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NEGOTIATING THE RULE OF LAW AND HUMAN RIGHTS IN INTERFAITH MARRIAGE REGISTRATION IN CONTEMPORARY INDONESIA

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Abstract

The Supreme Court Circular Letter Number 2 of 2023 (Surat Edaran Mahkamah Agung Nomor 2 Tahun 2023/SEMA), which prohibits the registration of interfaith marriages in Indonesia, aims to provide legal clarity following longstanding debates fueled by the abstract nature of existing norms. While the circular seeks to enforce uniformity in marriage regulations, it raises concerns regarding human rights, especially the rights to freedom, equality, and the pursuit of happiness, which are central to democratic governance. This article seeks to examine interfaith marriage registration by utilizing normative and human rights perspectives to explore its legal foundations and implications within Indonesia's modern context. The analysis highlights tensions between national law and international human rights conventions, suggesting that interfaith marriage registration should be recognized as a legal right that upholds citizens' freedoms, religious autonomy, and equality before the law. By situating interfaith marriage within Indonesia's framework of Islamic jurisprudence (fiqh), legal statutes, and human rights conventions, this article highlights the importance of

balancing legal uniformity with the protection of individual rights in a democratic, constitutional state.

[Surat Edaran Mahkamah Agung Nomor 2 Tahun 2023 tentang Larangan Pencatatan Perkawinan Beda Agama telah memberikan kepastian hukum setelah sebelumnya masih diperdebatkan karena sifat norma abstraknya. Namun, ketentuan tersebut seolah-olah bertolak belakang dalam perspektif perlindungan Hak Asasi Manusia (HAM). Artikel ini dengan menggunakan pendekatan normatif dan perspektif HAM mengkaji tentang definisi dan hakikat legalitas pernikahan beda agama dalam konteks catatan pernikahan di Indonesia kontemporer. Artikel ini berargumen bahwa konsep pencatatan pernikahan beda agama dalam narasi dan perundang-undangan fikih, serta konvensi HAM, merupakan salah satu bentuk perlindungan negara terhadap hak asasi warga negaranya, termasuk asas persamaan di muka hukum yang menjadi ciri negara hukum dan demokrasi di Indonesia.]

Keywords: *Marriage Registration, Interfaith Marriage, Human Rights, Fiqh*

Introduction

The issuance of Supreme Court Circular Letter (*Surat Edaran Mahkamah Agung/SEMA*) Number 2 of 2023 on the guidelines for judges not to grant registration of marriages of different religions is the final point of the legality of marriages of other religions and beliefs in Indonesia.[1] This is inseparable from the many for registration of marriages of different religions and beliefs due to the absence of clear norms regarding their legal status in the Marriage Law.[2] The *SEMA* states that to ensure legal certainty and legal unity in adjudicating applications for

[1] Supreme Court Circular Letter Number 2 of 2023 concerning Guidelines for Judges in Adjudicating Cases of Application for Marriage Registration between People of Different Religions and Beliefs.

[2] One example of decisions that legalize marriages between different religions and beliefs is Surabaya District Court Decision Number 916/Pdt.P/2022/PN.Sby and Central Jakarta District Court Decision Number 155/Pdt.P/2023/PN.Jkt.Pst. See Bani Syarif Maula and Ilyya Muhsin, "Interfaith Marriage and the Religion State Relationship: Debates between Human Rights Basis and Religious Precept," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 8, no. 2 (2024): 791–820, https://doi.org/http://dx.doi.org/10.22373/sjhk.v8i2.19479.

registration of marriages of different religions and beliefs, the Religious Courts should not grant them. However, the *SEMA* still raises debates regarding its legal status in the hierarchy of legislation and the Supreme Court's intervention in the lower courts.[3]

SEMA Number 2 of the Year 2023 primarily aims to clarify the legal status of interfaith marriages, particularly in cases brought forward by couples with legal standing who have filed judicial review lawsuits with the Constitutional Court, even though such lawsuits were ultimately rejected.[4] For the Court, the validity of a marriage falls within the domain of religion, as determined by religious institutions or organizations that have the authority to provide religious interpretations. The state's role is merely to extend the results of these interpretations. The Court's considerations are closely tied to its interpretation of Article 1, Paragraph (1) of Law Number 1 of the Year 1974, which stipulates that a marriage is valid as long as it complies with the teachings of each religion.[5]

Although Article 2 Paragraph (1) of Law No. 1974 has been interpreted by judges towards marriages of different religions and beliefs, from the perspective of human rights studies,[6] from the perspective of human rights studies, marriage cannot be prevented because of differences in religion or race, including differences in nationality. This

[3] The Supreme Court is the top of the judicial hierarchy, but it cannot necessarily intervene in the lower courts, especially if the norms on which the decision is based are abstract. This has also been clearly explained in Article 32 Paragraph (5) of Law Number 14 Year 1985 concerning the Supreme Court. The Supreme Court can intervene in the lower courts only in technical matters, not in the interpretation of norms that become the creativity of judges in deciding cases as guaranteed in Article 5 of Law Number 48 of 2009 concerning Judicial Power. See Anwar Usman, *Independensi Kekuasaan Kehakiman: Bentuk-Bentuk dan Relevansinya Bagi Penegak Hukum dan Keadilan di Indonesia* (Depok: Rajawali Pers, 2020), 113-114. Krisnadi Nasution, "Indonesian Judicial Power Post Amendment," *Mimbar Keadilan* 13, no. 1 (2020): 85–95.

[4] See Constitutional Court Decision Number 68/PUU-XII/2014 and Constitutional Court Decision Number 24/PUU-XX/2022.

[5] Constitutional Court Decision Number 24/PUU-XX/2022.

[6] Kadek Wiwik Indrayanti et al., "Judicial Implementations of the Legal Norm Void of Interfaith Marriages in Indonesia," *Brawijaya Law Journal* 4, no. 1 (2017): 129–143.

is clearly stated in Article 16 of the Universal Declaration of Human Rights, which states that adult men and women, without limitation as to nationality, citizenship or religion, have the right to marry and form a family.[7] Therefore, in the context of this human rights study, marriage registration for those who enter into a marriage between different religions and beliefs is a necessity as a form of protection of the rights possessed by a person, especially, because marriage registration is projected as a form of state protection of their citizenship status.[8]

It must be admitted that interfaith marriages have received attention from researchers, but those related to the registration of interfaith marriages seem to have escaped their attention. Even if there is a study of the registration of interfaith marriages, it is limited to the policy of registering interfaith marriages abroad for Indonesian citizens. In the conclusion, it is stated that in the context of recording interfaith marriages that occur abroad can be registered at the civil registry office. There is no question about the validity of the marriage.[9]

Some prior research merely focused on legal smuggling of recording interfaith marriages through apostasy,[10] the existence of legal irregularities due to the prevalence of interfaith marriages in Indonesia,[11] discusses *SEMA* Number 2 of 2023 which is considered contrary to

[7] Sonny Dewi Judiasih, Nazmina Asrimayasha, and Luh Putu Sudini, "Prohibitation of Intera Religion Marriage in Indonesia," *Jurnal Dinamika Hukum* 19, no. 1 (2019): 186–203.

[8] Sri Wahyuni et al., "The Registration Policy of Interfaith Marriage Overseas for Indonesian Citizen," *Bestuur* 10, no. 1 (2022): 12–21.

[9] Noer Yasin, Musataklima, and Ahmad Wahidi, "Interlegality of Interfaith Marriages Vis a Vis Supreme Court Circular Letter Number 2 of 2023 on the Rejection of Applications for Registration of Interfaith Marriages in Indonesia," *Jurnal Penelitian Hukum De Jure* 23, no. 4 (2023): 389–402.

[10] Asep Syarifuddin Hidayat, "Maladinistration in Indonesia's Interreligious Marriage," *Jurnal Cita Hukum (Indonesian Law Journal)* 11, no. 1 (2023): 1–20.

[11] Bayu Dwi Widdy Jatmiko, Nur Putri Hidayah, and Samira Echaib, "Legal Status of Interfaith Marriage in Indonesia and Its Implications for Registration," *Journal of Human Rights, Cultur, and Legal System* 2, no. 3 (2022): 167–177.

human rights and interferes with the independence of judges,[12] and the causes of the registration of interfaith marriages, namely the legal loopholes of Law Number 23 of 2006 and marriages abroad.[13]

However, nothing discussion about the interfaith marriage registration by utilizing normative and human rights perspectives to explore its legal foundations and implications within Indonesia's contemporary context. Thus, this article seeks to prove that the registration of interfaith marriages is a human right that must be protected by the state, regardless of the validity of interfaith marriages themselves, which is still a matter of debate. In addition, this article is based on the Constitutional Court Decision which states that marriage registration is only an administrative validity requirement. Thus, the obligation to record and make a marriage certificate is considered a mere administrative obligation, not a determinant of the validity of a marriage.[14]

This article includes normative legal research with a statutory and conceptual approach. The statutory approach is carried out by examining all laws in Indonesia relating to interfaith marriage and international legal sources. The conceptual approach is done by examining the legal history of interfaith marriage and its *fiqh* epistemology.[15] Primary legal sources in this article are legislation relating to the registration of marriages of different religions and beliefs. The secondary legal sources in this article

[12] Kadek Wiwik Indrayanti, Anak Agung Ayu Saraswati, and Eka Nugraha Putra, "Questioning Human Rights, Looking for Justice: Analiyzing the Impact of Supreme Court Circular Letter on Interfaith Marriages in Indonesia," *Journal of Indonesian Legal Studies* 9, no. 1 (2024): 385–416.

[13] Ahmad Rajafi, Arif Sugitanata, and Vinna Lusiana, "The 'Double Faced' Legal Expression: Dynamics and Legal Loopholes in Interfaith Marriages in Indonesia," *Journal of Islamic law* 5, no. 1 (2024): 19–43.

[14] Murul Miqat et al., "The Validity of Marriage Agreement Regarding Properties in Unregistered Marriages," *Yustisia Jurnal Hukum* 10, no. 2 (2021): 291–305. Imron Rosyadi and Aisyah Kahar, "Analysis of Legal Certainty Aspect in Indonesian Marriage Registration Rule," *Jurnal Hukum dan Peradilan* 12, no. 3 (2023): 469–88, https://doi.org/http://dx.doi.org/10.25216/jhp.12.3.2023.469-488.

[15] Johny Ibrahim, *Metode Penelitian Hukum Normatif* (Malang: Banyumedia, 2007), 300.

are books and scientific journals.[16] The technique of collecting legal materials in this article uses literature studies.[17] Meanwhile, the processing technique of legal materials in this article is carried out in several stages, namely inventory, identification, classification, and systematization.[18]

Marriage Registration: *Dusturiyah-Fiqhiyyah* Arguments

One of the *fiqhiyyah* arguments that can be advanced to state the importance of marriage registration is through analogy (*qiyas*) to the provisions for recording debts and receivables, which are explained *sarih* in the Qur'an. It is because there are similarities between the *muamalah* of marriage and the muamalah of buying and selling or debt and credit. The similarity is in terms of pillars, especially the presence of people who do the contract, the presence of witnesses, and the sighat of the contract. Therefore, marriage registration, for which there is no sharia text explaining it, can be compared to the muamalah of accounts payable and receivable for which there is an explanation in the text, because of the similarity of the *illah* between the two, namely proof of the validity of the muamalah agreement/transaction.[19]

Not to mention when viewed from the side of *maslahah* and *mafsadah* that hangs between marriage registration, while the *fiqh* rule states that every legal formulation must be based on the benefit and avoid aspects of harm.[20] Without this marriage registration, it will result in the

[16] Mukti N.D. Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris* (Yogyakarta: Pustaka Pelajar, 2010), 13.

[17] Sigit Sapto Nugroho, Anik Tri Haryani, and Farkhani, *Metodologi Riset Hukum* (Karanganyar: Oase Pustaka, 2020).

[18] Suratman and H. Philips Dillah, *Metode Penelitian Hukum* (Bandung: Penerbit Alfabeta, 2013) 83-85.

[19] Harwis and Ahmad, "Registration of Marriage Book Perspective of Needs Level Theory Abraham Maslow and Syatibi," *Al-'Adl: Jurnal Studi Ilmu Hukum Islam dan Pranata Sosial* 17, no. 1 (2024): 1–18. Fadhly Kharisma Rahman, "Marriage Registration As a Form of Maslahah Mursalah," *Maqashid: Jurnal Studi Hukum Islam* 12, no. 2 (2023): 33–45.

[20] Nadya Pratiwi Daniela et al., "The Granting of Family Card for Marriage in Banda City: Perspective of Islamic Family Law," *El-Usrah: Jurnal Hukum Keluarga* 7,

arbitrariness of the husband over the wife, the difficulty of determining civil rights, and the absence of administrative order.[21] This is what is meant by Syatibi the sharia was created only for the benefit of servants both in the life of this world and in the hereafter.[22] This rule emphasizes that the essence of *maqashid* sharia is *li mashalih al-ibad* by bringing benefit and rejecting harm.[23]

In relation to this point of benefit in marriage registration, which is not found implicitly in either the Qur'an or *sunnah*, including in the *fiqh* books of the various *mazhabs*, it can be justified that the existence of the Marriage Law cannot be fully said to be a 'duplication' of the *fiqh* books. Substantially, there are at least three patterns of indulgence of the Marriage Law from the *fiqh* books. First, the law has fully followed *munakahat fiqh* and even seems to quote directly from the Qur'an, for example, the provisions on the prohibition of marriage and the provisions on the iddah period for wives divorced from their husbands, which are then elaborated in Government Regulations.[24]

Second, the provisions contained in the Law are not found in any of the *mazhabs' fiqh munakahat*, but because they are administrative and not substantial, they can be added to the *fiqh*, such as marriage registration and prevention of marriage. Third, the provisions in the Law are not found in the *fiqh* books of the various *mazhabs*, but due to considerations of necessity, these provisions can be accepted, such as the minimum age limit for prospective couples who will marry and the provisions on

no. 1 (2024): 150–164.

[21] Yenny Febrianty, Sulastri, and Zulfiani, "Existence of Registered/Unregistered Marriage Clauses in Family Cards from a Family Law Perspective," *Pena Justisia: Media Komunikasi dan Kajian* 22, no. 3 (2023): 598–611, https://doi.org/http://dx.doi.org/10.31941/pj.v22i3.3485.

[22] Abu Ishaq Asy-Syatibi, *Al-Muwafaqat Fi Ushul Al-Syariah*, 2nd ed. (Mesir: Dar Ibn Affan, 1998), 6.

[23] Duski Ibrahim, *Al-Qawaid Al-Maqashidiyah* (Yogyakarta: Ar-Ruzz Media, 2019), 93.

[24] Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakahat dan Undang-Undang Perkawinan* (Jakarta: Kencana, 2009), 29.

joint property in marriage. Fourth, the provisions contained in the law outwardly appear to contradict the provisions of *fiqh munakahat* in various *mazhabs*, but by using reinterpretation and considering the benefits, these provisions can be accepted. The provisions in question include the requirement for divorce before the court according to the reasons in the law and the requirement for permission for polygamy by the court.[25]

In addition, the demand for marriage registration is in line with the principle of legality adopted in the Marriage Law, which considers a marriage valid if it has been registered. Even, all Islamic marriage laws in the Islamic world mandate the importance of marriage registration, whose function, apart from being a form of administrative order, also functions politically, namely as state control over the legal protection of each of its citizens, especially for wives and children who are under the domination of the husband in the household. Without the effort to close the *mudharat* of using marriage registration, it will be vulnerable to causing the realization of the purpose of marriage itself, which is to form a relationship that is *sakinnah, mawaddah*, and *warahmah*.[26]

Khoiruddin Nasution posits that marriage registration in Muslim-majority countries can be categorized into three typologies. The first typology includes countries that mandate marriage registration and impose sanctions on violators, such as Brunei Darussalam, Singapore, Iran, India, Pakistan, Jordan, and the Republic of Yemen. The second typology comprises countries where marriage registration is an administrative requirement, but non-compliance does not result in sanctions. Examples of such countries include the Philippines, Lebanon, Morocco, and Libya. The third typology involves countries that mandate marriage registration while still recognizing the validity

[25] Syarifuddin, *Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakahat dan Undang-Undang Perkawinan*, 29.

[26] Imron Rosyadi, *Rekonstruksi Epistemologi Hukum Keluarga Islam* (Jakarta: Kencana, 2019), 41.

of unregistered marriages, as observed in Syria.[27]

Based on the typologies mentioned above, marriage registration in Indonesia can be categorized within the second typology, where the law mandates marriage registration but does not impose sanctions for non-compliance. Agus Moh. Najib highlights that, in general, Indonesian legislation derived from Islamic law tends to emphasize moral guidance rather than definitive legal norms. He cites the example of marriage registration, which is emphasized in the Marriage Law as a significant requirement but is not accompanied by strict enforcement mechanisms.[28] This lack of sanctions has contributed to the prevalence of unregistered (*siri*) marriages in Indonesia. Additionally, the State facilitates the process of legalization of unregistered marriages (*isbat nikah*), which provides a legal framework for individuals involved in such practices.[29]

Mohammad Atho Mudzhar also provided commentary on the provisions of marriage registration. According to him, the regulations on marriage registration in the current Marriage Law represent a regression when compared to Law No. 22 of 1946 concerning the Registration of Marriage (*Nikah*), Divorce (*Talak*), and Reconciliation (*Rujuk*). Article 1, paragraph (1) of the 1946 law explicitly mandated the obligation of supervision by a marriage registrar appointed by the Ministry of Religious Affairs for marriages conducted in accordance with Islamic principles. Furthermore, Article 3, paragraphs (1) and (2) stipulated strict sanctions for individuals who conducted marriages without the required supervision, including penalties for those who

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[27] Khoiruddin Nasution, *Status Wanita di Asia Tenggara: Studi Terhadap Perundang-Undangan Perkawinan Muslim Kontemporer di Indonesia* (Jakarta: INIS, 2002), 158.

[28] Agus Moh. Najib, *Pengembangan Metodologi Fikih Indonesia dan Kontribusinya Bagi Pembentukan Hukum Nasional* (Jakarta: Kementerian Agama RI, 2011), 169.

[29] Nihrul Bahi Alhaidar, Muhammad Muhajir, and Syamsud Dhuha, "The Clouser of Isbat for Polygamous Marriage on Legal Purpose Perspective," *Al-Hukuma': The Indonesian Journal of Islamic Family Law* 13, no. 1 (2023): 1–26.

officiated marriages between men and women without such oversight.[30]

Religious Marriage as Part of Human Rights

For the Muslim majority, the prohibition of interfaith marriage is often attributed to the time of the Prophet Muhammad Saw. At that time, interfaith marriage was forbidden for Muslim women due to the perception that women held a lower status than men, which could lead to the likelihood of a woman adopting her husband's religion. However, such patriarchal views cannot be fully applied in the modern era. Islam itself does not fundamentally legitimize gender-biased perspectives or those that violate human rights.

In this context, Abdullahi Ahmed An-Na'im promoted Islam as a foundation for human rights. He critiques the framing of Islam as either inherently compatible or incompatible with human rights. This framing oversimplifies the complexity of both Islam and the human rights discourse, treating them as monolithic entities. It emphasizes that Islam, like any other religion, is subject to diverse interpretations. Similarly, human rights norms are not universal unless they are embraced and practiced by all—including Muslims.[31]

In further, An-Na'im suggested a dual approach to interpreting relation Islam and human rights: internal Islamic discourse and cross-cultural dialogue. He suggests that promoting human rights among Muslims requires presenting these rights as consistent with Islamic principles rather than imposing them as external moral obligations. Reinterpretation of sharia particularly concerning gender equality and freedom of religion, is a crucial step in aligning Islamic values with human rights. Reframing the role of sharia should be a matter of personal and

[30] Mohammad Atho Mudzar, *Fikih Responsif* (Yogyakarta: Pustaka Pelajar, 2017), 207.

[31] Abdullahi Ahmed An- Na'im, "Islam and Human Rights," in John Witte, Jr and M. Christian Green (eds.), *Religion and Human Rights: An Introduction* (Oxford & New York: Oxford University Press, 2012), 56.

communal religious practice rather than state law. When enforced by the state, sharia loses its religious value and becomes a tool of political authority, undermining its spiritual significance.[32]

It is same with case of hearing of the judicial review of the Marriage Law in Case Number 24/PUU-XX/2022. In this case, various world human rights institutions, including non-governmental organizations such as Amnesty International consider the right to marry and form a family as part of human rights. The UN Human Rights Committee when examining cases of disputes between citizens and UN member states related to marriage stated the permissibility of interfaith marriage.[33]

The above statement related when referring to the provisions of Article 16 paragraph (1) of the Universal Declaration of Human Rights which states. They have the same rights in the matter of marriage, during marriage and at the time of divorce.[34] It is also based on the provisions contained in Article 10 paragraph (2) of Law No. 39/1999 on Human Rights, which states that a valid marriage can only be entered into by the free will of both parties. Thus, this Article contains the principle of the free will of the couple in the marriage bond. Free will is a will that is born based on sincere holy intentions without coercion, deception, and pressure.[35]

Marriage is undeniably an inherent right. Recognizing marriage as a right carries significant implications for its existence, whether it is embraced or declined. In other words, choosing not to exercise this right—opting for celibacy—should not be subject to blame or criticism.[36] Another implication of marriage as a right is the absence of restrictions on an individual's freedom to choose their life partner, provided they

[32] Ibid., 37.

[33] Constitutional Court Decision Number 24/PUU-XX/2022.

[34] Article 16 paragraph (1) of the Universal Declaration of Human Rights.

[35] Article 10 paragraph (2) of Law No. 39/1999 on Human Rights.

[36] Misbahul Huda and Rahmat Dwi Putranto, "Interfaith Marriage in the Human Rights Perspective and the Compilation of Islamic Law," *Pena Justisia: Media Komunikasi dan Kajian Hukum* 21, no. 1 (2022): 1–8.

are legally competent (*ahliyat al-wujub*) and capable of acting (*ahliyat al-ada*'). In this context, there is no prohibition for a Muslim man to marry a non-Muslim woman. Similarly, there should be no barrier preventing a Muslim woman from marrying a non-Muslim man.[37]

In addition, to strengthen the "resistance" to the prohibition of marriage in addition to being a person's right that must be respected, it needs to be emphasized that the prohibition of interfaith marriage can be supported through political arguments, history and *asbabun nuzul*. Another factor that needs to be examined is the *theological-fiqhiyyah* debate that has not yet reached an agreement among the scholars.[38] Politically, the birth of the *fatwa* prohibiting interfaith marriage in Indonesia can be understood within the framework provided by Atho Mudzhar. According to his analysis, the issuance of the Indonesian Council of Ulama (MUI) *fatwa*, which acts as a guardian of religious discourse in the country, is inseparable from the awareness of religious competition. This competition, as assessed by the MUI's authorities, has reached a critical point, potentially threatening the growth and interests of the Muslim community. Consequently, the possibility of interfaith marriage is perceived as a significant risk and has been firmly prohibited to safeguard these interests.[39]

This phenomenon can be justified by referring to the political success of Muslims who have never emerged as winners, as happened in the 1971 and 1977 elections, which were suspected of fraud, causing a wave of protests from Islamic parties. However, even the 1955 election, which was considered an open and objective election, was not able to gain votes that could win over Islamic parties. This certainly caused

[37] Benedict Douglas, "Love and Human Rights," *Oxford Journal of Legal Studies* 43, no. 2 (2023): 273–297.

[38] Muhammad Adil and Syahril Jamil, "Interfaith Marriage in Indonesia: Polemics and Perspectives of Religious Leaders and Community Organization," *Religion and Human Rights* 18, no. 1 (2023): 1–23.

[39] Mohammad Atho Mudzhar, *Fatwa-Fatwa Majelis Ulama Indonesia (Sebuah Studi Tentang Pemikiran Hukum Islam di Indonesia 1975-1988)* (Jakarta: INIS, 1993), 103.

"confused" for Muslims in quantity were the majority but were unable to win an Islamic party. In this context, linking the prohibition of interfaith marriage with the sense of trauma of Muslims can find its justification.[40]

From the description above, the key point to emphasize is that the prohibition of interfaith marriage is aimed at strengthening the Islamic community. Ibn Khaldun's argue that group fanaticism played a crucial role in the successful spread of Islam during its early development.[41]

Similarly, the regulation on the prohibition of interfaith marriages raised in the religious *fatwa* of the MUI cannot be separated from this factor. The social fanaticism that is formed, by sorting between Muslims and non-Muslims which results in the prohibition of marriage between them is to make the superiority of the group it favors, in this case, Islam while other groups, in this case non-Muslims, must be marginalized.[42]

From a historical perspective, evidence of interfaith marriages can be found in several instances, including those involving the Prophet Muhammad Saw. For example, the Prophet's daughter, Zainab, married 'Amr Abu al-Ash, with whom she had two children, Umamah and Ali. Abu al-Ash remained a follower of his previous religion for six years before converting to Islam, without renewing the marriage contract. This indicates the recognition of the validity of marriages conducted prior to conversion to Islam. Similarly, the Prophet's daughters, Ruqayyah and Umm Kulthum, were married to Utbah ibn Abu Lahab. Additionally, interfaith marriages were practiced by some of the Companions the Prophet (*sahabat*), such as Ustman ibn Affan, Talhah ibn Ubaidillah, and Hudzaifah ibn al-Yaman.[43]

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[40] Jung Hoon Park, "Localised Impact on Islamic Political Mobilisation in Indonesia: Evidence from Three Sub-Provincial Units," *Journal of Southeast Asian Studies* 54, no. 3 (2023): 450–479.

[41] Muji Mulia, "Teori 'Asabiyyah Ibn Khaldun dalam Perspektif Hukum Islam," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 3, no. 2 (2019): 400–417.

[42] Jannah Aishah Maysun, "Are Religious Beliefs Truly the Root Cause of Terrorism?," *Journal of Global Faultlines* 10, no. 2 (2023): 252–263.

[43] Wijaya, *Menalar Autentisitas Wahyu Tuhan: Kritik Atas Tafsir Nalar Gender*, 331.

The *asab al-nuzul* or what Arkoun refers to as the "*situation de discours"* provides an essential framework for understanding the Qur'anic verse on the prohibition of interfaith marriage. This prohibition cannot be separated from the socio-political context of the ongoing conflict between the Prophet Muhammad Saw and his followers and the leaders of the pagan Quraish. The verse was revealed in the context of this conflict, specifically during an incident involving Abu Martsad. He was dispatched to evacuate Muslims who were still stranded in Mecca, but upon returning to Medina, he expressed a desire to marry a pagan Quraish woman. Given the precarious and hostile nature of the situation at the time, it was understandable that such a prohibition was introduced to protect the nascent Muslim community.[44]

A contrasting situation occurred when the Prophet Muhammad Saw was living in a peaceful environment in Medina. On one occasion, he sent a delegation to Muqauqis, the Coptic ruler of Egypt, inviting him to embrace Islam. Although Muqauqis ultimately declined the invitation, he responded politely by gifting two non-Muslim women, one of whom was Mariah al-Qibthiyah. At the time, Mariah was a Christian, and she later married the Prophet. This incident serves as a clear indication that the Qur'anic regulations regarding interfaith marriage are closely tied to the socio-historical context in which the legal formulations of the Qur'an were revealed.[45]

Thus, it is clear that the prohibition of interfaith marriage is closely related to the social situation surrounding the birth of the Qur'anic verses on this matter. Last but not least, the social system is very patriarchal, so what becomes a loophole for the permissibility of interfaith marriages is discussed by Islamic jurists when the woman is a member of the *ahl al-kitab* while the man is a Muslim and it is forbidden for the opposite. It is assumed that it is the man who plays a role in directing women so

[44] Suhadi, *Kawin Lintas Agama Perspektif Kritik Nalar Islam* (Yogyakarta: LKiS, 2006), 118.

[45] Ibid., 120.

that there is hope that when a Muslim man marries a woman of the *ahl al-kitab*, he can influence her to embrace Islam.[46]

Theological and *fiqh*-based arguments regarding interfaith marriage remain a subject of extensive debate among scholars. Analyzing classical *fiqh* texts reveals three distinct patterns of rulings on interfaith marriage. First, the marriage of a Muslim man to a polytheist woman. This type of marriage is permitted by Ibn Jarir al-Tabari, provided the woman is from a non-Arab nation that adheres to a holy book. Second, the marriage of Muslim men to women of *ahl al-kitab*. The majority of scholars consider such marriages permissible. Third, the marriage of a Muslim woman to a non-Muslim man. On this matter, there is a consensus among scholars that such marriages are prohibited.[47]

It is therefore reasonable to consider interfaith marriage as an area of *ijtihadi* (subject to independent juristic reasoning), where new legal formulations regarding its permissibility—such as between Muslim men and non-Muslim women—can be explored. This perspective is grounded in several considerations. First, the recognition of religious plurality as part of *sunnatullah*. Second, the primary purpose of marriage, which is to foster a bond of love and mutual understanding. Finally, the liberative spirit inherent in the Qur'anic message, which emphasizes justice and human dignity, must also be taken into account.[48]

The concept of liberation, which was a central mission of the Qur'anic revelation, aligns with the principle of freedom in choosing a life partner. This principle resonates with international human rights instruments that reject restrictions based on race, religion, or nationality as barriers to marriage. However, the freedom envisioned by the Qur'an,

[46] Wijaya, *Menalar Autentisitas Wahyu Tuhan: Kritik Atas Tafsir Nalar Gender*, 277.

[47] Zubaidi Sujiman, "Interfaith Marriage Perspective of Positive Law and Islamic Law in Indonesia," *Yudisia: Jurnal Pemikiran Hukum dan Hukum Islam* 15, no. 1 (2024): 125–136. Suwarjin, "Interfaith Marriage: Between Pro and Contra in Islamic Jurist's Thought," *Madani* 27, no. 1 (2023): 79–92.

[48] Nurcholish Madjid, *Fikih Lintas Agama: Membangun Masyarakat Inklusif-Pluralis* (Jakarta: Yayasan Wakaf Paramadina, 2004), 164.

including in matters of selecting a life partner, is often constrained by theological and *fiqh* doctrines, which remain within the realm of *ijtihadi*. Consequently, provisions that advocate for individual freedom in choosing a spouse are frequently interpreted as being at odds with the spirit of liberation promoted by the Qur'an.

The concept of liberation, which was a central mission of the Qur'anic revelation, aligns with the principle of freedom in choosing a life partner. This principle resonates with international human rights instruments that reject restrictions based on race, religion, or nationality as barriers to marriage. However, the freedom envisioned by the Qur'an, including in matters of selecting a life partner, is often constrained by theological and *fiqh* doctrines, which remain within the realm of *ijtihadi*. Consequently, provisions that advocate for individual freedom in choosing a spouse are frequently interpreted as being at odds with the spirit of liberation promoted by the Qur'an.[49]

In this context, the regulations emphasized in international human rights instruments are often viewed as focusing exclusively on marriage as an individual right. In contrast, the Qur'an emphasizes the ultimate purpose of marriage: to establish a family foundation characterized by *sakinah, mawaddah,* and *warahmah*, with the aim of creating a lasting and harmonious union. From this perspective, the freedom promoted by human rights instruments is considered insufficient, as it neglects to address how the permanence and stability of the family can be ensured, focusing instead solely on individual rights. This concern for family permanence forms the basis of fiqh rulings that prohibit interfaith marriages.[50]

Another obstacle to the legalization of interfaith marriage as an inherent human right is the conceptual framework in Islamic jurisprudence, which distinguishes between different categories of rights.

[49] Madjid, *Fikih Lintas Agama: Membangun Masyarakat Inklusif-Pluralis*, 164-165.

[50] Ahmad Kosasih, *HAM dalam Perspektif Islam: Menyikapi Persamaan dan Perbedaan Antara Islam dan Barat* (Jakarta: Salemba Diniyah, 2003), 87.

In this framework, a right is not considered inherent to a person because, in addition to individual rights, there are also obligations owed to God that must be fulfilled. According to Islamic jurists, the relationship between human rights and divine rights is categorized into three types: first, laws that pertain solely to God's rights; second, laws that involve both God's and human rights, with God's rights being more dominant; and third, laws that also involve both God's and human rights, but where human rights are more dominant.[51]

Interestingly, the separation of the relationship between God's rights and human rights, especially in the case of rights categorized as purely Adamic rights, is in the case of *muamalah* whose provisions are directed entirely at individual benefits.[52] Thus, interfaith marriage can be placed in the position of a purely adamic right. This is of course by following the opinion of scholars who do not categorize marriage into the realm of worship, such as the opinion of Imam Syafi'i, which is based on the argument of biological urges that are real needs of every human being so that even without being obliged, sexual relations will still take place.[53]

This perspective reinforces the idea of marriage as a right that belongs to an individual, meaning that it cannot be coerced, whether in terms of exercising the right or refraining from it. In this context, the concept of *al-hurriyah* (freedom) is central, encompassing both *al-hurriyah al-kharijiyyah* (external freedom) and *al-hurriyah al-dakhiliyyah* (internal freedom). In the former, external freedom, an individual must be free from external pressures in order to pursue personal goals. In the latter, internal freedom, a person possesses the right to exercise freedom that stems from within, affirming their autonomy as an independent individual.[54]

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[51] Nur Rofiah and Imam Nahe'i, *Kajian tentang Hukum dan Penghukuman dalam Islam* (Jakarta: Komnas Perempuan, 2016), 75.

[52] Rofiah and Nahe'i, *Kajian Tentang Hukum dan Penghukuman dalam Islam*, 75.

[53] Ghazali, *Argumen Pluralisme Agama*, 328.

[54] Fauzi, *Hak Asasi Manusia dalam Fikih Kontemporer* (Jakarta: Kencana, 2018), 161.

In light of the above, categorizing marriage as a right necessitates that it be free from external pressures, such as legal obstacles, as it is fundamentally a personal choice. Just as an individual is free to exercise the right to marry, as granted by religion, they are equally free to choose not to marry. Thus, one has the autonomy to relinquish the right to celibacy. If the prohibition of interfaith marriage, whether imposed by state authorities or religious bodies, restricts this freedom, it infringes upon *al-hurriyah al-kharijiyyah*, as it means the individual is no longer free from external interference.

Religious Marriage Registration: Unraveling the Forms of Human Rights Protection

The protection of human rights in Indonesia is essential because the country is a state based on the rule of law, which is characterized by the recognition and protection of human rights. This principle is explicitly stated in Article 1, paragraph 3 of the 1945 Constitution, which declares that Indonesia is a state of law. Additionally, the obligation of the state to protect and uphold human rights stems from Indonesia's ratification of various international treaties on human rights enforcement.[55] As a result, Indonesia recognizes the rule of law, which requires all government actions to be based on clear legal principles. This commitment is reflected in the protection of human rights and the assurance of equality before the law and government for all citizens.[56]

In the context of human rights protection, certain rights are categorized as non-derogable rights, meaning they cannot be reduced or suspended under any circumstances, even during a national emergency that threatens the survival of the nation. These rights include the right

[55] M. Miraj Mirza, Rudi Natamiharja, and J.A. Magaldi Serna, "Social Transformation of International Human Rights Law Through Indonesian Constitutional Court," *Uti Possidetis: Journal of International Law* 4, no. 3 (2023): 439–471.

[56] Wira Purwadi et al., "Application of the Principle of a Equality Before the Law to Law Enforcement for the Realization of Justice in Society," *Jurnal Legalitas* 15, no. 1 (2022): 59–75.

to life, the right to be free from torture and slavery, the right not to be enslaved, the right not to be imprisoned solely for an inability to fulfill contractual obligations, the right to be free from retroactive punishment, the right to recognition as a person before the law, and the right to freedom of thought, conscience, and religion.[57]

Among the rights mentioned above, the last category—freedom of thought, conscience, and religion—intersects with the issue of interfaith marriage. Interfaith marriage can thus be considered one of the rights that cannot be reduced if it is viewed as an implication of an individual's freedom to practice the religion they believe in. It would be unreasonable to guarantee a person's freedom of religion while prohibiting the implications of that freedom as mandated by the rule of law. From this perspective, the justification for interfaith marriage becomes evident.

In the context of human rights studies, although the right to freely choose and practice one's religion is non-derogable and cannot be suspended under any circumstances, including during emergencies, this does not mean it is entirely without limitations. Restrictions (limitations) can be applied in a very narrow scope for reasons such as morality, public order, public welfare, or in cases of national emergencies that threaten the life of the nation. Such emergencies might affect the entire population and endanger physical integrity, political independence, or territorial sovereignty.[58] In the Indonesian context, however, interfaith marriage is unrelated to these conditions. Even though the values held by the majority of Muslim communities in Indonesia oppose interfaith marriage, such opposition is rooted in cultural and religious norms rather than the aforementioned justifications for legal restrictions.[59]

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[57] Eko Riyadi, *Hukum Hak Asasi Manusia Perspektif Internasional, Regional, dan Nasional* (Depok: Rajawali Pers, 2018), 55.

[58] Katarzyna Kubuj, "The Role of General Clause of (Public) Morals Based on Selected European Court of Human Rights' Judgement," *Bialystok Legal Studies* 27, no. 4 (2022): 101–119.

[59] Imaro Sidqi and Mhd. Rasidin, "Prohibition of Interfaith Marriage in Indonesia: A Study of Constitutional Court Decision Number 24/PUU-XX/2022,"

Thus, restrictions on non-derogable rights can only be imposed under the conditions mentioned earlier. This includes issues such as interfaith marriage, which is considered an implication of an individual's freedom to choose their religion. As long as the restrictive conditions do not arise from interfaith marriage itself, there is no justification for the state to ignore or prohibit the legality of interfaith marriages, as evidenced by the refusal to record such marriages.

This argument contrasts with the perspective of Constitutional Court Judge Enny Nurbaningsih. According to her, as stipulated in Article 28B, paragraph (1) of the 1945 Constitution, two rights are explicitly guaranteed: "the right to form a family" and "the right to continue one's offspring." The subsequent wording indicates that a "legal marriage" is a prerequisite for safeguarding these rights. This interpretation implies that marriage is not positioned as an independent right but rather as a necessary condition for the realization of the right to form a family and to continue one's lineage.[60]

Furthermore, Nurbaningsih emphasized that while Article 28B, paragraph (1) of the 1945 Constitution places legal marriage as a prerequisite for protecting the right to form a family and the right to continue one's lineage, this requirement is mandatory. According to her, it is impossible to form a family or continue offspring without a legal marriage. Using the rule of Islamic law principle—"that which is necessary for the fulfillment of an obligation becomes obligatory" (*ma la yatimmul wajib illa bihi fahuwa wajib*)—legal marriage itself becomes a constitutional right that must be protected.[61]

The legal reasoning above raises questions regarding the ambiguity in the article regulating the validity of marriage. Specifically, it is unclear whether the mandatory requirement for validity is based solely on religious teachings or whether it also includes the obligation

Jurnal Ilmiah Al-Syir'ah 21, no. 1 (2023): 154–172.

[60] Constitutional Court Decision Number 24/PUU-XX/2022.

[61] Constitutional Court Decision Number 24/PUU-XX/2022.

to register the marriage. In this context, the Constitutional Court, as previously clarified, has determined that marriage registration is merely an administrative requirement. Therefore, the validity of a marriage is determined exclusively by fulfilling the conditions and essential elements prescribed by religious teachings.

Additionally, the rules governing the validity of marriage cannot conflict with the principle of registering interfaith marriages, which is an implication of a person's freedom of religion. This is demonstrated by the legal loophole often used by individuals entering into interfaith marriages, namely conversion by one of the partners. For instance, if one partner in an interfaith marriage converts to Islam, the marriage can be registered with the Office of Religious Affairs. Conversely, if one partner adopts a religion other than Islam, the marriage can be registered with the civil registry. This highlights that there is no justification for the state to refuse registration of interfaith marriages when such steps are taken.[62]

By treating the registration of interfaith marriages not as a requirement for the validity of marriage but as an administrative necessity, it becomes a right that the state must protect as part of its commitment to upholding human rights. Failure to record interfaith marriages can be seen as a violation of citizens' human rights, as it has implications for reducing their ability to access rights related to administrative matters. In such cases, the state is deemed to have violated human rights by neglecting its responsibility to ensure the fulfillment of its citizens' rights. Conversely, the state can also be considered in violation of human rights if it actively imposes a ban on the registration of interfaith marriages. Such a prohibition not only disregards the principles of equality and freedom but also undermines the state's obligation to protect the human rights of its citizens.[63]

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[62] Rosyadi, *Rekonstruksi Epistemologi Hukum Keluarga Islam*, 213.

[63] Riyadi, *Hukum Hak Asasi Manusia Perspektif Internasional, Regional dan Nasional*, 72.

Categorizing the registration of interfaith marriages as an inherent right aligns with the provisions of the Universal Declaration of Human Rights, which asserts that human rights are fundamental principles and inherent dignity possessed by every individual. These rights must be protected to ensure their fulfillment cannot be obstructed by laws, policies, or legal practices that degrade or violate human dignity.[64] In this context, fulfilling individuals' rights requires their effective protection and implementation through the domestic legal system. The rule of law, therefore, serves as an overarching principle in the realm of human rights protection, as without it, respect for human rights becomes illusory.[65]

Under a rights-based approach, the state's obligations and responsibilities revolve around three key principles: respect, protection, and fulfillment. First, the state is obligated to refrain from actions that impede the realization of human rights. Second, the state must actively ensure the protection of its citizens' human rights. Finally, the state is required to take legislative, administrative, legal, budgetary, and other necessary measures to fully realize human rights for all.[66]

In this context, Decision No. 916/PDT.P/2022.PN.SBY, which ordered the civil registration office to register marriages between individuals of different religions, is entirely reasonable. Referring to the articles in the 1945 Constitution, it is evident that there are strong legal arguments supporting marriage as a right that the state must respect and protect. These include Article 29, paragraph (2) of the 1945 Constitution, which mandates the state to guarantee the freedom of every resident to embrace their religion and worship according to their respective beliefs. This is further reinforced by Article 28B, paragraph (1), which recognizes

[64] Asy'ari and Triansyah Fisa, "Interfaith Marriage in Perspectives of Classical and Modern Scholars," *Al-Manahij: Jurnal Kajian Hukum Islam* 16, no. 2 (2022): 287–300.

[65] Denny Suwondo, "The Legal Protection of Personal Data in the Perspective of Human Rights," *Law Development Journal* 5, no. 4 (2023): 419–429.

[66] Didier Yangonzele Liambomba, "The Right of Access to Public Information: Human Rights Issues, Transparency and Good Governance," *Constitutionale* 4, no. 1 (2023): 1–28.

the right of every person to form a family and continue their lineage through legal marriage.[67]

This is also what is guaranteed through the Covenant on Civil and Political Rights that has been ratified by Indonesia with Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights, which includes the right to freedom to marry and form a family, as accommodated in Article 23 paragraph (2) of the Covenant on Civil and Political Rights. Thus, it can be seen that these human rights instruments have recognized the right to marry and have a family without religious restrictions as a human right. This also serves as a guideline for the state to enforce and protect this right.[68]

In line with the provisions of the articles above, the non-registration of interfaith marriages can be categorized as different treatment by the state, whereas in the context of human rights protection, everyone has the same legal status and cannot be treated discriminatively. The non-registration of interfaith marriages has implications for the fulfillment of the civil and political rights of the perpetrators of interfaith marriages. Meanwhile, in the context of a legal state that wants to realize orderly governance and protection and recognition of status for the Indonesian population, Law Number 23 of 2006 as amended by Law Number 24 of 2013 concerning Population Administration States, that every important event experienced by the community must be reported or recorded at the Implementing Agency, namely the Population and Civil Registration Office.[69]

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[67] Umar Haris Sanjaya, "Interpretation of Interfaith and/or Belief Marriage by Judges: Disparity and Legal Vacuum," *Jurnal Konstitusi* 20, no. 3 (2023): 536–555.

[68] Andra Noormansyah and Umar Haris Sanjaya, "The Legal Vacuum of Interreligious Marriage in Indonesia: The Study of Judges' Consideration in Interreligious Marriage Court Decisions 2010-2021," *Prophetic Law Review* 4, no. 2 (2022): 177–194.

[69] Peni Rinda Listyawati, Indah Setyowati, and Latifah Hanim, "Legal Analysis of the Rejection Registration Interfaith Marriages," *International journal of Law Reconstruction* 4, no. 2 (2020): 110–123.

Undoubtedly, an interfaith marriage is a significant event that cannot be disregarded. Denying the registration of an interfaith marriage, even when its legal status remains a subject of debate, cannot override the state's obligation to guarantee equal status for all individuals before the law. This is in line with the principle of equality before the law, which explicitly requires the state to protect the rights of all its citizens without exception. In other words, complicating or prohibiting the registration of interfaith marriages amounts to a violation of non-derogable human rights.[70]

Conclusion

The registration of interfaith marriages in Indonesia is essential when examined from the perspective of human rights, as viewed through *dusturiyah-fiqhiyyah*, the United Nations, and the 1945 Constitution of the Republic of Indonesia. These frameworks affirm that interfaith marriage constitutes an inherent right of every individual, obligating the state to respect, protect, and fulfill the associated human rights. This argument is further supported by various provisions in both national law and international human rights instruments, which classify the right to freedom of religion and belief as a non-derogable right that cannot be diminished under any circumstances. Consequently, an analysis of these three human rights perspectives leads to the conclusion that, if freedom of religion and belief is constitutionally guaranteed, then interfaith marriage—being a direct implication of such freedom—must also be recognized and protected as a fundamental human right.

[70] Khoirum Lutfiyah, "Equality Before the Law Principle and Legal Aid for the Poor: An Indonesian Insight," *The Indonesian Journal of International Clinical Legal Education* 3, no. 4 (2021): 517–536.

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