



Interfaith Marriage in The Aspect of State Law and Islamic Law Perspective

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Abstract

This article aims to examine the differences and similarities in the perspective of Islamic law and state law regarding interfaith marriage, the method used is qualitative descriptive, namely in the form of a literature review. Marriage is a very important thing in the reality of human life. The fact in people's lives that interfaith marriage is an undeniable reality is of course a great disregard for the existence of laws and regulations. Interfaith marriage in Indonesia does not have legal force because invitation number 1 of 1974 concerning marriage and the drafting of Islamic law as a positive law has prohibited interfaith marriage. Based on state law and the perspective of Islamic law, interfaith marriage is seen as more harmful than beneficial. Performing an interfaith marriage means not complying with the laws and regulations that apply in this country. State law has banned interfaith marriage. Therefore, the Religious and Civil Registry Office will not make administrative records of interfaith weddings. And the consequences of interfaith marriage will experience various problems in the household so that it is impossible to realize a sakinah family.

Keywords: Interfaith Marriage; State Law & Law

Abstrak: Artikel ini bertujuan untuk mengkaji perbedaan dan persamaan dalam perspektif hukum Islam dan hukum negara tentang perkawinan beda agama. Metode yang digunakan adalah deskriptif kualitatif, dalam bentuk tinjauan pustaka. Pernikahan adalah hal yang sangat penting dalam realitas kehidupan manusia. Kenyataan dalam kehidupan masyarakat bahwa perkawinan beda agama adalah kenyataan yang tidak dapat disangkal tentu tidak demikian, tentunya tidak mengindahkan keberadaan peraturan perundang-undangan yang berlaku. Perkawinan beda agama di Indonesia tidak memiliki kekuatan hukum karena Undang-Undang Nomor 1 Tahun 1974 tentang perkawinan dan penyusunan hukum Islam sebagai hukum positif telah melarang perkawinan beda agama. Berdasarkan hukum negara dan perspektif hukum Islam, pernikahan beda agama dipandang lebih besar merugikan daripada manfaat. Perkawinan beda agama berarti tidak mematuhi peraturan perundang-undangan yang berlaku di negara ini. Undang-undang negara bagian telah melarang pernikahan lintas agama. Oleh karena itu, Dinas Agama atau Catatan Sipil tidak akan membuat catatan administrasi acara pernikahan beda agama. Dan konsekuensi dari pelaksanaan perkawinan beda agama akan mengalami berbagai permasalahan dalam rumah tangga sehingga tidak mungkin terwujudnya keluarga yang harmonis.

Kata Kunci: *Pernikahan Beda Agama; Hukum Negara & Islam*

INTRODUCTION

At the end of 2022, in Jakarta there was an interfaith marriage that went viral in 2022. The viral news is inseparable from the general view of the Indonesian people about the prohibition of interfaith marriage. In addition, divorce occurs in couples of different religions. Marriage can be a very happy life experience, a little happy, or not happy at all. God designed two different sexes to complement each other. God wants men and women to be united in marriage so that they can fill each other's shortcomings. But differences can also be a drag that stretches and leads to division.

In the law applicable in Indonesia, mixed marriage is a marriage between two people who in Indonesia are subject to different laws, due to differences in nationality and one party is a foreign citizen and the other party is an Indonesian citizen. This difference in the Marriage Law does not question mixed marriage because of nationality. The mixed marriage in question is a mixed marriage in a broad sense, namely a marriage between two people; Men and women are subject to different laws, of which there are no provisions or laws that specifically regulate the issue of different religious marriages. (Amir, 2019)

Although the number of interfaith or interfaith marriages in Indonesia is increasing, until now it has not received a proper place, both among the community, religion and the government. This model of marriage is still considered taboo, prohibited which is contrary to existing religious rules and doctrines and government laws. The public in general only knows the doctrine they hold that prohibits religious marriage. And this is considered a single view or interpretation of the biblical texts dealing with this issue. Unfortunately, such an attitude is not accompanied by a critical examination of the texts of the book itself. So that an attitude that tends to be dogmatic and refuses with an anti-certainty attitude appears. Likewise, religious scholars who have "sole authority" in translating the message of the scriptures to the people, who, in the majority, hold a firm grip on the interpretation of biblical texts that prohibit interfaith marriage. People who follow religious organizations and religious people agree that interfaith marriage will be vulnerable to domestic problems. Apart from these reasons, the fact is that interfaith marriages are increasingly rampant in number. (Togatorop, 2023)

Not only among ordinary people, there are many celebrities who marry different religions while still maintaining their respective beliefs. For those who perform interfaith weddings carried out in the country, there are also those who hold them abroad. Here are celebrity couples who have married with different religions and their beliefs such as: Deva Mahendra (Muslim) and Mikha Tambayong (various Catholics) they got married in Bali. The couple Dimas Anggara and Nadine Chandrawinata where Dimas Anggra (Muslim) and

Nadine Chandrawinata (Catholic), Irfan Bachdim (Muslim) and Jennifer Kurniawan (Christian). (Juandini, 2023)

This research aims to examine the perspective of positive law and Islamic law on interfaith marriage from the perspective of similarities and differences between the two laws above. The results of this research can be useful in adding to the treasure of understanding for a wide audience, especially for those who are married to different religions. This study aims to examine the similarities and differences in perspectives of Islamic law and State Law regarding interfaith marriage. Indonesia is a country that has regulations on marriage as a positive law, namely Law Number 1 of 1974 concerning Marriage and the Drafting of Islamic Law. In addition, there is also a fatwa of the Indonesian Ulema Council (MUI) whose presence is a reference and legal umbrella for Muslims. (Jalil, 2018)

METHOD

The type of research used is a type of descriptive qualitative research, Descriptive qualitative research is a research that is narrative and tends to use analysis using a literature research approach. The data collection process uses sources from various relevant journals or articles, sources discuss interfaith marriage in the aspect of State law and Islamic law perspective as a reference, explain the root of the problem being discussed, namely by analyzing the problem of interfaith marriage in Indonesia, then summarize the main problem by using descriptive techniques about interfaith marriage in the perspective of State law and Islamic law.

RESULTS AND DISCUSSION

Definition of Interfaith Marriage

Interfaith marriage or interfaith marriage is a marriage between a man and a woman of different religions, for example a marriage between a Muslim man or woman and a non-Muslim man or woman. Meanwhile, according to experts, according to Rusli and R. Tama, it is stated that interfaith marriage is a bond between a man and a woman, which due to different religions, causes entangled in two different regulations regarding the terms and procedures for the implementation of marriage in accordance with the laws of their respective religions, with the aim of forming a happy and eternal family based on the One Godhead. Marriage is a legal act so it has legal consequences that can occur. The validity of a legal act is determined by positive law, which in the field of marriage in Indonesia becomes positive law, namely Marriage Law Number 1 of 1974, thus the validity of a marriage is determined by the provisions in the law. (Amir, 2019)

Along with the times, and in this era of modern globalization and increasingly sophisticated technology, many marriages are not in accordance with the applicable rules and laws. The marriage bond leaves the bond without

meaning and hope. Many problems arise in people's lives related to marriage. Although there is a national marriage law that functions to regulate marriage issues, it is undeniable that in reality there are still many people who still use the customary rules of each religion and their respective tribes. So that in carrying out marriage, many violate the rules of the law that have been regulated. One of them is marriage from various religions. The fact in people's lives that interfaith marriages occur is an undeniable reality. In practice, many couples want to live together but do not get married because they are based on different religions or beliefs. There are also couples who have lived together or "kumpul kebo" for reasons that have an influence in their relationship, namely different religions. In this context, they are simply sticking to the commitments that have been made by both parties. However, the problem is that when commitments do not go well, the relationship will become complicated, and there will be legal consequences that result in the disruption of the harmony of married life because there is no role of religion in the purpose of the marriage bond. (Makalew, 2013)

Although there is no definite formulation of interfaith marriage in the Marriage Law, we can refer to various definitions by scholars. First, according to Rusli and R. Tama, interfaith marriage is an innate bond between a man and a woman who, due to different religions, leads to entangled in two different rules on the terms and procedures of marriage in accordance with the laws of their respective religions, with the aim of forming a happy and eternal family based on the One Godhead. Second, according to Ketut Mandra and I. Ketut Artadi, interfaith marriage is an innate bond between a man and a woman who each have a different religion and maintain their religious differences as husband and wife with the aim of forming a happy and eternal household based on the One Godhead. Third, according to Abdurrahman, interfaith marriage is a marriage carried out by people who adhere to different religions and beliefs from each other. From the above understanding, according to the author, interfaith marriage is a relationship between two people with different beliefs and bound in one relationship, namely marriage. There are two main elements that must exist in the definition of interfaith marriage, namely different religious beliefs or embraces and are bound in marital relationships. (Arifin, 2018)

Interfaith marriage is part of a kind of mixed marriage. Interfaith marriages in their implementation often face obstacles. This is because in principle every religion prohibits interfaith marriage. However, even though religion prohibits interfaith marriage, based on Article 7 paragraph (2) of the GHR, interfaith marriage is allowed. This article stipulates that differences in origin, religion and nationality are not an obstacle to the implementation of marriage between those who want to marry from different religions. Several articles in the GHR are related to interfaith marriage. Article 1 of the GHR contains a broad understanding, in order to be able to carry out interfaith

marriages, the conditions that must be met, as a consequence. Similarly, in article 6 paragraph (1) the GHR requires that interfaith marriages must have the consent of the prospective husband and wife, that is, for the parties who want to carry out the marriage are required to meet both material and formal requirements in accordance with their own laws.⁸ Based on the provisions in the GHR, the scope of mixed marriage is very broad, even the provisions of religious law that prohibit marriage between different religions are violated by the GHR. The deviation of the GHR from religious law can be seen from the definition of mixed marriage which includes mixed marriage between people of different religions. This is contrary to what is regulated in religious law As for the relationship with the organization of interfaith marriages between fellow Indonesian citizens, it needs to be understood that marriage is meant according to religious law in Indonesia (Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism). The opinion of religious law about interfaith marriage basically prohibits its people from marrying followers of other religions. (Amir, 2019)

Interreligious Marriage in State Law

In Article 2 paragraph of the Marriage Law No. 1 of 1974, it is stated that marriage is valid if it is carried out in accordance with the laws of each religion and belief. In his explanation, it was then stated that there is no marriage outside the law of each religion and its belief, in accordance with the 1945 Constitution. Article 2 paragraph of Law No. 1 of 1974 also states that every marriage is recorded in accordance with applicable law. 9 of 1975 states that every person who wants to perform marriage must notify the will, either orally or in writing, to the Registrar at the place where the marriage will be held, within a period of at least 10 working days before the marriage takes place, while other provisions can ask for permission from the Sub-district Head on behalf of the regent, if 38 Article 2 Paragraph of Law Number 1 of 1974 concerning Marriage. Death certificate of wife/husband or divorce certificate for the second or more marriage. According to Article 10 of Government Regulation Number 9 of 1975, marriage can be carried out after the tenth day since it is announced in accordance with the marriage procedures according to the law of religion and their respective beliefs, for registration officers attended by 2 witnesses. (Aziz et al., 2019)

In article 1 of the Marriage Law number 1 of 1974, it is stated that marriage is a bond between a man and a happy and eternal family (household) based on the One Godhead. Another definition of marriage is a union between a man and a woman who are given the power of social sanctions in the marital relationship.¹⁷ Religious aspects are also found in other articles, such as the conditions for annulment of marriage and the prohibition of marriage. In article 2 paragraph (1) of the Marriage Law regarding the legal requirements of marriage, it is stated that marriage is valid, if it is carried out in accordance

with the law of each religion and its belief." As for the prohibition of marriage, article 8 letter f states that there is a relationship that is prohibited by religion or other regulations that prohibit marriage." 18 Based on these articles, it can be concluded that Indonesian marriage is based on religious law, so that marriage is carried out not based on or violates religious law that is considered religious, so marriage that is carried out not based on or violates religious law is considered invalid.¹⁹ This can be interpreted that marriage law in Indonesia is religious law and accommodates religious law in Indonesia. In other words, there is a plurality in the unity of laws, namely marriage laws according to Islam, Catholicism, Christianity, Hinduism, Buddhism, and Confucianism. Based on this explanation, the marriage period between adherents of different religions, hereinafter referred to as interfaith marriage, is still a polemic in marriage law in Indonesia.

The purpose of marriage is desired in Law number 1 of 1974, if we feel that it is very ideal. Because the purpose of marriage is not only from the external aspect but at the same time there is an inner relationship between husband and wife which is aimed at fostering an eternal and happy family or household for both of them and in accordance with the will of God Almighty. Marriage and religion have a close and inseparable relationship so that all religions regulate the issue of marriage and basically every religion always wants marriage between a man and a woman of the same religion. same. This can be understood because religion is the main foundation and very important in household life, by having a strong religious foundation, it is hoped that domestic life will also be strong so that it will not collapse even with a slight shock.(Togatorop, 2023)

The prohibition of interfaith marriage in Indonesia is very strong. In mid-June 2015, the Constitutional Court announced a ban on marrying couples of different religions. In this case, the Constitutional Court issued a decision rejecting the material examination of a number of articles in Law Number 1 of 1974 concerning Marriage, based on the decision of the Constitutional Court Number 68/PUU-XII/2014. Therefore, the prohibition of interfaith marriage as stipulated in Law Number 1 of 1974 concerning Marriage does not violate the constitution, even though the five applicants for material review consider the Constitutional Court's decision to be discriminatory, because it does not pay attention to the civil rights of citizens. In its ruling, the Constitutional Court stated that Law Number 1 of 1974 concerning Marriage can realize the principles contained in Pancasila and the 1945 Constitution and can accommodate all the realities of life in society. Furthermore, in Article 28J paragraph 2 of the 1945 Constitution it is stated that in exercising their rights and freedoms, every citizen must be subject to the restrictions set by the Law. According to the Constitutional Court, marriage is one of the areas of problem regulated in the legal order in Indonesia. For this reason, all actions and deeds carried out by citizens, including matters related to marriage, must be

obedient and submissive, and do not contradict the applicable laws and regulations.(Jalil, 2018)

In this article, it is emphasized that marriage will only be considered a valid legal act if it is carried out in accordance with the procedures set by the religion and beliefs of each individual, in accordance with the information in the Explanation of Article 2 of the UUP that there is no form of marriage outside the legal framework of religion and belief. This concept is in accordance with Article 29 of the 1945 Constitution: (1) The State is based on the One; (2) The State guarantees the freedom of every citizen to practice his or her own religious beliefs and worship in accordance with his religion and beliefs. It can even be said that interfaith marriage in Indonesia itself has not been explicitly regulated in any law. However, it has been affirmed in Article 44 of the KHI that a Muslim woman is prohibited from marrying a man who is not a Muslim. In addition, the MUI Fatwa 4/2005 also emphasizes that interfaith marriage is haram and invalid. And then on July 17, 2023, the Supreme Court has issued Circular Letter No. 2 of 2023 concerning Judges' Guidelines in Adjudicating Applications for Registration of Marriages Between People of Different Religions and Beliefs, to answer and end the polemic about marriage registration between different religions and beliefs that has been happening in the midst of society.(Mayaningsih, nd)

Interfaith Marriage in Islamic Law

In the Qur'an and legal literature in Islam, the word Islamic law is not found. The commonly used are Islamic shlaw, sharia, fiqh, and sharia/syarak. In western literature there is the term *Islamic law*, which can literally be called Islamic law. Joseph Schacht (1967:1) defines *Islamic law*: "the entire book of Allah that governs the life of every Muslim in all its aspects". This definition shows that Islamic law is closer to the meaning of Islamic law. In simple terms, the law can

It is defined as "a set of regulations on actions or behaviours recognized by a State or society, applicable and binding on all its members". If the term law is related to Islam, then Islamic law means "a set of rules based on the revelation of Allah and the Sunnah of the Prophet regarding the behavior of mukalaf human beings that are recognized and believed to be valid and binding for all those who Muslim" (Amir Syarifuddin, 1990: 17). From this definition, Islamic law includes the meaning of sharia law and fiqh law, because the meaning of sharia and fiqh is covered in it. So it can be said that Islamic law is a law based on the revelation of Allah SWT., whose purpose is to realize benefits for mankind. It is said in the fiqh of the qaidah ushul:

In Islam which adheres to the Quran, it is forbidden to marry a Muslim woman to a non-Muslim man. In Surah Albaqarah verse 221, "... And don't marry polytheistic women before they believe. Indeed, a mu'min slave is better than polytheistic people even if he appeals to your heart. They invite them to

hell while God invites them to heaven and forgives them with His permission to let them learn their lessons. Then in Al Muntahanah verse 10 it reads, "O you who believe, when you come to emigrate to you women who believe, then test their faith, and when you know that they really believe, do not return them to their husbands from the people. They are invalid unto them, and give to their husbands the dowry they have paid, and it is not a sin for you to marry them when you pay their dowry: do not hold fast to the marriage bond with the women who do, and let them ask for the dowry they have paid. Such is the law of Allah established between you and Allah the All-Knowing, the All-Wise." According to K.H. Ahmad Azhar Basyur, Surah Al Muntahanah verse 10 concludes that Muslim women are only allowed to marry Muslim men. Meanwhile, for Muslim men, it is permissible to marry a woman who is a book scholar (Christian and Jewish) as long as the Muslim man has strong religious beliefs. In Surah Al Maidah verse 5 reads "... It is permissible to marry an honorable woman among believing women among those to whom the Bible has given you, if you have paid their dowry with the intention of having it, not with the intention of committing adultery and not making them mistresses. Whoever believes (does not accept Islamic law) and abolishes his deeds and he in the Hereafter is a loser, regardless of religion. Basically, it does not allow non-faith marriages.(Togatorop, 2023)

Islam does not recognize the prohibition of marriage because of nationality differences or because of legal differences ((customary law), but prohibits its people from signing marriage contracts with non-Muslims. Regarding the MUI decision on interfaith marriage at the Second National Congress of the Ulema Council (MUI) with number 05/Kep/Munas II/MUI/1980 dated June 1, 1980 concerning Fatwa regulating fatwa on interfaith marriage, that: a. Marriage of a Muslim woman to a non-Muslim man is illegal; b. A Muslim man is prohibited from marrying a non-Muslim woman c. Regarding the marriage between a Muslim man and a woman in *the book of Ahl*, there is a difference of opinion: After considering that *mafsadat outweighs the benefits*, the MUI decided that *interfaith marriage is haram*.

The bond of marriage in Islamic law is the bond of all aspects and aspects of people's lives. Islam prohibits marriage bonds that result in the destruction of religious beliefs. From this provision, it is expressly stipulated that a Muslim is prohibited from marrying a non-Muslim which applies to both men and women.(Amir, 2019)

Interfaith marriage in this day and age is a phenomenon that is increasingly encountered in an increasingly open and plural society. However, this kind of marriage still presents challenges, both in terms of law, culture, and religion. On the one hand, many couples choose interfaith marriage because of their belief in the importance of tolerance, love, and respect for differences. On the other hand, religious differences are often an obstacle, both in daily life and in the process of legalizing marriage according to state law.

Therefore, it is important for each individual and couple to understand the legal and social consequences of their choices, as well as to open up space for dialogue and understanding between different religions and cultures. With a thoughtful, open, and respectful approach, interfaith marriages can be lived in harmony and tolerance, creating a strong and supportive family despite differences. Ultimately, any marriage relationship, whether religious or interfaithful, requires commitment, mutual understanding, and respect to create a peaceful and loving life. Interfaith marriage today is not in accordance with the purpose of interfaith marriage in the time of the Prophet Muhammad (peace be upon him), now interfaith marriage is only proof of prestige and satisfaction of lust and not for the glory of Islam so this is better avoided.(Arifin, 2018)

CONCLUSION

Interfaith marriage is a complex and sensitive issue, both from the perspective of state law and Islamic law. In terms of state law, interfaith marriage in Indonesia is regulated by Law Number 1 of 1974 concerning Marriage which requires religious similarity between husband and wife. Indonesian law generally does not allow interfaith marriages, although there are exceptions through certain legal procedures. From the perspective of Islamic law, interfaith marriage is also a matter of debate. Actually, Islamic law prohibits a Muslim from marrying a non-Muslim, except under certain conditions stipulated in fiqh (for example, a Muslim man can marry a woman such as a Jew or a Christian, under certain conditions). However, this view varies depending on the school to which it is adhered to. Overall, both state law and Islamic law view interfaith marriage with some strict restrictions and requirements. Therefore, individuals considering interfaith marriage need to understand the regulations that exist at both the country level and the religion they are following, as well as consider the social and personal impacts that may arise. The journal underscores the importance of dialogue between state law and religious law to find thoughtful solutions to the problem of interfaith marriage, as well as the need for a sensitive approach to individual rights and social values.

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