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Law and Application of Pancasila Principles in Interfaith Marriages in Indonesia

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Abstract

The implementation of the life of the nation and state is inextricably tied to the divine values encapsulated in Pancasila and the Constitution. However, the current reality of Indonesia's diverse nation poses a challenge to these divine values. The absence of barriers between individuals, as exemplified by their interactions and the formation of families through marriage, has resulted in the dissolution of ethnic, cultural, and religious distinctions. Consequently, some couples entering into marriage no longer consider their ethnic and cultural background as a determining factor in their relationship. The purpose of this paper is twofold: first, it aims to analyse the views of Pancasila and the 1945 Constitution of the Republic of Indonesia on the phenomenon of interfaith marriages in Indonesia; second, it seeks to provide confirmation of the actual legal status of these marriages. In order to achieve this, this paper employs a normative legal research methodology, utilising both a statutory and conceptual approach in its investigation. From a conceptual standpoint, marriage encompasses not only its legal and private aspects, but also its religious aspects. Therefore, the state relinquishes its authority to determine the legitimacy of marriage to religious law, which, by its nature, discourages interfaith marriages. This paper concludes that Pancasila and the 1945 Constitution do not acknowledge the existence of interfaith marriages, as they are deemed incompatible with divine values. Accordingly, the judiciary should refrain from recognizing interfaith unions. To resolve legal disputes surrounding these unions, the Population Administration Act should be amended to repeal Article 35, Paragraph 1.

Keywords: law, Pancasila, interfaith, marriages

INTRODUCTION

In human history, marriage has served as a foundation for the relationship between two individuals, offering the potential for a happy and prosperous life. The implementation of marriage has been influenced by prevailing values, traditions, and cultures, resulting in the emergence of rules that must be obeyed to preserve the purity of the bond created by marriage, in accordance with these underlying values, traditions, and cultures.

From a conceptual point of view, marriage can be considered a sacred institution. This is evidenced by the sociological fact that every major religion or belief system including even customs—must have detailed and strict rules governing the implementation of marriage for

its adherents. Given this profound religious influence, marriage cannot be carried out or even recognized when the conditions, procedures, and requirements set forth by religion are ignored. Isnaeni posits that "this postulate thickens in every religion without exception, thus forming a recognition of the sacredness of marriage to a universal level."

The institution of marriage in Indonesia is grounded upon the tenets of religion and the beliefs espoused by the populace. This is evidenced by Article 2, paragraph (1) of Law No. 1 of 1974 concerning Marriage, which states that "marriage is valid if it is carried out according to the laws of each religion and belief." This article is a "blanco norm," which is a rule or norm that gives authority to regulate other rules. In this case, the norm system contained in the Marriage Law is a norm of pointing (verwijzing).

In the Indonesian legal system, religious law serves as a tool designated by the statutory authority to determine the validity of a marriage conducted by the community. Those involved in a marriage are obliged to comply with the requirements set forth by their respective religious laws. In the event that the marriage is conducted in violation of the restrictions set forth by religion, the marriage is deemed invalid or never to have occurred.

In essence, marriage is a noble bond that is eternal and everlasting, and it idealizes the harmony and unity of life views between couples. It is therefore expected that a harmonious relationship be created between the couple and that each partner complement the other's views. The most basic unity of worldviews is unity in religion and belief. As such, the laws of existing religions apply strict rules to their adherents in the area of marriage. One such rule is the prohibition of marriage between individuals of different religions.

In conjunction with the evolution of values and an increasingly open outlook on life, interfaith marriage has become a social reality that cannot be dismissed. Marriage is regarded as an ordinary civil relationship based on love alone, without the necessity of being constrained by dogmatic religious values. In modern liberal life, religious values have lost their relevance. This perspective can be observed in numerous doctrines proposed by Western jurists. It is not surprising that the Dutch colonial Civil Code (Burgerlijk Wetbook) also espouses the same position.

It can be observed that the values and worldview of the Indonesian people, which are inspired by religious values, view interfaith marriage in an unusual and unjustified manner. Nevertheless, under the pretext of legal certainty and the fulfillment of human rights, it can be seen that Indonesian law still provides opportunities for the implementation of interfaith marriages. This can be evidenced by the fact that the aforementioned view is reflected in Article 35 letter a of Law No. 23/2006 on Population Administration.

It is important to note that an explanation of a statutory regulation cannot be considered a legal norm per se. According to the provisions of Appendix II of Law Number 12/2011 on the Formation of Legislation, the function of the explanation is solely to serve as an official interpretation of the legislator on certain norms within the legislation. It is therefore prohibited from containing formulations that expand, narrow, or add to the meaning of the norms in the legislation. Furthermore, the explanation cannot contain hidden changes to the provisions of the legislation, nor can it contain formulations that narrow, expand, or add to the meaning of the norms in the legislation.

Nevertheless, the explanation of Article 35, paragraph 1, letter a of the Population Administration Law is still used as the basis for judges in determining cases of applications for interreligious marriages. Consequently, in determining the application for an interfaith marriage, there are still discrepancies in the rulings between different courts. The panel of judges in each court has its own set of legal considerations in making a decision.

In other instances, however, the panel of judges granted the applicant's request based on the legal foundation of Article 35, letter a, of the Population Administration Law.

Additionally, they considered interfaith marriages a pervasive phenomenon within society and thus deemed it necessary to recognize and provide a clear legal foundation for them in order to avoid any potential societal repercussions. The Depok District Court, for instance, addressed the case of an application for a license to register an interfaith marriage between YPT, who is a Christian, and PMA, who is a Catholic. In its Decision No. 88/Pdt.P/2023/PN Dpk, the panel of judges presiding over the case determined that the petition should be granted. The panel granted permission to the petitioners to register their interfaith marriage at the Depok City Population and Civil Registration Office. In reaching this decision, the panel noted the importance of recording marriages, given that such records affect the status of children, inheritance, and other significant consequences.

The dichotomy of judicial decisions concerning interfaith marriages introduces legal uncertainty into the community, compelling the search for an exit strategy and a legally sanctioned affirmation. In light of these legal and social realities, this article examines the rationale behind the implementation of interfaith marriage law in Indonesia, with a focus on its alignment with the values and worldview of the Indonesian nation, as reflected in Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD 1945). In Indonesia, the principles of Pancasila serve as the foundation of all legislation, whereas the 1945 Constitution represents the fundamental framework for the country. Both of these documents play a pivotal role in guiding the nation's development and the administration of its state apparatus. Consequently, any challenges or issues within these two frameworks require a thorough examination and consideration.

RESEARCH METHOD

In this article, the methodology employed is that of a literature review. The data gathering phase concluded in September 2021, and the subsequent analysis was conducted. The literature review, as defined by Rahayu et al. (2019), is a methodical and organised approach that identifies, evaluates, and synthesises the research and ideas generated by previous researchers. The purpose of a literature review is to examine existing knowledge on a specific topic, identifying gaps that can inform future research. The process of conducting a literature review is one that is methodical, encompassing a series of distinct stages. The initial step is problem formulation, which involves the selection of a topic that is pertinent to the subject under investigation. The subsequent stage is literature/data search, which requires the identification of sources that can substantiate the findings. The third stage, data evaluation, is tasked with assessing the quality and relevance of the data in relation to the research objectives. The fourth stage, analysis and interpretation, involves discussing, finding, and summarizing documents.

RESULT & DISCUSSION

The Indonesian state is founded upon the principles of Pancasila, which are based upon the values that have become deeply embedded within the Indonesian nation. Pancasila is a set of values that have been shaped through a process of compromise, representing a synthesis of diverse perspectives on life. Within the Indonesian legal system, Pancasila acts as a primary source of applicable legislation.

Among the five principles, the first principle, namely belief in God Almighty, occupies a unique position in comparison to the other four principles. The distinguishing characteristic of the first principle can be described as containing the core value that is the animating principle behind the value expressed in the other principles. This demonstrates that in

conducting their lives, the Indonesian people cannot be dissociated from religious elements, which serve as a guiding force and a source of guidance in life.

Ali asserts that the phrase "Belief in One God," as outlined in Pancasila, encompasses multiple meanings. Firstly, the concept of God represents a unifying force for the Indonesian religious nation, serving as a catalyst for unity during the period of independence. Secondly, the Almighty God serves as the primary causal agent for the formation of statehood, thereby establishing the foundation for the establishment of a democratic state. 3) The Almighty God is a unity with the other four precepts as a whole, such that the value of divinity must be realized in the aspects of humanity, nationality, democracy, and justice. 4) The first precept is an affirmation of the rejection of all teachings that reject the existence of God.

The establishment of the first precept underscores several key aspects. Primarily, the state of Indonesia is not defined as a secular state, wherein religion is isolated from the fabric of society and the state. Additionally, the first principle underscores the state's commitment to safeguarding the freedom of individuals to adhere to religious beliefs and to uphold these teachings. The state bears responsibility for protecting religion and its followers from actions that diminish the values espoused by religion.

In his analysis of the Pancasila state law, Azhary asserts that the primary and most distinctive aspect of the Pancasila state of law is its first principle, which differentiates it from the legal concepts developed in the West. In his conceptualization of the Pancasila legal state, Azhary posits that there are two essential prerequisites. First, the concept of freedom of religion must be understood in its positive sense, eschewing the doctrine of denial of God (atheism) and any actions or attitudes that are hostile to God. Second, there must be no absolute or relative separation between the state and religion. This ensures that the ideology of religious separation is not a tenet of Indonesian society.

The relationship between religion and the state is symbiotic and inseparable. Religion is a divine guide that provides guidance and guidelines for the achievement of state goals and ideals. In fact, Islamic teachings, in particular, do not advocate for the establishment of a particular religious state. Instead, they seek to instill divine values into the fabric of national and state life. A symbiotic and interdependent relationship exists between religion and the state. This relationship is reciprocal and mutually influencing, with each entity relying on the other. Religion requires the state as a tool to preserve and defend its sacred teachings, while the state relies on religion as an ethical and moral foundation for national life and state practice.

In his written work, Arief Hidayat posits that the Indonesian state's governance is consistent with the tenets of theocratic governance as outlined in the 1945 Constitution of the Republic of Indonesia. This implies that the state's operations are guided by the rule of law, which is informed by the divine light inherent in religious teachings. Consequently, religion itself provides a source of morals, ethics, and spirituality that informs the thoughts, actions, and behaviors of state administrators and citizens alike.

The concept of the rule of law necessitates that all aspects of public life, whether private or public, be founded upon applicable laws. This principle is not subject to exception in the context of marriage. For the Indonesian people, marriage is a legal event that encompasses multiple dimensions, including the private and public domains as well as the religious. The private dimension of a marriage is defined as an agreement between a man and a woman to form a legal bond. The public dimension of the marriage can be seen in the state's role in registering and recognizing the legal marriage. The religious dimension of the marriage is evident in the existence of binding provisions related to the requirements and procedures for its implementation, which are based on the rules of each religion.

The institution of religion is the authority that determines the validity of marriages. Consequently, the regulations set forth by each religious tradition apply to all who engage in the practice of marriage. The concept of sacredness is central to the institution of marriage in religious thought; it is viewed as a bond between two people that transcends the boundaries of the physical world and is a sacred covenant with God. In Islam, for instance, marriage is a sacred bond that must be accounted for before Allah SWT.

In a marital union, the hope is that the husband and wife will complement one another and lead one another to achieve a state of lasting domestic happiness, which is based on the belief in divine values. Therefore, there must be a unity of life views and values between the two parties. The most fundamental value in this context is the belief in religious teachings. In light of the central role that religion plays in the formation of a harmonious marriage relationship, it is the state's obligation to ensure the enforcement of marriages that are based on religious unity.

The Indonesian state is founded upon the principles of Pancasila, which espouse the conviction that belief in one God is the core tenet. Therefore, it is evident that any action or inaction that violates, desecrates, or compromises the purity of the applicable laws and religious teachings cannot be tolerated. The state is duty-bound to safeguard the autonomy and independence of each religion. The state is prohibited from intervening in the independence of religion in regulating the behavior and actions of its adherents, including matters of marriage.

Interfaith marriage is a phenomenon that is becoming increasingly common in Indonesia. This can be attributed to the fact that the country is a pluralistic nation, which leads to diverse social interactions. Differences in ethnicity, culture, language and religion are not seen as obstacles in establishing a relationship, including marriage. In her research, Oktafiani identified two factors that influence the occurrence of interfaith marriages in a community. These include emotional and material factors. In this context, emotional factors refer to a sense of emotional and affective attachment between the couple, which enables them to navigate religious differences within their household harmoniously. Material factors, in contrast, relate to the economic need of one of the partners, which often leads them to pursue an interfaith marriage.

The justification for interfaith marriage is often based on the implementation of human rights (HAM). Human rights are fundamental rights bestowed upon humans from birth that are inherent, natural, and universal, and cannot be revoked by anyone. In John Locke's social contract theory, human rights are conceptualized as a gift of the universe, bestowed upon humans in the form of the right to life, the right to freedom and ownership. In order to ensure the continued existence of these rights, individuals enter into an agreement with the ruler (state), agreeing to protect these rights. In modern democracies, the protection of human rights is an important aspect of constitutional governance.

In conceptual terms, human rights can be classified into two broad categories: non-derogable and derogable. Non-derogable human rights are those that must be respected and protected in all circumstances, regardless of any potential constraints. According to international human rights law, there are a small number of absolute human rights, while the majority are non-absolute. In other words, they can be restricted within reasonable limits.

In accordance with the International Covenant on Civil and Political Rights (ICCPR), a number of fundamental rights classified as non-derogable include the right to life, the right to freedom from torture or cruel, inhuman, or degrading treatment or punishment, and the The right to be free from slavery, the right to be free from imprisonment for inability to fulfill contractual obligations, the right not to be punished retroactively, the right to recognition

before the law, and the right to freedom of thought, conscience and religion constitute the non-derogable rights of individuals.

The Indonesian Constitution of the Republic of Indonesia, as well as several subsequent legislative acts, has recognized certain human rights as non-derogable. These include Article 28I paragraph (1) of the 1945 Constitution, Article 4 of the Human Rights Law, and Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights.

It is important to note, however, that not all human rights are included in these provisions. Consequently, other rights can also be regarded as non-derogable.

One of the fundamental rights is that of marriage, which is not subject to reduction or elimination (non-derogable rights). This is based on the provisions of Article 28B (1) of the 1945 Constitution. The view that interfaith marriage is an aspect of human rights that must be protected is also expressed by Sindy. In her writing, Sindy states that the right to enter into marriage and form a family without being limited by religion—as outlined in Article 16 of the Universal Declaration of Human Rights (UDHR)—is universal. According to Sindy, prohibiting interfaith marriage constitutes a violation of human rights.

Although human rights are theoretically inviolable, as a state based on Pancasila, the Indonesian constitution explicitly states in Article 28J paragraph (2) that they may be reduced or revoked for any reason.

As cited by Sipghotullah, McGoldrick posits two rational justifications for the limitations on human rights: first, human rights themselves are not absolute or universal; second, the balancing of individual and public interests, according to prevailing values and culture, must take place. Secondly, instances may arise where the rights of one individual conflict with those of another; therefore, limitations must be placed on these competing rights in order to allow for the implementation of a prioritized right.

Furthermore, the Constitutional Court has provided an interpretation of Article 28J paragraph (2) of the 1945 Constitution in Decision Number 2-3/PUU-V/2007, which addresses the death penalty in the Narcotics Law. In its decision, the Constitutional Court posited that all human rights provisions enumerated in Article 28A up to Article 28I of the 1945 Constitution could be constrained in accordance with the stipulations of Article 28J, paragraph (2). The article's placement at the end of the articles regulating human rights was deliberate. This was done to emphasise that in Indonesia human rights are not interpreted as absolute freedom but can be limited as long as it is stipulated by law. Therefore, prohibitions on interfaith marriage do not amount to a violation of human rights.

The state has delegated the authority to define marriage to religious authorities. The incorporation of religious provisions into the legal framework for marriage reflects the values embraced by the Indonesian people, who are predominantly religious. The influence of religion on Indonesian society is evident in the country's founding principles, Pancasila, and the constitution. The incorporation of religious provisions into the Marriage Act has the potential to align with the prevailing worldview, values, and practices that are already embedded within Indonesian society. A regulatory framework that prioritizes values that have been accepted and implemented in everyday life is likely to be readily embraced by the populace, as it resonates with their lived experiences. The notion that a marriage is valid when conducted according to religious tenets is not a novel concept within Indonesian society.

Indonesia's status as a multiethnic and multicultural society has not prevented the occurrence of interfaith marriages. In fact, in the contemporary globalized era, the influences of foreign worldviews and doctrines on individual thought, attitudes, and behavior, including in the context of interfaith marriage, have become increasingly prevalent. The values of

Pancasila, however, must remain a fundamental tenet of Indonesian society, and any views that contradict them should not be accepted or applied within the country. Secularism, liberalism, and pluralism, which have a tendency to deconstruct religious teachings, are in direct opposition to Pancasila and the Constitution of the Republic of Indonesia. Both explicitly recognize Indonesia as a state with a deity.

In light of these considerations, this article posits that interfaith marriage is untenable in the eyes of Pancasila and the 1945 Constitution of the Republic of Indonesia. This stance is predicated on the conviction that interfaith marriage is incompatible with the fundamental tenet of the Indonesian state as espoused in the Constitution: the concept of Godhead. In this understanding, religion serves as a source of morality and ethics for the nation and state, and thus, any deviation from this principle is untenable.

Moreover, the historical context reveals a significant influence of religious norms on the formation of the Marriage Law itself, further substantiating the incompatibility of interfaith marriage with the principles enshrined within it. This can be discerned by the evident inclination of legislators to consider religious distinctions as a hindrance to marriage, particularly in cases where religious tenets explicitly prohibit such unions. This inclination is reflected implicitly in Article 8, paragraph f of the Marriage Law, which states that marriage is prohibited between individuals in a relationship that is prohibited by their religion or other pertinent regulations.

It can be reasonably deduced that the prohibition of interfaith marriage is implicitly stated within the Indonesian Marriage Law, which stipulates that the validity of marriage is contingent upon the laws and tenets of each religion. The majority of the recognized religions within Indonesia—whether explicitly or implicitly—maintain a general aversion to interfaith unions. The Marriage Law also stipulates that marriage is prohibited between two individuals when their respective religious beliefs or practices prohibit it.

In Islamic tradition, there is an explicit prohibition of interfaith marriage. In the context of Indonesian law, the prohibition is set forth in Articles 40 and 44 of the Compilation of Islamic Law (KHI). According to Karsayuda's interpretation as cited by Rizqon, the equality of beliefs/religions between the prospective bride and groom can be seen as a valid condition for Islamic marriage. Catholicism adheres to the doctrine of the sacrament of marriage, the procedures of which are delineated by the tenets of canon law. Therefore, in Catholicism, interfaith marriages are highly discouraged as they are considered invalid. In Hinduism, if there are discrepancies in beliefs between the prospective bride and groom, the marriage can only be considered valid if one of the non-Hindu parties has undergone the sudhiwadani ritual, which is the process of confirming a person to become a Hindu. Protestant Christianity generally forbids interfaith marriages. However, if a discrepancy exists between the prospective bride and groom with regard to their religious beliefs, the prospective couple of disparate religions must attest in written form to the understanding that their marriage will be validated and blessed solely in accordance with Christian principles.

Buddhism and Confucianism are two religions that are most open to interfaith marriage. Buddhism allows interfaith marriages as long as they comply with Buddhist marriage procedures. In Confucianism, all people are equal before God and thus cannot be distinguished, including in terms of marriage.

From the perspective of legal optics, it is crucial to highlight the significance of the rules governing the prohibition of interfaith marriages, as they not only affect the validity of a marriage, but also have legal implications in the event of divorce, child custody and inheritance. In particular, Islamic law establishes the obstacle of differing religious beliefs between the testator and the heir as one of the main factors influencing inheritance. Article 171 letters b and c of the Compilation of Islamic Law stipulates that both the testator and the

heir are required to be Muslims. This stipulation implies that, based on this legal provision, Muslim heirs are not entitled to inherit from non-Muslim heirs, and vice versa, non-Muslim heirs are not entitled to inherit from Muslim heirs. In an attempt to achieve justice, the Supreme Court has established jurisprudence, Supreme Court Number 1/Yur/Ag/2018. This jurisprudence permits the distribution of a mandatory bequest to non-Muslim heirs, provided that the value of the bequest is limited to a third of the value of the estate.

Furthermore, the introduction of interfaith marriages will result in confusion regarding the applicable law in the resolution of disputes. The judicial sphere is characterised by absolute competence to examine and adjudicate conflicts and cases; thus, if the interfaith marriage is between non-Muslims, the authority of the district court in hearing the case is clear. However, in the instance of interfaith marriages between Muslims, the question arises regarding the court with absolute competence to resolve such matters: is it the district court or the religious court?

In addition to the legal ramifications, interfaith marriages also have social impacts, as evidenced by the writings of Novita on social issues in such families. Among the social consequences of interfaith marriages, Novita identifies the following: first, the lack of guidance from husbands and wives on matters of religion, including to children; second, the lack of partnership and cooperation between husbands and wives in matters such as determining the children's education. Third, the lack of mutual respect when household conflicts arise due to differing religious beliefs held by husbands and wives. Fourth, the disharmonious relationship between the husband and the wife's relatives or vice versa due to the lack of agreement on the marriage from the outset.

It is imperative that legislators and judges in all jurisdictions affirm the prohibition of interfaith marriages, as such unions have the potential to have legal and societal repercussions. The institution of marriage, as a fundamental aspect of human existence, is regulated by various religions, each with its own set of rules pertaining to the conditions for its validity and procedures for its implementation.

In Islamic law, marriage is a means of achieving the objectives of the shariah (Islamic law), namely maintaining religion (hifdzu ad-din) and maintaining offspring (hifdzu an-nasl). In his writing, Dardiri posits that interfaith marriages deviate from the principle of maintaining religion. In light of the potential for religious practices and beliefs to be misused, as well as the risk of apostasy, interfaith marriage is not permitted in Islamic law. The purpose of Islamic law is to maintain religion, and therefore, in order to achieve this, marriages must be between couples with similar beliefs.

In this context, an interfaith marriage could be interpreted as a form of blasphemy against religion, especially Islam. While the religion does not explicitly define the various forms of blasphemy, it is widely understood that such acts can be carried out through a range of behaviors, including beliefs, speech, and actions that insult or belittle religious teachings.

Barda Nawawi Arif delineated three categories of religious offenses: offenses according to religion, offenses against religion, and offenses related to religion or religious life (Nawawi Arif). Offenses according to religion encompass all acts that, according to religious views, are deemed reprehensible, such as killing, stealing, cheating, and so on (ibid.). The offenses related to religion are those set forth in Articles 175–181 and 503 of the Criminal Code. These include acts such as disturbing religious ceremonies or insults directed at religious objects. The offense against religion, as stated in Article 156a, is blasphemy against the content of religious teachings.

In some jurisdictions, as Zulham notes, entering into a marriage that violates the provisions of an officially recognized religion in the country can result in the individual being punished for blasphemy. This perspective is likely to generate controversy within the

community, as the enforcement of blasphemy offenses in Indonesia remains a matter of ongoing debate and discussion. This is because its enforcement is often influenced by subjective factors rather than objective ones, and is frequently driven by external pressures.

As cited by Nazar, Muzakir posits that the enforcement of blasphemy offenses is subject to interpretation based on the holy book, which is interpreted by religious leaders or authoritative religious institutions. On one hand, religious offenses are the purview of religion; yet on the other hand, they are also subject to the authority of the state, thus resulting in an overlap between religious matters and state affairs. Additionally, Muzakir asserted that to ascertain the boundaries between the authority of religion and state, three distinct areas must be considered: (1) the internal area of religion, (2) the external area of religion, and (3) the public/state area.

In the case of marriage, the concept of the areas of competence of religion and the state is associated with the context of the marriage itself. The issue of the validity of the marriage is an internal religious area. In contrast, the only public/state area is the recording process. It must be emphasised that marriage registration is not part of the legal requirements for a marriage. The recording of marriages is an administrative obligation determined by the provisions of laws and regulations. Its purpose is to provide an authentic deed that can be used to prove the marriage and protect the rights that arise from it.

The Indonesian Population Administration Law permits interfaith marriages to be registered. Article 35 letter a stipulates that marriage registration also applies to marriages determined by the court.

This prompts the question of the law's authority in determining the legality of marriages. If, according to the Marriage Law, marriages are only valid according to the provisions of a particular religion, how does the court justify recognizing an interfaith union as the foundation for marriage registration? Is the court, in this context, acting as a religious institution, thereby assuming the authority to validate marriages?

It is challenging to provide a definitive response to this question as it contravenes the legal logic established by the Constitutional Court in Decision Number 24/PUU-XX/2022, pertaining to judicial review of Article 2 paragraphs (1), (2), and Article 8 letter f of the Marriage Law. In their legal considerations, the panel of judges stated that the state is precluded from interfering with the determination of the validity of marriage. The state is only authorized to follow up the results of the interpretation of authoritative religious institutions related to the validity of marriage into the provisions of laws and regulations.

Additionally, the constitutional judges addressed the stipulation set forth in Article 35, Paragraph a of the Population Administration Law. In their legal analysis, the provisions of the aforementioned article must be interpreted solely in the context of population administration, and not as a form of recognition, let alone legalization of interfaith marriages, given the clear lack of authority vested in the state to regulate such matters.

In the view of the author, the constitutional court is in a quandary, seemingly unable to decide on the matter. One argument is that interfaith marriages are contrary to religious beliefs; however, the court has allowed their registration in order to afford protection and recognition, as well as a legal status akin to that of ordinary civil events. This lack of resolution undoubtedly engenders legal ambiguity within the community, as interfaith marriages will continue to be permissible.

The issue of interfaith marriage has long been a point of contention in legal circles. In an attempt to provide legal certainty on the subject, the Supreme Court finally issued Circular Letter Number 2 of 2023, which sets forth guidelines for judges in the adjudication of cases concerning the registration of interfaith marriages. This circular letter, which is addressed to all judges, contains a set of guidelines for adjudicating such applications.

Circular letters, as policy rules, are a form of legal regulation. The concept of policy rule is an implication of the application of the concept of state law, which authorises state administrative officials to form policy products freely in this context allows us to better understand how these duties and functions are carried out.

It is reasonable to posit that circular letters including the Supreme Court Circular Letter (SEMA) exist within the realm of the law. This assertion is based on the Supreme Court's historical practice of conducting and granting judicial review of circular letters issued by state institutions or government officials. Although in practice the position of a circular letter is below the law, it is not included in the hierarchy of laws and regulations contained in Article 7, paragraph (1), of Law Number 12/2011 on the Formation of Laws and Regulations. This is because SEMA is only applicable and binding for the internal Supreme Court, thus failing to fulfill the requirement of "binding the public" as defined in Article 1, point 2 of Law 12/2011.

The issuance of SEMA by the Supreme Court does not impede the discretion of judges in examining and determining cases. The principle of ius curia novit, which requires judges to continue accepting, examining and adjudicating cases despite the absence or ambiguity of legal regulations, preserves the autonomy of judicial decision-making. Consequently, the efficacy of SEMA No. 2 of 2023 in preventing judges from granting applications for the registration of interfaith marriages is questionable.

To provide consistent legal affirmation, with religious provisions serving as a guide, it would be advisable to revoke the provisions of Article 35 letter a of the Population Administration Law. This would prevent the implementation of interfaith marriages, thereby eliminating a loophole that permits interfaith marriage in Indonesia. The legal affirmation related to the prohibition of interfaith marriage cannot be regarded as an act of discrimination or restriction of rights. It is important to note that what is safeguarded and protected by the state is the right to form a family and perpetuate offspring through legal marriage.

CONCLUSION

The institution of marriage is a sacred human event that encompasses private, legal and religious dimensions. As a religious country based upon Pancasila and the 1945 Constitution, religious beliefs play a significant role in shaping the lives of the people and the nation. The majority of religions recognized in Indonesia forbid interfaith marriages. In accordance with Article 2, paragraph 1 of the Marriage Law, determining the legitimacy of a marriage is the domain of religion. Accordingly, in the light of Pancasila and the 1945 Constitution, interfaith marriage is prohibited and cannot be justified as a form of implementation of human rights. While judges are afforded the freedom to decide a case, in the instance of interfaith marriage, they are obliged to adhere strictly and consistently to the stipulations of Article 2 paragraph (1) of the Marriage Law. The interpretation set forth by Article 35 letter a of the Population Administration Law cannot serve as the foundation for judges' consideration in the registration of interfaith marriages. This is because the aforementioned provisions are demonstrably at odds with the tenets set forth in Pancasila and the Constitution of 1945.

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