Justice and Equality in Islamic Family Law Faculty of Sharia, State Islamic University of Datokarama Palu

OTHER RELIGIOUS WEDDINGS

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Abstract

Statements that interfaith marriages constitute a space for tolerance are becoming more prevalent in society as a result of the polemics surrounding interfaith marriages, also known as mixed marriages, which are governed under Indonesian marriage law. Therefore, the purpose of this study is to comprehend the opinions of academics on interfaith marriages as well as the prevalence of such unions in Indonesia. The method of research performed is library research, and the literature studied includes books, journals, and other publications that are pertinent to the research topic. According to the study's findings, there are still many different perspectives about interfaith marriage as a reality in people's lives. For instance, the principles of Islam as represented by Islamic groups like MUI, NU, and Muhammadiyah specifically forbid interfaith unions. The Koran, hadith, and studies of ancient scholars, together with Indonesian laws and regulations, form the foundation of Islamic organizations' ban on marriage. However, there are still others who strive for the legalization of interfaith unions.

Keywords: Interfaith Marriages, Indonesian Marriage Law.

A. Introductions

In Indonesia, interfaith unions are fairly typical. Out of a total population of 273.32 million Indonesians, the majority of the country's citizens (86.93%) practice Islam, while minorities also follow Christianity (7.47%), Catholicism (3.08%), Hinduism (1.71%), Buddhism (0.05%), and other religions (0.08%). According to data, from 2005 to March 2022, 1425 pairs engaged in interfaith marriages. This poses a number of issues from a social, cultural, and legal perspective.

¹Kementerian Dalam Negeri, "Penganuat Agama Di Indonesia," Wikipedia (http://.id.m.wikipedia.org, 2022). Diakses tanggal 4 Maret 2023

²Ahmad Nurcholish, "Jumlah Pasangan Nikah Beda Agama Di Indonesia" (http://populis.id, 2022).

Interfaith unions also frequently result in issues with the law, particularly when it comes to the legal recognition and protection of the union. Interfaith weddings are permitted in Indonesia under the law, however there are still many challenges and issues with their execution.⁴

On the contrary side, there are many who contend that interfaith unions can promote religious harmony and offer possibilities to improve links between various faiths. Therefore, it is necessary to understand the issue of interfaith marriage in Indonesia within the context of the complexity and diversity of Indonesia's pluralistic society.⁵

When analyzing this research, the authors identify the primary issue as being how academics understand interfaith marriage and how interfaith marriage actually exists in Indonesia. Understanding the opinions of academics on interfaith marriages and the reality of interfaith marriages in Indonesia was the goal of producing this study.

B. Research Method

Library research as a type of research used in research. Then this research is included in qualitative research. The use of library research (library research) in this research is accuracy in analyzing a scientific problem obtained from data sources in the form of writing in the form of books, journals, or other scientific papers. The

³Abdul Jalil, "Pernikahan Beda Agama Dalam Perspektif Hukum Islam Dan Hukum Positif Di Indonesia," *Andragogi: Jurnal Diklat Teknis VI* (2018).

⁴Jefry Tarantanga, Siah Khosyiahb, Usep Saepullah, "Filosofi 'Illat Hukum Dan Maqashid Syariah Dalam Perkawinan Beda Agama", *Jurnal Studi Agama dan Masyarakat* 19, no. 1, (2023), 45.

⁵Sumriyah Dewi Muti'ah, "Hukum Pernikahan Beda Agama Menurut Hukum Islam Dan Hukum Formal," *Jurnal.Trunojoyo* 2 (2021).

emphasis on library research is to find various theories, laws, propositions, principles, opinions, ideas and others that can be used to analyze and solve the problem under study. So, the relevance of the approach and the type of research used is to select and analyze literature that is relevant to the title, namely in this case regarding the existence of interfaith marriages regulated at the legal level or regulatory recognition of the marriage case.

C. Findings and Discussion

1. Definition

Marriage is referred to in Arabic as (al-wath'u), which is defined as having sex.⁶ or it can also mean connecting or linking.⁷ The definition of marriage, however, in the munawwir dictionary is "to gather or oppress, have intercourse and intercourse.⁸ There are two different schools of thought among ushul scholars about the definition of the word marriage, namely: According to the Hanafi sect, marriage is a body in its literal sense (essential meaning), and in its metaphorical sense (majazi meaning), it is a contract that legalizes sex between a man and a woman. According to ushul experts from the Shafi'iyah sect, marriage is defined as a contract that makes sexual activity between a man and a woman legal, whereas majazi is defined as sexual activity.⁹

Despite the aforementioned viewpoint implies that marriage is essentially a contract governed by religion that grants a man the right to use a woman's entire body for sexual activity or is only concerned with worldly matters, marriage in Islam has the view that marriage is not only a biological aspect but also a psychological, sociological, and theological issue. Because there is responsibility in marriage to the wife and kids, the community, and even Allah. The majority of scholars agree that the

⁶Zuhdi Muhdhor, Kamus Kontemporer Al Ashri Arab-Inonesia, (Multi Karya Grafika, 2003)

⁷Muhdhor, *Kamus Kontemporer*,...

⁸A.W. Munawwir, *Kamus Al-Munawwir*, (Pustaka Progresif, 2002).

⁹Ahmadi Hasanuddin Dardiri, "Pernikahan Beda Agama Ditinjau Dari Perspektif Islam Dan HAM," Khazanah 6, no. 1 (2013).



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law of marriage is sunnah, while the majority of Maliki adherents also concur. Some scholars assert that the law of marriage is obligatory, while others assert that it is sunnah.¹⁰

Masjfuk Zuhdi clarified the definition of interfaith marriage as "marriage of a Muslim (male/female) to a non-Muslim (male/female)" in relation to this topic. Regarding this matter, the law makes distinctions between three groups: marriages between Muslim men and polytheist women, marriages between Muslim men and women from the biblical people, and unions between Muslim women and men who are not Muslims.¹¹

In Indonesia, an interfaith marriage can take place between married individuals of different faiths as well as between Muslims and non-Muslims.

2. The argument for interfaith marriage and the views of the clergy

In studies related to interfaith marriage, there are several arguments that are often used as a reference in discussing interfaith marriage, including Surah Al-Baqarah verse 221, Allah says:

Meaning:

Never married polytheistic ladies unless they become believers! Even when she wins your heart, a servant lady who believes is preferable than a polytheist woman. Additionally, you should wait until believing women are ready to marry mushrik men. Despite the fact that he may win your heart, a loyal male servant is actually preferable to a polytheist man. They invite people to hell, while Allah invites them to heaven and, with His permission, to forgiveness. In order for mankind to learn from His verses, (Allah) explains them to them.¹²

Ibn Abi Martsad al-Ghanawi asked the Prophet for permission to marry the child of a Quraysh woman who is poor but beautiful and who was once his lover before converting to Islam, but who is still polytheistic, according to the history

¹⁰Dardiri, "Pernikahan Beda Agama Ditinjau Dari Perspektif Islam Dan HAM,"...

¹¹Abdul Jalil, "Pernikahan Beda Agama dalam Perspektif Hukum Islam dan Hukum Positif di Indonesia", *Andragogi* 6, no. 2, (2018), 48-49.

 $^{^{12}{\}rm Lajnah}$ Pentahsis Mushaf Al Qur'an Kementerian Agama RI, Al Qur'an Dan Terjemah (Jakarta: Cipta Bagus Segera, 2013).



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related by Ibn Mundzir, Ibn Abi Hatim, and al-Whidi, who came from al-Muqatil..¹³ Ibn Abi Martsad, at the same time, was a Muslim. When Rasulullah saw that, he prevented her best friend from marrying her. Allah then gave us this verse. according to Al-Baghawi. Ibn Kathir went over the interpretation of the aforementioned text, according to which a believer cannot wed a polytheist who worships idols. Then, this passage broadly forbids polytheists from the Kitabiyah (Jews and Christians) and Watsaniyah (idol worshipers) from getting married. Ibn Kathir, however, disallows Muslim unions with women of the People of the Book on the grounds of Quranic passages that clarify the rules governing interfaith unions, specifically Surat al-Maidah verse 5:¹⁴

Meaning:

"Whatever that is nice has been become legal for you on this day. You may consume the food (slaughter) of the People of the Book, and they may consume food from you. And if you pay their dowry to marry them, as long as you do not intend to commit adultery or keep women as pets, it is legal for you to marry women who preserve honor among women who believe and women who guard honor among people who were given books before you. After believing, anyone who rejects religion is truly doing their deeds in vain and will be counted among the losers in the hereafter" (QS. Al-Maidah:5)¹⁵

The above verse gives Muslim men the option to marry Ahl al-Kitab, allowing interfaith marriage. Jews and Christians are what the phrase "People of the Book" in this passage refers to, according to Sheikh at-Thanthawi in Kitab Al-Wasith. Al-Nawawi stated that Imam al-Shafi'i held that Muslim males might wed these biblical women as long as they followed the Torah and the Bible prior to the revelation of the Qur'an and continued to practice their religion in accordance with their holy book. The other three schools of thought—Hanafi, Maliki, and Hambali—believe that Muslim males may marry devout women without exception, even though

¹³Nurinayah, "Menyelisik Hukum Pernikahan Beda Agama dalam Alquran", *Comparativa: Jurnal Perbandingan Mazhab dan Hukum* 2, no. 2, (2021), 175.

¹⁴M. Cholil Nafis, *Hukum Nikah Beda Agama*, (islam.nu.or.id, 2022).

¹⁵Kementerian *Agama* RI, Al Our'an Dan Terjemah.



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the People of the Book's religion has been canonized or altered). ¹⁶ The close companion of Abdullah bin Umar and a number of his friends said that it is prohibited and unlawful to wed members of the People of the Book because they have altered the Qur'an and claimed that Allah swt is the third of the three gods (trinity), which is false.. ¹⁷ In actuality, they have joined forces with Allah (swt) through aqidah (shirk). They interpret it to suggest that Ahl al-Kitab can marry as there weren't enough Muslim women around at the time this verse was revealed, thus Allah SWT granted them a dispensation. While there are many Muslim women nowadays, the dispensation no longer exists, making it forbidden to wed an Ahl al-Kitab. Allah SWT stated in another verse of the Qur'an that it is forbidden for a Muslim to wed a non-believer. Verse 10 of Surah Al-Mumtahanah provides the following explanation:

Meaning:

You who believe, come! You should test a believing woman's (faith) if she comes to immigrate to your country. Allah is more knowledgeable about their faith than you are; if you are aware that they (really) believe, do not give them back to their unbeliever husbands. Both those who do not believe in them and those who do not believe in them are not permitted. provide their (husbands) with the dowry they have already provided. Furthermore, if you give them the dowry, it is not sinful for you to marry them. You should ask for the dowry that you have returned, and (if the husband continues to be unbeliever) let them ask for the dowry they have paid back (to his ex-wife), and you should not stay on the ropes of (marriage) with unbelievers)¹⁸

The understanding between the Messenger of Allah and the Meccan polytheists in Hudaibiyah, according to At-Tabari, that everyone who descends from them must be returned to the Meccan polytheists, is explained by the verse above. When a lady who is descended from Meccan polytheists is present, she is prohibited from returning to them if, after being put to the test, it emerges that she believes in

¹⁶Yulianti, "Pernikahan Beda Agama dalam Pandangan Empat Mazhab", *Darussalam* 23, no. 2, (2022), 9-13.

¹⁷Muhammad Rasyid Ridha, *Tafsir al-Manar*, in Jilid 6 (Kairo: Dar al-Manar, 1367 H), 370.

¹⁸Kementerian *Agama* RI, Al Our'an Dan Terjemah.

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Allah and His Messenger. Because it is forbidden for a believer to wed a non-Muslim woman and for a Muslim lady to wed a kafir man.¹⁹

In the Indonesian context, various Islamic organizations provided their responses, for example the Indonesian Ulema Council in its fatwa number 4/MUNAS VII/MUI/8/2005 issued a fatwa regarding the law prohibiting interfaith marriages as follows:

- a. Interfaith marriage is haram and invalid.
- b. The marriage of a Muslim man to a woman from the People of the Book, according to gaul mu'tamad, is illegitimate and invalid.²⁰

The NU organization, Nahdlatul Ulama, has also issued a fatwa on interfaith unions. At the 28th Muktamar, which took place in Yogyakarta at the end of November 1989, the fatwa was decided upon. In their fatwa, NU clerics made it clear that in Indonesia, marriages between persons of various religions are invalid.

Whereas the Muhammadiyah organization stated or strengthened the viewpoint that it is not permitted to marry non-Muslim women or Ahlul Kitab in the resolution of the 22nd Tarjih Congress of 1989 in Malang, East Java, with the following justifications:

- a. The Ahlul Kitab that exists today is different from the Ahlul Kitab that did so during the Prophet's lifetime.
- b. All of the People of the Book today are categorically polytheists or consider other deities to be partners with Allah, claiming that Jesus is the son of God for Christians and Uzair is the son of God for Jews.
- c. It is a given that interfaith marriages cannot create a sakinah family, which is the primary goal of marriage.
- d. With God's help, there are plenty of Muslim women available; in fact, there are more Muslim women than there are men.²¹

¹⁹Ibn Jarir at-Thabari, *Jami' al-Bayan fi Ta'wil Al-Quran*, (t.tp: Muassah Ar-Risalah, 2000),

²⁰Majlis Ulama Indonesia, *Himpunan Fatwa MUI Sejak 1975*, (Jakarta, 2011), 477-481.

In result, the salaf and khalaf scholars concur that interfaith unions between Muslim women and non-Muslim men are invalid. Scholars disagree on the legality of interfaith unions between Muslim males and women of other faiths (Jewish or Christian), with some believing it to be acceptable and others believing it to be unlawful. However, Indonesian clerics who belong to the MUI, NU, and Muhammadiyah organizations as well as Muslim men and Muslim women have all agreed to outright forbid interfaith unions. It can be inferred from the above description, which discusses from a variety of angles beginning with references to interpretation, figh, laws and regulations, and socio-religious, that scholars are in agreement that interfaith marriage between Muslim men and Muslim women and polytheists or musyrikah is invalid. and filthy. The scholars also concur that it is invalid and forbidden for Muslim women to wed polytheists, unbelievers, or followers of the Bible. Although contemporary scholars, particularly those who are members of Islamic organizations in Indonesia, agree that the law of interfaith marriage is categorically invalid and illegal, Salafi scholars of the Salaf era disagreed on the issue of Muslim men marrying Islamic (Jewish and Christian) women.²²

Along with the opinions of large organizations mentioned above, interfaith marriage is likewise governed by the Marriage Law, while it is not expressly forbidden but rather implied as part of the law:

Article 2

- (1) Marriage is valid if it is performed according to the laws of each religion and belief
- (2) Each marriage is recorded according to the applicable laws and regulations Likewise in the Compilation of Islamic Law, in:

Article 40

²¹Keputusan Muktamar Tarjih Muhammadiyah ke XXII, (Malang Jawa Timur, 1989), 301-308

²²Aulil Amri, "Perkawinan Beda Agama menurut Hukum Positif dan Hukum Islam", *Media Syari'ah* 22, no. 1, (2020), 53-57.

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It is banned to enter into a marriage between a man and a woman due to specific circumstances: a. because the woman concerned is still married to another man;

b. a woman who is still in her iddah period with another man;

c. a non-Muslim woman.

Article 44

It is forbidden for a Muslim lady to wed a non-Muslim guy.

3. A legal evaluation of interfaith unions

Regarding the registration of interfaith weddings, most interfaith marriages are performed outside of Indonesia, where they can be legally consummated in accordance with local law and then be registered in Indonesia once the couple has returned.²³

Three perspectives on interfaith marriage are outlined in Law No. 1 of 1974, according to experts and legal professionals. First of all, interfaith marriage is unjustifiable and in breach of UUP Article 2 (1): Article 8 letter (f) states that marriage is illegal between two persons in a relationship whose religion or other relevant laws forbid it. Marriage is also illegal between two people who are in a relationship whose religion or other relevant laws forbid it. Interfaith marriages are now legally deemed unlawful and null and void by the marriage executive as a result of this clause. While there is a view that interfaith marriage is acceptable in Islam, this article asserts that it is allowed in this scenario according to the laws of each religion and belief.

Second, because interfaith marriages are considered mixed marriages under Article 57 of the UUP, which states that two persons in Indonesia are subject to various laws, they are legal, valid, and permitted. This second interpretation claims that the law not only governs marriages between couples of different nationalities but

²³Muti'ah, "Hukum Pernikahan Beda Agama Menurut Hukum Islam Dan Hukum Formal."...

²⁴Muhammad Khaeruddin Hamsin, "Perkawinan Beda Agama Dalam Tinjauan Syariah Dan Hukum Positif (Menyoal Pasal 2 ayat (1) *UU* No. 1 Th. 1974)", Jurnal TARJIH, Vol. 12, No. 2, (2014), 200.

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also between couples of various religions. He claims that the implementation is done in accordance with the steps outlined in Article 6 PPC: (1) Mixed unions are conducted in accordance with the law that is applicable to Using Article 66 UUP as a guide, the husband is the only one who may marry the prospective bride and groom without their consent.

Third, interfaith marriage is not governed by the UUP. As a result, while referencing Article 66 UUP, which underlines that other marriage-related laws are ruled invalid inasmuch as they have been covered by this law. However, since the UUP does not govern it, the previous laws can be enforced once more, necessitating that the mixed marriage laws (PPC) be followed when it comes to interfaith marriages. In addition to these three points of view, some people believe that the UUP needs to be improved because there is a legal void..²⁵

In terms of interfaith marriage's practicality, the issue is still contentious, and as was already mentioned, it is not easy to establish interfaith marriage in society. Interfaith marriage is still a reality in today's society. Interfaith weddings in the Wonosari Catholic Church reach an average of 32% per year, according to statistics the author has received in Gunung Kidul Regency, a region with a diverse range of religious practices; interfaith marriages at KUA also occur in a sizable proportion. There are a number of interfaith unions between Buddhists and non-Buddhists.

Another incident involved the Muslim couple Andy Vonny Gani P. and Protestant Adrianus Petrus Hendrik Nelwan. They went to the Tanah Abang Jakarta KUA and requested that their marriage be performed in accordance with Islamic law, but the KUA turned down their request owing to racial and religious discrimination. They both proceeded to the Civil Registry Office after that, but it too turned them away. They finally filed a petition with the Central Jakarta District Court after the KUA and the Civil Registry Office refused to perform their marriage. With its stipulation No. 382/Pdt/1986/PN.JKT.PST, dated April 11, 1986, the Central Jakarta

²⁵Lihat UUP No. 1 thn 1974 dan Abdul Halim Berkatullah dan Teguh Prasetyo, *Hukum Islam* Menjawab Tantangan Zaman yang Terus Berkembang, (Yogyakarta, Pustaka Pelajar, 2006), 147-148.

District Court denied the applicants' application and upheld the KUA and Civil Registry Office's denials:

- a. Because interfaith unions are not governed by the Marriage Law, marriages between people of the same religion are. These unions are registered by the Civil Registry Office for non-Muslims and the NTR Registrar Office for Muslims, respectively.
- b. In light of the fact that Law No. 1 of 1974 leaves interreligious marriages unregulated, the refusal by the two marriage registrars is acceptable and justified. This is so that marriage between potential husbands and wives who practice different religions is not prohibited by religious doctrine. The Supreme Court holds that it must be established and decided by legislation.
- c. Regarding that, in accordance with the provisions of Article 2 paragraph (1) and (2) of Law No. 1 of 1974, Marriage Registrars at the Civil Registry Office handle marriages performed in accordance with other religions than Islam, whereas Registrars for marriages performed in accordance with the Islamic religion are those to whom Law No. 32 of 1954 concerning NTR Registration refers.
- d. Because of this, it is not possible to perform the marriage in front of an NTR Registrar for a Muslim applicant who is being married to a Protestant man.
- e. Realizing that the Civil Registry Office's Marriage Registrar is their only option for getting married, and that there is no longer any other way to do so, it is vital to determine whether they can do so.

Even though the court has made a concession, several parties have persisted in advocating for the legality of interfaith unions up until this point. The Surabaya District Court's decision to permit the registration of interfaith marriages in its Stipulation Number: 916/Pdt.P/2022/PN.Sby has caused a new outcry over this topic. Filling the legal gap, protecting human rights, and avoiding social gatherings are the



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motivations. Even though he also made cohabitation lawful, disobeyed the legislation that was in effect at the time, and did not uphold human rights. According to Article 10 of Law Number 39 of 1999 Concerning Human Rights' chapter on the right to start a family and have children, "A valid marriage can only take place at the free will of both parties." ²⁶

D. Conclusion

It is clear from the description in the preceding section that there are many different perspectives held by academics regarding interfaith marriage. There are some that permit it, some that make supplementary notes, and some that outright forbid it. However, in practice, interfaith unions are outlawed in Indonesia by the Ulama through a number of Islamic organizations, such as the Indonesian Ulema Council, *Nahdhatul Ulama*, and *Muhammadiyah*. These laws and regulations include the Marriage Law and Compilation of Islamic Law. Still, there are many who continue to advocate for the legalization of interfaith unions. The authors advise that the current laws be improved in light of the reality of interfaith marriages in Indonesia so that there is no longer any legal controversy around interfaith marriages in that country.

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