



INTERFAITH MARRIAGE FROM A LEGAL PERSPECTIVE INDONESIA AND THAILAND: BETWEEN REGULATION AND FREEDOM OF RELIGION

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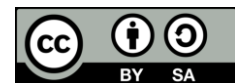
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ABSTRACT

Interfaith marriage is a social phenomenon that continues to grow in multicultural societies, but still raises legal debates regarding legal certainty and freedom of religion. This article aims to analyze the implementation of legal norms regarding interfaith marriage in social and institutional practices in Indonesia and Thailand, as well as to assess the extent to which legal regulations in both countries reflect a balance between legal certainty and freedom of religion. This study uses a normative legal research method with a regulatory, conceptual, and comparative approach. Data was obtained through a literature study of primary, secondary, and tertiary legal materials, which were then analyzed qualitatively. The results of the study show that in Indonesia, interfaith marriages face significant legal obstacles because the marriage law system still uses religion as the basis for the validity of marriage, as stipulated in Law Number 1 of 1974. This condition creates legal uncertainty and encourages couples to pursue alternative strategies, such as applying for a court ruling or getting married abroad. In contrast, Thailand implements a more secular and administrative marriage law system, where the validity of marriage is determined through civil registration without requiring religious similarity, although in Muslim communities the role of the Islamic Religious Council remains influential socially and religiously. This study concludes that the regulation of interfaith marriage in Thailand is relatively more capable of balancing legal certainty and religious freedom compared to Indonesia. Therefore, it is necessary to reformulate marriage law policies in Indonesia to be more adaptive and inclusive in order to respond to the social reality of a pluralistic society without neglecting constitutional and social values.

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1. INTRODUCTION

Marriage is considered a sacred event with a noble purpose, which cannot be separated from the provisions regulated by religious teachings. As social beings, humans greatly need regulations so that their lives can be well organized. Marriage, as an important aspect of human life, is also subject to regulations that must be obeyed. One issue that often arises is interfaith marriage, which requires resolution based on the values and principles of each religion. Thus, marriage continues to be viewed as a sacred event and is closely related to the rules established by religion.

Interfaith marriage is a physical and spiritual bond between a man and a woman of different religions, which results in two different sets of rules regarding the requirements and procedures for marriage according to each religion's laws. Interfaith marriage is not uncommon in Indonesia's multicultural society, as it has been practiced for a long time. However, interfaith marriage can still cause problems and often leads to controversy among the public. Based on data compiled by the Indonesian Conference on Religion and Peace (ICRP) since 2005, there are 1,425 interfaith couples who are registered as married in Indonesia [1]. According to Rusli and R. Tama, interfaith marriages involve two different religious legal systems, which have implications for the requirements and procedures for marriage. Therefore, the state is faced with a dilemma between guaranteeing freedom of religion and maintaining legal order in the national marriage system [2].

In Indonesia, the marriage law system still places religion as the basis for the validity of marriage as stipulated in Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage, which states that a marriage is valid if it is conducted according to the religious law of each party. This provision makes it difficult for interfaith marriages to obtain state recognition and causes various administrative problems, such as civil registration, child status, and inheritance rights [3]. In accordance with Article 2 paragraph (1) of the Marriage Law, a marriage is valid if it is conducted according to the laws of each religion and belief. Article 11 paragraph (4) regulates marriage barriers, namely the absence of blood relations, family relations, and prohibitions on marriage according to religion and other applicable regulations. Since one of the bases for the validity of marriage is religious law, it is necessary to understand how religious laws in Indonesia regulate interfaith marriage.

Some legal experts argue that the state should provide a middle ground through a civil registration mechanism as a form of administrative recognition without interfering with religious aspects. However, the Constitutional Court, through Decision Number 68/PUU-XII/2014, affirmed that the provisions of Article 2 paragraph (1) of the Marriage Law remain constitutional, so that interfaith marriages cannot be conducted unless one of the parties converts to the religion of their partner.

Unlike Indonesia, Thailand implements a relatively more flexible legal system in regulating interfaith marriages. Thai civil law allows interfaith marriages as long as they are conducted in the presence of a civil registrar (Registrar of Marriage), as regulated by the Department of Provincial Administration (DOPA). This flexibility is underpinned by the dualistic nature of the Thai legal system, which combines elements of modern civil law and local customary/religious law. Social acceptance of interfaith couples in Yala province (an area with a significant Muslim population) is quite high, as long as the marriage is respected by their respective communities [4].

Marriage in Thailand is no longer based on the religious identity of the couple, unlike the Marriage Law in Indonesia. The majority of marriages are considered valid if they have been approved by both families and registered with the state registry office. Even interfaith marriages can be recognized by the Thai state, in accordance with Articles 1457 and 1458 of the fifth book on family law. Article 1457 explains that "Marriage shall only be valid upon registration of the marriage. The registration referred to is the registration of the marriage with the respective religious council." Thus, there are no specific regulations regarding interfaith marriage there. This has become the basis for interfaith marriages by foreign nationals in Thailand, known as "menumpang nikah" (marriage by proxy). However, in Thailand itself, there is a Council that handles issues related to interfaith marriages in the country, known as the Islamic Religious Council (MAI) [5]. Religiously, marriage registration is carried out at the Islamic Religious Council (MAI) or at a mosque, not at a district court. After the marriage ceremony at the MAI, the record is then registered at the district court. If issues such as divorce arise, the MAI has the authority to decide, and the mosque imam typically makes the decision. If the issue cannot be resolved by the imam at the MAI, it is then referred to Dato' Yuthitham or the MAI judge (qadhi).

In Thailand, although the Family Law Act does not explicitly regulate interfaith marriages, many marriages are still governed by the religious teachings of each spouse. The Islamic Religious Council plays an important role in regulating interfaith marriages involving Muslims, but its role is more related to religious aspects and ceremonies than to official legal issues [6].

Freedom of religion is a fundamental right that is universally recognized as part of human rights, which includes the right of every individual to embrace, practice, and change the religion they believe in without pressure or discrimination from any party. In Indonesia, the guarantee of freedom of religion is reflected in Article 28E paragraphs (1) and (2) and Article 29 paragraph (2) of the 1945 Constitution. Meanwhile, in Thailand, protection of this right is enshrined in the national constitution and various other regulations that limit state intervention in the religious expression of its citizens [7].

The balance between legal certainty and religious freedom in interfaith marriages requires an approach that considers the constitutional, cultural, and social dimensions of society in each country. In Indonesia, the family law system is still rooted in religious values as contained in Law No. 1 of 1974 on Marriage, which states that a marriage is valid if it is conducted according to the laws of each religion and belief. This provision normatively provides legal certainty by establishing clear boundaries regarding the validity of marriage, but on the other hand,

it raises issues when confronted with the social reality of a pluralistic society that is increasingly open to differences in beliefs [8].

In a constitutional context, Indonesia guarantees freedom of religion through Article 28E paragraphs (1) and (2) and Article 29 paragraph (2) of the 1945 Constitution, which affirms the right of every individual to embrace a religion and worship according to their beliefs. However, in practice, the implementation of this freedom often conflicts with a legal system that is oriented towards a particular religion. The affirmation of religious principles in the Marriage Law has led to a “dualism of values” whereby, on the one hand, the state guarantees freedom of religion, but on the other hand, it also enforces rules that limit the manifestation of that freedom in the context of marriage. This tension creates a situation where interfaith couples must seek legal remedies such as court rulings or marrying abroad to obtain administrative certainty.

In contrast, Thailand has adopted a more secular and administrative legal system in regulating marriage. The validity of a marriage is determined based on civil registration at the district office (*amphoe*) without considering religious compatibility. This makes Thailand's legal system more inclusive and provides greater religious freedom, as the state does not interfere in the religious aspects of couples' lives. However, this freedom also faces its own challenges, particularly in terms of legal certainty regarding the religious status of children and the division of inheritance across faiths. The high degree of religious plurality in Thailand leads to differences in interpretation between civil law and the dominant Buddhist religious law, sometimes causing uncertainty in the practice of family law.

The issue of interfaith marriage is certainly a legal issue that must be addressed immediately, because the lack of clear regulations on the registration and recording of interfaith marriages, both by Indonesian citizens abroad and foreign nationals in Indonesia, creates opportunities for abuse due to a legal vacuum. A comparison of these two legal systems shows that legal certainty and freedom of religion are not mutually exclusive values, but rather two pillars that must be synergized through adaptive and inclusive regulations. In Indonesia, this balance can be achieved through marriage law reform that accommodates differences in beliefs without negating social values, for example by opening up space for interfaith mediation prior to marriage registration, or by creating a special administrative mechanism for the registration of interfaith marriages at the Population and Civil Registration Office. Meanwhile, in Thailand, the government can strengthen legal certainty through education on tolerance and family law equality, so that broad freedoms do not cause overlapping norms between civil and religious law. Thus, considering the issue of interfaith marriage in Indonesia and Thailand, it is important to conduct further research. Specifically, this study aims to identify and analyze the implementation of legal norms regarding interfaith marriage in social and institutional practices in Indonesia and Thailand, as well as to determine whether the regulations on interfaith marriage in Indonesia and Thailand reflect a balance between legal certainty and religious freedom.

2. RESEARCH METHODS

The type of research used in this study is known as normative legal research, which is legal research conducted by examining secondary data or library sources. Legal research that studies law understood as social norms or guidelines that serve as guides for individual behavior is known as normative legal research [9]. The nature of the research used in completing this study is descriptive analysis. This research was conducted using an approach to specific legislation or written law, namely by looking at concepts and doctrines in legal science to construct a legal argument in solving legal problems that arise. This research was also conducted using a comparative approach, which was done by comparing the laws of one country with the laws of one or more other countries on the same subject. The data sources used in conducting this legal research were:

- a. The primary data sources are derived from Islamic law, namely Surah al-Baqarah: 221 and Surah al-Maidah: 5.
- b. The secondary data sources used for this study consist of three legal materials, namely:
 - 1) Primary legal materials, in this case the researcher used primary legal materials such as Law Number 1 of 1974 concerning Marriage, Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage and the Civil and Commercial Code of Thailand Book V.
 - 2) Secondary legal materials, namely books on law, law journals, papers, articles from the mass media and internet websites, as well as magazines related to the issues in the writing that can be used as literature in the research.
 - 3) Tertiary legal materials, namely legal dictionaries or encyclopedias, either via the internet or directly from books.

The data collection tools used in this thesis are through document studies with library research. Data analysis is the process of organizing and sorting data into patterns, categories, and basic units of description so that themes can be found and working hypotheses can be formulated based on the data. The data obtained from document studies and library research were processed using qualitative analysis [10].

3. RESULT AND ANALYSIS

Implementation of Legal Norms Regarding Interfaith Marriage in Social and Institutional Practices in Indonesia and Thailand

The practice of interfaith marriage in Indonesia and Thailand goes beyond a mere formal legal issue, as it reflects the growing social dynamics within culturally diverse societies. Although official legal regulations in Indonesia tend to be restrictive, the reality on the ground shows that many interfaith couples continue to marry through adaptive approaches, both institutionally and socially. Meanwhile, in Thailand, social acceptance of interfaith marriage is shaped by religious diversity and variations in national and regional norms, especially among Muslim minorities in the south [11].

Despite vague legal regulations, interfaith marriages continue to take place due to various social motives, including love, happiness, and efforts to protect families from the risks of unregistered relationships. A phenomenological study of couples in Boyolali, Central Java, revealed that those who enter into such marriages are motivated by psychological factors, social values, and the desire to achieve mutual happiness, even though they are outside the framework of applicable state law [12]. In everyday life, people often seek innovative ways to legalize interfaith marriages, such as holding the wedding ceremony in another country or utilizing court rulings so that the marriage can be officially registered with the Indonesian civil registry. This phenomenon illustrates how couples maximize loopholes in existing regulations in order to obtain legal protection and official administrative status. This phenomenon often gives rise to complex social dynamics, such as resistance from families, rejection by the surrounding community, and identity conflicts within local communities. However, in a number of cases, the community tends to be more accommodating towards interfaith couples, in line with the recognition of personal rights and freedom to choose a life partner. Comparative research in Salatiga, Indonesia, reveals the important role of NGOs in providing guidance, legal advocacy, and assistance with the legal marriage process for interfaith couples in accordance with state regulations.

Formal institutions in Indonesia, such as district courts and civil registry offices, play an important role in the social practice of interfaith marriage. Marriage institutions in Indonesia are divided between registration carried out by the Office of Religious Affairs (KUA) for Muslims and by the Civil Registry Office/civil agencies for followers of other religions, as stipulated in the Marriage Law and its implementing regulations (including PP 9/1975). This practice demonstrates the centralization of religion in the marriage registration institution, where civil registration cannot be separated from the prevailing religious dimension [13]. Many couples take advantage of court rulings to obtain marriage registration at the Civil Registry, even though the law does not explicitly provide for this. This reflects that the state's institutional structure functions as a mediator between formal law and social needs [14].

Law No. 1 of 1974 on Marriage (Marriage Law) is the main basis, particularly Article 2 paragraph (1), which states that a marriage is valid if it is conducted according to the religious laws and beliefs of each party [15]. This article accommodates six official religions (Islam, Christianity, Catholicism, Hinduism, Buddhism, Confucianism), but rejects interfaith marriages because they do not meet the requirements of religious legal uniformity, so they are not officially recorded by the Civil Registry Office (Dispendukcapil). As a result of this norm, in practice, interfaith marriages are almost impossible to legally conduct within the country without one party converting to the other's religion or by marrying abroad and then re-registering the marriage in Indonesia. This is because the majority of religions in Indonesia require religious equality in order to marry according to religious law, and Indonesian law requires marriages to be conducted according to their respective religious laws.

Several district court decisions in Indonesia show different interpretations of the practice of interfaith marriage; one of them is Decision No. 916/Pdt.P/2022/PN.Surabaya, which opens up the possibility of requesting recognition of interfaith marriages through the courts [16]. However, the Supreme Court of the Republic of Indonesia (MA), through a Supreme Court Circular Letter (SEMA), has also issued a ban on granting interfaith marriage requests, which reaffirms the uncertainty of legal norms in Indonesia. However, MUI Fatwa No. 4 of 2005 affirms the prohibition for Muslims, creating tension between state and religious norms in social practice, where couples often marry abroad or according to custom without official recognition. In addition, religious organizations and NGOs play a strategic role as facilitators of advocacy, mediation, and social education for interfaith couples. They help couples understand administrative legal procedures and navigate social challenges within their communities. In a number of cases, these institutions act as social mediators that minimize conflicts between religious norms and couples' need for legal recognition by the state.

Unlike Indonesia, Thailand adheres to a secular marriage law system as regulated in the Thailand Civil and Commercial Code (Book V on Marriage) without requiring religion as the basis for the validity of marriage in the context of formal state norms. A marriage is considered valid when it has fulfilled the formal requirements and has been registered civilly at the state registry office in accordance with the provisions of the Thai Civil and Commercial Code on marriage requirements. In Thailand, interfaith marriages are also common, especially in Muslim-majority areas such as Yala, Pattani, and Narathiwat. Although state law does not explicitly prohibit

interfaith marriages, social norms in conservative Muslim communities still influence how such couples are viewed and treated socially [17].

Interfaith marriages in Thailand often reflect diverse interactions between communities, where couples sometimes face complex social integration due to the alignment between civil norms and local religious customs. Public responses to interfaith couples vary, ranging from widespread acceptance in urban areas to resistance in more conservative regions. In addition, there are civil society organizations and human rights activists who emphasize that the freedom to choose a life partner is part of human rights that must be protected by the state, including in Thailand. This perspective is further strengthened by legal developments that are more inclusive of diverse family forms, such as the adoption of marriage equality for same-sex couples, which officially came into effect on January 23, 2025. Although there are no regulations that directly govern interfaith marriages, this shows a broader social and institutional trend toward respect for plurality and family rights.

Thai society itself supports the implementation of civil marriages, while religious registration and rituals are usually conducted separately. The state only requires civil registration to obtain formal legal status. This perception reflects a more neutral approach to religion in the country's family law. However, in areas of Thailand with a Muslim majority population, local religious institutions still influence family social norms, including attitudes toward interfaith marriage.

The dualism between national regulations and local religious laws creates obstacles to the implementation of marriage practices in communities that strongly maintain their religious identity. In Thailand, particularly in the southern regions with significant Muslim populations such as Pattani, Yala, Narathiwat, and Satun, the state recognizes the Islamic Religious Council (Majlis Agama Islam/MAI) as a religious institution with special authority in matters of Islamic family law [18]. In social and institutional practice, the execution and registration of religious marriages for Muslim citizens is not carried out in district courts, but under the authority of the MAI or mosques. In the context of interfaith marriage, this mechanism is very important because it shows that Thailand does not fully implement a uniform family law system. For Muslim citizens, religious aspects remain the main foundation in determining the validity of marriage and divorce. Therefore, even though Thai law does not prohibit interfaith marriages, in social and institutional practice in Muslim areas, the MAI remains the central actor in determining whether such marriages are acceptable religiously and socially.

Regulations on Interfaith Marriage in Indonesia and Thailand Reflect a Balance between Legal Certainty and Freedom of Religion

Law No. 1 of 1974 on Marriage (Marriage Law) in Indonesia stipulates that a marriage is valid if it is conducted according to the religious law of each party to the marriage. This provision does not explicitly regulate interfaith marriages separately, but rather follows the understanding that marriages must be in accordance with the teachings of the religion professed. As a result, interfaith couples often experience legal uncertainty because different religions have different internal rules regarding the validity of such marriages [19].

Normatively, Article 2 paragraph (1) of the Marriage Law states that a marriage is valid if it complies with the religious laws of each party and is registered in accordance with the law. However, in practice, many religions—especially Islam consider interfaith marriages to be invalid or even haram (forbidden) according to the Indonesian Ulema Council (MUI) fatwa Number 4/MUNAS/VII/MUI/8/2005, which rejects the validity of interfaith marriages in Islam [20]. The absence of specific regulations creates legal uncertainty, as it is unclear what the status of civil registration, children's rights, and family law implications would be if religious marriage requirements cannot be met. Several studies show that this uncertainty often forces couples to marry outside of religious institutions or even abroad in order to be recognized civilly.

The legal issues surrounding interfaith marriage in Indonesia appear to be the result of a combination of religious legal norms within the state legal structure, formal state law, and human rights principles. Freedom of religion, which is guaranteed by the 1945 Constitution, includes the right to choose a life partner based on one's beliefs, but this often conflicts with legal norms that require marriage to be based solely on the religion of each party [21]. For example, a 2014 ruling by the Indonesian Constitutional Court (MK) affirmed that the provisions of Article 2 of the Marriage Law do not restrict freedom of religion, but emphasized that marriages are considered legally valid only if they meet the criteria of each party's religious law. This is considered not to provide a real solution for interfaith couples because the provision still places religion as a requirement for the validity of civil marriage, not merely as a guideline for individuals [22].

SEMA Number 2 of 2023 also reinforces the restrictions on courts in registering interfaith marriages, thereby responding to marginal decisions in several district courts that had previously accepted registration requests. On the one hand, this SEMA strengthens legal certainty by reducing differing court rulings, but on the other hand, it is considered to hinder the religious freedom of couples who wish to marry legally in a civil ceremony without changing their religion [23]. Several journals indicate that current provisions tend to create a legal vacuum in which interfaith couples often lack legal certainty regarding their marital status without court intervention. This shows that freedom of religion in choosing a partner sometimes conflicts with legal certainty. In addition, there is a normative conflict between marriage rules and the population administration system, so

that the legal status of an interfaith couple can be questioned. Thus, it can be concluded that legal certainty in Indonesia is still more dominant in protecting religious status and religious regulations than in the religious freedom of individual couples, so that a comprehensive balance between these two principles is still difficult to achieve.

Unlike Indonesia, Thailand's marriage law system is more secular and based on civil law, which means that state law generally regulates the legal status of marriage without requiring the fulfillment of specific internal religious requirements. Interfaith marriage in Thailand is not explicitly regulated in marriage law, but couples of any religion can basically marry as long as they meet the state's administrative requirements. However, the absence of explicit rules can create legal uncertainty—more because the law does not directly contain specific norms regarding interfaith marriage, not because there is a prohibition. Thai marriage law stipulates administrative requirements, such as age, consent, and registration at a state office, without requiring the parties to the marriage to follow certain religious rituals as a condition of validity [24]. In certain Muslim communities in Thailand, Islamic family law also still applies internally, but its status is in a state of dualism between state law and local religious law (Sharia), which is often not explicitly regulated by state law. However, in general, the national legal structure provides more space for the religious freedom of couples to choose their partners without the intervention of religious norms in the civil sphere.

In terms of legal certainty, Thailand is relatively more assertive and direct because family law requires civil registration without relying on religious doctrine. This means that interfaith couples do not need to rely on the interpretation of a particular religious law to obtain legal status for their marriage. However, in terms of religious freedom, Thai law also shows a neutral attitude towards the religious background of couples so that marriage is not influenced by particular religious preferences. This reflects that the state provides full space for individual freedom to marry without being influenced by their religion, as long as they meet the administrative requirements.

Thailand, on the other hand, through a civil law approach that is neutral towards religion, provides greater space for couples to marry without imposing a particular religious identity in the marriage registration procedure, while minimizing discrimination based on different beliefs.

4. CONCLUSION

The social practice of interfaith marriage in Indonesia and Thailand shows real dynamics influenced by social values, personal motives, and adaptive strategies of society amid unclear formal rules. Formal and informal institutions (courts, civil registries, religious institutions, NGOs) play an important role in the social implementation of this phenomenon, both as facilitators and obstacles. In Thailand, state institutions are generally neutral towards religion in the administration of marriage, but local and religious norms continue to exert influence. The function of marriage registration itself is an administrative act in accordance with applicable laws, carried out by the relevant authorities—namely the Office of Religious Affairs (KUA) for Muslims and the Civil Registry Office (Dispendukcapil) for non-Muslims—marked by the issuance of a marriage certificate and marriage book for both spouses [25] and in Thailand, it is recorded at the District Office (Amphur), marked by the issuance of a Marriage Certificate (Kor Ror 3) and Marriage Registration Book for both spouses.

Current regulations in Indonesia are insufficient in providing consistent legal certainty for interfaith couples, even though the freedom to choose a partner without religious discrimination is a human right. Regulations in Thailand demonstrate a more pragmatic and religiously neutral approach, thereby better supporting a balance between legal certainty and religious freedom in the context of marriage law. Overall, although both countries face challenges in balancing legal certainty and religious freedom in the context of interfaith marriage, Thailand currently has a relatively clearer and more consistent legal framework than Indonesia in protecting the rights of interfaith couples.

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