LEGAL CERTAINTY IN THE VALIDITY OF INTERFAITH MARRIAGES PERFORMED ABROAD

Nur Asih1*, A. Uwiyono2, Wahyuni Retno Wulandari2

1Doctoral Student in Law, Faculty of Law, Trisakti University, Jakarta, Indonesia
2Law Program, Faculty of Law, Trisakti University, Jakarta, Indonesia

ABSTRACT

This research examines in more depth how legal certainty regarding the validity of marriage certificates of different religions is held abroad after being recorded and reported to the Population and Civil Registry Office (Dukcapil), where the couple resides upon returning to the homeland. With lex loci celebrationis and lex fori principles, the state is expected to accept, recognize, and respect as the basis for recording and registration with the Dukcapil. This type of research is normative research using a statutory and factual approach. The data collection method used literature study, field research, and interviews. Based on the results and discussion of the research, it is found that Indonesian Citizens (WNI) who enter into marriages of different religions abroad under International Civil Law (HPI) are valid and recognized. However, when viewed from the applicable marriage law in Indonesia, it is invalid because it still has to be based on religious law. However, sociologically, the community still recognizes and accepts the existence of interfaith marriages.

Keywords: Interfaith marriage, Legal certainty, Overseas, Validity

Introduction

In Indonesian society, marriage does not only occur between those who have the same tribe but between different tribes often occurs. In addition, marriages can occur between nations, often called mixed marriages of different nationalities, and marriages also occur from many different religions and beliefs, often called interfaith marriages / interfaith marriages. A marriage is not only a birth contract but also a spiritual link between husband and wife to build an eternal and happy family based on the One and Only Godhead, as stated in Article 2 (1) of Law No. 1 of 1974 [1].

It can be concluded from the sound of Chapter 1 and Chapter 2, verse 1, that marriage is sacred, not playful, and not a game. Indonesia is not a religious state, but Indonesia is a multi-religious country, where the government recognizes several religions that can be embraced and practiced by all components of society who come from various ethnicities and tribes with various conditions and different socio-cultural and historical life backgrounds [2].

The diversity of religions and creeds in Indonesia can have implications for marriages between followers of religions and creeds. Interfaith marriage is not new and has been going on for a long time in Indonesia's multicultural
society. However, this does not mean that interfaith marriages do not cause problems and even tend to always cause controversy among the public [3].

Indonesia does not yet have an explicit legal umbrella regulating the issue of interfaith marriage, which is very complex. So far, interfaith marriage couples have to fight more, both through legal and illegal efforts, so that their marriages get legal in Indonesia. Various ways can be taken by interfaith marriage couples, one of which is by carrying out interfaith marriages abroad.

This trick or method of implementing interfaith marriage abroad attracts the author to see, study, and analyze in terms of validity and legality recognized by the state if the implementation is outside Indonesian territory, even though this type of marriage is said to have occurred legal smuggling due to a legal vacuum in the legal regulation of marriage in Indonesia.

Indonesia’s marriage law only legalizes marriages performed according to the laws of their respective religions and beliefs and prohibits interfaith marriages. However, the problems arising from interfaith marriage make the perpetrators of interfaith marriage choose many ways to continue their marriage, including by carrying out the marriage in a country that only has civil or civil law requirements in carrying out marriage and does not involve religious requirements in this matter. As a result of the law, there is legal smuggling in the legal regulations of marriage in Indonesia, where the legal requirements for marriage must still be based on their respective religions and beliefs. Marriage registration is an administrative requirement to obtain recognition from the state to protect its citizens and obtain legal certainty, such as the status of children born, property in marriage, and inheritance.

For interfaith marriages performed abroad, the law provides space that can be used as a means to legalize such marriages. Article 56 of Law No. 1 of 1974 [1] states that a marriage performed outside Indonesia between two Indonesian citizens or an Indonesian citizen and a foreign national is valid if it is carried out according to the applicable law in the country where the marriage took place and for the Indonesian citizen-state does not violate the provisions of this law. In interfaith marriages, Article 56 (1) causes a violation of order because it does not follow Article 2 of Law No. 1 of 1974 [1] concerning the legal requirements for marriage. Confusion in regulating marriage law in Indonesia has become a problem that has not been resolved until now because reality or phenomena in society and existing legal regulations are not appropriate or far from expectations.

Interfaith marriages carried out abroad are methods that are eventually widely used by perpetrators of interfaith marriages. This is because of the conditions that must be taken if the marriage is carried out in Indonesia. Many interfaith marriages that are carried out abroad are carried out by artists; although the costs incurred are quite large, the implementation process is fairly easy and not complicated. Therefore, this is a way that is in great demand. The countries that are widely targeted to hold interfaith marriages are Singapore, Hong Kong, America, Australia, England, and Germany.

If we look back at Article 56 Paragraph 2 of Law No. 1 of 1974 [1], it only mentions being recorded at the Civil Registration Office. In this case, the Population and Civil Registration Office only accepts reports of marriages held abroad, and the marriage reporting letter is not a marriage certificate but a marriage reporting letter issued by the local Dukcapil. With the existence of SEMA No. 2 of 2023 [4] concerning the prohibition of judges from legalizing interfaith marriages, article 35a of Law No. 24 of 2013 automatically cannot carry out its functions where interfaith marriages held within Indonesian territory cannot be registered at the local Civil Registration Office.

Concerning the existing legal arrangements on interfaith marriages relating to the implementation of interfaith marriages that take place abroad with interfaith marriages carried out domestically, there are legal consequences on the validity of interfaith marriages in terms of legal protection and certainty in society.

When viewed from the recording and reporting arrangements to the Civil Registration Office, it can be seen that there are religious arrangements carried out abroad between Law No.1 of 1974 Article 56 Paragraph 2 [1] and Administrative Law No. 23 of 2006...
Article 37 [5]. Therefore, the inequality that occurs through the dualism of legal regulations certainly brings new legal problems for the validity of interfaith marriages carried out abroad, especially in obtaining legal certainty for the perpetrators of interfaith marriages.

Therefore, the urgency of the research or the importance of the research carried out is to analyze the phenomenon that is often done by some people who still carry out interfaith marriages and how the attitude of the Government, both legislative and judicial, views this family law problem which is still far from perfection so that the certainty and legal protection of perpetrators of interfaith marriage couples continue to fight for it. As for the background description above, the purpose of this study is to examine more deeply how legal certainty regarding the validity of interfaith marriages held abroad after being recorded and reported to the Population and Civil Registration Service (Dukcapil) where the couple resides and upon returning to the country. The limitation of this study is regarding the validity of interfaith marriages held abroad.

Based on the research findings described, the academic question arises: How is the legal effectiveness of the legality of interfaith marriages carried out outside Indonesia based on the principle of legal certainty?

Methods

This type of research uses normative legal methods with a doctrinal approach, namely the statutory approach and the fact approach with the qualitative analysis concept. The subjects of this study were the Population and Civil Registration Office, as well as perpetrators of interfaith marriages. Data were collected by interviews, observations, and literature studies or documentation. All data that has been processed was then analyzed in a descriptive-analytical way. The analysis stages started with data collection, data processing/reduction, data presentation, and conclusion drawing/verification.

Result and Discussion

Holding interfaith marriages abroad is indeed a very popular thing to do. This is because the implementation is easier than in Indonesia, and the requirements of the same religion or one belief are unimportant for some countries, such as Singapore. As is known, Singapore is a secular country that allows interfaith marriage and is neutral in religious matters. Many couples hold their marriages because they are against the rule of law in Indonesia. It can be seen that many Indonesian actresses hold their marriages outside the territory of Indonesia. After the marriage, upon arrival in the homeland, the couple must register their marriage at the Civil Registry Office in the area where they live.

In the case of marriage in Indonesia, religious differences are one of the popular obstacles to opposite-sex relationships. The legal arrangements in Indonesia do not provide clear rules regarding interfaith marriage, so couples of different religions can carry out marriages to their will. So, it can be said that in marriages carried out abroad, marriage laws provide space that can be used as a means to legalize the marriage. Article 56 (1) of Law No. 1 of 1974 [1] explains in the first phrase that the marriage of two Indonesian citizens (WNI) or an Indonesian citizen with a foreign citizen (WNA) is valid if, according to the applicable law in the country where the marriage took place. In this case, the principle of Private International Law (HPI), known as the lex loci celebrationis principle, applies, meaning that every civil law act (marriage) is valid and subject to the rules where the act is committed. In the second phase, it is explained that Indonesian Citizens (WNI) do not violate the provisions of this law.

Look at marriages held abroad, for example, in Singapore, in addition to the prospective spouse preparing the conditions requested by the country, for example, having to stay at least 20 consecutive days in Singapore. The couple must also take care of the administration online at the Registration for Married building. This online marriage service is not yet known in Indonesia. The convenience obtained for interfaith couples, based on data obtained by the author, is often considered a smooth way to realize their hopes and aspirations to achieve the love they want by maintaining their respective religions. The next problem is that after the marriage has been carried out outside the
The territory of Indonesia, but the legal regulations in force in Indonesia, the couple must report their marriage within 1 year after the couple returns to their homeland. Their proof of marriage must be registered at the Marriage Registration Office where they live [6].

However, Marriage Law No.1 of 1974 [1] only regulates marriage registration, talaq, and reference, which means, in this case, only events, not legal material. It can be said, then, that marriages performed abroad by those with partners of different religions remain legal smuggling, as both spouses evade national law. The marriage is valid according to the law of the local country where the marriage took place. However, it still does not follow Article 2 Paragraph 1 of the 1974 Marriage Law in force in Indonesia. When reviewed in Article 83 of the Civil Code, marriages performed outside Indonesia between Indonesian citizens and other nationals are valid if the marriage is carried out according to the country's methods or rules and does not violate the provisions of the Civil Code [7].

Similarly, the Head of the Legal Bureau of the Ministry of Foreign Affairs of the Republic of Indonesia stated that every marriage registered in a country, if carried out according to local laws, is valid worldwide. This has been affirmed in Article 56 (1) of the Marriage Law No.1 of 1974 [1]. Such a marriage is valid if it is carried out according to the laws in force in the local country and does not violate Indonesian laws and regulations. Achieving the expected legal certainty is certainly not easy for interfaith marriage couples who choose to carry out it outside Indonesia. Formal and material requirements must be met. Formal requirements are stipulated in Article 18 AB, which is subject to the law where the marriage takes place (lex loci celebrationis), and material requirements are regarding the age limit for marriage applicable in national law. This condition must be met by Indonesian citizens who marry abroad. So, it is very likely that it is formally legal in the country where the marriage occurred, but it is not valid under Indonesian law. While the material conditions are violated, the marriage can be annulled and not registered according to the time limit prescribed by the marriage law.

For couples who marry abroad with the Administrative Law, this is one of the reasons they avoid going abroad. However, with the enactment of Law No. 23 of 2006 [5] concerning Population Administration, interfaith couples still have to report to the Population and Civil Registration Office no later than 30 days after arriving in Indonesia. Meanwhile, marriages held abroad still require recording, and registration is carried out by representatives of the Republic of Indonesia. The recording is carried out in the Marriage Certificate Register; a marriage certificate citation is issued. This is then brought to the Population and Civil Registration Office no later than 30 days after arriving in Indonesia.1

The recording mechanism after returning to Indonesia has differences; Law No.1 of 1974 [1] indicates that within 1 year of returning to Indonesia, interfaith marriages that have taken place abroad must be immediately recorded and re-registered at the Population and Civil Registration Office. Meanwhile, in the Administrative Law, 30 days is given to record and report the marriage event. Moreover, the interfaith marriage couple faces administrative fines if it is not carried out. In this case, the local government is given the authority to regulate the amount of the administrative fine. Even the local government, in accordance with Presidential Regulation No. 25 of 2008 [8], makes the fine a source of Regional Original Revenue (PAD). However, since the issuance of Law No. 24 of 2013 [9], the fine has not been reinstated, but Dukcapil as a form of community service.2

Based on interview results3, regarding the period of reporting to Dukcapil upon arrival in the country, there is no standard rule where Dukcapil, as a community service center, will still receive reports from perpetrators of

1 With the enactment of Law No. 24/2013 concerning Amendments to Law No. 23/2006 concerning Population Administration, this time period was shortened to 30 days (Article 37 Paragraph 4).

2 Based on Interview Results with Disdukcapil 19 February 2024.

3 Results of interviews with the Bekasi City Population and Civil Registration Service, March 1 2024.
interfaith marriage couples. Furthermore, Dukcapil will issue a certificate of marriage reporting.

Although Indonesia does not recognize interfaith marriages, recording mechanisms can regulate how the state protects its citizens in terms of marriage. The validity of a marriage, especially interfaith marriages held abroad, is a priority because it involves legal certainty and legal protection for these couples. This concerns how the administration must carry out legal actions, for example, regarding the status of children born, inheritance rights, data on ownership of property in marriage, and administrative data as an Indonesian citizen such as KK, KTP, Birth Certificate which is certainly very important to obtain the same position before the law [7].

Regulation and regulation of the validity of interfaith marriages performed abroad is a top priority for the government and civil relations with foreign countries involved in executing the marriage in the place where it is performed. The Consular Ministry of Foreign Affairs of the Republic of Indonesia has a role in safeguarding and protecting its citizens who have committed a legal act in the form of a marriage bond. The official letter of registration and quotation of marriage certificates from the Consular Ministry of Foreign Affairs of the Republic of Indonesia is an official document from the state whose arrangements have been explained in Law No.1 of 1974 [1] Article 56 (2) and strengthened by Admininduk Law No. 23 of 2006 Jo Administrative Law No. 24 of 2013.

Furthermore, the validity of interfaith marriages abroad certainly has legal consequences for legal events. Registration of the marriage to the local Population and Civil Registration Office where they live is a condition for the validity of the marriage. The issuance of Supreme Court Circular (SEMA) Number 2 of 2023 [4] certainly brings new changes that the Supreme Court of the Republic of Indonesia further reaffirms. Where previously, with the issuance of Constitutional Court decisions No. 68/PUU-XII/2014 and No. 24/PUU-XX/2022, which rejected applications for the legalization of interfaith marriage by all District Courts. The issuance of SEMA No. 2 of 2023 provides certainty and unity in applying the law in adjudicating applications for marriage registration between people of different religions and beliefs [10].

Thus, judges must be guided by the provisions of SEMA. If indeed the judge, as the ratification hand of the Population and Civil Registration Service Law No. 24 of 2013 [9], is unable to carry out the task of determining the ratification of applications for interfaith marriage, then immediately article 35 letter a in the Administrative Law cannot be carried out due to the legalization of interfaith marriages recorded by Dukcapil due to permission from the Court [11].

For those who have performed interfaith marriages that are not recorded in the population administration and civil registry records, it will have a broad impact on the legal consequences that occur, for example, regarding the rights as citizens to obtain clear legal status such as Identity Cards, Family Cards, marriage certificates recognized by the state. This birth certificate and others have a broad impact on the status of the position of the child born and the position of property in marriage, which must all be protected by the state, where, of course, legal certainty and justice are the expectations for perpetrators of interfaith marriage in demanding their rights as citizens by having equal standing before the law [12].

Interfaith marriages performed abroad adhere to civil marriage without adhering to religious marriage. In secular countries, religion is an individual and private matter because religion is a right to privacy owned by every citizen. It is different from marriage law in Indonesia, as stated in Article 2 (2), which states that marriage is valid according to the laws of each religion and belief. When related to interfaith marriages held abroad whose legal application uses Article 56 paragraph 1, it is explained that if marriages held outside the territory of Indonesia between an Indonesian Citizen (WNI) and a Foreign Citizen (WNA) or both are Indonesian citizens, then the marriage is considered valid and uses the law of the country where the marriage is carried out, given the concept of marriage held abroad using the perspective of Private International Law (HPI) [6], where in this case the territorial element is very touching because Indonesian citizens carry out the marriage abroad. So, it can be explained that the
application of law to foreign countries' decisions is something the Indonesian state accepts. In this case, it is a quotation of a marriage certificate issued by the country where the marriage occurred. The principle of *lex loci celebrationis* is used to designate the "place" where the marriage is performed. This is considered to be convenient because any citizen, when his country adheres to this principle, can marry according to local law so that the laws of his home country do not bind the perpetrator of the prospective spouse.

Meanwhile, concerning interfaith marriages carried out abroad with the principle of continuing the legal situation, where the rights obtained are applied in marriages carried out abroad between Indonesian citizens of different religions, it will still be considered valid when the couple returns to Indonesia. This is applied in Dukcapil regarding marriage registration abroad, where upon arrival in Indonesia, one must report and register the marriage; the Civil Registration Office also directly records the marriage. If it is connected with Article 56 Paragraphs 1 and 2 No.1 of 1974 [1], where a marriage performed abroad is considered valid if it is carried out based on the law of that country, and in Phrase 2, it is affirmed that the marriage by an Indonesian citizen is not contrary to national legal regulations. The article explains that the validity of marriage abroad depends on whether it is in accordance with Indonesian law or whether rights obtained abroad are applied in Indonesia. Phrase 2 of Article 56 of the Marriage Law explains that interfaith marriage is clearly contrary to Article 2, paragraph 2, where marriage must be based on religion and belief. The reality is that interfaith couples held abroad still maintain their respective religions. This is often said to be an interfaith marriage carried out abroad, a legal smuggling attempt [6].

With the quotation of a marriage certificate that has been issued from the country where interfaith marriage takes place and is also recorded in the Consular General of the Republic of Indonesia (KJRI) in the local country, of course, the Civil Registration Office must receive the report based on the formal requirements that have been completed, including a quotation of a marriage certificate from that country, a certificate of registration from the Indonesian Consulate General in that country, ID card, and spouse photo pass.

In this case, as a state of law that protects its citizens, the state has a full obligation to ensure legal certainty in realizing the rights of its citizens who have carried out their marriages abroad. The idea of law is still expected in Indonesia's legal society, which has a pluralistic legal system.

**Conclusion**

Legal certainty in the validity of interfaith marriage with marriage methods carried out outside Indonesia is still a way that is often done by artists or other interfaith marriage actors in Indonesia who are certainly ready with a lot of funds / expensive to get a marriage certificate issued.

The official marriage certificate obtained from the country where the marriage occurred is valid and registered at the local Consulate Office of the Indonesian Embassy. After the perpetrator of interfaith marriage arrives in Indonesia, it must be reported and recorded back to the local Disdukcapil. However, this is still contrary to Article 2 of Law No. 1 of 1974, even said to have occurred legal smuggling because a valid marriage must still be based on the laws of each religion and belief.

Regarding the reporting period, it is not standard and rigid because Dukcapil, as a community service center, will accept the reporting of the couple who reported their marriage. If it is not reported, the interfaith marriage is not recorded in the population administration database at the local Dukcapil. As for the legal consequences, the child born from the marriage has the status of "child of a mother, " meaning it only has a legal relationship with the mother and her mother's family.

So, the legal certainty expected by many perpetrators of interfaith marriage couples is far from expected; it's just that reporting and recording by Disdukcapil officers are still being carried out. The quotation of the marriage certificate obtained from the country where the marriage was performed is valid. It has legal force after being reported and recorded. The perpetrators of interfaith marriage couples get a certificate reporting the marriage that
occurred from the marriage issued by the local Disdukcapil.

References