

## SMUGGLING OF THE LAW IN DIFFERENT RELIGIOUS MARRIAGE AS A LEGAL ACTION IN THE STATE OF PANCASILA

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### ABSTRACT

*Marriage in Indonesia is a legal act that is valid in an external forum based on the legal contract of each religious law or belief. Interestingly, interfaith marriages continue to occur and experience problems related to illegal acts against various attempts to smuggle laws to obtain legal recognition from the State. This issue will be analyzed based on the Civil Code, Law Number 1 of 1974 concerning Marriage, Law Number 39 of 1999 concerning Human Rights, Law Number 23 of 2006 concerning Population Administration, and the Decision of the Constitutional Court Number. 68/ PUU-XII / 2014. To find out the legal arrangements in interfaith marriages, a normative juridical legal research method and a statutory approach were carried out by collecting literature study data. Secondary data were analyzed using qualitative juridical analysis. The results of this study explain that positive law in Indonesia does not prohibit interfaith marriage, but does not regulate it. The substance of the validity of marriage is pluralistic based on religious law and belief, even though the majority prohibits its followers, so that a juridical understanding emerges that it is impossible to legalize interaction marriages, but in reality some religions and beliefs provide dispensation or permission. Law smuggling by individuals adhering to religions or beliefs with low quality and/ or not obeying the forum internum which prohibits interfaith marriages, but imposes themselves on various motives (Al-Baits) based on positive law. The conclusion is that even though there is disharmony of norms, the smuggling of law in interfaith marriages fulfills the elements of acts against the law, which deliberately contradicts positive law, and reduces the authority of law and religion in the Pancasila State. Juridically, the determination of the legality of marriage is based on religious norms or beliefs, not a Court Ruling mechanism, because the State only determines administrative validity.*

**Keywords:** *Smuggling, Marriage, Different Religions, Acts against the Law, Pancasila*

### A. INTRODUCTION

External forum or dimensions of freedom of religious expression between men and women in the framework of marriage is not absolute in the Pancasila State, because as a material condition it must comply with the internal forum or the spiritual private dimension concerned,

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based on the main sources of religious teachings or beliefs through correct and generally accepted methodologies internally. Each religion, while the formal requirements are related to the registration of marriage in Law Number 1 of 1974 concerning Marriage (UUP) and its implementing regulations. Legal certainty to provide protection for rights and freedom of religion (*Non-Derogable Rights*) must be placed, not only for individuals, but also legal certainty that is just within the framework of the right to religion and belief in the order of life together in one religion and between religious communities. However, in reality, interfaith marriages in Indonesia continue to occur and experience problems related to illegal acts against various attempts to smuggle the law to obtain legal recognition from the State.

The diversity of the composition of Indonesian citizens according to religion and belief, as well as the flow of globalization and the acceleration of information, communication and technology in the era of the industrial revolution 4.0 towards the social era 5.0, causes the connectivity and interaction of a person with other people to be increasingly unhindered by space and time, so that it is very possible to occur. Marriage between people of different religions. For this reason, the limits of State intervention through the formation of a Law, by regulating restrictions for every religious adherent and believer of faith in interpreting their beliefs according to the main religious teachings derived from their respective holy books, have provided legal certainty for religious life.

Indonesia is not a religious state, but Indonesia is a religious country, because as a country that chooses Pancasila and it is contained in the Fourth Paragraph of the Preamble of the 1945 Constitution as the basis of the state, where the Almighty God is an inseparable part, then religion or belief is an important element that places religion or belief as an inseparable part of state life. Article 29 Paragraph (1) of the 1945 Constitution states that the State is based on the One Godhead. Then the embodiment of the One and Only Godhead at the national level, based on Article 28E and Article 29 Paragraph (2) of the 1945 Constitution, it is explained that the State guarantees the independence of every citizen to choose and embrace and worship according to the religion and belief he believes. Therefore, the State has an interest in maintaining the existence, harmony and sustainability of the religion or belief of its citizens.

The involvement of the State through the formation of laws, by fully laying down the legal authority of each religion and belief to determine the measure of truth regarding the parameters of specific interpretation of the validity of a marriage, is a form of state respect and recognition of the religions of its citizens. However, not freeing the State from its constitutional responsibilities and obligations to protect every citizen, regardless of their beliefs, and not allowing vigilante actions (persecution) that have the potential to lead to law violations against the norms of the Law, the State has the authority to take enforcement actions. law against the alleged violation.

The state provides the right and free will for every citizen to choose a potential partner in forming a happy and eternal family, but is limited by the provisions of the applicable laws and regulations. As referred to in Article 28B Paragraph (1) of the 1945 Constitution, it is explained that the State guarantees the right of everyone to form a family and continue their descendants through legal marriage, and Article 10 Paragraph (1) in conjunction with Paragraph (2) of Law Number 39 Year 1999 concerning Human Rights (Human Rights Law) explains that the State restricts the free will to choose interfaith partners to carry out legal marriages (Karim, 2017).

## Smuggling Of The Law In Different Religious Marriage As A Legal Action In The State Of Pancasila

M. Aprilzal Arsyita, Damrah Khair, Erina Pane, A. Kumedi Ja'far, Siti Mahmudah

Indonesia has hedged the process of formalizing the marriage of Indonesian citizens through the UUP, which accommodates the principles in accordance with the philosophical foundations of the Pancasila and the 1945 Constitution as well as the elements and provisions of the religious law and beliefs of those concerned. The purpose of marriage is to form a happy, eternal and prosperous family, so the UUP adheres to the principle of making divorce difficult. Article 2 Paragraph (1) UUP in conjunction with Article 6 to Article 12 UUP and confirmed in the Decision of the Constitutional Court (MK) Number 68 / PUU-XII / 2014, it is explained that the purpose of the State refers to the conditions of marriage according to each religious law and belief. as the entrance to a legal marriage, it is intended to prevent divorce due to fundamental differences in perspective and lifestyle based on beliefs according to religion or belief, so that husband and wife will help and complement each other, and each can develop their personality to achieve spiritual prosperity and material (Angka 3 dan Angka 4 Penjelasan Umum UU No. 1 Tahun 1974 Tentang Perkawinan).

Apart from the above provisions, there are still provisions that apply to mixed marriages (marriages of persons subject to different laws in Indonesia), referring to the Regulation on Mixed Marriage. Article 66 UUP states that *Burgelijk Wetboek* (BW), (*Huwelijks Ordonantie Christen Indonesiers Stb. 1933 No. 74* (HOCI), *Regeling Of de Gemengde Huwalijken Stb. 1898 No.158* (GHR) and other laws and regulations that regulate marriage as far as has been regulated in UUP does not apply, but Article 66 UUP not delete Article 6 GHR stated that the implementation of mixed marriages conducted according to the law applicable to him, without prejudice husband and wife are always required (Prodjodikoro, 1981).

Substantially, the State through the establishment of the Act , it does not negate rights in external forums, but rather regulates provisions that are able to reach the motive aspect (*Al-Baits*) which is very difficult for others to know, so as not to misinterpret the main points of religious teachings or beliefs that they believe in. Ironically, the State provides an opportunity for legal certainty to marry by submitting an application to court as referred to in Article 35 Letter a and b of Law Number 23 of 2006 concerning Population Administration (Adminduk Law) which explains that the registration of marriage as referred to in Article 34 of the Adminduk Law also applies to marriages determined by the court, in this case including interfaith marriages. . If the request is granted, the court will order the Office of Religious Affairs (KUA) or the Civil Registry Office (KCS) to carry out the marriage. This contradiction has implications for the emergence of multiple interpretations, and has led to various attempts to smuggle the law in interfaith marriages, to obtain legal recognition from the State.

Legal smuggling in interfaith marriages in Indonesia is also due to differences in interpretation that arise among legal experts due to the lack of clarity in the narrative formulation of Article 2 Paragraph (1) of the Company Law (Faizal, 2014). A different reason (*Concurring Opinion*) as stated in the Constitutional Court Decision Number 68 / PUU-XII / 2014 was conveyed by Maria Farida Indrati as one of the Constitutional Justices who stated that interfaith marriage is a legal vacuum (*Leemten Ini Het Recht*) based on Article 66 of UUP. *This Argumentum Per Analogiam Figurehead* aims to provide an Article 66 of the Company Law in accordance with its legal principles, so that interfaith marriages that cannot be included are deemed in accordance with the provisions of the statutory regulations (Faiz, 2018). Another interpretation of Ahmad Nurcholish's (Baso & Nurcholish, 2005) opinion as

an advisor (*Counselor*) for interfaith couples at the *Indonesian Conference on Religion and Peace* (ICRP), states that interfaith marriages are legal and can take place because they are included in mixed marriages. *Argumentum A Contrario* is based on denying the understanding between the things faced and the matters regulated in Article 57 of the Company Law regarding narrative subject to different laws.

The above interpretation is a legal argument used by interfaith marriage couples in Indonesia, in the form of legal smuggling (*Fraus Legis*) in order to obtain legal recognition from the State. Wahyono Darmabrata divides the four ways of smuggling the law, namely by asking for a Court Ruling, marriage to be carried out twice according to the law of each bride's religion, conducting marriages abroad, and temporary submission to one of the religious laws (Indriadi, 2012). Among the smuggling of these laws, the most worrying is the temporary submission to one of the religious laws as a form of manipulation of religious status, to get around the Law (*Wetsonduiking*). In fact, this temporary submission becomes broad in meaning based on the Constitutional Court Decision Number 97/ PUU-XIV / 2016, which causes legal consequences in the form of the disappearance of differences in legal standing between religion and belief in population administration (Sukirno & Adhim, 2020), so that believers can record their marriages according to their beliefs, after the marriage takes place. before the leaders of the belief.

The phenomenon of interfaith marriages has been published a lot, by asking for a court order, for example the decision of the Supreme Court of the Republic of Indonesia (MA) Number 1400K/ Pdt/ 1986, with a ruling ordering the Registrar at the Civil Registry Office of DKI Jakarta Province to have a marriage between Andi Vony Gani (Female, Islam) with Andrianus Petrus Hendrik Nelwan (Male, Protestant) after fulfilling the requirements according to the law, the stipulation of the Airmadidi District Court, Minahasa Utara District, North Sulawesi Province Number 41/ Pdt.P/ 2012/ PN.AMD with a decision containing permission to conduct interfaith marriages between DaniSamosir and Astriani Van Bone in front of Airmadidi Civil Registry Officers, Surakarta District Court Stipulation Number 156/ Pdt.P/ 2010/ PN. Ska with a decision that grants requests for interfaith marriage between ListyaniAstuti (Female, Christian (Protestant)) with Achmad Julianto (Male, Muslim); and Magelang District Court Decision Number 04/ Pdt.P/ 2012/ PN.MGL with a decision that grants the request for interfaith marriage between Yeni (female, Christian (Protestant)) and Yudi Aryono (male, Muslim). Marriage legalized by the court was also conducted by Jamal Mirdad (Male, Muslim) with Lydia Ruth Elizabeth Kandou (Female, Christian (Protestant)) ("Lydia Kandou," 2021).

Marriage is carried out twice according to the law of each bride's religion by Fifaldi Surya Permana/ Revaldo (Male, Islam) with Indah Puspita Sari (Female, Catholic) (Tresnady & Hadiyanti, 2016), and DeddyCorbuzier (Male, Christian (Protestant)) with Kalima Oktarani (Woman, Islam) (Palandi, 2013), after completing the consent of Kabul at home by the leader of Paramadina University, went straight to the nearest church for the blessing (Noviandi & Sumarni, 2019), as well as NellaKharisma (Woman, Christian (Protestant)) with Dory Harsa (Male, Muslim) (Wina, 2020). Marriages abroad such as Nurul Arifin (female, Muslim) with Mayong (male, Catholic), and Yuni Shara (female, Muslim) with Henry Siahaan (male, Christian (Protestant)). Temporary submission to one of the religious laws such as Asmirandah Zantman (Woman, Islam) with Jonas Rivanno Wattimena (Male, Christian (Protestant)) by

## Smuggling Of The Law In Different Religious Marriage As A Legal Action In The State Of Pancasila

M. Aprilzal Arsyita, Damrah Khair, Erina Pane, A. Kumedi Ja'far, Siti Mahmudah

means of the Islamic religion (Edward, 2013), and Dewi (Female, Penghayat) with Okky (Male, Catholic)) with the Sundanese Wiwitan belief procedure (Erwinskyahbana, 2019).

Various attempts to smuggle laws in interfaith marriages above or marriage between siblings (*Incest*) and same sex (Lesbi, Gay, Bisexual, Transgender) are very contrary to Pancasila, the 1945 Constitution, the Human Rights Law, the UUP and the Adminduk Law, because they are steps that are considered wrong as deviant behavior towards Pancasila as the source of all sources of law, and the regulations under it lose their authority. The reason for the concern about the practice of smuggling the law in interfaith marriages as an act against the law is that when a person returns to their original religion and belief, which is carried out in a short time after sexual intercourse (*Coitus*), especially if the husband and wife already have children, they will cause psychological and sociological impact on the couple and their family.

Such actions are deliberately contrary to law in general and reduce the authority of law and religion, in this case the Law on Law which designates the same religious law and belief between the two brides who are obeyed by society and have long been a norm of decency, causing direct harm to others, both in the form of assets from the costs of the marriage that arise, as well as decreased health due to fatigue after the marriage procession, it can even cause death victims from the high levels of depression and psychology that are faced. This allows filing a civil suit in terms of insult, namely demanding compensation according to the position and assets of each party according to the circumstances (as referred to in Article 1370 of the Civil Code) and losses to restore good name and honor (as referred to in Article 1372 of the Civil Code) and obliging perpetrators of violations to compensate for the losses they incur (as referred to in Article 1365 of the Civil Code).

Conducting Indonesia to remain religious is carried out by the State to protect the entire Indonesian nation in maintaining national unity and integrity from various covert efforts of economic, political and social motives by using the shield of human rights, tolerance and freedom of religion / secularism, or even in the name of grace. Divine in the form of holy love of two human beings. This is also done as a manifestation of the religious nature of the Indonesian nation which is realized in religious life, in Asmin (1986) order to obtain legal certainty and legal benefits in order to provide a sense of justice from the pressure of public minorities who increasingly provoke legality over the occurrence of polemics and criticism of the absence of law on interfaith marriages.

Based on the description above, questions arise that become important problems to deal with from the potential implications of legal consequences, have the novelty of various aspects of legal science, are very interesting and have never been answered from existing research, and are only answered from research conducted by the author, namely: Are the various efforts taken by interfaith marriage couples to obtain legal recognition from the State considered as smuggling of law in Indonesia? and Is smuggling of the law in marriage between religions and beliefs an act against the law in the Pancasila State? This research is reasonable to do, even though the color of life in society is always found some people who do not obey the rules of the law, be it law from God or positive law (Prodjodikoro, 1981, p. 9), such as there are still many interfaith marriage couples who until the end of their lives, live in harmony in a household with stick to the religious stance he embraced before marriage.

The purpose of writing this article in general is to provide an understanding to the public, that the State designates the conditions of marriage according to each religious law and

belief as the entrance to a legal marriage. This is to improve the quality of one's internal forum before making a decision when going to carry out marriage as an external forum, and specifically to find out about legal arrangements in interfaith marriages and to explain the opinion that there is a legal vacuum over the efforts to smuggle the law that continues to occur in interfaith marriages in Indonesia, because it hinders legal development and the perpetrators have the potential to be affected by legal implications in the form of legal sanctions for acts against law in the State of Pancasila.

It is hoped that the benefits of the results of this research are theoretically able to be part of the development of legal science with regard to the absence of a single implementing regulation that provides regulations for smuggling of laws in interfaith marriages, while practically providing information to the public regarding legal provisions and issues involved. has the potential to cause the impact of psychological disturbances and sociological shocks, in order to obtain legal certainty, legal benefits to provide a sense of justice towards the benefit of the life of the Indonesian nation, as well as to the government in the form of simple, fast, and inexpensive decision choices as well as tactical implementation of family law reform in Indonesia.

## B. METHOD

The writing of this article uses normative juridical legal research methods (Mertokusumo, 2004, p. 30), and a statutory approach by collecting literature study data. Secondary data as the main data were analyzed by qualitative juridical analysis (Olang, 2017), The main data in this article is obtained through secondary data collection (Sugiyono, 2017), including:

1. Primary legal materials, namely the Civil Code, Law No.1 of 1974 concerning Marriage, Law Number 39 of 1999 concerning Human Rights, Law Number 23 of 2006 concerning Population Administration, and the Decision of the Constitutional Court Number 68 / PUU-XII / 2014
2. Secondary legal materials in the form of books, research journals and articles discussing interfaith marriage.
3. Tertiary legal materials are in the form of a legal dictionary and a dictionary Indonesian-Arabic-English.

## C. DISCUSSION

### I. Smuggling of Laws for the Validity of Marriages of Different Religions in the Pancasila State

Association in social life leads to the interaction of various different interest variables towards a common ground towards harmony, including differences in *internal* forums. The interaction of a man and a woman who has different internal forum towards marriage experiences obstacles in the Pancasila State, namely that the mandatory pledge of both marriages becomes valid if it is carried out in accordance with the respective religious laws and beliefs concerned. This situation causes various attempts from interpretation or interpretation of prospective interfaith marriage partners and results in smuggling of laws in the field of law. On the other hand, the weak quality of a person's *internum* form in exploring religious

## Smuggling Of The Law In Different Religious Marriage As A Legal Action In The State Of Pancasila

M. Aprilzal Arsyita, Damrah Khair, Erina Pane, A. Kumedi Ja'far, Siti Mahmudah

teachings or beliefs that one believes in and a strong desire based on love and mutual trust, strengthens the determination by justifying all means in fighting for the validity of their marriage. There are four ways of smuggling laws that exist today, namely by asking for a Court Ruling, marriages are carried out twice according to the law of each religion of the bride and groom, carrying out marriages abroad, and temporarily submitting to one of the religious laws. This requires the presence of the State through the formation of a Law, so that the human rights of the bride and groom can be fulfilled.

LJ van Apeldoorn (2015) said that family law (*Familirecht*) is a regulation regarding legal relations arising from kinship, one of which is the law of marriage, and CST Kansil (Kansil, 2015, p. 37) explained that marriage is a part of civil law (*Burgelijkrecht*) from private law/ civil law (*Privaatrecht Civilerecht*). Marriage is a legal act that has legal consequences based on the provisions stipulated in positive law. Interestingly in Indonesia, the regulation of provisions regarding marriage becomes a collaboration between private law and public law involving religious law or belief from the citizen *internum forum*.

Written law has been codified (systematic and complete bookkeeping of certain types of law) to obtain legal certainty, simplification of law and legal unity, but some have not. Kansil (Kansil, 2015) explained that marriage law in Indonesia has been regulated in the *Burgelijk Wetboek* (BW), and currently the source of his knowledge lies in the 1945 Constitution as the source of written basic law (*Basic Law*), which underwent four amendments in the 1999-2000 period.

In the civil field regarding marriage, in the face of the still enactment of civil law pluralism, then in 1974 an effort was made to unify the law (an effort to enact one type of law for various groups of society and of a national nature) related to marriage. The meaning of marriage is in the first clause of the formulation of Article 1 of the Company Law, which reads Marriage is a physical and spiritual bond between a man and a woman as husband and wife. In this connection, Sardjono explained that this physical and spiritual bond is formally the status of an official relationship as husband and wife, both for them, their relationship with each other and with the wider community. The definition of an inner bond in marriage means that in the heart of the husband and wife there is a genuine intention to live together, with the aim of forming a happy and eternal family (household) (Sardjono, n.d.).

The achievement of national unification regarding marriage law with the enactment of the UUP on January 2, 1974, so that referring to Article 66 of the Company Law, in its place Article 2 Paragraph (I) of the Company Law refers to the validity of marriage according to the law of each religion and belief (Asmin, 1986). Elucidation of Article 2 Paragraph (I) of the UUP explains that with the formulation in Article 2 Paragraph (I), there is no marriage outside the law of each religion and belief, in accordance with Pancasila as the philosophy of national life and the 1945 Constitution as a *Basic Law*. Furthermore, it is stated that what is meant by the law of each of their religions and beliefs includes statutory provisions that apply to their respective religious groups and beliefs as long as they do not contradict or are not stipulated otherwise in the UUP (Asmin, 1986).

The national unification that resulted in the UUP became so sacred, given the bitter experience experienced by the Indonesian people over the regulation of the Dutch East Indies Government's constitutional provisions against civil law in Indonesia, which divided the

Indonesian population at that time into three groups, namely: European groups, foreign Eastern groups, and Bumi putera group. Article 26 *Burgerlijk Wetboek* (Stb. 1947 Number 23) and Article I HOCI (Stb. 1933 Number 74), view marriage only in a civil relationship, without paying attention to the religious law of the parties conducting the marriage, including in determining the validity of the marriage. Attempts to apply the same provisions are regulated in the Marriage Ordinance Draft 1937 which will be applied to Indonesian Muslims, Hindus, animists, and others, as well as foreign Easterners. But at that time, the draft of the ordinance was strongly opposed by Muslims.

According to Arief Sidharta (2013), religious norms are a set of norms that believers live and believe to be orders from God, which were revealed to humans through prophets and religious norms can be accepted by humans because humans are equipped with reason and conscience. In essence, religious norms regulate the relationship between humans and God, and the relationship between humans, as well as humans and the environment. There is no single religion in Indonesia that does not consider it important to regulate the institution of marriage for its people, because each religion has its own legal provisions regarding the validity of a marriage, it's just that in practice there are those that consistently maintain the provisions of their religion, and are lax in regard to the provisions of their religion. According to the Quraish Shihab, marriage must be based on the same belief, and in interfaith marriage, if religious teachings allow interfaith marriage, there must be a guarantee that husband and wife respect each other and do not prevent each other from carrying out their respective religious practices (Indriadi, 2012).

To be honest, the position of religion and belief as a internal forum is the same, because it is a human right that originates from a person's belief and is obtained naturally from his parents or is obtained in the process of his life journey. According to Presidential Decree No. 1 / PnPs / 1965 in conjunction with the religions that are embraced by the Indonesian population Law of the Republic of Indonesia Number 5 of 1969, almost all are prohibited from practicing interfaith marriages. According to the results of the 2010 Indonesian Population Census, Indonesia's population is 237,641,326, consisting of 87.18% Muslims, 6.96% Christians (Protestants), 2.91% Catholics, 1.69% Hindus, 0.72% Buddhist, 0.05% Confucianism, 0.13% belief, and 0.06% were not answered, and 0.32% were not asked (BPS RI, n.d.). Approximately 0.13% of these beliefs are uncertain, because not all followers of the faith register themselves according to their beliefs, but it is possible that they are registered as followers of one religion (Hidayati, 2019).

Indonesia is recorded as having 718 regional languages (Daftar Bahasa Daerah Di Indonesia, n.d.), and 1,340 ethnic or ethnic groups, with 40.22% Javanese as the largest group. Data per July 2018, the distribution of organizations that adhere to the belief in God Almighty that is registered with the Ministry of Education and Culture in 14 provinces throughout Indonesia, is recorded as many as 188 organizations (Kemendikbud, n.d.).

The validity of marriage in Indonesia is closely related to the norms of each religion and belief regarding the prohibition of interfaith marriage. Marriage according to Islamic sharia is essentially an agreement / *aqad* carried out by the parties through submission (*Jab*) and acceptance (*Qabul*) which begins with two sentences of the *Shahada* as a form of involvement of God in a strong agreement (*Mitsaqan Ghaliza*) (Mughtar, 1974), as referred to in Al. - Quran surah An-Nisaa Verse (21) (QS. IV: 21). Legally described in Article 2 Presidential



## Smuggling Of The Law In Different Religious Marriage As A Legal Action In The State Of Pancasila

M. Aprilzal Arsyita, Damrah Khair, Erina Pane, A. Kumedi Ja'far, Siti Mahmudah

Instruction No. I of 1991 concerning the Dissemination of the Compilation of Islamic Law (KHI) that according to Islam is a very strong contract (*mitsaqan ghalidzan*), socially it is to increase the degree or status in society than those who have not yet married, and religiously to obey the sharia/ commandments Allah SWT and doing it is worship.

The conditions for the validity of marriage according to the Islamic religion are the fulfillment of the rukun of marriage, the conditions of marriage and not violating the prohibition on marriage which is determined based on the sharia that he follows. Prophet Muhammad Saw in his sunnah has instructed Muslims that equality (*Kafaah*) in religion is a priority in determining the classification when choosing a partner who will be a life companion, as narrated by Al-Bukhari Number 4700 (Al-Bukhari, n.d.).

The teachings of Islam regarding the absolute prohibition of interfaith marriages have been mentioned in the Qur'an, namely Surat Al-Baqarah Verse 221 (QS. II: 221) (Asmin, 1986), while interfaith marriages are still allowed only for Muslim men with non-Muslim women. provided that it includes the group of scholars and in certain situations in accordance with the meaning of the message of the story behind the Qur'an verse came down into revelation (*Asbabun Nuzul*), as referred to in the letter Al-Maidah Verse 5 (QS.V: 5) (Asmin, 1986). The prohibitions for Muslims mentioned in the Qur'an are permanent. If there is a violation, including religion, then the marriage is considered void (*conversion Fasid*) (Asmin, 1986).

KHI categorizes interfaith marriage in Chapter VI Prohibition of Marriage, Article 40 letter c KHI explains that it is forbidden to marry between a man and a woman due to certain circumstances that is a woman who is not a Muslim, while Article 44 KHI explains that a Muslim woman is prohibited getting married to a non-Muslim man. There can even be annulment and be the reason for divorce if there is a conversion of religion as referred to in Article 75 letter a KHI which states that the decree of annulment does not apply to marriages annulled due to one husband or wife apostasy, then confirmed Article 116 letter g KHI which states that divorce can occur for reasons or reasons of religious conversion or apostasy, which leads to disharmony in the household. Marriage must be purified to achieve the purpose of marriage, not to make a particular religion for the spouse.

Marriage becomes legal in Christianity (Protestant) based on two aspects, namely the first on civil matters closely related to society and the State, so that the State has the right to regulate it by law, then the information provided by employees of the Civil Registry Office or Religious Leaders when confirming the marriage. The Christian (Protestant) who is sidi/adult, making the marriage legal. The second aspect, marriage is a matter of religion that must be subject to religious law, that is, after the registration of marriage according to State Law, confirmed and blessed by the church autonomously, in the conduct of worship, attended by two witnesses and witnessed by the congregation. According to Tika Sinaga that Christianity (Protestant) forbids interfaith marriage based on II Corinthians 6: 14-15. It is mentioned in II Corinthians 6: 14-18 to fulfill the second aspect whose spiritual elements are very dominant, in which both the bride and groom must be Christian (Protestant) in order for the marriage to be confirmed and blessed (Asmin, 1986). Protestant scholars also say this is not a bargain (Sinaga, 2013).

Marriage becomes valid in the Catholic religion and is performed, confirmed and blessed by the Pastor, who is elevated into a sacrament by vowing mutual allegiance before the

priest and witnesses (Ama, 1983). Although the ideal marriage according to the Catholic religion is a congregation, in the view of the Catholic church, the Bishop can provide a dispensation for interfaith marriage based on Canon 1086: 1 and 2 jo Kan. 1125 and 126. Dispensation is given in the hope that the marriage will build a good and intact family, as well as guarantee the maintenance of pastoral life after the marriage has taken place (Asmin, 1986). According to Father Andang Binawan SJ, Catholic church law allows interfaith marriage as long as the non-Catholic bride is willing to promise and submit to Catholic marriage law, monogamy, and non-divorce for life, as well as allowing the couple to remain Catholic (Indriadi, 2012).

The legal requirement of marriage according to Hindu law is performed through the ceremony of *samskara* (ascension to the upper realm like a sacrament in the Catholic religion) namely *Wiwaha Homa* or *Wiwaha Samskara*. If the marriage is not performed according to the procedure of *Wiwaha Homa* or *Wiwaha Samskara*, then the legal consequences arising from the marriage are religiously not recognized. As referred to in the Book of Manu *Manusmṛiti* M.III: 63, namely the legal basis of marriage through religious law, namely through the procedure of *Wiwaha Homa* or *Wiwaha Samskara*. The procedure of *Wiwaha Homa* or *Wiwaha Samskara* which has been mixed in Balinese customs is called ceremony *Beakala Beakaonor* (Asmin, 1986).

Prohibition of interfaith marriage based on the legalization of marriage according to Hinduism which does not have an exception clause (*Escape Clause conversion*) for Brahmins as Hindu religious leaders to perform the legalization of marriage ceremonies of two brides of different religions, including in this case (Asmin, 1986). According to Tika Sinaga that a Hindu marriage is only valid if a holy ceremony is performed by the Hindu religious leader *Pedende*, and *Pedende* only wants to perform a marriage ceremony if both the bride and groom are Hindus (Sinaga, 2013).

The legality of marriage as a material condition of marriage is regulated according to Buddhism in the Book of *Maha Mangala Jataka* 453, that is, the age of the two brides is not too far, must be *sedharma* by having comparable beliefs, comparable morals, comparable generosity and comparable wisdom. Formal requirements are performed at the *Vihara* or *Cetiya* or other buildings provided an altar is available, preceded by the recitation of *Parita Tritatna* as a confession of the faith of the bride and groom, then the vows ceremony of the parties led by *Pandita Loka Palasraya* as a Buddhist leader authorized to lead Buddhist ceremonies including marriage. The marriage confirmation and blessing ceremony and the reading of marriage advice (*Wiwaha Dharmadesana*) were performed as the closing ceremony. Prohibition of interfaith marriages including religious conversion in *Maha Mangala Jataka* 453 that the couple should be *sedharma* (Sinaga, 2013).

The legality of Khonghucu religious marriage is to acquire *Li Yuan*. In a ceremony *Li Yuan* led by a Khonghucu religious leader called *Haksu* (*Bunsu/ Kausing/ Tiangloo*), and a letter was published *Li Yuan* by the board of *Yinni Kong Jiao Zong Hui/ The Supreme Confusion For Religion In Indonesia* or the Indonesian Khonghucu Religious High Council (MATAKIN) as evidence has performed marriage according to the Khonghucu religion (Sinaga, 2013). The Khonghucu religion in the Book of *Wu Jing Five Classics/ The Five Books Of Old Testament* (五經) and the Book of *Si Shu* (四書) emphasize marriage performed by fellow Khonghucu believers through the ceremony *Li Yuan* as a confession of faith by the bride and groom at the time of marriage. Prohibition of interfaith marriage is not an obstacle in the

## Smuggling Of The Law In Different Religious Marriage As A Legal Action In The State Of Pancasila

M. Aprilzal Arsyita, Damrah Khair, Erina Pane, A. Kumedi Ja'far, Siti Mahmudah

Khonghucu religion which embraces differences in class, nationality, culture, as well as religion, because marriage is performed with the intention of uniting goodness and differences cannot be used as an obstacle to achieve goodness. Confucians who perform interfaith marriages still perform in front of the altar, but do not receive letter *Li Yuan's*, and MATAKIN institutionally requires the status bride's as a Khonghucu by issuing a certificate of having performed the marriage according to the Khonghucu religion (Sasmita, 2014).

Beliefs in Indonesia are closely related to the diversity of customs that come from local wisdom (*Local Wisdom*). The legality of marriage For believers based on the UUP, emphasized after the decision of Court Number 97/PUU-XIV/2016, referring to Article 81 Paragraph (1) to Paragraph (3) of Government Regulation Number 37 of 2007 on the Implementation of Law Number 23 of 2006 on Administration Population (PP Admuduk) stating that:

- a. The Marriage of the Believer is performed in the presence of the Head of the Believer;
- b. The Leader of the Believer as referred to in Paragraph (1) is appointed and stipulated by the Believer organization to fill out and sign the marriage certificate of the Believer;
- c. The Leader of the Faithful as referred to in Paragraph (2) is registered with the Ministry whose field of duty is technically to build the organization of the Faithful in the Almighty God.

The same basic view in customary law in each region regarding the purpose of marriage is that descent is an essential and absolute element of a tribal or clan community in maintaining its existence, because basically the indigenous people have permeated the values that live in the life of the indigenous people alone. Indigenous communities are generally more tolerant of the causes of divorce due to marriages that do not produce offspring (Soekanto & Taneko, 1981). The form of setting prohibitions in customary law from the lightest to the taboo is generally unwritten, but still closely held by members of the customary community. According to Dewi Wulansari in her book "Hukum Adat Indonesia", explains that the prohibition of marriage in customary law is anything that can cause the marriage cannot be performed because it does not meet the requirements, as required by customary law or religious prohibition that transforms into provisions in customary law. Prohibition of marriage in customary law that occurs include the closeness of kinship, differences in social strata in custom, religious differences, as well as same -sex marriage.

Herman M. Karim (2017) in his research explained that the meaning contained in Article 2 Paragraph (1) of the UUP can be interpreted in general that to assess the legality or not of a marriage the State leaves to each religion and belief in society to evaluate it, so that the legal norms contained in Article 2 Paragraph (1) of the UUP is a norm whose nature is an order and not a prohibition norm. The State does not prohibit interfaith marriages but the State commands religions or beliefs to give a valid or illegal assessment of interfaith marriages. The implementation of legal norms that contain orders and prohibitions that include the establishment, implementation, enforcement of positive legal norms is the duty, authority and responsibility of the State with the government and its government officials. In other words, the enforcement of positive legal norms in the public realm is the area of action of the State and government, while the implementation of non -positive legal norms such as religious norms, morality and decency is the duty, authority, responsibility and area of activity of parents, scholars, pastors, educators and moralists. If too many non-legal norms are turned into positive

legal norms and formulated into legislation, it means that the autonomy and authority of parents, scholars, pastors, educators and moralists are taken over, meaning co-opted by the State and government. If the norms that belong to the group of positive moral norms are forced into positive legal norms, by packing them into a Law, then it can lead to the emergence of symptoms of *legal moralism moral* (law that is morally) suggesting law.

The imposition of a group of positive moral norms other than religious norms into positive legal norms and packaged in a Law is found in the *Adminduk* Law. Population Administration in the Administrative Law is a series of activities for organizing and ordering documents and population data through population registration, civil registration, and management of population administration information and the utilization of the results for public services and other sector development. The state based on Pancasila and the 1945 Constitution is in essence obliged to provide protection and recognition to the determination of personal status and legal status of any Population Event and Significant Event experienced by Indonesian residents within or outside the jurisdiction of Indonesia.

Based on Article 35 Letter a of the Administrative Law, which states that the registration of marriages as referred to in Article 34 also applies to marriages established by the court, in this case including marriages of different religions. Article 35 Letter b of the Administrative Law which states that the registration of marriages as referred to in Article 34 also applies to marriages of foreign nationals performed in Indonesia at the request of the foreign nationals concerned, without mentioning either the two prospective brides as foreign nationals or one of them an Indonesian citizen, as well as does not require having the same *internum forum*. Armed with a civil decision that has permanent legal force (*Inkracht van Gewijsde*) referring to the order of Law Article 35 of the Administrative Law, the Court may order KUA or KCS to solemnize the marriage and issue a Marriage Deed for applicants for interfaith marriage. Examples of Court Determinations have been mentioned above, ranging from first -level court decisions, appeals decisions, to cassation decisions in the MA. The process of registering marriages of different religions is carried out by the Registrar of Marriages has actually been regulated in Article 20 of the UUP jo Article 21 Paragraph (4) of the UUP which explains the court ruling ordered that the marriage be held and clarified in Presidential Decree Number 12 of 1983 on Arrangement and Development and Maintenance of Civil Records. Whereas to assess the legality or not of marriage as a material condition of the legality of marriage is the action of religious leaders or beliefs that also include the attribution of the Law, while the Registration of Marriage as a formal requirement by the State through KUA and KCS is not the substance of the legality of marriage, but only an administrative service., the formal requirements that produce authentic evidence in the form of a copy of *Unfortunately kracht van Gewijsde Order* from the Court Until the issuance of the Marriage Deed from KUA or KCS, seem to be justification for the fulfillment of material requirements that should come from the belief in question.

Similar enforcement of the legal norms established in Article 2 Paragraph (1) of the UUP is explained on the role of religion and beliefs of a marriage, which is manifested in the registration of marriages in the form of Marriage Deeds for Muslims by KUA and followers of non -Islamic religions and beliefs by KCS, also occurs in Article 36 of the *Adminduk* Law which states that in the case of a marriage that cannot be proved by a Marriage Deed, the Marriage Registration is done after a Court Determination. This weakens the spirit of the marriage ceremony program which is the *prima donna* program of the Ministry of Religion to make the public aware of the importance of Marriage Registration for the future of the family and their descendants, because the State provides other alternatives under the umbrella of legal

## Smuggling Of The Law In Different Religious Marriage As A Legal Action In The State Of Pancasila

M. Aprilzal Arsyita, Damrah Khair, Erina Pane, A. Kumedi Ja'far, Siti Mahmudah

provisions in the courts to accommodate interfaith marriages that have occurred, but have not done Marriage Registration.

Similarly, marriages by Indonesian citizens who commit illegal smuggling in the form of marriages abroad. Article 37 of the *Adminduk* Law provides for the freedom of legal smuggling in interfaith marriages without requiring them to have the same internal forum. Registration of marriages abroad is listed in Article 37 Paragraph (1) of the Administrative Law states that marriages must be registered in an authorized agency in the local State and reported to the Representative of the Republic of Indonesia, Article 37 Paragraph (2) provides convenience that is if the local State as intended in Paragraph (1) does not conduct marriage registration for foreigners, registration is done at the local Representative of the Republic of Indonesia, and Article 37 Paragraph (3) gives attribution to the Representative of the Republic of Indonesia as referred to in Paragraph (2) records the marriage event in the Marriage Deed register and publishes citation of Marriage Deed. Marriage abroad by one or both Indonesian citizens has in fact also been regulated in Article 56 Paragraph (1) of the UUP states that marriage conducted outside Indonesia between two Indonesian citizens or an Indonesian citizen with a foreign citizen is valid if performed according to the law in force in the State where the marriage took place and for Indonesian citizens does not violate the provisions of this Law.

Disharmony of legal norms that occur between Article 20 UUP jo Article 21 Paragraph (4) UUP jo Article 56 Paragraph (1) UUP jo Article 57 UUP jo Article 66 UUP jo 34 to Article 37 of the Administrative Law, in conflict with Article 28B Paragraph (1) 1945 Constitution jo Article 28E 1945 Constitution jo Article 29 Paragraph (1) and Paragraph (2) 1945 Constitution jo Article 2 Paragraph (1) UUD jo Article 6 to 12 UUP jo Article 10 Paragraph (1) Human Rights Law jo Article 10 Paragraph (2) Law on Human Rights Article 49 Paragraph (2) Law on Amendments to UU *Adminduk* jo Article 50 Paragraph (2) Law on Amendments to UU *Adminduk*, and implementing regulations thereunder, even with Court Decision Number 68/PUU-XII/2014, cause anomalies or failures symmetry with the philosophy of Pancasila as the basis of the state. Each State is founded on the basis of philosophy as the embodiment of the desires of its people. Pancasila was chosen by acclamation by the people of Indonesia as a philosophy to provide the foundation for the strength of the establishment of the Republic of Indonesia (NKRI), so that the harmony of the above norms has certainly shaken the strength of the establishment of the NKRI with Pancasila as the basis of the state.

Pancasila was first delivered by Ir. Soekarno in the speech of the first session of the Indonesian Independence Business Preparation Research Agency (BPUPKI/*Dokuritsu Junbi Cosakai*) on June 1, 1945. Pancasila is the ideology of the Indonesian nation and is the basis of the state to organize all Indonesian life in order and accordance with five points of Pancasila, namely the Supreme Deity, Civilized Justice, Indonesian Unity, Citizenship Led by the Wisdom of Wisdom in Consultation/Representation, and Social Justice for All Indonesian People. Pancasila ideology as an open ideology has the meaning that the values contained in Pancasila must be able to adapt to the development of the times and technology of science by not changing the basic values in it (Amin, 2008). The changes that occur and are accommodated in the legislation, should not cause disharmony of norms that have long lived in society, so that the existence of the strength of the NKRI can be maintained for the sake of harmonious national life.

The era of globalization is rapidly evolving with the increasing variety of legal issues, not just human problems, but more than that, there are other elements that need attention, such

as man's relationship with nature around him or even with God who created man. The law must be seen as one, the law cannot stand alone, but has a very strong connection with God's command as the main source of law. It is stated in the Third Paragraph of the Opening of the 1945 Constitution that by the grace of God Almighty and driven by the noble desire to live a free national life, the Indonesian people hereby declare their independence. Similarly, Article 29 Paragraph (1) of the 1945 Constitution affirms what has been stated in the third paragraph above, namely the State is based on the Supreme Deity. With this legal perspective, all laws in force in the NKRI, must recognize and respect all the rules of law that have existed in the religion practiced by Indonesian citizens, including laws that apply and develop in society derived from religious law in the context of marriage (Karim, 2017).

The values contained in Pancasila have a dimension of reality in order to be able to develop in the life of a nation and a state, which is found in the society itself or called the ideology of the nation. The imposition of the will by the State by creating positive legal norms that allow interfaith marriages, which are strictly enforced on the community, then raises the potential for strong rejection from the religious community, especially Islam, Protestant Christianity and Hinduism as the majority religion. Then the different treatment by society to interfaith marriage couples, including their children, because interfaith marriage is considered by society to be a reprehensible act. The public's assessment of the process of interfaith marriage is invalid, because it challenges the religious norms that govern the provisions and determine what acts should be done or prohibited (Karim, 2017).

Interfaith marriages are in stark contrast to the moral norms in the life of eastern cultures that uphold moral rules. Eastern culture in Indonesian society as an acculturation that has become a tradition of customary culture/local wisdom (*local wisdom*) in the unity of customary law society in each region with the infiltration of religious norms, become the moral rules of everyone, so adherence to these moral teachings if not fulfilled, it becomes a taboo or bad thing for everyone to do, such as perpetrators who perform interfaith marriages. This is also contrary to the proper precautionary attitude in society, that is, actions taken contrary to the good attitude or propriety in society to pay attention to the interests of others, because generally the community environment is homogeneous with the same religious tradition, so that if something out of the ordinary, to be the object of public reproach.

The values of Pancasila are a dimension of idealism with a systematic, rational, and comprehensive nature in the five elements of Pancasila, which is to be achieved so that the future of the State is better when living the life of the nation and state, or called the view of national life (*Philosophische Grondslag*) (Amin, 2008). The values of the views of the Indonesian people formed in the ideals of law in the Pancasila State are formed in the minds and hearts of the people as a product of a combination of views of life, religious beliefs and the reality of community life projected on the process of changing the behavior of citizens in realizing elements of justice, power and successful use as well as legal certainty. All the values contained in the Pancasila are united in a system based on the principle of unity in difference and difference in unity that embodies the basic structure of human existence in that togetherness. The unifying principle of the emblem of the Republic of Indonesia is formulated in the expression *Bhinneka Tunggal Ika*. Due to differences in principles in religious diversity or belief, interfaith marriages are not valid according to Pancasila and the 1945 Constitution (Amin, 2008).

Pancasila must be used as a lens to monitor the smuggling of law in interfaith marriages. UUP has taken guidelines from the First Principle of Pancasila, namely the Principle of the Supreme Divinity as the basic norm in shaping the legality of marriage, as the first and

## Smuggling Of The Law In Different Religious Marriage As A Legal Action In The State Of Pancasila

M. Aprilzal Arsyita, Damrah Khair, Erina Pane, A. Kumedi Ja'far, Siti Mahmudah

main principle of Pancasila. Thus, the legal norms established in Article 2 Paragraph (I) of the UUP are explained regarding the affirmation of the religious role and beliefs of a marriage, where it is stated that the marriage is valid, if performed according to the law of each religion and belief. Indonesia is not a religious country but Indonesia is a religious country so in Pancasila it is confirmed that Indonesia is the One Divine State. Then in Article 29 Paragraph (I) of the 1945 Constitution it is confirmed that Indonesia is a State based on the Supreme Deity. The purpose of forming a household is to achieve a happy, eternal and eternal life based on the values of the Supreme Divinity, as explained in Article (I) of the UUP states that 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 or household based on the Supreme Deity.

Ichtianto (2003) stated that as a law established based on Pancasila, for example, the UUP gives the power to enforce the marriage law of religions embraced by Indonesian citizens. No marriage takes place outside the law of each religion or belief, because the UUP is formed based on the principle of the Supreme Deity. Similarly, there should be no record of mixed marriages between adherents of different religions, because it is dangerous and directly contrary to Pancasila. Therefore, the legal stipulation on the Determination of the Court that grants and legalizes interfaith marriages by judges in court is an act that is contrary to the legal ideals of the Pancasila State and norms outside the positive legal norms, especially religious norms.

According to Farida Prihatini, the government's ambiguity in providing firm regulations on interfaith marriage controversies has led to the law not being upheld properly. Such as the disharmony that occurs between the products of law that regulate marriage, namely the authority of KCS which records marriages based on Court rulings, although it is known to originate from legal smuggling (Indriadi, 2012). The strictness of the Registration of Interfaith Marriages through Court Determination is contrary to Pancasila as a value, the 1945 Constitution as a Principle, and UUP as a norm. This is confirmed by the decision of Court Number 68/PUUXII/2014 on passing a decision in the application for sound testing Article 2 Paragraph (I) of the UUP, with the decision to reject the application of the petitioners in full, related to the lawsuit of marital status according to the law of each religion and creed, as well as make a new interpretation in Article 2 Paragraph (I) of the UUP, namely by adding the phrase "Interpretation of religious law and belief is submitted to each prospective bride". Thus, the restrictions in terms of religious expression in the external forum contained in Article I and Article 4 of Law 1/PNPS/1965 are justified by the 1945 Constitution and international standards in force and listed in Article 18 *International Covenant on Civil and Political Rights* (ICCPR).

The principle of legality in law contains four principles that must be written (*Lex Scripta-interpretation*), clear formulation or not multi (*Lex Certa*), interpreted explicitly as readable (*Lex Stricta*) and does not apply retroactively (*Lex Praevia*). The misconception of the lack of regulation on interfaith marriage by adhering to the principle of legal legality, has in fact been anticipated by the State by filling the void of provisions governing interfaith marriage in Indonesia, through optimizing the role of religious institutions or beliefs to improve the quality of faith and piety in the forum internum a person, before conducting an external forum in public, especially marriage, as referred to in Article 28B Paragraph (I) of the 1945 Constitution is explained that the State guarantees the right of every person to form a family and continue descent through legal marriage and Article 10 Paragraph (I) jo Paragraph (2) The Human Rights Law explains that the State restricts the freedom to choose couples of different religions to marry, by complying with Article 2 Paragraph (I) of the UUP which refers to each religious

law and beliefs of both the bride and groom, as well as the marriage requirements contained in Chapter II Article 6 to denge n Article 12 UUP. So that if the religious teachings that he believes do not allow interfaith marriage, but the person rejects the religious norms that he has been running to firmly perform the interfaith marriage, automatically the person has left the religious teachings that he has embraced or called an apostate in Islam. If he chooses to follow the religious norms of his prospective partner in performing marriage, it has indirectly changed the direction of belief in the internal forum.

The author argues that it would be good for a person to immediately convert to another religion in order to facilitate the process of registering the marriage of one religion with his partner. Religion as an element of individual data listed in the population document, is only required as evidence, as referred to in Article 3 of the Adminduk Law states that Each Resident must report Population Events and Significant Events experienced to the Implementing Agency by meeting the requirements required in the Population Registration and Civil Registration, while for believers based on Article 50 Paragraph (5) of the Law Amendment to the Adminduk Law, it is stated that the population data element on religion as referred to in Paragraph (I) for residents whose religion has not been recognized as a religion based on the provisions of Legislation or for believers is not filled, but remains serviced and recorded in the population database.

A change or transfer of religion is not registered as a Population Event or recorded as a Significant Event in the population, such as a change of name or change of citizenship that requires a Court Determination. Based on Article I Number II of the Adminduk Law, it is stated that a Population Incident is an incident experienced by a Resident that must be reported as a result of the issuance or change of Family Card, Resident Identification Card and/or other residency certificates including relocation, change of address, and limited residence status. become permanent residence, while Article I Number 17 of the Adminduk Law states that Significant Events are events experienced by a person including birth, death, stillbirth, marriage, divorce, child recognition, child confirmation, adoption, change of name and change of citizenship status.

The pledge of religious conversion only requires administrative requirements specified by each institution of the religious organization or belief as a material requirement, and follows the recognition procedures in accordance with the norms of the religion or belief that is newly believed as a formal requirement. As in the teachings of Islam, becoming a new believer or called a convert, requires administrative fulfillment such as a statement of their own, signature on the seal that applies to the process of volition reciting two sentences of creed and witnessed at least two witnesses recorded in the pledge document. After the conversion process, the manager will issue a certificate, while the Christian church issues a letter of Baptism and Li Yuan for the Khonghucu religion. With a letter of proof or certificate issued by a religious organization that can be used to report marriage registration in KUA or KCS.

KUA Kecamatan, although hierarchically organized under the Ministry of Religion, has the attribution of UU Adminduk. Based on Article I Number 23 of the Adminduk Law, it is stated that the District Religious Affairs Office, hereinafter abbreviated as KUA Kec, is a working unit that performs the registration of marriages, divorces, divorces, and referrals at the sub -district level for Muslim residents. Article 34 Paragraph (4) states that Reporting as referred to in Paragraph (1) for Muslim Residents is done by KUA Kec, with the Explanation of Article 34 Paragraph (2) of the Adminduk Law states that the Issuance of Marriage Deeds for Muslim Residents is done by the Ministry of Religion ( currently the Ministry of Religion). Article 34 Paragraph (6) of the Administrative Law states that the data of the recording of



## Smuggling Of The Law In Different Religious Marriage As A Legal Action In The State Of Pancasila

M. Aprilzal Arsyita, Damrah Khair, Erina Pane, A. Kumedi Ja'far, Siti Mahmudah

events as referred to in Paragraph (4) and in Article 8 Paragraph (2) must be submitted by KUA Kec to the Implementing Agency within a maximum of 10 (ten) days after the marriage registration is carried out. With the Explanation of Article 34 Paragraph (5) it is stated that Because the marriage certificate for Muslim residents has been issued by KUA Kec, Article 34 Paragraph (6) of the marriage data received by the Implementing Agency does not need to be issued a quotation of the marriage certificate.

However, the State has legalized the legality of marriage for legal smuggling efforts made by couples of different religions through a Court Determination, in other words the State commits legal smuggling in the establishment of the Adminduk Law by using Article 35 Letter a of the Adminduk Law to circumvent Article 28B Paragraph (1) 1945 Constitution, Article 10 Paragraph (1) jo Paragraph (2) of the Human Rights Law, especially Article 2 Paragraph (1) of the UUP and Court Decision Number 68/PUU-XII/2014. It can also be interpreted for the scope of this issue, that the State is contrary to Pancasila as the basis of the state. This can be interpreted that marriage is considered only as a civil relationship by Article 35 Letter a of the Administrative Law, so it is not much different from the secular Dutch colonial government, referring to Article 26 *Burgerlijk Wetboek* (Stb. 1947 Number 23), Article I HOCI (Stb. 1933 No. 74) and the Draft Marriage Ordinance of 1937, which viewed marriage only in relation to citizenship, and set aside the religious norms of the parties performing the marriage, in particular in determining its validity.

### 2. Smuggling of Laws in Interfaith and Belief Marriages as an Act Against the Law in Pancasila State Legal

Acts committed by a man and a woman with different religious beliefs or beliefs to perform interfaith marriages, before the enactment of the UUP, KCS was given the authority to conduct and record marriages, as referred to in Article 81 and Article 100 of the Code of Civil Law (Civil Code), but currently Article 106 of the Administrative Law has repealed and changed the validity of the rule. Efforts to smuggle the law into interfaith marriages to obtain legal recognition from the State that designates the law of each religion and belief, in fact, have received a legal umbrella since the enactment of national unification in 1974 through the UUP. Based on Article 20 of the UUP jo Article 21 Paragraph (4) of the UUP jo Article 56 Paragraph (1) of the UUP which explicitly does not adhere to the principle of legal legality to facilitate citizens in understanding and complying with it, and continues to collide with Article 2 Paragraph (1) of the UUP so that it becomes the rolling and growing snowball polemics related to interfaith marriages.

There was an expansion of the article narrative for the narrowing of legal norms, previously the notion of Mixed Marriage according to Article 2 of *Staatsblad* 1898 Number 158 (S.1898-158, *Koninklijk Besluit* or Word of the King of the Netherlands Number 23 dated December 29, 1896) on Mixed Marriage, known as *Regulation op de Gemengde Huwelijken* (GHR), stated that in Mixed Marriage, a wife follows the law to which her husband is subject, so that marriage can take place between those of different religions and sects. So with Article 57 of the UUP it is stated that what is meant by Mixed Marriage in this Law is marriage between two people who in Indonesia are subject to different laws, due to differences in citizenship and one of the parties is Indonesian citizenship, marriage is prohibited if the religion of both parties prohibits it. and regarding Mixed Marriage only as a marriage between a Foreign citizen and an Indonesian citizen. The firmness of interfaith marriages becomes clearer based on Article 34 to Article 37 of the Administrative Law through Court Determination.

Religious norms related to the legality of marriage refer to Article 2 Paragraph (1) of the UUP as described earlier, obtaining a different view from Ahmad Nurcholish. Interfaith marriages from Ahmad Nurcholish's interpretation of Article 2 Paragraph (1) of the UUP give the opinion that interfaith marriages are legal and can be carried out, because they have been included in Mixed Marriages, with *Argument A Contrario* in Article 57 of the UUP. This explains that the provisions of this article governing marriages between two people of different nationalities also govern two people of different religions (Faizal, 2014).

There are several interpretations among lawyers due to the lack of clarity in the formulation of the article related to the narrative subject to different laws. The first opinion states that mixed marriages occur only between people who are subject to different laws, because of different groups of the population. The second opinion states marriage between people of different religions. The third opinion states marriages between people of different origin of the district (Faizal, 2014). Ichtianto (2003) on mixed marriages stated that interfaith marriages have been clearly regulated in Article 57 of the UUP which regulates mixed marriages. According to Ichtianto, the article contains three ideas, the first is mixed marriages between two people in Indonesia who are subject to different laws. Interfaith marriages are included in this idea because the notion of being subject to different laws can mean different religious laws. The second is a marriage between two people of different nationalities such as a Malaysian citizen and a Singaporean citizen who got married in Indonesia. The third idea is a marriage in which one of the parties has the status of an Indonesian citizen. The three ideas appear because there is a comma between the first idea and the second idea, thus indicating a separation between the two. But this opinion is not popular either among the public or academics.

Regarding the differences between the two opinions, the author agrees with the interpretation that assumes that what is meant by Mixed Marriage in the UUP is a marriage between two people who have different citizenships and one of them is an Indonesian citizen. This is because the comma in the formula is an affirmation to explain the previous sentence. Thus, the cause of mixed marriages is the difference in citizenship between the two parties, with one of the parties being an Indonesian citizen (Faisal et al., 2021). The author does not agree with the interpretation or idea of mixed marriage due to differences of group, different religions or regional origins, subject to different laws and both are not Indonesian citizens, because it does not fit the context intended by the UUP, that all forms of marriage of Indonesian citizens are legal. According to their respective religious laws and beliefs, including Mixed Marriage.

Setiati Widiastuti (2020) explained that the characteristics of law in Indonesia in the formation of legislation contains relationships, interrelationships and interrelationships between articles with other articles in a systematic Law in order to achieve the objectives based on Pancasila as the source of all sources of law and the 1945 Constitution as *Basic Law*. In the Indonesian legal system, among the elements of legal substance (formal law), legal structure (working legal patterns) and legal culture (demands of users of legal services) as well as legal consequences are interrelated, related to each other to achieve the objectives based on the Law-1945 Constitution and embodied by the philosophy of Pancasila. For the realization of this goal, of course, there is no need for conflict or contradiction between the elements of the system. If there is a conflict between the elements of the system, for example: a conflict between two legal regulations, or between custom and Law, or between Law and court decision, it will be immediately resolved by and within the system itself and not allowed to linger. -Soluble. The way the system overcomes this is by providing facilities that are steady and consistent, in the form of legal principles. So that if there is a conflict between the two legal rules, then the

## Smuggling Of The Law In Different Religious Marriage As A Legal Action In The State Of Pancasila

M. Aprilzal Arsyita, Damrah Khair, Erina Pane, A. Kumedi Ja'far, Siti Mahmudah

principles of will apply consistently *Lex Specialis Derogat Legi Generali*, *Lex Posteriori Derogat Legi Priori* or *Lex Superior Derogat Legi Inferiori*. The legal system in Indonesia, which is open because it contains incomplete regulations, opens up opportunities for various interpretations, depending on the point of view and the quality of the capacity it has comprehensively.

Couples who perform interfaith marriages generally violate religious norms even though the couple has been equipped with common sense and conscience so that they can distinguish between the commandments and prohibitions contained in religious norms. According to Farida Prihatini, other religions do not allow it, not just Islam. All religions do not allow interfaith marriage, only its people are looking for opportunities (Indriadi, 2012). According to Hutari (2006) in his research, the entering into small chances of interfaith marriages do not discourage the perpetrators form alliances in marriage law institutions that lead to legal smuggling. Faced with this situation, the MA in 1975 issued MA Directive Number MA/Pemb/0807/75, which contained It is the jurisdiction of the State Court as a general court to examine:

- a. On matters between non-Muslims, different religions and different nationalities ;
- b. Regarding matters that are not regulated in PP Number. 9 of 1975 on the Implementation of Law No. I 1974 even against those who are Muslims.

With the MA's Guidelines, it creates a more certain situation for couples of different religions, because previously the District Court always did not accept to decide the case of their marriage permit application. The issue of interfaith marriages not only confuses the MA, as KCS also has difficulty in determining the scale of the number of applications for registration of interfaith marriages, while the applicable regulations do not explicitly regulate this issue.

Armed with a petition, KCS asked KCS to record interfaith marriages from the application submitted to the District Court, as in KCS DKI Jakarta made arrangements to create legal certainty by issuing KCS DKI Jakarta Head Decree Number 2185/I.755.2/CS/1986 on Guidelines for Implementing Different Marriages religion on August 12, 1986, which contains:

- 1) Muslim men who will marry non-Muslim women, their marriages are recorded on KUA;
- 2) Muslim women who will marry a non-Muslim man can have their marriage recorded at KCS DKI Jakarta after obtaining permission from the District Court.

Although in its development in 1988, KCS DKI Jakarta again made a regulation that is the Instruction of the Head of KCS DKI Jakarta Number 3614/075.52 dated December 30, 1988 which in essence: That the registration of marriages in any KCS in the Head of the Catalan Civil Government in five city regions, counting since 1 Januari 1989 only carried out the registration of marriages that are legal according to religious law (after performing marriages in churches, monasteries and temples).

Many parties argue that marriage through a Court Determination is valid because it is based on the decision of a legitimate judicial institution, but the judge should consider the appropriateness of the decision material with the existing arrangements. If the reason is due to a legal gap in the field of interfaith marriage, it does not mean that the judge is free to find the law. This is where the quality of the judge in finding the law in the face of a matter that becomes his authority to decide. The method of finding the law must be in accordance with applicable national regulations, the state of society and the values that live in society. Thus, the

determination that contains permission to grant the legality of interfaith marriages, must be in accordance with the provisions of the legality of marriages whose foundations are implemented according to the law of each religion. The assumption about "according to the law of their religions respective" is that both parties must have the same religion.

The basic thinking is that if both have different religions then at the time of the marriage procession will only be performed according to the religious law of one party only, so that for the other party does not perform the marriage based on religious law but becomes based on the law of another religion. This is certainly not in accordance with the formulation of each word which is multi-interpretation. Although in practice there are couples who get married twice so that each party can get married according to the religion of each bride. For such an action cannot be justified because it remains a return to the basics of thinking in the beginning.

Another reason that is the basis for consideration of judges who grant marriage applications between those of different religions is the validity of the transitional rules of Article 66 of the UUP, which raises the judge's opinion that there are no regulations on interfaith marriages in the UUP, then the previous regulation or interpretation using *Argumentum Per Analogiam* or *Argumentum A Contrario*. The judge should understand that it is true that the UUP does not explicitly regulate on Mixed Marriages, but in Article 2 Paragraph (I) of the UUP jo Article 8 letter f of the UUP there is an underlying regulation, namely for the legality of marriage must refer to the religious law of the parties and the provisions of this law . Thus the judge can make a decision based on these provisions.

Another thing that should be noted is that in previous Dutch regulations, the legality of marriage was only viewed from a civil point of view without considering the religious aspect. There is a very fundamental difference between the two provisions, so that the judge should not use the old provisions that have been repealed and amended. Thus, interfaith marriages based on a Court Determination without complying with the respective religious laws or beliefs of the petitioners, still do not meet the requirements for the legality of the marriage and as a logical consequence the marriage is invalid.

Interfaith marriages performed abroad refer to Article 56 of the UUP and Article 37 of the Adminduk Law as presented above, performed in other countries that do not prohibit interfaith marriages. Then after returning to Indonesia they only have the obligation to report to KCS so that the marriage is recorded and get legal recognition from the State. The argument used is that the most important thing is the fulfillment of the provisions in the country where the marriage took place, then after returning to Indonesia must be recorded. Thus, there is a perception that marriages between people of different religions are illegal in Indonesia, becoming considered legal because in the country where the marriage took place there is no ban on interfaith marriages. After that, armed with documents from abroad, an application for marriage registration was made to KCS.

The above presumption is interpreted in Article 56 of the UUP as a reference to the validity of marriages performed outside the jurisdiction of Indonesian law by only subject to the law of the State in which the marriage took place. If the understanding is adopted, it means that there has been an incomplete interpretation of this article. This is because in the article, in addition to having to comply with the law of the State where the marriage took place, there is also a formula, "and for Indonesian citizens does not violate the provisions of this Law". The word "and" in the sentence indicates that the provisions in the article must be implemented simultaneously, not just one. If in interpreting it is done by truncating the formulation, then the interpretation cannot be justified and recognized legally.

## **Smuggling Of The Law In Different Religious Marriage As A Legal Action In The State Of Pancasila**

M. Aprilzal Arsyita, Damrah Khair, Erina Pane, A. Kumedi Ja'far, Siti Mahmudah

Another thing that must be considered is the principle of nationality adopted by Indonesia. This principle is reflected in Article 56 of the UUP in the sentence "for Indonesian citizens not to violate the provisions of this Law." This results in the fact that wherever the marriage takes place, Indonesian citizens still have to meet the materiel requirements set out in the Law. Meanwhile, for formal requirements to be able to follow the provisions of the legislation in the country where the marriage took place, so that to see the legality of the marriage performed outside the country, Indonesian citizens must still comply with the provisions of the legislation in force in Indonesia.

Article 56 Paragraph (2) of the UUP is also a provision that is accumulated from Article 56 Paragraph (1) of the UUP. This means that the provisions in the form of marriage registration in Article 56 Paragraph (2) of the UUP can be implemented if the marriage has met the provisions of the State where the marriage took place and the provisions of the State are not contrary to Indonesian national law, as required in Article 56 Paragraph (1) of the UUP. In general, based on the analysis of interfaith marriages conducted either based on Court Determination or conducted abroad, is an action that can not be justified because it is not in accordance with the law in force in Indonesia.

Hutari (2006) explained that the reason KCS accepts the registration of marriages between people of different religions that take place outside the jurisdiction of Indonesia, is because KCS only records the marriages that have taken place, but refuses to register marriages between those of different religions that will take place in Indonesia. So it is only an administrative function for the marriage to have the force of law in Indonesia, without considering the fulfillment of the material requirements of marriage that originate from religious norms or beliefs.

Tengku (2019) explained that interfaith marriage as an unavoidable and assumed social reality will continue to occur as a result of social interaction among all religiously pluralistic Indonesian citizens. The non-registration of a marriage due to the rejection of registration by the authorities (KUA and KCS) due to interfaith marriage, of course, has the consequence that the marriage is not binding, so it can be ascertained that the victims are mainly the wife or the wife's family and children. (his descendants) (Usman, 2018, Erwinsyahbana, 2019). Tengku stressed that this condition cannot be allowed, because it creates a sense of injustice in marriage, even though one of the purposes of the law is to bring about justice, but the fact is that there is still a denial of registration by the authorities (KUA or KCS) on the grounds that the marriage is different. religion is not valid based on religion and UUP, whereas if you look at the Admin Law which was later amended by Law Number 24 of 2013 on Amendments to Law Number 23 of 2006 on Population Administration (Law on Amendments to the Administrative Law), then marriage registration is one of Population Events that must be recorded after there is a Court Determinant (Erwinsyahbana, 2019).

Tengku added that after the issuance of Presidential Decree Number 12 of 1983, in Article I Paragraph (2) it is mentioned that KCS was given the authority to record and issue excerpts of deeds for non-Muslims. The absence of explicit and explicit regulation of interfaith marriage in the UUP, including its registration, results in legal uncertainty, so that if such a case really occurs, then the legal status of the marriage becomes unclear and can force people to convert or follow one religion. parties to avoid juridical problems. Although the process of recording marriages of different religions is carried out by the Registrar of Marriages, in fact, it has been regulated in Article 20 and Article 21 Paragraph (4) of the UUP stating that the court ruling ordered that the marriage be held (Erwinsyahbana, 2019).

Considering the obligations of the holding agency in both the center, province and district/city, which refers to Article 1 Number 17 jo Article 8 Paragraph (1) of the Administrative Law states that there is no legal reason for KCS to reject marriage registration applications implemented and approved by religious institutions, even though the marriage is an interfaith marriage. KCS is only in charge of recording Important Events, one of which is a marriage, it is not an institution that has the authority to determine whether or not a marriage is legal. The Adminduk Law does not specifically regulate the process of recording marriages of different religions, while in Article 35 letter a of the Adminduk Law only states that the registration of marriages as referred to in Article 34 of this Law also applies to marriages determined by the Court.

The marriage registration process is further regulated in Article 67 to Article 69 of Presidential Regulation Number 25 of 2008 on the Requirements and Procedures for Resident Registration and Civil Registration. In the explanation of Article 35 letter a of the Adminduk Law, what is meant by a marriage determined by the court is a marriage performed between people of different religions. So that the process of recording interfaith marriages is the same as marriages in general, the difference is that interfaith marriage couples must include a Court Determination as part of the requirements for recording interfaith marriages.

Based on the provisions contained in the Adminduk Law and based on Presidential Regulation Number 25 of 2008, then if a marriage of different religions has received a Court Determination, then KCS should no longer need to question the issue of religious legalization. KCS in accordance with Article 35 letter a of the Administrative Law is authorized to record marriages of different religions. The registration process is the same as the registration of marriages in general and the citation of the Marriage Deed issued is also not different from the Marriage Deed in general. The issue related to the Court's Determination of interfaith marriages, further raises legal uncertainty over the provisions contained in Article 2 Paragraph (1) of the UUP, because based on this provision it is stated that marriage is valid if performed according to the religion of each party, while there are religions (such as Islam, Christianity and Hinduism) that do not allow marriage of different religions, but given Article 35 letter a of the Adminduk Law, marriage can be religious differences in which one of the parties is Muslim, Christian (Protestant) or Hindu is recognized for its implementation after obtaining a Court Determination.

On the other hand, the UUP also provides an opportunity for interfaith marriages through Court Determination, because based on Article 21 of the UUP, if the Registrar in this case KCS argues that the marriage cannot be held and recorded in violation of the UUP, then he must issue a written denial. A written denial can be sued in Court and the Court can decide whether the denial is indeed appropriate or otherwise decide that the marriage can be registered.

The Adminduk Law seems to provide an opportunity for interfaith marriages in Indonesia, but it should be noted that the provisions contained in Article 35 letter a of the Adminduk Law only give the possibility of recording interfaith marriages in KCS if the Court has ordered so, meaning only the court decides whether or not. the marriage was recorded by KCS. Therefore, the judge in this case has the authority to assess the legality of interfaith marriages, it is necessary to pay attention by a judge in assessing the legality of interfaith marriages is a provision contained in Article 2 Paragraph (1) of the UUP, because to assess the legality or illegality of marriages must remain guided by the teachings (laws) of religion. An act that is not allowed according to religious law, then it should not be according to the law of the State. Therefore, the judge can not decide that an act is valid if according to religious law and state law is not allowed.

## Smuggling Of The Law In Different Religious Marriage As A Legal Action In The State Of Pancasila

M. Aprilzal Arsyita, Damrah Khair, Erina Pane, A. Kumedi Ja'far, Siti Mahmudah

On this basis, the author considers that in relation to interfaith marriages, it is not the judge's authority to determine whether the marriage is valid, but only to order KCS to record the marriage that has taken place before the institution or party authorized to marry. In other words, that the order given by the judge (Court) to KCS is only limited to grant recognition (legalization) of interfaith marriages, so not to determine that a marriage is valid according to religious teachings, in other words that KCS only has the authority to registering interfaith marriages by court order or KCS is only authorized to record not to marry. because KCS is not an institution that functions to marry.

Juridically, the author argues that the rejection of KUA or KCS is in accordance with the application of the UUP, because there are no regulations on interfaith marriages, which regulate only mixed marriages in the sense of marriage of two people of different nationalities, one of whom is an Indonesian citizen. The author does not agree that KUA or KCS fulfills the application for marriage registration after a Court Determination or from a Mixed Marriage based on national differences, because it can be the legal basis of a marriage, but without meeting the material requirements of religious law or belief.

In accordance with the above description, if a marriage of different religions has received a Court Determination and recorded in the KCS, then the marriage has the same legal status as the marriage in general according to State law, although according to religious law it is not so. This is done solely to protect the interests of the parties bound by the marriage in the juridical sense, but not in the theological sense. Marriage registration becomes an important function in a positive legal perspective in Indonesia, which ultimately aims to distinguish between legal descent and illegitimate descent. Legitimate descent is based on the existence of a lawful marriage, in the sense that one is the offspring of the other by birth in or as a result of a lawful marriage, such children are called lawful children, while illegitimate descent is descent not based on a marriage that legal, or in other words referred to as illegitimate children.

Based on Article 49 Paragraph (2) of the Law Amendment of the Law of Adminduk it is stated that child recognition is only valid for children whose parents have performed a legal marriage according to religious law, but not yet valid according to state law, with the Explanation of Article 49 that what is meant by "child recognition" is a father's recognition of his child born from a marriage that has been valid according to religious law and approved by the child's biological mother, while Article 50 Paragraph (2) of the Adminduk Law Amendment Act states that children whose parents have performed a legal marriage according to religious law and state law, with an Explanation of Article 50 Paragraph (1) of the Law Amendment of the Adminduk Law states that What is meant by "child confirmation" is the confirmation of the status of a child born of a legal marriage religion, at the time of registration of the marriage of both parents of the child has been legally state law. It is so important to prepare for the administrative interests of the child in the future through legal marriage and Marriage Registration as evidenced by the possession of the Marriage Deed from both parents.

There is no evidence (Marriage Deed) that shows that at a certain time it is true that there has been a marriage between a man and a woman, as a result, such marriages are only considered to occur sociologically, in the sense that the people who witnessed the marriage acknowledges that a person is right as a married couple, but if viewed from a juridical aspect, then the marriage is considered to have no legal force. To be able to prove that the marriage has taken place, then based on the UUP and Government Regulation Number 9 of 1975, the marriage must be proven with a Marriage Deed, while this Marriage Deed is obtained after the marriage is registered. Tengku explained that the registration of a marriage is not a requirement

for the validity of the marriage, but only an important administrative action to be implemented. Marriage registration provides authentic evidence of a person's legal status through the issuance of a Marriage Book or Marriage Deed as a means of proof that the marriage has been legal and actually took place and therefore every marriage must be recorded, but in order for a marriage to be recorded, the UUP is required to fulfill conditions based on religion first (Erwinsyahbana, 2019).

Marriage and marriage registration are 2 (two) different events, so that the issue of marriage legality does not depend on issues of marriage registration. The validity of a marriage if the marriage is carried out according to religion or belief, thus if according to religion a marriage is valid, then the marriage is valid. Regarding marriage registration which is an obligation to be carried out, it is not a measure of legal or invalid marriage, because based on Article 2 of Presidential Regulation Number 25 of 2008, civil registration only aims to provide validity of identity and legal certainty for resident documents, protection of the status of civil rights of the population. and obtain up-to-date, correct and complete data, so that it is not used as a measure or reason for the validity of marriage.

The author tends to argue that the registration of marriage is a legal continuation of a marriage, because the main condition for validity of marriage is in accordance with the terms or conditions contained in the teachings (rules) of religion, and marriage registration must absolutely be carried out in order to protect the rights of the parties in the same family, which consists of husband, wife and children / children born from that marriage. Through marriage registration followed by the publication of the Marriage Book, it will be able to prove that a person is indeed bound by a marriage bond, so that the parties can claim their rights and are required to fulfill their obligations as stipulated in the UUP. Thus, marriage registration is carried out not to prove the validity of marriage in the legal sense according to religion, but merely as an acknowledgment (legalization) from the State that the parties to a marriage are indeed bound by a marriage bond, in other words to prove one's identity. that he is really someone's husband or wife, and to prove the status of a child as the child of a husband and wife partner.

Tengku suggested that Article 2 Paragraph (1) of the Company Law relating to the legal provisions of marriage and Article 2 Paragraph (2) of the Company Law relating to the provisions for the registration of marriage should be put separately in a different article, so that the registration of marriage is no longer intended as a legal condition of marriage, but rather only as a condition related to the field of population administration. However, the author is of the opinion that the preparation of Article 2 Paragraph (1) and (2) of the current UUP is the best form, because the State has tried to balance between maintaining religious interests or beliefs in the social aspect as values that live in society and also fulfilling the fulfillment of legal certainty. in the juridical aspect to maintain the stability of the administration of the State in fostering a family.

The author does not agree with that in order to avoid juridical problems, then forcing or forcing someone to change religion either permanently or only temporarily to manipulate religious status, because marriage is a form of external forum which constitutes the right to personal freedom and is against Article 28E and Article 29 Paragraph (2) of the 1945 Constitution states that the State guarantees the freedom of every citizen to choose and embrace and worship according to the religion and belief he believes and Article 22 Paragraph (1) of the Human Rights Law states that everyone is free to embrace their respective religions and to worship according to his religion and belief. In addition, the State through the formation of a Law refers to religious norms or beliefs for the validity of marriage, not only regulating juridical



## Smuggling Of The Law In Different Religious Marriage As A Legal Action In The State Of Pancasila

M. Aprilzal Arsyita, Damrah Khair, Erina Pane, A. Kumedi Ja'far, Siti Mahmudah

issues that can be sanctioned by its citizens, but the State ensures the protection of religious life in accordance with the Principle of One Pancasila, namely Almighty God.

Every citizen action and administration of state administration by the government must be in accordance with the values contained in Pancasila as the solid foundation for the establishment of the Unitary State of the Republic of Indonesia, especially in shaping the laws and constitutional system of the Republic of Indonesia. The development of legal norms during the formation of laws which will be enforced as positive legal norms that every citizen will adhere to must put the values and principles contained in Pancasila as the basis of the state. The normative dimension of the values contained in Pancasila is described in a norm arranged in the Fourth Paragraph of the Preamble of the 1945 Constitution (*Grundnorm*) as a measure in assessing applicable law in Indonesia or called the source of all sources of law in Indonesia. Pancasila as the basic principle of the State (*Staats Fundamental Form*) which is the basic norm that induces all norms in the formation of the constitution and laws and regulations in Indonesia, is permanent, strong and irreversible / final (Amin, 2008).

So the acknowledgment of various legal smuggling efforts initiated by elements of religion or belief with low quality and / or indeed disobeying the forum internum which prohibits interfaith marriages, but still forces themselves with various motives (*Al-Bait* hidden) contrary to Pancasila as sources from all sources of law applicable in Indonesia in this case Law. This interpretation becomes the legal argument used by interfaith marriage couples in Indonesia. This legal construction continues to cause polemics ranging from marital status to the impact of being a reproach from the community, exclusion from the family, and many of which lead to divorce, and even willing to end their lives (Asmin, 1986).

The author emphasizes that the various efforts taken by interfaith marriage couples are against the law (*Onrechtmatige Dead*) in the form of legal smuggling (*Fraus Legis*) in order to obtain legal recognition from the State. The smuggling of the law is mainly in the practice of converting religion as a form of manipulation of religious status, to circumvent / circumvent the Law (*Wetsonduiking*). Among the smuggling of these laws, the most worrying is the temporary submission to one of the religious laws or the temporary transitional practice of religious status as a form of manipulation of religious status to circumvent the Law. Even the Constitutional Court Decision Number 97/ PUU-XIV/ 2016 abolished Article 61 Paragraph (1) and (2) of the Adminduk Law, and Article 64 Paragraph (5) of the Law on Amendments to the Adminduk Law, as the first, final and binding decision, which had consequences. law in the form of the elimination of differences in legal status in population administration between religion and belief, as well as the elimination of the blanking of the religious column on the Family Card (KK) and Identity Card (KTP) for believers (Sukirno & Adhim, 2020). The Constitutional Court Decision Number 97/ PUU-XIV/ 2016, allows the conversion of religion to religious followers, and records the marriage according to their beliefs, after the marriage takes place before a leader of the belief, as regulated in Article 81 of the Government Regulation of the Republic of Indonesia Number 37 of 2007 concerning Implementation Regulations of the Adminduk Law (PP Adminduk).

Concerns about smuggling of laws in Indonesia need to be watched out for more considering that there are still beliefs such as the traditional Bugis people of the Amparita Sidrap tribe in South Sulawesi Province, which allow lesbian, gay, bisexual and transgender (LGBT) (Sirait, 2017), or Polahi tribesmen in the Humohulo forest of Gorontalo Province who perform marriages. sekandung (*Incest*) (Sutriyanto, 2020), although Article 8 of the Company Law has explained the prohibited marriage between the relationship of two people. Dnature it is

UUP which refers to religious law and belief in common between both families who have become moral norms are adhered to society, giving rise to the loss directly to another person, either a property of marriage expenses incurred as well as declining health due to fatigue after the procession marriage, and allowing the filing of a civil suit in the case of insults, namely demanding compensation and losses to restore good name and honor (as referred to in Article 1372 of the Civil Code) and obliging the perpetrator of the violation to compensate for the losses incurred (as referred to in Article 1365 of the Civil Code).

In fact, the magnitude of the potential for the violation poses a very threatening danger to the life of the human soul, the reasons are: first, it can cause a death victim to one of the brides who experiences losses due to the violation from the high depression and psychology it faces. Then the victim's family has the right to sue for damages whose amount is determined according to the position and assets of each party according to the situation (as referred to in Article 1370 of the Civil Code). Losses experienced from violations of the law that occur like this are categorized as Unlawful Acts (PMH) as regulated in Articles 1365 - 1380 of the Civil Code. Second, the status of religious conversion in interfaith marriages is a violation of human rights, especially after the marriageplace, especially if you already have children, so that a takescouple is cornered to choose a religion because another partner changes religions or chooses to divorce to continue to embrace their religion and return to their biological family. This is in line with the legal norms of Article 29 of the 1945 Constitution and Article 10 of the Human Rights Law concerning guarantees of independence for every citizen to embrace their respective religions.

According to Boris Tampubolon (2017), civil disputes or lawsuit in principle only have two types, namely Default and Actions against the Law. Acts against the law are regulated in Article 1365 of the Civil Code, which reads: "Every act that violates the law and brings harm to others, obliges the person who caused the loss due to his mistake to compensate for the loss." From the sound of the Article, PMH elements can be drawn as follows:

- a) There is an act against the law;
- b) There is a mistake;
- c) There is a causal relationship between loss and action;
- d) There is a loss.

Boris Tampubolon (2017) explained, The elements that fulfill an act against the law in question are the actions or actions of the perpetrator who violate or violate the law. The previous definition of violating the law is interpreted narrowly, namely only written law, namely Law, so that a person or legal entity can only be sued if the elements of articles in the Law are fulfilled. However, since 1919, the decision of the Dutch Supreme Court in the case of Arrest Cohen-Lindenbaum (HR 31 January 1919), has expanded the notion of unlawfulness not only limited to law (written law) but also unwritten law, as follows:

- 1) Violating the Law -Invit, means that the act carried out clearly violates the Law;
- 2) Violating the subjective rights of others, meaning if the act committed has violated the rights of others guaranteed by law (including but not limited to personal rights, freedoms, material rights, honor, good name or other individual rights);
- 3) Contrary to the legal obligations of the perpetrator, it means legal obligations, both written and unwritten, including public law;
- 4) Contrary to decency, namely moral principles (Article 1335 in conjunction with Article 1337 of the Civil Code)

## Smuggling Of The Law In Different Religious Marriage As A Legal Action In The State Of Pancasila

M. Aprilzal Arsyita, Damrah Khair, Erina Pane, A. Kumedi Ja'far, Siti Mahmudah

- 5) Contrary to the proper prudence in society, Kriteria originates in the unwritten law (is a relative or relative), which acts committed contrary to the good attitude or decency in the community to consider the interests of others.

Interfaith marriages have clearly violated religious norms contained in the UUP, even though the UUP is regulatory and does not explicitly mention the prohibition of interfaith marriages, as long as the religious teachings or beliefs of each bride do not provide leniency in the form of dispensation or permission from religious or religious leaders. Violations that occur to a person's subjective are also in accordance with the right to personal freedom and are contrary to Article 28E and Article 29 Paragraph (2) of the 1945 Constitution, it is explained that the State guarantees the freedom of every citizen to choose and embrace and worship according to the religion and belief he believes, and Article 22 Paragraph (1) of the Human Rights Law states that everyone is free to embrace their respective religions and to worship according to their religion and belief. Marriage subject to a marriage procedure that is not a forum internum seems to be an imposition of worship from a belief that is in its heart.

Interfaith marriage is very contrary to the norms of decency in eastern cultural life that upholds moral principles, as stated in Article 1337 of the Civil Code that a cause is forbidden, if that cause is prohibited by law or if the cause is contrary to morality or with public order. Eastern culture in Indonesian society is an acculturation that has become a cultural tradition / *local wisdom* in the indigenous peoples in each region. Eastern culture, which is generally infiltrated by religious norms in Indonesia, has become the moral norms of everyone, so that obedience to these moral teachings, if not fulfilled, becomes a taboo or bad thing to do every time, such as perpetrators of interfaith marriages.

This is also contrary to the proper prudence in society, namely actions that are carried out contrary to good/ proper attitudes in society to pay attention to the interests of others, because generally the community environment is homogeneous with the same religious tradition, so that if there is something wrong out of habit, has become the material of community reproach, exclusion from the family, so many have led to divorce, and are even willing to kill their lives because they are ashamed of others in their surroundings.

The elements of an error, which means that there are 2 (two) there are 2 (two) mistakes, either on purpose (*dolus / delik Doleus Delicten*) or due to negligence (*offense culpa / Culpose Delicten*). Deliberate means that there is an awareness that normal people must know that the consequences of their actions will harm others. Medium, negligence means that there is an act of neglecting something that should be done, or not being careful or careful so that it causes harm to other people (Fuady, 2002). However, sometimes a certain situation can negate the element of error, for example in the case of *overmacht* the perpetrator is not healthy in mind. (crazy). Individuals who adhere to religions or beliefs with low quality and / or do not comply with the internal forum which prohibits interfaith marriages, but still impose themselves on various motives (*Al-Baits* hidden) contrary to Pancasila as the source of all sources of law applicable in Indonesia in this matter Law. This action is a deliberate action of this individual from the awareness of the understanding of religious teachings or beliefs which he believes so far prohibits interfaith marriage, but puts all this aside in order to realize the desired marriage.

The element of a causal relationship between loss and action (causality) means that there is a cause and effect relationship between the cause of the action committed and the effect that arises. For example, losses incurred were caused by the perpetrator's actions or in other words, losses would not occur if the perpetrator did not commit the illegal act. The reason for

the concern about the practice of smuggling the law in interfaith marriages as an act against the law is when the cause of a person's actions returns to their original religion and belief, which is carried out in a short time after sexual intercourse (*Coitus*), especially if the husband and wife have children. , giving rise to consequences in the form of psychological and sociological impacts on the spouse, the partner's family and their children.

The element of a loss is the result of the offender's actions causing harm. The losses here are divided into 2 (two), namely material and immaterial. Material such as losses due to car crashes, loss of profits, cost of goods, costs, and others. Immaterial such as fear, disappointment, regret, pain, and loss of enthusiasm for life which in practice will be valued in terms of money. As for the provision of compensation according to the Civil Code as follows:

- a. Compensation for all acts against the law (Article 1365 of the Civil Code);
- b. Compensation for actions committed by other people (Article 1367 Paragraph (I) of the Civil Code) means that a person is not only responsible for losses caused by his / her own actions, but also for losses caused by the actions of those who are dependent or caused by property. under his supervision (*Vicarious Liability*);
- c. Compensation for animal owners (Article 1368 of the Civil Code);
- d. Compensation for collapsed building owners (Article 1369 of the Civil Code);
- e. Compensation for the family left by the person who was killed (Article 1370 of the Civil Code)
- f. Compensation for injuries or disability of limbs (Article 1371 of the Civil Code)
- g. Compensation for acts of insult (Article 1372 of the Civil Code)

The element of causality in PMH for the cause of one's actions Broken promises at the time of the marriage agreement (Default) with the consequences that arise in the form of material and immaterial losses, as regulated in Article 1243 of the Civil Code makes provisions regarding compensation for Default, then the provisions for compensation due to default can be applied to determine compensation due to illegal actions (Djojodirdjo, 1982).

Interfaith marriages have fulfilled the elements of PMH, in which the act is intentionally contrary to law in general and reduces the authority of law and religion, in this case the UUP which refers to the same religious law and belief between the two brides who are adhered to by the community and have long been adhered to by the community. norms of decency, so as to cause direct harm to others, either in the form of property from the costs of the marriage that arise or the decline in health due to fatigue after the marriage procession, it can even cause death victims from the high levels of depression and psychology that are faced. This allows filing a civil suit in terms of insult, namely demanding compensation according to the position and assets of each party according to the circumstances (as referred to in Article 1370 of the Civil Code) and losses to restore good name and honor (as referred to in Article 1372 of the Civil Code) and obliging perpetrators of violations to compensate for the losses they incur (as referred to in Article 1365 of the Civil Code).

## D. CONCLUSION

The national unification regarding the law on the validity of marriage refers to Article 2 Paragraph (I) of the Company Law which designates the validity of marriage according to the law of each religion and the belief confirms that there is no marriage outside the law of each of their respective religions and beliefs, including statutory provisions which applies to religious

## Smuggling Of The Law In Different Religious Marriage As A Legal Action In The State Of Pancasila

M. Aprilzal Arsyita, Damrah Khair, Erina Pane, A. Kumedi Ja'far, Siti Mahmudah

groups and beliefs, as long as they do not contradict or are not determined otherwise in accordance with Pancasila as the philosophy of the nation's life and the 1945 Constitution as the *Basic Law*. The legal norms contained in the UUP are mandatory not prohibitions.

On the other hand, the weak quality of a person's forum internum in exploring religious teachings or beliefs that he believes in and a strong desire on the basis of love and mutual trust, strengthens his determination by justifying all means of fighting for the validity of marriage, causing smuggling of laws, namely by asking for a Court Ruling, the marriage is carried out twice according to the law of each religion, every bride, conducts marriage abroad, and temporarily submits to one of the religious laws. It must be understood that the validity of marriage and the registration of marriage are different legal events, however, both contain a relationship, are interrelated and complementary between articles and other articles in one systematic Law that cannot be separated from one another.

The validity of interfaith marriages faces obstacles in fulfilling the material and formal requirements. This prohibition in Islam is materially stated in the Koran, namely in Surah Al-Baqarah Verse 221 (QS. II: 221) and in certain situations according to Surah Al-Maidah Verse 5 (QS.V: 5). In formal terms for Muslims it is regulated in Article 40 letter c KHI jo Article 44 KHI jo Article 75 letter a KHI jo Article 116 letter g KHI. Apart from Islam, other religions formally follow positive law in Indonesia. Protestant Christianity regulates material requirements related to the prohibition of interfaith marriage as stated in Book II Corinthians 6: 14-18, Hinduism regulates material requirements in Manu's *Manusmriti* M.III: 63, and Buddhism regulates material requirements in the Book of MahaMangalaJataka 453. Dispensation or permission to enter into interfaith marriages with material requirements given by the Catholic Religion by the bishop based on Canon 1086: 1 and 2 in conjunction with Kan. 1125 and 126, Confucianism in the *Wu Jing Five Classics/ The Five Books Of Old Testament* (五經) and the *Si Shu* (四書) book emphasize more on marriages carried out by Confucian followers through ceremonies *Li Yuan* and interfaith marriages can be carried out by giving information from the MATAKIN institution, while the material requirements of the sect of the belief system are highly correlated with local customary law.

Legal arrangements in interfaith marriages in Indonesia are not actually prohibited in the Indonesian legal system which is open from the various interpretations that have emerged, be it *Argumentum Per Analogium* in Article 2 Paragraph (1) of the Company Law relating to the meaning of each word and Article 56 of the Law concerning Marriage in Outside Indonesia, *Argumentum A Contrario* in Article 57 UUP related to Mixed Marriage and Article 66 UUP which leaves the validity of Article 6 GHR, and the judge's discretion in finding the law in Article 20 UUP jo Article 21 Paragraph (4) UUP jo Article 56 Paragraph (1) UUP jo Article 57 UUP jo Article 66 UUP jo 34 to Article 37 of the Adminduk Law. Although in this regulation there is a group of positive moral norms other than religious norms into positive legal norms and encapsulated in a Law.

The mistake of the assumption that there is no regulation of provisions on interfaith marriage by adhering to the principle of legality of law, has actually been anticipated by the State by filling in the gaps in the provisions regulating interfaith marriage in Indonesia, through optimizing the role of religious or belief institutions to improve the quality of faith and piety in the forum. internum for someone, before carrying out an external forum in public, especially marriage by referring to Article 28B Paragraph (1) of the 1945 Constitution in conjunction with Article 28E of the 1945 Constitution in conjunction with Article 29 Paragraph (1) and

Paragraph (2) of the 1945 Constitution in conjunction with Article 2 Paragraph (1) of the UUP in conjunction with Articles 6 to 12 of UUP in conjunction with Article 10 Paragraph (1) of the Human Rights Law in conjunction with Article 10 Paragraph (2) of the Human Rights Law in conjunction with Article 49 Paragraph (2) of the Law on Amendments to the Law on Adminduk in conjunction with Article 50 Paragraph (2) of the Law on Amendments to the Law on Adminduk.

However, there was a Disharmony of positive legal norms above, and the implementing regulations, even with the Constitutional Court Decision Number 68 / PUU-XII / 2014, which led to anomalies or failures in symmetry with the philosophy of Pancasila as the basis of the state. NKRI with Pancasila as the basis of the state, and reducing the authority of law and religion in the Pancasila State. The quality of the capacity of judges in a comprehensive manner, is very influential in preventing marriages only in terms of civilization, because it contains religious norms based on the Principle of One Pancasila, namely the One Godhead. In addition, the status of religious conversion in interfaith marriages is a violation of human rights, especially after the marriageplace, especially if you already have children, so that a takesouple is cornered to choose a religion because another partner changes religions or chooses to divorce to continue to embrace their religion and return to their biological family. This is in line with the legal norms of Article 29 of the 1945 Constitution and Article 10 of the Human Rights Law.

The various efforts taken by interfaith marriage couples are categorized as illegal acts (*Onrechtmatige Dead*) in the form of legal smuggling (*Fraus Legis*) in order to obtain legal recognition from the State, especially by circumventing the Law (*Wetsonduiking*), as long as religion is explicitly prohibited or the trust concerned. If the religion or belief of each bride grants dispensation or permission, then interfaith marriage is valid under religious law and state law.

Fulfillment of PMH elements, namely the existence of actions that are against the law, the existence of errors, the existence of a causal relationship, and the existence of losses, resulting in the consequences of PMH in interfaith marriages, namely losses direct to other people, both in the form of assets from the costs of the marriage that arise, , as well as decreased health due to fatigue after the marriage procession, and allows filing a civil suit in terms of humiliation, namely demanding compensation and losses to restore good name and honor, even threatening life from the high depression and psychology it faces. Then the victim's family for the cause of the Default action has the right to demand damages, the amount of which is determined according to the position and assets of each party according to the situation. Losses experienced from violations of the law that occur like this are categorized as Unlawful Acts (PMH) as regulated in Articles 1365 - 1380 of the Civil Code.

Religious organizations should increase their role in an accountable manner in improving the quality of the internal forum of their respective adherents, to face the interpretation of several articles on positive law, one of which is filing a change in the pledge of religious recognition through a Court Decision. It seems that it is necessary to immediately carry out a comprehensive study of the 46 year old UUP through the reconstruction of the marriage law in order to obtain legal certainty and legal benefits in order to provide a sense of justice, even though the UUP has undergone changes related to the age limit of marriage in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage is only limited to accommodating the Constitutional Court Decision Number 22/ PUU-XV/ 2017, but other decisions have not been accommodated, or if deemed necessary, an Omnibus Law concerning Family Law is drafted, one of which is about marriage.

## Smuggling Of The Law In Different Religious Marriage As A Legal Action In The State Of Pancasila

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