

Interreligious Marriage (Between Muslim and Non-Muslim): A Comparative Study on Legal Framework and Enforcement of The Law in Malaysia and Indonesia

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ABSTRACT

This article undertakes a comprehensive examination of the legal frameworks governing interreligious marriages between Muslims and non-Muslims in two Southeast Asian countries, Malaysia and Indonesia. The research focuses on the legislative provisions, judicial decisions, and enforcement mechanisms that shape the landscape of interreligious marriage in these predominantly Muslim-majority nations. The comparative analysis aims to shed light on the differences, and evolving trends within the legal systems of Malaysia and Indonesia concerning interreligious marriages even though both countries perceive the same basic Islamic law. The study employs a mixed-methods approach, combining doctrinal legal analysis with empirical insights derived from case studies and article reviews. Furthermore, the study explores the judicial interpretation and application of these laws on the registration level that have influenced societal attitudes towards interreligious marriage. The research delves into the legal impact of legal frameworks related to interreligious marriages in both countries, considering the influence of cultural, religious, and political factors on the development of these laws. Last but not least, the study provides suggestions for improvement in the enforcement of interreligious marriage law in Malaysia and Indonesia.

Keywords: Interreligious Marriage, Muslim, non-Muslim, Malaysia, Indonesia

INTRODUCTION

The marriage of two individuals who practice different religions is known as an interreligious marriage. It is a complicated subject with many ramifications for society, culture, and the law. Interreligious marriage is a particularly important issue in Malaysia and Indonesia as Malaysia and Indonesia are two of the largest countries in Asia with majorities of Muslims. Interreligious marriages in Malaysia and Indonesia are influenced by the unique social, cultural, and legal contexts of each country. While both nations have a predominantly Muslim population, there are significant differences in how interreligious marriages are handled. Even though the percentage of inter-religious marriages is not that high in both countries, it is increasing in Indonesia in essence of differences of opinion about the implementation of interreligious marriages (Tisnadibrata, 2023). Research on interreligious marriage in Malaysia and Indonesia is still in its early stages. However, there is a growing body of research that is exploring the topic from a variety of perspectives.

This paper will underscore a comparative study of laws governing interreligious marriage in Malaysia and Indonesia which are two diverse Southeast Asian countries rooted in different cultural norms. By examining the law that governs interreligious marriages and its implications we aim to shed light on the current legal frameworks and evaluate the effect and impact of inter-religious marriage on individual and family institutions,

and societies in particular in Malaysia and Indonesia.

Malaysia and Indonesia share similarities in terms of their predominantly Muslim populations and legal systems influenced by Islamic principles (Barlinti, 2011). However, there are notable differences in how interreligious marriages are approached in each country. In Malaysia, interreligious marriages between Muslims and non-Muslims are strictly prohibited and regarded as a violation of the Islamic teachings of Imam Syafie school and legal principles unless one of the parties converts to Islam. Indonesian law on the other hand as derived and influenced from the Imam Shafie school also prohibits interreligious marriages between Muslims and non-Muslims. However, throughout all these years there have been a lot of cases of interreligious marriage between Muslims and non-Muslims registered in Indonesia (Kadriah et al., 2021).

Ultimately, this research proposal intends to conduct an all-encompassing comparative analysis of interreligious marriage legality in Malaysia and Indonesia. Our goal is not only limited to examining how these countries approach this matter customarily or legally but also evaluating the effect of interreligious marriage on an individual, and family institutions society in Malaysia and Indonesia and assessing alternative approaches for this issue. The outcome of our analysis can impact future policies related to interreligious marriage concerns that can benefit society in Malaysia and Indonesia.

In the context of two Muslim-majority countries, Malaysia and Indonesia, the issue of inter-religious marriage presents a multifaceted challenge that is characterized by a significant absence of clarity and a paradoxical relationship between codified regulations and the practical enforcement of laws. The issue of interreligious marriage in Indonesia and Malaysia represents a significant and tremendous lacuna in the legal landscape. Although codified regulations exist, there remains an absence of clear guidelines and enforcement mechanisms and procedures, which has culminated in uncertainty in the lives of those affected.

The paradox arises from the juxtaposition of constitutional provisions that uphold the freedom of religion with specific regulations, such as Section 10 of the Islamic Family Law Act in Malaysia and the Decision of the Indonesian Ulema Council Number 4/MUNAS VII/MUI/8/2005, dated July 28, 2005, and Compilation of Islamic Law Article 40 (c) and Article 44, which expressly forbid inter-religious marriages (Mardiono, 2023). However, off-centre and deviantly, there were a few issues and cases that arose in regard to the enforcement of these laws in both Malaysia and Indonesia⁷.

The Development of Governing Law of Interreligious Marriage in Malaysia and Indonesia

The Historical Background of the Law of Interreligious Marriage in Malaysia and Indonesia.

The historical background of the law of marriage in Malaysia and Indonesia is shaped by a combination of historical, cultural, and religious influences. Both countries have diverse populations with a mix of ethnicities and religions, and their legal frameworks for marriage have evolved over time. Malaysia and Indonesia are two of the largest countries in Asia with majorities of Muslims. Interreligious marriages in Malaysia and Indonesia are influenced by the unique social, cultural, and legal contexts of each country. While both nations have a predominantly Muslim population and are based on Syafi'i schools, there are significant differences in their marriage law.

Malaysians are accustomed to diverse cultural practices as each race has its customs and rituals which are practiced harmoniously in the multi-racial society. Due to the diversity, people of different racial backgrounds profess different religions with understanding and tolerance. In Malaysia, Islam is the "religion of the Federation," the Malaysian constitution guarantees religious freedom in this secular nation. Based on data from the 2020 Census, roughly 63.5% of people identify as Muslims. In Malaysia, the majority of Muslims are Sunni, belonging to the Shafi'i school of jurisprudence; the other 18% are nondenominational. With 18.7% of the population, Buddhism is the second most popular religion. Of the many religions, 9.1% adhere to Christianity, 6.1% to Hinduism, and 1.3% to traditional Chinese religions such as Confucianism and Taoism, while the remaining 2.7% fall into the category of unaffiliated, which might refer to "nothing in particular," atheism, or agnosticism (Find Easy, 2023). Therefore, Malaysia has separate jurisdiction for Muslims and non-Muslims regarding family matters including marriage (Subramaniam, 2018).

It is not much different from Indonesia because Indonesia also has multiple races and religions. Indonesia, being a diverse archipelago with various ethnicities and religions, upholds the principles of Pancasila, which is the state ideology, and Bhinneka Tunggal Ika, the unity in diversity (Abdurrahman et al., 2018). These principles guide the legal system to accommodate the country's diverse population. Indonesia also recognizes several religions, including Islam, Christianity, Hinduism, Buddhism, and Confucianism. Each religious community has its marriage laws, and couples must follow the regulations of their respective religions when getting married (Aini et al., 2019). However, different from Malaysia, Indonesia only has one united jurisdiction that governs marriage matters for Muslims and non-Muslims in all Indonesian provinces.

The Shafi'i school of Islamic jurisprudence (fiqh) has had a significant influence on the development of Islamic law in various parts of the Muslim world, including Indonesia and Malaysia. The Shafi'i school is one of the four major Sunni schools of jurisprudence, and it is named after its founder, Imam Al-Shafi'i. Malaysia officially follows the Shafi'i school in matters of personal law for Muslims. The Shafi'i principles are incorporated into the legal system, and family law matters such as marriage, divorce, and inheritance are governed by Shafi'i jurisprudence (New Straits Times, 2016). Although Indonesia is known for its diverse cultural and religious landscape, the Shafi'i school has had a notable impact on the country's legal system, particularly in regions with a significant Muslim population. The Indonesian government recognizes the diversity of Islamic legal traditions, but the Shafi'i school has influenced the formulation of some Islamic laws, especially in regions where it is the predominant school of thought. In both Indonesia and Malaysia, the Shafi'i school has played a crucial role in shaping the legal and religious landscape regarding the interreligious marriage issue.

Islam views marriage as a solid, sacred covenant that promises a lifetime of happiness, safety, serenity, and love. It is human nature for marriage to occur in order to provide God Almighty's slaves with a sense of love and compassion. One of Islam's core teachings on finding a partner is based on their religion. This has been stated in hadith Sahih Al-Bukhari. The Prophet (ﷺ) said, "A woman is married for four things, i.e., her wealth, her family status, her beauty, and her religion. Therefore, let you choose based on his religion so that you may be fortunate" (al-Bukhari, 7: 1422).

Therefore, the idea that religion plays the primary role in selecting a spouse for a family is becoming more and more significant. Nonetheless, scholars have different views on whether it is acceptable to wed someone who practices a different faith. Interreligious marriage between a Muslim man and a member of the book, according to classical literature, most scholars allow this marriage and some only consider it makruh (Saleh et al., 2022). This issue has been mentioned in al-Quran, Surah Al-Maidah verse 5.

According to scholarly interpretations, this verse allows for the marriage of Ahlul Kitab women, i.e., Jewish and Christian women. Al-Qurtuby reports Ibn Abbas as saying that the women of the book are those who reside in Muslim regions (Darul 'Ahd), not in non-Muslim nations. Jumhur scholars interpret the passage to mean that Muslim males are not allowed to marry women who worship idols. Instead, they should not marry polytheistic women until they believe. In the interim, Surah Al-Maidah verse 5 states that women from the Ahli Kitab are allowed to marry Muslim men. However, there are different views among other jurists regarding the issue of interreligious marriage. Some scholars agree that a Muslim man may not marry a non-Muslim woman and vice versa (Saleh et al., 2022). This viewpoint is founded on Al-Quran surah Al-Baqarah verse 221 in which it is said that "do not marry polytheistic women until they believe; for a believing slave-woman is better than a free polytheist, even though she may look pleasant to you. And do not marry your women to polytheistic men until they believe, for a believing slave-man is better than a free polytheist, even though he may look pleasant to you. They invite you to the Fire while Allah invites you to paradise and forgiveness by His grace. He makes His revelations clear to the people so perhaps they will be mindful."

In addition, some jurists think that Ahlul Kitab women are difficult to find nowadays because the books of the Christian and Jewish religions have been changed and developed according to the times and are no longer the same as Ahlul Kitab who lived during Prophet Muhammad's time and what was meant in the Qur'an surah al-Maidah verse 5. Marriage between spouses of different religions is prohibited and against the principle of beliefs of the Shafie sect (Ahli Sunnah Wal Jamaah) (Muntaqo, 2020). In Malaysia and Indonesia, it is illegal because both countries are using the Shafie sect as their based on legal framework regarding marriage matters.

Marriage in Islam is seen as a means of spiritual and emotional fulfillment, as well as a way to establish a family and maintain social stability. The principles mentioned above reflect the Islamic perspective on interreligious marriage, but practices may vary based on cultural and regional traditions and belief of people in each country.

Governing Law and Judicial Precedent of Interreligious Marriage in Malaysia

The Malaysian Federal Constitution of 1957 is the supreme law of the land which establishes the division of the Executive and Legislative functions between the Federation and the States. The Federation is in charge of criminal and civil laws, including family law, except for Muslim law and indigenous personal laws and customs, which are under the jurisdiction of the States.

The Federal Constitution of Malaysia guarantees freedom of religion to all people in Malaysian citizens. It is stated in Article 3 of the Malaysian Federal Constitution. According to Article 3(1), Islam is the religion of the Federation; but other religions may be practiced in peace and harmony in any part of the Federation. In addition, Article 11(1) of the Federal Constitution also states that Every person has the right to profess and practise his religion and, subject to Clause (4), to propagate it. These two articles of the Federal Constitution give rights to Malaysian citizens to profess and practice their religion but only Muslims can propagate Islam openly (Subramaniam, 2018).

Malaysia has a dual legal system, where Islamic law (Sharia) and civil law coexist. Islamic family law governs marriages involving Muslims, while civil law applies to non-Muslims. The power in matters of religion, particularly for Muslims, lies largely with the state authorities and the Sharia courts. The Malaysian Federation Constitution gives the power to state authorities regarding Islamic matters. Article 3(2) of the federal constitution states that in every State other than States not having a Ruler the position of the Ruler as the Head of the religion of Islam in his State in the manner and to the extent acknowledged and declared by the Constitution of that State, and, subject to that Constitution, all rights, privileges, prerogatives, and powers enjoyed by him as Head of that religion, are unaffected and unimpaired; but in any acts, observances of ceremonies with respect to which the Conference of Rulers has agreed that they should extend to the Federation as a whole each of the other Rulers shall in his capacity of Head of the religion of Islam authorize the Yang di-Pertuan Agong to represent him. Moreover, for the states that do not have a Ruler, it is YDPA who will be the head of the religion of Islam in those states as stated in Article 3(3) of the Constitution of the States of Malacca, Penang, Sabah and Sarawak shall each make provision for conferring on the Yang di-Pertuan Agong the position of Head of the religion of Islam in that State.

As stated before, there are two legal systems that co-exist in Malaysia, namely, the civil law system for non-Muslims and the Syariah law system for Muslims. Civil law comprised of the common law of England and the English rules of equity which were partially codified into legislation. Non-Muslims in Malaysia, which include communities such as Hindus, Buddhists, Christians, and others, are subject to civil law regarding marriage and family matters. The civil law framework is governed by the Law Reform (Marriage and Divorce) Act 1976. The marriage between non-Muslims needs to be registered under this law. For Muslims in Malaysia, matters related to marriage and family fall under the jurisdiction of Sharia law. Each state in Malaysia has its own Sharia laws and courts, and decisions made by Sharia courts are generally binding on Muslims. The Islamic Family Law (Federal Territories) Act 1984 is one of the statutes that provides the legal framework for Islamic family matters in the Federal Territories (Subramaniam, 2018).

Based on Section 3 of Law Reform (Marriage and Divorce) Act 1976 states that this Act shall not apply to a Muslim or to any person who is married under Islamic law and no marriage of one of the parties which professes the religion of Islam shall be solemnized or registered under this Act. Therefore this Act only governs marriage between non-Muslim. However, for Muslim marriage, Section 1 of the Islamic Family Law (Federal Territories) Act 1984 said that nothing in this Act shall affect the validity of any Muslim marriage solemnized under any law wheresoever prior to the appointed date. It clearly shows that the Islamic Family Law (Federal Territories) Act 1984 only governs Muslim marriage. In conclusion, interreligious marriages involving at least one Muslim partner are generally not recognized in Malaysia as there is a clear separate jurisdiction that governs Muslim and non-Muslim marriage and the conversion of the non-Muslim partner to Islam is often a requirement for legal recognition.

Governing Law of Inter-Religious Marriage in Indonesia

In Indonesia, the Indonesia Marriage Law 1974 (Undang-Undang Perkawinan) governs marriage matters between Muslims and non-Muslims. Unlike Malaysia, Indonesia does not have separate laws that govern marriage for Muslims and non-Muslims. Interreligious marriages between Muslims and non-Muslims basically are not permitted by the Indonesian court. Article 2(1) of the 1974 Marriage Law provides that "a marriage is legitimate if it has been performed according to the laws of the respective religions and beliefs of the parties concerned." This is emphasized in the implementing regulations, which require that the marriage ceremony shall be performed according to the laws of the respective religion and Faith. It has been said that these clauses forbid marriages between believers of different religions. This is due to the fact that a marriage ceremony needs to follow a recognized religion in order for it to be registered, and most of the time, at least one of the parties will follow a religion that prohibits marrying someone who practices a different faith.

The 1974 Marriage Law, however, is still up for interpretation and application because it does not specifically prohibit or permit marriage between individuals of different religions. One possible interpretation of Article 2(1) of Indonesia Marriage Law 1974 as an alternative to an outright ban would be that it just stipulates that marriages must be performed in accordance with religious law, meaning that "if, according to the religious law, there is no hindrance to the marriage, the marriage can take place." In addition, based on Government Regulation Number 9, 1975 on marriage stated that 'the marriage ceremony shall be performed according to the laws of the respective religion and faith', some people interpret this provision means marriage must be held between two people who have the same faith but some people interpret that the marriage is valid if it is solemnized by two separate solemnizations based on their faith. For example a couple of Muslims and Christians, it is valid if the solemnization is held at the church and in a Muslim way. Based on the discussion above, these unclear provisions cause misunderstanding and disunity among Indonesian citizens regarding the issue of interreligious marriage (Kusuma, 2018).

The Enforcement of Governing Law of Inter-Religious Marriage in Malaysia and Indonesia

The Comparison on the Issue of Enforcement of Interreligious Marriage Regulations in Malaysia and Indonesia

Every nation, including Indonesia and Malaysia, has marriage-related regulations that are applied in accordance with the suitability of the national populace. Despite the fact that the Shafi'i sect provides the fundamental foundations of Islamic law in Malaysia and Indonesia, each nation has its own unique perspectives and interpretations, which result in different legal frameworks and legal procedures. Malaysia practices a dual legal system where Islamic law (Sharia) applies to Muslims, and civil law applies to non-Muslims. For Muslims, the Islamic Family Law governs marriage, divorce, and other family matters and non-Muslims in Malaysia are subject to civil laws regarding marriage. The civil marriage registration is governed by the Law Reform (Marriage and Divorce) Act 1976 (Subramaniam, 2018). However, in Indonesia, The Marriage Law of 1974 (Undang-Undang Perkawinan) is the national law that regulates marriages in Indonesia. It applies to all residents of Indonesia, regardless of their religious affiliations. Since both countries have different types of legal frameworks, therefore, each country has a different approach to enforcing the law. The registration section is where the laws are enforced.

In Malaysia, the separate jurisdiction that governs Muslims and non-Muslims known as Syariah law and civil law, also creates different courts to handle marriage and family matters. The Islamic Family Law Act 1984 gives discretion to the Syariah court in handling the marriage solemnization for Muslims. It is stated under section 6(2) of The Islamic Family Law Act 1984; that such marriage, if valid under the law under which it was solemnized, shall be deemed to be registered under this Act. Besides, section 4(2) of the Law Reform (Marriage & Divorce) Act 1976 stated that such marriage, if valid under the law, religion, custom, or usage under which it was solemnized, shall be deemed to be registered under this Act. This provision gives jurisdiction to the Civil Court to handle the marriage solemnization for non-Muslims.

For both Muslims and non-Muslims, the marriage must be registered at the National Registration Department of Malaysia (Jabatan Pendaftaran Negara) following the solemnization of the union in accordance with their

respective religions and customs. However, for Muslims, there is an additional requirement to register their marriage with Islamic authorities at the state level, specifically with the Department of Islamic Religious Affairs (Jabatan Agama Islam). This dual registration process reflects the dual legal system in Malaysia, where civil matters, including marriage, are regulated by national authorities, while Islamic matters are governed by state-level Islamic authorities for Muslims. This ensures compliance with both civil laws and Islamic principles. In conclusion, there is no room for interreligious marriage to be performed or registered in Malaysia since the country strictly distinguishes between the laws and procedures governing marriage for Muslims and non-Muslims (Malaysia.gov.my, 2024).

When it comes to marriage registration, Indonesia and Malaysia approach things slightly differently. As stated before, Indonesia has a uniform law which is a national law known as The Marriage Law of 1974 (Undang-Undang Perkawinan) that regulates marriages in Indonesia. It applies to all residents of Indonesia, including Muslims and non-Muslims. However, at the registration level, different from Malaysia, Indonesia has a separate registration office for Muslim non-Muslims. This gives rise to the issue of interreligious marriage in Indonesia. The Office of Religious Affairs (Kantor Urusan Agama) only can register marriages between Muslims. It only governs Muslim marriage registration and rejects marriage between two people who have a different faith. For a civil marriage, couples need to go to the Civil Registry Office (Kantor Catatan Sipil) and submit the required documents, such as identity cards, and birth certificates to get a marriage certificate.

This is stated in Article 2, paragraph (2): "Applicable laws and regulations record every marriage." However, this article did not explain further the registration provisions, including the legal regulations for registering interreligious marriages. When it comes to interreligious marriage between Muslims and non-Muslims the couple cannot register their marriage in the Office of Religious Affairs (Kantor Urusan Agama), therefore they will register their marriage at the Civil Registry Office (Kantor Catatan Sipil). This is because, in Supreme Court Decision No. 1400K/PDT/1986, the Supreme Court of Indonesia once allowed the Civil Registry Office to perform interreligious marriages. This causes a misunderstanding and a lacuna or loophole in Indonesian law about interreligious marriage.⁵² The Supreme Court Decision No. 1400K/PDT/1986, allowing the Civil Registry Office to perform interreligious marriages, reflects a pragmatic approach to address the issue. However, as has been pointed out, the lack of specific legal regulations for registering interreligious marriages can lead to confusion and a legal loophole in Indonesia.

The Legal Impacts of The Enforcement of Interreligious Marriage Regulations in Malaysia and Indonesia

The Legal Impacts of the Enforcement of Interreligious Marriage Law in Malaysia

Marriages have traditionally been formed between people of the same race and faith. Syariah Law forbids Muslims from getting involved in interreligious marriages. Interreligious marriages, on the other hand, have become a frequent practice among non-Muslims; for example, a Buddhist is allowed to marry a Christian without having to convert to Christianity unless he or she desires to do so out of choice, convenience, or mutual understanding. Non-Muslim marriages are monogamous and governed by civil law, specifically the Law Reform (Marriage and Divorce) Act of 1976, whereas Muslim marriages are governed by Syariah Law, and polygamy is authorized under certain situations as represented in State Enactments. A non-Muslim who wishes to marry a Muslim must convert and profess Islam before the marriage is contracted. There have been numerous incidents of non-Muslims converting to Islam for the sake of marriage.

A problem emerges when one of the partners in a non-Muslim marriage converts to marry a Muslim before the civil marriage contracted under civil law is terminated (Subramaniam, 2018). On the one hand, the non-Muslim spouse who does not convert to Islam alongside his or her spouse will petition the Civil Court, which has authority over non-Muslim family problems for a divorce, custody and care of the civil marriage's children. The converted Muslim spouse, on the other hand, will seek recourse at the Syariah Court, which is constitutionally vested with jurisdiction over Muslim family problems. The obvious result of multiple applications to courts with different jurisdictions over distinct ethnicities is conflicting orders from the courts that have no legal impact against the parties. Upon receiving orders from their separate courts, each spouse would attempt to enforce the orders against the other without success. As a result, the judicial quandary.

The issue of conflict of jurisdiction was thoroughly examined by the Federal Court in its decision in the case of *Viran a/l Nagapan v Deepa a/p Subramaniam* (2015) and other appeals. The couple, in this case, were married under the LRA and had two children, a girl named Shamila (11 years old) and a boy named Mithran (8 years old). The husband converted himself and his two children to Islam and later applied for the dissolution of his civil marriage at the Syari'ah High Court, which granted the order along with temporary custody of his two children and later granted him permanent custody of the children.

Meanwhile, the non-Muslim wife petitioned the High Court for divorce, and she was given permanent custody of the children. The situation worsened when Mithran's father abducted him from his mother's care. The non-Muslim wife subsequently applied to the High Court for a recovery order. A significant issue arose during the husband's appeal against the High Court's verdict. The issue was whether the Civil Court had the authority to make a conflicting ruling in a case where the Syari'ah Court had made a custody order. The Federal Court ruled that the Civil Court has exclusive jurisdiction under the LRA over all civil marriage-related cases. Thus, it is an abuse of process for a converted spouse to bring custody procedures in the Syari'ah Court in relation to civil marriage children (Mohd Zin et al., 2019).

In the other case of *Subashini Rajasingam v Saravanan Thangathora* (2007), the Federal Court held that, under Article 121(1A) of the Federal Constitution, the civil court would have jurisdiction over matters involving a civil marriage even though the husband had converted to Islam before the wife petitioned for divorce. The important moment to consider when deciding on jurisdiction issues is when both couples engage in a civil marriage contract. The husband may not dodge his obligations in a civil law marriage on the basis of religious freedom, and it should be noted that both husband and wife were Hindus at the time of their marriage registration (Mohd Zin et al., 2019).

Not only jurisdictional conflicts, custody fights are also one of the common issues aroused from interreligious marriage in Malaysia. The custody fights in which non-Muslim and Muslim spouses try to establish their legal rights to win custody and care of the children of the civil marriage by filing separate applications in Civil court and Syariah court to obtain favourable orders. The matter becomes significantly more problematic when the converting spouse converts his or her minor children without the non-Muslim spouse's knowledge or agreement. The worst happens when the children, ostensibly now Muslim, are taken away from the non-Muslim parent by Islamic religious officials, citing Syariah court decisions in which a non-Muslim has no right of representation (Subramaniam, 2018).

Shamala Sathiyaseelan v. Dr Jayeganesh C Mogarajah (2007) is a vital case in conversion and custody disputes. Shamala is a Hindu mother whose husband became a Muslim. They were married for four years and had two infant children. Her Muslim husband had converted their children to Islam, unknown to her. She petitioned the Civil High Court for a custody order. The spouse appeared in the High Court and asked for an adjournment, forgetting to mention that he had appealed to the Syariah court for custody. Shamala's husband then got an ex parte custody order from the Syariah Court despite the fact that custody proceedings were already underway in the Civil High Court.

Following that, the Civil High Court granted their mother custody of the children on the condition that she raise her children as Muslims and not expose them to her own Hindu beliefs. Shamala's appeal for a declaration that her two children's conversion to Islam breached her equal right as their parent to determine their religious upbringing was denied. Because the children were now Muslims, the Civil High Court ruled that the only forum to examine the legality of their conversion was the Syariah Court. The Syariah Court, however, lacked jurisdiction to hear Shamala, a non-Muslim. As a result, she has no legal recourse and has now fled the country with her children (Subramaniam, 2018).

Indira Ghandi a/p Mutho v Pengarah Jabatan Agama Islam Perak (2018) is another controversial case regarding the custody battle due to the consequence of interreligious marriage. This was an appeal from the learned Judicial Commissioner's (JC) finding in the first appeal that the conversion to Islam of the appellant and respondent's children was unlawful, unconstitutional, void, and of no effect. The appellant and respondent married under the LRA in 1993. The appellant converted to Islam in 2009 and successfully converted the marriage's three children, ages 12, 11, and 11 months. The two older children lived with the wife at the time of the husband's conversion,

while the youngest kid lived with the husband. The Syari'ah Court also granted the appellant permanent custody of the children. In accepting the appeal, the Federal Court decided that the conversion of the children was done in line with the law because it did not violate the Enactment or the Constitution. The Federal Court further ruled that the learned Judicial Commissioner lacked jurisdiction to rule on the children's conversion to Islam because that was only the jurisdiction of the Syari'ah Court.

However, in the three appeals by Indira heard jointly by the Federal Court on 29 January 2018, the court unanimously decided that the unilateral conversion of Indira's children was illegal because the approval of both parents was required to convert a minor. Furthermore, the Court ruled that under Article 12(4), either parent had the right to convert a child from a marriage to Islam. The court based its decision that both parents' consent was required before a certificate of conversion to Islam could be issued in respect of the child on a purposeful interpretation of Article 12(4), read with the 11th Schedule of the Federal Constitution, which promotes the welfare of children. Furthermore, the court applied Sections 5 and 11 of the Guardianship of Infant Act 1961, which provides for equal rights in child custody for both parents.

Concerning the issue of custody, the Court in *Viran a/l Nagapan v Deepa a/p Subramaniam* (2015) cited Section 88(3) of the LRA and determined that the child's wellbeing is the most important consideration in determining custody. The conduct of the parties, their financial and social standing, the sex and age of the kid, and his/her wants must all be considered when deciding the child's welfare. The court also stated that a custody ruling is never definitive or irreversible. Considering the children's welfare to be of greatest significance, the court determined that it was necessary to evaluate the children's requests and balance them with their interests (Mohd Zin et al., 2019)..

As a result, in Malaysia, the effect of interreligious marriage typically occurs when one of the spouses in a non-Muslim marriage converts to Islam before the civil marriage contracted under civil law is ended. Effects such as jurisdictional conflict and custody battles will occur. Despite this, the Federal Court of Malaysia has made a proactive and thoughtful move to counter the effects. To cater for the problem of jurisdictional conflict, the Federal Court ruled that the trial should be held in civil court as the marriage was originally registered under the LRA. In the custody dispute, the Federal court will consider the child's best interests as well as the marital circumstances.

The Legal Impacts of the Enforcement of Interreligious Marriage Law in Indonesia

Historically, interfaith marriages may be recorded based on Supreme Court law, namely Supreme Court Decision No. 1400K/PDT/1986, which stated that the Civil Registry Office at the time was authorized to execute interfaith marriages. This case resulted from a marriage in which a female Muslim applicant sought to register with her Christian spouse (Munawaroh, 2023). In its ruling, the Supreme Court stated that by registering for marriage registration at the Civil Registry Office, the applicant chose not to have her marriage solemnized in accordance with Islam. As a result of the interfaith marriage, the applicant no longer considered her religious status (Islam), and the Civil Registry Office was required to perform and record the marriage.

However, Surat Edaran Mahkamah Agung Nomor 2 Tahun 2023 (SEMA NO.2) (Circular Letter of the Chief Justice of Supreme Court 2/2023) has been issued on rules for judges in adjudicating cases of applications for marriage registration between persons of different faiths and beliefs. The Circular Letter states that judges must be governed by the following provisions:

1. A lawful marriage is one that is done in compliance with the laws of each faith and belief, as outlined in Article 2 Section (1) and Article 8 Letter F of the Marriage Law.
2. The court rejects an application for the registration of marriage between people of different religions and beliefs.

An interfaith marriage cannot be registered because if it is filed to the court, the judge will not grant the application for marriage registration (Munawaroh, 2023). However, there are several effects and encumbrances in enforcing this provision.

Article 8 letter f of Law Number 1 of 1974 states that marriage is banned between two persons who are in a relationship whose religion or other applicable legislation forbids marriage. This passage clearly governs the ban on marriage, which is prohibited by religious law, as stated in al-Baqarah verse 221, “Do not marry polytheistic women until they believe, for a believing slave-woman is better than a free polytheist, even though she may look pleasant to you. And do not marry your women to polytheistic men until they believe, for a believing slave-man is better than a free polytheist, even though he may look pleasant to you. They invite you to the Fire while Allah invites you to Paradise and forgiveness by His grace. He makes His revelations clear to the people so that they may be mindful”.

However, in a different article in Law Number 1 of 1974 in article 21:

1. If the marriage registrar is of the opinion that the marriage is prohibited according to this Law, then he will refuse to carry out the marriage.
2. In the case of refusal, then the request of one party who wants a written statement of the rejection is accompanied by the reasons for the rejection.
3. The parties whose marriage is rejected have the right to submit an application to the court in the area where the marriage registrar who made the rejection is authorized to give a decision, by submitting a certificate of rejection as mentioned above.
4. The court will examine the case in a brief manner and will make a decision as to whether it will uphold the refusal or order the marriage to take place.

The two articles above are contradictory because Article 8 letter (f) regulates the prohibition of marriage between two people whose religious law and the law prohibited them from marrying. Meanwhile, Article 21 point (3), provides an opportunity for perpetrators of interfaith marriages to submit a petition to the court. The court has competence in deciding and examining this application, which then results in a disparate decision, showing that there is inconsistency in court decisions regarding cases of interfaith marriages (Najidah & Suriani, 2023).

Law No. 23 of 2006 Governing Population Administration (Undang-Undang Adminduk), namely Articles 34 and 35, is widely cited as the legal basis for interfaith marriages. Article 34 of the Law states that reported and registered unions are valid. The law does not clearly regulate interfaith marriages. Article 35 letter (a) recognizes court-approved marriages as valid. This defies the Marriage Law, which specifies that a marriage is legitimate if a husband and wife of different religions practice one of their partner's religions (Alifa, Sodikin, & Ambarayadi, 2023).⁶⁹ One partner may need to change their religion depending on their spouse's beliefs.

Nevertheless, legal conflicts may arise if Law No. 23 of 2006's marriage validity rules clash with Marriage Law No. 1 of 1974. According to the Marriage Law, marriage is founded on religious similarity. Hence, marriages between different faiths are invalid. Meanwhile, the Population Administration Law does not need similarity in faith to consider a marriage valid (Alifa, Sodikin, & Ambarayadi, 2023). Interfaith marriages are acceptable and can be registered through a court order.

The legal problem also arises because the explanation of Article 35 letter (a) of Law Number 23 of 2006 concerning Population Administration (Undang-Undang Adminduk), which is the ‘exit door’ to considerations for granting marriage, is always based on the administrative needs of the applicant. The judges easily set aside the Marriage Law, which, according to legal theory, should be Lex specialist marriage provisions in Indonesia and apply generally to all citizens (Najidah & Suriani, 2023). However, even though the Constitutional Court has twice rejected the lawsuit for judicial review of Article 2 paragraph (1) of the Marriage Law, there are still parties who feel dissatisfied and try to hide behind the district court's decision, which granted the request for interreligious marriage by relying on Article 35 letter (a) of the Population Administration (Undang-Undang Adminduk) (Najidah & Suriani, 2023).

The contradiction of this law raises questions about the Supreme Court's integrity. People will later be questioned, disregarded, and disobeyed the Supreme Court's ruling. Furthermore, this situation will complicate

the court's work and lengthen future legal proceedings involving the registration of marriages of different religions. This contradiction also depicts uncertainty about the law and its enforcement. People are confused about which law to follow. As a result, people will choose the easiest and most favourable way for them. When this occurs, the ban on interfaith marriage in Indonesia is said to have failed. Subsequent effects of this matter will increase the number of unregistered marriages, and definitely, the issue of the status of the child from that marriage, inheritance rights, child custody, filing for lawsuits, and divorce will arise.

Suggestion of improvement to enforcement of governing law of interreligious marriage in malaysia and indonesia.

Suggestion on Ways to Improve the Enforcement of Interreligious Marriage Law through Legal Provisions

In the pursuit of legal reforms regarding the enforcement of inter-religious marriage regulations in Indonesia, a legislative approach that draws inspiration from Malaysia's successful model is recommended. Malaysia has effectively separated its governing laws for Muslims and non-Muslims, creating a structured framework with Islamic Family Law (IFLA) for Muslims and Law Reform and Marriage Act (LRM) for non-Muslims.

Pertaining to this exhortation, the first notable benefit of legislative separation lies in the realm of clarity and consistency. By distinctly separating laws for Muslims and non-Muslims, this approach provides a clear and unambiguous legal framework. Individuals engaging in inter-religious marriages can navigate the legal landscape with confidence, understanding the specific regulations that govern their union. This clarity fosters a sense of legal security, ensuring that the rights and responsibilities of individuals are explicitly defined, contributing to a fair and just legal environment.

Moving on, the second advantage revolves around the profound respect for religious diversity. Recognizing and respecting the distinct legal frameworks for different religious communities is a testament to Indonesia's commitment to upholding the constitutional guarantee of freedom of religion. This approach honors the diversity of religious beliefs within the population adhering the Article 29 (2) of Indonesia's Constitution 1945 (Undang-Undang Dasar) which : The State guarantees the freedom of every citizen to embrace their own religion and to worship according to their religion and beliefs. Thus, this venture fosters an environment where individuals feel their unique traditions and practices are acknowledged and respected under the law.

Efficiency in the registration process emerges as another compelling benefit of legislative separation. By tailoring procedural laws for registration to the specific requirements of each religious group, the legal system becomes more accommodating and efficient. This streamlined approach minimizes bureaucratic hurdles, making the registration process more accessible and straightforward for individuals from different religious backgrounds. This efficiency contributes to a legal system that is responsive to the diverse needs of its citizens.

Lastly, the legislative separation minimizes legal conflicts and uncertainties associated with inter-religious marriages. The clear demarcation between laws for Muslims and non-Muslims acts as a robust mechanism to avoid contradictions and ambiguities. This benefit is particularly crucial in reducing the potential for legal disputes, providing a stable legal foundation for individuals navigating the complexities of inter-religious marriages. By offering predictability and coherence, this approach fosters an environment where legal conflicts are minimized, contributing to a more harmonious society.

To put it concisely, the benefits of legislative separation extend beyond legal clarity, encompassing respect for diversity, efficiency in procedures, and the mitigation of potential conflicts. Embracing this approach represents a significant stride towards a legal system that aligns with Indonesia's diverse religious landscape, ensuring that the legal framework is not only clear and consistent but also inclusive and responsive to the unique needs of its citizens. Embracing the revelation of Al-Kafirun which emphasizes individual religion paths, this legislative suggestion respects the diversity of religious beliefs.

It acknowledges that different religious communities may have distinct norms and values, offering a tailored legal framework that aligns with individual choices while upholding the principles of religious freedom. The

successful implementation of this legislative reform would represent a pathway towards a legal system that harmonizes with Indonesia's rich religious tapestry, fostering an environment where individuals can exercise their freedom of religion with legal clarity, consistency, and respect for diversity. The key to successful implementation lies in thorough consultations with religious leaders, communities, and legal experts, considering socio-cultural nuances and obtaining the perspectives of various stakeholders to guide tailored recommendations for Indonesia.

Suggestion on Ways to Improve the Enforcement of Interreligious Marriage Law by Executive Realm

In addressing the multifaceted challenges surrounding inter-religious marriages in Indonesia, a holistic and strategic approach to enforcement becomes imperative. The executive aspect plays a pivotal role in shaping the effectiveness and fairness of governing laws related to inter-religious unions. This section presents a set of meticulously crafted suggestions aimed at bolstering the enforcement of these laws, ensuring they align with legal frameworks, promote consistency, and engender societal understanding and acceptance. From the establishment of robust monitoring mechanisms to community engagement initiatives, each recommendation is designed to contribute to an environment that not only upholds the legal integrity of inter-religious marriage regulations but also fosters a culture of inclusivity and support within Indonesian society.

Establishing robust monitoring mechanisms stands as a fundamental recommendation. By instituting comprehensive monitoring systems, authorities can effectively track and assess the enforcement of regulations pertaining to inter-religious marriages. Regular evaluations conducted through these mechanisms can pinpoint challenges and areas requiring improvement. This proactive approach ensures a continual refinement of enforcement strategies, fostering a system that is responsive to the evolving dynamics of inter-religious marriages in Indonesia.

To enhance the enforcement of regulations on inter-religious marriages in Indonesia, the establishment of nationwide data collection systems is imperative. This system should track interfaith marriage cases, including registration rates, divorce statistics, and potential challenges faced by couples. Drawing inspiration from initiatives like those by the Indonesian Center for Law and Policy Studies (Pusat Kajian Hukum dan Kebijakan Indonesia), this data can inform policy adjustments and identify areas requiring targeted interventions. Additionally, the creation of an independent monitoring body, akin to the Interfaith Commission for Family Welfare in India, would regularly evaluate the enforcement of interfaith marriage regulations. This body could conduct case reviews, analyze data, and publish reports, highlighting areas for improvement and best practices for law enforcement agencies (Pusat Studi Hukum & Kebijakan Indonesia, 2024).

Essentially, consistency in the implementation of regulations across all levels of law enforcement is crucial for the effectiveness of governing laws. To achieve this, an emphasis should be placed on training and awareness programs for law enforcement officers. Such initiatives not only ensure a clear understanding of the regulations but also prevent misunderstandings or inconsistent application of the law. A well-informed and trained enforcement body is pivotal in upholding the integrity and coherence of the legal framework surrounding inter-religious marriages. To initiate a paradigm, we can cleave on the available principle rather than focusing on vacant lacunae of the regulation. For a yardstick, we may adhere to the archetype of the stipulation implied in Article 2 (1) of the Marriage Law (Undang-Undang Perkawinan) requires prospective husband and wife to marry according to the same religion rather than finding an excuse to justify the continuity of our astray and deviant way. For example by complicating the issue by misuse and deluding the leeway of Article 66 of the same Law.

In addition, developing comprehensive training programs for law enforcement officers at all levels is crucial. These programs should cover specific procedures related to interfaith marriages, cultural sensitivities, and religious complexities. Success can be achieved by drawing upon successful models like the Interfaith Training Initiative for Law Enforcement in the United States. Simultaneously, launching public awareness campaigns through media and community outreach programs is essential (Piereder, 2014). These campaigns would educate the public about interfaith marriage regulations and rights, partnering with religious organizations and NGOs like Yayasan BaKTI Indonesia for accurate information dissemination.

While Islam guides Muslims to prioritize faith in a marital relationship, it also encourages believers to respect and coexist with people of other faiths. Islam teaches tolerance, kindness, and justice towards people of different religious backgrounds. It is important for Muslims to engage in respectful dialogue and foster understanding with individuals from different faith communities. This allows for peaceful coexistence and promotes a harmonious society where people of different beliefs can live side by side. Thus, community engagement initiatives play a pivotal role in promoting understanding and disclosure on inter-religious marriages specifically in verge of respecting and adhering to the religious teaching rather than arbitrary and haphazard influence and prejudiced by the captivating delusion or alluring fabrication on the mesmerising deviant definition of love.

Organizing community forums and educational workshops in collaboration with religious leaders and civil society organizations can address common predicaments and hindrances surrounding interfaith or inter-religious marriages. Additionally, partnering with universities and research institutions to conduct studies on societal attitudes towards interfaith marriages in Indonesia can inform targeted educational campaigns and interventions. This engagement is essential for societal barriers and fostering a culture that respects and reveres the principal and values of religion, rather than the desired choices of individuals particularly involved in the matter of inter-religious unions.

Thus, facilitating inter-agency collaboration, particularly with a focus on religious affairs, is key to ensuring a unified and coordinated approach. This involves harmonizing efforts between executive agencies to address inconsistencies and promote a unified stance on inter-religious marriage matters. Clear communication and collaboration between relevant authorities can lead to a more coherent and effective implementation of policies. This collaborative approach ensures that executive agencies work in tandem, aligning their efforts to create a supportive and inclusive environment for exposing society to the charming delusion reality of inter-religious marriages in Indonesia.

Therewith, to ensure a unified and coordinated approach, regular consultation mechanisms between government agencies responsible for legal affairs, religious affairs, social welfare, and education should be established. This creates a platform for coordinating policies, sharing best practices, and addressing potential inconsistencies in the implementation of interfaith marriage regulations. Considering the establishment of an inter-agency task force, similar to the Interfaith Harmony Commission in Singapore, dedicated to addressing challenges faced by interfaith couples is also beneficial (Tan, 2020). This task force could provide targeted support, mediate disputes, and advocate for legislative reforms when necessary.

Laconically, these executive suggestions encompass monitoring mechanisms, consistent implementation, community engagement, and inter-agency collaboration. Together, they form a comprehensive strategy to enhance the enforcement of governing laws, creating an environment that is not only legally sound but also supportive and understanding of the diverse choices individuals make in the context of inter-religious marriages.

Suggestion on Ways to Improve the Enforcement of Interreligious Marriage Law by Judiciary

Navigating the intricate landscape of interfaith marriage regulations in Indonesia poses a distinctive challenge for the judiciary. The complexity of these regulations requires a nuanced understanding to ensure fair, clear, and culturally sensitive handling of cases. In response to this challenge, several essential steps can be undertaken to empower the judiciary and fortify the legal framework.

First and foremost we suggest to put some scrutinization on enhancing clarity and expertise. The recently proposed Interfaith Marriage Bill in Indonesia offers a crucial starting point. This bill, outlining clear procedures and requirements for solemnization, registration, and dissolution, should be incorporated into judicial training programs. Additionally, judges should receive comprehensive training on diverse family structures within different faiths at large. Drawing upon case studies like "Sarita vs. Ramesh" from India, where cultural practices within a Hindu-Muslim marriage were scrutinized, can further illuminate these complexities. This endeavour is not being coached to promote inter-religious marriage, but it is exertion in vesting our contemporary judges with the intricacies of this issue in the elixir to overcome these long-standing concerns that they will apprehend in this modernised and contemporary era.

Further, an instance involving Andy Vonny Gani, a Muslim spouse, and Petrus Hendrik Nelwan, a Protestant should be leveraged to establish benchmarks in endeavors of proposing a clarity on the prohibition of the interfaith marriage between Muslim and Non-Muslim nowadays. In this particular instance the spouse travelled to KUA Tanah Abang Jakarta and requested that their marriage be performed in accordance with Islamic law; but, due to religious differences, the KUA denied their application. After that, the two of them headed to the Civil Registry Office, but it was also denied there. They eventually filed a case with the District Court of Central Jakarta after the KUA and Civil Registry Office declined to honor their marriage. With its ruling No.382/Pdt/1986/PN.JKT.PST, issued April 11, 1986, the Central Jakarta District Court denied their application and reinforced the Civil Registry Office's and KUA's denials. This case in point sets a valuable precedent for consistent rulings in future interfaith marriage cases.

To delve deeper into the nuances of interfaith marriages, piloting dedicated courts in regions with high concentrations of such couples could be transformative in the core on building specialized platforms for understanding. Taking inspiration from neighbouring countries like Singapore, with its Family Syariah and Civil Courts, these specialized courts can offer judges and legal professionals an in-depth understanding of religious and cultural sensitivities. Impact assessments and public feedback surveys can then inform potential nationwide implementation of this model.

Moreover, collaborative panels composed of judges and religious representatives from both communities involved can foster culturally sensitive and religiously informed decisions. This approach, akin to the successful Interfaith Mediation Panels in New York City, can offer invaluable insights and perspectives often overlooked in traditional court settings.

Thirdly, continuous improvement through reflection and collaboration. In essence of maintaining the judiciary's effectiveness and fairness in handling interfaith marriage cases, a system of regular judicial reviews is paramount. An independent commission, similar to the National Commission on Judicial Ethics in Indonesia, can analyze data, identify systemic issues like inconsistencies in rulings, and recommend reforms for equitable adjudication.

Open engagement with stakeholders, including judges, religious leaders, legal scholars, and NGOs like Pusat Kajian Keagamaan dan Kebudayaan (PKKK), is critical (Butt, 2012). Periodic roundtables and workshops can be used to explore challenges faced by interfaith couples in the legal system and identify areas for legislative improvements and judicial training enhancements.

Finally, collaborating with universities and research institutions to analyze available data on interfaith marriage cases is crucial. This data, encompassing success rates of mediation efforts, challenges in property settlements, and trends in custody disputes, can inform the development of targeted training programs for judges and the refinement of relevant legal procedures.

Ultimately, by embracing these recommendations, the Indonesian judiciary can become a beacon of clarity, expertise, and cultural sensitivity in handling inter-religious marriage matters. This proactive approach will not only ensure fair and just legal processes but also promote greater understanding and respect for the diverse tapestry of faith and love within Indonesian society.

CONCLUSION

Interreligious marriages between Muslims and non-Muslims in Malaysia and Indonesia present complex and multifaceted challenges, shaped by historical, cultural, and legal contexts. While both countries share commonalities in their predominantly Muslim populations, they exhibit different approaches to interreligious marriage issues.

In Malaysia, the legal framework surrounding interreligious marriages is governed by Islamic family laws for Muslims and civil laws for non-Muslims. The dual legal system often leads to complications and disparities, making it challenging for couples of different faiths to navigate the legal landscape. Social attitudes, influenced by conservative interpretations of Islam, may contribute to societal resistance and family disapproval. Therefore,

due to these complexities and strict separate legal frameworks for Muslims and non-Muslims, the interreligious marriage does not happen in Malaysia.

Indonesia, with its diverse religious landscape, generally adopts a more tolerant stance towards interreligious marriages. While the majority of the population is Muslim, the state officially recognizes six religions, fostering a climate of religious pluralism. However, challenges may still arise due to societal expectations, particularly in more conservative regions. Uncertainty and gaps in the legal frameworks lead to misunderstandings and divergent views among the community about the topic of interreligious marriage in Indonesia. This explains why there are so many married couples that have different faiths in Indonesia.

In conclusion, interreligious marriages in Malaysia and Indonesia reflect the broader dynamics of religious diversity within their societies. Both countries face unique challenges, Malaysia with a dual legal system and conservative social attitudes, while Indonesia navigates its pluralistic landscape. In these nations, social, cultural, and legal considerations play a significant role in shaping attitudes towards interfaith unions. It is crucial to recognize that opinions on this matter can vary widely among individuals, communities, and religious leaders. Some argue that interreligious marriages can contribute to social harmony and understanding, fostering tolerance and respect among diverse religious communities. Others may hold traditional beliefs that discourage such unions due to concerns about religious compatibility and the potential challenges faced by the couple and their families. Therefore, the question of interreligious marriage, particularly between Muslims and non-Muslims, is a complex and sensitive issue in Malaysia and Indonesia.

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