

# REVIEW OF POSITIVE LAW AND FIQH LAW ON INTERFAITH MARRIAGES

<sup>1</sup>Ahmad Azmi Perkasa Alam, <sup>2</sup>M. Idris

<sup>1</sup>Universitas Muhammadiyah Kalimantan Timur, <sup>2</sup>Sekolah Tinggi Agama Islam Aceh Tamiang

Email: <sup>1</sup>aap284@umkt.ac.id, <sup>2</sup>annafi373@gmail.com

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## ABSTRACT

This study describes a review of positive law and fiqh law on interfaith marriages. Marriage is the result of affection between men and women, so limiting marriage to religion is one of the conflicts that often occurs, interfaith marriage is something that is difficult to separate, especially those who adhere to the teachings of pluralism in Indonesia. So from here the researcher considers it important to raise the problems that occur in interfaith marriages, in this study the author uses a descriptive method, namely to provide data that is as accurate as possible about the problems discussed. This descriptive method is intended to get a good, clear and can provide data as accurately as possible about the object under study. Data collection techniques using library research techniques. The selection of literature is carried out as carefully as possible by considering the author's authority in the field under study. This study also examines in detail the law of interfaith marriage in terms of Islamic law following the as-Syafi'i school, and also links civil law and positive law in Indonesia, as well as the MUI fatwa.

**Keywords:** positive law, fiqh law, interfaith marriage

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## 1. INTRODUCTION

Interfaith marriage has always been a hot topic to be raised, this is due to the reality or facts and data collected by each government regarding interfaith marriage. In Indonesia, there are two institutions that record marriage, namely the Office of Religious Affairs (KUA) for adherents of the Islamic religion, and the Civil Registry Office (KCS) for non-Muslims. Marriage with the meaning of inner and outer bond between husband and wife with the intent and purpose of fostering a *sakinah mawaddah* and *warahmah* household, and is eternal as God Almighty, then marriage is considered valid if it is carried out according to the guidance and applicable religious law, and has been recorded according to current regulation. However, this is not the case with interfaith marriages, because interfaith marriages are not mixed marriages, as our national law implies, mixed marriages according to the law are marriages between Indonesian citizens (WNI) and foreign citizens (WNA). Actually marriage is *sunnatullah* for mankind to maintain survival, marriage or marriage even though it has its own meaning but it is considered the same because it has the same literature, so in the KBBI dictionary marriage is defined as forming a family with the opposite sex; having a husband or wife; and this is normal for every human being. When Allah swt. created the Prophet Adam. (Jonathan, 2017)

then Allah swt. created Eve as his wife and partner, thus giving birth to 20 men and 20 women, and they were interbreeding, so this is where the marriage began. a man who proposes to a woman, after an agreement has been reached between two parties, the man gives a dowry to the woman, then marries her. this is the current marriage. The second marriage, namely *istibda'* marriage, a husband who wants good offspring, then he orders his wife to have sex with someone else during her fertile period, then the husband must not have sex with her, until his wife is tested positive for pregnancy. The third marriage is that less than ten men have sex with a woman, after pregnancy and childbirth, the woman sends a letter to all men who have had sex with her to gather, women have the right to choose one of them to marry. husbands, and they cannot refuse. The fourth marriage is a woman who puts a white flag in front of her house as a sign that any man can have sex, after pregnancy and giving birth, the woman will call every man she has ever had sex with to determine who the father of the baby is. Experts in the ins and outs of lineage (*Al-Qafah*) after researching carefully, then *al-Qafah* determines the father of the baby who is born. After the arrival of Islam, the Prophet Muhammad saw. eradicating three forms of marriage and perpetuating one form of marriage that is still running today. (Arifin, 2019)

## 2. LITERATURE REVIEW

### 1. Article 14 Compilation of Islamic Law (KHI)

There are prospective brides and grooms There are 2 witnesses There are marriage guardians or guardian judges. *Sighat* or *lafadz* consent and *qabul*. In Islam this is very important so that every

Muslim is permitted to have sexual relations between men and women after fulfilling the requirements of the pillars. Therefore, it is forbidden to have sexual relations or any form of association between men and women if the conditions and pillars are not fulfilled, even the marriage that occurs is considered invalid. From this we know that Islam is very concerned about the nature (holiness) of its people, and Islam highly upholds the honor of a woman, during the period of jahiliyah women were looked down upon and despised, so Islam came to place her in a noble place. The legitimacy of a marriage is the beginning of the recording of a husband and wife relationship, and the beginning of a relationship that was previously forbidden by religion to become halal, thus avoiding allegations of sexual harassment. Islam strictly forbids its people from having sexual relations outside of marriage, besides damaging themselves it can also damage the nation's generation, Islam forbids adultery but justifies marriage as a solution and means to get pious offspring and as a worship. So adultery is a major sin that obliges the perpetrator to go to hell, apart from being despised, it also has a negative impact which causes the wrath of God to come and invites disaster.(Pamungkas, 2021)

## 2. Conditions And Pillars To Be Considered Valid

Male and female candidates. Islam does not limit the minimum age for the validity of a marriage, a newborn baby will be legally married if the marriage contract is carried out by his guardian. Siti Aisyah's marriage to the Prophet Muhammad was carried out when she was 6 years old, and started a household life when she was 9 years old. However, Law Number 16 of 2019, reads "Marriage is only permitted if a man and a woman have reached the age of 19 years. This is related to the policy and the achievement of the goal of marriage at the age of 19. Two witnesses. There are 6 conditions for witnesses: 1). Muslim 2). Baligh 3). Common sense 4). Freedom 5). Boy 6). 'is (fair) Witness must meet the six criteria, then a marriage will be void if the witness adheres to a non-Muslim religion, on the issue of witness requirements that often triggers debate is on the sixth condition, where the witness must be of a fair nature, meaning 'is (fair) here, namely: "never commit major sins and do not continue to small sins, and also stay away from actions that can eliminate *murū'ah* (authority). Like peeing on the side of the road. So people who are not fair are called *fasiq* people, which makes it invalid to be a witness for marriage. Wali is a term for the male party in the family or others who are in charge of supervising the condition or condition of a woman, especially in the marriage chapter. The right of guardianship will move to the next order when there is no guardian or the guardian does not have a fair nature, as explained in the witness point. The following is the order of guardians: father, grandfather, sibling, half-brother, nephew of a sibling or father-in-law, and paternal uncle. Lafadz consent and qabul. Ijab is the submission of the guardian to the bridegroom with the words of marriage, qabul is the acceptance of marriage from the bridegroom with the words of acceptance. What needs to be considered in the ijab qabul is that it doesn't take long and does not give a different lafadz. (Hedi, 2019)

Interfaith marriages are marriages carried out by the bride and groom who adhere to different religions, establishing relationships with partners who hold different beliefs. interfaith marriage is not a new discourse but it is an issue that is constantly debated, interfaith marriages must not only be ready for conflict with their families, interfaith couples must also consider and prepare for religion to be taught to their children, and interfaith marriage in Indonesia is not a problem. It's simple, so many choose to marry abroad to get a marriage certificate from the local country or from the Indonesian Embassy, upon arrival in Indonesia they can register their marriage at the civil registry office (KCS) to get a certificate of reporting marriage abroad.(Robikah, 2020)

## 3. RESEARCH METHODS

The type of research used in this research is normative legal research (juridical normative), namely research that is focused on examining the application of rules or norms in positive law. Research conducted to examine legal materials and main books related to the problem being studied. Data collection techniques are carried out through document studies, to obtain conceptions of theories or doctrines, opinions or conceptual thoughts or research related to the object of this research study, can be in the form of applicable laws and regulations, books, scientific works of scholars, search results from the internet and other literature related to research.(Musahib, 2021)

#### 4. RESULTS AND DISCUSSION

##### 1. Definition of marriage

Etymologically, marriage is interpreted in the KBBI dictionary as a marriage contract which is carried out in accordance with the provisions of law and religious teachings: living as husband and wife. Marriage is defined as forming a family with the opposite sex; having a husband or wife; While the discussion in the classical book of marriage is interpreted as gathering or having intercourse, this is what triggers the naming of marriage. Interfaith marriages, namely marriages between women and men who adhere to different religions or beliefs, and interfaith marriages can occur among Indonesian citizens, namely women who are Muslim married to men who adhere to Christianity, or men who adhere to Islam and women who adhere to Christianity. Christianity, or it can happen among ethnic groups, regions or it can happen with Foreign Citizens who one of them adheres to different religious beliefs. (Wahyu Ziaulhaq, 2022)

##### 2. The purpose of the wedding

Marriage is a form of stability for a man or woman to build a household and establish harmony between husband and wife, the main purpose of marriage is to worship Allah swt. because as the Messenger of Allah (saw) said. Marriage is half a stronghold for a person in religion, so he should guard the other half by fearing Allah the Exalted. Scholars say that there are two things that destroy humans, namely the genitals (lust) and the stomach (greed). With lust, there are many crimes and disobedience where a person will fall at the lowest point until he will become a humble servant, when lust is divinized then shame will disappear in the human person as if there is no more ugliness or ugliness on his side, only with the right intention and hoping for a reward from God, marriage will always protect a person from things that are despicable from a religious point of view, and the integrity of his household will be maintained. Marriage in the Qur'an is explained as wasilah to get peace of mind for husband and wife (Q.s. Al-Rum: 12), and to channel biological needs and give birth to a quality generation for religion and intellectuals for the nation and state (Q.s Al-Nisa: 1), and stabilize the lust so that it is easy to lower the gaze and also maintain self-respect (H.r Bukhari and Muslim). And with marriage also multiply the kinship so that the realization of an Islamic relationship. (Anggi Nur Nisa Tanjung & Wahyu Ziaulhaq, 2022)

##### 3. The law of interfaith marriage according to Islam

Islam is a perfect religion that regulates all aspects of the life of Muslims from small to large matters, the Qur'an and hadith are the two main foundations that guide the lives of Muslims throughout the world. And interfaith marriages have been explained in the Qur'an clearly and unequivocally, that Allah SWT. prohibits interfaith marriages, namely the marriage of a Muslim or Muslim woman with a non-Muslim religion follower (Surah al-Baqarah: 221). Some commentators argue that the words musyrikah and musyrikn in (Surah al-Baqarah: 221) have a general meaning, namely for all unbelievers, including the people of the book. Some other commentators argue that the word "prohibition" from the verse has been removed by QS al-Maidah: 4. The first opinion, which forbids marriage to women of the people of the book, refers to the source of Ibn Umar and is used as a guide by the Zaidiyah Shia School. Ibn Umar is known to be very careful in issuing fatwas, so his opinion that prohibits it is based on an attitude of caution and concern for the safety of the religion of husband and wife and children. While the second opinion that justifies marrying a woman of the book is spearheaded by the majority of scholars. In countries where the majority of the population is Muslim, who adheres to the teachings of Islam kaffah / thickly, the law of marriage will follow the more dominant school, such as Indonesia which is based on the Shafi'i school, then the fiqh that is applied is fiqh which is derived from the Shafi school. 'i. There are several opinions among scholars about who is a musyrikah (mushrik woman) who is forbidden to marry? Sheikh Muhammad Ali al-Shabuni gave the ta'rif musyrikah is "women who worship idols".

Thus, the word musyrikah can be interpreted as "women who worship idols in the form of statues or in other forms which are believed to bring benefits and resist disaster". The majority of scholars are of the opinion that all polytheists from among Arabs or non-Arabs, except the people of the book, namely Jews and Christians, are forbidden to marry. According to this opinion, non-Muslim women and not people of the scriptures, regardless of religion or belief, such as Buddhism, Hinduism, Confucianism and Magi should not be married to Muslim men, because followers of religions other than Islam, Judaism and Christianity are included in the category of 'mushrikah'. The affirmation of the prohibition of marrying polytheist women in Surah al-Baqarah verse 221, is reinforced by the word of Allah in Surah al-Mumtahanah verse 10: "Do not hold on to the rope (marriage) with infidel women". Meanwhile, Ibn Jarir al-Tabari (a scholar of exegesis) restricts polytheist women who are forbidden to marry only mushrik women from the Arabs, because the Arabs at the time of the revelation of the Koran did not know the holy book, and they worshiped idols. According to this opinion, a Muslim man may marry a polytheist

woman from a non-Arab nation, such as Chinese, Indian and Japanese women, who are thought to have had a holy book or similar scriptures, such as Buddhists, Hindus, Confucians, who believe in God. The Almighty, believes in life after death and so on. This view is in line with the opinion of Sheikh Muhammad Abduh.

5. In the Shafii school of law on marriage with non-Muslims there are several details and explanations:

Marriage with a polytheist man/woman is unlawful and illegitimate, if there is a marriage with a polytheist man/woman then it is punished as adultery, and it is obligatory for the local government to separate the two. Marriage with a Jewish woman of the book, then this marriage is permissible and valid on the condition that her ancestors were Jews before the Prophet Jesus was sent and did not convert to other religions. Marriage with a woman of the scriptures from the Christians is considered valid on the condition that her ancestors have become Christians before being sent by the Prophet Muhammad. Marriage with men of the Scriptures from the Jewish and Christian groups is considered invalid and unlawful. A friend of the prophet, including a senior named Hudzaifah bin al-Yemen, was married to a Jewish woman, while none of the companions opposed him. (Masjufuk Zuhdi, 1997: 5). According to Imam Shafi'i's view, what is meant by the people of the book are the Jews and Christians of Israelite descent. Therefore, other nations who adhere to Judaism and Christianity are not included in the people of the book. His reason was that Moses and Jesus were only sent to the Children of Israel (descendants of Israel), not to other nations. He also emphasized the redaction of the *min qablikum* sentence in Surah al-Ma'idah verse 5. Imam Shafi'i's opinion is different from that of Imam Abu Hanifah and the majority of legal experts who state, whoever believes in one of the prophets, or a book that Allah has revealed, then he including scribes. Thus the people of the book are not limited to groups of adherents of Judaism or Christianity (Christians). Therefore, if there is a group that only believes in Suhuf Ibrahim or the Zabur given to the Prophet David only, he is also included in the range of understanding of the people of the book. Another opinion held by a small number of salaf scholars said that every ummah who has a book that can be presumed to be a holy book (*samawi*) is also included in the definition of scribes, just like the Magi. (M. Quraish Shihab, 1996: 366-367). This latter opinion was extended by Muhammad Rasyid Rida (1367 H: 193), who asserted that the Magi, *abi'in*, Hindus, Buddhists, Confucians, Shintoists and other religions could be categorized as scribes. monotheism (*tawhid*) and has a holy book. However, because the passage of time is so long, these religions are contaminated with shirk or paganism. Their holy books, if they had survived and were not swallowed up by the masses, would have experienced intervention from human hands, so that their contents deviated far from the original. Jews and Christians themselves, who are relatively young, have been contaminated.

6. Interfaith marriage in terms of positive law

Along with the development of human times in terms of formalizing a life partner, it has been regulated in Law NO.1 of 1974 concerning marriage, but a new problem arose, namely interfaith marriage, before Law NO. 1 of 1974, interfaith marriages are mixed marriages, while mixed marriages are regulated in the *Regeling op de Gemengde Huwelijk stbl.* 1898 number 158, which is 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. In Indonesia, legally, marriage in Indonesia is regulated in Law Number 1 of 1974 concerning Marriage and Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law (KHI). These two laws regulate matters relating to marriage, including interfaith marriages. In the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage, article 2 paragraph (1) it is stated: "Marriage is legal, if it is carried out according to the law of each religion and belief. In this case it can be concluded that there is no marriage outside the law of each other. each religion and belief. The same thing is explained in several articles in the Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law, as follows: Article 4: "Marriage is legal, if it is carried out according to Islamic law in accordance with article 2 paragraph (1) Law Number 1 of 1974 concerning Marriage". (Musahib, 2021)

7. Prohibition of marriage between a man and a woman due to certain circumstances;

Because the woman in question is still tied to one marriage to another man; A woman who is still in the period of *iddah* with another man; a non-Muslim woman. Article 44: "A Muslim woman is prohibited from marrying a man who is not Muslim" Article 61: "No *sekufu* cannot be used as a reason to prevent marriage, unless it is not *sekufu* because of religious differences or *ikhtilaf al-dien*" Based on the explanation above, different marriages Religion which is carried out in the territory of Indonesian law, must listen to the path of religion, with the meaning that interfaith marriages cannot be carried out and if forced, they violate the law and also marriages are considered invalid. So according to the positive law enforced in Indonesia, Law no. 1 of 1974 concerning marriage, interfaith marriage cannot be legalized.

#### 8. MUI fatwa on interfaith marriage

The Surabaya District Court (PN) has legalized the marriage of interfaith couples on Monday, June 20, 2022, the marriage has been recorded in the stipulation Number 916/Pdt./2022/PN/Sby. So what exactly is the fatwa of the Indonesian Ulema Council (MUI) regarding interfaith marriages? MUI's decision on interfaith marriage no. 05/Kep/Munas II/MUI/1980 dated June 1, 1980 regarding the Fatwa, which stipulates in number 2 Interfaith Marriages of Religious People, that: Interfaith marriages are unlawful and invalid. According to qaul mu'tamad, the marriage of a Muslim man with an ahlukitab woman is unlawful and illegitimate. Regarding the marriage of men and women of the people of the book, there are differences of opinion among fiqh scholars. However, MUI considers the mafsadah to be too large, so the MUI fatwa related to this matter also forbids marriage to women of the scriptures. The MUI fatwa is based on the arguments of the Qur'anic verses, hadith and also the rules of fiqh proposals, the fatwa is of course after in-depth research on determining masalah and its mafsadah. The following is the argument that makes the reference to the MUI fatwa: Surat An Nisa verse 3 which means: "If you are worried that you will not be able to do justice to the (rights of) orphaned women (if you marry her), marry (other) women you like: two, three, or four. However, if you are worried that you will not be able to do justice, (marry) only one or the female slaves you have. That is closer to not doing wrong." Surah Ar Rum verse 21: Meaning: "Among His signs is that He created partners for you from (kinds of) yourselves so that you may feel at ease with them. He made between you love and affection. Verily in that there are indeed signs (of Allah's greatness) for a people who think. Surah At Tahrim verse 6: Meaning: "O you who believe, protect yourselves and your families from the hell fire whose fuel is people and stones. Its guardians are harsh and stern angels. They do not disobey Allah for what He commands them and always do what they are commanded." (Arifin, 2019)

#### 5. CONCLUSION

In short, in general, interfaith marriages involving two religions to establish love in one family without leaving their respective religions or beliefs, will affect the harmony in the household, and in the Shafii school of law marriage with non-Muslims there are several details and explanations: Marriage with a polytheist man/woman is unlawful and illegitimate, if there is a marriage with a polytheist man/woman then it is punished as adultery, and it is obligatory for the local government to separate the two. Marriage with a Jewish woman of the book, then this marriage is permissible and valid on the condition that her ancestors were Jews before the Prophet Jesus was sent and did not convert to other religions. Marriage with a woman of the scriptures from the Christians is considered valid on the condition that her ancestors have become Christians before being sent by the Prophet Muhammad. Marriage with men of the Scriptures from the Jewish and Christian groups is considered invalid and unlawful. MUI's decision on interfaith marriage no. 05/Kep/Munas II/MUI/1980 dated June 1, 1980 regarding the Fatwa, which stipulates in number 2 Interfaith Marriages of Religious People, that: Interfaith marriages are unlawful and invalid. According to qaul mu'tamad, the marriage of a Muslim man with an ahlukitab woman is unlawful and illegitimate.

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