

17

Interfaith Marriage in the Human Rights Perspective and the Compilation of Islamic Law

Misbahul Huda ¹ , Rahmat Dwi Putranto ¹

¹ STIH IBLAM Master of Law Study Program, ² STIH IBLAM Bachelor of Law Study Program

Email : misbahulhuda@iblam.ac.id¹, rdp@iblam.ac.id²

Article Info

Received:

Revised:

Accepted:

Keywords:

Compilation Of Islamic Law;

Human Rights

Perspective;

Interfaith Marriage;

Abstract

Becoming a husband and wife via marriage is a sacred relationship shared by a woman and a man. Basically, marriage is governed by the laws of each religion. Interfaith marriage is one of the phenomenon that takes place in Indonesia. Some of these weddings were consummated in secret, but most of them were done so in public. Interfaith unions are likewise forbidden by Islam, according to Surah Al-Baqarah verse 221. Law Number 1 of 1974, article 2, also forbids interfaith unions. Interfaith weddings are still common in Indonesia, therefore this tradition has generated criticism even in the present day. Normative legal research is the methodology employed in this legal study. The findings of this study demonstrate that ¹⁵erfaith marriage is forbidden by the Compilation of Islamic Law (KHI) and Human Rights (HAM), which states that it is against God's mandates. All major religions forbid its adherents from marrying outside of their own faith. In order to compel ¹⁶citizens to abide by the relevant legal regulations, the Marriage Law and the Compilation of Islamic Law both forbid interfaith marriages. The highest human right in terms of human rights is divinity, which means that all individuals are required to follow their god's laws. The primary issue under investigation is how Islamic law and human rights relate to interfaith marriage and the legal ramifications of the human rights perspective on such marriages, which forbids and does not accommodate interfaith unions because all of the freedoms and rights outlined in the declaration are subject to sharia, or Islamic law.

I. Introduction

Interfaith marriage is one of the phenomenon that takes place in Indonesia. Some of these weddings were consummated in secret, but most of them were done so in public. Interfaith unions are likewise forbidden by Islam,

according to Surah Al-Baqarah verse 221. According to the human rights perspective, the family is the fundamental building block of society and should be shielded from both the state and society. the right of men and women who are of legal marriageable age to get married, start a family, and raise their children. Although many religions are still undecided on this matter, the State is required to safeguard, record, and publish marriage certificates at the Religious Affairs Office.

In order for a woman and a man to live together lawfully and create an eternal family as well as a peaceful, happy, and respectful relationship, marriage is a sacred tie that must be strong and durable (Syofyan, 2023). In line with the Islamic Law Compilation Matrimony is defined as a binding agreement, or mitsaqan ghalizan, to follow Allah's instructions, and fulfilling them is worship. Marriage implies "gathering and mingling" linguistically. The term "syara" refers to the permission and qabul ('aqad) that a man and a woman use to justify sexual relations with words or 'aqad that result in marriage in compliance with Islamic law. The word "marriage" (zawaj) is commonly understood to mean "marriage contract" (aqdu al-tazwij), alternatively it might indicate "having sexual relations with one's wife" (wath'u al zaujah). Human couples of various genders who practice the same religion typically form marital ties. For instance, a man may be a Muslim and his partner a Muslim; a woman may be a Christian and the man a Christian; a man may be Hindu and the woman a Hindu, and so forth. Since it is extremely uncommon for couples of various religions to perform marriage ceremonies, interfaith marriages in Indonesia are a complex topic that is frequently discussed.

This natural requirement for marriage is present in all of God's creations, including people, animals, and plants. Due to the intelligence of human beings, marriage is a culture that encourages procreation in order to maintain and achieve peace in life. This orderly process of procreation follows the evolution of human civilization. God uses marriage, often referred to as nikah, to ensure human survival on Earth and to uphold the honor and dignity of human glory. Muslims view marriage as a prerequisite to having children and a legal family in order to benefit from divine love and blessings both here on Earth and in the hereafter. from the standpoint of human rights. It is the right of an adult prospective husband and wife to start a family by marriage. Protecting, registering, and publishing marriage certificates is the state's responsibility. Unfortunately, the State does not acknowledge this reality enough. Naturally, there are more grounds to be critical of this prohibition. To start with, as a nation, we already have a human rights law in the shape of Law No. 39 of 1999. In actuality, a person should not be treated differently based only on their religion, including when it comes to getting married, according to the Western conception of human rights.

The rise of interfaith unions among Indonesian Muslims is consistent with the development of the electronic media industry, which is progressively witnessing a moral values collapse because of immorality and the brittleness of

Islamic principles. Interfaith marriage is still practiced even though Islamic scholars and personalities have explicitly stated that a Muslim cannot marry a non-Muslim(Erwinsyahbana, 2019)

Although it appears at first glance that their marriage was essentially not legal under Indonesian law, they were granted the ability to register their marriage in line with the country's current administrative framework as part of the terms of this ruling. Consequently, scholars are eager to go deeper into this issue, particularly as it relates to one of the Muslim parties, which is obviously against Islamic law. But it's crucial to keep in mind that Indonesia has universal human rights (HAM), even though there are disagreements over how best to put them into practice. Among these is the freedom to marry someone of a different religion. The Western conception of human rights holds that individuals should not be treated differently based only on their religion, and this also applies to matrimony. This clearly goes against the Islamic understanding of human rights.

2. Research Method

Normative legal research is the methodology employed in this legal study. This study employs a number of techniques. First, the author gathers data by conducting library research, which involves using published scientific articles, court rulings, and books about interfaith marriages as a foundation, source, or point of inspiration. During the analytical process, the author employs a deductive strategy, which involves analyzing facts with an emphasis on general rules. Based on this analysis, particular conclusions or solutions to the problems presented are made.

3. Results and Discussion

1. Marriage of different religions and Islamic views.

In Arabic, the word "nikah" (al-wath'u) refers to engaging in sexual activity or personal relationships(Azhari & Lubis, 2022). While the term "marriage" has many definitions and interpretations, it can be broadly understood to mean that marriage is a religiously sanctioned contract that grants men access to a woman's entire body, including her vagina, or that marriage is solely concerned with material matters. However, Islam views marriage as involving not only biological aspects but also psychological, sociological, and theological aspects. (Binawan, 2023). Islam views marriage as sunnahtullah, or the apostles' sunnah, which is rewarded if followed. If not followed, however, it is haram rather than sinful since it deviates from the Prophet's sunnah(Nawami, 2018) A contract to establish legal connections between men and women in which neither is *muhrim* is known as the marriage principle, or nikah. From a legal standpoint, it is evident that marriage is a holy and honorable agreement between a man and a woman, establishing

their legal position as husband and wife and permitting sexual activity with the goal of creating a *sakinah*, love-filled, moral household (Widodo et al., 2023)

As a result, if you're a logical person, you'll think that marriage is a civilization that encourages procreation in order to create and acquire a stable, ordered, and developed life that keeps pace with the evolution of human society. Marriage culture is straightforward and even closed in primitive communities, while it is sophisticated, open, and wide in modern societies. (Bahrudin et al., 2021). It was underlined in the explanation of Law No. 1 of 1974 that marriage is prohibited by each religion's and belief system as of article 2, paragraph 1. This article's provisions mandate that marriages be performed in accordance with religious law, and the Marriage Law forbids practices that are forbidden by religion. Accordingly, Hazairin read Article 2 paragraph 1 and its explanation that marriages between Muslims and adherents of other religions—Christians, Hindus, and Buddhists—cannot be consummated in contravention of their religious laws.

Marriage is a spiritual and physical union between a man and a woman as husband and wife with the goal of creating a happy and eternal family (home) based on belief in the Almighty God, as demonstrated by the severity of this prohibition. The Explanation to this article emphasizes that there is no marriage outside the laws of each religion, making it apparent that inter-religious marriages are invalid and not marriage. Article 2 (1) contains a provision that states that marriage is lawful if it is carried out by each religion and belief. Marriage laws under Indonesian International Private Law are insufficient to address issues that arise or that Indonesian citizens face, and individuals are frequently perplexed by the requirements. (Kementrian Sekretariat Negara RI, 2019). Following the marriage law, experts do not appear to agree on the definition of interfaith marriage. Some interpretations of interfaith weddings suggest that they are absolutely forbidden, while others contend that because there are no precise restrictions in place, interfaith marriages are nonetheless legal in Indonesia. One of the reasons for the varied reasons and manifestations of interfaith marriages in our culture is this disparity. (Abd. Kafi, 2020)

Although interfaith marriages are theoretically strictly forbidden in Islam, there is a notion that allows for the possibility of weddings between members of different groups, specifically between Muslims and women who are people of the book. Surah al-Maidah verse 5, which states that marriage with women who are people of the book is legal for Muslims, contains the permissibility of marriage with people of the book. Interfaith marriages are forbidden by Islamic law. There are five recognized religions in Indonesia, and each has its own laws governing interfaith unions. Interfaith unions are permitted under the Christian/Protestant religion as long as members abide by their respective countries' legal requirements. Catholic law forbids interfaith

unions unless the church grants approval under specific guidelines. While Hinduism forbids interfaith unions outright, Buddhist law does not control them and instead returns to local norms (Hidayat, 2017). Shafi'i and Shi'ite Imami ideas are adhered to by Islamic scholars in Malaysia, Singapore, Brunei, and certain Indonesian Ulama about the law of marriage between Muslim males and women from the book's people. Islamic law forbids the marriage of individuals who practice different religions, according to Hasan Basri, the former chairman of the Central MUI.

2. Researcher Analysis

In terms of our national law, interfaith unions are not considered mixed marriages since, as stated in the Marriage Law, mixed marriages are unions between foreign nationals and Indonesian citizens, not between adherents of several religions. It is quite common for persons of different religions to get married in a heterogeneous nation like Indonesia. Some people with plenty of worldly possessions might not care too much because they can marry abroad, but what about others whose circumstances are mediocre? Naturally, this raises legal issues.

The rights listed in the Human Rights Law consist of:

1. Article 9: Right to life. Everybody has the right to exist, to preserve life, to raise their level of living, to live in harmony, security, and happiness, to flourish both materially and spiritually, and to have a decent and healthy environment in which to live: the right to procreate and leave a legacy for his offspring (Article 10). Everyone has the right to marry legally or out of free will, start a family, and raise children.
2. The entitlement to personal growth (Articles 11-16). Everyone has the right to fight for the freedom to grow individually and as a group in order to advance their community, country, and state.
3. The right (Articles 17-19) to justice. In compliance with procedural law, which ensures an unbiased assessment by an honest judge and fairness in obtaining a just and correct decision, every individual, without distinction, has the right to pursue justice through applications, complaints, and lawsuits, whether in criminal, civil, or administrative cases.
4. Articles 20-27: The right to personal independence. Everyone has the freedom to select their citizenship without facing discrimination, adopt their own religion, express their political views in public, and travel outside the Republic of Indonesia's territory without restriction.
5. Articles 28-35: The right to a feeling of security. Everyone has the right to property rights, family, honor, dignity, and personal safety. They also have the right to peace of mind and security from the threat of being afraid to act or not act.

6. The welfare right (Articles 36-42). Every individual has the right to own property, either individually or jointly with others, for the advancement of that person, the country, and society in a manner that respects others' rights. They also have the right to obtain the essential social security, the right to work, the right to a decent life, and the right to form a trade union in order to defend and fight for their rights.
7. The ability to take part in political life (Articles 43-44). Every citizen is entitled to reelection to any post in the government and to engage in it directly or through representatives who are duly elected.
8. Rights of women (Articles 45-51). In compliance with legal requirements and rules, a woman has the right to select, be elected, be appointed to a post, pursue a vocation, and receive an education. Aside from that, individuals are entitled to extra protection when practicing their profession or line of work against risks to their health and/or safety.
9. Rights of children (Articles 52-60). Every kid has the right to be protected by their parents, families, society, and the government. They also have the right to education and training in the framework of their own growth, and they have the right not to have their freedom illegally taken away.

As a nation founded on social and/or material law, Indonesia upholds the idea of defending human rights. The assurance of protection for human rights is given without discrimination, in accordance with Article 3 paragraph (3) of the Human Rights Law. In the meantime, acts of limitation, harassment, or exclusion that are directly or indirectly based on human differentiation on the basis of religion, ethnicity, race, ethnicity, group, social status group, economic status, gender, language, belief, politics, or any other factor that results in the reduction or elimination of the recognition, implementation, or use of human rights and fundamental freedoms in life on an individual basis as well as in the context of political, economic, legal, social, cultural, and other aspects are considered discrimination, as defined by Article 1 paragraph (3) of the Human Rights Law of life (Bahrudin et al., 2021).

The UDHR bases marriage on rationalism, and liberalism creates a secular worldview that seeks to keep religion out of the world, allowing interfaith marriages to be freely practiced. This contrasts with the Islamic view, which holds that marriage is performed because God has granted the authority to do so. The Islamic view is that God has the authority to decide who gets married when, when, how, and why, and that God will decide which marriages are given to humanity to oversee. The State mandates that marriages be registered as one of the legal requirements, and marriage registration officers are selected by the State to carry out this task. Law No. 23 of 2006 concerning Population Administration (Adminduk) permits marriages between individuals of different religions, provided that a court order is obtained. According to Article 35(a), court-determined marriages are likewise subject to marriage

registration. This article's explanation states that court-approved marriages are unions of individuals of diverse religious beliefs (Bahrudin et al., 2021). Article 36 of the aquo Law is applicable to interfaith marriages since they are marriages without a marriage certificate. "In the event that the marriage cannot be proven by a Marriage Certificate, the registration of the marriage is carried out after a court decision."

Interfaith weddings will have a detrimental effect on the future if they continue to be practiced. Furthermore, one of the main factors contributing to the rise in interfaith weddings like this one in the modern day is the common habit of dating individuals of different religious backgrounds. Another significant reason for the prevalence of interfaith weddings is the challenge of obtaining parental consent to convert to a different religion. Thus, in order to lessen the prevalent practice of interfaith weddings, the author contends that it is critical to provide education and in-depth understanding regarding marriage provisions, marriage conditions, and the outcomes of such marriages.

4. Conclusion

Because a Muslim who wants to marry must marry another Muslim lady and not a non-Muslim woman, interfaith marriages are illegal. Furthermore, in the process used to make this decision, they got married under Christian laws, which are strongly at odds with Islamic law. Islamic law forbids interfaith unions, and a number of academics concur that this is because such unions include religious differences. The Human Rights perspective on interfaith weddings forbids and does not provide room for interfaith unions since all of the freedoms and rights outlined in the declaration are subject to sharia, or Islamic law, which is the sole human rights framework in existence. Human Rights (HAM) states that, in general, people have the freedom to choose to marry whomever they choose. However, in this instance, the highest power is God, and each religion has its own laws approving and legitimizing marriage, prohibiting the union of people who hold different religious beliefs.

A review of the psychological and legal ramifications of interfaith marriages in Indonesia is conducted. The psychological effect is the fading of the home that has been nurtured since disagreements emerge when attempting to create a happy home, and these issues lead to estrangement because of the recurring difficulties of differences. When considering interfaith weddings from a legal perspective, the legal ramifications are evident in relation to the legitimacy of these unions as well as the status of the children involved. Similarly, inheritance in interfaith marriages and divorce resulting from issues with differing opinions and beliefs within the household cannot be acknowledged by the heirs because of the variations in religious affiliations.

References

- Abd. Kafi. (2020). Jurnal Paramurobi, Vol. 3, No. 1, Januari-Juni 2020. *Jurnal Paramurobi*, 3(1), 55–62.
- Azhari, W. H., & Lubis, F. (2022). Pernikahan Beda Agama Dalam Perspektif Kompilasi Hukum Islam Dan Hak Azasi Manusia. *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial Islam*, 1–14. <https://doi.org/10.30868/am.v10i02.3184>
- Bahrudin, N., Fisioterapi, F., & Unggul, U. E. (2021). *Pendahuluan Pengertian Nikah Beda Agama Dasar Hukum Nikah Beda Agama Dalam hukum Islam*. 18.
- Binawan, A. A. L. (2023). Refleksi Filosofis Hukum Perkawinan Beda Agama Di Indonesia. *Refleksi Hukum: Jurnal Ilmu Hukum*, 7(April), 249–265. <https://ejournal.uksw.edu/refleksihukum/article/view/7946%0Ahttps://ejournal.uksw.edu/refleksihukum/article/download/7946/2567>
- Erwinsyahbana, T. (2019). Aspek Hukum Perkawinan Antar Agama Dan Problematika Yuridisnya. *Refleksi Hukum: Jurnal Ilmu Hukum*, 3(1), 97–114. <https://doi.org/10.24246/jrh.2018.v3.i1.p97-114>
- Hidayat, N. (2017). Rujukan Dan Aplikasi Sistem Hukum Indonesia Berdasarkan Pasal 1 Ayat (3) UUD 1945 Pasca Amandemen Ke Tiga. *Uir Law Review*, 1(02), 191. <https://doi.org/10.25299/uirlrev.2017.1.02.566>
- Kementrian Sekretariat Negara RI. (2019). Undang-undang Republik Indonesia No 16 Tahun 2019 Tentang Perubahan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan. *Undang-Undang Republik Indonesia*, 006265, 2–6. <https://peraturan.bpk.go.id/Home/Details/122740/uu-no-16-tahun-2019>
- Nawami, M. (2018). Hukum Waris Perspektif Islam dan Adat. In *Pamekasan: Duta Media Publishing*.
- Syofyan, Y. (2023). Analisis Putusan Mahkamah Konstitusi Nomor 68/PUU-XII/2014 tentang Perkawinan Beda Agama dalam Perspektif Hak Asasi Manusia. *UNES Law Review*, 6(1), 44–52. <https://doi.org/10.31933/unesrev.v6i1.837>
- Widodo, J., Lettu Suyitno No, J., Bojonegoro Jawa Timur, K., & Ridwan Al Murtaqi, M. (2023). Sistem Pembagian Harta Waris di Indonesia Berdasarkan Hukum Islam dan Hukum Adat. *Jurnal Hukum Islam*, 9(2), 2548–5903.

Template Pena Hukum Pernikahan Beda Agama

ORIGINALITY REPORT

13%

SIMILARITY INDEX

10%

INTERNET SOURCES

9%

PUBLICATIONS

6%

STUDENT PAPERS

PRIMARY SOURCES

1	Submitted to unikal Student Paper	3%
2	jurnal.unikal.ac.id Internet Source	2%
3	en.mkri.id Internet Source	1%
4	Nur Fika Palilati. "Review of Compilation of Islamic Law Against Interfaith Marriage Prohibition results in the registration of marriages", Estudiante Law Journal, 2022 Publication	1%
5	ejournal.unkhair.ac.id Internet Source	1%
6	Submitted to University of Wollongong Student Paper	1%
7	Submitted to Macquarie University Student Paper	1%
8	Triwahyuningsih Triwahyuningsih, Siti Zuliyah, Uni Tsulasi Putri, Hanifah Febriani, Zulfiani	1%

Ayu Astutik. "Constitutional Perspective of Human Rights Values in Local Wisdom in the Special Region of Yogyakarta (Study of Constitutional Court Decision No. 88/PUU-XIV/2016)", Jurnal Jurisprudence, 2023

Publication

9

ejournal.radenintan.ac.id

Internet Source

<1 %

10

Harry Pribadi Garfes. "Law Enforcement of Unregistered Marriage Practices in Indonesia Lawrence Meir Friedman's Legal Effective Perspective", Jurnal Ilmiah Kebijakan Hukum, 2022

Publication

<1 %

11

Poppy Putri Hidayani, Muhamad Helmi Md Said, Tinuk Dwi Cahyani. "Contradiction of CIVIL Code with Islamic Law Regarding Children Guardianship Outside Marriage in Indonesia", KnE Social Sciences, 2024

Publication

<1 %

12

Aik Fauzan Fikri, Pepe Iswanto, Ayi Ishak Sholih Muchtar. "Kebolehan Pernikahan Beda Agama menurut Undang-Undang Nomor 1 Tahun 1974 dan Kompilasi Hukum Islam", Istinbath | Jurnal Penelitian Hukum Islam, 2020

Publication

<1 %

Submitted to Binus University International

14

M. Thahir Maloko, Sippah Chotban, Muhammad Ikram Nur Fuady, Hasdiwanti. "Analyzing the prohibition of interfaith marriage in Indonesia: legal, religious, and human rights perspectives", Cogent Social Sciences, 2024

Publication

<1 %

15

jurnal.staialhidayahbogor.ac.id

Internet Source

<1 %

16

jurnal.umt.ac.id

Internet Source

<1 %

17

Aidil Aulya, Ahmad Irfan. "Koeksistensi Hukum Perkawinan Islam di Indonesia: Interpretasi Mahkamah Konstitusi Terhadap Pernikahan Beda Agama di Indonesia", Al-Adalah: Jurnal Hukum dan Politik Islam, 2023

Publication

<1 %

18

Andika Mubarak. "Normative Juridical Analysis of the Decision South Jakarta District Court No. 508/pdt.p/2022/pn jkt.Sel About Interfaith Marriage", El-Aqwal : Journal of Sharia and Comparative Law, 2023

Publication

<1 %

19

doaj.org

Internet Source

<1 %

Exclude quotes On

Exclude matches Off

Exclude bibliography On