



Judges' Ratio Decidendi to Accept and Reject Interfaith Marriage in The Perspective of Indonesian Positive Law

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Abstract

The existence of interfaith marriages in Indonesia does not yet have regulations that clearly regulate its implementation. This causes differences in decisions given by judges in each case. Ratio decidendi is a reason or argument used by judges to give a decision in a case that is always based on applicable laws and regulations. In addition to the absence of regulations that regulate exactly the implementation of interfaith marriages, the difference of opinion given by the judges in decisions related to the implementation of interfaith marriages makes people even more confused about the legality of implementing interfaith marriages in Indonesia. The purpose of this study is to analyze the ratio decidendi of judges in each decision, whether from a decision to reject or grant a decision, as well as to analyze the perspective of Indonesian positive law regarding the implementation of interfaith marriages. This study uses a type of normative juridical research that uses a case approach and a comparative approach. The results of this study in general are that actually interfaith marriage cannot be justified in its implementation, because there are several laws that actually regulate marriages carried out by two people who have different religions and beliefs.

Keywords: Ratio decidendi; interfaith marriage; Indonesian positive law.

I. INTRODUCTION

The existence of religious diversity in Indonesia is one of the factors in the occurrence of interfaith marriages.(Cantonia & Majid, 2021) In addition, Indonesia is also a country that has the characteristics of a pluralistic country, which is marked by the existence of various ethnicities, cultures, races, and religions.(Adha et al., 2021) Each of the religions in Indonesia has protected its existence in the Laws and Regulations. Besides, the State of Indonesia also gives every citizen the right to embrace their respective religions according to their beliefs. As stated in Article 29 paragraph (1) "The state is based on belief in the One and Only God" and also in Article (2) "The state guarantees the freedom of each resident to embrace their own religion and to worship according to their religion and beliefs."(RI, 1945)

The existence of the implementation of interfaith marriages is not something new, but in practice, this is still often a polemic in the middle of society. There are, at least, four problems that arise as a result of interfaith marriages. First, it related to whether the marriage is legal or not from a religious standpoint. Second, the matter of sociological acceptance from the family. Third, about the marriage procedure itself. Fourth, regarding how to determine children's religion of interfaith marriage.(Fatoni & Rusliana, 2019) In addition, the Laws and Regulations also seem to have not really provided clear regulations regarding the rules for interfaith marriage in Indonesia.(Tanjung & Tanjung, 2022) The

existence of some of these things causes a legal vacuum regarding the regulation of interfaith marriages.

The implementation of interfaith marriages among people who do not yet have a law that definitely regulates its implementation, causes interfaith marriages to become complex, causing every couple who will carry out interfaith marriages to make more efforts to obtain legality in their marriage. (*Konflik Norma Perkawinan Beda Agama Dalam Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan, Kompilasi Hukum Islam, Dan Undang-Undang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan | (20/7) - Direktorat Jenderal Badan Peradilan Agama*, n.d.) One of the methods taken is submitting an application to the District Court to obtain the legality of the marriage. (Suhasti et al., 2018) Regarding marriage, it has been regulated in the Marriage Law Number 1 of 1974, article 2 paragraph 1 which states that "Marriage is valid, if it is carried out according to the laws of each religion and belief". (Undang-Undang Perkawinan No. 1 Tahun 1974, 1974)

Based on the contents of Law Number 1 of 1974 concerning Marriage, a marriage can be considered valid if it is carried out according to the laws of each partner's religion and belief. However, the provisions of whether or not interfaith marriages are permissible are not emphasized in it. If indeed the State opposes the implementation of interfaith marriages, then regulations must be made as clear as possible which do not raise any doubts for every member of the community. (Indrawan & Artha, 2019)

The existence of Law Number 1 concerning Marriage is deemed insufficient to answer people's questions about the legality of interfaith marriage. Apart from that, there is Law Number 23 of 2006 concerning Population Administration which is felt to provide an opportunity for people who wish to carry out interfaith marriages to submit an application to the Court to obtain permission regarding the registration of their interfaith marriage to the civil registration officer in order to legalize their marriage. It is stated in Article 35 of Law Number 23 of 2006 concerning Population Administration that the registration of marriages as referred to in article 34 also applies to: (1) Marriages determined by the Court, (2) Marriages of Foreign Citizens conducted in Indonesia upon request Foreign nationals. (UU No 23 Tahun 2006 Tentang Administrasi Kependudukan | DISPENDUKAPIL, 2006) The law was finally used as the basis for couples who wish to carry out interfaith marriages by submitting an application to the authorized court.

Based on Law Number 23 of 2006 concerning Population Administration, people want interfaith marriages to get legality for their marriages. However, because of this incident, several different decisions were given by the judge to the applicants. There are judges who grant the request and there are also those who refuse to grant the implementation of interfaith marriages.

Regarding this incident, the judges have their own views in giving their decision, which must also be based on the applicable law. There have been several requests for interfaith marriages that have been granted, such as recently at the Surabaya District Court which granted the request and has been stipulated in decision Number 916/Pdt.P/2022/PN.Sby. However, there are also those who reject the application for interfaith marriage, one of which is the decision of the Blora District Court, namely decision Number 71/Pdt.P/2017/PN.Bla.

Based on the events that occurred, it can be seen that arrangements related to interfaith marriages are still experiencing a legal uncertainty. Regulations regarding interfaith marriages must be clarified so as not to cause confusion among the public. To prove the authenticity of this research, several previous studies that have been conducted by previous researchers with the same theme. This aims to find out if there is an update in each research conducted. The first is an article written by Moh. Yusuf Bachtiar, Hanif Nur Widhiyanti and also Herman Suryokumoro with the title "Judges' Decision on Legalization and/or Licensing of Interfaith Marriage" in 2022. This journal discusses the terminology of validation and permits granted by judges regarding the implementation of interfaith marriages. In addition, this journal discusses the judicial review of Article 2 paragraph (1) conducted by the Constitutional Court which states the rejection of interfaith marriages in Indonesia. This of course contradicts the ruling of the panel of judges granting permission

for interfaith marriage applications (Bachtiyar et al., 2022).

The second article is "Perkawinan Beda Agama dalam Perspektif Hukum Positif di Indonesia" written by Anisah Daeng Tarring in 2022. This research discusses interfaith marriages conducted by Indonesian Citizens (WNI) and Foreign Citizens (WNA). In addition, the validity and legal consequences of the impact of interfaith marriages between citizens are also discussed in it (Tarring, 2022). The third article is written by Mohd. Yusuf DM and Geofani Milthree Saragih with the title "Juridical Overview of the Prohibition of Interfaith Marriage from the Perspective of Human Rights and Criminal Law in Indonesia" in 2022. This journal contains reasons why the implementation of interfaith marriages in Indonesia is prohibited. This journal focuses on these issues from the perspective of Human Rights that every citizen has (Dm & Saragih, 2022). The fourth article is entitled "Ratio Decidendi Of Religious Court Judges on Rejection Of Applications For Interfaith Marriage Prevention". In this research, it contains the ratio decidendi of judges who decide to reject requests in cases of preventing interfaith marriages (Bachri, 2021).

The distinction of this study with those previous studies above is that this research was conducted to find out for sure about legal basis of the judge's consideration to grant the request for interfaith marriage in decision Number 916/Pdt.P/2022/PN.Sby and that of the judge's consideration to reject grant the request for interfaith marriage in decision Number 71/Pdt.P/2017/PN.Bla. The results of the review of the two decisions will be analyzed based on the perspective of positive law in Indonesia to provide certainty on legal standing regarding the legality of interfaith marriages.

II. METHOD

This study is a normative juridical research known as documentation research (Soekanto, 2007, p. 12) with the purpose to discuss the legal basis of the judge's consideration to grant the request for interfaith marriage in decision Number 916/Pdt.P/2022/PN.Sby and that of the judge's consideration to reject grant the request for interfaith marriage in decision Number 71/Pdt.P/2017/PN.Bla. The results of the review of the two decisions will be analyzed based on the perspective of positive law in Indonesia to provide certainty on legal standing regarding the legality of interfaith marriages. This research is classified as normative juridical research because all the processes carried out in making this research use written legal sources and literary sources. This study uses case and comparative approaches. This normative juridical research uses secondary data, because the data used has been written in the form of literature and does not use data from the field directly. The primary legal materials used in this research include (1) Law Number 1 of 1974 concerning Marriage; (2) Stipulation of the Surabaya District Court Number 916/Pdt.P/2022/PN.Sby; (3) Determination of Blora District Court Number 71/Pdt.P/2017/PN.Bla; (4) Law Number 23 of 2006 concerning Population Administration. Secondary legal materials such as books, journals, and information obtained from previous research.

III. DISCUSSION

Judge's Ratio Decidendi in Decision Accepting on Interfaith Marriage Applications

Among the several factors that cause confusion among the public regarding the implementation of interfaith marriages is the difference in opinion of judges in rulings on interfaith marriage cases. There are those who grant the implementation of interfaith marriages, there are also those who reject the implementation of interfaith marriages. One of the decisions that granted a decision to grant a request for the implementation of an interfaith marriage was a decision issued by the Surabaya District Court with case number 916/Pdt.P/2022/PN.Sby (PN Surabaya, 2022). In his decision, the judge conveyed the ratio decidendi or the reasons why the judges finally granted the request for the interfaith marriage case.

The first is the Law Number 1 of 1974 concerning marriage which states in Chapter II regarding the conditions for marriage Article 6 paragraph (1) namely that marriage must be based on the consent of the two prospective bride and groom. The bride and groom have agreed and agreed to carry out a marriage. Therefore, the marriage that will be held fulfills

the requirements as referred to in Article 6 paragraph (1) of Law Number 1 of 1974 concerning marriage.

Another requirement stated in Law Number 1 of 1974 concerning marriage is regarding the age limit. It is stated in Article 7 paragraph (1) of the 1974 Law concerning Marriage that a marriage will be permitted or permissible if the prospective groom has reached a minimum age of 19 years and the prospective bride has reached a minimum age of 16 years. Pursuant to Article 7 paragraph (1) the age of the Petitioners or the bride and groom has reached the specified minimum age limit. So that both of them have fulfilled the conditions for marriage. In addition, Article 8 letter (f) of Law Number 1 of 1974 concerning Marriage also states that a marriage between 2 people is prohibited if they have a relationship that is prohibited by their religion or other regulations that apply are prohibited from marrying.

The second reason is that the judge referred to Law Number 23 of 2006 concerning Population Administration. The judge referred to the rules written in Article 34 paragraph (1) which states that a marriage that is valid according to the Laws and Regulations is one that is reported and registered according to the authority of the Marriage Registration Officer. However, because the two bride and groom have different religions, the registration of their second marriage must be with permission from the competent court. In this regard, the judge also referred to the next article, namely Article 35 letter (a) which states that the registration of marriages also applies to marriages determined by the Court. So the interfaith marriage proposed by the applicants meets the requirements to be registered at the Civil Registry Office.

The ratio decidendi or the third reason is that the judge weighs based on the Human Rights of the Petitioners as Citizens. It is stated in Article 28B paragraph (1) of the 1945 Constitution, that every citizen has the right to form a family and continue offspring through a legal marriage. Article 28B paragraph (1) is also in line with Article 29 of the 1945 Constitution which states that the State has guaranteed the freedom for every citizen to embrace their own religion. Bearing in mind that the Petitioners after carrying out interfaith marriages, will still adhere to their respective religions.

Through several ratio decidendi it can be seen that the judge who granted the request for the implementation of the interfaith marriage was based on the applicable laws and regulations. In addition, the existence of this stipulation is also due to the absence of a law that regulates exactly the implementation of interfaith marriages in Indonesia.

Judge's Ratio Decidendi in Decision Rejecting Interfaith Marriage Application

The implementation of interfaith marriages does not have laws that specifically regulate the regulations. There is an urgency regarding the legalization of interfaith marriages, causing judges to formulate a decision to serve as the basis for interfaith marriages. In addition to the requests for interfaith marriages that were permitted by the Surabaya District Court, there were also requests which were rejected by the judges for the implementation of interfaith marriages. One of the rejected application cases was a decision issued by the Blora District Court with case number 71/Pdt.P/2017/PN.Bla.(PN Blora, 2017). In his refusal, the judge also conveyed a ratio decidendi which was based on the applicable laws and regulations.

Law Number 1 of 1974 concerning Marriage is the first thing to be considered by the Judge. Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage states that marriage is valid if it is carried out according to the laws of each religion and belief. Based on the contents of Article 2 paragraph (1) the Judge finally considers the legality of a marriage according to the religion of the bride who is Muslim and also considers the legality of marriage from the religion of the bridegroom who is Christian. In fact, if interpreted literally, the meaning contained in Article 2 paragraph (1) has returned arrangements related to marriage to each religion of the prospective bride and groom,

In Islam, arrangements regarding interfaith marriage are explained in Surah Al-Baqarah verse 221 which reads "And do not marry polytheistic women, before they believe. Indeed, a servant woman who believes is better than a polytheist woman even though she

attracts your heart. And do not marry polytheists (men) before they believe." It is also explained that Article 44 of the Compilation of Islamic Law states that a Muslim woman is prohibited from marrying a man who is not Muslim. So from what has been explained in QS Al-Baqarah verse 221 and regulated in Article 44 of the Compilation of Islamic Law, it is very clear that Islam opposes or does not allow the implementation of interfaith marriages.

After reviewing the legality of interfaith marriage in Islamic religious law, the judge then also reviewed the legality of interfaith marriage in Christian religious law because the groom is a Christian. One of the witnesses in the trial who was a priest at the GBI Arumdaluh Church in Blora explained that Christianity also does not allow interfaith marriages. Through this, the parties from the GBI Arumdaluh Church conveyed that they would allow interfaith marriages to be carried out at the GBI Arumdaluh Church if the bride wants to give up all attributes that show her identity as someone who is Muslim in another sense, namely if the bride wants to change religion from Islam to Christianity. This is also what ultimately causes the Judge to consider licensing for the implementation of interfaith marriages, because the Petitioners have stated that either before marriage or later when they are married both of them will still adhere to their respective religions. These factors eventually became the judge's ratio decidendi at the Blora District Court in giving a decision to reject the case for the implementation of an interfaith marriage.

Based on the reasons given by the judge in every decision making, it is known that every decision is always based on the applicable laws. To make it easier for the reader to understand the differences in decisions and their legal basis, the author will also present a comparative table. Here is a comparative table

Table 1. Comparative Table

NO	Case Register Number	Judge's Ratio Decidendi
1	Surabaya District Court (916/Pdt.P/2022/PN.Sby)	Article 6 paragraph (1) Law Number 1 of 1974 concerning Marriage Article 7 paragraph (1) Law Number 1 of 1974 concerning Marriage Article 8 letter (f) Law Number 1 of 1974 concerning Marriage Article 34 paragraph (1) of Law Number 23 of 2006 concerning Population Administration Article 35 letter (a) Law Number 23 of 2006 concerning Population Administration Article 28 B of the 1945 Constitution Article 29 of the 1945 Constitution
2	Blora District Court (71/Pdt.P/2017/PN.Bla)	Article 2 paragraph (1) of the 1974 Law concerning Marriage QS Al-Baqarah: 221 Article 44 KHI Statement from the Pastor of GBI Arumdaluh Church, Blora Regency.

Through the things that have been described in the comparative table, it can be concluded that every decision issued by a judge is based on the applicable laws and regulations. The judges used the method of anticipatory legal interpretation in formulating their decisions. This Anticipatory Interpretation is used by the Judges because there is no regulation that regulates exactly the implementation of interfaith marriages so the stipulation issued is intended to be a reference in making laws in the future. This interpretation is based on a new point of view from a judge that allows something like this to

happen again in the future.

Interfaith Marriage According to the Perspective of Law Number 1 of 1974 Concerning Marriage.

The existence of Law Number 1 of 1974 concerning Marriage is one manifestation of the existence of rules regarding the order of conduct of marriages made by the Government. In addition to Law Number 1 of 1974 concerning Marriage, this Marriage Law is also supplemented by Government Regulation Number 9 of 1975 concerning Implementation of Law Number 1 of 1974 concerning Marriage and other regulations. However, with the existence of Law Number 1 of 1974 concerning Marriage regarding interfaith marriages, there is still a legal vacuum in it.

Many people in society still question whether or not a marriage is "legal" in which the partner adheres to a different religion. The word "legal" in a marriage, means that a marriage is carried out in accordance with applicable regulations. Which means when a marriage is carried out not in accordance with Law Number 1 of 1974 concerning Marriage, then the marriage is not valid according to law. When marriage is not in accordance with religious law, then the marriage is not valid religiously. And when a marriage is carried out not in accordance with applicable customary law, then the marriage is also invalid according to applicable customary law.

In Article 2 of Law Number 1 of 1974 concerning Marriage, it is stated that a marriage is valid if (1) the marriage is carried out according to the law of each religion and belief; (2) A legal marriage is a marriage that is registered according to the prevailing laws and regulations. Apart from what has been stated in Article 2 of Law Number 1 of 1974 concerning Marriage, it is also explained that no marriage is carried out outside the law of each religion and belief. Through the matter that has been explained, in fact it is also in accordance with what has been described in the 1945 Constitution, which contains: (1) The state is based on Belief in the One and Only God, (2) The state guarantees the freedom of each resident to embrace their own religion and worship according to their religion and beliefs. From this it can be seen that actually the arrangement regarding interfaith marriage has been regulated in Article 2 of Law Number 1 of 1974 concerning marriage which states that what determines the validity of a marriage is if the marriage is carried out in accordance with the religion of each individual. However, in interfaith marriages where a couple consisting of a man and a woman have different religions and beliefs, so the arrangements are different in each religion. From this it can be seen that actually the arrangement regarding interfaith marriage has been regulated in Article 2 of Law Number 1 of 1974 concerning marriage which states that what determines the validity of a marriage is if the marriage is carried out in accordance with the religion of each individual. However, in interfaith marriages where a couple consisting of a man and a woman have different religions and beliefs, so the arrangements are different in each religion. From this it can be seen that actually the arrangement regarding interfaith marriage has been regulated in Article 2 of Law Number 1 of 1974 concerning marriage which states that what determines the validity of a marriage is if the marriage is carried out in accordance with the religion of each individual. However, in interfaith marriages where a couple consisting of a man and a woman have different religions and beliefs, so the arrangements are different in each religion. (Tarring, 2022)

When a marriage is carried out legally in force, then the marriage that is carried out will have legal consequences that arise afterwards. There are 4 main things that will arise as a result of the law from the implementation of the legal marriage, including: (1) The existence of a new status in a relationship, namely the relationship between husband and wife; (2) The emergence of property in a marriage; (3) The emergence of another new relationship after the relationship between husband and wife, namely the relationship between parents and children; (4) There are rights and obligations that must be completed between husband and wife, as well as between parents and children. (Sanger, 2015)

It is different with marriages carried out by couples who have different religions. Every event that occurs will definitely have legal consequences, as well as the existence of interfaith marriages. Some of the legal consequences arising from interfaith marriages

include: (1) The legitimacy of children where based on Article 42 of Law Number 1 of 1974 concerning Marriage it is stated that "A legitimate child is a child born in or as a result of a legal marriage" and It is also stated in Article 43 paragraph (1) that "Children born out of legal marriage only have civil relations with their mothers and their mothers' families". From the two articles above, a child born from an interfaith marriage will be considered valid if the child is born from a marriage whose marriage is registered either at the Office of Religious Affairs or the Civil Registry Office, then the child will be considered valid in the eyes of the law and has the same rights and obligations. the same as stated in Article 45 to Article 49 of Law Number 1 of 1974 concerning Marriage; (2) Inheritance Rights. Regarding inheritance, it has been regulated in the Book II of the Civil Code concerning Materials. However, the matter of inheritance caused by interfaith marriages is not regulated therein. If the problem of inheritance is viewed from the aspect of justice, then the prohibition to carry out interfaith marriages aims to protect the inheritance rights of each person, especially children. Because there is only a small possibility in an interfaith marriage in which there are adherents of the same religion, because it returns again that religion is a matter of belief that cannot be forced. Which means that a child born in an interfaith marriage is likely to follow the religion of his mother only or may only follow the religion of his father, or may even have a different religion from his parents. Therefore, if a child has the same religion as his father or mother, that child will only get inheritance rights from the father or mother who has the same religion. This is very possible for the emergence of other conflicts between siblings who have different religions in the family. Regarding fairness in the distribution of inheritance for children of the same religion as one of the parents will get their inheritance rights.(Tarring, 2022)

Interfaith Marriage According to the Perspective of Compilation of Islamic Law (KHI)

As stated in Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage "Marriage is valid if it is carried out according to the laws of each religion and belief", it can be understood that the provisions concerning interfaith marriage regulations are adjusted to the the law of each religion adhered to by the prospective bride and groom. For the Islamic religion, regulations governing marriage procedures are sourced from the Compilation of Islamic Law (KHI). Regarding Interfaith Marriage is not regulated in one chapter directly, but in different chapters; Article 40 KHI and also Article 44 on Prohibition of Marriage, Article 61 KHI on Prevention of Marriage, and Chapter on Dissolution of Marriages. (Kompilasi Hukum Islam (KHI), 1991)

In Article 40 KHI several things have been explained that are the reasons why someone is prohibited from getting married. The prohibitions that have been written in this article certainly do not conflict with what has been prescribed in Islam. There are 3 prohibitions written in it, including women who are still other people's wives or women who are still bound in a marriage with another man, women who are still in the iddah period or mourning period after the death of their husband, and women who do not Muslim. This third prohibition is closely related to the issue of interfaith marriage, namely the prohibition against marrying women who are not of the same religion or women who are not Muslim. (Nugroho, 2019)

Article 44 KHI explained a Muslim woman is prohibited from marrying a man who is not Muslim. Such an idea seems to be a law based on the Koran which later became the consensus of the scholars regarding the invalidity of this kind of interfaith marriage. As has been explained in the Qur'an Surah Al-Baqarah: 221, which means "And do not marry polytheistic women, before they believe. Indeed, a servant woman who believes is better than a polytheist woman even though she attracts your heart. And do not marry polytheists (men) before they believe." The existence of this verse is also supported by Surat Al-Mumtahanah verse 10 which means "God knows their faith better. If you know that they (really) believe, then do not return them to the disbelievers (their husbands). They are not lawful for those who disbelieve and those who disbelieve are not lawful for them."(M.Yunus & Aini, 2020)

In Article 61 KHI it is explained regarding kufu. Kufu referred to here is about the degree of family, wealth and so forth. So, it is stated in Article 61 KHI "Not being in

confederation cannot be used as a reason to prevent marriage, unless not in confederation because of religious differences or *ikhtilafu ad-diin*". Article 116 KHI discusses the reasons for breaking up a marriage. In this article, it has been explained that there are 8 reasons that cause the breakup of a marriage, including: (a) One of the parties commits adultery or becomes a drunkard, addict, gambler, and so on which is difficult to cure; (b) Either party leaves the other party for 2 consecutive years without the permission of the other party without a valid reason or for other reasons beyond his control; (c) One of the parties gets a prison sentence of 5 years or a heavier law after the marriage takes place; (d) One of the parties commits cruelty or serious abuse that endangers the other party; (e) One of the parties has a disability or illness with the result that he is unable to carry out his obligations as a husband or wife; (f) Between husband and wife there are constant disputes and fights and there is no hope of getting back together in the household; (g) The husband violates the divorce decree; (h) Conversion of religion or apostasy which causes disharmony in the household. (e) One of the parties has a disability or illness with the result that he is unable to carry out his obligations as a husband or wife; (f) Between husband and wife there are constant disputes and fights and there is no hope of getting back together in the household; (g) The husband violates the divorce decree; (h) Conversion of religion or apostasy which causes disharmony in the household. (Nugroho, 2019)

In this article it is clearly stated that the existence of religious differences is one of the reasons for the cancellation of a marriage. If the previous articles discussed how things were before marriage with someone of a different religion, this article explains the breakup of a marriage that has occurred as a result of one of the partners changing his religion to non-Muslim. So it can be concluded that the prohibition to carry out interfaith marriages is not solely based on the regulations that govern it, but also in the interest of protecting justice that will arise as a result of interfaith marriages.

Interfaith Marriage in Law Number 23 of 2006 concerning Population Administration

In Indonesia in Law Number 23 of 2006 concerning Population Administration are all forms of activities carried out aimed at structuring and controlling in terms of population documents and data through registration and population data collection, civil registration, management of population information, and utilization of the results for public services and other sectors. (UU No 23 Tahun 2006 Tentang Administrasi Kependudukan | DISPENDUKAPIL, 2006) Regarding the registration of marriages carried out by Civil Registry Employees, it is regulated in Article 34, Article 35, and Article 36. As regulated in Article 34 paragraph (1) it is stated that a marriage that is valid according to the Laws and Regulations must be reported by residents to the implementing agency at the place where the marriage took place no later than 60 days from the date of marriage. Arrangements regarding the registration of marriages are also regulated in accordance with the authority based on the religion of the bride and groom. In Article 34 paragraph (2) it is stated that the intended marriage reporting is by registering a marriage certificate recorded by the Civil Registry Officer and issuing a marriage certificate excerpt. Meanwhile, in Article 34 paragraph (4) for Muslim brides, registration is carried out at the Sub-District Office of Religious Affairs as previously regulated in Article 8 paragraph (2). (M. Yunus & Aini, 2020)

Through these two articles it is clear that when a marriage of different religions is carried out, especially one of the bride and groom is Muslim, the registration of the marriage cannot be carried out in accordance with the applicable laws and regulations. The Civil Registry Officer has the right to refuse to register the marriage. However, interfaith marriages can be registered and registered at the Civil Registry Office if referring to Article 35 letter (a) which states that the registration of marriages as referred to in Article 34 also applies to marriages determined by the Court. Therefore, when the bride and groom want to register an interfaith marriage, they must have a permit issued by the Court. The existence of Article 35 letter (a) is the legal basis used by judges to allow interfaith

marriages to be carried out. However, the existence of Article 35 letter (a) contradicts the explanation contained in Article 2 paragraph (2) of Law Number 1 of 1974 concerning Marriage that there is no marriage that is contrary to or outside the law of each religion and belief.

The existence of Law Number 23 of 2006 concerning Population Administration is like giving a choice to the community to take legal or illegal routes in order to obtain legality in the marriages of different religions carried out by them. The existence of Article 35 letter (a) of Law Number 23 of 2006 concerning Population Administration clearly provides a loophole for the public to obtain legality from interfaith marriages which actually contradicts Law Number 1 of 1974 concerning Marriage which prohibits interfaith marriages. (Jatmiko et al., 2022)

Through some of the analyzes presented by the author in this study, it can be understood that a judge who gives legality to this interfaith marriage has a ratio decidendi which is based on the applicable laws and regulations. Starting from Article Article 6 paragraph (1) of Law Number 1 of 1974 concerning Marriage, Article 7 paragraph (1) of Law Number 1 of 1974 concerning Marriage, Article 8 letter (f) of Law Number 1 of 1974 concerning Marriage, Article 34 paragraph (1) of Law Number 23 of 2006 concerning Population Administration, Article 35 letter (a) of Law Number 23 of 2006 concerning Population Administration, Article 28 B of the 1945 Constitution, to Article 29 of the Law Basic 1945.

However, in practice, of course there are also judges who refuse to grant requests for interfaith marriages. This is also of course the judge has a ratio decidendi or reasons that are considered beforehand. Starting from the rules stipulated in Article 2 paragraph (1) and interpreted using grammatical interpretation methods, a legal formulation can be found that in Article 2 paragraph (1) of Law Number 1 Year 1974 concerning Marriage it has been emphasized that regarding the implementation of marriage has returned to the arrangements in accordance with the laws of each religion. So that when there is a request for the implementation of interfaith marriages it cannot be granted considering that most religions in Indonesia also disagree about the existence of interfaith marriages.

Through the analysis carried out by the Judge and used as a ratio decidendi for his decision, both of them used Law Number 1 of 1974 concerning marriage. If it is based on Law Number 1 of 1974 concerning marriage, a marriage will be valid if the marriage does not conflict with applicable regulations, including customary law and also religious law. This statement is further strengthened by the existence of Article 2 of Law Number 1 of 1974 concerning Marriage, which states that marriage is valid if (1) the marriage is carried out according to each religion and belief; (2) A valid marriage is a marriage registered according to the applicable laws and regulations.

First, if the implementation of interfaith marriages is based on Article 2 paragraph (1), then interfaith marriages are not justified. Because in each religion there are many who do not approve of the implementation of interfaith marriages. As stated by the Indonesian Ulema Council (MUI) which argues that interfaith marriages may be legal in the eyes of civil law, but will not turn out to be legal in the eyes of religious law (MUI, 2003, pp. 167–169). Secondly, it is seen from Article 2 paragraph (2) that it opens opportunities for people to carry out interfaith marriages, because this article is also supported by Article 35 letter (a) which states that marriage registration can also be carried out at marriages determined by the Court.

From these two opinions, when viewed through Article 28B paragraph (1) of the 1945 Constitution which states that every citizen has the right to form a family and continue offspring through legal marriage (RI, 1945), interfaith marriage is not an obstacle for every citizen to do it. However, referring to the purpose of marriage: to continue offspring, and build a family in peace, then, the interfaith marriage is not an ideal thing to carry out because if in a family there are 2 different beliefs, it will be difficult to achieve a common goal. Despite all the regulations governing marriage.

IV. CONCLUSION

Each judge has their own reasons for making a decision. The judge at the Surabaya District Court who decided to grant the request for interfaith marriage conveyed some of the ratio decidendi he had. The judge considers the existence of the right of every citizen to marry in order to build a family and continue their offspring as conveyed in Article 28B paragraph (1) of the 1945 Constitution. In addition, the judge also considers the existence of a regulation mentioned in Article 2 paragraph (2) which states that a legal marriage is one that is registered at the Civil Registry Office, whereas in the case of interfaith marriage, The marriage can be registered if it obtains a decision stipulated by the court as stipulated in Article 35 letter (a) of Law Number 23 of 2006 concerning Population Administration. As is the practice in daily life, not all judges can give the same decision in the implementation of interfaith marriages. The judge at the Blora District Court decided to refuse to grant the request for an interfaith marriage. This decision to reject is based on Article 2 paragraph (1) which states that a marriage is valid if it is carried out in accordance with the laws of each religion and belief. If the two prospective bride and groom have different religions, then this causes a conflict of religious law in it. This is the ratio decidendi of the Blora District Court Judge to reject the application for the implementation of interfaith marriages. According to the Judge's opinion, interfaith marriage is actually not something that can be justified in its implementation. The existence of prevention of interfaith marriages is not solely due to the regulations that govern it, but also in view of the legal impact that will arise after the implementation of interfaith marriages. The absence of regulations that clearly state the implementation of interfaith marriages creates a legal vacuum in the community.

REFERENCES

- Adha, M. M., Perdana, D. R., & Supriyono, S. (2021). Nilai Pluralistik: Eksistensi Jatidiri Bangsa Indonesia Dilandasi Aktualisasi Penguatan Identitas Nasional. *Jurnal Civic Hukum*, 6(1), Article 1. <https://doi.org/10.22219/jch.v6i1.14931>
- Bachri, S. (2021). Ratio Decidendi of Religious Court Judges on Rejection of Applications For Interfaith Marriage Prevention. *Istinbath: Jurnal Hukum*, 18(1), Article 1. <https://doi.org/10.32332/istinbath.v18i1.3018>
- Bachtiyar, M. Y., Widhiyanti, H. N., & Suryokumoro, H. (2022). Judge's Decision on Legalization and/or Licensing of Interfaith Marriages. *International Journal of Innovative Technologies in Social Science*, 4(36), Article 4(36). https://doi.org/10.31435/rsglobal_ijitss/30122022/7889
- Cantonia, S., & Majid, I. A. (2021). Tinjauan Yuridis terhadap Perkawinan Beda Agama di Indonesia dalam Perspektif Undang-Undang Perkawinan dan Hak Asasi Manusia. *Jurnal Hukum Lex Generalis*, 2(6), 510–527. <https://doi.org/10.56370/jhlg.v2i6.122>
- Dm, M. Y., & Saragih, G. M. (2022). Juridical Overview of the Prohibition of Interfaith Marriage from the Perspective of Human Rights and Criminal Law in Indonesia. *Journal of Scientific Research, Education, and Technology (JSRET)*, 1(2), Article 2. <https://doi.org/10.58526/jsret.v1i2.11>
- Fatoni, S. N., & Rusliana, I. (2019). Pernikahan Beda Agama Menurut Tokoh Lintas Agama di Kota Bandung. *VARIA HUKUM*, 1(1), Article 1. <https://doi.org/10.15575/vh.v1i1.5139>
- Indrawan, M. P. S. P., & Artha, I. G. (2019). Pengaturan Perkawinan Beda Agama di Indonesia. *Kertha Semaya: Journal Ilmu Hukum*, 7(3), 1–14.
- Jatmiko, B. D. W., Hidayah, N. P., & Echaib, S. (2022). Legal Status of Interfaith Marriage in Indonesia and Its Implications for Registration. *Journal of Human Rights, Culture and Legal System*, 2(3), Article 3. <https://doi.org/10.53955/jhcls.v2i3.43>
- Kompilasi Hukum Islam (KHI), (1991).
- Konflik Norma Perkawinan Beda Agama dalam Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, Kompilasi Hukum Islam, dan Undang-Undang Nomor 23 Tahun 2006 tentang Administrasi Kependudukan | (20/7)—Direktorat Jenderal Badan Peradilan Agama.* (n.d.). Retrieved January 6, 2023, from <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/nadzirotus-sintya-falady-s-h-cpns-analis-perkara-peradilan-calon-hakim-2021-pengadilan-agama-probolinggo>
- MUI. (2003). *Himpunan Fatwa Majelis Ulama Indonesia*. Departemen Agama.
- M.Yunus, F., & Aini, Z. (2020). Perkawinan Beda Agama Dalam Undang-Undang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan (Tinjauan Hukum Islam). *Media Syari'ah: Wahana Kajian Hukum Islam dan Pranata Sosial*, 20(2), Article 2. <https://doi.org/10.22373/jms.v20i2.6512>

- Nugroho, E. S. (2019). Marriage of Different Religions in Indonesia in the Interfaith Fiqh Perspective (Building a Pluralist Inclusive Perspective). *IJIL: Indonesian Journal of Islamic Law*, 1(2), Article 2.
- Undang-Undang Perkawinan No. 1 Tahun 1974, (1974). <https://peraturan.bpk.go.id/Home/Details/47406/uu-no-1-tahun-1974>
- PN Blora. (2017). *Putusan PN BLORA Nomor 71/Pdt.P/2017/PN Bla*. <https://putusan3.mahkamahagung.go.id/direktori/putusan/5771737442159da219df8091b9a13d5a.html>
- PN Surabaya. (2022). *Putusan PN SURABAYA Nomor 916/Pdt.P/2022/PN Sby*. <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaecc51c755dad32a412313135303536.html>
- RI, S. D. (1945). *J.D.I.H. - Undang Undang Dasar 1945—Dewan Perwakilan Rakyat*. <https://www.dpr.go.id/jdih/uu1945>
- Sanger, J. P. (2015). Akibat Hukum Perkawinan Yang Sah Didasarkan Pada Pasal 2 UU. Nomor 1 Tahun 1974 Tentang Perkawinan. *LEX ADMINISTRATUM*, 3(6), Article 6. <https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/9172>
- Soekanto, S. (2007). *Pengantar Penelitian Hukum*. UI Press.
- Suhasti, E., Djazimah, S., & Hartini, H. (2018). Polemics on Interfaith Marriage in Indonesia between Rules and Practices. *Al-Jami'ah: Journal of Islamic Studies*, 56(2), Article 2. <https://doi.org/10.14421/ajis.2018.562.367-394>
- Tanjung, I. U., & Tanjung, D. (2022). Undang-Undang Perkawinan dan Nikah Beda Agama Hukum Islam dan Hukum Positif. *Jurnal Kewarganegaraan*, 6(4), Article 4. <https://doi.org/10.31316/jk.v6i4.4255>
- Tarring, A. D. (2022). Perkawinan Beda Agama dalam Perspektif Hukum Positif di Indonesia. *Jurnal Litigasi Amsir*, 9(4), Article 4.
- UU No 23 Tahun 2006 Tentang Administrasi Kependudukan | DISPENDUKCAPIL, (2006). <https://dispendukcapil.kendalkab.go.id/undangundang/article/23/uu-no-23-tahun-2006-tentang-administrasi-kependudukan>