



Reforming Marriage Law in Indonesia: A Critical Examination of Islamic Law on the Ban of Interfaith Marriages

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Abstract: Interfaith marriage is a widely debated issue in Indonesia, particularly within the context of Islamic law. The prohibition of interfaith marriages has frequently been the subject of substantial criticism from an Islamic legal perspective. This article aims to critically examine the enforcement of this prohibition within Indonesia's marriage legal system. Employing a normative legal approach and literature analysis, the research explores various Islamic law perspectives on the prohibition of interfaith marriages. Additionally, this study analyzes the social, cultural, and legal impacts of this prohibition on Indonesian society. The findings indicate that the prohibition of interfaith marriages often conflicts with principles of justice, religious freedom, and human rights. In the context of Islamic law, several scholars and legal experts advocate for a more inclusive interpretation, emphasizing the importance of considering social context and justice in marital regulations. It is essential to formalize Islamic law by incorporating sociological and cultural aspects and aligning it with the national constitution. Therefore, the development of Indonesia's marriage legal system must consider universal values that evolve sociologically and culturally. In conclusion, this research underscores the need for reform in Indonesia's marriage legal system to accommodate individual needs and rights while respecting religious and cultural values. These changes are expected to provide legal recognition for interfaith marriages and promote a more inclusive and harmonious society.

Keywords: Marriage legal system; Interfaith marriage; Critical examination; Islamic law

Abstrak: Perkawinan beda agama menjadi isu yang banyak diperdebatkan di Indonesia, khususnya dalam konteks hukum Islam. Larangan terhadap perkawinan beda agama seringkali menjadi subyek kritik yang mendalam dari sudut pandang hukum Islam. Tulisan ini bertujuan untuk mengkaji secara kritis implementasi larangan tersebut dalam sistem hukum perkawinan di Indonesia. Penelitian ini menggunakan pendekatan hukum normatif dan analisis literatur untuk mengeksplorasi berbagai pandangan hukum Islam terkait larangan perkawinan beda agama. Selain itu, penelitian ini juga menganalisis dampak sosial, budaya, dan hukum dari larangan tersebut terhadap masyarakat Indonesia. Hasil analisis menunjukkan bahwa larangan perkawinan beda agama seringkali bertentangan dengan prinsip keadilan, kebebasan beragama, dan hak asasi manusia. Dalam konteks hukum Islam, beberapa ulama dan pakar hukum memberikan pandangan yang lebih inklusif dan menekankan pentingnya mempertimbangkan konteks sosial dan keadilan dalam menafsirkan hukum Islam terkait

perkawinan. Diperlukan adanya formalisasi hukum Islam harus mempertimbangkan aspek sosiologis dan kultural serta memperhatikan konstitusi yang telah dibuat bersama sebagai bangsa. Dengan demikian, pengembangan sistem hukum perkawinan di Indonesia harus mempertimbangkan nilai universal yang berproses secara sosiologis dan kultural. Kesimpulannya, penelitian ini menyoroti perlunya reformasi dalam sistem hukum perkawinan di Indonesia, yang mengakomodasi kebutuhan dan hak individu dengan tetap memperhatikan nilai keagamaan dan budaya. Perubahan tersebut diharapkan dapat memberikan ruang bagi perkawinan beda agama yang sah secara hukum serta mendorong terciptanya masyarakat yang lebih inklusif dan harmonis.

Kata kunci: Sistem Hukum Perkawinan, Perkawinan Beda Agama, Kritik Hukum Islam

Introduction

Muslims believe that God recommends marriage to all human beings to form families, produce legitimate offspring, and receive divine approval.¹ God created humans with healthy minds, consciences, and emotions, guided by the revelation of holy scriptures, unlike animals that follow their instincts and desires without rules. Humans possess dignity and worth, as stated in the Qur'an: "We have certainly created man in the best of stature" (*Laqad Khalaqnā al-insān fī aḥsan taqwīm*). God's laws reflect the values of human dignity, ensuring that marital relations between men and women are governed with purity and sanctity.

The essence of marriage in Islamic law is expressed as *miṣāqan ghalīzan*, signifying a sacred bond between a man and a woman, binding each party through a promise made to God. Consequently, marriage is a legal event explicitly regulated by several verses of the Qur'an and the hadiths of the Prophet. In Islam, the validity of marriage is determined by religious law.

In Islam, as elucidated in the hadiths of the Prophet, marriage must be accompanied by devotion and adherence to God's provisions, with the husband guarding and loving his wife wholeheartedly. Both parties enter into a sacred agreement with trust in God. Accordingly, God permits the biological relationship between husband and wife based on a marriage contract, and they are enjoined to live harmoniously within the household (*mu'asyarah bi al-ma'rūf*).

Marriage provisions in Indonesia are governed by Law Number 1 of 1974 concerning Marriage. This law stipulates that a marriage is valid if conducted according to the religious laws and beliefs of the couple involved. Article 2, paragraph (1) of the law explicitly states, "Marriage is valid if it is carried out according to the laws of each respective religion and belief." This provision establishes a robust legal foundation for the practice of marriage in line with individual religious beliefs. However, in practice, this provision gives rise to various debates and challenges, particularly concerning the prohibition of interfaith marriages.²

¹ Muhammad Fuad Zain Durotun Nafisah, Nasrudin Nasrudin, Ahmad Rezy Meidina, "Comparative Analysis of Islamic Family Law and Normative Law: Examining the Causes of Divorce in Purwokerto, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (2024), <https://doi.org/http://dx.doi.org/10.22373/sjhk.v8i2.16825>; Siti Musawamah et al., "Resistance to Child Marriage Prevention in Indonesia and Malaysia," *AHKAM: Jurnal Ilmu Syariah* 23, no. 1 (2023), <https://doi.org/https://doi.org/10.15408/ajis.v23i1.32014>.

² Muhammad Salahuddin Salahuddin et al., "Practice of Interfaith Marriages in Indonesia on Islamic Jurisprudence," *International Journal of Social Science and Religion (IJSSR)*, December 13, 2023, 477–90, <https://doi.org/10.53639/ijssr.v4i3.205>; Ahmad Rezy Meidina, "Meninjau Ulang Iwadh Khuluk Perspektif Keadilan Gender," *Al-Manahij: Jurnal Kajian Hukum Islam* 16, no. 1 (May 29, 2022): 77–90, <https://doi.org/10.24090/mnh.v16i1.6027>; Ahmad Rezy Meidina, "Legal System of Polygamy and Divorce in Muslim Countries: Comparative Studies among Turkey, Pakistan, and Indonesia," *Matan : Journal of Islam and Muslim Society* 5, no. 1 (May 24, 2023): 15, <https://doi.org/10.20884/1.matan.2023.5.1.8301>.

For Muslims, the issue of interfaith marriage presents a complex and sensitive challenge. Islamic law imposes strict regulations on marriage, which can appear incongruent with the principles of pluralism and religious tolerance embraced by Indonesia's diverse society. The prohibition of interfaith marriages in Islam is rooted in Quranic verses and Hadiths, which instruct Muslims to marry within their faith community. For instance, Quran Surah Al-Baqarah verse 221 explicitly forbids Muslim men from marrying polytheist women (non-Muslims who do not follow the revealed scriptures). However, there exists a more lenient interpretation allowing Muslim men to marry women from the People of the Book (Christians and Jews), though this remains a topic of ongoing scholarly debate.

On the contrary, the Indonesian constitution safeguards religious freedom and human rights, including the right to marry and establish a family without discrimination based on religion. Article 28E, paragraph (1) of the Indonesian Constitution asserts that "Every person is free to embrace religion and worship according to his religion, choose education and teaching, choose work, choose citizenship, choose a place to live in the territory of the country and leave it, and has the right to return". Additionally, Article 29, paragraph (2) guarantees that "The State guarantees the freedom of every resident to embrace their own religion and to worship according to their religion and beliefs". This presents a legal and social quandary for interfaith couples seeking marriage in Indonesia. They often encounter numerous challenges, ranging from refusal of marriage registration by the Office of Religious Affairs to social stigma and ostracism from their communities.³

Article 2, paragraph 1 of the Marriage Law stipulates that "Marriage is valid if it is carried out according to the laws of each religion and belief", thereby granting each religion autonomy in determining the validity of marriages. In Islam, scholars hold differing views on interfaith marriages. Those who prohibit such marriages cite Quranic verses like Surah Al-Baqarah verse 221 and Surah Al-Mumtahanah verse 10 as their legal basis. Conversely, scholars permitting interfaith marriages refer to Quranic verses such as Surah Al-Ma'idah verse 5. The Indonesian state regulation, as articulated in Article 2, paragraph 1 of the Marriage Law, places full authority for determining marriage validity within the purview of each religion. The Marriage Registration Office registers marriages as long as they comply with the substantive requirements outlined in religious doctrines. Legally, interfaith marriages cannot be coerced, yet pragmatically, they present challenging issues that require optimal resolutions and legal certainty.⁴

Jurisprudence in Indonesia is currently guided by Supreme Court Circular Letter (SEMA) Number 2 of 2023, which provides guidelines for judges adjudicating cases concerning the registration of marriages between individuals of different religions and beliefs. This SEMA aims to ensure consistency and clarity in the application of the law regarding such marriages. Furthermore, the

³ Nurul Husna et al., "Children Citizenship Status of Acehese-Rohingya Mixed Marriage in Aceh: Maqāṣid Shari'ah Perspective," *Al-Ahkam* 34, no. 1 (April 30, 2024): 169–92, <https://doi.org/10.21580/ahkam.2024.34.1.20162>; Zainab Zainab Mega Puspita, Ahmad Rezy Meidina, "Implications of Mixed Marriages and Marriage Agreements," *International Conference on Islamic Studies (ICIS)*, 2022, 1133–47.

⁴ Y Sonafist and Henny Yuningsih, "Islamic Law, the State, and Human Rights: The Contestation of Interfaith Marriage Discourse on Social Media in Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 22, no. 2 (December 28, 2023): 381, <https://doi.org/10.31958/juris.v22i2.10934>; Bani Syarif Maula, Muhammad Fuad Zain, and Syifaun Nada, "Marital Property in Marriages of Different Nationalities in Indonesia According to National Law and Islamic Law," *El-Aqwal : Journal of Sharia and Comparative Law*, January 15, 2024, 1–16, <https://doi.org/10.24090/el-aqwal.v3i1.10508>.

Constitutional Court has rendered several decisions, notably Decision Number 68/PUU-XII/2014 and Decision Number 24/PUU-XX/2022, wherein the Court rejected petitions seeking legalization of interfaith marriages in their entirety. These decisions underscore the prevailing legal stance against legalizing interfaith marriages in Indonesia. Interpreting Article 2, paragraph 1 of the Marriage Law reveals that marriages must conform to the laws of each respective religion or belief. This provision emphasizes legal certainty, reinforced by judicial reviews at the Constitutional Court aimed at permitting interfaith marriages in Indonesia. Marzuki argues that legal certainty extends beyond statutory provisions; it demands consistent application in judicial decisions, precluding judicial divergence. Thus, legal certainty in the context of interfaith marriages necessitates uniformity in judicial interpretation and application of the law.⁵

According to the Fatwa issued by the Indonesian Ulema Council (MUI) during its 7th National Conference on July 26-29, 2005, interfaith marriages are deemed haram (forbidden) and invalid. The stance of MUI fatwas effectively closes avenues for the registration of interfaith marriages within Indonesia. Despite this official position, interfaith marriages have historically occurred and continue to do so. To legalize interfaith marriages under Indonesian law, wedding organizers typically adhere to legal provisions through various means. These include obtaining a court order, adhering to the religious practices of the partner, converting religions, fulfilling religious requirements, conducting marriages outside Indonesia, and subsequently registering them with civil registry offices to validate their legality.

Violations of the law regarding interfaith marriages often involve religious conversion, where one of the individuals temporarily changes their religion for legal compliance. For instance, a Christian woman intending to marry a Muslim man might convert temporarily to ensure conformity with the same religious identity, thereby enabling them to marry within the desired religious framework. Post-marriage, individuals typically revert to their original beliefs. Such practices are frequently adopted by individuals whose religious convictions are not steadfast.⁶

This phenomenon illustrates the tension between religious law, particularly Islamic law, and state law in Indonesia. Religious law often imposes strict and occasionally inflexible regulations concerning interfaith marriages. In contrast, state law aims to safeguard the human rights of individuals to marry and establish families in accordance with their beliefs. This conflict poses a challenging dilemma for interfaith couples seeking marriage, as they must navigate between adherence to religious laws and exercising their rights protected by the constitution.⁷

Against this backdrop, this study endeavors to reformulate Indonesia's marriage laws by critically examining Islamic prohibitions on interfaith marriages. This approach will encompass not only religious norms but also principles rooted in human rights and pluralism, which form the foundation of the Indonesian state. The goal of this legal reconstruction is to offer a more inclusive

⁵ Dian Aries Mujiburohman et al., "The Issues of Land Tenure in Mixed Marriage," *Jurnal Ilmiah Peuradeun* 11, no. 1 (January 30, 2023): 19, <https://doi.org/10.26811/peuradeun.v11i1.818>.

⁶ Misbahul Huda and Muhamad Nurhidayattulloh, "Analisis Putusan Verstek Kumulasi Isbat Nikah dan Cerai Gugat (Studi Perkara Nomor: 135/Pdt.G/2022/PA.Pbg)," *Khuluqiyya: Jurnal Kajian Hukum Dan Studi Islam*, May 4, 2024, 15-24, <https://doi.org/10.56593/khuluqiyya.v6i1.122>.

⁷ Usep Saepullah, "The Inter-Religious Marriage in Islamic and Indonesian Law Perspective," *Jurnal Ilmiah Peuradeun* 7, no. 1 (January 30, 2019): 43, <https://doi.org/10.26811/peuradeun.v7i1.317>.

and equitable resolution for all citizens, respecting their religious convictions while advancing societal harmony and fairness.⁸

This research will additionally investigate the potential for aligning religious law with state law concerning interfaith marriages. The aim is to develop a legal framework capable of accommodating Indonesia's religious and belief diversity while promoting social harmony and upholding human rights. It is anticipated that this research will make a substantive contribution to enhancing Indonesia's marriage legal system, fostering greater inclusivity and equity for all citizens.

This research employs qualitative methodology, a scientific approach commonly utilized in the social sciences, particularly in legal studies. It employs a juridical-normative approach to decision-making aimed at ensuring legal certainty concerning the registration of interfaith marriages in Indonesia. Qualitative research is valued for its ability to enrich research outcomes by fostering understanding and discovery related to applicable regulations.

The study constructs a conceptual framework, scrutinizes regulatory contents, examines tertiary expert statements, reviews expert opinions through literature on documented interfaith marriage cases, and extracts legal data from sources including the Quran, Hadith, Marriage Law, Compilation of Islamic Law in Indonesia, Constitutional Court Decisions Number 68/PUU-XII/2014 and Number 24/PUU-XX/2022, Supreme Court Circular Letter Number 2 of 2003, marriage textbooks, scientific journals, articles, and literature reviews relevant to the study's concepts.

General overview of interfaith marriage in Islamic law

In Islam, marriage between Muslims and polytheists is perpetually prohibited and deemed invalid. This is explicitly stated in the Qur'an, Surah Al-Baqarah, verse 221: "Do not marry unbelieving women (idolaters), until they believe: A slave woman who believes is better than an unbelieving woman, even though she allures you. Nor marry (your girls) to unbelievers until they believe: A man slave who believes is better than an unbeliever, even though he allures you. Unbelievers do (but) beckon you to the Fire. But Allah beckons by His Grace to the Garden (of bliss) and forgiveness, and makes His Signs clear to mankind: That they may celebrate His praise".⁹

The interpretation of this verse is that God prohibits Muslim men and women from marrying polytheists, particularly if such a marriage involves converting to another religion, thereby leaving Islam. This is even more emphatically prohibited. Interfaith marriages are unanimously considered haram and invalid if one partner is Muslim and the other is a polytheist (mushrik), as explicitly stated in the verse.

Conversely, the Qur'an permits Muslim men to marry non-Muslim women if they are Jewish or Christian, known as ahl al-kitab, as stated in Surah Al-Maidah, verse 5: "This day are (all) things good and pure made lawful unto you. The food of the People of the Book is lawful unto you and yours is lawful unto them. (Lawful unto you in marriage) are (not only) chaste women who are believers, but chaste women among the People of the Book, revealed before your time,- when ye give them their

⁸ Lakoni Lakoni, M. Ardiansyah, and Masayu Nila Juwita, "Reconstruction of Marriage and Divorce Law for Civil Servants," *SMART: Journal of Sharia, Traditon, and Modernity* 3, no. 1 (July 30, 2023): 55, <https://doi.org/10.24042/smart.v3i1.16979>; Kumedu Ja'far et al., "Reconstruction of Pregnancy Marriage Legality in Indonesia," *International Journal of Criminology and Sociology* 9 (April 5, 2022): 1082–90, <https://doi.org/10.6000/1929-4409.2020.09.125>.

⁹ Abdullah Yusuf Ali, *The Holy Qur'an*.

due dowers, and desire chastity, not lewdness, nor secret intrigues if any one rejects faith, fruitless is his work, and in the Hereafter he will be in the ranks of those who have lost (all spiritual good)".¹⁰

In the context of interfaith marriage regulations, fiqh scholars engage in ijtihad to interpret the Quranic verses and hadith related to marriage, while also considering the social and legal implications of interfaith marriages. Wahbah al-Zuhayli, for instance, emphasized the necessity of understanding the objectives and purposes of Islamic law, not only textually but also contextually, in addressing issues such as interfaith marriage regulations in Islam.¹¹

Thus, fiqh scholars strive to provide solid and relevant guidance for Muslims in understanding and addressing complex issues such as interfaith marriage regulations. They do so by considering the foundational sources of Islamic law, including Quranic verses, the Prophet's hadith, and general principles of Islamic jurisprudence. On July 28, 2005, the Indonesian Ulema Council issued Fatwa Number 4/MUNAS VII/MUI/8/2005 concerning Interfaith Marriages, which firmly stipulates: 1) Interfaith marriages are haram and invalid; 2) Marriage between Muslim men and women from the People of the Book, according to the strongest opinion (*qaul mu'tamad*), is haram and invalid. Additionally, the decision of the 4th Jam'iyah Tariqah Mu'tabarah NU Congress in Semarang on 4-7 Sha'ban 1388 H/28-30 October 1968 AD, concurred on the invalidity of marriages between Muslim men and Christian women, even if conducted with two contracts. Conversely, marriages between Muslim women and non-Muslim men are also deemed invalid.¹²

Interfaith marriage is a frequently debated topic within Islamic legal studies. Classical *fuqaha* (Islamic jurists) hold diverse views based on their interpretations of the Qur'an and Sunnah. Discussions on interfaith marriage are inherently linked to the fundamental principles in Islam concerning family and the protection of faith.¹³

The Hanafi School, established by Imam Abu Hanifah, holds a more lenient stance on interfaith marriages. Hanafi *fuqaha* permit a Muslim man to marry a woman from the People of the Book (Jews and Christians) based on their interpretation of Surah Al-Ma'idah, verse 5 of the Qur'an. However, they prohibit a Muslim woman from marrying a non-Muslim man, including those from the People of the Book, on the grounds that the man, as the head of the household, wields significant influence and may impact the religious beliefs of his wife and children.

The Maliki School, founded by Imam Malik bin Anas, holds a stricter view than the Hanafi School. Although Maliki *fuqaha* generally permit a Muslim man to marry a woman from the People of the Book, they strongly discourage it. This caution stems from concerns that such women might

¹⁰ Abdullah Yusuf Ali, *The Holy Qur'an*.

¹¹ Wahbah Al-Zuhaili, *Al-Fiqh Al-Islam Wa Adillatuhu*, (Beirut: Dar al-Fikr, 1989); Okti Nur Hidayah, Musyafangah, and Ahmad Rezy Meidina, "Analysis of the Rights and Obligations of Husband and Wife in the Compilation of Islamic Law: A Review from the Perspective of Gender Equality," *Legitima : Jurnal Hukum Keluarga Islam* 6, no. 1 (December 30, 2023): 1-15, <https://doi.org/10.33367/legitima.v6i1.4148>; Neng Eri Sofiana et al., "Gender-Responsive Construction in Nikah-Kawin Traditions in West Java: A Qiwamah Perspective," *El-Mashlahah* 14, no. 1 (2024): 71-94, <https://doi.org/https://doi.org/10.23971/el-mashlahah.v14i1.7691>.

¹² Nahdlatul Ulama, *Ahkâm Al-Fuqâhâ: Solusi Problematika Aktual Hukum Islam Keputusan Mukhtar, Munas Dan Konbes 1926-2010* (Surabaya: Khalista dan Lajnah Ta'lif Wan Nashr (LTN) PBNU, 2011).

¹³ Nuruddin Nuruddin, Aisyah Wardatul Jannah, and Dwi Martini, "Evaluating the Effectiveness of Age Restriction on Marriage in Indonesia," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, December 31, 2023, 313-30, <https://doi.org/10.24090/volksgeist.v6i2.9844>; Munasir, "The Reconstruction of Marriage Law in Classic Fiqh Perspective: The Case of Unregistered Marriage in Indonesia," *International Journal of Pharmaceutical Research* 12, no. 04 (December 2, 2020), <https://doi.org/10.31838/ijpr/2020.12.04.612>.

negatively influence the religious lives of their husbands and children. Imam Malik himself favored marriages between Muslims to preserve the purity of their beliefs and to avoid conflicts that could arise from differing religious views.

The Shafi'i School, founded by Imam Muhammad bin Idris ash-Shafi'i, shares similar views with the Hanafi School. Shafi'i *fuqaha* permit Muslim men to marry women from the People of the Book but strongly recommend choosing Muslim women as partners. They emphasize the importance of maintaining household harmony and avoiding potential conflicts arising from religious differences. Imam ash-Shafi'i also stressed that marriage with women from the People of the Book should only be considered if the woman is genuinely committed to her religion and will not negatively influence the religious life of her husband and children.

The Hanbali School, founded by Imam Ahmad bin Hanbal, also permits Muslim men to marry women from the People of the Book. However, they impose strict conditions, requiring that the woman must strictly maintain her honor and adhere to her religion. Hanbali *fuqaha* place great emphasis on choosing a partner who can uphold and strengthen faith and piety.

They also strongly discourage Muslim women from marrying non-Muslim men. This stance is based on the principle that men hold authority in the household and can influence the faith of their wives and children.¹⁴ In general, the opinions of classical *fuqaha* regarding interfaith marriage in Islamic law suggest that it is permissible for Muslim men to marry women from the People of the Book, although there are variations in the level of recommendation and conditions imposed. All schools of thought unanimously prohibit Muslim women from marrying non-Muslim men, citing the need to protect their faith and prevent potential negative impacts on religious life within the household.

Differences in views among classical *fuqaha* reflect variations in the interpretation of religious texts and the emphasis on certain aspects to maintain household harmony and the integrity of the Islamic faith. This understanding provides insight for Muslims in addressing the issue of interfaith marriage in the modern era, while adhering to the fundamental principles taught in Islam.

Moreover, the Constitutional Court's decision on interfaith marriage in Indonesia has offered a new legal perspective on a long-standing controversial issue. Interfaith marriage in Indonesia is complex and contentious. Legally, Law No. 1 of 1974 concerning Marriage serves as the primary reference. According to this law, a marriage is valid if it is conducted in accordance with the laws of each party's religion and belief.

The Constitutional Court has adjudicated several cases related to interfaith marriages. One significant ruling confirms that interfaith marriages must adhere to applicable law but allows for resolution outside of court. This decision does not explicitly amend Law No. 1 of 1974 but offers a more flexible interpretation. The Constitutional Court's decision allows interfaith couples to obtain legal recognition for their marriage. However, legal and social challenges persist. Interfaith couples must consider various legal, religious, and social aspects before deciding to marry.¹⁵

¹⁴ Samin Batubara et al., "Marriage Preparation Courses in Indonesia: Comparative Study of Muslims and Christians," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 22, no. 1 (June 30, 2022): 139–54, <https://doi.org/10.30631/alrisalah.v22i1.1231>; Elviana Sagala, "Reconstruction of Implementation of Marriage Agreements Post Decision of the Constitutional Court," *Journal of Law, Policy, and Globalization* 132, no. 1 (2023).

¹⁵ Siti Marlina and Haris Mubarak, "Joint Property after Divorce in the Polygamous Marriage: Comparative Research in Indonesia and Malaysia," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 22, no. 2 (December 31, 2022): 273–87, <https://doi.org/10.30631/alrisalah.v22i2.1231>.

The Marriage Law serves as a fundamental legal framework governing various aspects of marital life in Indonesia. One of its key provisions concerns the validity of marriage. According to the Marriage Law, a marriage is deemed valid if conducted in accordance with the religious teachings and beliefs of each partner. This study highlights that there are multiple interpretations of this provision, each with distinct implications and relevance in the context of Indonesia's pluralistic society.¹⁶

Article 2, paragraph (1) of the Marriage Law states, "Marriage is valid if it is carried out according to the laws of each respective religion and belief." This provision underscores that the validity of a marriage is determined not only by administrative or procedural aspects but also by adherence to the religious teachings and beliefs of the couple getting married.

Interpreting Article 2, paragraph (1) of the Marriage Law requires a comprehensive understanding of the relationship between state law and religious law. In Indonesia, the state acknowledges the existence of various religions and beliefs within society, including Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism. Each religion has its own rules and procedures concerning marriage that its adherents must follow. In Islam, marriage must fulfill the conditions and requirements stipulated in sharia law. These include the presence of a marriage guardian, two witnesses, a contract statement, and a dowry. If these conditions are met, the marriage is considered valid according to Islamic law. In Christianity, both Protestant and Catholic, marriage is regarded as a holy sacrament. The wedding ceremony is typically officiated by a priest and must take place in a church or other place of worship. Couples are also required to take premarital courses and meet other requirements set by the church. In Hinduism, marriage is a sacred ceremony called *Vivaha Samskara*, which marks the transition into married life. This ceremony involves various rituals that must be performed according to Hindu traditions and scriptures, such as the Vedas and Smriti. In Buddhism, while marriage is not considered a sacrament, it holds significant importance. Wedding ceremonies typically involve seeking blessings from monks and performing rituals according to Buddhist traditions. In Confucianism, marriage is one of the five essential human relationships. Wedding ceremonies are conducted by observing various rituals and traditions prescribed by Confucian teachings.

The implication of these provisions is that the state grants couples the freedom to marry according to the teachings of their respective religions and beliefs. However, following the fulfillment of religious requirements, couples are also required to register their marriage at the Religious Affairs Office (KUA) for Muslims or at the Civil Registry Office for non-Muslims. This registration is intended to ensure legal certainty and safeguard the civil rights of married couples and their children.

The interpretation of marriage validity based on religious teachings and beliefs in the Marriage Law underscores the significant role of religion in married life in Indonesia. Despite encountering challenges, this provision remains crucial in upholding religious freedom and ensuring legal certainty

org/10.30631/alrisalah.v22i2.1289; Nurunnisa Nurunnisa et al., "Implications of Annulment of Marriage on the Distribution of Joint Assets According to the Compilation of Islamic Law and National Law," *Syariah: Jurnal Hukum Dan Pemikiran* 23, no. 1 (July 4, 2023): 1-23, <https://doi.org/10.18592/sjhp.v23i1.9523>.

¹⁶ Asy'ari Asy'ari and Triansyah Fisa, "Interfaith Marriage in Perspectives of Classical and Modern Scholars," *Al-Manahij: Jurnal Kajian Hukum Islam*, November 25, 2022, 287-300, <https://doi.org/10.24090/mnh.v16i2.6772>; Najichah Najichah, "Reconstruction of Islamic Family Law in Indonesia Through Constitutional Court Decisions," *Walisongo Law Review (Walrev)* 4, no. 2 (October 31, 2022): 221-56, <https://doi.org/10.21580/walrev.2022.4.2.13407>.

for married couples. By enforcing laws fairly and respecting diversity, it is anticipated that married life in Indonesia can proceed harmoniously and be filled with blessings.¹⁷

Prohibition of Interfaith Marriages in Indonesian Legislation

Marriage is a significant dimension of human life globally. According to the Indonesian Marriage Law, marriage must embody the religious values of the couple, making religious beliefs a *conditio sine qua non* (a necessary condition) for establishing a marital relationship. Article 2, paragraph 1 of the Marriage Law, reinforces this provision, highlighting the state's recognition of the role of religious law in family law institutions. However, the interpretation of the phrase “marriage is valid if it is carried out according to the laws of each religion and belief” can implicitly be viewed as a formal prohibition against interfaith marriages.¹⁸ This is due to the distinct elements inherent in the marriage traditions of each religion and belief, which formally exclude the possibility of interfaith marriages.¹⁹

There are no explicit rules prohibiting interfaith marriages. The Marriage Law does not expressly forbid marriages between individuals of different religious affiliations. Articles 8 to 28 of the Marriage Law are often cited as potential barriers to interfaith marriages, suggesting that religious affiliation could be an impediment to marriage. However, a literal interpretation of Article 2, paragraph 1 does not prohibit interfaith marriages. If there are no obstacles according to religious law, the marriage can proceed. This is affirmed in Article 8, letter (1) of the Marriage Law, which states that a marriage is prohibited only if it is forbidden by religious or other regulations.²⁰

One of the intriguing legal phenomena to examine in modern and contemporary times is the regulation of family law in Muslim-majority countries. In Indonesia, for instance, a significant controversy exists regarding the validity of interfaith marriages from the perspective of Indonesian laws and regulations.²¹

The formulation of Article 2 paragraph 1 of the Marriage Law, which incorporates elements of religion and belief, represents the ideal of marriage law and the aspirations of Indonesian society, as it reflects the intrinsic religious nature of Indonesian culture. According to Article 1 of Law Number 1 of 1974: “Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on the belief in Almighty God.” Implicitly, this provision in the Marriage Law suggests that it is not permissible for a Muslim to marry according to Christian rites, or vice versa. Consequently, based on these principles, the state does not legalize interfaith marriages.

¹⁷ Nurul Miqat et al., “The Development of Indonesian Marriage Law in Contemporary Era,” *De Jure: Jurnal Hukum Dan Syar'iah* 15, no. 1 (July 4, 2023): 54–66, <https://doi.org/10.18860/j-fsh.v15i1.17461>; Husna et al., “Children Citizenship Status of Acehese-Rohingya Mixed Marriage in Aceh: Maqāṣid Shari'ah Perspective.”

¹⁸ *Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan*, n.d.

¹⁹ Bani Syarif Maula and Ilyya Muhsin, “Interfaith Marriage and the Religion–State Relationship: Debates between Human Rights Basis and Religious Precepts,” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (2024): 791–820, <https://doi.org/http://dx.doi.org/10.22373/sjhk.v8i2.19479>.

²⁰ *Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan*.

²¹ 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 (February 29, 2024): 19–43, <https://doi.org/10.24260/jil.v5i1.2153>; Jumarim, Ilyya Muhsin, and Muhammad Chairul Huda, “The Interplay of Fiqh, Adat, and State Marriage Law: Shaping Legal Consciousness of Sasak Women,” *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 19, no. 1 (June 15, 2024): 27–52, <https://doi.org/10.19105/al-lhkam.v19i1.10522>.

In the provisions of the Marriage Law, four articles are alleged to lack clear legal meaning due to their ambiguous interpretations and lack of binding legal certainty regarding the prohibition or permissibility of interfaith marriages. This ambiguity potentially creates a loophole for legal circumvention, particularly in relation to Article 2 paragraph 1 and Article 8 letter (f).

The provisions of Article 2 of the Marriage Law state, “Marriage is valid if it is carried out according to the laws of each religion and belief.” If this article is interpreted to mean that marriage must strictly adhere to the laws of each religion and belief, then it aligns with Article 29 of the Constitution, which states: “(1) The State is based on the belief in One Almighty God; (2) The State guarantees the independence of each resident to embrace their respective religions and to worship according to their religion and beliefs.” Consequently, this interpretation would prohibit interfaith marriages, rendering them unjustifiable and a violation of Article 2 paragraph 1 of the Marriage Law.

Similarly, the provisions of Article 8 letter (f) state that marriage is prohibited between two individuals whose relationship is forbidden by their religion or other applicable regulations. According to this article, interfaith marriages are deemed invalid and null if prohibited by religious law and other legal provisions regulating the prohibition of such marriages. However, it remains unclear which specific law regulates the prohibition of interfaith marriages if the aforementioned articles are to be strictly interpreted as prohibiting interfaith marriage practices.

Constitutional Court Decision Number 68/PUU-XII/2014

The implementation of Article 2, paragraph 1 of the Marriage Law has been perceived as having multiple interpretations by segments of Indonesian society, who hold diverse beliefs and seek to marry one another. This ambiguity was highlighted by a judicial review lawsuit filed in 2014. The basis for this legal challenge was that the norm was deemed insufficiently detailed, particularly in its use of the phrase “each religion and belief”, which can be interpreted variably by both individuals and institutions.²² These interpretations can be categorized as follows: (1) Individual interpretations, where the personal understanding of someone adhering to a religion or belief may vary based on their background knowledge, leading to different interpretations of Article 2, paragraph 1 of the Marriage Law; (2) Institutional interpretations by religious or belief systems, where each religion or belief has its own doctrinal interpretation; and (3) Institutional interpretations from entities involved in marriage registration, such as marriage registrars and court institutions.²³

The three reasons above highlight potential differences in the perception of Article 2, paragraph 1 regarding the validity of marriage in the context of various religious and belief systems.²⁴ One aspect of the judicial review of this Article is the proposal to add the words: “as long as the interpretation of religious law and belief is left to each prospective bride and groom.” The aim of this request is

²² Sukirno Sukirno, “Diskriminasi Pemenuhan Hak Sipil Bagi Penganut Agama Lokal,” *Administrative Law and Governance Journal* 1, no. 3 (December 5, 2018): 231–39, <https://doi.org/10.14710/alj.v1i3.231-239>.

²³ Aisyah Zarah Azizah Mochammad Rizky Eka Aditya, Dinda Khoirunnisa, Fawwas Fawwas, Ajid Qiston, “The Problem of Interfaith Marriage in Indonesia: A Juridical-Normative Approach,” *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (2023): 123, <https://doi.org/http://dx.doi.org/10.22373/ujhk.v6i2.20059>.

²⁴ Tri Chandra Aprianto, “Aturan Di Persimpangan Jalan: Perdebatan Rancangan Undang-Undang (RUU) Perkawinan 1973-1994. [Tulisan Ini Adalah Ringkasan Skripsi Jurusan Sejarah Universitas Jember, Dengan Judul Aslinya “Negara Dan Masalah Keislaman, Studi Historis Perdebatan Rancangan,” *Historia* 1, no. 1 (2018): 41–57.

for the phrase “respective religions and beliefs” in Article 2, paragraph 1, to be interpreted by the individuals seeking to marry.²⁵

This request for judicial review was ultimately rejected by the Constitutional Court through Decision Number 68/PUU-XIII/2014. The Court decided to reject the request for judicial review of Article 2, paragraph 1 of the Marriage Law. One of the key considerations of the judges was that every citizen must comply with the legal restrictions in exercising their rights and freedoms, ensuring these actions do not infringe upon the rights and freedoms of others.

The request for a judicial review of Article 2, paragraph 1 of the Marriage Law resurfaced in 2022. Notably, this request also included Article 8, letter (f) of the Marriage Law, which the applicant argued was unconstitutional. This application, similar to the 2014 judicial review, challenged the wording of “religious and belief law”, deeming it unclear and subject to varying interpretations in its application. This request was ultimately not granted by the Constitutional Court in Decision Number 24/PUU-XX/2022 in January 2022.

In the context of marriage law, differences in religious beliefs are still categorized as a “legal vacuum”. This categorization arises from the considerations of judges in various District Courts, who often adjudicate applications for the legalization or registration of marriages. The majority of judges’ deliberations highlight the following points: (1) the existence of a legal vacuum; (2) the issue is not yet regulated; (3) the law does not explicitly address it. This indicates that first instance judges possess legal knowledge and beliefs differing from those considering the Constitutional Court’s decisions. Judges at the court of first instance interpret Article 2, paragraph 1 of the Marriage Law concerning interfaith marriages as something legally “unclear”.²⁶ This perspective is evident in the judicial decisions on applications for the determination and registration of interfaith marriages.²⁷

Considering Constitutional Court Decision Number 68/PUU-XII/2014 and Constitutional Court Decision Number 24/PUU-XX/2022, it is evident that the Panel of Judges unanimously rejected the applications, despite individual judges providing different rationales with the same ultimate intention.²⁸ The interpretation of marriage validity being left to each bride and groom, implying religious conversion, would only further obscure the direction of the regulations and fail to provide clear legal certainty.²⁹

²⁵ Milati Fatma Sari and Yunanto Mulyadi, “Analisis Putusan Judicial Review Mahkamah Konstitusi No. 68/Puu-Xii/2014 Atas Pasal 2 Ayat (1) Undang-Undang No. 1 Tahun 1974 Terhadap Perkawinan Beda Agama,” *Diponegoro Law Journal* 5, no. 3 (2016): 1–13, <https://doi.org/https://doi.org/10.14710/dlj.2016.12376>.

²⁶ Andra Noormansyah and Umar Haris Sanjaya, “The Legal Vacuum Of Interreligious Marriage In Indonesia: The Study Of Judges’ Consideration In Interreligious Marriage Court Decisions 2010 -2021,” *Prophetic Law Review* 4, no. 2 (December 1, 2022): 177–94, <https://doi.org/10.20885/PLR.vol4.iss2.art3>. which states that it is not permissible for an Indonesian citizen to have an interreligious marriage. It has been requested for judicial review through the Decision of the Constitutional Court No. 68/PUU-XII/2014. Article 2 paragraph (1)

²⁷ Gamal Abdul Nasir, “Kekosongan Hukum: Percepatan Perkembangan Masyarakat,” *Jurnal Hukum Replik* 5, no. 2 (September 1, 2017): 172, <https://doi.org/10.31000/jhr.v5i2.925>.

²⁸ Dri Santoso et al., “Harmony of Religion and Culture: Fiqh Munākahat Perspective on the Gayo Marriage Custom,” *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 2 (December 5, 2022): 199–218, <https://doi.org/10.18326/ijtihad.v22i2.199-218>; Elviandri, “Hukum Transendental Dalam Konstelasi Pemikiran Hukum Positivistic Di Indonesia,” *Jurnal Yustisia Merdeka* 2, no. 1 (2016): 30.

²⁹ Bambang Sutiyoso, “Pembentukan Mahkamah Konstitusi Sebagai Pelaku Kekuasaan Kehakiman Di Indonesia,” *Jurnal Konstitusi* 7, no. 6 (2010): 25–50.

Supreme Court Circular Letter Number 2 of 2023 concerning Interfaith Marriage

The Supreme Court acknowledged the existence of a legal vacuum, making it impossible to produce a definitive decision regarding interfaith marriages. Recognizing and accepting the reality that interfaith marriages frequently occur in society, the Supreme Court noted that such marriages are indeed possible. It identified the Civil Registry Office as the only state institution capable of registering these marriages.³⁰

The Supreme Court considers that the Marriage Law does not explicitly address cases of interfaith marriages. Consequently, interfaith marriages are not typically deemed unlawful, and prohibiting them would be contrary to the Constitution, particularly Article 27. This article implies that every citizen has an equal right to marry, including individuals of different religious affiliations.³¹

The Supreme Court ruling stipulates that marriage registration at the Population and Civil Registry Service is permissible when both parties share the same religion. In cases where the parties have different religions, one of them must convert to the other's religion for the marriage to be registered. This directive is outlined in Supreme Court Decision Number 1400 K/Pdt/1986.

The Supreme Court decision is highly significant as it establishes two key legal principles. Firstly, it reinforces that a marriage is only deemed valid if it aligns with the religious laws of the individuals involved. Secondly, it introduces a novel legal precedent where a court can rule on someone's departure from their religion, potentially influencing their legal status. This judicial stance is unprecedented, lacking prior implementation or explicit legal guidelines for reference or comparison.

Criticism of Indonesian Legislation Prohibiting Interfaith Marriages According to Islamic Law

Criticism of Indonesian legislation regarding interfaith marriage from an Islamic legal perspective is often fundamental and profound. Doctrinally, Islamic law, interpreted from the Quran, hadith, and ulama consensus, shows a preference for religious homogeneity in marriage. This dichotomy emerges because the Indonesian state operates a plural legal system that includes secular Civil Law and Islamic Law for Muslim communities. According to Islamic Law, which applies to Indonesian Muslims, there are explicit restrictions on interfaith marriages, particularly for Muslim women. Such marriages are considered invalid (void) because they involve principles of guardianship, leadership in the family, and the transmission of faith to offspring. For Muslim men, although there is some allowance for marrying women from the *Ahl al-Kitab*, this must follow standards that ensure the maintenance of Islamic identity in the household.³²

In practice, courts often face the challenging task of balancing the principles of Islamic law, constitutional provisions, and social justice. Decisions resulting from Indonesian jurisprudence on

³⁰ Asikin Kusumah Atmadja, *Beberapa Yurisprudensi Perdata Yang Penting Serta Hubungan Ketentuan Hukum Acara Perdata* (Jakarta: Mahkamah Agung RI, 1991).

³¹ Ratno Lukito, *Hukum Sakral Dan Hukum Sekuler: Studi Tentang Konflik Dan Resolusi Dalam Sistem Hukum Indonesia* (Pustaka Alvabet, 2008).

³² Mohammad Reevany Bustami Azhari Akmal Tarigan, Jufri Naldo, Syahril Arif Hutagalung, "Islam and Christianity at Rumah Gadang: The Household Characteristics of Minangnese Interfaith Marriage," *JURIS: Jurnal Ilmiah Syari'ah* 23, no. 1 (2024): 111, <https://doi.org/https://dx.doi.org/10.31958/juris.v23i1.11926>; Ahmad Zayyadi et al., "Understanding of Legal Reform on Sociology of Islamic Law: Its Relevance to Islamic Family Law in Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam*, November 20, 2023, 249–62, <https://doi.org/10.24090/mnh.v17i2.7584>.

interfaith marriages often reflect efforts to achieve this balance, though they sometimes provoke controversy and criticism from diverse factions.³³

To reform the law concerning the prohibition of interfaith marriages in Indonesia, several measures can be implemented to ensure legal certainty and prevent legal vacuums:

1. **Revision of Legislation:** Legal reform can be undertaken by amending the marriage law to offer more explicit and comprehensive provisions concerning interfaith marriages. This revision should consider Islamic legal principles, constitutional values, and the social and cultural dynamics prevalent in Indonesia.
2. **Consultation with Stakeholders:** The process of legal reform should include engaging with various stakeholders, such as ulama, Islamic scholars, community leaders, and religious institutions. Incorporating diverse perspectives can ensure that proposed policies align with the interests and values of the broader community.
3. **In-depth Research and Study:** Comprehensive research on interfaith marriage practices, their legal ramifications, and the associated social and cultural dynamics plays a crucial role in the process of legal reform. Such studies serve as a foundation for developing robust and inclusive policies.
4. **Interreligious and Intergroup Dialogue:** Effective legal reform necessitates extensive dialogue among diverse religious communities and social groups. Establishing mutual understanding and consensus on the fundamental principles to be incorporated into new regulations is essential for fostering enduring legal certainty.
5. **Enhancing Law Enforcement:** Beyond legislative revision, it is crucial to bolster law enforcement concerning interfaith marriages. This includes equipping law enforcement personnel with adequate training to ensure fair and effective enforcement of regulations.

By undertaking these measures, the aim is to achieve enhanced legal certainty and address the existing legal gaps concerning interfaith marriages in Indonesia.

Reconstruction of the Marriage Law

Regulations on interfaith marriages in Indonesia, which currently overlap, include the Marriage Law, the Civic Administration Law, and the Compilation of Islamic Law in Indonesia (KHI). This presents a complex challenge that requires a holistic approach. Firstly, there is a need for harmonization among these three laws to prevent regulatory overlap and conflicts that could confuse the public and relevant institutions. This harmonization must be achieved through intensive dialogue and consultation with various stakeholders, such as religious leaders, legal experts, and civil society representatives, to ensure that the resulting regulations reflect the needs and aspirations of all parties.

Secondly, comprehensive and integrated regulations are needed within a single law that encompasses aspects of civil law, religious law, and civic administration related to interfaith marriages.

³³ Lia Noviana and Asep Awaludin, "Philosophical Basis of Various Polygynous Requirements: Comparative Study of Family Law's Philosophy in Asia and Africa," *De Jure: Jurnal Hukum Dan Syar'iah* 14, no. 2 (2022): 334–58, <https://doi.org/https://doi.org/10.18860/j-fsh.v14i2.18330>; Muhammad Fuad Zain, *Zina, Pemerkosaan, Dan Pencabulan Analisis Putusan MK Dan Hukum Islam* (Pustaka Ilmu Grup, 2020).

This approach would create a more consistent and structured legal framework, minimizing confusion and uncertainty in the implementation of regulations. When regulations are more integrated, it will be easier for the public and relevant institutions to understand and apply the provisions effectively.³⁴

Third, the development of clear and comprehensive implementation guidelines is essential after reconstructing the regulations. These guidelines will facilitate more effective and consistent implementation of the regulations in the field. Additionally, the guidelines will serve as an important tool for educating the public on the procedures and provisions applicable to interfaith marriages and providing direction to relevant institutions in performing their administrative duties. A holistic and inclusive approach is expected to result in reconstructed regulations that create a clearer, more consistent legal framework, supporting the interests of all individuals in Indonesia.³⁵

Views on interfaith marriages according to the perspectives of various religions in Indonesia are as follows. Firstly, in Islam, interfaith marriages are prohibited. This prohibition is based on the Quran, Surah al-Baqarah verse 221, which states: “And do not marry polytheist women until they believe. Indeed, a believing slave woman is better than a polytheist woman, even if she attracts you. And do not marry polytheists (to Muslim women) until they believe. And know that Allah knows what is in your hearts; so fear Him. And know that Allah is Forgiving and Merciful.”

Next is Protestant Christianity. In principle, Protestant Christianity requires its adherents to marry individuals of the same religion because the primary goal of marriage is to achieve happiness, which becomes challenging if the husband and wife do not share the same faith. Meanwhile, the Catholic Church, based on its Canon Law, imposes several obstacles to interfaith marriages that prevent the realization of the purpose of marriage. These obstacles include existing marriage ties (Canon 1085), pressure or coercion both physically, psychologically, and socially or communally (Canons 1089 and 1103), as well as differences in church (Canon 1124) and religion (Canon 1086).

Next is Buddhism. According to the decision of the Indonesian Supreme Sangha, interfaith marriages, where one of the prospective spouses is not Buddhist, are permitted as long as the marriage is legalized according to Buddhist rites. In this case, the non-Buddhist spouse is not required to convert to Buddhism beforehand. However, during the wedding ritual ceremony, the couple must say “in the name of the Buddha, Dharma, and Sangha,” which are the revered entities in Buddhism.

An interfaith marriage is a union between a man and a woman who adhere to different religions or beliefs. Such marriages can occur between Indonesian citizens, where both parties have differing religions or beliefs, or between individuals of different nationalities, where one partner is an Indonesian citizen and the other is a foreign national, each holding different religious or belief systems.³⁶

The perspectives of various religions on interfaith marriage are as follows: Islam principally prohibits interfaith marriages, with the Qur'an in Surah Al-Baqarah verse 221 explicitly forbidding

³⁴ Mohamad Abdun Nasir, “Negotiating Muslim Interfaith Marriage in Indonesia: Integration and Conflict in Islamic Law,” *Mazahib* 21, no. 2 (December 27, 2022): 155–86, <https://doi.org/10.21093/mj.v21i2.5436>.

³⁵ Kemas Muhammad Gemilang et al., “Discussing the Phenomenon of the Appointment of Judges in District Courts Regarding Interfaith Marriages from a Legal Logic Perspective,” *Al-Istinbath: Jurnal Hukum Islam* 8, no. 2 November (November 9, 2023): 307, <https://doi.org/10.29240/jhi.v8i2.8185>.

³⁶ Farahsyinta Gladisia Puspa Fardiana, Khoirul Hidayah, and Mohd Hazim bin Borhan, “A Comparative Analysis of the Missing (Mafqud) Husband Regulations in Indonesia and Malaysia: A Study to Reform the Regulation That Meets Legal Certainty in Indonesia,” *De Jure: Jurnal Hukum Dan Syari'ah* 14, no. 3 (2022): 359–79, <https://doi.org/https://doi.org/10.18860/j-fsh.v14i2.17347>.

marriage between Muslims and polytheists. The Catholic Church views marriage between Catholics and non-Catholics as less than ideal because it considers marriage a sacrament, which is sacred and holy. Protestant Christianity generally requires its adherents to marry within the same faith, as the goal of marriage is to achieve happiness, which is believed to be difficult if the spouses do not share the same faith. Hinduism does not recognize interfaith marriages, as a religious ceremony must be performed prior to marriage. Buddhism, according to the Indonesian Supreme Sangha, allows interfaith marriages where one partner is not Buddhist, provided the marriage is legalized through Buddhist rites. Due to the absence of regulations governing interfaith marriages in Indonesia, some Indonesians opt to marry abroad.

Referring to Article 56 of Law No. 1 of 1974 concerning Marriage, it states: 1) A marriage solemnized abroad between two Indonesian citizens or an Indonesian citizen and a foreign citizen is valid if it is carried out in accordance with the laws in force in the country where the marriage is held and does not violate the provisions of this law for Indonesian citizens. 2) Within one year after the husband and wife return to Indonesian territory, proof of their marriage must be registered at the Marriage Registry office where they reside. With the existence of Law No. 23 of 2006 concerning Civic Administration, it allows couples of different religions to have their marriage registered as long as it is through a court order. Article 35 letter (a) states that marriage registration also applies to marriages determined by the court. The explanation of this article clarifies that marriages determined by the court include marriages between people of different religions.³⁷

Conclusion

Marriage law in Indonesia, particularly concerning the prohibition of interfaith marriages, has sparked various polemics and criticisms from an Islamic legal perspective. In Muslim countries, family law plays a crucial role in maintaining social and spiritual harmony among the populace. These countries generally refer to sharia principles when drafting marriage regulations, often prohibiting interfaith marriages to protect religious values and the integrity of the Muslim family. However, in Indonesia, which has the largest Muslim population in the world but also significant religious diversity, a strictly prohibitive legal approach to interfaith marriages may be considered less inclusive and neglectful of existing social realities. The reconstruction of marriage law in Indonesia necessitates a more holistic and flexible approach that not only adheres to sharia norms but also considers aspects of human rights and religious pluralism. Criticism of the prohibition on interfaith marriages in Islamic law can be addressed by re-evaluating interpretations of religious texts in a manner that is more contextual and pertinent to the dynamics of modern society. Some Muslim countries, such as Tunisia and Turkey, have undertaken progressive reforms in their family laws to accommodate interfaith marriages while upholding Islamic principles.

³⁷ Diana Farid et al., "Interfaith Marriage: Subjectivity of the Judge in Determination of No. 454/Pdt.p/2018 Surakarta District Court," *Al-Istinbath : Jurnal Hukum Islam* 7, no. 2 (December 1, 2022): 355, <https://doi.org/10.29240/jhi.v7i2.4574>; Okti Nur Hidayah, Muhammad Fuad Zain, and Anis Ma'rifah, "Reconstruction of Islamic Family Law: Analyzing Marital Issues Through Multimedia," *Interdisciplinary Journal of Social Science and Education (IJSSE)*, March 19, 2024, 1–10, <https://doi.org/10.53639/ijssse.v2i1.14>.

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