



## **Interfaith Marriage Perspective of Positive Law and Islamic Law in Indonesia**

**Zubaidi Sujiman**

Institut Agama Islam Negeri Kudus

*E-mail: zubadi@iainkudus.ac.id*

### ***Abstract***

This research study aims to explore and analyze interfaith marriages from the perspective of positive law and Islamic law. This research is included in the category of literature study research with the basis of the qualitative approach used. Data obtained through literature searches (secondary data) include primary legal materials, secondary legal materials, and tertiary legal materials. After the data was obtained, the next step was to test the validity of the data using a credibility test in the form of extending observations, increasing persistence and triangulation in the form of sources and techniques, and analyzing using qualitative descriptive analysis techniques. The results of the research show that juridically, interfaith marriages are still polemic due to the dualism of legal norms between the Marriage Law and the Population Administration Law so it has legal implications for the disparity of judges in determining requests for interfaith marriages. Meanwhile, interfaith marriages are not permitted according to Islamic law, so if they are still carried out, they will have negative consequences for the status of children born from an invalid marriage.

**Keywords:** Interfaith Marriage; Positive Law; Islamic law.

### ***Abstrak***

*Kajian penelitian ini bertujuan untuk mengeksplorasi dan menganalisis pernikahan beda agama dari sudut pandang hukum positif dan hukum Islam. Penelitian ini termasuk dalam kategori jenis penelitian studi kepustakaan dengan basis pendekatan yang digunakan ialah kualitatif. Data diperoleh melalui penelusuran kepustakaan (data sekunder) meliputi bahan hukum primer, bahan hukum sekunder, dan bahan hukum tersier. Setelah data diperoleh langkah berikutnya dilakukan uji keabsahan data menggunakan uji kredibilitas berupa perpanjangan pengamatan, peningkatan ketekunan dan triangulasi berupa sumber dan teknik, dan dianalisis menggunakan teknik analisis deskriptif kualitatif. Hasil penelitian menunjukkan secara yuridis pernikahan beda agama masih menjadi polemik yang disebabkan dualisme norma hukum antara Undang-Undang perkawinan dan Undang-Undang Administrasi Kependudukan, sehingga berimplikasi hukum terhadap disparitas hakim dalam menetapkan permohonan pernikahan beda agama. Sedangkan pernikahan beda agama dalam tinjauan hukum Islam tidaklah diperbolehkan sehingga apabila tetap dilakukan maka berkonsekuensi negatif terhadap status anak yang dilahirkan dari pernikahan yang tidak sah.*

**Kata Kunci:** *Pernikahan Beda Agama; Hukum Positif; Hukum Islam.*

## INTRODUCTION

Interfaith marriages are not something new for Indonesian society, which has a diversity of cultures and religions. Interfaith marriages have occurred in society (according to social conditions) and have been going on for a long time. However, the issue of interfaith marriage tends to always generate controversy among society. There is an opinion that the cause is the existence of Law Number 1 of 1974 concerning Marriage, hereinafter abbreviated to the Marriage Law, which does not accommodate the issue of interfaith marriages, because the mixed marriages referred to in Article 57 are abbreviated as. The law is a marriage between two people who in Indonesia are subject to different laws, because of differences in nationality, not because of differences in religion. Meanwhile, the existence of Article 2 paragraph (1) is considered to close the opportunity for interfaith marriages to occur in Indonesia, so in its development, the existence of Article 2 paragraph (1) abbreviated to Law was then challenged through *judicial review* to the Constitutional Court.

Based on the ICRP report, it is stated that between 2015 and 2023 there were 1,655 interfaith marriages (Munawar, 2023). This is coupled with several courts issuing permits for interfaith marriages, such as the Surabaya District Court (PN), Jakarta District Court, Yogyakarta District Court, and Tangerang District Court. The permits issued by several District Courts certainly create ambiguity. Several assignments for registration of interfaith marriages by a court judge According to the community, this is not a breakthrough or solution The legal impasse, however, sets a bad precedent for the institution of Marriage law in Indonesia. This public perception can be understandable because the existence of marriage law in Indonesia occurs pluralistically.

Addressing issues related to the determination of applications for interfaith marriages. Then on July 17, 2023, the Supreme Court issued a prohibition for courts throughout Indonesia to grant interfaith marriages included in SEMA Number 2 of 2023. This prohibition is based on Article 2 paragraph (1) of the 1974 Marriage Law which explains that Marriage is valid when performed according to the law of each of their religions and beliefs (Republik Indonesia, 1974).

In the Islamic view, Muslims marrying women *polytheists* or *ahlul kitab* is forbidden according to His word in surah al-Baqarah verse 221. However, to maintain happiness in the family, Islam excludes Muslim marriages with female *ahlul kitab* as in surah al-Maidah verse 5. In essence, Allah allows Muslim marriages with female *ahlul kitab* books, namely Jewish and Christian. In this case, most scholars consider this practice to be *makruh tanzih*, not *makruh punishment*. This means that a Muslim should marry a Muslim woman because if he marries a woman

from *Ahlul Kitab*, it means going against what is more important. However, this is not sinful. Meanwhile, some scholars prohibit Muslim marriages with women from Jewish and Christian *ahlul* scriptures which contain a quite clear shirk. For example, the teachings of the trinity and the cult of the Prophets Isa As and Maryam (for Christians) and also the belief that Uzair is the son of Allah, and cultivating Haikal Prophet Sulaiman (for Jews). On the other hand, even though Jews and Christians both have books of revelation from heaven, they believe in their books.

Research on Interfaith Marriages has been widely discussed in previous research, such as research from Airis Aslami et al, which explains that the Marriage Law views interfaith marriages carried out through the ICRP institution as invalid even though the marriage has been registered at the Civil Registry Office and received Excerpt from Marriage Certificate (Aslami et al., 2022). Furthermore, research from Detto Kharisma et al, explains that interfaith marriages have juridical legality to be recorded by the Population and Civil Registry Office through a court decision as mandated by Article 21 of the Marriage Law and Article 35 letter a of the Population Administration Law (Rovanno et al., 2023).

From several previous studies above, there are different points of view regarding the validity of interfaith marriages. On the one hand, marriages between different religions, if seen from the Marriage Law, are invalid. However, on the other hand, if seen from the legal perspective of the Adminduk, interfaith marriages have legal legality according to the law. On the other hand, the existence of SEMA it self is expected to be This article proposes recommendations for legal views, both positive law and Islamic law related to interfaith marriages. The aim is to obtain legal certainty based on strong and relevant sources based on existing regulations in Indonesia regarding interfaith marriages. From the description above, in this case, the author will draw on two problem formulations, namely first: What is the positive legal view of interfaith marriages in Indonesia, and second: What is the view of Islamic law towards interfaith marriages in Indonesia.

## RESEARCH METHODS

This research can be categorized as library research based on a qualitative approach. Data sources were obtained through literature searches (secondary data) including primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include the Marriage Law, the Population Administration Law, the Compilation of Sharia Economic Law, and fiqh books. Secondary legal materials are in the form of journal articles, and tertiary legal materials are in the form of legal encyclopedias and Islamic law.

All data was then tested for data validity using a credibility test

including extending observations, increasing persistence, and triangulation in the form of sources and techniques. After carrying out the validity test, the next step was to analyze the data using qualitative descriptive data analysis techniques. This analysis technique is intended to describe data in the form of coherent, systematic, reasonable words so that it is easier to understand the results of the analysis.

## DISCUSSION

### **Interfaith Marriage Positive Legal Perspective in Indonesia**

The definition of marriage as stated in Article 1 of the Marriage Law is detailed as follows: 1) Marriage is a spiritual and physical bond between a man and a woman as husband and wife; 2) the inner and outer bonds are aimed at forming a happy, eternal and prosperous family (household); and 3) the bond of birth and the goal of eternal happiness is based on the one and only God. Meanwhile, Article 26 of the Civil Code views marriage as only a civil relationship. The concept of Western civil law is that marriage is seen as a civil relationship only, meaning that the law does not interfere concerning customs or religion, the law only recognizes marriages that take place in the presence of a civil registry officer.

The purpose of marriage is regulated in Article 1 of the Marriage Law, it is stated that the purpose of marriage is to form a happy and eternal family (household) based on belief in the Almighty God. The purpose of marriage in Islam is to fulfill the demands of human life instincts, to have relations between men and women to realize family happiness according to the teachings of Allah and His Messenger. Another opinion states that the purpose of marriage is to form a domestic life and create a *sakinah* family based on the virtues of religious guidance.

Marriage is legally valid if it meets the material and formal requirements. In Indonesia, the conditions for the validity of a marriage are regulated in the Marriage Law, which, based on Article 2, means that a marriage is legally valid if it is carried out according to the religious laws and beliefs of each party getting married and is recorded according to the applicable laws and regulations. The material conditions of marriage referred to in this provision are legal requirements according to the religion of each party and if the marriage is then carried out by a couple of different religions, then it will again refer to the religious laws of each party (Amri, 2020).

Every marriage involving Indonesian citizens must be reported in the marriage registration following Law Number 23 of 2006 concerning Administration Population Administration is hereinafter abbreviated to the Population Administration Law. This may be difficult for couples of different religions, especially if one party's religion does not recognize or

restrict marriage to followers of another religion. As a result, although marriages may be recognized by one religion or another, difficulties arise when trying to obtain legal and administrative recognition from the state. This will continue throughout the marriage certificate application process. Some conditions must be met to get married (Imam, 2022). This procedure may be more complicated in different religious marriage situations. To avoid obstacles, some religious couples prefer to marry outside Indonesia and then register in Indonesia.

According to Marriage Law Number 1 of 1974, interfaith marriages are permitted under Indonesian law if they are carried out following the religious laws of the bride and groom involved. This means that the bride and groom carry out the marriage following their respective religions. However, problems often arise when couples try to register their marriage at the administrative level (Hidayati Annisa, 2022). The Office of Religious Affairs (KUA) is the only place where Muslim couples can get married. On the other hand, for couples who are not Muslim, registration is usually carried out by the Population and Civil Registry Service. However, there are no clear statutory regulations regarding how procedures for registering marriages between different religions should be carried out, making it difficult to provide administrative clarity (B & Iskandar, 2023).

Article 8 of the Marriage Law does not clearly explain the prohibition on interfaith marriages. Apart from that, there are no statutory regulations that regulate this matter in detail. So there was a legal vacuum that resulted in the issuance of the Population Administration Law, Article 35 states that the registration of marriages regulated in Article 34 of this law also applies to marriages determined by the Court (M.Yunus & Aini, 2020). In his explanation, what is meant by marriage determined by the court is a marriage between people of different religions.

These provisions in the Population Administration Law are then used as the basis for considerations for judges to decide on cases involving interfaith marriages. From one judge's decision, the decision can then be used as the basis for the judge's consideration in deciding the next case. Bearing in mind the provisions of Article 10 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which reads: "Courts are prohibited from refusing to examine, try and decide on a case submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and try it." (DPR RI, 2009).

It is hoped that the issuance of SEMA No. 2 of 2023 will end the problems regarding interfaith marriages that occur in Indonesia so that judges will no longer grant requests for interfaith marriages submitted by the Petitioner. The provisions of Law Number 23 of 2006 were amended by Law Number 24 of 2013 concerning Population Administration. Article 35 letter relating to the issue of interfaith marriages has become the

authority of the district court to examine and decide whether it cannot be implemented. SEMA is a guide for judicial judges under the Supreme Court in carrying out their guidance and supervision functions as stated in Article 32 paragraph (4) of Law no. 14 of 1985 which has been amended by Law no. 3 of 2009 concerning the Supreme Court.

Judges are obliged to comply with SEMA because the contents of SEMA explain things that are still unclear or there are still differences between theory and practice in the world of justice. These instructions are explanations or interpretations of statutory regulations so that in court practice there are no disparities in providing justice which results in a lack of legal certainty, as one of the basic ideas of law. Based on the narrative above, in the author's opinion, it is time for adjustments to be made to the problem of legal dualism in regulating interfaith marriages as contained in the Marriage Law and the Population Administration Law so that there will no longer be conflicting norms by making changes to the Population Administration Law. Especially in Article 35 and Article 36 utilizing being revoked, because basically, interfaith marriages have many negative impacts in the future, especially regarding the status of children born from an invalid marriage process as a result of interfaith marriages.

### **Interfaith Marriage Perspective of Islamic Law**

In discussions of Islamic law, especially in classical jurisprudence literature, interfaith marriages can be divided into three categories: first, marriage between a Muslim man and a polytheist woman; second, marriage between a Muslim man and a woman who is an expert on the book; and third, marriage between a Muslim woman and a non-Muslim man (both polytheists or people of the book).

First, marriage between a Muslim man and a Muslim woman and vice versa. Scholars agree that it is forbidden for a Muslim man to marry a woman *polytheist*. This opinion is based on QS. Al-Baqarah (2), 221, which means: "*And don't you marry polytheist women, before they believe. Truly, a believing woman is better than a polytheist woman even if she attracts your heart. And do not marry polytheists (men) (with believing women) before they believe. Truly, my servant, a man who believes is better than a polytheist man, even if he attracts your heart, they invite you to hell, while Allah invites you to heaven and forgiveness with His permission. (Allah) explains His verses to people so that they take lessons*".

According to at-Tabari, the meaning of the verse "and do not marry polytheist women before they believe" is for polytheist women who are not among the people of the book. This verse is general outwardly and specific inwardly and there is no abrogation of the law from the verse (at-Tabari, 200 C.E.). Another verse about the prohibition of marriage between a Muslim woman and a non-Muslim man is also based on QS. Al-

Mumtahanah (60): 10, which means: "O you who believe, when believing women come to migrate to you, then you should test them, then Allah knows better about their faith if you have known that they (truly) believe, then do not return them to the people -unbelievers (their husbands). They are not halal for the infidels, and the infidels are not halal for them. And give them (husbands) the dowry they have given. And there is no sin for you to marry them if you pay them their dowry. And do not hold on to the rope (of marriage) with unbelieving women and ask for the return of the dowry that you have given and (if the husband remains an unbeliever) let them ask for the return of the dowry that they have paid to their former wives who have believed. Such is the law of God that He has established between you, and God is All-Knowing, All-Wise."

Imam Ath-Tabari in his interpretation interprets "if you have known that they (truly) believe, then do not return them to the unbelievers (their husbands)" that the women have acknowledged and proved their faith and Islam when tested, then they should not be returned to their unbelieving husbands, even though the contents of the Hudaibiyah agreement that occurred between the Prophet and the Quraysh polytheists required the return of the Quraish who came to the Prophet Muhammad, the agreement was reserved for the believing men. So that the conditions proposed in the peace agreement did not apply to the women who migrated to the prophet they were tested and proved their faith and Islam. They cannot be returned to their husbands, because the believing women are not halal for the infidels, and the infidel men are not halal for the women. *believer* (at-Tabari, 2000).

Ash-Shabuni in his interpretation also explained: If the women who migrated have proved that they are true believers, then they cannot be returned to their unbelieving husbands, because indeed God forbids believing women for polytheist men. And pay a dowry on them to their unbelieving husbands (in return). Similarly, a man who has believed, should not defend his marriage with a disbelieving woman who did not migrate with her husband. Indeed, his marriage bond has been broken due to disbelief, because Islam does not allow marrying polytheist women (As-Shabuni, 1980).

The two verses above strictly prohibit the marriage of a Muslim to a polytheist, whether between a Muslim man and a polytheist woman or between a polytheist man and a Muslim woman. However, there are still different interpretations among the ulama regarding what is meant by a polytheist woman who is forbidden to marry. Tafsir scholars say that the interpretation of polytheist women in this verse is Arab polytheist women because when the Koran was revealed they did not know the holy book and they worshiped idols. Others say that polytheist women are not only limited to Arab polytheist women, but have a general meaning, including all types of idolatry whether from Arab tribes or from other tribes,



including idol worshipers, Jews, and Christians, but mostly Ulama think that all women are polytheists, both from Arab and non-Arab tribes, apart from the people of the book from Jews and Christians (Ridha, 1948).

Muslim men are prohibited from marrying polytheist women, and vice versa, if the man is an idol worshiper, it is not permissible for Muslim women to marry him and maintain their marriage. From all the interpretations above, the commentators all emphasize that the infidel woman who cannot be married is the one who is a polytheist, as this verse was revealed due to the Hudaibiyah agreement between the Prophet SAW and the polytheists of Quraish Mecca. So this sparked differences of opinion among the ulama about marrying non-Muslim women other than polytheists.

Second, marriage between a Muslim man and a woman from the people of the book, in classical literature it is found that most scholars tend to allow this marriage, and some of them only consider it makruh, they refer to the QS. Al-Maidah (5): 5, which means: "*On this day everything good is made lawful to you, the food (slaughter) of the People of the Book is lawful to you and your food is lawful to them. And (it is permissible for you to marry) women who maintain honor among believing women and chaste women among those who were given the Book before you, when you pay their dowries to marry them, not by adultery and not to keep them as concubines. Whoever disbelieves after believing, their deeds are in vain, and in the afterlife he is one of the losers.*"

The scholars interpret that this verse shows that it is halal to marry women from the people of the book, namely Jewish or Christian women. Al-Maraghi in his interpretation said: *al-muhshanat* what is meant here is free women, that is, it is permissible for you, O believers, to marry free women from among the believing women, or free women from among those who were given the book before you, namely Jewish women or Christians if you give them a dowry when you marry them (Al-Maraghi, 1969).

Many scholars think that the verse "and do not marry polytheist women until they believe" shows that it is haram for Muslim men to marry women who are wise and who worship idols. Meanwhile, it is permissible for women among the people of the book to marry him as stated in Surah Al-Maidah verse 5. The argument is that the word *polytheist* The Al-Baqarah verse does not cover the people of the book. There is a history of Hudzaifah marrying a Jew (As-Shabuni, 1980). Another basis that is used as a basis is what the Prophet Muhammad and several of his companions did. The Prophet Muhammad SAW once married a woman from the people of the book (Maria al-Qibthiyah), Usman bin Affan once married a Christian woman (Nailah bint Al-Qarafisah AlKalabiyah), Hudzaifah bin Al-Yaman once married a Jewish woman, while other companions in At that time, no one opposed it or



forbade it. However, some scholars prohibit this marriage because they consider that the people of the book (Jews and Christians) are included in the polytheist category, especially in the doctrine and practice of Jewish and Christian (Christian) worship which contains elements of shirk (trinity), where the Jewish religion considers Uzair son of Allah and cults Haikal Prophet Sulaiman, while Christianity also considers Isa Al-Masih as the son of Allah and cults his mother Maryam (Mary) (Ridha, 1948).

Third, a marriage between a Muslim woman and a non-Muslim or infidel man, Islamic jurists consider the marriage prohibited by Islam, regardless of whether the prospective husband is from the people of the book (Jews and Christians) or followers of other religions that have holy books such as Hinduism and Buddhism. or even adherents of religious beliefs that do not have scriptures. The meaning of the word polytheism in the verse "and do not marry polytheist women before they believe" is all non-Islamic infidels, namely *watsani* (idol worshippers), magi, Jews, Christians and people who have apostatized from Islam. Everything mentioned above is haram for them to marry Muslim women. A husband has power over his wife, there is a possibility that the husband forces his wife to leave her religion and take her to Judaism or Christianity. In general, children will follow their father's religion, if their father is Jewish or Christian then they will follow him. Meanwhile, a Muslim man will glorify the Prophet Musa and Isa As. Believe in their message and the revelation of the Torah and Gospel. A Muslim will not harm his wife who is a Jew or Christian for reasons of their different faiths. It's different if a husband doesn't believe in the Koran and the Prophet Muhammad, his lack of faith in Islam causes him to hurt Muslim women and belittle their religion (As-Shabuni, 1980).

Apart from mentioning Jews and Christians, the Qur'an also mentions religious adherents several times *Shabi'ah* (al-Baqarah, 2 verse 62; al-Maidah, 5 verse 69; al-Hajj, 22 verse 17); Magi and those who hold to the *shuhuf* (scrolls of the holy book) of Prophet Ibrahim-which is called Syit and the *shuhuf* of Prophet Moses which is called Torah (al-A'la, 87 verse 19), and the book of Psalms which was revealed to Prophet Dawud. The mention of these religions may be closely related to the religions that once developed and were known to the Arab community at that time.

When marrying religious women outside of Jews, Christians, Magi, and *Shabi'ah* There are also two opinions. Hanafi madzhab scholars state: that whoever embraces the heavenly religion, and for a holy book such as the *shuhuf* of Ibrahim and Dawud, it is lawful to marry them as long as they are not shirk. Because they adhere to all of Allah's books, they are equated with Jews and Christians. Meanwhile, the Shafi'i and Hambali madzhab scholars do not allow it. The reason is that these books only contain advice and parables, and do not contain any law at all.

About women *shabi'ah*, the jurists of the Hanafi school think that they are actually among the People of the Book, it's just that the book has been distorted and fake. They are equated with converts to Judaism and Christianity so that men of faith can marry them. While the Syafi'iyah and Hanabilah jurists distinguish between the People of the Book and the followers of the religion *Shabi'ah*. According to them, Jews and Christians agree with Islam in basic religious matters (*ushul ad-din*) justifying the apostles and believing in the books. Anyone who differs from him in matters of religious principles (including *shabi'ah*) then he does not belong to his group. Therefore, the law of marrying her is also like marrying an idol worshiper, which is haram (Anshary, 2015).

Nahdlatul Ulama (NU) has also issued a fatwa regarding interfaith marriages. The fatwa was adopted in the 28th Congress in Yogyakarta at the end of November 1989. NU clerics in their fatwa emphasized that marriage between two people of different religions in Indonesia is invalid (Iaduni. id, 2019). In line with the Muhammadiyah organization, the decision of the 22nd Tarjih Congress in 1989 in Malang, East Java, expressed/strengthened the opinion that it was not permissible to marry a non-Muslim woman or *Ahlul Book*, for several reasons as follows: 1) The current *Ahlul Buku* is not the same with the People of the Book who existed during the time of the Prophet SAW. 2) All the People of the Book today are polytheists or associate partners with Allah SWT, by saying that Uzair was the son of Allah (according to the Jews) and Jesus was the son of Allah (according to the Christians). 3) Interfaith marriages will certainly not be possible to create a *sakinah* family as the main purpose of the marriage. 4) God willing, the Muslim Ummah will not lack Muslim women the number of Muslim women is greater than that of men (Ilham, 2022).

NU and Muhammadiyah views regarding interfaith marriages This is in line with the thoughts of one of the scholars, namely Gus Baha, According to him, interfaith marriages are permitted with conditions certain. Gus Baha' refers to the Qur'an Surah Al Maidah Verse 5. Textually, Gus Baha' explains that men Muslims can marry a woman from the People of the Book from Jews and Christians. However, Gus Baha also explained that Muslim women or Muslim women are prohibited from marrying non-Muslim men non-muslims. Regarding the People of the Book, Gus Baha' refers to the opinion of Imam Shafi'I who is very strict about the women of the People of the Book Muslim men are allowed to marry. Imam Shafi'i gave an explanation of the criteria for a woman of the book who can be married are those who are still "pure" in their faith. This means it does not contain the trinity and the teachings of shirk. Classical scholars interpret it as faith in God whose monotheism has not been mixed, whose faith is still straight.

## CONCLUSION

Based on the discussion and analysis presented above, this research concludes that legal dualism regarding the regulation of interfaith marriages should receive attention, especially from stakeholders, by amending or revoking Article 35 and Article 36 of the Population Administration Law so that there will no longer be conflicting norms, p. this is based on consideration of negative impacts (*mafsadat*) which are more performed. Apart from that, the changes are also intended to provide legal certainty for judges in examining and determining interfaith marriage applications in court.

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