

Legal Implications of Enforcement of the Supreme Court Circular Number 2 of 2023 on the Civil Rights of Interfaith Marriages

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ABSTRACT

Law Number 1 of 1974 regulating Marriage, Article 21 paragraph (3), has the legal loophole that has permitted couples of different religions and beliefs to seek acknowledgment of the legitimacy and register their marriage through a court ruling. By presenting a certificate of the rejection, the parties whose marriage is denied have the right to obtain a decision from the court in the region where the marriage registrar's officer holding the rejection of the marriage is located. The enactment of Law 23 of 2006 concerning Population Administration has increased the chances for married couples adhering to diverse religious and ideological beliefs to obtain legal recognition for their union. The marriage registrar's office will no longer be able to register marriages for married couples of various religions due to the adoption of Supreme Court Circular Letter Number 2 of 2023.

INTRODUCTION

There are numerous religions practiced by the people of Indonesia. Interfaith weddings frequently result from social ties between people of different religions. Positive laws that forbid interfaith marriages do not seem to have halted this tendency. Marriages between adherents of different religions continue to occur, despite the Law on Marriage affirming that a marriage is only lawful if it is performed in accordance with the regulations of each religion and belief. A legal gap in Law Number 1 of 1974 regulating Marriage, Article 21 paragraph (3), has made it possible for couples who practice different religions and beliefs to register their marriage through a court order and have it recognized as valid. The parties whose marriage is denied have the right to apply for a decision by presenting a certificate of the rejection to the court in the region where the marriage registrar's officer holding the rejection of the marriage is located.

A far broader legal gap has opened up since the implementation of Law 23 of 2006 concerning Population Administration, allowing couples of different religions and beliefs to get legality for the registration of their nuptials. Marriage registration as intended by Article 34 also applies to: a) marriages determined by the court, as stated in Article 35 letter an of Law Number 23 of 2006 concerning Population Administration, which states that a marriage between people of different religions is what is meant by marriage determined by the court. Article 35 letter an of Law Number 23 of 2006 concerning Population Administration has these principles. That's why the marriage of interfaith couples in Indonesia remains a contentious issue. There are still a number of requests being made to the District Court to allow interfaith weddings, such as: On April 26, 2022, the Surabaya District Court granted the request to legalize interfaith marriages under case number 916/Pdt.P/2022/PNSby. The Makasar District Court issued Determination No. 622/Pdt.P/2018/PN.MKS, and Determination 155/Pdt.P/2023/PN.Jkt.Pst.Fajar. Co.Id, Jakarta cited information on Wednesday, March 9, 2022, from Ahmad Nurcholish, Program Director of the Indonesian Conference on Religion and Peace (ICRP), stating that 1,425 interfaith couples have been married in Indonesia since 2005.

Circular Letter Number 2 of 2023, which the Supreme Court (MA) published on July 17, 2023, provides guidelines for judges to adhere to while making decisions regarding applications pertaining to the registration of marriages between people of different religious and philosophical backgrounds. Circular Letter Number 2 of 2023's exclusive goal is to address and resolve the current social discourse surrounding the registration of marriages between individuals of different religious and philosophical backgrounds. Actually, there has been a protracted discussion concerning the validity and legality of unions between individuals with diverse intellectual and religious perspectives. Because even in the absence of an official ban on such marriages, the laws and regulations in place nevertheless provide couples of different religions and beliefs with open legal avenues to wed.

Following the passage of Supreme Court Circular Letter Number 2 of 2023, it is a given that married couples who follow different religions would not be permitted to register their marriage at the marriage registrar's office. This article addresses the following questions: (1) Is it legal for Indonesian marriage law to recognize interfaith partnerships as valid? (2) How do partners in interfaith relationships fare in terms of their civil and marriage rights under Indonesian law?

LITERATURE REVIEW

Marriage

According to Indonesian culture, marriage is defined as "a partnership between a man and a woman that establishes sexual relations, produces children, and assigns responsibilities to husband and wife." According to Duvall and Miller (19 1985), "Marriage is a socially recognized relationship between a man and a woman that provides for sexual relations, legitimizes childbearing, and establishes a division of labor between spouses." Marriage, according to Olson & DeFrain (2006), is a long-term, legally binding emotional commitment that involves sexual relations, physical intimacy, financial and social commitments, and partner obligations.

A man and a woman's internal relationship as husband and wife, with the goal of creating a happy and joyful family (home), is defined as marriage in Section I, Article 1 of Law No. 1 of 1974 (Marriage Law). due to the Godhead Almighty, forever. According to the definition of birth bond, the husband and wife are the legal parties bound by marriage to one other and the larger community. In marriage, the concept of the "inner and outer bond" refers to the genuine desire of the husband and wife to live together as husband and wife with the goal of creating and maintaining a happy, long-lasting family. With the intention of establishing a family and achieving pleasure and love based on the Almighty Godhead, the author concludes that marriage is a social control relationship between men and women that regulates rights and obligations, emotional proximity, as well as sexual and economic activity. Based on the definitions given above, this conclusion has been reached.

Interfaith Marriage

According to Dewi Sukarti (2003), marriages involving men and women who practice different religions are referred to as interfaith marriages or simply interfaith unions. Muslim woman or man getting married to a non-Muslim man or woman. A mixed marriage is another term for this kind of interfaith union. Interfaith marriage is defined by Eoh OS (1996) as a union of individuals who practice diverse religions and ideologies from one another. It is clear from the phrasing of this definition that an interfaith marriage is one in which the couple is married to someone from a different religion while continuing to practice their respective beliefs. According to Abdurrahman in Ana Laela, et al. (2016), an inter-religious marriage is a union of individuals who practice distinct religions and ideologies.

Rusli and Tama (1986) defined interfaith marriage as a marriage between people of different religions as a marriage between a man and a woman who, as a result of their different religions, results in the involvement of two different regulations regarding the conditions and procedures for carrying out the marriage according to with the laws of their respective religions. This is done in order to form a happy and eternal family based on belief in the Almighty God. It is clear from the experts' definitions of interfaith marriage given above that an interfaith marriage is defined as a union of two individuals who practice different religions and continue to follow their own faiths.

Validity of Marriage

According to Sofyan Hadi and Tomy Michael (2017), the word "validity" is a translation of the legal term "rechtmatig" from the Dutch language, which means "based on law." Legitimacy is also known as "legality" in English, which is another word for "lawfulness" or "according to the law." This notion has its roots in the idea of the rule of law (rechtsstaat), which requires that all government acts be grounded in the existence of legal provisions governing "rechtmatig van het bestuur," or the application of the legality principle to all government legal actions. This indicates that the original intention behind this concept was to curtail the King's total power as the possessor of sovereignty at the time (princep legibus solutus est). This is why the law is intended to constitute a restraint on government power; otherwise, official activities would be legally deficient (onrechmatig) or illegal if they were not grounded in the law or went beyond its prescribed parameters. Therefore, the goal of defending people's rights against actions by the government is intimately tied to the validity/legality premise.

Marriage, according to Ahmad Rofiq (2003), is a legal act whose performers have been chosen by law, and it carries legal ramifications for both parties. Because there would be legal ramifications for both parties, such a court action will give rise to rights and obligations for husband and wife who have committed to being physically and psychologically bonded to one another. The requirements that must be met by the prospective bride and groom in order to consummate the marriage are outlined in Marriage Law Number 1 of 1974. There are two types of marriage conditions, according to Article 6 of the Marriage Law: 1) formal conditions, which are related to the procedures or procedures for carrying out a marriage according to Religious law and legislation, are also known as objective requirements; and 2) material conditions, which are conditions that are inherent in each party and are also called subjective conditions.

The following are the material or subjective requirements in question: 1) Consent of the prospective bride and groom; 2) Permission from parents or the court if the prospective bride and groom are under 21 years old. 3) Both men and women are nineteen years old. Not constrained by matrimony. 5) Avoid getting married or divorcing your spouse again. 6) There are rules for the waiting period, or iddah period, for widows.

Formal requirements are those that have to do with how marriage is implemented. The Republic of Indonesia's Government Regulation Number 9 of 1975, which addresses the implementation of the marriage law, explains these formal criteria in detail in Articles 3, 4, 5, 6, 8, and 9. The Marriage Law's Article 2 paragraphs (1) and (2), which state that: (1) A marriage is declared lawful if it is done in compliance with the laws of each individual faith and belief, control the legitimacy of marriages in this regard (2) In accordance with applicable rules and regulations, every marriage is recorded.

It is understood from this phrasing that marriage is forbidden under the rules of every religion and belief system. Article 2 paragraph (2) of the Marriage Law states that a marriage is legally valid after fulfilling paragraph (1) and then recording the continuation of the marriage. In contrast, the provisions of Article 2 paragraph (1) of the Marriage Law outline the legal requirements for marriage according to religion. as the. The act of registering is purely administrative in nature to satisfy its formal legality or legal validity; it does not decide the validity of a marriage. Rather, it certifies that the event truly occurred and existed. The requirements of Article 2 paragraph (1) of the Marriage Law indicate that religious law is a philosophical basis and legal basis which is an absolute prerequisite in evaluating the legitimacy of a marriage. As such, the Marriage Law does not restrict the existence of interfaith marriages in its application. Consequently, according to the Marriage Law, interfaith marriages are prohibited as every religion has legally binding customs that are incompatible with one another and have core tenets that cannot be resolved.

METHODOLOGY

Legal research, according to Peter Mahmud Marzuki (2011), is the act of locating legal doctrines, norms, and principles in order to provide answers to the legal questions that arise. This kind of research is known as normative legal research, or doctrinal research. It is conducted through the analysis of secondary data or library materials that comprise primary, secondary, and tertiary legal materials. Legal research, as defined by Peter Mahmud Marzuki (2009), is normative in nature at all. As a result, primary, secondary, and tertiary legal materials make up the secondary legal sources that served as the research's data sources.

The method employed is (1) a statutory approach, which entails reading through and investigating laws pertaining to interfaith marriages as well as other laws pertaining to their legitimacy. (2) A conceptual method to investigating marriage-related ideas and civic rights for married interfaith couples. Primary, secondary, and tertiary legal materials are the ones that are used. The process of gathering legal materials involves looking for, gathering, and reviewing relevant documentation. Legal interpretation technologies are then used to examine and analyze the gathered legal documents in a normative and predictive manner.

RESEARCH RESULT AND DISCUSSION

Validity of Interfaith Marriages

The Instruction of the President of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law (KHI) and Law Number 1 of 1974 concerning Marriage are the laws that control marriage in Indonesia. These two legal documents control every element of marriage, including partnerships between people of different religions. Marriage is legal "if it is carried out according to the laws of each respective religion and belief," according to Article 2 paragraph (1) of the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage. This phrase suggests that a marriage cannot exist if it is not governed by a certain religion or set of beliefs.

The Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law (KHI) provides the same justification for other items. These articles are as follows: "Marriage is valid if it is performed in compliance with Islamic law and Article 2 paragraph (1) of that law," reads Article 4 of Law Number 1 1974, which regulates marriage. Furthermore, under some circumstances, such as when the woman in issue is not a Muslim and is still bonded to another man or is in the iddah period with another man, Article 40 prohibits a man and a woman from getting married. Interfaith unions are strictly forbidden by Articles 44 and 61, which further state that "a Muslim woman is prohibited from entering into marriage with a man who is not Muslim" and "Non-comity cannot be used as an excuse to prevent the marriage, unless not being on equal terms because of differences in religion or ikhtilaf al-dien," respectively.

As previously mentioned, in order for a marriage to be recognized by Indonesian law, a single religious line needs to be followed. This implies that it is wrong to marry someone who follows a different religion and that the marriage is null and void even if it does happen. Since the affirmative law now in existence, Law Number 1 of 1974 Concerning Marriage, does not support interfaith partnerships, interfaith unions cannot be legally recognized in Indonesia. Muslim and non-Muslim couples register their marriages at the Religious Affairs Office (KUA) and the Civil Registry Office, respectively (KCS).

Owing to a legal technicality, couples belonging to disparate religious backgrounds have been able to get legal authorization and register their marriage through a court order. Article 21, Paragraph 3 of Law Number 1 of 1974 provides the legal foundation for this matter. The marriage registrar who made the decision is authorized to make decisions in the case that a marriage is denied, and the parties may submit the previously indicated rejection certificate to the local court. With the passage of Law 23 of 2006 concerning Population Administration, a legal loophole allowing couples of different religions and beliefs to obtain legality for the registration of weddings of different religions and beliefs has been substantially widened. According to Law Number 23 of 2006 concerning Population Administration's Article 35 letter a, "marriage registration as intended in Article 34 also applies to: a) marriages determined by the court." However, it is clear from Law Number 23 of 2006 regarding Population Administration's Article 35 letter that the word "marriage determined by the Court" refers to a partnership between individuals of different religious beliefs.

When we examine Article 35 letter an of Law Number 23 of 2006 concerning Population Administration more closely, however, we discover that its explanation contradicts (contradicts in terminus) other statutory regulations, like Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage, which says that "marriage is valid if it is carried out according to the laws of each religion and belief." This is so because marriage entails responsibilities and interests shared by the state and church. When it comes to marriage law, the state and religion are related; the former determines the administrative legality of marriage, while the latter determines its legitimacy. According to Article 6 paragraph (1) of Law number 12 of 2011 concerning the Formation of Legislative regulations, reflecting the principles of legal order and certainty is in fact one of the prerequisites for the content of outstanding statutory rules. Beyond that, Law number 12 of the 2011 appendix for the Establishment of Legislative Regulations number 178 contains an explanation of statutory regulations. It is made clear by this explanation that it does not use a formula whose elements imply implicit modifications to the statutory rules' requirements.

Any legal voids relating to the union of individuals holding divergent philosophical and religious beliefs have already been filled by the Constitutional Court. The notion of offering a constitutional foundation for weddings between people of different religious and ideological convictions was categorically rejected by the Constitutional Court in its rulings in 68/PUU-XII/2014 and 24/PUU-XX/2022. That being said, neither Article 21 paragraph (3) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage nor Article 35 letter an of Law Number 23 of 2006 concerning Population Administration are put to the test by these two rulings; rather, marriage registration is a legal consequence of the recognition of whether or not a marriage is valid, which has already been determined to be constitutional by the Constitutional Court (MK).

Following a marriage's validity being acknowledged by the law – which the Constitutional Court (MK) has already declared to be constitutional – marriage registration follows. However, the two rulings do not test Article 21 paragraph (3) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, nor Article 35 letter an of Law Number 23 of 2006 concerning Population Administration. Nevertheless, the two decisions only tested the legal conditions stated in Article 2 paragraph (1) of Law Number 1 of 1974. Nonetheless, as Pancasila is the basis of Indonesian national identity, human rights in that nation also need to align with its ideology. Each nation implements human rights differently based on its own philosophy, religion, social structure, and cultural norms, despite the fact that the Universal Declaration of Human Rights, an international agreement, guarantees universal protection for human rights.

One of the more challenging legal matters in Indonesia is that of marriage regulation, which is the subject of Law Number 1 of 1974 concerning Marriage and has been amended into Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. Therefore, all citizen behavior needs to be courteous, submissive, and in compliance with all laws and regulations, especially when it comes to marital issues. Marriage laws are intended to regulate and protect each citizen's rights and obligations with regard to marriage. Legality of marriage is a religious domain, and hence subject to the right to a religious interpretation. It is the state's responsibility to look at the religious perspective's implications. To provide population administration with certainty and order, state institutions are implementing marriage registration in accordance with the spirit of Article 28D paragraph (1) of the 1945 Constitution, which states that everyone has the right to recognition, guarantee, protection, fair legal certainty, and equal treatment before the law.

Consequently, the Constitutional Court's decisions 68/PUU-XII/2014 and 24/PUU-XX/2022, as well as the Supreme Court's Circular Letter (SEMA) number 2 of 2023 about Instructions for Judges in Judging Applications for Registration of Marriages Between Different Peoples These faiths and beliefs have led to legal certainty regarding marriage registration. This suggests that the legal loophole formerly used by interfaith couples who obtained a court order to register their marriage at the marriage registration office has been closed with the issuing of SEMA number 2 of 2023.

Civil Rights in Interfaith Marriages

According to Zainal Asikin (2012), the law governs the legal interactions between every individual, group, organization, and nation. The rights and responsibilities established by law serve as the foundation for this legal partnership. There are always two sides to any legal relationship that the law creates. There are two sides: obligations and rights. Without responsibilities, there can be no rights. On the other hand, without rights, there can be no obligations. Since everything has a companion in essence. Legal authority or power is known as a right. a legally protected interest. both personal and communal. One way to understand rights is as something that belongs or is deserving of being granted. The freedom to believe in oneself, and the right to life are a few examples.

According to a different definition, rights are the powers that objective law bestows onto legal beings. According to a different definition, rights are justifiable requests that others act in a particular manner. The power bestowed upon legal subjects by objective law has consequences for the legal subjects themselves, enabling them to use their rights in any manner they see fit, provided that it does not contravene existing propriety, public order, or applicable rules and regulations. (Angrayni, Lysa (2014).

According to Article 3 of the Civil Code, which stipulates that no punishment will result in civil death or the loss of all citizenship rights, civil rights are among the fundamental rights of every individual. Article 26 of the Civil Code (KUHPerdata) restricts the definition of marriage to civil partnerships. For an event to be deemed lawful, it is necessary for every marriage to be legally registered. Legal repercussions for civil rights and obligations, such as the requirement to make support payments and inherit rights, may result from this. A legitimate official certificate and a registration list issued by an authorized agency serve as records of marriage registrations. The following purposes of marriage registration are to: a) guarantee the orderly administration of marriages; b) ensure the acquisition of certain rights (birth certificates, obtaining a Resident Identity Card, creating a Family Card, etc.); c) safeguard the status of the marriage; d) provide clarification regarding the husband, wife, and children's legal status; and e) safeguard the civil rights that arise from marriage.

The core of a marriage's validity as required by Law Number 1 of 1974 about Marriage is that it is valid in accordance with religious law and State law. A marriage is considered valid in Indonesia under positive law if it has been registered. Paragraphs (1) and (2) of Article 2 constitute a single unit. The objectives of marriage registration, as stated in Article 2 paragraph (2), are to: a) ensure the orderly administration of marriages; b) give legal status to husbands, wives, and children certainty and protection; and c) guarantee and protect certain rights arising from marriage, such as the right to inherit and the right to obtain a birth certificate. The provisions of Article 11 of Government Regulation (PP) number 9 of 1975, which expressly indicate that every marriage must be registered before a marriage registrar as demonstrated by a marriage certificate, further affirm the validity of this marriage. Accordingly, a marriage that cannot be validated by a marriage license is not recognized as official or lawful. From a binding perspective, legally speaking, the registration of weddings under Law Number 1 of 1974 in combination with PP Number 9 of 1975 serves as a prerequisite for the marriage to be binding on third parties (other persons) and to obtain legal recognition and protection from the state. From a regulatory perspective, however, marriage registration establishes legal certainty by proving that a marriage event happened through the presence of a marriage certificate. Moreover, if the marriage is not implemented in accordance with the protocols and registration of weddings, there is no marriage or the marriage is void from a legal standpoint.

A legal marriage has consequences for the husband and wife's legal status during the marriage. The establishment of marital property, the standing and status of legitimate kids, and inheritance ties are some of these consequences. Legal consequences can only arise from a marriage that is performed legally, that is, in compliance with Article 2 Paragraphs (1) and (2) of the Marriage Law, which stipulate that the marriage must be performed in compliance with the laws of all major religions and beliefs and recorded in compliance with applicable laws and regulations. According to such an agreement, a man and a woman entering into matrimony must adhere to strict rules in order for their union to be accepted and have legal standing; on the other hand, if the rules are broken, the union is void.

There are many more consequences of an unreported marriage, such as:

a) The status and position of the children: According to Article 42 of the Marriage Law, a legitimate child is "a child born in or as a result of a valid marriage". Marriage is regarded as legitimate by all major religions. Marriages between Muslims and non-Muslims are registered at the Religious Affairs Office and the Civil Registry Office, respectively. This registration is attested to by the marriage certificate. The Marriage Law's Article 2 paragraphs (1) and (2) provide regulations on this. Consequently, the status of a kid born out of an unregistered marriage is the same as that of an illegitimate child. The child's birth certificate will thus only have the mother's name on it. The child's psychology will be impacted since he feels unique compared to other kids.

b) Inheritance: As previously mentioned, children born to parents with an unrecorded marriage are considered illegitimate. The child's inheritance rights are thus limited to his mother and her relatives. The fact that Article 43 paragraph (1) of Law number 1 of 1974 governing Marriage states that "Children born outside of marriage only have a civil relationship with their mother and her mother's family" further clarifies this. As a result, children cannot inherit from their father and have no friendly relations with his family.

When assessing the importance of marriage registration, the following considerations must be made in view of the laws governing marriage registration and the possible legal consequences of not registering a marriage:

a) According to Marital Law Number 1 of 1974, Article 2, Paragraph 1, the legal basis for marriage registration mandates that every marriage be registered in compliance with all applicable regulations. Marriages performed in accordance with Islamic law are registered at the Religious Affairs Office (KUA). In the meantime, the Civil Registry Office (KCS) is where Catholics, Christians, Buddhists, and Hindus complete their registration.

b) If a marriage is not registered, what are the legal ramifications?

1) The marriage is deemed void;

2) If your marriage hasn't been officially registered with the Religious Affairs Office or the Civil Registry Office, the state will view it as void even if it was consummated in accordance with your religion and beliefs.

2) The only civil relationships that children have are with their mother and her family. A further repercussion of an unregistered marriage is that neither the spouse nor the offspring are entitled to maintenance or inheritance from their father.

According to the aforesaid justification, interfaith weddings will not be permitted to be registered at the marriage registration office following the issuance and execution of SEMA number 2 of 2023. When a marriage is not officially registered with the marriage registration office, the husband and wife do not have a civil legal relationship, and the children born out of the marriage only have a civil relationship with the mother who gave birth.

Unreported marriages are extremely harmful to the wife in terms of law and society. Women are not regarded as lawful spouses in law. In the event of her husband's death, she will not be entitled to his assistance or inheritance. Aside from that, since the marriage is regarded as having never happened legally, the wife is not entitled to the marital assets in the case of a divorce. Socially, unreported married women are frequently referred to as mistresses. Aside from that, the newborn is regarded as an illegitimate child.

CONCLUSIONS AND RECOMMENDATIONS

From the description above, the author draws the following conclusions: 1) Couples getting married in an interfaith setting are no longer able to ask for a court order verifying their union, which keeps the union from being registered at the marriage registration office. This is due to SEMA number 2 of 2023. A marriage is considered null and illegitimate under Indonesian positive law if it is not formally registered at the marriage registrar's office in accordance with applicable laws and regulations. 2) Outcomes of an invalid marriage are as follows: the children born in the marriage are not legitimate children and only have a civil relationship with the mother who gave birth; the husband and wife have no civil legal relationship.

ADVANCED RESEARCH

Still conducting further research to find out more about Legal Implications of Enforcement of the Supreme Court Circular Number 2 of 2023 on the Civil Rights of Interfaith Marriages

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