

The Ratio Legis of Article 35(a) of Law Number 23 of 2006 on Population Administration

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ABSTRACT

This study aims to analyze the ratio legis underlying the enactment of Article 35 letter (a) of Law Number 23 of 2006 concerning Population Administration, which regulates the registration of marriages based on a court determination, particularly in the context of interfaith marriages. The study is motivated by a normative conflict between Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage, which stipulates the validity of marriage based on religious law, and Article 35 letter (a) of Law Number 23 of 2006, which provides an opportunity for marriage registration through a court ruling. This research employs a normative legal research method with statutory, case, and conceptual approaches. Primary, secondary, and tertiary legal materials are analyzed using descriptive-analytical and argumentative techniques. The research gap lies in the absence of studies that specifically position Article 35 letter (a) as the central object of ratio legis analysis and connect it to the disharmony between the legal regime of marriage and population administration law. Previous studies have generally focused on the legality of interfaith marriages, human rights protection, or judicial decision analysis, without systematically examining the legislative purpose of the norm and its implications for the consistency of the national legal system. The novelty of this study lies in the reconstruction of the ratio legis of Article 35 letter (a) as an instrument of population administration, which is then analyzed within the framework of vertical and horizontal legal harmonization between the population administration regime and national marriage law. Accordingly, this study not only explains the underlying legislative intent but also proposes a regulatory harmonization construct based on the theory of legal certainty as a model for resolving normative disharmony that has not been previously offered in the literature. The findings indicate that the existence of Article 35 letter (a) generates normative disharmony, resulting in legal uncertainty and divergent interpretations in judicial practice. From a legal perspective, interfaith marriages do not fulfill the validity requirements under national marriage law. Therefore, regulatory harmonization is required to ensure legal certainty, consistency in law enforcement, and synchronization between the population administration system and marriage law.

Keywords : Ratio Legis; Interfaith Marriage; Population Administration; Legal Certainty; Legal Harmonization.

1. INTRODUCTION

Indonesia is a country characterized by a highly complex plurality of religions, cultures, and ethnic groups in the Southeast Asian region. Within such a pluralistic society, interfaith marriage constitutes a social reality that cannot be ignored in the construction of the national legal system. Normatively, Law Number 1 of 1974 on Marriage, particularly Article 2 paragraph (1), stipulates that a marriage is valid when it is conducted according to the laws of each religion and belief. This provision systematically positions religion as the validating ground for the legality of marriage, which in practice is often interpreted as implying religious uniformity between the parties. This construct aligns with the approach of legal pluralism, which places religious law as the primary source of validity for personal status within Indonesia's family law system. In this

framework, interfaith marriage becomes an issue of normative friction between state law and religious law within a plural legal system (Rahmat, 2023).

From a sociological perspective, however, global societal developments demonstrate an increasing prevalence of interfaith marriage as a consequence of social mobility, education, and cross-cultural interaction. Comparative studies indicate that countries with plural legal systems face similar challenges in balancing individual freedom to marry with the authority of religious norms in family law (Ferrari & Durand, 2022). Therefore, the tension between the normativity of religious law and modern social needs becomes a critical point in the formation and application of marriage law in Indonesia.

Marriage registration within the Indonesian legal system functions as an administrative instrument of the state with a dual function: as an authentic evidentiary tool and as a legal protection mechanism for citizens' civil status. Article 2 paragraph (2) of Law Number 1 of 1974 affirms this registration requirement as part of the legal recognition of marital status. From an administrative law perspective, registration is not merely declarative but also has constitutive implications for access to civil rights, such as inheritance rights, child status, and social protection. In this context, the lack of regulatory certainty regarding the registration of interfaith marriages results in legal uncertainty that directly affects the protection of human rights (Luthfia, 2022). Furthermore, the United Nations Human Rights Committee emphasizes that states are obliged to guarantee every individual's right to marry without discrimination on the basis of religion, while still respecting the applicable national legal system (UNHRC, General Comment No. 28, 2022).

Normative complexity is further intensified by the enactment of Law Number 23 of 2006 on Population Administration, particularly Article 35 letter (a), which opens the possibility of marriage registration based on a court determination, including interpretations that may encompass interfaith marriages. This provision creates a norm conflict with Article 2 paragraph (1) of the Marriage Law, which positions religion as a requirement for the validity of marriage. From the perspective of Hans Kelsen's theory of the hierarchy of norms, this conflict reflects tension between primary norms (marital validity) and secondary norms (administrative registration), potentially resulting in legal fragmentation in judicial practice (Hanifah, 2020).

Empirically, interfaith marriage practices in Indonesia show an increasing trend. Data from the Indonesian Conference on Religion and Peace (ICRP) recorded 1,566 couples between 2005 and 2022 facilitated in interfaith marriages, with 89 couples in 2023 (Aslami, 2023). In South Jakarta, there was an increase in court applications for interfaith marriage registration determinations from 9 cases in 2022 to 10 cases in 2023. This phenomenon indicates the emergence of the judicialization of marriage regulation, namely the tendency of society to utilize



judicial mechanisms as a means of legitimizing marriage when administrative norms fail to provide legal certainty. Recent studies further indicate that this practice reflects a “regulatory gap” between written law and evolving social reality (International Journal of Law, Policy and the Family, 2024).

Judicial dynamics demonstrate a lack of consistency in court decisions concerning interfaith marriage. Prior to the issuance of Supreme Court Circular Letter (SEMA) Number 2 of 2023, several decisions accommodated applications for the registration of interfaith marriages, such as Supreme Court Decision Number 1400 K/Pdt/1986 and various district court rulings. However, after SEMA 2/2023, which in principle restricts the registration of interfaith marriages, there remain decisions granting similar applications, indicating judicial inconsistency in the application of law. From the perspective of legal certainty theory, such inconsistency undermines legal predictability as a core element of the rule of law (Otto, 2009).

The Constitutional Court, through Decision Number 68/PUU-XII/2014 and Decision Number 24/PUU-XX/2022, consistently affirms that a valid marriage is one conducted according to the law of each religion. These decisions reinforce a constitutional deference approach toward religious law within Indonesia’s legal system. However, in practice, interpretive space remains that is utilized by applicants through population administration mechanisms, demonstrating tension between constitutional interpretation and administrative pragmatism. In this regard, the Supreme Court, through SEMA 2/2023, attempts judicial harmonization, although its effectiveness remains debated in judicial practice.

From a legal theory perspective, the core issue of this study lies in the ratio legis of Article 35 letter (a) of the Population Administration Law. Ratio legis is not merely understood as the rationale for norm formation, but also as a normative justification bridging legal objectives, public policy, and social reality. In Jan Michiel Otto’s perspective, legal certainty must encompass both formal and substantive dimensions, meaning that law must not only be clear and predictable but also possess strong social legitimacy (Otto, 2009). Meanwhile, within Gustav Radbruch’s framework, when a conflict arises between legal certainty and justice, substantive justice may serve as a corrective to positive law that no longer reflects social justice values (Radbruch, 2006). In this context, the conflict between the Marriage Law and the Population Administration Law reflects an unresolved tension between formal legal certainty and substantive justice.

Previous studies have examined interfaith marriage from various perspectives. Atabik Hasin (2015) highlighted the sociological aspect of religious conversion practices in the context of marriage. Other research in the International Journal of Social Welfare by Katili, Leonarza, and Fadlan emphasizes the importance of legal harmonization in addressing the reality of interfaith marriages in Indonesia. Meanwhile, recent studies in the Journal of Comparative Family Law



(2023) argue that plural legal systems such as Indonesia require more adaptive normative harmonization mechanisms to prevent fragmentation in family law. However, no study has specifically examined the ratio legis behind Article 35 letter (a) of the Population Administration Law as its philosophical, juridical, and sociological foundation.

Based on the foregoing analysis, there is both academic and practical urgency to conduct an in-depth examination of the ratio legis of Article 35 letter (a) of the Population Administration Law. Judicial disparity, normative uncertainty, and inter-legislative conflict have created conditions of legal uncertainty that directly impact society. Therefore, this research not only contributes to the development of family law scholarship in Indonesia but also provides a conceptual foundation for policymakers, judges, and legal practitioners in building a more harmonious, certain, and just marriage law system

2. RESEARCH METHODS

This study employs a normative (doctrinal) legal research method based on a comprehensive library study of the prevailing positive legal norms. Three complementary approaches are adopted. First, the statutory approach is used to examine the provisions of Article 2 of Law Number 1 of 1974 on Marriage and Article 35 of Law Number 23 of 2006 on Population Administration. Second, the conceptual approach is applied to analyze legal principles, including legal certainty and legal construction, which constitute the theoretical foundation of this study. Third, the case approach is employed to examine the *ratio decidendi* of various court determinations concerning applications for the registration of interfaith marriages, including decisions issued by the South Jakarta District Court, Denpasar District Court, Surabaya District Court, and Tangerang District Court.

The legal materials were collected through library research and classified into three categories. Primary legal materials consist of statutory regulations and judicial decisions that are directly binding on the legal issues under examination, particularly Law Number 1 of 1974 on Marriage, Law Number 23 of 2006 on Population Administration, the Indonesian Civil Code (*Burgerlijk Wetboek*), relevant decisions of the Constitutional Court, and district court determinations concerning interfaith marriage registration. These materials were selected based on their normative relevance to the regulatory conflict that constitutes the focus of this study. Secondary legal materials comprise legal textbooks, accredited scholarly journals, and expert opinions that provide explanations and critical analyses of the primary legal materials. Their selection was based on thematic relevance, currency, and the academic credibility of the authors or publishers. Tertiary legal materials, including legal dictionaries and encyclopedias, were used



solely to support terminological clarification. All legal materials were obtained from official and credible sources, including the Legal Documentation and Information Network (JDIH) of the Ministry of Law and Human Rights, the official website of the Constitutional Court (MKRI.go.id), university libraries, and accredited legal journal databases. The collected materials were analyzed qualitatively using a descriptive-analytical method by systematically describing the substance of the relevant legal norms, examining their logical structure and normative consistency, and drawing prescriptive conclusions through legal argumentation to formulate recommendations for resolving the legal issues under investigation.

2. RESULTS AND DISCUSSION

The Ratio Legis of Article 35(a) of Law Number 23 of 2006 on Population Administration

The findings of this study demonstrate that the *ratio legis* (the legal rationale underlying the enactment) of Article 35(a) of Law Number 23 of 2006 concerning Population Administration originated from the State's administrative necessity to provide legal recognition through civil registration documents for all citizens without exception, including couples whose marital status falls within complex legal circumstances. Historically, Indonesia's civil registration system inherited the pluralistic and discriminatory colonial legal framework of the Dutch East Indies, which differentiated the population based on ethnic and legal classifications, beginning with *Staatsblad* 1849 No. 25 for Europeans, *Staatsblad* 1917 No. 130 for Chinese Indonesians, and *Staatsblad* 1933 No. 75 for Indonesian Christians. Following Indonesia's independence, these fragmented systems were not immediately unified. A significant effort toward legal unification was introduced through Law Number 1 of 1974 concerning Marriage. Nevertheless, the absence of a comprehensive legal framework governing the registration of population events led to the enactment of Law Number 23 of 2006, which was designed as an integrated legal instrument to guarantee every citizen's right to obtain valid civil registration documents (Naskah Akademis RUU Administrasi Kependudukan, 2003). Accordingly, the *ratio legis* of Article 35(a) was never intended to substantively legalize interfaith marriages; rather, it serves as an administrative mechanism enabling legal events that have already occurred including marriages validated by a court order to receive official recognition through state-issued documentation.

This study identifies a clear normative conflict between Article 2(1) of Law Number 1 of 1974 concerning Marriage and the elucidation of Article 35(a) of Law Number 23 of 2006 concerning Population Administration. Article 2(1) of the Marriage Law unequivocally provides that a marriage is legally valid only when conducted in accordance with the religious law and beliefs of the parties concerned. Consequently, it implicitly precludes interfaith marriages because



none of the religions officially recognized in Indonesia unequivocally permits marriage between adherents of different religions (Saleh, 2022). Conversely, the elucidation of Article 35(a) of the Population Administration Law defines a "marriage determined by a court" as a marriage between individuals of different religions, thereby creating an avenue for the administrative registration of interfaith marriages through judicial determination. This normative inconsistency constitutes a *contradictio in terminis* because both statutes occupy the same hierarchical level within Indonesia's legislative framework. Therefore, the conflict cannot be resolved merely by applying the principle of *lex posterior derogat legi priori*. This study argues that the Marriage Law functions as the *lex specialis* concerning the substantive validity of marriage, whereas the Population Administration Law serves as the *lex specialis* regarding administrative registration. Since both laws regulate different dimensions of the same legal event, the principle of *lex specialis derogat legi generali* must be applied contextually according to the particular normative dimension under examination (Mertokusumo, 2007).

The findings further demonstrate that the issue of interfaith marriage in Indonesia did not emerge from a legal vacuum but is rooted in a long and contested history of legal politics dating back to the colonial era. During the Dutch East Indies period, the *Regeling op de Gemengde Huwelijken* (GHR) (*Staatsblad* 1898 No. 158) explicitly stipulated that differences in religion could not constitute an impediment to mixed marriages, thereby permitting and regulating interfaith marriages. Following Indonesia's independence and the enactment of Law Number 1 of 1974 concerning Marriage, Article 66 expressly repealed the applicability of the *Regeling op de Gemengde Huwelijken* (GHR). The legislative process leading to the Marriage Law was marked by intense political contestation between Islamic groups advocating a marriage law grounded in Islamic principles and nationalist as well as non-Muslim groups supporting a more inclusive legal framework (Atabik, 2015). The formulation ultimately adopted in Article 2(1) represented a political compromise that delegated the determination of marital validity entirely to the respective religious laws of the parties. Consequently, interfaith marriage has no normative basis within Indonesia's national legal system following the enactment of the 1974 Marriage Law. Furthermore, the Constitutional Court, through Decisions No. 68/PUU-XII/2014 and No. 24/PUU-XX/2022, reaffirmed the constitutionality of Article 2(1), confirming that only marriages solemnized in accordance with the parties' respective religions and beliefs are constitutionally recognized as valid.

One of the principal contributions of this study is the identification of judicial disparities in decisions concerning applications for the registration of interfaith marriages, both before and after the issuance of Supreme Court Circular Letter (SEMA) Number 2 of 2023. Prior to the issuance of



the Circular Letter, several courts granted such applications, including Supreme Court Decision No. 1400 K/Pdt/1986, Surakarta District Court Decision No. 46/Pdt.P/2016/PN.Skt, Magelang District Court Decision No. 04/Pdt.P/2012/PN.Mgl, and Central Jakarta District Court Decision No. 155/PDT.P/2023/PN.Jkt.Pst. However, even after SEMA No. 2 of 2023 which essentially prohibits courts from granting applications for the registration of interfaith marriages certain courts continued to approve such petitions, as reflected in North Jakarta District Court Decision No. 423/Pdt.P/2023/PN Jkt.Utr. This inconsistency illustrates the dilemma faced by judges in balancing formal legal certainty against the protection of human rights and the interests of women and children. According to Jan Michiel Otto's theory of legal certainty, ambiguous legal norms or norms lacking clear implementation mechanisms inevitably generate legal uncertainty (Otto, 2021). Empirical evidence further indicates that the South Jakarta District Court approved nine applications for interfaith marriage registration in 2022, increasing to ten applications in 2023, thereby demonstrating the persistent uncertainty surrounding this area of law.

This study also provides a comprehensive mapping of the legal consequences arising from interfaith marriages in Indonesia. First, regarding the validity of marriage, interfaith marriages registered pursuant to a court order are administratively recognized under Article 2(2) of the Marriage Law but remain substantively invalid under Article 2(1). Consequently, such marriages remain vulnerable to annulment pursuant to Article 22 of the Marriage Law or Article 40(c) of the Compilation of Islamic Law. Second, concerning inheritance, under Islamic law an invalid marriage eliminates reciprocal inheritance rights between husband and wife and may also affect inheritance rights between a child and the father, as the child's civil legal relationship is recognized only with the mother. Third, with respect to judicial jurisdiction, significant difficulties arise from the principle of personality in determining whether disputes involving interfaith couples whose marriages have been registered by the Civil Registry Office fall within the jurisdiction of the Religious Court or the District Court. Fourth, marriages that remain unregistered disproportionately disadvantage women because, without an officially recognized marriage certificate, wives lack the legal standing to claim maintenance, marital property, or inheritance rights. These findings demonstrate that disharmonization between legal norms extends beyond theoretical inconsistencies and produces tangible legal disadvantages, particularly for women and children involved in interfaith marriages.

From a comparative law perspective, Indonesia's approach to prohibiting interfaith marriage through religious legal norms differs significantly from the legal practices adopted in many other jurisdictions. Malaysia, despite having a Muslim-majority population, prohibits interfaith marriages involving Muslims under state Islamic family laws while allowing religious



conversion as a procedural avenue for marriage. Türkiye, by contrast, has separated marriage law from religious law since Atatürk's legal reforms of 1926, making civil marriage legally valid regardless of religious affiliation. Likewise, the United States and most Western European countries have adopted fully secular civil marriage systems in which differences in religion present no legal impediment to marriage. Singapore, another multicultural neighboring country, regulates marriage primarily through the Women's Charter, which does not require religious uniformity except for Muslims governed by the Administration of Muslim Law Act (AMLA). Within this comparative framework, Indonesia's legal model whereby the substantive validity of marriage is entirely determined by religious law constitutes a distinctive approach among contemporary democratic states and has generated a legal gap that Article 35(a) of the Population Administration Law attempts, albeit incompletely, to address (Saleh, 2022). This comparison demonstrates that reconciling religious principles with administrative legal certainty represents a universal challenge; however, Indonesia has yet to develop a coherent legal framework capable of resolving this issue comprehensively.

Based on the foregoing analysis, this study concludes that a horizontal normative inconsistency exists between Law Number 1 of 1974 concerning Marriage and Law Number 23 of 2006 concerning Population Administration, particularly regarding the registration of interfaith marriages. Vertically, the Compilation of Islamic Law and Government Regulation Number 9 of 1975 are consistent with the Marriage Law, whereas Supreme Court Decision No. 1400/K/Pdt/1986 and the GHR (*Staatsblad* 1898 No. 158) are inconsistent with the current statutory framework. The issuance of Supreme Court Circular Letter No. 2 of 2023 represents an institutional effort by the Supreme Court to close the legal loophole created by Article 35(a); however, from the perspective of normative hierarchy, a circular letter cannot amend or override statutory provisions (Saleh, 2022). Applying Jan Michiel Otto's theory of legal certainty, this study emphasizes that legal certainty is not achieved merely through the existence of written legislation but also depends upon consistent enforcement and clear implementation procedures. The persistent ambiguity surrounding Article 35(a) of the Population Administration Law has generated systemic legal uncertainty that adversely affects society. Therefore, the principal recommendation of this study is the need for explicit legislative harmonization between Law Number 1 of 1974 concerning Marriage and Law Number 23 of 2006 concerning Population Administration, whether through statutory amendment, the issuance of implementing government regulations serving as bridging norms, or a Constitutional Court decision expressly clarifying the relationship between these two statutes, thereby ensuring legal certainty while safeguarding the rights of all citizens (Otto, 2021).



Finally, this study highlights the manner in which judges employ legal construction, particularly the methods of *rechtsverfijning* (legal refinement) and analogy, to fill normative gaps. Pursuant to Article 10(1) of Law Number 48 of 2009 concerning Judicial Power, courts are prohibited from refusing to adjudicate cases on the grounds that the applicable law is absent or unclear. This obligation requires judges to engage in *rechtvinding* (judicial law-finding) when adjudicating applications for the registration of interfaith marriages. Some judges have relied analogically upon Article 35(a) of the Population Administration Law as the legal basis for granting such applications, reasoning that administrative legal certainty must be guaranteed by the State. However, this study argues that such an approach suffers from flawed legal construction because it relies upon an administrative norm to legitimize a legal relationship that is substantively prohibited under a superior legal norm. Referring to Adolf Merkl's theory of the "dual aspect of legal norms" (*das Doppelte Rechtsantlitz*), every legal norm must remain consistent with higher norms while simultaneously serving as the legal basis for subordinate norms. Accordingly, judicial determinations permitting interfaith marriages solely on the basis of Article 35(a), without first confirming their substantive validity under Article 2(1) of the Marriage Law, constitute an incoherent legal construction that exacerbates legal uncertainty (Atabik, 2015). Consequently, a uniform *ratio decidendi* should be established to guide judges nationwide, thereby eliminating inconsistent judicial decisions and promoting greater legal certainty within Indonesia's marriage law regime.

Interfaith Marriage under Indonesian Laws and Regulations: An Analysis of Law Number 1 of 1974 on Marriage

The findings of this study demonstrate that the enactment of Article 35(a) of Law Number 23 of 2006 on Population Administration (hereinafter referred to as the *Population Administration Law*) cannot be separated from the long historical development of Indonesia's population administration system, which had long been characterized by legal pluralism and discrimination. Prior to the enactment of the Population Administration Law, marriage registration was regulated through various colonial legal instruments, including *Staatsblad* 1849 No. 25 and *Staatsblad* 1898 No. 158 concerning the *Regeling op de Gemengde Huwelijken* (Mixed Marriage Regulation/GHR), which imposed different legal regimes based on ethnicity, religion, and social status. Rather than providing legal certainty, this normative pluralism perpetuated legal uncertainty well into the post-independence era. The primary *ratio legis* underlying the Population Administration Law was to establish an integrated population administration system, ensure equal protection of citizens' civil rights without discrimination, and incorporate significant civil events including marriage within a unified and modern legal framework. Within this context, Article 35(a) constitutes a form of



judicial legal construction (*rechtsvinding*) intended to fill the legal vacuum (*leemten*) concerning the registration of interfaith marriages, for which no clear legal mechanism previously existed. This legislative policy is consistent with Article 10(1) of Law Number 48 of 2009 on Judicial Power, which prohibits courts from refusing to adjudicate cases on the grounds that the applicable law is absent or unclear (Hanifah, 2020).

From the perspective of legislative history, the regulation of marriage registration in Indonesia has evolved through several significant phases that have shaped the country's complex legal landscape. Law Number 22 of 1946 concerning the Registration of Marriage, Divorce, and Reconciliation marked the first effort to unify the administrative regulation of Islamic marriages under the supervision of the Ministry of Religious Affairs. Subsequently, Law Number 1 of 1974 on Marriage established the principle that the validity of a marriage depends upon the religious law applicable to each party (Article 2(1)), while marriage registration serves solely as an administrative requirement (Article 2(2)). Nevertheless, the Marriage Law does not explicitly regulate the registration mechanism for interfaith marriages, resulting in divergent interpretations among legal practitioners and judges. In this context, the Supreme Court Decision No. 1400 K/Pdt/1986 created a legal opening by holding that religious differences do not constitute an impediment to marriage and ordering the Civil Registry Office to register an interfaith marriage. The enactment of the Population Administration Law in 2006, particularly Article 35(a), subsequently provided explicit legal recognition for the registration of interfaith marriages that had obtained a court order, thereby positioning the judiciary as the institution responsible for legitimizing the administrative validity of such marriages (Luthfia, 2022).

The study further identifies a significant normative conflict (*contradictio in terminis*) between Article 35(a) of the Population Administration Law and its elucidation on the one hand, and Article 2(1) of the Marriage Law on the other. The elucidation of Article 35(a) expressly states that "a marriage determined by a court refers to a marriage conducted between individuals of different religions," whereas Article 2(1) of the Marriage Law stipulates that a marriage is legally valid only if performed in accordance with the respective religious laws of the parties concerned. This contradiction creates a fundamental legal dilemma: one legal provision implicitly permits interfaith marriages, while the other implicitly prohibits them. Through Constitutional Court Decisions No. 68/PUU-XII/2014 and No. 24/PUU-XX/2022, the Constitutional Court unequivocally rejected attempts to constitutionalize interfaith marriage and reaffirmed that the validity of marriage must remain subject entirely to religious law. According to Jan Michiel Otto (2009), such circumstances represent a condition of substantive legal uncertainty, in which normative ambiguity and inconsistent legal implementation prevent citizens from reasonably



predicting the legal consequences of their actions. This uncertainty has been further aggravated by inconsistent judicial decisions across Indonesian courts. For example, the South Jakarta District Court granted nine applications for interfaith marriage registration in 2022 and ten similar applications in 2023, while comparable applications submitted before other district courts were rejected (Pratiwi, 2022).

From the perspective of substantive law, this research finds that interfaith marriages registered pursuant to a court order possess only formal administrative validity and do not attain substantive legal validity under Article 2(1) of the Marriage Law. This creates what the author characterizes as a "hidden legal defect," whereby the marriage is evidenced by an official marriage certificate issued by the Population and Civil Registration Office, yet remains vulnerable to annulment proceedings initiated by legally authorized parties pursuant to Article 22 of the Marriage Law on the ground that the essential legal requirements for a valid marriage were not fulfilled. For Muslim parties, such annulment may additionally be based upon Article 40(c) of the Compilation of Islamic Law, which prohibits Muslim men from marrying non-Muslim women, and Article 44, which prohibits Muslim women from marrying non-Muslim men.

A comparative analysis demonstrates that the regulation of interfaith marriage varies considerably across jurisdictions, reflecting different socio-legal contexts. In Türkiye, a predominantly Muslim country operating under a secular legal system, civil marriage registration constitutes the only form of marriage recognized by the state regardless of religious affiliation, thereby allowing interfaith marriages to be registered without institutional barriers. Malaysia, by contrast, adopts a more religion-oriented legal framework by expressly prohibiting interfaith marriages involving Muslims under the Islamic Family Law enacted by each state, without providing any judicial authorization mechanism comparable to that available in Indonesia. India adopts yet another approach through the Special Marriage Act 1954, which enables individuals of different religions to marry legally outside their respective religious legal systems without requiring religious conversion or judicial authorization, thereby providing a more definitive framework for legal certainty (Dhanda, 2021). This comparison illustrates Indonesia's uniquely vulnerable legal position: it neither categorically prohibits interfaith marriages as Malaysia does nor provides a comprehensive civil marriage mechanism similar to India's. Instead, Indonesia relies upon an administrative pathway through judicial authorization, which has generated inconsistent judicial decisions and continuing legal uncertainty. This situation reflects what Otto (2009) describes as "illusory legal certainty," whereby written legal norms formally exist but cannot be applied consistently in practice.



From the perspective of legal construction theory, judicial decisions granting applications for interfaith marriage registration pursuant to Article 35(a) of the Population Administration Law may be classified as a form of legal refinement (*rechtsverfijning*), whereby judges abstract general legal principles from existing legislation and apply them to concrete situations that have not been explicitly regulated in order to avoid injustice resulting from legal gaps. Nevertheless, such judicial refinement cannot be justified when it conflicts with higher-ranking legal norms or produces systemic inconsistency within the legal system. In this case, judicial constructions that effectively "legalize" interfaith marriages through court orders directly conflict with the Constitutional Court's interpretation that the validity of marriage cannot be separated from religious law. Since lower courts are constitutionally bound by Constitutional Court interpretations, district court decisions approving interfaith marriage applications remain substantively weak from a juridical perspective, notwithstanding the administrative validity of the documents they produce. The issuance of Supreme Court Circular Letter (SEMA) No. 2 of 2023 has further clarified the judiciary's institutional position by instructing judges to reject applications for the registration of interfaith marriages, thereby closing the legal loophole previously relied upon and reaffirming Article 2(1) of the Marriage Law as a mandatory legal norm that cannot be circumvented through administrative mechanisms (Hanifah, 2020).

The findings of this study further demonstrate that the *ratio legis* of Article 35(a) of the Population Administration Law was originally intended to provide administrative legal certainty for marriages that had obtained judicial authorization including marriages performed abroad requiring subsequent registration in Indonesia rather than to serve as an independent legal basis conferring substantive validity upon interfaith marriages. Its implementation during the period from 2006 to 2023 has generated normative disharmony with significant practical consequences, including: (1) uncertainty regarding the legal status of registered interfaith marriages; (2) uncertainty concerning the legal status of children born from such marriages, who under Article 43 of the Marriage Law possess civil legal relations only with their mother should their parents' marriage subsequently be declared invalid; (3) the loss of inheritance rights under Islamic law; and (4) ambiguity regarding the competent judicial forum for resolving family disputes, as the principle of personal jurisdiction applicable to Muslims conflicts with the fact that such marriages are registered before the Civil Registry rather than the Office of Religious Affairs (KUA). These findings reinforce the argument advanced by Chaula Luthfia (2022) that marriage registration extends far beyond a mere administrative procedure, encompassing the entire spectrum of legal consequences arising from the marital relationship.



Based on the foregoing analysis, this study concludes that urgent legislative harmonization is required between Law Number 1 of 1974 on Marriage, particularly Article 2(1), and Law Number 23 of 2006 on Population Administration, particularly Article 35(a). Such harmonization should be grounded in the principle of *lex specialis derogat legi generali*, whereby the Marriage Law, as the special legislation governing the substantive validity of marriage, should prevail over the administrative provisions contained in the Population Administration Law. Harmonization must also conform to the Constitutional Court's final and binding constitutional interpretation. In accordance with Jan Michiel Otto's (2009) theory of legal certainty, an effective legal system requires norms that are not only formally enacted and generally applicable but are also implemented consistently and predictably. As long as Article 35(a) of the Population Administration Law and its elucidation continue to be interpreted as providing a limited authorization for interfaith marriage without clearly defining its scope and legal consequences, legal uncertainty will persist as a source of normative conflict and inconsistent judicial decisions, ultimately disadvantaging those most in need of legal protection namely the couples themselves and, more importantly, the children born from such marriages.

4. CONCLUSION

The findings demonstrate that the regulation of interfaith marriage in Indonesia continues to suffer from normative disharmony between Article 2(1) of Law Number 1 of 1974 on Marriage and Article 35(a) of Law Number 23 of 2006 on Population Administration. This study establishes that the *ratio legis* of Article 35(a) of the Population Administration Law is fundamentally intended to ensure administrative legal certainty through the registration of civil status events, rather than to confer substantive legal validity upon interfaith marriages. As a consequence of this normative inconsistency, divergent judicial interpretations have emerged, resulting in inconsistent court decisions. Accordingly, marriage registration merely provides administrative recognition without resolving fundamental legal issues concerning the substantive validity of interfaith marriages, the legal status of children, inheritance rights, marital property, and judicial jurisdiction.

The original contribution of this study lies in reconstructing the *ratio legis* of Article 35(a) of the Population Administration Law by emphasizing the distinction between administrative legality and the substantive validity of interfaith marriages through the application of the theory of legal certainty, the theory of legal norms, and the principle of *lex specialis derogat legi generali*. Based on these findings, this study recommends harmonizing the Marriage Law and the Population Administration Law through legislative reform or normative clarification in order to establish



consistent legal certainty, eliminate disparities in judicial decisions, and provide more effective legal protection for all citizens.

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