

Interfaith Marriage Among the Tengger-Tosari Community in Pasuruan: Between Religious Normativity and Cultural Reality

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Article	Abstract
<p>Article History : Received : May, 25, 2025 Reviewed : May, 30, 2025 Accepted : June, 29, 2025 Published : June, 30, 2025</p> <p>Keywords : <i>Interfaith Marriage, Legal Evasion, Tengger Community</i></p>	<p>The focus of this article is to discuss the reality of interfaith marriages that occur among the Tengger-Tosari community in Pasuruan, in addition to the pattern of legal smuggling they do to obtain legal recognition of interfaith marriages. This is an interesting topic to study in order to complement general studies on interfaith marriage that tend to focus only on formal legal issues. Therefore, this research uses a socio-legal research model, which is a combination of doctrinal legal research methods and empirical legal research. Through this method, it is concluded that legal avoidance through submission to one of the prospective partner's religions is the main avoidance model among the Tengger Tosari community. However, this conversion is not permanent, because data from interviews with informants show that after the marriage takes place, they tend to return to their original religion. so the disposition of this research illustrates interesting field facts. in the future, researchers can enrich similar research by describing quantitative data that can be approached with mixed method research to find the exact number and perceptions of the perpetrators of interfaith marriages.</p>

INTRODUCTION

Interfaith marriage (hereinafter referred to as PBA) is a legal issue that is always interesting to study. This is at least due to the absurdity of the legal norms that regulate it, while on the other hand, PBA has become an undeniable legal reality. From a regulatory perspective, specifically the Marriage Law No. 1 of 1974, as amended by Law No. 16 of 2019 (hereinafter referred to as UUP), does not explicitly address the legal status of interfaith marriages. The law in question tends to leave it entirely up to the religious laws of each party to determine the legal status of interfaith marriages (Dahwal, 2016).

The absence of clear regulations regarding PBA has led to conflicting interpretations in determining its legal status, including in court decisions, which vary greatly. There is one provision in the UUP that is interpreted by some groups who reject the legality of PBA, namely the legal norm contained in Article 2 paragraph (1), which is viewed as a religiously-tinged provision in marriage. Even in the explanation of this article, it is explicitly stated that “there shall be no marriage outside the laws of their respective religions and beliefs in accordance with the 1945 Constitution.”

However, for those who support the validity of PBA, the legal norm above is not understood as a legal provision that rejects the validity of PBA, because using the legal provision above as justification for prohibiting PBA would be seen as conflicting with an individual's freedom to choose their life partner, as stipulated in human rights documents, namely in the Universal Declaration of Human Rights, Article 16, paragraphs (1, 2) of the Universal Declaration of Human Rights, which states that men and women of full age,

without any limitation due to nationality, citizenship, or religion, have the right to marry and to found a family. They have equal rights in marriage, during marriage, and at its dissolution; marriage shall be entered into only with the free and full consent of the intending spouses (Majelis Umum PBB, 1948).

In addition to the above legal provisions, another rule that could potentially be violated if the provisions of Article 2 paragraph (1) are used as a prohibition on PBA is the legal norm contained in Law No. 39 of 1999 on Human Rights, namely Article 10 paragraphs (1, 2), which states that every person has the right to form a family and continue their lineage through legal marriage. A valid marriage can only take place with the free consent of the prospective husband and wife concerned, in accordance with the provisions of applicable laws and regulations (Presiden Republik Indonesia, 1999).

To address the disparity in court decisions regarding PBA, steps have been taken to unify decisions, as seen in the decisions of the Constitutional Court (hereinafter referred to as MK) on requests for judicial review of the UUP relating to articles deemed to be obstacles to the validity of PBA. The decision in question is MK Decision No. 24/PUU-XX/2022 (January 31, 2023), which reinforces MK Decision No. 68/PUU-XII/2014. In the latest decision, the MK emphasizes that in matters of marriage, there is a mutually reinforcing relationship between religion and the state; religion determines the validity of marriage, while the state determines the administrative validity of marriage within the legal framework (Mursalin, 2023).

In line with the above Constitutional Court ruling, the Supreme Court issued Supreme Court Circular Letter No. 2 of 2023 (hereinafter referred to as SEMA 2/2003) on July 17, 2023. Of course, the issuance of SEMA 2/2003 can be seen as a response to the disparity in court rulings regarding PBA. The reason is that SEMA 2/2023 clearly states that a valid marriage is one conducted in accordance with the teachings of each party's respective religion, and therefore, courts are prohibited from granting requests for marriage registration submitted by couples of different religions and beliefs (Mahkamah Agung, 2023).

However, both the Constitutional Court's decision and the SEMA must be tested for effectiveness when confronted with the community's legal perception of PBA, which then has an impact on the occurrence of PBA in certain communities. One example of this can be seen in the Tengger community in the village of Tosari in Pasuruan district, where PBA is no longer an issue and has even become a living law (Kurnia, 2016).

For the Tengger community, most of whom are Hindu and the rest Muslim, interfaith marriages are a result of their highly valued attitude of tolerance (SD, personal communication, Desember 2023). Other local values that also have an influence are kinship and mutual cooperation, which are no longer hindered by religious barriers. All of this is possible thanks to the presence of traditional leaders who serve as role models in their social lives (Rizqi & Mujiwati, 2023).

Based on the above narrative, it is important to examine the pattern of legal smuggling carried out by the Tengger-Tosari community in order to obtain legality for their legal actions in the form of PBA, not from a juridical perspective, but from the socio-legal aspects surrounding it. because in the context of socio-legal studies, whether or not an individual complies with the legal framework established by the state depends heavily on the perception of the relevant community toward the subject matter being regulated. In other words, law is not merely about written rules but must also be adequately perceived by the community it seeks to regulate (Abdul Halim, 2013).

The Tengger community has attracted the interest of several researchers, including Hefner, who studied the Tengger community from the perspective of social change following

political and cultural penetration from outside the community. According to Hefner, state intervention, whether in the process of Islamization or in other aspects such as modernization in agriculture, has had a serious impact on the social structure of the Tengger community, which is essentially a mountain community with an egalitarian character (Hefner et al., 1999).

While Hefner discusses the implications of state intervention on the social order of the Tengger community, other studies reveal the efforts of the Tengger community to preserve its cultural identity, including adaptive and elaborative efforts that flexibly combine Islamic values, power, and local traditions. With such a strategy, it can be stated that the Tengger community has successfully integrated Tengger traditions and culture (Maksum, 2015).

The two studies above certainly have their own specific areas of focus, namely the struggles of the Tengger community in maintaining their local traditions and dealing with “foreign” elements that come from outside their community. Thus, they have not succeeded in capturing the aspect of interfaith marriage from the perspective of the Tengger community. A study focusing on interfaith marriage can be found in Bakhrul Ulum's research. He highlights the existence of interlegalism in the Tengger community regarding interfaith marriage. The interlegalism referred to here is the intersection between religious law, customary law, and national law. According to Ulum, this indicates that legal pluralism still prevails within the Tengger community (Bakhrul Ulum, 2023).

Bakhrul Ulum's study only succeeded in revealing aspects of the interlegal nature of marriage law applicable among the Tengger community. This certainly does not reveal the Tengger community's perception of interfaith marriage, let alone relate it to the SEMA, which prohibits courts from granting requests for the legalization of interfaith marriages.

The legal struggle as studied by Bakhrul Ulum has also attracted the attention of other researchers, even though the locus delicti is not the Tengger community but the Osing Banyuwangi tribe. The research concluded that there is synergy between customary law and Islamic law among the Osing community. Customary law can accept Islamic law in its capacity as the culmination of indigenous legal values, while Islamic law can accept customary law as the basis for its effectiveness (M. L. Nurcahyono & Yulianto, 2021).

In addition to the above study, there is another study that successfully revealed the procedures for interfaith marriages among the Tengger community, which begin with the determination of the date by a shaman, followed by a traditional wedding ceremony, and then an Islamic ceremony. This study also highlights the background behind interfaith marriages among the Tengger community, which seem to have become a “living” law, characterized by high levels of tolerance and grounded in the protection of human rights that guarantee an individual's freedom to choose a spouse (Kurnia, 2016).

In addition to procedural aspects, a study was conducted on the walagara ritual in the marriage process. The study concluded that the customs developed among the Tengger community in the marriage process, known as the walagara ritual, have been carried out in a compromise by all Tengger communities, including all religions in the region. This indicates a shift in the meaning of the ritual from its original religious significance to a mere tradition (Hasyim et al., 2020).

The two studies above still leave room for further research, namely regarding the *fraus legis* pursued by interfaith marriage couples among the Tengger community. These two studies only managed to capture the procedures of interfaith marriage and the traditions that have developed among the Tengger community. Research on legal evasion has indeed been found in the literature, although it does not focus on the Tengger community as its subject of study. Furthermore, the study is only conceptual-theoretical in nature.

The study on legal evasion was conducted by Dian Khoreanita Pratiwi. In her study, she concluded that, legally speaking, legal evasion by interfaith marriage participants is valid as long as it is registered. However, according to her, from the perspective of the theory of *receptio a contrario*, interfaith marriage is invalid because it is prohibited in religious teachings, so such marriages can be seen as a violation of religious prohibitions (Pratiwi, 2018).

Taroman Pasyah also reached conclusions that were more or less the same as those in the article above. He also examined legal evasion from the perspective of *fiqh* and legislation. In his conclusion, Pasyah revealed that legal evasion is a step taken by those involved in interfaith marriages to avoid prohibitions in both *fiqh* and legislation. According to him, this is due to the lack of clear laws in the legislation regarding interfaith marriages (Pasyah, 2021).

Another conclusion expressed by Pasyah concerns the debate on the legal status of interfaith marriages in *fiqh* provisions. As far as the debate on the legal status of interfaith marriage is concerned, the research of Muhammad Adil and Syahril Jamil is worth mentioning. Their research focuses on the polemics between religionists and counseling activists for interfaith marriages. The results show that there is a concern on the part of religionists about the understanding that allows interfaith marriages, while for interfaith marriage counseling activists, the rise of interfaith marriages is caused by the existence of a multi-interpretive Marriage Law (Adil & Jamil, 2023).

A different conclusion regarding legal smuggling is found in a study conducted by Lutfiana Dwi Mayasari. In her study, she states that legal smuggling is different from mixed marriages, so according to her, the occurrence of legal smuggling in the case of interfaith marriages is contrary to the rule of law, but it is also not justified according to the provisions of religious law. For Mayasari, the provisions in Article 56 and Article 57 of Law Number 1 of 1974 are related to mixed marriages and do not apply to legal smuggling (Mayasari, 2020).

Some of the studies above clearly focus on the legal prescriptions of legal smuggling. In other words, the available studies only dwell on the legal status related to legal smuggling, thus failing to review the concrete steps taken by the perpetrators of interfaith marriages. This can be understood because some of the studies presented regarding legal smuggling are entirely doctrinal-normative in nature, while the study that the author will conduct takes a socio-legal approach that makes law not only limited to written formulations but law as a social symptom that lives in a particular community environment.

Based on all the studies that have been shown in the previous descriptions, it can be said that ethnolegal research concerning the model of legal smuggling by the Tengger community in relation to interfaith marriages that researchers will study can complete the gap that has not been touched by previous researchers. Given that none of the studies presented reveal the issues that are the focus of this study.

RESEARCH METHODS

In terms of its approach, this study is classified as socio-legal research which is a combination of doctrinal legal research methods and empirical legal research (Warassih et al., 2016), so it requires data obtained through document studies accompanied by field studies (Irianto, 2009). This research is also classified as interdisciplinary research, because in its study it utilizes disciplines outside doctrinal legal studies, namely social science, which in this case uses ethno-legal theory to analyze legal phenomena in the form of legal smuggling patterns carried out by the Tengger Pasuruan community (Disemadi, 2022), so that through this method, the legal behavior of the Pasuruan Tengger community related to legal

smuggling in PBA is not only studied from its normative aspects through its alignment with the positivistic legal formulation, but also photographed from its cognitive aspects related to PBA itself (Irianto, 2009).

RESULTS AND DISCUSSION

Tosari Tengger Community: A Portrait of Socio-religious Relations

From the administrative side of government, Tosari village is located in the capital of Tosari sub-district, Pasuruan district, which is included in the Bromo Tengger Semeru National Park (TNBTS) area. Tosari Village itself consists of 6 (six) hamlets, namely Wonomerto hamlet, Ledoksari hamlet, Tosari hamlet, Tlogosari hamlet, Kertoanom hamlet, and Wonopolo hamlet, each of which is led by a Hamlet Head (abbreviated as Kasun). The hamlets are then divided into 6 (six) Rukun Warga (RW) and 26 (twenty-six) Rukun Tetangga (RT). In addition to formal leadership, Tosari also recognizes cultural leadership as well as other Bromo regions, namely the existence of “Dukun” (shaman) (O. H. Nurcahyono & Astutik, 2018)

Tosari Sub-district, which was inaugurated by the Minister of Religious Affairs of the Republic of Indonesia as a Sub-district of Unity in Diversity, seems to be quite reasonable by looking at the very high level of tolerance. This was recognized by Irsyad Yusuf - the regent at the time - that the population in Tosari District reached 19,555 people. Of these, 12,000 are Hindus, 6,000 are Muslims and around 500 are Christians. Although dominated by Hindus, continued Irsyad, but tolerance and harmony between religious communities in Tosari District is very good. In the sense that between religious adherents with one another respect each other's religious life. In fact, efforts to enliven every worship activity in mosques, temples and churches are strongly supported by residents. Currently, Tosari Sub-district has 21 mosques and 114 musholla, 26 temples, and 3 churches. This shows the configuration of the number of houses of worship in Tosari Sub-district, making it famous as a pluralistic community area (Rizqi & Mujiwati, 2023).

The religions most widely practiced by the Tengger Tosari community are Hinduism and Islam. This difference in belief is not considered a problem, on the contrary, they have a high sense of tolerance and brotherhood in the shade of tribalism, so that all are considered equal in any case. It is also inevitable that because the two religions Hinduism and Islam interact together, it is not uncommon for the Tengger Tosari community to have interfaith marriages. This is considered by most people as an ordinary social phenomenon that does not need to be disputed. This is the Tengger Tosari community that can be used as a role model of religious harmony and the implementation of the motto of *Bhinneka Tunggal Ika*.

The Tengger Tosari community previously also had a Shiva-Buddhist religion, which tends to be closer to the cult. However, after the conflict of the Indonesian Communist Party (PKI) in 1965, over time this religion began to be abandoned by its followers. The main factor was to avoid being accused of being PKI sympathizers. Eventually, they converted to Hinduism and some others to Islam (Manggala, 2019).

The Tengger Tosari community also has a very open nature towards migrants. This causes an easy integration process between the Tosari Tengger community and migrants. The purpose of migrants entering Tosari varies, some want to trade, travel, and even preach. Many Muslim traders deliberately settle there, so there is a massive communication process through buying and selling and as neighbors. There are also migrants who stay because they are married to local residents (Manggala, 2019, p. 101).

Regarding Islam, many preachers preach it through mosques, prayer rooms, majelis ta'lim, Islamic boarding schools, and religious programs such as safari Ramadhan. This has

caused Islam to develop rapidly in Tengger Tosari. The preachers, especially from Nahdlatul Ulama (NU), entered gradually through the lower slopes and finally to the middle slopes or Tosari Village. In addition to these organizations, there was also the spread of Islam through Muslim traders who settled there. Thus there is group integration that will give birth to new values that did not exist before. An example is a Tengger Tosari Muslim who follows traditional rituals only to respect and continue the tradition and not to be believed. They argue that everything comes from God Almighty (Manggala, 2019).

Majelis ta'lim as a forum for Islamic education in the Tosari Tengger area has experienced significant development. This can be seen from the number of places of worship that are used as centers of religious activity spread evenly throughout the Tosari sub-district area. What makes it interesting is that even though Islam is a minority religion, based on research there are 38 ta'lim assemblies and active Qur'an Education Parks (TPQ), which are more than Hindu religious activities which only amount to 8 activity points (Marzuki, 2016).

The Tengger Tosari community generally upholds the value of togetherness which is realized in mutual cooperation activities. They have a friendly and smiling personality. In the context of being a citizen, they have a law-abiding personality, even to the point of being awarded as one of the community groups that obediently pays Land and Building Tax (PBB) in Indonesia (Rizqi & Mujiwati, 2023).

The Tosari Tengger community is one of two parts of the customary area which is divided into sabrang kulon and sabrang wetan. Sabrang kulon is represented by Tosari Village, Tosari District, Pasuruan Regency, while sabrang wetan is represented by Ngadisari Village, Wanatara, Jetak, Sukapura District, Probolinggo Regency. Each of these areas is led by a customary head (dukun adat) who is highly respected and trusted by the Tengger people, even more respected than the local government (Aziz, 2011).

The customary chief has both spiritual and social functions. The spiritual function of the adat head, for example, is to lead traditional ceremonies, while the social function is as a mediator between the community and the government. Furthermore, the customary chief also has certain authorities, such as decision-making, making rules, sanctions and social fines for those who violate customary law. An example of decision-making that the customary chief has the right to do is determining when the community can evacuate or remain in the village when a natural disaster occurs (Aziz, 2011).

The Practice of Interfaith Marriage among the Tengger Community

Referring to several studies related to the model of legal smuggling (*fraus legis*) in relation to PBA, several alternatives were found in its implementation, including being carried out by following the religious law of a bride, usually in this case the husband, followed by the implementation of marriage according to the religious law adopted by the prospective wife. In addition to this, another way of doing it is by one spouse "converting" to the religion of the other. In fact, there are even a number of PBA couples who take the method of performing their marriage abroad (Dahwal, 2016).

From the various legal options stated above, in the context of PBA among the Tengger community residing in Tosari, none of the data found shows that the marriage process takes the alternative of marriage abroad. In general, based on field data obtained through interviews, the model adopted is submission to the religion of one of the partners.

CL's confession, which shows the submission of her partner from Islam to Hinduism following her religion, is clear evidence of this. CL, who is Hindu, married TH, who is Muslim. In the process, according to CL, the husband followed CL's religion by converting to Hinduism. Therefore, the marriage process followed the marriage process attended by the

head of the parisade, which in the Islamic context is equivalent to the person who provides marriage services and guidance (CL, personal communication, Agustus 2024).

Regarding the process of conversion and the marriage process carried out by CL and TH, as in CL's narrative below:

"Before marrying Mr. TH, I knew him at school because I was his younger brother. As time went by, Mr. TH and I wanted to make the relationship more serious and get married. Yes, in the beginning, there was a bit of rejection from both my family and Mas TH's family until finally Mas TH decided to convert to my religion, Hinduism. So the marriage that we had was normal because Mas TH had already converted before we got married. Because Mas TH joined my religion, the marriage process followed my religion, which was attended by the head of Parisade, after which it was continued with the Tengger traditional procession" (CL, personal communication, Agustus 2024).

Meanwhile, in relation to the continuity of beliefs after their conversion from the religion they believe in to their partner's religion, they tend not to survive. This is what CL said. According to CL, after marriage, her husband TH returned to his original religion, Islam. According to CL, this is a common thing, because it could be just a way to facilitate the marriage process and avoid rejection from various parties. With this submission, the marriage process will be easier (CL, personal communication, Agustus 2024).

In line with CL's statement, another informant who also confirmed the model of legal smuggling in the context of PBA through submission to the religion of one of the spouses was also revealed by WL, who is a Muslim. This 26-year-old woman is married to her husband, RD, who is Hindu. In her second case, unlike the marriage between CL and TH, where the religious conversion was from Islam to Hinduism, the marriage between WL and RD was a conversion from Hinduism to Islam (WL, personal communication, Agustus 2024).

In her narrative, WL recounted the process of her marriage from the beginning of her introduction to the process of her husband's conversion. In this case, she stated:

"So in the beginning, I participated in Muslim religious activities, now in the middle of the event he was an invited guest because indeed if there is an event here, religious figures are always invited, both religious figures from non-Muslims, well he is one of the invitees so we first met there, then we looked at each other and finally got hooked too. But 1 week later he came straight to my house to propose but I haven't because I also need approval from my family" (WL, personal communication, Agustus 2024)

In reality, although in reality, PBA is a common thing among the Tengger Tosari community, it does not mean that it is not related to several requirements that are sometimes set by each couple. This was recognized by WL. When she was about to accept her husband's proposal, WL's extended family still expected the same religion between her and her partner. This requirement was recognized by WL:

"Actually, there were a lot of considerations at that time, we were different but we discussed it first, there was a lot of opposition that did not allow it because my family was too fanatical, his family was too fanatical. Finally we continued to discuss and agreed together if indeed he wants to join my faith our family can accept, if it cannot be our family will not accept and according to the agreement we also gave conditions if indeed later after marriage he should not return to his beliefs because indeed if from the beginning he proposed to me well and wanted to follow my beliefs also had to end up with my beliefs" (WL, personal communication, Agustus 2024)

Regarding the marriage process, WL said that it was done in accordance with Islamic teachings because her husband-to-be had submitted himself to WL's religion. The following is the marriage process taken by WL and RD, as conveyed by WL:

"So after discussing and deciding to get married, my family finally took my husband-to-be to the ustadz to pledge to convert to Islam and become a convert, after becoming a convert we took care of the proper papers to fulfill the requirements for marriage to the KUA and the process was also accompanied by Pak Mudin of course. Therefore, we

do the marriage contract in Islam as in general after that, after the contract we carry out the procession of the tengger traditional ceremony, because even though we are Muslims, we still have to follow the tengger traditional ceremony because it is talking about customs and this custom has existed since our ancestors who have gone before, so after the contract we carry out the tengger traditional marriage procession, the first of which is temu manten, so temu manten also comes from Java anyway, well temu manten is meeting or bringing together the bride and groom and carrying out the marriage procession so the process of temu manten is known to the community as ngunduh mantu well the process of ngunduh mantu is also a process of bringing or what is the language here is bringing the bride to live and settle in her husband so, after temu manten we also" (WL, personal communication, Agustus 2024)

Apart from the process of religious conversion as a way of getting around the PBA prohibition, what can be seen from the interview data above is the juxtaposition of religious teachings with local culture which has indeed become a tradition for generations in the Tengger Tosari community. In fact, through the interview above, the Tengger Tosari community's belief in the validity of the customs in which they live can be seen. This can be seen from their belief, even though in terms of the implementation of marriage according to Islamic teachings, they do not rule out the prevailing customary issues.

Another thing that also needs to be observed is the existence of legal awareness regarding the administrative order of marriage, namely the recording of legal actions in the form of marriages carried out by them. To state the existence of legal awareness regarding marriage registration is very evident from the views of informants who explain the marriage process they carried out, where if it turns out that the process follows Islamic teachings in the sense that one of the couples who marry different religions submits themselves to Islam, they take the process of legalizing their marriage through the KUA. Vice versa, if a couple with different religions adheres to a religion other than Islam, there is an effort to register it at the Population and Civil Registry Office.

KJ, who converted from Hinduism to Islam before marrying her partner of the same religion, acknowledged the effort to register her marriage as a form of obedience to state regulations.

"Yes, at that time I found it difficult to register my marriage with the KUA because I initially did not understand. After someone showed me the way to take care of it, I finally came to the mudin while consulting, and not long after, alhamdulillah, I was taken care of and married by the penghulunya" (KJ, personal communication, Agustus 2024)

FA recognized the same thing, as a Muslim woman who married her Hindu partner SD. In her submission, FA stated that prior to marriage, her husband had converted from Hinduism to Islam so that it did not complicate the marriage registration process at the KUA, and the marriage process was held at the local KUA.

"Before the marriage contract, the husband-to-be had pledged to convert to Islam. The decision was made after we thought for a long time about how to avoid any problems during the marriage. Alhamdulillah, it turned out that my future husband wanted to convert. And because my husband has converted, then yes we can get married like Muslims in general who get married at the KUA" (FA, personal communication, September 5, 2024)

The legal awareness that arises among PBA actors, especially the Tengger Tosari community, regarding marriage registration actually arises from pragmatic considerations that the marriage certificate that shows the legality of the marriage is legal evidence that the marriage is not an illegal legal action. However, from the interview data that researchers collected, none of the informants correlated the registration of marriage at the KUA with its religious validity. They tended to interpret the validity of marriage as when the elements that

are taught in religion are fulfilled, while marriage registration is nothing more than a legal document that shows that the legal action has legal evidence.

Presumably, AN's explanation reinforces the above narrative. For her, even though she married a partner of a different religion, she still tried to obtain legality from the state in the form of a marriage certificate issued by the KUA. Even though he views that the marriage that is carried out by fulfilling the elements of religion has shown the validity of the marriage he has entered into, he still sees the importance of having a marriage certificate as authentic evidence of the occurrence of a legal event in the form of marriage.

The following is AN's statement regarding her marriage process and her efforts to obtain a marriage certificate from the KUA. I did marry my Hindu husband, but according to our agreement, my husband joined my religion. We used to think simply, if we both don't want to give in (read: subjugate ourselves to the religion of one of the partners), then it is difficult for us to get married. Because it certainly wasn't easy to get a marriage license, and my parents didn't approve either. That's why I agreed with my future husband to give in and follow my religion. When we get married, I don't know whether my husband will return to his original religion or follow my religion. Who knows what's in a person's heart? (AN, personal communication, September 2024)

Interfaith Marriage: Between Religious Normativity and Cultural Reality

Before going further to discuss interfaith marriage as one of the products produced by culture, it would be nice to first know and understand the meaning of culture. The word culture comes from the Sanskrit buddhayah, which is the plural form of the word buddhi (mind or budi). Culture in English is called culture which comes from the Latin word colere which means to cultivate or work. the word culture is then absorbed into the Indonesian language to become culture (Tjahyadi et al., 2019).

In the Big Indonesian Dictionary (KBBI) culture is defined as: thoughts, customs, something that has developed, something that has become a habit that is difficult to change. In everyday use, people usually equate the notion of culture with tradition. In this case, tradition is defined as the visible habits of society. (Kamus Besar Bahasa Indonesia (KBBI) Online Version Dictionary, n.d.)

There is an opinion that the word culture is a development of the word cultivation, which means empowered mind. Budi is defined as the guidance of reason and feelings to think about what is good and bad, while power is the ability to do something or act. Thus culture can be interpreted as everything related to the mind and the ability of dynamic human life throughout the ages (Madani, 2022). It can be concluded that culture is a way of life that is passed down from generation to generation through various efforts to continue a certain way of life that is considered most suitable for the environment in which the community lives.

Culture has seven elements, namely language systems, knowledge systems, social systems, systems of living equipment and technology, livelihood systems, religious systems, and arts. If it is related to marriage, then of the seven elements of culture, marriage can be included in the category of social system elements. Social systems are human efforts to form various groups in society. Each community group has certain traditions and rules to interact with each other and carry out their daily lives (Tjahyadi et al., 2019). In this case, marriage is a social product because it involves a meeting between certain traditions and rules that form a social group called a family (Ammar et al., 2023).

In this study, the researcher found that the Tengger people who live in Tosari Village make PBA part of their culture. This is not common in other places, because the general view

of the community is that interfaith marriages are not allowed in either religion or the state (Sufiyah, 2023).

However, on the other hand, it cannot be denied that the nature of the law if we refer to Von Savigny's view that "das recht wird nicht gemacht est und wird mit dem volke", which means "the law is not made, but grows and develops with society". This view is based on the fact that every nation in the world has a volkgeist (people's soul). This volgeist varies according to the time and place of a nation or society. Therefore, the nature of law also varies according to time and place. It does not make sense if then the law is forced to be a universal and eternal rule which is then applied in every place (Sandy Firmansyah, 2024). In this context, it is reasonable to qualify PBA as part of the volgeist of the Tengger-Tosari community and the state must respect it.

Interestingly, the Tengger-Tosari community also has a certain level of legal awareness so that those who do PBA do legal smuggling (fraus legis) so that their marriage is legal in religious and state law. Several studies related to the model of legal smuggling (fraus legis) related to PBA, found several alternatives in its implementation, including being carried out by following the religious law of the bride and groom, usually in this case following the religious law of the husband first and then followed by the implementation of marriage according to the religious law adopted by the prospective wife. In addition to this method, there is also the legal submission of one of the spouses to convert or convert to the religion of their partner. In fact, not a few, PBA perpetrators take the method of conducting their marriages abroad (Dahwal, 2016).

Of the various legal options stated above, in the context of PBA among the Tengger community residing in Tosari, none of the data found shows that the marriage process takes the alternative of marriage abroad. In general, based on field data obtained through interviews, the model adopted is submission to the religion of one of the partners.

In addition to the process of changing religions as a way of getting around the PBA prohibition, what can be seen from the interview data above is the juxtaposition of religious teachings with local culture, which has been a tradition for generations in the Tengger Tosari community. In fact, through the interview above, the Tengger Tosari community's belief in the validity of the customs in which they live can be seen. This can be seen from their belief, even though in terms of the implementation of marriage according to Islamic teachings, they do not override the prevailing customary issues. In fact, both the explanation of conversion as a way to get around the PBA prohibition and the explanation of combining religious teachings and local culture during the wedding reception are all apologetic. In fact, their aim is to defend the legitimacy of PBA that has been practiced for generations.

Referring to Snouck Hurgronje's receptio theory, religious law does not automatically apply to its adherents before it is reaccepted or accepted by the customary law where they live. Therefore, it is customary law that enforces PBA (Nurjannah, 2023). PBA conducted by the Tengger Tosari community indirectly sacrifices religious law and prioritizes PBA traditions by "circumventing" religious law through temporary religious conversion by one of the spouses.

CONCLUSION

The previous descriptions show that the tendency of legal smuggling carried out by PBA perpetrators among the Tengger-Tosari Community in general is through submission to one of the partner's religions. This is preceded by a deliberation to determine a couple who will voluntarily submit themselves to their partner's religion. The data obtained through field research did not reveal any cases of legal smuggling through overseas marriages between

couples of different religions, nor were there any other alternatives such as following the religious law of the bride, usually in this case the husband, followed by the implementation of marriage according to the religious law of the prospective wife. Thus, the choice of legal smuggling through submission to one of the prospective bride's religions is the main model of smuggling among the Tengger Tosari community. However, the submission is not permanent, because in several interviews with informants, data were obtained showing that after the marriage takes place, they tend to return to their original religion.

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