

## Discussing the Phenomenon of the Appointment of Judges in District Courts Regarding Interfaith Marriages from a Legal Logic Perspective

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### Abstract

This research aims to determine the intent of legislation and the constitution regarding interfaith marriages in Indonesia, so that judges can have a deeper understanding of the existing legal intent rather than relying solely on subjective legal interpretations. Additionally, this study also examines the authority of judges in District Courts who play a role in the determination of interfaith marriages. This research is a qualitative-normative study that utilizes legal documents and literature review, including books, journals, reports, and other reliable sources, which are analyzed using legal logic reasoning. Based on the researcher's findings, legal logic reasoning in interpreting legislation indicates that interfaith marriages are prohibited. This can be seen in the constitutional goals of Indonesia in the fourth paragraph of the 1945 Constitution, the Judiciary Power Law in Article 5 and Article 50. The constitutional goals serve as the foundation for every judge's decision. Such decisions not only aim to achieve lasting peace and justice for the parties involved but also for society at large or the majority of the Muslim community in Indonesia. Therefore, interfaith marriages between Muslim women and non-Muslim men

should not be permitted. Furthermore, according to Constitutional Court Decision Number 68/PUU-XII/2014, which states that interfaith marriages are closely related to religion, the authority to resolve interfaith marriage cases should be held by Religious Courts. This is in line with Article 49 of Law Number 3 of 2006 on Religious Courts, which specifies one of their authorities is related to marriage matters.

**Keywords:** Interfaith marriage; judge appointment; legal logic

## Introduction

Interfaith marriages have been a subject of discussion among scholars from the past and continue to be debated today due to the existence of legal ambiguities in Indonesia regarding the permissibility of interfaith marriages, specifically when they are registered at the Civil Registry Office.<sup>1</sup> It is evident that as of 2022, there are still social phenomena related to interfaith marriages.<sup>2,3</sup> However, interfaith marriages do not have a strong legal basis or specific regulations that directly address them.

In 2014, a constitutional challenge was filed against Article 2 Paragraph 1 of Law Number 1 of 1974 concerning Marriage. This challenge arose because a citizen was prohibited from marrying due to religious differences, namely Christianity and Islam. The Constitutional Court conducted a judicial review of the law and ruled that Law Number 1 of 1974 on Marriage is not in conflict with the 1945 Constitution, particularly Article 29, which states: *“The state guarantees the freedom of every citizen to embrace their religion and to worship according to their religion and beliefs”*.

One of the considerations for rejecting the applicants’ request was that in the nation’s life based on Pancasila and the 1945 Constitution, religion is a foundation, especially concerning marriage. Moreover, marriage should not be viewed solely from a formal aspect but should also be considered from a spiritual and social perspective.<sup>4</sup> This statement suggests that religion determines the validity of marriage, while the law establishes administrative validity performed by the state.

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<sup>1</sup> Sri Wahyuni, “Kontroversi Perkawinan Beda Agama Di Indonesia,” *Al-Risalah* 14, no. 2 (2014): 293–306, <https://doi.org/10.30631/al-risalah.v14i02.452>.

<sup>2</sup> Edyna Ratna Nurmaya, “Pernikahan Beda Agama Stafsus Jokowi: Ayu Dan Gerald Umumkan Lewat Instagram, Mohon Doa Dan Dukungan - Suara Merdeka,” *Suara Merdeka*, 2022.

<sup>3</sup> Andi Saputra, “PN Surabaya Izinkan Pernikahan Beda Agama Pasangan Islam-Kristen Ini,” *Detik News*, 2022.

<sup>4</sup> Mahkamah Konstitusi, “Putusan Mahkamah Konstitusi Nomor 68/PUU-XII/2014,” *Mahkamah Konstitusi* (2015).

The explanation above indicates that there is no explicit presentation or explanation that interfaith marriage is prohibited in Indonesian legislation. Even though the applicant's requests were entirely rejected in the Constitutional Court's decision, it is understandable that some judges in District Courts still grant requests for interfaith marriages.<sup>56</sup>

The existence of Constitutional Court Decision Number 68/PUU-XII/2014 also raises questions about the authority of District Courts to decide on interfaith marriages. Traditionally, the determination of interfaith marriages has been within the jurisdiction of District Courts. The question arises: Is this authority correctly placed in the hands of Religious Courts? This issue needs further examination to ensure that the appropriate judges are responsible for determining the permissibility of interfaith marriages.

The issue of interfaith marriage has gained prominence due to a case involving a woman who worked as a special staff to the president marrying a non-Muslim man.<sup>7</sup> His has sparked extensive public discussions through television and academic forums.<sup>8</sup> However, the author observes that these discussions have not provided significant clarity regarding Indonesia's legal stance on the permissibility of interfaith marriages, particularly between non-Muslim men and Muslim women.

On the other hand, the law has its own intent in regulating societal life, and this intent can be discerned through various approaches, one of which is legal logic reasoning. Legal logic is a specialized form of logic used to analyze legal thinking and reasoning to draw conclusions about a legal matter.<sup>9</sup> Other researchers have also employed systematic legal logic reasoning to find rational and acceptable answers.<sup>10</sup> This legal logic reasoning is what the author uses to analyze the intent of interfaith marriage regulations in Indonesia.

The author's hypothesis regarding the legal intent of interfaith marriage regulations in Indonesia is that they are prohibited or not allowed to be conducted. This is clearly stated in the explanation of the Marriage Law, which stipulates that marriages must adhere to the laws of their respective religions and beliefs. Despite this clear provision in the Marriage Law, some judges still issue decisions allowing interfaith marriages, especially those involving non-Muslim

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<sup>5</sup> Pengadilan Negeri Pati, "Direktori Putusan Mahkamah Agung" (2020).

<sup>6</sup> "Direktori Putusan Mahkamah Agung" (2022).

<sup>7</sup> Nurmay, "Pernikahan Beda Agama Stafsus Jokowi: Ayu Dan Gerald Umumkan Lewat Instagram, Mohon Doa Dan Dukungan - Suara Merdeka."

<sup>8</sup> Reva Deddy Utama, "Catatan Demokrasi: Nikah Beda Agama Di Indonesia, Kok Bisa?," 2022.

<sup>9</sup> Nurul Qamar, *Logika Dan Penalaran Dalam Ilmu Hukum* (CV. Social Politic Genius (SIGn), 2018).

<sup>10</sup> Nurfaqih Irfani, "Asas Lex Superior, Lex Specialis, Dan Lex Posterior: Pemaknaan, Problematika, Dan Penggunaannya Dalam Penalaran Dan Argumentasi Hukum," *Jurnal Legislasi Indonesia* 16, no. 3 (2020): 305–25.

men and Muslim women. Additionally, the second hypothesis is whether the authority to determine the permissibility of interfaith marriages is correctly placed in District Courts. Therefore, systematic legal logic reasoning is needed to further examine the legal intent of interfaith marriage regulations in Indonesian legislation.

This research is qualitative-normative, with a focus on analyzing legal regulations that have legal ambiguities concerning interfaith marriages. The author will describe this analysis using legal logic reasoning to uncover the intent of the Indonesian constitution and legal regulations. Additionally, the research will relate this legal logic reasoning to the perspective of maqashid sharia. Conducting qualitative research allows the author to identify relevant theoretical perspectives that help in understanding the phenomena being studied.<sup>11</sup>

The research begins by observing the phenomenon of District Court judges granting permission for interfaith marriages in Indonesia, particularly marriages between non-Muslim men and Muslim women. This is followed by examining the legal considerations behind these judge's decisions, which are combined with relevant literature, including journals, books, and online media, to ensure the accuracy of the data. The comprehensive reading materials are used as a basis for legal logic reasoning, making the description of this research structured and objective.

There are some studies with similarities to this discussion. For example, an article by Fitrawati titled "*Discourse on Interfaith Marriage in Indonesia from the Perspective of Human Rights Universalism and Cultural Relativism.*" This research concludes that interfaith marriages have elements of Human Rights Universalism, but these values can be applied if they align with cultural revitalization in a given country.<sup>12</sup> However, this study does not specifically address the considerations of judges who permit interfaith marriages.

Another study by Anthin Lathifah titled "*State Marriage and Civil Marriage: The Role of State Policy on Interreligious Marriage in Central Java*" discusses interfaith marriages in Semarang, Surakarta, and Jepara. It concludes that there is a phenomenon of interfaith marriages being allowed in one city but prohibited in another within the same province.<sup>13</sup> However, this study does not specifically delve into the legal intent of interfaith marriage regulations in Indonesian legislation. Therefore, it is important for researchers to conduct a more in-depth

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<sup>11</sup> Nursapia Harahap, "Penelitian Kualitatif," 2020.

<sup>12</sup> Fitrawati, "Diskursus Perkawinan Beda Agama Di Indonesia Dalam Tinjauan Universalisme Ham Dan Relativisme Budaya," *JURIS (Jurnal Ilmiah Syariah)* 20, no. 1 (June 2021): 131–45, <https://doi.org/10.31958/JURIS.V20I1.2825>.

<sup>13</sup> Anthin Lathifah, "State Marriage and Civil Marriage: The Role of State Policy on Interreligious Marriage in Central Java," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 15, no. 1 (June 2020): 1–30, <https://doi.org/10.19105/AL-LHKAM.V15I1.2689>.

examination to explore the legal intent and constitutional aspects of interfaith marriage regulations in Indonesia.

## Discussion

Interfaith marriage, in essence, refers to marriage between individuals of different religions. This topic has been extensively discussed by scholars, especially prominent Islamic scholars from various schools of thought (*imam mazhab*). The *imam mazhab* categorized interfaith marriages into three types: marriages between a Muslim man and a “*kitabiyah*” (woman of the book, referring to Jews or Christians), marriages between a Muslim man and a polytheist (*musyrik*) woman, and marriages between a non-Muslim man and a Muslim woman. The consensus among *imam mazhab* is that only marriages between Muslim men and “*kitabiyah*” women are permissible, provided that the woman is able to maintain her purity. Marriages between Muslim men and polytheist women and between non-Muslim men and Muslim women are considered forbidden.<sup>14</sup> However, it’s worth noting that there are Islamic scholars who have a different interpretation, considering interfaith marriages valid and permissible.<sup>15</sup>

In the context of Indonesian legislation, there is no clear legal certainty regarding the permissibility or prohibition of interfaith marriages. Consequently, it is not surprising that judges in District Courts issue rulings allowing applicants to marry people of different faiths.<sup>16</sup> Therefore, the author invites readers, especially judges, to use legal logic reasoning when determining the appropriate legal basis for their decisions or rulings on interfaith marriages.

Logic is a thinking strategy carried out through coherent reasoning to be accepted by reason, whether it is a hypothesis, an answer, or a conclusion. Logic is the science of using reason to guide us toward what is right. The material object of logic is reason (comprehension, judgment, and thought), while its formal object is the rules governing these acts of reason. Therefore, logic can be defined as the totality of a law for obtaining truth in thought.<sup>17</sup>

Legal logic can be understood as a tool for constructing an argument that allows a judge to decide a case based on sound legal reasoning, ensuring that the decision or ruling can be justified and aligns with the purpose of the law

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<sup>14</sup> Nurcahaya, Mawardi Dalimunthe, and Srimurhayati, “Perkawinan Beda Agama Dalam Perspektif Hukum Islam,” *Hukum Islam* 18, no. 2 (August 2019): 141–56.

<sup>15</sup> Dio Alif Bawazier, “Pernikahan Beda Agama (Studi Komparatif Tentang Hukum Pernikahan Beda Agama Perspektif Abdullah Ahmad An-Na’im Dan Ahmad Zahro),” *Sakina: Journal of Family Studies* 4, no. 3 (2020).

<sup>16</sup> Pengadilan Negeri Pati, Direktori Putusan Mahkamah Agung.

<sup>17</sup> Fajlurrahman Jurdi, *Logika Hukum*, 2nd ed. (Jakarta: Kencana, 2019).

itself.<sup>18</sup> According to Halper, as quoted by Weruin, legal issues cannot be resolved through logic alone. Logic is seen as containing rigid and inflexible codes, which may lead to the understanding that a legal issue can be resolved purely through logical reasoning. Therefore, legal issues and legal decisions or rulings should not be limited to literal meanings and logical propositions alone, disregarding the context and purpose of the law. Thus, a law should not be easily altered through syllogism and deduction. Legal principles must be understood in a broader context.<sup>19</sup>

The statement by Halper demonstrates his disagreement with the use of logic in legal resolution. However, on the other hand, the use of logic provides precise reasoning when individuals have a framework based on definitive principles, thus clearly delineating constructive boundaries that can be used to impart meaning.<sup>20</sup> Therefore, the correct use of logic leads to legal resolutions that align with the context and purpose of the law, as desired by Halper.

The author's statement becomes even more relevant with the exposition by Edwin W. Patterson in his article titled *Logic In The Law*, as quoted by Weruin, where logic is described as a tool to control emotions, feelings, prejudices, and even human passions that may come into play in the formulation, implementation, and application of the law.<sup>21</sup> Additionally, Bernard Arif Sidartha, as quoted by Isnantiana, mentions that the decision-making process cannot be separated from a judge's reasoning activities. A judge's reasoning involves a variety of motivations that support it and is always influenced by the pull of diverse juridical thinking frameworks preserved in a self-sustaining system. Thus, it can develop according to its own logic and exist as a unique model of reasoning in line with its professional tasks.<sup>22</sup> Therefore, logic remains relevant as a means to construct legal arguments to achieve the goals of the law, which are based on the principles of legal certainty, justice, and the benefit of the law.

A judge should be able to deliver a decision or ruling that aligns with the constitution's objectives and the intent of the law itself. Ultimately, a judge's decision or ruling in court should be acceptable to the majority of the Muslim population in Indonesia. If a judge's decision or ruling does not align with the constitution's objectives and the intent of the law, the outcome (jurisprudence) can be misused by certain interfaith couples and may foster a liberal understanding of interfaith marriages in Islam.

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<sup>18</sup> Ni Luh Putu Vera and Nurul Ainuddin, "Logika Hukum Dan Terobosan Hukum Melalui Legal Reasoning," *Jatisswara* 31, no. 1 (2016): 99–110.

<sup>19</sup> Urbanus Ura Weruin, "Logika, Penalaran, Dan Argumentasi Hukum," *Jurnal Konstitusi* 14, no. 2 (November 2017): 374–95, <https://doi.org/10.31078/JK1427>.

<sup>20</sup> Jurdi, *Logika Hukum*.

<sup>21</sup> Weruin, "Logika, Penalaran, Dan Argumentasi Hukum."

<sup>22</sup> Nur Ifitah Isnantiana, "Legal Reasoning Hakim Dalam Pengambilan Putusan Perkara Di Pengadilan," *Islamadina: Jurnal Pemikiran Islam* 18, no. 2 (2017): 41–56.

A judge is expected to engage in legal reasoning because the spearhead of justice lies in the decisions made by a judge. Legal reasoning is the result of a thought process using the judge's own logic. To ensure that this reasoning does not exceed its limits and objectives, the outcome of legal reasoning should approach the term ideal. This means that the goals of law, which include justice, legal certainty, and the benefit of the law, should be realized simultaneously and in a balanced manner. Simultaneously means that the focus should not be on just one of the objectives of the law, while balanced means proportional, without emphasizing one of the three goals excessively.<sup>23</sup> Therefore, the use of legal logic reasoning remains highly relevant, especially in interpreting the legal regulations concerning interfaith marriages in Indonesia.

### **Legal Gaps in Interfaith Marriage in Indonesian Legislation**

Interfaith marriage is an inevitable reality, especially in Indonesia, which is a diverse society. Furthermore, the discussion revolves around young men and women deeply in love. This cannot be denied, as research indicates that falling in love is a philosophical exploration, portraying love as an experience that leads to boundless desires. Love also demands self-sacrifice and devotion to one's beloved.<sup>24</sup> The statement above suggests that when someone falls in love, they will do everything in their power to find a way (a legal gap) to live together in matrimony. This legal gap is not only found within the realm of legislation but also within religious teachings.

When discussing legal gaps, there are many legal loopholes that allow interfaith marriages to take place in Indonesia. These gaps can be observed within Indonesian legislation itself and in the considerations outlined in court decisions based on applications submitted by the applicants. Moreover, there is an understanding among the public regarding religious teachings that emboldens them to enter into interfaith marriages, believing in interpretations provided by individuals considered experts in marriage within their faith.

Regarding marriage regulations, Indonesia has the Marriage Law Number 1 of 1974, which was subsequently amended by Law Number 16 of 2019. Article 2, Paragraph 1 of the Marriage Law states that a marriage is considered valid if conducted in accordance with the religion and beliefs of the parties involved. Furthermore, Paragraph 2 of the same article mentions that marriages must be recorded according to prevailing laws and regulations. This regulation serves as the legal basis for conducting marriages for the entire Indonesian population. However, it is Article 2, Paragraph 1 that prospective brides and grooms use as the legal basis for allowing interfaith marriages.

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<sup>23</sup> Agus Setiawan, "Penalaran Hukum Yang Mampu Mewujudkan Tujuan Hukum Secara Proporsional," *Jurnal Hukum Mimbar Justitia* 3, no. 2 (December 2017): 204–15, <https://doi.org/10.35194/JHMJ.V3I2.257>.

<sup>24</sup> Leo Agung Srie Gunawan, "Problematika Jatuh Cinta: Sebuah Tinjauan Filosofis," *LOGOS* 15, no. 2 (April 2018): 1–30, <https://doi.org/10.54367/LOGOS.V15I2.319>.

In addition to Article 2, there is Article 8, Section f, which stipulates that marriages are prohibited if they are forbidden in the respective religions. This includes interfaith marriages, which are generally believed to be prohibited in religions, whether it involves a Muslim man and a non-Muslim woman or a non-Muslim man and a Muslim woman. For individuals who hold such beliefs, the law prohibits interfaith marriages.

The elaboration above demonstrates that the Marriage Law Number 1 of 1974 does not provide a clear explanation of whether interfaith marriages are prohibited. This lack of clarity can be found in both Article 2, Paragraph 1 and Article 8, Section f. These two articles appear to provide extensive room for interpretation by the public, allowing prospective brides and grooms or their legal representatives to interpret them as they see fit.

Article 2, Paragraph 1 does not specify whether understanding religious teachings should align with a particular school of thought or sect, or if it is left entirely to the interpretation of individuals. If someone wishes to enter into an interfaith marriage, they are likely to choose an interpretation of religious teachings that allows them to marry someone of a different faith. This is an anomaly within the legislative framework, as one of the purposes of creating laws is to provide legal certainty for the public.<sup>25</sup>

The understanding derived from these legal gaps seems to gain real support from the decision issued by the Supreme Court regarding the cassation request submitted by an applicant named Andi Vonny Gani P. The applicant's request was rejected by the Judge of the Central Jakarta District Court with Case Number 382/Pdt.P/1986/PN.JKT.PST. The decision stated that the applicant's request for an interfaith marriage at the Office of Religious Affairs (KUA) in the Tanah Abang sub-district and the Jakarta Civil Registry Office was denied. However, the cassation request, when heard by the Supreme Court, resulted in Decision Number 1400 K/Pdt/1986, which essentially stated that the applicant could not have an interfaith marriage at the KUA but could do so at the Civil Registry Office based on the court's decision.<sup>26</sup>

Among the considerations made by the judge was the applicants' persistence in seeking an interfaith marriage, evidenced by the cassation memorandum indicating that the applicants had obtained their parents' consent. Additionally, the applicants still expressed their intention to have an interfaith marriage and were no longer concerned about their religious statuses. The judge then determined that the only institution authorized to conduct or assist in their marriage was the Civil Registry Office. Consequently, the judge ordered the Civil Registry Office in the Special Capital Region of Jakarta (DKI Jakarta) to

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<sup>25</sup> Ahyuni Yunus, *Hukum Perkawinan Dan Itsbat Nikah: Antara Perlindungan Dan Kepastian Hukum* (Humanities Genius, 2020).

<sup>26</sup> Mahkamah Agung, "Putusan MA No. 1400 K/Pdt/1986," Daniel S. Lev Library, 1986.



solemnize the marriage for the applicants. The description above illustrates that the Marriage Law does not clearly regulate the permissibility of interfaith marriages. Instead, the legal basis for allowing interfaith marriages seems to derive from the Supreme Court's decision. Although, when examining the considerations mentioned above, it appears that the Supreme Court judge was simply seeking a way for the applicants to have their desired interfaith marriage, as there were no legal obstacles from a juridical perspective. However, the judge did not delve deeper into the Islamic perspective on interfaith marriages and the implications of such a decision for the majority of Muslims in Indonesia.

In addition to the Supreme Court Decision Number 1400 K/Pdt/1986, there is also a provision that can be interpreted as the legal basis for permitting interfaith marriages, namely Article 29, Paragraph (2) of the 1945 Constitution (UUD 1945). This article states that the state guarantees the freedom of every citizen to embrace and practice their religious beliefs in accordance with their respective religions and beliefs. The phrase "*in accordance with their respective religions and beliefs*" emphasizes that the Constitution appears to grant significant freedom, as if any interpretation of religious teachings can be followed without considering other applicable regulations.

### **Legal Logic Analysis of Indonesian Marriage Laws Regarding Interfaith Marriages**

Indonesia has a constitution that must be followed, namely the 1945 Constitution of the Republic of Indonesia (UUD 1945). In the fourth paragraph of the UUD 1945, it is stated that the government shall protect all Indonesian people and the entirety of Indonesian territory and shall advance the general welfare, educate the nation's life, and contribute to implementing a world order based on freedom, eternal peace, and social justice. When viewed from a substantive approach, as described by Liav Orgad and quoted by Mei Susanto in her article titled *The Position and Function of the Preamble of the 1945 Constitution: Learning from Global Trends*, it consists of historical narration, sovereignty, supreme goals, national identity, and concerning God. Therefore, the fourth paragraph of the UUD 1945 is part of the supreme goals, which include promoting the general welfare, educating the nation's life, and contributing to a world order based on freedom, eternal peace, and social justice.<sup>27</sup>

The consequence of the UUD 1945 Preamble being categorized as the supreme goals of the constitution is that the articles below it and other legislation must not contradict these goals. Therefore, it is reasonable that Article 7 of Law Number 12 of 2011 concerning the Formation of Legislation states that the hierarchy of legislation in Indonesia is as follows: UUD 1945, MPR Decree, Laws or Government Regulations in Lieu of Laws (Perppu),

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<sup>27</sup> Mei Susanto, "Kedudukan Dan Fungsi Pembukaan Undang-Undang Dasar 1945: Pembelajaran Dari Tren Global," *Jurnal Legislasi Indonesia* 18, no. 2 (2021): 184–203.

Government Regulations, Presidential Regulations, Provincial Regulations, and Regency/Municipality Regulations.<sup>28</sup> Thus, judicial decisions or judgments (as legal precedents) must be aligned with the effort to realize the constitutional goals, particularly in promoting the general welfare, educating the nation's life, and contributing to a world order based on freedom, eternal peace, and social justice.

The author emphasizes the words *eternal peace and social justice*. These words are crucial to understand, as granting approval for interfaith marriages conflicts with the notion of eternal peace and social justice. Numerous articles and discussions have explored the harm and benefits of interfaith marriages from various theoretical and practical angles. One such approach is through the lens of *maqasid al-sharia*, which highlights that interfaith marriages contradict the concept of *maqasid al-sharia* in terms of preserving religion (*Hifẓ al-Din*), preserving life (*Hifẓ al-Nafs*), preserving intellect (*Hifẓ al-Aql*), preserving lineage (*Hifẓ al-Nasl*), and preserving wealth (*Hifẓ al-Mal*).<sup>29</sup>

Many studies indicate that interfaith marriages can lead to harm within household relationships, potentially resulting in an unhappy marriage. In Islam, one of the purposes of marriage is to attain happiness and tranquility.<sup>30</sup> If it is widely acknowledged that interfaith marriages cause harm and fail to achieve the intended purpose of marriage, then divorces may occur, ultimately rendering the constitutional goals unattainable, particularly the goal of eternal peace. The study of *maqasid al-sharia* is essential when discussing interfaith marriages, as it aims to provide social control over societal changes, ultimately promoting the greater good and preserving the dignity and welfare of individuals, as per the purpose of law itself.<sup>31</sup>

Returning to the term *social justice*, judges should consider the condition of Indonesian society, which is predominantly Muslim and follows the teachings of prominent Islamic scholars, particularly the four major Sunni schools of thought: Hanafi, Maliki, Shafi'i, and Hanbali. Among these scholars, Imam Shafi'i has had a significant influence on Indonesian Muslims.<sup>32</sup> The consensus

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<sup>28</sup> “Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan” (2011).

<sup>29</sup> Mega Rani Tiara S., “Diskursus Tentang Nikah Beda Agama (Kajian Al Maqasid As Syari’ah),” *Al-Adl: Jurnal Hukum* 8, no. 1 (2016), <https://doi.org/10.31602/al-adl.v8i1.351>.

<sup>30</sup> Amrul Muzan et al., “Mitigasi Konflik Rumah Tangga Dalam Upaya Menjaga Keutuhan Keluarga Sakinah,” *Hukum Islam* 22, no. 2 (2022): 52–72.

<sup>31</sup> A . Bahruddin, “Implementasi Maqasid Al-Shari’ah Sebagai Solusi Problematika Sosial Dan Kemasyarakatan Kontemporer,” *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 17, no. 1 (June 2017): 1–18, <https://doi.org/10.18326/IJTIHAD.V17I1.1-18>; Ahmad Maulidizen, “The Urgency of Islamic Law Sources Knowledge Masadir Al-Ahkam Al-Mukhtalaf Fiha: Istinab, Sadd Al-Dzariah and Qaul Al-Sahabi,” *Jurnal Hukum Islam* 18, no. 2 (2018): 49–68, <https://doi.org/10.24014/hi.v18i2.6749>.

<sup>32</sup> Anny Nailatur Rohmah and Ashif Az Zafi, “Jejak Eksistensi Mazhab Syafi’i Di Indonesia,” *Tamaddun: Jurnal Sejarah Dan Kebudayaan* 8, no. 1 (May 2020).

of the majority of scholars (including Imam Shafi'i) on interfaith marriages involving a non-Muslim man and a Muslim woman is that it is forbidden (*Haram*).<sup>33</sup> Therefore, it can be concluded that judges should not rule in favor of interfaith marriages, especially those involving a non-Muslim man and a Muslim woman, as it goes against the wishes of the Muslim community in Indonesia, where such marriages are prohibited.

In Law Number 48 of 2009 concerning the Judiciary, Article 5, Paragraph (1) states that judges are obliged to explore, follow, and understand the legal values and sense of justice prevailing in society. This article indicates that a judge's decision or judgment should not only provide legal certainty and justice for the parties involved but should also serve as a lesson for society, demonstrating that the law is accurate and just according to the prevailing sense of justice among the majority of Muslims in Indonesia. Because judicial decisions or judgments become legal precedents that can be used as a legal basis in similar cases.

This argument aligns with Article 50, Paragraph (1), which states that a court decision must not only contain the reasons and legal basis for the decision but also reference specific articles of the relevant legislation or unwritten legal sources that serve as the basis for the judgment. These unwritten legal sources can include customary law, which tends to be influenced by Islamic law because the majority of Indonesia's population is Muslim. Therefore, one form of unwritten law that can serve as a legal basis for judicial decisions is Islamic law, which prohibits marriages between non-Muslim men and Muslim women. This is the consensus of the majority of scholars (*ijma'*) and is one of the sources of Islamic law, ranking third after the Quran and Hadith.<sup>34</sup>

In addition to the wishes of the majority of the Muslim population in Indonesia, the perspectives of individuals from non-Muslim communities are also important. Research has shown that leaders from various religious backgrounds also hope to prevent interfaith marriages because they believe it would make it difficult for religious leaders to guide individuals from a theological perspective. Therefore, they strive to guide their followers to avoid interfaith marriages.<sup>35</sup> Consequently, the interpretation of the 1945 Constitution

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<sup>33</sup> Tyas Amalia, "Model Manajemen Konflik Pernikahan Beda Agama Dalam Pemikiran Ahmad Nurcholish," *Jurnal Sosiologi Agama* 12, no. 1 (2018): 1, <https://doi.org/10.14421/jsa.2018.121-01>.

<sup>34</sup> Ahmad Syaripudin and M Kasim, "Konsep Dasar Ijmak Sebagai Sumber Hukum Islam," *BUSTANUL FUQAHA: Jurnal Bidang Hukum Islam* 1, no. 1 (April 2020): 28–43, <https://doi.org/10.36701/BUSTANUL.V1I1.125>; Ahmad Maulidizen and Ashilah Raihanah, "The Technique of Determining Ijtihad and Its Application in Life: Analysis of Istihsan, Masalah Mursalah, 'Urf and Syar'u Man Qablana," *Al-Ahkam: Jurnal Ilmu Syariah Dan Hukum* 4, no. 1 (2019): 45–62, <https://doi.org/10.22515/alakhkam.v4i1.1600>.

<sup>35</sup> Siti Nur Fatoni and Iu Rusliana, "Pernikahan Beda Agama Menurut Tokoh Lintas Agama Di Kota Bandung" 1 (2019): 95–114.

(UUD 1945) should be understood in its entirety and not be fragmented into individual articles. If the focus is solely on Article 29, Paragraph (2) of the UUD 1945, which states that the state guarantees the freedom of every citizen to embrace and practice their religion and beliefs, judges may be inclined to allow interfaith marriages.

Furthermore, if we look at the concept of interfaith marriages within the context of Article 2, Paragraph (1) of the Marriage Law, which defines marriage as a spiritual and physical union conducted in accordance with one's religion and beliefs, it might lead to the understanding that the marrying couple should share the same religion, as implied by the phrase *spiritual and physical union*. In religious concepts, inner peace (spiritual tranquility) is closely related to religious teachings.<sup>36</sup> For Muslims, one way to attain inner peace is through *dhikr* (remembrance of God).<sup>37</sup> Therefore, it is reasonable for the majority of Indonesia's Muslim population to interpret Article 2, Paragraph (1) as referring to marriages between partners of the same religion. This interpretation aligns with the explanation provided in the Marriage Law's Article 2, Paragraph (1), which states that the law aims to prevent marriages that go against the laws of their respective religions and beliefs.

Moreover, the Supreme Court's Decision Number 1400 K/Pdt/1986 suggests that couples with differing religious beliefs can request a court ruling before proceeding with their marriage. This decision implies that interfaith marriages are not under the jurisdiction of Religious Courts but rather fall under the jurisdiction of District Courts. However, this decision is no longer applicable due to the clarification provided in the Constitutional Court's Decision Number 68/PUU-XII/2014, which emphasizes that marriages should not be considered solely from a formal aspect but also from spiritual and social aspects. The validity of a marriage still depends on religious teachings, while the law establishes administrative validity determined by the state.

The assertion of the Religious Court's jurisdiction can be found in Article 49 of Law Number 3 of 2006 regarding Amendments to Law Number 7 of 1989 concerning Religious Judiciary. It states that Religious Courts have the task and authority to examine, decide, and settle cases at the first instance involving individuals who practice Islam in matters related to marriage, inheritance, wills, gifts, endowments, almsgiving, donations, and Islamic economic matters. The explanatory notes of the Law on Religious Judiciary

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<sup>36</sup> "Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan" (n.d.).

<sup>37</sup> Medi Romi Ardianto and Ahmad Zamroni, "Implikasi Ketenangan Jiwa Dan Ketentraman Hati Sebagai Faktor Yang Mempengaruhi Keberhasilan Pendidikan Bagi Remaja," *IEMJ: Islamic Education Management Journal* 1, no. 1 (February 22, 2022): 20–35, <https://journal.staialmaarifwaykanan.ac.id/index.php/icmj/article/view/85>; Burhanuddin, "Zikir Dan Ketenangan Jiwa (Solusi Islam Mengatasi Kegelisahan Dan Kegagalan Jiwa)," *Jurnal Mimbar: Media Intelektual Muslim Dan Bimbingan Robani* 6, no. 1 (April 2020): 1–25, <https://doi.org/10.47435/MIMBAR.V6I1.371>.

mention that the Religious Court's jurisdiction was intentionally expanded to align with legal developments and the needs of the Muslim community. Therefore, cases involving interfaith marriages where one of the partners is a Muslim fall under the jurisdiction of the Religious Courts.

### **Legal Will and the Constitution on Interfaith Marriages in Indonesia**

As previously outlined in the preceding sub-section, it can be understood that interfaith marriage is not explicitly addressed in Indonesian legislation because, specifically, interfaith marriage is not addressed in the Marriage Law No. 1 of 1974. Furthermore, this Marriage Law has been in effect for 48 years. If interfaith marriages were to be allowed, there should be clear a regulation governing such marriages, possibly through amendments to the Marriage Law, as was done with the enactment of Law No. 16 of 2019 amending Law No. 1 of 1974 on Marriage. Therefore, it is reasonable that interfaith marriages have become challenging since the implementation of the Marriage Law.<sup>38</sup>

Additionally, the Constitutional Court Decision No. 68/PUU-XII/2014 can override the Supreme Court Decision No. 1400 K/Pdt/1986 due to the principle of *lex posteriori derogate legi priori*, meaning that newer regulations supersede older ones.<sup>39</sup> This principle is applied to ensure equality between the Constitutional Court and the Supreme Court.<sup>40</sup> Consequently, the Constitutional Court decision is more appropriate as a legal basis for addressing the phenomenon of interfaith marriage. On the other hand, the Constitutional Court decision serves as a filter for interpretations of statutory regulations that deviate from their intended meaning, thereby enabling statutory compliance with the will of the law itself.

The accuracy in determining the role in establishing the permissibility of interfaith marriages is also highly important, as an individual's expertise forms the basis for interpreting the law. Therefore, in the author's opinion, cases involving interfaith marriages that involve a Muslim should be adjudicated in Religious Courts. This preference is rooted in the fact that the majority of Religious Court judges possess expertise in Islamic law and positive law. Article 13, paragraph 1, specifies that prospective Religious Court judges must have a background in Islamic Law or Law and demonstrate a mastery of Islamic Law.<sup>41</sup>

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<sup>38</sup> Sri Wahyuni, "Kontroversi Perkawinan Beda Agama Di Indonesia."

<sup>39</sup> Taufik Hidayat Simatupang, "Adult Age in Marriage in Indonesia (Theoretical Study of the Application of the Lex Posterior Derogat Legi Priori Principle)," *Jurnal Penelitian Hukum De Jure* 21, no. 2 (June 2021): 213–22, <https://doi.org/10.30641/DEJURE.2021.V21.213-222>.

<sup>40</sup> Jimly Asshiddiqie, "Kedudukan Mahkamah Konstitusi Dalam Struktur Ketatanegaraan Indonesia | Mahkamah Konstitusi Republik Indonesia," 2015.

<sup>41</sup> Dewan Perwakilan Rakyat, "Undang-Undang Nomor 3 Tahun 2006 Tentang Perubahan Atas Undang-Undang Nomor 7 Tahun 1989 Tentang Peradilan Agama" (2006), [dpr.go.id](http://dpr.go.id).

Additionally, Article 5 of the Supreme Court Regulation No. 2 of 2017 on the Recruitment of Judges outlines the requirements for prospective Religious Court judges, emphasizing their ability to read and understand traditional Islamic texts. Consequently, cases related to interfaith marriages are best suited for adjudication in Religious Courts, where judges can delve deeper into the law through the studies they have undertaken.

## **Conclusion**

Interfaith marriages in Indonesia do indeed have legal loopholes because there are no specific regulations that clearly address the permissibility or prohibition of such marriages. However, when applying sound legal reasoning, the tendency of the legal will regarding interfaith marriages leans towards prohibition. This inclination is evident in the constitutional goals outlined in the fourth paragraph of the Preamble to the 1945 Indonesian Constitution, particularly in the phrases *eternal peace and social justice*. These constitutional objectives should always serve as the foundation for every judge's decision or determination, ensuring that their rulings provide a sense of eternal peace and social justice for the majority of Muslims in Indonesia. Examining the long-standing enactment of the Marriage Law, which has reached 48 years, and its subsequent amendment, there has been no addition of provisions explicitly permitting interfaith marriages, especially between non-Muslim men and Muslim women. Furthermore, considering the impact of judge's decisions and determinations, these legal rulings become jurisprudence for other judges when deciding cases with similar circumstances. Therefore, these decisions have a significant and broad-reaching impact on the Indonesian population, particularly those who practice Islam. This perspective aligns with the notion that judges should explore unwritten laws as the basis for their decisions, as stipulated in Article 5, Paragraph 1 of Law No. 48 of 2009 on Judicial Authority. It states that judges are obliged to explore, follow, and understand the legal values and sense of justice prevailing in society. Consequently, the appropriate decision for a judge to make is one that does not endorse interfaith marriages. This reflects the intention of Indonesia's marriage legislation. Additionally, the judges best suited to adjudicate interfaith marriage cases are those from the Religious Court. This choice is justified because Religious Court judges have educational backgrounds in religious studies and possess an understanding of classical and contemporary Islamic jurisprudence. This aligns with Law No. 3 of 2006 on Amendments to Law No. 7 of 1989 concerning Religious Courts and Supreme Court Regulation No. 2 of 2017 on the Recruitment of Judges.

## **References**

- Amalia, Tyas. "Model Manajemen Konflik Pernikahan Beda Agama Dalam Pemikiran Ahmad Nurcholish." *Jurnal Sosiologi Agama* 12, no. 1 (2018): 1. <https://doi.org/10.14421/jsa.2018.121-01>.

- Ardianto, Medi Romi, and Ahmad Zamroni. "Implikasi Ketenangan Jiwa Dan Ketentraman Hati Sebagai Faktor Yang Mempengaruhi Keberhasilan Pendidikan Bagi Remaja." *IEMJ: Islamic Education Management Journal* 1, no. 1 (February 2022): 20–35.
- Bahrudin, A . "Implementasi Maqasid Al-Shari'ah Sebagai Solusi Problematika Sosial Dan Kemasyarakatan Kontemporer." *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 17, no. 1 (June 2017): 1–18. <https://doi.org/10.18326/IJTIHAD.V17I1.1-18>.
- Bawazier, Dio Alif. "Pernikahan Beda Agama (Studi Komparatif Tentang Hukum Pernikahan Beda Agama Perspektif Abdullah Ahmad An-Na'im Dan Ahmad Zahro)." *Sakina: Journal of Family Studies* 4, no. 3 (2020).
- Burhanuddin. "Zikir Dan Ketenangan Jiwa (Solusi Islam Mengatasi Kegelisahan Dan Kegagalan Jiwa)." *Jurnal Mimbar: Media Intelektual Muslim Dan Bimbingan Rohani* 6, no. 1 (April 2020): 1–25. <https://doi.org/10.47435/MIMBAR.V6I1.371>.
- Direktori Putusan Mahkamah Agung (2022).
- Fatoni, Siti Nur, and Iu Rusliana. "Pernikahan Beda Agama Menurut Tokoh Lintas Agama Di Kota Bandung" 1 (2019): 95–114.
- Fitrawati. "Diskursus Perkawinan Beda Agama Di Indonesia Dalam Tinjauan Universalisme Ham Dan Relativisme Budaya." *JURIS (Jurnal Ilmiah Syariah)* 20, no. 1 (June 2021): 131–45. <https://doi.org/10.31958/JURIS.V20I1.2825>.
- Gunawan, Leo Agung Srie. "Problematika Jatuh Cinta: Sebuah Tinjauan Filosofis." *LOGOS* 15, no. 2 (April 2018): 1–30. <https://doi.org/10.54367/LOGOS.V15I2.319>.
- Harahap, Nursapia. "Penelitian Kualitatif," 2020.
- Irfani, Nurfaqih. "Asas Lex Superior, Lex Specialis, Dan Lex Posterior: Pemaknaan, Problematika, Dan Penggunaannya Dalam Penalaran Dan Argumentasi Hukum." *Jurnal Legislasi Indonesia* 16, no. 3 (2020): 305–25.
- Isnantiana, Nur Iftitah. "Legal Reasoning Hakim Dalam Pengambilan Putusan Perkara Di Pengadilan." *Islamadina: Jurnal Pemikiran Islam* 18, no. 2 (2017): 41–56.
- Jimly Asshiddiqie. "Kedudukan Mahkamah Konstitusi Dalam Struktur Ketatanegaraan Indonesia | Mahkamah Konstitusi Republik Indonesia," 2015.
- Jurdi, Fajlurrahman. *Logika Hukum*. 2nd ed. Jakarta: Kencana, 2019.
- Konstitusi, Mahkamah. Putusan Mahkamah Konstitusi Nomor 68/PUU-XII/2014, Mahkamah Konstitusi § (2015).

- Lathifah, Anthin. "State Marriage and Civil Marriage: The Role of State Policy on Interreligious Marriage in Central Java." *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 15, no. 1 (June 2020): 1–30. <https://doi.org/10.19105/AL-IHKAM.V15I1.2689>.
- Mahkamah Agung. "Putusan MA No. 1400 K/Pdt/1986." Daniel S. Lev Library, 1986.
- Maulidizen, Ahmad. "The Urgency of Islamic Law Sources Knowledge Masadir Al-Ahkam Al-Mukhtalaf Fiha: Istisab, Sadd Al-Dzariah and Qaul Al-Sahabi." *Jurnal Hukum Islam* 18, no. 2 (2018): 49–68. <https://doi.org/10.24014/hi.v18i2.6749>.
- Maulidizen, Ahmad, and Ashilah Raihanah. "The Technique of Determining Ijtihad and Its Application in Life: Analysis of Istihsan, Maslahah Mursalah, 'Urf and Syar'u Man Qablana." *Al-Ahkam: Jurnal Ilmu Syariah Dan Hukum* 4, no. 1 (2019): 45–62. <https://doi.org/10.22515/alahkam.v4i1.1600>.
- Muzan, Amrul, Syamsuddin Muir, Hasan Basri, Kemas Muhammad Gemilang, and Darulhuda Darulhuda. "Mitigasi Konflik Rumah Tangga Dalam Upaya Menjaga Keutuhan Keluarga Sakinah." *Hukum Islam* 22, no. 2 (2022): 52–72.
- Nurchahaya, Mawardi Dalimunthe, and Srimurhayati. "Perkawinan Beda Agama Dalam Perspektif Hukum Islam." *Hukum Islam* 18, no. 2 (August 2019): 141–56.
- Nurmaya, Edyna Ratna. "Pernikahan Beda Agama Stafsus Jokowi: Ayu Dan Gerald Umumkan Lewat Instagram, Mohon Doa Dan Dukungan - Suara Merdeka." *Suara Merdeka*, 2022.
- Pengadilan Negeri Pati. *Direktori Putusan Mahkamah Agung* (2020).
- Qamar, Nurul. *Logika Dan Penalaran Dalam Ilmu Hukum*. CV. Social Politic Genius (SIGn), 2018.
- Rakyat, Dewan Perwakilan. *Undang-Undang Nomor 3 Tahun 2006 Tentang Perubahan Atas Undang-Undang Nomor 7 Tahun 1989 Tentang Peradilan Agama* (2006). [dpr.go.id](http://dpr.go.id).
- Rani Tiara S., Mega. "Diskursus Tentang Nikah Beda Agama (Kajian Al Maqasid As Syari'ah)." *Al-Adl: Jurnal Hukum* 8, no. 1 (2016). <https://doi.org/10.31602/al-adl.v8i1.351>.
- Reva Deddy Utama. "Catatan Demokrasi: Nikah Beda Agama Di Indonesia, Kok Bisa?" 2022.
- Rohmah, Anny Nailatur, and Ashif Az Zafi. "Jejak Eksistensi Mazhab Syafi'i Di Indonesia." *Tamaddun: Jurnal Sejarah Dan Kebudayaan* 8, no. 1 (May 2020).



- Saputra, Andi. "PN Surabaya Izinkan Pernikahan Beda Agama Pasangan Islam-Kristen Ini." Detik News, 2022.
- Setiawan, Agus. "Penalaran Hukum Yang Mampu Mewujudkan Tujuan Hukum Secara Proporsional." *Jurnal Hukum Mimbar Justitia* 3, no. 2 (December 2017): 204–15. <https://doi.org/10.35194/JHMJ.V3I2.257>.
- Simatupang, Taufik Hidayat. "Adult Age in Marriage in Indonesia (Theoretical Study of the Application of the Lex Posterior Derogat Legi Priori Principle)." *Jurnal Penelitian Hukum De Jure* 21, no. 2 (June 2021): 213–22. <https://doi.org/10.30641/DEJURE.2021.V21.213-222>.
- Sri Wahyuni. "Kontroversi Perkawinan Beda Agama Di Indonesia." *Al-Risalah* 14, no. 2 (2014): 293–306. <https://doi.org/10.30631/al-risalah.v14i02.452>.
- Susanto, Mei. "Kedudukan Dan Fungsi Pembukaan Undang-Undang Dasar 1945: Pembelajaran Dari Tren Global." *Jurnal Legislasi Indonesia* 18, no. 2 (2021): 184–203.
- Syaripudin, Ahmad, and M Kasim. "Konsep Dasar Ijmak Sebagai Sumber Hukum Islam." *BUSTANUL FUQAH: Jurnal Bidang Hukum Islam* 1, no. 1 (April 2020): 28–43. <https://doi.org/10.36701/BUSTANUL.V1I1.125>.
- Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan (2011).
- Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan (n.d.).
- Vera, Ni Luh Putu, and Nurul Ainuddin. "Logika Hukum Dan Terobosan Hukum Melalui Legal Reasoning." *Jatiswara* 31, no. 1 (2016): 99–110.
- Weruin, Urbanus Ura. "Logika, Penalaran, Dan Argumentasi Hukum." *Jurnal Konstitusi* 14, no. 2 (November 2017): 374–95. <https://doi.org/10.31078/JK1427>.
- Yunus, Ahyuni. *Hukum Perkawinan Dan Itsbat Nikah: Antara Perlindungan Dan Kepastian Hukum*. Humanities Genius, 2020.

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