

Legitimation: License for Registration of Interreligious Marriages by the State Court

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Abstract

The Surabaya District Court judge has granted the application for a permit to register an interfaith marriage between Rizal Adikara (Islam) and Eka Debora Sidauruk (Christian with decision Number: 916/Pdt.P/2022/PN.Sby. Previously, the registration of their marriage was rejected by the Population and Civil Registry Office. Civil Registry. The purpose of this research is to analyze judges' considerations in determining permission to register interfaith marriages. This type of research is library research, using a juridical normative approach. The source of data comes from primary legal materials, namely statutory regulations and legal materials secondary such as legal opinion/doctrine/theories from legal literature, research results, journals, papers, theses and websites related to research. This research is descriptive analytical in nature. Results of the research are that District Court judges have legitimized the registration of interfaith marriages with the consideration that The Marriage Law and the Law on Population Administration have provided space for the Court to render decisions and citizens have the right to defend their religious beliefs when they want to build a household. This judge has used a judicial activism approach in order to guarantee the freedom of citizens as protected by the constitution. Then this decision only granted permission to register religious marriages, not permission to carry out marriages because the applicant parties were married before the Court's decision.

Keywords: Legitimacy, Registration, Marriage, Different Religions..

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Introduction

Interfaith marriage is not something new for Indonesian society which is multicultural and has been going on for a long time. However, this does not mean that the issue of interfaith marriage is not an issue, in fact it tends to always generate controversy among the public (Amri, 2020).

The practice of interfaith marriages is widely practiced by ordinary people (Nafisah, 2019), as well as by public figures, such as the Indonesian artist couple Jamal Mirdad (Islam) and Lidya Kandou (Christian) married in 1984, Ayu Kartika Dewi (Islam) and Gerald Bastian (Christian) married on 18 March 2022 (Daud et al., 2022). Rizal Adikara (Islam) and Eka Debora Sidauruk (Christian) married on 23 March 2022. (Decision of the District Court of Surabaya Number: 916/Pdt.P/2022/PN.Sby) Ari Sihasale (Christianity) and Nia Zulkarnaen (Islam), Nurul Arifin (Islam) and Mayong Suryo Laksono (Christian), Rio Febrian (Christian) and Sabria Kono (Islam), Marcell Siahaan (Christian) and Rima Melati (Islam), Nadine Chandrawinata (Christianity) and Dimas Anggara (Islam). Even recently, a young artist who performed an interfaith marriage, Deva Mahendra (Islam) and Mikha

Tambayong (Christian), who married January 28, 2023. (<https://www.Suaramerdeka.Com/Hiburan/Pr-047339143/Demi-Cinta-Korban-Agama-Pernikahan-Mikha-Tambayong-Dengan-Deva-Mahendra-What-a-Dream>), it was recorded from 2005 to March 5 2022 there were 1,425 couples who entered into interfaith marriages (Bahri, 2022).

The phenomenon that occurs with artists as public figures does this on the basis of mutual liking and is considered no longer a taboo for Indonesian society (Ilham, 2020). It is feared that the trend of artists marrying different religions will give negative inspiration to many people. Something you may not realize is that as a public figure you will definitely be an example for your fanatical followers (fans) (Kaharuddin & Syafruddin, 2020).

Materially, marriage is valid if it is carried out according to each religion and belief, as stated in Article 2 paragraph (1) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. The validity of a marriage according to Islamic law is when the pillars and conditions are met (Al-Syafi'i, t.t). One of the requirements for prospective husbands and wives is that they are Muslim (Ria, 2018).

According to the Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, Article 2 paragraph (1) and (2) that formally registration of marriages for people of Muslim faith is carried out at the Office of Religious Affairs and those non-Muslims in the Civil Registry Office. For people who carry out interfaith marriages, if there is a rejection of marriage at the Population and Civil Registry Service, they will first obtain a marriage permit from the Court. This is stated in Article 21 paragraph (3) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, the parties whose marriage is rejected have the right to submit an application to the court in which territory the marriage registrar who made the refusal is domiciled to give a decision, by submitting: the statement of refusal mentioned above, in conjunction with Article 35 letter a of Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration, concerning registration of marriages determined by the Court. Regarding the issue of interfaith marriage, it is the authority of the district court to examine and decide it. The District Court is the determinant of whether or not people may enter into interfaith marriages. The District Court's decision can be used as a basis for legal force for couples of different religions to be able to register their marriage at the Civil Registry Office. In Article 7 Paragraph (2) letter (1) of Law Number 30 of 2014 concerning Government Administration, that government officials are obliged to comply with court decisions that have permanent legal force. This means that the Department of Population and Civil Registry cannot refuse registration.

One of the cases of rejection of the registration of interfaith marriages by the Population and Civil Registry Service against a husband and wife, namely Rizal Adikara (Islam) and Eka Debora Sidauruk (Christian), because of that they submitted an application for the determination of interfaith marriages to the Surabaya District Court and granted the request with Decision Number: 916/Pdt.P/2022/PN.Sby.

Materials and Methods

This type of research is library research, using a normative juridical approach. Data sources come from primary legal materials, namely laws and regulations and secondary legal materials such as legal opinions/ doctrines/ theories from legal literature, research results, journals, papers, theses and websites related to research. This research is descriptive analytical.

Results and Discussion

A. Interfaith marriage in the perspective of various religions in Indonesia

In the elucidation of Article 1 of the Decree of the President of the Republic of Indonesia Number 1 of 1965 concerning the Prevention of the Use and/or Blasphemy of Religion, it is stated that the religions embraced by the Indonesian population are Islam, Christianity, Catholicism, Hinduism, Buddhism and Confucianism.

The decision of the XXII Tarjih Muhammadiyah Congress in 1989 defines that interfaith marriages are marriages between Muslims/Muslims and non-Muslims/Muslims or polytheists and people of the book. Interfaith marriage is a marriage between a man and a woman who both have different religions or beliefs from each other (Sastra, 2011). Interfaith marriages can be divided into three categories: First, marriages between a Muslim man and a polytheist woman; Second, marriage between a Muslim man and a woman who is a member of the book; and Third, marriage between a Muslim woman and a non-Muslim man (either polytheists or ahlulkitab) (Syarifuddin, 2006). Thus interfaith marriage is a physical and spiritual bond between a man and a woman of a different religion which is carried out in accordance with the respective religious laws with the aim of forming a happy and eternal family based on Belief in the One Supreme God (Amri, 2020).

Regarding interfaith marriages, the majority of scholars, namely the Hanafi School, the Maliki School, the Syafi'i School and the Hambali School, prohibit marriage between a Muslim woman (Muslim) and a non-Muslim man. The marriage of a Muslim man (Muslim) with a non-Muslim woman/people of the Bible (Jews and Christians) allows most scholars to do so, this only applies before the revelation of the Qur'an. If it is done afterward, it is unlawful (Aljazir i, 1996). Scholars have different opinions about the scope of the people of the book because of differences in understanding of the text of the Koran. Some of them think that there are no more people of the book, some scholars say that Jews and Christians are people of the book and some scholars are of the opinion that every believer of a religion who has prophets and holy books is included in the people of the book (Nafisah, 2019).

Islam basically prohibits interfaith marriages (Dardiri et al., 2013). This prohibition is stated in Article 40 letter c of Presidential Instruction Number 1 of 1991 concerning Compilation of Islamic Law, that it is prohibited to enter into a marriage between a Muslim man and a woman who is not Muslim and Article 44 states that a Muslim woman is prohibited from marrying a man who not Muslim. According to the MUI fatwa Number: 4/MUNASVII/MUI/8/2005, that interfaith marriage is haraam and the marriage of a Muslim man to a woman of the People of the Book, according to qaul mu'tamad, is illegitimate and invalid.

According to the agreement between the Indonesian Church Communion (PGI) and the Indonesian Christian Church (GKI) that Christians can marry people other than Christians, with the condition that they must marry in a church and children born from the marriage must be educated according to Christian teachings (Panji Maulana & Hidayat, 2022). In Catholicism, Catholics are prevented from marrying non-Catholics who have not been baptized, such as Muslims, Hindus, Buddhists, Confucianists, Jews and even atheists (Fatoni & Rusliana, 2019). The church views that interfaith marriage is something that is unbiblical and inconsistent with Christian identity, because it has quite significant differences such as: spirituality, faith, lifestyle, vision and mission (Pasaribu, et al., 2022). Hindu religious teachings also do not provide opportunities for the implementation of interfaith marriages, because marriages can only be legalized according to Hindu law if the bride and groom are Hindus. Thus, if a marriage is to be legalized according to Hindu law, the bride who is not Hindu must become a follower of Hinduism through the Sudhiwadani ritual.

Buddhism in essence does not prohibit interfaith marriages, because what is emphasized in marriage is moral teachings. In Buddhism, interfaith marriages can be carried out as long as the non-Buddhist bride and groom agree to follow Buddhist marriage procedures, even though they are not required to embrace Buddhism. Meanwhile, in Confucianism, it is explained that differences in class, nation, culture, ethnicity, or religion are not obstacles in carrying out marriages (Cantonia et al., 2021).

A. Surabaya District Court judge's consideration of interfaith marriages

There are differences in the interpretation of whether or not interfaith marriage is permissible in court. In reality, not all applications submitted to the Court regarding interfaith marriages are granted. For example, the determination of Number 71/Pdt.P/2017/PN Bla. refused the application for interfaith marriage. The consideration was because the judge referred to Law No. 1 of 1974 concerning Marriage in Article 2 paragraph (1) that marriage can be said to be valid if it is carried out according to each religion and belief. Meanwhile, there is also a Court ruling that grants interfaith marriages in decision Number 916/Pdt.P/2022/PN.Sby. with the judge's considerations including referring to article 35 letter (a) of Law Number 23 of 2006 Concerning Population Administration.

The Surabaya District Court has granted an application for a permit to register an interfaith marriage between Rizal Adikara who is Muslim and Eka Debora Sidauruk, who is Christian, with the stipulation Number 916/Pdt.P/2022/PN.Sby. dated April 26, 2022. Single Judge Imam Supriyadi gave permission to the Petitioners to enter into interfaith marriages in the presence of Officials and ordered the Officers of the Surabaya City Population and Civil Registry Office to record the interfaith marriages of the Petitioners into the Marriage Registration Register which is used for and immediately issue the marriage certificate, having previously been rejected by the agency. The judge in his considerations stated that religious differences could not be used as a prohibition against holding a marriage as stipulated in the Marriage Law. The judge is of the opinion that interfaith marriages can be determined in court by referring to Article 35 letter a of Law Number 23 of 2006 concerning Population Administration, it states that "registration of marriages also applies to marriages determined by the Court". Another thing to consider is that citizens have the right to defend their religious beliefs when they want to build a household as stipulated in Article 29 of the 1945 Constitution. Having granted the petition of the Petitioners, at least the judge has used a judicial activism approach in order to guarantee the freedom of citizens as protected by the constitution, not the other way around. . That is, the proposition guaranteeing freedom can be a trigger for the court to be able to be active in deciding a case (Latipulhayat, 2018). This shows that the Surabaya District Court has legitimized the registration of interfaith marriages. In the author's opinion, the judge only granted the request for a permit to register interfaith marriages, not a permit to carry out a marriage, because Rizal Adikara and Eka Debora Sidauruk had been married before the court's decision with the Marriage Certificate No.1.433/HMM/III/2022 dated March 23, 2022, and the Charter Ecclesiastical Marriage Number 373/NIK/GKN-RAEDS/III/2022 dated 23 March 2022.

This decision can be used as a benchmark by judges in Indonesia in deciding on the same case if there is a request from a husband and wife who have different religions. One source of law is jurisprudence, namely a judge's decision (court) which contains its own rules which are then recognized and used as the basis for decisions by other judges in the same case (Ngutra, 2016). Regarding the decision of the Surabaya District Court above, comments have been made from various parties, including:

According to DPR RI Commission VIII member Muslich Zainal Abidin, the PN's decision cannot be justified because it has violated Pancasila and the 1945 Constitution. The marriage is invalid because the Marriage Law in Indonesia, which applies to interfaith

marriages, is considered invalid by law unless one party follows the religion of the other party. Complications of Islamic Law have also regulated marriages between adherents of religions (DPR, 2022).

According to the Indonesian Ulema Council (MUI), Secretary General of MUI Amirsyah Tambunan regretted the decision of the Surabaya District Court (PN) which legalized interfaith marriages. The MUI stated that interfaith marriage in Indonesia is contrary to the 1945 Constitution Article 29 concerning freedom and independence to embrace belief in God Almighty. And the two couples of different religions and different beliefs are contrary to the Marriage Law article Article 2 paragraph (1), marriage is valid if it is carried out according to the laws of each religion and belief. In addition, interfaith marriage is also against the constitution which has been explained in Article 28 B of the 1945 Constitution. Article 28 B (1) Everyone has the right to form a family and continue offspring through a legal marriage. (2) Everyone has the right to survival, growth and development and is entitled to protection from violence and discrimination. With interfaith marriages, there is a conflict of legal logic, because in addition to different religions, there are also different beliefs held by the prospective husband and wife which in this case must be rejected or annulled (Aliansyah, 2022).

According to the head of the Dakwah and Ukhuwah division of the MUI, Cholil Nafis, interfaith marriages are illegal and illegal, do not fulfill human rights and legalize cohabitation and are not in accordance with Islamic teachings which prohibit it. Likewise with the MUI in the MUI decision No.4/MUNAS VII/MUI/8/2005 concerning the law prohibiting interfaith marriages is illegal and invalid, as well as the marriage of Muslim women with polytheists, infidels or scriptures is invalid and unlawful (Pratama, 2022). According to the Head of the Office of Religious Affairs (KUA) Abdul Wahid Boedin stated that interfaith marriages in Indonesia are not considered valid by law, unless one party follows the other party's religion (Islam, 2022).

According to civil law expert Unair Faizar Kurniawan stated that, basically interfaith marriages in fact have not fulfilled the requirements for the validity of a marriage as stated in article 2 paragraph (1) of Law Number 1 Year 1974 concerning Marriage. In the article it is explained that in carrying out a marriage it should be done according to their respective religions (Dedeh Kurnia, 2022).

These opinions emerged because there was no clear regulation regarding interfaith marriage in the legal system in Indonesia. Article 2 paragraph 1 of the Marriage Law states that marriage is valid if it is carried out according to the laws of each religion and belief. This means that marriage can only take place if the parties (husband and wife) adhere to the same religion. Based on the formulation of Article 2, paragraph 1, there is no marriage outside the law of each of them and their beliefs. Interfaith marriage is very closely related to one's beliefs. If someone has a strong belief then he will not violate the provisions of his religion. Meanwhile, the District Court's decision is legitimate in terms of the registration of interfaith marriages.

Conclusion

The results of the study show that the District Court Judge has legitimized the registration of interfaith marriages between Rizal Adikara and Eka Debora Sidauruk. This decision only granted a permit to register a religious marriage, not a permit to carry out a marriage, because the applicant parties had been married before the court's decision. The judge's consideration is that the marriage law and the law on population administration have given room to the court to make a decision. In addition, every citizen has the right to defend his religious beliefs when he wants to build a household as stipulated in Article 29 of the

1945 Constitution. In determining at least the judge has used a judicial activism approach in order to guarantee the freedom of citizens as protected by the constitution.

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