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The Controversy over the Registration of Interfaith Marriages: A Conflict between Human Rights and Islamic Law

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Abstract: *This article examines the emerging judicial trend in Indonesia concerning the registration of interfaith marriages, particularly through the application of the concept of submission to a single religious law. On the one hand, this practice is often justified as an effort to accommodate human rights and administrative legal certainty. On the other hand, it raises fundamental normative tensions with Islamic law. This study takes as its primary case the Decision of the Yogyakarta District Court Number 378/Pdt.P/2022/PN.Yyk. Employing a qualitative legal research method, the study analyzes official court documents and relevant statutory regulations, jurisprudence, and scholarly literature. The findings reveal that the authorization of interfaith marriage registration by civil courts is largely based on jurisprudence developed by the Supreme Court, which recognizes the validity of such marriages when one party submits to the religious law of the other. This approach has been further institutionalized through an official circular letter issued by the Supreme Court. However, from the perspective of Islamic jurisprudence (fiqh), this concept is highly problematic. Islamic law adheres to the principle that the original legal status of marriage is prohibition, and permissibility arises only when all substantive and formal religious requirements are fulfilled. Consequently, the performance or registration of a marriage outside Islamic law cannot replace its normative authority. An interfaith union involving a Muslim that is not solemnized according to Islamic law cannot be regarded as a valid marriage, but merely as a biological relationship without legitimate marital status.*
Keywords: *Interfaith Marriage; Islamic Law; Human Rights; and Submission.*

Abstrak: Artikel ini mengkaji kecenderungan yudisial yang berkembang di Indonesia terkait pencatatan perkawinan beda agama, khususnya melalui penerapan konsep ketundukan pada satu hukum agama. Di satu sisi, praktik ini kerap dibenarkan sebagai upaya untuk mengakomodasi hak asasi manusia dan menjamin kepastian hukum administrasi. Namun, di sisi lain, praktik tersebut menimbulkan ketegangan normatif yang

mendasar dengan hukum Islam. Penelitian ini menggunakan Putusan Pengadilan Negeri Yogyakarta Nomor 378/Pdt.P/2022/PN.Yyk sebagai studi kasus utama. Dengan menggunakan metode penelitian hukum kualitatif, kajian ini menganalisis dokumen putusan pengadilan, peraturan perundang-undangan yang relevan, yurisprudensi, serta literatur ilmiah. Hasil penelitian menunjukkan bahwa pemberian izin pencatatan perkawinan beda agama oleh pengadilan sipil terutama didasarkan pada yurisprudensi yang dikembangkan oleh Mahkamah Agung, yang mengakui keabsahan perkawinan tersebut apabila salah satu pihak tunduk pada hukum agama pihak lainnya. Pendekatan ini selanjutnya dilembagakan melalui surat edaran resmi Mahkamah Agung. Namun demikian, dari perspektif fikih, konsep tersebut dipandang bermasalah. Hukum Islam menganut prinsip bahwa status hukum asal perkawinan adalah terlarang, dan kebolehan baru muncul apabila seluruh syarat substantif dan formal keagamaan terpenuhi. Oleh karena itu, pelaksanaan atau pencatatan perkawinan di luar hukum Islam tidak dapat menggantikan otoritas normatifnya. Perkawinan beda agama yang melibatkan seorang Muslim dan tidak dilangsungkan sesuai dengan hukum Islam tidak dapat dianggap sebagai perkawinan yang sah, melainkan semata-mata sebagai hubungan biologis tanpa ikatan perkawinan yang sah.

Kata Kunci: *Perkawinan Beda Agama; Hukum Islam; Hak Asasi Manusia; Ketundukan.*

Introduction

The debate over the legal standing of the Marriage Law (Law Number 1 of 1974, as amended by Law Number 16 of 2019) in addressing interfaith marriages persists. Some parties argue that the Marriage Law advances a narrative prohibiting marriages between Muslims and non-Muslims. As a country with a Muslim-majority population, Indonesia is often categorized as a state that supports the implementation of Islamic marriage law, which prohibits interfaith marriages between Muslims and non-Muslims.[1] Several studies reinforce this conclusion. One publication concludes that the Marriage

[1] Ermi Suhasti, Siti Djazimah, and Hartini Hartini, "Polemics on Interfaith Marriage in Indonesia between Rules and Practices," *Al-Jami'ah: Journal of Islamic Studies* 56, no. 2 (May 30, 2019): 367–94, https://doi.org/10.14421/ajis.2018.562.367-394.

Law pays insufficient attention to issues of interpersonal relationships involving individuals from different religious backgrounds.[2]

One study emphasizes the existence of provisions within the Marriage Law that explicitly prohibit interfaith marriages between Muslims and non-Muslims. The study finds that Islamic Law constitutes one of the dominant substantive sources in the formulation of marriage law. This dominance is evident in the persistence of specific articles that conflict with the spirit of human rights protection.[3] Another study concludes that the prohibition of interfaith marriage in Indonesia contradicts the philosophical foundations of marriage in Indonesia. This study argues that interfaith marriage cannot achieve the purpose of marriage, namely, to establish a happy and enduring family based on the belief in One Almighty God. According to this view, such objectives can only be realized through marriages between partners who share the same religion.[4]

Conversely, other perspectives argue that the Marriage Law lacks a clear position in addressing interfaith marriages between Muslims and non-Muslims. The Law is considered to create a legal vacuum in regulating interfaith marriages. Consequently, some Indonesian Muslims seek out-of-the-box solutions to obtain state recognition of interfaith marriages. These interfaith couples choose to solemnize their marriages abroad and subsequently register their marriages with the Civil Registry Office in Indonesia. Although this approach raises issues regarding the validity of the marriage, the registration process itself encounters no significant obstacles.[5] One publication examines interfaith marriages conducted abroad and the pursuit of legal recognition through district courts as an alternative legal

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[2] Ratno Lukito, "The Enigma of Legal Pluralism in Indonesian Islam: The Case of Interfaith Marriage," *Journal of Islamic Law and Culture* 10, no. 2 (July 2008): 179–91, https://doi.org/10.1080/15288170802236457.

[3] Judith Koschorke, "Legal Pluralism in Indonesia: The Case of Interfaith Marriages Involving Muslims," in *Legal Pluralism in Muslim Contexts* (BRILL, 2019), 199–229, https://doi.org/10.1163/9789004398269_010.

[4] Fathol Hedi, Abdul Ghofur Anshori, and Harun Harun, "Legal Policy of Interfaith Marriage in Indonesia," *Hasanuddin Law Review* 3, no. 3 (December 26, 2017): 263, https://doi.org/10.20956/halrev.v3i3.1297.

[5] Sri Wahyuni et al., "The Registration Policy of Interfaith Marriage Overseas for Indonesian Citizens," *BESTUUR* 10, no. 1 (August 6, 2012): 12, https://doi.org/10.20961/bestuur.v10i1.64330.

pathway amid the legal vacuum created by the Marriage Law in addressing interfaith marriages.[6]

Amid these two opposing views, this article identifies a unique trend in the practice of interfaith marriage. Several court decisions indicate a growing trend for individuals to pursue interfaith marriages through applications for judicial recognition of their legality. Notable recent cases include the District Court Decision of Surakarta Number 454/Pdt.P/2018/PN.Skt, District Court Decision of Surakarta Number 278/Pdt.P/2019/PN.Skt, District Court Decision of Surabaya Number 916/Pdt.P/2019/PN.Sby, District Court Decision of Surabaya Number P/2022/PN.Sby, and District Court Decision of Yogyakarta Number 378/Pdt.P/2022/PN.Yyk. This tendency to utilize judicial mechanisms to obtain registration of interfaith marriages reflects a phenomenon of leveraging existing institutional authority within the Indonesian legal system to provide a form of personal autonomy for Muslims who intend to marry non-Muslims.[7]

This article examines the granting of permission for the registration of an interfaith marriage in the District Court of Yogyakarta, Decision Number 378/Pdt.P/2022/PN explicitly.Yyk. The selection of this decision aims to describe a model of protection for interfaith marriages from a human rights perspective and to discuss issues concerning the validity of marriage arising from this protection model. Accordingly, the research question addressed in this article is: How are human rights protected, and how do they conflict with Islamic Law, in the registration of interfaith marriages as reflected in the District Court of Yogyakarta's Decision Number 378/Pdt.P/2022/PN.Yyk?

This study employs a normative legal research method. Data collection and processing are conducted using a qualitative approach. The data are derived from the official copy of the District Court of Yogyakarta Decision Number 378/Pdt.P/2022/PN.Yyk. The analysis

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[6] Rosdiana Rosdiana, Ummu Hanah Yusuf Saumin, and Masayu Mashita Maisarah, "Legitimacy on Inter-Faith Marriages: An Analysis of the Role of Religious Councils on the Legal Policy in Indonesia," *AHKAM : Jurnal Ilmu Syariah* 19, no. 1 (July 9, 2019): 81–96, https://doi.org/10.15408/ajis.v19i1.11710.

[7] Mohamad Abdun Nasir, "Religion, Law, and Identity: Contending Authorities on Interfaith Marriage in Lombok, Indonesia," *Islam and Christian–Muslim Relations* 31, no. 2 (April 2, 2020): 131–50, https://doi.org/10.1080/09596410.2020.1773618.

is carried out in three stages. The first stage involves document content analysis by extracting materials relevant to the research focus. The second stage involves a comparative document analysis, in which the contents of Decision Number 378/Pdt.P/2022/PN.Yyk are compared with Supreme Court Decision Number 1400 K/Pdt/1986, Supreme Court Circular Letter Number 231/PAN/HK.05/1/2019, several district court decisions, and relevant statutory regulations governing interfaith marriage. In addition to comparing legal documents, the author also analyzes the decision using theoretical frameworks derived from prior research to interpret its substance. The third stage involves thematic analysis, through which conclusions are drawn based on the available data, in accordance with the research questions that form the central theme of the study.

Result and Discussion

Application for the Registration of an Interfaith Marriage

In Decision No. 378/Pdt.P/2022/PN.Yyk, the interfaith couple consisted of adherents of Islam and Catholicism. The male party was Muslim, while the female party was Catholic. The application for the registration of their interfaith marriage was submitted in late 2022. The couple had married in accordance with Catholic canon law, as evidenced by a blessing certificate issued by a church in Sleman Regency. The Catholic marriage ceremony was conducted in September 2022. In October 2022, the couple was blessed with a child. In November 2022, they sought consultation and initiated administrative procedures concerning the issuance of a marriage certificate. In response, the Civil Registry Office stated that the issuance of a marriage certificate for an interfaith marriage required a district court decision. Consequently, the couple applied for the registration of their interfaith marriage to the district court.[8]

During the court proceedings at the District Court of Yogyakarta, the applicants invoked Article 21 paragraph (4) of the Marriage Law to protect their rights. This provision regulates the court's obligation to examine cases related to marriage registration in a summary manner and to provide legal certainty. In addition, the

[8] Mahkamah Agung, "Penetapan Pengadilan Negeri Yogyakarta Nomor 378/Pdt.P/2022/PN.Yyk" (2022).

applicants relied on Article 35 paragraph (1) of the Population Administration Law (Law No. 23 of 2006 on Population Administration, as amended by Law No. 24 of 2013), which obliges the government to register marriages that a court decision has determined. They argued that the Indonesian legal system adheres to the principle that differences in religion do not constitute an impediment to marriage. Furthermore, the applicants referred to several prior district court decisions (jurisprudence) to strengthen their legal arguments, namely District Court of Surabaya Decision No. 916/Pdt.P/2022/PN.Sby and District Court of Surakarta Decision No. 278/Pdt.P/2019/PN.Skt. These decisions granted applications for the registration of interfaith marriages on the primary legal basis that marriage constitutes a human right. According to this view, the state must exercise restraint and refrain from intervening in the validity of interfaith marriages by rejecting their registration. The refusal to register interfaith marriages was argued to constitute a violation of human rights, as it represents discriminatory treatment of citizens in marriage registration based on religious differences.[9]

The judge grounded his reasoning in Supreme Court Decision No. 1400 K/Pdt/1986. Based on this jurisprudence, the judge understood that the interfaith couple was asserting their rights and requesting state protection in the context of their marriage. Such protection was interpreted as the state's willingness to facilitate the registration of interfaith marriages. The act of registering the marriage was regarded as a fulfillment of the human rights of interfaith couples, ensuring that their marriage attains legal certainty. Accordingly, the judge held that the authority of the Civil Registry Office is limited to "registration" rather than "validation" of marriage. Similarly, the court's authority lies in granting permission for registration rather than examining the substantive validity of the marriage. The judge emphasized that the applicants required a court decision affirming that marriage registration constitutes a right of interfaith couples. Once such recognition is granted, the Civil Registry Office is obliged to register the marriage.[10]

The judge cited two constitutional provisions related to human rights under the 1945 Constitution of the Republic of Indonesia. First,

[9] Mahkamah Agung.
[10] Mahkamah Agung.

Article 29 paragraph (2), which guarantees the freedom of every person to adhere to a religion and to worship according to that religion. Second, Article 28B, which affirms that every person has the right to form a family and to procreate through a lawful marriage. The judge reasoned that the Marriage Law neither explicitly prohibits interfaith marriage nor regulates interfaith marriage in specific terms. Consequently, the judge referred to the explanatory provisions of the Population Administration Law, which obligate the state to protect the legal status of every person and the legal status of population-related events experienced by Indonesian citizens. Marriage constitutes one such population-related event (Article 1, paragraph (17)). Furthermore, the judge emphasized that the protection of citizenship rights is also a state obligation as part of compliance with international human rights instruments. As a member of the international community, Indonesian Law refers to international legal instruments adopted by the United Nations, including the 1966 International Covenant on Civil and Political Rights, which Indonesia has ratified. This instrument guarantees the right of every person to form a family, to adhere to a religion of their choice, and to have children within a lawful marriage. The judge also considered the child's human rights in the context of the couple's biological relationship. The legal considerations in the decision referred to Articles 5 and 27 of the Child Protection Law (Law No. 23 of 2002, as amended by Law No. 35 of 2014), which provide that every child has the right to a name as an identity and the right to citizenship status as recorded in a birth certificate.[11]

Accordingly, the judge found that there were substantial legal grounds to grant the application for the registration of the interfaith marriage. Granting the application also fulfilled the child's right to obtain a birth certificate and to maintain civil relations with both parents. The authorization for marriage registration was not solely intended to enable the issuance of a marriage certificate, but also to provide legal access for the couple to establish a family card and to include the child as a family member therein lawfully. Based on these considerations, the court rendered its decision concerning the legality of the interfaith marriage and ordered the Civil Registry Office of

[11] Mahkamah Agung.

Yogyakarta City to fulfill the rights of the interfaith couple by registering their marriage.[12]

The Polemic of Interfaith Marriage within the National Marriage Law System

The discussion of the national marriage law system is not limited solely to the Marriage Law. Instead, the national marriage law system encompasses all statutory regulations related to state regulation of marriage in Indonesia. This system encompasses the Marriage Law and its implementing regulations, the Population Administration Law and its related provisions, as well as several other legal instruments outside these two laws that have implications for the implementation of marriage in Indonesia. These include, among others, the Human Rights Law (Law No. 39 of 1999), the Child Protection Law, and related legislation. Several provisions of the 1945 Constitution of the Republic of Indonesia—such as those concerning freedom of religion, the right to form a family, and the protection of children's rights—together with several Constitutional Court decisions, also form part of the national marriage law system. Furthermore, the national legal framework governing interfaith marriage includes various legal products issued by the Supreme Court, regulations of the Ministry of Religious Affairs, and regulations of the Ministry of Home Affairs of the Republic of Indonesia. Within these legal instruments, particularly the Marriage Law, there is no explicit provision that prohibits interfaith marriage. Accordingly, the national marriage law system may be understood as providing legal protection for interfaith marriages, including marriages between Muslims and non-Muslims.

Article 2, paragraph (1) of the Marriage Law stipulates that a marriage is considered valid if it is conducted in accordance with the religious laws and beliefs of the respective spouses. This provision implies that the state has relaxed the legal requirements concerning the validity of interfaith marriage. Such relaxation is consistent with Constitutional Court rulings affirming that the state neither prohibits nor encourages interfaith marriage.[13] The Constitutional Court has issued two decisions concerning judicial review petitions related to

[12] Mahkamah Agung.

[13] Faiq Tobroni, "Kebebasan Hak Ijtihad Nikah Beda Agama Pasca Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 12, no. 3 (2016): 604–30.

interfaith marriage, namely Decision No. 68/PUU-XII/2014 and Decision No. 24/PUU-XX/2022. In both cases, the Court rejected the petitions, which sought to amend Article 2, paragraph (1) of the Marriage Law to permit interfaith marriage explicitly. The rejection of these petitions does not imply a prohibition of interfaith marriage. Instead, the state continues to protect a policy of non-intervention. This model of human rights protection is characterized by the state's abstention from regulating or intervening in the exercise of the right in question.[14]

This policy of non-intervention corresponds to the nature of the right inherent in marriage. Marriage constitutes a human right within the category of civil rights. Article 23 of the International Covenant on Civil and Political Rights recognizes the right to marry and to found a family. In responding to rights within this category, the state is expected to minimize its intervention. Civil rights are often better protected when the state refrains from excessive regulation or interference in their exercise.[15]

As part of its obligation to protect human rights within the category of civil rights, the Indonesian marriage law framework does not interfere with the criteria for the validity of interfaith marriage. This legal approach accommodates the plurality of ijtihad regarding the permissibility of interfaith marriage within Islamic Law. Within Islamic legal thought, a diversity of views exists on the validity of interfaith marriage. At least two major perspectives can be identified: one that prohibits interfaith marriage and another that permits it.

The first group, representing the majority view, rejects interfaith marriage. Several legal arguments support this position. The primary argument concerns the Qur'anic classification of non-Muslims. The Qur'an categorizes non-Muslims as mushrik (polytheists), kafir (disbelievers), and Ahl al-Kitab (People of the Book). The Qur'an explicitly prohibits marriage between Muslims and polytheists or

[14] Josina Augustina Yvonne Wattimena and Vondaal Vidya Hattu, "Ketahanan Pangan Masyarakat Adat Sebagai Wujud Pemenuhan Ham Dalam Masa Pandemi Covid-19," *SASI* 27, no. 2 (June 5, 2021): 247, https://doi.org/10.47268/sasi.v27i2.448.

[15] Pardomuan Gultom and Rumainur Rumainur, "Analisis Yuridis Terhadap Kewajiban Pemenuhan Hak Asasi Manusia Dalam Praktik Bisnis Perkebunan Kelapa Sawit," *Jurnal HAM* 13, no. 2 (August 30, 2022): 305, https://doi.org/10.30641/ham.2022.13.305-332.

disbelievers.[16] This prohibition is absolute and applies equally to Muslim men and women. Surah Al-Mumtahanah (60:10) prohibits marriage between Muslims and disbelievers, while Surah Al-Baqarah (2:221) prohibits marriage between Muslims and polytheists. By contrast, the Qur'an permits marriage between Muslim men and women from among the People of the Book. However, it does not permit marriage between Muslim women and men from among the People of the Book, as stipulated in Surah Al-Ma'idah (5:5).[17]

This differential treatment of the People of the Book in the Qur'an is grounded in considerations of lineage (nasab). In Islamic Law, lineage follows the father. When a Muslim man marries a woman from among the People of the Book, the child of the marriage retains lineage through the Muslim father. Consequently, the child maintains civil and familial relations with the father, including rights of inheritance, care, and guardianship. The father may also act as the legal guardian (wali) in his daughter's marriage.[18] Conversely, this legal rationale does not apply to marriages between men from among the People of the Book and Muslim women. Such marriages are considered to entail significant legal harm. Under Islamic Law, a man from among the People of the Book cannot be recognized as the legal father of children born from such a marriage. As a result, he cannot establish lineage, inheritance rights, guardianship, or other civil relationships with the child. Islamic Law, therefore, considers marriages between Muslim women and men from among the People of the Book to be invalid, as a direct consequence of the Qur'anic prohibition against such unions.

A second argument supporting the prohibition of interfaith marriage in Islamic Law is based on considerations of *maslahah mursalah* (unrestricted public interest). In response to the evolving dynamics of religious life in Muslim societies, the dominant view within Islamic legal thought has increasingly favored the prohibition of interfaith marriage. In Indonesia, this development has extended to prohibiting marriages between Muslims and individuals classified as People of the Book. One

[16] Muhammad ibn Idrîs Asy-Syâfi'î, *Al-Umm* (Beirut: Dâr al-fikr, 1980).

[17] Wahbah Al-Zuhayli, *Al-Fiqh Al-Islamiy Wa Adillatuh* (Beirut: Daar al-Fikr, 1989).

[18] Abd ar-Rahmân Al-Jazîrî, *Kitab Al-Fiqh 'Alâ Al-Madzâhib Al-Arba'Ah* (Beirut: Daar ar-Rasyiid al- Hadiisah, n.d.).

argument advanced is that contemporary Jewish and Christian communities no longer correspond to the People of the Book as understood at the time of Qur'anic revelation. Their religious texts and belief systems differ substantially from those of the People of the Book referenced in the Qur'an.[19] On this basis, the majority of Islamic scholars prohibit interfaith marriage.

This position is reflected in the fatwa of the Indonesian Council of Ulama (Majelis Ulama Indonesia, MUI), which categorically prohibits marriage between Muslims and non-Muslims. This prohibition was formally established in MUI Fatwa No. 4/Munas VII/MUI/8/2005.[20] The fatwa explicitly relies on considerations of maslahah mursalah to prohibit interfaith marriage in order to prevent greater social harm (mafsadah).[21] Although maslahah mursalah is not explicitly articulated in the Qur'an, it is recognized as a valid legal principle grounded in empirical social realities. Within Indonesian Muslim society, this fatwa is among the most widely complied with.[22] Similarly, the Compilation of Islamic Law (Kompilasi Hukum Islam) unequivocally prohibits marriage between Muslims and non-Muslims (Articles 44 and 61).

The second group within Islamic legal discourse consists of scholars and activists who permit interfaith marriage. This group employs a human rights framework as the basis for its ijtihad concerning the validity of marriage between Muslims and non-Muslims. Human rights discourse has contributed to the emergence of cross-religious fiqh initiatives, notably those developed by the Paramadina Foundation. One such ijtihad advanced the legal permissibility of interfaith marriage between Muslims and non-

[19] Muhammad Farid, "PERKAWINAN BEDA AGAMA DALAM PERSPEKTIF HADIS AHKAM," *Al-Bayyinah* 1, no. 2 (December 1, 2017): 1–16, https://doi.org/10.35673/al-bayyinah.v1i2.13.

[20] Majelis Ulama Indonesia, *Himpunan Fatwa Majelis Ulama Indonesia* (Jakarta: Majelis Ulama Indonesia, 2007).

[21] Muhammad Yusuf, "Pendekatan Al-Maṣlaḥaḥ Al-Mursalah Dalam Fatwa MUI Tentang Pernikahan Beda Agama," *AHKAM : Jurnal Ilmu Syariah* 13, no. 1 (February 1, 2013), https://doi.org/10.15408/ajis.v13i1.955.

[22] M Sofwan Jauhari and Abdul Ghoni, "The Level of People's Obedience to MUI Fatwas (COVID-19, Bank Interest, and Interfaith Marriage)," *AHKAM : Jurnal Ilmu Syariah* 20, no. 2 (December 30, 2020), https://doi.org/10.15408/ajis.v20i2.18685.

Muslims.[23] In the early 2000s, this perspective gained prominence through debates surrounding the Draft Bill on the Compilation of Islamic Law, which controversially proposed the permissibility of interfaith marriage.[24]

One prominent advocate of interfaith marriage between Muslims and non-Muslims is Nurcholis, a Muslim educated in Islamic boarding schools (pesantren). He is an Islamic law activist who actively campaigns for the recognition of interfaith marriage and also serves as a practitioner and counselor in such marriages. Nurcholis has officiated hundreds of interfaith marriages. In his framework, he proposes three approaches to managing interfaith marriage: self-reflection, seeking advice from close relatives and trusted individuals, and involving mediators.[25]

According to Nurcholis, interfaith marriage between Muslims and non-Muslims should not be understood narrowly. Such marriages are not limited to unions between Muslims and Christians, but extend to adherents of other religions, including Hinduism, Buddhism, Confucianism, and other belief systems. The permissibility of interfaith marriage should not be confined to the category of the People of the Book. Since all religions possess sacred texts, adherents of all religions may be regarded as People of the Book. This interpretation is based on a methodological reading of Qur'anic texts that distinguishes between general ('amm) and specific (khas) injunctions. From this perspective, the prohibition in Surah Al-Baqarah (2:221) is context-specific (khas) and linked to particular historical circumstances, rather than a universally applicable ('amm) norm.[26] The prohibition applied specifically to Arab polytheists who no longer exist. Consequently,

[23] Iffah Muzammil, "Telaah Gagasan Paramadina Tentang Pernikahan Beda Agama," *ISLAMICA: Jurnal Studi Keislaman* 10, no. 2 (March 1, 2016): 396, https://doi.org/10.15642/islamica.2016.10.2.451-474.

[24] Siti Musdah Mulia, "Menafsir Ulang Pernikahan Lintas Agama," in *Tafsir Ulang Perkawinan Lintas Agama: Perspektif Perempuan Dan Pluralisme*, ed. Maria Ulfah Anshor and Martin Lukito Sinaga (Jakarta: Kapal Perempuan, 2004).

[25] Tyas Amalia, "MODEL MANAJEMEN KONFLIK PERNIKAHAN BEDA AGAMA DALAM PEMIKIRAN AHMAD NURCHOLISH," *Jurnal Sosiologi Agama* 12, no. 1 (December 6, 2018): 1, https://doi.org/10.14421/jsa.2018.121-01.

[26] Fathol Hedi, "PERKAWINAN BEDA AGAMA PERSPEKTIF HUKUM ISLAM," *Mamba'ul 'Ulum* 15, no. 2 (October 21, 2019): 8–15, https://doi.org/10.54090/mu.19.

marriage between Muslims and non-Muslims outside the categories of Judaism and Christianity is considered permissible.[27]

The Marginalization of Islamic Law

District court decisions ordering the registration of interfaith marriages at the Civil Registry demonstrate the existence of institutional authority that protects interfaith marriages based on the principle of personal autonomy.[28] Such protection may serve as a temporary solution to halt the practice of religious conversion undertaken solely to obtain legal recognition of interfaith marriages. One of the darker social consequences of interfaith marriage is the phenomenon of temporary religious conversion. This practice is often employed to avoid rejection of marriage registration. However, such a strategy does not constitute a legitimate solution for securing the right to marriage registration. Instead, it produces a double negative impact. On the one hand, temporary conversion represents an attempt to circumvent the Law. On the other hand, it trivializes religion itself. This choice leaves a lasting negative stigma on the couple. Society frequently ridicules individuals who temporarily convert to people who "trade" religion. Empirical research indicates that temporary religious conversion imposes a significant psychological and social burden on those involved, particularly when the individual converting is a woman.[29]

The Yogyakarta District Court Decision No. 378/Pdt.P/2022/PN Yyk represents one manifestation of the state's role in facilitating interfaith marriages without requiring either party to convert. This decision constitutes a form of progressive jurisprudence in addressing the polemics surrounding interfaith marriage. From a human rights perspective, this jurisprudence reflects an effort to protect freedom of religion and related fundamental rights. The

[27] Ramlan Karim and Nova Efenty Mohammad, "Penetapan Hukum Nurcholish Majid Dan Mustofa Ali Yaqub Tentang Pernikahan Beda Agama," *AS-SYAMS* 1, no. 1 (2020): 102–20.

[28] Nasir, "Religion, Law, and Identity: Contending Authorities on Interfaith Marriage in Lombok, Indonesia."

[29] Fransiska Widyawati, "WHEN LOVE AND FAITH COLLIDE: Women's Conversion to Husband's Religion in Flores," *JOURNAL OF INDONESIAN ISLAM* 14, no. 2 (December 1, 2020): 335, https://doi.org/10.15642/JIIS.2020.14.2.335-358.

decision also illustrates judicial innovation through the explicit invocation of several human rights norms enshrined in the 1948 Universal Declaration of Human Rights. Two constitutional human rights provisions were central to the court's reasoning in granting the registration of the interfaith marriage: freedom of religion (Article 29(2) of the 1945 Constitution) and the right to form a family and continue one's lineage through a lawful marriage (Article 28B of the 1945 Constitution). Beyond these constitutional provisions, the judge also constructed a human rights narrative by drawing upon child protection norms contained in the Child Protection Act. Through an intertextual reading of legal texts, the judge correlated the Marriage Law with other statutes to develop a legal construction that protects interfaith marriage. The court acknowledged that a legal basis supporting interfaith marriage between Muslims and non-Muslims could not be found if the analysis were confined solely to the Marriage Law.

Despite the progressive nature of this ruling, specific legal considerations remain open to debate. The core issue lies in the legal fact that the couple conducted the marriage ceremony according to only one religious Law. The couple acknowledged that their marriage was solemnized exclusively under Catholic Law. They submitted evidence in the form of a Catholic marriage blessing letter issued by the Banteng–Sleman Church dated 3 September 2022. This admission was corroborated by the testimonies of the first and second witnesses, both of whom confirmed that the couple married solely according to Catholic rites. Each party maintained its respective religious beliefs. However, as a Muslim, the male party agreed not to conduct the marriage according to Islamic Law. The couple believed that their marriage had attained legal validity by being solemnized under a single religious law. They understood that Catholic Law permits interfaith marriage, while Islamic Law does not permit marriage between Muslims and non-Muslims. Consequently, the couple chose Catholic Law and set aside Islamic Law. Their strategy for obtaining marital validity was therefore to conduct the marriage before a Catholic religious authority.

This misunderstanding might not have occurred had the couple engaged with the diversity of ijtihād (legal reasoning) concerning the validity of interfaith marriage within Islamic Law. Indeed, they could have sought out Islamic religious authorities who have developed

ijtihād permitting interfaith marriage. The jurisprudence reinforced the couple's understanding of marital validity, which the court relied upon in its decision. In its reasoning in Decision No. 378/Pdt.P/2022/PN Yyk, the judge cited Supreme Court Decision No. 1400 K/Pdt/1986. This earlier decision addressed a similar context involving the registration of an interfaith marriage between a Muslim and a non-Muslim. In Supreme Court Decision No. 1400 K/Pdt/1986, the male party was Muslim, while the female party was Catholic. The couple initially petitioned the district court for registration of their interfaith marriage, but the request was denied. They subsequently filed an appeal to the Supreme Court, seeking authorization for registration and an order directing the Civil Registry Office to record their marriage. In the written explanation contained in the decision, the couple acknowledged that their marriage had been solemnized solely in accordance with Catholic Law. On this basis, the Supreme Court judges interpreted that the Muslim man had submitted himself to the Catholic religious Law. Consequently, the Court held that the interfaith marriage was valid because it had been conducted in accordance with the religious Law of one of the parties.

This Supreme Court decision has since served as a reference for several judicial rulings concerning interfaith marriage, including Decision No. 378/Pdt.P/2022/PN Yyk. A similar rationale was also adopted in a Supreme Court Circular Letter, which relied on the validity of interfaith marriage under the religious Law of one party. In approximately 2018, the Directorate General of Population and Civil Registration of the Ministry of Home Affairs submitted a request for a legal opinion on interfaith marriage to the Supreme Court. This request was formalized in Letter No. 472.2/18752/DUKCAPIL dated 10 October 2018. The Supreme Court responded through Letter No. 231/PAN/HK.05/1/2019, stating that the state may register an interfaith marriage provided that the couple submits a marriage certificate issued by a religious authority of one of the parties. In this legal explanation, the Supreme Court clarified that such a couple is deemed to have submitted to the religious Law of one party.

This position indicates that the state has adopted the concept of submission to the religious Law of one party as a prerequisite for establishing the validity of an interfaith marriage. However, this concept tends to conflict with Islamic Law. Submission to the religious

Law of only one party results in the non-fulfillment of the requirements for a valid marriage under Islamic Law. In Islamic jurisprudence, marriage is fundamentally a religious matter. A fiqh maxim states that the original legal ruling concerning sexual relations (including marriage) is prohibition unless there is a basis that renders it lawful.[30] Based on this principle, Muslims who marry non-Muslims cannot assume the validity of their marriage solely by relying on non-Islamic religious Law. Islamic legal tradition does not recognize the concept of submission to a marriage law other than Islamic Law. Consequently, Muslims cannot invoke such a concept. Non-Islamic religious Law cannot substitute for the requirements of a valid marriage under Islamic Law, nor can it legitimize a marital relationship between Muslims and non-Muslims. Because such a couple lacks validity under Islamic Law, their relationship is not considered that of husband and wife, but somewhat akin to individuals without a lawful marital bond who nonetheless engage in biological relations.

The concept of submission to a single religious law constructs a view that the state's authority is purely administrative, limited to registering marriages. This approach overlooks the intertextual relationship between the validity of marriage and administrative recognition. Although marriage registration is an administrative act, it must still refer to the substantive validity of marriage, which falls within the domain of religious Law. It is therefore inappropriate for the state to facilitate the registration of marriages that are inconsistent with or contrary to religious Law. The Constitution mandates that the state guarantee the implementation of religious Law. This interpretation may be grounded in Article 29(1) of the 1945 Constitution, which declares that the state is based on the belief in One Supreme God, implying that religious Law constitutes one of the material sources of national Law.

Conclusion

There is a growing tendency for courts to grant permission for the registration of interfaith marriages by applying the concept of submission to a single religious law. The Supreme Court first employed this concept and subsequently developed it into a jurisprudence that several district courts have cited in authorizing the registration of

[30] Al-Jazîrî, *Kitab Al-Fiqh 'Alâ Al-Madzâhib Al-Arba'Ah.*

interfaith marriages. The Supreme Court has also disseminated this concept through an official circular letter in response to an inquiry from the Directorate General of Population and Civil Registration of the Ministry of Home Affairs of the Republic of Indonesia. Under this approach, an interfaith marriage is deemed valid solely based on the religious Law of one of the parties to the marriage. However, this concept gives rise to tension with Islamic Law (fiqh). From the perspective of Islamic jurisprudence, there is a well-established legal maxim that the original ruling on marriage is prohibition. A marriage becomes lawful only when there is a valid legal basis that renders it permissible. This principle implies that the performance of a marriage outside Islamic Law cannot substitute for the normative authority of Islamic Law in legitimizing a marriage. Consequently, a union between a Muslim and a non-Muslim that is not solemnized in accordance with Islamic Law cannot be regarded as a valid marriage; rather, it is considered merely a biological relationship lacking a legitimate marital bond.

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