

**JURIDICAL ANALYSIS OF THE VALIDITY OF INTERRELIGIOUS MARRIAGES BASED ON MK RULING****No. 24/PUU-XX/2022**Budi Prasetyo Adi Wibowo<sup>1</sup>, Diana Setiawati<sup>2</sup><sup>1</sup> Muhammadiyah University of Surakarta ([c100190294@student.ums.ac.id](mailto:c100190294@student.ums.ac.id))<sup>2</sup> Muhammadiyah University of Surakarta ([ds170@ums.ac.id](mailto:ds170@ums.ac.id))**ABSTRACT**

The purpose of this study is to find out whether interfaith marriages are legal based on Constitutional Court Decision No.24/PUU-XX/2022 and to identify the legal implications of court decisions on interfaith marriages. The problem discussed in this study is how legal interfaith marriages are based on the Marriage Law No. 1 of 1974 and what are the legal consequences for court decisions regarding interfaith marriages. Normative legal studies are used in this study. The data sources used are the main data sources that are relevant to the research author's problem, namely the Constitutional Court Decision Number 24/PUU-XX/2022, Decree Number 9 of 1975, Law Number 23 of 2006 concerning Population Administration and secondary data sources in the form of books -books, journals, internet related to research topics. The results of the study show that interfaith marriages are clearly invalid or it can be concluded based on Article 2 of the Marriage Law No. 1 of 1974 which states that legal marriages must be carried out according to all religions and beliefs. That is, marriage can only be interpreted if the couple (prospective husband and wife) adheres to the same religion. And the legal value of the decision of the interfaith marriage court has been examined based on Article 35 letter a of Law Number 23 of 2006 concerning Population Administration and in the case of marriage based on an interfaith court decision, it is permissible to establish a marriage based on a court decision.

Keywords: Religion, Rules, Marriage

**INTRODUCTION**

Marriage in Indonesia is a culture where the knowledge, experience, beliefs and religion of the parties cannot be separated or influenced. In Indonesia, there are ethnic, cultural and national differences between men and women, and marriage is not a problem. Indonesian law does not prohibit marriage between men and women of different ethnicities, cultures and nationalities. This problem is in line with the heterogeneous situation of Indonesian society consisting of various ethnicities and cultures. These differences and variations often create very complicated problems between men and women of different beliefs who want to get married.

Considering the diversity of religions and beliefs in Indonesia, this has implications for the emergence of interfaith marriages. Marriage between different religions is nothing new and has existed for a long time in Indonesia's multicultural society. However, this does not mean that cases of interfaith marriages do not cause problems, and often become public controversies. From 2005 to early March 2022, 1,425 interfaith couples married in Indonesia, based on data from the Indonesian Conference on Religion and Peace (ICRP). Marriage between different religions is a relationship between couples of different religions who are bound by ordinary marriage ties. The definition of interfaith marriage must contain two main elements. It is belief in or acceptance of another religion and commitment to marriage.

The high rate of interfaith marriages in Indonesia shows the need for clear regulations so as not to create legal vacuum and prejudice which could lead to social turmoil and chaos in the future. In Indonesia, marriage regulations are contained in Law no. 16 of 2019 (hereinafter referred to as the Marriage Law) together with Marriage Law no. 1 of 1974. Article 1 of the Marriage Law explains, "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 belief in the Almighty God.

Marriages of different religions are not explicitly regulated in Law Number 1 of 1974 concerning Marriage, even though there is a Constitutional Court decision Number 24/PUU-XX/2022. This phenomenon continues to occur today and is present in society. About marriages of different religions.

In connection with the explanation above, the author is encouraged to continue further research on the juridical analysis of the Constitutional Court decision No.24/PUU-XX/2022 based on the Marriage Law? And what are the legal consequences after the Constitutional Court decision No.24/PUU-XX/2022. In an effort to equalize rights between citizens, and also aims to find a more transparent and more precise explanation. Given the urgency of this problem, a more in-depth discussion is needed.

## RESEARCH METHODS

The research method that will be applied in this research is normative or doctrinal. Normative legal research is legal research carried out by examining Law No. 1 of 1974, Constitutional Court Decision No.24/PUU-XX/2022, related journals, books about interfaith marriages, and from the internet. The approach method in this research is research that uses an approach based on legal material from library research, which tries to understand legal issues and events based on law and literature, so it is based on a doctrinal (normative) research approach. , and other related materials. The data collection method used in this research is library research or data collection techniques through research and searching for library materials, literature or references, journals or scientific papers, which are related to interfaith marriages. For qualitative data analysis, namely analysis techniques without using numbers and statistical or mathematical formulas. Data obtained from literature surveys are processed, analyzed to answer questions and a conclusion/solution is drawn.

## RESULTS AND DISCUSSION

### I. Juridical analysis of Constitutional Court decision No.24/PUU-XX/2022

Article 1 of Law Number 1 of 1974 concerning Marriage understands that "marriage is an agreement between a man and a woman as husband and wife to form a happy and eternal family (household). "In the Almighty God" The law explains that in a country based on Pancasila, where the Almighty God is believed, marriage is very closely related to religion and spirituality so that marriage is physical and material, spiritual factors play an important role. (Sudarsono 2005)

That a person is not prohibited from entering into a marriage and is also not prohibited from carrying out various legal actions, must not be seen as different in the eyes of the law, nor is he prohibited from starting a family, as long as they obey the rules and laws, in the belief or religion they adhere to.

Religious differences in marriage can occur before marriage, during marriage, and after marriage. Differences in religion before marriage can raise questions about whether the marriage is valid or not. Then religious disputes will arise throughout building and running a household, which can lead to disputes about the end of a marriage. The current marriage law rejects marriage cases between people of different religions or beliefs, because a marriage is valid if both parties are regulated by a law that does not conflict with the rules of their religion, meaning that this is not free from problems. On the contrary, this contains many interpretations.

The interpretation of this provision leads to the interpretation that marriage of different religions is a legal act in Law number 1 of 1974 article 2 paragraph 1 in conjunction with article 8 f, which states that marriage is valid if it is carried out according to the laws of each religion and belief. The explanation of the Law above confirms that the wording in article 2 paragraph 1 does not include marriage outside the rules of each belief and religion.

Marriages of different religions are not clearly regulated in Law number 1 of 1974, therefore in

Article 66 of Law number 1 of 1974, the subject of marriages of different religions can be referred to in other regulations such as mixed marriages, because it is not clearly regulated in the Law Marriage.

Submission of applications for the right to judicial review in the Marriage Law is solely based on personal desires and does not include the wishes of the majority of the Indonesian population. The majority of people do not accept interfaith marriages because interfaith marriages are not permitted in Indonesia. Marriages of different religions are not legalized in Indonesia because of the current regulations that marriage must be of the same faith, as the regulations that have become the core of the implementation of marriage regulated in the Complications of Islamic Law have become positive law, applicable to all Indonesian people who are Muslim. Where in Article 4 Presidential Instruction Number 1 states "Marriage is valid if according to Islam it is in accordance with Article 2 paragraph (1) of Law Number 1 of 1974" apart from that Articles 41 and 44 Complications of Islamic Law strengthen this article.

The applicant's request could disrupt the marriage registration mechanism in the provisions contained in Article 2 paragraph (1) PP Number 9 of 1975 in the Marriage Registrar Law Number 32 of 1954 concerning registration of marriages, divorces and marriages, namely the Office of Religious Affairs. Indonesian people who wish to enter into non-Muslim marriages are recorded in the civil registry based on Law no. 23 of 2006 concerning Population Administration has been replaced as Law no. 24 of 2013 concerning amendments to Law No. 23 of 2006 concerning Population Administration. This results in the registration of marriages between different religions hampering the legal regulatory system regarding procedures for registering marriages between different religions.

Apart from that, the provisions of Article 2 paragraphs (1) and (2) of the Marriage Law apparently do not violate the constitutional rights of the applicants, so it can be said that the applicants do not have legal standing regarding this matter. In connection with the review of Article 2 paragraphs (1) and (2) and Article 8 letter f of the Marriage Law number 1 of 1974. Therefore, it is natural that the Panel of Judges did not accept the applicant's application.

In KHI, interfaith marriages are divided into three parts. The first is religious differences rather than a lack of conditions in marriage. Differences in beliefs that occur and are known before marriage are regulated in chapter VI concerning the Prohibition of Marriage (Articles 40 and 44) and chapter X concerning the Prevention of Marriage (Article 61). A man may not marry a non-Muslim woman (Article 40 c), while a Muslim woman may not marry a non-Muslim man (Article 44). This section is indeed separate from the literal pillars and conditions of marriage, but Article 18 explains that chapter VI is actually related to the second part of chapter IV, which regulates prospective partners.

Second, religious differences in marriage can be a reason for preventing marriage. Prevention has no consequences for the validity of the marriage, because the marriage contract has not yet taken place (Article 61), prevention can be submitted to the Religious Court in the legal area where the marriage will take place by notifying the local PPN (Article 65). Family, relatives, marriage guardians, guardians of the bride and groom can provide for prevention of offspring (Article 62). A man and a woman who are still married to one of the bride and groom can ask for marriage (Article 63). In fact, marriage supervisory officers must prevent a marriage from taking place if the reasons and basic conditions for the marriage are not met (Article 64).

Lastly, religious differences are one of the causes of divorce. Article 75 is an element in the article that regulates the annulment of marriages where one of the causes of divorce is "one of the parties changes religion". The decision to divorce because one of the partners has apostatized does not apply retroactively.

## **II. Legal consequences that occurred after the Constitutional Court decision No.24/PUU-XX/2022**

Interfaith marriages give rise to legal problems regarding validity, registration, then the legal status of children who will be born (the most important thing is inheritance and guardianship), inheritance between husband and wife. Considering that there are marriage regulations that are not appropriate if applied in the Islamic religion with statutory regulations such as in Indonesia.

According to psychologists and sociologists, marriages of different religions can cause commotion which initially originates from other problems or issues. Several decisions on divorce cases show: the applicant filed a lawsuit or petition for divorce citing a dispute and also emphasizing the differences in their religion (due to the applicant's pleasure during the marriage period, what was previously a problem should not be a problem for both parties). Marriages of different religions can also cause psychological and sociological disorders for biological children due to uncertainty about the religion and beliefs they will adhere to. There are even those who argue that marriages between different religions can last forever (meaning that marriages between different religions or within the same religion can both lead to discord and harmony), but the fact is that marriages between different religions are damaged by quarrels which are not only worldly but also spiritual which must be emphasized then. considered.

Based on human rights and freedoms, it is not permissible to enter into marriages with people of different beliefs and beliefs, because every Indonesian citizen is obliged to comply with the restrictions specified in the Law, with the main aim being to ensure that when they exercise their rights and freedoms with the aim of ensuring that recognition and respect for the right to fulfill legitimate demands based on moral considerations, religious values, security and public order in a democratic society. So in a country based on Pancasila and the 1945 Constitution which is based on human rights and freedoms, no couple can freely marry of different religions and beliefs, because marriages of different religions and beliefs can occur, which can violate the constitutional rights of other people which should be respected and protected in life. which is a natural nation and state as regulated in the 1945 Constitution.

Based on the explanation above, the provisions of Article 2 and Article 8 letter f of the Marriage Law do not in the least prevent someone from getting married or discriminate against them. On the other hand, carrying out marriages of different religions is not in line with religious laws and beliefs and is also not in accordance with Pancasila and the 1945 Constitution as well as other legal regulations.

From the perspective of families born from marriages of different religions, the state pays great attention to the development and protects families with preventive measures against everything that could threaten marriage and life in Indonesia. Where family development is regulated in Law number 52 Article 47 paragraph (1) and paragraph (2). That is why interfaith marriages threaten marriage and cause many problems because the family as the smallest component of society loses the birth of the nation's best generation.

a) The Psychological Impact of Interfaith Marriage on the Psychological Condition of Religious Choice

In life, a child born from a marriage of a different religion often faces the difficult choice of following the beliefs of his father and mother. Not to mention the fact that children who do not obey the beliefs of their fathers and mothers are bullied and discriminated against if they do not. One of them is financially stronger in the family. This makes interfaith marriages more vulnerable to shocks that can cause psychological problems for children. There is even evidence that from testimony children find it difficult to grow up in two different parents' beliefs, and even the shock and pressure lasts a lifetime into adulthood. Thus, the applicant's application does not anticipate the potential for marriages of different religions which could cause conflict in the future.

b) Marriage between different religions makes families vulnerable and fragile

For example, partners and children do not feel warm because they have to spend religious holidays separately. So, as time goes by, harmonious goals are never achieved, and family ties become weaker and more fragile. In connection with the goals of family development, specifically regulated in Article 4 paragraph (2).

c) Marriages from different religions usually don't last long

Divorce occurs both in marriages of the same religion and marriages of different religions. The cause of marital failure lies in the fact that men and women are not compatible in terms of fulfilling the principles of life. Continuous marital discord increases with age along with increasing religious understanding and attitudes and awareness. Therefore, in principle, marriages of different religions are not suitable to survive if the principles of religious life are different.

## CONCLUSION

Interfaith marriages are clearly invalidated or will not take place according to Article 2 of the Marriage Law Number 1 of 1974, as it is made clear that marriages that are recognized in the eyes of the law must be carried out in line with the rules of each religion. This means that the parties (potential couples) can only get married if they adhere to the same beliefs. Likewise, according to the rules of different religions, marriages of different religions are not permitted. Thus, marriage between different religions is a violation of national law and Islamic law. The legal consequences of decisions regarding interfaith marriages are recognized as legally valid because of Article 35 a of Law number 23 of 2006 concerning Population Administration, based on court decisions, interfaith marriages are legally valid. This provision allows the registration of marriages between lovers of different beliefs after a court decision. However, based on the current law, marriages of different religions are still invalid in the eyes of the law because they are not in line with regulations. In addition, according to the Constitutional Court decision no. 24/PUU-XX/2022, there is an opinion from religions, Islamic legal bodies and the MUI, that marriages of different religions affect the relationship between children and their parents, namely that children have a relationship only with their mother, while all rights belonging to the child's father are lost and are not recognized by law. . This situation also affects inheritance rights, namely that children cannot inherit property from their father and mother, but the child can inherit property from their parents who share their religion.

The legal consequences of interfaith marriages in Indonesia are seen from a psychological and juridical perspective. The psychological aspect that emerges is that with the estrangement of family relationships that have been formed, the emergence of differences in perception in building a happy household is increasingly weakened because of the problems of differences that come and go. Children who experience mental disorders because they are confused have to choose which belief to follow when parents compete to influence their children. And from a juridical perspective, the legal consequences of marriages of different religions are the validity of marriages of different religions and the status of children in the marriage. Also, heirs do not receive inheritance because of differences of opinion and belief in the household.

## REFERENCES

1. Abdul Halim dan Cerina Rizky Ardhani (2016) , “Keabsahan Perkawinan Beda Agama Diluar Negeri Dalam Tinjauan Yuridis”, dalam Jurnal Moral Kemasyarakatan, Vol. 1, No. 1, Juni, hlm. 78.
2. Ana Laela F. CH, dkk (2016) , “Fikih Perkawinan Beda Agama sebagai Upaya Harmonisasi Agama: Studi Perkawinan Beda Agama di Jember”, Fikrah: Jurnal Ilmu Aqidah dan Studi Keagamaan, Vol. 4 No. 1.
3. Djaja S Meliala (2008), Himpunan Peraturan Perundang-Undangan tentang Perkawinan, Nuansa Aulia, Bandung.
4. Ika Octavia Cahyan, Muhammad Aini, Sri Herlina (2020), “Analisa Yuridis Terhadap Perkawinan Beda Agama”
5. Jane Marlen Makalew (2013) , “Akibat Hukum Dari Perkawinan Beda Agama Di Indonesia” Lex Privatum, Vol.I/No.2/Apr-Jun
6. K. Watjik Saleh (1992), Hukum Perkawinan Indonesia, Ghalia, Jakarta.
7. Muhammad Ashsubli, “ Undang-Undang Perkawinan Dalam Pluralitas Hukum Agama” Jurnal Cita Hukum. Vol. II No. 2 Desember 2015. ISSN: 2356-1440
8. Mulyadi (2008), Hukum Perkawinan Indonesia, Badan Penerbit Universitas Diponegoro Semarang.
9. O.S. Eoh (2001), Perkawinan Antar Agama dalam Teori dan Praktek, Raja Grafindo Persada, Jakarta.
10. Putusan Mahkamah Konstitusi Nomor 24/PUU-XX/2022
11. Sirman Dahwal (2016), Hukum Perkawinan Beda Agama dalam Teori dan Praktiknya di Indonesia,

Mandar Maju, Bandung.

12. Soerjono Soekanto (2003), Hukum Adat Indonesia, PT. Raja Grafindo Persada, Jakarta.
13. Sudarsono (2005), Hukum Perkawinan Nasional, Rineka Cipta, Jakarta.
14. Sudikno Mertokusumo (2002), Mengenal Hukum, Liberty, Yogyakarta..
15. Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan. \
16. Undang-Undang Nomor 23 Tahun 2006 tentang Administrasi Kependudukan
17. Yunu, S.U. Jarwo (2005). Aspek Perkawinan Beda Agama di Indonesia. Jakarta: CV. Insani.  
<http://alexanderizki.blogspot.com/2011/03/perkawinan-beda-agama-hukum-dan.html> diakses pada 10 Juni 2023 pukul 14.40 WIB
18. <https://www.hukumonline.com/berita/a/inilah-babak-akhir-judicial-review-kawin-beda-agama-lt55828be906c8b/> diakses pada 10 Juni 2023 pukul 16.00 WIB
19. <https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-komnas-perempuan-terkait-putusan-mk-nomor-24-puu-xx-2022-pertimbangan-mahkamah-konstitusi-potensial-memperkuat-diskriminasi-dan-kekerasan-terhadap-perempuan-yang-menikah-beda-agama#:~:text=Komisi%20Nasional%20Anti%20Kekerasan%20terhadap,1974%20pada%2031%20Januari%202023>. Diakses pada 11 Juni 2023 pukul 14.00 WIB
20. <https://www.hukumonline.com/berita/a/sikap-komnas-perempuan-atas-putusan-mk-perkawinan-beda-agama-lt63e463e807081/?page=all> diakses pada 11 Juni pukul 20.00 WIB