
ANALYSIS OF THE SUPREME COURT'S DECISION IN CASE NO. 916/PDT.P/2022/PN.SBY IN GRANTING THE APPLICATION FOR REGISTRATION OF INTERFAITH MARRIAGES IN THE PERSPECTIVE OF MARRIAGE LAW NO. 1 OF 1974

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ABSTRACT

Indonesia is a country with multi-religious citizens. The large variety of religions and beliefs held by Indonesians makes it possible for them to have heterosexual marriages. Marriage regulations in Indonesia are stated in Law No. 1 1974 concerning marriage. How the place of marriage between different religions in the law is still a matter of debate. There is an article that says that about marriage between different religions. The decision of the Supreme Court of the Republic of Indonesia regarding accepting the request for freedom from marriages of different religions. The Surabaya District Court is the entry point for the legal legitimacy of marriages of different religions in Indonesia. The purpose of this article is to review and analyze the Supreme Court's decision in issuing a request for registration of marriages between different religions at the Surabaya District Court, and examine the legal position of marriages between different religions in Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law. Studying it is a normative study using legal methods in Indonesia. Based on the analysis of legal hardware, it is found that marriages of different religions according to Indonesian marriage law are prohibited and declared invalid

Keywords: Marriage, Different Religions, Rules**INTRODUCTION**

WeLiving in a country is full of diversity, be it religion, ethnicity or race. Christianity, Catholicism, Buddhism, Hinduism and Islam are religions that have been recognized since ancient times and are also recognized by the state. All followers of a religion are given the freedom to practice the teachings of their beliefs according to their own beliefs. Seeing ethnic diversity, ethnic races certainly opens the eyes to opportunities for mixing of existing ethnicities and cultures. Law No. 1 of 1974 explains Marriage is an external relationship between a man and a man women in a happily ever after family relationship based on the Almighty Godhead.¹

With the diversity that occurs in our country, it is impossible to rule out the possibility of marriages with different religions. According to the era, nowadays there are a lot of marriages with different religious statuses. Whether it's from ordinary people, even from the upper class too. Indonesia has a diverse social background, from small people to even upper class people.

We live in an era today which is based on rules that have been thought of by the formulators and originators to regulate the entire life of our country. Rules are born to organize life because rules provide a position for human behavior so that they do not exceed the limits of norms and morals in life. Because we live in an area that is founded on diversity, in its life there are bound to be collisions from within the environment and outside the environment, both intentionally and unintentionally. The formation of rules in our country regulates the flow of life.

¹ Kustini, Menelusuri Makna Dibalik Fenomena Pernikahan Dini, (Jakarta:Kementerian Agama RI Badan Litbang dan Puslitbang Kehidupan Keagamaan, 2013) h. 3

Likewise regarding marriage, the many tribes or types of people in Indonesia mean that people are free to choose who will be their partner. Therefore, the issue of interfaith marriage cannot be avoided in the life of a country that stands on a land of great diversity.

Marriage is a permanent relationship between two people that is officially acquired from society in accordance with the legal rules of marriage. It takes different forms depending on the culture adopted because that culture may have a different goal or direction. Each region has different cultures, but generally marriage adheres to general concepts referring to statutory regulations.

Marriage is aimed at forming a family or harmonious bond in the future, marriage is followed by legal evidence in the form of a document in the form of a marriage certificate.

The first time an interfaith marriage occurred in Indonesia was a marriage that took place in the Semarang area at St. Ignatius Krapyak Church, Semarang City. In this case, a Muslim woman marries a Catholic man, in which case the marriage is carried out using the procedures of both religions, first the woman undergoes a blessing in church and then continues with a marriage contract using Islamic religious procedures. From this incident, two weeks later, there was a wedding that caused a stir again in Indonesia, namely a wedding of different religions in Pontianak. Referring to the decision of the Pontianak District Court, all requests from applicants of different religions were granted. A marriage between different religions that was no less shocking to the public was the marriage between different religions carried out by the presidential staff with the initials AKD, a Muslim woman married a non-Muslim man with the initials GS.²

Marriages of different religions are a marriage incident in Indonesia that continues to exist and is a problem that will never end. The reason is that marriages between different religions are not a problem. For someone who marries in a different religion, the most important thing is that someone can live together under one roof, but this also applies to its validity and position under religious law and state law. This marriage of different religions is the cause of the mixing of different religious beliefs and then has an impact on the process of recording at the civil registry office regarding the status of the marriage.

If a marriage between different religions is found, it can be concluded that legally and can be reported at the civil registry, this is by submitting a request for dispensation for marriage registration to the District Court. Likewise, what happened in the Surabaya court in the case of requests for marriage between different religions a man with the initials RA who is Muslim and a woman with the initials EDS, in the case decision No. 916/Pdt.P/2022/PN.Sby dated 8 April 2022 agreed to the applicant's request regarding the reporting of the marriage carried out by the applicant. The Supreme Court in its decision determined (1) to approve the Petitioner's request; (2) Permit the Petitioner to perform a marriage of different religions in front of an official from the Population and Civil Registry Office of the Municipality of Surabaya; (3) Give instructions to Officials of the Population and Civil Registry Office of the Municipality of South Jakarta to carry out the registration of marriages between different religions of the Applicant in the Marriage Registration Register used for this purpose and to issue the Marriage Certificate as soon as possible.³

For a review of the previous literature on Khyiaroh's Review of Islamic Law and Law entitled Reasons and Objectives of the Birth of Marriage Law No. 1 of 1974.⁴ Islamic Law Journal by Mendra Siswanto with the title Family Law Fatwas of the Indonesian Ulema Council 1975-2012 in the Perspective of Maqashid Al-Syari'ah.⁵ The Samudra Perempuan Law Journal by Nur Aisyah with the title Legal Study of Marriages of

² <https://www.cnnindonesia.com/nasional/20220318182241-20-773354/deretan-pernikahan-beda-agama-warga-semarang-hingga-stafsus-jokowi> diakses pada tanggal 13 April 2023 pukul 10:30

³ Direktori Putusan Mahkamah Agung Republik Indonesia putusan.mahkamahagung.go.id

⁴ Khyiaroh, Alasan dan Tujuan Lahirnya Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan, Al-Qadha: Jurnal Hukum Islam dan Perundang-Undangan, Volume 7 No 1, Juni 2020, h. 115.

⁵ Mendra Siswanto, Jurnal Hukum Islam karya Mendra Siswanto dengan judul Fatwa-Fatwa Hukum Keluarga Majelis Ulama Indonesia Tahun 1975-2012, Dalam Perspektif Maqashid Al-Syari'ah. Hukum Islam Vol. 21, No. 2 Desember 2021

Different Religions According to Marriage Law and Islamic Law.⁶Based on several scientific works mentioned above, they have similarities, namely that they both research Law No. 1 of 1974 concerning Marriage. As well as literature from a journal entitled Analysis of the Supreme Court Decision in Case No. 916/Pdt.P/2022/PN.Sby in Granting Requests for Registration of Marriages of Different Religions in the Perspective of Marriage Law No. 1 of 1974 from the authors Anwar Hakim and Ridhokimuraa Soderii. In essence, it discusses the issue of marriage between different religions that already exists in our beloved country. Then what about the solution from looking at Islamic law and state law? The writing that we wrote is a writing that discusses the analysis of the judge's considerations in the Supreme Court Decision in Case No. 916/Pdt.P/2022/PN.Sby in order to see the validity of the marriage requested by the applicant in that case. The author takes benchmarks based on the provisions of Law No. 1 of 1974 concerning marriage and the Compilation of Islamic Law. In order for readers to understand the contents of the decision and to take a piece of the rules regarding marriage and discuss them in detail. So that readers can understand what a marriage is like if it is carried out by different religions in Indonesia.

RESEARCH METHODS

This article applies normative juridical research methods, how to analyze library materials, namely primary and secondary legal materials. The data collection technique uses library research, by collecting data and information or legal materials related to the substance of the research. After the legal materials are collected, analysis is carried out and appropriate conclusions are drawn regarding the problems contained in the problem formulation. This writing also applies data analysis techniques with deductive logic. This conclusion is based on a literature analysis regarding the rules that explain the issue of interfaith marriages. This brand dispute will be analyzed according to existing regulations, from a brand law perspective in order to understand its essence and intent in resolving the legal problems discussed in this research.⁷

RESULTS AND DISCUSSION

So the legal status of marriage is in Law Number 1 of 1974 stipulates cumulatively that marriages are carried out based on religious law and that marriages must be reported. Article 2 paragraph (2) of the Marriage Law explains that every marriage is registered in accordance with applicable laws and regulations. The cumulative ratification of Article 2 is a systematic risk of legislative items, namely parts whose parts cannot be separated from one another. .

So, even if a marriage is seen as valid according to the provisions of that religion, if it is not reported to a powerful government office, such as the KUA for the Islamic religion, or the Civil Registry Office for those who are not Muslim, then the marriage is not considered valid by the state. There are many cases involving marriages of different religions. Proof of the validity of a marriage is by showing a registration from the Religious Affairs Office or Civil Registry Office.

If incidents involving marriages of different religions have been reported to the Civil Registry, then marriages of different religions are considered valid and have received valid recognition from the state and their status from the state is legal. However, if there is an incident of a marriage between different religions that has not been registered or forgotten to process it at the Civil Registry Office, then the marriage will be carried out with invalid status and will not be considered valid. Then it is different from the act of marriage of different religions which has been written down at the Civil Registry Office and the marriage is considered legal and legitimate. Therefore, if a marriage between different religions must be registered at the Civil Registry Office, the marriage and all its legal consequences are as valid as normal

⁶ Nur Aisyah, Kajian Hukum Terhadap Pernikahan Beda Agama Menurut Undang-Undang Perkawinan dan Hukum Islam. Jurnal Hukum Samudra Keadilan. Vol 10 No 2 Juli-Desember 2015

⁷ Khudzaifah Dimiyati & Kelik Wardiono, 2004, Metode Penelitian Hukum, Surakarta: Fakultas Hukum UMS, hal. 4.

same-religion marriages.

Looking at the Decision of the Supreme Court of the Republic of Indonesia No. 916/Pdt.P/2022/PN.Sby

The Surabaya Court which examined and decided the request case at the first trial, has given a decision in the applicant's case, namely:

- a) Decision No. 916/Pdt.P/2022/PN.Sby on the results:
 1. Accept the applicant's request.
 2. Permission is given to people who want to register marriages of different religions in front of the Surabaya city civil service and population office. ;
 3. Give instructions to employees of the South Jakarta City Civil and Population Registry Office to register the applicant's marriage of different religions in the marriage book used and then provide the current marriage certificate;
 4. Providing cover for request costs for the applicant in the amount of Rp. 120,000.00 (one hundred and twenty thousand rupiah);
- b) The judge's considerations in agreeing to the party's request regarding reporting marriages of different religions at the Surabaya District Court are:
 1. Considering that marriage is regulated in Law Number 1 of 1974 and government regulation number 9 of 1975, where in article 2 paragraph 1 of Law number 1 of 1974 in conjunction with article 10 paragraph 2 of government regulation number 9 of 1975 it is explained that a marriage is valid if it is carried out based on religious provisions and beliefs of each party. The regulations in article 2 paragraph 1 of Law number 1 of 1974 are the rules that apply to marriages between people who adhere to the same religion, so the status of marriages is not applied based on these provisions.
 2. Considering that marriages that have occurred between two people of different religions are only stated in the explanation of article 35 letter a of Law Number 23 of 2006 concerning Population Administration, the explanation of article 35 letter a is emphasized with the essence which means that marriages that have been applied in court are marriages that are carried out between religious people. The basis of this decision is a provision that grants the possibility of registering a marriage that has occurred between two people of different religions after a court ruling regarding this matter.
 3. Considering, that based on the juridical facts as revealed in the trial above, it is connected with the regulations regarding marriage conditions in Law No. 1 of 1974 concerning marriage in article 6 paragraph 1 concerning the validation of the bride and groom and the regulations in article 7 regarding the age of marriage, therefore the applicants have completed the requirements material for carrying out the wedding.
 4. Considering, that different religions are not a prohibition on carrying out marriages as defined in article 8 letter f of the Marriage Law and based on provisions 35 letter a of Law number 23 of 2006 concerning Population Administration, therefore regarding the issue of marriages of different religions it is the authority of the District Court to examine and decide.
 5. Considering the above legal facts that the Petitioner is Muslim, while Petitioner II is Christian, he has the right to maintain his religious beliefs, in terms of his intention to carry out his marriage to form a family created by a prospective wife (Petitioner) of a different religion, in accordance with the contents of Article 29 The 1945 Constitution concerning independence from belief in One Almighty God.
 6. Considering, that in addition, based on Article 28 B paragraph (1) of the 1945 Constitution which confirms that every person has the right to marry and continue their offspring through legal marriage, this is also in accordance with Article 29 of the 1945 Constitution concerning the right to be guaranteed by the State, the right to independence. according to the religion of every citizen.

7. Considering that the Petitioner's desire to marry someone from a different religion is basically not prohibited based on regulation number 1 of 1974, and it should be noted that forming a household through marriage is the right of the applicant who has the status of a citizen or as a human being. the applicant's right to uphold their own beliefs, the regulations of Article 2(1) of Law Number 1 of 1974 concerning the validity of a marriage if it is carried out according to religious procedures or beliefs that are respected by the prospective husband and wife in casu, this cannot be done by the applicant with religious differences.
8. Considering, that in relation to procedures for marriage according to religion or belief which cannot be carried out by the parties concerned due to differences in religion, the provisions of Article 10 Paragraph (3) of Government Regulation Number 9 of 1975 regulate the possibility of marriage. can be held solemnly, while the provisions of Article 10 paragraph (3) of Government Regulation Number 9 of 1975 emphasize "by complying with the marriage procedures according to the respective laws". "The ceremony was held in the presence of a civil registration officer witnessed by 02 (two) witnesses."
9. Looking at the decision on Article 1 of 1974 concerning Marriage and Article 35 letter a of Law Number 23 of 2006 concerning Population Administration, other related laws and regulations.

In the legal history of our country, marriages of different religions are called mixed marriages. Based on the GHR legal rules, namely article 1 of the Staatsblad that what is called mixed marriage is a marriage between people in Indonesia who obey different laws. Different laws can arise because of religious differences (between religions) such as Muslim-Christian marriages, or because of different laws or different beliefs.⁸

Following these rules, religious comparisons are not an obstacle for someone to marry someone from a different religion. This chapter emphasizes that differences in religion or nationality are not an obstacle to marriage. The existence of Law No. 1 of 1974 concerning marriage-Mixed marriage has experienced a shift in meaning as explained in the law in article 57, which essentially means that mixed marriage is a marriage between two parties in Indonesia who comply with different laws, due to differences in nationality and the only party being an Indonesian citizen.

In the explanation of Article 57 of the Law, what is meant by mixed marriage is a difference in population, namely marriage between residents of Indonesia and foreigners. In essence, every marriage between an Indonesian citizen and an outsider is called a mixed marriage. From Marriage Law no. 1 was promulgated in 1974, all legal provisions relating to family law before this law was promulgated no longer apply. This chapter can be seen from Article 66 of Law No. 1 of 1974. The Mixed Marriage Regulations (Regeling Op de gemengde Huwelijken S.19898 No. 158) and all other regulations governing marriage as far as they are regulated in this Law are declared invalid.

Then finally, the legality of marriages of different religions or different religions according to Article 7 paragraph (2) of the GHR regulates that differences in religion, country or origin are in no way an obstacle to marriage which automatically ends after the marriage is issued. 1 of 1974. This is confirmed in Article 2(1) of the 1974 Marriage Law as follows: "A marriage is declared valid if it is carried out according to the laws of each religion and belief. 21 The words in this article clearly imply that marriages of different religions or mixed marriages are prohibited under Indonesian law. This can be seen from the sound of article 2 paragraph (1) of the Law, where same-sex marriage is declared valid if it is declared legal according to the Law on Religion and Beliefs. This provision has the consequence that mixed marriages carried out by foreign citizens must be of the same faith.

Another consequence of marriages of different religions and different beliefs is that the marriage cannot be registered at the civil registry office or religious office. The marriage was not registered because in reality the registered marriage was a valid marriage which was declared legally and was not prohibited by the applicable laws and regulations.

⁸ M. Anshary, Hukum Perkawinan di Indonesia, (Yogyakarta: Pustaka Pelajar, 2010) h. 53.

Marriage registration also shows that there is no legitimacy in the form of a marriage certificate for married couples of different religions, and proof in the form of a marriage certificate will be obtained if the marriage is declared valid and registered with the civil service or religious service. Marriage registration as a legal form as stated in the Marriage Law Article 2 paragraph (2) requires every citizen to register their marriage in accordance with applicable laws and regulations.

In an example of a case where the court granted a request to annul a marriage of different religions so that it could be registered at the clerk's office, the court judge who decided the case was of the opinion that there was a legal loophole in the Marriage Law. 1 of 1974 concerning marriage because it is not explicitly stated in any of the provisions relating to marriages of different religions, so based on the principle of *Ius Curia Novit* the judge must accept it, every case that arises even if the legal basis is not clear. Furthermore, the *Recht Vinding* principle states that "judges as enforcers of law and justice are obliged to discover, obey and understand the laws that apply in society" (i.e. in their jurisdiction) judges must be able and active to discover the law). These two principles mean that a judge cannot dismiss every case that comes before him but must try every case that comes before him, and in cases where the legal basis is unclear, the judge is obliged to give a valid decision.

This statement is supported by the opinion of a number of legal experts that interfaith marriages are not yet regulated in the marriage law, because there are no clear provisions, so they should be regulated in Article 7 (Article 7). 2) GHR is always applied to marriages of different religions. .in Indonesia. This view is also supported by the provisions of Article 66 of the Marriage Law no. 1 of 1974 which states that "with the enactment of this Law, the provisions relating to marriage are regulated by BW, GHR and other provisions governing marriage to the extent regulated by this law are declared null and void.

Article 2(1) Marriage Law no. 1 of 1974 which states that "marriage is declared valid if it is solemnly performed according to the laws of each religion and belief" which was confirmed by the decision of the Supreme Court. Republic of Indonesia issued on January 30 2019 Circular Letter no. 231/PAN/HK.05/1/2019 point (2) explains "Different marriages are not recognized by the state and are not registered. However, if the marriage was solemnly solemnized on the basis of the religion of one of the parties and the other spouse adheres to the religion of the other spouse, then the marriage can be registered. For example, if the marriage is held on the basis of the Christian religion, it will be registered with the Population and Civil Registry Service, likewise if the marriage is held on the basis of the Islamic religion, then the couple's marriage will be registered. with the Department of Religion (KUA).

Regarding the chapter on the provisions for confirming this matter, the request for dispensation for marriage registration at the Surabaya District Court, based on the considerations explained above, is absolutely the judge's power in deciding a case that is requested based on the principles of legal certainty and justice.

Jurisprudence can be designated as a source of law if there are no statutory provisions that clearly act on or explain events and cases that will occur or have already occurred. With jurisprudence, the benefit of judges is as an element in filling legal gaps if there are no or no statutory provisions governing them or they are already outdated. This benefit is implemented through efforts to find values that are born and live in people's lives. This case is in accordance with judicial obligations as defined in article 27 paragraph (1) of Law No. 14 of 1974.

The formulation of law based on jurisprudence requires three elements, namely (1) Philosophical Values which means that legal decisions must have aspects of justice and truth; (2) Sociological values, in essence, that the judge's decision must be in line with cultural values, aka legal values, that are alive and valid in society; (3) Juridical value, the essence of which is that the judge's decision is based on valid state regulations.

In the case of the decision of the Judge of the Supreme Court of the Republic of Indonesia granting the request for registration of marriages of different religions at the Surabaya District Court, several things can be found.

Case law was created to fill legal gaps if the law has expired or expired, but in the case of marriage, the law expressly states that marriage for all Indonesian citizens is prohibited. In the explanation, there is no vacuum in the rules, then case law must be applied as a source of law. The judge's decision must be in harmony with the cultural and legal values that breathe and run in his life. In the chapter on marriages of different religions, Ma's decision contains cultural values and legal values which breathe into everyday life and originate from religious norms which in religion have rules about what is prohibited and how it is passed into regulations.⁹

CONCLUSION AND SUGGESTION

So the rules for the validity of marriages in Article 2 of Law Number 1 of 1974 are stipulated cumulatively, namely that marriages are carried out based on religious law and the marriage must be registered. So, even if a marriage is seen as valid or valid according to the rules of that religion, if it has not been reported to the ruling government body, such as the Office of Religious Affairs for the Islamic religion, or the Capil Office for those who are not Muslim, then the marriage is not considered valid by the state. There are many cases involving marriages of different religions. However, if there is an incident of a marriage between different religions that has not been registered or forgotten to process it at the Civil Registry Office, then the marriage will be carried out with invalid status and will not be considered valid. Then, in contrast to the marriage act of different religions which has been written down at the Civil Registry Office, the marriage is considered legal and valid.

Based on the GHR legal regulations, namely article 1 of the Staatsblad, it is explained that mixed marriages are marriages between people who in Indonesia are subject to different laws. Following these rules, religious comparisons are not an obstacle for someone to marry someone of a different religion. This chapter emphasizes that differences in religion, nationality or whatever are not at all an obstacle to marriage. With the existence of Marriage Law no. 1 of 1974, the meaning of heterosexual marriage has changed, as stated in article 57 of the law which states, what is meant by heterosexual marriage is a marriage between two people in Indonesia, the rules may differ. law, due to differences in resident status and if one of the parties is a citizen. Referring to the explanation of Article 57 of this law, what is meant by mixed marriage is a difference in citizenship, namely a marriage between an Indonesian citizen and a person outside Indonesia. In other words, every marriage between an Indonesian citizen and a foreigner is called a mixed marriage. Since Marriage Law no. 1 was enacted in 1974, all legal provisions relating to family law before this law was promulgated no longer apply. This is confirmed in Article 2(1) of the 1974 Marriage Law as follows: "Marriage is declared valid if it is carried out according to the laws of each religion and belief. This provision has the consequence that mixed marriages carried out by foreign citizens must be of the same faith. Another consequence of mixed marriages with different beliefs is that the marriage cannot be registered at the civil registry office or religious office. Marriage registration also shows that there is no legitimacy in the form of a marriage certificate for married couples of different religions, and proof in the form of a marriage certificate will be obtained if the marriage is declared valid and registered with the civil service or religious service.

Marriage registration is part of the law as Article 2 paragraph (2) of the Marriage Law requires every citizen to register their marriage in accordance with the applicable Perpu. Regarding marriage, because it is not explicitly stated in one of the provisions relating to marriages of different religions, based on the principle of *Ius Curia Novit*, the judge must accept it, even if the law is uncertain, all the problems that arise. These two principles mean that a judge cannot dismiss every case that comes to him but must try every case that comes before him, and in cases whose legal basis is unclear, the judge is obliged to give a valid decision. This statement is strengthened by the arguments of a number of legal experts that inter-religious marriages are not included in the marriage law, because there are no clear

⁹ M. Anshary, *Hukum Perkawinan di Indonesia*, (Yogyakarta: Pustaka Pelajar, 2010) h. 53-54

provisions, so they should be regulated in Article 7 (Article 7). 2) GHR is always applied to marriages of different religions. The Indonesian state adheres to the principle of belief in the Almighty God which regulates the principles of values and religious norms followed by the Indonesian nation. Article 2(1) Marriage Law no. 1 of 1974 which states that "a marriage is said to be official if it is carried out solemnly according to the laws of each religion and belief" which is confirmed through the provisions of the Supreme Court. Issued on January 30 2019 Circular Letter No. However, if the marriage was solemnly solemnized on the basis of the religion of one party and the spouse adheres to the religion of the other spouse, then it can be recorded. Regarding the chapter regarding the determination of approving this matter, the request for dispensation for marriage registration at the Surabaya District Court, basically the consideration that has been explained absolutely is the power of the judge to determine the outcome of a case that is requested for him based on the principles of legal certainty and justice. Jurisprudence can be designated as a source of law if there are no statutory provisions that clearly act on or explain events and cases that will occur or have already occurred.

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