

Conference Paper

Polemics of Interfaith Marriage Reviewed from the Perspectives of Marriage Law and the Compilations of Islamic Law

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ORCIDPrahasti Suyaman: <https://orcid.org/0000-0002-5225-2862>**Abstract.**

Indonesia regulates the marriage problems of its citizens through Marriage Law No.1 of 1974. In the Marriage Law Article 2 paragraph (1) it is stated that marriage is valid if it is carried out according to the law of each religion and belief. The heterogeneity of religions adopted by Indonesian society in their interactions will have an impact on marriage. Quite a lot of cases of interfaith marriages that occur in society have not been well received and are still considered problematic. On the other hand, the Indonesian state already has a law on marriage, but this law does not explicitly mention interfaith marriage. This gives rise to multiple interpretations and a lack of legal certainty regarding interfaith marriage. Although it must be admitted that the issue of interfaith marriage has experienced a legal vacuum, on the other hand, carrying out marriage will not be unstoppable. The purpose of writing this article is to examine the polemics of interfaith marriage, its impact, and the legal review of Marriage Regulation and *Kompilasi Hukum Islam*. The results of the study, marriage between religions, although, difficult but widely carried out in Indonesia, shows that the level of diversity of the Indonesian people is still not strong enough so that practices that are prohibited by religion and regulated in the Law are still carried out.

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1. INTRODUCTION

Interfaith marriages in Indonesia have recently become a topic of discussion, after several couples including special presidential staff held interfaith marriages, and previously viral couples married different religions in Semarang. A similar phenomenon occurs in the Indonesian border area of Malaysia in the interior of Sarawak, especially in the Sambas area which is still included in the territory of Indonesia. In this area, there are many interfaith marriages between the Dayak tribe of Kalimantan who adhere to the Kaharingan faith and the Malay tribe of Malaysian citizens who are Muslims.

Interfaith marriages caused their own polemics. In Indonesia, where what is recognized is a marriage of one religion, if a marriage is carried out between religions, it will

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cause complicated problems, in addition to the implementation of marriage as well as the registration of marriage itself.

The Constitutional Court of the Republic of Indonesia on December 15, 2014, issued Decision Number 68/PUU-XII/2014, in which amarnya rejected all requests for a material test of the Marriage Law Number 1 of 1974 concerning Marriage Article 2 paragraph (1), which was submitted by four Indonesian citizens who wished for interfaith marriages to obtain legal certainty in Indonesia.[1]

With this decision, article 2 paragraph (2) of the Marriage Law remains in force, still has legal force, and becomes the main legal basis for the implementation of marriage in Indonesia. Affirming that interfaith marriage does not or does not have legal certainty in Indonesia.

The reality on the ground after the Constitutional Court ruling is that there are still many couples who marry different religions, as admitted by Ahmad Nurcholish from the NGO Center for The Study of Religion and Peace (ICRP). As a consultant, companion, and advisor to couples of different religions, on his Facebook page wrote that he had helped 1424 couples of different religions to carry out marriages.

Interfaith marriages are still not well accepted among the people, it happens that one of the parties of the couple converts or follows the religion adopted by one of the parties, so that the marriage can be legalized based on the religion chosen by the couple. Amid the pros and cons in society, with respect to this interfaith marriage, the community says that religious matters are a personal matter, so the state does not need to make rules that include religious elements. However, there are some people who argue that interfaith marriage is prohibited by religion so it is unjustified and unacceptable in society.

The reality in people's lives that marriages are different religions it occurs as an undeniable reality. In practice, many couples want to live together but there is no marriage because it is based on a different religion or belief. There are also couples who have lived together or "got together" because of a reason that affects their relationship, namely different religions. In this context they only hold on to the commitments that have been made by both parties. However, the problem is that when the commitment does not go well, the relationship will become complicated, and legal consequences arise which results in disruption of domestic life harmony because there is no religious role in the purpose of the marriage bond.

Thus, if you are going to have a marriage, both parties still maintain their respective religions, then the marriage will result in having children, if you have children, the child will be confused in having faith. This marriage also has no legal certainty. Because basically, the Marriage Law in Indonesia does not specifically regulate interfaith marriage.

2. METHODOLOGY/ MATERIALS

This paper uses the descriptive method.[2] And is a type of normative juridical legal research. The type of normative juridical legal research is where the law is conceptualized as written in the laws and regulations (law in books) or the law is conceptualized as a rule or norm that is a benchmark for human behavior that is considered appropriate. , where the research procedures produced are descriptive data, speech, writing, and observed behavior from the community or the research subject itself.[3]

3. RESULTS AND DISCUSSIONS

3.1. Polemics of Interfaith Marriage

The Compilation of Islamic Law Article 4 states that marriage is valid if it is carried out according to Islamic law in accordance with article 2 paragraph (1) of Law No. 1 of 1974 concerning marriage. The article affirms that a valid and recognized marriage by law is a marriage in accordance with the laws of each religion.

The purpose of marriage in Article 3 of the KHI is to realize a *sakinah*, *mawaddah*, and *rahmah* domestic life. One of the efforts to realize *sakinah mawaddah* and *rahmah* is with the same religion among couples. According to Usep Saepullah, interfaith marriages, in addition to controversies that cause debate, also cause social conflicts between married couples of different religions and between their families.[4]

Islam, explaining through verse 221 of surah al-Baqarah that one of the factors that will provide harmony in marriage is the same religious background.[5]

وَلَا تَنْكِحُوا الْمُشْرِكِيْنَ حَتَّىٰ يُؤْمِنَ ۚ وَلَا مَٔةٌ مُّؤْمِنَةٌ خَيْرٌ مِّنْ مُّشْرِكَةٍ وَلَا تُنْكِحُوا الْمُشْرِكِيْنَ حَتَّىٰ
يُؤْمِنُوا ۚ وَلَعَبْدٌ مُّؤْمِنٌ خَيْرٌ مِّنْ مُّشْرِكٍ ۚ وَلَا أُعْجَبُكُمْ ۚ أُولَٰئِكَ يَدْعُونَ إِلَى النَّارِ ۚ وَاللَّهُ يَدْعُوا إِلَى الْجَنَّةِ وَالْمَغْفِرَةِ بِإِ
ذْنِهِ ۚ وَيُبَيِّنُ آيَاتِهِ لِلنَّاسِ لَعَلَّهُمْ يَتَذَكَّرُونَ

”And you shall not marry a woman of faith before they have faith. Truly, the servant of the sahaya of the woman of faith is better than the woman of the musyrik even though she attracts your heart. And you shall not marry a man (male) believer (to a woman of faith) before they have faith. Truly, the servant of the man of faith is better than the man of the faith even though he attracts your heart. They invited them to hell, while God invited them to heaven and forgiveness with His permission. (God) explains his verses to men so that they may take lessons.”

In his interpretation of this verse, al-Maraghi (d. 1952) explains, (وَلَا تُنْكِحُوا الْمُشْرِكِيْنَ حَتَّىٰ يُؤْمِنُوا) that you shall not marry the women of the musyrik who do not have a book, so

that they will have faith in Allah and justify the Prophet Muhammad SAW, then the word "musyrik" in the Quran which has the same meaning as this verse is the following word of Allah:

مَا يَوَدُّ الَّذِينَ كَفَرُوا مِنْ أَهْلِ الْكِتَابِ وَلَا الْمُشْرِكِينَ أَنْ يُنَزَّلَ عَلَيْكُمْ مِنْ خَيْرٍ مِنْ رَبِّكُمْ

"The pagans of the ahlul of the book and the people of the musyriks do not want to be passed down to you a good from your Lord." (QS Al-Baqarah 2: Verse 105)

لَمْ يَكُنِ الَّذِينَ كَفَرُوا مِنْ أَهْلِ الْكِتَابِ وَالْمُشْرِكِينَ مُتَفَكِّينَ حَتَّى تَأْتِيَهُمُ الْبَيِّنَةُ

"The infidels of the scribes and the musyriks will not leave (their religion) until there comes to them real evidence," (QS Al-Bayyinah 98: Verse 1)

According to him, it can be inferred from these verses, you shall not marry the women of the wicked as long as they are still in their animosity.[6] Sayyid Quthb explained that it is illegal for Muslim men to marry musyrik women, and vice versa, haram musyrik men marry Muslim women. The two do not meet in the creed concerning Allah and the rules of life are not enforced on the *manhaj* of Allah.[7]

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ : تُنْكَحُ الْمَرْأَةُ لِأَرْبَعٍ : لِمَالِهَا , وَلِحَسَبِهَا , وَلِجَمَالِهَا , وَلِدِينِهَا , فَأَظْفَرُ بِدَاتِ الدِّينِ تَرَبُّثَ يَدَاكَ (مُتَّفَقٌ عَلَيْهِ مَعَ بَقِيَّةِ السَّبْعَةِ

It is from Abu Hurairah Radliyallaahu 'anhu that the Prophet Shallallaahu 'alaihi wa Sallam said: "The woman was married because of four things, namely: heredity, heredity, beauty, and religion. Get a devout woman, you will be happy." (Muttafaq Alaihi and Imam Lima).[8]

Indonesian Ulema Council in the Session of Commission C for Fatwas in Munas VII MUI 2005, taking considerations including from the verses of the Quran above and also the hadith that has been mentioned, and using the rules of fiqh *المفاسد* `در preventing omnipresence takes precedence (takes precedence) over attracting benefits), and rules *Sadd adz-Dzari'ah* decide and establish a Fatwa on Interfaith Marriage as follows:[9]

1. Interfaith marriage is illegitimate and illegitimate.
2. The marriage of a muslim man to a woman ahlul kitab, according to *qaul mu'tamad* is haram and illegitimate.

Although it is clear to Muslims that based on the Quran and hadith marrying couples of different religions is forbidden, the reality is that there are still Muslims who still want marriages to occur with couples of different religions. This can happen due to the following factors:

1. Daily social life in social life.
2. Education about religion is minimal. Many parents never or rarely teach their children about religious knowledge. So it doesn't matter if you have a partner of different religions.
3. The background of parents who also performed marriages was different religions.
4. Freedom to choose a partner. Many couples choose different religions because they are based on love alone and do not consider future relationships after marriage.
5. Globalization. As a result, social relations with various nations, cultures, and religions contributed to the occurrence of interfaith marriages.[10]

For Catholic religion, marriage between a person who is Catholic and a person who is not Catholic and is not carried out according to the laws of the Catholic religion, the marriage is considered invalid and not an ideal marriage. This is because in Catholicism marriage is seen as a sacrament, so it is recommended that adherents marry fellow Catholics.

Protestantism requires its adherents to marry the same religious so that the main purpose of marriage according to Protestantism, namely achieving happiness, can be achieved. In the event that the adherents are married to adherents of another religion, they are encouraged to marry civilly where both parties continue to adhere to their respective religions. In general the church does not bless their marriage.[11]

From the humanistic side, marriage is related to basic human desires and needs. According to Abraham Maslow, there are five basic levels of human needs, namely:

1. Physiological *needs*. Physical needs are the most basic and dominate the needs of the human being the most. These needs are more biological in nature such as oxygen, food, water and so on.
2. The need for *safety needs*. Once biological needs are met, humans tend to seek a sense of security.
3. The need for ownership and love (*the belongingness and love needs*). Humans will tend to seek the love of others so that they can be understood and understood by others.
4. The need to be appreciated (*the esteem needs*). Human instinct to be appreciated by others and even society.

5. *Self-actualization* needs. The highest peak of human achievement after the above needs are met.[12]

The need for ownership and love is a basic need and it may be that for some people it should not be hindered by religion or belief, so that interfaith marriages are then carried out.

3.2. The Impact of Interfaith Marriage

A marriage always causes legal consequences and if the marriage is a marriage of different religions, it will certainly cause various problems. These problems concern the husband and wife relationship and affect the children if they have children. And the legal consequences here are divided into two parts, namely according to the psychological aspect and according to the juridical aspect. The consequences that arise in interfaith marriages according to the psychological aspect here include the fading of households that have been built for a dozen years. At first, when he was still dating, the difference was considered trivial, which could be overcome by the basis of love. But over time it turns out that the difference can become a polemic in building a solid household. Just imagine, when a husband (who is Muslim) goes to umrah or takes the Hajj, it is certainly a happiness for a husband if his wife and children can come with him. But how sad it would be when his wife and children preferred to go to church, or to the monastery. So a household that was originally a love for each other, over time will fade due to differences in beliefs. Because one of the happiness of a Muslim father is to be an imam in congregational prayers with his wife's children and vice versa, the happiness of a Christian or Buddhist wife is to go to church or to the monastery to pray with his husband and children, because the husband is a head of household who is the leader for his wife and children.

Likewise, when Ramadan arrives, the atmosphere of fasting becomes the inner glue of family life when the couple is equally Muslim. But that desire is difficult to fulfill when the partner is of different religions. On the other hand his wife, who happens to be a Christian for example, will definitely feel the same way, how wonderful it is to do worship in church side by side with her husband and celebrate Christmas together, but it is all just a delusion.

In this case, there is also a mother who feels happy because her children follow her mother's religion. This condition makes a father feel lonely when he wants to share religious knowledge and experiences. In this age of pluralism, interfaith marriages seem to be increasing. Regardless of theological issues and religious beliefs, it is necessary

to remember that the purpose of the household is to achieve eternal happiness based on the One True Godhead. For this reason, compatibility and mutual understanding are very important to maintain the harmony and growth and development of children in the family. Therefore, the obligation that must be carried out by every married couple who fosters a family is to fill and complement each other between their spouses. And in accordance with the provisions in the marriage law No. 1 of 1974 article 33 says that husbands and wives are obliged to love each other respectfully, faithfully and give help to one's inner birth to another. From the formulation of the article, it can be concluded that the obligations of the husband and wife must be based on mutual respect and mutual love so that the sturdiness in the house remains intertwined.

Couples who marry different religions, which were originally only based on love, over time as they get older, they will definitely feel the consequences. Because at an increasingly mature age, of course, it will lead to the thought of the existence of eternal happiness. And happiness here, of course, is not only based on love itself but must also be based on a sense of faith that guides couples to be more obedient to their creator in achieving eternal happiness. If all of that is not owned in the sense of different beliefs, then in the household it will feel tenuous and empty.

And the problem of interfaith marriage if blessed with offspring, will certainly affect the position of the child and the child's mentality and how to maintain good relations between children and parents regarding interfaith marriage. The problem that arises here is scrambling for influence so that his son follows the religion he believes in. If his father is Islamic, he wants his son to be Muslim, if his mother is Christian he wants his son to follow Christianity. It has indirectly become a competition for both parent couples in order to influence which religion to adhere to. Then the child will be mentally burdened in choosing or adhering to which religion he will adhere to. Indeed, a good and commendable child is a child who is filial to both parents and respects all orders, but when the child is faced with a problem like this, the child will definitely be confused about which one to choose, the child's psychology may become disturbed by the problems of his parents.

They were at a loss as to who to follow his convictions. Moreover, the phase of the child who is entering a period of personality formation and development where religious values play a very important role. If religion is even a source of conflict, it is certainly not good for children.[11] Indeed, as parents, they want their children to embrace the religion adopted by both parents, but in the position of parents who have different beliefs, it is very difficult to make a choice. If a father adheres to the Muslim religion, then how happy it would be if his son followed his father's religion and read a letter of yasin to the

father when he died in order to be calm in heaven. And vice versa with the wishes of the Mother. In this case, the child will be in a position that goes awry, where the child wants to make his parents happy and also does not want his parents to fight for influence so that both forget the goal of a happy household due to differences in beliefs that exist in the household. The child, too, who is supposed to be the glue of the parent as a husband and wife, sometimes becomes a source of dispute and relationship tension because of these differences in beliefs. On the other hand, children also have the right to choose which religion is worthy of their belief in the future without coercion from both parents.

Because religion is like clothes that are used for life. Religious spirits, beliefs, and traditions are always attached to every religious individual, including in domestic life. There are religious rituals that are ideally maintained and carried out collectively in domestic life. For example, the implementation of congregational prayers in Muslim families, or the ritual of fasting. All this will feel beautiful and comfortable when done compactly by the whole family. After the congregational prayers, a father who acts as a priest then delivers a cultum and dialogue, exchanging experiences to interpret life. Such a beautiful and religious atmosphere is difficult to realize when the life partner is of different religions, the enjoyment of having a family is lost.[11]

So, it can be concluded that psychologically interfaith marriages harbor problems that can eat away at both happiness and domestic harmony. With the consequences that occur, of course, many interfaith marriages end in divorce. However, this does not mean that a religious marriage will also be free from problems. It all depends on the two couples who are going to get married how to respond to the differences that arise within the family sphere.

If the marriage always causes problem after problem that cannot be resolved and there is no solution for the two couples, then the consequences arising in divorce in interfaith marriages are included in the legal consequences of interfaith marriages in terms of juridical aspects.

The legal consequences of interfaith marriages are seen from the juridical aspect, namely about the validity of interfaith marriages. According to the Marriage Law, the validity of a marriage must be in accordance with the religion and beliefs regulated in article 2 paragraph (1). Based on the article, it can be interpreted that the marriage law leaves its decisions to the teachings of their respective religions. If in interfaith marriages this is legal according to religion, then the marriage law also recognizes its validity. But the reality is that for each religion, it is very difficult to legalize the marriage

of different religions unless one of the couples converts to follow one of their spouses. And even then it could be a religious perversion.

Likewise with the issue of the status of the child born. According to the law, children born by spouses of different religions are considered valid as long as the marriage of the different religion is legalized by religion and recorded in the marriage registration office. Because a legal child according to the provisions of the marriage law article 42 is a child born from a legal marriage based on article 2 paragraph (2). Furthermore, the legal consequences that will also arise from interfaith marriages are regarding the issue of inheritance. For example, a husband is Muslim and his wife and children are non-Muslims, then, it is certainly an obstacle for Muslims to receive or inherit their inheritance.

If there is a divorce, of course, it will cause rights and obligations for the husband and wife and children if they have children. Divorce in interfaith marriages is also very complicated, for example, if it occurs in a Muslim husband with a married Catholic wife. Case in point : a Muslim man married a catholic woman who initially married following an Islamic marriage blessed by the penghulu but was not registered with the KUA office, then remarried following the religion of the wife who is Catholic, blessed by the priest then registered in the civil registry office and had a valid marriage certificate.

The question here is how the divorce process is valid for the two couples mentioned above due to the existence of a marriage of different religions. Surely the marriage law does not specifically regulate marriages of different religions. The Marriage Law here only relies on article 2 paragraph (1), namely the validity of a marriage regulated according to their respective religious beliefs. And if the marriage here gives rise to divorce, then the first will be discussed about the religion of the husband. According to the author, if in Islam there is a marriage without being registered in the marriage registration office or KUA, the marriage is said to be a serial marriage. And serial marriage in the law is also unregulated and has no legal right of recognition and protection. So what will be used in the case of divorce in marriages of different religions here is according to a valid marriage, namely a catholic marriage. Or a marriage from the wife's religion in the performance of a valid marriage. Because the marriage has authentic legal evidence, namely the marriage certificate and is recognized by religion and the State because it is recorded in the marriage registration at the Civil Registry Office based on article 2 paragraph (2) of the Marriage Law. But religiously for Catholics marriage is a sacred covenant and only occurs once in a lifetime, so a divorce is strictly prohibited by Catholics. Unless it gets a dispensation from the competent authority, namely the Bishop, and also has to go through court proceedings, then the divorce is

allowed. Thus, a divorce that has the force of law and is considered valid is a divorce following the consequences of the validity of the marriage. Therefore, a valid interfaith marriage results in divorce based on this as complicated as the one that will carry out the marriage.

3.3. Interfaith Marriage According to Marriage Law No. 1 of 1974 and Compilation of Islamic Law

In Indonesia, before the marriage law was formulated, there was a regulation on mixed marriage, namely Stbl. 1989 No. 158. In article 1 of the Mixed Marriage Regulation, it is stated that what is meant by mixed marriage is marriage between people who in Indonesia are subject to different laws. Due to the generality of this provision, jurists differ in opinion about this marriage. Some argue that the differences in question are differences in population groups and some interpret differences between religious believers, and some interpret them as different regions of origin.[13]

Marriage is juridically formally regulated in the following laws and regulations:[14]

1. Law No. 32 of 1954 concerning the Establishment of the Enactment of Law of the Republic of Indonesia No. 22 of 1946 which was passed on November 21, 1946 concerning Registration of Marriages, Talaks, and References in all regions outside Java and Madura.
2. Law No. 1 of 1974 concerning Marriage which is the material law of marriage.
3. Government Regulation No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning Marriage. This REGULATION only contains the implementation of several provisions contained in Law No. 1 of 1974
4. Law No. 7 of 1989 concerning Religious Justice.

The main source of all Indonesian state regulations is Pancasila and the 1945 Constitution. The first precept of Pancasila is the One True Godhead, in the 1945 Constitution in one of its articles stipulates state guarantees in the implementation of the teachings of their respective religions, of which the largest adherents in Indonesia are Islam. This situation can give an idea that Indonesian laws are religious in nature, and the religious teachings that are widely absorbed in the law are dominated by Islam.

With regard to the implementation of a marriage that is valid and recognized by the state, article 2 paragraph (1) has affirmed it, however, the strict prohibition of interfaith marriage is not mentioned in one particular article. The article regulating the prohibition

of interfaith marriage is contained in the Compilation of Islamic Law Article 40 paragraph c and article 44:

Article 40

It is forbidden to have a marriage between a man and a woman due to certain circumstances: c a woman who is not Muslim.

Article 44

A Muslim woman is prohibited from entering into a marriage with a man who is not Muslim.

If you pay attention to the Marriage Law and KHI which regulate the prohibition of marriage, almost all provisions contained in the fiqh sourced from the Quran have been accommodated in the laws and regulations on marriage in force in Indonesia.[14]

Indonesian citizens, especially those who are Muslims, should have a solid foundation from the religious understanding of marriage, so that there will be no marriage with couples of different faiths. But because not all citizens of the Muslim faith fully understand the religious guidelines, there is still interfaith marriage.

Unsupportive regulations are then outsmarted by conducting interfaith marriages abroad. In addition to marrying abroad, there are also those who use the method of subjugation while in one of the religious laws, namely the morning of marriage according to the religion of the bridegroom, the afternoon of marriage according to the religion of the woman. This method is possible by re-interpreting article 2 paragraph (2) of the Marriage Law as often done by the Paramadina group, wahid Institute, and the Indonesian Conference on religion and Peace (ICRP).[15]

The ratification of Law no. 23 of 2006 concerning Population Administration contains several provisions regarding interfaith marriage. This law places a residency event such as a marital event as a right. Based on this law, marriages of Indonesian citizens held abroad must be registered with the competent authority in the local country and reported to the representative of the Republic of Indonesia. By the Representative of the Republic of Indonesia, the marriage is recorded in the Register of Marriage Certificates, then an Excerpt of the Marriage Certificate is issued. When they return to Indonesia, they must report to the Population and Civil Registry Office no later than 30 days after arriving in Indonesia.[15]

4. CONCLUSION AND RECOMMENDATION

Interfaith marriage is still a polemic in Indonesia because the prevailing laws and regulations do not provide an opportunity to marry couples who adhere to different beliefs.

The legal consequences arising from interfaith marriages in Indonesia are reviewed in psychological and juridical aspects. The psychological aspect that occurs is the fading of households that have been built for a dozen years, the emergence of differences of opinion in building a happy household becomes tenuous due to the problems of differences that come one after another. A child's mental disturbance is confused about which religion to follow due to parental competition in influencing the child. And reviewed in the juridical aspect, the legal consequences of interfaith marriages are seen from the juridical aspect, namely about the validity of interfaith marriages and the status of children in interfaith marriages. Likewise, divorce occurs due to problems – problems of differences of opinion and beliefs in the household and inheritance that occur in interfaith marriages cannot be accepted by the heirs due to religious differences.

Ideally, if all citizens understand each religion that is well adhered to, there will be no violations by holding interfaith marriages.

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