

Limitations on Interfaith Marriage Practices in Indonesia According to Human Rights Perspective



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ABSTRACT: Fundamental human rights include the right to marry and start a family. The 1945 Constitution of the Republic of Indonesia assures such right in its Article 28B. An exception to such right is through Article 2 paragraph 1 of the Law Number 1 of 1974 on Marriage which states that marriages are only deemed legitimate if they are done according to each religion or belief. This prevents Indonesian citizens from having interfaith marriages. This paper aims to discuss such restriction in carrying out interfaith marriage in Indonesia in relation to the fundamental human right to marry and start a family. The result of the research shows that while Indonesia is based on the Pancasila which underlies the provision of the Article 2 paragraph 1 of the Marriage Law, it still has the obligation as a living ideology to protect all Indonesian's interests, including families born out of interfaith marriages, and that the UDHR as an expression of the international community, clearly states the freedom to marry with no limitation due to religion.

KEYWORDS: interfaith marriage; human rights; constitution; religion

INTRODUCTION

Humans live balancing their rights and duties. There are several basic rights that humans are entitled to the minute they're born, which bear the duty for them to honor other's such basic rights. On 10 December 1948, the General Assembly of the United Nations adopted the Universal Declaration of Human Rights (UDHR), which articulates fundamental rights and freedoms for all. The UDHR came on the heels of the Second World War which resulted in the extermination of almost 17 million people during the holocaust. The war brought to light that basic human rights to live are not always universally respected¹, and thus warrants an official declaration to secure it. While the UDHR is not a treaty, and thus does not directly create legal obligations for countries, it is an expression of fundamental values shared by all members of the international community.² Most countries in the world take on the duty of protecting their people's fundamental rights, which usually are stated in their constitution.

The same goes for Indonesia. The Indonesian constitution, which is the 1945 Constitution of the Republic of Indonesia, cemented the fundamental human rights of its people protected by the State. The 1945 Constitution includes the freedom to associate and to assemble, to express written and oral opinions, the right to live and defend their life and existence, to develop themselves through the fulfillment of their basic needs, to get education, and to benefit from science and technology. Most of these basic rights are aligned with the contents of the UDHR.

The protection of these rights in the 1945 Constitution are then to be translated into its own specific laws or acts, in order to be further regulated and the right of every individual assured. One law that is debated up to this day has to do with the right to establish a family and to procreate based upon lawful marriage, as stated in Article 28B of the 1945 Constitution. While on first glance it may seem harmless and should spawn no debate, relating Article 28B's end phrase "based upon lawful marriage" with the contour of Indonesian culture and values reveal otherwise. Religion plays a big part in Indonesian's live which shows in the making of the law. Indonesia is a country whose law is based upon the 5 principles of the Indonesian State as listed in the Pancasila, which are:

1. Belief in the one and only God (*Ketuhanan Yang Maha Esa*);
2. A just and civilized humanity (*Kerakyatan Yang Adil Dan Beradab*);
3. Unity of Indonesia (*Persatuan Indonesia*);
4. Democracy, led by the wisdom of the representatives of the people (*Kerakyatan Yang Dipimpin Oleh Hikmat Kebijaksanaan Dalam Permusyawaratan Perwakilan*); and

¹ Amnesty International UK, 2017, accessed from <https://www.amnesty.org.uk/universal-declaration-human-rights-UDHR>.

² Australian Human Rights Commission, accessed from <https://humanrights.gov.au/our-work/what-universal-declaration-human-rights>.

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5. Social justice for all Indonesian people (*Keadilan Sosial Bagi Seluruh Rakyat Indonesia*).

Embodying the belief in the one and only God as stated above, the Law Number 1 of 1974 on Marriage (Marriage Law) states in its Article 2 paragraph (1) that “Marriage is legal, so long as it is carried out according to the law of each’s religion and belief.” This article thus implies that in order for a marriage to be considered legal and recognized by the State, it must first be recognized by the bride and groom’s religion and belief. This poses a problem as this prevents interfaith marriage from ever happening or at least from ever legally recognized by the State, because the law of the religions recognized by the Indonesian State do not permit interfaith marriage. Most of them orders its disciples to marry those of the same religion. Furthermore, this pertains to the question of fundamental human rights issues, as religion and beliefs are very private to each person, and every individual may interpret them differently and have different relations to God. Some may follow the orders of their religion thoroughly, while some other may not. Those who wish to marry someone outside of their religion may feel their rights violated.

This research aims to analyze the human rights issues surrounding Article 2 paragraph (1) of the Law Number 1 of 1974 on Marriage in relation to the 1945 Constitution and the UDHR.

METHODOLOGY

This research is normative juridical research, using secondary data in the form of ready-to-use library data. The materials used in this research are primary legal materials such as statutory regulations, secondary materials such as legal literature, and non-legal materials for support. The research approach used is the statutory approach through the regulations governing marriage law and human rights law.

DISCUSSION

Indonesian Law Regulating Marriage Practices

Indonesia is a heterogenous country, with various tribes and customs that live side by side, thus it is the duty of legislators in Indonesia to unify laws and harmonize regulations that live in society into a national law that applies to all Indonesian people. There are still several things that reflect legal pluralism in Indonesia, such as inheritance law, which still follows the three types of inheritance law recognized in Indonesia, namely the Islamic Inheritance Law, Customary Inheritance Law, and the Western Civil Inheritance Law. On the other hand, one of the legal pluralism issues that has been unified is the issue of the marriage law, as poured into the Law Number 1 of 1974 on Marriage (Marriage Law). Article 1 of Marriage Law states that marriage is an inner and outer binding between a man and a woman as husband and wife with the goal to create a happy and eternal family based on the belief of the one and only God. Reading through the article, one can see that it is heavily influenced by the first point of the Pancasila, which is the belief in the one and only God. This seeps over to the second article, which is Article 2 paragraph (1), which says: “Marriage is legal, so long as it is carried out according to the law of each’s religion and belief”.

The formulation of the abovementioned article constructs two different levels of marriage validity³:

1. The level of legality of marriage determined by national law whose validity is based on the law of each religion and belief held by the people in the marriage; and
2. The level of validity assessed based on each religious law and belief held by the community.

The two levels are essentially inseparable. In order to be legally recognized by the state, a marriage must first and foremost be conducted in accordance with the religion and belief of the husband and wife. Marriage done religiously must then follow the administrative procedures to be registered and protected by law.

Both Article 1 and 2 of the Marriage Law shows how marriage in Indonesian law is closely related to divine and religious values regarding marriage and family. That marriage is virtually an agreement between a man and a woman to form a happy and eternal family (household) based on God Almighty.⁴ What is meant by “inner and outer binding” in Article 1 of Marriage Law, is that the aim of a marriage is not merely to have either an “outer bond” or an “inner bond”, but rather to have both. An “outer bond” or “*ikatan lahir*” in Bahasa Indonesia, is a visible bond, namely the existence of a legal relationship between a man and a woman to live together, which can also be referred to as a “formal bond”. This formal relationship is binding for the parties to the marriage, as well as for the other people or for the society. On the other hand, an “inner bond” or “*ikatan batin*” in Bahasa Indonesia, is a bond that cannot be seen, but must exist between the marriage partners, as without an inner bond, the outer bond becomes fragile. The inner bond is the cause and reason for there to be an outer bond.⁵

Based on the above understanding, the various aspects of marriage can be concluded below⁶:

³ Constitutional Court Decision Number 68/PUU-XII/2014, hlm. 3.

⁴ Milati Fatma Sari, *et. al.*, “Analisis Putusan Judicial Review Mahkamah Konstitusi No. 68/PUU-XII/2014 atas Pasal 2 ayat (1) Undang-Undang No. 1 Tahun 1974 terhadap Perkawinan Beda Agama”, *Diponegoro Law Journal*, Volume 5 Nomor 3, 2016, p. 2.

⁵ Sri Wahyuni, “Kontroversi Perkawinan Beda Agama di Indonesia”, *Al-Risalah*, Jurnal Kajian Hukum Islam dan Sosial Kemasyarakatan, Volume 11 Nomor 2, Desember 2011, p. 16.

⁶ *Ibid.*, p. 17.

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- a. **Juridical aspect:** contained in the “outer bond” or “formal bond”, which is a legal relationship between the husband and wife in the marriage;
- b. **Social aspect:** a bond which binds the people in marriage to other people in the surrounding community that interact with them (bond between the husband and the wife’s family and friends and vice versa); and
- c. **Religious aspect:** that is, with the phrase “based on the belief in the One and only God” as the basis for the formation of a happy and eternal family starting with such marriage between two people.

Problems Arising from Article 2 of the Law Number 1 of 1974 on Marriage

In reviewing a statutory regulation, it is also necessary to consider how the legal norms contained in it can be applied in the practical world. One of the problems that often arise regarding the application of the provisions of the Marriage Law, is regarding interfaith marriages. Interfaith marriage is a complicated phenomenon in Indonesia because not only does it often conflict with what is determined by religions and beliefs, it is also complicated in its legal implications and administrative records. Based on the current formulation of Article 2 paragraph (1) of the Marriage Law, it can be concluded that the State leaves it to each religion to determine the conditions set by the state. This means that whether a marriage is prohibited or allowed, is determined by the provisions in the laws of each religion and belief recognized in Indonesia, on top of adhering to the provisions contained in the Marriage Law. Therefore, based on the provisions of the Article 2 paragraph (1) of the Marriage Law, the State instructs Indonesian citizens who are adherents of religions and beliefs to provide their own assessment of whether a marriage is legal and must be recognized. Based on this explanation, it can be said that the task of the State is limited to supervising and ensuring that all forms of worship and marriage activities of every citizen are done safely and smoothly.⁷

What usually happens in the case of interfaith marriages occurred with Andy Vonny Gani P, who is a Muslim, and Adrianus Petrus Hendrik Nelwan, who is a Christian. They initially went to the Office of Religious Affairs to apply for their marriage to take place according to the Islamic religion. The Office of Religious Affairs, or *Kantor Urusan Agama* in Bahasa Indonesia (KUA), is the office tasked to manage, document, and register marriages for done according to Islamic principles for Muslims in Indonesia. The KUA refused to register the couple’s marriage on the grounds that the two were of different religions. The couple then went to the Civil Registry Office, tasked with documenting and registering marriages for non-Muslims, but the same thing happened, and the Civil Registry Office refused because they were of different religions. Because of this, they submitted an application to the Central Jakarta District Court to be able to register their marriage and be legally recognized.⁸

The Law Number 23 of 2006 on Population Administration as has partially been revised through the Law Number 24 of 2013 (Population Administration Law), stipulated in Article 35 that marriage registration may be done for marriages deemed legal by the court. What is meant by marriage determined to be legal by the court is the registration of mixed marriages of interfaith marriages. Interfaith marriages in Indonesia as a religious country can no longer be avoided because in reality, humans as social beings always interact and such interactions often cite feelings of love and affection. There are four ways that interfaith couples can get married with the current law, that is⁹:

1. Requesting a court order;
2. Marriage is carried out in accordance to each partner’s religion;
3. Temporary submission to one of the religious laws; or
4. Getting married outside of the country.

Based on the above list, one way that can be taken is to request a court order, in which if the court grants the applicant’s request, the court orders the KUA or the Civil Registry Office to carry out and register the marriage. There have been several decisions of the Supreme Court and several District Courts in Indonesia which have granted applications for interfaith marriages of a several couples, one of them being the Decision of the Supreme Court Number 1400/K/Pdt/1986 allowing the Civil Registry Office to carry out and register the interfaith marriage of Andy Vonny Gani P (female/Islam) to Adrianus Petrus Hendrik Nelwan (male/Christian).

Constitutional Court Decision Number 68/PUU-XII/2014

The latest court decision on the issue of the legality of interfaith marriages is the Constitutional Court Decision Number 68/PUU-XII/2014. Petitioners asking for juridical review of the Marriage Law to the Constitutional Court of the Republic of Indonesia, wish for the Article 2 paragraph (1) of the Marriage Law to be stated as unconstitutional. According to petitioners, Article 2 paragraph (1) of the Marriage Law implies that the State “forces” every citizen to submit to an interpretation adopted by the State, and marriages performed outside of the State’s interpretation on each of these religions become invalid. This causes legal uncertainty for people looking to carry out marriages, such as marriages of different religions and beliefs. Each religion and belief have different

⁷ Sari, *et. al.*, *Op. Cit.*, p. 3.

⁸ Wahyuni, *Op. Cit.*, p. 28.

⁹ Herman M. Karim, “Keabsahan Perkawinan Beda Agama di Indonesia dalam Perspektif Cita Hukum Pancasila”, *ADIL: Jurnal Hukum*, Volume 8 Nomor 2, p. 188.

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views of marriage, even within one religion or belief can be found several views at once. This results in unclear marital status of interfaith marriages. Moreover, legal uncertainty is increasingly found when people in interfaith marriages need to perform the administrative obligation of registering the marriage. Such as what happened to Andy Vonny Gani P and Adrianus Petrus Hendrik Nelwan, where neither the KUA nor the Civil Registry Office were willing to let them register the marriage. This will also have an impact on the legal consequences of marriage, including the obligations of husband and wife, and the obligations of the parents to the children or offsprings in the marriage, which only arise when the marriage is valid and recognized legally by the State. In this case, such obligations become unclear.¹⁰

Due to these legal obstacles and uncertainties, in the Indonesian community's customary practice, there are various negative adaptations law evasion, such as:

- a. **Evasion of national law:** done by getting married abroad or marriage according to customary law; and
- b. **Evasion of religious law:** done by subjecting the couple to the marriage law from the religion and belief of one of the parties (either the prospective husband or wife) or changing religion and belief for a short amount of time just before getting married and then converting back once married.

Based on the above issues, the petitioners presented their arguments. First, that the judgment carried out by the State against citizens who enter into interfaith marriage through Article 2 paragraph (1) of the Marriage Law is a violation of religious rights which are recognized by the Article 28E paragraph (1) and (2), Article 28I paragraph (1) and Article 29 paragraph (2) of the 1945 Constitution. According to the petitioners, the right to religion as guaranteed in the previously mentioned articles of the 1945 Constitution, in particular, the right to practice religion and the right to the freedom of religion, has been violated with the enactment of Article 2 paragraph (1) of the Marriage Law as it provides legitimacy for the State to mix up matters of administration and implementation of religious teachings and dictate the interpretation of religion and belief regarding marriage for each individual citizen. The petitioners explained that there are 2 parts to the right and freedom of religion, which are:

- a. **The right to freedom of religion:** that is the *forum internum*, which is the exclusive territory of a person and cannot be intervened by other individuals or entities. This includes the freedom of individuals to choose certain religions and beliefs to believe in and practice in a private sphere; and
- b. **The right to freedom to practice religion:** that is the *forum externum*, which is a collective dimension of religion and belief which is reflected in the protection of a person's existence to express his spiritual existence and maintain his existence and identity as the disciple of that religion or belief in public.

By dictating the interpretation of religion and belief, the state is said to have not only neglected its obligation to register marriages, but also violated the right to freedom of religion because it does not provide space for interpretation of religious laws and beliefs regarding marriage and which vastly differ from one person to another. Thus the petitioners request that the Constitutional Court declare that the provision of Article 2 paragraph (1) of the Marriage Law is unconstitutional, or contrary to the 1945 Constitution as long as it is not interpreted as follows, "**Marriage is valid, if it is carried out according to the laws of each religion and belief, as long as the interpretation of the law of their religion and belief is up to each of the bride and groom**". And to state that Article 2 paragraph (1) of the Marriage Law does not have binding legal force as long as it is not interpreted as above.

After undergoing the whole court trial process, the Judges of the Constitutional Court handed down a decision with legal considerations as described in the Decision of the Constitutional Court Number 68/PUU-XII/2014. In which, virtually, Article 2 paragraph (1) of the Marriage Law is tested for constitutionality against Article 27 paragraph (1), 28B paragraph (2), 28D paragraph (2), 28E paragraph (1) and (2), 28I paragraph (1) and (2), 28J paragraph (2), and 29 paragraph (2) of the 1945 Constitution. The Constitutional Court considers that as stated in the fourth paragraph of the Preamble to the 1945 Constitution, the ideology of the Indonesian State is belief in the One and only God, as also stated in Article 29 paragraph (1) of the 1945 Constitution. The principle of God as mandated in the 1945 Constitution is the embodiment of religious recognition. Marriage is a form of embodiment of the constitutional rights of citizens that must be respected and protected by everyone in the orderly life of society, nation, and state, which therefore contains the obligation to respect the constitutional rights of others in it. Thus, to avoid conflicts in the implementation of constitutional rights, it is necessary to regulate their implementation by the State.¹¹

The Constitutional Court in this case considers that the Marriage Law is capable in realizing the principles contained in Pancasila and the 1945 Constitution and is also able to accommodate all the practices and realities that exist in the Indonesian society. According to the Court, marriage is one of the areas of problems regulated in the legal order in Indonesia, which means that all acts of marriage must be obedient and submissive and do not conflict or violate laws and regulations. In the life of the nation and state based on Pancasila and the 1945 Constitution, religion is the foundation, and the State has its interests in regulating marriages. Religion is the basis for individuals to have a place for interpersonal relationship between themselves and in their relationship with God and is also responsible for the realization of God's will to continue and ensure the survival of the human life.¹² In essence, the

¹⁰ Constitutional Court Decision Number 68/PUU-XII/2014.

¹¹ *Ibid.*

¹² *Ibid.*

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Constitutional Court's legal considerations and decision in this case emphasizes that Article 2 paragraph (1) of the Marriage Law does not conflict with the 1945 Constitution and is sufficient enough to contain the values of Pancasila, belief in the One and only God, and to protect the human rights of Indonesia citizens.

Protection of Fundamental Human Rights According to the International Perspective

On 10 December 1948, the United Nations General Assembly adopted the Universal Declaration of Human Right (UDHR), and the international human rights movement was strengthened because of it. A series of international human rights treaties and other instruments adopted since 1945 have given fundamental human rights a legal form and developed the international human rights system. Other instruments have also been adopted at the regional level, reflecting specific human rights issues in the region, and providing specific protection mechanisms. Most States have also passed constitutions and other laws that formally protect basic human rights. By ratifying international human rights treaties, Governments promise to implement national laws and measures consistent with its traditional obligations and duties. If domestic legal procedures do not resolve human rights violations, then individual complaint or communications mechanisms and procedures can be utilized on a regional and international scale to help ensure that international human rights standards are respected, implemented, and enforced at the local level.¹³

In order to protect and ensure universal respect of human rights, there has to be established the rule of law at the national and international levels. International human rights law is a set of international rules established by treaties or customs. According to these rules, individuals and groups can expect and/or require certain actions or benefits of the government. Human rights are inherent rights that belong to everyone and are the result of being human. Many non-treaty-based principles and norms also belong to the international human rights standard system.¹⁴ The UDHR is generally regarded as the foundation of international human rights law. It inspired a large number of legally binding international human rights treaties.¹⁵ In regard to the issue of this research, that is the right to marry and start a family when it comes to interfaith marriages, Article 16 of the UDHR states the following:

- “(1) Men and women of full age, without limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and its dissolution.*
- (2) Marriage shall be entered into only with the free and full consent of the intending spouses.*
- (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”*

The above Article 16 of the UDHR clearly states “without limitation due to race, nationality or religion”, which bears the question of whether without limitation due to religion in this case only means that those of all religion are free to marry so long as it is done according to laws of their religion, or if it means that those of all religion are free to marry whoever and however they like so long as it does not harm others' human rights. If it were to be concluded that what the article means by without limitation due to religion means men and women of full age, of whatever religion and belief, have the freedom to marry whomever they like and to build a family. In which case, the provisions of the Article 2 paragraph (1) of the Indonesian Marriage Law are not in accordance with the UDHR.

Furthermore, Article 16 paragraph (3) of the UDHR as mentioned above states that the family is entitled to protection by society and the State. Families resulting in interfaith marriages in Indonesia have unclear status, validity, and thus has little protection from the State. One may say that by neglecting to care for these families and their legalities, the State chooses to ignore the fundamental human rights of these families. If one were to say that these families brought it upon themselves by going against the Marriage Law provisions, they still deserve the protection of their fundamental rights, as even prisoners are still given basic human rights while being imprisoned.

Indonesia and Pancasila

Indonesia is a country based on the ideology of Pancasila as its *staatsfundamentalnorm*, or the identity of the Indonesian nation. This means that both the 1945 Constitution and other laws and regulations under it, according to the hierarchy, must animate the values of Pancasila. Article 29 of the 1945 Constitution states that:

- a. The State is based on the belief of the one and only God; and
- b. The State guaranteed the independence of each resident to embrace their respective religions and to worship according to each and their own religion and beliefs.

In such freedom to embrace religion, it includes the freedom to marry according to the religions and beliefs of the husband and wife participating in the marriage. As has been explained in this research, it means that the validity of the marriage of a human

¹³ United Nations Human Rights Office of the High Commissioner, accessed from <https://www.ohchr.org/en/professionalinterest/pages/internationallaw.aspx>.

¹⁴ International Committee of the Red Cross, “International Humanitarian Law and International Human Rights Law: Similarities and differences”, *Advisory Service on International Humanitarian Law*, p. 1, accessed from https://www.icrc.org/en/doc/assets/files/other/ihl_and_ihrl.pdf.

¹⁵ United Nations, “The Foundation of International Human Rights Law”, accessed from <https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law>.

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couple in Indonesia is determined based on the assessment of the religious community, in addition to the conditions of marriage as stipulated in the Marriage Law, which are:

1. There is agreement between the two prospective bride and groom;
2. There is permission from parents/guardians for bride and groom who are not yet 21 years old;
3. The age of the prospective bride and groom is no less than 19 years old;
4. Between the two prospective bride and groom there is no blood relationship, family relationship, and relationship that is prohibited from marriage by religion and other applicable regulations;
5. Not in marital relations with other people;
6. Not divorced for the second time with the same husband or wife; and
7. For a woman, can not remarry before the waiting time has passed.

The above terms of marriage based on the Marriage Law actually do not provide any limitations that a person must marry another person of the same religion. However, usually it is the provisions of the religious laws as embraced and recognized in Indonesia, which forbid its disciples from going into interfaith marriages. Therefore, if we circle back to the provisions of Article 2 paragraph (1) of the Marriage Law, interfaith marriages which are prohibited by the law of the religion adopted by the prospective bride and groom, are marriages that are not in accordance with the laws of their religion and belief, thus it is a marriage that is not legal in the eyes of the State law. So that based on religious law and belief itself in Indonesia, in terms of religious values, interfaith marriages are difficult to carry out.¹⁶

In analyzing the constitutionality of interfaith marriages and the fulfillment of the values of Pancasila in it, it is necessary to first truly understand the meaning of the precepts of the belief in the One and only God. The precepts of God in Pancasila, which is the main foundation of the Indonesian State, needs to be understood as a belief that the independence of the nation and the homeland is obtained by the grace of God Almighty. That the divine values desired by Pancasila are cultural and civilized divine values. That is, God Almighty is not a principle that enters the space of religious norms, but a principle of living together in a country in the midst of a society with a diversity of religions and beliefs.¹⁷ Thus, it should be the freedom of humans and creatures of God, regardless of religion and belief, to carry out marriages, including mixed or interfaith marriages, and start a happy and eternal family.

Forming a family is the prerogative right of a man and a woman who have become adults. The State's obligation is to protect, register, and issue marriage certificates. Meanwhile, in order to carry out a marriage, whether mixed or not, it is the freedom of the parties to the marriage. Moreover, it can be seen that in society nowadays, interfaith marriages keep happening and seem to be hard to stop completely, and the State should not be allowed to restrain its people from conducting interfaith marriages should they want to do so. In addition, there is a legal vacuum created through the enactment of Article 2 paragraph (1) which does not clearly regulate procedures and legalities of interfaith marriage, even though there have been a number of families formed through interfaith marriages.¹⁸ It creates uncertainties and minimum protection for those already in interfaith marriages, especially the offsprings.

Pancasila is the ideology of the Indonesian nation and State, which follows the contours and characteristics of the plurality of the Indonesian nation. Therefore, Pancasila should also be able to protect the plurality of the vast religions, ethnicities, tribes, and races in Indonesia, which is realized through interfaith marriages. Prohibition of interfaith marriage is tantamount to denying the reality of pluralism and diversity that prospers in Indonesia. In addition, in the legal considerations of the Constitutional Court Decision Number 68/PUU-XII/2014, it's explained that freedom of religion is a human right protected by the State, which therefore must also be subject to restrictions as regulated in Article 28J paragraph (2) of the 1945 Constitution, so as not to violate others' human rights. However, the legal considerations of the Constitutional Court Decision do not explain further, as to what others' human rights exactly that an interfaith marriage violates, as it happens stemming from a sincere desire to start a family and affects mostly the couple in the marriage themselves and does not really harm others. As also explained in the petition for judicial review to the Constitutional Court, that due to the prohibition of interfaith marriages, evasion of law is done by the prospective bride and groom, by temporarily submitting to one religion, marrying abroad, and other means. These are clearly not in accordance with the principle of legal certainty as aspired by the Pancasila.

CONCLUSION

The Universal Declaration of Human Rights on 10 December 1948 became the foundation for international human rights law and expressed the international community's perspective on the protection of fundamental human rights. As declared in Article 16 paragraph (1) of the UDHR, man and woman who are of age have the right to marry with no limitation due to religion. The same is stated in the 1945 Constitution. However, the limitations as presented in the Article 2 paragraph (1) of the Marriage Law poses a problem as it prevents people from carrying out interfaith marriages. While interfaith marriages may not be in accordance with most

¹⁶ Wahyuni, *Op. Cit.*, p. 23.

¹⁷ Arief Hidayat, "Indonesia Negara Berketuhanan", p. 3-4, accessed from https://www.mkri.id/public/content/infoumum/artikel/pdf/artikel_14_02_arief_hidayat.pdf.

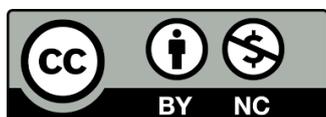
¹⁸ Sari, *et. al.*, *Op. Cit.*, p. 9.

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of the laws of the recognized religions and beliefs in Indonesia, religion and belief themselves are very much private and individualized. Interpretation or religious beliefs differ from one individual to the next, thus some may see it plausible to marry outside one's faith. Even though the underlier for the provision of the Article 2 paragraph (1) of the Marriage Law is the Pancasila first precept belief of the One and only God, Pancasila as a living ideology of the people must be adaptable to the lives of the Indonesia people be able to protect all Indonesian's interests, including families born out of interfaith marriages.

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