

**Interfaith Marriage in Indonesia: Judicial Interpretation of
Surabaya District Court Decision No. 916/Pdt.P/2022/PN.Sby in the
Perspective of Human Rights and Islamic Law Compilation**

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Abstract: The purpose of this research is to answer the question of how the Surabaya District Court decided Number 916/Pdt.P/2022/Pn.Sby regarding the application for interfaith marriage in the Human Rights Perspective and the Compilation of Islamic Law. This research is library research. The source of the data used is primary legal material taken from the Surabaya PN Decision Number 916/Pdt.P/2022/PN. Sby, Civil Code, Law No. 1 of 1974 concerning Marriage, Government Regulation No. 9 of 1975 as Implementing Regulation of Law No. 1 of 1974, Compilation of Islamic Law, Al-Quran and MUI Fatwa, skunder legal material is taken from materials that are closely related to primary legal material and data related to the title and problem studied. The results showed that the implementation of interfaith marriage based on Law No. 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI) could not be carried out because interfaith marriage did not meet the marriage requirements specified in the two legal provisions. Interfaith marriage according to the perspective of Islamic Law, Law No. 1 of 1974 concerning Marriage is a marriage prohibited by Law No. 1 of 1974 concerning

Marriage because it does not meet the legal requirements of marriage in Article 2 of Law No. 1 of 1974 so as to determine the invalid marital status.

Keywords: Marriage Dispensation, Law, Religious Courts, HAM

Abstrak: Tujuan penelitian ini adalah untuk menjawab pertanyaan bagaimana putusan Pengadilan Negeri Surabaya Nomor 916/Pdt.P/2022/Pn.Sby tentang permohonan pernikahan beda agama dalam Perspektif Hak Asasi Manusia dan Kompilasi Hukum Islam. Penelitian ini merupakan penelitian kepustakaan (library research). Sumber data yang digunakan adalah bahan hukum primer diambil dari Putusan PN Surabaya Nomor 916/Pdt.P/2022/PN.Sby, KUHP Perdata, Undang-Undang No 1 Tahun 1974 Tentang Perkawinan, Peraturan Pemerintah No 9 Tahun 1975 sebagai Peraturan Pelaksana UU No 1 Tahun 1974, Kompilasi Hukum Islam, Al-Quran dan Fatwa MUI, bahan hukum skunder diambil dari bahan-bahan yang erat kaitannya dengan bahan hukum primer dan data-data yang berkaitan dengan judul dan permasalahan yang diteliti. Hasil penelitian menunjukkan bahwa pelaksanaan perkawinan beda agama berdasarkan Undang-Undang No. 1 Tahun 1974 tentang Perkawinan dan Kompilasi Hukum Islam (KHI) tidak dapat dilaksanakan karena perkawinan beda agama tidak memenuhi syarat-syarat perkawinan yang telah ditentukan di dalam kedua ketentuan hukum tersebut. Perkawinan beda agama menurut perspektif Hukum Islam, Undang-Undang No. 1 Tahun 1974 tentang Perkawinan merupakan perkawinan yang dilarang oleh Undang-Undang No. 1 Tahun 1974 tentang Perkawinan karena tidak memenuhi syarat sah perkawinan dalam Pasal 2 Undang-

Undang No. 1 Tahun 1974 sehingga menentukan status perkawinan yang tidak sah.

Kata Kunci: Perkawinan, Perkawinan Beda Agama, Putusan, HAM.

Introduction

Humans are social creatures and humans have been given individual freedom, the nature of a human being is that the life of a human being is inseparable from other humans. Life together between humans on a small scale can be seen from a marriage to form a family. Family is a form of human life symptoms which are formed by one man and a woman who have met certain requirements.¹

Marriage is an important legal event in human life which contains various legal consequences. So the existing laws provide detailed rules about the marriage. Marriage itself is an innate bond between a man and a woman in order to form a household based on the one Godhead. And all countries have their own laws and regulations without the smallest of Indonesia. Marriage is an innate bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead.²

In the condition of diverse Indonesian society, in terms of ethnicity, race and religion, in terms of religion, the Indonesian government has recognized several kinds of religions including Islam, Buddhism, Confucianism, Protestantism, Catholicism, and Hinduism.³ There are various kinds of problems that arise in it. For example, the problem of the distribution of inheritance in the family, the problem of what type of custom applies in a family rule. One of the problems that is

¹ Ahmad Azhar Basyir, *Hukum Perkawinan Islam* (Yogyakarta;UII Press, 1999),h. 124

² Peter Salim,Yenni Salim, *Kamus Besar Bahasa Indonesia Kontemporer*, (Jakarta: Modern English Press,1999). h.61.

³ Nazmudin, *Kerukunan dan Toleransi Antar Umat Beragama dalam Membangun Keutuhan Negara Kesatuan Republik Indonesia* (NKRI), *Journal Of Government and Civil Society*, 1(Aoril 2017),h. 23

highlighted in the conflicts that arise in today's society is, where we often encounter the implementation of Interfaith Marriages.

The problem of marriage is not just a personal problem of those who will carry out the marriage, but it is one of the religious issues that is quite sensitive and closely related to one's spirituality. As a religious issue, almost every religion in the world has its own rules about marriage so that in principle it is regulated and must be subject to the provisions of religious teachings adopted by those who practice marriage.⁴

The importance of this marriage, the government has regulated it with the issuance of Law Number 1 of 1974 concerning Marriage which took effect on October 1, 1975 and its implementation provisions, namely Government Regulation Number 9 of 1975 concerning the implementation of Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI) as an addition specifically for Indonesian citizens who are Muslims. According to Article 2 of the Marriage Law Number 1 of 1974, as for the validity of the marriage and its registration, it is determined that:

1. Marriage is legal, if it is carried out according to the laws of each religion and belief.
2. Each marriage is recorded according to the applicable laws and regulations.⁵
3. According to Law No. 1 of 1974 concerning Marriage, marriage can be declared valid if it is carried out according to the religious law and beliefs of the couple who perform the marriage and are recorded. If the couple who performs the marriage does not carry out the terms and conditions of their respective religions and beliefs, then the marriage is invalid, thus Law No. 1 of 1974 concerning Marriage leaves the implementation of marriage to their respective religions.

⁴ Usman Rachmadi,. 2006.*Aspek-Aspek Hukum Perorangan dan Keluarga di Indonesia*. Jakarta: Sinar Grafika, h. 303

⁵ Pasal 2, Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 tentang Perkawinan

4. If we pay attention to the Marriage Law No. 1/1974 and the implementing regulations of Government Regulation No. 9/1975, the two regulations do not expressly regulate the issue of interfaith marriage. If we examine these two regulations, then we can only conclude that there is not a single article, either explicit or implied, that prohibits interreligious marriage.⁶

In addition to Law No. 1 of 1974 concerning Marriage, there are also other rules that regulate Marriage within the scope of Islam, namely the Compilation of Islamic Law. Based on this Compilation of Islamic Law, it is also regulated about the conditions of marriage, the principles of marriage and so on. Basically, between the Compilation of Islamic Law and Law No. 1 of 1974 concerning Marriage, there is a substance that is not much different about the procedures for the implementation of Marriage. If Law No. 1 of 1974 concerning Marriage leads to positive Indonesian law or is national in nature, while the Compilation of Islamic Law has a substance based on Islam. In the Compilation of Islamic Law (KHI) enacted by Presidential Instruction Number 1 of 1991, it is forbidden for a Muslim to perform interfaith marriages.

The existence of interreligious marriage will cause a difference in principles in marriage so that it is feared that it will cause problems that are difficult to solve in the future, for example regarding the rights and obligations of husband and wife, inheritance and child maintenance. But if the parents only have different principles and beliefs, how can the parents educate the religious basis to the child. In addition, the problem that will arise is if the interfaith couple divorces, which court will handle the divorce case, in addition to that if one of the interfaith couples dies, what about inheritance issues. From the inheritance problem, it will arise whether a child born from a marriage of a different religion has the right to inherit from a father or mother who is of a different religion from the

⁶ Rusli, *Perkawinan antar Agama dan Masalahnya*, Cetakan Pertama, (Bandung, Shantika Dharma Bandung, 1984), h 8

child. Because interfaith marriage will only cause problems, many parties are opposed to interfaith marriage.

As for some previous research, an article written by Muhammad Ashsubli, a lecturer at the Islamic College of Bengkalis Riau entitled *The Law on Interfaith Marriage in the Plurality of Religious Law (Judicial Review of Interfaith Marriage Articles)*. The results of the study say that marriage is sacred, so, marriage is not just a legal event. In Indonesia, the people are religious so that marriage is a sacred event, even marriage is worship. The non-recognition of the Marriage Law in the Plurality of Religious Law of interfaith marriage by the Constitutional Court is one of the religious provisions and it reflects our Indonesia. Through the Constitutional Court's decision that rejects interfaith marriage, it is a divine principle mandated in the 1945 Constitution as a manifestation of religious recognition.

As a country based on the One Godhead, actions or deeds carried out by citizens have a close relationship with religion and one of them is marriage. Marriage is one of the areas of problems that are regulated in the legal order in Indonesia. For this reason, all actions and deeds carried out by citizens, including those related to marriage matters, must be obedient and submissive and do not contradict or violate laws and regulations. The non-recognition of interfaith marriage is one of the provisions of religion. Quoting the statement of the Minister of Religion.⁷

The article was written by Syauqi Futaqi, a lecturer at FAI Islamic University Darul Ulum Lamongan, East Java, entitled "Interfaith Marriage: Pluralism Perspective of Muticulturalism". The results of the study say that based on the above study, there are at least three opinions. First, the opinion that it is forbidden to marry non-Muslims and scholars of the book, because scholars of the book are included in the category of polytheists. Second, opinions that are permissible only to the members of the book, while other members of the book are prohibited. The scribes are only a group that accepts the book of Samawi. Third, the opinion that

⁷ Muhammad Ashsubli Dosen Sekolah Tinggi Islam Bengkalis Riau jurnal berjudul *Undang-Undang Perkawinan Beda Agama Dalam Pluralitas Hukum Agama (Judiciary Review Pasal Perkawinan Beda Agama)*".

is permissible in muthlak, because other religions also include the scholars of the book. The pluralism-multiculturalism group presents a new ijtihad by using historical criticism of the text in the interpretation of revelation. From this perspective, interfaith marriage is allowed because there is no sharih postulate that explicitly states the prohibition of interfaith marriage. The absence of evidence shows an open interpretation that leads to the permissibility of interfaith marriage.⁸

The article written by Abdul Jalil Widyaiswara, a Young Expert at the Technical Education and Religious Education and Training Center of the Ministry of Religion of the Republic of Indonesia is entitled "The Choice of Different Religions in the Perspective of Islamic Law and Positive Law in Indonesia". The results of the study say that in reality, interfaith marriages in Indonesia occur among artists and ordinary people. This shows that interfaith marriage still works, albeit controversial. On the one hand, it is faced with Islamic law, and on the other hand there is a regulation as a positive law, namely Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law. The affirmation of the Qur'an surah al-Baqarah verse 221 has prohibited marriage between a Muslim and a non-Muslim in the category of polytheism/polytheism. A Muslim man is allowed to marry an ahlulkitab woman (Jewish and Christian) based on Qur'an al-Mā'idah verse 5, with the condition that the quality of the Muslim man's faith and Islam is good, because this kind of marriage carries a high risk: "change of religion or divorce". The marriage of a Muslim man to a woman of the Qur'an is only an act that is punished as "mubah" (permissible), but not an encouragement, let alone a commandment. The companions of Umar bin al-Khattab also showed disapproval to the companions of Hudzaifah bin al-Yemen and Talhah who married Jewish and Christian women, because they were afraid that other Muslims would be followed, so that they would stay away from Muslim women.

Based on the consideration of benefits, namely preventive measures to prevent apostasy and destruction of the household due to

⁸ Syauqi Futaqi Dosen FAI Universitas Islam Darul Ulum Lamongan Jawa Timur Jurnal berjudul "*Kawin Beda Agama : Perpektif Pluralisme Mutikulturalisme*".

interfaith marriage, it can be affirmed that the most ideal marriage is according to the instructions of QS al-Rūm verse 21, and which can lead to salvation in this world and the hereafter and a happy family: *sakinah*, *mawaddah* and *rahmah* is marriage with people of the same religion. Based on the perspective of Islamic law and positive law, interfaith marriage is seen as more harmful than its benefits. According to Islamic law, Muslim men are allowed to marry *ahlulkitab* women (Jews and Christians), while positive law does not allow interfaith marriage. The ban is based on the consideration that interfaith marriage has a greater negative impact, which will affect the continuity of the household. Multi-faith in a family can cause a lot of friction, especially when it comes to worship practices that cannot be mixed together.⁹

Discussion

In the Jurisprudence of the Decision of the Supreme Court of the Republic of Indonesia Number 1400K/Pdt/1986, dated January 20, 1989, it is basically stated that religious differences from prospective husband and wife are not one of the prohibitions on marriage, and regarding interfaith marriage is not found in the formulation of article by article in Law Number 1 of 1974 concerning Marriage, including Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, So that problems related to interfaith or belief marriage must be found and determined by law.

When looking at Human Rights, Article 29 of the 1945 Constitution contains the freedom to embrace belief in God Almighty, while in Article 28B Paragraph (1) of the 1945 Constitution it is stated: "Everyone has the right to form a family and continue their offspring through a valid marriage." Regarding the phrase legal marriage, it is clearly regulated in Article 2 paragraph (1) of the Marriage Law that marriage is valid if it is carried out according to the religious law of both spouses. Meanwhile, Islam regulates the invalidity of interfaith marriage. Interfaith marriage

⁹ Abdul Jalil Widyaishwara Ahli Muda Pusdiklat Teknis Pendidikan dan Keagamaan Kemenag RI jurnal berjudul "Pernikahan Beda Agama Dalam Perspektif Hukum Islam dan Hukum Positif Di Indonesia"

should also not be interpreted as a violation of Human Rights. Because as stipulated in Article 28J Paragraph (2) of the 1945 Constitution, the implementation of human rights in Indonesia is not liberal, but recognizes the existence of restrictions on the practice of human rights in order to respect the human rights of others, including the right to marry, one of which considers religious values.¹⁰

From the description above, interfaith marriage is still not expressly regulated in the Marriage Law, however, because every religion in Indonesia prohibits interfaith marriage while Article 2 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 explains that the validity of marriage must be carried out in accordance with their respective religions and beliefs, meaning that every couple who wants to carry out marriage must come from the same religion. Of course, if religion allows the practice of interfaith marriage, then the Marriage Law also recognizes its validity. But the reality is that each religion does not want to legalize the existence of interfaith marriage unless one of the couples changes religion following his partner.

Provisions related to interfaith marriage are also contained in Law Number 23 of 2006 concerning Population Administration. Where the existence of this rule provides a greater opportunity to legalize interfaith marriage. Namely with the availability of the option to submit an application for interfaith marriage to the District Court to issue a determination that allows interfaith marriage and order the Civil Registry office employees to register the interfaith marriage in the Marriage Registration Register.¹¹ Article 35 letter a of Law Number 23 of 2006 concerning Population Administration, states that the registration of marriages as referred to in Article 34 of Law Number 23 of 2006 concerning Population Administration also applies to marriages determined by the court. Following in the explanation of Article 35 letter a of Law Number 23 of 2006 concerning Population Administration, it is explained that what is meant by marriage determined by the Investigator

¹⁰ MPR RI, HNWI: Perkawinan Beda Agama Tidak Sejalan dengan Konstitusi (On-line), tersedia di <https://mpr.go.id> (20 Juli 2023).

¹¹ Mahkamah Agung Direktorat Jenderal Badan Peradilan Agama (On-line).

is a marriage carried out between people of different religions. So based on the provisions of Law Number 23 of 2006 concerning Population Administration, interfaith marriage can be considered valid because it is carried out based on a court determination in accordance with the content of Article 35 letter a of Law Number 23 of 2006 concerning Population Administration which has been the basis for perpetrators of interfaith marriage to request a determination from the court whose marriage is then recorded at the Civil Registry Office.

There are several considerations behind the judge in granting the application for the determination of interfaith marriage. First, interfaith marriage is not a prohibition based on Law Number 1 of 1974 concerning Marriage, and the formulation of Article 35 of Law Number 23 of 2006 concerning Population Administration can be enforced because there is a legal gap as contained in Article 21 Paragraph (3) in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, which provides that a written rejection issued by the Civil Registry Office of a marriage application can be sued to the courts, and the court that will determine whether the rejection is appropriate or decides the marriage can be recorded. Thus, the court's authority to grant permission for interfaith marriage to take place is the basis for registering interfaith marriages at the Civil Registry Office in Indonesia, as contained in Article 35 letter (a) of Law Number 23 of 2006 concerning Population Administration. This article is seen as a form of weakening the provisions of Article 2 Paragraph (1) of Law Number 1 of 1974 concerning Marriage. 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. Regarding the same issue, the court has given different determinations, either granting or rejecting the application for the determination of interfaith marriage.¹²

Regarding Marriage has indeed given full authority to the court to assess the issue of the rejection of marriage issued by the Office of the Population and Civil Registry and is authorized to allow the implementation of a marriage, but regardless of this authority, the author

¹² Dengan Rakhmat et al., "UU No. 1 Tahun 1974 Tentang Perkawinan," 1974, 1-15.

views that the District Court in this case the judge must really dig out the facts and truth related to the reason for this rejection of marriage and not necessarily give permission to Marriage for applicants is only based on their belief to marry. Especially if the religious provisions of each prospective bride prohibit the marriage and also if you look at the Constitutional Court Decision Number 68/PUU-XII/2014 which strictly prohibits interfaith marriage.

From the explanation above, it can be interpreted that the validity or not of a marriage cannot be based on Law Number 24 of 2013 concerning Population Administration but must look at Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, so that the legality of interfaith marriage based on religious provisions and laws in the field of marriage law becomes invalid. However, interfaith marriages carried out based on court determinations are legally valid according to the law and have the right to be registered by Employees of the Population and Civil Registration Office as stipulated in Law Number 23 of 2006 concerning Population Administration.

Since the enactment of Law No. 1 of 1974 concerning Marriage, all legal provisions related to family law before the birth of this law have become invalid. It can be seen from article 66 of Law No. 1 of 1974 that "with the enactment of this Law, the provisions of the provisions regulated in the Civil Code (BW=Burgerlijk wetboek), the Indonesian Christian Marriage Ordinance (Huwelijk Ordonantie Christen Indonesiers S.1933 No 74), the Mixed Marriage Regulation (Regeling Op de gemengde Huwelijken S.19898 No 158) and all other regulations governing marriage to the extent that they have been regulated in this Law declared invalid.¹³

Thus, the ability of interfaith marriage or interfaith marriage which refers to article 7 paragraph (2) of the GHR which states differences in religion, nation, origin is not at all an obstacle to marriage, by itself ends after the birth of Law No. 1 of 1974 concerning Marriage. This is as affirmed in article 2 paragraph 1 of Law No. 1974 concerning

¹³ M. Anshary, *Hukum Perkawinan di Indonesia*, (Yogyakarta: Pustaka Pelajar, 2010) h. 53.

Marriage which reads "marriage is declared valid, if it is carried out according to the law of each religion and belief."²¹ The statement of the article clearly means that interfaith marriage or interfaith marriage is prohibited under Indonesian law. This can be seen from the reading of article 2 paragraph (1) of the Law mentioned above that mixed marriage is declared valid if it is declared valid according to the law of religion and belief. This provision has the consequence that mixed marriages performed by Indonesian citizens with foreign nationalities must be in one faith.

Article 2 paragraph 1 of this law is further affirmed in article 6 paragraph (6) which regulates the conditions for the validity of marriage where in the article it is stated that "The provisions of paragraphs (1) to (5) of this article apply as long as the law of each religion and the beliefs of the person concerned do not determine otherwise."¹⁴ The phrase that mentions the length of the law of each religion and belief does not specify the religion and beliefs adhered to by the prospective spouse who will marry, and the sound of the phrase indicates the limit of whether the marriage is valid or not depends on whether or not it is valid according to the religion and beliefs of the prospective spouse. Furthermore, the prohibition of marriage is affirmed in article 8 paragraph (6) which states the prohibition of marriage for citizens who have a relationship that is prohibited by their religion or other applicable regulations.¹⁵

This statement is corroborated by some legal experts who say that interfaith marriage has not been regulated by the Marriage Law, because there is no article that expressly regulates it, therefore the provisions of article 7 paragraph (2) of the GHR still apply to interfaith marriage in Indonesia. This opinion is also supported by the provisions of article 66 of Law No. 1 of 1974 concerning Marriage which states that "with the enactment of this Law, the provisions on marriage regulated in the BW, GHR and other regulations governing marriage to the extent that they have been regulated in this Law are declared invalid. However, this

¹⁴ Undang-undang No 1 Tahun 1974 tentang Perkawinan

¹⁵ Departemen Agama RI, Pedoman Akad Nikah, (Jakarta: Departemen Agama, 2008), h. 75

opinion does not have a strong reason because if you pay close attention to the provisions of article 2 yat (1) of Law No. 1 of 1974 concerning Marriage, it implicitly contains a prohibition on interreligious marriage. In the history of the birth of Law No. 1 of 1974, according to Prof. DR Muhammad Daud Ali, the secular view formulated in article 11 paragraph (2) of the Marriage Bill, was rejected by the House of Representatives and excluded from the Marriage Law on the grounds that it was not in accordance with the philosophy of Pancasila and the Constitution of the Republic of Indonesia. The Indonesian state that adheres to the Principle of the One Godhead prioritizes the principles of religious values and norms embraced by the Indonesian people.¹⁶

Article 2 paragraph (1) of Law No. 1 of 1974 concerning Marriage which reads "marriage is declared valid, if it is carried out according to the law of each religion and belief" is emphasized by the decision of the Supreme Court of the Republic of Indonesia which on January 30, 2019 issued circular No. 231/PAN/HK.05/1/2019 point (2) explaining "Interfaith marriage is not recognized by the state and cannot be recorded.

In the Compilation of Islamic Law, it is explicitly and more strictly regulated the prohibition of marriage for Muslims with people who are not Muslims, it can be seen from the provisions of four articles: In article 40 of the KHI, it is stated: It is forbidden to perform a marriage between a man and a woman due to certain circumstances:

1. Because the woman in question is still tied to one marriage with another man.
2. A woman who is still in the period of iddah with another man.
3. A woman who is not a Muslim.¹⁷

Article 44 of the Criminal Code; "A Muslim woman is forbidden to marry a man who is not a Muslim." Religious differences in KHI are seen as a barrier for men and women who want to get married. This means

¹⁶ M. Anshary, *Hukum Perkawinan di Indonesia*, (Yogyakarta: Pustaka Pelajar, 2010), h. 57.

¹⁷ Mohammad monib, Ahmad Nurcholis, *Kado Cinta*, h. 149-150.

that Muslim men and women are not allowed to marry non-Muslim men or women.

In the Supreme Court's Circular Letter Number 2 of 2023 at point 2, "The Court does not grant the application to register marriages between people of different religions and beliefs. In the case of interfaith marriage, the Supreme Court's decision contains contradictions with cultural values and legal values that live in Indonesian society because in cultural values and legal values of society that are sourced from religious norms, interfaith marriage is actually prohibited according to several religions in Indonesia, namely Islam, Catholic Christianity, Protestant Christianity, Hinduism, Buddhism and Confucianism. The Surabaya Court decision regarding the granting of interfaith marriage applications is contrary to the Pancasila philosophy which adheres to the principle of the One Godhead.

Furthermore, if viewed from the religion of each applicant in this case, where one is Muslim and the other is Christian, it is known that these two religions prohibit the practice of interfaith marriage, the author is of the opinion that the judge who examined and adjudicated this case did not consider the teachings and recommendations of these two religions, namely Islam and Christianity. On the contrary, the court judge only bases his consideration on the wishes and wishes of the applicants who want to perform interfaith marriages. In fact, it is very important to explore and study in depth the religious teachings adopted by the applicants who submitted this application.

In this case, it appears that the Court Judge made little effort to obtain material truth, especially related to the search for truth derived from the teachings or provisions believed in from each of the applicants' religions and also the opinions of legal experts and religious experts regarding the phenomenon of interfaith marriage which is the subject of the problem in this case. Especially after the Constitutional Court Decision Number 68/PUU-XII/2014 which also prohibits the implementation of interfaith marriages.

That in the consideration of the Judge who examined and adjudicated case No. 916/Pdt.P/PN. Sby, the panel of judges used a Human Rights approach in which in the consideration that from the

juridical facts that had been revealed at the trial, namely Petitioner I embraced Islam, while Petitioner II embraced Christianity, the Judge considered that the applicants have the right to maintain their respective religious beliefs, as well as have the right to carry out a marriage with the intention of forming a household that is to be carried out by the prospective bride (the applicants) who different religions. This is as contained in Article 29 of the 1945 Constitution concerning the freedom to embrace belief in God Almighty and based on Article 28B Paragraph (1) of the 1945 Constitution which affirms that everyone has the right to form a family and continue offspring through legal marriage. These two provisions are also in line and must be guaranteed by the State.

The development of human rights in Indonesia is juridically interfered with by the development of the world of International Law. It is a logical consequence that Indonesia's independence, which began from centuries of colonialism, produced a nationalist attitude to defend the rights of its people. In addition, the influence of western doctrine on human rights at that time also played a role, resulting in the basis of the Indonesian State, namely the 1945 Constitution which in its opening explicitly recognized the existence of human rights.

Based on the basis of the State, the recognition of human rights mainly includes independence, that is, freedom and responsibility. Furthermore, the State's basis states the State's obligation to meet the welfare of its people, meet the welfare of its people, and protect all its people. It is a logical consequence that the emergence of obligations will include rights on the other party, which in this context is the people. This is then able to equate the spirit of the constitution with the spirit in establishing a welfare state, which is a state whose goal is to prosper its people.¹⁸

DUHAM came into force in Indonesia. However, in Law 39 of 1999, the concept of divinity was added in article 1 regarding general provisions regarding the definition of human rights itself. This then limits the implementation of human rights which must be based on divinity. In general, human rights in Indonesia include: a). The right to life, b). The

¹⁸ Bahder, Nasution Johan, *Negara Hukum Dan Hak Asasi Manusia*, Bandung : Sumbersari Indah 40222. h, 202

right to have a family and continue one's offspring, c). The right to self-development, d). The right to justice, e). The right to personal freedom (to choose and have political beliefs, to express opinions in public, to embrace one's religion, not to be enslaved, to choose citizenship without discrimination, freedom of movement, to move and reside in the territory of the Republic of Indonesia), f). The right to a sense of security, g). Right to welfare, h). The right to participate in government, i). Women's rights, j). Children's rights.¹⁹

The conflict between human rights and Islam begins with a difference in the fundamental concept of the origin of human rights itself. Nowadays, human rights prioritize the aspect of human freedom or liberalization of human beings. In fact, in Islam, this cannot be fully recognized, because in this religion there is a teaching that states that God (Allah SWT) is the owner of the universe, so that no human being is free to do anything except with His permission.

The discussion of human rights in Islam is substantively contained in the teachings of Islam itself, which in this context obliges a person to respect the rights of others. Such as the teachings prohibit killing, forbidden stealing, and so on. The codification of human rights began with the emergence of the Charter of Medina, which is an agreement like a political contract between the Prophet Muhammad PBUH and the people of Medina that placed the Prophet as its leader.²⁰

In the Charter of Medina there are several basic conceptions of rights stated in the paragraph "Preamble". There are at least five main meanings of the alenia content, namely the placement of the name of Allah SWT in the top position, a written social contract, plurality of participants, open membership, and unity in diversity. Human rights contained in the Charter of Medina can be divided into three things, namely the right to life, the right to freedom, and the right to seek happiness.

¹⁹ Undang-undang Republik Indonesia Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia, Jakarta Sinar Grafika, 2000, cet. Ke-2.

²⁰ Jurnal Al-Adalah Vol.12, No. 2 (2015) Penegakan Hak Asasi Manusia di Era Globalisasi Dalam Perspektif Hukum Islam

From this discussion, it can be concluded that Islam recognizes the concept of inherent rights of human beings given by God to humans. This has a logical consequence, that God is the one who can determine what rights can be had by humans and what is not. Substantively, human rights in Islam are more directed at the implementation of human obligations, namely the necessity of human beings not to do things to other human beings. In this case, the guidelines for doing so are found in the religion of Islam itself. That human rights are basically natural rights given by God to humans, so it is irrational if these natural rights deviate from the rules and regulations of God. Likewise, in Islam, with the rule of Allah, human rights must certainly not contradict the teachings commanded by Allah SWT. So it can be said that interfaith marriage from the perspective of human rights is not allowed.

Conclusion

The provisions of article 2 yat (1) of Law No. 1 of 1974 concerning Marriage implicitly contain a prohibition on interreligious marriage. The Indonesian state that adheres to the Principle of the One Godhead prioritizes the principles of religious values and norms embraced by the Indonesian people. If interfaith marriage occurs between a Muslim woman and a non-Muslim man or vice versa, either the future husband or wife has a holy book such as Judaism, Christianity called ahl al-kitab or other religions that have a book of teachings similar to the holy book, such as Buddhism, Hinduism, and other religious traditions, according to the legal researcher it is haram and invalid. So it can be said that interfaith marriage from the perspective of human rights is not allowed. It is also understood in the KHI that Muslims are forbidden to have relations with polytheists, infidels, and ahl al-kitab through marriage.

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