




Interfaith Marriage in Perspective of Islamic Law

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Abstrak. With the many religions and sects of belief in the State of Indonesia, it is undeniable that marriages of different religions and sects of belief can occur, but contextually there is the permissibility of marrying the people of the book in the Qur'an, as well as Article 35 and its explanation, and Article 37 paragraph (1) of Law Number 23 of 2006 concerning Population Administration which indirectly provides opportunities for interfaith marriages. The type of research is library research, namely by tracing literature or data sources obtained from books, books and others that have a direct or indirect relationship to the theme. This research is descriptive analysis using a normative juridical approach. The data that has been collected is analyzed descriptively with deductive and inductive thinking methods. Judging from Maqasid Ash Shari'ah, but the relevance of the existence of the people of the book at this time is not in accordance with the text of the nash at the time of the prophet and from the aspect of the evil that dominates over the good. In the MUI fatwa it is explained that marrying different religions is haram and in positive law there are articles that prohibit marriages of different beliefs. The conclusion of this study concludes that interfaith marriages as described according to Islamic law, the Compilation of Islamic Law and Law Number 1 of 1974 concerning Marriage are declared invalid.

Keywords: Marriage, Faith, Islamic Law.

I. Introduction

Marriage is a sunnatullah that applies in general and the behavior of creatures created by Allah SWT, so that with marriage life in this world can develop to enliven this vast nature from generation to generation.¹ Marriage is an instinctual demand that applies to each of His creatures, both in humans, animals, and plants. In the Compilation of Islamic Law, what is meant by marriage is a very strong contract or "mitsaqan gholidan" in obeying Allah and one of the worship services.²

So humans who have reason and thought, marriage is one way to continue offspring for survival so that order is formed in the development of mankind.

As for the society at its core, it has decided on certain rules and methods to be able to carry out marriage. These rules have evolved continuously in societies that have the power of the state and government. Marriage is inseparable from the influence of customs and the environment in the community where he lives. These customs are influenced by the knowledge, experience, beliefs and religion of the community.

Marriage is a way established by Allah SWT for the survival of human life on earth with

¹ Hilman Hadikusuma, Indonesian Marriage Law According to Legislation, Customary Law, Religious Law, Cet. 2, (Bandung: Mandar Maju, 2003), pp. 1

² Abdurrahman, Compilation of Islamic Law in Indonesia (Article 2), (Jakarta: Akademika Presindo, 1992), p. 144. 144

the aim of maintaining the honor and dignity and glory of mankind. For Muslims, marriage is prescribed so that humans have legitimate offspring and families towards a happy life in this world and in the hereafter, and under the auspices of divine love and pleasure. Marriage is carried out by means of a marriage contract which is the pronouncement of *ijab* pronounced by the woman's guardian which is then accompanied by *qabul* from the prospective husband who is witnessed by two male witnesses who are *baliq*.³

The implementation of marriage in Indonesia is regulated by Law Number 1 of 1974 concerning Marriage, which has been promulgated since January 2, 1974, but became effective on October 1, 1975, after the issuance of Government Regulation of the Republic of Indonesia No. 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage.

Law Number 1 of 1974 concerning Marriage has been formally juridical in Indonesia, and has become part of positive law. The Marriage Law also contains the principles, principles, legal basis and regulates the principles of marriage such as the relationship between parents and children, joint property, *thalaq*, reconciliation, and others.

Laws in Indonesia that regulate marriage issues already exist, namely Law Number 1 of 1974 concerning Marriage and Government Regulation No. 9 of 1975.⁴ In the development of the complexity of marriage problems and marriage cases in Indonesia, it is very worth discussing because marriage is a legal act that causes problems and one of the problems is interfaith marriage.

Interfaith marriage is a physical and mental bond between a man and a woman who have different religions and countries that cause the convergence of two different rules regarding the requirements and procedures for implementation according to the religious law of each individual, with the aim of forming a happy and eternal family based on God Almighty.⁵

One of the cases of interfaith marriage is the marriage between Muslim Sabria Kono and Christian Rio Febrian, both of whom officially became husband and wife on February 3, 2010. Where they have legalized their marriage in Bangkok, the process is not as difficult as in Indonesia."⁶

So that to obtain the legality of their marriage they use the legal basis of Article 56 paragraph (1) of the Marriage Law, which reads:

"A marriage solemnized outside Indonesia between two Indonesian citizens or between two Indonesian citizens and a foreign national is valid if it is conducted in accordance with the laws of the country where the marriage is solemnized and for

³ Soerjono Soekanto, *Indonesian Customary Law*, (Jakarta: PT. Raja Grafindo Persada, 2003), pp. 6

⁴ Asmin, *The Status of Interfaith Marriages Viewed from Marriage Law No. 1 of 1974*, (Jakarta: Dian Rakyat, 1986), Cet. 1, pp. 16

⁵ Rusli and R. Tama, *Interfaith Marriage and Its Problems* (Bandung: Pionir Jaya Publisher, 2000), pp. 1

⁶ <http://kapanlagi.com/showbiz/celebrity/rio-febrian-sabria-kono-officially-becomes-husband-wife.html>, access July 14, 2014

Indonesian citizens does not violate the provisions of this law.⁷

According to Law Number 1 of 1974 concerning Marriage, a marriage can be declared valid if it is carried out according to the laws of each religion that a marriage can be declared valid, if it is carried out according to the religious laws and beliefs of the couple who perform the marriage.

The legal basis of religion in carrying out marriage is very important in Law Number 1974 concerning Marriage, so that in determining marriage depends on the provisions of religious teachings.

So the issue of interfaith marriage in the Compilation of Islamic Law has been categorized as interfaith marriage in the chapter on marriage prohibitions. Article 40 letter (c) states that it is prohibited to marry a man with a woman who is not Muslim.⁸ As well as the authority in the determination of interfaith marriages by the court in Article 35 letter (a), if reviewed this is contrary to Law Number 1 of 1974 concerning Marriage which does not explicitly prohibit interfaith marriages.

Then based on the law on the marriage of Sabria and Rio, with the legal basis of Article 56 paragraph (1) of the Marriage Law: "A marriage solemnized outside Indonesia between two Indonesian citizens or an Indonesian citizen and a foreigner is valid if it is conducted according to the law in force in the country where the marriage is solemnized and for Indonesian citizens does not violate the provisions of Law Number 1 of 1974 concerning Marriage Article 8 letter f, which states that marriage is prohibited between two people who have a relationship that is prohibited by their religion or other applicable regulations. So this marriage has violated other provisions in accordance with the contents of Article 56 paragraph (1) of the Marriage Law.

So based on the problems as described above, where the marriage registrar officials who record interfaith marriages do not look at the applicable laws and regulations, but directly take policies based on the principle of welfare where it is legal according to the State and no longer based on the rules of marriage according to religion.

In connection with the explanation of the background above, the author formulates several problems that can be raised, namely the review of positive law and Islamic law on the legality of interfaith marriage and how the legality of interfaith marriage.

II. Research Methodology

This writing uses several methods, namely: First, data collection that is library research, namely by collecting books and papers related to marriage. The reference sources of the analyzed writings are from various books and scientific works that have to do with interfaith marriages. Second, data analysis is by using the deduction method, which is a data analysis that starts from or is based on general principles and then a specific conclusion is

⁷ Article 56 Paragraph (1), Law Number 1 Year 1974 concerning Marriage

⁸ Article 40 letter (c), Compilation of Islamic Law

drawn.

III. The Rules of Interfaith Marriage in the Perspective of Islamic Law and State Law

Formally, marriage in Indonesia is regulated by Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage and Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law. These two laws regulate issues related to marriage, including interfaith marriage.

Where in the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage Article 2 paragraph (1) states: "Marriage is valid, if performed according to the laws of each religion and belief." In this formulation, it is known that there is no marriage outside the laws of each religion and belief. The same thing is explained in several Articles in Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law, as follows:

Article 4: "Marriage is valid if performed according to Islamic law in accordance with Article 2 paragraph (1) of Law No. 1/1974 on Marriage".

Article 40: Marriage between a man and a woman is prohibited due to certain circumstances;

- a. Because the woman concerned is still bound by one marriage with another man;
- b. A woman who is still in the iddah period with another man;
- c. A woman who is not a Muslim.⁹

Article 44: "A Muslim woman may not enter into marriage with a man who is not Muslim" ¹⁰

Article 61: "Not being compatible cannot be used as a reason to prevent marriage, unless not compatible due to differences in religion or ikhtilaf al-dien". ¹¹

Thus, according to the explanations of these articles, every marriage that is carried out within the jurisdiction of Indonesia must be carried out in the same religious line, no marriage with a different religion is allowed, and if it occurs, it is a violation of the rule of law.

Islam holds the view that marriages of different religions are not allowed. Even the Qur'an explicitly prohibits marriage between Muslims and polytheists / infidels as the firm reads:

وَلَا تَنْكِحُوا الْمُشْرِكِينَ حَتَّىٰ يُؤْمِنُوا ۗ وَلَعَبْدٌ مُّؤْمِنٌ خَيْرٌ مِّنْ مُّشْرِكٍ ۚ وَلَوْ أَعْجَبَكُمْ ۗ أُولَٰئِكَ يَدْعُونَ إِلَى النَّارِ ۗ وَاللَّهُ يَدْعُو
وَلَا تَنْكِحُوا الْمُشْرِكِينَ حَتَّىٰ يُؤْمِنُوا ۗ وَلَعَبْدٌ مُّؤْمِنٌ خَيْرٌ مِّنْ مُّشْرِكَةٍ ۚ وَلَوْ أَعْجَبَتْكُمْ ۗ وَلَا تَنْكِحُوا

⁹ Ministry of Religious Affairs of the Republic of Indonesia, Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law in Indonesia (Jakarta: Directorate General of Islamic Institutional Development, 2000), pp. 15

¹⁰ Ibid, Page 28

¹¹ Ibid, Hlm.39.

إِلَى الْجَنَّةِ وَالْمَغْفِرَةِ بِإِذْنِهِ وَيُبَيِّنُ آيَاتِهِ لِلنَّاسِ لَعَلَّهُمْ يَتَذَكَّرُونَ

Meaning: "Do not marry polytheist women until they believe! Indeed, a believing female slave is better than a polytheist woman, even if she appeals to you. Nor should you marry polytheist men (to believing women) until they believe. Indeed, a believing male slave is better than a polytheist male, even if he attracts you. They invite to hell, while Allah invites to paradise and forgiveness with His permission. (Allah) explains His verses to people so that they may learn." (Al-Baqarah (2):221)

1. Prohibition of marriage of a Muslim woman to a non-Muslim man

Islam prohibits the marriage of a Muslim woman to a non-Muslim. This prohibition is stated in the Qur'an Surah al-Mumtahanah: 10 and al-Baqarah: 221.

Surah al-Mumtahanah verse 10:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا جَاءَكُمْ الْمُؤْمِنَاتُ مُهَاجِرَاتٍ فَامْتَحِنُوهُنَّ ۚ اللَّهُ أَعْلَمُ بِإِيمَانِهِنَّ فَإِنْ عَلِمْتُمُوهُنَّ مُؤْمِنَاتٍ فَلَا تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ لَا هُنَّ حِلٌّ لَهُمْ وَلَا هُمْ يَحِلُّونَ لَهُنَّ وَآتُوهُنَّ مَا آتَفَقُوا وَلَا جُنَاحَ عَلَيْكُمْ أَنْ تَنْكِحُوهُنَّ إِذَا آتَيْتُمُوهُنَّ أَجُورَهُنَّ وَلَا تُمْسِكُوا بِعِصَمِ الْكَوَافِرِ وَسْئَلُوا مَا آتَفَقْتُمْ وَلَيْسَ لَكُمْ أَنْ تَنْفُقُوا ۚ ذَلِكَ حُكْمُ اللَّهِ يَحْكُمُ بَيْنَكُمْ وَاللَّهُ عَلِيمٌ حَكِيمٌ

Meaning: "O you who believe, when believing women come on migration to you, test them. Allah knows better about their faith. When you have found out that they are believing women, do not return them to the disbelievers (their husbands). They are not lawful for the disbelievers and the disbelievers are not lawful for them. Give them to their husbands the dowry which they have given. There is no sin for you in marrying them if you pay them their dowry. Do not hold fast to the bonds (of marriage) with unbelieving women. You should ask back (from the disbelievers) the dowry which you have given (to the disbelieving wife). Let them (the disbelievers) ask back the dowry they have paid (to their former wives who have believed). Such is the law of Allah which He has established among you. Allah is All-Knowing, All-Wise." (al-Mumtahanah:10)

Surat al-Baqarah verse 221:

وَلَا تَنْكِحُوا الْمُشْرِكَةَ حَتَّىٰ يُؤْمِنَ

"And do not marry polytheists (with believing women) until they believe...." (al-Baqarah:221).

It was stated that there is no verse or hadith that allows a disbeliever or polytheist to marry a Muslim woman after the revelation of verse 10 of Surah al-Mumtahanah. The scholars, such as Shaykh Abu Bakr al-Jazairy (may Allah have mercy on him) and al-Imam Al-Qurthubi, stated that it is not permissible for a Muslim woman to marry a disbeliever, whether Ahl al-Baqarah or not.

2. Prohibition of Marrying a Woman Who Does Not Follow Islam

The prohibition of marrying non-Muslim women is in accordance with Umar's statement to the companions to divorce their non-Muslim wives unless they have faith in Allah SWT. Umar's statement was based on the words of Allah SWT in the Qur'an Surah Al-Baqarah verse 221 and Surah al-Mumtahanah verse 10.

3. Interfaith Marriage According to the Fatwa of the Indonesian Ulema Council

The Indonesian Ulema Council at its second National Conference in 1980 issued a decision No. 05/Kep/Munas II/MUI/1980 dated June 1, 1980 concerning the Fatwa on Interfaith Marriage at number 2 as follows:

- a) It is forbidden for a Muslim woman to marry a non-Muslim man.
- b) It is forbidden for a Muslim man to marry a non-Muslim woman. As for marriage between a Muslim man and a woman of the Book, there are differences of opinion.

MUI has ruled that interfaith marriage is haram. This fatwa is determined considering and considering the mafsadah which is greater than the maslahat, so MUI also expects every Muslim man is prohibited from marrying a woman who does not embrace Islam.

Marriage registration is carried out by the Religious Affairs Office (KUA) for people who are Muslims and the Population and Civil Registry Office (Dukcapil) for people who are not Muslims.

Marriage is defined as a physical and mental 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 God.¹² Therefore, marriage is considered valid if it is carried out in accordance with the laws of religion and their respective beliefs and then registered by state agencies.

Mixed marriages between Indonesian citizens and foreigners are also registered by the Population and Civil Registration Office but not interfaith marriages, because interfaith marriages violate religious rules and laws.

With the pluralistic society that exists in Indonesia, it is possible for interfaith marriages to occur. There are two ways of addressing the rules and legalizing interfaith marriage: First, one of the parties can convert, but this can mean legal smuggling, because what happens is only getting around the legal provisions in Law No. 1 of 1974 concerning Marriage. However, after the marriage takes place, each party returns to their respective religions. This method is not recommended. Secondly, people can perform interfaith marriages if the organization of the marriage is not carried out in accordance with Islamic teachings, as in the case of the marriage of Lidya Kandau, a Christian woman, and Jamal Mirdad, a Muslim man, which in the end could be registered by the Population and Civil Registration Office after the issuance of Supreme Court Decision No. 1400 K/Pdt/1986.

If a couple of different religions insists on marrying, there are two ways to do it: either one of them converts to another religion or the marriage is not held according to Islamic rules.

¹² Law Number 1 of 1974 concerning Marriage

IV. Conclusion

Positive law in Indonesia does not explicitly prohibit the implementation of interfaith marriages. However, in terms of the rules and culture that exist in Indonesia and the State of Indonesia is not a secular state, it can be interpreted in Indonesia that interfaith marriages cannot be held, then if interfaith marriages are considered a violation of the law.

Islam considers interfaith marriage to be haram and sinful. Allah SWT says in the Qur'an explicitly prohibits Muslims from marrying disbelievers or polytheists as stated in Surah Al-Baqarah (2): 221).

There are two ways to respond to the legality of interfaith marriages: First, one of the parties can convert, but this can mean legal smuggling, because what happens is only getting around the legal provisions in Law Number 1 of 1974 concerning Marriage. Second, based on jurisprudence, namely Supreme Court Decision Number. 1400 K/Pdt/1986 The Civil Registry Office is allowed to perform marriages of different religions. Where the case originated from a marriage that would be registered by Jamal Mirdad (male Muslim artist) with Lidya Kandau (female Christian artist).

For this reason, it is hoped that every citizen in Indonesia, both those who adhere to the teachings of Islam and those who are not Muslim, will pay more attention to the purpose of marriage and be able to follow the rules of invitation that apply in Indonesia and carry out the laws or rules of religion and belief.

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