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Analysis of Interfaith Marriage Law in the Marriage Law and Law Number 23 of 2006 concerning Population Administration Perspective

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ABSTRACT

This study aims to analyze the nature of interfaith mixed marriage after the enactment of Law Number 1 of 1974 and the legality of interfaith marriage in the perspective of the Marriage Law and Based on Law Number 23 of 2006 concerning Population Administration. The research method used in this study is normative legal research as a process to find legal rules, legal principles, and legal doctrines to answer the legal issues faced. Scientific logic in normative legal research is built based on scientific discipline and the workings of normative legal science, namely legal science whose object is law itself. The results of this study show that the nature of interfaith mixed marriage after the enactment of Law Number 1 of 1974 has given rise to various interpretations. There are at least three interpretations of the provision. First, the interpretation that interfaith marriage is a violation of UUP article 2 paragraph 1 jo article 8 f, which states that marriage is valid if it is carried out according to the laws of each religion and belief. In the explanation of the law, it is affirmed that with the formulation of article 2 paragraph 1 there is no longer any marriage outside the law of each religion and belief. Second, interfaith marriages are legal and can take place because they are included in mixed marriages. The reason is Article 57 on mixed marriages which focuses on two people who in Indonesia are subject to different laws. Third, interfaith marriage is not regulated at all in Law Number 1 of 1974 concerning Marriage, so based on article 66 of the Law, the issue of interfaith marriage can be referred to the mixed marriage regulation, because it has not been regulated in Law Number 1 of 1974 concerning Marriage.

INTRODUCTION

Marriage is already a generally accepted sunnatullâh and behavior of God's creatures, so that with marriage life in the realm of this world can develop to enliven this vast realm from generation to generation. Marriage already exists in even simple societies, because it is maintained by community members and religious and traditional leaders. Society has basically established certain ways to be able to carry out marriage.

Law No. 1 of 1974 places religion as a very important element in marriage. A marriage is valid if the terms or conditions of the laws of its respective religions and beliefs are met. This is contained in Article 2 paragraph (1) of Law Number 1 of 1974 which reads: "Marriage is valid if it is carried out according to the laws of each religion and belief". It is further explained that what is meant by the law of each religion and belief includes statutory provisions that apply to religious groups and beliefs as long as they do not contradict or are not otherwise specified in this law.

These rules continue to thrive in societies that have governmental power and within a country. Marriage is inseparable from the influence of culture and the environment in which the society is located. It can be influenced by the knowledge, experience, beliefs and religion of the community concerned. Marriage (commonly called marriage), is a method chosen by God to maintain human survival on earth with the aim of maintaining the honor and dignity of human glory.

From the formulation of Article 2 paragraph (1) of the Marriage Law, it can also be seen that if a marriage is carried out not according to the laws of their respective religions and beliefs or there is one prohibition on marriage that is prohibited, then the marriage is invalid. In addition, validity according to the laws of each religion and belief, marriage registration is also an important matter.

The marriage registration order is contained in Article 2 paragraph (2) of Law Number 1 of 1974 which reads: "Every marriage is recorded according to the applicable laws and regulations". Marriage registration is an administrative action as evidence of marriage and is important for the consequences of marriage, for example regarding the status of children and joint property.

Marriage registration also aims to make the event of marriage clear, both for the person concerned and for other parties, because it can be read in an official letter and also contained in a list specifically provided for it, so that at any time it can be used when necessary and can be used as authentic evidence, and with that evidence letter can be justified or prevented another act.

Arrangements regarding interfaith marriage in different countries vary widely. On the one hand there are countries that allow interfaith marriage, and on the other hand there are countries that prohibit, either expressly or unequivocally, interfaith marriage. In the Indonesian legal conception, the issue of marriage has received its legal regulation nationally, namely Law Number 1 of 1974 concerning Marriage (Marriage Law). Article 2 of the Marriage Law states that marriage is valid if it is performed according to the laws of each religion and belief.

Regarding marriage registration, it is also regulated in Law Number 23 of 2006 concerning Population Administration. Registration can be done at the Civil Registration Office for non-Muslims, and for Muslims marriage registration can be done at the Office of Religious Affairs. However, Article 35 letter a of the Law reads "Marriage determined by the Court". This means that there are indications that interfaith marriage is allowed by the State Administration Law. In this case, if the marriage is not successfully registered at the religious affairs office or civil registration office, it can apply and be determined by the District Court. As the absence of interfaith marriage regulation norms in the Marriage Law creates a legal vacuum.

The above provision means that the framer of the law left it to each of his religious leaders to regulate the issue of interfaith marriage. In addition to problems related to state recognition or religious recognition of marriage, couples who perform such marriages often face other problems in the future, especially for interfaith marriages. Usually to prevent interfaith marriages that are still not well accepted by society, usually one of the parties of the couple converts or follows the religion of one of the parties so that the marriage is legalized based on the religion he chooses. The basis of religious law in carrying out a marriage is important in Law No. 1 of 1974, so that the determination of whether or not marriage can take place depends on religious provisions. This also means that religious law states that marriage is not permissible, nor is it permissible under state law. So in different marriages the religion that becomes permissible or not depends on religious provisions.

Interfaith marriage for each party involves creeds and laws that are important to a person. This means that two different regulations regarding the terms and procedures for performing

marriage are involved in accordance with their respective religious laws. Because it is contrary to applicable law in Indonesia. But it turns out that interfaith marriages still occur and will probably continue to occur as a result of social interaction among all pluralist Indonesian citizens. The reality that exists in the life of a pluralistic society, that marriages of different religions occur as an undeniable thing. The aim to be achieved in this study is to analyze whether interfaith marriage in Indonesia can be interpreted as mixed marriage after the enactment of Law Number 1 of 1974. To examine the Legality of Interfaith Marriage in the Perspective of the Marriage Law and Based on Law Number 23 of 2006 concerning Population Administration.

METHOD

This type of research is normative legal research, that is, the problems that have been formulated above will be answered with a doctrinal idea that law can be seen as a norm or dass sollen). The approach taken is based on the main legal material by examining theories, concepts, and laws and regulations (law in books) and legal systematics or written law related to this research. This approach is also known as the literature approach, namely by studying books, laws and regulations and other documents related to this research. so that researchers, with legal research Legal studies on Interfaith Marriage, researchers emphasize this study from a juridical aspect, namely based on positive laws in force in the Indonesian state.

RESULTS AND DISCUSSION

The Nature of Inter-Religious Mixed Marriage After the Enactment of Law No. 1 of 1974

Every human being in society will be interdependent with other humans. This is in accordance with the nature and position of humans as social creatures who like to live in groups or make friends with other humans. Living together is one of the means to meet the needs of human life, both physical and spiritual needs. Similarly, for a man and a woman who have reached a certain age, they desire to live together in a household.

Living together in a house between a man and a woman as a married couple and have fulfilled the provisions of the law, commonly referred to as marriage. The relationship that occurs in a marriage is essentially a legal relationship, but the legal relationship that occurs in marriage is different from the legal relationship in the civil law field in general, because the legal relationship in the civil law field generally (eg buying and selling, leasing, etc.), is a legal relationship that is temporary and more intended for economic interests. The legal relationship in marriage is not temporary, but lasts forever (eternal) and aims to create happiness, besides that it also has worship value, because it must be based on the One True Godhead.

According to Suwarti in her dissertation entitled, "The legality of sirri marriage in an effort to reform marriage law in Indonesia". Elaborating that "the validity of marriage is the domain of religious law while speaking of the legality of marriage itself is the domain of state law, the state only regulates so that every marriage performed by its citizens can be administratively orderly and have legal certainty".

Marriages usually take place only between people living in one community, but due to advances in information, communication and transfortation technology, it is also common for marriages between people of different nationalities. Interactions that occur between individuals of different ethnicities and nationalities in various fields, will certainly give birth to legal relationships, which among others are through marriage called mixed marriage.

Mixed marriages will have their own consequences, namelythe enactment of the regulations of each legal system that apply to each party. Especially in Indonesia, the issue of mixed marriage is regulated in Article 57 to Article 62 Article 1 of Law No. 1 of 1974 concerning Marriage (hereinafter abbreviated as Law No. 1 of 1974).

Based on Law No. 1 of 1974, what is meant by mixed marriage is only marriage between two people who in Indonesia are subject to different laws, due to differences in nationality and one of the parties is an Indonesian citizen.

Juridical problems can occur in mixed marriages, especially related to determining citizenship status, be it the citizenship status of the husband or wife, or the citizenship status of children. The issue of citizenship status due to mixed marriage will certainly have juridical consequences on marital property, and therefore this issue is interesting to analyze which aims to describe the legal status of citizenship of husband / wife and children due to mixed marriage

A mixed marriage cannot take place until it has been proven that the conditions prescribed under the law applicable to each party have been met. To prove that these conditions have been fulfilled and there is no obstacle to consummating the marriage, each prospective bride and groom by an official who according to their respective laws is authorized to record the marriage is given a certificate that the conditions have been met.

If according to the law that applies to non-Indonesian citizens allows, then the certificate mentioned above can be made since the enactment of Law of the Republic of Indonesia No. 1 of 1974, then in the field of marriage law legal unification has been created, but it does not rule out the possibility of mixed marriages between different citizens. A mixed marriage is a marriage between two people who in Indonesia are subject to different laws, due to differences in nationality and one of the parties is an Indonesian citizen. The first thing to note is that the formulation of marriage according to Law No. 1 of 1974 is limited to marriages between Indonesian citizens and foreign nationals, while marriages between Indonesian citizens who are subject to different religious laws are not mixed marriages.

In the opinion of most jurists and jurisprudence, mixed marriage is a marriage between a man and a woman, each of whom is generally subject to different laws. Taking into account the provisions of Article 57 of the Law of the Republic of Indonesia No. 1 of 1974, a mixed marriage is a marriage between two people who in Indonesia are subject to different laws due to differences in nationality and one of the married couples is an Indonesian citizen. Thus, it can be said that mixed marriage according to Law No. 1 of 1974 is an international mixed marriage. In connection with the issue of nationality differences, based on Article 58 of Law No. 1 of 1974, people who enter into such mixed marriages can obtain citizenship from a husband or wife, and can lose their citizenship, according to the methods prescribed in the law on citizenship (now Law No. 12 of 2006 concerning Citizenship of the Republic of Indonesia.

Mixed marriages give rise to civil relationships that are part of the scope of private international law, because in mixed marriages contain foreign elements, that is, there are two different nationalities. It is this foreign element that makes the relationship international so that it gives rise to private international law relations.

This mixed marriage will have its own consequences, namely the enactment of regulations from each legal system that applies to each party involved. Prior to the enactment of Law No. 1 of 1974, then based on GHR (S. 1898 No. 158), the wife followed the legal status of the husband and thus the wife followed the legal status of the husband's citizenship. It is stated in Article 2 of the GHR that a woman (wife) who enters into a mixed marriage during the marriage has not broken up, the woman (wife) is subject to the laws applicable to her husband both public law and civil law In private international law, there are known to be 2 (two) conceptions regarding the status of these personnel, namely: 23

1. Broad conception, namely:

In the field of individual law, such as the authority to have legal rights in general and the ability to perform legal acts;

In family law, as well as in matters of guardianship and power; and Inheritance in the broadest sense.

2. Narrow conception,

All that is included in the broad conception of personnel status, except regarding inheritance. From these two conceptions (both broad and narrow), marriage is also included as a personnel status. The issue is that the law must be used against the status of personnel in connection with legal events that fall into private international law relations.

Taking into account legal concepts in private international law, 2 (two) streams or principles of law are known to apply to the status of these personnel, namely:

1. The principle of personality, which determines that the personnel status of a person, whether an Indonesian citizen or a foreign national, is determined by his or her national law. Thus, wherever a person is, his national law applies.
2. The principle of territoriality, which determines that the law applicable to the status of a person's personnel is the law in which the person is located or domiciled. In relation to the applicable principles, the principles adopted in Indonesia are based on Article 16 Algemene Bepalingen (AB), which specifies that for residents of the Dutch East Indies (Indonesian citizens), laws and regulations regarding a person's status and authority still apply to them if they are abroad. This provision applies according to the status of personnel which includes:

1. Individual law, including family law and marriage.
2. Rules regarding non-fixed objects.

Based on these provisions, it can be seen that private international law in Indonesia adheres to the principle of personality on the status of personnel. Thus, for Indonesian citizens wherever they are, the status of personnel still applies to the Indonesian National Law. This principle of nationality in fact applies by analogy to foreigners residing in Indonesian territory. This is a fixed stance of jurisprudence. The jurisprudence that can be put forward as an example, namely:

The decision of Raad van Justitie (RvJ) in Medan, dated October 8, 1925, which accepted the law of the Japanese residing in Indonesia, who wanted to ask for a file without the help of her husband

The Hoogerchtshof ruling, dated June 25, 1936, had used the Chinese marital property law for married husbands and wives in China in 1910.

Regarding citizenship status in mixed marriages according to Indonesia's current positive law refers to Law No. 12 of 2006. Basically, this law places the position of men and women based on the principle of equality, that both men and women, can lose citizenship status as Indonesian citizens if they marry foreign nationals. This is in accordance with Law No. 1 of 1974.

Mixed marriage does not in itself cause the wife or husband to be subject to the citizenship law of the husband or wife, because Article 58 of Law No. 1 of 1974 states that for people of different nationalities who perform mixed marriages, can obtain citizenship from their husband or wife and can also lose their citizenship according to the methods specified in the applicable citizenship law.

Based on Article 26 paragraphs (1) and (2) of Law No. 12 of 2006, an Indonesian citizen who marries a foreign national can lose Indonesian citizenship, if according to the law of the foreign national husband's home country it is determined that the husband or wife follows the nationality of the husband or wife. Meanwhile, based on paragraph (3) it is also determined that a husband or wife who is an Indonesian citizen can submit a statement letter regarding his desire to remain an Indonesian citizen, if indeed this does not cause dual citizenship.

Based on Article 19 of Law No. 12 of 2006, a foreign national who is married to an Indonesian citizen, can also submit a statement to become an Indonesian citizen if the person concerned has resided in the territory of the Republic of Indonesia for at least 5 (five) consecutive years or at least 10 (ten) non-consecutive years, unless the acquisition of citizenship results in dual citizenship. Thus, citizenship status to become an Indonesian citizen due to marriage does not apply immediately, but is alternative, meaning that it can be used or not by the foreign national concerned.

In accordance with the provisions contained in Law No. 1 of 1974 and Law No. 12 of 2006, it can be said that people who engage in mixed marriages have the right to freely determine their attitude to choose their nationality. The existence of freedom for the parties is a matter of determining their nationality raises the possibility of difficulties to determine the law that must be used in the event of a legal event, because based on Article 59 paragraph (1) of Law No. 1 of 1974 it is determined that citizenship obtained as a result of mixed marriage and as a result of the breakup of marriage determines the law that applies to them both regarding public law and civil law.

One of the difficulties that can occur in relation to citizenship status due to mixed marriage, where one party (husband or wife) retains his original citizenship status is related to determining the citizenship status of his child. Law No. 1 of 1974 does not expressly regulate the citizenship status of children whose parents differ in nationality. However, based on Article 4 of Law No. 12 of 2006 it is determined that in a marriage in which one party (husband or wife) is an Indonesian citizen and the other party (wife or husband) is a foreign citizen, the child has the status of an Indonesian citizen.

Based on Article 6 of Law No. 12 of 2006, if there is a difference in the citizenship status of husband and wife in a marriage, it can happen that the child has dual citizenship status, but after the child reaches the age of 18 (eighteen) years or is married, the child must declare choosing one of the nationalities. This declaration to choose nationality is submitted within no later than 3 (three) years after the child turns 18 (eighteen) years old or married.

Prior to the enactment of Law No. 1 of 1974, the issue of mixed marriage was regulated in the GHR (Regeling op de Gemengde Huwelijken) Staatsblad 1898 Number 158, and based on the GHR that mixed marriage is marriage between people who in Indonesia are subject to different laws. Thus, those that include mixed marriages are:

1. International marriage;
2. intermarriage;
3. Intermarriage between places (between customs); and
4. Interfaith marriage.

Based on the provisions above, the author can conclude that one of the categories of mixed marriage is interfaith marriage which is the focus of this study. The plurality of religions and streams of belief in Indonesia can have implications for marriages between followers of religions and streams of belief. Interfaith marriage is not new and has been going on for a long time for Indonesia's multicultural society. However, this does not mean that cases of interfaith marriage do not cause problems, even tend to always reap controversy among the public.

In fact, Indonesia does not yet have an explicit legal umbrella regulating the issue of interfaith marriage which is very complex. So far, interfaith marriage couples have to fight more, both through legal and illegal efforts so that their marriages get legality in Indonesia. Various efforts that are often taken by interfaith marriage couples are to marry twice with the provisions of each party's religion, for example in the morning to hold a contract according to Islamic law adopted by one bride, then on the same day also hold a marriage blessing in the church according to Christian religious law adopted by the other bride. However, this effort also raises the question of which marriages are considered valid. Another way is that in the meantime one party pretends to convert, but this is actually also prohibited by any religion because it is considered to be playing religion. The last effort that is also widely taken is to carry out weddings abroad as many artists do in Indonesia. However, this effort also caused controversy because it was considered legal smuggling. The large number of interfaith marriage phenomena in Indonesia has resulted in the need for explicit regulation related to the issue so that in the future there will no longer be a vacuum or legal bias that causes confusion in society.

Positive law in Indonesia has provided a legal umbrella regarding marriage which is manifested in the existence of Law No. 1 of 1974 concerning Marriage jo. Government Regulation No. 9 of 1975.

This means that a marriage can be categorized as a valid marriage if it is carried out according to the laws of each religion and belief of the couple who carried out the marriage. Thus, the determination of whether or not marriage is permissible depends on religious provisions, because the basis of religious law in carrying out marriage is very important in Law Number 1 of 1974. If religious law declares a marriage invalid, so is the law of the country that the marriage is also invalid.

However, since the enactment of Law Number 23 of 2006 concerning Population Administration, regulations related to interfaith marriage have occurred a legal conflict. The existence of Article 35 letter a of the Population Administration Law has opened up opportunities for the determination of interfaith marriages which clearly contradict Article 2 of the Marriage Law

which implicitly stipulates that interfaith marriages are invalid in the eyes of religion and the state. The logical consequence of this juridical conflict is that there is an opportunity for disparity for judges in determining applications for interfaith marriage. Regarding this phenomenon, judges have different views, some refuse to grant applications for the determination of interfaith marriage, but on the other hand there are also those who grant requests for the determination of interfaith marriage. If this multi-interpretation problem continues to be allowed, it will cause legal uncertainty in society. Seeing the urgency of this problem, there needs to be a more in-depth discussion.

Interfaith Marriage According to Islamic Law

From ancient times to the present, there is no known explicit definition of the phrase interfaith marriage in classical literature and there are no clear restrictions on its meaning. Discussions that have a correlation with these issues are usually included in discussions related to forbidden marriage or categories of women who are haram to marry, namely:

A. Az-zawaj bi al-kitabiyat; Marriage to women of the Book is marriage to Jewish and Christian women
B. Az-zawaj bi al-musyrikat; Marriage with polytheistic women
C. Az-zawaj bi ghair al-muslimah; Marriage with a non-Muslim.

However, Islamic treatises teach that if a polytheist has believed, Muslims are allowed to marry him. Because of the fact that marriage is one of the mediums of lifelong worship and da'wah calls people to go to the right path in accordance with the teachings derived from the Qur'an and Hadith. Through marriage and with the process of emotional approach, it is hoped that the believer will get guidance and teachings from his partner who first embraced Islam, so that in the future he is expected to understand Islam as a whole. In classical fiqh literature, interfaith marriage can be divided into three categories, namely:

Marriage between a Muslim man and a polytheistic woman;

Scholars agree that a Muslim man is forbidden to marry a polytheistic woman.

Based on the interpretation of Ath-Thabari, this verse contains a prohibition for Muslims to marry polytheistic women (pagan pagan women). And when there was a marriage, God commanded them to divorce. Similarly, a Muslim man is forbidden to maintain his marriage with a polytheist woman who does not join the migration with her husband. Indeed, his marriage bond had been broken due to kufr, because Islam did not allow marrying a polytheist woman.

Marriage between a Muslim man and a woman of the Book;

Most scholars who punish the haram of marriage base their decisions on consideration:

a. Based on the Shafi'i School, which is the largest school adopted by the Indonesian people, argues that the category of people of the book who can be married must be "min qablikum", namely the ancestors of the people of the book before the apostolic period of the Prophet Muhammad SAW. Based on this criterion, Christians and Jews who still exist today cannot be said to be pure book experts because they have passed the apostolic period and have encountered Islamic teachings brought by the Prophet Muhammad SAW. In addition, it is now there were no pure People of the Book (whose original books had not changed at all) and were truly adhering to divine religion and Muhsonate women of the Book.

b. Based on the study of the Indonesian Ulema Council and facts on the ground that show that interfaith marriage causes mafsadat that far outweigh the benefits. Among them, the non-fulfillment of the duties and objectives to preserve the religion and its descendants; the mission of da'wah and learning through marriage did not work effectively; And ironically, more and more couples are converting, especially the children of these marriages.

c. Based on the opinion that the people of the book (Jews and Christians) today can be categorized as polytheists. Because in the doctrine and practice of Jewish and Christian worship clearly contains elements of shirk (trinity), where Jews consider Uzair the son of God and cult the Haikal of the Prophet Solomon, while Christians consider Isa Al-Masih as the son of God and cult his mother Maryam.

Marriage between a Muslim woman and a non-Muslim man (both polytheists and people of the book)

The scholars agreed that the marriage was haram by Islam, whether the prospective husband was a member of the book (Jews and Christians) or followers of other religions that had books such as Hinduism and Buddhism or other believers. It is also based on QS. Al-Baqarah (2) verse 221,

Furthermore, the Indonesian Ulema Council as a community organization that has always been a reference for solutions to every problem of Muslims, in the VII MUI National Conference on 26-29 July 2005 in Jakarta decided and determined that:

1) Interfaith marriages are haram and invalid;

2) The marriage of a Muslim man to a woman of the Book according to qaul mu'tamad is haram and invalid.

Interfaith Marriage According to Positive Law in Indonesia

The juridical basis of marriage in Indonesia is contained in Law Number 1 of 1974 concerning Marriage and Presidential Instruction Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law. However, Law Number 1 of 1974 has not clearly and concretely regulated interfaith marriage, in the sense that there is no explicit phrase regulating, legalizing, or prohibiting interfaith marriage. In addition, Law Number 1 of 1974 adheres to a system of verwijzing norms on the laws of their respective religions and beliefs. Marriage as one of the legal acts will certainly also cause complex legal consequences, so related to the validity or absence of legal acts must be considered carefully. Article 2 of Law Number 1 of 1974 concerning Marriage states the legal requirements for marriage, namely:

(1) Marriage is valid if it is performed according to the laws of each religion and belief.

(2) Every marriage is recorded according to applicable laws and regulations.

Based on the formulation of Article 2 paragraph (1), it can be concluded a contrario that the marriage held is not in accordance with the laws of each religion and belief of the bride and groom, it can be said that the marriage is invalid. While in Indonesia, six recognized religions have their own regulations and tend to strictly prohibit the practice of interfaith marriage. Islamic law clearly opposes interfaith marriage, even if it is enforced and is commonly known in society as "adultery for life." Christianity/Protestantism basically forbids its followers to carry out interfaith marriages, because in Christian doctrine, the purpose of marriage is to achieve happiness between husband, wife, and children within the scope of an eternal and eternal home.

Catholic law prohibits interfaith marriage unless authorized by the church under certain conditions. Buddhist law does not regulate interfaith marriage and returns to local customs, while Hinduism strictly forbids interfaith marriage. In the Explanation of Article 2 paragraph (1) of the Marriage Law, it is also reaffirmed that with the formulation in Article 2 paragraph (1), there is no marriage outside the law of each religion and belief. The enactment of Article 2 of the Marriage Law must be interpreted cumulatively, meaning that the components in Article 2 paragraph (1) and Article 2 paragraph (2) are parts that cannot be separated from each other. Thus, it can be concluded that although a marriage has been carried out legally based on religious law, but if it has not been registered with the competent agency, either the Office of Religious Affairs for Muslims or the Civil Registration Office for non-Muslims, then the marriage has not been recognized as valid by the state.

Prior to the enactment of the Marriage Law No. 1 of 1974, interfaith marriage was first regulated in the Regeling op de Gemengde Huwelijken (GHR) Koninklijk Besluit van 29 December 1896 No.23, Staatblad 1898 No. 158, which is the Mixed Marriage Regulation (PPC). In the PPC issued specifically by the Dutch Colonial Government, there are several provisions regarding mixed marriage, one of which is in Article 7 paragraph (2) which stipulates that:

Differences in religion, class, population or origin cannot be an obstacle to marriage.

However, with the existence of the Marriage Law No. 1 of 1974, the legality of mixed marriage as referred to in PPC S. 1898 No. 158 above, became revoked and does not apply in

the legal system currently in force in Indonesia. Mixed marriage legalized by Marriage Law Number 1 of 1974 is only found in Article 57, namely:

What is meant by mixed marriage in this Law is a marriage between two people who in Indonesia are subject to different laws, due to differences in nationality and one of the parties is an Indonesian citizen.

Thus, the author can conclude that, the factor of different religions is no longer included in the rules of mixed marriage under the Marriage Law. But mixed marriages are marriages that occur between Indonesian citizens and foreigners. In contrast to the Marriage Law Number 1 of 1974 concerning Marriage, several articles in the Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law actually dare to make new breakthroughs to regulate the issue of interfaith marriage, namely:

1. Article 4

Marriage is valid, if it is carried out according to Islamic law in accordance with article 2 paragraph (1) of Law No. 1 of 1974 concerning Marriage

2. Article 40 letter c

It is forbidden to enter into a marriage between a man and a woman due to certain circumstances:

a. Because the woman concerned is still bound by one marriage with another man;
b. A woman who is still in the period of iddah with another man;
c. A woman who is not Muslim.

This Article is closely related to Article 18 which provides:

For prospective husbands and prospective wives who will hold marriages there are no obstacles to marriage as stipulated in chapter VI.

3. Article 44:

A Muslim woman is forbidden to marry a man who is not Muslim.

4. Article 61:

No sekufu cannot be used as a reason to prevent marriage, unless it is not sekufu because of religious differences or ikhtilaafu al dien.

Article 61 is a preventive measure for marriage that is proposed before marriage occurs, so this article has no legal consequences for the validity of marriage because there has not been a marriage contract. Prevention shall be submitted to the Religious Court in the jurisdiction where the marriage will take place by notifying the local VAT.

5. Article 116 letter h :

Divorce can occur for reasons or reasons:

Conversion or apostasy that causes disharmony in the household.

Seeing the "lag" of the Marriage Law in regulating the issue of interfaith marriage compared to the Compilation of Islamic Law, the author argues that there is a need for improvement efforts related to interfaith marriage in Law Number 1 of 1974 concerning Marriage. Because although the Compilation of Islamic Law has regulated interfaith marriages, the next problem is that the Compilation of Islamic Law (KHI) is only contained in the form of a Presidential Instruction, and not a Law or its derivatives, so it cannot be included in the hierarchy of laws and regulations as stipulated in Article 7 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations. So in order to have more binding power, the Marriage Law should be amended. Especially in Article 8 of the Marriage Law which regulates the prohibition of marriage in order to add interfaith marriage as a prohibited marriage. Because until now Article 8 letter f of the Marriage Law only implicitly states that:

Marriage is prohibited between two people who have a relationship that, by their religion or other applicable regulations, is prohibited from marrying.

According to the authors, differences in beliefs can occur before, during, and after marriage. Religious differences before marriage that continue during marriage will result in a debate over whether or not the marriage is valid. While religious differences that arise during the formation and running of a household, can cause controversy on the issue of annulment of the marriage concerned.

Although at first glance it seems that the UUP relatively clearly rejects the ability of people of different religions to hold marriages, because it is considered valid if the bride and groom are subject to a law where there is no prohibition on marriage in their religion, this does not mean that they are free from problems. Instead, it invites various interpretations.

There are at least three interpretations of the provision. First, the interpretation that interfaith marriage is a violation of UUP article 2 paragraph 1 jo article 8 f, which states that marriage is valid if it is carried out according to the laws of each religion and belief. In the explanation of the law, it is affirmed that with the formulation of article 2 paragraph 1 there is no longer any marriage outside the law of each religion and belief.

Second, interfaith marriages are legal and can take place because they are included in mixed marriages. The reason is Article 57 on mixed marriages which focuses on two people who in Indonesia are subject to different laws. This means this Article regulates marriage between two people of different nationalities, also regulates two people of different religions.

Third, interfaith marriage is not regulated at all in Law Number 1 of 1974 concerning Marriage, so based on article 66 of the Law, the issue of interfaith marriage can be referred to the mixed marriage regulation, because it has not been regulated in Law Number 1 of 1974 concerning Marriage.

Legality of Interfaith Marriage in the Perspective of the Marriage Law and Based on Law Number 23 of 2006 concerning Population Administration

Marriage is one form of manifestation of constitutional rights of citizens that must be respected and protected by everyone in the orderly life of society, nation and state. In the constitutional right of marriage is contained the obligation of respect for the constitutional rights of others. Therefore, to avoid conflicts in the exercise of constitutional rights, it is necessary to regulate the implementation of constitutional rights carried out by the State.

Marriage is also a legal event that is always closely related to various rules that apply in society. Indonesia as a formal and material legal State has the consequence that the State is obliged to protect all its citizens with a law, especially to protect and guarantee human rights for the welfare of life together. Therefore

In 1974 Law Number 1 of 1974 concerning Marriage was formed, which was expected to accommodate various principles and provide a legal basis in the field of marriage that previously applied to various groups in society.

The establishment of the Marriage Law is an effort to create a codification and unification of laws that apply in society, especially those related to marriage, so as to create justice and legal certainty. So with the establishment of the Marriage Law to regulate the actions of its citizens, especially in the field of marriage, it is very appropriate for the State of Indonesia as a legal State that prioritizes legal certainty and human rights protection for all its citizens. The establishment of this legislation is also an effort by the government to go towards legal development and is an effort to realize a State of law. Indonesia as a Pancasila State which means it is not a secular state nor a religious state. This means that Indonesia does not strictly separate the State and religion, but also does not make one of the religions as the basic law in the life of the nation and state. The position of the State towards religion in the context of the State of Pancasila, one of which is that the State must not form a regulation that conflicts with the rules of religious law in Indonesia.

The regulation of marriage in Law Number 1 of 1974 which connects the implementation of marriage with religion, so that marriage and religion have a very close relationship, is in line with Pancasila which is the basis for the State of Indonesia. Thus, interfaith marriage is not a new thing for Indonesian society.

Such marriages have occurred among society in various social dimensions and have been going on for a long time. Although different religions are not ideal, marriage between people of different ethnicities, races or religions is not impossible and even often occurs in society, especially in this era of modern society which is increasingly multicultural. Meanwhile, the Marriage Law itself does not regulate interfaith marriage.

According to the author, there is not a single article in the Marriage Law that discusses interfaith marriage, so the provisions expressly prohibited or not prohibited by interfaith marriage, cannot be found in the Marriage Law and Government Regulations as implementing regulations. This is what makes many polemics and controversies related to interfaith marriage to date. The Marriage Law, which is a national marriage law, should be able to accommodate all the realities that live in today's society, while still realizing the principles contained in Pancasila and the 1945 Constitution. By accommodating events that develop in society, including the problem of interfaith marriage as a reality that cannot be denied. The Marriage Law No. 1 of 1974 as a whole does not regulate interfaith marriages and this creates a legal vacuum that creates legal uncertainty for interfaith marriages, while on the other hand in reality there are many citizens who establish relationships and form families with citizens of different religions or beliefs. This can be proven by the many cases of legal smuggling committed by citizens related to the implementation of interfaith marriages. In general, there are two ways of legal smuggling, namely:

Ignoring national law, by performing marriages abroad and then registering them at the Marriage Registration Office in Indonesia, or by carrying out marriages in a customary manner that is not usually followed by registration;

Leaving aside religious law, namely by submitting to the law of marriage and the belief of one party, or changing religion and belief temporarily before consummating marriage and afterwards returning to the original religion and belief.

Law smuggling on the one hand is considered as "deviant" behavior, a form of legal non-compliance of citizens with laws that have been made by the state. When this disobedience is committed, then the law that should be the commander-in-chief in this country has lost its authority. In fact, as a state of law, Indonesia bases everything on the basis of law and it is the law that is sovereign for the life of the nation and state. Thus, it is fitting that the law should be obeyed and upheld in this country. But on the other hand, the rise of legal smuggling is a clear marker of the needs of the community that are not met with the existing laws in the issue of interfaith marriage, the applicable laws are not in accordance with the needs and desires of the community.

In addition, with the non-regulation of interfaith marriage in the Marriage Law specifically, in general there are three understandings of interfaith marriage in Indonesia, namely:

Interfaith marriage is not permitted and is a violation of the marriage law under Article 2 paragraph (1) and Article 8 letter (f).

Interfaith marriages are permissible and legal and therefore can take place, because they belong to mixed marriages.

In this opinion, the emphasis of Article 57 on mixed marriage lies in the words "two persons who in Indonesia are subject to different laws". Therefore, the article not only regulates marriage between two people of different nationalities but also regulates marriage between two people of different religions. According to this opinion, the implementation of interfaith marriages is carried out according to the procedures regulated by Article 6 of the Mixed Marriage Regulations.

The Marriage Law does not prohibit marriage between people of different religions, but it does not regulate it. That is, as long as religious law allows marriage between people of different religions, then the Marriage Law does not constitute a conflict. In principle, the Marriage Law leaves the validity of marriage to religious law so that when religious law allows interfaith marriages to occur, it means that the marriage can also be legalized by State law, and vice versa, if religious law prohibits interfaith marriage, then the marriage also cannot be legalized by State law. The religions adopted by Indonesian society all consider co-religious marriage to be an ideal marriage. In practice, however, certain religious laws still open the possibility of interfaith marriages with certain dispensations and strict requirements.

However, the problem of interfaith marriage will not be resolved simply by the rules in Article 2 paragraph (1). The provisions of Article 2 paragraph (1) of the Marriage Law which in its implementation have given rise to various interpretations, especially against prospective brides of different religions. The issue concerns the validity of the marriage based on the religion and beliefs of the bride and groom and the administrative obligations regarding its recording. The

formulation of Article 2 paragraph (1), which states that marriage can only be said to be valid if it is carried out in accordance with the laws of each religion and belief of the bride and groom, provides a very wide interpretation loophole, especially regarding who is the party who has the right to interpret religious law and belief in the field of marriage and about when the marriage performed is declared valid, This can create legal uncertainty because it is multiinterpretive.

The existence of interfaith marriage arrangements also gives rise to different interpretations of Article 2 paragraph (1) and results in the following:

There is a Civil Registration Office (KCS) that does not want to carry out or register interfaith marriages because it thinks it will violate the provisions of Article 2 paragraph (1) of the Marriage Law and therefore rejects the applications of parties who want to hold their marriages at KCS.

There is a Civil Registry Office (KCS) that still conducts or registers interfaith marriages under Article 1 of the GHR, Staatsblad 1989 Number 158 which has not been expressly revoked.

There is a Civil Registry Office (KCS) that only wants to hold marriages or register interfaith marriages after the party concerned with the notarial deed voluntarily submits to the law applied to Christian marriages.

Regarding the existence of legal vacuums and legal uncertainties related to interfaith marriage in Indonesia, it is also supported by a step from the Supreme Court by sending a letter from the Chairman of the Supreme Court of the Republic of Indonesia Number KMA / 72 / 4 / 1981 concerning Mixed Marriage addressed to the Minister of Religious Affairs and the Minister of Home Affairs, which in essence the letter is intended to eliminate or at least reduce the existence of marriages carried out illegally or secretly, and ensure legal certainty.

The Supreme Court in its decision No. 1400/K/Pdt/1986 (as already mentioned in chapter IV) reiterated that Article 2 paragraph (1) of Law No. 1974 on Marriage does not regulate interfaith marriage, so there is a legal vacuum. As a result of the legal vacuum, it resulted in smuggling, the closure of social, religious, and positive legal values.

According to the author, the step taken by the Supreme Court is very appropriate, because in the face of a legal vacuum, the judge may not reject a case on the grounds that there is no or unclear law, he may not refuse to pass a judgment on the grounds that the law is incomplete or unclear, the judge must adhere to the principle of ius curia novit, where the judge is considered to know the law. In this regard, the Supreme Court has created a breakthrough in filling the legal vacuum on the issue of interfaith marriage. So that the decision of the Supreme Court which already has permanent legal force is used as jurisprudence for court decisions afterwards. Based on the description above, the legality of interfaith mixed marriage after the enactment of Law Number 1 of 1974 and Law According to Law Number 23 of 2006 concerning Population Administration as follows:

Through Court Determination According to Law Number 23 of 2006 concerning Population Administration

After the birth of Law Number 23 of 2006 concerning Population Administration, the opportunity to legalize interfaith marriage seemed to be increasingly wide open. That is, with the option of submitting an application for interfaith marriage to the District Court to issue an order permitting interfaith marriage and instruct Civil Registry office employees to register the interfaith marriage in the Marriage Registration Register.

There are several considerations that can be behind the judge in granting a request for a determination of different religions. First, interfaith marriage is not a prohibition under Law Number 1 of 1974 concerning Marriage. Therefore, this petition was granted to fill the void in the rules of the Marriage Act. The next consideration is Article 21 paragraph (3) of the Marriage Law Number 1 of 1974 jo. Article 35 letter a of Law Number 23 of 2006 concerning Population Administration is based on the provisions of Article 21 paragraph (3) of Marriage Law Number 1 of 1974:

The parties whose marriage is rejected have the right to apply to the court in the territory where the registrar of marriages who made the refusal is domiciled to give a decision, by submitting the certificate of refusal mentioned above. It can be concluded that the authority to examine and decide the issue of interfaith marriage lies with the District Court. Although the

purpose of the formulation of the article is for marriage registration, the existence of Article 35 letter a of the Population Administration Law clearly provides wider space to allow interfaith marriages which under the Marriage Law are considered invalid. The provisions of this article clearly contradict Article 2 of the Marriage Law which states that a marriage is considered valid if it is carried out according to the laws of their respective religions and beliefs. Article 2 of the Marriage Law is the basis for the prohibition of interfaith marriage, because in fact no recognized religion in Indonesia freely allows its citizens to marry followers of other religions. Thus, it can be concluded that there is a juridical conflict (legal conflict) between Article 35 letter a of the Population Administration Law and Article 2 of the Marriage Law.Related to the same issue, the court has given different determinations, either granting or rejecting applications for the determination of interfaith marriage.

In the author's view, although the "Ius Curia Novit" principle applies in the Indonesian judicial system which requires judges to accept all cases that go to the Court even though there is no or unclear legal arrangement, including the issue of interfaith marriage, judges should not rush to make a determination that legalizes interfaith marriage based only on Article 35 letter a of the Population Administration Law. Instead, it must also consider the perspective of the Marriage Law and the Compilation of Islamic Law. The judge should also consider the Constitutional Court Decision Number 68/PUU-XII/2014 which essentially rejected the application for judicial review of Article 2 of the Marriage Law and reaffirmed the prohibition of interfaith marriage because the act constitutes the legalization of adultery.

In the author's opinion, judging from the complexity of the problem of interfaith marriage, regarding the non-regulation of interfaith marriage concretely in Law Number 1 of 1974 concerning Marriage which causes multiple interpretations of several articles in it, it is necessary to make changes to the Marriage Law. For example, by inserting a rule prohibiting interfaith marriage in Article 8 of the Marriage Law. Then to solve the problem of dualism in interfaith marriage arrangements, where the Marriage Law prohibits the practice of interfaith marriage, while the Population Administration Law actually opens up opportunities for the legalization of interfaith marriage, in the opinion of the author Articles 35 and 36 of the Population Administration Law should be repealed, because it causes conflict of norms. The occurrence of a legal vacuum in the regulation of interfaith marriage cannot be allowed to continue because interfaith marriage if allowed and not given a legal solution will have a negative impact in terms of social and religious life. The negative impact can occur in the form of smuggling of social and religious values and positive laws. Therefore, the prohibition of interfaith marriage has fulfilled the value of justice because:

First, it has been in line with the moral values espoused by the majority of Indonesian Muslims, in this case it has fulfilled the sense of justice of the majority;

Second, it is oriented towards a relationship with God, but also provides opportunities for the creed of children born from interfaith marriages. Justice that satisfies positive divine law (ius divinium positivum) and that reaches human reason/positive human law (ius positivum humanum).

Interfaith marriage should also not be legalized because it has many negative implications in the future. One implication is that the status of a child born through an illegal marriage process (due to the prohibition of interfaith marriage) is the recognition that the child is a child born outside of legal marriage. Consequently, the child has no sexual relationship with his biological father, is not entitled to the father's livelihood and maintenance, then the father also cannot be the guardian of marriage for his daughter, and does not have the right to inherit property if he is not of the same religion as the heir (in this case the heir is Muslim).

Implementation of Interfaith Marriages Abroad

The regulation of interfaith marriage in Law No. 1 of 1974 (UUP) is not explicitly explained. However, if the articles in the UUP are examined, there are several arrangements that can be used as a basis that basically the UUP does not recognize the existence of interfaith

marriage, namely contained in Article 2 paragraph (1) and Article 8 sub f of the Law. In Private International Law there are two views on the definition of mixed marriage, namely:

The view that assumes that a mixed marriage is a marriage that takes place between parties with different domiciles, so that each party applies internal legal rules from 2 (two) different legal systems. The view that a marriage is considered a mixed marriage if the parties differ in nationality / nationality Indonesia adheres to the second view as stipulated in Article 57 of Law No. 1 of 1974 concerning Marriage. The conditions that must be met in conducting mixed marriages are regulated in Articles 57 to Article 62 of Law No. 1 of 1974 concerning Marriage. Article 57 of the Law states that a mixed marriage is a marriage between two people who in Indonesia are subject to different laws, due to differences in nationality and one of the parties is an Indonesian citizen. So based on the provisions of the marriage law, interfaith marriage is not known, so the discussion of such a conceptual framework will stop. However, if the phenomenon of interfaith marriages held abroad is associated with the framework of Private International Law, many things can be observed.

Interfaith marriages held abroad when viewed from a legal perspective have two aspects, first the marriage is carried out by two people of different religions or different beliefs. Both marriages are held outside the territory of Indonesia, so that Indonesian law and the law of the place where the marriage takes place (lex loci celebrationis) apply.

Based on the provisions of Article 56 of the UUP states that a marriage performed outside Indonesia between two Indonesian citizens or an Indonesian citizen and a foreign national is valid if it is carried out according to the applicable law in the country where the marriage took place and for Indonesian citizens does not violate the provisions of this law.

Based on the provisions mentioned above, it is clearly seen that marriage is valid if it is carried out according to the applicable law in the country where the marriage took place and for Indonesian citizens does not violate the provisions of the UUP. Thus, if there is a Christian Indonesian citizen, marrying a Christian Indonesian citizen abroad is legal if it is carried out according to Christian religious procedures and does not contradict Article 2 paragraph (1) of the Law. Conversely, a marriage becomes invalid if the marriage abroad is performed only through a civil registry office (before a judge and/or civil registry), without performing a blessing in a church, mosque or other religious institution.

The marriage is nothing more than a recorded samenlaven (Hartini: 2004: 19). Interfaith marriages performed abroad have actually caused problems in the field of Private International Law. Because marriage is included in personal status which in Indonesian International Civil Law is subject to the provisions of Article 16 AB which states that Indonesian citizens wherever they are will be subject to Indonesian law.

This means that marriages between Indonesian citizens performed abroad remain subject to the provisions of Indonesian law. For the validity of a marriage, two conditions are needed, namely formal requirements and material requirements. The regulation of formal requirements is regulated in the provisions of Article 18 AB, namely regarding the procedure of a marriage, subject to the law where the marriage took place (lex loci celebrationis), meaning that if in the country where the marriage took place a civil marriage applies, the marriage must be performed civilly.

Material requirements, for example regarding the age limit for marriage, whether followed by interfaith marriage (religion marriage) or civil marriage (civil marriage) will apply the national law of each bride and groom (Article 16 AB). So if the marriage is held abroad, both those carried out by fellow Indonesian citizens and Indonesian citizens with foreign nationals meet the two conditions mentioned above. This is in accordance with the provisions of Article 56 of the Law.

If an Indonesian citizen of a different religion marries abroad, i.e. before the local civil registry and still maintains his or her own religion, the marriage is valid according to the law of the place where the marriage was performed, but not valid under Indonesian law in accordance with the provisions of Article 16 AB and Article 56 of the Law, because the marriage was carried out in violation of the provisions of the Law. In this case, it violates the provisions of Article 2

paragraph (1) of the UUP which states that marriage is valid, if it is carried out according to the laws of each religion and belief. This means that if the marriage is not performed based on religion and belief, then the marriage is invalid. The provisions of Article 2 of this Law are coercive provisions so that they constitute public order for Indonesian citizens, so they cannot be violated. If the provision is violated, the marriage can be annulled. Moreover, marriages performed abroad are civil marriages that are not recognized in the UUP.

Reporting of Interfaith Marriages Performed Abroad to the Civil Registry Office Because interfaith marriages are almost impossible in Indonesia, the way that many couples who want to get married, especially for couples who are Muslim and non-Muslim and still want to maintain their respective religions is to hold civil marriages abroad. Upon return, the marriage was reported to the Civil Registry Office at their place of residence. The Marriage Law No. 1 of 1974 does not prohibit interfaith marriage, nor does it explicitly regulate interfaith marriage. However, article 2 paragraph 1 of the Marriage Law is interpreted between co-religionists. Problems arise with couples of different religions. Even though they love each other, whether to spark because of religious differences between them. In order to formalize their love relationship in a legal marital relationship, couples of different religions try to find a way out.

The effort they took finally was to legalize marriage in countries outside Indonesia that did not prohibit interfaith marriage. The question of article 35 letter a of the Population Administration Law No. 23 of 2006 is whether interfaith marriages registered by Court Determination are valid according to Law No. 1 of 1974.

According to the provisions of article 21 of Law No. 1 of 1974, the Judge has the authority to decide whether a marriage is contrary or not to Law No. 1 of 1974. If it turns out that the Judge decides that the marriage can be performed and registered, then the marriage registrar employee can be carried out and registered, then the marriage registration employee, in this case the KUA or Civil Registration Office, must register the marriage**.**

CONCLUSION

The nature of interfaith mixed marriage after the enactment of Law No. 1 of 1974 has given rise to various interpretations. There are at least three interpretations of the provision. First, the interpretation that interfaith marriage is a violation of UUP article 2 paragraph 1 jo article 8 f, which states that marriage is valid if it is carried out according to the laws of each religion and belief. In the explanation of the law, it is affirmed that with the formulation of article 2 paragraph 1 there is no longer any marriage outside the law of each religion and belief. Second, interfaith marriages are legal and can take place because they are included in mixed marriages. The reason is Article 57 on mixed marriages which focuses on two people who in Indonesia are subject to different laws. This means this Article regulates marriage between two people of different nationalities, also regulates two people of different religions. Third, interfaith marriage is not regulated at all in Law Number 1 of 1974 concerning Marriage, so based on article 66 of the Law, the issue of interfaith marriage can be referred to the mixed marriage regulation, because it has not been regulated in Law Number 1 of 1974 concerning Marriage.

Legality of Interfaith Marriage in the Perspective of the Marriage Law and Based on Law Number 23 of 2006 concerning Population Administration Whether or not interfaith marriage is allowed is left to the religious law itself. The law leaves the matter entirely to the religious provisions of each party. However, the lack of strict regulation of interfaith marriage in the Marriage Law has led to the emergence of various interpretations of the law, resulting in legal uncertainty regarding interfaith marriage issues. The existence of a legal vacuum in the issue of regulating interfaith marriage has resulted in many legal smuggling carried out by perpetrators of interfaith marriages which in addition to being considered a "deviant" act is also a clear marker of the needs of society that are not met with the existing laws in the issue of interfaith marriage. Through Law Number 23 of 2006 concerning Population Administration, the government seeks to fill the legal vacuum related to interfaith marriage. By stating the authority of the Civil Registry Office to register interfaith marriages after obtaining a determination from the court in Article 35 letter (a). So in this case, the judge is very instrumental in assessing the validity of an interfaith

marriage. Because Law Number 23 of 2006 does not further regulate the implementation of complete interfaith marriage, in assessing the wetness of interfaith marriage, judges must still be guided by the provisions contained in Law Number 1 of 1974 concerning Marriage.

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