



Review of Compilation of Islamic Law Against Interfaith Marriage Prohibition results in the registration of marriages

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Abstract: This research aims to review the compilation of Islamic law on the prohibition of interfaith marriages, which will result in marriage registration. The research method is judicial sociological research, which employs a descriptive qualitative research approach and interactive analysis techniques. The results of this study indicate that the prohibition on interfaith marriages does result in the registration of marriages, with Muslims registering marriages through the office of religious affairs. Interfaith marriages are prohibited in the rules of the Compilation of Islamic Law, one of which is explained in Article 40 KHI. Wherever it is mentioned in the article, women and men are prohibited from marrying women and men of other religions. The KUA can register Muslim marriages, while the Civil Registry Office can only register marriages for people who are married to a religion other than Islam. This means that a marriage can only be registered at the Population Service, or KUA, if it has been legalized by law or a recognized religion.

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1. Introduction

Indonesia is a state based on the law (rechtstaat). Therefore, the law's status and position greatly determine constitutional life. The logical consequence of this fact is the necessity and existence of an order or legal device capable of regulating the lives of society, nation, and state nationally based on Pancasila and the 1945 Constitution of the Republic of Indonesia. The law must guarantee legal certainty in society.¹ The 1945 Constitution as the Indonesian Constitution is the result of the long contemplation experienced by the Indonesian people in searching for, multiplying, and exploring constitutional ideas that are suitable and appropriate to be implemented in this state.² Therefore, the state must really control a government area because the absolute condition for state sovereignty is the existence of people who obey the constitution and their government.³ As Fenty Puluhuawa said in his writing, the government, through the law, has provided a starting point for justice, which is carried out for the sake of justice based on belief in one almighty God.⁴

Indonesia itself has provisions regarding marriage that have been regulated in state laws and regulations that apply to Indonesian citizens. The marriage rules in question are in the form of a law, namely Law No. 1 of 1974, which has been changed to Law No. 16 of 2019, which has become a legal standard concerning marriage and its implementing regulations in the form of Government Regulation No. 9 of 1975. This law is the material law of marriage. In contrast, a complementary derivative that will serve as a guideline for law in religious courts is the KHI in Indonesia, which has been stipulated and promulgated through Presidential Instruction No. 1 of 1991 concerning the compilation of Islamic law.⁵ Law of the Republic of Indonesia Number 16 of 2019 concerning marriage state that :

“Marriage can only be permitted for those who have met the age requirements, but in certain circumstances, the court can grant a dispensation from marriage following the applicable laws and regulations. ”

The development of Indonesian society is becoming increasingly complex, and the problems that occur are also becoming more complex. This includes interfaith marriage, which is a physical and spiritual bond between a man and a woman of different religions and countries, causing the union of two different regulations to become conditions and procedures for implementation following the laws of their respective religions.⁶ Law is a political product because the character of the contents

¹ H. M. Anshary, *Hukum Perkawinan Di Indonesia* (Jakarta: Pustaka Pelajar, 2009)., 5

² Lisnawaty W. Badu And Ahmad. "Purifikasi Pemberian Amnesti Dan Abolisi: Suatu Ikhtiar Penyempurnaan Undang Undang Dasar 1945." *Jurnal Ius Civile*. 5 No. 2 (2021): 93-111., 104

³ Mellisa Towadi and Nur Mohamad Kasim, "An Indication of China ' s Policy towards Uighurs and Its Implications by International Law Aspects." *Jambura Law Review*. 3, No. 01 (2021): 55-71., 69

⁴ Sutrisno, Puluhuawa Fenty, and Lusiana Margaereth Tijow, "Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim Tindak Pidana Korupsi." *Gorontalo Law Review*. 3, No. 2 (2020): 168-87., 184

⁵ Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia* (Jakarta: Kencana., 2004)., 1

⁶ Nur Asiah, "Kajian HUKUM Terhadapperkawinan Beda Agama Menurut Undang-Undang Perkawinan Dan Hukum Islam," *Jurnal Hukum*. 10, no. 2 (2015): 204-214., 206

of each legal product will be determined or colored by the balance of power or the political configuration that gave birth to it.⁷ According to Zamroni Abdussamad, when studying law, we are faced with the fact that law is a law. However, the law is not just a law but covers many other aspects and components, such as legal rules and legal jurisprudence.⁸

The basis of religious law in marriage is very important in Law Number 16 of 2019, so whether marriage is permissible depends on religious provisions. This means that religious law states that marriage is not permissible, so it is also not permissible according to state religious law, so in interfaith marriages, whether or not it is permissible depends on the provisions of the religion. In line with KHI categorizing marriages between religious adherents in the chapter on the prohibition of marriage. Article 40, letter (c) states that entering into a marriage between a man and a woman who is not Muslim is prohibited.⁹

In theory, there is a prohibition on interfaith marriages in Islam, but in practice, this opens the door for non-class marriages between Muslims and women of the book. The permissibility of marriage with people of the book is contained in the letter AL-Maidah Verse 5, which explains that marriage with women is legalized for Muslims.¹⁰

“Today, everything that is good is lawful for you. The food (slaughter) of the People of the Book is lawful for you, and your food is lawful for them. And (lawful for you to marry) women who guard honor among women who believe and women who guard honor among those who were given books before you, if you pay their dowry to marry them, not with the intention of adultery and not to keep women as pets. Whoever disbelieves after believing, then indeed, their deeds are in vain, and in the Hereafter, he will be among the losers.”

Interfaith marriages in Indonesia at this time, apart from being a bit ordinary, are also the latest trend to get ratings and increase popularity, especially for artists. You may not realize that as a public figure, you will be an example for your enthusiastic followers. If this is not seriously prevented immediately with action, it is not surprising that interfaith marriages will become more common.¹¹ Eventually, interfaith marriages developed into a topic of debate. Implementing interfaith marriages is relatively challenging due to the ambiguity of the Marriage Law regulations. According to Article 2 of the Marriage Law, marriage is even valid if carried out according to each religion's beliefs. This article shows that in Indonesia, marriage is regulated by religious law. Therefore, a marriage is considered invalid if it is not based on or violates religious law. According to this article, it is generally accepted that interfaith unions prohibited by religious law are also null and void.

⁷ Ahmad dan Nasran, “Comparison Of Judicial Review: A Critical Approach To The Model In Several Countries” *Jurnal Legalitas* 14, No. 2 (2021): 85-105., 88

⁸ Zamroni Abdussamad., “Kebijakan Hukum Menuju Sistem Hukum Nasional.,” *Jurnal Inovasi*. 7, No. 3 (2010): 1-13., 1

⁹ “Article 40 Letter (c), Compilation of Islamic Law,”

¹⁰ Asiah, *Op. Cit.*, 79

¹¹ Syafruddin, Kaharuddin “Pernikahan Beda Agama Dan Dampak Terhadap Pendidikan Agama Anak.,” *Jurnal Pemikiran Syariah Dan Hukum* 4, no. 1 (2020): 53-81., 65

Therefore, the existence of existing regulations provides equal rights for every citizen.¹²

Interfaith marriages are challenging to implement, which has led to the formation of various settlement models in the community. Changing a pseudo-religion to the religion of one of the parties is one of the ways that people use to carry out interfaith marriages. For example, suppose a spouse is registered at the Office of Religious Affairs (KUA), and one party is Muslim while the other is Christian, Catholic, or another religion. In that case, the non-Muslim party must first convert to Islam with the shahada. Likewise, when a couple wants to marry according to Catholic teachings, the non-Catholic party must first submit to Catholic teachings to obtain permission from the local parish. Before receiving marital dispensation, non-Catholic couples must register with the Church to receive Catholic religious instruction for about one year. Administrative formalities for registration, especially changing the name of the religion adhered to on the National Identity Card, are usually included with this ID submission method. The same goes for adherents of other religions, such as Buddhism, Hinduism, and Christianity. When a Buddhist wants to marry a Muslim, one of the parties must also convert to the other's religion. For example, a follower of Islam can become a Buddhist, followed by a change in identification on the ID, or a Buddhist can convert to Islam, followed by a change of identity on the ID.¹³

2. Research Method

The research used in this writing is Juridical Sociological research and uses a qualitative research approach that is descriptive in nature and uses interactive analysis techniques.

3. Review of the Compilation of Islamic Law Against the Prohibition of Interfaith Marriages, which results in the registration of marriages

In essence, the government regulations of the Republic of Indonesia have stated that interfaith marriages are considered invalid and null and void if religious regulations prohibit them and other regulations apply. However, some legal practitioners state that there are still loopholes that can be passed so that the applicable regulations and fatwas can be challenged.¹⁴ The number of interfaith marriages is very rapid and has spread in various regions of Indonesia. Therefore, as a writer, I want to examine the truth of this law and what kind of law enforcement will be made in this regard.

Article 2, paragraph 1 of Law Number 1 of 1974 concerning Marriage states that interfaith marriages carried out by prospective husband and wife are valid if they are

¹² Abdul Hamid Tome, "Dynamics of Village Head Election Arrangements." *Jambura Law Review*. 3, No. Spesial Issue (2021): 96-116., 101

¹³ Sri Wahyuni., "Perkawinan Beda Agama Di Indonesia Dan Hak Asasi Manusia.," *Artikel Al-Jamiah Research Centre*, 2017, 131-151., 132

¹⁴ Asiah, *Op. Cit.*, 67

carried out according to the laws of their respective religions and beliefs. According to Article 10 PP No.9 of 1975, a marriage can only take place legally if it is carried out in the presence of a clerk and two witnesses. In addition, the marriage process follows the laws of each religion and belief. According to Sudhar Indopa, religious law, not national policy, prohibits interfaith unity. The state does not necessarily object to interfaith unions. Religious law, not state law, is the source of this prohibition. Marriages cannot be registered with the Population and Civil Registry Service as long as there is no legalization of religion.¹⁵ The defect of the bureaucracy is that sometimes many judges the tasks of an agency to overlap, resulting in a lack of coordination caused by institutional egoism in formulating policies.¹⁶

The term difference in religion or *ikhtilaf al-din* is in article 61 KHI. In addition, some have equivalent words in other words, namely, people who are not Muslim (non-Muslim). This is contained in articles 40, 44, and 116.¹⁷ Thus it can be seen that the notion of interfaith Marriage here is a marriage carried out by a Muslim, both male, and female, with adherents of other religions (non-Muslims) as a whole, without exception, the men and women come from which religion. For example, marriages are carried out by a Muslim with a Protestant Christian, a Muslim with a Buddhist, and others. Meanwhile, the Compilation of Islamic Law does not mention Marriage between non-Muslims and other non-Muslims. This happens because the Compilation of Islamic Law only regulates the provisions that apply to Muslims.

The laws of each religion and their respective philosophical beliefs regulate whether or not a marriage is valid, according to Article 2(1) of Law no. That is, the law leaves it up to each religion to decide how to get married and under what circumstances (besides the method and conditions determined by the state).¹⁸

Suppose the author analyzes and looks at the study in Article 40 of the Compilation of Islamic Law. In that case, it is prohibited to enter into a marriage between a man and a woman due to unavoidable circumstances:¹⁹

- a. Because the woman in question is still bound by marriage with another man.
- b. A woman who is still in her *iddah* period with another man.
- c. A woman who is not Muslim

It is clear from the third point in Article 40 that a woman who is not Muslim is prohibited from marrying. By him, as in the previous explanation, I meant that the Compilation of Islamic Law only regulates provisions for Muslims. This is reinforced

¹⁵ Sudhar Indopa, *Perkawinan Beda Agama, Solusi Dan Pemecahannya* (Jakarta: FH UI, 2006).

¹⁶ Mohamad Syahnez W. A. C. Nirwan Junus, Karlin Zakaria Mamu, "No Title Granting Business License to Fuel Traders 'Pertamini' As a Form of Legal Protection.," *Jambura Law Review*. 3, No. 1 (2021): 155-170., 167.

¹⁷ Pagar, *Himpunan Peraturan Perundang-Undangan Peradilan Agama Di Indonesia* (Medan: IAIN Medan, 1995), 500

¹⁸ Karyasuda M, *Perkawinan Beda Agama, Menakar Nilai-Nilai Keadilan Kompilasi Hukum Islam*. (Yogyakarta: Total Media., 2006). 10

¹⁹ " Article 40 Compilation of Islamic Law,"

by the description of the provisions of Article 44, which says that a Muslim woman is prohibited from marrying a man who is not Muslim.

The Compilation of Islamic Law prohibits interfaith marriages for several compelling reasons, including that marriage is valid if it is carried out according to the laws of each religion and belief, according to Law Number 1 of 1974 concerning Marriage, Chapter 1, Article 2 (1). This is the basis for "basic marriage," a state law that is generally applicable and binding and eliminates conflict of opinion for Indonesian residents (including Muslims in Indonesia).²⁰

The Compilation of Islamic Law prohibits interfaith marriages following a fatwa issued by the Indonesian Ulema Council on June 1, 1980, as a response to increasing public concern over the rise of interfaith marriages. Two explicit affirmations on interfaith marriage are included in the fatwa. First, Muslim women are prohibited from marrying non-Muslim men (illegally). Second, because the mafsada (loss) is considered higher than the gain, it is unlawful for a Muslim man to marry a non-Muslim woman, especially a woman mastering the Quran.²¹

The author contends that, in addition to the compilation of Islamic law, which is used as a clear legal basis for interfaith marriages, there are also specific guidelines for Muslims in carrying out marital acts, such as the Qur'an and hadith, which scholars use as a solid legal basis. Therefore, the prohibition, as explained above, is that the ulemas, in this case, use the Koran and hadith as a guideline to state that interfaith marriage is prohibited for Muslim women and vice versa, that Muslim men are prohibited from marrying non-Muslim women, especially those women who are experts in the Qur'an. This restriction exists because, in Islam, marriage is a sacred institution that invokes Allah during the marriage ritual. This is consistent with the goals of Article 2 KHI, which emphasizes that marriage is a very binding contract under Islamic law, or mitsaqan ghalidzan, to obey Allah's law, and that act includes worship. *Marriage* is a sacred institution that aspires to realize a sakinah, mawaddah, and warahmah household life.

The registration of this marriage has been regulated in Article 2 of Law No. 1 of 1974, paragraph (2), "Every marriage is recorded according to the applicable laws and regulations." Also, in Presidential Decree No. 12 of 1983 concerning the arrangement and improvement of the administration of records in the Civil Republic of Indonesia, Article 1 paragraph 2 (a) states, "The authority and responsibility in the field of civil registration are to organize the recording and control of quotations of birth certificates, death certificates, marriage certificates, and divorce certificates for those who are not Muslims, and certificates of recognition and validation of children". Registration of marriages is a step taken by the government to regulate marriages and protect the rights of husband and wife in the event of a dispute.²²

²⁰ Abdul Jalil, "Pernikahan Beda Agama Dalam Perspektif Hukum Islam Dan Hukum Positif Di Indonesia.," *Jurnal Diklat Teknis Pendidikan Dan Keagamaan* 6, No. 2 (2018): 46-69., 63

²¹ *Ibid.*

²² " Article 1 Paragraph 2 (a) Presidential Decree No.12 of 1983 Concerning Arrangement and Improvement of Development and Administration of Civil Registry,"

Based on the explanation of the legal basis for registering marriages above, it can be concluded that the KUA can register Muslim marriages. In contrast, the Civil Registry Office can only register marriages for people who are married to a religion other than Islam. This means that a marriage can only be registered at the Population Service, or KUA if it has been legalized by law or a recognized religion. This refers to Article 2, paragraph 1 of Law No. 16 of 2019 regarding changes to Law No. 1 of 1974 concerning marriage, which says that every marriage is recorded according to the applicable laws and regulations. For those who marry according to the Islamic religion, registration is done at the Office of Religious Affairs (in Indonesia is KUA).

One of the discussions on Law No. 23 of 2006 concerning Population Administration (Adminder) was within the Office of Religious Affairs (KUA). Article 35, letter (a), states, "Marriage registration also applies to marriages determined by the causes this. Marriages legalized by the court are marriages between adherents of several religions. In this regard, Law Number 23 of 2006 concerning Population Administration (Adminder) allows couples of different religions to register their marriage through a court order. This is acceptable because it relates to the responsibilities of the KUA itself, namely carrying out the duties of the Ministry of Religion at the sub-district level following the policies of the Regional Office of the Ministry of Religion and related laws and regulations. One of them is the registration of Muslim citizens' marriages. The policy is critical because it can be a robust legal shield to protect local governments.²³

Initially, Islamic law did not explicitly regulate the registration of marriages, both in the Al-Qur'an and the Sunnah. In contrast to the verses of Muamalah (mudayanah), which must be recorded under certain circumstances, this is not the case. Islamic law in Indonesia balances the demands of development by using various factors of benefit. It aims to build a social hierarchy around marriage. The integrity and dignity of marriage, especially the role of women in domestic life, are protected through legal channels. Registration of marriages aims to bring order to marry in society. This is an effort regulated through legislation to protect the dignity and sanctity (misaq algalidz) of marriage and, more specifically, women in domestic life.²⁴ Through the registration of marriages as evidenced by a marriage certificate, each husband and wife receive a copy if there is a dispute between them or if one is not responsible. The other can take legal action to defend or obtain their respective rights. Because with this deed, the husband and wife have authentic evidence of the legal actions they have committed.²⁵

The legal basis for marriage registration makes it very important that the marriage be registered. A marriage certificate can be used to guarantee rights and is free from partiality, doubt, negligence, and witnesses who, according to the law, cannot do anything other than guarantee the order of the deed. Registration of marriages is essential even though it is purely administrative because it results in the issuance of a

²³ Novendri Mohamad Nggilu, Lisnawaty Wadju Badu, and Suwitno Yutye Imran, "Legal Protection Bonda And Bulango Language : In Reality And Prospect." *Jambura Law Review*. 3, No. 1 (2020): 19-36., 32

²⁴ Lev. Daniels, *Pengadilan Agama Islam Di Indonesia*. (Jakarta: PT. Inddonesia, 1986)., 99

²⁵ Ahmad Rofiq., *Hukum Islam Di Indonesia* (Jakarta: Raja Grafindo Persada, 2003)., 107

marriage certificate, which is legal proof of the occurrence of a legal marriage. The manhaj used to get the marriage certificate is called qiyas. According to the language, qiyas means "comparing something with something else to discover the similarities between the two." Usul fiqh asserts that qiyas connects (equalizes law) the two because there is a parallel between something that does not have legal protection and something that does. Therefore, the state is firmly obliged to try to fulfill the rights of every citizen.²⁶

Compilation of Islamic Law Article 5 KHI regulates the registration of marriages as follows:²⁷

1. Every marriage must be documented to ensure the orderliness of marriage in the Islamic community.
2. As stated in Law Number 22 of 1946 and subsequent Law Number 32 of 1954, marriage registration, as referred to in paragraph (1), is carried out by a marriage registrar.

According to the author, this phrase must be written in Article 5, paragraph 1. KHI also solely seeks to guarantee an orderly marriage for Muslims. According to Article 6 KHI, all marriages must be carried out before and under the supervision of a marriage registrar in order to fulfill the requirements of Article 5, and marriages carried out otherwise have no legal consequences. According to Law No. 22 of 1946 and Law No. 32 of 1954, as referred to in Article 2 paragraph 1 of Government Regulation No. 9 of 1975, the registration of marriages for Muslims is carried out by a marriage registrar. Similar provisions are contained in Article 5 KHI. Based on the order of marriage registration rules in the legislation, the soul of Article 2 paragraph (2) of Law No. 1 of 1974 is re-embodied in KHI Article 5 and PP No. 9 of 1975: article 2, paragraph 1.

The development of digital information and communication technology in social media exposes the public to a new reality, namely the mortal world visible from the device screen but synchronized with real-world life.²⁸ Precisely the development of increasingly advanced technology is required to develop itself.²⁹ Wahyono Darmabrata noted that four ways are commonly used by interfaith couples to get married:³⁰

²⁶ Julius Mandjo, "The Right to Obtain Free Assistance and Legal Protection for The Indigent People Through Legal Assistance Organizations." *Jambura Law Review*. 3, No. 02 (2021): 365-77., 375

²⁷ Tim Redaksi Nuansa Aulia, *Kompilasi Hukum Islam* (Bandung: CV Nuansa Aulia, 2009)., 2

²⁸ Moh. Rusdiyanto U. Puluhulawa dan Riski Husain, "Body Shaming through Social Media as a Digital Crime in the Era of Disruption." *Jambura Law Review*. 3, No. 01 (2021): 112-123., 117

²⁹ Dolot Alhasni, "Determinasi Perlindungan Hukum Pemegang Hak Atas Neighboring Right " Determination of The Legal Protection of Right-Holders To." *Jambura Law Review*. 2, no. 01 (2020): 65-82., 67

³⁰ Wahyono Darmabrata, *Tinjauan Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan Beserta Undang-Undang Dan Peraturan Pelaksanaannya*. (Jakarta: CV. Gitama Jaya, 2003)., 102

1. First, get a trial order. This requirement is the basis for couples in the Civil Registry Office to get married. However, Presidential Decree No. 12 of 1983 prohibits using this technology.
2. The principles governing each religion are followed when performing a marriage. The religious laws of the bride (often the husband) are followed by marriage being performed according to the religious laws of the subsequent bride. Which marriage is considered valid is the issue. If the first marital status returns to being a concern concerning marriage according to the second (last) law
3. Both spouses choose law. According to one perspective, he must obey the laws of his partner. So, as a sign of compliance with the law, one of the spouses "converted."
4. These days, getting married abroad is a common practice. The difficulty of interfaith marriage in Indonesia has made some recording musicians choose this strategy.

Apart from that, based on the explanation above also explains that every marriage must be recorded, according to KHI Article 5, to ensure an orderly marriage for the Islamic community. According to Law Number 22 of 1946 and Law Number 32 of 1954, the Marriage Registrar records the marriage in paragraph (1). The term must, which appears in article 5, also indicates that something is obligatory according to Islamic law and the Big Indonesian Dictionary. Therefore, according to KHI, marriages that are not registered and performed without the supervision of a marriage registrar do not have legal force. Article 7 strengthens Article 5 by stating that only a marriage certificate made by a marriage registrar can be used to enter a marriage. So it can be stated that every Muslim who wants to marry must register his marriage. Because marriage registration is related to civil relations, it must be linked to whether a marriage is valid. According to Indonesian law, marriages that a marriage registrar does not register do not have legal force, and as a result, the marriage is invalid. This is done so that everyone related to marriage can have their rights protected following Indonesian laws and regulations.

The registration of marriages is an administrative necessity when considering the laws governing it. This shows that the marriage is still valid because a marriage does not contain legal rules; instead, the basis for determining whether or not a marriage is valid is determined by the religious norms of the parties carrying out the marriage. As a result, if one party does not fulfill its obligations, the other party cannot sue because it does not have legal proof of the marriage being preserved. Of course, this circumstance clarifies the purpose and reason behind the marriage.³¹

5. Conclusion

Interfaith marriages are prohibited in the rules of the Compilation of Islamic Law, one of which is explained in Article 40 KHI. Wherever it is mentioned in the article, women and men are prohibited from marrying women and men of other religions. The KUA

³¹ Budi Durachman, *Undang-Undang Perkawinan* (Bandung: Focus Media, 2005)., 13

can register Muslim marriages, while the Civil Registry Office can only register marriages for people who are married to a religion other than Islam. This means that a marriage can only be registered at the Population Service, or KUA if it has been legalized by law and a recognized religion. This refers to Article 2, paragraph 1 of Law No. 16 of 2019, amending Marriage Law No. 1 of 1974, which states that every marriage is recorded following the applicable laws and regulations. For those who marry according to the Islamic religion, registration is done at the Office of Religious Affairs (KUA).

The government should provide solutions to interfaith marriages so they can live peacefully, especially regarding the population administration process. Convoluted legal procedures will make people increasingly disobedient to the laws that apply in their environment.

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