

**Interfaith Marriage in the Indonesian Legal System: An Analysis of Supreme Court Decision No. 1400 K/Pdt/1986 and Its Relevance to European Practice
(A legal study of how the Indonesian Supreme Court handles interfaith marriage and a comparison with regulations in European countries)**

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ABSTRACT

*This article discusses the Supreme Court Decision No. 1400 K/Pdt/1986, which permits the registration of interfaith marriages in Indonesia as a response to the legal gap in the Marriage Law. Using a normative approach, a statute approach, and a comparative approach, this study finds that the Indonesian legal system emphasizes religious legitimacy before marriage registration is carried out. In contrast, the legal systems in the Netherlands and Turkey base marriage validity primarily on civil registration. Based on these findings, the study recommends adopting a European-style civil registration system to ensure legal certainty while respecting religious diversity in Indonesia. **Keywords:** Interfaith Marriage, Supreme Court Decision 1400/1986, European Legal Comparison.*

A. INTRODUCTION

Indonesian citizens who wish to marry a partner of a different religious belief still face legal obstacles in realizing their right to form a family. This is due to the absence of regulations regarding the validity of interfaith marriages in Law No. 1 of 1974 on Marriage, as amended by Law No. 16 of 2019. To overcome this barrier, some couples choose to convert to the religion of one party before getting married. However, in practice, these couples continue to practice their respective religions in daily life. The state has yet to provide clear legal space or protection for interfaith marriages. On the other hand, the growing pluralism of Indonesian society and advancements in information technology have accelerated interactions among individuals from different religious backgrounds, leading to emotional relationships and the desire to marry, including interfaith marriages.¹

According to the Supreme Court of the Republic of Indonesia's jurisprudence, register

¹ Indrayanti, K. W., & Ristanty, E. Analisis peraturan perkawinan beda agama di berbagai negara sebagai perlindungan hukum untuk membentuk keluarga. *Jurnal Cakrawala Hukum*, 11(1), (2020), Page. 72.

number 1400K/Pdt/1986, the marriage between Andi Vonny Gani P., who is Muslim, and Adrianus Petrus Nelwan, who is Protestant, was legalized. The Supreme Court ordered the Civil Registry of the Jakarta Province to perform the marriage after the couple fulfilled the

marriage requirements according to the law. According to the Supreme Court's reasoning, Indonesian marriage law does not provide detailed regulations for marriages between people of different religions. The Court noted a legal vacuum in marriage law. Therefore, the Supreme Court's decision in this case was necessary not only for the parties involved, but also to fill this legal void so that it would not continue to exist.²

The aforementioned Supreme Court decision has significant ramifications for the practice of interfaith marriage in Indonesia. The Supreme Court, as the highest legal authority in Indonesia, serves as a primary source of guidance for judges at both the initial and appellate levels in matters pertaining to the legal implications of marriage between individuals of different religious affiliations. A legal vacuum exists in Law No. 1 Year 1974, and from an academic perspective, one potential effort is to examine how the Indonesian Supreme Court handles interfaith marriages and compare it with regulations in European countries. It is on this basis that the present paper aims to trace and analyze the juridical decisions on interfaith marriage in several countries, and to identify the differences and similarities between them.

B. METHOD

This writing employs a normative legal research approach. Normative legal research is a method that studies law from an internal perspective, with the primary focus on legal norms as its object of study. This method includes the process of analyzing doctrines, provisions, and legal principles that are used as the foundation for resolving legal issues. The objective is to evaluate the alignment of a legal rule with the prevailing norms, ensuring that the provision does not contradict the fundamental principles of the legal system.³

This study utilizes several types of approaches, including the statute approach, which is used to examine legal provisions regarding interfaith marriage in the three countries based on the relevant laws and regulations. Additionally, the comparative

² Lizwary, K., & Safitri, W. Kajian Hukum Terhadap Perkawinan Beda Agama Dengan Adanya Yurisprudensi Mahkamah Agung No. 1400k/Pdt/1986. *Jurnal Ilmiah Hukum*, (2017), Page. 3.

³ I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum* (Jakarta: Kencana, 2016), Page. 12.

approach is employed to compare the regulations in Indonesia, the Netherlands, and Turkey in order to identify differences in the legal frameworks regarding this issue.⁴

C. ANALYSIS/DISCUSSION

a. Interfaith Marriage

Interfaith marriage can generally be defined as a legal bond between a man and a woman who come from different religious backgrounds but choose to build a life together in one household based on a strong mutual love. In various literatures, such as those presented by *Rusli* and *R. Tama*, interfaith marriage is described as an agreement, both physical and spiritual, between two individuals who wish to live a married life, even though their respective beliefs do not align. In this context, the marriage rules based on the teachings of their respective religions are no longer considered the primary foundation. Instead, the couple strives to independently fulfill the requirements of each of their beliefs to create a harmonious household grounded in love and mutual acknowledgment of the existence of God Almighty. However, in the practical application of law, a marriage cannot be considered valid if it is not carried out in accordance with the procedures prescribed by the religious teachings of each party. A marriage that is only registered civilly in court or at the Civil Registry Office without a religious ceremony does not receive legal recognition. The same applies to marriages conducted solely according to traditional customs or beliefs that are not listed among the officially recognized religions by the state. Therefore, the validity of marriage from the perspective of religious law is highly determined by the conformity of the implementation process with the respective religious norms of each party.

In conclusion, interfaith marriage is a form of marriage that occurs between two individuals who adhere to different religions or beliefs but are determined to build a family life without abandoning their faith, while consistently practicing the teachings of their respective religions in their household life.⁵

⁴ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2011), Page. 95.

⁵ Palandi, A. C. *Analisa Yuridis Perkawinan Beda Agama di Indonesia. Lex Privatum*, 1(2). (2013). Page. 200.

b. Legal Regulation of Interfaith Marriage in Indonesia

Upon reviewing the provisions in Law No. 1 of 1974 on Marriage, no explicit rule can be found that allows interfaith marriages between individuals from different religious backgrounds. Article 2 of this law firmly states that a marriage is only valid if it is conducted in accordance with the respective religious laws and beliefs of both parties. This means that the legality of a marriage is highly determined by the shared belief or the approval of the religious authorities of the couple's respective religions.

A similar prohibition is also outlined in the Compilation of Islamic Law (KHI), particularly Article 40 letter (c), which states that marriage is not permitted under certain conditions one of which is if the prospective wife is not Muslim. Additionally, Article 44 of the KHI explicitly prohibits Muslim women from marrying non-Muslim men. Referring to these two provisions, it can be concluded that under Islamic law in Indonesia, a Muslim man is not allowed to marry a woman of a different faith, regardless of the religion she adheres to. Similarly, a Muslim woman is forbidden from marrying a non-Muslim man, including those from the People of the Book or others.

A fatwa issued at the VII National Congress of the Indonesian Ulema Council (MUI) further reaffirms this stance. The fatwa states that: first, interfaith marriage is haram and invalid; and second, even though there are opinions suggesting that a Muslim man can marry a woman from the People of the Book, MUI insists that this is also prohibited according to the *qaul mu'tamad* (strong opinion). This fatwa emerged in response to several considerations, including the rising practice of interfaith marriage in society, growing concerns within the Muslim community, the emergence of views justifying such practices under the banner of human rights and public welfare, and the need to preserve the stability and harmony of households.

A similar position was adopted by Muhammadiyah during the XXII Majelis Tarjih and Tajdid Congress, which was held in Malang from February 12–16, 1989. During the congress, it was emphasized that marrying a partner of a different faith is considered haram. Therefore, both Muslim men marrying women from the People of the Book or polytheists, as well as Muslim women marrying non-Muslim men whether from the People of the Book,

polytheists, or unbelievers are all viewed as contradictory to Islamic law according to Muhammadiyah’s perspective.⁶

c. Regulation of Interfaith Marriage in Europe

Family law reforms in several Muslim countries have led to the emergence of more modern regulations through various approaches. These reforms not only cover general aspects of family law but also include provisions on interfaith marriages. As these changes unfold, each country establishes different rules concerning interfaith unions. The provisions related to interfaith marriage in some Muslim countries can be outlined as follows:

1. The Netherlands

In the Netherlands, the legality of a marriage is only recognized if it has been officially registered by a civil officer (*ambtenaar van de burgerlijke stand*). After this registration process, the couple is free to hold a religious ceremony in accordance with their respective

beliefs, although the religious ritual does not affect the legal status of the marriage. However, diplomatic representatives, such as consulates, do not have the authority to validate a marriage, issue a marriage certificate, or act as witnesses in a legally conducted marriage.

Local authorities will only facilitate a marriage if one of the parties is a legal resident of the Netherlands. Immigration authorities also do not guarantee legal status simply because someone intends to marry. Information about the marriage procedure is available at local government offices such as the *Stadhuis* (City Hall), specifically in the marriage department (*Afdeling Huwelijkszaken*). Furthermore, Dutch nationals under the age of 18 are required to obtain parental consent and approval based on royal law, although this condition applies only under certain circumstances. It is important to note that marriage in the Netherlands does not automatically change the partner's nationality to Dutch.

The Netherlands is also known as a pioneer in legalizing same-sex marriage. Since April 1, 2001, marriage law was amended through a revision of Article 1:30, which states that "a marriage can be entered into by two persons of different or the same gender" (*Een huwelijk kan worden aangegaan door twee personen van verschillend of van gelijk geslacht*).

Under the prevailing regulations, couples wishing to marry in the Netherlands must have Dutch citizenship or legally reside in the country. This rule applies not only to European territory but also to overseas territories such as Bonaire, Saba, and St. Eustatius. However,

⁶ Amri, A. Page. 56-57.

this regulation is not enforced in the other constituent countries within the Kingdom of the Netherlands.

One significant difference between heterosexual and same-sex marriages is related to legal recognition of children. In the Dutch legal system, the biological mother is automatically recognized as the legal mother (under Article 1:198 BW). The legal father is the man who is the husband of the mother at the time of the child's birth. However, in the case of same-sex couples, the partner of the mother can only be recognized as a parent through the adoption process, as stated in Article 1:199⁷.

2. Turkey

Turkey is chosen as a comparison study in this research due to several similarities with Indonesia, such as a republican form of government and a Muslim-majority population. The legal regulations governing marriage in Turkey refer to the *Turkish Family Law of Cyprus*, which has been in effect since 1951.

As a country with a large Muslim population, Turkey became a pioneer in reforming its family law system, including marriage law. This reform emerged as a response to waves of modernization, secularization, and Western influence, which encouraged the creation of a more practical legal system in line with the demands of contemporary society. Legal scholars in Turkey no longer interpret religious teachings literally but emphasize moral values and the substantive meaning of religious texts such as the Qur'an and Hadith. This interpretation is done while considering the broader social context of Turkish society.

The main objective of the family law reform in Turkey was to create a unified legal system without overlapping regulations (unification), uphold the principle of equality between men and women, and update laws to align with the dynamics of the times. One of the concrete steps in this reform was the prohibition of polygamy. Turkish Civil Law stipulates that a person is not allowed to marry again while the previous marriage is still in effect. If this provision is violated, the second marriage can be annulled by a court decision, as it is considered contrary to the principles of justice and harmful to women.

As a country with a secular legal system, Turkey also allows interfaith marriage. The law does not require religious uniformity as a condition for a valid marriage. According to the provisions in Articles 11 to 23 of the 1951 Law, couples can still hold a religious ceremony based on their respective beliefs if they wish. However, the civil registration process must be completed first before the religious ceremony is conducted. Thus, the state

⁷ Indrayanti, K. W., & Ristanty, E. Page. 75.

ensures that the validity of marriage is determined by the state’s administration, not religious rituals⁸.

d. Chronology of the Case and the Appeal Process to the Supreme Court

In case Number 382/PDT/P/1986/PN.JKT.PST, the Central Jakarta District Court ruled that Article 2 paragraph (1) of the Marriage Law could be interpreted as an indirect prohibition against marriages between individuals of different religions. This interpretation contrasts with the decision of the Supreme Court in Case Number 1400 K/Pdt/1986, which concluded that this article could not be used as a basis to prevent the validity of interfaith marriages.

The interpretation of Article 2 paragraph (1) in the District Court's decision was made using an interdisciplinary approach, where the judge did not interpret the legal norm merely textually, but linked it to a religious perspective. In the analysis, the judge argued that most religious teachings do not accommodate or even prohibit interfaith marriages. Therefore, the judge concluded that the validity of a marriage would only be recognized if it met the religious requirements of each party. This conclusion led to the interpretation of Article 2 paragraph (1) as a norm that implicitly prohibits interfaith marriages.

In contrast, the Supreme Court interpreted the provision in a more open manner, emphasizing that the lack of an explicit prohibition in the law leaves room for constitutional interpretation, which guarantees the right of citizens to marry without discrimination based on religion. This difference in interpretation highlights the tension between the textual-religious approach and a more progressive and contextual legal approach⁹.

e. Review of the Supreme Court Decision No. 1400 K/Pdt/1986

In Decision No. 1400/K/Pdt/1986, the Supreme Court annulled the decision of the Central Jakarta District Court, which had previously supported the rejection of marriage registration by the DKI Jakarta Civil Registry Office, as stated in the official letter No. 651/1.1755.4/CS/1986. In its ruling, the Supreme Court directly ordered the Civil Registry officer to register and carry out the marriage between Andy Vonny Gani and Petrus Nelwan, who came from different religious backgrounds.

In its legal reasoning, the Supreme Court emphasized that Law No. 1 of 1974 on Marriage does not explicitly state that interfaith marriage is prohibited. Therefore, the legal

⁸ Indrayanti, K. W., & Ristanty, E. Page. 78.

⁹ Ulfa Azizah dkk., “Vague Norm Pengaturan Perkawinan Beda Agama di Indonesia,” t.t. Page. 9.

interpretation of this provision must align with constitutional principles, particularly Article 27 of the 1945 Constitution, which stresses equal rights for all citizens before the law, including the right to form a family without regard to religious differences. Furthermore, this argument is in line with Article 29 of the 1945 Constitution, which guarantees the freedom of every citizen to embrace and practice their religion. Based on this, the Court concluded that there was no constitutional or legal reason to reject interfaith marriages.

Regarding the potential reference to the *Regeling op de Gemengde Huwelijken* (GHR) as stated in Staatsblad 1898 No. 258 through Article 66 of the Marriage Law, the Court stated that this approach was no longer relevant. The GHR considered marriage solely a civil matter, while Law No. 1 of 1974 acknowledges marriage as an institution with strong spiritual and religious values, which cannot be separated from religious rules. This reinforces the position that marriage in Indonesia must remain within the framework of Pancasila values and the national positive law, which is religion-oriented.

Through its considerations, the Supreme Court recognized the existence of a legal vacuum regarding the regulation of interfaith marriages. In a society as diverse in belief and culture as Indonesia, the practice or intention to marry across religions is inevitable. However, the existing legal system has been unable to provide legal certainty because it only accommodates marriages between people of the same faith. Article 2 paragraph (1) of the Marriage Law, reinforced by Article 10 paragraph (2) of Government Regulation No. 9 of 1975, only applies in the context of same-faith couples, thus failing to address the existing social reality.

Thus, the Supreme Court stressed the need for a more definitive legal solution to address this gap. This ruling then became an important reference (jurisprudence) used by many interfaith couples who faced administrative obstacles when applying to register their marriages with the Religious Affairs Office (KUA) or civil registry authorities¹⁰.

f. Legal Analysis of the Supreme Court's Handling of Interfaith Marriages in Indonesia

The Supreme Court of the Republic of Indonesia's decision No. 1400 K/Pdt/1986, rendered on January 20, 1989, provided the green light for the implementation of marriages between individuals of different religious beliefs, in this case, between a Protestant Christian

¹⁰ Dr. Eman Suparman, S.H., M.H. Hukum Perselisihan (Konflik Kompetensi dan Pluralisme Hukum Orang Pribumi). 2009. Bandung : PT. Refika Aditama. Vii. Page. 51.

man and a woman of a different faith. The Court ruled that the authority to register and legitimize such marriages rested with the Civil Registry Office.

This decision was not made without legal grounds. The Supreme Court provided the following juridical considerations:

1. Ambiguity in the Marriage Law

Law No. 1 of 1974 on Marriage does not explicitly prohibit interfaith marriages. This ambiguity opens the door for a more flexible interpretation within the legal context, including the possibility of recognizing interfaith marriages through civil registration.

2. Precedent from Earlier Regulations

Prior to the enactment of the Marriage Law, interfaith marriages were accommodated by previous regulations, namely the *Regeling op de Gemengde Huwelijken* (GHR) promulgated in Staatsblad 1898 No. 258. Although Article 66 of the Marriage Law provided the possibility of still referring to the GHR, in practice, the GHR was difficult to apply because it was fundamentally at odds with the philosophy of the Marriage Law. While the GHR treated marriage solely as a civil relationship without religious dimensions, Law No. 1 of 1974 places religion as the primary foundation for the validity of marriage. This is in line with the Pancasila ideology, which views marriage as a moral and spiritual institution, not just an administrative one.

The Supreme Court concluded that, in the context of interfaith marriages, the Marriage Law faced a *legal vacuum*. Sociological facts in Indonesia indicate that its society is pluralistic and multicultural, making it inevitable for interfaith couples to wish to marry. However, the existing legal system has not yet provided certainty regarding this issue due to the operation of two systems simultaneously: the religious system and the state administrative system. Article 2 paragraph (1) of the Marriage Law, reinforced by Article 10 paragraph (2) of Government Regulation No. 9 of 1975, only applies in the context of same-faith couples, thereby failing to address the complexity of social realities in Indonesia's diverse religious landscape.

This decision underscores the need for a clearer and more inclusive legal framework to address interfaith marriages in a pluralistic society, where religion plays a significant role in social and legal life.¹¹

¹¹ Lizwary, K., & Safitri, W. Kajian Hukum Terhadap Perkawinan Beda Agama Dengan Adanya Yurisprudensi Mahkamah Agung No. 1400k/Pdt/1986. *Jurnal Ilmiah Hukum*, (2017), Page. 10-11.

g. Comparative Analysis of Interfaith Marriages in Europe

A comparison between the Indonesian legal system and those of Western countries regarding marriage reveals fundamental differences, particularly in the basis of marriage validity. In Indonesia, the legitimacy of a marriage is closely tied to religious recognition, meaning that the state cannot legally register a marriage without approval from the religious authorities of the couple's respective faiths.

In contrast, European countries, which are the focus of this study, do not consider religious rituals as a determinant of the validity of a marriage. Instead, civil registration is the main element that grants legal recognition to a marriage. For example, Turkey mandates that official civil registration must be completed before couples can hold a religious ceremony according to their respective faiths. This contrasts with the Indonesian system, where state legitimacy can only be granted after the religious ceremony is deemed valid. Countries like the Netherlands, which follow a civil law system, even legalize marriages entirely through civil procedures without requiring religious involvement.

In these legal systems, interfaith marriages are not an issue as long as they are legally registered according to the country's administrative procedures. Religious rituals are entirely up to the couple's personal decision, with the state having no involvement in spiritual matters. Religion is considered a private matter, with protection guaranteed under the constitution, particularly in terms of religious freedom.

Given this context, Indonesia should consider the partial adoption of systems implemented in other countries, particularly concerning the mechanism of registering interfaith marriages. Turkey's model, for example, could serve as a practical reference to provide legal guarantees for interfaith couples, including the recognition of their marital status and the protection of the rights of children born from such marriages. A review of policies in European countries shows that their legal systems, particularly those based on civil law, prioritize state administrative aspects over religious obligations in determining the validity of a marriage. This fundamental difference reflects the secular approach that views religion as a personal right not directly regulated by the state.

D. CONCLUSION

Interfaith marriage in Indonesia still faces legal obstacles because Law No. 1 of 1974 does not explicitly regulate or permit such practices, even placing the legitimacy of marriage under the religious recognition of each couple's faith. In contrast, countries like the

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Netherlands and Turkey implement legal systems that emphasize civil registration as the basis for recognizing a marriage, while religious ceremonies are optional and considered a private matter. The state does not intervene in religious aspects but only regulates registration as a form of legal recognition. This reflects a fundamental paradigm difference between Indonesia's religiously influenced legal system and the more secular legal systems in the West. Therefore, to provide legal certainty and protection for citizens entering interfaith marriages, Indonesia should consider adopting certain aspects from the legal systems of other countries, particularly the civil registration mechanisms used in Turkey, to avoid legal gaps and ensure the protection of the marital status and rights of their children.

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