

Interfaith Marriage Perspective of Fiqh Law and Positive Law

¹ M. Idris. ² Ahmad Azmi Perkasa Alam

¹ Aceh Tamiang Islamic College .. ² Muhammadiyah University of East Kalimantan

Email: 1annafi373@gmail.com ² aap284@umkt.ac.id

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Abstract: Study this examine interfaith marriages _ perspective law fiqh and law positive. Marriage is the result of affection between men and women, so limiting Marriage to Religion is one of the conflicts that often occur. Interfaith Marriage is difficult to separate, especially for those who adhere to the teachings of pluralism in Indonesia. So from here, the researcher considers raising the problems in interfaith marriages. Important In research, this researcher use study law normative that is our knowledge with designation study law literature, i.e., article law is carried out with method researching based on sourced materials _ from the library. Source of data used writer article in writing this, among other things, primary laws (ingredients legally binding). Data collection techniques using technique study library. Election literature is carefully done _ possible with considering the authority of the author in the studied field. This study also examines in detail the law of interfaith Marriage from a perspective of law fiqh linking civil law and positive law in Indonesia to the MUI fatwa and following the as- syafi'i school.

Keywords: Wedding, Interfaith, fiqh, positive law

Abstract: Penelitian ini mengkaji pernikahan beda agama perspektif hukum fiqh dan hukum positif. Pernikahan adalah hasil jalinan kasih sayang antara pria dan wanita, sehingga membatasi pernikahan dengan agama adalah salah satu konflik yang kerap terjadi, pernikahan beda agama adalah hal yang sulit dipisahkan khususnya yang menganut ajaran pluralisme di Indonesia. Maka dari sini peneliti menganggap penting untuk mengangkat problematika yang terjadi pada pernikahan beda agama. Pada penelitian ini peneliti menggunakan penelitian hukum normatif yaitu kita kenal dengan sebutan penelitian hukum kepustakaan yakni artikel hukum yang dilakukan dengan cara meneliti berdasarkan bahan-bahan yang bersumber dari pustaka. Sumber data yang digunakan penulis artikel dalam penulisan ini antara lain bahan hukum primer (bahan-bahan hukum yang mengikat). Teknik pengumpulan data menggunakan teknik penelitian kepustakaan. Pemilihan kepustakaan dilakukan setelah mungking dengan mempertimbangkan otoritas pengarangnya terhadap bidang yang dikaji. Penelitian ini juga mengupas secara rinci hukum pernikahan beda agama perspektif hukum fiqh mengkaitkan hukum pedata dan hukum positif di Indonesia fatwa MUI serta mengikut kepada mazhab as-syafi'i

Kata Kunci : pernikahan, beda agama, hukum fikih, hukum positif.

Introduction

In Indonesia, two institutions register marriages: the Office of Religious Affairs (KUA) for adherents of Islam and the Office of Civil Registry (KCS) for non-Muslims. Marriage with the meaning of an inner and outer bond between husband and wife with the intent and purpose of fostering a *sakinah mawaddah* and *warahmah* household, and is eternal as belief in one and only God, then Marriage is considered valid if it is carried out according to the guidance and applicable religious law, and has been recorded according to current regulation. Interfaith Marriage has always been a hot topic to be raised. This is due to the reality or facts and data collected in each related government regarding interfaith Marriage. However, this is not the case for interfaith marriages because interfaith marriages are not *mixed marriages*. As meant by our national laws, *mixed marriages*, according to the law, are marriages between Indonesian Citizens (WNI) and Foreign Citizens (WNA). Marriage is a *sunnatullah* for mankind to maintain survival, Marriage or Marriage even though it has its meaning but it is considered the same because it has the same literature, so in the KBBI dictionary, Marriage is defined as forming a family with the opposite sex; married or married, and this is common to every human being. When Allah SWT. Created the Prophet Adam (as). Then Allah SWT. Created Eve as a wife and partner, thus giving birth to 20 men and 20 women, and they intermarried, so this is where the Marriage started. In the Marriage of a man who proposes to a woman, after an agreement has been reached between the two parties, the man gives the dowry to the woman, then marries her.¹

This is a marriage being done at this time. In the second Marriage, namely *istibda'* Marriage, a husband who wants good offspring, then he orders his wife to have intercourse with other people during her fertile period, then the husband is not allowed to have sex with her until his wife is tested positive for pregnancy. The third Marriage is that several men, less than ten people have intercourse with a woman. After pregnancy and childbirth, the woman sends a letter to all the men who have had intercourse with her to gather. The woman has the right to choose one of the men to marry her. made husband, and they should not refuse. In the fourth Marriage, a woman plants a white flag in front of her house to signify that any man can have intercourse with her. After pregnancy and childbirth, the woman will call every man who has had intercourse with her to determine the baby's father. Experts in the ins and outs of lineage (*Al-Qafah*) after careful research, the *al-qafah* determines the baby's father. After coming to Islam, the Prophet Muhammad SAW. Eliminating the three forms of Marriage and perpetuating the one form that still exists today.²

Literature Review

Conditions And Pillars Until It Is Considered Valid

Male and female candidates. Islam does not limit the minimum age at which a marriage is valid. A newborn baby will legally marry if his guardian carries out a marriage contract. Siti Aisyah's Marriage to the Prophet Muhammad was carried out when she was six years old, and she entered a household when she was 9. However, Law Number 16 of 2019 reads, " Marriage only allowed if man and woman already reach 19 years old n. This is related to policy and achieving the goal of Marriage at the age of 19. Two witnesses. There are six conditions for witnesses: 1). Religion, Islam, and 2). Baligh 3). Reasonable 4). Independence 5). boy 6). ' is (just) Witnesses must meet the sixth criterion, then a marriage will be *void* if the witness adheres to a non-Muslim religion, the issue of witness requirements that often triggers debate is the sixth condition, where the witness must be fair, meaning 'is (fair) here. Namely: "never commit major sins and do not persist in minor sins, and stay away from actions that can eliminate *muru'ah* (authority), like peeing on the side of the road. So a person who is not fair is called a *fasiq* person, which makes it illegal to be a marriage witness. Guardian is a term for the male party in the family or others tasked with overseeing a woman's condition or condition, especially in the chapter on Marriage. The right of guardianship will move

¹ Andre Jonathan, 'Pernikahan Beda Agama (Studi Kasus Pada Pasangan Pernikahan Beda Agama Katolik Dengan Islam Di Keuskupan Surabaya)', *Jurnal Sosial Dan Politik*, 2017.

² Zainal Arifin, *Perkawinan Beda Agama*, *Journal Lentera Kajian Keafamaan, Keilmuan Dan Teknologi*, 2019, II.

to the next sequence when there is no guardian, or the guardian does not have fair character, as explained in the point of witness. The following is the order of guardians: father, grandfather, sibling, half-father, a nephew from sibling or half-father, and paternal uncle. Lafadz consent and qabul . Ijab is the submission of the guardian to the bridegroom with the lafadz nikah, and qabul is the acceptance of Marriage from the groom's side with the lafadz received. What needs to be considered in the qabul consent is that it does not last long and does not give a different pronunciation.³

Interfaith marriages are carried out by the bride and groom, who adhere to different religions and have a relationship with partners who adhere to different beliefs. Interfaith Marriage is not a new discourse, but it is an issue that is endlessly debated, interfaith Marriage apart from having to be ready for conflict with the family, interfaith couples must also consider and prepare the Religion to be taught to their children and interfaith Marriage in Indonesia is not a which is simple, so that many choose to marry abroad to get a marriage certificate from the local country or the Indonesian Embassy, upon arrival to Indonesia they can register their Marriage at the civil registry office (KCS) to get a certificate of reporting foreign marriages.

Method

The type of study used in this is study law normative (normative juridical) research focused on examining the application of the rules or the norms in positive law.⁴ The research examined materials law and books related to the studied problem. Technique collection data is conducted through studies documents for getting conception theory or doctrines, opinions or conceptual thoughts, or research related to the object of study; this research can be in the form of applicable laws and regulations, books, scientific works of para scholars, search results from the internet and other literature related to research.⁵

Results And Discussion

Goals implemented wedding

Marriage is a form of male or female stability to build a household and establish harmony between husband and wife. The most important purpose is to worship Allah SWT. Because as said by Rasulullah SAW. Marriage is half a stronghold for a person in Religion, so he should guard the other half by fearing Allah taala. Scholars say that two things damage humans: the genitals (lust) and the stomach (greed). With lust, there is a lot of crime and disobedience, where a person will fall to the lowest point until he becomes a despicable servant. When lust is deified, then the shame will disappear on the human person as if there is no bad or ugliness on his side, only with the right intention and hoping for a reward from God, Marriage will always protect someone from things that are reprehensible from a religious point of view, and the integrity of their household will be maintained. Marriage in the Qur'an is explained as a ware to get peace of mind for husband and wife (Qs Al-Rum: 12) and to channel biological needs and give birth to quality generations for Religion and intellectuals for the nation and state (Qs Al-Nisa: 1), and stabilize lust so that it is easy to lower the gaze and also maintain self-respect (HR. Bukhari and Muslim). Furthermore, Marriage also increases kinship ties so that Islamic friendship ties are realized.

³ Eduardus Krisna Pamungkas, 'Perkawinan Beda Agama Menurut Kitab Suci, Ajaran, Dan Hukum Gereja Eduardus', 7249 (2021).

⁴ Dri Santoso and others, 'Harmony of Religion and Culture: Fiqh Munākahat Perspective on the Gayo Marriage Custom', *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 22.2 (2022), 199-218 <<https://doi.org/10.18326/IJTIHAD.V22I2.199-218>>.

⁵ Abd Razak Musahib, 'KAJIAN PERNIKAHAN BEDAH AGAMA MENURUT HUKUM ISLAM', *Jurnal Inovasi Penelitian*, 1.10 (2021), 1-208.

Definition of Marriage

Etymologically, Marriage is interpreted in the KBBI dictionary. Namely, the marriage bond (contract) is carried out by legal provisions and religious teachings: living as husband and wife. Marriage is interpreted as forming a family with the opposite sex, married or married. While the discussion in the classics of Marriage is interpreted as gathering or having intercourse, this triggers the naming of Marriage. Interfaith marriages are between women and men who adhere to different religions or beliefs. Interfaith marriages can occur among Indonesian citizens; Muslim women marry men who adhere to Christianity or men who adhere to Islam with women who adhere to Christianity. Christian Religion can happen among ethnic groups and regions, or it can happen with foreign nationals, one of whom adheres to different religious beliefs.⁶

The law of interfaith Marriage according to Islam

Islam is the perfect Religion that regulates all aspects of Muslim life, from small to large. The Qur'an and Hadith are the two main foundations that guide the life of Muslims throughout the world.⁷ Moreover, interfaith Marriage has been explained in the Qur'an clearly and unequivocally that Allah SWT. Prohibits interfaith marriages, namely the Marriage of a Muslim or Muslim woman to adherents of non-Muslim religions (QS al-Baqarah: 221).

Some commentators believe that the words *musyrikah* and *musyrikīn* in (QS al-Baqarah: 221) have a general meaning for all infidels, including people of the book. Some other commentators argue that the word "prohibition" from the verse has been removed by QS al-Maidah: 4. The first opinion, which prohibits marrying women of the book, refers to the source of Ibn Umar and is used as a guide by the Shi'a Zaidiyah School. Ibn Umar was known to be very careful in issuing fatwas, so his opinion that banning it was based on caution and concern for the safety of the Religion of husband and wife and children. At the same time, the second opinion, which justifies Marriage to women of the people of the book, was pioneered by the majority of Ulama. In countries where the majority of the population is Muslim and strictly adheres to Islamic teachings, the marriage law will follow the more dominant school of thought, such as in Indonesia, which has the Shafi'i school of thought, the jurisprudence that is applied the jurisprudence derived from the Shafi school. 'i. There are several opinions among scholars about which *musyrikah* (*musyrik* women) are forbidden to marry. Sheikh Muhammad Ali al-Shabuni gave the ta'rif of *musyrikah*, namely, "women who worship idols." Thus, the word *musyrikah* can be interpreted as "a woman who worships idols in the form of statues or in other forms that are believed to be able to bring benefits and ward off disaster." Most scholars believe that all *musyrikah* from among the Arab nation or nations other than Arab except for people of the book, namely Jews and Christians, are forbidden to marry. According to this opinion, non-Muslim women and non-Kitab people, regardless of their Religion or belief, such as Buddhists, Hindus, Confucians, and Zoroastrians, cannot marry Muslim men because adherents of religions other than Islam, Judaism, and Christianity are categorized as '*mushrikah*.'

The affirmation of the prohibition against marrying polytheistic women in surah al-Baqarah verse 221 is reinforced by the word of Allah in surah al-Mumtahanah verse 10: "Do not stick to the rope (marriage) with infidel women." Meanwhile, Ibn Jarir al-Tabari (a scholar of interpretation) limits polytheistic women who are forbidden to marry only polytheist women from the Arab nation because the Arabs at the time the Koran was revealed did not know the holy book, and they worshiped idols. According to this opinion, a Muslim man may marry a polytheist woman from a non-Arab nation, such as a Chinese, Indian and Japanese woman, who is suspected of having holy books or similar scriptures, such as adherents of Buddhism, Hinduism, Confucianism, who believe in God. The Almighty believes in life after death and so on. View this in line with the opinion of

⁶ Siti Robikah, 'Nikah Beda Agama Dalam Al-Qur'an Dan Implikasinya Terhadap Hukum Pernikahan Di Indonesia', *Al-Wajid*, 5.1 (2020), 1-23.

⁷ 'View of Child Playing Online Game in the Sadd Al-Zari'ah's Perspective' <<https://juna.nusantarajournal.com/index.php/juna/article/view/16/7>> [accessed 16 December 2022].

Sheikh Muhammad Abduh.⁸

Interfaith Marriage in terms of positive law

Along with the development of the human era in terms of formalizing a spouse, it has been regulated in Law NO.1 of 1974 concerning Marriage. However, a new problem emerged, namely interfaith Marriage. Before the enactment of Law NO. 1 of 1974, interfaith marriages were classified as *mixed marriages*. As for the marriage mixture arranged in *Regeling op de Gemengde Huwelijk* stable. 1898 number 158, which is abbreviated with GHR. Article 1 of this GHR mentioned that marriage mixture is Marriage between people who in Indonesia are subject to [different laws](#).

In Indonesia, In formal juridical terms, Marriage in Indonesia is regulated in Constitution Number 1 of 1974 concerning Marriage and Instruction President Republic of Indonesia Number 1 of 1991 concerning Compilation of Islamic Law (KHI). Second, legislation arranges related matters _ by Marriage _ including Marriage of different Religion. In the law Republic of Indonesia, Number 1 of 1974 concerning Marriage Article 2 paragraph (1) states: " Marriage is legal if conducted according to laws of each Religion and belief. In this case, it can be concluded that there are outside marriage _ laws of each Religion and belief. Such things are explained in some chapters in the Instructions President Republic of Indonesia Number 1 of 1991 concerning Compilation of Islamic Law, as follows: Article 4: " *Marriage is legal if conducted according to Islamic law with Article 2 paragraph (1) of the Law Number 1 of 1974 concerning Marriage* ".

In the Syafii school of law on Marriage to non-Muslims, there are several details and explanations:

Marriage with a polytheist man/woman is unlawful and invalid. If a marriage with a polytheistic man/woman occurs, it is punishable as adultery, and the local government must separate the two. Marriage with a woman of the book from the Jews, then this Marriage is permissible and legal on the condition that her ancestors were Jewish before being sent by Prophet Isa and did not convert to another religion. Marriage with a Christian woman who is a member of the Bible is considered valid on the condition that her ancestors had become Christians before the Prophet Muhammad was sent. Marriage with men, the book from the Jewish and Christian groups, is considered invalid and unlawful. One _ Friend prophet, including a senior named Hudzaifah bin al-Yaman ever, marry with a woman Jew, while the Companions no some are against it. (Masjfuk Zuhdi, 1997: 5). According to the view of Imam Syafi'i, what is meant by the people of the book are the Jews and Christian Israelite descent. Therefore, other nations that embrace Judaism and Christianity do not include the book's people. His reason is that the Prophet Musa and Isa were only sent to the Children of Israel (descendants of Israel), not to other nations. It also emphasizes the editorial min qablikum sentence in the letter alMā'idah verse 5. Imam Shafi'i's opinion is different from that of Imam Abu Hanifah and the majority expert law that states , anyone who trusts one _ Prophet, or book ever sent down by Allah, then he includes the people of the book. So the people of the book do not limit to groups adherents of Judaism or Christianity (Christian). Therefore, if _ there is one group that only believes in Suratf Ibrahim or Zabur was given to the Prophet David alone, he was included in the reach meaning of the people of the book. Another opinion espoused by a few salaf scholars says that every person who has a book that can be suspected as a holy book (samawi) is also included in understanding the people of the book , such as the Magi. (M. Quraish Shihab, 1996: 366- 367). The latter opinion was expanded by Muhammad Rashid Ridha (1367 H: 193), who confirmed that clan Zoroastrians, Şabi'in , Hindus, Buddhists, Confucianists, Shintoists, and other religions could categorize as groups of ahli book. Monotheism (tawhid) and holy books. However, because of the long passage of time, these religions were contaminated with shirk or paganism. Holy

⁸ Musahib.

Scriptures, if still survive and don't swallowed by time, have experience intervention from human hands, so the contents are distorted far from the original. Judaism and Christianity itself, whose age is relatively still young, apparently has contaminated.⁹

Prohibition carry out Marriage Among a Men with a woman because circumstances certain ;

Because the woman in question is still bound to one Marriage with another man; A still woman _ is in the iddat period with another man, a woman who does not like various Islam. Article 44: " A Muslim woman is prohibited from carrying out marriage with a man who does not like the religion of Islam" Article 61: "Not being in a confederation cannot be used as an excuse to prevent the marriage, unless not in confederation because of religious differences or ikhtilaf al-dien" Based on the explanation above, interfaith marriages that are carried out in the Indonesian jurisdiction must listen to the same religious route with the meaning that interfaith marriages cannot be carried out and if they are forced, then they violate the law and also the Marriage is considered invalid. So, according to the positive law enforced in Indonesia, Law no. 1 of 1974 concerning Marriage, interfaith Marriage cannot be legalized.¹⁰

MUI fatwa on interfaith Marriage

The court (PN) has authorized the wedding couple of different religions on Monday, 20 June 2022. The wedding has been recorded in determination Number 916/ Pdt. / 2022/PN/ Sby. Then what exactly is the Fatwa of the Indonesian Ulema Council (MUI) regarding interfaith Marriage? MUI decision on interfaith Marriage no. 05/Kep/Munas II/MUI/1980 dated 1 June 1980 regarding the Fatwa, stipulating in number 2 Interfaith Marriage of Religious People, that: Interfaith Marriage is haram and invalid. According to qaul mu'tamad, a Muslim man's Marriage to the ahl-Kitab woman is forbidden and invalid.

Regarding the Marriage of men and women of the people of the book, there is a difference of opinion among fiqh scholars. However, the MUI considers that the mafsadah is too big, so the MUI fatwa regarding this matter also forbids Marriage to women who are people of the book. The MUI fatwa is based on the arguments of the verses of the Qur'an, hadith, and the principles of fiqh proposal, of course, after in-depth research to determine the maslahah and its mafsadah. The following is the argument that refers to the MUI fatwa: Surat An Nisa verse 3 Meaning: "If you are worried that you will not be able to do justice to (the rights of) orphaned women (if you marry her), marry (another) woman you like: two, three, or four. However, if you are worried that you will not be able to act fairly (marry) only one or the enslaved women you have, that is so that more close for no do unjustly." Surah Ar Rum verse 21: Meaning: "In between His signs (greatness) are that He creates couples for you of (kind of) you for you feel serene to him. He makes between you love and mercy _ dear. Indeed, there are signs (the greatness of Allah) for thinking people. _ Surah At Tahrim verse 6: " O you who believe, take care yourself and your family from fire hell that material burns it is man and stone. The keeper is angels rough and tough. _ They no lawless to God against what he _ command to him and always work what was ordered .".¹¹

⁹ Wahyu Wibisana, 'Pernikahan Dalam Islam', *Jurnal Pendidikan Agama Islam - Ta'lim*, 14.2 (2016), 185-93.

¹⁰ Wahyu Ziaulhaq, 'BENTUK KOMUNIKASI BIMBINGAN PERKAWINAN (BINWIN) TERHADAP CALON PENGANTIN', 1.1 (2022), 13-19.

¹¹ Anggi Nur Nisa Tanjung and Wahyu Ziaulhaq, 'Analisis Terhadap Hukum Positif Dan Fiqih Pada Perkawinan Siri Dan Pengaruhnya Terhadap Kepemilikan Harta Kekayaan', *SOSMANIORA: Jurnal Ilmu Sosial Dan Humaniora*, 1.1 (2022), 62-66 <<https://doi.org/10.55123/sosmaniora.v1i1.207>>.

Conclusion

In general, interfaith marriages involving two religions to establish love in one family without leaving their respective religions or beliefs will affect harmony in the household. In the Syafii school of law, marriages with non-Muslims have several details and explanations: Marriage with a polytheist man/woman is unlawful and invalid. If a marriage with a polytheistic man/woman occurs, it is punishable by adultery. The local government must separate the two. Marriage with a woman of the book from the Jews, then this Marriage is permissible and legal on the condition that her ancestors were Jewish before being sent by Prophet Isa and did not convert to another religion. Marriage with a Christian woman who is a member of the Bible is considered valid on the condition that her ancestors had become Christians before the Prophet Muhammad was sent. Marriage with men in the book from the Jewish and Christian groups is considered invalid and unlawful. MUI decision on interfaith Marriage no. 05/Kep/Munas II/MUI/1980 dated 1 June 1980 regarding the Fatwa, stipulating in number 2 Interfaith Marriage of Religious People, that: Interfaith Marriage is haram and invalid. According to qaul mu'tamad, a Muslim man's Marriage to the ahl-Kitab woman is forbidden and invalid.

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