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LEGAL PROBLEMS AND THE VIEWS OF SCHOLARS OF CHILDREN BORN FROM INTERFAITH MARRIAGES

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Abstract. The prohibition and the views of scholars interfaith marriage in Indonesia is further strengthened by the Constitutional Court Decision Number 24/PUU-XX/2022 and the issuance of the Supreme Court Circular Letter Number 2 of 2023 which has very broad implications. Not only does it affect marriage practices, but it also has a significant impact on the marriage registration system. Interfaith marriage in Indonesia also presents a number of complex legal problems for children born from such marriages. Children in these marriages often do not receive adequate legal protection because of the marriage so that they only have a civil relationship with their mother. In the legal context, children often face uncertainty regarding their legal status and legitimacy, because interfaith marriages in Indonesia are not recognized by the state. In terms of custody, if a divorce occurs, several problems arise, including to whom custody will be given. Regarding this problem, policy reform is expected because there is an urgent need for legal regulations to protect the rights of children born from interfaith marriages and provide legal justice for these children

Keywords: Interfaith Marriage, Children, Legal Status, Legal Protection.

1. PENDAHULUAN

1. 1. Latar Belakang Masalah

Marriage is a physical and spiritual relationship between a man and a woman as husband and wife with the aim of creating a happy, lasting family (household) based on God Almighty (Wahyono & Sjarief, 2015). From the definition of marriage above, it is clear that Belief in God Almighty is a very important legal element, which is the essence and spirit of national law. In Indonesia, a marriage is only considered valid if it is in accordance with religious law. Marriage is bestowed on humans as civilized beings by God, not only in accordance with the wishes of the parties, because it is based on faith in God Almighty.

The growth of religious life and religious law in national life is necessary for Indonesian legal politics based on Pancasila. In Indonesian legislation, there is a tendency for the position of religious law in national law to become stronger, as indicated by several laws and regulations, one of which is the establishment of Marriage Law Number 1 of 1974 (Marriage Law) which applies nationally (Meliala, 2015).

Constitutional Court Decision Number 24/PUU-XX/2022 which rejected the application regarding interfaith marriage in Indonesia emphasized that "Interfaith marriage is prohibited in Indonesia and has

no legal force". Furthermore, the Circular of the Supreme Court (SEMA) Number 2 of 2023 states that "To provide certainty and legal unity in adjudicating applications for registration of marriages of people of different religions and beliefs, judges must be guided by the provisions (1) a valid marriage is one that is carried out according to the laws of each religion and belief, in accordance with Article 2 paragraph 1 and Article 8 sub (f) of Law Number 1 of 1974 concerning Marriage. (2) The court does not grant an application for registration of marriages between people of different religions and beliefs".

Interfaith marriages often cause problems, especially for children born from the relationship, children do not receive legal protection because their marriage is not recognized by the state, so the result of a marriage not recognized by the state is that the child only has a civil relationship with the mother and her mother's family. In terms of identity recognition, the child's basic rights cannot be demanded from the father and this of course has an impact on the child's future.

Based on this, legal obstacles for children born from interfaith marriages often become a complex issue because children's basic rights are not fully fulfilled as regulated in Law Number 35 of 2014 concerning Child Protection and Law Number 39 of 1999 concerning Human Rights. The interests of children must be prioritized, if the marriage is not officially recognized by the state, then this will have an impact on children born from the marriage, including difficulties in recognizing identity, which will have an impact on the future of the child.

In terms of education, which is an important aspect in the development of children, it also often causes problems because the legal system in Indonesia does not clearly accommodate the needs of children born from interfaith marriages, in addition, the aspect of custody in the event of a divorce between parents of different religions also often causes conflict over determining who holds custody, which of course has a major impact on the child. The position of children is regulated in Law Number 1 of 1974 (Marriage Law) in Chapter IX Article 42 and Article 43. Article 42 of the Marriage Law states that "A legitimate child is a child born in or as a result of a legitimate marriage." Furthermore, Article 43 paragraph (1) of the Marriage Law states that "For children born outside of a legitimate marriage, they only have a civil relationship with their mother and their mother's family" (Law on Marriage, 1974). Based on the above facts, it is necessary to further examine the legal problems and legal protection of children born from interfaith marriages.

Through this research, it is hoped that there can be updates or improvements to the laws and regulations in the marriage law and other regulations related to children, so that children's rights can be fulfilled and always prioritize the interests of children. In relation to this, it is important to study this problem in more depth, which is expected to have clearer regulations related to the certainty and legal protection of children born in interfaith marriages.

2. METODOLOGI PENELITIAN

This study uses a qualitative research method with a doctrinal approach focused on legal studies related to interfaith marriages based on the Constitutional Court's decision Number 24/PUU-XX/2022 and the Supreme Court Circular Letter Number 2 of 2023. Through a literature study, the study analyzes applicable laws and regulations, legal literature, and legal norms to identify closely related problems, namely legal certainty for children born from interfaith marriages. The main objective of the study is to examine in depth the legal status, protection, and legal implications faced by children from interfaith marriages in Indonesia.



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3. HASIL DAN PEMBAHASAN

3.1 Interfaith Marriage in Indonesia

In Indonesia, the influence of religion is very large in all aspects including marriage, this can be proven by the definition of marriage in Law Number 1 of 1974 (Marriage Law). All new marriages can be said to be valid if they are in accordance with the law of their religion. This is also strengthened by Article 2 paragraph (1) of the Marriage Law, Number 1 of 1974, which states that a marriage is valid if it is carried out according to the law of each religion and its beliefs, from the explanation of Article 2 paragraph (1) of Law Number 1 of 1974 (Marriage Law) it can be concluded that marriage must be carried out according to the law of each religion and its beliefs, if not, then the marriage is invalid. It is clear that the law mandates that a marriage can only be said to be valid if it is in accordance with the law of religion and its beliefs.

Article 1 and Article 2 of the Marriage Law are further strengthened by the prohibition of marriages that are not in accordance with religious law and beliefs from the provisions of Article 8 sub (f), which regulates the prohibition of interfaith marriages, which broadly stipulates that marriage is prohibited between two people who have a relationship that is prohibited by their religion or other applicable regulations (Law on Marriage, 1974). Although the Marriage Law does not explicitly regulate interfaith marriages, according to the author, interfaith marriages have actually been regulated and can be seen in Article 1 and Article 2 of the Marriage Law, which state that interfaith marriages cannot be recognized and emphasized in Article 8 sub (f) that interfaith marriages are prohibited. Through Decision Number 24/PUU-XX-2022, the Constitutional Court in its decision stated that a valid marriage is one that is carried out according to each person's religion and beliefs.

Through its decision, the Constitutional Court rejected interfaith marriages, the decision emphasized that interfaith marriages prohibited in Indonesia. The Constitutional Court through decision Number 24/PUU-XX-2022 stated that it still adheres to its position that considering that Law Number 1 of 1974 (Marriage Law) regulates interfaith marriage and does not violate the constitution, interfaith marriage is not legally permitted in Indonesia. The Constitutional Court is very important to maintain a good Indonesian legal system. (Mauliana & Hanapi, 2023). Furthermore, through the Circular Letter of the Supreme Court (SEMA) Number 2 of 2023 concerning Instructions for Judges in Adjudicating Cases of Applications for Registration of Marriages Between People of Different Religions and Beliefs, it is stated that "To provide certainty and legal unity in adjudicating applications for registration of marriages between people of different religions and beliefs, judges must be guided by the provisions (1) a valid marriage is one that is carried out according to the laws of each religion and belief, in accordance with Article 2 paragraph 1 and Article 8 sub (f) of Law Number 1 of 1974 concerning Marriage. (2) The court does not grant an application for registration of marriages between people of different religions and beliefs" (Supreme Court, 2023).

Based on the Circular of the Supreme Court (SEMA), it is clear that interfaith marriages cannot be recognized in Indonesia, and judges are ordered not to grant their marriage applications, so that unregistered marriages have no legal force and are not recognized by the state. All religions recognized in Indonesia prohibit interfaith marriages, although some religions allow them for certain reasons and conditions. How do religions in Indonesia view interfaith marriages, will be explained as follows:

According to Islam

Based on Islamic teachings, a description of a peaceful husband and wife life will be realized if the husband and wife have the same religious beliefs, because both adhere to implementing one religious teaching, namely Islam (Dahwal, 2021). The compilation of Islamic law strictly regulates the prohibition of marriage between Muslims and non-Muslims, this provision is regulated more firmly in Article 40 letter (c) of the Compilation of Islamic Law (KHI) which regulates the prohibition of marriage between a Muslim man and a woman who is not Muslim (Supreme Court of the Republic of Indonesia, 2011). Furthermore, Article 44 of the Compilation of Islamic Law (KHI) regulates that a Muslim woman is prohibited from marrying a man who is not Muslim (Supreme Court of the Republic of Indonesia, 2011).

This prohibition has the consequence that marriages that are carried out with different religions cannot be registered at the Office of Religious Affairs (KUA) (Anshary, 2015). In Indonesia, the prohibition of marriage between Muslim women and non-Muslim men was emphasized by the issuance of a fatwa by the Indonesian Ulema Council (MUI) on June 1, 1980, which prohibited such marriages, and even did not allow all interfaith marriages (Dahwal, 2021). This fatwa is also in line with what is stated above in Article 40 letter (c) and Article 44 of the Compilation of Islamic Law (KHI). It can be concluded, based on the regulations above, it is very clear that interfaith marriages in Islam are prohibited and do not receive legal recognition so that they do not receive legal protection and have violated the rules in Islam which are also regulated in the Compilation of Islamic Law (KHI) and the fatwa of the Indonesian Ulema Council (MUI) dated June 1, 1980.

According to the Catholic

Religion Basically, the Catholic religion views marriage as a partnership between a man and a woman, which is based on God's creation for develop their offspring. The church's attitude and views on marriage in principle want marriage to be carried out with equality of faith (Dahwal, 2021). According to the Catholic religion, a valid marriage is a marriage that is confirmed, affirmed and blessed by church officials.

A marriage between a man and a woman that is carried out legally is elevated to a sacrament (Dahwal, 2017). This sacrament is given by the husband and wife themselves, namely by saying a promise to love and be faithful to each other before the faith of the church and witnesses (Dahwal, 2017). The Catholic Church generally considers that a marriage between a Catholic and a non-Catholic is not a harmonious or ideal couple (Dahwal, 2017). Canon 1086 states that a marriage between two people, one of whom has been baptized in the Catholic Church or accepted into it, while the other has not been baptized, is invalid. However, the Catholic Church in certain cases can grant dispensation for marriages between people of different religions.

Dispensation will be granted if the non-Catholic party is willing to promise, among other things, (i) to accept a Catholic marriage, (ii) not to divorce the Catholic party, (iii) not to prevent the Catholic party from practicing their faith, and (iv) to educate their children as Catholics. Conversely, the Catholic party must also promise (i) to remain faithful to the Catholic faith, and (ii) to try to baptize and educate all their children as Catholics (Canon 1125) (Dahwal, 2017). Although forced, the Bishop can grant dispensation as mentioned above. However, all views of the Catholic Church, marriage between adherents of different religions will cause various conflicts or disputes in family or household life. The conflicts that will arise are conflicts of faith, inner conflicts, conflicts of human rights towards children, psychological conflicts and confusion in children and other conflicts especially after the fire of love is no longer burning.



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Therefore, according to the Catholic religion, marriage between people of different religions should be avoided. Furthermore, from what has been explained, interfaith marriages can be carried out with the note that only conditions that cannot be avoided. The Church can permit interfaith marriages by fulfilling the requirements that have been determined by the Church. Interfaith marriages are carried out in the Church if the non-Catholic party makes a statement that he does not object to his marriage being carried out in the Church and allows his children to be educated as Catholics (Dahwal, 2017).

Furthermore, from the explanation above, it can be concluded that the Catholic religion actually prohibits its followers from carrying out interfaith marriages even though there is a dispensation for interfaith marriages because if we look again at the requirements for the dispensation, in essence it must be implemented and carried out in accordance with the teachings of the Catholic religion.

According to the Protestant

Religion Another name for Christianity is Protestantism, in Christianity (Protestantism) the term marriage is also called marriage or marriage. They consider marriage to be God's decree. This is based on the testimony of the Bible contained in Genesis 2:24, therefore a man will leave his parents and be united to his wife, and the two will become one flesh. According to Dr. J.L.Ch. Abineno (1989:1) marriage has twin aspects. On the one hand, the relationship between husband and wife is regulated and approved by law; on the other hand it is based on the regulations or decrees of God (Asmar & Ismail, 2021).

A valid marriage in Christianity (Protestantism) is a marriage that is in accordance with and meets the stages or requirements according to Christianity (Protestantism), one of which is that both the bride and groom must be Christians (Protestant). Marriages of different religions or outside Christianity (Protestantism) are considered invalid. Christianity (Protestantism) believes that marriages between people with different faiths will experience complications (Ramadhan & Purwanti, 2023).

The Indonesian Bishops' Conference (Catholic) and the Indonesian Church Association (Protestant) in their seminar on marriage between adherents of different religions held in Malang, on March 12-14, 1987 regarding interfaith marriages concluded, among others, the following: (1) they are advised to have a civil marriage in which both parties continue to adhere to their respective religions, (2) they are given special pastoral care, (3) in general the church does not bless their marriages, (however) (4) if they later repent and become Christians, their marriage can be blessed by the church, and (5) they are given instructions to change or add information to their old marriage certificates stating that they have become Christians (Dahwal, 2021).

In this decision, it can be concluded that interfaith marriages do not receive blessings from the church, because marriages can be blessed by the church if they repent and become Christians, this means that interfaith marriages if not carried out in accordance with Christianity, then their marriages are not valid according to religion.

According to Hinduism

In Hindu law, the requirements for a valid marriage are as follows (Dahwal, 2021). (1) A marriage according to Hindu law is valid if it is carried out according to the provisions of Hindu law. (2) To validate a marriage according to Hindu law, it must be carried out by a priest or Pinandita. (3) A marriage can only be validated according to Hindu law. This means that if one of the bride and groom is not yet Hindu, the marriage cannot be validated. To validate someone's conversion to Hinduism, they must be Disudhiwadani or disudhikan (a religious ceremony to officially embrace Hinduism).

According to Hinduism, a marriage is considered valid if it is carried out in the presence of a brahmana, priest, or other religious leader who is authorized to perform the act. Hindu law also requires that a marriage be carried out according to Hindu law, which means that the prospective bride and groom must be Hindu (Hadikusuma, 2007). Brahmana (Priests) will only legalize a marriage if the non-Hindu party has been sudhida (legalized) as a Hindu and has signed the Sudhiwadani (declaration letter of conversion to Hinduism). If both the bride and groom or one of them are not Hindu, then the marriage cannot take place (Dahwal, 2021). From the explanation above, it can be concluded that Hinduism clearly prohibits its followers from carrying out interfaith marriages.

According to Buddhism

In practice, if a Buddhist wants to marry a non-Buddhist, then one of the requirements that must be met is that both prospective brides and grooms must be of the same Dharma (of the same religion). Buddhism prohibits its followers from having mixed marriages of different religions. To achieve this goal, the husband and wife must have Saddhavanta, meaning the same equally have a firm belief in Sang Tri Ratna (Tratna) (Hadikusuma, 2007). In addition, each should be obliged to carry out the precepts, be generous and wise. If one party has a different religion, they must be given a religious certificate, for the purpose of carrying out the marriage at the Civil Registry Office. The provision of the religious certificate must be accompanied by a promise from the prospective bride and groom to continue to uphold the teachings of Buddhism. The provision of this religious certificate is intended to protect both prospective bride and groom to live together in a marriage bond that is justified according to the teachings of Buddhism and the law (Hadikusuma, 2007). From the explanation above, it can be concluded that Buddhism actually prohibits its followers from carrying out interfaith marriages because it requires both prospective bride and groom to be of the same Dharma (same religion) and must have Saddhavanta, which means that they both have a firm belief in Sang Tri Ratna (Tratna).

According to Confucianism

Interfaith marriage from the perspective of Confucianism, where in the teachings of Confucianism, as explained in the statement at the Constitutional Court on November 24, 2015 with case register No. 68/PUU-XII/2014, marriage between a man and a woman is considered the will of Tian (God) (Dewi, 2023).

According to Confucian principles, marriage should not be hindered by differences of opinion, social status, ethnicity, culture, socio-political background, or religion. Therefore, as long as they adhere to Confucian norms, interfaith marriage is permitted within the framework of Confucian beliefs. The phrase "Li Yuan", which describes a marriage between two people who follow Confucian principles, is used in the Confucian tradition. This means that both the bride and groom must adhere to Confucian principles in the marriage. Therefore, marriage is considered more suitable if both partners are Confucian. This is in line with the Confucian ideal of respecting the values and teachings of Confucianism. It is important to remember that, regardless of their personal beliefs about interfaith unity, Confucians generally accept diversity and encourage family harmony. This often allows marriages between Confucians and non-Confucians while still upholding the customs and cultural values of Confucianism (Dewi, 2023).

As previously explained, Confucianism allows interfaith marriages while maintaining the customs and values of Confucian society. Therefore, it can be said that Confucianism actually prohibits its adherents from holding interfaith marriages because according to Confucian tradition, a marriage is only valid between two people who adhere to the same belief, thus requiring the participation of both the bride and groom.

INTERFAITH MARRIAGE AFTER CONSTITUTIONAL COURT DECISION NUMBER 24/PUU-XX/2022



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Constitutional Court Decision Number 24/PUU-XX-2022 can be understood as a continuation and strengthening of the legal arguments of the previous decision. The Constitutional Court in its decision further emphasized the prohibition on interfaith marriage, strengthening the principle that marriage must be carried out in the same religion and belief. Referring to Constitutional Court Decision Number 68/PUU/XXI/2014 which states that a valid marriage is a marriage that is carried out in accordance with the laws of each religion, interfaith marriages according to positive Indonesian law cannot be carried out. This means that a marriage can be legalized if both partners who are going to get married have the same religion or belief, this also refers to Article 2 Paragraph (1) of Law Number 1 of 1974 (Marriage Law) (Constitutional Court Decision, 2014).

The Constitutional Court Decisions Number 68/PUU/XXI/2014 and Number 24/PUU-XX-2022 are closely related to interpreting the concept of marriage in Indonesia. These two decisions consistently affirm the principle that a valid marriage is a marriage that is carried out in accordance with the laws of the religion and beliefs of each party and also show the consistency of the judicial institution in protecting religious values and maintaining the legal construction of marriage that has been in effect in Indonesia. Decision Number 68/PUU/XXI/2014 previously provided a fundamental interpretation of Article 2 of the Marriage Law, this emphasized the meaning that the validity of a marriage is determined by compliance with religious norms.

The law provides guidelines, but its implementation requires flexibility and consideration of the best interests of the child. Parents have the primary responsibility to ensure that their children's rights are met, even if the bond between the child and the parents is not severed in the event of a divorce. Article 9 of Law Number 4 of 1979 concerning Child Welfare states that "Parents are primarily responsible for the realization of the child's welfare, both spiritually, physically and socially". Children in this situation are expected to grow and develop optimally, regardless of the complexity of the situation they face. The parties should comply with the regulations in force in Indonesia so that the legal status of the child is clear and does not harm the child born from the marriage. Article 2 of Law Number 4 of 1979 concerning Child Welfare states that "Children have the right to welfare, care, upbringing and guidance based on affection, both in their families and in special care to grow and develop properly" (Law on Child Welfare, 1974) After a divorce, the primary concern should be on the emotional well-being and development of the child.

A custody agreement does not only cover material aspects, such as finances and education, but also spiritual and social aspects. Both parents need to ensure that the child continues to feel loved, safe, and connected to both parents. parents, even though they have different beliefs. Divorce should not reduce the rights and quality of child care. Both parents have a moral and legal obligation to continue to provide the best for their children, regardless of the differences in beliefs that exist

4. KESIMPULAN

The prohibition of interfaith marriage in Indonesia is emphasized in the applicable laws and regulations and is further strengthened by the Constitutional Court decision Number 24/PUU-XX-2022.

Interfaith marriages in Indonesia that are not legally recognized and cannot be registered have very significant consequences, especially for children born from such relationships. This has complex legal consequences for children born from interfaith marriages. Through the Circular of the Supreme Court Number 2 of 2023 which prohibits the registration of interfaith marriages in Indonesia, it has a direct impact on the legal status of children born from such marriages. Children will have difficulty accessing their various basic rights. The rights of children born from interfaith marriages must still be upheld, both in terms of the child's legal status, the child's civil rights, the issue of religious identity and the child's rights that arise when there is a divorce between parents in an interfaith marriage. It is important to provide an understanding to the public that this prohibition is not just a legal rule, but also reflects respect for children's rights.

A more inclusive legal policy is needed that is oriented towards the best interests of children, so that it can be a solution to overcome the problems experienced by children from interfaith marriages. To overcome this, joint efforts are needed from various parties to formulate better solutions by always prioritizing the best interests of children. Thus, children in interfaith marriages can grow and develop well without having to face discrimination and social stigma

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