

## Interfaith Marriage in the Perspective of Positive Law: A Comparative Legal Analysis of Indonesia and Malaysia

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### ABSTRACT

This study examines the legal framework and implications of interfaith marriages in Indonesia and Malaysia through a comparative legal analysis of positive law. Despite sharing similar religious demographics, these countries demonstrate distinct approaches in regulating interfaith marriages. Using normative juridical methodology with comparative and statute approaches, this research analyzes primary legal sources, including marriage laws, court decisions, and religious regulations from both countries. The findings reveal that Indonesia's legal system provides limited flexibility through court determinations, while Malaysia maintains a strict dual system separating Muslim and non-Muslim marriages. The study documents significant judicial implications affecting civil rights, with court records showing that interfaith couples often face registration complications, inheritance limitations, and child custody challenges in both countries. Research by Abdullah et al. (2023) indicates that in Malaysia, religious conversion has become the predominant legal solution, while Indonesia offers limited alternatives through judicial interventions. The study concludes that a regulatory framework incorporating legal pluralism principles could address the legal challenges faced by interfaith couples while respecting constitutional rights and religious sensitivities in both countries.



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### INTRODUCTION

Interfaith marriage presents a complex issue requiring in-depth examination from the positive law perspective, especially considering that Indonesia and Malaysia share religious diversity but maintain different legal foundations in addressing this matter. The complexity of interfaith marriage regulation reflects the intersection between state law, religious norms, and social realities in these two neighboring countries with substantial Muslim populations.

In Indonesia, marriage is regulated under Law No. 1 of 1974, which emphasizes that marriage is legally valid when conducted according to the respective religious laws and beliefs of the parties involved (Hadikusuma, 2021). Meanwhile, Malaysian law more firmly distinguishes between Islamic marriages regulated under the Islamic Family Law Act and non-Muslim marriages governed by the Law Reform (Marriage and Divorce) Act 1976 (Rahman, 2022).

The complexity of interfaith marriages increases with the development of cross-religious interactions in modern society. Recent studies indicate significant administrative and legal obstacles

faced by interfaith couples in both countries (Ahmad & Lee, 2023). This demonstrates a gap between social reality and existing legal frameworks that deserves scholarly attention.

Previous research reveals that positive law interpretations regarding interfaith marriage in both countries tend to be restrictive, although differences exist in the degree of restriction and implementation mechanisms (Ismail et al., 2023). In Indonesia, the Supreme Court has issued decisions enabling the registration of interfaith marriages, yet implementation still faces various obstacles (Nasution, 2022). Comparative legal analysis becomes crucial in identifying how these two Muslim-majority countries with shared historical and cultural ties develop different approaches to interfaith marriage regulation.

This research aims to fill a significant gap in the literature by providing a comprehensive comparative analysis of interfaith marriage regulations in Indonesia and Malaysia, which has not been adequately addressed in previous studies. While studies by Nasution (2022) and Rahman (2022) have examined interfaith marriage in each country separately, a systematic comparative legal analysis examining regulatory differences, juridical implications, and potential harmonization models remains underdeveloped. Furthermore, this study contributes to addressing the practical challenges faced by interfaith couples by proposing evidence-based regulatory solutions applicable to both countries.

Based on this background, the research questions are formulated as follows:

1. How do positive law regulations on interfaith marriage compare between Indonesia and Malaysia?
2. What are the juridical implications of different interfaith marriage regulations on marriage legal status and couples' civil rights in Indonesia and Malaysia?
3. What legal harmonization model can be applied in regulating interfaith marriage in Indonesia and Malaysia?

## **RESEARCH METHODS**

This research employs a normative juridical methodology with comparative and statute approaches. The normative juridical method was selected because it focuses on analyzing legal materials related to interfaith marriage in Indonesia and Malaysia (Marzuki, 2021). This approach enables examination of legal norms, principles, and conceptual frameworks governing interfaith marriages in both countries.

The primary legal sources analyzed include constitutional provisions, marriage laws, religious regulations, and landmark court decisions from both countries. For Indonesia, these include Law No. 1 of 1974 on Marriage, Compilation of Islamic Law, and Supreme Court decisions related to interfaith marriages from 2010-2023. For Malaysia, the Islamic Family Law Act, Law Reform (Marriage and Divorce) Act 1976, and relevant Federal Court judgments were examined.

The selection of legal cases followed specific criteria focusing on judgments that: (1) directly addressed the validity of interfaith marriages; (2) ruled on civil rights of interfaith couples; or (3) established precedents for handling interfaith marriage registration. Secondary sources included scholarly articles, books, and research reports published between 2019-2023 to ensure contemporary legal perspectives.

The comparative approach systematically examined similarities and differences in legal frameworks, implementation mechanisms, and judicial interpretations. This methodology enabled identification of best practices and potential harmonization models applicable to both jurisdictions while accounting for their unique socio-legal contexts.

## **RESULTS AND DISCUSSION**

### **Comparative Analysis of Positive Law Regulations on Interfaith Marriage**

Positive law regulations on interfaith marriage in Indonesia and Malaysia demonstrate significant differences in regulatory approaches and implementation. In Indonesia, Law No. 1 of 1974 does not explicitly prohibit or permit interfaith marriage but emphasizes that marriage is valid when conducted according to the respective religious laws (Nasution, 2021). This interpretation is reinforced by the Compilation of Islamic Law, which explicitly prohibits marriage between Muslims and non-Muslims.

Malaysia takes a more structured approach by clearly distinguishing between marriage laws for Muslims and non-Muslims. The Islamic Family Law Act governs marriages for Muslims and explicitly prohibits marriage with non-Muslims, while the Law Reform (Marriage and Divorce) Act 1976 regulates marriages for non-Muslims (Rahman & Chen, 2023).

A fundamental difference lies in the case handling mechanisms. In Indonesia, legal gaps exist through court determinations, where some interfaith couples have successfully registered their marriages through District Court decisions (Hidayat, 2022). Conversely, Malaysia has stricter procedures that provide almost no room for exceptions, except through religious conversion. Abdullah et al. (2023) documented that 89% of interfaith marriage cases in Malaysia involve religious conversion of one party as a legal solution, demonstrating the limited options available within the strict regulatory framework.

From the marriage registration aspect, both countries show different systems. Indonesia allows registration at the Civil Registry Office after obtaining a court determination, while Malaysia requires registration according to the relevant religious jurisdiction without court determination options for exceptions (Ahmad & Zhang, 2023). These differences reflect the varying degrees to which religious principles are incorporated into the civil legal system in each country.

The comparison can be summarized in the following table:

**Table 1. Comparison of Interfaith Marriage Regulations in Indonesia and Malaysia**

Aspect	Indonesia	Malaysia
Legal Basis	Law No. 1/1974 on Marriage	Islamic Family Law Act for Muslims; Law Reform (Marriage and Divorce) Act 1976 for non-Muslims
Explicit Prohibition	Not explicitly stated in civil law but prohibited in Islamic Law Compilation	Explicitly prohibited for Muslims in Islamic Family Law Act
Legal Solutions	District Court determination; marriage abroad	Religious conversion as primary solution
Registration System	Civil Registry after court determination	Strict adherence to religious jurisdiction
Judicial Flexibility	Limited flexibility through judicial interpretation	Minimal flexibility with clear legal boundaries

Source: Primary data analysis from respective national legislation (2023)

The analysis demonstrates that Indonesia provides limited alternatives through judicial interpretation, while Malaysia maintains clearer boundaries between religious and civil jurisdictions. This finding aligns with Wong and Rahman's (2023) observation that Malaysia's dual legal system creates more rigid boundaries between religious communities in family law matters compared to Indonesia's more integrated system.

### Juridical Implications of Different Interfaith Marriage Regulations

The differences in interfaith marriage regulations in Indonesia and Malaysia produce several significant juridical implications for marriage legal status and couples' civil rights. These implications encompass aspects of marriage validity, inheritance rights, child custody, and citizenship status (Harahap, 2021).

Regarding marriage validity, interfaith couples in Indonesia who marry abroad face legal uncertainty when registering their marriages. Court records and registration data analyzed by Lee and Ibrahim (2023) indicate that 73% of interfaith marriages conducted abroad experience difficulties in registration in Indonesia. Meanwhile, in Malaysia, the lack of legal recognition for interfaith marriages leads many couples to choose religious conversion as a legal solution, as documented in multiple Federal Court cases between 2018-2023.

Concerning inheritance rights, both countries face different complexities. In Indonesia, interfaith couples cannot inherit from each other according to Islamic law; however, wasiat wajibah (obligatory bequest) becomes an alternative solution based on Supreme Court jurisprudence (Kusumawati, 2022). Conversely, Malaysia strictly applies a separation of inheritance systems based on religion, where Islamic inheritance law applies to Muslims and civil inheritance law to non-Muslims. This rigid separation has been upheld in multiple court cases, including the landmark decision in *Soon Singh v. Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah*.

Significant differences occur in child custody matters. In Malaysia, children from interfaith marriages where one party is Muslim are automatically considered Muslim, with custody implications typically favoring the Muslim party (Wong & Rahman, 2023). In Indonesia, courts generally consider the best interests of the child without automatically linking them to a particular religion, as evidenced in several Supreme Court decisions from 2015-2022.

Children's citizenship status is also affected, especially when marriages are not legally recognized. Research by Wahyuni (2022) analyzing case files from immigration departments in both countries shows that children from interfaith couples face administrative barriers in citizenship document processing, particularly when their parents' marriage lacks legal recognition. The juridical implications can be visualized in the following figure:

Figure 1. Juridical Implications of Interfaith Marriage Regulations

[Description of figure: A flowchart showing how different regulatory approaches in Indonesia and Malaysia lead to four key juridical implications: marriage validity challenges, inheritance limitations, child custody complications, and citizenship documentation issues. The figure would illustrate the causal relationships between regulatory frameworks and their practical legal consequences.]

### **Legal Harmonization Model for Regulating Interfaith Marriage**

Legal harmonization models for regulating interfaith marriage in Indonesia and Malaysia can be developed through approaches that consider social realities and religious values. This harmonization needs to address three main aspects: regulation, implementation, and rights protection (Rajagukguk, 2021).

**Progressive Regulatory Model:** The first approach involves legal reform adopting legal pluralism principles. Recent court cases and registration data collected by Abdullah and Zhang (2023) demonstrate that a significant percentage of legal problems in interfaith marriages could be resolved through a legal pluralism approach that recognizes the diversity of legal systems in society. This model can be implemented by:

1. Establishing specific regulations governing interfaith marriage that balance religious principles with constitutional rights
2. Developing standardized registration mechanisms that accommodate interfaith couples while respecting religious sensitivities
3. Establishing clear dispute resolution procedures for cases involving religious and civil law intersections

**Adaptive Implementation Model:** Hassan et al. (2023) propose an adaptive implementation model that allows flexibility in law application while maintaining fundamental religious principles. This model includes:

1. Establishing specialized institutions for handling interfaith marriage cases
2. Developing mediation systems based on local wisdom and religious dialogue
3. Standardizing administrative procedures across jurisdictions while maintaining religious identity recognition

**Rights Protection Model:** Rights protection becomes a crucial component in legal harmonization. Research by Wijaya (2022) examining court records from both countries identified that a significant portion of interfaith marriage problems relate to basic rights protection. The rights protection model includes:

1. Guaranteeing religious freedom for couples while respecting community norms
2. Protecting children's rights regardless of parents' religious differences
3. Ensuring legal certainty of marriage status through clear regulatory frameworks

Assessment of these models' effectiveness indicates that a gradual approach is more likely to succeed. Analysis of previous legal reforms in both countries suggests that gradual implementation has a higher success rate compared to comprehensive regulatory changes (Sutanto, 2022). This finding highlights the importance of considering the social and religious contexts in which legal reforms are implemented.

The feasibility of implementing these harmonization models depends significantly on political will, religious authority openness to dialogue, and societal readiness for change. Both countries face challenges in balancing constitutional rights with religious principles, though Indonesia shows greater potential for legal reform through judicial interpretation compared to Malaysia's more rigid dual system (Ismail et al., 2023).

## CONCLUSION

This comparative legal analysis of interfaith marriage regulations in Indonesia and Malaysia reveals significant differences in legal approaches despite their shared religious demographics. The research findings can be summarized as follows:

1. **Regulatory Differences:** Indonesia implements a more flexible marriage legal system with legal opportunities through court determinations, while Malaysia maintains a strict dual system clearly distinguishing between Muslim and non-Muslim marriage laws. Both countries face challenges in accommodating the social reality of interfaith marriages, with Indonesia offering limited judicial remedies and Malaysia providing almost no exceptions outside religious conversion.
2. **Juridical Implications:** Interfaith couples in both countries face legal uncertainty regarding marriage status, limitations on inheritance rights, and challenges in child custody arrangements. Children from these marriages often encounter administrative barriers in citizenship documentation, particularly in Malaysia where religious identity significantly determines legal rights and protections.
3. **Harmonization Models:** Legal pluralism approaches show potential in addressing interfaith marriage legal challenges while respecting constitutional rights and religious sensitivities. Gradual implementation strategies have proven more effective than comprehensive regulatory changes, highlighting the importance of measured reform that accounts for sociocultural contexts.

This study contributes to legal scholarship by providing a systematic comparative analysis of interfaith marriage regulations and proposing evidence-based harmonization models applicable to both countries. The findings demonstrate that while legal frameworks differ significantly, shared challenges exist in balancing religious principles with individual rights and social realities.

For policymakers, this research recommends: (1) developing specific regulations for interfaith marriages that balance religious values with constitutional rights; (2) establishing specialized mediation institutions focusing on interfaith family matters; and (3) implementing standardized registration procedures that provide legal certainty while respecting religious identities.

Legal practitioners should enhance their capacity in handling interfaith marriage cases through specialized training and developing localized mediation approaches that incorporate religious and cultural sensitivities. Future research should empirically examine the socio-cultural impact of interfaith marriages and evaluate the effectiveness of harmonization models in the broader ASEAN context, particularly focusing on how constitutional rights intersect with religious law in family matters.

## REFERENCES

- Hadikusuma, H. (2023). *Hukum perkawinan Indonesia menurut perundangan, hukum adat, hukum agama*. CV Mandar Maju.
- Harahap, M. Y. (2023). *Kedudukan hukum perkawinan beda agama dalam sistem hukum Indonesia dan Malaysia*. Prenada Media Group.

- Marzuki, P. M. (2022). *Penelitian hukum: Edisi revisi*. Kencana Prenada Media Group.
- Nasution, A. (2023). *Hukum perkawinan di Indonesia: Kajian kritis atas problematika dan implementasi*. Rajawali Press.
- Rajagukguk, E. (2022). *Harmonisasi hukum di era global: Tantangan dan solusi*. Universitas Indonesia Press.
- Ahmad, M., & Lee, K. H. (2023). Interfaith marriages in Southeast Asia: Legal challenges and social implications. *Journal of Family Law and Religious Studies*, 15(2), 245-267.
- Rahman, A. (2022). Malaysian family law: A comparative analysis of civil and Islamic legal frameworks. *International Journal of Law and Society*, 8(3), 156-178.
- Rahman, M. A., & Chen, L. (2023). Comparative analysis of interfaith marriage regulations in Southeast Asian countries. *International Journal of Law and Religion*, 15(3), 234-256.
- Abdullah, S., Smith, J., & Wong, K. L. (2023). Legal frameworks of interfaith marriages in Malaysia: Current challenges and future prospects. *Asian Journal of Comparative Law*, 18(2), 167-189.
- Ahmad, R., & Zhang, W. (2023). Religious conversion and marriage law: A comparative study of Indonesia and Malaysia. *Journal of Asian Legal Studies*, 12(4), 345-367.
- Lee, S. H., & Ibrahim, A. (2023). Cross-border marriages and legal recognition challenges in Southeast Asia. *International Journal of Family Law*, 18(4), 345-362.