

Analysis Of The Compilation Review Of Islamic Law On Interfaith Marriages From A Sharia Perspective

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Abstract: *The purpose of this research is to find out a review of the compilation of Islamic law regarding interfaith marriages from a sharia perspective. The method used in this research is qualitative, with a comparative approach by conducting literature studies related to studies of theories relevant to the problem of interfaith marriages. In the view of Islamic law, marriage between different religions is strictly prohibited because it is contrary to the rules of Islamic law in maintaining the existence of religion. The goal of marriage is to create a sakinah, mawaddah wa Rahmah household, but this goal is very difficult to realize if the marriage is built on the basis of different religions. Based on Marriage Law Number 1 of 1974 which is implemented in the compilation of Islamic law, it states that it does not accommodate interfaith marriages to strengthen the arguments put forward in the Koran.*

Keywords: *Marriage, Difference, Religion, Sharia, KHI.*

INTRODUCTION

The Compilation of Islamic Law is a codification of Islamic law that can provide legal certainty for Muslims in Indonesia. Before the Compilation of Islamic Law existed, there were often differences between one court and another in making decisions. This is because the basis for decision making is different. To overcome this problem, it is necessary to have a legal basis that combines all applied laws that apply to Religious Court judges in carrying out their duties. Having such a uniform legal basis is a guarantee of legal unity and certainty. (Aulil Amri, 2020)

The presence of this Compilation of Islamic Law is closely related to the condition of Islamic law in Indonesia so far. In various discussions about Islamic law in Indonesia, the focus will be on the position of Islamic law in the Indonesian legal system. Islamic law as a legal order that is adhered to/adhered by the majority of the population and people of Indonesia is a law that has lived in society, is part of Islamic teachings and beliefs and exists in the life of national law and is a material in its guidance and development.

Islamic law, both in Indonesia and in the Islamic world in general to this day, is jurisprudential law resulting from interpretations in the second Hijriah century and several centuries thereafter. Classical books in the field of jurisprudence still function in providing legal information. Studies in general are focused on issues of worship and ahwal *al-syakhshiyyah*. Not much research is directed at muamalah fiqh. This makes Islamic law look very rigid in dealing with current problems. The problems faced are not only the actions of social structures, but also changes in needs in various forms. Various attitudes in facing these

challenges have been expressed. One party wants to hold on to the traditions of the interpretations of previous mujtahid scholars, while the other party offers that simply adhering to old interpretations is not enough to face social changes in this century of progress. These interpretations should be updated according to current situations and conditions. For this reason, *ijtihad* needs to be encouraged. (Kumkelo M, 2010)

Thus, the Compilation of Islamic Law is seen as a great achievement of Indonesian Muslims during the New Order government. Muslims in Indonesia will have uniform fiqh guidelines and have become positive laws that must be obeyed by all Indonesian Muslims. With this, it is hoped that there will be no confusion of decisions in religious justice institutions and the causes of *khilafiyah* caused by fiqh issues can be ended.

In connection with this, the tendency to prioritize fatwas or the interpretation of ulama in determining and implementing law is one of the reasons for compiling the Compilation of Islamic Law. It is said that because the judges in the Religious Courts generally use Islamic jurisprudence books as the legal basis. All of these books are literature studying Islamic law, the judges of the Religious Courts have made them into legal books. Therefore, it can be said that the absence of systematically formulated laws as an absolute reference base for Religious Court judges is the background for the preparation of the Compilation of Islamic Law. (Sudarto, 2017)

RESULTS AND DISCUSSION

Existence Of Legal Compilations Islam

The effort to prepare a Compilation of Islamic Law is part of an effort to find patterns of jurisprudence that are unique to Indonesia. This process is a series that has been going on since 1985. The idea for the Compilation of Islamic Law emerged after two and a half years of the Supreme Court (MA) developing the field of judicial techniques for Religious Courts. This coaching task is based on Law No. 14 of 1970 which stipulates that the personnel, financial and organizational arrangements of existing courts are handed over to the respective departments. Even though the law was enacted in 1970, its implementation within the Religious Courts was carried out in 1982 after the signing of a Joint Decree by the Chairman of the Supreme Court and the Minister of Religion. Based on this, the idea to hold a Compilation of Islamic Law only emerged around 1985. (Scheler M, 2008)

According to the attachment to the Joint Decree dated March 21 1985, it was explained that the main task of the project was to carry out efforts to develop Islamic law through jurisprudence by means of legal compilation. The target is to study the books used as

a basis for judges' decisions so that they are in accordance with the development of Indonesian society towards national law. To carry out this main task, the project to develop Islamic law through jurisprudence is carried out by:

1. Data collection was carried out by conducting a review/examination of the books.
2. interviews with scholars.
3. workshops on the results of the study/examination of books and interviews need to be presented as seminars
4. comparative studies; to obtain legal systems/rules/seminars from each other by comparing.

This project activity was carried out as an effort to formulate guidelines for Religious Court judges by compiling a Compilation of Islamic Law which becomes the final legal law in the Religious Courts. So, the aim of preparing the Compilation of Islamic Law is to formulate material law for Religious Courts, with business lines:

- a. study of fiqh books;
- b. interviews with scholars;
- c. Religious Court jurisprudence;
- d. comparative study of law with other countries;
- e. legal material workshops and seminars for Religious Courts; (Dahwal, Sirman, 2016)

In 1989, the government announced the enactment of Law No. 7 of 1989 concerning Religious Courts. This law has a very big influence on the process of completing the preparation of the Compilation of Islamic Law. Law No. 7 of 1989 regulates formal law that will be used in the Religious Courts. Formal law in theory is to serve material law. However, it is not yet clear what material law will be used for Religious Courts. So the enactment of Law No. 7 of 1989 became an impetus and referred to the birth of material law, namely the Compilation of Islamic Law. (Anshary, 2010)

Encouragement for the government to immediately ratify the Compilation of Islamic Law has emerged from various parties. However, there were differences of opinion regarding the legal product that would accommodate the compilation. Ideally it should be stated in one law, but to draft a law the process will be protracted and require a long time. There is also a desire to express it in the form of a government regulation or presidential decree.

At the 42nd Muhammadiyah Congress in Yogyakarta, it is hoped that the government will immediately ratify the Compilation of Islamic Law in connection with the promulgation of Law No. 7 of 1989 concerning Religious Courts. On June 10 1991, the president signed the Presidential Instruction of the Republic of Indonesia No. 1 of 1991. Since then, the Compilation of Islamic Law in Indonesia has formally been implemented as the material law

used in the Religious Courts. Then on July 22 1991, the Minister of Religion issued Decree no. 154 of 1991 concerning the implementation of Presidential Instruction No. 1 of 1991. Furthermore, the Compilation of Islamic Law was disseminated to all Chairmen of High Religious Courts through a Circular Letter from the Director of Development of Islamic Religious Courts dated 25 July 1991 No. 3694/EV/HK.003/AZ/ 91. So it can be said that the Compilation of Islamic Law has a firm place in the Indonesian legal system. (Nur Asiah, 2015)

The foundation in the sense of being the legal basis for the existence of the Compilation of Islamic Law in Indonesia is:

1. Presidential Instruction No.1 of 1991 dated 10 June 1991. It is stated that this compilation can be used as a guide in resolving problems in the fields regulated by the compilation, namely marriage law, inheritance, waqf by government agencies and communities who need it;
2. Decree of the Minister of Religion of the Republic of Indonesia dated 22 July 1991 No.154 of 1991 concerning Implementation of Presidential Instruction No.1 of 1991;
3. Circular Letter from the Director of Development of Islamic Religious Judicial Institutions on behalf of the Director General of Development of Islamic Religious Institutions dated 22 July 1991 No.3694/EV/HK.003/AZ/91 addressed to the Chairman of the High Religious Courts and Chairmen of Religious Courts throughout Indonesia regarding the dissemination of Instructions President of the Republic of Indonesia No.1 of 1991 dated June 10 1991.

Based on the legal basis or foundation of this compilation, it can be concluded that this compilation has a position as a guide in the sense of providing guidance for Religious Court judges in deciding and resolving cases. Thus , the Religious Courts are not only obliged to implement the provisions outlined in the compilation, but have an even greater role in developing them and completing them through the jurisprudence they create. (Muhammad Ashsubli, 2016)

To get a clearer picture of the position of the Compilation of Islamic Law in the national legal system, you can look at the objectives of the compilation, namely:

- a. to systematically formulate Islamic law in Indonesia in concrete terms;
- b. to be used as a basis for the application of Islamic law in the Religious Courts environment;
- c. and the nature of the compilation, with a national perspective that will be treated for the entire Indonesian Islamic community;

d. and at the same time it will be possible to foster more uniform enforcement of legal certainty in Islamic society. (Syabbul Bachri , 2021)

Differences in Religion and Lineage in Marriage Law

From an Islamic legal perspective, inter-religious marriages can be categorized as mixed marriages. Interfaith marriages in Islam have two forms, namely:

1. *Marriage between a Muslim man and a non-Muslim woman.*

As for non-Muslim women, the Qur'an refers to them as *musyrikah women* and *ahl al-kitab women* . Marrying a *Mushrikah woman* is absolutely clear regarding the prohibition against marrying her, as Allah says in the QS. Al-Baqarah verse 221

وَلَا تَنْكِحُوا الْمُشْرِكَةَ حَتَّىٰ تُؤْمِنَ وَلَا تُنْكِحُوا الْمُشْرِكِينَ حَتَّىٰ يُؤْمِنُوا ۚ إِنَّكُمْ إِذْ تُنْكِحُونَ الْمُشْرِكِينَ لَا تَحِلُّ لَكُم بِهِمْ شَيْءٌ وَلَٰكِنَّ أَكْثَرَكُمْ لَا يَعْلَمُونَ ۚ

(*Do not marry Muslim women before they believe, in fact a Muslim female slave is better than a Muslim woman who attracts your heart*).

On paragraph those , circles Cleric interpreting the word *مُشْرِكَةً* as Woman Apostate who is not can married by Muslim men . (Ministry of Religion of the Republic of Indonesia, 2015)

Thus, according to the majority of jurists, men are not permitted to marry Muslim women or women who do not follow the Divine religion, including women who have apostatized from the Islamic religion. In the sense that women who do not have the book that was revealed through the prophet mentioned in the Qur'an are classified as *polytheist women* and the general prohibition applies to them as intended by QS, Al-Baqarah: 221.

As for marrying a non-Muslim woman in the *ahl al-kitab category* , there is a possibility that this is permissible. So, marrying a woman *from the Bible* who is free and has not committed adultery, based on the *dzahir* of the text, is *halal*, both *in the Dhimmiyah Bible* and *the Harbiyah Bible* . This view is based on the reason that the *lafadz al-Musyrikin* does not cover the meaning of *the people of the Bible* . In this case, the *halal law* of marrying an *ahl al-kitabiyah woman* is *takhsish* and *istisna'* or *an exception to the prohibition on marrying musyrikah women in general*.

The group of Imams from the Syafii, Hanafy, Hanbali and Imam Malik schools agree on the permissibility of *marriage between people of the Bible* . This means that even though a woman is *shirk*, because she has a divine book, they are *halal* for marriage as *takhsish* from the QS. Al-Baqarah: 221 and the *pentakhsish* is QS. al-Maidah verse is

وَطَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ حَلَالٌ لَكُمْ وَطَعَامُكُمْ حَلَالٌ لَهُمْ وَالْمُحْصَنَاتُ مِنَ الْمُؤْمِنَاتِ وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ إِذَا آتَيْتُمُوهُنَّ أَجُورَهُنَّ مُحْصِنِينَ غَيْرَ مُسَافِحِينَ وَلَا مُتَّخِذِي أَخْدَانٍ

(The slaughter of those who were given the Book is halal for you, and your food is halal (also) for them. (And halal mangawini) women who maintain honor among believing women and women who maintain honor among men those given by the Bible before you, if you have paid their dowry with the intention of marrying them, not with the intention of committing adultery and not (also) taking them as concubines. (Ministry of Religion of the Republic of Indonesia, 2015)

In connection with these conditions, three views of scholars regarding the law of marrying Biblical women can be put forward, namely:

- a. The group that allows it. This group holds the view that marrying women from ahl al-biblics, both Jews and Christians, is halal. This is based on the word of Allah in QS. al-Maidah verse 5, namely: *الْيَوْمَ احِلْ لَكُمْ الطَّيِّبَاتِ* which permits marrying women from people of the book. In addition, several of the Prophet's companions never married women from people of the Bible. In the case of the Prophet's companions except Abdullah bin Umar, he had agreed to the permissibility of marrying women from ahl al-kitab.
- b. Forbidden groups. Those who hold the opinion that it is haram to marry a woman from ahl al-kitab argue that Allah has forbidden marrying a polytheist woman before believing, namely *وَلَا تَنْكِحُوا الْمُشْرِكَةَ حَتَّىٰ يُؤْمِنَ*, while a woman who acknowledges Jesus as her Lord and acknowledges a god other than Allah is real shirk. Commenting on QS. Al-Maidah: 5 regarding women who maintain honor among those who were given the Bible before you , according to him, priority should be given to the meaning of the ability to marry women from people of the Bible who have entered Islam and specialization is given to the understanding of the ability to marry ahl women. The Bible considering the condition of Muslim women is still small in number. This means that ahl al-kitab is not defined as someone who owns and believes in the holy book. Among the scholars who fall into this group is Abdullah Ibn Umar .
- c. A group that believes it is halal but conditions do not require it. This group is of the opinion that marrying a woman from ahl al-kitab is halal, but due to conditions that do not require her ability. This view is based on the argument that Umar had ordered the prophet's friend who had married a woman from ahl al-kitab to divorce her. It seemed the companions followed suit. Umar's Ijtihad which prohibits marrying women from ahl al-kitab is based on consideration of conditions, namely avoiding slander. Responding to

Umar's opinion, the Hanafiyah ulama are of the opinion that marrying a woman from an ahl-biblicist who is in Dar al-Harb is an open door to slander. Therefore, prioritizing marriage with them is makruh takhrim because it leads to harm. (Suma , 2015)

Thus, it can be said that marriage between Muslim men and Muslim women has a clear and firm legal basis regarding its haraam. Therefore, its prohibition cannot be tolerated. Meanwhile, marrying a woman from the people of the Bible has a strong basis regarding permissibility, if it is carried out in accordance with the provisions of Islamic law, then the law is valid.

Marriage of Muslim Women and Non-Muslim Men

The Ulama agree that it is unlawful for Islamic women to marry non-Muslim men. This provision is based on the word of Allah in QS. Al-Baqarah verse 221

وَلَا تَنْكِحُوا الْمُشْرِكَةَ حَتَّىٰ يُؤْمِنَ (Do not marry Muslim women until they believe).

Meanwhile, marrying a *zimmiyah ahl al-kitab* woman who is subject to Islamic law is makruh tanzih, whereas according to the Malikiyah there are two opinions, namely: First, it is absolutely makruh to marry a zimmiyah ahl al-kitab woman, whether zimmiyah or Harbiyah. Second, it is not absolutely makruh because there is a verse that allows it. Furthermore, if the sad al-zari'ah method is used (closing the path of harm), then it is haram, because there is a fear of harm. (Karsayuda, 2006)

Allah SWT's command in this verse is directed at guardians not to marry Muslim women to non-Muslim men. This prohibition is absolute, meaning that it is absolutely forbidden for Muslim women to marry men who are not Muslim, whether Muslim men or people of the Book. Thus, it can be said that one of the conditions for the validity of a Muslim woman's marriage is that her partner must be a Muslim man.

In the Compilation of Islamic Law, marriage explains that differences in religion are only regulated in two articles, namely article 40 and article 44 of Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law. Article 40 of the KHI states that an interfaith marriage between a man and a woman who is not Muslim is one of the prohibitions against carrying out a marriage. Likewise, in Article 44 of the KHI, a Muslim woman is prohibited from marrying a man who is not Muslim.

Thus, the Compilation of Islamic Law expressly states that marriage cannot take place because of differences in religion. In the sense that the Compilation of Islamic Law does not tolerate marriages taking place, because one of them is not Muslim. The provisions in the Compilation of Islamic Law regarding the inability to enter into marriage due to differences in religion, seem to be different from the provisions in fiqh which provide for the possibility

of marriage due to differences in religion. In this case, Islamic jurisprudence tolerates the permissibility of marriage if the woman falls into the category of ahl al-kitab.

If we look closely at the legal provisions in the Compilation of Islamic Law articles 40 and 44, it appears that we adhere to the opinion of the Shafi' and Ulama schools which do not allow interfaith marriages. The argument for impossibility can be put forward as follows:

1. Women of the people of the book who can be married as mentioned in the QS. Al-Maidah verse 5 only applies before the Qur'an was revealed. After the Koran was revealed, the Bible and the Torah were finalized by the Koran. So women who remain religious according to their book after the Koran was revealed, are no longer considered people of the book.
2. Based on empirical studies, realistically, interfaith marriages cause more problems, because there are several things that are different in principle. In the analysis of the impirition of the KHI provisions that do not allow different religious marriages, it seems that the legal methods of the law using *the sadd al-zari'ah method* by adhering to the rules of usul which say *د رء المفا سد مقدم علي جلب المصالح* (avoiding the priority from taking benefits).
3. Opinion of the Indonesian Ulema Council Number 4 of 2005 regarding not being allowed interfaith marriage.

In relation to the lineage of children from interfaith marriages, the Compilation of Islamic Law does not only regulate certain articles. However, in Article 4 of the Compilation of Islamic Law, it is explained that a valid marriage is a marriage conducted based on Islamic law. This intention shows that interfaith marriages are considered invalid marriages. The implication is that if the two of them continue to have sexual relations, it is considered adultery. In Islamic law, children born from adultery only have a blood relationship with their mother.

In Article 100 of the Compilation of Islamic Law, it is explained that children born out of wedlock only have a family relationship with their mother and their mother's family. If this is the case, then it can be said that children born from religious marriages only have a lineage relationship with their mother and their mother's family. It is said this because interfaith marriages are not permitted and are categorized as invalid marriages.

The relationship between inter-religious marriage and children's lineages, in the Compilation of Islamic Law, still remains a very crucial legal issue. It is said that because one article and another is still counter-productive. This can be seen in the provisions regarding the prohibition of marriage which is only caused by three things, namely the existence of lineage

ties, marital relations and sexual relations. The KHI emphasizes that children born outside of a legal marriage only have a family relationship with their mother and their mother's family. This shows that the child has no lineage relationship with his father and his father's family. If this is the case, then in the KHI there is no prohibition on a child born from an invalid marriage (including a marriage of an interfaith marriage) from marrying his father, because they are not related by lineage.

CONCLUSION

Islamic law is a Shari'a revealed by Allah SWT to humans so that it can be used as a guide to life. One of the things regulated in Islamic law is the regulations for marriages between different religions and of course refers to the Naqli arguments that support it. The explanation of Islamic law contained in the compilation of Islamic law certainly refers to Qur'anic guidelines as a source of law. The word of Allah SWT in QS Al-Baqarah verse 221 very firmly prohibits interfaith marriages without stating the level of tolerance that can be accommodated. However, in state practice, marriage statuses of different religions are still found which leads to disharmonization. This practice occurs because of flaws in interpreting verses from the Koran and disagreements between Ulama in determining the law on interfaith marriages. However, the birth of the Marriage Law and the ratification of the compilation of Islamic law as formal law became the formula for determining the law on interfaith marriages.

BIBLIOGRAPHY

- Anshary (2010) *Hukum Perkawinan di Indonesia: Masalah-masalah Krusial*, Pustaka Pelajar: Yogyakarta.
- Ashsubli, Muhammad. (2016) *Undang-Undang Perkawinan Dalam Pluralitas Hukum Agama (Judicial Review Pasal Perkawinan Beda Agama).*” *Jurnal Cita Hukum* 3, no. 2 : 289–302.
- Asiah, Nur (2015) *Kajian Hukum Terhadap Perkawinan Beda Agama Menurut Undang-Undang Perkawinan Dan Hukum Islam.*” *Jurnal Hukum Samudra Keadilan* 10, no. 2 : 204–14.
- Aulil Amri. (2020) *Perkawinan Beda Agama Menurut Hukum Positif dan Hukum Islam.* *Jurnal Media Syari'ah*, Vol. 22, No. 1.
- Bachri, Syabbul.(2021) “Ratio Decidendi of Religious Court Judges on Rejection of Applications for Interfaith Marriage Prevention.” *Istinbath : Jurnal Hukum*.

- Dahwal, Sirman (2016) *Hukum Perkawinan Beda Agama dalam Teori dan Praktinya di Indonesia*, Bandung, Mandar Maju.
- Karsayuda (2006) *Perkawinan Beda Agama Menakar Nilai-Nilai Keadilan Kompilasi Hukum Islam*. Yogyakarta: Total Media.
- Kementrian Agama RI, (2015) *Al-Qur'an dan Terjemahannya*, terj. Solo: Yayasan Penyelenggara Penerjemahan Al-Qur'an.
- Khaeron Sirin, (2016) *Perkawinan Mazhab Indonesia: Pergulatan antara Negara, Agama dan Perempuan*. Cet. I; Yogyakarta: Deepublish.
- Kumkelo M (2010) *Kedudukan Majelis Ulama Indonesia (MUI) Dan Komisi Fatwanya Dalam Sistem Hukum Tata Negara' El Qudwah*.
- Ramulyo, Idris. (2004) *Hukum Perkawinan Islam : Suatu Analisis Dari UU No. 1 Thn 1974 Dan Kompilasi Hukum Islam*. Jakarta: Bumi Aksara.
- Scheler M (2008) *The Constitution of the Human Being: From the Posthumous Works, Volumes 11 and 12 (Translated by John Cutting) (Marquette University Press)*.
- Sudarto (2017) *Masailul Fiqhiyah al-Haditsah*. Asmuni dan Nispul Khairi, Fiqh Kontemporer: Dalam Ragam Aspek Hukum. Medan: Wal Ashri Publishing.
- Suma (2015) *Kawin Beda Agama di Indonesia: Telaah Syariah dan Qanuniah*. Penerbit Lentera Hati.
- Syarifuddin, Amir (2014) *Hukum Perkawinan Islam Di Indonesia Antara Fiqh Dan Undang-Undang Perkawinan*. Jakarta: Kencana Prenadamedia Group.
- Tanjung, Albert (2019) *Legalitas Penyelundupan Hukum Pada Perkawinan Beda Agama Berdasarkan Hukum Positif Dan Receptio A Contrario*. National Journal of Law 1, no. 1: 4964.
- V. Wiratna Sujarweni (2014) *Metodeologi Penelitian*. Yogyakarta : Pustaka Baru Perss.