

Legal Protection For Children In Interfaith Marriages: Comparative Study Between Indonesia And Other Countries

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Abstract

Interfaith marriage is a global phenomenon that raises various challenges, including in the context of legal protection for children. In Indonesia, this issue is becoming increasingly important considering the diversity of religions and beliefs held by its people, which requires an inclusive and fair legal approach. Comparative studies between Indonesia and other countries in terms of legal protection for children in interfaith marriages are important to identify best practices that can be adopted and adapted. This research aims to explore and compare the legal framework for child protection in interfaith marriages in Indonesia with other countries, to identify lacuna and provide policy recommendations. This research uses a normative legal approach with comparative studies, collecting data from various relevant sources and processing it to obtain significant findings. The research conclusions show that an inclusive and effective legal framework, along with efficient implementation, is the main key to ensuring the protection of children's rights in the context of interfaith marriages. Indonesia needs to adopt and adapt best practices from other successful countries in this regard, including strengthening the legal framework, increasing public education and awareness, and establishing effective support mechanisms. Through collaboration between stakeholders and active community participation, a more inclusive and supportive environment for children from interfaith marriages can be created. This ensures that their rights and welfare are thoroughly protected. It is hoped that the resulting policy recommendations can help strengthen child protection in interfaith marriages in Indonesia.

Keywords: Legal Protection, Children, Interfaith Marriage, Indonesia



A. INTRODUCTION

Interfaith marriage is a social phenomenon that occurs in various parts of the world, including in Indonesia. This phenomenon has attracted widespread attention because it involves complex legal, social, and cultural aspects, especially when it comes to the rights and protection of children born from these marriages (Larson, 2022). In many countries, including Indonesia, interfaith marriages are often faced with significant legal and social challenges due to differences in applicable legal provisions and society's views on such marriages. This is very relevant considering that children's rights are a universal issue recognized in various international conventions, including the Convention on the Rights of the Child which emphasizes that the best interests of children must be the main consideration in all actions and decisions that affect them (Nasir, 2020).

In Indonesia, the issue of legal protection for children in interfaith marriages is becoming increasingly complex because Indonesia is a country with very high religious diversity and has strict laws and regulations regarding marriage. According to Law Number 1 of 1974 concerning Marriage, a valid marriage is a marriage carried out according to the laws of each respective religion and belief (Rosdiana & Bahtiar, 2020). This creates challenges in practice, especially related to the legal status of children, custody rights, and access to education and health services which are often tied to official documents that require recognition of the parents' marital status (Toros & Falch-Eriksen, 2020).

Comparison with other countries shows that each country has a different approach to dealing with similar issues. Some countries may have more inclusive and flexible regulations that allow interfaith marriages with clearer legal protections for children, while other countries may have stricter policies. This comparative study is important to identify best practices and lessons to be learned in formulating policies that not only recognize religious diversity but also ensure the protection of children's rights in interfaith marriages (Heffron et al., 2020).

Specific cases in Indonesia and other countries show that children from interfaith marriages often face problems of identity, involvement in religious communities, and access to social and educational services. For example, in terms of birth registration and state recognition of a child's status, it is important for access to health, education, and other services (Adil & Jamil, 2023). On the other hand, there are also challenges in daily life practices, such as participation in different religious rites and traditions, which raise questions about how these children are raised in an environment that respects both of their parents' religions.

One of the forms of legal understanding in Islamic society, especially the Republic of Indonesia, is the registration of marriages as one of the conditions for marriage that must be fulfilled. Without the registration of marriages recorded by marriage registrar, the marriage is considered to have no power before the law (Halim, 2020). Given the complexity of this issue, it is very important to conduct in-depth comparative studies between Indonesia and other countries to identify challenges, opportunities, and best practices in the legal protection of children in interfaith marriages. It is hoped that this research will provide insight and recommendations for policymakers, legal practitioners, and the wider community to ensure that children's rights are protected in all situations, including in the complex and multicultural context of interfaith marriages.

B. LITERATURE REVIEW

1. Legal Protection of Children

Legal safeguards are designed to shield individuals' human rights from infringement by others, offering citizens the ability to fully exercise their legal entitlements. These safeguards can be crafted to be both reactive and adaptable, as well as forward-looking and preventive. The law serves as a crucial tool for

empowering those who are socially, economically, and politically disadvantaged, facilitating their pursuit of social equity (Savitri & Sitanggang, 2022).

Legal protection safeguards the respect and esteem of individuals, along with the affirmation of rights granted to legal entities under law, shielding them from arbitrary actions or serving as a framework of norms and regulations designed to offer protection. For consumers, this implies that the law acts as a guard for their rights against any actions that might prevent the fulfillment of these rights (Bucholc, 2022).

Children, as the bearers of a nation's lofty aspirations, its future leaders, and the hope of preceding generations, must be given the broadest opportunities to thrive and develop in every aspect—spiritually, physically, and socially. The legal protection of children represents a concerted effort and activity by society at all levels, in various capacities and roles, who recognize the critical importance of children for the future of the country and the nation (Linyan & Boqing, 2023).

Safeguarding children through legal means is a pivotal strategy for ensuring the future prosperity of a nation. Such protection encompasses all relevant legal statutes and is deemed essential due to children's unique position within society and their inherent physical and psychological vulnerabilities. As such, they necessitate distinct safeguards (Murthy & Ramakrishna, 2022).

Legal protection can be viewed as the provision of safeguards to individuals recognized by law, involving both deterrent and corrective measures, and encompassing both codified and customary laws. Essentially, legal protection serves as a manifestation of the law's role in delivering justice, establishing order, ensuring reliability, and fostering harmony (Dinanti et al., 2020).

The objective of child protection is to establish an environment where every child can exercise their rights and fulfill their responsibilities, contributing to their holistic and healthy development—be it physical, mental, or social. Child protection is a reflection of societal justice, pursued across various facets of governmental and community life. The initiatives undertaken for child protection carry legal implications, pertaining to both formal legislation and traditional laws, with the law acting as a cornerstone for securing the welfare of children (Erdianti & Al-Fatih, 2020).

Children, as the bearers of a nation's cherished aspirations, its forthcoming leaders, and the hope of earlier generations, must be given ample opportunities for holistic growth—encompassing spiritual, physical, and social dimensions (Hidayati, 2020). The endeavor to protect children involves contributions from every societal stratum, with participants in diverse roles recognizing the critical significance of nurturing the youth for the country's future prosperity. Once children attain maturity in physical, mental, and social aspects, they are poised to take the baton from the preceding generation (Suarno & Suryono, 2021).

Efforts towards child protection aim to ensure that all children have the environment needed to exercise their rights and meet their responsibilities, facilitating their natural and comprehensive development. This pursuit of child protection mirrors the quest for justice within society and extends across various sectors of national and communal life. The initiatives aimed at safeguarding children carry

implications under both formal and informal legal systems (Huntington & Scott, 2020).

It's crucial that child protection measures are applied judiciously, taking into account their environmental impact and the direct effects on the children concerned to prevent adverse outcomes. Such measures should be implemented in a way that is rational, responsible, and yields tangible benefits (Katz et al., 2022). It's essential to ensure these efforts do not stifle the child's initiative, creativity, skills, or lead to dependency or erratic behavior, thereby preserving the child's capability and eagerness to assert their rights and fulfill their responsibilities (Ooi et al., 2023).

Child protection law as a law (written or unwritten) must guarantee that children can carry out their rights and obligations. The legal aspect of child protection must focus more on children's rights which are regulated by law and not on obligations because legally (juridically) children are not yet burdened with obligations (Kiswanto & Mashdurohatun, 2021).

2. Interfaith Marriage

Marriage is a binding agreement to form a family relationship that has legal force in law. In carrying out marriages that have positive legal force, Indonesia is based on the Law or Legislative Regulations regarding the implementation of the marriage itself. In this sense, it can be concluded that the implementation of a marriage must have valid legal force, and its implementation must be recorded so that it has a valid legal force following the laws and regulations in Indonesia (Muttaqin, 2020).

Marriage according to Article 1 of Law Number 16 of 2019 Amendment to Law Number 1 of 1974 concerning Marriage is "The natural bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the belief in the Almighty God." In this understanding, it can be concluded that a husband and wife, in forming a happy and eternal family, must have goals following the Almighty Godhead (Mintarsih & Mahdami, 2021).

Based on the belief in the Almighty God, what is meant is that because Indonesia has an ideology based on Pancasila, which contains the first principle which reads "Belief in the Almighty God", then in carrying out marriages or implementing other legal provisions in Indonesia, we must adhere firmly to the belief in the Almighty God. In Indonesia itself, there are 6 (six) different religions, namely Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism. Therefore the implementation of the legal system in Indonesia must follow religion and belief in Almighty God (Anwar, 2021).

In Indonesia itself, various tribes, races, and religions are different from each other. It cannot be denied that in everyday life every human being encounters several people who are of different ethnicity, race, language, or religion than his own. One example is interfaith marriage in Indonesia, where a person marries a partner who has a different belief or religion from his or her own (Pajarianto et al., 2022).

An interfaith marriage itself is a marriage that occurs between a man and a woman who have different beliefs or religions but still carry out the marriage and

maintain their respective religions or beliefs. Marriages that occur in families that have different beliefs or religions have at least two beliefs adhered to in the family. For example, from a Christian mother's family and a Muslim father's family, the child born from that marriage must choose one of the religions that he or she will follow and there must be no coercion from anyone (Elmali-Karakaya, 2022).

Interfaith marriages can also be called mixed marriages, in these marriages there are differences in the beliefs of each partner that they adhere to. This can be caused by the geographical distribution of the population, Indonesia itself has at least 6 (six) different religions (Chebotareva & Volk, 2020).

C. METHOD

This research was carried out using a normative legal approach, which is a research method that examines legal norms, both those written in statutory regulations and those contained in legal doctrine. This approach allows researchers to analyze and compare the legal framework relating to child protection in interfaith marriages in Indonesia with other countries. To conduct this comparative study, researchers collected data from various sources relevant to the research theme, including scientific articles, laws, government regulations, court decisions, and related international documents. After the research data has been successfully collected, the next step is to process the data to obtain significant findings. The data processing process involves an in-depth analysis of the legal materials obtained, to identify similarities and differences in legal protection for children in the context of interfaith marriages between Indonesia and the countries used as objects of comparative study. Thus, it is hoped that the results of this research will provide a clear picture of Indonesia's legal position compared to other countries and provide recommendations that can support increasing legal protection for children in interfaith marriages (Kristiawanto, 2022).

D. RESULT AND DISCUSSION

1. Legal Framework for Child Protection in Interfaith Marriages

In a global context, the legal framework governing the protection of children in interfaith marriages shows significant variations from one country to another, including Indonesia. Comparison of legislation between countries reveals that differences in legal approaches to interfaith marriages directly influence how children's rights and welfare are guaranteed and protected. In Indonesia, for example, the Marriage Law limits the legitimacy of marriage to couples who share the same religious beliefs, which has the potential to raise issues regarding the legal status of children from interfaith marriages. This is different from some other countries which may have a more inclusive and flexible legal framework for interfaith marriages, allowing children born from such marriages to receive the same legal recognition and protection as children from same-religion marriages.

Implementation of the law in the context of child protection in interfaith marriages also presents complex challenges. In Indonesia, implementation challenges

are often related to varying interpretations and application of laws in various regions, which can result in inconsistencies in the protection of children's rights. This challenge is not unique to Indonesia; many of the countries studied face similar obstacles in ensuring that laws not only exist on paper but are also effective in practice. The effectiveness of the implementation of this law often depends on the justice system, law enforcement mechanisms, as well as public awareness and understanding of children's rights in the context of interfaith marriages.

Apart from that, legal lacuna, or legal vacuum, is an important issue that requires serious attention. In many cases, existing legislation may not explicitly address children from interfaith marriages, leaving a gray area that could negatively impact the protection of their rights. For example, in the Indonesian context, the absence of specific regulations addressing the status of children in interfaith marriages can create complications in terms of birth registration, access to education and health services, and clear custody rights. In contrast, countries that have taken steps to close this legal gap by providing clear legal guidance regarding the treatment of children from interfaith marriages, show that it is possible to create a legal environment that better supports and protects the rights of children regardless of their parents' religious background.

Looking at the comparisons and existing challenges, it is clear that child protection in interfaith marriages requires a comprehensive and inclusive legal approach. The legal framework must be designed to explicitly recognize and protect the rights of children, ensuring that they are not disadvantaged because of their parents' marital status. This includes not only the creation of inclusive laws but also their effective implementation and closing of existing legal gaps. These steps are essential to ensure that all children, regardless of their parent's religious background, receive equal legal protection and full access to their rights, affirming the principles of justice and equality that must be the basis of all legal systems.

2. Social and Psychological Impact on Children of Interfaith Marriages

Interfaith marriages bring a unique dimension to family dynamics, especially concerning their influence on the children born of the marriage. Aspects of the identity and well-being of children in interfaith families are often complex and multifaceted topics. These children are in a unique position where they are directly exposed to two different religious traditions, which can influence the formation of their self-identity. This identity formation process not only involves how they see themselves, but also how they are seen and accepted by others, including family, friends, and the wider community. Problems arise when there is a lack of clarity or conflict in the values taught by two different religions, which can cause confusion or internal conflict within the child about who they are and what they believe. In the long term, this can affect their psychological well-being, including their sense of self-confidence and emotional security.

In addition, social integration is a significant challenge for children from interfaith marriages. In many societies, religion is often an important part of social

identity and community. Children from interfaith marriages may find it difficult to navigate the different expectations and social norms of two different religious communities. At school or in other social settings, they may face questions or even discrimination about their religious background, which can affect their social interactions and sense of belonging to a social group. These difficulties not only affect their social relationships with peers but can also impact academic achievement and the development of social skills.

Family and community support plays a critical role in overcoming the challenges faced by children from interfaith marriages. The family, as the smallest social unit, has a major influence in shaping children's perceptions of religion and identity. Parents and other family members who show understanding, tolerance, and support for religious diversity can help children feel safe and valued in their family environment. This creates a strong foundation for children to develop self-confidence and psychological well-being. On the other hand, community support is also very important. Communities that are inclusive and support diversity can provide a conducive environment for children from interfaith marriages to grow and develop. Educational programs and community activities designed to increase understanding and tolerance of religious diversity can help reduce stigma and strengthen the social integration of these children.

The social and psychological impact of interfaith marriage on children is a complex topic and requires in-depth understanding and a sensitive approach. Child identity and well-being, social integration, and family and community support are key factors that must be considered in understanding and overcoming the challenges faced by these children. Through a holistic and inclusive approach, society can move towards better understanding and stronger support for children from interfaith marriages, ensuring that they can grow and develop in a healthy and supportive environment.

3. Comparison of Child Protection Policies and Practices in Various Countries

In a global context, protecting children's rights in interfaith marriages is an issue that receives serious attention from various countries. Inclusive policies and best practices have been developed and implemented in several places to address the challenges faced by children from families with different religious backgrounds. Comparing these policies and practices provides valuable insight into how countries can work towards more effective and inclusive child protection.

One example of inclusive policy can be seen in countries such as Canada and Sweden, which have long been recognized for their progressive approach to addressing children's rights issues. Both countries implement policies that not only protect children's rights in general but also specifically recognize and support the needs of children from interfaith families. This policy includes educational programs designed to teach tolerance and diversity from an early age, as well as legal mechanisms that ensure all children have the same rights regardless of their parent's religious background.

Best practices that Indonesia could adopt might include developing an inclusive education curriculum, which integrates lessons about religious and cultural diversity as part of basic education. This can help build understanding and tolerance early on, which is important in preventing discrimination and strengthening social cohesion. Additionally, increasing access to psychosocial support services for children of interfaith marriages, which can help them overcome the specific challenges they may face, is another practice that could be considered.

International cooperation plays an important role in increasing the protection of children in interfaith marriages. Through platforms such as the UN and UNESCO, countries can share knowledge, strategies, and best practices in protecting children's rights. International conferences, workshops, and exchange programs can facilitate dialogue between countries and help identify innovative solutions that can be adapted and applied in various contexts. This collaboration is also important in developing international standards that can be used as a reference by countries in formulating and implementing their policies.

The importance of building inclusive and comprehensive child protection systems becomes increasingly clear through international comparisons of policies and practices. By learning from countries that have made significant progress in this area, Indonesia can identify opportunities to strengthen its own legal and social framework. This includes adopting a more inclusive approach to education, providing better support for children and their families, and increasing international cooperation. Through these efforts, the ultimate goal is to ensure that all children, regardless of their parent's religious background, receive the protection and support they need to grow and thrive in a just and inclusive society.

4. Policy Recommendations for Child Protection in Interfaith Marriages

Given the complexity and sensitivity of the issue of child protection in interfaith marriages, comprehensive and multifaceted policies are needed to address this challenge effectively. An important first step is to strengthen the legal framework in Indonesia to create a strong foundation for the protection of children's rights. This can be achieved by studying and adopting best practices from other countries that have successfully implemented inclusive policies and supported children's rights in the context of interfaith marriages. For example, a legislative model that guarantees children's rights without discrimination based on their parents' religion could be a reference. These legislative reforms must be accompanied by effective law enforcement mechanisms, including monitoring and evaluation of their implementation, to ensure that children's rights are truly protected in practice.

Furthermore, education and increasing public awareness are another critical aspect in protecting children from interfaith marriages. Education, both in schools and through the media and public campaigns, should be used to promote understanding of diversity and tolerance, as well as the importance of protecting children's rights. Educational materials should include information about how interfaith marriages can affect children and how the stigma or discrimination they face can be minimized.

These educational programs should be designed to reach the entire community, including parents, teachers, religious leaders, and policymakers, to build broad support for child protection in this context.

The establishment of a comprehensive support mechanism is another important step to support children from interfaith marriages. This includes providing counseling services that can help children overcome identity issues, social pressures, or family conflicts they may face. Additionally, educational support, such as scholarship programs or special tutoring, can help ensure that these children have equal access to quality education. Social integration programs are also important to help children build strong social networks and feel accepted in their society, despite their parents' religious differences.

In implementing these recommendations, collaboration between government, non-governmental organizations, religious communities, and the private sector is essential. These partnerships can strengthen child protection efforts by bringing together resources, expertise, and reach to address this issue from multiple angles. In addition, active community participation in this process is very necessary to ensure that the policies and programs developed are following local needs and conditions, and have strong support from the community.

Through strengthening the legal framework, increasing public education and awareness, and establishing comprehensive support mechanisms, Indonesia can make major strides towards better protection for children in interfaith marriages. This will not only help overcome the challenges faced by these children but also promote diversity, tolerance, and inclusion in Indonesian society more broadly.

E. CONCLUSION

Comparative studies regarding legal protection for children in interfaith marriages between Indonesia and other countries show that this problem is a complex issue that requires a multifaceted approach. From comparing legislation, and legal implementation, to identifying legal lacuna, it is clear that an inclusive and effective legal framework, along with efficient implementation, is the main key in ensuring the protection of children's rights. The social and psychological impact on children, as well as a comparison of child protection policies and practices in various countries, provide important insights into the importance of a child-centered approach in addressing the issue of interfaith marriage. To increase protection for children in the context of interfaith marriages, Indonesia needs to adopt and adapt best practices from other countries that have been successful in this regard. This includes strengthening the legal framework, increasing public education and awareness, and establishing effective support mechanisms. Through collaboration between stakeholders and active community participation, Indonesia can create a more inclusive and supportive environment for children from interfaith marriages, ensuring that their rights and welfare are fully protected.

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