

**Review Article****REVIEW OF ISLAMIC LAW REGARDING INTERRELIGIOUS MARRIAGES IN INDONESIA;**

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Abstract:

Discussion Results: 1. Interfaith Marriage in Indonesia according to Islamic Law refers to QS Al-Maidah: 5, QS. Al-Baqoroh: 221 and QS. Al-Mummlahanah: 10. Marriage between different religions is basically prohibited. However, there are exceptions if the male partner is a believer and the female partner is a scholar of the book, in this type of couple the ulama' have different opinions regarding punishment. The rule of ushul fiqh "idza ijtama'a baina al halal wal haram ghuliba al haram" can be used as a solution in making laws as a form of ihtiyaat or caution in implementing Islamic sharia. Apart from that, we can also see the prohibition against interfaith marriages in article 40 letter c KHI which reads: It is prohibited to carry out a marriage between a man and a woman due to certain circumstances, namely a woman who is not Muslim. As well as article 44 of the KHI which reads: A Muslim woman is prohibited from marrying a man who is not Muslim. 2. What factors influence the occurrence of interfaith marriages in Indonesia, namely: A person's lack of understanding of their religious knowledge, personal desires without anyone's encouragement based on love and affection, and pregnancies out of wedlock, so that interfaith marriages often occur in Indonesia;

Keywords: Islamic Law, Marriage, Different Religions

INTRODUCTION

Marriage is a place for the union of men and women in a legal bond. Interfaith marriages are marriages performed by people of different religions or different beliefs, such as marriages between Muslims and Musyrikah, and Musyrikah and Muslim. A marriage is said to be valid if it meets all the specified requirements. In Islam, one of the conditions for a valid marriage is that one must be Muslim. In fact, marriage is carried out to avoid actions that are prohibited by religion. However, with the large number of people today with various religions and beliefs, interfaith marriages are also happening. Based on love or interests of each party, couples of different religions marry even though each individual's religion and beliefs strictly prohibit this. An interfaith marriage or what is often called a different religion is a marriage where the religions of both partners are different from each other. Religious diversity or plurality presents interfaith marriages and has given rise to debates to this day in Indonesia, especially for those who are Muslim. Interfaith marriages can be classified into three categories, namely: marriages between Muslim men and Muslim women;

The marriage of Muslim men to non-Muslim women (people of the book), and the marriage of Muslim women to non-Muslim men. So the regulations clearly state that interfaith marriages in Indonesia do not have legal force, because Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law as positive law in Indonesia clearly prohibits interfaith marriages. For this reason, the Office of Religious Affairs and the Civil Registry will not carry out administrative registration of events involving interfaith marriages. The conclusion is that the legal vacuum regarding interfaith marriages must be answered in full and with existing laws in Indonesia. On the other hand, in the concept of Human Rights we see that it is more based on western law, where someone cannot be differentiated just because of their religious basis, including for carrying out marriages. marriage. Even if we examine it, the concept of human rights related to marriage is very contradictory to Islamic law. In Islam, in layman's terms, it limits whether or not interfaith marriages are permissible by assigning the terms kafir, dhimmi, or polytheist to believers. However, in a social context, especially in Indonesia where more than 85% of the population is Muslim, this is a social dynamic that deserves attention in cases of interfaith marriages. Indonesia has diversity from various aspects, including religion, which makes it possible for interfaith marriages to continue. With these social dynamics occurring, which raises questions about whether or not to carry out marriages with partners of different religions, it is necessary for us to carry out a review of Islamic law regarding marriage. Different Religions in Indonesia and knowing what factors influence the occurrence of interfaith marriages. With this research, it is hoped that both the author and the public can understand and comprehend whether or not marriages between people of different religions and beliefs are valid. Due to public questions about the permissibility of interfaith marriages, the ulama who are members of the Indonesian Ulema Council then tried to provide religious arguments to provide legal certainty in this case. In its fatwa, the MUI stated on various grounds that marriage between different religions is completely haram, even though it is contrary to the principles of ulama.¹

¹Faeshol Jamaluddin, Analisis Fatwa MUI Nomor :4/Munas VII/MUI/8/2005 tentang perkawinan beda agama, dimuat dalam <http://idb4.wikispaces.com/file/view/bu4001.pdf>, diakses pada tanggal 23 Nopember 2023.

RESEARCH METHODS

In accordance with the title and problems that will be discussed in this research, this research was carried out using a normative juridical research method (normative legal research method). The normative juridical research method is library legal research which is carried out by examining library materials or mere secondary data. This research was carried out in order to obtain materials in the form of: theories, concepts, legal principles and legal regulations related to the subject matter. In this research, the scope of this research will be to carry out research by drawing on legal principles, which is carried out on written and unwritten positive law.²

RESULTS AND DISCUSSION

1. Interfaith Marriage in Indonesia according to Islamic Law

In Abdullah Ghani's opinion, Islamic law is law that originates and is part of the Islamic religion which is used as the basis and reference or guideline for Islamic law. This law does not only regulate human relationships with humans, but this law regulates human relationships with God.

Muhammad Daud Ali stated that Islamic Law is norms, rules, measures, benchmarks, guidelines used to assess and view human behavior with the surrounding environment. Meanwhile, according to Muchammad Ichsan's opinion, Islamic law is a law revealed by Allah for the benefit of his servants in this world and the afterlife. Islamic law is law that originates from the Koran and hadith and the Sunnah of the Prophet which is a reference for Muslims to do and not do things.

Some experts say marriage, but the legislation says marriage. However, there is no problem with the mention of marriage or marriage, because basically it has the same meaning. Nikah in Arabic means (al-wath'u), namely having sexual intercourse or having intimate relations or it can also mean connection or connection. Meanwhile, according to the Munawwir dictionary, the meaning of nikah is gathering or oppressing, having sexual intercourse and sexual intercourse..³

Marriage in Terminology among Ushul scholars, two kinds of opinions have developed regarding the meaning of the word marriage, namely: Marriage according to its original meaning (essential meaning) is sexual intercourse and according to the majazi meaning (metaphorical) it is a contract which with this contract makes sexual relations between a man and a woman halal; according to the Hanafi group. According to its original meaning, marriage is a contract which makes sexual relations between a man and woman lawful, while according to the meaning of majazi it is sexual intercourse, according to the Syafi'iyah ushul experts. Although this opinion states that basically marriage is a contract regulated by religion to give a man the right to have the use of a woman's vagina (genitals) and her entire body for sexual intercourse or is something that only deals with the worldly world, marriage in Islam has the view that Marriage is not only a biological aspect, but also a psychological, sociological and theological issue.⁴

²Soerjono Soekanto, Pengantar Penelitian Hukum, (Jakarta: UI Press, 1996), hlm. 63

³A. W. Munawwir, kamus al-Munawwir Arab-Indonesia Terlengkap, (Surabaya: Pustaka Progressif, 2002), hlm. 1461. Abdurahman al-Jaziri, al-Fiqh 'Ala al Madzahib al-Arba'ah, (Beirut: Dar al Fikr, t.th), Juz. IV, hlm. 3

⁴Karsayuda, perkawinan beda agama, (Yogyakarta: Total Media Yogyakarta, 2006), hlm. 69

In the Big Indonesian Dictionary (KBBI), marriage or marriage is defined in basic words as establishing a family with the opposite sex. This understanding is not a problem when it does not touch the basis of idealism, when someone based on their beliefs does not make a marriage permissible on religious grounds. Marriage according to Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage, which is regulated in Article 1 states that marriage is "an inner and outer bond between a man and a woman as husband and wife with the aim of forming an eternally happy family/household based on the Almighty Godhead." One."

According to Islamic law, marriage is a union between a woman's guardian (future wife) and the woman's future husband, not just a union between a man and a woman as intended in Article 1 of Law Number 1 of 1974 concerning Marriage. Or in Christian Law it is stated that the word 'wali' does not only mean father but also 'datuk' (embah), male brothers, male children, male brothers of the father (uncle), uncle's male children, all along the line. male descent (patrilineal). This shows that marriage ties also mean kinship ties, not individual ties.⁵

The theoretical basis used to answer this issue of interfaith marriage is based on the arguments of the Qur'an, we can see it as follows:

QS Al-Maidah: 5 "...(And it is permissible for mangawini) women who maintain honor among believing women and women who maintain honor among those who were given the Book before you, if you have paid their dowry with the intention of marrying her, not with the intention of committing adultery and not (also) making her his concubine..."

QS. Al-Baqoroh: 221 "And do not marry polytheist women before they believe. Indeed, a believing slave woman is better than a polytheist woman, even if she attracts your heart. And do not marry polytheists (to believing women) before they believe. Indeed, a believing slave is better than a polytheist, even if he attracts your heart. They invite to hell, while Allah invites to heaven and forgiveness with His permission..."

QS. Al-Mummlahanah: 10 "O you who believe, when believing women come to you who emigrate, then you should test their (faith). Allah knows better about their faith, so if you know that they (really) believe, then do not return them to (their husbands) who are disbelievers. They are not lawful for those who disbelieve and those who disbelieve are not lawful for them either. And give to their (husbands) the dowry they have paid. And there is no sin on you in marrying them if you pay them the dowry. And do not hold on to ties (marriages) with unbeliever women, and ask for the dowry that you have paid, and let them ask for the dowry that they have paid. Such is the law of Allah which He established among you. And Allah is All-Knowing, All-Wise."

The conclusion is that basically Islamic law prohibits interfaith marriages. In Indonesia, five recognized religions have their own regulations regarding interfaith marriages. The Christian/Protestant religion allows interfaith marriages by submitting to the national laws of each of its followers. Catholic law does not allow interfaith marriages unless permission is obtained by the church with certain conditions. Buddhist law does not regulate interfaith marriages and returns to the customs of each region, while Hinduism strictly prohibits interfaith marriages. This prohibition on interfaith marriages was then formulated in the Compilation of

⁵Hilman Hadi Kusuma, *Hukum Perkawinan Indonesia* (Bandung: Mandar Maju2007), hlm. 11

Islamic Law (KHI) in Indonesia. KHI, which was enforced by Presidential Instruction (Inpres) Number 1 of 1991, prohibits Muslims from entering into interfaith marriages. This prohibition is regulated in article 40 letter c KHI which reads: It is prohibited to carry out a marriage between a man and a woman due to certain circumstances:

- a. Because the woman in question is still married to another man;
- b. A woman who is still in the iddah period with another man;
- c. A woman who is not Muslim.

This article is closely related to Article 18 which regulates that for prospective husbands and prospective wives who are going to get married there are no obstacles to marriage as regulated in chapter VI. Meanwhile, the prohibition on marriage between other religions is regulated in article 44 of the KHI which reads: A Muslim woman is prohibited from entering into a marriage with a man who is not Muslim. Normatively, the prohibition on interfaith marriages is not a problem, because it is in line with the provisions of the Qur'an agreed upon by the jurists..⁶

Why are interfaith marriages not allowed? Because the arguments in the Koran clearly prohibit interfaith marriages. On the other hand, interfaith marriages raise many complex issues because each religion has different rules and methods that can influence the course of the marriage later. Law no. 1 of 1974 concerning Marriage is a regulation created to regulate all Indonesian citizens of various religions. Another reason for the prohibition on inter-religious marriages is more about the legal consequences, where the legal consequences of inter-religious marriages are, namely, husband and wife and their children cannot inherit from each other due to different religions, so the nasab is also different. We can see this in Article 171 letter C Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law (KHI).

Apart from that, the Supreme Court (MA) has issued Circular Letter (SEMA) Number 2 of 2003 concerning Instructions for Judges in adjudicating cases regarding requests for registration of marriages between people of different religions and beliefs dated 17 July 2023. This SEMA provides certainty in the application of the law in adjudicating application for registration of marriages between people of different religions and beliefs. The legal certainty referred to here is that a valid marriage is a marriage carried out according to the laws of each religion and belief in accordance with Article 2 paragraph (1) and Article 8 Letter f of Law no. 1 of 1974 concerning Marriage. The court did not grant the request to register marriages between people of different religions and beliefs. So it is clear that the marriages between different religions mentioned above are not considered valid because they conflict with religious law and individual beliefs, so the court does not grant requests for registration of marriages between different religions, so the marriage is never valid and never legally recognized. in Indonesia.

2. Factors that cause interfaith marriages to occur in Indonesia;

The factors causing the large number of interfaith marriages to occur in Indonesia are:

1. A person's lack of understanding of his religious knowledge

⁶Ibid, 7

A person's lack of understanding of their religious knowledge makes someone do something without understanding the consequences. Every religion has regulated prohibitions against interfaith marriages, this must have a purpose. Because basically every religion regulates matters relating to marriage and its causes, even the legal consequences of marriage. If a person does not understand the knowledge of his religion, then a person is free to carry out actions that are prohibited according to his religion and are even haram to do. But due to a lack of understanding of one's religious knowledge, a person has no restrictions on committing these prohibited acts.

2. Personal desires without anyone's encouragement based on love and affection

Loving and caring for each other is a factor in interfaith marriages. A person who is blinded by love usually does not see the bad consequences of his actions. On the basis of mutual love and affection, it creates an understanding that all religions are the same. It doesn't matter if you marry someone from a different religion, the important thing is to love each other so that harmony in life will be created. Assuming that every religion has the same goal, namely to live side by side with each other, although in different ways. So that they no longer think about all the risks that will arise as a result of the marriage.

3. Pregnant out of wedlock

This factor is one of the factors in the occurrence of pregnancy outside of marriage. Because they feel embarrassed by their family, relatives and even the community, they usually take shortcuts to carry out interfaith marriages, even though their religion clearly forbids them, but the marriages are still carried out. Regarding the negative impacts that occur afterwards, that is a matter that can be put aside for now. The most important thing is that they carry out marriages that they themselves consider valid, but religion and the state never recognize it.

So the author concludes that the factors that cause interfaith marriages to occur in Indonesia include: a person's lack of understanding of their religious knowledge, personal desires without anyone's encouragement based on love and affection, and pregnancies out of wedlock, so that interfaith marriages often occur in Indonesia..

CONCLUSION

In Islam, interfaith marriages are basically prohibited. However, there are exceptions if the male partner is a believer and the female partner is an expert, in this type of couple the ulama' have different opinions regarding punishment. The rule of ushul fiqh "idza ijta'ma'a baina al halal wal haram ghuliba al haram" can be used as a solution in making laws as a form of ihtiyaat or caution in implementing Islamic sharia. Factors that cause interfaith marriages to occur in Indonesia include: a person's lack of understanding of their religious knowledge, personal desires without anyone's encouragement based on love and affection, and pregnancies out of wedlock, so that interfaith marriages often occur in Indonesia.

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