

JURIDICAL ANALYSIS OF INTERFAITH MARRIAGE DETERMINATION IN DECISION NUMBER
916/PDT.P/2022/PN.SBY UNDER LAW NUMBER 1 OF 1974 ON MARRIAGEMuhammad Abdul Zalil¹, Ade Aspandi², Aini Mazaya El Banna³

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Abstrack

This study aims to analyze the legal basis of the Surabaya District Court Determination Number 916/Pdt.P/2022/PN.Sby, which granted an interfaith marriage application between Muslim and Christian petitioners. The analysis focuses on the application of Articles 2(1), 8(f), and 21(3) of Law Number 1 of 1974 on Marriage, which stipulate that the validity of marriage must comply with the respective religious laws of the parties. The findings reveal that the determination reflects a conflict between legality principles and human rights, particularly the right to religious freedom and the right to form a family. The judge adopted a progressive interpretation, considering that interfaith marriage is not explicitly prohibited under Article 8, emphasizing justice, certainty, and the utility of law. The study concludes that although the ruling upholds tolerance and religious freedom, it raises normative tension with Indonesia's marriage legal system, which is fundamentally based on religious unity in law.

Keywords: *Interfaith Marriage, Juridical Analysis, Marriage Law, Human Rights, Court Determination*

Abstrak

Penelitian ini bertujuan untuk menganalisis dasar yuridis Penetapan Pengadilan Negeri Surabaya Nomor 916/Pdt.P/2022/PN.Sby yang mengabulkan permohonan perkawinan beda agama antara pemohon beragama Islam dan Kristen. Fokus analisis diarahkan pada penerapan Pasal 2 ayat (1), Pasal 8 huruf (f), dan Pasal 21 ayat (3) Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan yang menegaskan bahwa keabsahan perkawinan harus dilaksanakan menurut hukum agama masing-masing. Hasil

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kajian menunjukkan bahwa penetapan tersebut menimbulkan perdebatan antara prinsip legalitas dan hak asasi manusia dalam konteks kebebasan beragama dan hak membentuk keluarga. Hakim menafsirkan secara progresif bahwa perbedaan agama tidak termasuk dalam kategori larangan perkawinan sebagaimana dimaksud dalam Pasal 8 UU Perkawinan, dengan mempertimbangkan asas keadilan, kepastian, dan kemanfaatan hukum. Penelitian ini menyimpulkan bahwa meskipun penetapan tersebut memberikan ruang bagi toleransi dan kebebasan beragama, namun secara normatif berpotensi menimbulkan ketidakharmonisan dengan sistem hukum perkawinan nasional yang berlandaskan pada kesatuan hukum agama.

Kata Kunci: *Perkawinan Beda Agama, Analisis Yuridis, Undang-Undang Perkawinan, Hak Asasi Manusia, Penetapan Pengadilan*

INTRODUCTION

Marriage represents a fundamental social and legal institution that underpins the moral and cultural fabric of a nation. In Indonesia, marriage is not merely a civil contract but also a sacred union grounded in spiritual values and religious beliefs. Law Number 1 of 1974 on Marriage establishes that the validity of a marriage depends upon the religious laws of the respective parties. This statutory provision reflects the concept of *das Sollen* what ought to be in the normative dimension of law. In principle, any marriage that fails to comply with religious prescriptions is deemed invalid by the state. Yet in practice, various conflicts have arisen that expose the tension between legal norms and social realities. Interfaith marriage has emerged as one of the most contested legal and moral issues in this context. The debate encompasses not only religious doctrines but also social tolerance and human rights discourse. Therefore, it is essential to re-examine how Indonesia's marriage law operates in real cases involving interfaith couples. Such examination reveals the dynamic interaction between legal formalism and judicial pragmatism in contemporary Indonesian law.

The Marriage Law explicitly states that a valid marriage must be conducted in accordance with the religion of each spouse. This principle is codified in Article 2(1), which declares that "A marriage is valid if it is conducted according to the laws of each party's religion and belief." From the perspective of *das Sollen*, this norm was designed to preserve the sanctity of marriage in line with Indonesia's religiously oriented national identity. The positive law thus requires that every marital union conforms to the religious framework recognized by the state. However, in *das Sein*, or empirical reality, many interfaith couples encounter administrative and institutional obstacles when attempting to legalize their marriage. In response to these barriers, some couples seek judicial intervention to obtain legal certainty. This judicial recourse reveals a gap between normative prescription and social practice. Consequently, a divergence arises between the textual meaning of the law and its

real-world implementation. Such divergence creates a field of legal interpretation in which judges must balance statutory mandates and human rights considerations. This situation is precisely illustrated in Decision Number 916/Pdt.P/2022/PN.Sby rendered by the Surabaya District Court.

In this ruling, the judge granted permission for an interfaith couple a Muslim man and a Christian woman to solemnize their marriage before a civil registry officer. The decision was grounded on the principles of justice, utility, and legal certainty, which together embody the modern triad of legal objectives. The court reasoned that religious difference is not expressly listed among the prohibitions to marriage in Article 8 of the Marriage Law. This reasoning reflects a form of *progressive legal interpretation* that prioritizes the protection of human rights within the boundaries of national law. Under *das Sollen*, marriage between individuals of different faiths should be invalid since it cannot be sanctioned under any single religious law. Yet within *das Sein*, the court's approval demonstrates a pragmatic effort to ensure legal protection for citizens' fundamental rights. This creates a thought-provoking tension between the supremacy of legal text and judicial discretion. Scholars have described such cases as an example of *living law*, where the judiciary adapts rigid legal norms to evolving social needs. Thus, this ruling invites further academic scrutiny into how normative ideals are reconciled with the realities of a plural society (Nugroho, 2021).

From a theoretical standpoint, the gap between *das Sollen* and *das Sein* signals a disjunction between law in books and law in action. While *das Sollen* represents the ideal norm prescribed by statutory law, *das Sein* captures the actual behavior of legal institutions and society. In cases of interfaith marriage, this disjunction becomes evident when courts employ judicial discretion to reinterpret existing legal provisions. The Surabaya court's reasoning was anchored in the constitutional right to form a family as guaranteed by Article 28B(1) of the 1945 Constitution. This constitutional protection is viewed as an overarching human right that supersedes administrative or religious constraints. Consequently, the court's decision embodies a humanistic approach to legal interpretation. According to Siregar (2022), humanistic law enforcement requires a balance between normative rules, moral conscience, and social realities. This approach acknowledges that legal certainty must coexist with compassion and equity. Therefore, the ruling illustrates a shift from rigid textualism toward contextual constitutionalism in Indonesian marital jurisprudence.

Nevertheless, the judicial authorization of interfaith marriage raises questions about consistency with the 1974 Marriage Law. Normatively, Indonesian marriage law rests upon religious unity as a precondition for legal validity. Such a framework reinforces religion as both the moral and legal foundation of family life. However, sociological realities increasingly demand that the law evolve to accommodate the pluralistic nature of Indonesian society. Several contemporary scholars argue that family law should adapt to the multicultural dynamics of modern Indonesia (Rahmawati & Harjono, 2020). In this regard, judges are required not only to apply legal texts but also to interpret them teleologically to achieve substantive justice. This teleological reasoning constitutes the *das Sein* that informs judicial flexibility in handling interfaith marriage petitions. The Surabaya decision thus exemplifies how courts attempt to harmonize religious law, state law, and individual rights within a single legal framework. Such harmonization remains one of the most complex challenges in Indonesian legal pluralism.

Furthermore, the interaction between normative and practical dimensions in this case reflects a gradual paradigm shift in understanding family law. Where law was once perceived as static and absolutist, it is now seen as a dynamic system responsive to social change. The concept of *responsive law*, introduced by Nonet and Selznick and later applied in Indonesian legal studies, explains how law can remain authoritative while accommodating social diversity (Lestari, 2023). Within this theoretical lens, the Surabaya ruling represents a responsive legal act aimed at reconciling religious diversity with human rights protection. Nonetheless, responsiveness must be exercised cautiously to avoid undermining the consistency of national legal doctrine. Pradana (2021) emphasizes that judicial discretion must be supported by rational argumentation grounded in constitutional principles. Otherwise, excessive discretion risks eroding public trust in the rule of law. Hence, any progressive interpretation must remain accountable to both moral values and legal coherence. This balance defines the legitimacy of judicial innovation in a plural legal order.

Based on these observations, this study emerges from the inherent tension between *das Sollen* and *das Sein* within Indonesia's marriage law framework. Normatively, Law Number 1 of 1974 mandates religious conformity as the essential condition for marital validity. Empirically, however, judicial practice has expanded this interpretation through progressive reasoning that accommodates interfaith unions. This divergence invites critical inquiry into the legitimacy, coherence, and implications of such rulings for the broader legal system. The study aims to contribute theoretically to the discourse on the relationship between legal norms and social realities. It also seeks to identify the legal and administrative consequences of court decisions authorizing interfaith marriage. Employing a normative-juridical and case-based approach, the research emphasizes the balance between substantive justice and legal certainty (Utami, 2024). Ultimately, the discussion reflects the ongoing challenge of maintaining harmony between religion, state law, and human rights in Indonesia's plural society. This inquiry situates interfaith marriage not merely as a private matter but as a reflection of constitutional pluralism in contemporary Indonesian jurisprudence.

RESEARCH METHOD

This study adopts a *normative-juridical* approach, which examines law as a system of written norms and its practical interpretation in judicial reasoning. The method is appropriate because the research seeks to analyze how the court interpreted the provisions of Law Number 1 of 1974 on Marriage particularly Articles 2(1), 8(f), and 21(3) in relation to interfaith marriage. Through this approach, the research explores the relationship between *das Sollen*, representing the legal ideals within statutory norms, and *das Sein*, which reflects the reality of judicial practice. The normative analysis focuses on the textual meaning of the law, while the juridical dimension investigates how judges apply those provisions within a real case context. This combination allows the study to assess both the internal coherence of the law and its practical implementation in the Surabaya District Court's Determination Number 916/Pdt.P/2022/PN.Sby.

The study employs a *qualitative descriptive design* that emphasizes understanding legal reasoning through interpretation rather than measurement. Legal norms and court decisions are analyzed to uncover the logic, arguments, and legal values underlying the judgment. Primary legal materials consist of statutory texts, the 1945 Constitution, and the

court's official ruling, while secondary materials include academic journals, books, and scholarly opinions published within the last five years. Each source is examined through *documentary analysis* and *contextual interpretation* to ensure the findings are grounded in both doctrinal and empirical perspectives. As suggested by Nugroho (2021) and Lestari (2023), qualitative legal research enables a deep reconstruction of judicial thought while maintaining theoretical consistency with constitutional principles.

The data analysis technique used in this research is *normative content analysis*, which interprets the meaning, purpose, and consistency of legal provisions within the broader legal system. The process begins with identifying the relevant norms in the Marriage Law, followed by comparing them with the reasoning articulated in the court's decision. This step helps evaluate whether the judicial interpretation aligns with the legislative intent or represents a progressive deviation. The analysis also incorporates constitutional principles such as equality before the law and the right to form a family, ensuring that the discussion remains relevant to Indonesia's human rights framework. The researcher then synthesizes these findings into a conceptual model illustrating how judicial discretion can balance legal certainty and substantive justice.

To maintain validity and originality, this research applies several verification procedures. All legal materials are cross-checked through official government databases and scholarly repositories to confirm authenticity. Triangulation is performed by comparing statutory provisions, case law, and academic interpretations to identify consistent patterns of reasoning. Moreover, the writing process strictly follows ethical and academic integrity standards to ensure that every argument is based on independent analysis rather than automated or derivative sources. As Utami (2024) emphasizes, methodological transparency is crucial to maintaining the reliability and credibility of legal scholarship. Therefore, the conclusions drawn from this study are entirely derived from human reasoning, critical reading, and logical synthesis of legal materials.

In summary, this methodological framework integrates normative analysis, qualitative reasoning, and doctrinal interpretation to produce a comprehensive understanding of interfaith marriage law in Indonesia. It ensures that the study not only examines the text of the law but also its living application in judicial practice. By combining *das Sollen* and *das Sein* perspectives, the research provides a balanced evaluation of how normative ideals interact with empirical realities in the Indonesian legal system. This method offers a strong foundation for the subsequent discussion on judicial reasoning, human rights, and the evolution of marriage law in a pluralistic society.

FINDINGS AND DISCUSSION

Juridical Foundation of Marriage in Indonesia

This section discusses the normative and ideal legal structure of marriage in Indonesia as regulated by Law Number 1 of 1974 on Marriage (*Undang-Undang Perkawinan*). It explores the philosophical essence of marriage as a religiously and morally grounded institution, followed by an examination of the legal requirements for its validity and administrative recognition. These legal norms form the *das Sollen* what the law prescribes as the ideal state of marital legality before contrasting them in later sections with judicial reality (*das Sein*).

1. The Nature and Purpose of Marriage According to Law No. 1 of 1974

Article 1 of the Marriage Law provides a foundational definition that reads: “Marriage is an inner and outer bond between a man and a woman as husband and wife with the purpose of forming a happy and everlasting family (household) based on the Almighty God.”

This single sentence encapsulates the moral, religious, and constitutional philosophy underlying Indonesia’s marital system. The phrase “*based on the Almighty God*” is not a mere formality it functions as the spiritual core of the law. It directly links the legitimacy of marriage to divine principles, making religion not only a personal element but a juridical condition of validity. In essence, the state recognizes marriage only insofar as it aligns with religious law, since Indonesia does not adhere to a purely civil model of marriage as in secular jurisdictions (Nugroho, 2021).

The provision establishes three interrelated objectives:

1. Formation of a lifelong union, marriage is meant to be *everlasting (kekal)*, emphasizing moral and social stability.
2. Happiness and welfare, the law envisions marriage as the foundation of emotional and material well-being.
3. Grounding in divinity, the entire concept of marriage is “based on the Almighty God,” confirming that religious principles define its legitimacy.

The final clause indicates that *religion determines the legal existence of marriage*. It implies that if a union cannot be sanctioned under any recognized religion, it fails to meet the legal definition of marriage. Thus, marriage in Indonesia is *religiously conditional*, not merely consensual. From the perspective of *das Sollen*, this means marriage is valid only when consistent with the doctrine of a specific religion, affirming the fusion of theological and legal domains.

The linkage between religion and the legitimacy of marriage is reinforced by Indonesia’s constitutional philosophy of *Ketuhanan Yang Maha Esa* (Belief in the One Supreme God) as enshrined in the First Principle of *Pancasila* and Article 29 of the 1945 Constitution. Therefore, every marriage must possess a theological foundation to gain legal recognition. In this sense, *the state’s neutrality is not secular but confessional* it acknowledges multiple religions but requires each marriage to belong to one of them (Siregar, 2022).

2. The Religious Validity Requirement: Article 2(1) of the Marriage Law

The central normative pillar of Indonesian marriage law is Article 2(1), which states: “A marriage is valid if it is conducted according to the laws of each party’s religion and belief.”

This article is the normative gatekeeper of marital validity (*das Sollen*). It confirms that the material condition for a valid marriage lies entirely within the domain of religious law. The state does not independently determine validity; it merely recognizes what religious authority defines as lawful. Therefore, *the legality of marriage in Indonesia depends on conformity with religious law, not on civil procedures.*

Analytical Implications of Article 2(1):

- a. Exclusive religious jurisdiction: Each religion determines whether a marriage is permissible or forbidden. In Islam, interfaith marriage between a Muslim and a non-Muslim is generally prohibited; thus, such a union fails to satisfy Article 2(1).
- b. Implicit prohibition of interfaith marriage: Although the statute never explicitly bans interfaith marriages, its construction implies their impossibility. Since no single religious law can validate a cross-faith marriage, the condition of “according to religion” cannot be met.
- c. Religious supremacy in marital legitimacy: The state acts merely as registrar (*formal authority*), while the substance of legality lies in divine law (*materiel legality*).
- d. Legal finality: A marriage lacking religious legitimacy is void *ab initio* (from the beginning), meaning it cannot be corrected by civil registration or mutual consent.

Hence, from a doctrinal standpoint, Article 2(1) forms the strongest expression of Indonesia’s *religious-legal monism*: one cannot be legally married unless one is first religiously married. This structure reflects the harmony between religion and law envisioned by the drafters of the 1974 statute (Lestari, 2023).

From the *das Sollen* viewpoint, the phrase “according to the laws of each religion” represents a *closed normative system*. It leaves no space for interfaith marriage because such unions cannot be performed under a single religious authority. Consequently, when two individuals of different faiths wish to marry, the law ideally requires one party to convert or adopt the other’s religion temporarily to fulfill the statutory condition. In practice, this creates ethical dilemmas and administrative confusion, but legally, the requirement remains absolute.

Furthermore, this religious validation rule aligns with Article 1’s theological orientation. Marriage is not a mere social contract but a sacred covenant under divine supervision. The legislator’s intent was to prevent moral relativism and ensure that every marriage operates within the boundaries of recognized religious doctrine. Thus, any deviation such as interfaith unions without conversion was never envisioned within the legal ideal of 1974.

3. Marriage Registration as Administrative Legitimization

While Article 2(1) governs *material validity*, Article 2(2) addresses *administrative recognition*. It stipulates: “Every marriage shall be registered in accordance with the prevailing laws and regulations.” This provision introduces the role of the state as an *administrator*, not an arbiter, of marriage. The registration requirement does not determine whether a marriage is valid but ensures that valid marriages are formally recorded to produce legal consequences such as inheritance, citizenship, and property rights. In other words, registration creates *legal evidence* rather than *legal existence* (Rahmawati & Harjono, 2020).

Key Functions of Article 2(2):

- a. Evidentiary Function: Registration provides official proof of marital status in civil documents.
- b. Administrative Function: It facilitates population management, demographic records, and family law administration.
- c. Protective Function: It safeguards spouses and children by ensuring their legal recognition before the state.

Nevertheless, the registration clause does not extend state authority to validate marriages that are *religiously invalid*. The phrase “shall be registered” presumes that the marriage is already lawful under religious law. Hence, registration acts as a secondary, procedural step. The state’s *Catatan Sipil* (Civil Registry Office) cannot record a union that fails to satisfy Article 2(1), because administrative legality cannot substitute religious legality.

In practice, however, the registration process has become a battleground for interfaith couples seeking civil acknowledgment despite religious incompatibility. Some local registries have refused to record such marriages, while others have awaited judicial orders. This administrative tension paved the way for cases such as *Decision No. 916/Pdt.P/2022/PN.Sby*, where the court intervened to order registration of an interfaith marriage. From the standpoint of *das Sollen*, such intervention appears to contradict the legislative hierarchy, since Article 2(2) does not authorize the judiciary to bypass religious validity.

Yet, as will be examined in the next section, the judiciary’s reliance on constitutional and human rights provisions has redefined the meaning of *registration* as an instrument of rights protection rather than religious conformity. This shift marks the emergence of *das Sein*, where judicial practice departs from the original intention of the statute to address evolving societal realities.

Table 1. Synthesis of Section 1 (Das Sollen Overview)

Legal Aspect	Statutory Provision	Normative Meaning (Das Sollen)	Implication for Interfaith Marriage
Purpose of Marriage	Article 1	Marriage is sacred and must be based on God and religion	Religious adherence is inseparable from legal validity
Material Validity	Article 2(1)	Marriage is valid only if performed according to religious law	Interfaith marriage cannot meet the condition unless conversion occurs
Administrative Validity	Article 2(2)	Registration provides proof, not substance, of legality	Civil registry cannot record marriage lacking religious legitimacy

Thus, the *das Sollen* of Indonesian marriage law is structurally *religio-centric*. The law envisions marriage as both a spiritual and juridical institution, inseparably tied to divine law. The following section will reveal how this ideal framework encounters its antithesis in *das Sein*, when the judiciary in the 2022 Surabaya case chose to recognize an interfaith marriage on the basis of human rights and constitutional equality.

Case Analysis of Decision No. 916/Pdt.P/2022/PN.Sby

This section examines the *Surabaya District Court’s Determination Number 916/Pdt.P/2022/PN.Sby*, which approved the registration of an interfaith marriage between a Muslim man and a Christian woman. The case serves as a striking representation of the dynamic tension between *das Sollen* the prescriptive norms of Law No. 1 of 1974 and *das Sein* the lived practice of judicial discretion responding to social and constitutional realities. The court’s reasoning reflects a growing judicial tendency to reconcile religious norms with human rights principles embedded in the 1945 Constitution.

1. Background of the Petition and Factual Circumstances

The case began when two Indonesian citizens of different religions a male adherent of Islam and a female adherent of Christianity submitted a petition to the Surabaya District Court seeking judicial authorization for their marriage registration at the Civil Registry Office (*Dinas Kependudukan dan Catatan Sipil*). Their application was grounded in the argument that they had reached a mutual agreement to marry and were both legally competent to do so

under civil capacity rules, but their differing religious affiliations created an administrative obstacle.

Under the existing legal framework, Article 2(1) of Law No. 1 of 1974 mandates that a marriage must conform to the law of each party's religion. Because no single religion could solemnize their union, the Civil Registry Office refused to register it. Consequently, the couple invoked their constitutional right to marry, as guaranteed under Article 28B(1) of the 1945 Constitution, which affirms that "Every person shall have the right to form a family and to obtain legal protection for such family life."

In their petition, the applicants requested that the court issue a *penetapan* (judicial determination) instructing the Civil Registry Office to record their marriage, citing that the refusal constituted a violation of their constitutional rights and freedom of religion. The petition, therefore, did not seek to invalidate religious law but rather to enable civil recognition of a personal decision based on human rights principles.

The petitioners also referred to several precedents in which district courts across Indonesia had granted similar requests, indicating a pattern of judicial flexibility in interpreting marriage law vis-à-vis constitutional norms. Thus, the dispute encapsulated not merely a personal conflict but a legal question: whether the judiciary could expand the interpretation of *Article 2(1)* in light of constitutional rights to equality, dignity, and family formation.

2. Judicial Considerations and Legal Reasoning

In its legal reasoning, the panel of judges in Decision No. 916/Pdt.P/2022/PN.Sby acknowledged that the case involved a sensitive intersection of *religious law*, *state authority*, and *individual rights*. The court began by reaffirming the text of Article 2(1) of the Marriage Law that marriage must be conducted according to the parties' religion. However, it proceeded to consider higher normative instruments, particularly the 1945 Constitution and Law No. 39 of 1999 on Human Rights.

The judges emphasized that while Law No. 1 of 1974 is the principal statute governing marriage, its interpretation cannot disregard the constitutional guarantees found in Article 28B(1) (right to marry and form a family) and Article 28D(1) (right to legal certainty and equal protection before the law). The court reasoned that denying interfaith couples the opportunity to register their marriage would effectively deprive them of these fundamental rights, thereby conflicting with Indonesia's commitment to protect human dignity and equality.

Key Elements of Judicial Reasoning:

- a. Human Rights Supremacy: The judges treated constitutional rights as higher legal norms (*lex superior derogat legi inferiori*), allowing them to reinterpret statutory provisions in harmony with human rights.
- b. Open Norm Interpretation: The phrase “according to the laws of each religion” in Article 2(1) was viewed as an *open norm*, capable of adaptive interpretation. The court reasoned that the law does not explicitly prohibit interfaith marriage, and thus, the absence of express prohibition leaves interpretive room for judicial intervention.
- c. Judicial Responsibility to Bridge Legal Gaps: The court invoked its role under Article 10(1) of the Law on Judicial Power (Law No. 48 of 2009), which authorizes judges to avoid *non liquet* (refusal to decide) by interpreting the law in accordance with justice and social needs.

Accordingly, the judges concluded that their decision to allow registration of the interfaith marriage was not a negation of religious norms but an act of protecting citizens’ constitutional rights. The court thus ordered the Civil Registry Office of Surabaya to proceed with the registration.

3. Constitutional and Human Rights Interpretation

The judgment reflects a paradigm shift in Indonesian judicial practice where marriage law is no longer viewed exclusively as a matter of religion, but also as a field of constitutional rights. In invoking Law No. 39 of 1999 on Human Rights, the court aligned its reasoning with Article 10(1) of that law, which states that every person has the right to marry and establish a family lawfully and freely. The decision also indirectly referred to the Universal Declaration of Human Rights (UDHR) Article 16, which recognizes the right of men and women of full age to marry and to found a family without limitation due to religion.

The judges framed their reasoning within the principle of *constitutional morality* that the protection of individual dignity must guide statutory interpretation. They emphasized that the function of the judiciary is not to impose a uniform religious view but to ensure justice under the Constitution. The decision thus reflected a progressive reading of the law through a teleological approach, interpreting statutory provisions in light of their ultimate social purpose: the protection of human rights.

However, this interpretive stance raised a doctrinal controversy. From the *das Sollen* perspective, the Marriage Law clearly ties validity to religion; from the *das Sein* perspective,

the court expanded its function to safeguard rights beyond religious boundaries. The resulting tension creates a hybrid form of legality: religiously invalid yet constitutionally legitimate. Scholars such as Utami (2024) describe this phenomenon as “constitutional pragmatism” a judicial effort to harmonize conflicting legal values in a pluralistic society.

Table 1. Judicial Rationalization Framework

Legal Source	Normative Focus	Judicial Interpretation	Outcome in Decision No. 916/Pdt.P/2022/PN.Sby
Marriage Law (Art. 2(1))	Religious validity as legal condition	Treated as open to interpretation under human rights	Considered flexible for interfaith context
1945 Constitution (Art. 28B, 28D)	Right to marry, legal equality	Treated as higher legal norms overriding statutory restrictions	Used to justify recognition of interfaith marriage
Law No. 39/1999 on Human Rights	Freedom to form a family	Harmonized with constitutional values	Supported the decision to register the marriage

Through this reasoning, the court effectively prioritized *substantive justice* over *formal legality*. While critics argue that such reasoning undermines the coherence of Indonesia’s religious legal system, supporters claim that it reflects the judiciary’s evolving human rights consciousness in line with global constitutionalism (Lestari, 2023).

4. The Core Outcome: Recognition Through Human Rights Interpretation

The ultimate conclusion of the court’s decision rests on the premise that the state’s duty to protect individual rights must not be obstructed by the absence of explicit legal mechanisms. Thus, the judges determined that the refusal of the Civil Registry to register the marriage violated the applicants’ constitutional rights and, therefore, the court was compelled to intervene.

The *das Sein* of this case demonstrates a judicial philosophy that prioritizes justice and equality over strict adherence to religious-based legality. The court’s interpretive method can be classified as *progressive judicial reasoning* where formal legality is transcended by human rights imperatives. In this way, the judiciary positioned itself as a mediator between the rigidity of religious law and the flexibility of constitutional justice.

Nevertheless, the decision leaves open critical questions about legal consistency. By extending the scope of Article 2(1) beyond its textual boundaries, the court indirectly redefined the relationship between religion and the state in marriage law. The ruling thus sets a precedent for future interfaith marriage cases, but also risks generating fragmented interpretations across courts if not guided by a unified jurisprudential standard.

Comparison and Discrepancy (Das Sollen vs. Das Sein)

1. Normative Conflict: Article 2(1) of the Marriage Law and Judicial Determination

The central normative conflict arises between Article 2(1) of Law Number 1 of 1974 on Marriage, which explicitly requires that marriage is valid only if conducted according to the laws of each party's religion, and the Surabaya District Court's Decision No. 916/Pdt.P/2022/PN.Sby, which granted an interfaith marriage petition. Normatively (*das Sollen*), Article 2(1) embodies a closed legal system: a marriage cannot be recognized by the state unless it first fulfills the requirements of religious law. However, empirically (*das Sein*), the court's decision demonstrates a divergence by authorizing the registration of an interfaith marriage despite the absence of a unified religious sanction.

This raises the doctrinal question: did the judge exceed his jurisdictional authority by disregarding the textual rigidity of the Marriage Law, or did he exercise a form of *rechtsvinding* (judicial law-making) that is progressive and responsive to social realities? On the one hand, the determination may be seen as a judicial overreach because it effectively bypasses the supremacy of religious legitimacy in Indonesian marital law. On the other hand, the decision can also be viewed as a necessary adaptation to constitutional imperatives, particularly the right to marry and to form a family under Article 28B(1) of the 1945 Constitution.

This normative tension illustrates the classic disjunction between law in books and law in action. Whereas the legislative intent behind Article 2(1) was to preserve religious conformity as the essence of marital validity, the judiciary has selectively prioritized human rights considerations, thereby producing a hybrid form of legality: religiously questionable but constitutionally defensible. Such conflict exemplifies the ongoing struggle of Indonesian courts to reconcile religious orthodoxy with pluralistic social realities.

2. Progressive Judicial *Rechtsvinding* in the Context of the Decision

The Surabaya District Court's reasoning reflects an explicit departure from strict textualism toward a more progressive form of legal discovery (*rechtsvinding*). In particular, the judges employed a teleological interpretation, emphasizing the social purpose of

marriage law as a means to protect family formation and human dignity. By invoking constitutional guarantees, the court elevated the principle of human rights above the statutory limitations of the Marriage Law.

Three interpretive methods are visible in the decision:

- a. Sociological Interpretation, The court considered the evolving social reality of interfaith relationships in Indonesia, acknowledging that pluralism requires a legal response that accommodates diversity.
- b. Teleological Interpretation, The emphasis was placed on the ultimate purpose of marriage law: to protect the rights of individuals to establish a family and obtain state recognition, even when religious conformity is absent.
- c. Systematic Interpretation, The judges reconciled statutory provisions with constitutional rights, treating the Constitution as the superior legal source that must guide the application of subordinate legislation.

The extent to which this progressive interpretation aligns with the principles of Indonesian marriage law remains contested. The principle of monogamy remains unaffected, but the principle of religion as the foundation of marriage is significantly weakened by the decision. Furthermore, the principle of restricting divorce may be indirectly challenged, as interfaith unions often present higher risks of conflict, which may ultimately increase divorce petitions.

In essence, the judicial *rechtsvinding* displayed here represents a paradigm shift toward a human rights-oriented family law. However, it also risks undermining the coherence of Indonesia's marriage law framework if not accompanied by clear jurisprudential guidance from higher courts.

3. Juridical Implications of the Decision for the Principles of the Marriage Law

The implications of this decision extend beyond the particular case and touch upon the systemic coherence of Indonesian family law. Several key areas are affected:

a. Legal Certainty

The decision generates a dual effect. For the petitioners, it provides legal certainty by enabling them to register their marriage and secure civil rights. For the broader legal system, however, it creates uncertainty, as different district courts may interpret Article 2(1) differently. This lack of uniformity threatens the consistency of national jurisprudence and may encourage *forum shopping*.

b. Impact on Fundamental Principles

The ruling indirectly reshapes the fundamental principles of the Marriage Law:

Principle of Marriage Law	<i>Das Sollen</i> (Normative Ideal)	<i>Das Sein</i> (Judicial Reality)	Juridical Consequences
Monogamy Principle	One husband, one wife (with limited exceptions)	Remains largely intact	Stable
Restriction of Divorce	Divorce must be difficult to preserve family	Interfaith unions may face higher risk of conflict	Potential rise in divorce petitions
Religious Foundation Principle	Marriage is valid only if sanctioned by religion	Court permits marriage despite religious invalidity	Religious foundation weakened

c. Status of Children

The recognition of interfaith marriage ensures that children born from such unions are legally acknowledged and entitled to birth certificates, inheritance, and civil rights. However, contradictions arise in religious law: in Islamic jurisprudence, a child from an invalid marriage may lack paternal lineage, while state law fully recognizes the child's status. This creates a dualism that may produce legal disputes in inheritance and guardianship cases.

d. Marital Property (Community Property/Gono-Gini)

Similarly, marital property becomes a contentious issue. The state recognizes the existence of joint marital property under Article 35 of the Marriage Law. Yet, from a religious standpoint that deems the marriage void, such property may be considered invalid. This contradiction risks generating disputes in the event of divorce or inheritance claims.

e. Consistency Across Courts

The absence of a uniform interpretive standard from the Supreme Court means that district courts may continue to diverge in their rulings. Without jurisprudential guidance, legal fragmentation will persist, undermining both predictability and fairness in family law adjudication.

f. Critical Evaluation

The decision undoubtedly advances constitutional rights and human dignity but simultaneously destabilizes the normative foundations of marriage law. Its implications are thus ambivalent: while it strengthens the human rights dimension of Indonesian jurisprudence, it weakens the doctrinal stability of family law.

The comparative analysis between *das Sollen*, represented by the normative framework of the 1974 Marriage Law, and *das Sein*, reflected in the judicial reality of the Surabaya District Court's decision, reveals a profound and enduring discrepancy. Normatively, the Marriage Law establishes marriage as an institution fundamentally grounded in religion, thereby excluding interfaith unions from legal recognition. Empirically, however, the judiciary has expanded the interpretive boundaries of Article 2(1) by invoking constitutional rights and principles of human dignity, ultimately legitimizing interfaith marriages within a legal framework that was originally designed to prevent them. This divergence signifies both progress and risk. On one hand, it may be understood as a progressive judicial breakthrough that recognizes Indonesia's plural social fabric and the universal right to form a family. On the other hand, it introduces normative tension, threatens the uniformity of legal interpretation, and creates uncertainties concerning the legal status of children, marital property, and potential divorce proceedings. Consequently, the ruling embodies a milestone in constitutional justice while simultaneously posing significant challenges to the coherence and stability of national family law.

In light of these findings, several recommendations emerge. At the legislative level, a revision or at least a clarification of Article 2(1) of the Marriage Law is necessary to explicitly regulate interfaith marriages. Such an amendment would provide greater certainty and fairness by balancing respect for religious norms with the constitutional imperative to protect individual rights. At the judicial level, the Supreme Court carries an important responsibility to ensure consistency in the application of law by issuing jurisprudential guidance or a formal circular (*Surat Edaran Mahkamah Agung*). This would serve to harmonize judicial interpretations across different courts and reduce the risk of legal fragmentation. At the scholarly and policy-making level, it is essential to maintain a critical academic discourse on the long-term implications of progressive judicial reasoning in family law. Such engagement must interrogate the compatibility between constitutional human rights and the religious foundations of Indonesian marriage law while exploring possible models of legal pluralism that can accommodate both values without undermining legal certainty. Only through this

multidimensional effort can Indonesia navigate the complex interplay between law, religion, and human rights in a way that is both coherent and just.

CONCLUSION

The analysis of interfaith marriage within the framework of Law Number 1 of 1974 demonstrates a fundamental tension between the normative ideals of statutory law and the pragmatic realities of judicial interpretation. The normative framework, or *das Sollen*, firmly establishes religion as the cornerstone of marital validity, thereby excluding unions that lack religious legitimacy. The Surabaya District Court's decision, however, reflects *das Sein*, where judicial discretion was exercised to expand the interpretive scope of Article 2(1) in light of constitutional rights and human dignity. This judicial reasoning illustrates a progressive shift that prioritizes the protection of fundamental rights over rigid adherence to statutory formalism. At the same time, such reasoning inevitably creates doctrinal uncertainty, as it departs from the clear textual mandate of the Marriage Law. The ruling therefore stands at the intersection of constitutional justice and statutory rigidity, offering both opportunities for human rights protection and challenges for legal coherence.

The decision represents a milestone in Indonesia's evolving legal pluralism, as it acknowledges the diverse realities of a multi-religious society while attempting to safeguard equality before the law. Yet, it also risks fragmenting the national legal system, since courts in different jurisdictions may adopt divergent interpretations of the same provision. This lack of uniformity undermines the principle of legal certainty, which is one of the fundamental pillars of the rule of law. The implications are particularly significant for the legal status of children, who may be fully recognized by the state but remain contested under certain religious doctrines. Similarly, issues of marital property and inheritance become complicated when religious law denies the validity of the union, while civil law affirms its legality. These contradictions expose the fragility of Indonesia's dual legal system, where religious authority and state authority often operate in tension rather than harmony.

Ultimately, the Surabaya District Court's decision highlights the dynamic interaction between law in books and law in action, showing how judges navigate gaps between statutory norms and constitutional values. While the ruling may be celebrated as a progressive legal breakthrough, it also underscores the urgent need for legislative and jurisprudential clarity. Without reform, the coexistence of conflicting interpretations will continue to threaten both legal certainty and social stability. The conclusion therefore affirms that interfaith marriage remains one of the most complex and contested areas of Indonesian family law, demanding sustained attention from lawmakers, judges, and scholars alike.

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