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## Comparison Of Positive Law And Islamic Law In Registration Of Interfaith Marriage In Case Number 91/Pdt.P/2022/Pn Bks

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**Abstract :** This study looks at how interfaith marriage is controlled in Indonesia, with a focus on Decision Number 91/Pdt.P/2022/PN Bks. Interfaith marriages often create legal uncertainty, even though religion has a big impact on marriage law in Indonesia. Article 35 letter a of the Population Administration Law, which allows marriage registration after a court ruling, was created to resolve this issue. The study aims to analyze the legal considerations behind the judge's approval of interfaith marriage registration in this case. It also examines the legal status of such marriages from the perspectives of both positive law and religious law. The research uses a normative legal approach with narrative-qualitative data analysis. The findings show that judges considered Article 35(a), human rights principles, non-discrimination, and relevant Supreme Court decisions in approving the request. However, under religious law, particularly Islamic law, such marriages are still considered invalid or haram, creating legal dualism. The problem is further complicated by the issuance of Supreme Court Circular Letter No. 2 of 2023, which restricts judicial discretion in similar future cases. This indicates that the challenge of harmonizing state law with religious norms continues and requires a more comprehensive legal solution.

**Keyword:** Court Decision, Marriage Registration, Interfaith Marriage, Legal Dualism

### INTRODUCTION

Based on Law Number 1 of 1974 regarding Marriage, marriage in Indonesia is defined as a man and a woman building a happy family based totally on God Almighty through a physical and mental relationship. Article 2 paragraph (1) of the Marriage Law, which declares that a marriage is deemed lawful if it is performed in line with each party's spiritual principles and beliefs, reflects the substantial influence of religious values on Indonesian marriage law. However, in practice, interfaith marriages are becoming increasingly common in Indonesia's pluralistic society (Indriana Farihah, Djanuardi, & Agus Saleh, 2024). This creates prison and social complexities, especially with regards to marriage registration, that is an important crucial administrative requirement for legal certainty for the spouse and the kids born from the marriage (Atika, Ishaq, & Faisol, 2024).

Problems get up because the Marriage Law does now not explicitly adjust or prohibit interfaith marriages, resulting in ambiguity and legal vacuum (Adrianto, 2024). However, couples with different religions can sign up their marriage after receiving a District Court verdict thanks to a loophole in Article 35 letter an of regulation No. 24/2013 at the Amendment to regulation No. 23/2006 on Population Administration. Marriage between people of different religions is expressly described in Article 35 Letter A as a marriage that the court may approve. This indicates an effort to offer legal truth and protection of human rights, thinking about that the proper to shape a own family is a constitutional right of every citizen (Angela, 2024),

However, Article 2 paragraph (1) of the Marriage Law and religious requirements, mainly Islamic Law, which expressly forbids marriages of various religions for its believers, regularly conflict with the existence of Article 35 letter a of the Civil Registration Law (Zain, 2024). It's miles explicitly forbidden for Muslim males to marry non-Muslim women, and vice versa, in keeping with to Article 40 letter c and Article 44 of the Compilation of Islamic Law (KHI). Basically, the Compilation of Islamic regulation (KHI) firmly states that interfaith marriages may not be executed by Muslims in Indonesia (Jalil, 2018). Judges' rulings in different District Courts have been inconsistent as a result of this normative contradiction; some have granted applications for interfaith marriage registration based on the Populace Administration Law, while others have denied them by citing the Marriage Law and religious requirements (Maiyori, Harianto, & Nurcahaya, n.d.). This legal dynamic demonstrates that Indonesian legislation pertaining to interfaith weddings are not consistently interpreted and applied.

The case have a look at of choice Number 91/Pdt.P/2022/PN Bks is highly pertinent in this regard. Then, Petitioner I, Michelle Elida Putri, who is Christian, and Petitioner II, M. Aditya Anugrah Pratama, who is Muslim, wanted to get married in an interfaith marriage after dating since 2020. Because interfaith marriage does not adhere to Article 2 paragraphs (1) and (2) of regulation Number 1 of 1974 regarding Marriage in conjunction with Article 35 of regulation range 23 of 2006 concerning Populace Administration, the couples efforts to sign up their wedding at the Bekasi city Populace and Civil Registration workplace was denied. Article 1 of regulation Number 1 of 1974, Article 35 letter (a) of Law wide variety 23 of 2006 concerning Populace Administration, and the very best Court of the Republic of Indonesia's range:1400K/Pdt/1986, which holds that religious differences do not prevent marriage, were cited in the filing of this application.

Based in this heritage, the author is interested in undertaking take a look at of the registration of interfaith marriages in selection range 91/Pdt.P/PN Bks. This have a look at targets to research the judge's considerations in granting the registration of interfaith marriages and additionally to investigate the assessment of superb law and Islamic law regarding the registration of interfaith marriages in the choice. Those objectives are expected to make a good sized contribution to the effort to gain legal certainty and complete justice for all Indonesian residents concerning the issue of interfaith marriages, in addition to bridging the dualism between advantageous law and Islamic religious norms.

## METHOD

This study focuses on literature analysis and is a normative legal (doctrinal) study. The purpose of this observe is to have a look at the legal considerations of judges regarding the registration of interfaith marriages in choice 91/Pdt.P/2022/PN Bks and also to examine the comparison of positive law and Islamic law regarding the registration of interfaith marriages in Indonesia in the decision. The strategies used consist of a statutory approach to examine Law Number 1 of 1974, regulation range 24 of 2013 on Populace Administration, the Compilation of Islamic Law, and other relevant regulations. In addition, a case approach

was applied via reading decision Number 91/Pdt.P/2022/PN Bks and the very best Court Republic of Indonesia's range 1400 K/Pdt/1986 in depth. A conceptual approach was also used to understand the principles of law and human rights underlying the decisions.

Primary legal materials, such as court rulings and laws and regulations, as well as secondary legal materials, such as books and scientific journals that explore interfaith marriages, were used to gather the research data through document or literary investigations. Following data collection, a qualitative-descriptive analysis was conducted, which included comparisons with positive legal and religious standards, information synthesis, legal interpretation, and critical review.

## **RESULTS AND DISCUSSION**

### **In Decision Number 91/Pdt.P/2022/PN Bks, judges' legal considerations when granting applications for non-religious marriage registration**

The judges criminal concerns in granting the software for registration of a marriage between distinct religion in selection range 91/Pdt.P/2022/PN Bks were based on a comprehensive set of juridical arguments, covering aspects of population administration law, court authority, the reality of marriage, in addition to the concepts of human rights and non-discrimination. The panel of judges fundamentally based its choice on Article 35 letter a of regulation No. 24/2013 on Population Administration (previously Law No. 23/2006). This article explicitly opens up space for the registration of marriages that have obtained a court decision, where the explanation specifically refers to marriages between people of various religions. This shows that Indonesian positive law provides a legal pathway for interfaith marriages to be administratively recognized after going through a court determination process.

The Bekasi District Court asserted its authority to examine and determine this case. The facts of the trial showed that Applicant I (Michelle Elida Putri) was Christian and Applicant II (M. Aditya Anugrah Pratama) was Muslim. They had been in a romantic relationship and intended to marry, but the Bekasi City Populace and Civil Registration Workplace refused to check in the marriage due to religious differences, and advised them to obtain a court order. On the basis of Article 1 of regulation No. 1/1974 on Marriage and Article 35 letter (a) of regulation No. 23/2006 on Populace Administration, they so filed an software with the courtroom.

Human rights and nondiscrimination principles had a significant impact on the judge's decision. The court ruled that a person's religious beliefs should not be the primary reason they can not marry. According to Article 28B paragraph (1) of the 1945 charter, which ensures every person the right to begin a family and bypass on their offspring thru felony marriage, marriage is acknowledged as one of the fundamental human rights. Refusing to register a marriage on the basis of religious differences alone may be regarded as discriminatory and against human rights norms (Hutapea, 2024). According to the Indonesian Ideal Court's jurisprudence, Number:1400 K/Pdt/1986, issued January 20, 1989, "That the distinction in religion of the potential husband and spouse does not constitute a prohibition of marriage for them," supports this point of view. The judge also ruled that there aren't any provisions in regulation Number 1 of 1974 concerning Marriage that restrict marriage based on religious differences. This is consistent with the 1945 Constitution's Articles 27 and 29.

In addition, the judge considered that the marriage between Applicant I, who is a Christian, and Applicant II, who is a Muslim, might be performed in accordance with the Indonesian Christian marriage rules (Huwelijksordonnantie Christen Indonesia) S. 1933 Number 74. Article of regulation range 1 of 1974 states that a marriage performed in accordance with the previous rules is lawful. Therefore, as long as it did not contravene the relevant legislation, this marriage of different religions could be performed. This is because

the two applicants maintained their separate spiritual perspectives, and the wedding became to be finished in accordance with the spiritual law of one of the events. Accordingly, the court concluded that the marriage of the applicants was valid under the laws of the Republic of Indonesia and granted the petition in its entirety.

Bekasi District court selection range 91/Pdt.P/2022/PN Bks have become part of revolutionary jurisprudence in addressing the exceptional interpretations of interfaith marriage. The attention of the panel of judges indicates the braveness to apply the precept of substantial justice, by putting the constitutional rights of citizens of the nation in forming a own family as the primary footing. This technique is in line with the good judgment of modern regulation, which perspectives judges no longer most effective as mouthpieces of the law, but also agents of protection of individual civil rights (Jafar, Qosim, & Syamsul, 2024).

Another consideration taken turned into the harmonization between the marriage law and the population administration regulation. The judge placed Article 35 letter (a) of regulation No. 23/2006 as a criminal loophole that allows for the registration of interfaith marriages thru a court order. Despite the fact that normatively law No. 1/1974 has a tendency to close the space for this type of marriage, judges keep in mind that populace regulation is administrative in nature and serves to ensure legal fact over the civil reputation of the network (Ma'rifatulloh, 2017)

This selection additionally suggests the have an impact on of maqasid sharia concerns in bridging the want for civil rights safety. In this context, marriage registration is taken into consideration a legal mechanism to defend youngsters and spouses from legal implications which includes inheritance, kid's legal reputation, and rights to public services. This angle is extensively supported by studies that emphasizes that uncertainty about the legal fame of interfaith couples can damage own family unity and harm children legally and socially (Safithri & Shiddiqi, 2024).

### **Comparison of positive law and Islamic law regarding the registration of interfaith marriages in Indonesia in Decision Number 91/Pdt.P/2022/PN Bks**

Particularly when viewed from the perspective of positive law (state law) and religious law, the legal status of interfaith marriages whose registration has been approved by the courts has given rise to intricate and frequently conflicting discussions. This conflict reflects the tug-of-war between the principles of human rights and individual freedom, as well as the religious norms widely practiced in Indonesia.

### **Overview of Positive Law**

According to choice range 91/Pdt.P/2022/PN Bks, a marriage among people of different religions is deemed lawful from a positive legal standpoint as long as it has a court order and is registered with the state. This is in keeping with Article 35 letter (a) of Law No. 24/2013 on Population Administration, which permits marriage registration upon a court order. This legality is also supported by the constitutional principle of the human right to shape a own family through legal marriage, as stated in Article 28B paragraph (1) of the 1945 constitution.

In the context of positive law, the registration of interfaith marriages which have received a courtroom decision is administratively binding. This is confirmed in numerous legal studies that country that the courtroom has the authority to offer administrative legality that have to be recognized by means of the populace and Civil Registry office, with out intervening within the realm of whether or not or not a marriage is valid according to religion (Setyawan, Kurniawati, 2014). With a court selection, the marriage has the force of state law and all its legal consequences, including the legal status of children and inheritance, can be regulated under general civil law.

However, in practice, the implementation of post-court-order registration of interfaith marriages often faces challenges and differences in interpretation at the administrative level. Despite jurisprudence allowing registration, Supreme Court Circular Letter (SEMA) Number 2 of 2023 prohibits judges from granting such requests, creating legal uncertainty. This debate over legality often arises due to the interpretation of Law No. 1/1974 on Marriage, which does not clearly prohibit, but also does not expressly allow, interfaith marriages, leading to multiple interpretations among legal practitioners and the public. This is further clarified in a comparative study between the decisions of the Magelang District Court and the Blora District Court, where the Magelang District Court granted the registration application, while the Blora District Court rejected it (Rizani, 2018).

### Overview of Islamic Law

While positive law provides a loophole for registration, the position of interfaith marriages from the attitude of religious regulation, particularly Islam, remains a controversial crucial point. Most views in Islamic regulation and the Compilation of Islamic Law (KHI) firmly forbid interfaith marriages, mainly if a Muslim female marries a non-Muslim man, and there are also viewpoints that prevent Muslim men from marrying women of the Book (Amri, 2020). Article 2 paragraph (1) of number 1/1974 on Marriage, which specifies that a wedding is lawful furnished it is executed in conformity with the religious guidelines of every party, is usually the foundation for the rejection of interfaith marriages by religious institutions. Because the essence of “valid” in steo with religious law is not always in line with “valid” administratively by the state (Maloko, Chotban, Fuady, & Hasdiwanti, 2024).

In Islamic regulation, the prohibition for Muslim ladies to marry non-Muslim men is explained in the Qur'an, specifically in Surah Al-Baqarah verse 221 and Al-Mumtahanah verse 10. This prohibition is absolute in order to preserve the faith and to avoid possible problems or temptations (slander). Although there are differences of opinion on whether Muslim guys may marry ladies of the book (Jews or Christians), the majority of scholarly opinion in Indonesia tends to prohibit it, and the fatwa of the Indonesian Ulema Council (MUI) additionally explicitly states that interfaith marriages are haram and invalid. The Compilation of Islamic regulation (KHI), which acts as positive law for Muslims in Indonesia, likewise embraces this premise. Article 40 letter c of the KHI honestly prevents a man from marrying a woman because of certain conditions, including “if the woman concerned is not Muslim.” This tacitly reinforces the prohibition of marriage between a Muslim girl and a non-Muslim man. In addition, Article 44 of the KHI also reiterates that Muslim ladies may not marry non-Muslim males. In terms of maqasid sharia, this prohibition is supposed to protect religion (hifz al-din) and hold the stability of the Muslim circle of relatives (Safithri & Shiddiqi, 2024).

Although in Decision No. 91/Pdt.P/2022/PN Bks, Applicant I is Christian and Applicant II is Muslim, their marriage shall be solemnized in a Christian way. This difference of view shows that positive law and Islamic religious law are still far from a meeting point that satisfies all parties. This normative conflict leads to ongoing polemics, where constitutional rights and individual human rights clash with strong religious values and norms in Indonesian society. This legal dualism creates major challenges in practice, where state recognition through registration does not necessarily remove the “illegitimate” status from a religious perspective, which often has social and spiritual implications for the individuals and communities involved.

### CONCLUSION

Based on the evaluation selection wide Number 91/Pdt.P/2022/PN Bks concerning the application for registration of a wedding between different religions, it could be concluded



that the judge's felony consideration in granting the application refers to Article 35 letter (a) of regulation Number 24/2013 regarding Populace Administration which lets in marriage registration based on a court decision for couples of different religions. In addition, the decide additionally firmly regarded the values of the human right to shape a family and non-discrimination, and was supported via ideally suited Court selection range:1400 K/Pdt/1986. The judges additionally taken into consideration that the marriage regulation does not now not without a doubt forbid interfaith marriages, that is in compliance with the 1945 Constitution.

The felony function of interfaith weddings whose registration is authorized by the court exhibits a considerable duality between positive law and religious law. From a positive law perspective, the court ruling makes the marriage administratively legitimate in the eyes of the state, presenting legal fact and civil rights for the couple and the kids born from the marriage. However, from the perspective of Islamic religious regulation, interfaith marriages are nevertheless appeared invalid or haram based on the reasons of the Qur'an and the Compilation of Islamic regulation (KHI). This discrepancy between governmental recognition and religious validity produces an ongoing controversy, where administrative legalization does not necessarily remove the "invalid" role in the eyes of the spitual community.

The interplay between choice range 91/Pdt.P/2022/PN Bks and Supreme Court Circular Letter No. 2 of 2023 suggest the complexity and evolution of fenoly interpretation surrounding interfaith marriage in Indonesia. While this judgment is a reflection of efforts to preserve human rights in the framework of civil registration, the SEMA alters the legal landscape, limiting judges' authority in the future and supporting the Supreme Court's conservative approach on this topic. This illustrates that establishing a balance between human rights principles, positive law and religious values remains a fundamental difficulty in attaining legal certainty and full justice for all Indonesian residents.

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Undang-Undang Dasar Tahun 1945

Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan

Undang-Undang No. 24 Tahun 2013 tentang Administrasi Kependudukan

Surat Edaran Mahkamah Agung (SEMA) Nomor 2 Tahun 2023 tentang Petunjuk bagi Hakim yang Melarang Pencatatan Perkawinan Beda Agama

Kompilasi Hukum Islam