

Questioning the Legal Considerations of Interfaith Marriage from the Perspective of Islamic Law and Positive Law in Indonesia

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Abstract: This study examines the legal implications of interfaith marriage in Indonesia from the perspectives of Islamic law and national positive law. Employing a normative juridical approach, this library research utilizes content analysis of authoritative literature to address the core legal issues. The collected data were processed through comparative analysis to provide a comprehensive review and conclusion. The findings reveal that interfaith marriage lacks a valid legal basis under both Islamic law and the Indonesian Marriage Law. This research argues that the legalization of interfaith unions—often justified by human rights claims or perceived "legal vacuums"—is based on flawed legal reasoning. Furthermore, permitting interfaith marriage in Indonesia is prone to triggering complex social and legal problems. Consequently, the existing prohibition remains the most suitable stance given Indonesia's socio-religious landscape. As legal interpretations may evolve with time and context, this issue requires continuous academic scrutiny. Moreover, it is crucial to communicate the rationale behind this prohibition to the public in accessible language to mitigate social friction and misunderstandings among the general population.

Keywords: Interfaith Marriage, Islamic Law, Positive Law.

Abstrak: Penelitian ini bertujuan untuk menganalisis pertimbangan hukum terkait perkawinan beda agama di Indonesia dalam perspektif hukum Islam dan hukum positif. Penulis menggunakan pendekatan yuridis normatif dengan jenis penelitian kepustakaan (*library research*). Data yang terkumpul dianalisis menggunakan analisis isi (*content analysis*) terhadap literatur yang representatif dan relevan, kemudian dikomparasikan melalui analisis perbandingan, ditelaah, hingga ditarik sebuah



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kesimpulan. Hasil penelitian menunjukkan bahwa perkawinan beda agama tidak memiliki dasar hukum, baik dalam hukum Islam maupun Undang-Undang Perkawinan. Pertimbangan legalisasi perkawinan beda agama—yang didasarkan pada hak asasi manusia pemohon hingga klaim adanya kekosongan hukum—merupakan pertimbangan hukum yang keliru. Legalisasi perkawinan beda agama di Indonesia berpotensi memicu berbagai permasalahan kompleks. Oleh karena itu, larangan perkawinan beda agama lebih sesuai dengan realitas dan kebutuhan masyarakat di Indonesia. Kajian mengenai perkawinan beda agama perlu mendapat perhatian lebih lanjut mengingat hukum dapat berubah seiring perubahan waktu dan tempat. Selain itu, larangan perkawinan beda agama perlu disosialisasikan kepada masyarakat dengan bahasa yang sederhana dan mudah dipahami, karena dampak negatif dari perbedaan pendapat mengenai isu ini sering kali muncul di tengah masyarakat awam.

Kata Kunci: Perkawinan Beda Agama, Hukum Islam, Hukum Positif

A. Introduction

Everyone Islam is the religion of nature. Allah SWT created humans according to their nature. The Prophet Muhammad SAW said,

مَا مِنْ مَوْلُودٍ إِلَّا يُوَلَّدُ عَلَى الْفِطْرَةِ¹

Meaning:

No child is born except in a state of fitrah.

Ibn al-Atsir explains that the meaning of this hadith is that every child is born with human nature, which is a fitrah from Allah SWT, ready to accept the truth in accordance with human nature, and to

¹ Muhammad bin Ismail Al-Bukhari, *Shahih Al-Bukhari*, Juz 1 (Dimasyq: Dar Ibn Katsir, 1993), 456.

accept that truth willingly.² One of the natural tendencies of human beings is attraction to the opposite sex. This is mentioned in QS Ali 'Imran/3: 14.

زَيْنَ لِلنَّاسِ حُبُّ الشَّهَوَاتِ مِنَ النِّسَاءِ وَالْبَنِينَ وَالْقَنَاطِيرِ الْمُقْنَطَرَةِ مِنَ الْذَّهَبِ
وَالْفِضَّةِ وَالْخَيْلِ الْمُسَوَّمَةِ وَالْأَنْعَامِ وَالْحَرَثِ ذَلِكَ مَتَاعُ الْحَيَاةِ الدُّنْيَا وَاللَّهُ عِنْدَهُ
حُسْنُ الْمَآبِ

Translation:

Made to appear beautiful in the eyes of humans is the love of what they desire, such as women, children, piles of gold and silver, choice horses, livestock, and fields. That is the enjoyment of worldly life, and with Allah is the best return.³

Al-Qurtubi explains that the meaning of “made beautiful” in this verse is that Allah SWT has determined human nature to have a tendency toward the things mentioned in the verse.⁴ Marriage is prescribed so that humans can channel their natural instincts into something that is permitted by Allah SWT. Allah SWT says in Surah Al-Rum/30: 21.

Ibn Katsir also explains that the purpose of marriage is to preserve honor and increase offspring, which is something that is

² Ibn Al-Asir, *Al-Nihayah Fi Garib Al-Hadis*, Juz 1 (Beirut: Al-Maktabah al-'Ilmiyah, 1979), 247.

³ Kementerian Agama RI, *Terjemah Tafsir Per Kata* (Bandung: Sygma Creative Media Corp, 2010), 51.

⁴ Muhammad bin Ahmad Al-Qurtubi, *Al-Jami' Li Abkam Al-Qur'an*, Juz 4 (Kairo: Dar al-Kutub al-Mishriyah, 1964), 28.

encouraged and praiseworthy, as stated in the hadiths that motivate people to marry and increase their offspring.⁵

Marriage is an important moment in human life. Marriage is not only related to the couple themselves, but also to family and community affairs. Marriage is considered a sacred event, so every religion always associates marriage with religious principles. Marriage requires legal norms and regulations to govern it. The application of legal norms in marriage is necessary to regulate the rights, obligations, and responsibilities of each family member with the aim of fostering a happy and prosperous household.⁶

As Indonesian society becomes increasingly complex, the issues that arise also become more complex, including marriage issues. Various types of marriage cases in Indonesia are worth discussing because marriage is a legal act that has consequences for both the couple getting married and the country in which they live. One such case is interfaith marriage, which has recently become a phenomenon in Indonesia, among artists, the general public, and activists alike.⁷

Marriage is regulated in Law Number 1 of 1974 concerning Marriage. Article 2 paragraph (1) of Law Number 1 of 1974

⁵ Ibn Katsir, *Tafsir Al-Qur'an Al-'Azhim*, Juz 2 (Cet. VI; Beirut: Dar al-Kutub al-'Ilmiyah, n.d.), 15-16.

⁶ Anggreini Carolina Palandi, "Analisa Yuridis Perkawinan Beda Agama Di Indonesia," *Lex Privatum* 1, no. 2 (2013): 196–210, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/1717>.

⁷ Nur Asiah, "Kajian Hukum Terhadap Perkawinan Beda Agama Menurut Undang-Undang Perkawinan Dan Hukum Islam," *Jurnal Hukum Samudra Keadilan* 10, no. 2 (2015): 204–214.

concerning Marriage states that a marriage is valid if it is conducted according to the laws of each religion and belief. The diversity of religions and beliefs in Indonesia does not preclude the possibility of interfaith marriages between different religions and beliefs. The legalization of interfaith marriages is not new in Indonesia. The Indonesian Conference on Religion and Peace (ICRP) has recorded that since 2005, there have been 1,425 interfaith couples married in Indonesia. This number was mentioned by ICRP Program Director Ahmad Nurcholish. "That is data from 2005 to Saturday (March 5). Actually, on Saturday, there were two couples who got married, one in Semarang and one in Jakarta. So, the total is now 1,425," said Nurcholish.⁸

Interfaith marriages have the potential to cause various legal problems for both the husband and wife and for outside parties, including issues that arise regarding the inheritance rights of children born from interfaith marriages. This is related to the validity of interfaith marriages because children born from invalid marriages only have a legal relationship with their mother, as stated in Article 43 paragraph (1) of Law Number 1 of 1974, which explains that children born outside of marriage only have a civil relationship with their mother and their mother's family. Based on this reasoning, religious differences are considered one of the factors that prevent a person from inheriting from their parents.⁹

⁸ "Sebegini Jumlah Pasangan Melakukan Pernikahan Beda Agama Di Indonesia, Jangan Kaget Ya," Situs JPNN, 2021, <https://www.jpnn.com/news/sebegini-jumlah-pasangan-melakukan-pernikahan-beda-agama-di-indonesia-jangan-kaget-ya?page=2>.

⁹ Palandi, "Analisa Yuridis Perkawinan Beda Agama Di Indonesia."

Based on this background, the author was interested in expressing it in a journal article entitled "Questioning Legal Considerations of Interfaith Marriage from the Perspective of Islamic Law and Positive Law in Indonesia."

B. Method

The type of research used in writing this journal article is descriptive qualitative research using the library research method. In terms of its nature, this research is qualitative. This research uses a normative juridical approach, which is by reviewing library data or secondary data. The review was conducted using content analysis and comparative analysis. The data collection method used was a review of literature or document analysis. The research data was collected from the Qur'an, hadith, laws and regulations, court decisions, books, research journals, and others, then the data was reviewed and analyzed to extract what was considered relevant to the subject matter.

C. Legal Considerations for Interfaith Marriage

1. Legal Considerations of Interfaith Marriage from an Islamic Law Perspective

According to Islamic law, it is not permissible for Muslim women to marry non-Muslim men (kafir). Wahbah al-Zuhaili mentions that the scholars have reached a consensus (ijmā) on this matter.¹⁰ This is based on the word of Allah SWT in QS Al-Baqarah/2: 221.

If a Muslim man marries a woman who is not Muslim, some scholars distinguish between the law of marrying a woman who is

¹⁰ Wahbah Al-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*, Juz 9 (Cet. IV; Dimasyq: Dar al-Fikr, 2012), 6614.

not Muslim from among the polytheists and a woman from among the People of the Book. There is no disagreement among scholars about the prohibition of marrying a polytheist woman. This is based on the words of Allah SWT in QS Al-Baqarah/2: 221.

As for marrying women of the People of the Book, Ibn Qudamah mentions the opinion of scholars who permit marrying free women of the People of the Book. This opinion is narrated from 'Uthman, Thalhah, and others. Ibn Mundhir said that none of the early scholars prohibited this (marrying women of the People of the Book).¹¹ This is based on the word of Allah SWT in QS Al-Māidah/5: 5.

This verse is a specification of verse 221 in Surah al-Baqarah, which states that women of the Book are included in the general prohibition against marrying polytheistic women. Some exegetes say that the meaning of muhshanat in this verse is women who preserve their chastity, some say women from the Children of Israel, and others say dzimmi women and not harbi women.¹²

Some scholars disapprove of marrying women of the Book. This opinion is held by scholars of the Hanafi and Shafi'i schools of thought. As for the scholars of the Hanbali school of thought, they argue that it is khilaf al-aula (disagreeing with what is more preferable) because 'Umar bin Khattab, may Allah be pleased with him, told the companions who married women of the People of the

¹¹ Ibn Qudamah Al-Maqdisi, *Al-Mugbni*, Juz 9 (Cet. III; Riyad: Dar 'Alam al-Kutub li al-Thiba'ah wa al-Nasyr wa al-Tawzi', 1997), 545.

¹² Ibn Katsir, *Tafsir Al-Qur'an Al-'Azhim*, Juz 3 (Cet. VI; Beirut: Dar al-Kutub al-'Ilmiyah, n.d.), 42.

Book, “Divorce them.” They then divorced their wives except for Hudzaifah, may Allah be pleased with him.¹³

Yusuf al-Qardawi states that the permissibility of Muslim men marrying women of the People of the Book is intended to attract these women to Islam, to bring Muslims and the People of the Book closer together, and to maintain tolerance, harmony, and interaction between the two groups. However, Yusuf al-Qardawi mentions in more detail several conditions and considerations for the permissibility of marrying women of the People of the Book, namely:

a) Ensuring that the woman is truly a Book Expert

This means that the woman believes in the original heavenly religions such as Judaism and Christianity, and that she generally believes in God, His message, and the Last Day. This woman is not an atheist who has renounced her religion. This is because in the West today, not all women born to Christian parents become Christian women, and not all those who grow up in a Christian environment will necessarily become Christian; they may become communists, or follow a religion that is fundamentally opposed to Islam, such as the Baha'i faith.

a. A woman who maintains her honor

Allah does not permit marrying all women of the People of the Book, but Allah requires that the woman be a muhshanat. Ibn Kathir mentions in his tafsir that what is meant by muhshanat is a woman who protects herself from adultery. This is the opinion chosen by Ibn Kathir and is the opinion of the majority of scholars.

¹³ Wahbah Al-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*, Juz 9 (Cet. IV; Dimasyq: Dar al-Fikr, 2012), 6654.

Therefore, it is not permissible for a Muslim to marry a woman who willingly gives herself to any man, but it is obligatory for him to choose a woman who is steadfast, pure, and far from doubt.

b) That woman did not come from a group that was hostile to Islam.

The jurists distinguish between dzimmiyyah women and harbiyyah women, permitting marriage to dzimmiyyah women but not to harbiyyah women. This opinion is held by the companion Ibn 'Abbas (may Allah be pleased with him). Allah SWT has made family relationships through marriage among the strongest relationships between humans. These relationships come after kinship and blood relationships. Based on this, Allah SWT says in QS Al-Furqan/25: 54.

It is impossible for this bond to be realized between Muslims and those who oppose Islam, just as it is impossible for Muslims to feel secure that they (the People of the Book) will not spread the shame of Muslims to their people.

c) The absence of slander and harm arising

Everything that is permitted in Sharia law is subject to the absence of harm. If it is clear that there is general harm, then it is generally prohibited. If there is specific harm, then it is specifically prohibited. The greater the harm, the more strict the prohibition and prohibition.¹⁴

The Indonesian Ulema Council (MUI) has issued a fatwa on interfaith marriage as stated in the Indonesian Ulema Council Fatwa Number: 4/MUNAS VII/MUI/8/2005 concerning Interfaith

¹⁴ Yusuf Al-Qardhawi, "Zawaj Al-Muslim Min Al-Kitabiyah," 2022, <https://www.al-qaradawi.net/node/4073>.

Marriage, that interfaith marriage is haram and invalid. marriage between a Muslim man and a woman of the People of the Book according to qaul mu'tamad is haram and invalid. The MUI chose this opinion because it is considered to be in line with the needs and realities in Indonesia today, namely that interfaith marriages between Muslim men and non-Muslim women have more disadvantages than advantages, so they should be avoided. Such marriages are generally short-lived, and even if they do last, many argue that it is because the couple tends to be indifferent or permissive in religious matters. Therefore, it can be said that they fail to implement Islamic guidance in their household life.¹⁵

The fatwa of the Indonesian Ulema Council (MUI) should be the basis and legal consideration for judges adjudicating interfaith marriage cases. This is because the MUI functions as a guardian for Muslims, an educator, a guide, and a provider of solutions to various religious issues in Indonesia. Disregard for the MUI fatwa actually shows the low quality of religious practice and the lack of trust of the public and state institutions in the ulama.

D. Legal Considerations of Interfaith Marriage: A Positive Law Perspective in Indonesia

Several Article 2 of Law Number 1 of 1974 concerning Marriage (Marriage Law) states that,

- 1) A marriage is valid if it is conducted in accordance with the laws of their respective religions and beliefs.

¹⁵ Faiq Tobroni, "Kawin Beda Agama dalam Legislasi Hukum Perkawinan Indonesia Perspektif HAM," *Al-Mawarid* 11, no. 2 (2011): 157–173, <https://journal.uii.ac.id/JHI/article/view/2859>.

- 2) Each marriage shall be registered in accordance with the applicable laws and regulations.

This article stipulates that a valid marriage must be conducted in accordance with the religion and beliefs of each party, as explained in Article 2 paragraph (1). With the formulation of Article 2 paragraph (1), there can be no marriage outside the laws of each party's religion and beliefs.

Regarding the absence of marriages outside the laws of each religion and belief, Hazairin stated that it is impossible for Muslims to marry in violation of their own religious laws, and the same applies to Christians and Hindus or Buddhists as found in Indonesia.¹⁶ The meaning of the statement "according to their respective religions" is that it depends on the validity of the respective religions in conducting interfaith marriages. The law gives its full trust to religion, and religion plays an important role in interfaith marriages.

Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law (KHI) article 40 explicitly states the prohibition of marriage between a man and a woman who are not Muslim. Article 44 of the KHI also states that a Muslim woman is prohibited from marrying a man who is not Muslim. This was reinforced by a Constitutional Court ruling at the end of January 2023 that rejected a request for interfaith marriage. This ruling was outlined in Decision Number 24/PUU-XX/2022, the case concerning the review of Law No. 1 of 1974 on Marriage

¹⁶ Sri Wahyuni, "Kontroversi Perkawinan Beda Agama di Indonesia," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 11, no. 02 (2018): 18, <https://doi.org/10.30631/al-risalah.v11i02.466>.

(Marriage Law) as amended by Law No. 16 of 2019 on Amendments to Law No. 1 of 1974 on Marriage.

Law No. 1 of 1974 on Marriage was issued with the aim of unifying and providing legal certainty in the field of marriage law in Indonesia.¹⁷ This is as stated in Article 66 that with the enactment of this Law, the provisions stipulated in the Civil Code (Burgerlijk Wetboek), the Indonesian Christian Marriage Ordinance (Huwelijks Ordonantie Christen Indonesiers S.1933 No. 74), the Mixed Marriage Regulation (Regeling op de gemengde Huwelijken S. 1898 No. 158), and other regulations governing marriage to the extent that they are regulated in this Law, are declared invalid.

In relation to human rights considerations as legal considerations for the legalization of interfaith marriages as stated in decision number: 916/Pdt.P/2022/ PN.Sby, in which the Surabaya District Court granted permission for the registration of interfaith marriages on the grounds that the establishment of a household through marriage is a fundamental right of the petitioners as citizens and a fundamental right of the petitioners to maintain their respective religions. This consideration can be refuted with the argument that the formation of a household through legal marriage is a fundamental right of the applicants, but the applicants' desire to marry a partner of a different religion is a non-fundamental right. This was conveyed by M. Amin Suma in the Interfaith Marriage Forum Group Discussion (FGD) held by the Directorate General

¹⁷ Trusto Subekti, "Sahnya Perkawinan Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Ditinjau Dari Hukum Perjanjian," *Jurnal Dinamika Hukum* 10, no. 3 (2010): 329–338, <https://doi.org/10.20884/1.jdh.2010.10.3.103>.

of Islamic Community Guidance of the Ministry of Religious Affairs of the Republic of Indonesia on September 28, 2022. M. Amin Suma argued that marriage is a human right because it is God's will that humans are allowed to marry. Based on this, the decision of the Surabaya District Court, which considered the applicant's human rights as a legal consideration in granting an interfaith marriage, is incorrect.

As for Article 2 paragraph (2) concerning registration as a requirement for a valid marriage, Wantjik Saleh argues that the act of registration does not determine the validity of a marriage, but rather states that the event did indeed take place, and is therefore purely administrative in nature.¹⁸ Although registration is not a determining factor in the validity of a marriage, this registration requirement must also be carried out or fulfilled by the parties, because marriage registration is proof that the state has recognized the marriage between the parties. Marriage registration means that the state has officially recognized the civil legal force of the marriage. This is because, in principle, the Marriage Law stipulates that there must be a balance between religious law and state law in accordance with the formal law that must be fulfilled.¹⁹

The General Explanation of the Marriage Law states that the registration of each marriage is the same as the registration of

¹⁸ K. Wantjik Saleh, *Hukum Perkawinan Indonesia* (Jakarta: Ghalia Indonesia, 1982), 14-15.

¹⁹ Bing Waluyo, "Sahnya Perkawinan Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Jurnal Media Komunikasi Pendidikan Pancasila Dan Kewarganegaraan* 2, no. 1 (2020): 199, <https://doi.org/10.23887/jmpppkn.v2i1.135>.

important events in a person's life, such as birth and death, which are stated in certificates, an official document that is also included in the registration list. It should be noted that Article 45 of Government Regulation Number 9 of 1975 contains criminal penalties for brides and grooms and Marriage Registrars who violate the provisions of registration.

The Supreme Court has issued a ban on the registration of interfaith marriages. The ruling is contained in Supreme Court Circular Letter (SEMA) Number 2 of 2023 concerning Guidelines for Judges in Adjudicating Cases of Marriage Registration Requests between People of Different Religions and Beliefs. The Circular Letter, issued on July 17, 2023, clearly states in point two that the court will not grant requests for the registration of interfaith marriages.

SEMA Number 2 of 2023 was issued after pressure from many groups who highlighted the frequent granting of interfaith marriage applications by the District Court (PN). The court's ruling is considered to undermine the marriage laws in force in Indonesia, even though in its deliberations the judge used Law Number 23 of 2006 on Population Administration as the legal basis for deciding the case. SEMA Number 2 of 2023 can be used as a reference for judges in court when examining marriage cases. When examining marriage cases, judges should prioritize the formal principles of marriage law rather than population administration law.²⁰

²⁰ Kementerian Agama RI, "Larangan Hakim Menetapkan Perkawinan Beda Agama," Situs Resmi KEMENAG RI, 2023, <https://kemenag.go.id/kolom/larangan-hakim-menetapkan-perkawinan-beda-agama-beSC4>.

Some legal experts argue that there is a legal vacuum regarding interfaith marriages because the Marriage Law does not regulate interfaith marriages, while Article 66 of the Marriage Law states that the old marriage regulations do not apply as long as they are regulated by this Marriage Law. This is as stated by Purwanto S. Gandasubrata that interfaith marriages, as long as they are not directly regulated in the Marriage Law, can be carried out in accordance with the principles in the Marriage Law.²¹

Interfaith marriages will be difficult to carry out in Indonesia after the Marriage Law comes into effect. Furthermore, the fact that interfaith marriage is not explicitly mentioned in the Marriage Law has caused controversy among the public in understanding it. Regardless of the discourse on interfaith marriage, the issuance of Supreme Court Circular Letter No. 2 of 2023 has provided legal certainty and serves as a reference to close the loophole on interfaith marriage, which has long been a source of controversy among the public.

E. Conclusion

This Law No. 1 of 1974 on Marriage is the national marriage law that serves to harmonize religious marriage rules and culture. The Marriage Law was created so that the community can fulfill its needs in the field of marriage, thereby creating social order and resolving various community issues in the field of family and marriage law. The Marriage Law contains a norm that a marriage is not valid if it is not conducted according to the respective religious laws and is

²¹ Djaya S. Melida, *Masalah Perkawinan Antar Agama dan Kepercayaan di Indonesia dalam Perspektif Hukum* (Jakarta: Vrana Widya Dharma, 1988), 79.

not registered administratively by the state, so that the determination of whether or not a marriage is valid depends on religious provisions.

According to Islamic law, marriage between a Muslim woman and a non-Muslim man is not valid. This has become the consensus among Muslim scholars. Although there are differences of opinion among scholars regarding the validity of marriage between a Muslim man and a non-Muslim woman from among the People of the Book, allowing interfaith marriage in Indonesia tends to have the potential to cause various problems. Therefore, the prohibition of interfaith marriage is more in line with the reality and needs in Indonesia. As for considerations of human rights and claims of a legal vacuum to legalize interfaith marriage in Indonesia, these are weak legal arguments and have been proven to be incorrect, especially since the prohibition of interfaith marriage has been supported by the Indonesian Ulema Council's Fatwa and the Supreme Court Circular Letter No. 2 of 2023.

Studies on interfaith marriage are, at first glance, the preserve of academics and Islamic law activists. However, the results of these studies need to be widely disseminated to the public in simple and easy-to-understand language, because the negative impact of differing opinions on interfaith marriage often arises among the general public.

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