

Indonesia: Inter-Religious Marriage

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INDONESIA

INTER-RELIGIOUS MARRIAGE

Executive Summary

The Indonesian marriage law has been interpreted as prohibiting marriage between people who follow different religions. However, this interpretation is disputed by some scholars, and the Supreme Court of Indonesia has essentially found that there is a “legal vacuum” in this area. In practice, it has been reported that the law and administrative processes make it difficult to register an inter-religious marriage. Couples may therefore choose to marry overseas or one party may decide to convert to the religion of the other. The laws relating to divorce also distinguish between marriages conducted under different religions, requiring that an application be submitted to either a General Court or a Religious Court depending on the religion involved.

I. Introduction

Marriage in Indonesia is governed by Law Number 1 of Year 1974 on Marriage (1974 Marriage Law). The 1974 Marriage Law applies to all Indonesian citizens, regardless of religion.¹ Prior to the passage of the 1974 Marriage Law there were different laws in place for citizens of European or Chinese origin² and for Indonesian Christians,³ while the Muslim population was “subject to unwritten customary (*adat*) law and to Moslem religious law.”⁴ The key purposes of the reform of marriage laws were “the development of codification and uniformity in Indonesia’s legal system and the improvement of women’s position.”⁵

The 1974 Marriage Law had a long and contentious history, with the primary issue being the question of whether there should be one unified law for all religions, or separate laws for different groups.⁶ Initial drafts of a new marriage law were completed in 1952 and 1954, and two Marriage Bills (one based on unification, one with separate rules for different religions)

¹ Indonesia Department of Information, Introduction to Law of the Republic of Indonesia Number 1 of the Year 1974 on Marriage 5 (Nov. 1975). See also INDONESIA LAW 1949-1989: A BIBLIOGRAPHY OF FOREIGN-LANGUAGE MATERIALS WITH BRIEF COMMENTARIES ON THE LAW 167 (S. Pompe ed., 1992).

² The relevant provisions were contained in the Indonesian Civil Code of 1847. See Ratno Lukito, *The Enigma of Legal Pluralism in Indonesian Islam: The Case of Interfaith Marriage*, 10(2) J. ISLAMIC LAW & CULTURE 176, 177 (2008) (listing the various enactments that applied to marriage in Indonesia prior to 1974).

³ Marriage Ordinance for Indonesian Christians in Java, Madura and Ambon (S. 1933 No. 74).

⁴ Department of Information, *supra* note 1, at 5.

⁵ *Id.*

⁶ *Id.* at 6.

were discussed by the Indonesian legislature in 1958-1959, but neither of these passed.⁷ Two more bills were then developed in 1967 and 1968, but again were not passed.⁸

The subsequent bill that was introduced in 1973 caused significant controversy. In particular, “Muslim criticism was directed at the Bill’s restrictions on polygamy and acceptance of interreligious mixed marriages.”⁹ There were heated debates on the bill in the People’s Representative Assembly as well as protests by Muslim students.¹⁰ As a result of the strong opposition and potential for serious unrest, an amended statute was enacted on January 2, 1974, that permitted polygamous marriage and excluded the provision that would have specifically allowed inter-religious marriages.¹¹

II. Prohibition of Inter-Religious Marriage under the 1974 Marriage Law

A. Wording and Interpretation

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.”¹² 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.”¹³

The 1974 Marriage Law also requires that every marriage must be “registered according to the regulations of the legislation in force.”¹⁴ The implementing regulations state that non-Muslim marriages must be registered with the Civil Registry Office following the religious ceremony,¹⁵ while Muslim marriages must be registered with the local Office of Religious Affairs.¹⁶

⁷ *Id.*

⁸ *Id.* See also Simon Butt, *Polygamy and Mixed Marriage in Indonesia: Islam and the Marriage Law in the Courts*, in *INDONESIA: LAW AND SOCIETY* 266, 269 (Tim Lindsey ed., 2d ed. 2008).

⁹ Butt, *supra* note 8, at 266 (referring to the Marriage Bill arts 3, 11(2), and 49).

¹⁰ *Id.* at 266-67 (stating that “Muslim students at one point seized control of the floor when the government was defending the Bill.”).

¹¹ *Id.* at 267. See also Department of Information, *supra* note 1, at 6 (referring to “lengthy deliberations” on the bill and several amendments being made in December 1973 prior to its enactment).

¹² Law No. 1 of 1974 on Marriage art. 2(1).

¹³ Government Regulation No. 9 of 1975 on Marriage art. 10(2). Articles 57-62 of the 1974 Marriage Law apply to “mixed marriages” involving people who “are subject to different laws due to a difference in nationality and one of the parties is a foreign national while the other party is an Indonesian national,” but these provisions do not refer to differences in religious backgrounds.

¹⁴ Law No. 1 of 1974 on Marriage art. 2(2).

¹⁵ Government Regulation No. 9 of 1975 on Marriage art. 2(2).

¹⁶ *Id.* art. 2(1). For an analysis of the impact of non-registration of marriages in Indonesia, see PROF. DR. HJ. HUZAEWAH TAHIDO YANGGO ET AL., *THE 2ND PERIODIC DISCUSSION: EXPERTS IN SECULAR LAW, ISLAMIC LAW, AND ADAT LAW – MARRIAGES THAT ARE NOT REGISTERED BY THE GOVERNMENT* (2007).

These provisions have been interpreted as prohibiting marriage between people of different religions. This is because, in order for a marriage to be registered, a marriage ceremony must be conducted in accordance with a recognized religion,¹⁷ and in most cases at least one of the parties will adhere to a religion that does not allow a person to marry someone of a different faith.¹⁸

However, as the 1974 Marriage Law does not explicitly forbid or allow marriage between people of different religions, there is considerable debate regarding its interpretation and application.¹⁹ For example, an alternative interpretation to an absolute prohibition is that Article 2(1) only states that marriage must be conducted according to religious law and, therefore “if, according to the religious law, there is no hindrance to the marriage, the marriage can take place.”²⁰

Separate from the 1974 Marriage Law, a “Compilation of Islamic Laws in Indonesia” published by the government in 1997 sets out the elements that must be satisfied in order for marriages to be conducted according to the Muslim faith. Article 40A(c) of this Compilation prohibits a Muslim man from marrying a non-Muslim woman, and Article 44 prohibits a Muslim woman from marrying a non-Muslim man.²¹ Article 4 confirms that “marriage is legal when it is done based on the Islamic Law under Article 2 Verse 1 Law no. 1 of 1974 re Marriage.”²²

In terms of official recognition of inter-religious marriages, in 1983 a Presidential Decision instructed the Civil Registry to refuse to formalize marriages involving Muslims,²³ and in 1984 the Ministry of Religion issued guidance to marriage registry officials at the Office of Religious Affairs stating they could only register marriages between Muslims.²⁴

¹⁷ The religions that are recognized by the government in Indonesia are Islam, Catholicism, Protestantism, Buddhism, Hinduism, and Confucianism. This is based on Presidential Decree No. 1 of 1965.

¹⁸ Butt, *supra* note 8, at 277. The author notes that, while the Catholic Church may give dispensation for an inter-religious marriage if certain conditions are met, it is “usually impossible” for Muslims, Hindus, and Buddhists to marry inter-religiously. See also Lukito, *supra* note 2, at 177, stating that “a literal interpretation of the sentence in Article 2(1) ... can be taken as a formal prohibition of a marital relationship between two parties who have different religions or beliefs. The Muslim law on marriage, for instance, contains elements that are foreign to Christian tradition, and *vice versa*: thus intermarriage by nature contradicts the law.”

¹⁹ Butt, *supra* note 8, at 276. Various news articles also discuss the controversy regarding the legality and practice of inter-religious marriage. See, e.g., Hera Diani, *A Leap of Faith: Taking the Plunge in Interreligious Marriage*, THE JAKARTA POST, Sept. 19, 2004, <http://www.thejakartapost.com/news/2004/09/19/leap-faith-taking-plunge-interreligious-marriage.html>; *Interfaith Marriage Remains Sensitive Issue*, The Jakarta Post, Apr. 24, 2005, <http://www.thejakartapost.com/news/2005/04/24/interfaith-marriage-remains-sensitive-issue.html>.

²⁰ Lukito, *supra* note 2, at 177. Lukito further discusses the arguments of different legal scholars regarding the legality of inter-religious marriage at p. 179.

²¹ DEPARTMENT OF RELIGIOUS AFFAIRS OF THE REPUBLIC OF INDONESIA, THE COMPILATION OF ISLAMIC LAWS OF INDONESIA (1996/1997), arts. 40A(c), 44.

²² *Id.* art. 4.

²³ Butt, *supra* note 8, at 278

²⁴ *Id.*

B. Court Decisions

The 1974 Marriage Law repealed relevant colonial regulations only to the extent that they were inconsistent with it.²⁵ Previously, an 1898 regulation that expressly allowed marriage between parties of different religions had been upheld by the Indonesian courts,²⁶ despite Muslims generally believing that inter-religious marriages were against Islamic law.²⁷ Even following the passage of the 1974 Marriage Law, the courts continued to hold that the 1898 regulation applied because the new Law did not explicitly cover inter-religious marriages.²⁸ However, a 1989 decision of the Indonesian Supreme Court found that this regulation was no longer applicable.²⁹

The case involved a marriage between a Muslim woman and a Protestant man. Officials at the Office of Religious Affairs had refused to formalize the marriage because the marriage did not accord with Islamic law due to the man not being Muslim. The marriage also could not be registered at the Civil Registry Office because the woman was Muslim.³⁰

The Supreme Court held that “the Marriage Law did not regulate marriages between partners of different religions.”³¹ In essence, the Court considered that “there was a legal vacuum, which made a clear decision on the matter of interfaith marriage impossible.”³² The Court did find a legal basis for the marriage to be formalized, holding that because the couple had sought to register their marriage with the Civil Registry Office the woman must not have wished to marry in accordance with Islam, and had therefore essentially abandoned her religion.³³ The Court held that the couple could therefore register their marriage at the Civil Registry Office as it was a non-Muslim marriage.³⁴

²⁵ Law No. 1 of 1974 on Marriage art. 66.

²⁶ Butt, *supra* note 8, at 276 (referring to *Regeling op de gemengde huwelijken* [Regulation on Mixed Marriages, S. 1898 No. 158], a decree that applied to Indonesians under Dutch rule). *See also* Lukito, *supra* note 2, at 178 (stating that “interfaith marriage is a long-standing tradition in Indonesia.”).

²⁷ Butt, *supra* note 8, at 276. The author refers to a 1952 decision of the Mahkamah Agung (Supreme Court) that upheld a decision of a lower court that permitted a marriage between a Christian man and Muslim women on the basis of the 1898 regulation.

²⁸ *Id.*

²⁹ Andy Vony v. The State, Decision of the Supreme Court No. 1400 K/Pdt/1986 (Jan. 20, 1989). This decision is referred to and discussed in Butt, *supra* note 8, at 278-82; Lukito, *supra* note 2, at 183-86; and Pompe, *supra* note 1, at 168.

³⁰ Butt, *supra* note 8, at 278.

³¹ *Id.* at 279.

³² *Id.* *See also* Lukito, *supra* note 2, at 184.

³³ *Id.*

³⁴ *Id.*

C. Practical Impact

One commentator states that, as a consequence of the 1898 regulation being found to be no longer applicable, “marriage candidates of different religious convictions have since had serious difficulties in finding a proper forum to be married and a civil registry that is willing to register the marriage.”³⁵

In practice, however, marriage between people of different religions does occur, and these marriages (particularly those that involve Indonesian celebrities seeking to marry foreigners of a different religious background) are often the subject of media reports and public discussion.³⁶ It has been stated that “uncertainty over the applicability of the Marriage Law to interfaith marriages has never discouraged the practice.”³⁷ However, there are legal and practical complexities involved and people may try to use different methods to ensure that these marriages are able to be registered.

The most common method is for a person to convert to his or her partner’s religion prior to marriage.³⁸ The website of the Australian Embassy in Jakarta states:

Under Law No.1 of 1974 concerning marriage (the ‘Marriage Law’), both parties must hold the same religion, if not, one party must convert to the other religion. Anecdotal evidence suggests that the process of converting to Islam is not a lengthy one. To start the process, speak with the Imam at the local mosque.³⁹

Another option taken is for couples to marry in an overseas country and then register the marriage under Indonesian law. The U.S. State Department’s 2009 report on religious freedom in Indonesia states:

Men and women of different religions also continued to face obstacles to marrying and officially registering their marriages. Such couples had difficulty finding a religious official willing to perform the ceremony, which is required before registering a marriage. As a result, some persons converted in order to marry. Others traveled overseas, where they wed and then registered the marriage at an Indonesian embassy.⁴⁰

³⁵ Adriaan Bedner & Stijn van Huis, *Plurality of Marriage Law and Marriage Registration for Muslims in Indonesia: A Plea for Pragmatism*, 6(2) UTRECHT L. REV. 175, 182 (2010), available at <http://www.utrechtlawreview.org/publish/articles/000134/article.pdf>.

³⁶ Butt, *supra* note 8, at 267.

³⁷ Lukito, *supra* note 2, at 180.

³⁸ *Id.* at 181.

³⁹ Australian Embassy, Jakarta, *Marriage in Indonesia*, <http://www.indonesia.embassy.gov.au/jakt/MarriageInd.html> (last visited June 29, 2010).

⁴⁰ U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, INTERNATIONAL RELIGIOUS FREEDOM REPORT 2009: INDONESIA (Oct. 26, 2009), available at <http://www.state.gov/g/drl/rls/irf/2009/127271.htm>.

The 1974 Marriage Law provides that “a marriage performed outside Indonesia between two Indonesian nationals or between an Indonesian national and a foreign national shall be legitimate if carried out according to the laws in force in the state wherein the marriage has been performed and insofar as the Indonesian national is concerned, the marriage is not in contravention with the provisions of this Law.”⁴¹ Such marriages must be registered in Indonesia within one year of a couple’s return to the country.⁴²

III. Divorce Laws

The 1974 Marriage Law also regulates the dissolution of marriage.⁴³ The implementing regulations set out particular requirements and processes, including the legal grounds for divorce.⁴⁴

Divorce must be carried out before a court.⁴⁵ If the marriage was conducted in accordance with Islamic law then a request for dissolution would need to be submitted by the husband to an Islamic (or “Religious”) Court.⁴⁶ If the marriage was registered as a non-Muslim marriage then the General Courts would have jurisdiction.⁴⁷ A separate law relating to the Religious Courts includes provisions that apply to Muslim divorce proceedings.⁴⁸

IV. Concluding Remarks

Although inter-religious marriage does occur in Indonesia, the legal situation surrounding it is complex. The fact that the 1974 Marriage Law does not explicitly address the issue of inter-religious marriage may be seen as creating “a legal vacuum.”⁴⁹ Another view, however, is that such marriages are clearly prohibited.⁵⁰

⁴¹ Law No. 1 of 1974 on Marriage art. 56(1).

⁴² *Id.* art. 56(2).

⁴³ Law No. 1 of 1974 on Marriage chs. IV-VIII.

⁴⁴ Government Regulation No. 9 of 1975 on Marriage art. 19. Grounds include adultery, alcohol and drug addiction, gambling, abandonment, imprisonment, cruelty, physical disfigurement or illness, and disputes that mean there is no hope of the husband and wife living together peacefully.

⁴⁵ Law No. 1 of 1974 on Marriage arts. 39(1), 40(1). Government Regulation No. 9 of 1975 on Marriage arts. 14-18 establish the court processes relating to the dissolution of marriages conducted according to the Islamic faith.

⁴⁶ *See* Law No. 1 of 1974 on Marriage art. 63 (stating that references to a “Court of Law” in the Law is to be understood as meaning a Religious Court for those having Islam as a religion, and a General Court for all others). *See also* Government Regulation No. 9 of 1975 on Marriage art. 1.

⁴⁷ *Id.*

⁴⁸ Law No. 7 of 1989 on the Religious Judicature arts. 65-91.

⁴⁹ Lukito, *supra* note 2, at 178. *See also* Butt, *supra* note 8, at 282 (stating that “the law of mixed marriages in Indonesia is now highly uncertain.”).

⁵⁰ Lukito, *supra* note 2, at 180.

Aside from this legal uncertainty, a number of sources state that it is difficult to register inter-religious marriages and therefore that people find it necessary to convert to their partner's religion or to get married overseas. In particular, the rules relating to marriages conducted in accordance with the Muslim faith preclude inter-religious marriages, and a non-Muslim party may therefore seek to convert to Islam in order to marry a person who adheres to the Muslim faith. In this situation, where the marriage is registered with the Office of Religious Affairs, dissolution of the marriage would also be conducted under Islamic law and would involve an application to the Religious Court.

Prepared by Kelly Buchanan
Foreign Law Specialist
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