hinduism, Buddhism, and



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Confucianism. This religious diversity has made Indonesia a pluralistic nation, particularly regarding religion and religious expression. However, this pluralism has also given rise to interfaith marriages,¹ which often becomes a complex legal issue and a subject of extensive debate and controversy across various sectors of society.²

Before the enactment of Law No. 1 of 1974 on marriage (hereinafter referred to as the Marriage Law), interfaith marriages were classified as mixed marriages and regulated under the *Regeling op de Gemengde Huwelijken* (Staatsblad 1898 No. 158), commonly abbreviated as GHR. Article 1 of the GHR stipulates that a “*marriage between persons in Indonesia who are subject to different legal systems*” constitutes a mixed marriage.³ This provision reflects the pluralistic nature of religious affiliation in Indonesian society.⁴ Consequently, it was not uncommon for marriages to occur between individuals of different faiths—for instance, between Muslims and Catholics, Muslims and Hindus, Catholics and Protestants, or Hindus and Buddhists, etc.⁵

From the perspective of the Marriage Law, the legitimacy of a marriage is determined by the religious provisions of each faith. This principle is articulated in Article 2 of the Marriage Law, which states: “(1) *A marriage is legally valid if conducted according to the laws of the respective religions and beliefs of the parties; (2) Every marriage must be registered by the prevailing laws and regulations*”. This is further clarified in Article 8 letter (f) of the same law, which stipulates that a marriage is prohibited between individuals “*who are related in a way that is forbidden by their religion or other applicable regulations*.”

Upon closer examination, the trend of interfaith marriage among Indonesian society continues to evolve. This phenomenon is influenced by globalization and digitalization, which gradually shift societal behavior and

¹ Akhmad Faroh Hasan et al., “Interfaith Marriage in Indonesia’s Law: A Comparative Study of Tafsir Al-Misbah and Al-Maraghi,” *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 10, no. 1 (2025): 322–37, <https://doi.org/10.22373/petita.v10i1.458>.

² Iwan Setiawan et al., “Reforming Marriage Law in Indonesia: A Critical Examination of Islamic Law on the Ban of Interfaith Marriages,” *Al-Manabji: Jurnal Kajian Hukum Islam* 18, no. 2 (2024): 179–98, <https://doi.org/10.24090/mnh.v18i2.11134>.

³ Sri Wahyuni, “Kontroversi Perkawinan Beda Agama Di Indonesia,” *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 11, no. 2 (2011): 14–34, <https://doi.org/10.30631/alrisalah.v11i02.466>.

⁴ Sri Wahyuni et al., “The Registration Policy of Interfaith Marriage Overseas for Indonesian Citizen,” *BESTUUR* 10, no. 1 (August 6, 2012): 12, <https://doi.org/10.20961/bestuur.v10i1.64330>.

⁵ Ahmad Rajafi, Arif Sugitanata, and Vinna Lusiana, “The ‘Double-Faced’ Legal Expression: Dynamics and Legal Loopholes in Interfaith Marriages in Indonesia,” *Journal of Islamic Law* 5, no. 1 (2024): 19–43, <https://doi.org/10.24260/jil.v5i1.2153>.

reflections on norms and legal frameworks.⁶ Generally, interfaith marriages in Indonesia are most commonly observed between adherents of Islam and Christianity. One notable case is the marriage between RA, a Muslim, and EDS, a Christian. This interfaith marriage was declared valid through Decision of the Surabaya District Court No. 916/Pdt.P/2022/PN.Sby. The court also permitted the couple to register their marriage at the Surabaya City Office of Population and Civil Registration (Dinas Dukcapil).

Interfaith marriage is permitted under the Decision of Surabaya District Court No. 916/Pdt.P/2022/PN.Sby has the potential to generate controversy. When viewed through the lens of the respective religious laws of the husband and wife, such interfaith marriages are generally deemed impermissible. In Islamic law, there is a prevailing prohibition against interfaith marriages, as reflected in the Qur'an, Hadith, and Islamic scholars' legal reasoning (ijtihad). This prohibition is further reinforced by the provision of Article 40 point (c) of Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law (Kompilasi Hukum Islam or KHI). In addition, the Indonesian Ulema Council (Majelis Ulama Indonesia, MUI) has issued a fatwa prohibiting interfaith marriage, as stated in Decision No. 4/MUNAS VII/MUI/8/2005.⁷

Like Islamic law, Christian religious law demonstrates a comparable stance regarding interfaith marriage. The prohibition against interfaith marriage in Christian doctrine can be found in the Bible, specifically in 2 Corinthians 6:14. In his interpretation, J. Wesley Brill explains that the Apostle Paul, through this biblical passage, refers to the prohibition of "unequally yoked" marriages as a reference to unions between individuals of different faiths.⁸ This indicates that, in essence, Christian religious law generally does not endorse or permit interfaith marriage.

Although religious law prohibits interfaith marriage, human rights instruments tend to adopt a neutral stance. Article 10 paragraph (2) of the Human Rights Law does not stipulate any requirement regarding the religion of the husband and wife. Fundamentally, by prevailing legal regulations, the article upholds the principle of free will between the parties entering into marriage. In this context, the notion of "free will" refers to the genuine

⁶ M Thahir Maloko et al., "Analyzing the Prohibition of Interfaith Marriage in Indonesia: Legal, Religious, and Human Rights Perspectives," *Cogent Social Sciences* 10, no. 1 (2024): 111–12, <https://doi.org/10.1080/23311886.2024.2308174>.

⁷ Sri Pujiarti, "Ulama Ormas Islam Indonesia Sepakat Melarang Pernikahan Beda Agama," Mahkamah Konstitusi Republik Indonesia, 2023, <https://www.mkri.id/index.php?page=web.Berita&id=18544&menu=2>.

⁸ Victoria Woen, "Pandangan Alkitab Mengenai Pernikahan Yang Tidak Seiman," *Excelsis Deo: Jurnal Teologi, Misiologi, Dan Pendidikan* 4, no. 1 (2020): 51–60, <https://doi.org/10.51730/ed.v4i1.34>.

intention to marry without coercion or pressure from any party.⁹ The most important thing in marriage is voluntary. The Human Rights Law approaches marriage from a civil law perspective, whereby religion is not a determining factor in the legitimacy of a marital union.¹⁰

Studies on interfaith marriage have been extensively conducted using various approaches. For instance, Sindy Cantonia and Ilyas Abdul Majid have examined interfaith marriage in relation to the Marriage Law and the Human Rights Law. In their analysis, Cantonia and Majid argue that, normatively, the Marriage Law does not provide explicit provisions regarding interfaith marriage. This legal ambiguity may result in uncertainty, leading to human rights violations.¹¹

Delving deeper into the issue, Rahmatulloh Panji Maulana and Taufiq Hidayat focus on the judicial considerations in the Decision of Surabaya District Court No. 916/Pdt.P/2022/PN.Sby. According to them, although the Marriage Law does not explicitly regulate interfaith marriage, if one refers to the broader legal framework—such as the Marriage Law and the Compilation of Islamic Law (KHI)—marriage is only legally recognized for couples who have the same religion.¹² Similarly, Patricia Karlina Dimiyati and Rosalinda Elsina Latumahina also examine the practice of interfaith marriage in the Decision of Surabaya District Court No. 916/Pdt.P/2022/PN.Sby. However, Dimiyati and Latumahina emphasize the potential legal implications arising from the decision. They argue that the Decision of Surabaya District Court No. 916/Pdt.P/2022/PN.Sby grants civil rights to children born from interfaith marriages, including the right to a birth certificate. Consequently, such children are considered legitimate under the law.¹³

⁹ Sarping Saputra, Ririn Maulina Putri, and Syifa Maulida Fahmia Syihab, “Forced Marriage in Cultural Practices and Sexual Violence Law,” *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 12, no. 2 (December 31, 2023): 205–20, <https://doi.org/10.14421/sh.v12i2.3160>.

¹⁰ 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, <https://doi.org/10.22225/jph.2.1.3044.16-21>.

¹¹ Sindy Cantonia and Ilyas Abdul Majid, “Tinjauan Yuridis Terhadap Perkawinan Beda Agama Di Indonesia Dalam Perspektif Undang-Undang Perkawinan Dan Hak Asasi Manusia,” *Jurnal Hukum Lex Generalis* 2, no. 6 (July 17, 2021): 510–27, <https://doi.org/10.56370/jhlg.v2i6.122>.

¹² Rahmatulloh Panji Maulana and Taufiq Hidayat, “Analisis Yuridis Normatif Terhadap Penetapan Pengadilan Negeri Surabaya Nomor 916/Pdt.P/2022/PN.Sby. Tentang Perkawinan Beda Agama,” *Mahakim: Journal of Islamic Family Law* 6, no. 2 (2022): 162–76, <https://doi.org/10.30762/mahakim.v6i2.154>.

¹³ Patricia Karlina Dimiyati and Rosalinda Elsina Latumahina, “Akibat Hukum Terhadap Perkawinan Beda Agama Di Indonesia (Studi Terhadap Putusan PN Surabaya Nomor 916/Pdt.P/2022/PN.Sby),” *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 3, no. 1 (2023): 138–53, <https://doi.org/10.53363/bureau.v3i1.170>.

Based on the aforementioned studies, this research examines the judge's considerations in the Decision of Surabaya District Court No. 916/Pdt.P/2022/PN.Sby, also traces the consistency of the judge's considerations with the Marriage and Human Rights Law. To examine this, this study employs the concept of the legality of interfaith marriages from the perspectives of religious law and positive law, as well as the concept of marriage as a human right. Therefore, this study formulates the following research questions. First, what are the legal considerations of the judge in the Decision of Surabaya District Court No. 916/Pdt.P/2022/PN.Sby? Second, how is the Decision of Surabaya District Court No. 916/Pdt.P/2022/PN.Sby reviewed from the perspective of the marriage law and the human rights law?

This study analyses the issue of interfaith marriage in the Decision of Surabaya District Court No. 916/Pdt.P/2022/PN.Sby using a legal-normative method. The data collection technique in this study uses a literature review that focuses on analysing the legal issues in secondary data. At a minimum, secondary data includes primary, secondary, and tertiary legal materials. This study uses primary legal materials, which include the Decision of Surabaya District Court No. 916/Pdt.P/2022/PN.Sby, the Marriage Law and its amendments, the Human Rights Law, the Population Administration Law, and the KHI. Secondary legal materials refer to relevant legal literature, while tertiary legal materials focus on legal encyclopaedias and dictionaries. This study analyses the data using a descriptive-analytical approach with qualitative techniques to address the legal issues outlined. Thus, this study provides an analytical framework for interfaith marriage issues based on scientific procedures.

Discussion

Legal Considerations in the Decision of Surabaya District Court No. 916/Pdt.P/2022/PN.Sby about Interfaith Marriage

In a court decision, the judges' legal considerations are critical because they are one of the steps in determining a case or petition fairly. Therefore, in a decision, mature legal considerations by the panel of judges are necessary so that the decision can fulfil the elements of justice. This is emphasised in Article 50(1) of Law No. 48 of 2009 on Judicial Power, which states: “*Court decisions must not only contain the reasons and basis for the decision, but also specific articles from the relevant legislation or unwritten sources of law that were used as the basis for the judgment.*”

In the Decision of Surabaya District Court No. 916/Pdt.P/2022/PN.Sby, the panel of judges granted the request for permission to register an interfaith marriage filed on April 8, 2022. The panel of judges referred to Article 8(f) of the Marriage Law and Article 35(a) of

Law No. 23 of 2006 on Population Administration (UU Administrasi Kependudukan), Article 6(1) of the Marriage Law which explains the consent of both prospective spouses, Article 7 of the Marriage Law which explains the age limit for prospective spouses to enter into marriage, Article 10(3) of Government Regulation No. 9 of 1975 which explains the procedures for marriage, Article 28B(1) of the Second Amendment to the 1945 Constitution which explains the rights of every person to form a family and continue their lineage through a valid marriage, and Article 29 of the 1945 Constitution of the Republic of Indonesia which explains the rights of every citizen to practice their respective religions. Since forming a family relationship through marriage is a fundamental right of every citizen, every citizen also has the right to marry while maintaining their respective religions.

In the Surabaya District Court Decision No. 916/Pdt.P/2022/PN.Sby, the Panel of Judges granted the interfaith marriage petition based on considerations of human rights (HAM) as submitted by the petitioners. This is reflected in one of the legal considerations of the Panel of Judges, which refers to Article 10(3) of Government Regulation No. 9 of 1975. In its consideration, the provision is interpreted as allowing the conduct of marriage according to the religious or customary practices of one of the parties, provided it is performed before a Marriage Registrar and witnessed by two witnesses. Thus, neither party needs to change religion to proceed with the marriage.

Meanwhile, the Marriage Law does not explicitly regulate interfaith marriages. According to the Panel of Judges, the provisions of Article 2(1) of the Marriage Law in conjunction with Article 10(2) of Government Regulation No. 9 of 1975 only apply to couples who have the same religion. Therefore, these provisions are deemed inapplicable to marriages between individuals of different religions. This view is based on the Supreme Court Decision No. 1400 K/Pdt/1986 dated January 20, 1989. Based on this jurisprudence, the Panel of Judges cited Article 8(f) of the Marriage Law as one of the legal grounds for its decision. According to the Panel, differences in religion do not fall under the category of prohibitions for entering into marriage as referred to in Article 8(f) of the Marriage Law and Article 35(a) of the Population Administration Law.

The legal considerations made by the Panel of Judges have fulfilled the provisions of procedural law: holding a trial, hearing and assessing the evidence submitted by the Petitioners, and conducting a careful analysis. The granting of permission for registering an interfaith marriage by the Panel of Judges was not without reason. According to the Panel, the petition submitted by the Petitioners met the legal requirements for a valid marriage. Therefore, the Panel of Judges decided to grant the Population and Civil Registration Office permission to register the marriage.

The researcher responded to the interpretation of the Panel of Judges on Article 2 paragraph (1) of the Marriage Law in conjunction with Article 10 paragraph (2) of Government Regulation No. 9 of 1975, as well as Article 8 letter (f) of the Marriage Law, which were used as the basis for legal considerations in the case. Article 8(f) states that marriage is prohibited between parties who, according to their religion or applicable laws and regulations, are prohibited from marrying. Based on these provisions, it is clear that the respective religions followed by the Petitioners, namely Islam and Christianity, prohibit interfaith marriages. Therefore, it is not only Article 2(1) that serves as the basis for the prohibition, but Article 8(f) explicitly prohibits marriages between adherents of different religions.

In Islamic teachings, interfaith marriage is strictly considered prohibited. This is emphasized in the Qur'an, Surah Al-Baqarah, verse 221, which states that a Muslim is not permitted to marry a polytheist or a person of the Book. This prohibition is further clarified in the Compilation of Islamic Law, particularly in Articles 40 and 44, which explicitly ban interfaith marriages. However, within the Muslim community itself, there remain differing opinions on this issue. At least, these differing viewpoints can be observed between institutions such as the Indonesian Ulama Council (MUI), Nahdlatul Ulama (NU), and Muhammadiyah on one side, and other groups such as Paramadina on the other side.

In the existing differences of opinion, the Indonesian Ulema Council (MUI), Nahdlatul Ulama (NU), and Muhammadiyah agree that interfaith marriage is strictly prohibited for Muslims. This prohibition applies to both Muslim men who wish to marry non-Muslim women and Muslim women who wish to marry non-Muslim men. This view is based on several verses of the Quran, including Surah Al-Baqarah verse 221, An-Nisa verses 3 and 25, Al-Maidah verse 5, Ar-Rum verse 21, Al-Mumtahanah verse 10, and At-Tahrim verse 6. Additionally, MUI has issued a fatwa through Decision No. 4/MUNAS VII/MUI/8/2005, which explicitly states that interfaith marriage is *haram* and invalid. In this fatwa, MUI also reaffirms that marriage between a Muslim man and a woman from the People of the Book (*Ahlul Kitab*), according to the *Qaul Mu'tamad*, is *haram* and invalid.¹⁴

In line with the MUI's view, Nahdlatul Ulama (NU), through the results of its 28th Congress in Yogyakarta in 1989, confirmed that marriage between two people of different religions in Indonesia is not valid. Meanwhile, Muhammadiyah also reinforced its view on the prohibition of interfaith marriage through the results of its 22nd Tarjih Decision in the

¹⁴ 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): 11–25, <https://doi.org/10.14421/ahwal.2021.14102>.

same year. This decision emphasized that the concept of Ahlul Kitab today differs from that of Ahlul Kitab during the time of the Prophet Muhammad SAW. Muhammadiyah argues that Ahlul Kitab today falls under the category of polytheists because they associate partners (*musyrik*) with Allah SWT. Therefore, according to Muhammadiyah, interfaith marriage cannot achieve happiness in the family, which is the primary purpose of marriage.

According to Paramadina, through the issued *ijtihad*, it is explained that every Muslim, both male and female, should be given the freedom to marry a non-Muslim. This *ijtihad* is based on two fundamental assumptions. *First*, that the only people who are forbidden to marry are Arab polytheists, and this form of belief is almost certainly no longer in existence today. *Second*, all existing religions and beliefs are considered heavenly religions (*agama samawi*), and their followers are included in the category of *Ahlul Kitab*. Paramadina's opinion refers to Surah Al-Māidah verse 5, which is considered a revolutionary verse. According to them, this verse explicitly answers Muslims' doubts regarding interfaith marriage. The views of Rasyid Rida greatly influenced Paramadina's *ijtihad*. In his view, *Ahlul Kitab* includes not only Jews and Christians but also religions such as Hinduism, Buddhism, and Confucianism. Essentially, these three religions teach the concept of monotheism. However, over time and as the distance between the people and their prophets grew, the teachings in their holy books underwent various changes.¹⁵

Christianity also explains something similar to Islam, namely that interfaith marriage is prohibited. According to Christian teachings, the purpose of marriage is to achieve happiness. However, this happiness will be difficult to achieve if one of the partners does not share the same faith. As explained in the Bible, specifically in *Kitab Kejadian* 2:24, marriage is God's idea for humanity, where God ordained that a man and a woman should become one flesh. The importance of unity in faith is also emphasized in 2 Corinthians 6:14. Christianity views interfaith marriage as a time bomb that could eventually explode and destroy the family relationship. Therefore, Christians firmly reject interfaith marriage because it involves aspects of faith, vision, and mission in life, as well as the continuity of lineage, which is considered "divine lineage." For this reason, God intends marriage to occur only between fellow children of God, as it is impossible for a child of God to build a good and happy family life with someone who is not of the same faith.¹⁶

¹⁵ Ahmad Nurcholis and Ahmad Baso, *Pernikahan Beda Agama: Kesaksian, Argumen Keberagaman Dan Analisis Kebijakan*, 2nd ed. (Jakarta: Komnas HAM RI, 2010).

¹⁶ Gerhard Eliasman Sipayung, "Elohin YHWH Sebagai Dasar Pernikahan Kristen Menyikapi Pro Dan Kontra Pemberkatan Pernikahan Beda Agama/Iman (Tinjauan Teologis

In the Old Testament, specifically in *Kejadian* 2:18, God said, “It is not good for the man to be alone. I will make a helper suitable for him.” From this verse, we can understand that God has a plan for humanity to form beautiful and happy families as a reflection of His power and love for humanity. Therefore, God created women as helpers for men or their husbands—not to dominate, lead, or influence negatively—but to be equal companions and supporters. The main reason God opposes intermarriage among His people is that it is seen as a blatant form of contempt for His holiness. In *Imamat* 11:45, God says, “For I am the Lord who brought you up out of the land of Egypt to be your God; therefore you shall be holy, for I am holy.” This verse emphasizes that everyone who has become His possession must strive earnestly to live by God's holiness.¹⁷

The New Testament's view on interfaith marriage states that marriage must be by God's eternal plan in order to fulfill its original purpose. Therefore, humans must return to God and His Word, not merely rely on their own opinions about the meaning and nature of marriage according to their thinking. God intends for marriage to take place between fellow children of God, as it is impossible for a child of God to form or build a good and happy marriage with “children of darkness.”¹⁸

Based on the above explanation, researchers argue that interfaith marriage is considered invalid according to each religion. One way for interfaith marriage to take place is for one party to convert to his partner's religion, so there is no difference in beliefs within the marriage. Therefore, each religion explicitly prohibits interfaith marriages, as they seek to ensure their followers remain faithful to their adopted religion. However, in making this ruling, the Court may have considered the Islamic perspective referenced in Paramadina's opinion, which permits interfaith marriages by considering human rights considerations. As a result, the Court in this decision places greater emphasis on fulfilling the petitioners' human rights.

The researcher assessed that the legal considerations made by the Panel of Judges did not fully consider a marriage's validity, but only focused on its legality. The validity of a marriage is regulated in Article 2(1) of the Marriage Law in conjunction with Article 10(2) of Government Regulation No. 9 of 1975, which states that a marriage is considered valid if the religion and beliefs of each party permit it. However, the Panel of Judges opined that this provision only applies to couples who share the same religion. Meanwhile, the legality of marriage is regulated under Article 2(2) of the Marriage Law in

Pernikahan Menurut Kejadian Pasal 1-6,” *Jurnal Teologi Dan Pendidikan Kristiani* 3, no. 3 (2020): 119–39.

¹⁷ Jessica Silfanus, “Perkawinan Beda Agama Secara Alkitabiah Dalam Masyarakat Pluralisme,” *The Way: Jurnal Teologi Dan Kependidikan* 8, no. 1 (2022): 82–95.

¹⁸ Silfanus.

conjunction with Article 2 of the Government Regulation on the Implementation of the Marriage Law and Article 35 of the Population Administration Law. Article 35(a) of the Population Administration Law explains that the term "marriage established by a court" refers to a marriage between two people of different religions. Therefore, the legal considerations of the Court in this case are based solely on the legal aspects as regulated in the aforementioned regulations. Therefore, the Panel of Judges decided to grant the petition by the Petitioners on April 8, 2022.

Based on this explanation, the researcher argues that the legal considerations made by the Panel of Judges only focused on the legality of a marriage and ignored its validity. However, according to one legal expert, interpreting Article 35(a) of the Population Administration Law is considered legal evasion. Therefore, the conduct of interfaith marriages through court rulings can be categorized as an illegal act.

Furthermore, the legal considerations used by the Panel of Judges also refer to Article 29 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which regulates freedom to embrace belief in God Almighty, which reads: "The State guarantees freedom for every citizen to practice their respective religions and to worship according to their religion and beliefs."

Additionally, the Panel of Judges based its considerations on Article 28B(1) of the Second Amendment to the 1945 Constitution of the Republic of Indonesia, which states that every person has the right to form a family and continue their lineage through a valid marriage, as follows: "Every person has the right to form a family and continue their lineage through a valid marriage."

The Panel of Judges used both articles to review the petition from a human rights perspective. According to the Panel of Judges, the two articles are related because they both explain that the state guarantees the freedom of every citizen to embrace their respective religions. This legal consideration was used to examine the human rights aspects of the Petitioners, enabling the Panel of Judges to rule on the petition without disregarding the rights inherent to the Petitioners.

The Panel of Judges in this ruling deserves recognition for upholding the human rights of the Petitioners by referring to Article 29 of the 1945 Constitution of the Republic of Indonesia and Article 28B of the Second Amendment to the 1945 Constitution of the Republic of Indonesia. The direct use of the 1945 Constitution as the basis for consideration, rather than the Human Rights Law (UU HAM), demonstrates that the Panel of Judges has genuinely protected the human rights of the Petitioners.

Upon closer examination, the legal considerations made by the Panel of Judges regarding Article 29 of the 1945 Constitution of the Republic of Indonesia include the phrase "to worship according to their religion and

beliefs,” which indicates that the State of Indonesia does not permit the existence of rules that are contrary to religious law. The guarantee of human rights enshrined in Article 28B(1) of the Second Amendment to the 1945 Constitution is reaffirmed in Article 10(1) of the Human Rights Act (UU HAM). In addition, Article 10(2) of the Human Rights Law also regulates the conditions for a valid marriage, which reads: "A marriage is only valid if it is entered into freely by the prospective husband and wife, by the provisions of the law."

In this case, the applicable legislation is the Marriage Law. Article 2(1) of the Marriage Law stipulates that a marriage is valid if each party's religious laws and beliefs permit it. This means that interfaith marriages are not permitted under the laws of the respective religions followed by the parties involved. If such an interfaith marriage is forcibly conducted, it automatically fails to meet the legal requirements for validity and is deemed invalid.

The concept of restriction reinforces this. The concept used in restriction is part of the scope of external forums. Within this framework, the state has the authority to regulate, including restricting certain rights, considering moral aspects, religious values, security, and public order.¹⁹ However, such restrictions cannot be applied arbitrarily without careful consideration and a strong legal basis for policy-making. Based on this explanation, the state can restrict individuals from interfaith marriage to anticipate potential social unrest from conflicts with moral and religious values.²⁰ This is relevant considering that the majority of Indonesians are Muslims, who strictly prohibit interfaith marriage.²¹ Furthermore, Article 28J of the Second Amendment to the 1945 Constitution also explains that the government may impose restrictions on human rights with consideration of moral values, ethics, and religious norms.²² Therefore, the Court should have considered these aspects and not granted the petitioners' request—the ruling risks creating the perception that the Court has acted contrary to the law. Based on the above explanation, the researcher concludes that in the

¹⁹ Faiq Tobroni, “Pembatasan Kegiatan Keagamaan Dalam Penanganan Covid-19,” *Jurnal Komunikasi Hukum (JKH)* 6, no. 2 (2020): 369–395, <https://doi.org/10.23887/jkh.v6i2.28062>.

²⁰ Faiq Tobroni, “Kebebasan Hak Ijtihad Nikah Beda Agama Pasca Putusan Mahkamah Konstitusi,” *Jurnal Konstitusi* 12, no. 3 (May 20, 2016): 604, <https://doi.org/10.31078/jk1239>.

²¹ Faiq Tobroni, “Kawin Beda Agama Dalam Legislasi Hukum Perkawinan Indonesia Perspektif HAM,” *Al-Mawarid* 11, no. 2 (March 12, 2011), <https://doi.org/10.20885/almawarid.vol11.iss2.art2>.

²² Hanif Millata Ibrahim, “Indikator Penerapan Ham Universal Dan Ham Partikular Dalam Putusan Mk No 46/Puu-Viii/2010 Tentang Anak Di Luar Perkawinan Dan Putusan Mk No 8/Puu-Xii/2014 Tentang Perkawinan Beda Agama,” *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 7, no. 1 (June 28, 2018), <https://doi.org/10.14421/sh.v7i1.2032>.

Decision of the Surabaya District Court No. 916/Pdt.P/2022/PN.Sby, there are inaccuracies in the decision-making process and the legal considerations used by the Panel of Judges in ruling on the petition filed by the Petitioners.

The Permits for the Registration of Interfaith Marriages in Perspectives on the Marriage Law

In the Surabaya District Court Decision No. 916/Pdt.P/2022/PN.Sby, the Panel of Judges based its considerations, among other things, on the provisions of the Marriage Law, particularly Article 8(f), Article 6(1), and Article 7. Article 6(1) regulates the consent of both prospective spouses as a requirement for a valid marriage. In contrast, Article 7 sets the minimum age for prospective spouses to enter a valid marriage under the law. One of the issues of concern to the researcher is the use of Article 8(f) as the legal basis for the Panel of Judges' decision. This provision states that marriage is prohibited if there is a relationship that, according to religion or other applicable laws and regulations, is not permitted to marry. Therefore, if, according to the religion of the Petitioners, there is a prohibition against entering into marriage, then the petition should not be granted.

Thus, it is clear that each religion professed by the Petitioners prohibits interfaith marriage. The religions professed by the Petitioners are Islam and Christianity. In Islam, interfaith marriage is prohibited. This is emphasized in the Qur'an, Surah Al-Baqarah, verse 221, which states that a Muslim is not permitted to marry a polytheist or Ahlul Kitab. This prohibition is also regulated in the Compilation of Islamic Law, specifically in Articles 40 and 44.

Christianity also shares a similar view with Islam regarding the prohibition of interfaith marriage. According to Christian teachings, the primary purpose of marriage is to achieve true happiness, which is considered challenging to attain if the couple is not of the same faith. The Bible emphasizes this view, particularly in Genesis 2:24, which states that marriage is God's idea for humanity, in which a man and a woman become one flesh. Furthermore, the unity of faith in marriage is reaffirmed in II Corinthians 6:14, which reminds believers not to be unequally yoked with unbelievers. In the Christian view, interfaith marriage is seen as a "time bomb" that has the potential to cause serious conflict in the future. Therefore, Christianity firmly rejects interfaith marriage because it concerns fundamental aspects, such as faith, vision, and mission in life together, and the continuity of the lineage referred to as "Divine Descendants." God intends for marriage to occur between fellow children of God, as it is believed that a good and happy marital bond cannot be formed with someone outside the Christian faith.

The religions of the Petitioners strictly prohibit interfaith marriage. However, in its decision, the Panel of Judges used an inappropriate legal

basis, namely Article 8(f) of the Marriage Law. That article states that marriage is prohibited if it conflicts with the religious beliefs of either party. In its ruling, the Panel of Judges argued that Article 2 of the Marriage Law was irrelevant as a legal basis in cases of interfaith marriage because it only applies to marriages between couples of the same religion. However, Article 2 of the Marriage Law explicitly regulates the validity and legality of a marriage, including aspects related to the religious and belief foundations of the prospective spouses.

Perspective of Human Rights Law

As a country governed by the rule of law, Indonesia recognizes and protects the human rights of all its citizens. This principle is reflected in various legal instruments, including the Preamble to the 1945 Constitution, Chapter XA of the 1945 Constitution, Decision of the People's Consultative Assembly of the Republic of Indonesia No. XVII/MPR/1998, Law No. 39 of 1999 on Human Rights (Human Rights Law), Law No. 26 of 2000 on Human Rights Courts, and other relevant laws and regulations governing and addressing human rights. However, in the context of this study, the researcher will analyze the Decision of the Surabaya District Court No. 916/Pdt.P/2022/PN.Sby specifically from the perspective of the Human Rights Law, so the study's focus is limited to the Law on Human Rights.

A legal fact has been revealed in a case concerning a request for permission to marry between individuals of different religions, as determined by the Surabaya District Court, that the Petitioners sincerely intend to enter a valid marriage while maintaining their respective religions and beliefs. In essence, the Panel of Judges ruled that the petition constitutes a form of protection for the petitioners' fundamental rights, citing Article 29 of the 1945 Constitution and Article 28B(1) of the Second Amendment to the 1945 Constitution. However, by Article 10(2) of the Law on Human Rights (UU HAM), which states that a valid marriage must be conducted by the provisions of applicable laws and regulations, the granting of permission for an interfaith marriage should still be based on Article 2(1) of the Marriage Law. This provision is consistent with Article 28J of the Second Amendment to the 1945 Constitution and Article 29(2) of the Universal Declaration of Human Rights (UDHR).

In essence, the state has the authority to restrict individuals from entering into interfaith marriages, with the consideration of preventing potential social unrest within society. This is based on the fact that interfaith marriages have the potential to conflict with the moral and religious values held by the majority of Indonesian society, which is predominantly Muslim. Therefore, the Panel of Judges should carefully consider these sociological aspects to anticipate the possibility of social tensions arising in society. The

ruling issued by the Panel of Judges in this case is deemed inconsistent with the moral and religious values that are alive in society. For this reason, the Panel of Judges should be more prudent in considering the social impact of the ruling. In the context of interfaith tolerance, it is sufficient for each party to respect each other's religious beliefs and teachings without entering into more sensitive areas such as interfaith marriage.

The Panel of Judges, in one of its legal considerations, referred to Article 29 of the 1945 Constitution of the Republic of Indonesia, which states that the state guarantees every citizen the freedom to embrace a religion and worship according to their religion and beliefs. However, according to the researcher, using this article as a basis for consideration is inappropriate. This is due to the wording in the article, namely "to profess a religion and to worship according to their religion and beliefs," which explicitly indicates that the practice of worship must be by the teachings of each religion. However, in Islamic and Christian law, which the Petitioners follow, marriage is part of religious worship and has its own rules. Therefore, interfaith marriage should not only be viewed as an expression of religious freedom, but also must be placed within the framework of the religious law applicable to each adherent. The contents of administrative decisions must pay attention to the provisions of legislation and the General Principles of Good Government (AUPB).²³ This also applies to this court decision that grant permission to register interfaith marriages even though the decision was not made at the State Administrative Court.

Conclusion

Based on the above explanation, it can be concluded that the legal basis and considerations of the Panel of Judges in the Surabaya District Court Decision Number 916/Pdt.P/2022/PN.Sby refer to Article 8 letter (f) of the Marriage Law, Article 35 letter (a) of the Population Administration Law, as well as Article 10(3) of Government Regulation No. 9 of 1975. Additionally, the Panel of Judges also considered the fundamental rights of the Petitioners to form a family through a valid marriage while maintaining their respective religious beliefs, as guaranteed under Article 28B(1) of the Second Amendment to the 1945 Constitution. However, the researcher assesses that the legal considerations adopted by the Panel of Judges contain inaccuracies. The ruling placed greater emphasis on administrative legality alone without considering the validity of the marriage according to the religious law followed by the petitioners. The validity of a marriage does not

²³ Nor Fadillah, Hariyanto Hariyanto, and Abdallah Mourtaadhoi, "Legal Problems in Determining Factual Actions as Dispute Object of the State Administrative Court in Indonesia," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 12, no. 1 (August 6, 2023): 1–20, <https://doi.org/10.14421/sh.v12i1.2949>.

solely depend on administrative recognition. However, it must also comply with the provisions of the respective religions as stipulated in Article 2(1) of the Marriage Law. Therefore, the decision should not be used to register interfaith marriages at the Population and Civil Registration Office.

The judge has considered the human rights of the petitioners to grant the registration of marriage between different religions. In terms of the Marriage Law, the legal considerations used by the judge are not quite right, because the article explains that marriage is prohibited if it is prohibited by religion, and all religions in Indonesia prohibit interfaith marriage. In terms of the Human Rights Law, it is explained that a marriage is valid if it is in accordance with the provisions of the applicable laws and regulations, so that the legalization of marriage should refer to the Marriage Law.

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