

The 'Double-Faced' Legal Expression: Dynamics and Legal Loopholes in Interfaith Marriages in Indonesia

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Abstract

Interfaith marriages remain a controversial subject among scholars in Indonesia. Despite the legal prohibition, the practice of interfaith marriage continues to persist. This article analyses various legal norms, decisions of the state courts and the Indonesian Constitutional Court related to interfaith marriages, revealing disparities between legal norms and practical implementation. Employing a normative approach through a literature review, this research finds that the state legislation strictly prohibits interfaith marriage. Paradoxically, couples navigate a legal workaround, exploiting a loophole in Population Administration Law No. 23 of 2006 to formalise their marriages. They submit applications to the district court, and the court's decisions serve as the basis for recording their union. Some couples also employ an alternative strategy by marrying abroad and subsequently registering their unions upon returning to Indonesia. The article argues that the state's legal expression in regulating the practice of interfaith marriages in Indonesia manifests 'double face'. This study holds significant implications, particularly in enhancing policy comprehension, providing profound insights into the legal dynamics of interfaith marriages in Indonesia, and assessing its impact on citizens' religious freedom.

[Perkawinan beda agama di Indonesia masih menjadi isu kontroversial di kalangan para sarjana. Meskipun hukum negara telah melarangnya, praktik perkawinan beda agama masih terus berjalan hingga saat ini. Artikel ini menganalisis sejumlah hukum negara, putusan Pengadilan Negeri, dan putusan Mahkamah Konstitusi terkait perkawinan beda agama di Indonesia, mengungkap disparitas antara aturan hukum dan praktik. Menggunakan penelitian kepustakaan dengan pendekatan normatif, penelitian ini menemukan bahwa hukum negara telah mengatur secara ketat perkawinan beda agama dengan melarangnya. Namun, para pasangan beda agama memanfaatkan celah hukum dalam Undang-Undang No. 23 Tahun 2006 tentang Administrasi Kependudukan untuk mencatatkan perkawinan mereka. Mereka mengajukan permohonan ke pengadilan negeri dan ketetapannya digunakan sebagai dasar untuk mencatatkan perkawinan mereka. Sebagian dari mereka juga memanfaatkan "pintu belakang" dengan menikah di luar Indonesia dan kembali untuk mencatatkan administrasi perkawinan mereka. Dengan demikian, tulisan ini berpendapat bahwa ekspresi hukum negara dalam mengatur praktik perkawinan beda agama di Indonesia mencerminkan "dua wajah". Kajian ini memiliki implikasi penting terutama dalam pemahaman kebijakan, memberikan wawasan mendalam tentang dinamika hukum perkawinan beda agama di Indonesia dan dampaknya terhadap kebebasan beragama bagi warga negara.]

Keywords: Indonesian Law, Interfaith Marriage, Legal Expression, Legal Loopholes, Religious Freedom.

Introduction

The regulation of interfaith marriage exhibits considerable variation across several Muslim-majority nations.¹ Turkey stands out with its notably liberal stance, permitting interfaith unions, and Turkish women employ pre-marital discussions and conflict avoidance strategies to navigate such marriages.² Conversely, Saudi Arabia and Somalia adopt the most conservative positions, unequivocally prohibiting interfaith marriages.³ In southwestern Nigeria, marriages between Muslims and Christians are often viewed as challenging, yet they are deemed less problematic than remaining unmarried.⁴ A similar sentiment prevails within the Zongo community in Accra. While doctrine disparities between Muslims and Christians serve as a foundational basis for prohibiting interfaith marriages, mitigating factors exist that render the prospect of such unions more tolerable in the future.⁵ This diversity in approach and acceptance is mirrored in various state laws and practices on interfaith marriage.

In the Indonesian context, the regulation of interfaith marriages is meticulously governed by the provisions stipulated in Article 2, paragraph (1), of Marriage Law No. 1 of 1974,⁶ which unequivocally defines a valid marriage as one conducted in accordance with the rites and tenets of each respective religion and belief system. Further, Article 40, Letter (c), of Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law (*Kompilasi Hukum Islam*, or KHI) expressly underscores the proscription of interfaith marriages within the legal framework.⁷ Despite the categorical prohibition enshrined in state law, the issue of interfaith marriage in Indonesia remains a subject of contentious debate within legal circles.⁸

¹ Jana van Niekerk and Maykel Verkuyten, “Interfaith Marriage Attitudes in Muslim Majority Countries: A Multilevel Approach,” *The International Journal for the Psychology of Religion* 28, no. 4 (2018): 257–70.

² Haifaa Jawad and Ayse Elmali-Karakaya, “Interfaith Marriages in Islam from a Woman’s Perspective: Turkish Women’s Interfaith Marriage Practices in the United Kingdom,” *Journal of Muslim Minority Affairs* 40, no. 1 (2020): 128–47.

³ See: Lama Abu-Odeh, “Modernizing Muslim Family Law: The Case of Egypt,” *Vand. J. Transnat’l L.* 37, no. 4 (2004): 1043; Nurul Adhha, “The Human Rights and Women in the Context of Interfaith Marriage and Inheritance: A Comparative Analysis of Family Law in Muslim Countries,” in *SCITEPRESS–Sci. Technol.*, 2020, 964–71; Ayse Elmali-Karakaya, “Interfaith Marriage in Islam: Classical Islamic Resources and Contemporary Debates on Muslim Women’s Interfaith Marriages,” *Religions* 13, no. 8 (2022): 726; Jawad and Elmali-Karakaya, “Interfaith Marriages in Islam from a Woman’s Perspective,” 128–47.

⁴ I. Nolte, “‘At Least I Am Married’: Muslim–Christian Marriage and Gender in Southwest Nigeria,” *Social Anthropology* 28, no. 2 (2020): 434–50.

⁵ S. Owoahene-Acheampong and C. Prempeh, “Contemporary Zongo Communities in Accra Interfaith Marriages: The Case of Muslims and Christians in Accra,” *African Studies Quarterly* 19, no. 1 (2020): 23–40.

⁶ The Marriage Law, designated as No. 1 of 1974, underwent revision under Law No. 16 of 2019. The principal aspect addressed in this recent legislation pertains to the age restriction for marriage. See: Achmad Hariri, “The Dialectics Feminism Paradigm of the Legal Marriage as a Form of Legal Protection in Girls,” *Syariah: Jurnal Hukum dan Pemikiran* 21, no. 2 (August 22, 2021): 125–36.

⁷ Arif Sugitanata, “Pertentangan Misi Kenabian dan Hukum Pernikahan Beda Agama di Indonesia,” *Al-Ushob* 3, no. 2 (2023): 163–87.

⁸ See: Muhammad Faisal Hamdani, M Jamil Jamil, and Fatimah Zuhrah, “The Legal and Human Rights Challenges of Interfaith Marriage in Indonesia,” *Journal of Law and Sustainable Development* 11, no. 12 (December 2023): 1–15; Usep Saepullah, “The Inter-Religious Marriage in Islamic and Indonesian Law Perspective,” *Jurnal Ilmiah Peuradeun* 7, no. 1 (January 30, 2019): 43–58.

Numerous endeavours have been undertaken by couples in interfaith marriages to challenge and amend specific statutory provisions. Regrettably, these concerted efforts have met with limited success, as evidenced by the rejection of judicial review applications by the Constitutional Court in Decisions No. 46/PUU-VIII/2010, No. 68/PUU-XII/2014, and No. 24/PUU-XX/2022. Although interfaith marriages persist as a legally contested terrain, the possibility for such unions to be officially registered persists. This arises from the acknowledgement that an individual's choice of religious affiliation is considered a private matter, shielded from public scrutiny.⁹ The crux of the analysis in this article centres on the disjuncture between the 'law in the books' and the 'law in action' on interfaith marriages, discerning the salient disparities between legal prescriptions and their practical application.

There are three categories into which previous studies on the phenomena of interfaith marriage can be classified. The first category consists of research that focuses on identifying factors that influence the occurrence of interfaith marriages such as the environment, family dynamic, traditions, cultural aspects, and a lack of religious knowledge.¹⁰ The second encompasses studies delving into the examination of conflict and negotiation within interfaith unions.¹¹ An examination of religious conversion patterns in interfaith marriages reveals three distinct trajectories: the non-Muslim partner embracing Islam prior to marriage, the Muslim partner relinquishing Islam to wed the non-Muslim counterpart, and each partner maintaining their faith while conforming to Islamic marital stipulations.¹² The final category scrutinises the discourse surrounding the legal validity of interfaith marriages, both normatively and administratively.¹³ Despite certain district court adjudications sanctioning interfaith unions,¹⁴ the legal deliberations commonly neglect religious dimensions.¹⁵ As of

⁹ Otto Gusti Madung, "Liberalisme versus Perfeksionisme? Sebuah Tinjauan Filsafat Politik tentang Relasi antara Agama dan Negara," *Jurnal Ledalero* 12, no. 2 (2017): 173–90.

¹⁰ See: Khairul Hamim, Muhammad Iskandar, and Muhammad Azizurrohmah, "Interfaith Marriage in North Lombok: Sociological Perspective of Islamic Law," *Khazanah Hukum* 4, no. 2 (2022): 129–38; Hannah K Shoaf et al., "Strengths and Strategies in Interfaith Marriages," *Marriage & Family Review* 58, no. 8 (2022): 675–701; Juliette Crespin-Boucaud, "Interethnic and Interfaith Marriages in Sub-Saharan Africa," *World Development* 125 (January 1, 2020): 104668; M. Hasyim Syamhudi, "Konstruksi Sosial Pernikahan Beda Agama di kalangan Muslim Tionghoa di Probolinggo," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 11, no. 2 (December 31, 2011): 127–43; Surya Sukti, Munib Munib, and Imam S. Arifin, "Pernikahan Adat Dayak Ngaju Perspektif Hukum Islam (Studi di Kabupaten Gunung Mas Kalimantan Tengah)," *El-Mashlahab* 10, no. 2 (December 30, 2020): 65–75.

¹¹ See: Nisful Laili and Rina Sari Kusuma, "Conflict Management Strategies for Children of Interfaith Marriages in Religious Decision Making," in *Proceedings of the International Conference on Community Empowerment and Engagement (ICCEE 2021)* (Atlantis Press, 2022), 232–39; Mochamad Taufiqurrachman and Agus Machfud Fauzi, "Harmony in Diversity: The Dynamics of Interfaith Families," *Jurnal Sosiologi Agama Indonesia (JSAI)* 4, no. 3 (2023): 328–41.

¹² M.A. Nasir, "Negotiating Muslim Interfaith Marriage in Indonesia: Integration and Conflict in Islamic Law," *Mazahib Jurnal Pemikiran Hukum Islam* 21, no. 2 (2022): 155–86.

¹³ B.D.W. Jatmiko, N.P. Hidayah, and S. Echaib, "Legal Status of Interfaith Marriage in Indonesia and Its Implications for Registration," *Journal of Human Rights, Culture and Legal System* 2, no. 3 (2022): 167–77.

¹⁴ M. Yakub Aiyub Kadir and F. Rizki, "Interfaith Marriage in Indonesia: A Critique of Court Verdicts," *Yuridika* 38, no. 1 (2023): 171–90.

¹⁵ See: Sri Wahyuni et al., "The Registration Policy of Interfaith Marriage Overseas for Indonesian Citizen," *Bestuur* 10, no. 1 (2022): 12–21; Zaidah Nur Rosidah, Lego Karjoko, and Mohd Rizal Palil, "The Government's Role in Interfaith Marriage Rights Protection: A Case Study of Adjustment and Social Integration," *Journal of Human Rights, Culture and Legal System* 3, no. 2 (2023): 265–87; Kemas Muhammad Gemilang et al., "Discussing the Phenomenon of the Appointment of Judges in District Courts Regarding Interfaith Marriages from a Legal Logic Perspective," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 2 (2023): 307–

now, the legal standing of interfaith marriages remains fraught with ambiguity concerning their legitimacy.¹⁶ This article endeavours to delineate the disjunction between the ‘law in the books’ and the ‘law in action’ regarding the phenomenon of interfaith matrimony. This article posits that the execution of interfaith marriage legislation epitomises a bifurcated legal expression, where the overt proscription of interfaith unions coexists with a covert allowance for such couples to officially register their marriages.¹⁷

This article constitutes a literature review employing a normative framework to dissect various regulatory frameworks pertinent to interfaith matrimonial unions. The analysed legal instruments include the Marriage Law No. 1 of 1974, the KHI, and Population Administration Law No. 23 of 2006. Additionally, three Constitutional Court Verdicts, namely No. 46/PUU-VIII/2010, No. 68/PUU-XII/2014, and No. 24/PUU-XX/2022, are scrutinized. Subsequently, the data was analysed by the legal expression theory of Herbert Lionel Adolphus Hart.¹⁸ The theory underscores the premise that law fundamentally functions as an articulation of prevalent societal values, encapsulating collective aspirations and beliefs. According to Hart, statutory law mirrors the norms acknowledged and embraced by the populace, thereby positing law as a manifestation of the moral and social norms endemic to a given community.¹⁹

Regulatory Frameworks Governing Interfaith Marriages

Since the inception of independence, the Indonesian government has undertaken the formulation of specific regulations pertaining to marriage. However, these regulations crystallised during the New Order with the promulgation of Marriage Law No. 1 of 1974.²⁰ The enactment of the Marriage Law No. 1 of 1974 marked the resolution of discord between religious and political authorities of that era concerning the legalisation of marriages in Indonesia. Preceding Indonesia’s independence, the legal framework governing interfaith marriage was present for Christian unions through the *Regeling op de Gemengde Huwelijken* (GHR) *Staatblaad* 1898 No. 158, regulating mixed marriages, and the *Huwelijksordonnantie*

24; Irina Rabinovich, “Interfaith Marriage Goes Wrong: Belle Kendrick Abbott’s Leah Mordecai,” *Neohelicon* 50, no. 1 (2023): 259–72.

¹⁶ See: Ibnudin, Ahmad Syathori, and Didik Himmawan, “Rekonstruksi Hukum Perkawinan Beda Agama Prespektif Hak Asasi Manusia,” *Risalah, Jurnal Pendidikan dan Studi Islam* 9, no. 3 (2023): 1086–1100; Anggreini Carolina Palandi, “Analisa Yuridis Perkawinan Beda Agama di Indonesia,” *Lex Privatum* 1, no. 2 (2013): 196–210; Abdul Halim and Carina Rizky Ardhani, “Keabsahan Perkawinan Beda Agama diluar Negeri dalam Tinjauan Yuridis,” *Jurnal Moral Kemasyarakatan* 1, no. 1 (2016): 67–75; Andri Rifai Togatorop, “Perkawinan Beda Agama,” *Journal of Religious and Socio-Cultural* 4, no. 1 (2023): 26–36; Muhammad Ashsubli, “Undang-Undang Perkawinan dalam Pluralitas Hukum Agama (Judicial Review Pasal Perkawinan Beda Agama),” *Jurnal Cita Hukum* 2, no. 2 (December 2015): 289–302.

¹⁷ The term ‘double-faced’, as employed in this article, pertains to the conceptualization of ‘dual-faced politics’ delineated by David Runciman and the notion of ‘two-faced democracy’ articulated by Aqil Irham. See: David Runciman, *Political Hypocrisy, The Mask of Power, from Hobbes to Orwell and Beyond* (New Jersey: Princeton University Press, 2008), 1–288; Muhammad Aqil Irham, *Demokrasi Muka Dua: Membaca Ulang Pilkada di Indonesia* (Jakarta: Kepustakaan Populer Gramedia, 2016), 1–204.

¹⁸ Herbert Lionel Adolphus Hart, *The Concept of Law* (Oxford: Oxford University Press, 1961), 7–93.

¹⁹ Robert S. Summers, “Professor H. L. A. Hart’s ‘Concept of Law,’” *Duke Law Journal* 1963, no. 4 (1963): 629–70.

²⁰ Ahmad Rajafi, “Hukum Keluarga Islam di Indonesia: Dari Orde Lama hingga Orde Reformasi,” *Al-Adalah* 14, no. 2 (2018): 311–32.

Cristen-Indonesiers (HOCI).²¹ Despite the amelioration of disagreements among religious leaders, the discourse on dissent, particularly through interfaith marriage counselling initiatives, persists to the present day.²² Notwithstanding, a definitive and stringent regulation prohibiting interfaith marriages is stipulated in Article 2, paragraph (1), wherein the validity of every marriage is contingent upon adherence to the laws of each respective religion and belief. Article 2, paragraph (2), mandates the registration of marriage events for every citizen. To operationalize this mandate, a derivative regulation was instituted in the form of Government Regulation No. 9 of 1975, as delineated in Article 1, paragraphs (1) and (2). This article specifies that Muslim marriages must be recorded at the Office of Religious Affairs (*Kantor Urusan Agama*, or KUA) under the guidance of a marriage registration officer, while non-Muslim marriages are recorded at the Civil Registry Office (*Kantor Catatan Sipil*).²³

For Muslims, the legal stipulations enshrined in the Marriage Law No. 1 of 1974 are of a general nature, necessitating additional regulations that specifically address and mitigate divergent opinions among Indonesian Muslim scholars adhering to the four schools of *fiqh* (Ḥanafī, Mālikī, Shāfi‘ī, and Ḥanbalī). Legal standardization was achieved through Presidential Instruction No. 1 of 1991 on the KHI, explicitly proscribing interfaith marriage.²⁴ Article 40 of the KHI explicitly prohibits a Muslim man from marrying a non-Muslim woman, while Article 44 mandates that a Muslim woman is forbidden from marrying a non-Muslim man. The proscription of interfaith marriage within the KHI underscores an endeavour to preserve societal integrity and religious identity.²⁵ As articulated in Article 40 of the KHI, the prohibition of a Muslim man marrying a non-Muslim woman is not solely a legal provision but also a manifestation of religious values upheld by the Islamic community. Correspondingly, Article 44 of the KHI establishes the converse safeguard, disallowing a Muslim woman from marrying a non-Muslim man. This regulation reflects the belief that marriage, as a sacred institution, should be solemnized between individuals who share congruent religious beliefs.²⁶ Consequently, this prohibition is perceived as a measure aimed at fostering the perpetuation and dissemination of Islamic religious values within the populace.²⁷

In accordance with these regulations, interfaith marriage is deemed a transgression against state law, thereby posing a potential threat to the sanctity of Indonesia’s religious

²¹ Nani Soewondo, “Analisa dan Evaluasi Hukum Tidak Tertulis tentang Hukum Kebiasaan dalam Perkawinan Campuran,” *Jakarta: Proyek Pusat Perencanaan Pembangunan Hukum Nasional, Badan Pembinaan Hukum Nasional* 1992 (1991): 41–42.

²² M. Adil and S. Jamil, “Interfaith Marriage in Indonesia: Polemics and Perspectives of Religious Leaders and Community Organizations,” *Religion and Human Rights* 18, no. 1 (2023): 31–53.

²³ Jatmiko, Hidayah, and Echaib, “Legal Status of Interfaith Marriage in Indonesia and Its Implications for Registration,” 167–77.

²⁴ Hikmatullah Hikmatullah, “Selayang Pandang Sejarah Penyusunan Kompilasi Hukum Islam di Indonesia,” *Ajudikasi: Jurnal Ilmu Hukum* 1, no. 2 (2017): 39–52.

²⁵ Nasir, “Negotiating Muslim Interfaith Marriage in Indonesia: Integration and Conflict in Islamic Law,” 155–86.

²⁶ Arif Sugitanata, “Product Renewal in the Field of Family Law in Indonesia,” *Law and Justice* 6, no. 1 (2021): 62–79.

²⁷ Asy’ari Asy’ari and Triansyah Fisa, “Interfaith Marriage in Perspectives of Classical and Modern Scholars,” *Al-Manabij: Jurnal Kajian Hukum Islam* 16, no. 2 (November 25, 2022): 287–300.

doctrines, which steadfastly forbid such unions.²⁸ Moreover, interfaith marriages have the potential to erode the established societal framework. Subsequently, concerns arise regarding the legal validity of marriages, registration procedures, the status of offspring, divorce proceedings, and matters pertaining to inheritance.²⁹ These regulations explicitly preclude individuals of divergent religious affiliations,³⁰ even within the same familial context, from inheriting assets, permitting only bequests and testaments of a scale less expensive than those governed by inheritance laws. Despite the equality in rights and status afforded to non-Muslims as citizens *vis-à-vis* their Muslim counterparts, this prohibition aligns with the fatwa issued by the Indonesian Ulema Council (MUI) following the MUI National Conference VII in 2005.³¹ The MUI not only proscribes interfaith marriages but also condemns the utilisation of non-Muslim religious attributes.³²

To strengthen the constructed legal arguments, the state, through the Ministry of Law and Human Rights, undertook the publication of scientific findings in 2011, derived from field research conducted across multiple nations, concerning interfaith marriage. The studies concluded that Indonesia, as a non-secular state, proscribes interfaith marriages on account of their psychological and religious intricacies.³³ The state's disapproval of interfaith unions aligns with the tenets of Pancasila, which comprehensively accommodates the concurrent interests of the government, religion, and society.³⁴ As articulated by Nurhadi, the Marriage Law No. 1 of 1974 is harmonious with the tenets of *maqāṣid al-sharī'ah* (objectives of Islamic law), encompassing the prohibition of interfaith marriages to safeguard the tenets of religion,

²⁸ Budiarti, "Analisis Yuridis Perkawinan Beda Agama dengan Pendekatan Maqashid al-Syariah dalam Konteks Negara Hukum Pancasila," *Justicia Islamica: Jurnal Kajian Hukum dan Sosial* 15, no. 1 (2018): 27–47.

²⁹ See: Muhammad Lutfi Hakim and Khoiruddin Nasution, "Accommodating Non-Muslim Rights: Legal Arguments and Legal Principles in the Islamic Jurisprudence of the Indonesian Supreme Court in the Post-New Order Era," *Oxford Journal of Law and Religion* 11, no. 2–3 (July 25, 2023): 288–313; Aden Rosadi and Siti Ropiah, "Reconstruction of Different Religion Inheritance through Wajibah Testament," *Jurnal Ilmiah Peuradeum* 8, no. 2 (May 30, 2020): 327–50; Asni Zubair, Hamzah Latif, and Al Furqon Dono Hariyanto, "The Construction of Inheritance Law Reform in Indonesia: Questioning the Transfer of Properties through Wasiat Wajibah to Non-Muslim Heirs," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, no. 1 (June 27, 2022): 176–97; Fatya Pramesta Cahyani and Muhammad Ya'kub Aiyub Kadir, "Guardianship Supervisory in Indonesia: A Comparative Analyzes of Baitul Mal Aceh and the Heirloom Board," *Al-Ahkam* 33, no. 2 (October 31, 2023): 231–54.

³⁰ See: Rumadi Ahmad, "Speaking the Unspeakable: The Status of 'Non-Muslims' in Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, no. 2 (December 31, 2022): 734–56; Mursyid Djawas et al., "The Position of Non-Muslims in the Implementation of Islamic Law in Aceh, Indonesia," *AHKAM: Jurnal Ilmu Syariah* 23, no. 1 (June 19, 2023): 95–120.

³¹ See: R. Cecep Lukman Yasin, "The Fatwa of the Council of Indonesian Ulama on Inter-Religious Marriage," *De Jure: Jurnal Hukum dan Syar'iah* 1, no. 1 (June 1, 2009): 51–61; Rahmawati Rahmawati, "Kontestasi Pemikiran Ulama dalam Pembaruan Hukum: Studi pada Fatwa MUI tentang Perkawinan Beda Agama," *Al-Manabij: Jurnal Kajian Hukum Islam* 10, no. 1 (2016): 31–42.

³² Makyun Subuki, Hilmi Akmal, and Syihaabul Huda, "Identity and Piety: Critical Discourse Analysis on Indonesian Ulema Council's Fatwa about The Law Using Non-Moslim Religious Attributes," *AHKAM: Jurnal Ilmu Syariah* 23, no. 2 (December 31, 2023): 423–88.

³³ Abdul Rozak A Sastra, "Pengkajian Hukum tentang Perkawinan Beda Agama (Perbandingan Beberapa Negara)," *Jakarta: Badan Pembinaan Hukum Nasional (BPHN) Kementerian Hukum dan Hak Asasi Manusia*, 2011, 1–86.

³⁴ Herman M Karim, "Keabsahan Perkawinan Beda Agama di Indonesia dalam Prespektif Cita Hukum Pancasila," *ADIL: Jurnal Hukum* 8, no. 2 (2017): 185–209.

preserve individual souls and progeny, exercise prudence, and duly record familial matters for the collective welfare, while simultaneously rejecting potential harm.³⁵

While the Marriage Law No. 1 of 1974 and the KHI unequivocally prohibit interfaith marriages, such unions persist within the community.³⁶ Activists sought to challenge Article 2, paragraph (1) of the Marriage Law No. 1 of 1974 before the Constitutional Court in 2010, 2014, and 2022, endeavouring to secure state recognition for the practice of interfaith marriage.³⁷ On June 14, 2010, the applicants formally applied to the Constitutional Court with Registration No. 46/PUU-VIII/2010. Their application sought a judicial review of the Marriage Law No. 1 of 1974, specifically targeting Article 2(2) and Article 43(1), as they perceived a violation of their constitutional rights, particularly with the legal uncertainties impacting the marital status and legal standing of offspring resultant from such unions.

The applicants contended that these legal provisions contravened Article 28B (1) and (2) and Article 28D (1) of the 1945 Constitution, guaranteeing the right to the legalisation of marriage and the legal status of children, and emphasising the principle of equality before the law devoid of discrimination. The argument posited that the Marriage Act disregarded religious norms recognising the validity of the applicants' marriage, adversely affecting the legal status of their children. Additionally, the applicants claimed material losses due to this legal ambiguity. Consequently, the petition underscored constitutional violations experienced by the petitioner and her child, urging the Constitutional Court to adjudicate on the matter in the pursuit of justice and legal certainty.

However, the application met with rejection from the Constitutional Court, grounded in constitutional, socio-cultural, and child protection considerations.³⁸ The judges opined that the Marriage Law No. 1 of 1974 aligned with the constitution and did not transgress human rights, as it reflected the principle of marriage in accordance with the religious and belief laws applicable in Indonesia. The judges acknowledged and respected Indonesia's religious and cultural diversity, recognising marriage as an institution with profound social and religious dimensions aimed at maintaining societal harmony. Furthermore, the judgement considered the welfare and religious identity of children born from interfaith marriages, aiming to safeguard their rights and ensure a harmonious family environment.³⁹

Subsequently, the Constitutional Court re-evaluated Article 2, paragraph (1) of the Marriage Law No. 1 of 1974. Throughout the judicial review, diverse factions engaged in deliberations regarding the legitimacy of interfaith marriage within the Indonesian context. Mass media played a pivotal role in disseminating information and either endorsing or

³⁵ See: Nurhadi Nurhadi, "Undang-Undang No. 1 Tahun 1974 tentang Pernikahan (Perkawinan) Ditinjau dari Maqashid Syariah," *UIR Law Review* 2, no. 2 (2018): 414–414; Budiarti Budiarti, "Analisis Yuridis Perkawinan Beda Agama dengan Pendekatan Maqashid al-Syariah dalam Konteks Negara Hukum Pancasila," *Justicia Islamica: Jurnal Kajian Hukum dan Sosial* 15, no. 1 (2018): 27–48.

³⁶ Mochammad Rizky Eka Aditya et al., "The Problem of Interfaith Marriage in Indonesia: A Juridical-Normative Approach," *El-Ushab: Jurnal Hukum Keluarga* 6, no. 2 (December 30, 2023): 456–70.

³⁷ Ayub Mursalin, "Legalitas Perkawinan Beda Agama: Mengungkap Disparitas Putusan Pengadilan di Indonesia," *Undang: Jurnal Hukum* 6, no. 1 (2023): 113–50.

³⁸ Achmad Irwan Hamzani, "Nasab Anak Luar Kawin Pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010," *Jurnal Konstitusi* 12, no. 1 (2015): 57–74.

³⁹ Nurhadi Nurhadi, "Implementasi Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 tentang Anak di Luar Kawin," *Jurnal Yudisial* 11, no. 2 (2018): 243–65.

opposing interfaith marriage.⁴⁰ Nevertheless, the Constitutional Court rejected the judicial review via Decision No. 68/PUU/XII/2014, citing incongruence with the ideological underpinnings of Pancasila and Articles 28E (1) and (2), 29 (1) and (2), 28J (2), 28B (1), 27 (1), 28D (1), and 28I (2) of the 1945 Constitution. The decision underscored that the validation of a marriage must be contingent upon the religious and belief systems of the respective couples entering matrimony.⁴¹

In 2022, the Constitutional Court once again rebuffed a judicial review petition challenging Article 2, paragraph (1) of the Marriage Law No. 1 of 1974. As articulated in Decision No. 24/PUU-XX/2022, the Constitutional Court underscored that the validity of marriage constitutes a religious concern, with the state primarily overseeing its administrative facets. This determination emanated from the guiding principle that human rights must harmonise with Pancasila. In contrast to the Universal Declaration of Human Rights, the 1945 Constitution does not explicitly categorise marriage as a right but rather as a foundational element for establishing a family and perpetuating progeny. The Constitutional Court further asserted that there existed no exigency to revise the approach to validating marriages based on religious considerations, affirming the preservation of the demarcation between the realms of religion and the state.⁴²

The Constitutional Court's ruling has fortified the proscription of interfaith marriage, underscoring not only legislative and executive implementation but also judicial elucidation. The decision of the Constitutional Court embodies principles of justice, expediency, and truth, as the legal considerations of the judges extend beyond statutory norms to encompass societal legal norms,⁴³ including religious laws sanctioned by the first precept in Pancasila. This reflects the 'face' of the legal landscape in Indonesia, where the state constitutionally prohibits interfaith marriage. The explicit affirmation of this prohibition serves a discernible purpose: to preclude potential tensions and legal complications that may emanate from interfaith unions. Consequently, the interdiction of interfaith marriage transcends the confines of legal aspects, constituting an integral facet of the religious norms and identities upheld by various religious communities.⁴⁴

Legal Loopholes in the Registration of Interfaith Marriages

While the Marriage Law No. 1 of 1974 and the KHI expressly forbid interfaith marriages, Population Administration Law No. 23 of 2006 introduces a legal mechanism enabling interfaith couples to register their unions.⁴⁵ Article 35, letter (a) delineates that a court-

⁴⁰ Eko Harry Susanto and Silviana Dharma Zhang, "Critical Discourse Analysis of Interfaith Marriage News from Cyber Media in Indonesia," *Journal of Educational and Social Research* 7, no. 1 (January 2017): 91–103.

⁴¹ Milati Fatma Sari and Yunanto Mulyadi, "Analisis Putusan Judicial Review Mahkamah Konstitusi No. 68/PUU-XII/2014 atas Pasal 2 Ayat (1) Undang-Undang No. 1 Tahun 1974 terhadap Perkawinan Beda Agama," *Diponegoro Law Journal* 5, no. 3 (2016): 1–13.

⁴² Sudjah Mauliana and Agustin Hanapi, "Analisis Putusan Mahkamah Konstitusi Nomor 24/PUU-XX/2022 tentang Perkawinan Beda Agama," *Usroh: Jurnal Hukum Keluarga Islam* 7, no. 2 (2023): 92–104.

⁴³ Islamiyati Islamiyati, "Analisis Putusan Mahkamah Konstitusi No. 68/PUU/XII/2014 Kaitannya dengan Nikah Beda Agama Menurut Hukum Islam di Indonesia," *Al-Ahkam* 27, no. 2 (2017): 157–78.

⁴⁴ Abdul Jalil, "Pernikahan Beda Agama dalam Perspektif Hukum Islam dan Hukum Positif di Indonesia," *Andragogi: Jurnal Diklat Teknis Pendidikan dan Keagamaan* 6, no. 2 (2018): 46–69.

⁴⁵ See: Syamsul Bahri, "Dinamika Hukum Perkawinan Beda Agama dan Campuran di Dunia Islam dan Implementasinya di Indonesia," *Syaksia: Jurnal Hukum Perdata Islam* 23, no. 1 (2022): 101–14; Rifki Rufaida,

determined marriage encompasses unions between individuals professing different religions. This provision serves as a legal directive empowering the judge of the District Court to authorise the registration of interfaith marriages brought before the court. It is regarded as a means of legal assurance for those contemplating interfaith matrimony⁴⁶ and is perceived as a legal innovation addressing a lacuna in Marriage Law No. 1 of 1974, providing a legal framework for individuals seeking validation for their interfaith marriages.⁴⁷ The rationale derived from this article asserts that while the Marriage Law No. 1 of 1974 ostensibly governs interfaith marriages, a contextual void exists when confronted with emergent societal challenges and novel practices. In such instances, this omission can be construed as a legal vacuum.⁴⁸ Consequently, judges are compelled to address this vacuum, as they cannot abdicate their responsibility to adjudicate based on the principle of *ius curia novit* (the court knows the law).⁴⁹

A scrutiny of the Directory of Decisions of the Supreme Court of the Republic of Indonesia spanning the years 2007 to 2021 reveals 158 District Court decisions that authorise the solemnisation of marriages involving individuals of different religions at civil registry offices, accompanied by directives to local officials for the recording of these matrimonial events.⁵⁰ Among these 158 decisions, 10 instances exhibit legal rationales manifesting a positive responsiveness to the evolving social dynamics. The judges consistently grounded their decisions on the recognition that the practicality of interfaith marriages has evolved into a societal imperative, necessitating a legal remedy capable of accommodating this social transformation. Additionally, these juridical deliberations drew upon Population Administration Law No. 23 of 2006 as a legal underpinning for interfaith couples, citing Article 35, letter (a), which explicates that court-determined marriages encompass unions between individuals adhering to different religions. District Court judges have recurrently invoked this provision as a foundation for authorising the registration of interfaith marriages, deeming it a source of legal assurance and innovation when the Marriage Law No. 1 of 1974 lacks specific provisions for interfaith unions. This legal provision is deemed essential for ensuring legal certainty and providing an innovative remedy in instances where Marriage Law No. 1 of 1974 falls short. The judiciary bears the responsibility of averting potential conflicts within the community by proactively addressing gaps in legal provisions.⁵¹ Beyond the

Mufidah Mufidah, and Erfaniah Zuhriyah, “Perkawinan Beda Agama dalam Sistem Perundang-Undangan,” *Kabillab (Journal of Social Community)* 7, no. 1 (2022): 192–207.

⁴⁶ Fathol Hedi, Abdul Ghofur Anshori, and Harun Harun, “Legal Policy of Interfaith Marriage in Indonesia,” *Hasanuddin Law Review* 3, no. 3 (2017): 263–76.

⁴⁷ Imam Wahyujati, “Pengaturan Perkawinan Beda Agama di Indonesia,” *Aainul Haq: Jurnal Hukum Keluarga Islam* 2, no. 1 (June 27, 2022): 49–63.

⁴⁸ Gamal Abdul Nasir, “Kekosongan Hukum dan Percepatan Perkembangan Masyarakat,” *JHR (Jurnal Hukum Replik)* 5, no. 2 (2017): 172–83.

⁴⁹ Yuristawan Pambudi Wicaksana, “Implementasi Asas Ius Curia Novit dalam Penafsiran Hukum Putusan Hakim tentang Keabsahan Penetapan Tersangka,” *Lex Renaissance* 3, no. 1 (January 2018): 86–108.

⁵⁰ Indonesian Supreme Court, “Direktori Putusan,” accessed February 2, 2024, <https://putusan3.mahkamahagung.go.id/search.html>.

⁵¹ See: Surakarta District Court Verdict No. 421/Pdt.P/2013/PN.Ska, South Jakarta District Court Verdict No. 1139/Pdt.P/2018/PN.JKT.Sel, Surakarta District Court Verdict No. 454/Pdt.P/2018/PN.Skt, Surakarta District Court Verdict No. 333/Pdt.P/2018/PN.Skt, Surakarta District Court Verdict No. 186/Pdt.P/2018/PN.Skt, Bandung District Court Verdict No. 959/Pdt.P/2020/PN.Bdg, Surakarta District Court Verdict No. 278/Pdt.P/2019/PN.Skt, Lubuk Lingau District Court Verdict No.

Population Administration Law No. 23 of 2006, the subjectivity of judges in interpreting Article 2 (1) of the Marriage Law No. 1 of 1974 significantly influences their legal actions in legitimising interfaith marriages.⁵²

Despite governmental regulations, the protocols surrounding interfaith marriage exhibit considerable variability within the community, with the prevailing practice often involving a religious leader during the marriage ceremony.⁵³ This transformation underscores a shift in societal requirements—from an initial emphasis solely on community acknowledgment through the presence of witnesses and the observance of *walimah al-‘ursy* (marriage reception) as a public declaration—to a contemporary emphasis on legal recognition manifested through an official marriage certificate recorded in government documents. The contemporary significance placed on obtaining a marriage certificate by individuals engaged in interfaith marriages reflects the pursuit of legal acknowledgment and safeguards for their rights within the familial domain.⁵⁴

Beyond resorting to legal avenues within courts, couples seeking interfaith marriages also exploit an alternative method, colloquially referred to as the ‘back door’, by formalising their unions abroad. It appears that interfaith couples have discerned a legal loophole through this strategy, deploying it as a proactive measure to circumvent legal impediments in their home country.⁵⁵ Consequently, this approach presents an indirect avenue for potential legal transformations in the contentious and politically charged domain of interfaith marriages.⁵⁶ Opting to marry in countries with more permissive attitudes towards interfaith unions, these couples endeavour to navigate the complexities surrounding the legality of their interfaith marriages upon their return to Indonesia.⁵⁷ Additionally, they often interface with civil registry offices, where their marriages are registered without extensive scrutiny regarding their validity.⁵⁸

Moreover, the phenomenon of interfaith marriages exploiting legal loopholes within Population Administration Law No. 23 of 2006 has garnered attention from scholars. Presently, a consensus among religious leaders regarding the legitimacy of interfaith marriages remains elusive, reflecting the escalating prevalence of such unions in Indonesia.⁵⁹

3/Pdt.P/2015/PN.Lig, Surakarta District Court Verdict No. 367/Pdt.P/2019/PN.Skt, and Purwokerto District Court Verdict No. 26/Pdt.P/2014/PN.Pwt.

⁵² D. Farid, M.H. Abdulah Pakarti, and I. Fathiah, “Interfaith Marriage: Subjectivity of the Judge in Determination of No. 454/Pdt.P/2018 Surakarta District Court,” *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 (2022): 347–62.

⁵³ Jennifer Connolly, “Forbidden Intimacies: Christian–Muslim Inter-marriage in East Kalimantan, Indonesia,” *American Ethnologist* 36, no. 3 (July 2009): 492–506.

⁵⁴ Ermi Suhasti, Siti Djazimah, and Hartini Hartini, “Polemics on Interfaith Marriage in Indonesia between Rules and Practices,” *Al-Jami’ah: Journal of Islamic Studies* 56, no. 2 (2018): 367–94.

⁵⁵ M.T. Maloko, S. Chotban, and M.I.N. Fuady, “Analyzing the Prohibition of Interfaith Marriage in Indonesia: Legal, Religious, and Human Rights Perspectives,” *Cogent Social Sciences* 10, no. 1 (2024): 1–11.

⁵⁶ Judith Koschorke, “Legal Pluralism in Indonesia: The Case of Interfaith Marriages Involving Muslims,” in *Legal Pluralism in Muslim Contexts* (Brill, 2019), 199–229.

⁵⁷ Fitrawati, “Diskursus Perkawinan Beda Agama di Indonesia dalam Tinjauan Universalisme HAM dan Relativisme Budaya,” *Juris: Jurnal Ilmiah Syariah* 20, no. 1 (2021): 131–45.

⁵⁸ Wahyuni et al., “The Registration Policy of Interfaith Marriage Overseas for Indonesian Citizen,” 12–21.

⁵⁹ Rosdiana Rosdiana, Ummu Hanah Yusuf Saumin, and Masayu Mashita Maisarah, “Legitimacy on Inter-Faith Marriages: An Analysis of the Role of Religious Councils on the Legal Policy in Indonesia,” *Abkam: Jurnal Ilmu Syariah* 19, no. 1 (2019): 81–96.

Furthermore, the discourse surrounding interfaith marriage has extended to social media platforms. Advocates of interfaith marriage emphasise human rights, diversity, and freedom in their comments, concurrently critiquing the state's intervention in private matters. Conversely, detractors of interfaith marriage base their objections on Islamic and state legal provisions.⁶⁰ Beyond Indonesia, a parallel surge in interfaith marriages is witnessed in Nigeria, particularly involving Muslim men and Christian women. Such interfaith unions are perceived as a mechanism to cultivate a mutually advantageous relationship between Islam and Christianity.⁶¹

The facts elucidate a form of 'back face' legal expression concerning interfaith marriage in Indonesia. The state has constitutionally sanctioned the practice not by amending Marriage Law No. 1 of 1974 but by exploiting a legal loophole within Population Administration Law No. 23 of 2006.⁶² Article 35, letter (a), designates the judiciary, particularly the Court under the Supreme Court, as the enforcer of the rule of law, enabling its decisions to instruct civil registration officers to record interfaith marriages. In this instance, the state appears to be striving to strike a balance between fulfilling constitutional aspirations and respecting prevailing religious values within society. This framework allows for legal diversity capable of accommodating the social and religious distinctions present in Indonesia.⁶³ The legal diversity engendered by these legal loopholes in interfaith marriages transcends mere administrative formalities. It provides a nuanced space wherein individuals with diverse religious backgrounds can forge marital lives in harmony with their respective beliefs.⁶⁴

Recent Regulations on Interfaith Marriages for Judges

The 'double-faced' in the interfaith marriage law in Indonesia underscores the state's ambivalence in addressing this phenomenon.⁶⁵ On one hand, the state expressly prohibits interfaith marriages through the Marriage Law No. 1 of 1974 and the KHI. Conversely, a subset of district court judges has chosen to disregard these regulatory prohibitions, as evidenced by their approval of applications for the registration of interfaith marriages in various rulings. This disjunction between state legislation and judicial application underscores the legal uncertainty and void surrounding interfaith marriages,⁶⁶ providing leeway for judges to interpret specific articles in state law divergently.⁶⁷ The variance in judges' legal

⁶⁰ Y. Sonafist and H. Yuningsih, "Islamic Law, the State, and Human Rights: The Contestation of Interfaith Marriage Discourse on Social Media in Indonesia," *Juris: Jurnal Ilmiah Syariah* 22, no. 2 (2023): 381–91.

⁶¹ See: Nolte, "'At Least I Am Married': Muslim-Christian Marriage and Gender in Southwest Nigeria," 434–50; Hironimus Bandur and Adison Adrianus Sihombing, "Likang Telu: Cultural Basis for Muslim-Catholic Relations in Manggarai," *Al-Albab* 11, no. 1 (June 30, 2022): 81–102.

⁶² Dany Try Hutama Hutabarat, Komis Simanjuntak, and Syahransyah Syahransyah, "Pengelabuan Hukum Perkawinan atas Perkawinan Beda Agama," *Jurnal Ius Constituendum* 7, no. 2 (2022): 322–34.

⁶³ Fitrawati, "Diskursus Perkawinan Beda Agama di Indonesia dalam Tinjauan Universalisme HAM dan Relativisme Budaya," 131–45.

⁶⁴ Tyas Amalia, "Model Manajemen Konflik Pernikahan Beda Agama dalam Pemikiran Ahmad Nurcholish," *Jurnal Sosiologi Agama* 12, no. 1 (2018): 1–30.

⁶⁵ Aulil Amri, "Perkawinan Beda Agama Menurut Hukum Positif dan Hukum Islam," *Media Syari'ah: Wahana Kajian Hukum Islam dan Pranata Sosial* 22, no. 1 (2020): 48–64.

⁶⁶ Ashsubli, "Undang-Undang Perkawinan dalam Pluralitas Hukum Agama," 289–302.

⁶⁷ Kharis Mudakir, "Keabsahan Perkawinan Beda Agama Ada di Tangan Hakim?," *Asas Wa Tandhim: Jurnal Hukum, Pendidikan dan Sosial Keagamaan* 3, no. 1 (2024): 71–86.

interpretations is contingent upon their perspectives⁶⁸ and legal acumen, as discernible in numerous court decisions spanning both religious and district courts.

In response to several district court decisions approving applications for the registration of marriages between individuals of different religions, the Supreme Court issued Circular Letters No. 02 of 2023, outlining guidelines for judges when adjudicating cases involving applications for the registration of marriages between individuals with differing religions and beliefs. As the apex state court, the Supreme Court holds the responsibility to supervise the performance of lower courts as well as the conduct of judges, court officials, legal practitioners, and notaries in matters pertaining to the judiciary.⁶⁹ This Supreme Court Circular Letters (SEMA) mandates judges to decline applications seeking the registration of marriages between individuals with different religions and beliefs. The criteria for rejecting such applications are grounded in Article 2, paragraph (1), and Article 8, letter (f), of the Marriage Law No. 1 of 1974, which stipulate that a valid marriage is one conducted in accordance with the laws of each religion and belief. Consequently, the SEMA reinforces the regulatory stance against interfaith marriages, fortifying the ‘front face’ of the law. Its purpose is to ensure clarity and uniformity in the application of the law among court judges operating under the jurisdiction of the Supreme Court.

Despite being a judicial guideline for judges, it is evident that some judges continue to approve requests for the registration of interfaith marriages. A notable instance occurred at the North Jakarta District Court in late August 2023, where a judge sanctioned the union between a Catholic and Protestant couple. The decision was based on the provisions of Article 35, letter (a) of the Population Administration Law No. 23 of 2006, and Article 50, paragraph (3) of Ministerial Regulation 108 of 2019, asserting that both parties were still within the confines of a single faith. Consequently, the judge posited that the marriage could be registered following the acquisition of a stipulation from the North Jakarta District Court. In response to this decision, the Supreme Court issued a reminder asserting that Indonesia is not a secular state. Nevertheless, the Supreme Court abstained from elucidating potential repercussions should a judge defy the SEMA, which unequivocally underscores the prohibition of granting consent to interfaith marriages.⁷⁰

Moreover, the SEMA does not function as a regulatory instrument that prohibits the issuance of licences for interfaith marriage applications. Instead, it serves as a directive, guiding judges in the adjudication of such cases.⁷¹ In consideration of its hierarchical standing and authoritative influence, the SEMA lacks compulsory authority over judges. This

⁶⁸ Nabilah Falah, “Disparity of Judges’decisions in Determining Interreligious Marriage Applications in the Mursalah Masalah Perspective,” *ALFIQH Islamic Law Review Journal* 2, no. 2 (2023): 49–65.

⁶⁹ Bintang Ulya Kharisma, “Surat Edaran Mahkamah Agung (SEMA) Nomor 2 Tahun 2023, Akhir dari Polemik Perkawinan Beda Agama?,” *Journal of Scientech Research and Development* 5, no. 1 (2023): 477–82.

⁷⁰ Suryono Suryono, Ani Yumarni, and Rizal Syamsul Ma’arif, “Kajian Putusan Pengadilan Negeri Jakarta Utara Nomor 423/Pdt./2023/PN.Jkt.Utr tentang Pelaksanaan Perawinan Beda Agama Pasca Pemberlakuan SEMA Nomor 2 Tahun 2023,” *COMSERVA: Jurnal Penelitian dan Pengabdian Masyarakat* 3, no. 09 (2024): 3801–14.

⁷¹ Muharrir Muharrir, Jefrie Maulana, and Muhammad Nahyan Zulfikar, “Kekuatan Hukum Surat Edaran Mahkamah Agung Nomor 2 Tahun 2023 tentang Petunjuk bagi Hakim dalam Mengadili Perkara Permohonan Pencatatan Perkawinan antar-Umat yang berbeda Agama dan Kepercayaan,” *Ius Civile: Refleksi Penegakan Hukum dan Keadilan* 7, no. 2 (2023): 70–81.

deficiency arises from the inherent nature of the SEMA, which predominantly assumes a role as a guiding document. Furthermore, the SEMA does not impose an obligation on judges to adhere to its provisions, and non-compliance with its directives does not entail legal repercussions for the judiciary. This is exemplified in the North Jakarta District Court Decision; wherein no punitive measures were enforced against judges who deviated from the stipulations outlined in the SEMA. It is imperative to underscore that the SEMA is immune to criminal sanctions, distinct from the legal consequences applicable to statutes and regional regulations.⁷²

Subsequently, why does the SEMA appear to be disregarded by some judges? From a juridical perspective, an examination of Article 7, paragraph (1) of Law No. 12 of 2011 on the Establishment of Laws and Regulations, as amended by Law No. 15 of 2019 and Law No. 13 of 2022, elucidates the hierarchical positioning of Supreme Court Regulations (PERMA) and SEMA. It becomes evident that these instruments do not fit within the hierarchy of prevailing laws and regulations.⁷³ Consequently, SEMA and PERMA lack the inherent authority and potency akin to laws of general applicability. Nonetheless, the legitimacy of PERMA's existence is delineated in the stipulations of Article 8, paragraph (1), and Article 8, paragraph (2) of the Law on the Formation of Legislation. In accordance with this framework, it becomes apparent that PERMA holds binding legal force upon judges within the purview of the Supreme Court. This contrasts with the legal status attributed to the SEMA, constituting a discernible distinction between the two legal entities.

Grounded on these empirical observations, this study posits that the SEMA does not possess the characteristics of a regulatory framework, in contrast to the prescriptive nature inherent in the judges' knowledge. Despite the implementation of the SEMA, the continued applicability of Population Administration Law No. 23 of 2006 persists, enabling the registration of interfaith married families through judicial decisions. Notably, the SEMA is distinguished by its non-binding nature, lacking legal compulsion.⁷⁴ Although it provides judicial guidance, the absence of legal repercussions for non-compliance allows judges to perceive it as non-mandatory and, consequently, subject to discretionary disregard. Moreover, the discord between the SEMA and Population Administration Law No. 23 of 2006 engenders legal uncertainty. While the SEMA advocates against endorsing interfaith marriages, Population Administration Law No. 23 of 2006 establishes a legal foundation for the documentation of such unions.⁷⁵ This incongruity begets confusion and affords judges the latitude for diverse interpretations. Consequently, despite Indonesia's non-secular status, instances arise where judges adjudicate on interfaith marriages.

⁷² Maulana Rihdo et al., "Kedudukan Surat Edaran Mahkamah Agung (SEMA) dalam Perspektif Akademisi: Kekuatan Hukum, Ketetapan dan Konsistensi, Pengaruh terhadap Putusan Hukum," *USRAH: Jurnal Hukum Keluarga Islam* 4, no. 2 (2023): 230–40.

⁷³ Raihan Andhika Santoso, Elan Jaelani, and Utang Rosidin, "Kedudukan dan Kekuatan Hukum Surat Edaran Mahkamah Agung (SEMA) dalam Hukum Positif Indonesia," *Deposisi: Jurnal Publikasi Ilmu Hukum* 1, no. 4 (2023): 7–15.

⁷⁴ Mahadi Abdullah et al., "Analisis Perkawinan Beda Agama di Kota Semarang: Sebuah Telaah Setelah Dikeluarkannya SEMA Nomor 2 Tahun 2023," *Causa: Jurnal Hukum dan Kewarganegaraan* 1, no. 4 (2023): 71–80.

⁷⁵ Jatmiko, Hidayah, and Echaib, "Legal Status of Interfaith Marriage in Indonesia and Its Implications for Registration," 167–77.

‘Double-Faced’ in the Legislative Dynamics of Interfaith Marriage Law

An explicit proscription against interfaith marriage, as a ‘front face’, is delineated in Article 2 (1) and Article 6 (6) of the Marriage Law No. 1 of 1974. Analogously, a comparable regulation is embodied in Article 44 of the KHI.⁷⁶ However, certain jurists contend that the existing prohibition lacks the requisite strictness, thereby permitting divergent interpretations. In response to these contentions, the Supreme Court implemented corrective measures, as exemplified by the issuance of SEMA No. 2 of 2023. This directive expressly prohibits the practice of interfaith marriage, aiming to enhance the coherence and clarity of law enforcement.⁷⁷ A parallel affirmation was articulated by the Constitutional Court, as evidenced by the annulment of an interfaith marriage petition in Decision No. 24/PUU-XX/2022.⁷⁸ Consequently, these multifarious decisions emanating from the Supreme Court and the Constitutional Court, *vis-à-vis* interfaith marriage, have fortified the legal foundation of the prohibition and engendered certainty for law enforcement entities.

Meanwhile, the ‘back face’ of the interfaith marriage law in Indonesia delineates the existence of loopholes that can be exploited for the legalization of such marriages. This phenomenon is notably evident within the ambit of Law No. 24 of 2013, amending Population Administration Law No. 23 of 2006, specifically in Article 35. This provision permits marriages between individuals adhering to different religious faiths to attain civil registration, including the issuance of a family card, contingent upon approval by the Court.⁷⁹ Certain juridical interpretations posit that the prohibition of interfaith marriages within the country is not stringent, primarily attributed to perceived loopholes in the Population Administration Law No. 23 of 2006.⁸⁰ The intricacies further compound when interfaith marriages transpire abroad, introducing opportunities for legalisation and the determination of legal status within Indonesia.⁸¹ Such legal intricacies engender a paradox between the ostensible and underlying facets of Indonesian interfaith marriage legislation. The endorsement of this practice by the state assumes a potentially perilous dimension, introducing discord at the state level, where the imperative role of the state should be to foster coherence and furnish consistent and lucid legal guidance concerning interfaith matrimony.

⁷⁶ Airis Aslami, Djanuardi Djanuardi, and Fatmi Utarie Nasution, “Keabsahan Perkawinan Beda Agama Ditinjau dari Undang-Undang Perkawinan dan Hukum Islam,” *Ulil Albab: Jurnal Ilmiah Multidisiplin* 2, no. 10 (2023): 4572–83.

⁷⁷ Bintang Ulya Kharisma, “Surat Edaran Mahkamah Agung (SEMA) Nomor 2 Tahun 2023, Akhir dari Polemik Perkawinan Beda Agama?” *Journal of Scientech Research and Development* 5, no. 1 (2023): 477–82.

⁷⁸ Dominikus Rato and Galuh Puspaningrum, “Kepastian Perkawinan Beda Agama di Indonesia Pasca Putusan Mahkamah Konstitusi Nomor 24/PUU-XX/2022,” *Sakina: Journal of Family Studies* 7, no. 3 (2023): 420–35.

⁷⁹ Wahyuni et al., “The Registration Policy of Interfaith Marriage Overseas for Indonesian Citizen,” 12–21.

⁸⁰ Muharrir, Maulana, and Zulfikar, “Kekuatan Hukum Surat Edaran Mahkamah Agung Nomor 2 Tahun 2023 tentang Petunjuk bagi Hakim dalam Mengadili Perkara Permohonan Pencatatan Perkawinan antar-Umat yang Berbeda Agama dan Kepercayaan,” 70–81.

⁸¹ Zalma Afika Nandapratwi, Anjar Sri Ciptorukmi Nugraheni, and Andina Elok Puri Maharani, “A Juridical Analysis of Abroad Interfaith Marriage’s Position in Indonesia’s Law,” *Interdisciplinary Social Studies* 1, no. 10 (2022): 1242–49.

The legal manifestation of a ‘double-faced’ within state law underscores the government’s perplexity in addressing the phenomenon of interfaith marriage in Indonesia. It is imperative to acknowledge that, formally, Indonesian law explicitly prohibits the practice of interfaith marriage (‘front face’). This prohibition is unambiguously articulated in key legislative instruments, namely the Marriage Law No. 1 of 1974, the KHI, the SEMA, and Constitutional Court Decisions. Despite these formal pronouncements, the practical implementation of state policy reveals inconsistencies and ambiguities. While the government ostensibly prohibits interfaith marriages, it simultaneously introduces loopholes for legalisation through population administration regulations and court decisions. Furthermore, marriages between individuals of different religions conducted abroad are also afforded opportunities for legalisation within Indonesia. This complex scenario has given rise to the term ‘back face’, underscoring the vacillating stance of the state on the matter.

The legal manifestation of a ‘double-faced’ within state law underscores the government’s internal conflict arising from the persistent occurrence of interfaith marriages, despite their formal prohibition. This conflict stems from the intricate interplay between the state’s imperative to address social realities and the inherent challenges posed by the sensitive intersections of religion and civil liberties. Moreover, the state grapples with the influence of political interests, compelling it to accommodate diverse socio-political forces within society on this contentious issue, thereby engendering policy inconsistencies. The state is confronted with the task of navigating a delicate balance: on one hand, it endeavours to appease religious groups advocating for a ban on interfaith marriages, while, on the other hand, it hesitates to curtail the absolute freedom of citizens in selecting both a life partner and a religious affiliation.⁸² Consequently, the emergence of a ‘double-faced’ policy attempts to reconcile these conflicting interests. The utilisation of this term, alongside the evident state of confusion, reflects the government’s challenge in formulating an equitable and resolute policy concerning this intricate and sensitive matter. The state finds itself in a dilemma, torn between the obligation to safeguard religious values and the imperative of ensuring the civil liberties of its citizens.⁸³ Considering this, the enactment of regulations that underscore the equal status of citizens becomes imperative to guarantee the protection of their rights, including the freedom of religion.⁸⁴

The state’s vacillation in addressing the matter of interfaith marriage is further underscored by the inadequacy of existing regulations to engender behavioural change

⁸² See: Gugun El Guyanie and Aji Baskoro, “The Constitutional Rights of Indigenous Beliefs Adherents in Minority Fiqh Perspective,” *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 21, no. 2 (December 29, 2021): 155–76; Hilmi Ridho, Hamim Maftuh Elmy, and Muhammad Sibawaihi, “Fiqh al-Aqalliyat; Jurisprudence for Muslim Minorities as a Guide to Living in Non-Muslim Countries,” *Syariah: Jurnal Hukum dan Pemikiran* 23, no. 1 (October 16, 2023): 93–106.

⁸³ Sonafist and Yuningsih, “Islamic Law, the State, and Human Rights,” 381–91.

⁸⁴ See: Burhanudin Harahap, I Gusti Ayu Ketut Rachmi Handayani, and Lego Karjoko, “Non-Muslims and Sharia-Based Regional Government; Comparison between Aceh, Indonesia and Selangor, Malaysia,” *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 18, no. 2 (November 19, 2023): 364–91; Sayuti Sayuti, Ghina Nabilah Effendi, and Illy Yanti, “Freedom of Speech Without a Direction: Criticism of the Promotion of Freedom of Speech in Indonesia,” *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 23, no. 1 (June 30, 2023): 121–44.

amongst the populace.⁸⁵ Despite formal proscriptions, the state finds it imperative to continually promulgate supplementary regulations, exemplified by the SEMA and Constitutional Court Decisions, to reaffirm the prohibition. This manifestation implies that the efficacy of the Marriage Law No. 1 of 1974 is deficient in effecting a transformation in the conduct of individuals who persist in contracting interfaith marriages.⁸⁶ Consequently, it is discernible that existing regulations have proven ineffective, serving as deficient benchmarks for certain segments of the citizenry. This regulatory deficiency, in turn, amplifies the state's quandary and hesitation in formulating policies pertaining to this contentious and delicate societal issue.

Moreover, the state's reluctance to legalise interfaith marriages in Indonesia is evident in the non-endorsement of the Counter Legal Draft-Compilation of Islamic Law (CLD-KHI) in 2004.⁸⁷ Articles 49 and 50 of the CLD-KHI assert the validity and permissibility of marriages between individuals professing divergent religious beliefs. This permissiveness is intricately tied to the overarching objective of marriage, as elucidated in Article 5 of the CLD-KHI, which seeks to establish a family characterised by *sakinah*, *mawaddah*, and *rahmah* and fulfil biological needs in a legal, healthy, safe, comfortable, and responsible manner. The validation of such interfaith unions is grounded in the fundamental principle of mutual respect and the acknowledgment of the right to freedom in practising the tenets of one's respective religious convictions. This entitlement to freedom extends to the offspring's right to independently elect and adhere to a religion of their choosing without coercion from either parent. Couples entering matrimonial unions with divergent religious affiliations are anticipated to accord precedence to their matrimonial objectives. Consequently, if these objectives align, the implementation of interfaith marriages is deemed permissible.⁸⁸

The CLD-KHI emanates from the deliberations of the Gender Mainstreaming Working Group Team of the Ministry of Religious Affairs in 2004, under the leadership of Siti Musdah Mulia. Following a comprehensive examination of diverse legal sources, the team made the significant decision to permit the practice of interfaith marriage. The analytical process encompassed sociological observations of Indonesian societal dynamics and normative investigations into several Quranic verses, hadiths, and classical *fiqh* books (*turāts*).⁸⁹ Subsequently, the CLD-KHI encountered vehement protests and sharp criticisms, notably from HM Taher Azhari (University of Indonesia, Jakarta) and Hasanuddin AF (MUI), prompting its withdrawal and suspension by the Minister of Religious Affairs for the

⁸⁵ Ermi Suhasti, Siti Djazimah, and Hartini, "Polemics on Interfaith Marriage in Indonesia between Rules and Practices," *Al-Jami'ah* 56, no. 2 (2018): 367–94.

⁸⁶ Jatmiko, Hidayah, and Echaib, "Legal Status of Interfaith Marriage in Indonesia and Its Implications for Registration," 167–77.

⁸⁷ See: Nurul Ma'rifah, "Positivisasi Hukum Keluarga Islam sebagai Langkah Pembaharuan Hukum Islam di Indonesia: Kajian Sejarah Politik Hukum Islam," *Al-Manahij: Jurnal Kajian Hukum Islam* 13, no. 2 (2019): 243–57; Iri Hamzah, "Pandangan Hakim PA Se DI Yogyakarta terhadap Counter Legal Draft Kompilasi Hukum Islam (CLD-KHI)," *NUR EL-ISLAM: Jurnal Pendidikan dan Sosial Keagamaan* 6, no. 1 (2019): 31–56; Lukman Budi Santoso, "Eksistensi Peran Perempuan sebagai Kepala Keluarga (Telaah terhadap Counter Legal Draft-Kompilasi Hukum Islam dan Qira'ah Mubadalah)," *Marwab: Jurnal Perempuan, Agama dan Jender* 18, no. 2 (2020): 107–20.

⁸⁸ Ahmad Nurcholish, *Memoar Cintaku Pengalaman Empiris Pernikahan Beda Agama* (Yogyakarta: LKiS Yogyakarta, 2004), 131.

⁸⁹ Siti Musdah Mulia, *Islam & Inspirasi Kesetaraan Gender* (Yogyakarta: Kibar Pres, 2006), 101.

2004–2009 tenure, Maftuh Basyuni. This action was taken on account of the perceived controversy and the purported misalignment with the prevailing perspectives of the majority of Indonesian Muslims. Despite its withdrawal, the discourse surrounding the CLD-KHI remains a subject of ongoing scholarly examination and dialogue among Indonesian academics and intellectuals.⁹⁰

Conclusion

Within the realm of interfaith marriage legislation in Indonesia, intricate dynamics unfold, revealing a legal dichotomy characterised by a ‘double-faced’ manifestation. On one facet, there exists a ‘front face’ of the law that rigorously proscribes interfaith marriage, as stipulated in both the Marriage Law No. 1 of 1974 and the KHI. Conversely, a ‘back face’ materialises through loopholes within civil registration administration, enabling the legalisation of interfaith unions. Despite the Supreme Court’s endeavour to provide stringent guidelines via SEMA No. 02 of 2023, the evident misalignment between regulatory precepts and judicial practices underscores a discord in law enforcement. The resultant tumult within the state mirrors the dilemma of balancing the preservation of religious values against safeguarding citizens’ civil liberties. Concurrently, the frailty in regulatory capacity contributes to the proliferation of uncertainty and inconsistency in the enforcement of the law. Thus, the discord between formal legal frameworks and judicial practices, compounded by the prevailing legal uncertainty, reflects the state’s struggle to formulate coherent and equitable policies on this intricate issue.

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⁹⁰ Rizqon Rizqon, “Analisis Perkawinan Beda Agama Perspektif KHI, HAM dan CLD-KHI,” *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam* 4, no. 1 (2022): 13–24.

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