

A Legal Analysis of the Status of Children from Interreligious Marriages According to Positive Law

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Abstract

This study discusses a juridical analysis of the legal status of children born from interfaith marriages under positive law. To obtain data on this issue, the author conducted a literature-based study using a normative legal research method, relying on various sources of legal literature. The data used in this study consist of both primary and secondary legal materials, analyzed using a descriptive qualitative approach. The findings reveal that interfaith marriages occur when a man and a woman adhere to different religions. According to the prevailing positive law in Indonesia, such marriages are deemed legally invalid. This is due to the fact that the concept of interfaith marriage is not yet legally recognized in the Indonesian legal system. However, legal protection is provided for children born from unregistered interfaith marriages, as stipulated in statutory regulations. This protection includes the recognition of the child's legal status and their rights to welfare, personal identity, freedom of religion, and other fundamental guarantees.

Keywords: *Interfaith Marriage, Positive Law, Children's Rights.*

Abstrak

Penelitian ini membahas analisis yuridis mengenai status hukum anak yang lahir dari perkawinan beda agama berdasarkan hukum positif. Untuk memperoleh data mengenai hal ini, penulis melakukan studi kepustakaan dengan metode penelitian hukum normatif, dengan mengacu pada berbagai sumber kepustakaan hukum. Data yang digunakan dalam penelitian ini terdiri dari bahan hukum primer dan sekunder, yang dianalisis menggunakan pendekatan kualitatif deskriptif. Temuan penelitian menunjukkan bahwa perkawinan beda agama terjadi ketika seorang pria dan seorang wanita menganut agama yang berbeda. Menurut hukum positif yang berlaku di Indonesia, perkawinan semacam itu dianggap tidak sah secara hukum. Hal ini

disebabkan oleh belum diakuinya konsep perkawinan beda agama secara hukum dalam sistem hukum Indonesia. Namun, perlindungan hukum diberikan kepada anak yang lahir dari perkawinan beda agama yang tidak dicatatkan, sebagaimana diatur dalam peraturan perundang-undangan. Perlindungan ini mencakup pengakuan status hukum anak dan hak-haknya atas kesejahteraan, identitas pribadi, kebebasan beragama, dan jaminan fundamental lainnya.

Kata kunci: Pernikahan Beda Agama, Hukum Positif, Hak Anak.

INTRODUCTION

Marriage is a religious ceremony that often requires a considerable amount of time to be properly conducted. It involves a covenant entered into by a man and a woman with the purpose of establishing a sacred union based on faith in one God. According to Article 1 of Law No. 1 of 1974 concerning Marriage, it is defined as a spiritual and physical bond between a man and a woman as husband and wife, with the aim of forming a happy and everlasting family grounded in the belief in the Almighty God (Asiah, 2007).

Human beings are, by nature, social and intelligent creatures. (Soekanto, 2003) explain, marriage, for humans, is a significant cultural practice that ensures the continuation of life and the welfare of future generations. Societies inherently establish certain marriage protocols, which continue to evolve in alignment with national legal authority, despite the prevailing influence of culture and the surrounding environment. Marriage is regarded as a divine path ordained by God to guarantee the existence of humankind on Earth.

In Islam, marriage is considered lawful and serves as a means for individuals to establish a legitimate family and lineage. (Abdurrahman, 1992) emphasizes that the process includes the *akad nikah* (marriage contract), comprising the consent of the bride's guardian (*wali*), the groom's declaration of acceptance, and the presence of at least two adult witnesses. Ultimately, this institution is intended to lead to a harmonious life both in this world and the hereafter under divine blessing.

Under Indonesian law, matters concerning marital consent are subject to national laws and regulations. Law No. 1 of 1974 on Marriage reflects the evolving nature of Indonesian society over time. In Indonesia, various marital contexts and forms have become important subjects of discussion, as marriage constitutes a legal act that establishes the relationship between the couple and the state in which the marriage takes place. One prevalent example of marriage in Indonesia is interfaith marriage, which is particularly observed among public figures and within certain communities across the country.

Interfaith marriage refers to a spiritual and physical union between a man and a woman who adhere to different religions and, in some cases, come from different national backgrounds. Such a union merges two distinct religious systems in terms of their requirements and ceremonial procedures, with the shared goal of establishing a harmonious and enduring family under divine guidance. Given Indonesia's rich religious and cultural diversity, the occurrence of interfaith marriages is a realistic possibility.

In Indonesian law, the institution of marriage holds profound legal significance, as clearly articulated in Law No. 1 of 1974 on Marriage. (Anshori, 2011) The legal validity of a marriage is determined by religious principles, meaning that if a particular religion (such as Islam) does not permit a certain form of marriage, the state will also refrain from recognizing it. Consequently, the legality of interfaith marriages is largely dependent on religious doctrines, and whether such marriages are accepted or rejected is shaped by theological interpretations. As a multicultural nation, (Amri, 2020) Indonesia is home to various religious beliefs. Since marriage is a universal institution rooted in human nature and acknowledged by all major religions, the religious diversity within Indonesia inevitably creates opportunities for unions between individuals of differing religious backgrounds.

Interfaith marriage is not a new phenomenon in Indonesia, a country rich in cultural and religious diversity. These unions have a long-standing history and have persisted across various communities. Nevertheless, it is important to note that interfaith marriage remains a controversial issue and often sparks public debate. Disputes and concerns surrounding interfaith marriages are particularly prevalent among Muslim communities in Indonesia. Such marriages continue to be relatively common in Indonesian society, especially among artists, both historically and in contemporary times. (Djubaidah, 2012)

In Indonesia, marriage is relatively straightforward when both partners share the same religion or belief system. (Hariyanto, 2009) However, complications frequently arise when the couple comes from different religious backgrounds or holds differing beliefs, such as a Muslim marrying a non-Muslim or someone of another faith. These complexities stem from the religious diversity within Indonesian society. (Muta'al, 2003).

Naturally, interfaith marriages may result in offspring. Marriages involving individuals of different religions or belief systems can lead to a variety of legal complications (Agustin, 2018). These legal implications include the rights and responsibilities of each spouse, marital property, and the legal status of the children. Issues may emerge beginning from the child's birth, continuing through the parenting

approach adopted by the parents, and extending into adulthood when the child becomes eligible to engage in legal activities. (Hasbi, 2018). Based on the background described above, the author identifies the urgency of conducting a juridical study on interfaith marriage, particularly regarding its regulation under positive law. Therefore, the author is compelled to explore this issue further and present it in the form of an academic journal entitled "A Juridical Analysis of the Legal Status of Children Born from Interfaith Marriages Under Positive Law".

METHOD

This study falls within the category of qualitative descriptive research, which focuses on the description and analysis of data in narrative form (Moleong, 2017). Qualitative research also emphasizes the observation of a phenomenon and the interpretation of its underlying meanings. This library based research employs a literature review method to gather information from existing sources. (Mamudji, 2013).

This research utilizes a specific methodology known as normative analysis. This approach involves the examination of library sources or secondary data, with particular emphasis on materials relevant to the topic (Hakim, 2017). The study adopts a normative legal research approach, which is a type of legal inquiry that emphasizes normative analysis by treating law as a theoretical framework and a set of rules, specifically in relation to the rights of children within the context of interfaith marriage. (Djamali, 2011)

RESULTS AND DISCUSSION

1. The Legal Standing of Interfaith Marriage According to Positive Law

Marriage is a form of worship and a universal human practice through which life is sustained and generations are continued across the earth (Hadikusuma, 2007). Fundamentally, marriage involves choosing a life partner with sincere intentions, even if that choice comes with many challenges. Those who are certain in their decision typically proceed to formalize their union both religiously and legally (Mulyadi, 2008). Couples of different religions must not only prepare for potential conflicts with their families but also have serious discussions about which religious teachings they wish to pass on to their future children (Asmin, 1974).

In Indonesia, marrying someone from a different religious background presents distinct challenges (Tama, 2000). Beyond the social and cultural issues, navigating the country's complex bureaucratic procedures is also a significant hurdle. As a result, some interfaith couples choose to marry abroad. These couples obtain official marriage certificates from foreign authorities (Prawirohamidjojo, 1986). Upon returning to

Indonesia, they can register their marriage at the Civil Registry Office and obtain an official foreign marriage certificate through the Regional Representative Office of the Republic of Indonesia (KBRI) (Rokilah, 2017).

However, this does not mean that interfaith marriages cannot take place within Indonesia. Couples with different religious beliefs can seek legal recognition based on the Supreme Court Decision Number 1400 K/Pdt/1986 (Simajuntak, 2019). This decision provides legal grounds for a notary to solemnize an interfaith marriage, although it may not be formally recognized (Agustin, 2018). Nevertheless, not all civil registry offices accommodate interfaith marriages. Those that do generally categorize such unions as non-Islamic during registration. Couples may still follow the religious customs of their respective faiths by seeking religious authorities who are open to performing ceremonies such as an Islamic contract or a Christian blessing (Amri, 2020).

This approach presents its own challenges, especially due to the rarity of religious authorities and registry offices willing to formalize marriages involving individuals of different faiths (Asiah, 2007). As a last resort, interfaith couples in Indonesia often temporarily adopt one religion to comply with legal requirements. This practice is sometimes perceived as a form of validation to maintain familial ties within the relationship (Hasbi, 2018).

The legal formalization of personal relationships is now governed by Law Number 1 of 1974 on Marriage (Prins, 1982). However, this progress also brings new issues, such as the controversy surrounding interfaith marriages. Before the enactment of this law, such unions were classified as mixed marriages, as regulated by the *Regeling op de Gemengde Huwelijk* (GHR) Stbl. 1898 No. 158 (Hariyanto, 2009). Article 1 of the GHR defines mixed marriage as a union between individuals subject to different legal systems within Indonesia (Sudargo, 1977).

According to Islamic teachings, as the majority religion in Indonesia, interfaith marriage is strongly discouraged. Islamic law prohibits the guardian from officiating an interfaith marriage. A Muslim is not permitted to give his daughter in marriage to a non-Muslim man, and vice versa, as the guardianship is considered invalid in such cases (Abdurrahman, 1992).

However, marriage between a Muslim man and a woman from among the People of the Book is permitted. The People of the Book also study the Bible and the Torah, similar to the teachings found in the Qur'an revealed by Allah (Haries, 2010). According to some scholars, such marriages are permissible because a Muslim man is expected to guide his wife in upholding religious values within the household. It is believed that if the woman truly respects the Bible and the Torah, she may eventually embrace Islam (Mardani, 2010).

The prohibition against Muslim women marrying non-Muslim men is rooted in concerns that a woman may abandon her faith to follow that of her husband (Suparman, 2014). Since men traditionally assume leadership roles in the family, they may influence their wives' beliefs. Thus, interfaith marriages are often viewed as a form of apostasy or deviation from Islam. (Prasetyo, 2013) Nevertheless, such situations are frequently driven by love and personal choice, which often override these concerns.

In Indonesia, marriage is governed by Law Number 1 of 1974 and Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (KHI) (Islam, 1991). These regulations address various aspects of marriage, including interfaith unions. Article 2 paragraph (1) of the Marriage Law states: "A marriage is legal if conducted according to the laws of the religion and belief of each party" (Djubaidah, 2012).

This suggests that marriage must be framed within the religious systems of the individuals involved. (Sembiring, 2016) Similar principles are reflected in several provisions of the Compilation of Islamic Law, including:

Article 4:

"A marriage is legal if conducted according to Islamic law, in accordance with Article 2 paragraph (1) of Law Number 1 of 1974."

Article 40:

"It is forbidden to conduct a marriage between a man and a woman under certain circumstances, including if the woman is still legally married to another man, is in her waiting period (*iddah*) from a previous marriage, or is not a Muslim."

Article 44:

"A Muslim woman is forbidden to marry a man who is not a Muslim."

Article 61:

"Inequality of religious background (*ikhtilaf al-dien*) is a valid reason to prevent a marriage."

Law Number 1 of 1974 does not specifically regulate interfaith marriage; in fact, there is no specific law addressing such unions (Meliala, 2014). The Marriage Law mainly refers to mixed marriages involving different nationalities (Prinst, 2003). Interfaith marriage is only briefly mentioned, especially in the explanation of Article 2 (Djamali, 2011). Paragraph (1) of Article 2 requires that the validity of marriage be determined by the religion or belief of the parties involved, while paragraph (2) reinforces the need for all marriage ceremonies to comply with national legal regulations. Thus, the phrase "according to their respective religions" implies reliance on religious legal frameworks for validating interfaith unions (Sembiring, 2016).

From these provisions, it is evident that prospective spouses must share the same religion to avoid legal or religious obstacles (Agustin, 2018). An interfaith marriage is only legally valid if one party adopts the religion of the other. If both share the same religion, the marriage can be formalized and recognized by being registered in accordance with the Marriage Law.

The legal provisions concerning interfaith marriage are found in several prohibitory articles, such as Articles 40 and 44. The Compilation of Islamic Law also prohibits Muslims from marrying non-Muslims. According to Articles 61 and 116, a marriage between two Muslims may be annulled if one of them leaves the Islamic faith (Soekanto, 2003).

Regarding the legal authority of the Compilation of Islamic Law, it is argued that KHI is a binding legal instrument and serves as an official source of law in Indonesia (Ashshofa, 2007). Thus, its prohibition of interfaith marriage is considered constitutional. However, an opposing view holds that KHI is not an official legal source because it is based solely on a Presidential Instruction, which does not hold the status of formal law (Simajuntak, 2019). From this perspective, KHI serves only a persuasive function and its provisions should be viewed as guidance rather than mandatory rules. Therefore, the Staatsblad 1898 No. 158 remains applicable to individuals engaging in such marriages, and the marriage may still be constitutionally valid (Prawirohamidjojo, 1986).

The author emphasizes a normative perspective, asserting that interfaith marriage is prohibited not only by Islamic doctrine but also under constitutional considerations. Consequently, those entering such unions often rely on the principle of *Mitsaqon Ghalizon*, aiming for both worldly and spiritual harmony (Mardani, 2010). However, it is important to acknowledge that the Presidential Instruction enforcing KHI lacks sufficient legal authority, as it is not a formal legal source in Indonesia. Therefore, the government must make greater efforts to resolve this issue by establishing a stronger legal foundation, possibly through legislation that holds a higher position in the legal hierarchy. This would elevate KHI from a moral guideline to a framework with binding legal consequences (Majid, 2021).

The legal consequence of interfaith marriage is the invalidation of the union according to Law Number 1 of 1974. The annulment of the marriage also affects the legal status of the children. Children born from an unrecognized interfaith marriage are considered illegitimate and have no legal relationship with the father. However, this applies only in regard to the mother and her family, as stipulated in Article 43 paragraph (1) of the Marriage Law and Article 100 of the Compilation of Islamic Law.

Nonetheless, all children born must still be registered with the Civil Registry to obtain an official birth certificate (Sembiring, 2016).

Based on the explanation above, marriages conducted under Indonesian law must adhere to the religion of the parties involved. This means that interfaith marriage is not permissible, and if such a marriage is carried out, it will be considered invalid or contrary to the law (Syamsul, 2020). Therefore, according to positive law, as stated in 2021, Law Number 1 of 1974 prohibits interfaith marriage, meaning such unions cannot be officially recognized in Indonesia (Yannor, 2019). Marriages involving Muslim couples are recorded by the Office of Religious Affairs (KUA), while those involving non-Muslim couples are recorded by the Civil Registry Office (KCS).

2. The Legal Status of Children Born from Interfaith Marriages under Positive Law

The Republic of Indonesia upholds the principle of *Bhinneka Tunggal Ika*, meaning unity in diversity. Indonesian society comprises various ethnicities, races, cultures, and religions, all guided by the *Pancasila* ideology (Prasetyo, 2013). *Pancasila* serves as the foundation for maintaining harmony within this diversity. Given the nation's pluralistic nature, Indonesian society must respect the boundaries established by societal norms and promote tolerance in order to maintain mutual support and harmony (Soekanto, 2003). As a result of this diversity, interfaith marriages are an undeniable reality.

Interfaith marriage occurs when a man and a woman of different religious beliefs decide to marry while maintaining their respective faiths. (Hadikusuma, 2007) Concluded that according to Article 2 paragraph (1) of the Marriage Law, interfaith marriage is considered invalid. In contrast, (Meliala, 2014) argued that whether or not such a marriage is permissible depends on the religious teachings of each party and whether their respective religions allow it. Based on these differing views, the author assumes that there is no explicit prohibition on each individual practicing their own religion. Thus, as long as both parties refrain from comparing religious doctrines, interfaith marriage can be carried out (Amri, 2020).

The law stipulates that all marriages must be officially documented in accordance with legal standards (Asmin, 1974). To register a marriage between individuals of different religions, both material and formal requirements as stipulated in the Marriage Law must be fulfilled. It is not uncommon for interfaith couples to face challenges in registering their marriage, particularly due to the complexities of meeting formal requirements.

Marriage leads to the birth of a person. In general, society and the state require legal protection for children born within the institution of marriage. Legal protection means safeguarding legal entities through proactive and reactive legal efforts, whether explicit or implicit, to enforce the law (Prins, 1982). The initiative to ensure legal protection for

children is based on provisions contained in the 1945 Constitution of the Republic of Indonesia and Law Number 39 of 1999 on Human Rights (Agustin, 2018).

Further problems arise when an interfaith marriage is not registered, even though a child has been born from such a union. The resulting concern is the legal protection available for children born from interfaith marriages. This is because such marriages often overlook parental responsibilities, parent child relationships, rights and obligations, as well as other aspects such as social rights, citizenship, and civil rights of the child (Prinst, 2003).

In practice, the state provides different administrative treatments. For instance, in the birth certificate of a child from an unregistered interfaith marriage, only the mother's name is listed. Meanwhile, in registered marriages, the child receives a birth certificate that includes details of both parents. Clearly, there is a discrepancy in how these children are treated. Therefore, a specific legal framework is needed to regulate interfaith marriages and protect the legal rights of children born from such unions (Meliala, 2014). In essence, children born from interfaith marriages have the same rights as any other child. Indonesian legislation guarantees equal protection for everyone. Children of interfaith marriages have the right to verified identification as stipulated in the Child Protection Law (Agustin, 2018). This law mandates that every child must be given an identity at birth and have it documented in a birth certificate.

A birth certificate serves more than just proof of identity, it is crucial for various administrative purposes in a child's future. For instance, it is required for school and university admissions, for marriage registration, and other legal documentation. Therefore, it is vital that every child is issued a birth certificate.

One of the ways to protect the legal rights of children from unregistered interfaith marriages is through statutory regulations, which safeguard children's rights to parental care, personal identity, social welfare, educational stability, healthcare, freedom of religion, and special child protections (Majid, 2021). These protections apply to all children, regardless of their legal status.

A child's legal status depends on whether the marriage meets the validity criteria. If a couple conducts an interfaith marriage in line with Article 2 paragraph (1) of the Marriage Law, the child is legally recognized and entitled to legal protection, including the rights and responsibilities of both parents as stated in Articles 45 to 49 of the Marriage Law (Soekanto, 2003). Conversely, if the marriage does not comply with Article 2 paragraph (1), the child only has a civil relationship with the mother and her family, unless the father acknowledges the child as his legitimate offspring.

A legitimate child is one born from a legally valid marriage. This is clarified in Article 42 of the Marriage Law, which states that only those within a legal marriage

may have legitimate children. This aligns with Article 250 of the Civil Code, which explicitly declares that every child born or raised in a marriage is assumed to have the husband as their legal father (Kritis et al., n.d.).

Similarly, Article 99 of the Compilation of Islamic Law (KHI) states that a legitimate child is one born from a valid marriage. This provision refers to the so-called "legal presumption." In interfaith marriages, inheritance issues can become a source of family conflict and may hinder inheritance rights for children born from such unions.

Islamic inheritance law is based on bilateral individual inheritance, not collective or majority inheritance. Therefore, Islamic inheritance law does not restrict heirs to only the paternal or maternal side, nor does it limit inheritance to a particular gender (Hamjah et al., 2022). There are three obstacles to inheritance, known as "*mawāni*": murder, interfaith marriage, and apostasy. In the second *mawani*, the difference in religion becomes a barrier. If a "*muwarrith*" (a person who dies and leaves an inheritance) and their heir follow different religions, inheritance cannot be distributed between them. In this context, religious difference refers to one being a Muslim and the other a non-Muslim.

The author has previously discussed the continued existence of legal pluralism in Indonesian inheritance law (Suparman, 2014). In examining inheritance rights for children born from interfaith marriages, the issue is also addressed in the context of the Civil Code (BW), which adheres to individual-based inheritance distribution among heirs of a deceased person. This civil inheritance law applies to Indonesian citizens of foreign descent, including Europeans, Chinese, Arabs, and others who may no longer strictly practice their religion (Hariyanto, 2009).

Western inheritance law is still upheld, even though certain parts of the Civil Code have been rendered invalid. For instance, the marriage regulations in the Civil Code became void after the enactment of Law Number 1 of 1974 on Marriage, which applies to all citizens (Prins, 1982). Due to the continued pluralism in inheritance law, challenges arise concerning inheritance rights for children born from interfaith marriages. The prevailing principle in legislation is that each party (heir or inheritor) must adhere to the legal provisions of their respective religion.

According to the author, these challenges can be addressed by adhering to the Fatwa of the Indonesian Ulema Council (MUI) No. 5/MUNAS VII/9/2005 concerning inheritance rights between individuals of different religions. Islamic inheritance law does not recognize inheritance between a Muslim and a non-Muslim. However, the transfer of property between individuals of different religions can be conducted through gifts (*hibah*), donations, or grants (Suparman, 2014).

Although Islamic inheritance law does not permit shared inheritance between individuals of different faiths (such as Muslims and non-Muslims), there are specific regulations that allow for the transfer of assets through donations, endowments, and other channels. Thus, parents of different religions can still ensure that their children from interfaith marriages receive inheritance through means such as gifts, wills, and donations.

Nevertheless, children born from interfaith parents may still inherit assets, particularly through wills that are not legally binding, as stipulated in Article 209 of the Compilation of Islamic Law (KHI). This regulation explicitly applies to adoptive parents and adopted children (Abdurrahman, 1992). Inheritance issues related to the rights of children born from interfaith marriages become a shared responsibility of society, particularly the disputing parties. Whether they choose to rely on religious law or other legal frameworks (such as the Western Civil Code or customary law), is permitted by applicable laws, especially Law Number 7 of 1989 on Religious Courts.

In general, the author explains that when disputes arise, the involved parties have the right to choose which legal framework to apply in inheritance distribution. This is due to the continuing pluralism in inheritance law, which poses challenges to the inheritance rights of children born from interfaith marriages. The law is applied because each party (heir) naturally adheres to the legal norms of their own religion (Suparman, 2014).

CONCLUSION

The union of two individuals from different religious backgrounds is not an easy process. However, this does not mean that interfaith marriage is impossible in this country. The current formalization of partnerships is governed by Law Number 1 of 1974 on Marriage. The prohibition of interfaith marriage stems from the assumption that a person intends to abandon their religion and adopt their partner's faith. According to Indonesian law, the legal consequence is that interfaith marriages are deemed invalid. This is because the existing legal framework does not recognize such unions, rendering interfaith marriages unenforceable within Indonesia.

An interfaith marriage may occur when a man and a woman of different religions marry while maintaining their respective beliefs. After an interfaith marriage, issues may arise if the child is not registered, even though they were born from that union. In principle, children born from interfaith marriages have equal rights to other children. Unregistered interfaith unions are subject to legal regulations regarding child status and the protection of their rights, ensuring their social welfare, identity, religious freedom, and many other guarantees. This constitutes a form of legal protection for children from

such marriages. Islamic inheritance law does not provide for shared inheritance between individuals of different religious beliefs. However, there are regulations that allow for the transfer of assets between such individuals through gifts, wills, or donations.

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