

Research Article

Islamic Family Law: The Legality of Interfaith Marriage the Perspective of Islamic Law and Law No. 16 of 2019 Concerning Marriage

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Abstract.

The introduction to this research is that the legality of interfaith marriages in Indonesia is still a polemic, so people trapped in interfaith marriages choose court institutions to legalize their marriages. The method used is the normative juridical legal research method, descriptive analytical in nature, using primary and secondary data sources. Data sources were obtained from library research. The research results show that Islamic law and marriage law prohibit interfaith marriages, so there is no need for a new formulation because the law is clear, namely, it is not valid. This research discusses how marriage between followers of different religions is seen from the perspective according to Islamic law and the marriage law, and to find out what the solution is.

Keywords: marriage family law, interfaith marriage, Islamic law

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1. INTRODUCTION

Indonesia's population is more than 262 million people, of which around 87% are Muslims. The 1945 Constitution guarantees freedom for everyone to embrace religion and worship according to their religion [1]

An interfaith marriage is a marriage between followers of different religions, a marriage between a man and a woman of different beliefs (Yuni Juniarti, 2022) From its definition, 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 which is carried out based on religious demands [2]

The idea of modernizing Islamic law, including marriage, came from several figures who developed ideas in the field of Islamic law in order to create the continuity of actual Islamic law in accordance with the situation and conditions of Indonesian society. Marriages which were previously only carried out with the same belief, are now developing

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with an understanding of the permissibility of marriages between different religions. Even though this is a polemic, several opinions have emerged accompanied by their respective reasons and legal bases [3]

Biological needs are one of the primary needs for every person. Marriage as a condition for fulfilling these biological needs to be valid is a very important thing to do [4] If it is related to the mixed marriage regulations that existed before Law Number 16 of 2019 was born, then these regulations are the Mixed Marriage Regulations (Gegeling op de gemengde Huwelijken) which are contained in the stbl. 1898 Number 158 which we usually call by the abbreviation GHR. Initially, draft Law Number 1 of 1974 concerning Marriage, which was proposed by the Government, contained an article similar to article 7 of the GHR. The article was originally article 11 paragraph 2 which states that differences in nationality, ethnicity, country of origin, place of origin, religion, belief and descent are not obstacles to marriage, as the motto in Pancasila is different but remains one. Continuing from the above, the values contained in Pancasila do not conflict with Islamic law as it can be seen that belief in the Almighty God, Humanity, Unity, Democracy and Justice is a crystallization of the spirit of Islamic law so that there is no longer any reason to conflict. between Islamic law and Pancasila [5]

Then next, whether it is permitted or not, marriage between two followers of different religions has occurred since the world began to develop, in fact modernization is carried out because Islamic law and marriage law are laws that have high flexibility as stated by Ibn Qayyim that Islamic law can change according to with changes in time and place [6]

As social creatures who always live in groups in everyday life, of course we do not escape the name of interaction or communication, so it is not uncommon between one individual and another individual that a combination of unlimited sympathy arises between two individuals or what is known as love [7]

Indonesian society is a pluralistic society so interactions between adherents of various religions often occur everywhere so that falling in love and fulfilling sexual needs is often unexpected. Fulfilling sexual needs is an important part of human life, if it is not channeled it can affect sexual behavior [8] This fact shows that even though there are religious prohibitions, inter-religious marriages cannot be avoided [9]

Continuing from the above, on the other hand there are those who argue that marriage is a human right so that every person must be given the freedom to choose their partner through marriage without being hindered by anyone regardless of gender,

ethnicity, race, religion or cultural, social background, and even politics. The point is that everyone has human rights that cannot be violated [10]

Human rights are basic rights that humans have because of their dignity as humans and are not granted by society or the state. Therefore, human rights cannot be eliminated or declared invalid by the state [11]

A marriage can take place even if there are differences in nationality, race, ethnicity, origin, descent, or religious differences between those who are about to get married. Apart from that, when he was chairman of the Supreme Court, Ali Said was of the opinion that instead of allowing, validating and justifying immorality, it was better to reduce it by giving approval and justification for them to become husband and wife in a legal marriage, even though their religious beliefs were different [12]

Furthermore, Ali Said said that if there were religious sanctions, according to the religion they adhered to in the marriage, then it would be handed back to each individual. According to researchers, Ali Said's opinion, directly or indirectly, seems to be influenced by the receipt theory put forward by Snouck Hurgronje and Van Volenhoven previously.

From the description that the researcher has presented, the researcher will explain how marriage between followers of different religions is according to Islamic law and according to Law Number 16 of 2019 regarding amendments to Law Number 1 of 1974 concerning Marriage? Then, if there has been a marriage between followers of different religions, what is the solution?

2. METHOD

The research method used in this research is normative juridical, with research specifications in the form of a statutory approach and a case approach, the data source is secondary data, data collection techniques through library studies which are analyzed using qualitative descriptive analysis methods, then the research location is in the library.

This research uses a type of normative juridical research. It is called normative research, because this research is carried out or shown on written regulations and legal materials [13] Apart from written laws, there are norms that live and develop in society that are not written which effectively regulate the behavior of members of society.

The research specifications use a statutory approach and a case approach. The definition of a statutory approach is an approach that examines laws that are related to the legal issue being handled. Meanwhile, the case approach is carried out by examining cases related to the issue at hand, and the main study in the case approach is the decision ratio or reasoning, namely the court's considerations in arriving at a decision [14]

The data collection technique used in preparing this research is library research, which is a data collection technique to obtain theories and concepts relating to judges' decision methods through various books, magazines, documents and various other literature which are considered representative and related to the research object. The study is intended to obtain complete information and determine the actions to be taken as an important step in scientific activities.

The theory used is the theory of legal certainty. Certainty is a matter (state) that is certain. Laws must essentially be certain and fair. Basically, certainty itself is the main goal of law, and can be said to be an effort to realize justice. The real form of legal certainty is the implementation and enforcement of law regarding an action regardless of who carries it out. With legal certainty, everyone can predict what will happen if they take legal action, certainty is very necessary to realize the principle of equality before the law without discrimination.

Sudikno Mertokusumo stated that Legal Certainty is a guarantee that the law is implemented, and those who are entitled according to the law can obtain their rights and that the decision can be implemented [15] Normative Legal Certainty is when a regulation is made and promulgated with certainty because it regulates it definitely and logically [16] Clear in the sense of not giving rise to doubt (multiple interpretations) and logical in the sense of being a system of norms with other norms so that they do not clash or give rise to norm conflicts. Certainty will be realized if in making a decision to resolve a case the judge looks at the statutory regulations.

3. RESULT AND DISCUSSION

3.1. Inter Religious Marriage According To Islamic Law

Indonesia is a pluralistic country that includes ethnic, racial, cultural and religious diversity. One of the most fundamental pluralism of the Indonesian nation is the religious pluralism adhered to by its population. Indonesia has six recognized religions and each

religion has its own rules, including marriage rules [17] Islam has taught the pillars and conditions for carrying out marriage to create family order and harmony. The government has also made regulations for orderly implementation of marriages [18]

The term inter-religious marriage emerged as a result of human non-compliance with religious rules. This kind of marriage occurred for the first time in the West because there the people's religious attitudes were very weak, they even did not believe in religion at all [19]

Then further, what is meant by marriage between followers of different religions is the marriage of Muslims, both men and women, with other people who are not Muslim, both men and women [20] Islam strictly prohibits marriage between a Muslim man and a polytheist woman based on QS 2: 221, the translation of which is, do not marry polytheist women until they believe. Indeed, a believing slave woman is better than a polytheist woman, even if she attracts your heart. Then, the majority of ulama are of the opinion that a Muslim man may marry a woman from an Ahlul Kitah, based on the QS. 5: 5 whose translation is, and it is permissible to marry women who maintain honor among believing women and women who maintain honor among those who were given the holy book before you [19]

Thus, does this group still exist, because even though both are included in the category of divine religion, namely religion that was sent down from the sky, in later developments their creeds became very different [9] Apart from that, the people of the book referred to in the Qur'an no longer exist, because the people of the book who are now are different from those who existed at the time of the Prophet Muhammad [21]

In a situation like in Indonesia, it is difficult for Muslims to justify the use of this dispensation, because the opportunities to marry Muslim women are very wide. The dispensation only applies to countries where Muslim women are a minority [9] The formulation in the Compilation of Islamic Law clearly regulates marriage between followers of the Islamic religion and followers of other religions. Therefore, it is not correct to say that in Indonesian marriage legislation, marriages between two people of different religions have not been regulated, especially between people of the Islamic faith who are the largest number of citizens in Indonesia, because everything is clear and has been strictly regulated [9]

The rules regarding the validity or legality of marriage in Indonesia, especially those related to interfaith marriages, are very different from other countries. In secular countries, religious differences are not a factor preventing marriage; legality is determined

by its recording at the Civil Registry Office. In Islamic countries, apart from Saudi Arabia, interfaith marriages are legal and can be registered as long as the husband is a Muslim man and the wife is a non-Muslim woman who is an expert in the book, not vice versa and nothing else [22]

Continuing from the above, everything that hinders the goal of marriage must be avoided, in fact Islam has stipulated several things that are not permitted in marriage, one of which is religious differences. Based on Maqashid ash-Syariah regarding the Determination of the Yogyakarta District Court Number 378/PDT.P/2022/PN YYK concerning Applications for the Registration of Interfaith Marriages including actions that endanger the benefit of religion both in terms of *hifz ad-Diin*, *hifz al-Maal*, and *hifz-Nasl* [23]

3.2. Marriages Between Feelings Of Different Religions According To Law Number 16 Of 2019 As Amended To Law Number 1 Of 1974 Concerning Marriage and Its Solutions

Sharia in the constitution and legislation remains a source of reference and source of ethics. The implementation of sharia proceeds smoothly, naturally, through a series of debates and widespread public participation [24] The issue of interfaith marriage in Indonesia is a sensitive issue and always attracts a lot of attention from many parties, especially researchers or academics. Different from secular Western countries [25]

Continuing from the above, the State should be able to provide legal certainty regarding the prohibition of interfaith marriages because the Indonesian nation consists of various ethnicities and cultures [26]

Referring to the Marriage Law, Article 2 paragraph 1 explains the validity if the marriage is carried out according to each respective religious belief and is valid. This means that it can be said that the Marriage Law transfers marriage matters back to each religion, marriages with different religions can take place and can be said to be valid if that religion allows it. It is different if the religious law prohibits marriages with different religions, this will result in the status of the marriage being invalid according to marriage law [27]

In the implementation of interfaith marriages which are regulated in Law Number 1 of 1974 and updated as Law Number 16 of 2019 concerning Marriage, it does not clearly regulate the existence of interfaith marriages, this is what causes deviations in society. In the judge's consideration of the implementation of interfaith marriages in Indonesia in

Decision Number 26/Pdt.p/2020/Pn.Pwt. To carry out an interfaith marriage, it must be based on a court decision, so that the marriage carried out by the prospective couples is considered valid by the court in order to obtain legal certainty [28]

During the Covid-19 and post-Covid-19 periods, the divorce rate in several regions in Indonesia increased because people's psychological well-being during those times was generally still low, as were the dimensions of environmental mastery, personal growth, and positive relationships with other people. This affects the continuity of family relationships, both in divorce and marriage [29]

It is important to change people's mindset, culture and skills, as well as their behavior so that they can have a more advanced, prosperous economy and improve the quality of life after Covid-19 [30] Because the spread of the Covid 19 outbreak has had various effects on the fabric of social life, especially the economic sector which has been most affected. This economic factor is one of the main causes of the high divorce rate and all kinds of problems in marriage [31] In fact, divorce in marriage is permissible when there are strong reasons. Likewise, according to Islamic law, even though it is hated by Allah SWT, divorce is permissible [32]

Continuing from the above, the reality that is happening nowadays is that there are many couples who have different religions and they insist on getting married. The requirements contained in Law Number 1 of 1974 concerning Marriage, that marriage is only valid if it is carried out according to religious law, in practice are often circumvented in various ways.

Regarding marriage as fulfilling urgent needs for the well-being of a person's life, according to WHO (2019), good psychological and mental health is related to a person's mental and mental health which is a fulfillment of psychological well-being. Well-being is a complex multidimensional construct consisting of two dimensions, namely hedonic and eudaemonic well-being [33] Hedonic well-being is known as subjective well-being [34] [35] while eudaemonic well-being is known as psychological well-being [36]

Psychological well-being is a construct in psychological theory that involves positive human functioning and optimal development [37] Depression, anxiety, and stress are considered important indicators of psychological well-being [38] A person's biological needs must be met by marriage for the sake of the creation of a normal and stable life and away from depression, anxiety and stress. Continuing from this, many cases show that they are unable to maintain the harmony, tolerance and mutual respect that existed in the early years of their marriage. Those who marry, they take various methods. There

are those who look for loopholes in the law, such as marrying in the manner prescribed by their respective religions or for those who can afford it, they go abroad where the marriage laws in that country are not so strict, then after carrying out their marriage return to Indonesia by registering it in the Civil Registry. There is even one of them, usually a man who gives in temporarily by converting to a woman's religion, as long as he can be married, then after the marriage, returns to his original religion, and the most worrying thing is if the woman becomes pregnant.

The incident mentioned above, even though according to State law it could be legalized, but one day the realization will arise from both husband and wife, that their marriage is not valid according to religion so that their hearts will be gnawed at all times by feelings of sin.

Continuing from the above, a very complicated issue is that if they have children, the mother wants the child to embrace her mother's religion. If a child dies, further complications arise, whether the body will be buried according to the mother's or father's religious ceremonies. In fact, some time ago, bodies were ceremonized by two kinds of religions, after which they were buried. The occurrence of violations in the legal order of marriage in Indonesia is based on various factors including the rapid influx of globalization which makes violations in the legal order of marriage in Indonesia increasingly common. The decision of the Constitutional Court Number 24/PUU-UU/2022 in rejecting the lawsuit for judicial review of Law Number 1 of 1974 regarding interfaith marriages is in order to provide legal certainty and become a legal reference for the implementation of marriages in Indonesia not to legalize final and interfaith marriages. binding and preventing the community from the legal consequences of interfaith marriages [39]

As a rule of law that upholds the supremacy of the constitution, ideally the decisions of the Constitutional Court should be a reference for all parties in the life of the nation and state. However, in its implementation, at least after the 2015 Constitutional Court decision regarding the request for judicial review of the 1974 Marriage Law against the 1945 Constitution, where this request was rejected, the practice of interfaith marriages still continues. Of the 118 District Court decisions regarding applications for permission to register marriages over the last 20 years, 66.9 percent (79 decisions) occurred after the 2015 Constitutional Court decision. an intersecting issue, namely the ability to register interfaith marriages at the Civil Registry Office. [40] As we already know, the regulations regarding the administrative registration of marriages have been explained in the Compilation of Islamic Law, Article 5 paragraph (1), which states that in order to ensure orderly marriages for the Islamic community, every marriage must be recorded.

Then regarding the registration of marriages, it is further explained in Article 6 paragraph (1), namely, to fulfill the provisions of Article 5, every marriage must take place in the presence of a marriage registrar or under the supervision of a marriage registrar. Then in paragraph (2) it is explained that marriages carried out outside the supervision of marriage registrar employees have no legal force [41]

The Constitutional Court interpreted that the legality of a marriage according to each religious law, meaning that the marriage must be carried out by a couple of the same religion, must be a prerequisite for it to be registered with the authorized institution. Meanwhile, judges at the District Court generally give the interpretation that the 1974 Marriage Law does not regulate the prohibition of interfaith marriages, so it is appropriate to grant permission to register them at the Civil Registry Office [40]

Furthermore, in connection with the above, the State guarantees the freedom of each resident to embrace their own religion and to worship according to their religion and beliefs. This right includes freedom to exchange religion or belief [42]

Marriages of different faiths are one of the many problems related to marriage regulations that continue to arise in Indonesia [43] If viewed normatively, there is no legal certainty regarding the regulation of interfaith marriages. However, several article formulations contained in the Marriage Law provide loopholes for those who wish to carry out interfaith marriages, one of which is by carrying out marriages abroad. Considering the condition of Indonesian society which is very diverse in ethnicity, religion, belief and so on. Regardless of the existence of this method, even though religiously the bond has been recognized, there is still a need for national legal legality for the implementation of interfaith marriages. Article 56 and Article 57 of the Marriage Law are benchmarks for legal status and legal certainty regarding the implementation of interfaith marriages for those who wish to do so. It should be further regulated in detail regarding how interfaith marriages are carried out, so as not to cause prolonged polemics and provide legal certainty for those who wish to carry them out [44]

In the Islamic view, a good and correct marriage is a marriage carried out because there is equality of belief, equality of morals and equality of purpose, in addition to that it can create love and sincerity from each party, therefore marriage must be carried out taking into account the principle of equality of belief [45]

If, under the pretext of defending human rights, a person may violate the rules of his religion, it means that he has placed his personal interests and freedom above the values of the religion he adheres to. So this means that at some point personal freedom

and human rights will be placed in value above Pancasila or even more than Pancasila. This is contrary to the agreement of the Indonesian people which has placed Pancasila as the source of all sources of law in Indonesia. Therefore, every thought containing opinions and legal products, which places Pancasila under it, must be declared null and void.

Marriages of different religions should be avoided as much as possible, because with different beginnings it is feared that in the future they will still not be able to unite, because marriage should also unite the heart, not only unite the outside [46]

In Islamic Law referring to the Compilation of Islamic Law, interfaith marriages are strictly prohibited. In Indonesia there are two institutions for registering marriages, namely those registered in the Islamic faith at the Religious Affairs Office (KUA) while for non-Muslims they are recorded at the Civil Registry Office (KCS). At the Religious Affairs Office, interfaith marriages cannot be recorded, nor can they be registered at the Disdukcapil Office unless there is a dispensation. Indonesian society needs regulations regarding interfaith marriages, so that there is no legal vacuum regarding this issue, especially since Indonesia is a plural country with many different religions. So there is no longer any debate in interfaith marriages [17] Regulatoryly, interfaith marriages in Indonesia do not have legal force because the Marriage Law article 2 paragraphs 1 and 2, the Compilation of Islamic Law article 40 paragraph c and article 44, as well as the MUI fatwa prohibit interfaith marriages. For this reason, the Religious Affairs Office (KUA) and the Civil Registry should not carry out administrative registration of events involving interfaith marriages. Based on the perspective of positive law and Islamic law, interfaith marriages are seen as having greater harm than good. People who marry people of different religions mean they do not heed the laws and regulations that apply in this country. The logical consequence will definitely be experiencing various problems in the household making it impossible to create a family that is *Sakinah mawadah wa rahmah* [47]

4. CONCLUSION

From the description above, it can be concluded that marriage between followers of different religions according to Islamic law and Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning marriage are compatible and both prohibit it. Likewise, if a marriage occurs between followers of different religions, the

marriage is considered invalid. Thus, there is no need for any further changes or creation of new formulations, because the law is clear.

Marriage between followers of different religions not only raises religious problems but also psychological problems, because in navigating the household, problems will always arise that conflict with their religion, so the purpose of marriage is stated in Islamic Law and Article 1 of Law Number 16 of 2019 regarding changes to law number 1 of 1974 concerning marriage did not materialize.

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