

The Validity Of Inter-Religious Marriages: A Fiqh And Positive Law Perspective

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Info Articles	Abstract
<p>Article History Received : 2019-09-04 Revised: 2019-09-10 Published: 2019-09-30</p> <p>Keywords: <i>Marriage, Interfaith, Compilation of Islamic Law</i></p>	<p>The practice of interfaith marriage among Muslims in Indonesia is still prevalent in society. This phenomenon has given rise to various controversies and debates from religious, social, psychological, and legal perspectives. This paper will discuss the validity of interfaith marriage in Indonesia from the perspective of Islamic jurisprudence and positive law. The method used is normative legal research with library research as the data source. The data is then collected, processed, analyzed, and presented qualitatively. The results of the study conclude that Islamic jurisprudence scholars agree that marriage between a Muslim man and a non-Muslim polytheist woman is prohibited. This opinion refers to the verses of QS 2:221, QS 60:10, QS 5:5, and considerations of public interest. In the legal context in Indonesia, the Compilation of Islamic Law (KHI) regulates the prohibition of interfaith marriage. Meanwhile, the Marriage Law does not clearly regulate the permissibility of interfaith marriage, thus leaving room for differing legal interpretations in society. The Population Administration Law and several court rulings have opened the door to recognizing interfaith marriages, making them valid, registered, and recognized by the state. However, this development led to the birth of Supreme Court Circular Letter No. 2 of 2023, which prohibits courts from granting permits for registering interfaith marriages. Interfaith marriages not registered with an official institution have no legal status in the eyes of the state. Consequently, such marriages are not administratively recognized.</p>

I. INTRODUCTION

The discourse on interfaith marriage has recently become a hot topic debated by both the public and Muslim scholars. This issue arose due to the widespread practice of interfaith marriages among Muslims in various regions. This phenomenon often sparks debate, both from an Islamic perspective and within Indonesian law. The practice of interreligious marriages among Indonesian Muslims is inseparable from the social reality of Indonesia's pluralistic society (Nurkholis, 2012). On the other hand,

technological developments, globalization, and free association have also influenced social interactions, leading to interfaith marriages. Although the Indonesian Ulema Council (MUI) and Islamic scholars have affirmed the prohibition of marriage between Muslims and non-Muslims, the practice of interfaith marriages continues to occur in society. Data compiled by the Indonesian Conference on Religion and Peace (ICRP) from 2005 to 2022 recorded 1,425 couples of different religions marrying, with the number increasing significantly each year. Meanwhile, research conducted by Anthin Lathifah and her team in

Central Java Province in 2022 found that Muslim men were more likely to enter into interfaith marriages than women. According to Islamic teachings, marriage is a universally accepted law, intended to produce offspring to continue life in this world from time to time. Marriage is seen as a sacred and holy covenant that allows a man and a woman to build a harmonious household, full of love, and happiness. For a marriage to be considered valid under Islamic law, there are requirements for both parties. According to Islamic jurisprudence, these requirements are referred to as the pillars of marriage. The majority of Islamic jurisprudence scholars agree on five pillars that must be met, as outlined in the Compilation of Islamic Law (KHI). Among the main requirements stipulated are related to the religion of the bride and groom, which must comply with Islamic provisions for the marriage to be valid under sharia law. The KHI in force in Indonesia stipulates that the bride and groom must adhere to the same religion, namely Islam. Therefore, the Indonesian government, through its representatives at the Office of Religious Affairs, does not organize weddings between couples of different religions. However, as a pluralistic nation with diverse religions, the practice of interfaith marriages remains common. Despite prohibitions in Islamic law and applicable regulations, this phenomenon persists in communities living side by side with differing beliefs and religions. The issue of interfaith marriage has recently sparked debate among legal, social, cultural, and interpretive experts. Some scholars permit interfaith marriage based on Quranic texts, while others prohibit it for reasons that are also based on the Koran and its beneficial aspects. According to the teachings in the Koran, there are several verses that discuss marriage between Muslims and non-Muslims. These verses can be found in Surah Al-Baqarah (2:221), Surah Al-Mumtahanah (60:10), and Surah Al-Maidah (5:5). In Surah Al-Baqarah, there

is a prohibition on Muslims marrying polytheists, whether Muslim men want to marry polytheist women or vice versa. Surah Al-Mumtahanah and Surah Al-Maidah also continue this prohibition, where Muslim women are prohibited from marrying infidel men, and vice versa, infidel men are not allowed to marry Muslim women. Meanwhile, the third verse gives permission to Muslim men to marry women from the Ahl al-Kitab, while Muslim women are prohibited from marrying non-Muslim men. This article will examine in more depth the validity of inter-religious marriage status from the perspective of Islamic law and positive law in Indonesia.

II. RESEARCH METHODS

This study uses a qualitative research method with a normative juridical approach. This approach was chosen because it focuses on analyzing legal norms governing interfaith marriage, both from the perspective of Islamic law and positive law in Indonesia.

The data sources in this study consist of secondary data, which include primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include laws and regulations such as Law Number 1 of 1974 concerning Marriage, Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (KHI), Law Number 23 of 2006 in conjunction with Law Number 24 of 2013 concerning Population Administration, and Supreme Court Circular Letter (SEMA) Number 2 of 2023. In addition, this study also uses the arguments of the Qur'an such as QS. Al-Baqarah verse 221, QS. Al-Mumtahanah verse 10, and QS. Al-Maidah verse 5 as the basis for Islamic law analysis.

Secondary legal materials are obtained from literature such as books, scientific journals, the results of previous research, as well as the

opinions of Muslim scholars and scholars, including interpretations from figures such as Al-Qurtubi, Hamka, and Rasyid Ridha. Tertiary legal materials include dictionaries, encyclopedias and other supporting sources relevant to this research.

Data collection was conducted through library research, which involved reviewing and collecting various literature sources related to the research topic. The data obtained was then analyzed using descriptive qualitative analysis, describing, interpreting, and comparing various perspectives on Islamic law and positive law regarding interfaith marriage.

The approaches used in this research include a statutory approach and a conceptual approach. The statutory approach is used to examine various regulations governing interfaith marriage in Indonesia, while the conceptual approach is used to understand Islamic legal concepts related to interfaith marriage based on the Qur'anic verses and the opinions of Islamic scholars.

With this method, the research is expected to be able to provide a comprehensive picture of the validity of interfaith marriages from the perspective of Islamic law and positive law in Indonesia.

III. RESULTS AND DISCUSSION

A. interfaith marriage

Marriage, or what is often referred to as marriage, is a translation of the terms "nakaha" and "zawaja." In Arabic, the term nikah contains the meaning "al-wath'u," which refers to intimate relations or intercourse, and can also be interpreted as connection or connection. According to the Munawwir Dictionary, the word nikah means gathering, intimate relations, or intercourse. Furthermore, in the view of ushul scholars, there are two interpretations regarding

the meaning of the word nikah. First, according to the Hanafi school, nikah literally means having intimate relations. In the majazi sense, nikah is understood as a contract that makes sexual relations between a man and a woman permissible. Conversely, the Shafi'i school argues that nikah literally is a contract that makes sexual relations between a man and a woman permissible, while in the majazi context, nikah means having intimate relations. Although this definition states that fundamentally, marriage is a contract regulated by religion to legalize physical relations between a man and a woman, from an Islamic perspective, marriage is not only seen as a biological issue. However, it also involves psychological, sociological, and theological aspects. In the context of marriage, there are obligations that must be fulfilled towards the wife, children, society, and towards Allah SWT. (Al-Jasshas, Abu Bakr Ahmad bin Ali Al-Razi. 1992)

Interfaith marriage, or interfaith marriage, refers to a union between a man and a woman of different religious backgrounds. In this context, a marriage between a Muslim and a non-Muslim is known as an interreligious marriage. Abdurrahman argues that interfaith marriage involves a relationship between individuals of different religions, each maintaining their own religious beliefs. In this situation, couples with differing beliefs need to make adjustments, compromises, and even sacrifices to overcome the differences. This process involves not only the husband and wife but also the dynamics of the extended families from both parties. In Islamic teachings, religious differences between husband and wife can pose various challenges in family life. Matters such as religious observance, child education, dietary arrangements, and religious traditions can be sources of difficulty. Therefore, Islam emphasizes the need for shared religious beliefs to achieve a harmonious family life. Overall, Islam teaches that having shared religious beliefs between husband and wife is crucial for

building a happy, harmonious, and prosperous family. (Al-Maraghi, Ahmad Mushtafa, 1984)

B. The opinions of Islamic jurists regarding the Qur'anic evidence regarding interfaith marriage

a. Surah Al-Baqarah: 221

Interfaith marriage can be understood explicitly in QS 2: 221 which reads as follows;
وَلَا تَنْكِحُوا الْمُشْرِكَةَ حَتَّىٰ يُؤْمِنَ وَلَا مَؤْمِنَةً خَيْرٌ مِّنْ مُّشْرِكَةٍ وَلَا حَتَّىٰ يُؤْمِنُوا وَلَعَنُوا الْمُؤْمِنِينَ خَيْرٌ مِّنْ أَعْبَدْتُمْ وَلَا تَنْكِحُوا حَتَّىٰ يُؤْمِنُوا اللَّهُ النَّارُ In the name of Allah the Most Gracious, the Most Merciful. أَجْبَبْتُمْ أَوْلِيَكُمْ يَدْعُونَ الْجَنَّةَ وَالْمَغْفِرَةَ بِأَذْنِهِ وَيُبَيِّنُ آيَاتِهِ لِلنَّاسِ لَعَلَّهُمْ يَتَذَكَّرُونَ

The verse explains not to marry polytheist women before they believe. According to Al-Qurtubi, the polytheist women referred to in this verse are idol worshipers and women of the Magian religion. This opinion is also supported by Imam Malik, Ash-Shafi'i, Abu Hanifah, and Al-Auza'i, all of whom prohibit marriage with Magian women. On the other hand, Ibn Hanbal believes that this does not have much influence. In a history, Hudzaifah bin Al-Yaman once married a Magi woman, and Umar advised him to divorce her. When Umar asked Hudzaifah to separate, he asked whether the woman was considered haram. Umar replied that he did not consider it haram, but was worried that Hudzaifah would be influenced by the polytheist woman's beliefs. (Al-Maraghi, Ahmad Mustafa. 1946)

Al-Qurtubi also quoted the opinion of Ibn Athiyah, who said that Ibn Abbas stated that this verse applies generally, including all women who worship idols, women of the Magi, and women of the People of the Book. According to Ibn Abbas, every woman who adheres to a religion other than Islam is considered a polytheist. In this context, Abdullah bin Umar, when asked about marriage between a Muslim and a Christian or Jewish woman, explained that Allah had forbidden polytheistic women for believers. He also emphasized that there is no greater polytheism

than a woman who considers her Lord to be Jesus or one of Allah's servants. (Al-Thabari. 1976)

Al-Qurtubi explains that the prohibition on marrying polytheist women is because they invite them to hell, as explained in the next verse, which states that "a believing slave woman is better than a polytheist woman." Therefore, if faced with a choice between a polytheist woman and a believer slave woman, the one who must be chosen is the believer slave woman. This is confirmed by the verse which states that believing slave women are better than polytheist women even if the polytheist women are rich or have high status.

Another opinion comes from Rasyid Ridha, who provides an interpretation of the polytheistic women whom Muslim men are prohibited from marrying in Surah Al-Baqarah verse 221. He argues that the polytheistic women referred to in the context of the verse are Arab polytheistic women who do not follow the holy book as a guide for life. Rasyid Ridha emphasized that women who fall into the category of People of the Book—those who possess the holy book—cannot be classified as polytheists and are therefore not bound by the prohibition. (Baidan, Nasrudin. 1993)

He also criticized the understanding that this verse contradicts other verses, such as Surah Al-Maidah verse 5, which permits marriage to women from the People of the Book. According to Rasyid Ridha, marrying polytheistic women is potentially dangerous, as they can lead their husbands to disbelief, both through words and actions. Therefore, he emphasized that it is better to choose a believing slave woman than to marry a polytheistic woman who may be physically attractive but lacks clear religious guidance.

Al-Maraghi, in his commentary, states that the prohibition on marrying polytheist women applies to all polytheists, except if they believe in Allah. He added that marriage with a slave woman who believes in Allah is better than

a polytheist woman who has many advantages. If you have to choose between beauty and faith, faith is more important. Muslim women do not have clear religious guidelines, so they tend not to maintain morality and goodness in the household.

Hamka further argued that marriage between a Muslim man and a polytheistic woman could lead to marital discord, especially if the couple had children. The verse then continues with a verse that forbids marriage between a Muslim man and a polytheistic woman and emphasizes that a slave woman is far more noble than an unbelieving woman, even though a polytheistic woman is more enchanting because of her beauty. This verse teaches that equality of religious belief is very important in marriage, because differences in belief can cause disharmony in the household, even leading to a journey to hell. (Hadikusuma, Hilman. 2003)

b. QS Al-Mumtahanah: 10

The Qur'anic argument relating to the prohibition of inter-religious marriage is stated in surah al-Mumtahanah verse 10 which reads:

أَعْلَمُ Allah يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا جَاءَكُمُ الْمُؤْمِنَاتُ مُهَاجِرَاتٍ فَامْتَحِنُوهُنَّ
الله الْكُفَّارَاتِ Allah فَإِنْ عَلِمْتُمُوهُنَّ مُؤْمِنَاتٍ فَلَا تَرْجِعُوهُنَّ
لَهُمْ وَلَا هُمْ يَحِلُّونَ لَهُنَّ وَأَتُوهُنَّ مِمَّا أَنْفَقْتُمْ وَلَا جُنَاحَ Allah هُنَّ
تَنَكُّحُوهُنَّ إِذَا اتَّيَمَّمْتُمُوهُنَّ أَجُورَهُنَّ وَلَا تُمْسِكُوا بِعِصَمِ الْكُوفِرِ Al عَلَيْكُمْ
In بِحُكْمِ رَبِّكُمْ Allah وَسَأَلُوا مِمَّا أَنْفَقْتُمْ وَلَيْسَ لَكُمْ عَلَيْكُمْ
the name of Allah حِكْمٌ عَلِيمٌ حَكِيمٌ

This verse explains the prohibition on returning women who have believed to their husbands who are still unbelievers. Allah SWT gave orders to Muslims to test the faith of the women who emigrated to them. Allah knows better about their situation, including the faith embedded in their hearts. If it is proven that these women truly have faith, then they should not be invited to return to their husbands who do not believe, because believing women are not allowed to unite with unbelievers, and vice versa, unbelievers are also not allowed to believe women. Those who have emigrated must be given the dowry they previously received from their

infidel husbands. Muslims are not permitted to maintain a marital relationship with an infidel woman. If the woman returns to her infidelity, then the dowry that has been given must be returned by the party who received it (the infidel husband or ex-wife who has returned to infidelity). This is a wise and knowledgeable decree of God's law. In general, this sentence explains the procedures that need to be followed when a Muslim woman immigrates from a non-Islamic country to an Islamic country, as well as the rules regarding dowry and separation between a believing woman and her non-believing husband. (Hamka. 2015)

Imam Al-Qurtubi explained that in the verse which reads, "O you who believe, when believing women come to you who emigrate, then you should test their (faith)," Allah SWT instructed Muslims to test the faith of women who emigrated. When Allah SWT forbids Muslims from making infidels their close friends or helpers, this is related to the emigration of Muslims from areas of disbelief to the land of Islam. Marriage is a very strong form of bond between two individuals, so Allah SWT established rules regarding women who emigrate, namely to test their faith and separate them from husbands who are infidels. Women who perform the hijrah are required to swear that they do it out of love for Allah SWT, not because of worldly motivations such as anger at their husband or attraction to a believer. (Kathir, Ibn. 1999)

Imam Al-Qurtubi further explained that the phrase "Allah knows better about their faith" shows that although humans can carry out tests, only Allah knows the true faith, including the hidden ones. If it is proven that a woman is truly a believer, then she should not be returned to her unbelieving husbands. Allah SWT forbids marriage between believing women and unbelieving men, and vice versa. This shows that faith is the basis for the separation between a

Muslim woman and her infidel husband, not just based on their hijrah. (Karsayuda. 2006)

Hamka also explained the verse that reads, "And do not cling to the rope (marriage ties) of unbelievers." In his interpretation, he interpreted the term 'isham as a rope that symbolizes the bond of love between a Muslim husband who has migrated and his unbeliever wife. This verse shows that after the verse was revealed, the marriage bond between a Muslim who has migrated and his wife who is still an unbeliever is automatically severed. Hamka emphasized that a Muslim man who has migrated is prohibited from marrying an unbeliever woman, even if the woman follows another religion, except in the case of a woman from the People of the Book as regulated in Surah al-Maidah verse 5. However, in this situation, a Muslim man who marries a woman from the People of the Book must have strong faith and be able to guide his wife to the teachings of Islam. If a man does not have strong enough faith, the marriage has the potential to degrade the values of Islam. (Kharlie, Ahmad Tholabi, 2015)

c. QS Al-Maidah: 5

Marriage involving differences in religion is also clearly stated in QS Al-Maidah (5), verse 5, which states the following.

لَكُمْ وَطَعَامَكُمْ اللَّهُ الْيَوْمَ أَجَلَ لَكُمْ الطَّيِّبَاتِ وَطَعَامَ الَّذِينَ أُوتُوا الْكِتَابَ لَهُمْ وَالْمُحْصَنَاتُ مِنَ الْمُؤْمِنَاتِ وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ إِذَا آتَيْتُمُوهُنَّ أَجُورَهُنَّ مُحْصِنِينَ غَيْرَ مُسْلِفِينَ وَلَا مُنْجِذِينَ أَخْدَانٍ وَمَنْ يَكْفُرْ بِالْإِيمَانِ فَقَدْ حَبِطَ عَمَلُهُ وَهُوَ فِي الْآخِرَةِ مِنَ الْخَسِرِينَ

Today, all good things have been made lawful for you. The food of the People of the Book is lawful for you, and your food is lawful for them. Furthermore, it is permissible for you to marry chaste women among the believers, and chaste women among those who received the Scripture before you, provided that you give them a dowry for their marriage with good intentions, not for adultery or

keeping them as pets. Indeed, whoever disbelieves after believing, their deeds will be in vain, and in the Hereafter, they will be among the losers.

As already mentioned, Al-Qurtubi refers to the opinion of Ishak bin Ibrahim al-Harabi who states that there is a group of scholars who believe that the verse in Surah Al-Baqarah (2:221), which prohibits marriage with polytheistic women, cancels (nasakh) the verse in Surah Al-Maidah (5:5) which permits marriage with women from the People of the Book. This group believes that all polytheist women, whether they fall into the category of People of the Book (Jews and Christians) or not, are prohibited from marrying Muslim men. On the other hand, several scholars such as Uthman, Talha, Ibn Abbas, Jabir, Huzaifah, as well as a number of tabi'in such as Sa'id bin al-Musayyab, Sa'id bin Jubair, al-Hasan, and Mujahid, are of the opinion that marrying women from the People of the Book is permissible. Their opinion is contrary to the view which states that the verse in Surah Al-Baqarah (2:221) cancels the verse in Surah Al-Maidah (5:5). They argue that the two verses do not contradict each other. (Monib Mohammad, and Ahmad Nurcholish. 2008)

As expressed by An-Nuhas, the view they put forward is based on the belief that the verse in Surah Al-Baqarah was the first verse revealed after the migration to Medina, while the verse in Surah Al-Maidah was the last, containing legal provisions that are more relevant and applicable today. In various interpretations of naskh (abolition of laws), newer verses usually take precedence. Therefore, the verse in Surah Al-Maidah which permits marriage to women from the People of the Book is considered more appropriate. Al-Qurtubi also emphasized that the two verses do not contradict each other. He believes that the term shirk in the verse of Surah Al-Baqarah does not include the People of the Book. Even though they do not believe in Allah in

the proper way, they still have the holy books and follow the revelations sent by Allah, namely the Torah and the Gospel. Thus, marriages with women from People of the Book are considered valid in the view of many scholars. (MS, Eoh, OS Sh.2001)

Rasyid Ridha broadened the understanding of who is included in the category of People of the Book. According to him, People of the Book are not only Jews or Christians, but in a broader sense include followers of religions that have holy books, even if there are deviations from these books. Therefore, according to Rasyid Ridha, religions such as Sabi'un, Hinduism, Buddhism, Confucianism, Shinto, and others, can be classified as part of the People of the Book. He argued that although there are tahrif (distortions) in their holy books, each religion originally had revelations and prophets sent by Allah. Therefore, the basic law of marriage is permissible, and only in certain cases is it prohibited by clear texts, such as the prohibition of marriage with idol worshippers or people who do not have holy books.(Mudzhar, Mohammad Atho 1993)

Rasyid Ridha emphasized the basic principle in Islamic law that marriage is basically permissible, and there are only prohibitions or restrictions based on clear texts. In this regard, marriage to a woman from the People of the Book is considered permissible, unless there is a shari'a reason forbidding it, such as if the woman is involved in polytheism or acts in a clear violation of Islamic teachings. Overall, the most commonly accepted view among scholars is that marriage to a woman from the People of the Book (Jews and Christians) is permissible, based on the interpretation of the verse of Surah Al-Maidah (5:5). This view is supported by many companions, tabi'in, and prominent scholars, although there are differences of opinion regarding who is included in the category of People of the Book. Rasyid Ridha proposed a broader understanding of who is included in the

People of the Book, including those who possess the holy book even if there are deviations in it.

In addition, it is important to remember that in practice, interfaith marriages require further care and consideration regarding other aspects, such as commitment to practicing religious teachings, children's rights, and clarity of understanding of religion that applies in the daily lives of the couple concerned. (Muhdhor, Zuhdi. 2003)

C. interfaith marriage according to positive law

In Law Number 1 of 1974, Article 2 paragraph (1) stipulates that a marriage is considered valid if it is carried out in accordance with the religious laws and beliefs of each party. Furthermore, Article 2 paragraph (2) emphasizes the obligation to register the marriage in accordance with applicable regulations. However, although there are general provisions regarding the validity of marriages that refer to religious law, this law does not clearly regulate interfaith marriages. This situation creates legal uncertainty regarding marriages between individuals who adhere to different religions. (*Munawwir, AW 2002*)

In the KHI regulated through Presidential Instruction Number 1 of 1991, there is a prohibition on marriage between a Muslim man and a non-Muslim woman as stated in Article 44. This prohibition is in accordance with the Islamic view that prohibits interfaith marriage, except in the case of marriage with a woman from the People of the Book (Jews and Christians). The KHI more clearly states that marriage between a Muslim woman and a non-Muslim man is prohibited, which provides stricter restrictions for interfaith couples. Because there are no regulations that explicitly regulate or prohibit interfaith marriage in Law Number 1 of 1974, this has led to differences in interpretation among the public and authorities. As conveyed by Asro

Sastroatmojo, Article 2 paragraph (1) and Article 8 letter (f) of Law No. 1 of 1974, which states that marriage between two people prohibited by their religion is invalid. This is considered a legal basis against interfaith marriage, considering that in Islam marriage between Muslims and non-Muslims is not permitted. (Syamruddin. 2011)

Regarding the legality of interfaith marriage in Indonesia, there have been significant legal developments, including jurisprudence, population administration laws, and changes in Supreme Court policy. The jurisprudence on interfaith marriage is based on Supreme Court Decision Number 1400 K/Pdt/1986. This decision allows interfaith couples to request a court ruling. This undoubtedly influences judges in deciding interfaith marriage cases. A relevant case example is the marriage of Rizal Adikara (Muslim) and Eka Debora Sidauruk (Christian). In the Surabaya District Court Decision Number 916/Pdt.P/2022/PN.Sby and the Jakarta District Court Number 131/Pdt.P/2021/PN.Jkt.Se, they received permission to register their marriage at the Surabaya City Population and Civil Registration Office. This shows that, although interfaith marriage is generally prohibited, there is room for couples to obtain legal recognition after obtaining a court order. (Ramulyo, Mohd. Idris. 1996)

Law No. 23 of 2006 concerning Population Administration, which was later amended by Law No. 24 of 2013, contains a provision that permits the registration of interfaith marriages that have been validated by the court. According to Article 35 paragraph (a), marriages declared by the court between individuals of different religions can be registered with the relevant agency, namely the Population and Civil Registration Office. This provides legitimacy for couples who enter into interfaith marriages to obtain administrative recognition from the state, even though the legal status of

their marriage in a religious context remains questionable. (Ridha, Muhammad Rashid. 1947)

The Population Administration Law and its jurisprudence set a precedent for couples entering into interfaith marriages to have their marriages legally recognized by the state. Due to the numerous jurisprudence cases recognizing interfaith marriages, the Supreme Court issued a Circular Letter prohibiting courts from granting permits for interfaith marriages. Marriages between couples of different religions that are not officially registered are not recognized by state law. Law Number 23 of 2006 concerning Population Administration, which was amended by Law Number 24 of 2013, provides an opportunity for couples entering into interfaith marriages to register their marriages with the relevant institution, namely the Population and Civil Registration Office. Article 35 letter (a) states that interfaith marriages that have received court approval can be registered with the Population and Civil Registration Office. This opens up opportunities for interfaith couples to obtain administrative recognition and legal status for their marriages in the eyes of the state. (Rofiq, Ahmad. 2019)

However, with numerous jurisprudence cases recognizing interfaith marriages, the Supreme Court issued Supreme Court Circular Letter (SEMA) No. 2 of 2023. This SEMA prohibits judges from granting permits for interfaith marriages. Consequently, unregistered interfaith marriages or those without court permission will not be recognized by the state. This SEMA emphasizes that even if there is jurisprudence recognizing interfaith marriages, the government and judges must comply with stricter provisions requiring court permission for the marriage to be legally valid. (Sastra, Abd Rozak A. 2011)

Therefore, although the Population Administration Law allows couples of different religions to obtain official recognition through registration with the Population and Civil

Registration Office, the Supreme Court has implemented a stricter policy prohibiting permits for interfaith marriages. This policy has the potential to create legal uncertainty for couples who enter into such marriages. Interfaith marriages that are not registered or conducted through the proper legal channels will not be recognized by the state. (Shihab, M. Quraish. 1999)

IV. CONCLUSION AND SUGGESTION

A. Conclusion

Fiqh scholars agree that Muslim men are prohibited from marrying non-Muslim women, and likewise Muslim women are prohibited from marrying non-Muslim men. This prohibition is based on several verses in the Koran, including surah al-Baqarah verse 221, surah al-Mumtahanah verse 10, and surah al-Maidah verse 5, which emphasizes the need to maintain faith in marriage. Apart from that, this prohibition is also seen from the aspect of the benefit of the people, to prevent potential disruption to the integrity of religious beliefs in the family.

The Indonesian Compilation of Islamic Law (KHI) expressly prohibits interfaith marriage. However, the Marriage Law does not explicitly specify whether interfaith marriage is permissible, leading to biased legal interpretation. This creates ambiguity, as the law does not provide clear regulations regarding interfaith marriage.

However, with the enactment of the Population Administration Law and several court rulings permitting the registration of interfaith marriages, couples entering into interfaith marriages can now obtain administrative recognition. Their marriages are considered valid, registered, and recognized by the state. While there was previously scope for legal recognition through court rulings permitting the registration of interfaith marriages, SEMA No. 2 of 2023

clarifies that only marriages that comply with applicable religious and legal provisions can be registered and recognized by the state.

This means that even if an interfaith marriage is conducted and approved by the relevant parties, its legal status is not recognized as long as it is not legally registered. This affirmation leads to the need to register interfaith marriages through the courts, in accordance with applicable regulations, to ensure legal validity. Therefore, couples entering into an interfaith marriage and seeking legal recognition must first submit a request for a court ruling. Only after this ruling is received can their marriage be registered with the Population and Civil Registration Office, thereby obtaining administrative legal status.

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