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Interfaith Marriage in Indonesia in the Perspective of Margin of Appreciation Doctrine

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ABSTRACT: This study aims to show whether the rejection of interfaith marriage in Indonesia can be accepted by the margin of appreciation doctrine. The research method uses doctrinal research by examining Indonesian marriage law policies that reject interfaith marriage along with facts on the ground to be analyzed from the perspective of margin of appreciation doctrine. The results show that theoretically the rejection of interfaith marriage that aims to entitle to a happier marriage is acceptable to the margin of appreciation doctrine. However, in practice, with the high number of divorces in interfaith marriages, the goal of implementing the minimum human right to a happier marriage required in the margin of appreciation doctrine has not been achieved.

KEYWORDS: Marriage, Secularism, Different religions, Human Rights

I. INTRODUCTION

Indonesia is a diverse society inhabited by different ethnic groups cultures languages customs and religions. The existence of this diversity makes Indonesian people coexist with differences. Given that humans are social creatures who need each other, they will definitely marry to continue living with their partner and form a family. There are 6 recognized religions in Indonesia, namely Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism. The existence of religious diversity does not rule out the possibility of Indonesian people establishing relationships and choosing to enter into interfaith marriages. (Karina Lizwary)

Law Number 1 of 1974 regulates marriage as amended by Law Number 16 of 2019. Article 1 of Law Number 1 of 1974 explains that marriage is a physical and spiritual union between a man and a woman with the aim of creating a happy and eternal family based on faith. Moreover according to Article 2 paragraph (1) of Law Number 1 of 1974 a marriage is valid only if it is carried out based on the religion and beliefs of each party. This provision shows that Indonesia relies more on religious beliefs than secularism as the standard for marriage arrangements. Interfaith marriages in Indonesia still give rise to differences of opinion. Many people believe that interfaith marriages should not be carried out and this has both positive and negative impacts. According to Article 171 c of the Presidential Instruction on the Codification of Islamic Law of 1991 the impact on interfaith marriages is as follows: In other words the legal consequences of marriage between couples of different religions and their children are not descendants. They are different because their religious beliefs are different and of course their ancestors are also different.

In fact, the different point of view remained about interfaith marriage, by means a marriage between spouses with different religious. The Government is one who tend not to recognize interfaith marriage. Article 171 letter c of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law supports the government's refusal stance by asserting that children born from an interfaith marriage will not inherit their parents' property due to religious differences, which is called nazab.

Atip Latipulhayat of Majelis Ulama Indonesia (MUI) in a session reviewing materials related to the legality of religion-based marriage in Indonesia said that marriage laws in one country differ from another because they are adapted to socio-cultural and religious life. (Pujiyanti s.) Many countries do not allow interfaith marriage while other countries accept it. Countries that adhere to secularism will allow interfaith marriages because religion is not the basis of laws including marriage laws. Pancasila with the first precept of God is the source of all sources of law in Indonesia as stated in Article 2 of Law No. 12 of 2011 on the formation of legislation. Based on these provisions any legislative activity must not conflict with the precepts of Pancasila including the first precept of the Supreme Lord. The validity of marriage based on religious law in the Marriage Law is the application of the first precept of Pancasila.

On the other side, freedom of religion is a human right. As specified in article 22 of law no. 39 of 1999 anyone can profess and venerate their religion according to their religion and belief. (Auli, hukumonline.com, 2023) From a human rights perspective forcing someone to convert including legalizing marriage is a violation of human rights. Furthermore as underlined in Law no. 1 of

1974 states that religion is the basis of marriage religion that creates a happy and eternal family based on Almighty God does not guarantee that marriage will be eternal. In Table 1 this divorce rate is confirmed to be the highest among civil cases filed in court.

Table 1. Comparison of civil and divorce cases in Yogyakarta city and Sleman District Courts and Religious Courts in 2022

Name of court	Civil cases amount	Divorce cases amount
Sleman District Court	310	179
Sleman Religious Court	2494	1672
Yogyakarta City District Court	164	88
Yogyakarta City Religious Court	710	618

Retrieved from source: http://pn-sleman.go.id/sipp/list_perkara/, https://sipp.pa-slemankab.go.id/list_perkara/, https://www.sipp.pn-yogyakota.go.id/list_perkara/, https://sipp.pa-yogyakarta.go.id/list_perkara/

The margin of appreciation doctrine is often used to resolve conflicts or differences in the application of human rights due to socio-cultural, political, cultural and legal differences between European countries. For example, in the decision on the application to legalize same-sex marriage filed by Schalk and Kopf and decided by the Australian Court, the judge applied the doctrine of presumption. With the consideration that Austrian society still upholds Christian values that prohibit same-sex marriage. Reflecting on the European practice that makes the margin of appreciation as a limitation to the claim of human rights universalism, according to Atip, this gives a strong message about the imposition of human rights universalism claims that subordinate particular values is very potential to give birth to new human rights violations in the name of human rights universalism. Furthermore, Atip emphasized that in essence, human rights provisions are not supra-religious that subordinate religious teachings, but are present to strengthen the implementation of religious teachings.

Based on the Austrian court's ruling in Schalk and Kopf cases, that favoring religious principles in cases of conflict with human rights, this research aims to explore how the *margin of appreciation* doctrine works in cases of interfaith marriage bans in Indonesia. First, this research will explore the main problems in interfaith marriage. It will then explore how doctrine works to solve these problems.

II. METHODS

This research uses normative and doctrinal research by examining data on Indonesian marriage law which adheres to secular principles of human rights and a wide margin of justice in the context of interfaith marriages. (Zainuddin, 2009) This research analyzes data qualitatively to explore the main issues related to interfaith marriages in Indonesia and explores how further interpretation can overcome these problems. Conclusions are reached using deductive reasoning.

III. LITERATURE REVIEW

Indonesia's legal policy on interfaith marriage.

Marriage in Indonesia is regulated by Law No. 1 of 1974 and Presidential Directive No. 1 of 1991 which is essentially based on religious law. This is in the marriage requirements based on Article 2 Paragraph 1 and Article 2 Paragraph 2 of Law No. 1 of 1974. It states that a marriage can be legally performed if it is celebrated in accordance with the law. marriages must be registered in accordance with applicable laws and regulations.

One of the principles of marriage in Indonesia is the principle of monogamy. In the Marriage Law, as amended by Law Number 16 of 2019, the application of the principle of monogamy is not absolute. What is implied is not absolute is that a man or man can have more than one wife if he wishes and according to his religious law. This is also related to Article 4 paragraph (1) which contains an affirmation that if a man wants more than one wife, it must go through the court (Media Justitia, 2022)

Indonesian positive law does not explicitly prohibit interfaith marriage. However, based on current regulations and because Indonesia is not a secular state, interfaith marriages cannot be legal in Indonesia. According to Muslim teachings in Indonesia, a marriage is considered valid if it is made in the form of a prenuptial agreement at the bride's residence, mosque, or religious office. A valid marriage for Christians must fulfill the prescribed conditions and take place in the presence of a priest witnessed by two witnesses. On the other hand, the bride and groom must also be baptized. Although there are different precepts based on each religious law, they all contain the same meaning of marriage. There is equality between men and women in this meaning.

In the Provisions of Islamic Law (*Kompilasi Hukum Islam*, KHI), marriage between men and women of different faiths is regulated in detail under Article 40 letter (c). This article states that marriage between a man and a woman is prohibited in certain circumstances, one of which is when the woman is non muslim. Based on Article 44, it states that a woman who is muslim is prohibited from marrying a man who is not muslim. These two articles confirm that according to KHI, a Muslim man is not allowed to marry a non-muslim woman, regardless of her religion. A muslim woman is also not allowed to marry a non-muslim man.

The validity of marriage in Indonesia is officially governed by the matrimonial law of the Republic of Indonesia of 1974 and also by Decree no 1 of 1991 by the President of the Republic of Indonesia concerning the Compilation of Islamic Law. Both pieces

of legislation aim to regulate various aspects of marriage, including interfaith marriage. Before being regulated in Marriage Law No. 1 of 1974, interfaith marriage was first regulated in the *Koninklijk Besluit de la Regeling op de Gemengde Huwelijke* (GHR) dated December 29, 1896 number 23 which was listed in Staatblad 1898. The ordinance in question is the Intermarriage Law number 158. The Inter-Marriage Law of the Dutch colonial government has several rules that must be obeyed. One of them is Article 7 paragraph (2) which contains an affirmation that differences in religion, class, population or origin must not be an obstacle to the continuation of marriage. (Wahyuni, Interfaith Marriage in Indonesia and Human Rights) However, the existence of Marriage Law No. 1 of 1974 also guarantees the validity of mixed marriages as stipulated in the Marriage Enforcement Regulations of the Government of the Republic of Indonesia. All provisions of Article 158 are repealed and revoked based on the provisions applicable in Indonesia.

Mixed marriages which are legalized in Marriage Law Number 1 of 1974 are only regulated in Article 57, to be precise: “In this law, mixed marriage means a marriage between two people who are subject to other laws in Indonesia because of different nationalities. and one Indonesian citizen. Article 2 paragraph (1) of Law Number 1 of 1974 states: "Marriage is valid if performed according to the laws of each religion and belief."

So it is known that marriage does not exist outside the law of every religion and belief. Some articles of Presidential Directive No. 1 of the Republic of Indonesia on the Introduction of Islamic Law (KHI) 1991 also explains related matters as follows: Article 4: Marriage is valid if performed according to Islamic law. Article 2 Subsection 1 of the Marriage Act No. 1 of 1974. Article 40: "Marriage between a man and a woman is prohibited for a certain period of time;

a) because the woman concerned is still married to another man;
b) a woman who is in the iddah period with another man;
c) a woman who is not a Muslim"

Article 44: "A Muslim woman may not marry a non-Muslim man."

Article 61: "The absence of a marriage cannot be used as a reason to prevent marriage, except because of differences in religion or differences in aldi ikhtilaf in marriage."

Based on the explanation of these articles, it can be concluded that every marriage in Indonesia must choose one religion, without interfaith marriage. If this happens, it violates the human rights as provided in the 1945 Constitution. No specific law that providing interfaith marriage. In the fact, some religious courts in Indonesia have allowed interfaith marriages to be proposed, while public having various opinions. (Marzuki, 2023)

Recently, the Supreme Court issued Circular Letter SEMA Number 2 of 2023 which contains instructions for judges by ordering that court should not accept the interfaith marriage application. Based on the condition, some Indonesian citizens filed a petition to review Article 2(1) of the Marriage Law with the 1945 Constitution of the Republic of Indonesia. For instance, a petition applied by the plaintiffs in case number 68/PUU-XII/2014 with the arguments that:

a) the judge rejected the plaintiffs' application Article 2 paragraph 1 of Law No. 1/1974 contains restrictions on marriage that violate the right to legal marriage and the right to form a family under Article 28B paragraph 1 of the 1945 Constitution;
b) The provision of marriage under Article 2 paragraph 1 of Law No. 1 of 1974 provides a very broad scope for interpretation and the creation of conflicts between these norms, so that it cannot achieve the realization of a right that is determined based on fair legal certainty. Article 28 D paragraph 1 of the 1945 Constitution;
c) Marriage Law No. 2 Paragraph 1 of 1974 contradicts Article 27 Paragraph 1 and Article 28D of the 1945 Constitution, Article 1 of the Right to equality before the law, and Article 281 paragraph (2) of the 1945 Constitution which provides for freedom of discrimination because it forces the government, through various tricks, to treat its citizens differently;
d) The restriction on marriage stipulated in Article 2 paragraph 1 of Law No. 1/1974 is incompatible with the notion of restriction of rights and freedoms established under Article 28J paragraph 2 of the 1945 Constitution;
e) The enactment of Article 2 paragraph 1 of Marriage Law No. 1 of 1974 has led to more violations of the marriage law.
f) Article 2 paragraph 1 of Marriage Law No. 1 of 1974 is a norm that is not in accordance with the norms regulated in the law;
g) The existence of Article 2 paragraph 1 of Marriage Law No. 1 of 1974 is contrary to the purpose of making every marriage based on the law of each religion and belief

Secularism

Secularism is often thought of as the separation of religion from civil and public affairs and can be extended to similar areas that attempt to eliminate or reduce the role of religion in the public sphere. (Galen, 2016) Secularism means the belief that religion should be separated from worldly goods and all aspects of life. He rejects the idea of an unnatural or supernatural entity such that the soul is connected with material nature and is supported by things. Religion is a social ideology that believes that faith and religion have nothing to do with understanding the world and that it is separate from government and decision-making. With these ideological understanding principles of pragmatism and utilitarianism political behavior was promoted by religion.

A country that adheres to the principle of secularism is supposed to treat all its citizens without discrimination even if they have different religions; in that case the state is considered neutral and does not interfere in religious matters. I dont. when he ruled the republic. Secular states usually do not have a state religion. There are many countries that follow the principles of secularism

such as Turkey Kazakhstan France South Korea and Canada. Turkey is a Muslim country that has completely changed its marriage laws and introduced modern Western laws. In countries around the world including Turkey marriage is considered to be separate from religion but since ved that marriage should not be based on religion. The validity of a marriage lies in its registration by the Minister of Marriage in the relevant state and it can be contracted by anyone regardless of religion as long as existing procedures are followed. Also non-religious parties can enter into a contract. (Rozak, 2011)

In the year The Turkish Cypriot Family Law enacted in 1951 confirms that marriage can be celebrated according to each individuals wishes after confirmation. Freedom of religion as part of human rights.

Freedom of religion as part of human rights

Human Rights are a set of universal rights that are inherent in human beings and directly conferred or granted by Almighty God at birth. (Gunakaya, 2017) Since the protection of human rights is an aspect of the rule of law society must obey the government and the law to protect it. Marriage is an internationally and nationally recognized human right. Article 16 paragraph 1 of the Universal Declaration of Human Rights affirms that adult women and men have the right to marry and found a family without any restriction on nationality religion or race. Article 23(2) of the International Covenant on Civil and Political Rights of 1976 regulates similar provisions without specifying religion as a valid basis for marriage.

Indonesia established human rights in the 1945 Constitution. This is further stated in Law no. 39 of 1999. There are two specific human rights that need to be considered in this regard. Article 22 First of Law Number 39 of 1999 regulates: (1) Every person is free to practice and worship his religion in accordance with his religion or belief (2) The State guarantees the freedom of every person to practice religion. Second Article 10 of Law Number 39 of 1999 confirms: (1) Every person has the right to form a family and continue the lineage through a legal marriage. (2) A legal marriage can only be established at the will of the prospective husband. and future wife. can be carried out in accordance with the provisions of statutory regulations. It can only enter under certain conditions. These two rights are the most important rights relevant to analyzing whether the prohibition of inter-caste marriage violates human rights.

Margin of appreciation doctrine

The margin of appreciation doctrine is an analytical tool used by the ECHR to carefully weigh other competing public interests when assessing the importance of laws and regulations. (Frantziou, 2014)Furthermore Frantzio argues that this principle ensures that human rights are created pluralistically in the convention system if the limited scope of the convention is defined by the convention. Boujiandi similarly stated that the doctrine was designed to provide flexibility to resolve conflicts or differences in the implementation of human rights due to different socio-political cultural and legal cultures among European countries (Pujiyanti).

Schalke and Kopf v. Austria - Same-sex marriage legalization case - Applicants claimed that the law did not allow them to marry which violated their rights to respect individuals and families. life and the principle of non-discrimination. Austrian law only allows two people of the same sex to enter into a registered relationship not a marriage. The judges of the European Court of Human Rights applied the principle of broad discretion when hearing the case and held that the ban on same-sex marriage did not violate Article 12 of the Convention: the right to marry at any age. The right to marry and found a family in accordance with national law regulating the exercise of this right. The judges said that under Article 8(2) of the European Convention on Human Rights same-sex couples cannot enjoy family life (Public authorities may not interfere with the exercise of this right. National Security In a democratic society it is necessary in a democratic society to pass laws to prevent disorder or crime in the interests of health morals or security in addition to the interests of the public safety or economic well-being of the country. concerning the rights and freedoms of others).

The reason for rejecting this proposal is that Austrian society still adheres to Christian morality that prohibits same-sex marriage. (European Court of Human Rights, 2010) According to Atip if we consider European traditions that limit the definition of international human rights claims this is a strong message for human rights claims in a world that follows several traditions. At a certain value. New human rights violations continue to occur in the name of international human rights. Atif added that human rights are not only religious beliefs or convictions but something that strengthens the implementation of religious teachings.

IV. RESULT AND DISCUSSION

Interfaith Marriage from a Secular Perspective

In the philosophical view of secularism laws governing social and national life are separated from religion. Some countries adhere to the concept of secularism and are neutral regarding religion and do not take sides with religious or non-religious people. Secular countries also claim to treat all citizens equally regardless of religion and do not discriminate against citizens belonging to a particular religion. Interfaith marriages are common in secular countries where religion is not considered a form of marriage. National marriage laws should indicate that religion is not a requirement for the validity of a marriage. Under this condition couples of different religions are still allowed to marry. Marriage is based on civil marriage or registered marriage (Kadek Wiwik Indrayanti, 2020)

Indonesia marriage law is based on religious law not secularism. This is clear from the fact that the Marriage Act clearly states that the purpose of marriage is to build a happy and stable family in faith in Almighty God. On the other hand this reflects the legal

marriage requirement of the Marriage Act which states that a marriage is valid if it is performed in accordance with each persons religion and beliefs.

Marriages that take place in Indonesias jurisdiction must be performed according to religious lines. This means that intermarriage is generally not allowed. In this case the marriage will be void and against the law. For intermarriage is not fully established. Because of this condition some religious courts have interpreted it as allowing intermarriage while others have rejected it. Therefore there are actually many differences. (Amri, 2020). The diversity of interpretations has been stopped with the publication of the Supreme Courts Circular Memorandum (SEMA) Number 2 of 2023 which contains guidelines for judges to adjudicate marriages between people of different religions. SEMA No. 2 rule after 2023;

a) Valid marriage means a marriage contracted on the legal grounds of any religion or belief in accordance with Section 2 (2)1 and Section 8(f) of the Marriage Act No. 1 of 1974.
b) The court should not accept applications for registration of marriages between people of different religions and beliefs. The judge rejected the plaintiff's application.

Even though it is banned by the Supreme Court inter-caste marriage still reaps benefits and drawbacks in the society. A secular approach would obviously allow interfaith marriages because it does not consider religion as a basis for organizing social and political life. Unfortunately secularism is not a universal view that compels countries to adhere to it. Secularism still recognizes religious life in society but does not use it to determine legal elements.

Indonesia is a country that has not fully embraced secularism. Indonesian law within common law adheres to secularism and does not use religious law as a basis for common law regulation. This is distinct from the field of civil law which has a strong influence on religious law such as matrimonial law inheritance law and legal acts especially in the area of regulation of marriage law.

Interfaith marriage from a human rights perspective

From a human rights perspective marriage is a form of human rights. There is no provision that makes religion a valid basis for marriage from a global human rights perspective. Article 16 paragraph 1 of the Universal Declaration of Human Rights affirms that men and women of adult age have the right to marry and form families without restrictions on nationality nationality or religion. Article 23 paragraph 2 of the International Covenant on Civil and Political Rights also emphasizes the recognition that men and women of marriageable age should marry and form a family.

Human Rights in Indonesia Constitution of 1945 and number 39 are regulated by law. Marriage rights are governed by Article 28B(1) of the 1945 Constitution which states that every individual has the right to have and support a family. Families having children through legal marriage; Article 10 of law no. Clause 1 of Article 39 provides that every individual has the right to found a family and to support his children through legitimate marriage. Furthermore paragraph 2 of Article 10 establishes that legal marriage can only be celebrated on the basis of the will of the future spouse.

Human rights in Indonesia are basic rights appropriate to Indonesias national conditions that is human rights that do not conflict with the ideology of Pancasila. (Sekarbuana et al 2021-17) This can be seen in the marriage law which makes religion the basis for valid marriage. This means that the exercise of the right to marry is integrated with religious norms about the validity of marriage. According to Pujianti (Pujianti 2022) a valid religious basis for marriage does not conflict with human rights but rather protects the human right to marry so marriages are happier because they are based on religion.

Denial of interfaith marriage in the perspective of margin of appreciation doctrine.

The role of *margin of appreciation* doctrine, as Frantziou and Pujianti argue, is to provide flexibility in resolving conflicts or differences in the application of human rights due to the diversity of social, political, cultural, and legal cultures. Regarding the issue of refusal of interfaith marriage, the problem that must be answered is whether the refusal is permitted in the perspective of the doctrine of the margin of appreciation. Based on the role of the doctrine presented by Frantziou, the renunciation should be as long as the minimum limits set by the Human Rights are effectively protected. With regard to refusal of inter-religious marriages it is expected that applicants should be allowed to marry on account of another religion. In this case a conflict arises between the human right to freedom of religion and the denial of interracial marriages based on certain religious principles in accordance with Article 44 of the Presidency of the Republic of Indonesia Number 1 of 1991. Islamic law. Intercaste marriages should be allowed if they are based on the human right of religious freedom. For example a legal process should be considered for the marriages of couples of each religion to ensure that the marriage is legal and the couple can continue to marry. There are inter-religious marriages. Enjoy your right to freedom of religion. However as agreed in Article 44 of Presidential Directive No. 1 of the Republic of Indonesia of 1991 interfaith marriages combined with Islamic rules are rejected because they are not compatible with the principles of any religion.

Does this denial at least count as the fulfillment of human rights? Even if a religious person establishes an assumption or belief that rejecting another religion prevents an unhappy or incompatible marriage such rejection does not at least interfere with human rights i.e. the continued enforcement of human rights. It is considered as inheritance of marital relationship. In the context of evaluating Shaadi fringe ideas one can certainly reject the idea of interfaith marriages to enforce human rights and create happier and more harmonious families. However in reality there is no guarantee that marriage between believers of the same religion will

always create a happy and harmonious family. This can be seen by looking at the number of divorces in the table. 1. At the same time in fact interfaith marriages can also create harmony. For example a study by Radhiah Renee Amna and colleagues (Amna Radhiah, 2017) found that interfaith couples therapy was often preferred. The tendency to accept and adopt patterns adopted by interfaith parenting couples to create a more popular parenting style that positively impacts childrens growth and development.

V. CONCLUSIONS

Based on the results and information above, the rejection or acceptance of a person's marriage in a country depends on the policy of that country, whether it is related to world conditions and world rights to accept a person's marriage or usage. world religions and laws accept it be free to apply the principles of the religion you accept. Opposes interfaith marriages Indonesia is among those who does not accept interfaith marriage because it is considered contrary to religious norms. Furthermore, bassed on the margin of appreciation doctrine, this can be justified, because it still appreciates the application of a minimum of human rights, namely the right to marry more happily and harmoniously.

Although in the assumption the denial is said to support the application of the right to a happier or more harmonious marriage, in practice the facts prove otherwise. If the assumption that 'refusal of interfaith marriage will support the implementation of the human right to a happier marriage' in reality is not proven, then the margin of appreciation doctrine cannot be used as a basis for refusing interfaith marriage. Furthermore, it is necessary to rethink the acceptance of interfaith marriage, based on the implementation of the human right to freedom of religion and the right to marry.

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