

Interpretation of Article 28J Paragraph (2) of the 1945 Constitution Regarding Interfaith Marriage in Indonesia

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ABSTRACT

The problem of interfaith marriage involves the conflict between religious freedom and religious values and the constitution. Regarding interfaith marriage in Indonesia, Article 28J, Paragraph 2 of the 1945 Constitution highlights that legal restrictions may be placed on an individual's rights and freedoms. This research discusses how to ensure the protection of human rights without neglecting upheld religious values. This study uses a normative juridical analysis method of laws and regulations, legal norms and doctrines as well as previous articles on marriage and human rights. The results of the study found that the right to marriage is qualified as a derogable right (a right that can be restricted) by the 1945 Constitution. Although the right to marry is a human right, its implementation is not liberal and the religious aspect in the understanding of particularism greatly affects the protection and enforcement of human rights, including the right to marry.

INTRODUCTION

Union Article 1 of Law Number 1 of 1974 about Marriage states that the purpose of marriage is to create an eternal and joyful family (home) based on the One Godhead by establishing an inherently strong relationship between a man and a woman as husband and wife (Nita, 2021). In Indonesia, interfaith marriage has gained a lot of attention. The government enacted Law Number 1 of 1974 about Marriage (Marriage Law) during the preceding ten years. Law Number 1 of 1974 about Marriage (Marriage Law) was issued by the government. Nevertheless, it is not specifically stated in this legislation whether or not interfaith marriage is permitted. According to Article 2 of the Marriage Law, a marriage is lawful if it is performed in line with each partner's personal religious and ethical convictions.

A significant interpretation of the requirements for a marriage's validity can be found in Article 2 of Law Number 1 of 1974 regulating Marriage. The terms "law" here refer to the rules governing marriage found in religion and belief systems. Consequently, if a marriage complies with the religious teachings and beliefs of the intended couple, it is deemed lawful. The way that different communities view things varies. Some people hold that a marriage can only be deemed lawful if it is performed in compliance with a specific religion's legal requirements. Other points of view, on the other hand, acknowledge the plurality of religions and beliefs and hold that a marriage is only lawful if it complies with the rules of the religion and beliefs that the couple has chosen. The distinctions extend beyond religious differences; within a single faith, disparities in matrimonial customs may arise from disparate philosophical perspectives. (Nita, 2021)

The Civil Registry Office was authorized to perform interfaith marriages by Supreme Court Decision No. 1400K/PDT/1986, which was issued by the Supreme Court of Massachusetts in 1986. The discussion about whether interfaith marriage is acceptable in Indonesia has its roots in this ruling. While some see this judgment as an acknowledgment of religious freedom, others believe it goes against both the constitution and religious principles. In Article 28J The 1945 Constitution's Paragraph 2 governs limitations on the exercise of personal freedoms and rights. This text implies that all people must abide by the legal limitations. These limitations are put in place to make sure that other people's rights and freedoms are acknowledged and respected, and to satisfy reasonable demands that align with moral principles, religious beliefs, public safety, and democratic society. (Farahdiba et al., 2021)

There are pertinent consequences of Article 28J Paragraph 2 for interfaith marriage in Indonesia. Despite the fact that marriage is a human right, its implementation is not liberal. This implies that in order to protect other people's human rights, certain limitations must be acknowledged and adhered to. Religious values are also a consideration in regulating this right. Thus, although every individual has the right to marry, its implementation must pay attention to the restrictions that have been established by the law and take into account

religious values as well as the public interest. In practice, this can affect interfaith marriage in Indonesia. All rights may be limited by applicable law only to guarantee respect and recognition of something that must be received and the freedom of the community to complete legitimate requests based on morality, religious belief, safety and general welfare.(Naura Maharani et al., 2023)

The problem of interfaith marriage involves the conflict between religious freedom and religious values and the constitution. How can we strike a compromise between people's freedom to marry and Indonesia's multitude of cultures and religions. How do we safeguard human rights while upholding the religious principles that are adhered to. Interfaith marriage also has social and legal implications. All of these questions require deep thinking and fair solutions. The main question that is interesting for the author to examine in this case is "Interpretation of Article 28J Paragraph (2) of the 1945 Constitution Regarding Interfaith Marriage in Indonesia". The difficulty is to determine how to interpret Indonesia's interfaith marriage laws as they pertain to Article 28j, Paragraph 2, of the 1945 Constitution, as well as whether this provision is in line with human rights and religious values and how the legal views and practices of interfaith marriage are implemented from the perspective of Indonesian law.

THEORETICAL FRAMEWORK

Legal Certainty Theory

Since the goal of law is to establish order in society, it is responsible for establishing legal certainty. One quality of the law that cannot be divorced from it is legal clarity, particularly when it comes to written legal norms. As said by Fene M. Wantu, "the law without the value of legal certainty will lose its meaning because it can no longer be used as a code of conduct for everyone"(Halilah & Arif, 2021). Legal certainty is defined as norms that are clear enough for those who are subject to the regulation to utilize them as a guide. One way to understand the notion of certainty is that it refers to the clarity and firmness with which the law is enforced in society.

In order for the community to know what is permitted and what is not, as well as the repercussions of breaking the law, clarity must be achieved through the creation of the law before the acts it regulates are carried out. Certainty is defined as "provisions; Provisions." However, when "certainty" and "law" are combined, it creates legal certainty, which is understood to be a national legal framework that can protect each citizen's rights and obligations(Remaja, 2014). Legal certainty is the value that, in theory, shields every citizen from the exercise of arbitrary power; hence, the law places the onus of guaranteeing protection for every person on the state.

Human Rights Theory

It's hard to differentiate the terms human rights and human rights. Humans have inherently had natural rights since the beginning of time, and these rights are essential to their existence (Wilujeng, 2017). Humans are social animals who always live in groups, whether they be small communities, tribes, nations, or entire countries. Human rights concerns become exceedingly complex because of this. Humans are social creatures. Conflicts between individuals and between groups occur frequently. Indonesia's commitment to human rights stems from Pancasila, which serves as the national and official ideology. From a conceptual standpoint, Pancasila's human rights recognize human characteristics as both social and individual entities.

In order to uphold humanist values as a whole, it is appropriate that the orientation of thinking is based on human rights principles in every activity and work plan. These human rights principles include First, the Principle of Harmony (Equality). One of the most fundamental human rights concepts is harmony. According to the definition, equality in services refers to fair or harmonious treatment, where there is equality of treatment in the same situation, or in certain situations, although it is still debated, the equality can be minimized (Hanafie & Iskandar, 2022). All human rights in the 1945 Constitution, however, are restricted by the provisions of Article 28J paragraph (2), which allows laws to be passed with the express purpose of ensuring that the rights and freedoms of others be recognized and respected, as well as to uphold just demands based on moral principles, religious beliefs, public safety, and democratic society.

METHODS

In order to find a legal rule, legal doctrine, or legal principles to address legal issues, this study employs a sort of normative legal research. The author of this study employs both a statute approach and a case approach, which begin with the theory that emerges in legal science and actual cases that take place in the industry. The basic legal material in the form of a law is the legal content from this study. Secondary legal resources can be found in print or electronic media, as well as legal books, journals, reports, and other legal publications. Furthermore to news articles and tertiary legal documents taken from the Great Indonesian Dictionary.

RESULTS AND DISCUSSION

Interpretation of Article 28j Paragraph (2) of the 1945 Law Regarding Interfaith Marriage in Indonesia

A problem that often arises in the implementation of the right to marriage is the view that this right can be interpreted as the legality to carry out interfaith marriage in Indonesia. The emergence of the phenomena of interfaith marriage, which has so far generated controversy, has been directly attributed to this paradigm. To establish a social structure that is integrated with the features of

the norms that apply to Indonesia as a whole, the concept of the right to marriage needs to be clarified in the lives of society, religion, and the state.

In 2014, the Constitutional Court received a case regarding interfaith marriage for judicial review. However, the plea for judicial review was denied by the Constitutional Court in Decision Number 68/PUU-XII/2014. The view held by the Constitutional Court is that marriage should be seen from both its formal and social and religious components. This is due to the fact that while the law plays a significant role in determining the administrative legitimacy of state operations, religion plays a significant part in deciding the validity of marriages.(Aslami et al., 2023)

Constitutional Court decisions that cancel or declare, signify the presence of a controlling and balancing institution of law-making power, additionally serving as a defense against any abuses of human rights or constitutional rights by legislative and executive product legislation (Marzuki et al., 2013). Specifically, the question is whether the restrictions outlined in Article 28J paragraph (2) of the 1945 Constitution apply to all rights that are regulated by the document, including those that are found to be "irreducible under any circumstances," as stated in Article 28I paragraph (1) of the 1945 Constitution.

According to a methodical reading, the Republic of Indonesia's 1945 Constitution qualifies the right to marriage as a derogable right one that can be regulated rather than a right that is unalienable (one that cannot be prohibited). This is due to the fact that the Republic of Indonesia's 1945 Constitution's Article 28I, paragraph (1), does not declare the right to marriage to be unalienable, allowing for its restriction. Article 28J, paragraph (2) of the 1945 Constitution of the Republic of Indonesia allows for the limitation of the right to marry. It states that "In exercising their rights and freedoms, every person is obliged to submit to the restrictions stipulated by law with the sole intention of ensuring recognition and respect for the rights and freedoms of others and to meet fair demands in accordance with moral considerations, religious values, security, and public order in a democratic society".

In order to limit the freedom to interfaith marriage in Indonesia, Article 28J paragraph (2) of the 1945 Constitution is positioned as a specialist lex to Article 28B paragraph (1) of the 1945 NRI Constitution. The defense of religious principles is invoked when limiting the legality of interfaith marriage. The rationale is straightforward: interfaith marriage goes against both religious teachings and conventions. (Wiwin, 2023)

Particularism is the human rights idea that Indonesia has accepted. The kind of particularism that is being discussed here is that religious principles are interwoven with the defense and upholding of human rights in Indonesia (Wiwin, 2023). Particularism's religious component has a significant impact on how human rights are upheld and protected, particularly the freedom to marry. Therefore, the understanding of the right to marriage should not be interpreted

and understood liberally, which will ultimately partially legalize interfaith marriage.

Theoretically, all people have fundamental rights and responsibilities as fellow humans from the moment of their conception. The 1945 Constitution's Article 28J, paragraph (1), outlines these duties and states that everyone has a duty to respect others' human rights as part of the social order in their community, country, and state. Every Indonesian citizen has an obligation to respect the rights of others, which means that while they exercise their own freedoms, they also have an obligation to consider the rights and freedoms of others. (Salim & Rowa, 2024)

The 1945 Constitution's Article 28J, paragraph (2), which reads as follows "In exercising their rights and liberties, every person is obliged to submit to the restrictions established by law with the sole intention of ensuring recognition and respect for the rights and freedoms of others and to meet fair demands in accordance with moral considerations, religious values, security, and public order in a democratic society".

Furthermore, the Constitutional Court acknowledged this limitation in Decision No. 14/PUU-VI/2008 concerning Insult to the President, stating that it must be presumed that every right has an inherent limitation on cohabitation in the absence of the provisions of Article 28J paragraph (2). That liberty isn't "at will" liberty. (Prabowo, 2020)

There are at least two reasons why there should be restrictions on the implementation of human rights, according to McGoldrick, as quoted by Candra. The idea of restricting human rights practices in particular, based on actual knowledge, most human rights do not reflect a perfect balance between private or public interests. Second, the resolution of legal issues such as the right to privacy vs religious freedom. It is possible to restrict one right to fully exercise the other (Naura Maharani et al., 2023). Only in order to guarantee the community's freedom to fulfill lawful requests based on morality, religious beliefs, safety, and overall welfare, as well as the respect and recognition of something that must be received, may all rights be restricted by the relevant legislation.

Because Article 28 J, paragraph (2) of the 1945 Constitution of the Republic of Indonesia is the last article in the document, it has provided a methodical response to the question of whether the human rights outlined in Articles 28 A through 28 I of the 1945 Constitution of the Republic of Indonesia are subject to the rights restriction provisions found in Article 28 J. In other words, the Indonesian constitution and laws do not uphold the idea of absolute human rights, according to which the state has the authority to revoke someone's right to life. This indicates that the Republic of Indonesia's 1945 Constitution's provisions of Article 28 J paragraph (2) have established a foundation for restricting human rights, which are not permitted to violate the rights of others. (Hidayat et al., 2022)

In addition, how does Article 28J, paragraph 2, relate to the Constitution's human rights provisions? More information on this topic is provided in Decision 2-3/PUU-V/2007 on the Death Penalty. The Constitutional Court ruled in its ruling that the provisions of Article 28J apply to the human rights established in Articles 28A to 28I, based on a methodical interpretation (Prabowo, 2020). Interfaith marriage has significant implications, both from a social and legal perspective. The law regulates the rights and obligations of married couples. This includes inheritance rights, child custody, and financial responsibility. Interfaith marriages can complicate these things because of the differences in religious laws that apply to each couple.

A person who has a low consciousness and is selfish who is always selfish. A person who has such an attitude will do everything possible to fulfill his rights or wills, even though others have rights that must be respected and cannot be violated. In fact, Article 28J, paragraphs 1 and 2, of the Constitution explains that everyone must abide by the legal limitations in order to use their rights and freedoms. (Farahdiba et al., 2021)

Thus, in the context of interfaith marriage, restrictions can be made to respect the religious values embraced by the community. Some religions have very strict rules regarding marriage with people of other religions. Therefore, this restriction can be considered as an effort to respect these values. These restrictions can also be applied to maintain security and public order. In some cases, interfaith marriages can cause conflicts between religious groups, which in turn can disrupt security and order in society.

Legal Opinions and Practices Regarding Interfaith Marriage from an Indonesian Legal Perspective

Articles 2 paragraphs (1), (2), and 8 letter (f) of Law No. 1 of 1974 concerning marriage are frequently cited as the reasons why interfaith marriage is prohibited. Articles 56 and 57, on the other hand, are frequently cited as the reasons why interfaith marriage is acceptable (Fani, 2021). The legal guidelines outlined in Law Number 1 of 1974's Article 2 paragraph (1) clarify the religious role and beliefs of marriage, stating that a marriage is lawful provided it is conducted in accordance with each religion's laws and beliefs.

The article "Marriage is prohibited between two persons who have a relationship that by their religion or other applicable regulations, marriage is prohibited" (Article 8 letter (f) of Law Number 1 of 1974) is also frequently used to support the claim that the Marriage Law has firmly, clearly, and specifically regulated regarding interfaith marriage. From the provisions of Article 8 letter (f), it is evident that in addition to the prohibitions that are expressly stated in Law Number 1 of 1974 and other regulations, there are also prohibitions that stem from the laws of each religion.

With its decision, the Constitutional Court has expressed its opinion on this interfaith union. The Constitutional Court once rejected the test of Article 2

paragraph (1) of the Marriage Law, which regulates the conditions for the validity of marriage related to interfaith marriage applied for by a student and several alumni of FH UI. The decision, No. 68/PUU-XII/2014, was read on June 18, 2015 (K Fachri, 2022). The court believes that this marriage law can accommodate all social circumstances and has been able to actualize the values found in Pancasila and the 1945 Constitution. Furthermore, every citizen is required to abide by the limitations imposed by the law when exercising their rights and freedoms, one of which is taking religious values into account (Article 28J of the 1945 Constitution).

Nonetheless, weddings decided by the Court are also subject to the Indonesian regulations for marriage registration found in Article 34. The definition of "marriage determined by the court" in Article 35 Point A of the Population Administration Law further highlights that this refers to a union between individuals of different religions who have received approval from the court (Zeinudin & Santoso, 2021). The passage of this provision undoubtedly creates a lot of legal prospects for interfaith unions, which naturally runs counter to Marriage Law Number 1 of 1974, which forbids them.

The Constitutional Court's Decision No. 46/PUU-VIII/2010 highlights that marriage registration is not a determining factor in the validity of a marriage. This is because marriage registration is an administrative duty that the state has as part of its duty to guarantee the protection, enforcement, and fulfillment of citizens' human rights, as well as an authentic deed that can be used as evidence in court if an unintended event, like a divorce, occurs. As a result, the fundamental element that establishes whether or not a marriage is lawful will always revert to the parameters established by the couple's chosen faith.

When combined with the Supreme Court Circular Letter (SEMA) Number 2 of 2023, it gives judges guidelines for deciding on marriage registration applications involving individuals of various religious backgrounds. Judges of courts are prohibited by SEMA Number 2 of 2023 from approving applications to determine interfaith marriages. If a new marriage satisfies the requirements of the aforementioned legislation, it can be considered valid according to these standards. There is no rule governing the acceptance of interfaith marriage in the Marriage Law. Consequently, there is an attempt by couples planning to marry but practicing different religions to engage in a legal deceit.

The law of marriage cannot prevent someone from practicing their religion, nor can it prevent someone from changing their religion after marriage if it is followed in the same religion. Indeed, the law does not discuss or prohibit parties who used to be married of the same religion and then after marriage change religions, the marital status becomes different religions. However, such an act is an act that is categorized as legal evasion. (Hutabarat et al., 2022)

Interfaith unions based on temporary subordination are viewed as insulting religious convictions. Bringing and guiding good and true walkers based on Pancasila and the One Godhead is undoubtedly the goal of the law.

Interfaith couples that tie the knot overseas also exist. Article 56 (1) and (2) of the Marriage Law lists foreign elements in a marriage. It states that a marriage between Indonesian citizens outside of Indonesia is valid as long as it complies with the applicable laws of the country in which the marriage takes place, does not violate the Marriage Law's provisions, and requires registration one year after the marriage. (Ade Witoko & Budhisulistiyawati, 2019)

As a result, the two legal systems that are tied to the parties are nevertheless mentioned in the law's execution. In the meantime, the concept of *locus regit actum* which is predicated on the laws of the location of marriage (*lex loci celebration*) determines the formal criteria for marriage. According to Article 56 of the Marriage Law, "if it is carried out in accordance with the law in force in the country where the marriage is performed"

CONCLUSIONS AND RECOMMENDATIONS

According to Article 28J, Paragraph 2 of the 1945 Constitution, each person's exercise of rights and freedoms is subject to the limitations imposed by the law. The limitations are intended to meet reasonable demands in line with moral principles, religious beliefs, public order, security, and democracy while also guaranteeing acknowledgment and respect for the rights and freedoms of others. Despite being a human right, the ability to marriage is not liberally exercised. This implies that in order to protect other people's human rights, certain limitations must be acknowledged and adhered to. Regulation of this right also takes religious values into account. In contrast, the 1945 Constitution qualifies the right to marriage as a derogable right—one that can be restricted rather than a non-derogable one, which cannot be curtailed. This is due to the fact that the 1945 Constitution's Article 28I, paragraph (1), completely invalidates the right to marriage.

It is important for governments and relevant institutions to ensure that regulations and policies regarding interfaith marriage are applied consistently and fairly. There should be no sectarian discrimination or religious bias in its application. To reduce resistance to interfaith marriage, inclusive education is needed that emphasizes the importance of tolerance, interreligious understanding, and respect for differences.

FURTHER STUDY

This study has several limitations, this study focuses on one aspect of this phenomenon. More research is needed to examine other aspects of this phenomenon. Further research is needed to confirm these findings and to explore the underlying mechanisms.

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