

Marriage Between Religions Based on Human Rights Perspectives

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Keywords: Human rights, Law, Religious marriages.	Abstract The controversy over religious marriages is still a matter of legitimate recognition by the state. The provisions of this regulation have not been explicitly regulated in the Act No. 16 of 2019 on the Amendment of the Regulation of the Law No. 1 of 1974. So researchers are interested to know the establishment of marriages of different religions based on the human rights perspective in the decision of the Supreme Court No. 1400K/Pdt/1986. This research is analytically descriptive, with an empirical jurisprudential approach and using the type of library research, to describe in depth about the topic of marriage from a different religious perspective through the understanding of concepts, understanding marriage rules, analyzing and concluding the results of research. So it is concluded that this problem does not have a point of legal clarity and creates a legal vacuum, so that this practice does not get a place in the eyes of the law. This practice of marriage is considered difficult to implement, so not a few people submit to the trust of their partners to carry out the marriage. According to the International DUHAM instrument, marriages of different religions are deemed to violate the right of every human being to enter into marriage. So the practice of marriage of different religions in the country of Indonesia is established on the basis of the decision of the Supreme Court No. 1400K/Pdt/1986. It's supposed to have got the attention of the government by issuing a new legal regulation.		
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A. INTRODUCTON

The marriage becomes a phase of uniting a human couple to fill each other's shortcomings.¹ One of the problems that occurs in a marriage is the existence of marriages of different religions. Non-religious marriage is one of the phenomena that raises its own controversy.² The controversy over such marriages continues in

¹Bunyamin, Riska Novita, Mujahidin, (2023), "Public Perception and Reaction Toward Early-Age Marriage (Case: Village of Arajang, Region of Wajo)", *Jurnal Sapientia et Virtus* Vol 8, (2).

²Sri Wahyuni, "Perkawinan Beda Agama Di Indonesia Dan Hak Asasi Manusia, (2011), "In Right: *Jurnal Agama Dan Hak Azazi Manusia*, Vol. 1 (1), hlm. 132, <https://doi.org/10.14421/inright.v1i1.1215>.

the political history of marriage law in Indonesia.³ Non-religious marriages are still a problem associated with various attempts to obtain legitimate recognition from a state.⁴ The State grants everyone the right to choose a candidate for a living companion, but remains restricted by the rules of the laws in force.⁵

Marriage is a sacred covenant for a happy family.⁶ Marriage relates to the civil rights of the male as husband and wife becoming a wife arising from the family forming a legal relationship.⁷ Aristotle stated that Indonesia was a state of law.⁸ The Constitutional Law of the Republic of Indonesia of 1945 recognizes that marriage is a form of legal act protected by the Law as a legal right of every citizen, as stipulated in Article 28B source (1).⁹ Prior to the entry into force of the provisions of the Act No. 1974 on Marriage, marriage of different religions was classified as a form of mixed marriage according to the *Regeling op de Gemengde Huwelijk stbl. 1989 No. 158* which is usually abbreviated as GHR. nationality differences¹⁰, in accordance with the procedures laid down in the applicable nationality laws of RI.¹¹

Even until this era, marriage between religions has not been clearly regulated in the provisions of the Act No. 16 of 2019 on Amendments to the Regulations of the Law No. 1 of 1974¹², which formed the latest amendment and codification of the laws on national marriage in force in Indonesia. ¹³ However, according to article 2, paragraph 1, of the Marriage Act, which states that a marriage will be valid, when it is made on the basis of each other's beliefs and laws, this is what ultimately raises

³Nurcholis Chairunissa, (2022), "Perkawinan Beda Agama Ditinjau Dari Perspektif Hukum Islam Dan Hak Asasi Manusia," *US FACTI: Jurnal Berkala Fakultas Hukum Universitas Bung Karno* 1 (1) hlm. 48-61.

⁴Muhammad Aprizal Arsyita, "Epistimologi Hukum Perkawinan Beda Agama Di Indonesia Berdasarkan Pancasila" Disertasi, UIN Raden Intan Lampung, 2022.

⁵Herman M. Karim, (2017), "Keabsahan Perkawinan Beda Agama Di Indonesia Dalam Perspektif Cita Hukum Pancasila," *Jurnal Hukum Adil*, Vol. (2), hlm. 187, <http://academicjournal.yarsi.ac.id/index.php/Jurnal-ADIL/article/download/655/387>.

⁶Laily Dwi Setiarini, "Perkawinan Beda Agama Dalam Perspektif Hak Asasi Manusia, (2021), " *Al Qodiri: Jurnal Pendidikan, Sosial Dan Keagamaan* Vol. 19, (1), hlm. 46, <http://ejournal.kopertais4.or.id/tapalkuda/index.php/qodiri/article/view/4236>.

⁷L.J. van Apeldoorn, *Pengantar Ilmu Hukum* (Jakarta: Balai Pustaka, Cetakan Ke-35, 2015).

⁸Celia Santa Katarina, (2019), "Pencabutan Hak Poltik Mantan Terpidana Kasus Korupsi Berdasarkan Perspektif Hak Asasi Manusia," *Sapientia Et Virtus* Vol. 4, (1), <https://doi.org/10.37477/sev.v4i1.189>.

⁹Made Widya Sekarbuana, Ida Ayu Putu Widiawati, I Wayan Arthanaya, (2021), "Perkawinan Beda Agama Perspektif Hak Asasi Manusia Di Indonesia," *Jurnal Preferensi Hukum* Vol. 2, (1), <https://doi.org/10.22225/jph.2.1.3044.16-21>.

¹⁰Wildan Habib Azhari, Fauziah Lubis, (2023), "Pernikahan Beda Agama Dalam Perspektif Kompilasi Hukum Islam Dan Hak Asasi Manusia," *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial Islam*, <https://doi.org/10.30868/am.v10i02.3184>.

¹¹Zeinudin, M., & Ariyanto, (2023), "Rekonstruksi Hukum Perkawinan Beda Agama Berbasis Hak Asasi Manusia Di Indonesia.," *Jurnal Jendela Hukum* Vol. 8, (2), hlm. 13–24.

¹²Ibnudin, Ahmad Syathori, Didik Himmawan, (2023) "Rekonstruksi Hukum Perkawinan Beda Agama Prespektif Hak Asasi Manusia," *Risalah: Jurnal Pendidikan Dan Studi Islam* Vol. 9, (3), hlm. 1087, <https://jurnal.faiunwir.ac.id>.

¹³Azhari,W.H.,& Lubis,F, (2022), "Kawin Beda Agama Dalam HukumPerkawinan Indonesia Prespektif HAM," *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata SosialIslam* 10, (2).

problematics. Then according to article 2 paragraph 2 of the Marriage Act it is explained that every marriage is recorded according to the rules of the laws in force. Furthermore, in article 8, letter f, it is prohibited to marry persons who imply that they "have a relationship which is forbidden by their religion or by any other applicable rule".¹⁴

However, this is also reflected in article 22 of the Human Rights Act 39 of 1999, which states that everyone embraces his or her religion and has the right to worship according to that belief. The realization of the presence of the term "non-religious marriage" became a paradox in the proposal against the right to embrace religion in a marriage. However, according to the other side for couples who adhere to other religions will encounter obstacles or problems in the process of legally uniting marriage, so in the context of marriage of different religions for one of the parties must submit to the religion of his partner.¹⁵ In Indonesia, marriages of different religions can be performed by adhering to one of the religious laws or beliefs of either party.¹⁶

Based on related research topics, researchers found several studies that were judged to be relevant to the objects the researchers were doing. The first study conducted by Sri Wahyuni with the title Differential Marriages in Indonesia and Human Rights, in the study carried out it can be found that the difficulty of the implementation of different marriages conducted in the country of Indonesia, this marriage is judged contrary to the values of human rights, that is about the value in religious freedom and freedom to be able to form a family through the legal marriage process according to the law in force. The reason for the difficulties in the implementation of religious marriages is the lack of rigour in the level of interpretation and technical procedures among the marriage registrars, so that in this case it is necessary to have a clear procedure on the procedures for implementing religious Marriages in Indonesia, in order to be able to accommodate the birth of the human right to religious freedom and the freedom to form a family with a legitimate marriage.¹⁷

In the study studied by the researchers also offer the same topic is about the rigidity in the law regarding related issues so that there is no legal vacuum, which in the end results in law smuggling because the marriage process carried out not based on the sharia'at but is attached to the administrative process that exists in the conditions of marriage occurrence. Further research by Made Widya Sekarbuana, Ida Ayu Putu Widiawati, I Wayan Arthanaya in her research entitled Marriage Different Religions Perspective Human Rights In Indonesia, in the research carried out can be found results that due to uncertainty against the law concerning

¹⁴Utami Argawati, (2022), "Pernikahan Beda Agama Menimbulkan Kemudaratan Berkelanjutan," Mahkamah Konstitusi Republik Indonesia, <https://www.mkri.id/index.php?page=web.&id=18664&menu=2>.

¹⁵Yonesta, F, Isnur, M, Hidayat, N, Febrian, S. H, Sihite, I. L., & Biky, A, (2012), "Agama, Negara Dan Hak Asasi Manusia.," *In Journal of Chemical Information and Modeling* 53, no. 9 (2012).

¹⁶Soedharyo Soimin, *Hukum Orang Dan Keluarga* (Jakarta: Sinar Grafika, 2002).

¹⁷Sri Wahyuni, (2011) "Perkawinan Beda Agama Di Indonesia Dan Hak Asasi Manusia",

marriages of different religions makes a realisation that for the couple who wishes to celebrate marriage can make an application through the establishment of the court, then make a temporary submission to one of the beliefs of the couple and celebrate the marriage abroad, in his research also found that there is a conflict in both regulations so that makes one couple have to commit submission against the religion of one party.¹⁸

Further research by Wildan Habib Azhari, Fauziah Lubis entitled Marriage Different Religions In the Perspective of Compilation of Islamic Law and Human Rights, found that in fact, every human has a right to choose a partner, but in this case the main milestone of the existence of the highest authority is based on authority according to the law of God, it happens because for each religion has its own provisions in the process of licensing or confirmation of the marriage, and it also makes that any religion cannot allow the occurrence of marriage for couples who have a difference in beliefs. It is as in the outcome of the Application Trial Application concerning confirmation and permission made on the Decision No. 508/Pdt.P/2022/PN JKT.SEL, in which case it can be decided that the marriage made invalid, but the judge still gives permission to be able to register their marriage in the Civil Registry Office because it has met the provisions of the Administrative Law.¹⁹

Further research carried out by Istiqomah and Nanda Chairunnisa in the title Divergent Marriages In Review From the Perspective of Islamic Law and Human Rights, then it can be known that in the perspective of human rights prohibits the existence of marriages of different religions and does not give place to marriage of different religion, because all the rights and freedoms contained in the declaration are subject to the Sharia'at of the Islamic law.²⁰ It is also known for a group of people who support the existence of different religious practices of marriage based on human rights. So the birth of the prohibition of marriage between religions is seen as one of the forms of discrimination against the rights of a person so that it is very contrary to human rights. However, if observed through a specific context, it is known that according to the Law No. 39 of 1999 on human rights in the State of Indonesia, does not regulate explicitly about this law, so in the object of this study based on the human rights perspective still restores such law based on Marriage Act.²¹

Based on some studies from previous research that had similar topics to the researchers, researchers wanted to undertake a deeper examination of the concept

¹⁸Made Widya Sekarbuana, Ida Ayu Putu Widiawati, I Wayan Arthanaya, (2021), "Perkawinan Beda Agama Perspektif Hak Asasi Manusia Di Indonesia".

¹⁹Wildan Habib Azhari, Fauziah Lubis, (2023), "Pernikahan Beda Agama Dalam Perspektif Kompilasi Hukum Islam Dan Hak Asasi Manusia".

²⁰Istiqomah dan Nanda Chairunnisa, (2022), "Perkawinan Beda Agama Di Tinjau Dari Perspektif Hukum Islam Dan Hak Asasi Manusia", Universitas Bung Karno.

²¹Rizqon Rizqon, (2022), "Analisis Perkawinan Beda Agama Perspektif KHI, HAM Dan CLD-KHI," *Al - Manhaj: Jurnal Hukum Dan Pranata Sosial Islam* Vol 4, (1), <https://doi.org/10.37680/almanhaj.v4i1.1499>.

of religious marriage in a Human Rights perspective. In this study, the researchers also wanted to find a gap to fill the void of previous research through the establishment of the law on marriage of different religions according to the decision of the Supreme Court No. 1400K/Pdt/1986. The decision of the Supreme Court concerning marriages of different religions can strengthen the protection of human rights based on positive legal provisions existing in the country of Indonesia. So researchers are interested to know the regulation of marriage of different faiths according to the regulations of the laws, according to human rights as well as know the provisions of marriage of different religion in the ruling of the High Court No. 1400K/Pdt/1986.

So we can find some formulas of the problem, among them: (1) how is marriage of different religions based on the rules of the law? (2) how is the concept of marriages of different religion based on human rights perspectives?

B. METHOD

Based on the subject of this study, it is possible to know that this research is analytically descriptive. This analytic characteristic is a method to give an image of the object studied through data that has been collected without carrying out analysis making conclusions that apply to the general public.²² In addition, it is used to describe the phenomenon of the subject of this study in a comprehensive way, to study in depth about the objects to be examined. Using an empirical jurisprudential approach, this approach relates to the enforcement or implementation of normative legal provisions in any legal event within a society.²³ This approach is used by studying legislative materials, literature, books and journal articles that have a connection with the object of this research. The phase of the research carried out in this study, begins with the collection of relevant qualitative data, then performs the disaggregation of a data that has been collected by the researchers. Then after the collection, the researchers answered the purpose of a study that was under study.

The type of research that researchers use is library research to gather research topics through library materials such as books, literature materials, laws, journal articles, or other materials related to the research that is being studied.²⁴ According to this study, the researchers used a number of first steps to study the concept of marriage between religions, then proceeded to understand the rules of matrimony between different religions before and after the birth of the rules in the Marriage Act, then analyzed the concepts of

²²Sugiyono, *Metodologi Penelitian Kuantitatif, Kualitatif Dan R&D* (Bandung: Alfabeta, 2013).

²³Abd. Rozak A. Sastra, *Pengkajian Hukum Tentang Perkawinan Beda Agama (Perbandingan Beberapa Negara)* (Jakarta: Penerbit Badan Pembinaan Hukum Nasional (BPHN) Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 2011).

²⁴Mahmud, *Metode Penelitian Pendidikan* (Bandung: Pustaka Setia, 2011).

marriages between religious religions from the perspective of human rights, as well as examined the rulings of the Supreme Court relating to religious marriage, and finally tried to conclude the results of the research carried out.

C. DISCUSSIONS

1. Interreligious marriage in marriage law

Act under Act No. 1 of 1974, it is known that marriage is aimed at forming a happy family. Further, according to article 2, paragraph 1, it is known that marriage is lawful. When it is made on the basis of the law of religion and beliefs of each other.²⁵ In Indonesia, marriages are considered by citizens on the basis of the element of religious integrity, as well as religious elements referring to elements of uniformity.²⁶ Before the rule was formed through the Marriage Act, the state of law that occurs in the country of Indonesia in varying values. In the law, it is also known that there is a term of equality between a mixed marriage and a marriage of different religions. A mixed marriage is defined as an intimate relationship between a man and a woman, in which they are submissive to each other's religion.²⁷

According to article 7 GHR it is known that a mixed marriage that occurs in a relationship cannot prevent the existence of the marriage carried out. So if there is a difference of religion in the marriage before the birth of the Marriage Act, then the enforcement is done through the Civil Registration Office. After the birth of the Marriage Act according to article 66, there was an amendment in which there were differences in terms of custom in the reference to marriage of different religions, besides under article 66 it was known that the provisions of the GHR no longer apply to marriages of different faiths, but this also raised a new controversy about the legal vacuum that exists to fill the rules about marriage of different religion.²⁸

However, in this case made understanding through Maria Ulfa Subadjo who stated that although the rules concerning marriage of different religions are not covered in the Marriage Act in Indonesia, but as stipulated in Article 66, that the rules based on GHR can still apply to couples who wish to enter into marriage between the same religions. Then the rule of lawfulness of marriage is also contained in article 2, paragraph 2, which states that every marriage occurrence is recorded as the rules of the laws in force. This is done, because it can imply the legal provisions that are in place and for the creation of orderly administrative regulations. That would have a major impact on couples who have not registered their marriage with the authorities, including:

- a) The status of such a marriage is questioned, if in religion or belief the marriage was considered valid, but this marriage has not been recognised by

²⁵Made Widya Sekarbuana, Ida Ayu Putu Widiawati, I Wayan Arthanaya, (2021), "Perkawinan Beda Agama Perspektif Hak Asasi Manusia Di Indonesia."

²⁶J.S, *Perikatan Lahir Dan Perjanjian* (Citra Aditya Bakti, 1995).

²⁷Sri Wahyuni, (2011), "Perkawinan Beda Agama Di Indonesia Dan Hak Asasi Manusia".

²⁸Djaya S. Melida, *Masalah Perkawinan Antar Agamadan Kepercayaan Di Indonesia Dalam Perspektif Hukum* (Jakarta: Vrana Widya Darma, 1988).

the State, so that it can be understood that marriage carried out does not have explicit legal validity in the regulations of the laws.

- b) The status of the child born as a result of the marriage is not clear in the law.
- c) The property status of the spouses also does not create legal certainty, which in this case can affect the difficulty of sharing the price between the two.²⁹

According to Indonesian international civil law, the rules on marriage have not been able to resolve all the problems that arise for citizens, in particular with regard to marriages of different religions.³⁰ Non-religious marriages are still considered to have no point of clarity in the law. As is well known in the practice of society, that Muslims marry Muslims performed at the Office of Religious Affairs, then for a Christian marrying the same religion in the Church through a registrar of the Civil Registry Office, the certificate for Catholics married to their fellow believers in the church with the registration of the civil registry officer and so on. Thus, on the basis of this stigma, it can be known that marriages of different religions are relatively unlawful.

According to the statement, it can be understood that it is so difficult to establish a marriage of different religions, so that the society carries out the settlement using the same method that one of the couples entered the other couple's religion as a condition of the legality of the marriage that will be implemented.³¹ Until some interpreters say that the marriage of different religions is strictly prohibited, but this practice of marriage can still be implemented in the country of Indonesia so that for the person to make a change of identity in his personal data on the ID card.³² Because there are no strongly binding rules on this subject yet. So the difference in this is what makes this practice of marriage still practiced in the country of Indonesia.³³

2. Interreligious marriage from a human rights perspective

In fact, human rights are a right of the individual of every person that cannot be abolished by others, because this right is not granted under positive laws in Indonesia.³⁴ One of the legal umbrellas of an international instrument is the Universal Declaration of Human Rights, which was adopted by the General Assembly

²⁹Made Widya Sekarbuana, Ida Ayu Putu Widiawati, I Wayan Arthanaya, (2021), "Perkawinan Beda Agama Perspektif Hak Asasi Manusia Di Indonesia."

³⁰Daeng Taring, (2022), "Perkawinan Beda Agama Dalam Perspektif Hukum Positif Di Indonesia," *Julia: Jurnal Litigasi Amsir* Vol 9 (4), <https://journalstih.amsir.ac.id/index.php/julia/article/view/109>.

³¹Sri Wahyuni, "Pelaksanaan Perkawinan Beda Agama Di Kabupaten Gunung Kidul," (Thesis, Universitas Gadjah Mada, 2004).

³²Sri Wahyuni, "Pluralisme Agama Dan Toleransi Umat Budha Di Kecamatan Panggang Gunung Kidul," *Litbang Departemen Agama*, 2009.

³³Ismail, Danu Aris Setiyanto, "Larangan Perkawinan Beda Agama Dalam Kompilasi Hukum Islam Perspektif Hak Asasi Manusia" (UIN Sunan Kalijaga Yogyakarta, 2017).

³⁴Amran Suadi, *Filsafat Hukum: Refleksi Filsafat Pancasila, Hak Asasi Manusia, Dan Etika* (Jakarta: Penerbit Kencana, 2019).

of the United Nations in 1948.³⁵ Initially, the DUHAM instrument did not show any consequences for the law, but DUHAM has established a position on human rights as a standard of protection in a country. This is as it is stated in article 16, paragraph 1, of the Law, which states that men and women who have reached adulthood, without limitation by nationality, nationality or religion, have the right to marry and form a family.

Studying human rights in depth and comprehensively has to do with a legal construction against non-religious marriage is not a simple matter. Generally speaking, the topic of this discussion will be covered in several dimensions, including the value dimension, the conceptual dimension, and the intrinsic dimension of the rule of law. Especially if in this object is also associated with a legal certainty, it happens because besides having to be responsible epistemologically for the meaning of "certainty" itself, it will also make a conflict with the significance of the balances born between justice and utility as part of a legal goal.³⁶

The fundamental rights of human beings based on human rights are freedom and equality. Then in this respect, the human rights instruments recognize that there is a right to marry and have a family without any religious constraints as a right, and is a guideline for a State in enforcing the right.³⁷ According to the Act No. 16 of 2019 on Amendments to the Law No. 1 of 1974 on Marriage, which is a guideline in Indonesian marriage law, it does not explicitly regulate the provision for a person to marry with a different religion.³⁸

Turning to the next article that any marriage must be registered under the Law and not be a condition of the validity of a marriage. This marriage registration is only made as an administrative act concerning the clarity of the marriage relationship which is carried out clearly where the law, but again known that marriage not registered on the basis of the law in force, then will be considered valid according to the religious provisions of each.³⁹ According to the provisions contained in article 2, paragraph 2, marriage in this concept is often associated with being always submissive to one faith. So based on the object of this study, if the interpretation remains, then the concept of marriage of different religions will not have a place in the eyes of the law. This is because the practice of marriage between different religions would never be practiced if the person who intends to enter into a marriage was guided by one religion. This is what can ultimately lead to a violation

³⁵Sunaryo, (2012), "Studi Komparatif Antara Universal Declaration of Human Rights 1948 Dan The Cairo Declaration on Human Rights in Islam," *Fiat Justitia Jurnal Ilmu Hukum* Vol. 5 (2), hlm. 390.

³⁶Azhari,W.H.,&Lubis,F, (2022), "Pernikahan Beda Agama Dalam Perspektif Kompilasi Hukum Islam Dan Hak Asasi Manusia," *Al-Mashlahah: Jurnal Hukum Islam dan Pranata Sosial Islam* 10, (2).

³⁷Amran Suadi, *Filsafat Hukum: Refleksi Filsafat Pancasila, Hak Asasi Manusia, Dan Etika*, (2019).

³⁸Sindy Cantonia dan Ilyas Abdul Majid, (2021), "Tinjauan Yuridis Terhadap Perkawinan Beda Agama Dalam Perspektif Undang-Undang Perkawinan Dan Hak Asasi Manusia," *Tinjauan Yuridis Terhadap Perkawinan Beda Agama Di Indonesia Dalam Perspektif Undang-Undang Perkawinan Dan Hak Asasi Manusia* Vol.2 (6).

³⁹Rachmadi Usman, (2017), "Makna Pencatatan Perkawinan Dalam Peraturan Perundang-Undangan Indonesia," *Jurnal Legislasi Indonesia* Vol.14, (3), hlm. 256.

of human rights based on the right to freedom of marriage without restriction of a religion.

As has been revealed above, then back again it is known that there are no rules that explicitly regulate marriage of different religions. But according to the eighth letter of the law of marriage, it is forbidden for two persons to enter into marriage on the basis of their religion, there is a prohibition on marriage. It may be interpreted that when a religion prohibits the presence of a marriage consisting of different religions, then the marriage cannot be carried out, as long as Article 8 (F) of this paragraph is made the basis of a basis regarding the legality or non-legality of marriages that occur between different faiths.⁴⁰

The practice of marriage between religions is considered to be very difficult to implement, so that not a few people who submit to the beliefs of their spouses in order to succeed in a marriage, submissive to the religion there are who do it in full or even do it with intention.⁴¹ The real concept in this matter can be seen when the couple participates in the conduct of their partner's religious scholarship. It is a marriage, and it is a religious marriage. For that, according to the Law No. 16 of 2016 on the amendment of the previous regulations, then this act falls into the category of legal smuggling because it is done with the intention to be able to establish something specifically marriage.⁴²

Based on the International Instrument of DUHAM concerning the marriage of different religions, this is deemed to infringe upon the right of every human being to enter into a marriage and form a family without any restriction on the scope of religion. For that, in the country of Indonesia, the practice of marriage of different religions encourages one of the so-called couples to change religion for the legitimacy of the marriage and to obtain a valid administrative record in his marriage. So there is no smuggling of marriages that occur because of the marriage that is carried out in the purest nature, only to make such marriage legal in the eyes of the law which ultimately gives rise to acts of violation of the right to freedom of religious conception for every individual. This can be seen through the process of religious transfer which is not based on the intention but for the purposes of marriage with a legitimate administrative. This is as enshrined in the Law No. 39 of 1999 on Human Rights, which states that "everyone is free to embrace his or her religion and to worship according to its religion and belief".

In this modern era, the practice of the execution of marriages of different religions in the country of Indonesia is established on the basis of the decision of the Supreme Court No. 1400K/Pdt/1986. In the judgment, it is known that the Supreme Court has not issued a statement on the prohibition of marriages of different religions, which could create a legal vacuum, leading to the practice of law

⁴⁰Ahmad Nurcholish, (2014), "Pernikahan Beda Agama Dan Jaminan Kebebasan Beragama Di Indonesia," *Jurnal HAM Komnas HAM* Vol. 11, hlm. 167.

⁴¹Sri Wahyuni, (2009), "Pluralisme Agama Dan Toleransi Umat Budha Di Kecamatan Panggang Gunung Kidul."

⁴²Abd. Rozak A. Sastra, *Pengkajian Hukum Tentang Perkawinan Beda Agama (Perbandingan Beberapa Negara)*, (2011).

smuggling. According to article 27 of the 1945 Basic Law, all Indonesian citizens have the same law in Indonesia, such equality can also be seen in the practice of marriage as long as it is not prohibited by the applicable law, even in this case there are differences in one religion.⁴³

D. CONCLUTION

Based on the topics of the study that the researchers have presented above, then can be drawn some conclusions. *First*, the marriage of different religions is still a polemic for the country of Indonesia, the occurrence of such polemics occurred because there was no rigidity found nor clarity about the regulations governing this marriage. As it is known that before the Marriage Act came into force, marriage of different religions was classified as a mixed marriage on the basis of Article 7 of the GHR, in the law it was found that the mixed matrimony in a relationship does not preclude the existence of a marriage. This is what in the end raises new controversy, because marriages of different religions are still considered not to have a point of clarity in the law, so in this case creates a legal void, so making marriage of different religion relatively not get a place in the eyes of the law.

Second, the practice of marriage between religions is considered to be very difficult to implement, so that not a few people submit to the beliefs of their partners in order to succeed a marriage. This is considered to violate the right of every human being to enter into a marriage and form a family without any restriction on the religious sphere. For that in this case the practice of the execution of marriages of different religions in the country of Indonesia is established on the basis of the decision of the Supreme Court No. 1400K/Pdt/1986. However, in this case, the Supreme Court's ruling concerning marriages of different religions can strengthen the protection of human rights based on positive legal provisions in the country of Indonesia, including in this instance in the practice of marriage of different faiths. It is seen in line with the International Instinct of Spirituality on the right to marry and have a family without any restriction of religion.

In this case, the researchers also analyze that it must have marriages of different religions got the attention of the government by issuing the new legislation. Because the prolematics concerning marriage of different faiths is not a new thing, but in this case already the children who do marriage between religions even a public figure many found to carry out marriage among religions.

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