

## IMPLICATIONS OF SUPREME COURT JURISPRUDENCE NO.1400K/PDT/1986 ON MARRIAGE DIFFERENT RELIGIONS

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### **ABSTRACT**

*In Indonesian law, Marriage Law does not provide for marriages of different faiths. Thus, Indonesia's positive law does not recognize the term interfaith or interfaith marriage. But, after the Supreme Court decision Number 1400K / Pdt / 1986, the existence of interfaith marriage in Indonesia is getting bigger. Supreme Court Decision No. 1400k/Pdt/1986, states that couples of different faiths can ask for a court determination. But Constitutional Court Decision No.68/PUU-XII/2014 rejected the legalization of interfaith marriage. This research is normative legal research, as it is based on library research that takes citations from reading books, as well as supporting data related to the problem studied assisted by primary, secondary and tertiary data sources. This research uses qualitative data analysis and produces descriptive data. From the results of the study, it was concluded that, first, the position of interfaith marriage in Indonesia is not regulated in Law No. 1 of 1974 concerning Marriage and the latest Marriage Law, namely Law No. 16 of 2019 concerning Marriage. The regulation of interfaith marriage in Indonesia at this time is based on the jurisprudence of Supreme Court Decision No. 1400K / Pdt / 1986. Second, the position of interfaith marriage in Indonesia according to the Constitutional Court Decree No. 86/PUU-XII/2014 is prohibited because interfaith marriage is not by the values of the Divine in the First Precept of Pancasila, it is also contrary to the 1945 Constitution and contrary to the values of Pancasila. However, in some applications for interfaith marriage in the court by the bride and groom, the judge did not adhere the constitutional court decision No. 86/PUU-XII/2014, so the implementation of the constitutional court's decision was ineffective. Meanwhile, in principle, according to the jurisprudence of Supreme Court Decision No. 1400K/Pdt/1986, the State is only responsible for the registration of interfaith marriages, and is not responsible for the legitimacy of interfaith marriages.*

**Keywords: Constitutional Court ruling; Jurisprudence; Interfaith Marriage; Supreme Court of Indonesia**

## INTRODUCTION

Indonesia's positive law does not recognize the term interfaith marriage or different religions. The Republic of Indonesia of Pancasila respects religion and puts religious law in a basic position. In the state of Pancasila there should be no rule of law that is contrary to religious law. Religions in Indonesia prohibit marriage between people of different religions.

The explanation of the provisions of Article 2 paragraph (1) of Law No. 1 of 1974 on Marriage states, that there is no marriage outside the law of each religion and its beliefs are to the 1945 Constitution. The provision means that marriage can only be carried out if both brides have the same religion. Marriage of different religions is also regulated in Article 8 letter (f) of Law No. 1 of 1974 on Marriage that formulated that "Marriage is prohibited between two persons who have a relationship by their religion or other applicable regulations prohibit marriage." That is, the Marriage Law prohibits the marriage to be carried out or legalized by religion and other regulations applicable in the Republic of Indonesia. Experts and legal practitioners argue that marriage of different religions is a violation of the Marriage Act that is, marriage is legal if done according to their respective laws and beliefs.

In line with what is stipulated in the Compilation of Islamic Law (KHI) in Article 40 paragraphs (3) Jo Article 44 stipulates that Muslim men and women prohibit non-Muslims from marrying, and vice versa. This is reinforced by the constitutional court's decision No. 68/PUU-XII/2014 which states it rejects marriages of different religions.

But until now different religious marriages in Indonesia are still held this can be seen from several religious marriage applications granted by several District Courts, among others: First, the Determination of Bandung District Court Number 495 / PDT.P / 2021 / PN.Bdg dated June 24, 2021, which was submitted by Risky Januari Putra (Islam) with the aim to marry his future wife named Yenny Lestari (Buddhism). Second, the Determination of the Makassar District Court on September 18, 2018, under Register No: 622/ Pdt.P/2018/PN. Thanks to Kevin Sangian Hendrik Rumiap (Protestant Christian) thanks to him and his future wife Nur Reski for applying for a different religion Angraeni Akhbar (Religion of Islam). Third, the Determination of the South Jakarta District Court on November 29, 2018, under Register No. 1139 / Pdt.P / 2018 / PN. Jkt.Sel was proposed by Edhu Mario Purwadiadji (Religion of Islam) with the aim of obtaining a marriage license of different religions with his future wife named Diana Stefani (Protestant Christianity). Based on the above three cases, when revoking the decision of the panel of judges, the Supreme Court's decision No. 1400K/Pdt/1986 is still used as a reference, taking the breakdown of religious marriage as an example. So, this causes a conflict between the rule of law that exists and of course, this has an impact on the validity of the marriage and other legal consequences.

## METHOD

The type of research used is normative legal research. The approach used is a normative juridical approach. Researchers will examine the synchronization between the supreme court's rules and the rules of the constitutional court on interfaith marriages in Indonesia. Base on this approach, the main materials to be studied are primary legal materials, secondary legal materials, and tertiary legal materials as intended by Ronny H. Soemitro.<sup>1</sup> The research uses qualitative data analysis and generates derived data.

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<sup>1</sup> Rony Hanitijo Soemitro, (1985), *Legal Research Methodology*, Jakarta, Ghalia Indonesia, p. 9

## ANALYSIS AND DISCUSSION

### *The Position of Marriage of Different Religions in Indonesia*

A marriage of different religions is a marriage performed by people who embrace different religions and beliefs from one another. According to Rusli and R. Tama states that interfaith marriage is the birth and inner bond between a man and a woman, which due to different religions, leads to the attachment of two different rules about the terms and procedures of the implementation of marriage by their respective religious laws, with the aim of forming a happy and eternal family based on the Supreme Divinity.<sup>2</sup>

#### **1. Marriage of Different Religions Reviewed off Law No. 1 of 1974 about Marriage**

In the history of family law in Indonesia, interfaith marriage before the issuance of Law No. 1 of 1974, is called mixed marriage. The legal basis is guided by the provisions of the Mixed Marriage Order (GHR) 1898 Number 158. The definition of mixed marriage in the Marriage Order in Article 1 states: “The so-called mixed marriage is that marriage between people in Indonesia is subject to different laws”. Then Article 7 of the Ordonanti also affirms that: “Differences in religion, ethnicity, nation, and descent, are in no way an impediment to marriage”. This provision opens the widest possibility to hold a religious marriage.<sup>34</sup>

Since 1974, the State of Indonesia has established a national marriage regulation that applies to all Indonesian citizens. The law governing the issue of marriage is the Marriage Law No. 1 of 1974, enacted on January 2, 1974, and entered into force in conjunction with the issuance of The Implementation Regulation, Government Regulation Number 9 of 1974 on the Implementation of Marriage Law No. 1 of 1974, which was effective on October 1, 1975.<sup>5</sup>

After the enactment of the Marriage Act, all legal provisions governing the ability of marriages of different religions are declared no longer valid. This can be seen by the provisions of Article 66 of the Marriage Act: “For marriage and everything related to marriage under this Law, then with the enactment of this Law the provisions stipulated in the Civil Law Code (*Burgerlijk Wetboek*), the Christian Indonesian Marriage Ordinance (*Huwelijk Ordonantie ChristianIndonesia* S.1933No.74), The Mixed Marriage Regulation (*Regelling op de gemengde Huwelijke* S.1898 No. 158), and other regulations governing marriage to the extent that they have been governed by this Act, are declared invalid.”

About the validity of marriage, in Article 2 paragraph (1) it is stated that “marriage is legal if carried out according to the law of each religion and its beliefs”. This indicates that the law leaves it to each religion to determine the ways and conditions of the marriage (besides to the ways and conditions set by the state), whether a marriage is prohibited or not, or whether the bride and groom have met the conditions or not, besides to depending on the provisions contained in the Marriage Act, also determined by the law of religion. each. This means that if a marriage has qualified and the pillars of marriage or *Ijab Qabul* has been performed (for Muslims) and the pastor or pastor (for Christians) has performed blessings or other rituals, then the marriage is valid, especially in the eyes of his religion and his beliefs. Absolute marriage must be performed according to the law of each religion and its beliefs, otherwise, the marriage can be said to be invalid. The law of each religion becomes the basis of the validity of marriage, which means that the implementation of marriage is only subject

<sup>2</sup> Ana Laela F. CH, Ken Ismi Rozana, and Shifa Khilwiyatul Muthi'ah. (2016). “Fikih Marriage Of Different Religions as An Effort to Harmonization of Religion: Marriage Study Different Religions in Jember”. *Journal of Aqidah Science and Religious Studies*,4(1): p. 121.

<sup>3</sup> M. Anshar MK. (2015). *Marriage Law in Indonesia Crucial Issues*. Yogyakarta: Student Library, p. 49.

<sup>4</sup> Sirman Dahwal. (2016). *Marriage Law of Different Religions in Teori and Its Practices in Indonesia*. Bandung: CV. Mandar Maju, p. 245.

<sup>5</sup> *Ibid.*

to 1 (one) religious law only, in other words, marriage cannot be carried out using 2 (two) different religious laws.<sup>6</sup>

As in the previous explanation, before the issuance of the Marriage Act, religious marriages were regulated in the Mixed Marriage Ordinance S. 1898 No. 158 and after the issuance of the Marriage Act, mixed marriages were regulated in Article 57 of the Marriage Act. Mixed marriage undergoes a change in meaning because according to the provisions of Article 57 of the Marriage Law that is meant by marriage is a marriage between two people who in Indonesia are subject to different laws, because of differences in nationality and one of the Indonesian nationalities. Thus, marriage only refers to differences in citizenship and marriage between Indonesian citizens and foreign nationals.

Of the two laws and regulations above, the Mixed Marriage Ordinance S. 1898 No. 158 and Law No. 1 of 1974, both regulate mixed marriage, but the understanding of mixed marriage there are differences between the two, in the Mixed Marriage Ordinance S. 1898 No. 158, mixed marriage regulates marriages of different religions, tribes, nations or offspring, while in the Marriage Act, Mixed marriages are only differences in nationality, religious marriages do not include the regulated part, either in Article 57 or in other articles in the Marriage Act.

According to Law No. 1 of 1974 concerning Marriage, the meaning of the term Mixed Marriage can be seen in Article 57, namely: "what is meant by Mixed Marriage in this Law is Marriage between two people who in Indonesia are subject to different laws, due to differences in nationality and one of the parties of Indonesian nationality". Mixed Marriage is a marriage carried out by two people of different nationalities, open to different religions.<sup>7</sup>

Thus, based on Article 2 paragraph (1) of the Marriage Act, a marriage is valid if performed according to the law of each religion and its beliefs, so religious institutions are given the authority to legalize a marriage. So that marriages of different religions according to the Marriage Act, are not valid, because they do not meet Article 2 paragraph (1) of the Marriage Act. This resulted in the invalidity of recording marriages of different religions in the Civil Registry Office.<sup>8</sup>

Besides looking at Article 2 paragraph (1) of the Marriage Act, to find out the clarity of the issue of marriage of different religions can be seen also in Article 8 letter (f) of the Marriage Act, which states: "Marriage is prohibited between two people who have a relationship by their religion or other applicable regulations, it is forbidden to marry".[A2]

## **2. Marriage of Different Religions Reviewed from Jurisprudence of Supreme Court Decision No. 1400K/Pdt/1986**

To discuss the marriage of different religions as stated in the Supreme Court Decision Number 1400K/Pdt/1986, the author will outline the case in the Supreme Court Decision: The Supreme Court has given its verdict on January 20, 1986, Number: 1400K/Pdt/1986 Opposition to religious marriage. The Supreme Court held that it cannot be justified the continued legality of religious marriages. This case stems from the marriage that was to be recorded by Andi Vonny Gani P (Islamic Woman) with Adrianus Petrus Hendrik Nelwan (Protestant Christian man) who wanted to hold a marriage. It turned out that both the Office of Religious Affairs (KUA) and the Civil Registry refused to hold their marriages. In the rejection it was stated that the Applicant's husband was a Protestant Christian. This rejection is stated in the Letter of the Office of Religious Affairs dated March 5, 1986 No.: K2/NJ-I/834/III/1986. The Civil Registry Office of the Jakarta Capital Region rejected the marriage on the grounds that the

<sup>6</sup> *Ibid*, p. 246.

<sup>7</sup> Rosa Kisworo et al, (2019), Mixed Marriage Law Problems Based on Jessica Iskandar's Marriage Case With Ludwig Frans Willibald In The Perspective of International Civil Law, Journal of pPrivat Law, Volume VII Number 1.

<sup>8</sup> *Ibid*, p. 255-256.

future wife converted to Islam. This rejection is stated in the letter dated March 5, 1986 No.: 655/1,755.4/CS/1986. Based on the rejection of the Office of Religious Affairs and the Civil Records Office above, the applicant applied to the Central Jakarta District Court Office to declare the rejection from the Office of Religious Affairs and Civil Office Employees in the dated ruling as unwarranted and thus invalid. But, the District Court in its ruling of April 11, 1986 did not grant the application with the consideration that Marriage Law No. 16/2019 Regarding the amendment of the law No. 1/1974 does not regulate marriages of people of different faiths. On the refusal, the petitioner's application in the Central Jakarta District Court, then the applicant submits a cassation examination application to the Supreme Court of the Republic of Indonesia, so that the determination issued by the Central Jakarta District Court Judge is examined with the memory of the Cassation whose main contents are as follows:

1. Object to the determination of judges who reject the applicant's desire to hold a marriage of different religions. There is an inherent relationship of love and affection between them. Although their religious beliefs are different, the guardians of the two brides have agreed and do not mind the marriage;
2. The provisions of Article 21 paragraph (4) of Marriage Law Number 1 of 1974, do not prohibit the marriage of prospective husband and wife of different religions, but only stipulates that the District Court has the right to choose, i.e. whether to strengthen the rejection of the Civil Registry, or give permission to the applicant to hold a marriage with the prospective husband of the applicant at the Civil Registry Office of the Special Capital Region of Jakarta;
3. Since Article 21(4) of Law No. 1 of 1974 was not considered, the Jakarta District Court Decree of April 11, 1986 No.382/PDT/p/1986/PN.Jkt.Pst., I made a mistake, so please cancel.

In the supreme court consultative meeting, it was decided that the petitioner's cassation application was granted for part on January 20, 1986 No.:1400/K/Pdt/1986 with the main consideration of the Supreme Court of the Republic of Indonesia and the decision of the Supreme Court of the Republic of Indonesia as follows:

I. Consideration of the Supreme Court of the Republic of Indonesia:

1. There is a legal vacuum, thus the Supreme Court of Indonesia should be able to find the law in this matter;
2. Prospective husband and wife are already 21 years old, so no longer need their parents' permission;
3. The biological father of the bride-to-be (guardian) has given permission to his daughter to marry the man of her choice;
4. The bride-to-be still wants to marry the man;
5. The father of the bride-to-be wants the marriage to continue even if "not according to the religion of Islam";
6. The bride-to-be has ignored the status of "Islamic Law" which she embraces;
7. Article 8 letter f of Marriage Law No. 1 of 1974 is no longer an obstacle to marriage;
8. It should be the Office of Civil Records, as the only agency authorized to hold a marriage.

II. Supreme Court of the Republic of Indonesia

1. Canceling the Appointment of a Central Jakarta District Court Judge;

2. Self-judge;
3. Canceling the “Rejection Letter of Marriage” from the Extraordinary Employee of the Civil Registry Office of the Special Capital Region of Jakarta;
4. Ordered the Marriage Mutilation Officer at the Civil Registry Office of the Special Capital Region of Jakarta to hold a marriage between Andy Vonny Gani P and Adrianus Petrus Hendrik Nelwan, after fulfilling the marriage conditions according to the Law.

Supreme Court Decision No. 1400/K/Pdt/1986 mutatis mutandis makes Article 2 paragraph (1) of the Marriage Act a vague norm. How is it possible, a court ruling can turn a firm norm into a vague norm? As for the intensive interpretation of the Supreme Court Decision No. 1400 / K / Pdt / 1986 which states that Article 8 letter f of the Marriage Act means that when marriage is held, both brides must submit and follow one provision of religious law only and must waive the provisions of the religion they embrace. So, if it is interpreted to avoid the position of Article 8 letter f of this Marriage Act, then the meaning of “must release the provisions of the religion it embraces” must also be attached onwards (out of the religion embraced / Islamically called apostate), Not only explained at the time of marriage. Because, if it is meant only to the extent that marriage is held, it will cause legal consequences on the position of the child and his rights (most inheritance rights) because there is a prohibition on receiving heirs from heirs of different religions. Children cannot have two religions and must choose which religion to follow, father or mother. But it will be different religion with one of his parents, and the prohibition of accepting heirs will still be attached.

Consistent with Sirman Dahwal, the author later linked it to the theory of legal certainty. Hans Kelsen asserts that the rule of law governs a particular action or neglect (non-doing) of that act, thus the human action is regulated positively or negatively. Hans Kelsen said that the rule of law “commands, permits, and permits one’s behavior”. Hans Kelsen further stated why the law is obeyed, because it conforms to moral principles, i.e., forming an ideal sense of justice. Therefore, if today the Marriage Act is considered a positive norm governing the validity of marriage, especially Article 2 paragraph (1) of the Marriage Act, then to achieve legal certainty “for the sake of law” the use of jurisprudence as a reference for marriage of different religions must be ruled out.<sup>9</sup>

Besides, the main body of the legal country that has chosen the European continental legal state procedure chosen by Indonesia has and requires the applicable law as a positive legal norm to be a statutory law. Legal certainty to the “written law” can see in Article 1 number 2 of General Provisions of Law No. 12 of 2011 on the Establishment of Laws and Regulations, which states that: “Laws and Regulations are written regulations that contain binding legal norms and are established or established by state institutions or authorized officials through procedures stipulated in the Laws and Regulations.”

Besides, the legal certainty written in the legal countries with the European continent flow (such as Indonesia) regulates the status of jurisprudence as a source of conditional law. The conditions include: “there are not enough laws governing a particular event.” In this case, it is not appropriate if the marriage of different religions declared a state of legal emptiness (void of norms), because although the provisions of marriage of different religions are not regulated by mechanism in the Marriage Law, but the prohibition regulated. This can be seen from the provisions of Article 2 paragraph (1) of the Marriage Law which requires that

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<sup>9</sup> Jimly Ashiddiqie and Ali Safa’at. (2006). *Hans Kelsen’s Theory of Law*. Jakarta: Secretariat General and clerk of the Constitutional Court of the Republic of Indonesia, p. 13.

marriage is legal if done by the law of each religion. As the juridical argument above, all religions in Indonesia prohibit marriages of different religions in Indonesia.

Therefore, we express the view that the determination of interfaith marriage shall under the religious law. Our opinion regarding this issue seeks to avoid the legal problem in the future. The law of the state shall adhere the religious law whether the interfaith marriage is legitimate or illegitimate.

### 3. Expert Opinions Related to Marriages of Different Religions

About the status and validity of marriages of different religions in Indonesia, some expert opinions on marriages of different religions will be presented below.

1. Abdul Halim Barkatullah and Teguh Prasetyo argue that because the Marriage Law does not regulate the issue of intermarriage, then when referring to Article 66 of the Marriage Act which emphasizes that other regulations governing marriage, to the extent that it has been regulated in this law, it is declared no longer valid. But, because the "Marriage Law" does not provide that the old rules can be re-enacted, marriage issues of different religions must be guided by the rules of intermarriage.<sup>10</sup>

At first glance, Abdul Halim Barkatullah and Teguh Prasetyo agreed with the "presence" of different religious marriages in Indonesia. But, what needs to be emphasized is the difference in the use of legal norms between Abdul Halim Barkatullah and Teguh Prasetyo with the practice of religious marriages carried out to this day. Where, Abdul Halim Barkatullah and Teguh Prasetyo stated that the validity of different religious marriages in Indonesia should be returned to the intermarriage agreement that is the Mixed Marriage Ordernasi (GHR) 1898 Number 158, but in today's context, The marriage of different religions in Indonesia actually refers to the Supreme Court Decision Number 1400K/Pdt/1986, which later became a precedent. According to the Author, there is a mistake if the legalization of different religious marriages in Indonesia refers to the Supreme Court Decision No. 1400K / Pdt / 1986, which prioritizes jurisprudence over laws and regulations when both are sources of law that adhere to hierarchy.

2. According to Aulil Amri, Lecturer of the Faculty of Shari'ah and Law of UIN Ar-Raniry Banda Aceh, argues that the majority of Muslim communities in Indonesia are of the view that UUP does not need to be perfected by including different religious marriage laws in the law, because according to them, the Marriage Law has regulated the marriage law of different religions. This expression is true, because Muslims as the majority population in Indonesia feel benefited by Article 2 paragraph (1) of the Marriage Act, because with the article closed the possibility to marry in a "secular" manner, and closed also the possibility of a Muslim woman to marry a non-Muslim man, as well as the marriage of a Muslim man with a woman, because the marriage is prohibited (considered invalid) according to Islamic law.<sup>11</sup>

3. According to Zainal Arifin in Alyasa Abubakar, stated that the marriage of different religions is a violation of the Marriage Law Porigin 2 paragraph 1 jo Porigin 8 The letter f means that if you marry according to the laws of each religion and belief, the marriage is legal. In the interpretation of the "Marriage Law", through the statement of the first paragraph and

<sup>10</sup> Abdul Halim Berkatullah and Teguh Prasetyo. (2009). *Islamic Law Answers the Challenges of an Ever-Evolving Age*. Yogyakarta: Student Library, p. 147-148.

<sup>11</sup> Ulil Amri. (2015). "Marriage of Different Religions According to Positive Law and Islamic Law". *Journal of Shari'ah Media*, 22(1): 60-61.

- the second paragraph of Polykin, it is confirmed that there is no marriage outside the laws of various religions and beliefs. So, marriage of different religions is an invalid marriage.<sup>12</sup>
4. Hazairin in Soediman Kartohadiprojo gives the interpretation of Article 2 that for Muslims there is no possibility to marry by violating their own religious laws, as well as for Christians, and for Hindus. So, it means a dead end for candidates of different religions to carry out interfaith marriages, because besides to the regulations in Article 2, they are also unlikely to use the marriage regulations in Chapter XII Article 57 of the Marriage Act, which does not regulate interfaith marriage.<sup>13</sup>
  5. According to Abdurrahman in the Compendium of the Field of Marriage Law, there is a way taken by those who will perform marriages of different religions, one of the couples following the religious beliefs of their spouse and marrying according to the religion of the spouse. There are two forms of religious conversion that couples do to be able to hold marriages with their partners: 1). Conversion is only in the form of pro forma to meet the requirements so that the marriage can be held and reassessed, but then after the marriage takes place the concerned return to his original religious beliefs and continue to carry out the rules of his religion. Cases of marriage of different religions in this way occur a lot, causing disruption to household and family life in the future; 2). A sincere marriage makes a transition of its religious beliefs and carries out its teachings for the rest in their married and family life.<sup>14</sup>

#### **4. Regulation and Position of Marriage Of Different Religions After The Decree of Mahkamah Constitution No. 68 / PUU-XII / 2014**

##### **The Birth of Constitutional Court Decision No. 86/PUU-XII/2014**

Based on Article 24C paragraph (1) of the 1945 Constitution and Article 10 paragraph (1) letter a of Law Number 24 of 2003 about the Constitutional Court as amended by Law No. 8 of 2011 on Amendments to Law Number 24 of 2003 on the Constitutional Court (State Gazette of the Republic of Indonesia Year 2011 Number 70, Supplement to State Gazette of the Republic of Indonesia Number 5226, Hereinafter referred to as the Constitutional Law), as well as Article 29 paragraph (1) letter a law Number 48 of 2009 on Judicial Power (National Gazette of the Republic of Indonesia) Number 157 of 2009, a supplement to the National Gazette Number. 5076 of the Republic of Indonesia, hereinafter referred to as Law 48/2009, one of the constitutional authority of the Court is to adjudicate at the first and last level whose decision is final to test the Law against the Basic Law.<sup>15</sup>

On September 4, 2014, the right to judicial review was submitted to the Constitutional Court with case number 68/PUU-XII/2014. Application Letter submitted to the Constitutional Court a substantive test of the 1945 Constitution by the Marriage Law No. 1 of 1974. And the legal position of the applicant is an individual Indonesian citizen who feels harmed by his constitutional rights under Article 2 paragraph 1 of Law No. 1 of 1974 on Marriage, following the names of applicants who filed a lawsuit with the Constitutional Court as follows:

- a. Damian Agata Yuvens, as the Petitioner I
- b. Ranga Prostrated Widigda, as the Applicant II
- c. Varida Megawati Simarmata, as the Applicant III

<sup>12</sup> Alyasa Abubakar. (2008). *Marriage of Muslims with Non-Muslims*. Naggroe Aceh Darusalam: Islamic Shari'ah Service, p. 60.

<sup>13</sup> Soediman Kartohadiprojo. (1984). *Introduction to Law in Indonesia, Cet-10*, Jakarta: Ghalia Indonesia, p. 36.

<sup>14</sup> Abdul Rahman. (2011). *Compendium of The Field of Law "Marriage Of Different Religions and Their Implications"*, Yogyakarta: National Legal Development Agency, Ministry of Hukum and Human Rights, p. 12.

<sup>15</sup> Indra Lesmana, (2019). "The Position of The Outer Child of Marriage in the Concept of Indonesian Civility". *Thesis*. Pekanbaru: Strata One Program of Riau University, p. 64.

d. Anbar Jayadi, as the Applicant IV

e. Luthfi Saputra, as the Applicant V

Against this Application, the Constitutional Court through Decision Number 68/PUU-XII/2014 which rejects this Petition gives consideration:

- a. According to the Petitioners, the right to form a family through a legal marriage has been guaranteed in Article 28B paragraph (1) of the 1945 Constitution so that with the existence of Article 2 paragraph (1) of Law 1/1974 the Petitioners feel there are restrictions on the rights of citizens in the marriage. According to the Court, in exercising their rights and freedoms every citizen must be subject to the restrictions set by law with the sole purpose of guaranteeing the recognition and respect for the rights and freedoms of others and to fulfill fair demands by moral considerations, religious values, security, and public order in a democratic society (Vide Article 28J of the 1945 Constitution). By the philosophical foundation of Pancasila and the 1945 Constitution, according to the Court, Law 1/1974 has been able to realize the principles contained in Pancasila and the 1945 Constitution and has also been able to accommodate some statements of life in society.<sup>16</sup>
- b. According to the Court, in the life of the nation and state based on Pancasila and the 1945 Constitution, religion became the foundation and the state has an interest in marriage. Religion becomes the foundation for the individual community that becomes a forum for personal togetherness in relation to God Almighty and handles the realization of God Almighty's will to continue and ensure the survival of human life. The state also plays a role in providing guidelines to ensure the legal certainty of common life in the bond of marriage. In particular, the state plays a role to provide protection to form a family and continue the offspring through legal marriages that are the form and guarantee of human survival. Marriage should not only be seen from the formal aspect, but also must be seen from the spiritual and social aspects. Religion establishes the validity of marriage, while the Law establishes the administrative validity of the state.<sup>17</sup>

Thus, through this Constitutional Court Decision, Article 2 paragraph (1) of the Marriage Act, and does not conflict with the provisions contained in the 1945 Constitution, and is not domiciled as a vague norm as long as it is not interpreted otherwise based on supreme court decision Number 1400K/Pdt/1986. As the decision of case No. 68/PUU-XII/2014 which states that the Constitutional Court rejects the petitioners' application for the whole. Thus, Article 2 paragraph (1) of the Marriage Act does not conflict with the provisions contained in the 1945 Constitution.

### ***Ban on Marriage of Different Religions Based on Religious Law in Indonesia***

#### **a. Islamic Perspectives**

About marriage between people of different religions, through shari'ah or religious law, Islam has regulated it in the Qur'an surah Al-Baqarah (2):221 that Muslim men and women are forbidden to marry women and men of idolatry and infidels.<sup>18</sup>

For adherents of Islam is also affirmed in the Fatwa of the Indonesian Ulema Council (MUI) Munas II in 1400H/1980 AD on Mixed Marriage, which was established on June 1, 1980. Then, the ban was reinforced again by the Fatwa Decree of the Indonesian Ulema Council Number: 4/MUNAS VII/MUI/8/2005 on The Marriage of Different Religions.<sup>19</sup>

The prohibition of interfaith marriage for adherents of Islam is affirmed in the Compilation of Islamic Law (KHI) through Presidential Instruction No. 1 of 1991. Letter (c) in Article

<sup>16</sup> See The Decision of the Constituent Court Number 68/PUU-XII/2014, p. 151-152.

<sup>17</sup> See The Decision of the Constituent Court No. 68/PUU-XII/2014, p. 153.

<sup>18</sup> Dedhy Supriadi, (2013). "Marriage of Different Religions in Indonesia Dalam Positive and Normative Legal Perspective". *Bi-Monthly Journal of The Pulpit of Law*, 62:53.

<sup>19</sup> Sirman Dahwal. *Op.cit*, p. 85.

40 and KHI in Article 44. Article 40 of the KHI reads the prohibition of marriage between a man and a woman due to the circumstances of:

- a. Because the woman in question is still bound by one marriage to another man;
- b. A woman who is still in iddah with another man;
- c. A woman who is not diverse in Islam.

Then Article 44 of KHI explains that an Islamic woman is forbidden to marry a man who is not Muslim. From both articles it can be known that the religion of Islam prohibits marriage of different religions performed by a Muslim man or woman.

### **b. Perspective of Catholic Christianity**

The Catholic Church generally considers that marriage between a Catholic and a non-diverse Catholic is not a compatible or ideal couple. Thus, Catholicism requires marriage between a woman who is a believer or equal. In fact, Catholicism states that “marriage between a Catholic and a believer in another religion is invalid” (Canon 1086).

But, for those who are no longer able to be separated because their love is already deep, the church official in authority with the bishop can grant dispensation (the exclusion of the atranuum for a special circumstance) by fulfilling the conditions prescribed by church law. Dispensation must be granted if the Catholic party wishes to pledge, among other things (i) to accept catholic marriage, (ii) will not divorce the Catholic party, (iii) does not prevent the Catholic party from practicing his faith, and (iv) is willing to educate his children. As such, Catholics must also pledge (i) to remain faithful to the Kalik faith, and (ii) seek to bathe and educate all their children (Canon 1125).<sup>20</sup>

So, according to Catholicism, marriage between people of different religions should be avoided. Adherents of different religions are more prone to cause various conflicts or conflicts in family or household life.

### **c. Protestant Christian Perspective**

In the Bible, there are several texts discussing marriages of different religions, among them in the Old Testament (Deuteronomy 7:3-4) it is stated that: “Do not marry them either: your daughters do not give to their men, nor do your daughters take for your sons. For they will make your son go from me.” The verse prohibits marriage of different religions.<sup>21</sup>

To create happiness in marriage, the Protestant church encourages its followers to find a life partner who believes in life. The main purpose of marriage, according to Protestant Christianity, is happiness, and happiness will be difficult to achieve if it is not faith or religion.<sup>22</sup>

But, in an unavoidable situation in an emergency, the church may allow marriages of different religions as long as they are met with some of the conditions set by each church. The Indonesian Kisten Church stipulates, among other things: (1) Protestant Christians must sign a covenant that (i) will continue to practice their Christian faith, (ii) baptize children born of the marriage christianly, and (iii) promise to study their children Christianly. (2) Non-Protestant Christians must sign an affidavit, that he (i) does not object

<sup>20</sup> *Ibid*, p. 113

<sup>21</sup> Amal Zainul Naim. (2019). “Analysis of The Verdict of Marriage Appeals Different Religions Perspectives of Progressive Legal Theory (Comparative Study of Supreme Court Decision No. 1400K/Pdt/1986and Number 1977K/Pdt/2017”. *Thesis*. Malang: Postgraduate Program of Negeri Islamic UniversityMalang, p. 35.

<sup>22</sup> *Op.cit*, p. A 114

to marriage being performed in a Protestant church, (ii) does not object to their children being idied protestan.<sup>23</sup>

#### **d. Hinduism Perspective**

In Hinduism a marriage will be considered void if it does not meet certain conditions. In Hindu law the requirements for the legality of marriage are as follows: (1) A marriage under Hindu law is valid, if performed according to the provisions of Hindu Law; (2) To legalize marriage according to Hindu law must be performed by the Priest / Pedande; (3) A marriage can only be legalized under Hindu law. If one of them is not a Hindu, or a marriage between a Hindu and a non-believer, then this marriage is considered invalid according to Hindu law.<sup>24</sup>

The endorsement of a marriage according to Hinduism must be done by a Pedande who is qualified for it. If there is a marriage of different religions, Pedande will not legalize the marriage. In Hinduism there is no known marriage of different religions. This is because religious ceremonies must be held before marriage. Where in the religious ceremony if the bride-to-be is not diverse Hindu, then he must be purified as a hindu first. If it is not purified first and then marriage is carried out, this is considered a violation in Seloka V-89 of the Book of Manawadharnasastra.<sup>25</sup>

#### **e. Buddhist Perspectives**

In practice, if Buddhists want to have a marriage with a non-Buddhist party, then one of the conditions that must be met is that both brides-to-be should be dharma (as religious). Buddhism emphasizes the relationship of men and women in the institution of marriage that allows them to foster a life together in harmony and harmony in a happy and prosperous family. Because to achieve this goal, the husband and wife must have Saddhavanata, meaning have firm faith in the Tri Ratna (Tratna). Besides, each should be obliged to carry out the precepts, generous and wise.<sup>26</sup>

#### **f. Confucian Perspective**

Confucian religion argues that marriages of different religions are not prohibited. Although the marriage of different religions is not prohibited, it does not mean free without rules. Marriages derived from one clan (or more when interpreted as inbreeding or between close family) are not allowed. Marriage should be to fuse and develop the seeds of goodness, in the sense that it should be on Love, and not aimed at something unkind and untrue. Wedding ceremonies need to do by the rules of decency that apply, because it is the basis of human civilization.<sup>27</sup>

If observed after the discussion in this chapter, there are propositions that state that marriages of different religions can hold, but there are also propositions that state that marriages of different religions should not be held. Although based on the jurisprudence of the Supreme Court Decision No. 1400K / Pdt / 1986 marriages of different religions are very likely to carry out, but with the issuance of the Constitutional Court Decision 68 / PUU-XII / 2014 which prohibits the holding of marriages of different religions should be the last proposition or the validity of different religious marriages in Indonesia. The author then agrees with the opinion of the Constitutional Court which states that marriage of different religions cannot

<sup>23</sup> Dedhy Supriadi. *Op.cit*, p. A 52

<sup>24</sup> Sirman Dahwal. *Op.cit*, p. A 121

<sup>25</sup> Lysa Stiabudi. (2016). "Analysis of Marriages of Different Religions (Study of District Court Rulings Related to Marriage Permits of Different Religions)". *Skripsi*. Semarang: Strata One Program of Semarang State University, p. 47.

<sup>26</sup> *Op. Cit*, p. 125.

<sup>27</sup> Lysa Stiabudi. *Op.cit*, p. 48.

carry out and should not give legality because it is not in line with the values of Godhead as meant by the 1st Precept of Pancasila, besides to contrary to the 1945 Constitution or in the testing of Article 2 paragraph 1 of the Marriage Law in the case of a quo the Court argues that the Article is not unconstitutional so it must be maintain.

The Constitutional Court decision 68/PUU-XII/2014 submitted by the Constitutional Judge Maria Farida Indarti in this paper seems to need to be confirmed. It can be know based on the Constitutional Court's Decision, the different reasons conveyed by the Constitutional Judge in the ruling is not the basis for the validity of marriage of different religions. So, Maria Farida Indarti argues that the redaction offered by the Petitioners which reads: "Marriage is valid, if done according to the law of each religion and belief, as long as the interpretation of her religion and its trust left to each bride-to-be" is unwarrant according to the law, because the interpretation of religion and belief carried out by each bride-to-be cannot guarantee any legal certainty. The addition of the phrase according to Maria Farida Indarti will actually create a legal uncertainty and cause various interpretations, because the interpretation of the law of his religion and his beliefs left to each bride-to-be, so that it will give rise to a more varied disclaimer.<sup>28</sup>

In the Marriage Act Article 1 states: "Marriage is the inner birth bond between a man and a woman as husband and wife with the aim of forming a family (household) that is happy based on the Supreme Divinity". From the understanding of marriage according to Article 1 of the Marriage Law can be help the elements of marriage, as follows: 1) Marriage is the inner connection between man and woman; 2) The purpose of marriage is to form an eternal and happy family (family); 3) Marriage based on the Supreme Divinity.

Where the implementation of marriage must be carry out based on the Supreme Godhead has a direct effect on the validity of a marriage. In the explanation of Article 1 mentioned: As a state based on Pancasila, where the first precept is the Supreme Divinity, then marriage has a very close relationship with religion / spirituality, so that marriage not only has an element of birth / physical, but the inner / spiritual element also has an important role.

Aini Maryam Siti Qurrotul and Andrie Irawan, stated that Pancasila as a fundamental state must be affirm without exception, including respect for religious freedom by not mixing between onereligiousperinsipwithotherreligiousperinsip, including marriage issues. speaking, that marriage of different religions in Indonesia is actually also to conflicting with religion is also in opposition to the concept of Pancasila.

Every religion cannot legalize marriage of different religions, because all religions require their devotee to marry the religious and to maintain holiness. Then it can be concluded that marriage different religions according to Marriage Law is an illegitimate marriage, so evasion is carried out against the laws that should apply or can be said to be legal smuggling acts. The smuggler tries to avoid the law which will have legal consequences that will harm their interest. By Some examples of marital law smuggling actions above, there needs to be an unequivocally the government's actions against those legal smuggling case.<sup>29</sup>

There is no article in Law No. 1 of 1974 that regulates that expressly forbid marriage of different religions. However, the provisions of article 2 paragraph 1 about the legal condition of marriage presupposed a legal marriage if performed according to the law of the bridegroom's religion and beliefs. Therefore, marriage is legal if it is performed under to the laws of each religion. Under recognized religion in Indonesia – Islam, Christian, Budha, Hindu - there is no religious experts who attest that marriage of different religions can be officially. Therefore, it

<sup>28</sup> Constitutional Court Decision 68/PUU-XII/2014, p. 161-162.

<sup>29</sup> Prasetyo Ade Witoko et al, (2019), Smuggling of Interfaith Marriage Law in Indonesia, Postgraduate Journal of Law, UNS, Volume VII Number 2.

is a great fallacious if the court grants permission to perform marriages of different religions in Indonesia.<sup>30</sup>

Based on the discussions carried out can be concluded as follows: first, in its historical journey, the issue of interfaith marriage has always been a controversy among Muslims until now and in the future. This is because there are parties who consider marriage of different religions is something that is final and inviolable, while on the other hand parties who want to rationalize the problem in accordance with the times. Second, to determine the legal status of marriage of different religions, it is necessary to re-read the texts that have the potential to strengthen and enrich the decisions to be taken using a comprehensive, contextual and multi-analytical approach.<sup>31</sup>

Marriage of Different Religions is feared to also cause legal management, including: the validity of marriage related to the rights and obligations of husband and wife, the right of inheritance of husband and wife to their children, and several other issues.<sup>32</sup>

The result of the law arising from marriage of different religions is that the marital status of different religions is not legal according to Law No. 1 of 1974 concerning marriage. With the existence of an invalid marriage so that it can bring consequences to the status and position of the child. Children born in marriages of different religions are illegitimate children because marriage of both parents is not a legal marriage. The result is that the child has no legal relationship with his father. Except with his mother and family. And this is in accordance with article 43 paragraph 1 of the marriage law and article 100 of the KHI. However, every child born must still be recorded on the civil registry to be able to obtain a birth certificate.<sup>33</sup>

According to H.M. Daud Ali, the Republic of Indonesia, based in Pancasila, respects religion and puts religious law in a fundamental position. In a state based on Pancasila there should be no rule of law that is contrary to religious law. Religions in Indonesia prohibit marriage between people of different religions. Pancasila state there should be no marriage between devotee of different religions. Marriage between people of different religions by various means of disclosure, is not valid according to the religion recognized in the Republic of Indonesia. Additionally, since the legality of marriage based on religious law, unlawful marriage according to religious law is not valid according to the Indonesian Marriage Law.<sup>34</sup>

When examined briefly according to the provisions of constitutional law, in Article 24C paragraph (1), Article 10 of the Constitutional Court Law and Article 29 paragraph (1) of the Law on The Power of Justice, the three expressly state that “the Constitutional Court is authorized to adjudicate at the first and last level whose verdict is final...”. The last sentence must mean that there is no other legal effort against the decision of the Constitutional Court to overturn it, so the ruling must be enforced (binding) immediately after the judgment is read.

Based on the description above, there will be differences in the interpretation of marriage arrangements of different religions as stipulated in the Supreme Court Decision no.1400K / Pdt / 1986 with the Constitutional Court Decision No.68 / PUU-XII / Year 2014.

## CONCLUSION

<sup>30</sup> Kesuma et al,(2019), Recording of Interfaith Marriages from the Perspective of Law No. 1 of 1974 concerning Marriage (Study of The Decision of The Judge of surakarta District Court) Faculty of Law, University of North Sumatarera.

<sup>31</sup> Aulil Amri, (2020), Marriage of Different Religions According to Positive Law and Islamic Law, Faculty of Sharia and Law UIN Arraniry, Banda Aceh, *Sharia Media*, Vol. 22 Number 1.

<sup>32</sup> Zainal Ariin, (2019). Marriage of Different Religions, Zainal Arifin, *Journal of Machinery*, Volume 18 Number 1.

<sup>33</sup> A. Syamsul Bahri et al, (2020), Due to The Law of Interfaith Marriage According to Law No. 1 of 1974 concerning Marriage, *Al-Asyakhshiyah: Journal of Islamic Family Law and Human Beings*, Vo. 2 Number 1.

<sup>34</sup> M. Daud Ali, (1992). “The Attitude of the State in Realizing Legal Protection for Citizens and Marriage Between Marriages of Different Religions”. *Journal of Actualization of Islamic Law*,5:75-76.

The position of marriage of different religions in Indonesia is not regulated in the Law of Marriage and its amendment, but then the arrangement of marriages of different religions in Indonesia be found on the jurisprudence of Supreme Court Decision Number 1400K/Pdt/1986. There is differences in the interpretation of marriage arrangements of different religions as stipulated in the Supreme Court Decision no.1400K / Pdt / 1986 with the Constitutional Court Decision No.68 / PUU-XII / Year 2014

Marriage of different religions in Indonesia according to the Constitutional Court Decision Number 86/PUU-XII/2014 prohibited because it is not keeping the values of Divinity in the First Precept of Pancasila, contrary to the 1945 Constitution, and contrary to religious values. However, in some marriage applications of different religions in the Court by the bridegroom, the Judge did not adhere the Constitutional Court Decision Number 86/PUU-XII/2014.

## Bibliography

### Books

- Abdul Halim Berkatullah (ed). (2009). *Islamic Law Answers the Challenges of an Ever-Evolving Age*. Yogyakarta: Pustaka Siswa.
- Alyasa Abubakar. (2008). *Marriage of Muslims with Non-Muslims*. Naggroe Aceh Darusalam: Islamic Shari'ah Service.
- Jimly Ashiddiqie. (ed). (2006). *Hans Kelsen's Theory of Law*. Jakarta: Secretariat General and clerk of the Constitutional Court of the Republic of Indonesia.
- M. Anshar MK. (2015). *Marriage Law in Indonesia Crucial Issues*. Yogyakarta: Pustaka Siswa.
- Rony Hanitijo Soemitro, (1985), *Legal Research Methodology*, Jakarta, Ghalia Indonesia.
- Sirman Dahwal. (2016). *Marriage Law of Different Religions in Theory and Practice in Indonesia*. Bandung: CV. Mandar Maju.
- Soediman Kartohadiprojo. (1984). *Introduction to Law in Indonesia*, Edition-10, Jakarta: Ghalia Indonesia.
- Abdul Rahman. (2011). *Compendium of The Field of Law "Marriage Of Different Religions and Their Implications"*, Yogyakarta: National Legal Development Agency, Ministry of Law and Human Rights.

### Journal articles

- Amal Zainul Naim. (2019). "Analysis of The Verdict of Marriage Appeals of Different Religions Perspectives of Progressive Legal Theory (Comparative Study of Supreme Court Decision No. 1400K/Pdt/1986 and Number 1977K/Pdt/2017)". *Thesis*. Malang: Graduate Program of Malang State Islamic University.
- Ana Laela F. CH, Ken Ismi Rozana, and Shifa Khilwiyatul Muthi'ah. (2016). "Fikih Marriage of Different Religions as an Effort to Harmonize Religion: Study of Marriage of Different Religions in Jember". *Journal of Aqidah Science and Religious Studies*,4(1): 121.
- Dedhy Supriadi, (2013). "Marriage of Different Religions in Indonesia in Positive and Normative Legal Perspective" *Bi-Monthly Journal of Legal Pulpit*,62:53.

- Indra Lesmana, (2019). “The Position of the Outer Child of Marriage in the Concept of Indonesian Civility”. *Thesis*. Pekanbaru: Strata One Program of Riau University.
- Lyas Stiabudi. (2016). “Analysis of Marriages of Different Religions (Study of District Court Rulings Related to Marriage Permits of Different Religions)”. *Skripsi*. Semarang: Strata One Program of Semarang State University.
- Kesuma et al, (2019), Recording of Interfaith Marriages from the Perspective of Law No. 1 of 1974 concerning Marriage (Study of The Decision of The Judge of surakarta District Court) Faculty of Law, University of North Sumatera.
- M. Daud Ali, (1992). “The Attitude of the State in Realizing Legal Protection for Citizens and Marriage Between Marriages of Different Religions” *Journal of Actualization of Islamic Law*,5:75-76.
- Prasetyo Ade Witoko et al, (2019), Smuggling of Interfaith Marriage Law in Indonesia, *Postgraduate Journal of Law*, UNS, Volume VII Number 2.
- Rosa Kisworo et al, 2019, Mixed Marriage Law Problems Based on Jessica Iskandar’s Marriage Case with Ludwig Frans Willibald in the Perspective of International Civil Law, *Journal of Privat Law*, Volume VII Number 1.
- Ulil Amri. (2020).” Marriage Of Different Religions According to Positive Law and Islamic Law” *Journal of Shari’ah Media*,22(1): 60-61.
- Zainal Arifin (2019) Marriage of Different Religions, *Journal of JENTERA*, Volume 18 Number 1, March 2019.