

The Analysis on the Interfaith Marriage Problems Based on the Perspectives of Islamic Law and Human Rights in Indonesia

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Abstract:

Interfaith marriages are relatively widespread and one issue that has sparked controversy in Indonesia. Islamic Law and Human Rights (HAM) has taken a position on legalizing interfaith marriages in Indonesia. This study aims to provide an overview of Indonesian interfaith marriages. The legal interpretation of Islam and human rights concerning the practice of interreligious marriage in Indonesia is described in this research, which is qualitative research. The key data sources for this research, which is also a sort of library research, are legal materials pertaining to interfaith weddings in Indonesia, documents outlining Indonesian Islamic law's interfaith marriage regulations, and documents on human rights. Secondary data sources, additional research findings, and other pertinent papers are also used to support this study. Techniques for gathering data via documents. The study's findings show that the legal perspective encompasses Marriage Law, Islamic religious law, and human rights (HAM), all of which tend to forbid interfaith marriages from taking place. The legality of an interreligious union and the status of any children it produces may be affected.

Keywords: Interfaith Marriage; Islamic law and Human rights.

Introduction

The majority of interfaith marriages in Indonesia were between artists, as evidenced by Jamal Mirdad's 25-year marriage to Lidia Kanda, which ended in divorce, Titi Kamal with Kristian Sugiono, Rinto Harahap and Lily Kuslilita, Marcell Siahaan and Rima Melati Adams, Bob Tutupoly and Rosmayasuti Nasution, Jeremy Thomas and Ina Indayanti, Ari Sihasale and Nia Zulkarnaen, Rio Febrian and Sabria Sagita Kono (Amir, 2019). Indonesia is home to several tribes, languages, cultures, and faiths. These varied conditions can encourage the development of social bonds between various groups of individuals that lead to marriage, including interfaith marriages. The practice of interfaith marriage has sparked various opinions, both from an Islamic legal perspective and a human rights perspective (Cantonia, 2021).

Indonesian society's rules for Marriage are outlined in Law Number 16 of 2019, which amends Law Number 1 of 1974 regulating Marriage. Article 28 B paragraph (1) of the 1945 Constitution of the Republic of Indonesia also recognizes Marriage as a legal act and a human right for all Indonesian citizens. From a formal legal perspective, this legislation has good value for Indonesian citizens. This marriage law incorporates guiding concepts and binding legal regulations that apply to all

Indonesian residents (Daud, 2022).

The Marriage Law (UUP), which explains the legitimacy of marriage if it is carried out following the legal requirements of each religion and belief, does not appear to directly address the phenomena of marriage, such as interfaith marriage, as stated in Article 2 paragraph (1) of the UUP. These kinds of phenomena ultimately cause debates and ideas about the advantages and disadvantages to persist. Moreover, the globe recognizes human rights as a societal principle. A legal foundation for this privilege has also been established by Indonesia through Law 39 of 1999, respecting Human Rights. Article 29 of the law also guarantees everyone's freedom to practice their religion and worship following their convictions (Hakim, 2023).

Interfaith weddings are paradoxically challenging to implement in Indonesia, which has created debate over changing one's marital status to conform to a specific religion. As a result, it will be challenging for both prospective brides to change their relationship status into a formal marriage, and one of them would have to decide between their religion and their partner's religion. Additionally, the state now provides a guarantee of religious freedom. There is a disclaimer against interfaith weddings because they have emerged based on the ideals of human rights, this is then seen as discriminatory (Daus, 2023).

Law Number 16 of 2019, amending Law Number 1 of 1974 concerning Marriage and Government Regulation No. 9 of 1975, has given the issue of Marriage in Indonesia as a whole a conception of the rule of law. From the perspective of human rights, every citizen has the prerogative right to get married once they reach the age at which they are allowed to start a family. The state is also responsible for keeping records, issuing marriage licenses, and offering protection. However, based on Law Number 16 of 2019 on the Amendment to Law Number 1 of 1974 concerning Marriage which does not provide a definitive determination of interfaith weddings, the state needs to be aware of interfaith marriages. The prohibition on interfaith marriages was then subject to more criticism because it did not follow the legal framework established by Law Number 39 of 1999 Concerning Human Rights. On the other hand, it is explained in the Human Rights teachings popularized by the West that a person cannot be discriminated only based on their religious background, especially regarding Marriage (Kusniawati, 2023).

On April 26, 2022, an interfaith marriage took place in Surabaya. Both parties who have entered into an interfaith marriage and have a Surabaya residence must apply to the interfaith marriage. Imam Supriyadi, the single judge of the Surabaya District Court, made his decision about their motion. After many steps, the Surabaya Civil and Population Registry Office (Dispendukcapil) produces a different-religious marriage certificate. Agung, who represents the Surabaya District Court, asserts. He clarified that they wed following the tenets of their respective religions, Islam and Christianity, respectively. However, the Surabaya City Civil and Population Registry Office declined registering their marriage because the couple has different religious beliefs. Surabaya Dispendukcapil representatives are also urged to ask the District Court to rule on the applicants' lawful residence. They brought a lawsuit before the Surabaya District Court, according to Agung. Article 21 (3) of Law Number 16 of 2019, amending Law Number 1 of 1974 concerning Marriage and Article 35 of Republic of Indonesia Law No. 23 of 2006 concerning population management, were cited by the single judge Imam Supriyadi who presided over this case. The Surabaya

District Court also agreed to grant the plaintiffs' lawsuit on April 26, 2022. Before Surabaya Civil and Population Registry Office officials, applicants are first permitted to register interfaith marriages. Second, requesting that interfaith marriages be registered with Surabaya Civil and Population Registry officials. A marriage certificate is instantly issued after the applicant enters the marriage book. According to Law Number 16 of 2019, which amends Law Number 1 of 1974 regulating Marriage, Judge Imam Supriyadi did not perceive any evidence of an interfaith marriage ban. Additionally, the applicants' human right to have a family while adhering to their respective religions, according to the Great (Juandini, 2023).

This study attempts to describe the practice of interfaith marriage in Indonesia from the perspective of Islamic law and human rights based on the phenomena of interfaith marriage cases mentioned above and the different challenges of interfaith marriage discourse in Indonesia, which gave rise to varied perspectives. The legal viewpoint is anticipated to shed light on the legal standing of interfaith weddings in Indonesia. The approach was taken by Islamic law in implementing the custom of interfaith marriage. The practice of interfaith marriage in Indonesia, a multi religious nation, is explained from the human rights standpoint.

Research Methods

This research is a type of qualitative research that describes the perspective of Islamic Law and Human Rights on the practice of interfaith marriage in Indonesia. This research is also a type of library research with primary data sources of juridical documents that regulate interfaith marriages in Indonesia, documents of religions in Indonesia that regulate interfaith marriages in Indonesia and also Human Rights documents. This research is also supported by secondary data sources, other research documents and others related. The data collection method is carried out through documentation. This research uses a normative juridical approach that examines laws, books, journals, articles and other legal materials that are based on the object of this research. The stages of analysis in this research begin with collecting qualitative data, then proceed by describing the data that has been collected to answer the research objectives (Sari & Nurlinda, 2018).

Results and Discussion

Interfaith Marriage in the Perspective of Marriage Law in Indonesia

According to Article 1 of Law Number 16 of 2019, in addition to Law Number 1 of 1974 concerning Marriage, marriage is defined as a physical and spiritual bond between a man and a woman to create a happy family based on religious belief. Following this definition, marriage consists of five different elements (Rangkuti, 2022) :

1. A husband and wife bond is founded on religious belief.
2. Creating *sakinah*, *mawadah*, and *warahmah* households.
3. The bond affirms the status of husband and wife.
4. The bond that exists between a man and a woman.
5. There is an inner and outer bond.

Thus, marriage may be claimed as a sacred tie since it cannot forget the religious principles that the husband and wife hold dear. Building a happy, harmonious, safe, and secure family for the entire family, including the husband and wife, is one of the

goals of marriage. As a result, it is acknowledged that a marriage's living arrangements serve purposes other than simply engaging in sexual activity (Roni, 2022).

Article 11 paragraph (2) of the 1973 Marriage Bill, which stated that religious differences were not a barrier to marriage, was officially repealed by the Marriage Law Number 1 of 1974. Due to the unequal position of citizens and the fact that one of the couples is an Indonesian citizen, UU No. 1 of 1974 clarifies the marriage situation between two Indonesian citizens subject to conflicting laws (Article 57) (Bahri, 2022). The motivation for writing this article is marriages that occur due to different citizenship statuses. This demonstrates that, without an explanation, it is safe to assume that weddings between people of different religions do not fall within the category of "mixed marriages." Article 2, paragraph (1) of Law No. 1 of 1974 states that a valid marriage is conducted according to the rules established by their respective religions and beliefs. Article 2, paragraph (2) of the same law states that marriage registration following applicable laws and regulations is the absolute requirement for legalizing marriages in Indonesia (Sekarbuana, 2021).

The article's two explanations explain how marriages are dealt with by Law No. 1 of 1974. However, Article 2 Paragraph 1 explains that a marriage is considered lawful if it conforms to each party's religious beliefs and laws. The regulations of the 1945 Constitution were then referenced, and it was further clarified that with the publication of a statement in the article, it was determined that no marriage that was not in accordance with each of their beliefs could occur. Everyone in a relationship is not permitted to get married if the relationship does not follow the rules established by their religion, statutory requirements, or other applicable regulations, according to Article 8 F of the Marriage Law. Due to the varied ways that interfaith weddings are interpreted, this topic generates conflicting understandings (Utami, 2023).

The occurrence of many weddings has developed into a protracted legal issue for which there is no conclusive resolution. The legal framework for handling marital problems in Indonesia is already Law Number 1 of 1974. However, there are still issues with how it is being implemented. One of these is the legal relaxation of restrictions for interfaith marriages, even though the majority of Indonesians practice more than one religion, including Islam, Protestant Christianity, Catholicism, Hinduism, Buddhism, and Confucianism (Yusuf, 2023).

Interfaith Marriage in the Perspective of the Marriage Law

The results of the study should be written clearly and concisely. The results of the study should better summarize the findings of the study rather than detailed data. It is advisable to provide a review of the differences between your results or findings and previous research. Discussion is the most important part of your article. Here, you get the opportunity to explore your data. It usually begins with a summary of the research findings and is then discussed with various theories or related references. The theory or reference used must be accompanied by a clear source of reference. **Theory becomes an integral part in the discussion.** Manuscript length between 3.500-5000 words, excluding bibliography. The manuscript must be free from plagiarism, scan similarity a maximum of 25%.

People in the country of Indonesia practice a variety of religions. People of different religions develop social ties with one another due to this religious diversity. These social relations occasionally lead to unions against Islamic principles, like

interfaith marriages, mentioned explicitly in QS. Al-Baqarah verse 221: "And do not marry polytheistic women before they believe. Even though she wins your heart, a servant woman who believes is preferable to a polytheist woman. Also, don't wed polytheists (guys) before they become believers" (Zahara, 2022).

The Islamic perspective holds that having a family of interfaith couples will not achieve perfection. It can lead to many challenges that only the perpetrators of interfaith marriages will experience in their homes, including difficulties with worship, upholding religious traditions, initiating social activities, and other issues. According to the majority of authorities, when a Muslim woman marries a non-Muslim man, the union is invalid. On page 44 of the book al-Muhadzdzab Juz II, it is mentioned that since Jews and Christians have experienced transformations, marriages between Muslim men and women of the book's people are no longer valid. This statement demonstrates that it is forbidden for Muslim men to wed Jews or Christians since these religions are included in a false religion and are considered apostates from Islam (Hidayat, 2023).

Interfaith Marriage in the Perspective of Islamic Law

There is a concept known as the principle of selection in Islamic marital law. The idea behind this rule is that a person who wants to be married must first decide who he can marry and who he cannot. It is truly known that there is a more explicit ban on marriage in customary law than what is governed by religion and law (Yusuf, 2022). Islamic law also acknowledges the prohibition against marriage, known as a mahram (a person prohibited from marrying) in fiqh. This phrase is frequently referred to in society as muhrim, an imprecise term. Even if you choose to use the word, muhrim refers to the husband, meaning that his wife is forbidden from marrying another man as long as she is still legally wed or in the iddah of raj'i divorce. Fiqh scholars have categorised this mahram into two categories: mahram mua'qqat (a temporary ban) and mahram abbad (a permanent ban) (Hermanto, 2022).

According to article 40 of the Compilation of Islamic Law, it is forbidden for a man and a woman to get married if there are certain conditions, such as the fact that the woman is still legally bound by a previous marriage, the woman is still in her iddah period with another man, or the woman is not a Muslim (Chairunissa, 2022).

As the Word of Allah SWT in the Koran, Surah Al-Baqarah verse 221,

وَلَا تَنْكِحُوا الْمُشْرِكَةَ حَتَّىٰ يُؤْمِنَ ۚ وَلَآ أَمَةٌ مُّؤْمِنَةٌ خَيْرٌ مِّنْ مُّشْرِكَةٍ وَلَوْ أَعْجَبَتْكُمْ ۚ وَلَا تُنكِحُوا الْمُشْرِكِينَ حَتَّىٰ يُؤْمِنُوا ۚ
وَلَعَبْدٌ مُّؤْمِنٌ خَيْرٌ مِّنْ مُّشْرِكٍ وَلَوْ أَعْجَبَكُمْ ۚ أُولَٰئِكَ يَدْعُونَ إِلَى النَّارِ ۚ وَاللَّهُ يَدْعُو إِلَى الْجَنَّةِ وَالْمَغْفِرَةِ بِإِذْنِهِ ۚ وَبَيِّنَ
ءَاتِيهِ ۚ لِلنَّاسِ لَعَلَّهُمْ يَتَذَكَّرُونَ

Meaning :

Also, don't wed polytheistic ladies before they become believers. Even if she wins your heart, a believing slave lady is preferable to a mushrik woman. Additionally, avoid marrying polytheists to believing women before they become believers. Even if he seduces your heart, an enslaved person who believes is preferable to a polytheist. They invite people to hell, while Allah invites them to heaven and, with His permission, to forgiveness. And Allah explains His verses (His commandments) to them so they can learn. (QS. Al-Baqarah ayat 221)

Likewise mentioned in surah Al-Mumtahanah verse 10,

وَلَا تُمْسِكُوا بِعِصَمِ الْكُوفَرِ.....

And do not stick to ropes (marriage) with disbelieving women. (QS. Al-Muntahannah (60): 10)

A woman who departs the Islamic faith is not eligible for marriage; since she does not adhere to her religion, she has no religion. He is not a Muslim because he is no longer a Watsaniyah (idol worshiper), a non-believer. An apostate has no religion since he refuses to uphold his faith, even when he has changed to another divine religion, and the marriage has religious overtones and signals (Salsabila, 2023).

The Qur'anic verse, "Do not marry polytheistic women before they believe," makes it quite apparent that it is against Islamic law for a Muslim to wed a non-Muslim. If he has faith, the barrier separating him will vanish, allowing the two hearts to unite in Allah's religion. And protect the components of humanity from the two things that harm and hinder it so that it is secure in aqidah. Even if she captures your heart, a believing slave lady is unquestionably preferable to a polytheist woman for you (Mirady, 2023)."

Interfaith Marriage in the Perspective of Human Rights (HAM)

In essence, Indonesia's rejection of interfaith marriages constitutes discrimination because it violates fundamental human rights norms restricting persons' freedom of religion. Every human being's soul is considered very significant, and the 1945 UUDNRI, the highest statutory rule, has ensured this. Regarding freedom of religion, Article 28 E paragraph (1) and Article 29 paragraph (2) are construed as holding that such freedom is a necessary element that the state should not even intervene. Because it does not adhere to the values of safeguarding human rights, the regulation of fundamental rights in marriage has yet to be in line with laws and regulations philosophically (Setiarini, 2021).

In essence, Article 10 paragraph (2) of the Human Rights Law indicates that a lawful marriage may only be effected with the consent of both parties; this provision embodies the idea that the marriage bond is based on the free choice of the couple. A will born from true, pure intentions without force, fraud, or pressure is what is meant by having free will. As no religious component takes precedence in a good marriage relationship, the Human Rights Law primarily examines the civil side of marriage. The Marriage Law continues to conceptualize the legitimacy of marriage in terms of religion (Zeinudin, 2021).

Article 10 paragraph (2) and Article 3 paragraph (3) should be followed to uphold the freedom to start a family and have children through valid marriage relations. These provisions cannot be altered or restricted for religious reasons. The manner of the couple's marriage can reveal the religious status of each interfaith relationship. Although interfaith marriages impact one of the parties if they are pursued with one party willing to submit, especially needing to follow the partner's religion, religious endogamy is, in fact, the ideal marriage for all religions (Mursalin, 2023).

The state is expected to protect the fundamental rights of its citizens. Even though the couple practices different religions, legal marriage is essential to citizenship. For a type of harmonization of relevant laws and social realities to be

realized, the state must be present and give tangible clarification of rules. The imposition of legal penalties is solely based on behaviour defined by the law as legal behaviour; it excludes social behaviour. Marriage has three legal ramifications: the husband-wife connection, the parent-child relationship, and property issues (Saputra, 2022).

Since the marriage tie has been recognized as valid, a legal connection between husband and wife will inevitably develop. Rights and obligations will result from the legal relationship. The rights and responsibilities of a husband and wife are governed by Articles 30 to 34 of the Marriage Law. The rights and responsibilities of husbands and wives have been explained in detail in these articles. Religious differences do not give one party special rights or obligations to the other under the marriage contract (Indra Utama, 2022).

The rights and responsibilities of the husband and wife are spelt down so that it is clear that neither party is stronger nor weaker than the other concerning the law. According to Article 34, paragraph (3), the party who believes they have suffered a loss may bring a case with the District Court or the Religious Court if they believe their rights have been infringed or harmed. The following exceptions apply to Muslim husbands who live their lives in accordance with Islam: a) there is no shared inheritance in the event that one of the parties passes away; b) the husband is permitted to engage in polygamy; c) the husband is permitted to divorce; and d) the husband is permitted to refer his wife (without entering into a new marriage contract). Even though the woman's faith forbids this from happening, these actions are nonetheless acceptable (Salsabila, 2023).

Conclusion

Indonesian laws and regulations do not contain any provisions that permit interfaith marriages. According to experts, it is prohibited to wed a polytheist of a different religion. There are two schools of thought for Muslim men on marrying Ahl al-Kitab women. First, it is permissible as long as the Ahl al-Kitab women are free and uphold their honor by abstaining from adultery. This is based on Q.S. Al-Maidah [5]: verse 5, and secondly, it is forbidden if the Ahl al-Kitab woman later confesses to having changed her religion by acknowledging the trinity or declaring that Uzer and Isa are God's children. Ahl al-Kitab women are categorized as polytheists in this view. This is in agreement with verse 221 of Al-Baqarah, chapter two.

However, in theory, the author claims that based on the realities of contemporary life, it is only permissible for Muslim men to wed women from the Ahl al-Kitab who are steadfast in their faith, able to exhibit Islamic perfection, Islamic nobility of character, and capable of carrying out da'wah missions, to ensure that the Ahl al-Kitab woman was interested in Islamic teachings and at the same time embraced Islam fully. But it is forbidden for him to wed a member of Ahl al-Kitab if his faith is feeble, and he fears it would deteriorate and lead to apostasy

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