



MARRIAGE LAW IN INDONESIA

(A Study of Law Number 1 of 1974 concerning Marriage, a
Compilation of Islamic Law, and a Gender-Based Research Review)

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Abstract

This study examines the construction of marriage law in Indonesia through a comparative analysis of Law Number 1 of 1974 and the Compilation of Islamic Law (KHI). The main focus of the research is to evaluate the relevance of these legal products to the principles of gender equality and justice. Using a literature review method and critical analysis of various previous research, this study found tensions between positive legal norms, classical fiqh doctrine, and the dynamics of women's human rights in Indonesia. The results of the study indicate that although reforms have been carried out, several articles still retain gender bias that has the potential to discriminate against women's rights. Therefore, a reorientation of family law that is more inclusive and gender-responsive is needed. Marriage Law in Indonesia as regulated in Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI) aims to create a harmonious family, but still contains patriarchal nuances that place the husband as the head of the family and the wife as the housewife, thus triggering the need for a reinterpretation or reformulation of the law that is more gender-oriented and equal. This is considering that: (1) Law Number 1 of 1974 concerning Marriage adheres to the principle of open monogamy and requires marriage registration for formal legality, (2) there is still gender inequality in the articles that regulate the roles of husband and wife (Article 31 of Law Number 1 of 1974 concerning Marriage), which often limits the wife's public space, (3) gender-perspective research encourages the reconstruction of marriage law to be more egalitarian, non-discriminatory, and in accordance with modernity and equal rights between husband and wife, and (4) Law Number 1 of 1974 concerning Marriage does not accommodate interfaith marriages, affirming the validity of marriage according to the laws of each religion.

Keywords: *Marriage, Compilation of Islamic Law and Gender.*

Abstract

Studi ini mengkaji konstruksi hukum perkawinan di Indonesia melalui analisis komparatif terhadap Undang-Undang Nomor 1 Tahun 1974 dan Kompilasi Hukum Islam (KHI). Fokus utama penelitian adalah mengevaluasi relevansi produk hukum tersebut terhadap prinsip kesetaraan dan keadilan gender. Menggunakan metode *review* literatur dan analisis kritis terhadap berbagai riset terdahulu, penelitian ini menemukan adanya ketegangan antara norma hukum positif, doktrin fikih klasik, dan dinamika hak asasi perempuan di Indonesia. Hasil kajian menunjukkan bahwa meskipun pembaruan telah dilakukan, beberapa pasal masih menyisakan bias gender yang berpotensi mendiskriminasi hak-hak perempuan. Oleh karena itu, diperlukan reorientasi hukum keluarga yang lebih inklusif dan responsif gender. Hukum Perkawinan di Indonesia sebagaimana diatur dalam Undang-undang Nomor 1 Tahun 1974 Tentang Perkawinan dan Kompilasi Hukum Islam (KHI) bertujuan mewujudkan keluarga



sakinah, namun masih mengandung nuansa patriarki yang menempatkan suami sebagai kepala keluarga dan istri sebagai ibu rumah tangga, sehingga memicu perlunya interpretasi ulang atau reformulasi hukum yang lebih berperspektif gender dan setara. Hal ini mengingat bahwa : (1) Undang-undang Nomor 1 Tahun 1974 Tentang Perkawinan menganut asas monogami terbuka dan mewajibkan pencatatan perkawinan untuk legalitas formal, (2) masih terdapat ketimpangan gender dalam pasal-pasal yang mengatur peran suami-istri (Pasal 31 Undang-undang Nomor 1 Tahun 1974 Tentang Perkawinan), yang sering membatasi ruang publik istri, (3) riset berperspektif gender mendorong rekonstruksi hukum perkawinan agar lebih egaliter, tidak diskriminatif, dan sesuai dengan modernitas serta kesetaraan hak antara suami dan istri, dan (4) Undang-undang Nomor 1 Tahun 1974 Tentang Perkawinan tidak mengakomodasi perkawinan beda agama, menegaskan sahnya perkawinan menurut hukum agama masing-masing.

Kata Kunci : Perkawinan, Kompilasi Hukum Islam dan Gender.

I. INTRODUCTION

Marriage, also known as nikah or marriage, is a form of worship ordained by Allah SWT, which contains the aims and objectives of the sharia (Maqashid al-Syari'ah), in this case to protect and safeguard offspring (hifzh al-nasl). The scholars of the Shafi'i school of thought define marriage as: *عَقْدٌ يَتَضَمَّنُ إِبَاحَةَ وَطْءٍ بِلَفْظِ إِنْكَاحٍ أَوْ تَرْوِيحٍ أَوْ تَرْجَمَتِهِ* (a contract that contains the permissibility of having sexual relations with the word marriage or something similar to it), and the scholars of the Hanafi school of thought define marriage as: *عَقْدٌ يُعِيدُ حِلَّ اسْتِمْتَاعِ الرَّجُلِ مِنْ امْرَأَةٍ لَمْ يَمْنَعْ مِنْ نِكَاحِهَا مَا نَعَى شَرْعِيٌّ* (a contract that provides halal benefits for carrying out husband and wife relations between a man and a woman as long as there are no sharia obstacles). Muhammad Abu Zahrah (W. 1974 AD / 1394 H.) defines marriage as: *هُوَ عِبَارَةٌ عَنْ عَقْدٍ يَتَضَمَّنُ مِنْ مَخَارِمِهِ أَوْ هُوَ مِنَ الْمُبَاشِيرَةِ وَالْتَفْقِيَلِ* God willing, God willing, God willing, God willing (a contract that makes sexual relations between a man and a woman permissible, mutual assistance between them and gives rise to rights and obligations between them). According to Wahbah al-Zuhaili, marriage means "a contract that contains the permission to have fun with women, by having intimate relations, touching, kissing, hugging, and so on, where the woman is not included in the mahram in terms of lineage, marriage and family, or a contract that has been established by the Shari'a which functions to give men ownership rights to have fun with women, and makes it lawful for a woman to have fun with men.

In Law Number 1 of 1974 concerning Marriage, Article 2 Paragraph (1), it is emphasized that marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the belief in the Almighty God, and in the Compilation of Islamic Law (KHI), Article 2 states that marriage according to

Islamic law is a marriage, namely a very strong contract (mitsaqan ghalizan) to obey Allah's commands. and carrying it out is worship. Scholars have explained several goals and wisdom of marriage as understood from the womb QS. al-Rum verse 21, as follows:

And among the signs of His power is that He created for you wives from your own kind, so that you would be inclined and feel at ease with them, and He made between you feelings of love and affection. Indeed, in that there are truly signs for a people who think. (QS. al-Rum: 21).

Tafsir scholars explain that the purpose and wisdom of marriage as contained in QS. al-Rum verse 21 is the formation of a sakinah, mawaddah and rahmah family (household) life. From this atmosphere of sakinah and mawaddah, rahmah will emerge, namely healthy offspring and full of blessings from Allah SWT, as well as an outpouring of love and affection for husband and wife and their children. It is in this context that Islamic jurisprudence scholars have put forward several purposes and wisdoms of marriage. The most important of these is that the observance of marriage, of course, holds numerous wisdoms and benefits. Besides the goal of preserving good offspring, it also fosters human compassion, tenderness, and love. This fosters a fusion of feelings between men and women, who differ in taste, emotions, capacity for love, personality, and so on.

Marriage provides a means for humans to channel biological needs and avoid acts prohibited by religion, such as promiscuity, prostitution, and so on. Marriage is a more effective and efficient way to prevent and avoid adultery, as explained in a hadith narrated by al-Bukhari and Muslim from Abdullah ibn Umar (may Allah be pleased with him):

According to Abdullah bin Umar (ra), the Messenger of Allah (peace be upon him) said to us, "O young men! Whoever among you is able (to marry), let him marry, for by doing so he can restrain his gaze and guard his chastity (from committing adultery). And whoever is not yet able to marry should fast, for that will be a shield (preventing him from committing adultery). (Narrated by al-Bukhari and Muslim).

In a hadith narrated by al-Thabrani, al-Baihaqi, and al-Hakim, sourced from Anas bin Malik (ra), it is explained that marriage means perfecting half of one's religion, as follows:

According to Anas bin Malik (ra), the Prophet (peace be upon him) said, "When a servant marries, he has indeed perfected half of his religion, so let him fear Allah and safeguard the other half." (Narrated by al-Bayhaqi, al-Tabrani, and al-Hakim).

In Islam, half of religious values reside within the household, while the other half is spread across various aspects of life. Therefore, the foundation underlying why someone

marries and steps into married life is based solely on these three potentials. Therefore, marriage, as a teaching ordained by Allah SWT, contains the intent and purpose of human welfare, preserving and protecting humanity. Therefore, in order to achieve the intent and purpose of human welfare, preserving and protecting humanity, in Indonesia, there needs to be legislation, in this case Law Number 1 of 1974 concerning Marriage, which is essentially formed from two dimensions: (1) the dimension of quality of life, and (2) the dimension of (2) the dimension of time, duration, or stability. Thus, marriage is a legal act, as a legal act it has legal consequences, where the validity or otherwise of a legal act is determined by positive law, and the positive law in the field of marriage in Indonesia is Law Number 1 of 1974 concerning Marriage and the implementation of the Compilation of Islamic Law is to realize certain ideals and goals as well as the wisdom behind the implementation of its laws.

II. THEORITICAL STUDIES

A. Marriage

1. Definition and Scope

The word "marriage" means marriage. The word "marriage" is derived from the root word "nika" in the Indonesian Dictionary, and "marital" is derived from the root word "kawin." The Arabic word "nika" is a mashdar form of the word "Nakaha-yankihu-nikahan" (نَكَحَ - يَنْكِحُ) (- نَكَاحًا), which originally means "intercourse" (الوَطْءُ) and "communion" (الْجَمَاعُ). This is in line with the opinion of several Islamic jurisprudence scholars, who define the root word "nika" with the same meaning and add the additional meaning "to enter" (الدُّخُولُ).

In the Quran, there are 2 (two) keywords that indicate the concept of marriage, namely *zawwaja* (زَوَّجَ) and its derivatives in approximately 20 verses and *nakaha* (نَكَحَ) and its derivatives in approximately 17 verses. What is meant by marriage in the context of this discussion is the bond (*aqad*) of marriage. Furthermore, in the Quran, the term marriage is usually referred to as *nikah* (نِكَاحٌ) and *mitsaq* (مِيثَاقٌ) (agreement) (QS. al-Nisa'; 3 and al-Nur; 32 with the word *mitsaq* in QS. al-Nisa'; 21). Some interpret marriage as agreement (*al-fittifaq*) and mixing (*mukhalathat*). Others interpret it literally as "to squeeze" or "to press down." Meanwhile, figuratively, marriage means "to have intercourse" or "aqad" (making a marriage contract). In everyday language, the word "nikah" is used more figuratively than literally.

In matters of marriage, jurists define marriage figuratively. They differ on the figurative meaning they use. Imam Abu Hanifah (d. 150 AH) uses the meaning "to have intercourse," while Imam al-Shafi'i (d. 204 AH) uses the meaning "to make a marriage contract." If viewed from the perspective of legal certainty and the use of the word "marriage" in the Qur'an and the

Prophet's hadiths, then "nikah" with the meaning of "commitment agreement" is more appropriate and widely used than "marriage" with the meaning of "coitus." Ibn Jinni (d. 392 H) once asked Abu Ali about the meaning of their saying *nakaha al-mar'ah* (نَكَحَ الْمَرْأَةَ), he answered:

Arabs use the word "nakaha" in different contexts, allowing for subtle distinctions between its meanings to avoid confusion. When they say "nakaha fulan fulanah," they mean entering into a marital bond with a woman. However, when they say "nakaha imraatahu," they mean nothing other than sexual intercourse.

Based on this understanding, several definitions put forward by Islamic jurisprudence scholars mean entering into a marital bond with a woman. Therefore, al-Karkhi, as quoted by Ali al-Shabuniy, stated that "nikah" refers to the marital bond, not sexual intercourse. Therefore, the word "nikah" (الْوَط) is never mentioned in the Quran, as the Quran uses "kinayah." This use of kinayah is considered a polite form of language. While some definitions of "nikah" offered by Islamic jurisprudence scholars vary slightly, all of them convey the same essence, despite their wording. Shafi'i scholars define "nikah" as follows:

In fact, marriage is a contract that contains the ability to have husband and wife relations with the pronunciation of marriage or something similar to that.

Meanwhile, Hanafiyah scholars define marriage as follows:

Marriage is a contract that provides the legal basis for sexual intercourse between a man and a woman, provided there are no Islamic impediments.

Muhammad Abu Zahrah defines marriage as follows:

A contract that makes sexual relations between a man and a woman lawful, mutual assistance between the two and creates rights and obligations between the two.

The definition of *jumhur ulama* emphasizes the importance of stating the pronunciation used in the marriage contract, namely that it must be pronounced *nikah*, *married* or something similar. In the definition of Hanafiyah scholars, this is not stated clearly, so that all pronunciations that contain the meaning of *halal* for a man and a woman to have sexual relations may be used, such as the pronunciation of *grant*. What is of particular concern to Hanafiyah scholars, apart from the issue of *halal* sexual relations, is that there are no *sharia* obstacles to marrying the woman. For example ; the woman was neither a *mahram* (*mahram* or *muhrim*) nor an idol worshiper. According to a number of *ulama*, things like that are not mentioned in their definition because these things are enough to be discussed in the terms of marriage.

2. The Purpose and Wisdom of Marriage

Islamic legal experts have formulated five aspects contained in the aims and objectives of sharia (al-maqashid al-khamsah), namely: (1) protection of religion (hifzh al-din), (2) protection of the soul (hifzh al-nafs), (3) protection of reason (hifzh al-aql), (4) protection of offspring (hifzh al-nasl), and (5) protection of property (hifzh al-mal). Marriage and the formation of a family/household are acts of worship ordained by Allah SWT, which include one of the aims and objectives of sharia (maqashid al-Shari'ah), namely the protection of offspring (hifzh al-nasl). Scholars have agreed that the aims and objectives of sharia (maqashid al-Shari'ah) of marriage are indicated, among other things, in Surah al-Rum, verse 21, as follows:

And among the signs of His power is that He created for you wives from your own kind, so that you would be inclined and feel at ease with them, and He made between you feelings of love and affection. Indeed, in that there are truly signs for a people who think. (QS. al-Ruum: 21).

Tafsir scholars explain that there are three key words contained in this verse, which are associated with the ideal household life according to Islam, namely *sakinah*, *mawaddah*, and *rahmah*. From this atmosphere of *sakinah* and *mawaddah*, *rahmah* will emerge, namely healthy offspring and full of blessings from Allah SWT, as well as an outpouring of love and affection for husband and wife and their children.

In this context, Islamic jurisprudence scholars have proposed several purposes and wisdoms of marriage. The most important is that the observance of marriage is intended to preserve good offspring, and to cultivate human compassion, tenderness, and love. This will foster a fusion of feelings between the two sexes, which differ in taste, emotions, capacity for love, skills, and so on.

Abbas al-Mahmud al-Aqqad argued that marriage, in addition to preserving good offspring, also fosters human compassion, tenderness, and love, and this will foster a fusion of feelings between the two sexes. This is because there are differences in taste, emotions, capacity for love, skills, and so on. The wisdom of marriage is closely related to the purpose for which humans were created on earth. Ali Ahmad al-Jurjani explained:

God created humans with the purpose of prospering the earth, and the earth and all its contents were created for human benefit. Therefore, for the sustainable prosperity of the earth, human presence is essential as long as the earth remains. The preservation of humankind is essential, ensuring that Earth's existence within the universe is not in vain.

Human preservation is naturally achieved through marriage. Therefore, for the sake of the Earth's prosperity, marriage is absolutely necessary. It is a prerequisite for its prosperity. A man's life will not be orderly, peaceful, and enjoyable unless it is managed effectively. This can be achieved with skilled and professional hands, namely the gentle hands of women, who are instinctively capable of managing a household well, neatly, and appropriately. Therefore, marriage is prescribed not only for the sake of the Earth's prosperity, but equally importantly, to ensure an orderly and orderly human existence. The presence of women by the side of men (husbands) through marriage is crucial.

The wisdom contained in marriage includes: (1) Channeling sexual instincts legally and correctly, (2) The best way to have children and develop offspring legally, (3) Channeling paternal and maternal instincts, (4) Cultivating a sense of responsibility in the context of caring for and educating children, thus providing a strong motivation for a person to make happy those for whom he is responsible, (5) Sharing responsibilities between husband and wife, which previously may have been borne only by each party, (6) Uniting two large families, so that ties of kinship become stronger and thus the formation of new, larger families, and (7) Prolonging life.

Naturally, the instinct that is difficult for every adult human to contain is the sexual instinct. Islam wants to show that what distinguishes humans from animals in channeling sexual instincts is through marriage, so that all negative consequences caused by improper sexual channeling can be avoided as early as possible. Therefore, Islamic jurisprudence scholars state that marriage is the only correct and legitimate way to channel sexual desires, so that neither party feels concerned about the consequences. This is what Allah SWT means in Surah al-Rum, verse 21. Regarding this, the Prophet Muhammad (peace be upon him) said:

Sourced from Jabir bin Abdullah... and he said, "Women (seen) from the front are always tempting, from behind too. If a man is tempted by a woman, then come (pass it on to) his wife, because that will calm his soul." (HR. Muslim, Abu Dawud, and at-Tirmizi).

Fiqh scholars agree that to start a marriage there are several steps that need to be taken in order to achieve the ideals of a sakinah household. These steps start with the proposal (khitbah) of the prospective wife by the man and seeing the prospective wife; On the other hand, the woman also has the right to see and evaluate her future husband in terms of his suitability (kafaah). Meanwhile, according to most people, the purpose of marriage is to make sexual relations between a man and a woman legal. This assumption is not a perfect goal of

marriage according to Islam, because there are still main goals of marriage contained in Islamic teachings, including:

- a. To continue the lineage, which is the lifeblood and the successor to ideals, and to form families, and from these families to form a community, namely the community of the Prophet Muhammad (peace be upon him). The above statement is in accordance with the word of Allah:

"Allah has made for you wives of your own kind, and has made for you, from your wives, sons and grandsons, and has provided you with good things." (QS. an-Nahl: 72).

The Prophet (peace be upon him) himself explained the purpose of marriage, including:

Anas ibn Malik (may Allah be pleased with him) reported that the Messenger of Allah (peace and blessings be upon him) commanded (his followers) to marry and strictly forbade celibacy. He said, "Marry women who can bear many children, for I will be proud to be a prophet who has a larger number of followers than other prophets in the hereafter."

A large number of children has positive impacts, both generally and specifically. Therefore, some nations strive to increase their population by offering rewards to those who have many children.

- b. To nurture maternal and paternal instincts, so that they grow in harmony with their children and foster feelings of friendliness, love, and affection. This is in accordance with the words of Allah SWT:

"And among the signs of His power is that He created for you wives from among yourselves, so that you would be inclined and feel at ease with them, and He made affection among you so that you would become people of thought." (QS. al-Rum: 21).

- c. To protect yourself from actions that are prohibited by Allah SWT. Do it, as the Prophet SAW said:

Sourced from Abdullah bin Mas'ud ra., Rasulullah SAW has conveyed to us saying: O young men, whoever among you is capable (inwardly and physically to marry) then marry, because marriage will be able to limit your views and maintain honor (genitals), and whoever is not able (to marry), then let him fast, because fasting for him is medicine (which can reduce lust).

- d. As a fortress for himself to maintain morals and purity. Because: marriage provides a person with a stronghold built for sexual satisfaction as well as a stronghold of moral protection for himself. In this case, Allah SWT has stated:

And (forbidden for you to marry) married women, except those whom your right hands possess. (Allah has decreed this) as a decree for you. And lawful for you is other than that: to seek wives from your wealth for marriage, not for the purpose of committing adultery. (Surat an-Nisa': 24).

B. Gender Equity

Etymologically, gender comes from the English word meaning sex. The Women's Studies Encyclopedia explains that gender is a cultural concept that seeks to create distinctions in the roles, behaviors, mentalities, and emotional characteristics of men and women that develop in society. This term appears to be more global. It also equates gender with sex. Therefore, the understanding of gender applied in this sense seems inapplicable to terminological categories. This is because, in terminology, gender and sex are two terms with different definitions.

Sex is understood as a non-interchangeable label for men and women. For example, women experience menstruation, childbirth, and breastfeeding—all conditions that are impossible for men. Likewise, men have an Adam's apple, sperm, and a penis, which are not interchangeable with women. Therefore, sex is understood as a biological, natural, and unchangeable gender, regardless of conditions, situations, cultures, or traditions. The understanding of sex truly transcends the boundaries of time and space.

In the context of women, sex or gender is closely related to the reproductive rights that women naturally possess. Reproductive rights related to breastfeeding, menstruation, pregnancy, and childbirth are experienced by women. However, this differs from men, who never experience these natural events. This means there are many fundamental differences between sex and gender. Sex is more about labeling gender and natural habits and activities, and is absolute, while gender is the mapping of a person's roles that are sometimes carried out by both men and women and is more relative and relative. Therefore, gender is merely a label that exists in reality and can be exchanged between men and women. For example, gentleness, roughness, crying, and anger. Gender is not inherent, but rather a modification of the social constructs within which men and women live. In other words, gender is the result of traditions, culture, religion, and specific ideologies that recognize the boundaries of space and time and directly shape the characteristics of men and women.

Gender is dependent on the values held by society, which determine what men and women do. Thus, gender can change from one situation or tradition to another. There are three characteristics that can be emphasized in gender.

First, gender is a interchangeable trait. For example, some men are emotional, gentle, and maternal. In addition, some women are strong, rational, and powerful. Second, there are changes over time and place. For example, in ancient times, in certain tribes, women were stronger than men, but in other times and places, men were stronger. Third, social class also varies from one class to another. Some lower-class women in rural areas of certain tribes are stronger than men.

All the interchangeable traits between women and men change over time and vary from place to place. Likewise, they also vary from one class to another. This concept is what we now know as gender, a concept used to indicate the differences in roles, behaviors, mentalities, and emotional characteristics considered appropriate for men and women, shaped by the social and psychological environment, including history and culture. Gender determines aspects of masculinity and femininity, rather than sex and biology.

III. RESEARCH METHODS

A. Research Type and Approach

This research is classified as library research because the data examined are manuscripts, books, or magazines sourced from the library. The nature of this research is qualitative, meaning that the findings are not obtained through statistical procedures or other forms of calculation. For example, data on life, individual behavior, organizational roles, and social movements can be calculated like census data, but the analysis is qualitative. Library research is research conducted based on sources or libraries, in the form of written works and research results, manuscripts, books, or magazines, both published and unpublished. This type of research includes historical research, research on the thoughts of prominent figures, book reviews, and various other examples of library-related research.

The approach used to obtain data is content analysis. In Klaus Krippendorff's terms, this method is defined as "A research technique for making replicable and valid inferences from data by taking into account its context." Suharsimi Arkunto calls it "document analysis" (documentary) which is "research conducted on information documented in recordings, whether images, sounds, spoken, written and so on." As a research technique, this analysis includes special procedures for processing scientific data.

B. Data Sources

The data sources in this study can be grouped as follows: (1) primary legal materials, namely: Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law, and books on Maqashid al-Syar'ah; (2) secondary legal materials, which provide explanations of primary legal materials, research results, works by legal circles, and so on; and (3) tertiary legal materials or supporting legal materials, namely legal materials that provide guidance and explanations of primary and secondary legal materials, such as encyclopedias, dictionaries, and others.

C. Data Collection and Data Analysis Techniques

All research data was obtained through direct and indirect citations, then systematically compiled to form a clear presentation of: MARRIAGE LAW IN INDONESIA (Study of Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law, and a Gender-Perspective Research Review). Data analysis techniques are the process of collecting data and sorting it into patterns and groupings. In his book, Burhan Bungin states that data analysis is a crucial part of the scientific method, as it provides meaning and significance that can be used to solve research problems. The data analysis techniques used in this study follow the steps of data reduction, data presentation, and conclusions/verification.

IV. RESEARCH RESULTS

A. Law Number 1 of 1974 concerning Marriage

1. Definition, Scope, and Purpose

In Indonesian positive law, the term commonly used to describe marriage is "marital," which means a contract or agreement between a man and a woman to legally establish sexual relations between them to achieve a happy family life filled with love and peace in ways that are pleasing to God. That is why, in Law Number 1 of 1974 concerning Marriage, Article 1 Paragraph (1) uses the term marriage which contains the meaning of "a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Almighty God.

The formulation of the definition of marriage as contained in Article 1 of the Marriage Law explains that the physical and spiritual bond is a bond that is not only sufficient with a physical bond or a spiritual bond alone. However, both must be closely integrated. The spiritual bond is the basis of the physical bond that can be used as a foundation in building a happy family based on the One Almighty God. The purpose of forming an eternal family (household) is to have offspring who are devoted to their parents, and a family that is happy and eternal

forever. Based on the One Almighty God, marriage is valid according to the laws of each religion and belief based on the One Almighty God. The inclusion of the One Almighty God is because the State of Indonesia is based on Pancasila, whose first principle is Belief in the One and Only God.

Thus, marriage is a sacred agreement (aqad) to live as legal husband and wife, forming a happy and eternal family, the elements of which are: (1) a sacred agreement between a man and a woman, (2) forming a happy and prosperous family (makruf, sakinah, mawaddah, and rahmah). Thus, marriage is an agreement between a man and a woman to become legal husband and wife to form a happy and prosperous family in accordance with the commands of God Almighty.

In the Compilation of Islamic Law (KHI), Article 2 states that marriage is a very strong contract (*mitsaqan ghalizan*) to obey Allah's commands and carrying them out is worship, and aims to create a household life that is *sakinah mawaddah wa rahmah*. According to Article 3 of the Compilation of Islamic Law, "Marriage aims to create a household life that is *sakinah, mawaddah and rahmah*." A marriage contract, in this sense, contains three specific characteristics: (1) marriage cannot be entered into without the voluntary element of both parties; (2) both parties (man and woman) who enter into the marriage agreement have the right to terminate the agreement based on existing legal provisions; and (3) the marriage agreement regulates the legal boundaries regarding the rights and obligations of each party.

Being called a very strong contract (*mitsaqan ghalizan*) means that the marriage contract is not merely a civil agreement, but rather a religious event to obey the commands of Allah and the Messenger, and carrying it out is part of worship. Undergoing marriage means carrying out the *sunnah* of Allah and the *sunnah* of the Messenger. The *sunnah* of Allah means according to the *qudrat* and *iradat* of Allah in the creation of this world, while the *sunnah* of the Messenger means a tradition established by the Messenger for himself and for his people. Therefore, the marriage contract must be pronounced clearly by the guardian of the bride in the form of a marriage contract (*ijab kabul*) by the groom, carried out in the presence of two qualified witnesses. According to Islamic law, the purpose of marriage is according to God's command to have legitimate offspring in society by establishing a peaceful and serene household. Thus, the purpose of marriage is to uphold religion, to have offspring, to prevent sin and to build a peaceful and serene household. Because the purpose of marriage is to form a happy and eternal family (household) based on the One Almighty God, then husband and wife need to help and

complement each other so that each can develop their personality to help and achieve spiritual and material well-being, and must last a lifetime and cannot be broken off easily.

2. Legal Basis, Principles, and Principles

In accordance with the philosophical foundation of Pancasila and the 1945 Constitution, this law must, on the one hand, embody the principles contained in Pancasila and the 1945 Constitution, while on the other hand, it must also accommodate all the realities of contemporary society. Law Number 1 of 1974 concerning Marriage incorporates the elements and provisions of each individual's religious and belief law. This law defines the principles or principles regarding marriage, including all matters related to marriage, adapted to current developments and demands.

The legal basis for marriage is contained in Article 28 B paragraph (1) of the 1945 Constitution, which states, "Everyone has the right to establish a family and continue their lineage through a legal marriage." Based on what has been outlined in the Preamble to the 1945 Constitution, Article 28B paragraph (1) of the 1945 Constitution, it can be seen that the goal and ideals of the Indonesian state are to advance the welfare of its people by granting every citizen the right to maintain their lives, which means having the right to continue their lineage. Everyone has the right to form a family, a human right that cannot be diminished. The legal basis for marriage is also contained in Law No. 1 of 1974 concerning Marriage, regulated in Chapter I concerning the Basics of Marriage, which consists of five articles, namely Articles 1 to 5.

The principles or principles stated in Law No. 1 of 1974 are as follows:

- a. The purpose of marriage is to form a happy and lasting family. Therefore, husband and wife need to help and complement each other, so that each can develop their personality, help and achieve spiritual and material well-being.
- b. This law states that a marriage is valid if it is conducted according to the laws of each respective religion and belief. Furthermore, each marriage must be registered according to applicable laws and regulations. The registration of each marriage is the same as for important events in a person's life, such as birth and death, which are stated in certificates and official certificates, which are also included in the registration.
- c. This law adheres to the principle of monogamy. Only if desired by the parties concerned, and where the law and their respective religions permit, can a husband have more than one wife. However, marriage between a husband and more than one wife, even if desired by the

parties concerned, may only be carried out if certain requirements are met and decided by the court.

- d. This law adheres to the principle that the prospective husband and wife must be mentally and physically mature to enter into marriage. This is to ensure that the marriage's objectives are achieved properly without ending in divorce and to produce healthy and good offspring. Therefore, marriages between prospective husband and wife who are underage must be prevented. In addition, marriage is related to population problems. It turns out that a lower age limit for a woman to marry results in a higher birth rate. In this regard, this law determines the age limit for marriage for both men and women, namely 19 (nineteen) years for men and 16 (sixteen) years for women.
- e. Because the purpose of marriage is to form a family that is eternally happy and prosperous, this law adheres to the principle that to make divorce difficult, there must be certain reasons and it must be done in front of a court hearing.
- f. The rights and position of the wife are balanced with the rights and position of the husband both in domestic life and in social interactions, so that everything in the family can be negotiated and decided together by the husband and wife.

Marriage Law Number 1 of 1974 contains highly ideal and flexible principles. Ideal in the sense that the material in Marriage Law Number 1 of 1974 can actually suppress negative behavioral tendencies within society, as much of its content is derived from Islamic Sharia, a source believed to have both vertical and horizontal dimensions, and to embody the normative values inherent in society. These principles are:

- a. Consent (the principle of voluntariness). This principle is stated in Article 6 paragraph 1, which requires the consent of both parties to a marriage. The law prohibits any element of coercion or compulsion from one or both parties, as this clearly violates human rights.
- b. Family participation. Although Article 7, paragraph 1, of the Law stipulates the age of consent for marriage, meaning a person is legally competent, the Law also requires the participation and involvement of the family when the person is not yet legally competent, in terms of granting blessings or permission.
- c. Divorce is complicated. The easy and arbitrary use of divorce will have a negative impact on the future of the children. The wife, of course, suffers the most. In this situation, the wife becomes truly subordinate. Therefore, the Law stipulates that for divorce to be permitted, there must be specific reasons, as strictly regulated, and it must be conducted in court (Article 39).

- d. Polygamy is strictly limited. Our Law adheres to the principle of strict monogamy or polygamy. Only if the person concerned desires it, because the law and religion permit it, can a person have more than one wife. However, polygamy can be practiced if certain conditions stipulated by law and decided by the court have been met (Articles 4 and 5).
- e. Maturity of the prospective bride and groom. The law also stipulates a minimum age limit for couples wishing to marry: 19 years for men and 16 years for women (Article 1). This is intended to ensure that both partners are physically and mentally ready to navigate the journey of married life.
- f. Elevating the status of women. The law places great importance on women as legal subjects. In the past, when it was easy for husbands to divorce their wives, women suffered the most. They had to provide for their own needs, finance their children's education, and so on. However, to prevent this from happening and to ensure the rights of wives after divorce are fulfilled, the law regulates this in several articles, including Article 29, Articles 35-37, Article 41, and others.

Indonesian marriage law essentially adheres to the principle of monogamy, as stated in Article 3 paragraph (1) of Law Number 1 of 1974 concerning marriage, which states that "a man may only have one wife and a woman may only have one husband." The application of the principle of monogamy in Law Number 1 of 1974 concerning marriage can be deviated from. This is evident in Article 3 paragraph (2) of Law Number 1 of 1974 concerning Marriage, which states that "the court may grant permission to a husband to have more than one wife if desired by the parties concerned." Furthermore, the Compilation of Islamic Law also states in Article 56 paragraph (1) that "A husband who wishes to have more than one wife must obtain permission from the Religious Court." Polygamy is given a place regulated by several articles and verses that regulate it.

Although polygamy is given a place, this does not mean that polygamy is made a principle in Law Number 1 of 1974 concerning Marriage and Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law. This is an exception only, intended for individuals who, according to law and their religion or beliefs, have certain limitations or conditions, and for certain reasons, receive permission from the court. This is emphasized in the general explanation of Law Number 1 of 1974 concerning Marriage, number 4 letter c, which states as follows:

This law adheres to the principle of monogamy. Only if the law and religion of the parties concerned permit it, a husband may have more than one wife. However, marriage

between a husband and more than one wife, even if desired by the parties concerned, may only occur if certain requirements are met and decided by a court.

The above explanation shows that the principle of monogamy is used in marriage. However, the principle of monogamy adopted by Law Number 1 of 1974 concerning marriage is not absolute, but rather directive towards the formation of a harmonious marriage by complicating and narrowing the use of polygamy, rather than eliminating it altogether. The provisions of the principle of monogamy are not merely limiting, because in Article 3 paragraph (2) of Law Number 1 of 1974 concerning marriage, it is stated that the court can grant permission to a husband to have more than one wife if the parties concerned wish. This provision opens the possibility for a husband to practice polygamy with court permission. This is closely related to the various religions practiced by society, as some religions prohibit polygamy and others allow or permit polygamy. Muslims in particular must obtain permission from the Religious Court, and those of religions other than Islam must obtain permission from the District Court.

3. Material and Formal Requirements for Marriage

According to R. Soetojo Prawirohamidjojo, the requirements for marriage are divided into: (1) Material requirements are those related to the parties entering into marriage, and formal requirements are those related to the formalities that must be met in carrying out the marriage.

a. Material Requirements

Before entering into marriage, the prospective bride and groom must fulfill the marriage requirements stipulated by law, as stipulated in Articles 6-12 of the Marriage Law, and specifically for civil servants, Government Regulation No. 10 of 1983. The basic requirements are as follows:

- 1) Consent from both prospective bride and groom. This first requirement is contained in Article 6 paragraph (1) of the Marriage Law, which states that marriage must be based on the consent of both prospective bride and groom. Both prospective bride and groom must mutually agree to bind themselves in marriage, which must be stated in writing. The consent of the prospective bride and groom as one of the requirements for marriage is intended to allow each person to freely choose their partner for married life. The emergence of the consent requirement in the Marriage Law can be linked to the marriage system in ancient times, the time of our grandparents and before, when forced marriages occurred. A child must obey his or her parents and agree to be matched with a person

- deemed suitable by their parents. To address forced marriage, the Marriage Law has provided a solution: a husband or wife can file for annulment of the marriage by referring to Article 27 paragraph (1) if the coercion to marry was carried out under unlawful threats.
- 2) The age of the prospective bride and groom: for men, they must have reached 19 years of age, while for women, they must have reached 16 years of age. As mentioned above, the minimum age requirement for marriage is 19 years for men and 16 years for women (Article 7 paragraph (1) of the Marriage Law). Why is this minimum age requirement? In the General Explanation of the Law in question, it states that the Law adheres to the principle that at this age the prospective husband and wife are deemed to be physically and mentally mature to enter into marriage, and are deemed to be capable of realizing the goals of marriage properly and having good and healthy offspring.
 - 3) Permission from both parents or guardians is required for prospective brides and grooms who are under 21 years of age. Permission to marry from both parents or guardians only applies to those under 21 years of age. The law does not explain why the age limit of 21 and over is not required. In our opinion, because 21 years of age is considered adulthood for this legal act of marriage, there is no need to seek permission from parents or guardians.
 - 4) Not violating any prohibitions on marriage. The next requirement for a marriage to be valid is that the bride and groom must not violate any prohibitions on marriage. In the Marriage Law there are 6 (six) points of prohibition as regulated in Article 8, namely: (1) having blood relations in a straight downward or upward line of descent, (2) blood relations in a lateral line of descent, namely between siblings, between one person and one's parent's sibling and between one and one's grandmother's siblings, (3) sexual relations, namely father-in-law, stepchild, daughter-in-law and stepmother/stepfather, (4) family relations, namely half-parents, baby-brothers and baby-aunts/uncles, (5) having a relationship with the wife or as an aunt or niece of the wife, in the case of a husband having more than one wife, (6) having a relationship which is prohibited by his religion or other applicable regulations from marriage.
 - 5) The principle of monogamy applies. This principle is also one of the conditions for carrying out a marriage. A husband can only have one wife. Therefore, prospective grooms cannot marry more than one person at a time. Even if a husband later wishes to marry more than one wife, there must be a valid reason for doing so.

- 6) A waiting period applies to widows who wish to remarry. This waiting period is stipulated in Article 11 of the Marriage Law, specifically for a woman whose marriage ends due to the death of her husband or divorce. It is at least 90 days for those whose marriage ends due to divorce, and 130 days for those whose marriage ends due to the death of their husband.

b. Formal Requirements

A marriage must be conducted according to the procedures established by applicable laws and regulations. If this is not done, many people consider the marriage to be informal. Some communities still practice this. The formal requirements that must be met are as follows:

- 1) Notification. Article 3 of Government Regulation Number 9 of 1975 stipulates that anyone intending to marry must notify the marriage registrar at the location where the marriage will take place. For Muslims, notification is submitted to the Office of Religious Affairs, as Law Number 32 of 1954 concerning the Registration of Marriages, Talat, and Reconciliation applies. For non-Muslims, notification is submitted to the local Civil Registry Office.
- 2) Investigation. After notification of the marriage, an investigation is conducted by the marriage registrar. In accordance with Article 6 paragraph (1) of Government Regulation Number 9 of 1975, the registrar examines whether the marriage requirements have been met and whether there are no obstacles according to the law. In addition, based on paragraph (2), the marriage registrar is also required to conduct research on: (1) extracts of birth certificates or birth recognition letters of the prospective bride and groom, (2) information regarding the name, religion/belief, occupation and place of residence of the prospective bride and groom's parents, (3) written permission/court permission as referred to in Article 6 paragraph (2), (3), (4) and (5) of the Law, if one or both of the prospective bride and groom has not reached 21 (twenty one) years, (4) court permission as referred to in Article 4 of the Law in the case of the prospective bride and groom being a husband who still has a wife, (5) court/official dispensation as referred to in Article 7 paragraph (2) of the Law, namely dispensation in the case of the prospective bride and groom not fulfilling the minimum age limit for marriage, (6) death certificate of the previous wife or husband or in the case of divorce, a divorce certificate, for a second or more marriages, (7) written permission from an official appointed by the Minister of Defense/Armed Forces Commander, if one of the bride and groom or both members of the Armed Forces, (8) an authentic or private power of attorney authorized by the Registrar, if one or both of the

prospective bride and groom cannot attend in person for an important reason, and so they are represented by another person.

- 3) **Announcement.** After the procedures and requirements for notification have been fulfilled and there are no obstacles to the marriage, the next stage is for the Marriage Registrar to make an announcement. Based on Article 8 of Government Regulation Number 9 of 1975, an announcement regarding the intention to marry is made. Regarding the method, the announcement letter is posted according to the established form at the marriage registrar's office in a designated location that is easily read by the public.
- 4) **Implementation.** In accordance with the provisions regarding notification of the intention of the prospective bride and groom to marry, the marriage will take place after the tenth day from the date of the announcement above. Regarding the procedures for conducting a marriage, Article 10 paragraph (2) of Government Regulation Number 9 of 1975 reaffirms Article 2 paragraph (1) of the Marriage Law, which states that a marriage must be conducted according to the laws of each religion and belief to be valid. This Government Regulation also requires that the marriage be conducted before an authorized marriage registrar and attended by two witnesses. Immediately after the marriage is conducted, as stipulated in Article 10 of Government Regulation Number 9 of 1975, the bride and groom sign the marriage certificate prepared by the marriage registrar.

In the Compilation of Islamic Law, marriage is stated in Article 6 concerning the requirements for marriage, including: (1) the marriage must be conducted according to religious law, (2) the marriage must be registered according to statutory regulations, (3) the marriage must be based on the consent of both prospective bride and groom, (4) a person under the age of 21 must obtain parental permission to marry. The validity of a marriage, from a civil perspective, is determined by its registration at the Civil Registry Office. As long as the marriage is not registered, it is not considered legally valid, even if it meets the procedures and procedures according to religious law. From a religious perspective, marriage registration is merely an administrative act and does not determine whether the marriage is valid.

If we examine the provisions regarding the validity of a marriage in Law Number 1 of 1974, it states that "a marriage is valid if it is conducted according to the laws of each religion and its beliefs." It is also stated that each marriage is registered according to the applicable laws and regulations. This formulation means that there are no marriages outside the laws of each religion and its beliefs. So registration is not a condition that determines the validity of a marriage. The validity of a marriage is determined by the provisions of the religion and beliefs

of those who are conducting the marriage; meaning that if a marriage is conducted in conflict with the provisions of the religion and beliefs, the marriage is automatically not valid according to law and has no legal consequences as a marriage bond. Article 2 of the Marriage Law states that: (1) A marriage is valid if it is conducted according to the laws of each religion and its beliefs. (2) Each marriage is registered according to the applicable laws and regulations. The explanation of Article 2 paragraph (1) states that there is no marriage outside the law of each religion and belief, in accordance with the 1945 Constitution. The law of each religion and belief includes the statutory provisions applicable to that religion and belief group, as long as they do not conflict with or are not stipulated otherwise in this Law.

Therefore, for those who adhere to Islam, the legality of a marriage is determined by the provisions of Islamic law. The same applies to Christianity and Balinese Hinduism, where religious law is the basis for the implementation of a valid marriage. Hazairin explained that there is no marriage outside the law of each religion and belief. For Muslims, it is impossible to marry in violation of their own religious law. Likewise, for Christians and Hindus and Buddhists, as found in Indonesia, for a marriage to be valid, it must comply with the provisions of the law of their religion and belief. A marriage based on Law Number 1 of 1974, with the implementation of Government Regulation Number 9 of 1975, must be conducted according to the religious law and beliefs of each person entering into the marriage; otherwise, the marriage is invalid.

4. Legal Consequences of a Marriage

Marriage will have legal consequences for both husband and wife, their assets, and any children born within the marriage. The legal consequences of marriage are:

- 1) Consequences of marriage for husband and wife: (1) Husband and wife bear the noble responsibility of upholding a household based on the One Almighty God (Article 30); (2) The rights and status of the wife are equal to those of the husband in domestic life and in social interactions (Article 31 paragraph 1); (3) Each party has the right to perform legal acts, with the husband being the head of the family and the wife the homemaker. (Article 31 paragraphs 2 and 3), (4) The husband is obliged to protect his wife and provide all the necessities of household life according to his ability (Article 34 paragraph 1).
- 2) The effects of marriage on assets: (1) The emergence of inherited and joint assets, (2) The husband or wife each has full rights to the inherited assets to carry out any legal action, (3) The husband or wife must always have agreement to carry out legal actions against joint assets (Articles 35 and 36).

- 3) The effects of marriage on children: (1) Children born in a valid marriage are legitimate children (Article 42), (2) Children born outside of marriage only have a civil relationship with their mother.

5. Marriage Registration

Regarding marriage registration, Chapter II, Article 2 of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage regulates marriage registration. For those marrying according to the Islamic religion, registration is carried out at the Office of Religious Affairs. Based on Law Number 1 of 1974 concerning Marriage, Article 2 Paragraph (2), "Every marriage is registered in accordance with applicable laws and regulations." Likewise, as explained in the Compilation of Islamic Law, Article 6 Paragraph (2) states, "Marriages conducted outside the supervision of a marriage registrar have no legal force," and Article 7 Paragraph (1), "Marriages can only be proven by a marriage certificate." Meanwhile, to register marriages of those with religions and beliefs other than Islam, the legal basis is Article 2 paragraph (2) of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, which states, "Registration of marriages of those who conduct their marriage according to their religion and beliefs other than Islam, is carried out by a marriage registrar at the civil registry office as referred to in various laws concerning marriage registration."

The procedures for registering marriages are implemented as stipulated in Articles 3 to 9 of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage. Among other things, every person who will be getting married must notify the registrar at the place where the marriage will take place, verbally or in writing, of their marriage plans, no later than 10 working days before the marriage takes place. The registrar then examines whether the marriage requirements have been met and whether there are no obstacles to marriage according to the Law. Next, after the notification procedures and requirements have been met and no impediments to the marriage are found, the registrar announces and signs the notification of the intention to marry by posting the notice in a designated, easily readable location.

The existence of state regulations for registering marriages is a good thing, and all government regulations must be followed. This is to uphold the rights and obligations of both parties, such as those regarding maintenance, inheritance, descendants, and so on. A secret marriage may no longer need to be kept secret after a certain period, so it is advisable to register it, even if it is late. However, registration with the Religious Affairs Office or the Civil Registry

Office is not a requirement for a valid marriage. Broadly speaking, an unregistered marriage is tantamount to allowing cohabitation outside of marriage, which is highly detrimental to the parties involved (especially the woman), especially if there are already children. Those born to parents who live together without registering their marriage are illegitimate children who have only a legal relationship with their mother, meaning they have no legal relationship with their father. Children born to parents who enter into an unofficial marriage have the same legal status as children born out of wedlock, thus having a legal relationship only with their mother and not with their father.

From the above explanation, it can be understood that marriage registration is important and is regulated in Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage. This is stated in Chapter II, Article 2 of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage.

6. Prohibition, Prevention and Cancellation of Marriage

In Article 8 of Law Number 1 of 1974 concerning Marriage, it is stated that marriage is prohibited between two people who: (1) are related by blood in a straight downward or upward line of descent, (2) are related by blood, in a lateral line of descent, namely between siblings, between a person and their parent's sibling and between a person and their grandmother's sibling, (3) in relation to their parents, namely in-laws, stepchildren, sons-in-law and stepfathers, (4) in relation to family members, namely step-parents, step-parents, step-brothers, and foster aunt/uncle, (5) in relation to the wife's relatives or as the wife's aunt or great-niece, in the case of a husband having more than one wife, (6) having a relationship which is prohibited by their religion or applicable regulations from marriage.

Article 8 of Law Number 1 of 1974 concerning Marriage above explains that marriages may not be carried out between people who have the relationship mentioned in this Article. Apart from Law Number 1 of 1974 concerning Marriage, prohibitions on marriage are also contained in Articles 39 to 44 of the Compilation of Islamic Law. In Article 39 of the Compilation of Islamic Law, it is stated that the prohibition on marriage between a man and a woman is due to: (1) Because of blood relations: (a) with a woman who gave birth to him or who inherited him or his descendants, (b) with a woman who is a descendant of his father and mother, (c) with a female relative who gave birth to him, (2) because of blood relatives: (a) with a woman who gave birth to his wife or ex-wife, (b) with a woman who was the ex-wife of the person who inherited him, (c) with a woman who is a descendant of his wife or ex-wife,

unless the marital relationship with his ex-wife is terminated qabla al-dukhul, (d) with a woman whose ex-wife is a descendant of his wife, (3) because of sexual relations: (a) with a woman who is breast-feeding and so on in a straight line upwards, (b) with a woman who is a breast-feeder and so on in a straight line downwards, (c) with a woman who is a half-brother, and who is a descendant, (d) with an aunt. breast milk and aunt's grandmother breastfed above, and (e) with children breastfed by his wife and their offspring.

Marriage prevention is avoiding marriage based on prohibitions in marriage law. Provisions regarding prevention of marriage are contained in Article 13 to Article 21 of Law No. 1 of 1974 concerning Marriage. Where in Article 13 of Law No.1 of 1974 concerning Marriage states "Marriage can be prevented, if there are parties who do not fulfill the requirements for carrying out a marriage." This article explains that if in a marriage there are conditions for the marriage that are not fulfilled then the marriage can be prevented as mentioned.

The parties who can prevent a marriage are mentioned in Article 14 paragraph (1) of Law No. 1 of 1974 concerning Marriage, namely "Those who can prevent a marriage are the family in straight line up and down, relatives, marriage guardians, guardians of one of the prospective bride and groom and interested parties." This article explains the parties who have the right to file a marriage prevention petition with the court with the intention of avoiding a marriage prohibited by law.

Provisions regarding marriage prevention are also contained in Articles 60 to 69 of the Compilation of Islamic Law. Article 60 paragraph (1) of the Compilation of Islamic Law states, "Marriage prevention aims to prevent a marriage prohibited by Islamic law and statutory regulations." This article explains the purpose of marriage prevention, namely to prevent an unwanted marriage from occurring. Article 60 paragraph (2) of the Compilation of Islamic Law states, "Marriage prevention can be carried out if the prospective husband or wife who will be getting married does not fulfill the requirements for marriage according to Islamic law and statutory regulations." This article explains that if the prospective husband and wife do not fulfill any of the marriage requirements, the marriage can be prevented from taking place.

A marriage is essentially void (annulled) if the parties to the marriage fail to fulfill the requirements for marriage, even though the marriage has already been performed. Provisions regarding annulment of marriage are outlined in Articles 22 through 28 of Law Number 1 of 1974 concerning Marriage. Article 22 of Law Number 1 of 1974 concerning Marriage states, "A marriage may be annulled if the parties fail to fulfill the requirements for marriage." This

article explains that a marriage can be annulled if the prospective husband or wife fails to fulfill the requirements for marriage as outlined in Articles 6 through 12 of Law Number 1 of 1974 concerning Marriage.

The parties who can file for annulment of marriage according to Article 23 of Law Number 1 of 1974 concerning Marriage are: (1) The families in the direct line of descent from the husband or wife, (2) The husband or wife, (3) The official who is authorized only as long as the marriage has not been dissolved, (4) The official appointed as referred to in paragraph (2) of Article 16 of this Law and any person who has a direct legal interest in the marriage, but only after the marriage has been dissolved. Provisions regarding annulment of marriage are also contained in Articles 70 to 76 of the Compilation of Islamic Law. Article 70 states that a marriage can be annulled if: (1) The husband marries, and he does not have the right to enter into a marriage contract because he already has four wives even though one of the four wives is in the iddah talak raj'iy, (2) A person marries his ex-wife whom he has divorced, (3) A person marries his ex-wife to whom he has been given three divorces, unless the ex-wife was married to another man and then divorced again ba`da al-dukhul and the man and his iddah period has expired, (4) The marriage is between two people who are related by blood. Semenanda and consanguinity to a certain degree prevent marriage according to article 8 of Law Number 1 of 1974, namely: (1) related by blood in a straight downward or upward lineage, (2) related by blood in a deviant lineage, namely between siblings, between a person and their parent's sibling and between a person and their grandmother's sibling, (3) related by blood, namely father-in-law, stepson, daughter-in-law and mother or stepfather, (4) related by blood, namely co-parent, child a sibling and a sibling aunt or uncle, and (5) The wife is a sibling or an aunt or niece and his wife or wives.

Article 70 of the Compilation of Islamic Law explains that a marriage will be void if the parties enter into a marriage that is prohibited by this Article. Article 71 states that a marriage can be annulled if: (1) A husband commits polygamy without the permission of the Religious Court, (2) The woman he marries is later discovered to still be the wife of another man who is mafqud, (3) The woman he marries turns out to be still in iddah and another husband, (4) The marriage violates the marriage age limit as stipulated in Article 7 of Law Number 1 of 1974, (5) The marriage takes place without a guardian or is carried out without a guardian. by an unauthorized guardian, and (5) Marriages carried out by force.

Article 71 of the Compilation of Islamic Law explains that a marriage can be annulled if the parties commit acts prohibited by this Article. These include carrying out marriages by

force, because a marriage must be based on the voluntariness and consent of both prospective bride and groom with the aim of forming a marriage that is serene, peaceful and forever.

In Article 73 of the Compilation of Islamic Law, it is stated that those who can submit an annulment request are: (1) The families in the direct line of descent up and down from the husband or wife, (2) Husband or wife, (3) Officials who are authorized to supervise the implementation of marriage according to the Law, (4) Interested parties who are aware of defects in the pillars and conditions, (5) Marriage according to Islamic law and statutory regulations as stated in Article 67. Article 73 of the Compilation of Islamic Law explains that the parties have the right to submit an annulment request for marriage. Marriage not only unites the prospective husband and wife but unites the families of both parties. Those who can submit an annulment request for marriage are not only the prospective husband and wife but the families of both parties also have the right to submit an annulment request for marriage.

B. Compilation of Islamic Law (KHI)

1. History and Background

The Unitary State of the Republic of Indonesia (NKRI) adheres to various legal systems, namely customary law, Islamic law, and former Western legal systems. These three legal systems were in effect in the Unitary State of the Republic of Indonesia before Indonesian independence. However, after Indonesian independence, these three systems became the raw material for the formation of a national legal system in Indonesia.⁶⁷ Indonesia is a pluralistic nation. This diversity is characterized by the existence of various religions embraced by its population, ethnicities, groups, and races. Islamic law is law constructed based on human understanding of the texts of the Qur'an and Sunnah to regulate human life, applying universally—relevant to every age (time) and place (space). This universality of Islamic law is a direct extension of the essence of Islam as a universal religion, namely a religion whose teachings are not limited by human space and time, but rather apply to all Muslims everywhere, at all times, and regardless of nationality. The term Islamic law is a typical Indonesian term, as a translation of *al-Fiqh al-Islamiy*, or in certain contexts called *al-Syari'ah al-Islamiy*. This term in Western literature is known as the idiom Islamic law.⁶⁸ T.M. Hasbi Ash-Shidieqy quoted the opinion of Sheikh Mahmud Syaltut, that sharia or Islamic law are the laws and regulations established by Allah for His servants to be followed and implemented in their relationship with Allah and the relationship between humans which are sourced from the Qur'an and His Messenger, Ijma' of the companions and Ijtihad through qias, qarienah, signs and evidence.⁶⁹ If seen in the political aspect of Islamic law, it is to build a way of life and

livelihood that is regulated and peaceful, based on the laws of peace that must be continuously fought for.⁷⁰ The determination of Islamic law has a hierarchy, namely the most important referring to the Qur'an, then the Sunnah, Ijma and Qiyas. Even in the context of modern law, the highest hierarchy is based on divinity. This was expressed by Thomas Aquinas, who defined the position of natural law within the hierarchical structure of law. First, the apex of the hierarchy is eternal law, the rational regulation of all things, where God is the ruler of the universe. Second, below eternal law is natural law, which is the participation of rational beings in eternal law. Third, below nature is positive law, or human-made law.⁷¹

The development of Islamic law, in addition to being based on a solid epistemology, also requires formulating and reconstructing its theoretical basis. The theoretical basis of Islamic law, as discussed by previous Islamic legal theorists, states that one of the essential requirements for a mujtahid in conducting *ijtihad* is the necessity of understanding the purpose of Islamic law's establishment. This statement was first put forward by Abd al-Malik al-Juwani, followed by Abu Hamid al-Ghazali, and then by Izzuddin ibn Abd al-Salam. This theoretical basis was systematically and in detail developed by Abu Ishaq al-Syatibi and liberalized by Najamuddin al-Thufi. The main study in the theory of *Maqasid al-Syari'ah* concerns the objectives of Islamic law, which are realized in the form of the welfare of humanity both in this world and the hereafter.⁷² Therefore, the formulation and reconstruction of legislation, theoretical proposals, and any *ijtihad* methods in resolving Islamic legal issues must refer to the realization of this welfare. Of course, what is meant by legal issues in this connection are contemporary legal issues related to the field of *mu'amalah*.

The application of Islamic law in Indonesia, in the judicial decision-making process, has always been problematic. Furthermore, given the diversity of the nation's society, applicable law should adhere to a pluralistic national legal system.⁷³ Theoretically, people always associate the application of law with power, particularly state power. Indonesia is not an Islamic state but a national state that does not allow Muslims to implement Islamic law, nor does it allow followers of other religions to practice it. In fact, Indonesian Muslims are not only the majority group in Indonesia but also the largest Muslim group in the world. Islamic law occupies a very strategic position not only for Indonesian Muslims but also for the Islamic world in general, and simultaneously occupies a strategic position within the Indonesian legal system. For Islamic law to be implemented in Indonesia within the framework of the national legal system, clear laws are required, enforced by both law enforcement officials and the public.

Therefore, the basic idea of the Compilation of Islamic Law (a framework for the national legal system) emerged to bridge the gap between the application of Islamic law in Indonesia.

The application of Islamic law in Indonesia continues to be a source of pros and cons in society. In the post-New Order era, the controversy surrounding the position of Islamic law within the legal framework of the modern state has been characterized by two extreme approaches. On the one hand, there are those who desire the total implementation of Islamic law through state channels. On the other hand, there are those who want to reject anything remotely resembling Islamic law from state institutions. The controversy surrounding the implementation of Islamic law in Indonesia within the legal framework of the modern state can be described from the perspective of political ethics and governance. The implementation of Islamic law (the Compilation of Islamic Law) from the perspective of political ethics and governance is viewed from three aspects: regulatory, institutional (organizational), and law enforcement. Prior to the formation of the Compilation of Indonesian Law (KHI), important and fundamental changes had occurred within the Religious Courts with the ratification of the Draft Law on Religious Courts (RUU-PA) as Law Number 7 of 1989,74 proposed by Minister of Religious Affairs Munawir Sjadzali to the Indonesian House of Representatives. Its contents are as follows:

- a. The Religious Courts have become independent courts, truly equal and on par with general courts, military courts, and state administrative courts.
- b. The name, structure, authority (power), and procedural law are now the same and uniform throughout Indonesia. The unification of religious court procedural law will facilitate the realization of order and legal certainty, grounded in justice, within the religious court environment.
- c. Protection for women has been enhanced by, among other things, granting wives equal rights in legal proceedings and defending their interests before religious courts.
- d. Efforts to further strengthen the exploration of various principles and rules of Islamic law as raw material for the formulation and development of national law through jurisprudence.
- e. The provisions of the Basic Law on Judicial Power (1970) have been implemented.
- f. The development of national law with an archipelagic perspective, while simultaneously embracing the principle of Unity in Diversity, has been implemented in the form of the Religious Courts Law.

The success of Indonesian Muslims (the Minister of Religious Affairs and Islamic scholars) in passing the Draft Law on Religious Courts into Law Number 7 of 1989 on Religious Courts did not resolve the issues related to the implementation of Islamic law in Indonesia. A crucial issue arose, concerning the lack of uniformity among judges in rendering legal decisions on the issues they faced. This was due to the lack of a single text on Islamic law. While 13 texts, all of which adhere to the Shafi'i school of thought, have been established as references for deciding cases.⁷⁶ However, the lack of uniformity in judicial decisions remains a problem. Based on this reality, the desire to compile a "Book of Islamic Law" became increasingly urgent. The compilation of this compilation was not only based on the need for uniform references for Islamic Court legal decisions in Indonesia, but also on the need to fulfill the requirements of a judicial system, namely a book of Islamic law materials used in the judicial institution. ⁷⁷ Bustanul Arifin was a figure who came up with the idea of creating a Compilation of Indonesian Law. These ideas were based on the following considerations:

- a. For Islamic law to apply in Indonesia, there must be clear laws that can be implemented by law enforcement officials and the public.
- b. The inconsistent perception of sharia will and has led to the following: (1) Inconsistency in determining what constitutes Islamic law (*manzalallahu*), (2) Lack of clarity on how to implement sharia (*Tanfiziyah*), and (3) The long-term consequence is the inability to utilize the means and tools available in the 1945 Constitution and other laws.
- c. In Islamic history, there have been three countries where Islamic law was enforced: (1) as a well-known law in the fatwa of Alamfiri, (2) in the Ottoman Empire, known as *Majallah al-Ahkam al-Adliyah*, and (3) Islamic law was codified in Subang in 1983.

Bustanul Arifin's idea was agreed upon and a Project Implementation Team was formed with a Joint Decree (SKB) of the Chief Justice of the Supreme Court of the Republic of Indonesia and the Minister of Religious Affairs of the Republic of Indonesia Number 07/KMA/1985. In the Team, Bushtanul was trusted to be the General Leader with Team members including officials from the Supreme Court and the Ministry of Religious Affairs. With the hard work of the Team members and the clerics and scholars involved in it, the KHI was formulated, which was followed up with the issuance of Presidential Instruction (Inpres) Number 1 of 1991 to the Minister of Religious Affairs to disseminate the Compilation of Islamic Law consisting of Book I on Marriage, Book II on Inheritance, Book III on Waqf.⁷⁹ The Inpres was followed up with the Decree of the Minister of Religious Affairs Number 154 of 1991 dated July 22, 1991. Although the Compilation of Islamic Law was not enacted through

law as happened in Law Number 1 of 1974 on Marriage Law in Indonesia. According to Nur Ahmad Fadil Lubis, this is a highly sensitive issue to address in Indonesia, which is highly pluralistic in terms of religion and theology. According to Abdul Gani Abdullah, the issuance of the Presidential Instruction and Decree implies at least three things:

- a. The order to disseminate the KHI is nothing more than an obligation for the Muslim community to utilize the explanation of Islamic teachings, insofar as they relate to normative matters, as law that must be applied in society.
- b. The formulation of Islamic law in the KHI seeks to end the dual perception of the validity of Islamic law, as indicated by Article 2 paragraph 1 of Law Number 1 of 1974 concerning Marriage and Law Number 7 of 1989 concerning Formal Legal Aspects.
- c. The KHI explicitly designates the scope of validity of the KHI, referring to government agencies and the community that require it, as a guideline for resolving problems in the three legal areas outlined in the KHI.

The emergence of the KHI in Indonesia can be considered a major achievement for Muslims, according to Yahya Harahap. The KHI is expected to: First, complement the pillars of the Religious Courts. Second, unify perceptions of legal application. Third, accelerate the process of taqrib bainal ummah. Fourth, eliminate the notion of private affairs.⁸¹ At least with the KHI, pluralism in Religious Court Decisions will no longer be found in Indonesia, because the texts used as reference by Religious Court judges are the same. Furthermore, fiqh, which has previously been negative, has been transformed into positive law that applies and binds all Indonesian Muslims. More importantly, the KHI is expected to be more easily accepted by the Indonesian Muslim community because it is derived from Indonesian traditions. Therefore, there will be no psychological barriers among Muslims who wish to implement Islamic law. Based on the description above, it can be concluded that from a historical perspective, the Marriage Law currently in force in Indonesia is in accordance with the KHI. This is based on the Draft Marriage Law which initially received strong opposition from the Islamic side, and then things that were contrary to the provisions of Islamic teachings were adjusted and changed so as not to be contradictory. Meanwhile, the KHI itself is a formulation of various Shafi'i school of jurisprudence books.

2. Dynamics of Islamic Law Compilation Regulation

In establishing legal policy in Indonesia, the government has made Islamic law part of national law. However, a question has arisen: how to understand and implement Islamic law within the context of national law or incorporate Islamic law as part of national law. This issue

has led to polarization regarding the Islamic law legislative process, with two opinions emerging. The first opinion holds that there needs to be a clear separation between religion and state. The second opinion holds that Islamic law should become part of national law, both symbolically and substantively.⁸² The idea of legal compilation emerged after several years of the Supreme Court's development of the judicial technical aspects of the Religious Courts. This development task is based on Law No. 14 of 1970 concerning the Basic Provisions of Judicial Power. Article 11 paragraph (1) of this law states that the organization, administration, and finances of the courts are carried out by their respective departments, while the technical judicial development is carried out by the Supreme Court. Although the law was enacted in 1970, its implementation in the religious courts began in 1983, following the signing of Joint Decrees (SKB) between the Chief Justice of the Supreme Court and the Minister of Religious Affairs of the Republic of Indonesia No. 01, 02, 03, and 04/SK/1-1983 and No. 1, 2, 3, and 4 of 1983.⁸³

These four Joint Decrees were a shortcut while awaiting the issuance of the Law on the Structure, Powers, and Procedures of the Religious Courts, which served as the implementing regulations for Law Number 14 of 1970 for the Religious Courts, which at that time was still in the intensive drafting process (now Law Number 4 of 2004).⁸⁴ Therefore, in accordance with the Supreme Court's function in administering justice in all religious courts, it was necessary to conduct a Compilation of Islamic Law, which has become positive law in the Religious Courts. The legal basis for judges' need to pay attention to the public's legal awareness is Law Number 4 of 2004, Article 28, paragraph 1, which states: "Judges are obliged to explore, follow, and understand the legal values and sense of justice that exist in society." Furthermore, Islamic Jurisprudence (Fiqh) states the principle: "Islamic law can change due to changes in time, place, and circumstances." Societal conditions are constantly evolving because they employ methods that pay close attention to the public's sense of justice. These methods include *maslahat mursalah*, *istihsan*, *istishab*, and *urf*.⁸⁵

The Compilation of Islamic Law is Indonesian fiqh because it was compiled with attention to the legal needs of Indonesian Muslims. Indonesian fiqh refers to the fiqh initiated by Hazairin and TM. Hasbi Ash-Shiddiqi. Previously, fiqh had local types of fiqh, such as Hijazi fiqh, Mishry fiqh, Hindi fiqh, and other fiqh, which paid close attention to the needs and legal awareness of local communities. This led to the unification of schools of thought within Islamic law. Therefore, in the legal system in Indonesia, this is the closest form to legal codification which is the direction of national legal development in Indonesia.

3. Systematics, Content, and Content of the Compilation of Islamic Law (KHI)

The Compilation of Islamic Law (KHI), a systematic collection of Islamic legal principles, consists of three (3) books with the following structure:

Book I, Marriage Law, consists of 19 chapters with 170 articles. Article 1 defines: proposal of marriage, guardianship by judge, marriage contract, dowry, taklik talak (religious divorce), marital or joint property, child maintenance, guardianship, khuluk (property), and mut'ah (property). Chapter II regulates the Basics of Marriage (Articles 2 to 10). Article 3 states the purpose of marriage. Article 4 states that a marriage is valid if it is conducted according to Islamic law. Article 5 emphasizes that every marriage must be registered by a Marriage Registrar. Article 6 states that every marriage must be conducted in the presence and under the supervision of a Marriage Registrar. Article 7 states that marriage can only be proven by a Marriage Certificate made by a Marriage Registrar. Chapter III regulates proposals (Articles 11 to 13). Article 11 is called the proposal procedure. Article 12 states that women can or may be taken in marriage.

Chapter IV (Articles 14 to 29), regulates the Pillars and Conditions of Marriage. Article 19 mentions marriage guardians. Article 20 states who has the right to be a marriage guardian, namely the lineage guardian and the judge's guardian. Article 21 regulates the order of kinship priorities for nasab guardians. Article 22 concerning the shift of the guardian of the lineage, if the father of the guardian of the lineage who has the most rights is unable to become the guardian of the marriage. Article 23 mentions guardian judges. Article 24 mentions witnesses. Article 25 concerns the requirements for people who can be witnesses (Muslim, fair, mature, sane and not deaf). Article 26 states that witnesses must be present to witness the marriage contract and sign the Marriage Certificate at the time and place where the marriage contract is held. Article 27 states that the marriage contract between the guardian and the prospective groom must be clearly consecutive, not at a time interval. Article 28 states that the marriage contract is carried out personally by the marriage guardian, but the marriage guardian can delegate it to another person.

Chapter V regulates the dowry (Articles 30 to 38). Chapter VI regulates marriage prohibitions (Articles 39 to 44): (1) Due to blood ties (nasab), (2) Due to marital ties (kinship, in-laws), (3) Due to breastfeeding ties. Article 40 prohibits the marriage of a man with a woman due to certain circumstances. Article 41 (1) A man is prohibited from marrying a woman who has a blood/breastfeeding relationship with his wife, (2) It is prohibited for a man to marry a

woman if the man is already married to more than one wife. Article 43. A man is prohibited from marrying: (1) A woman who has been divorced three times, (2) A woman who has been divorced. In Article 43 (2) the prohibition in letter a is dropped if the ex-wife has married another man and is divorced again from another man. Article 44 a Muslim woman is prohibited from marrying a man who is not Muslim.

C. Review of Gender-Based Research in Relation to Marriage Law in Indonesia

Gender-based research shows that marriage law in Indonesia, particularly Law Number 1 of 1974 concerning Marriage, still contains gender bias and structural discrimination. Despite progress, traditional roles (husband as head of the family, wife as housewife) often lead to the subordination of women, particularly in divorce, child custody, and economic vulnerability. Key points of gender-based research in relation to marriage law in Indonesia are as follows:

1. Structural and traditional bias. Law Number 1 of 1974 concerning Marriage still positions the husband as head of the family and the wife as manager of the household (Article 31 paragraph 3), which reinforces gender inequality.
2. Divorce inequality. Women often face a greater burden of proof in divorce and are economically vulnerable due to their dependence on their husbands, which limits their access to financial rights.
3. Child marriage. Research highlights that child marriage increases violence against women (physical, sexual, and mental) and increases health risks due to a lack of independence.
4. The Need for Reform. There is a strong demand from research to revise marriage law for full equality, supported by an awareness of women's human rights and protection.
5. The Role of Islamic Law. Islamic legal studies are also beginning to reexamine classical interpretations that tend to be gender-biased, encouraging a more equitable approach.

A gender-based study of marriage law in Indonesia, conducted by Muhammad Habib et al., entitled "Implementation of the Principle of Gender Equality in the Marriage Law in Indonesia," concluded that although Marriage Law No. 1 of 1974 in Indonesia provides some legal basis for women's rights in marriage, the implementation of the principle of gender equality still faces many obstacles. Court decisions in cases of divorce, child custody, alimony, and polygamy demonstrate that women are often in an unequal position, whether due to cultural influences, religion, or existing legal limitations. Courts frequently issue decisions that are unfavorable to women, particularly regarding the distribution of alimony and child custody, indicating persistent gaps in the fair and equal application of the law. To address this, reforms are needed to address several provisions of the Marriage Law, particularly those related to the

right to alimony, child custody, and polygamy. Stricter enforcement of husbands' maintenance obligations, increased access to legal aid for women, and social advocacy to raise awareness of gender equality in marriage are essential. Furthermore, it is crucial to align legal policies with evolving social dynamics, ensuring stronger protection for women and ensuring justice in every aspect of marriage.

In their research, entitled "Gender Role Transformation in the Family: Implications for Marriage Law and the Education System," Ariestina Laela and Yuss Nawwir provide policy recommendations that can be implemented to address the challenges of gender role transformation in the family, marriage law, and the education system. These include:

1. Strengthening policies and programs that encourage men's involvement in domestic work and childcare, such as paternity leave and incentives for companies that implement gender-friendly family policies.
2. Reforming marriage law to accommodate equal gender roles, including in matters of division of joint property, child custody, and family decision-making.
3. Integrating a gender perspective into the curriculum, teaching methods, and learning environment in schools to eliminate gender stereotypes and encourage equal participation between men and women.
4. Strengthening career counseling and guidance services in schools to assist students, both boys and girls, in choosing and developing careers according to their interests and abilities.
5. Conducting public and educational campaigns to change perceptions and social norms regarding gender roles in the family, so that gender role transformation is accepted and supported by society.

Ahmad Fadhli and Nur Iman Sabono in their research entitled *Women's Movement in Revising the Marriage Age Limit for Girls in Indonesia*, concluded that the role of a political group/movement is still needed in society, especially in Indonesia. The 18+ Coalition is able to present the success of a political movement that fights for justice and equality between genders, especially in this case girls. The enactment of Law Number 1 of 2019 concerning Marriage is one form of real success produced by society for society. The success of the 18+ Coalition is a historical record that in the reform era, it must continue to be monitored by political movements that prioritize the interests of society. The enactment of Law Number 1 of 2019 concerning Marriage is a note for us all, that it is necessary for socio-political movements to be present in the midst of the country to oversee and monitor any policy process that is closely related to gender-based policies. Moreover, if we consider the revision of the injustices

contained in the enactment of Law Number 1 of 1974 concerning Marriage, it actually emerged from the initiative of the community, which is part of the 18+ Coalition, not from the Indonesian House of Representatives or the government. This shows that their political agenda is still not optimal in addressing issues based on gender inequality, even though the impacts found on child marriage are truly detrimental to girls.

V. CONCLUSION

Marriage Law in Indonesia as regulated in Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI) aims to create a harmonious family, but still contains patriarchal nuances that place the husband as the head of the family and the wife as the housewife, thus triggering the need for reinterpretation or reformulation of the law that is more gender-oriented and equal. This is because: (1) Law Number 1 of 1974 concerning Marriage adheres to the principle of open monogamy and requires marriage registration for formal legality, (2) there is still gender inequality in the articles that regulate the roles of husband and wife (Article 31 of Law Number 1 of 1974 concerning Marriage), which often limits the wife's public space, (3) gender-perspective research encourages the reconstruction of marriage law to be more egalitarian, non-discriminatory, and in accordance with modernity and equal rights between husband and wife, and (4) Law Number 1 of 1974 concerning Marriage does not accommodate interfaith marriages, affirming the validity of marriage according to the laws of each religion.

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