

Analysis of Interfaith Marriage Arrangements in Islamic Family Law: Multiculturalism and Social Harmony Perspectives

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Article Info

Article history:

Received August, 2024
Revised October, 2024
Accepted October, 2024

Keywords:

Interfaith Marriage
Arrangements
Islamic Family Law
Perspectives on
Multiculturalism and Social
Harmony

ABSTRACT

This research aims to understand the analysis of Interfaith Marriage Arrangements in Islamic Family Law: Multiculturalism and Social Harmony Perspectives. Normative research is legal research that places law as a system of norms. The norm system itself is related to the principles, norms, rules of the legislation itself. The approach of examining statutory regulations aims to find out how consistent and appropriate the laws are with the legal problem or case being studied. Data collection techniques are a way of recording events or information, characteristics and all forms of information that describe the object of research. The results of research on interfaith marriages according to Islamic law as contained in the Word of Allah, Surah al-Baqarah verse 221, have confirmed that interfaith marriages are absolutely forbidden, apart from that, if you continue to carry out an interfaith marriage, many disputes will arise in the household because both partners have different opinions and beliefs. Interfaith marriage in Indonesia is a reality that continues to occur even though state law and religious law expressly prohibit it. In fact, if you look closely, Law no. 39 of 1999 concerning Human Rights in Indonesia does not explicitly regulate interfaith marriages. On the issue of more detailed marriage regulations, including the issue of interfaith marriages, Human Rights still returns it to the applicable laws and regulations, which in this case the Marriage Law in Indonesia is Law no. 1 in 1974.

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1. INTRODUCTION

According to Islam, marriage is a sacred contract which means worshipping Allah according to the Sunnah of the Prophet. The marriage itself is carried out in good faith, full of responsibility and in accordance with applicable legal provisions so that later they will live happily, safely, peacefully, peacefully and loving each other. As a means

of expressing gratitude, love and affection that Almighty God has given to his servants, [1] As explained in Surah an-Nisa' verse 21, marriage is not an ordinary contract but a strong contract. Marriage itself is a form of worship, but in social life sometimes several issues or problems arise related to marriage, one of which is interfaith marriage, which is a marriage between a man and a woman who in this case have different beliefs or religions. As

in Indonesia itself, there are six recognized religions, including Islam, Buddhism, Hinduism, Catholicism, Christianity and Confucianism. This diversity certainly does not reduce the sense of tolerance in matters of religion and social life. Therefore, as is the case in Indonesia, marriages between different religions can still be found.

In general, marriage bonds are carried out by couples of different genders but each adheres to the same religion, for example the man is Muslim, the woman is also Muslim, the man is Christian, the woman is also Christian; the man is Hindu, the woman is also Hindu, and so on. It is very rare for aqad marriages to be carried out by couples of different religions, so the discussion about interfaith marriages in Indonesia is a complicated matter and is always a topic of discussion. Religious issues involving marriage, we can see that every religion certainly has provisions that regulate marriage matters, so that in principle it is regulated and subject to the provisions of the religion adhered to by the couple who will enter into marriage. Social problems related to marriage are the perspective of society in general regarding the implementation of marriage, which will have a certain impact on couples who will get married in their community environment [2].

The discussion regarding interfaith marriage in Indonesia is a complicated matter and is always a topic of conversation. Prior to the enactment of Law Number 1 of 1974 concerning Marriage, interfaith marriages were classified as mixed marriages which were regulated in the *Regeling op de Gemengde Huwelijk stbl. 1989* Number 158, which is usually abbreviated as GHR. In Article 1 of the GHR it is stated that mixed marriages are marriages between people who in Indonesia are subject to different laws. Because Indonesia is a pluralistic society in religion. Which consists of the Samawi religion and the Ardhi religion. Under conditions like this, marriages between Muslims and Catholics, Muslims and Hindus, Catholics and Protestants, Hindus and Buddhists and so on can occur. However,

what will be the main topic in our discussion is interfaith marriages between Muslim men and non-Muslim women [3].

Supreme Court Decision No. 1400 K/Pdt/1986 states that if a couple marries from people of different religions, they can ask for a court order. The issue of interfaith marriage is not a new problem but has existed for a long time and is still a topic of discussion among the public today. From this we can see that in Indonesia itself there is no law or statute that explicitly regulates the prohibition of interfaith marriages. If you look back, this is also one of the considerations in order to realize human rights as citizens and defend their respective religions. It should be remembered again that this does not mean that with the Supreme Court Decision Jurisprudence, someone will be free to enter into an inter-religious marriage, because in the process, if you wish to enter into an inter-religious marriage, you must ask for a decision from the relevant district court. Issues related to interfaith marriages certainly cannot be concluded subjectively, they must be based on considerations of Islamic Law, Positive Law and also the opinions of several Ulama or Experts. As stated in Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage states that "Marriage is valid, if it is carried out according to the laws of each religion and belief." 7 From this we can see that this rule is binding in that a person who wants to marry must adhere to the same religion and have the same beliefs.

The phenomenon of interfaith marriages is increasingly occurring among Indonesian society. Then, if viewed from Islamic law, the Indonesian Ulema Council (MUI) prohibited such marriages by issuing Fatwa Number: 4/MUNAS VII/MUI/8/2005 concerning Interfaith Marriages, because such marriages will cause more harm and will have an impact on home life. This step also invites debate among Muslims and in society. 10 The MUI fatwa is not to hinder human rights but to provide guidelines as well as efforts to

create and maintain a peaceful and peaceful household life so as to avoid actions that cause damage to the household. Even though Indonesia has clear regulations regarding marriage, this does not rule out the possibility that there will still be many cases of interfaith marriages. At first glance, it is clear that basically the marriage they entered into was not in accordance with the laws in force in Indonesia, however, in the stipulation of this decision they received the right to be able to register their marriage in accordance with the existing administration in Indonesia. Therefore, the author is interested in researching more deeply regarding this problem, especially one of the Muslim parties, which of course is not in accordance with the provisions in Islamic law. However, we need to remember again that Indonesia has human rights (HAM) and they are universal and there are many points or issues that are debated in the implementation of these human rights. One of them is a person's right to enter into an interfaith marriage. The concept of human rights brought by the West states that people should not be differentiated just because of their religious basis and this includes marriage. This certainly contradicts the concept of human rights in Islam.

In essence, currently there are still families who have carried out interfaith marriages between followers of Islam and non-Muslims. The marriage was carried out by requesting a decision from the court, one of which was the decision of the Magelang District Court and the Ungaran District Court which contained the granting of permission to carry out an interfaith marriage in the presence of employees of the Magelang and Ungaran civil registration offices, their marriage was carried out after the promulgation of Law Number 1 1974 Junto Government Regulation Number 9 of 1975 concerning the implementation of Law Number 1 of 1974 concerning Marriage. The official interpretation of the Marriage Law itself only recognizes marriages that are based on the same religion and beliefs of two people of different sexes who want to get married. In a pluralistic society like Indonesia, it is very

possible for marriage to occur between people belonging to different religions. In the presence of inter-religious marriages, there will be differences in principle in the marriage, so it is feared that problems will arise that will be difficult to resolve in the future, for example regarding the rights and obligations of husband and wife, inheritance and child care. However, if the parents have different principles and beliefs, how do the parents educate the child about religious basics? Apart from that, the problem that will arise is if an interfaith couple divorces which court will handle the divorce case. Apart from that, if one of the interfaith couples dies, what about inheritance issues? From this inheritance problem, it will arise whether a child born from an interfaith marriage has the right to inherit from a father or mother who has a different religion than the child. Because interfaith marriages will only cause problems, many people oppose interfaith marriages.

2. LITERATURE REVIEW

2.1 *Interfaith Marriage Arrangements*

Meanwhile, the MUI issued its legal fatwa regarding the prohibition of interfaith marriages number 4/MUNAS/VII/MUI/8/2005 which stipulates that interfaith marriages are haram and invalid as well as marriages between Muslim men and women from people of the Book, according to your qaul' tamad is haram and invalid. In Indonesia, it is stated in Law no. 1 of 1974 article 2 paragraph 1 explains that "Marriage is valid, if it is carried out according to the laws of each respective religion and belief".

2.2 *Islamic Family Law*

Islamic family law as an offer to resolve several problems [4]. In essence, it is not intended to teach Muslims so that they can practice it in the future, but the law here is solution in nature, meaning that Islamic law provides solutions in resolving family problems that occur [5]. However, sometimes, existing laws cannot be understood regarding their wisdom and philosophy, resulting in the assumption that Islamic law is no longer

appropriate in resolving Islamic family civil cases.

2.3 Multiculturalism Perspective

The term multiculturalism comes from the origin of the word culture. The definition of culture according to Elizabeth Taylor and LH Morgan [6] means a culture that is universal for humans at various levels which is shared by all members of society. Meanwhile, Emile Durkheim, as quoted by Ainul Yaqin, [6] explains culture as a group of people who adhere to a set of symbols that bind society to be implemented. According to Choirul Mahfud [7], etymologically, multiculturalism is formed from the words multi (many), culture (culture), and ism (school/understanding). In this situation of cultural diversity, there is a need for understanding, mutual understanding, tolerance, respect, respect, cooperation and so on in order to create a peaceful and prosperous life and avoid conflict and violence [8].

2.4 Social Harmony Perspective

Social harmony is a condition where individuals live in harmony and harmony with the goals of their society. Social harmony also occurs in a society that is characterized by solidarity [9]. Social Harmony, a state of balance in life, two words that are mutually sustainable and have inseparable meanings, is a situation that people always desire in their lives. Harmony will be realized if there is an attitude of mutual respect and love between family or community members [10]. Harmony in human life in a nation state system can develop well if adherents of various religions stop using God and the religion they adhere to as a mask for greed for power and material wealth.

3. METHODS

Normative research is legal research that places law as a system of norms. The norm system itself is related to the principles, norms, rules of the legislation itself [11]. The approach of examining statutory regulations aims to find out the consistency and suitability of the laws relating to the legal

issues or cases being researched [12]. Legal materials are an important part of legal research used to find answers to questions or aspects currently being researched. So the legal materials that researchers use are primary legal materials (primary sources) but in this case they are not limited to secondary legal materials (secondary sources).

Data collection techniques are a way of recording events or information, characteristics and all forms of information that describe the object of research. In order to obtain the right data sources in this research, researchers used library study data collection techniques, namely reviewing written information about law that comes from various sources and is widely duplicated and is needed in normative legal research [13]. Data analysis is a very important part of the scientific method, because by managing and analyzing the data it can be given meaning and meaning that is useful in solving research. In qualitative research, data analysis is carried out over a certain period of time during data collection. This research uses interactive analysis techniques, namely data analysis techniques consisting of analysis process components.

4. RESULTS AND DISCUSSION

4.1 Interfaith Marriage According to Islamic Family Law

Protection of intellectual property rights (IPR) in the digital era includes a series of laws and regulations designed to ensure that intellectual works, innovations and digital creations are properly protected. The right to protect intellectual property rights in the digital era is a set of regulations. In essence, Islam has given orders to humans to carry out marriage. Because marriage is a command recommended by the Islamic religion, when two human beings who have entered into a marriage are considered to have carried out some of the recommendations in Islamic law, [14] In the shade of Allah SWT's blessing and love for those who have carried out the marriage. In a marriage, the purpose of marriage can be realized, which is none

other than so that humans can continue their offspring until the attainment of happiness in this world and the hereafter. In the context of Islamic studies, this Shari'a is prioritized for those who are adults and have mental readiness and also finance their household life.

As stated in Article 3 of the KHI, the requirement to enter into a marriage with someone of the same faith and belief is an absolute thing that must be fulfilled in order to achieve the ideal domestic life in Islam, namely *sakinah mawaddah warohmah*. Therefore, if the marriage is carried out by two parties with different religions and beliefs then of course the purpose of marriage as explained in the Shari'a will not be realized. Islam also requires that parties wishing to enter into a marriage must have noble morals that do not view the woman or man they will marry based on worldly material things [15]. As in the MUI Fatwa in the decision of the VII National Conference Number 04/MUNAS VII/MUI/8/2005 concerning interfaith marriages. The public's response to the fatwa was the increase in interfaith marriages among the community. Two statements emerged from this fatwa, according to which a Muslim woman is not allowed to marry a non-Muslim man, and vice versa.

4.2 *Interfaith Marriage Regulations in Islamic Family Law*

The VIIth MUI National Conference on 26-29 July 2005 in Jakarta decided and determined that: 1) Interfaith marriages are haram and invalid; 2) Marriage between Muslim men and women from people of the book according to *Qaul Mu'tamad* is haram and invalid. The decision of the fatwa was based on considerations: a) that recently it was alleged that many interfaith marriages had occurred; b) that interfaith marriages not only contain debates among fellow Muslims, but also contain unrest among society; c) that in society ideas have emerged that justify interfaith marriages under the pretext of human rights and benefits, and; d) that in order to create and maintain peaceful married life, the MUI considers it necessary to issue a

fatwa on interfaith marriages to serve as a guideline (MUI, 2011: 477-481).

According to Article 1 of Law no. 1 of 1974, marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on the Almighty Godhead. In this sense, the words "inner and outer ties" mean that marriage is not enough just to have a physical bond, or just an inner bond, but both must be present in the marriage. Birth bond can be interpreted as meaning that marriage is a bond that can be seen, meaning: the existence of a legal relationship between a man and a woman to live together, as husband and wife. This bond can also be called a "formal bond" namely a formal relationship that binds oneself, other people and society. Meanwhile, "inner bond" can be interpreted as an informal relationship, meaning a bond that cannot be seen, but must exist because in the absence of an inner bond in marriage, the external bond will be fragile.

Marriage as an agreement which is a legal act, has legal consequences. The existence of legal consequences is very important in relation to whether the legal action is legal or not. Article 2 of the UUP states the conditions for the validity of a marriage, namely: (1) A marriage is valid if it is carried out according to the laws of each religion and belief; (2) Every marriage is recorded according to the applicable laws and regulations. In this article there is an affirmation that marriage can only be categorized as a valid legal act if it is carried out according to the provisions of each religion and belief, as in the explanation of Article 2 of the UUP that there is no marriage outside the law of each religion and belief. This is in accordance with Article 29 of the 1945 Constitution: (1) The State is based on the belief in One Almighty God; (2) The State guarantees the freedom of each resident to embrace their own religion and to worship according to their religion and beliefs.

4.3 *Legal Status of Interfaith Marriages in the Marriage Law and Islamic Family Law*

Interfaith Marriage according to the understanding of legal experts and practitioners in Law no. 1 of 1974, in general, three views can be found. First, interfaith marriages cannot be justified and are a violation of UUP Article 2 paragraph (1): Marriage is valid if it is carried out according to the laws of each religion and belief; and Article 8 letter (f): that marriage is prohibited between two people who are in a relationship whose religion or other applicable regulations prohibit marriage. So with this article, interfaith marriages are considered invalid and null and void by the marriage executing official. Even though this article states that it is legal according to the laws of each religion and belief, in Islam there is an opinion that allows marriage between different religions. Second, interfaith marriages are permitted, legal and can be carried out because they are included in mixed marriages, as written in Article 57 of the UUP, namely two people who in Indonesia are subject to different laws. According to this second view, this article not only regulates marriage between two people of different nationalities, but also regulates marriage between two people of different religions. According to him, the implementation is carried out according to the procedures regulated by Article 6 of the PPC: (1) Mixed marriages are carried out according to the law that applies to the husband, except for permission from both parties to the prospective bride and groom, which should be available, with reference to Article 66 of the UUP.

Third, the UUP does not regulate inter-religious marriage issues. Therefore, if you refer to Article 66 of the UUP which emphasizes that other regulations governing marriage, as long as they have been regulated in this law, are declared no longer valid. However, because the UUP does not yet regulate it, the old regulations can be re-enacted, so that the issue of interfaith marriages must be guided by mixed marriage regulations (PPC). Apart from these three opinions, there are groups who believe that the UUP needs to be refined, considering that there is a legal vacuum regarding interfaith

marriages. The arguments built by the group were based on four things, namely: 1) the UUP does not regulate interfaith marriages; 2) Indonesian society is a plural society, so interfaith marriages cannot be avoided; 3) religious issues are part of a person's human rights; and 4) the legal vacuum in the field of marriage cannot be ignored, because it will encourage hidden adultery through the door of cohabitation.

On the other hand, the majority of Muslim communities in Indonesia are of the view that the UUP does not need to be refined by including the law on interfaith marriages in the law, because according to them, Law no. 1 of 1974 has regulated the law on interfaith marriages clearly and firmly. This expression is true, because Muslims as the majority population in Indonesia feel that they benefit from Article 2 paragraph (1) of the UUP, because with this article the possibility of having a "secular" marriage is closed, and the possibility of a Muslim woman marrying a man is also closed. non-Muslims, as is the case with the marriage of a Muslim man to a polytheist woman, because the marriage is prohibited (considered invalid) according to Islamic law.

In fact, the ban on interfaith marriages is an important issue for Muslims because the Dutch legacy marriage regulations (PPC) allow Indonesians to perform interfaith marriages. Interfaith marriages in the KHI are specifically regulated in Article 40 letter (c) which states that it is prohibited to carry out a marriage between a man and a woman due to certain circumstances; including, because a woman is not Muslim. Article 44 states that a Muslim woman is prohibited from marrying a man who is not Muslim. Based on these two articles, it can be said that according to the KHI, a non-Muslim woman, regardless of the religion she adheres to, may not marry a Muslim man, and a Muslim woman may not marry a non-Muslim man, either from the category of people of the book or any other person. not an expert on the book

4.4 Interfaith Marriage Arrangements from a Multiculturalist Perspective

Interfaith marriage from a pluralism-multiculturalism perspective presents a new understanding. The issue of interfaith marriages is an area of "ijtihadi", so it is still open to new ijtihad by adjusting the current context. Pluralist circles argue that marriage is merely a human social relationship [16]. Marriage will have the value of worship, if it is intended to seek the approval of Allah SWT." Differences in marriage are a common thing that occurs in multicultural Indonesia, these differences are in the form of regional origin, race, ethnicity, customs or culture of the prospective partner. who want to get married. However, if the difference is in the belief or religion of the prospective bride and groom, it will of course create new problems that affect the process, whether the marriage is valid or not and the legal impacts that arise if the marriage continues In Islam, the validity of a practice depends on the sufficient conditions and harmony. Likewise with the issue of marriage, a marriage is only said to be valid if the conditions and harmony are sufficient and fulfilled.

One of the conditions for marriage in Islam is that the prospective husband and wife must be Muslim. So it can be understood that marriages between people of different religions are not permitted and are not valid according to Islam. The increase in cases of religious marriage in Indonesia indicates that the acceptance of plurality among Indonesian society is increasingly widespread, so that the impact of this results in narrowing the boundaries of differences between individuals. However, interfaith marriages are still considered difficult, but in reality they still occur in Indonesia. Apart from that, the widespread practice of interfaith marriages also indicates that the sanctity of religious values in the midst of people's lives is increasingly being lost day by day. Religious values are clearly visible in the formation of the Marriage Law in Indonesia. The consideration of religiosity in forming rules is one proof of the implementation of the divine values contained in the first principle of Pancasila, namely Belief in One Almighty

God. Problems caused by different religions can also occur after marriage.

This is caused by one of the husband or wife apostasy (changing beliefs or leaving the Islamic religion). In KHI, the apostasy of one of the husbands or wives has an impact on the legal status of the marriage or family. The religious differences that occurred resulted in the enactment of the Article on marriage annulment. The reasons for annulling a marriage due to the apostasy of one of the husband or wife in the KHI are regulated in Article 75 point (a) and the annulment decision does not apply retroactively. According to Islam, apostasy results in the marital status being canceled or terminated when someone vows to leave Islam. However, according to the KHI, the status of marriage annulment does not automatically occur when one of the husband or wife partners apostatizes, but is annulled after the decision is made in the Religious Court (Article 74 paragraph (2) KHI). Not only KHI, the commitment to close down the possibility of marriages that are not justified by religion is also supported by the Supreme Court as the institution that supervises Religious Justice. This can be seen from the assignment of duties or rights (not obligations) to Marriage Registrar Employees (P2N) to submit applications. cancellation if there is a problem of apostasy by one of the husband and wife, and the official cannot refuse to carry out his duties on the grounds of costs, because basically no costs are charged for this.

4.5 Interfaith Marriage Arrangements from the Perspective of Social Harmony

Many of the religious beliefs of husbands and wives from different religious families after marriage are classified as moderate or low, although there are a quarter of them who are classified as high. Meanwhile, before they married partners of different religions, more than half of them were classified as highly religious, and only a few were low religious. The socialization of religious values in children from interfaith families does not only come from one social structure, but also from family structures and

social environments such as formal education and religious institutions. The roles of each party often overlap, although for the purposes of analysis differentiation and separation can be made. One thing that is important to note from the start is that the role of these three structures indicates that children's religious formation is more influenced by the social structures that exist in their society. These structures have the power to compel (influence) children to follow the cultural and religious values held by members of their community.

Even though fathers and mothers will differ in their views and positioning of religion in life issues, this religious variable is still a 'need' for every parent, at least for more practical purposes such as in arranging identity cards and at the same time as part of identity of parents and children. This first tendency seems relevant to sociocultural role theory. As stated in the previous section, local society is still dominated by a patriarchal culture. Mothers still have the position as the main administrators in the reproductive sector, even though many of them already work in the productive and social sectors. In a society dominated by patriarchal culture, men's roles are differentiated, wives take care of the reproductive sector including childcare, even though they already work in the productive and social sectors, while fathers take care of the productive and social sectors more. This will affect the quality and quantity of caring for children, so that children are able to be closer to their mothers, both boys and girls. In the end, children will follow the social behavior and cultural values adhered to by the mother. Thus, it can be concluded that, in accordance with the socio-cultural roles of husband and wife which are based on the concept of gender division of labor in a society dominated by patriarchal culture, the religious affiliation of children, among other things, is determined more by the gender of the parents. The mother's religion is more strongly identified by her child or it could also be said that the mother has a stronger role in including her child in a religion that is in accordance with the mother's religion.

5. CONCLUSION

Based on the results of the research and discussion in the previous chapter, it can be concluded as follows:

Marriage between different religions according to Islamic law as contained in the Word of Allah, Surah al-Baqarah verse 221, has been emphasized that marriage between different religions is absolutely forbidden, apart from that, if you continue to carry out an interfaith marriage, many disputes will arise in the household because both partners have opinions and different beliefs. Meanwhile, marriage between different religions according to positive law as stated in Article 2 paragraph 1 states that a marriage is valid if it is carried out based on their respective religions and beliefs, so from this article it can be seen that marriage between different religions is not permitted because it is contrary to the provisions in Article 2 paragraph 1 Marriage Law. In KHI it is also stated in Article 40 (c) that marriage is prohibited between men and women due to certain circumstances, including because the woman is not Muslim.

Interfaith marriage in Indonesia is a reality that continues to occur even though state law and religious law expressly prohibit it. Through the Compilation of Islamic Law, the prohibition on interfaith marriages is emphasized by the publication of articles prohibiting, preventing and canceling marriages if a husband and wife have different beliefs. In fact, if you look closely, Law no. 39 of 1999 concerning Human Rights in Indonesia does not explicitly regulate interfaith marriages, it only guarantees freedom and protects the rights of each individual to marry and form a family. On the issue of more detailed marriage regulations, including the issue of interfaith marriages, Human Rights still returns it to the applicable laws and regulations, which in this case the Marriage Law in Indonesia is Law no. 1 in 1974.

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