

## **Analysis Review of Determination of Interreligious Marriages In The Perspective of Islamic Fiqh and Marriage Law Number 16 of 2019**

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### **Abstract**

*Interfaith marriages in Indonesia are always a matter of debate, because interfaith marriages give rise to various legal consequences such as the validity of the marriage according to the Marriage Law, based on Article 2 paragraph (1) of Law No.16 of 2019 concerning Marriage. An interfaith marriage is a physical and spiritual bond between a man and a woman of different religions which results in two different regulations regarding procedures for implementation according to the laws of their respective religions. Indonesia recognizes more than 1 (one) religion and does not rule out the possibility for couples to enter into interfaith marriages. Incidents of interfaith marriages are still often found in communities where the Marriage Law does not provide regulatory space for couples who wish to enter into interfaith marriages. The aim of this research is to find out how the practice of interfaith marriages is in Indonesia, what is the status of interfaith marriages according to the views of Fiqh and the Marriage Law. This research is normative juridical research that is descriptive in nature, using a statutory approach. The data in this research comes from revelation data and secondary data. Data collection was carried out by means of library research, namely visiting the library directly or indirectly. The results of this writing result in the practice of marriage in Indonesia, there are several cases of married couples who choose to stick to their respective religions, so several ways of carrying out interfaith marriages are found, namely: First, the marriage is first carried out according to the religious laws of the bride (husband), then followed by marriage according to the bride's religious laws. Second, one of the parties pretends to change religion so that the marriage can be carried out and registered, after which they return to their respective religions. Third, carry out the marriage by following one of the couple's religions. The status of interfaith marriages according to Fiqh is that the pillars of marriage consist of consent and consent, with consent giving rise to a legal relationship between the two parties. The fatwa of the Indonesian Ulema Council also issued a ruling that interfaith marriages are haram and invalid. If you look at article 2 paragraphs (1) and (2). This article confirms that marriage can be said to be a valid legal act if it is carried out according to their respective religions and beliefs. Interfaith marriages are considered invalid and null and void by marriage officials because there is a legal vacuum regarding interfaith marriages.*

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*Keywords: Determination of Interfaith Marriages, Interreligious Marriages, Islamic Fiqh, Marriage Law*

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## **I. INTRODUCTION**

Marriage is a way to maintain human survival, human honor and dignity as well as one of human efforts towards happiness. Marriage is not for momentary purposes but for a lifetime, the process requires various preparations so that its implementation is in accordance with the purpose of marriage. Marriage Law is a legal rule that regulates legal actions and their consequences between two parties, namely a man and a woman, who live together for a long time according to the regulations stipulated in the Law.<sup>1</sup> Marriage is a method chosen by God as a way for humans to have legal sexual relations between men and women and also a way to maintain their offspring. Marriage law as part of civil law is a legal regulation that regulates legal actions and their consequences between two parties, namely a man and a woman with the intention of living together for a long time according to the regulations stipulated in law. Such is the importance of marriage, almost all religions have detailed regulations which are formed in the rules and requirements for marriage, customs and various rituals, including the regulation of interfaith marriages. An interfaith marriage is an inner and outer bond between a man and a woman of different religions which results in two different regulations regarding procedures for implementation according to the laws of their respective religions.<sup>2</sup>

Indonesia recognizes more than 1 (one) religion and does not rule out the possibility for couples to enter into interfaith marriages. Incidences of interfaith marriages are still often found in communities where the Marriage Law does not provide regulatory space for couples who wish to enter into an interfaith marriage.<sup>3</sup> According to Law no. 16 of 2019 concerning Amendments to Law no. 1 of 1974 concerning Marriage (Marriage Law), both in the articles and explanations as well as the implementing regulations there are no provisions that explicitly regulate marriages of different religions, but if you look at the provisions of Article 2 paragraph (1) which states that marriage is valid if it is carried out

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<sup>1</sup> Winda Wijayanti, 2021. "Mariage Law and its Dynamics". Depok: Rajawali, Page 1

<sup>2</sup> Nur Asiah, "Legal Study of Interreligious Marriages According to Marriage Law and Islamic Law" In Samudra Perempuan Journal Vol. 10 No.2 Juli-December 2015, Page 205.

<sup>3</sup> Wedya Laplata, "Implementation of Interfaith Marriages from a Juridical Perspective (Case Study at the Surakarta District Court) In Journal of Jurisprudence Vol. 4 No. 2 September 2014, Page 76.

according to the laws of each religion and belief, this states that the law leaves it to each religion to determine the methods and conditions for carrying out a marriage, in addition to the methods and conditions that have been determined by the State. Therefore, whether a marriage is prohibited or not depends on the provisions contained in the Marriage Law and is also determined by the laws of each religion.<sup>4</sup>

The Marriage Law is not a solution as a rule governing marriage problems in Indonesia. One of the problems with marriage in Indonesia is interfaith marriages in society which are always controversial. Interfaith marriages in Indonesia are not easy to carry out, so most people who carry out interfaith marriages leave the country. An interfaith marriage is a marriage bond between a man and a woman who adhere to different religions and beliefs while maintaining their respective beliefs. All religions do not allow interfaith marriages, but there are still many people who do not understand the law on interfaith marriages and the problems that arise in its implementation in Indonesia. It is not easy for interfaith marriages to be registered, registration of interfaith marriages can be registered if through a court order, the purpose of the application is for the court to issue a decree and the decree is issued by the court as a form of dispensation from the district court so that the interfaith marriage is legally permitted. The Islamic religious view of interfaith marriages, in principle, does not allow it. In the Al-Qur'an it is strictly forbidden to marry between Muslims and polytheists as written in Surah Al-Baqarah verse 221:

*“And do not marry polytheist women, until they believe. Indeed, a believing slave woman is better than a polytheist woman, even if she attracts your heart. and do not marry polytheists (to believing women) before they believe. Indeed, a believing slave is better than a polytheist, even if he attracts your heart. they invite to hell, while Allah invites to heaven and forgiveness with His permission. and Allah explains His verses (His commandments) to people so that they learn a lesson”<sup>5</sup>*

The prohibition on marriage in Surah al-Baqarah verse 221 applies to both men and women who are Muslim from marrying people who are not Muslim. Or in other words it can be said that those who are not Muslim are polytheists.<sup>6</sup> The second fatwa from the MUI entitled "Interreligious Marriage" in the VII MUI National Conference, resulted in

<sup>4</sup> Novita Lestari, "Problematics of Marriage Law in Indonesia" in Legal Discourse Journal Vol 4 No. 1 2017, Page 47.

<sup>5</sup> Al Hakim. Al-Qur'an and Translation. Ahmad Toha Putra, 1998. Page 27.

<sup>6</sup> Ana Lela Dkk, "The Jurisprudence of Interfaith Marriages as Harmonization of Religions in Jember" in the Journal of Aqidah and Religious Studies, Vol 4 No. 1 2016, Page 121.

two provisions: First, interfaith marriages are haram and invalid. Second, the marriage of a Muslim man with a woman from an expert on the book, according to the qaul mu 'tamad, is haram and invalid. In this fatwa, the MUI has considerations, among other things, because it is alleged that many interfaith marriages occur in society, apart from that, interreligious marriages are not only inviting. debates among fellow Muslims but also often invite unrest in the community and again in the community there have been ideas that justify interfaith marriages under the pretext of human rights and benefits, therefore the MUI fatwa regarding this matter is deemed necessary to be implemented. guidelines for realizing and maintaining a peaceful and peaceful married life. <sup>7</sup>

Interfaith marriages still continue to occur in various ways to gain recognition from the State. Like what went viral on social media in March 2022, which showed a video of a procession of a couple from Semarang carrying out an interfaith marriage at a church in Semarang City. Because the man is Catholic and the woman is Muslim, they carry out the procession in two ways, namely: First, a blessing is carried out in the church and after that they carry out the marriage contract. Then the deputy minister of religion, Zainut Taudid, said that the interfaith marriage which was going viral was not registered with the KUA, this information was confirmed by Zainut after coordinating with the Regional Office of the Ministry of Religion. Zainut explained that the legal rules that apply in Indonesia are Law No.16 of 2019 concerning Amendments to Law No.1 of 1974 concerning Marriage. <sup>8</sup> The couple who established an interfaith marriage by the court, namely Lydia Kandou and Jamal Mirdad, entered into an interfaith marriage in 1986. In that year, Lydia and Jamal insisted on getting married legally by asking permission from the South Jakarta District Court. Lydia's application for permission to marry but while still adhering to their respective beliefs is Christian while Jamal is Muslim and their request was granted by the judge so that they can register their interfaith marriage at the Civil Registry Office (KSC). The author will discuss how is the practice of interfaith marriage in Indonesia? and What is the status of interfaith marriages according to fiqh and marriage law?

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<sup>7</sup> Ibid, Page 26.

<sup>88</sup> Dwi Andayani, <https://News.Detik.Com/Berita/D-5975172/Viral-Pernikahan-BedaAgamadi-Semarang-Wamenag-Tidak-Tercatat-Di-Kua> ,Di Akses Pada Hari Senin, 13 September 2023 Pukul 7.41 Wib

## II. LITERATURE REVIEW

### Marriage

Marriage law in Indonesia means the study that will be discussed must be a study of marriage that is based on Indonesian law. Marriage law in Indonesia itself initially had a pluralism of regulations regarding marriage. Marriage is a very important legal event for humans with various legal consequences. Therefore, the law regulates this marriage issue in detail. What is meant by marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on belief in the Almighty Godhead which must be carried out in accordance with their respective religions and must also be recorded according to regulations. applicable laws. In Article 1 and Article 2 of Law no. 16 of 2019 concerning Amendments to Law No.1 of 1974 concerning Marriage (Marriage Law). Indonesia which regulates marriage is Law no. 16 of 2019 concerning Amendments to Law no. 1 of 1974 concerning Marriage along with implementing regulations and the Marriage Law which applies to all Indonesian people regardless of religion, origin, etc. <sup>9</sup>

According to Tengku Erwinsyahbana & Tengku Rizq Syahbana (2022), marriage is valid if it is carried out according to the laws of each religion and belief and is recorded according to applicable laws and regulations. Nowadays, many marriages are held contrary to religious law and applicable laws and regulations. Marriages are contradictory and considered to violate religious law and positive law.<sup>10</sup>

According to Islam, marriage is said to be valid if it fulfills the conditions that have been determined. The conditions for a valid marriage are as follows:

- 1) Muslim, the groom and bride must be Muslim. It is not legal for a Muslim to marry a non-Muslim using Islamic ijab and qabul procedures.
- 2) Not a mahrom for the future wife, marriage is forbidden if the bride is the mahrom of the groom from the father's side. Check your family history first before getting married.

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<sup>9</sup> Munir Fuady, 2015. "Concepts of Civil Law". Jakarta: Rajawali Pers, Page 10.

<sup>10</sup> Tengku Erwinsyahbana & Tengku Rizq Syahbana, 2022. "Legal Aspects of Marriage in Indonesia". Medan:Umsu Perss, Page 4.

3) Guardian of the marriage contract. The guardian of the bride's marriage contract is the father. However, if the woman's father has died, her grandfather can represent her. In Islamic law, there are judge guardians who can be guardians in a marriage.<sup>11</sup>

Meanwhile, Zurifah Nurdin (2020) Marriage aims to create a household life that is *sakinah*, *mawaddah* and *warahmah*. According to Khairuddin Nasution, the purpose of marriage is to obtain a peaceful family life full of love and affection, reproduction, fulfillment of biological needs, maintaining honor and worship, marriage is part of worship because worship is part of religious activities.<sup>12</sup>

### **Interfaith Marriage According to the Marriage Law**

An interfaith marriage is a marriage between two men and women who are subject to the laws of different religions or beliefs. Article 2 Paragraph 1 Law Number 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage which reads: "Marriage is valid, if it is carried out according to the laws of each respective religion and belief." With the explanation of the Marriage Law, it is emphasized in Article 2 Paragraph 1 that there is no marriage outside the law of each religion or belief. According to the Marriage Law, both in its articles and explanations as well as implementing regulations, there are no provisions that explicitly regulate marriages of different religions. However, if we look at the provisions of Article 2 paragraph (1) which states that marriage is valid if it is carried out according to the laws of each religion and belief, it states that the law leaves it to each religion to determine the methods and conditions for implementation. marriage, in addition to the methods and conditions determined by the State. Whether marriage is prohibited or not depends on the provisions contained in the Marriage Law and is also determined by each religious law.<sup>13</sup>

Interfaith marriage is an issue that causes controversy among society. This problem cannot be resolved if only guided by the provisions contained in the Marriage Law because the practice has been carried out in various ways and some people say it is legal smuggling,

<sup>14</sup> The legal method of smuggling is often carried out by people who have economic

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<sup>11</sup> Misbahul Munir, Dkk. "A Review of Islamic Law Regarding Interfaith Al-Ahkam by Shaykh Aly Al-Shabuny" *Asa Journal*, Page 29.

<sup>12</sup> Zurifah Nurdin, 2020. "Marriage (Fiqh Perspective, Positive Law and Custom in Indonesia)". Bengkulu: Elmarkazi Publisher, Page 86.

<sup>13</sup> Tengku Erwinsyahbana. "Legal Aspects of Inter-Religious Marriage and Juridical Problems" in *Journal of Legal Studies* Vol. 3 No. 1 2018, Page 104.

<sup>14</sup> Tengku Erwinsyahban & Tengku Rizq Syahbana. *Op.Cit*, Page 2015.

capabilities by marrying abroad. Until now, there is still uncertainty about marriage law, especially in marriages between different religions. The legal uncertainty regarding interfaith marriages in the current marriage laws in Indonesia has given rise to pros and cons in society. So there are those who think that the issue of marriage is a personal matter so the State does not need to regulate religious elements and so another opinion is that interfaith marriages are prohibited by religion so they should not be carried out.<sup>15</sup>

### **Interfaith Marriage According to Islamic Fiqh**

Ulama are of the opinion that it is haram for a Muslim woman to marry a non-Muslim man. Marriage in Islam is a noble act of worship, namely the joining of two people in a sacred bond. Therefore, on the road to marriage there are things that must be gone through. Starting from preparing yourself, choosing a suitable partner, going through the taaruf process, sermons and other preparation processes. In determining a partner, Rasulullah SAW also mandated four things to Muslims. Rasulullah SAW said:

*“Marry a woman for four things: her wealth, her offspring, her beauty and her religion. So prioritize those who are religious (who practice religion), then you will be lucky”.*<sup>16</sup>

This hadith is an authentic hadith narrated by Imam Bukhari and Imam Muslim. In this hadith, the Prophet Muhammad SAW strongly recommends every believer to marry someone they prioritize. Umar once said to Hudzaifah.

*“If Muslims like to marry kitabiyah women (non-Muslim women of the book), then who marries Muslim women? And he (Rasulullah) prohibited Muslim marriages with Biblical women.”*<sup>17</sup>

It is highly recommended for Muslim women to look for a man who believes in Allah and the Messenger of Allah SAW. This is as stated by Allah SWT in the Koran, surah al-Baqarah verse 221:

*“And do not marry polytheist women until they believe. Indeed, a believing female servant is better than an idolatrous woman, even if she attracts your heart. And do not marry polytheists (men) (to women who believe) before they believe. Indeed, a faithful male servant is better than a polytheist male slave, even if he attracts your heart. They invite them to hell, while Allah invites them to heaven and forgiveness with his permission.”*

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<sup>15</sup> Ibid Page 229.

<sup>16</sup> Alfiah dkk, 2002. Study of Hadith Science. Educational Creations, Imam Bukhari and Imam Muslim.

<sup>17</sup> Al Hakim. Al-Qur'an and Translation. Ahmad Toha Putra. 1998, Page 27

Imam Abu Ja'far at -Thabari in his tafsir al-Maraghy explains that the meaning of verse 221 of Surah al-Baqarah is that all musyrikah is haram for Muslim men, whether women with Jewish, Christian or other religious backgrounds. Likewise, Muslim women are not allowed to marry non-Muslims because it will cause harm to them. The legal basis for the Indonesian Ulema Council in determining the prohibition on interfaith marriages consists entirely of the Koran and Hadith. The first Koranic verse quoted is Q.S Al-Baqarah verse 221 regarding the prohibition on the marriage of a Muslim man or Muslim woman to a polytheist. second Q.S Al-Ma'idah verse 5 regarding the permissibility of a Muslim man to marry a woman from the people of the Book (Jews and Christians).<sup>18</sup>

In several schools of thought, it is necessary for us to discuss interfaith marriages, especially marriages with women from other circles (people of the book), as follows:

- 1) According to the view of the Hanafi School, in this school of thought it is stated that a man who marries a woman from the People of the Book who is fighting against the Muslims (Dar al-Harb) is prohibited.
- 2) The Maliki school of thought puts forward two views, firstly, the act contains a makruh nature, whether the woman is from a zimmi infidel or a resident of dar al harb. Second, the statement from the Al-Quran is more towards silence regarding the problem of the people of this book. Here it can be concluded that this silent nature is considered consent, so that marital status with an expert of the book is fine without considering whether the parents are also an expert on the book.<sup>19</sup>

### III. METHODOLOGY

In this research, the author uses an approach to certain statutory regulations or written law. This research also uses comparisons with views and doctrines in legal science to build a legal argument in solving the issue under study. Data sourced from Islamic Law; namely the Qur'an which is called revelation data. In this research, the revelation data used refers to Q.S Al-Baqarah Verse 221. Other revelation data used to discuss interfaith marriages is Q.S Al-Maidah Verse 5. Primary legal materials are materials consisting of statutory regulations, namely Law no. 16 of 2019 concerning Marriage, Presidential Regulation no. 1 of 1991 concerning the Compilation of Islamic Law and the Population Administration

<sup>18</sup> Abdul Jalil, "Interfaith Marriage From The Perspective of Islamic Law and Positive Law in Indonesia". Technical Training Journal Vol VI No.2 Juli-December 2018, Page 63.

<sup>19</sup> Muhammad Ilham, "Interreligious Marriage in The Study of Islamic Law and National Legal Order" Journal of Sharia and Law Vol 2 No. 1 Januari-Juni 2020, Page 53.



Law. This type of research is normative juridical, namely research that seeks to find the truth based on legal science, in other words, examining norms in positive law as a means of resolving legal problems in people's lives. <sup>20</sup>Research is a basic means of developing science and technology. Because research aims to reveal truths systematically, methodologically and consistently. Through the research process, analysis and construction of the data that has been collected and processed is carried out.

#### **IV. RESULT AND DISCUSSION**

##### **Practices of Interfaith Marriages in Indonesia**

Marriage is a legal relationship between a man and a woman as husband and wife and gives rise to rights and obligations for each husband and wife. Marriage is the union of two people in a legal bond according to State law which gives rise to rights and obligations to each other regarding property and matters related to that legal relationship. determined by law both in Islamic law (shari'a) and Indonesian positive law which is regulated through Law no. 16 of 2019 concerning Amendments to Law no. 1 of 1974 concerning Marriages whose implementation is carried out according to the laws of each religion and belief (Article 2 Paragraph (1) of the Marriage Law. Based on Presidential Decree (Penpres) No. 1 of 1964 there are 5 religions recognized in Indonesia, namely: Islam, Catholic, Protestant, Hindu and Buddhist. The Marriage Law can relatively address the need for legal regulations governing marriage for all groups of society in Indonesia. An example of an issue that is not regulated by the Marriage Law is interfaith marriage, namely marriage between a man and a woman of different religions.

Interfaith marriages are not clearly regulated in the Marriage Law, but marriages of this kind continue to occur in Indonesian society. There are many celebrities who marry partners who do not share their religion, for example, husband and wife Jamal Mirdad, a Muslim and Lydia Kandou, who are Christians, so most of them marry abroad or another way, namely marriage according to the religion of both parties. <sup>21</sup>

Marriage is not only a personal matter for those who are getting married, but is also a matter related to religion because each religion has its own rules regarding Article 1 of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning marriage (Marriage Law). Confirming the definition of marriage in this article, marriage is defined

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<sup>20</sup> Johny Ibrahim, 2017, Normative Legal Research Theory and Methods, Bayumedia Publishing, Page 57

<sup>21</sup> Ibid Page 10.

as an inner and outer bond between a man and a woman as husband and wife based on belief in the Almighty God. Marriage according to this definition contains elements, namely:

- a. There is a strong inner and outer relationship.
- b. A man and woman as husband and wife
- c. The purpose of marriage is to form a happy and eternal family

The foundation of marriage is the belief and practice of religious teachings based on belief in the Almighty God.<sup>22</sup> Marriage is one of the family institutions that is very important in human life. Therefore, every normal and mature human being will definitely want marriage. Marriage for humans has procedures and regulations determined by law both in Islamic law (shari'a) and positive Indonesian law which is regulated through Law no. 16 of 2019 concerning Amendments to Law no. 1 of 1974 concerning Marriages whose implementation is carried out according to the laws of each religion and belief (Article 2 Paragraph (1) of the Marriage Law. Based on Presidential Decree (Penpres) No. 1 of 1964 there are 5 religions recognized in Indonesia, namely: Islam, Catholic, Protestant, Hindu and Buddhist. The Marriage Law can relatively address the need for legal regulations governing marriage for all groups of society in Indonesia. An example of an issue that is not regulated by the Marriage Law is interfaith marriage, namely marriage between a man and a woman of different religions.

Interfaith marriages are not clearly regulated in the Marriage Law, but marriages of this kind continue to occur in Indonesian society. There are many celebrities who marry partners who do not share their religion, for example, husband and wife Jamal Mirdad, a Muslim and Lydia Kandou, who are Christians, so most of them marry abroad or another way, namely marriage according to the religion of both parties. Marriage is not only a personal matter for those who are getting married, but is also a matter related to religion because each religion has its own rules regarding marriage, so in principle marriage is regulated and subject to the provisions of the religious teachings adhered to and marriage can also be considered as a legal action.

Interfaith marriages from the past until now still cause problems in the social, religious and legal fields. Despite this development, there are regulations that prohibit it clearly and emphatically as explained in the Fatwa of the Indonesian Ulema Council of 1980 and 2005 as well as the Compilation of Islamic Law through Presidential Instruction (Inpres) No. 1

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<sup>22</sup> M. Natsir Asnawi, 2020. Joint Property Law. Jakarta Kencana, Page 3.

of 1991 which has been in effect in Indonesia since 1991 until now, especially for Islamic communities. The results of the literature search carried out by the author show forms of interfaith marriages that occur in practice in Indonesia, as stated by Wahyono Darmabrata regarding interfaith marriages where he believes there are 3 methods commonly used for interfaith couples who want to get married.

- a. Request a court decision first, based on that decision, the couple will marry at the Civil Registry Office. However, this method cannot be implemented since the issuance of Presidential Decree No. 12 of 1983.
- b. Marriage is carried out according to the laws of each religion: (i) marriage is first carried out according to the religious law of the bride (husband), then followed by marriage according to the religious law of the bride.<sup>23</sup> (ii) both partners determine legal options. One view states submission to the law of one's partner. In this way, one of the partners changes religion as a form of submission to the law.
- c. What is often used is to hold a marriage abroad. Several artists are noted to have chosen this method because of the difficulty of interfaith marriages in Indonesia.

Mudiarti Trisnaningsi in his book *The Relevance of Legal Certainty in Regulating Interfaith Marriages in Indonesia*, divides interfaith marriages into several cases in practice. Some married couples who choose to stick to their respective religions have found several ways to carry out interfaith marriages. The procedures they carry out and the reasons are that in practice interfaith marriages are carried out based on religious authority, civil registration and are carried out abroad. This can be explained as follows:

1. Based on religious authority

- a) The man is Muslim and the woman is Catholic who carries out a Catholic marriage. The reason for the men is that God cannot possibly punish His people who have good will and do good. The man is a Catholic and the woman is a Muslim who carries out a Catholic marriage, the woman's reason is that the Catholic religion does not allow polygamy and divorce.<sup>24</sup> The man is Muslim and the woman is Catholic who carries out an Islamic marriage. The woman's reason is that women must obey their husbands.

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<sup>23</sup> Ibid Page 137.

<sup>24</sup> Ibid Page 138.

- b) The man is a Catholic and the woman is a Muslim who carries out an Islamic marriage. The reason for the man's side is simply practical, so that the woman's parents agree.
2. Based on civil records
- a) The man is Muslim and the woman is Christian who gets married at the Civil Registry. Their reason was because they wanted to maintain their respective religions and continue to get married.
  - b) The man is religious<sup>25</sup> Catholics and Muslim women who marry at the Civil Registry. Their reason is because each parent forbids marriage according to the religious procedures of one of the parties.
3. Based on Marriage Registration Abroad
- a) The man is Muslim and the woman is Christian who marries outside the territory of Indonesia. Their reason is because they want to maintain their respective religions and continue to get married.
  - b) The man is a Christian and the woman is a Muslim who marries outside the territory of Indonesia. Their reason is because they want to maintain and continue their marriage.

The Compilation of Islamic Law clearly prohibits the practice of interfaith marriage. This is in Article 40 KHI in paragraph (c) which reads: it is prohibited to carry out a marriage between a man and a woman due to certain circumstances: Because the woman in question is still married to another man, a woman who is still in her iddah period with the man other; A woman who is not Muslim. Apart from that, the same provision is found in Article 44 of the KHI which regulates the opposite that: a Muslim woman is prohibited from marrying a man who is not Muslim.<sup>26</sup> The Compilation of Islamic Law clearly prohibits the practice of interfaith marriages. It is further explained that the KHI does not differentiate between categories of people of the book or not, as long as they are not Muslim or Muslim, marriage is prohibited. The prohibition on interfaith marriages in the Compilation of Islamic Law was carried out not without a comprehensive study. This prohibition on marriage is part of a reform of Islamic law in the context of Indonesian Fiqh.

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<sup>25</sup> Ibid Page 139.

<sup>26</sup> Umar Haris Sanjaya. Op.Cit, Page 161.

Indonesia as a legal state regarding the practice of interfaith marriage can certainly be seen by the existence of a legal remedy. This means that if a bride and groom want to have an interfaith marriage, they can take legal action to file a lawsuit in the District Court. Legal efforts are being made so that the government can legally register the practice of formally interfaith marriages. This goes back to the Court's decision which determines whether or not the application for interfaith marriage will be granted. Seeing the legal efforts taken to carry out interfaith marriages according to Wahyono Darmabrata, there is a tendency for legal smuggling such as:

- a. Request a court order
- b. Marriages are carried out according to each religious law
- c. Temporarily submitting to one of the religious laws of one of the bride and groom
- d. Married abroad<sup>27</sup>

### **Status of Interfaith Marriages According to the Views of Islamic Fiqh and Marriage Law**

A marriage that is recognized as legally valid in the perspective of Indonesian marriage law (munakahat) is a marriage that is carried out according to the provisions of the second religious law adhered to by both prospective partners based on Islamic religious law for those who are Muslim, Catholic religious law for couples who are Catholic, and Hindu religious law for Hindu couples and so on.<sup>28</sup> All marriages carried out in Indonesian territory must be registered at the KUA for those who are Muslim and at the KCS for those who are not Muslim.<sup>29</sup> Interfaith marriages are an issue that is still controversial among Indonesian ulama, debates over the laws or regulations for interfaith marriages are caused by differences in the verses of the Koran that explain marriage. When choosing a partner, you must be of the same religion because this is the most important and most important factor, because this factor will determine happiness and peace in a marriage. This was stated by Rasulullah SAW in a hadith:

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<sup>27</sup> Ibid Page 162.

<sup>28</sup> Muhammad Amin Suma, 2015. "Interreligious Marriage in Indonesia Examining Sharia and Qanuniah". Tangerang: Lantera Hati, Page 27

<sup>29</sup> Ibid Page 28.

*“He marries a woman because of four things, namely because of her wealth, because of her nation or heredity, because of her beauty and because of her religion. So look for someone who is (strong in) religion, you will be happy”.*<sup>30</sup>  
(HR. Bukhari and Muslim from Abu Hurairah r.a) This shows that among the four factors appointed by the Prophet, religion must be prioritized and number one in determining a person's choice in finding a partner.

This verse is about prohibiting Muslims from marrying polytheists. Second, surah Al-Mumtahanah Verse 10, which means:

*“O you who believe, when believing women come to emigrate to you, then you should test their (faith). Allah knows better about their faith; If you know that they (really) believe, then do not return them to unbelievers (their husbands). They are not lawful for those who disbelieve and those who disbelieve are not lawful for them. And give to their (husbands) the dowry they have given. And there is no sin for you in marrying them if you pay them the dowry. And do not remain tied to (marriage) ties with unbeliever women; and ask for the dowry you have given back; and (if their husbands remain unbelievers) let them ask for the dowry they have paid back (to their ex-wives who have believed). Such is the law of Allah which He established among you. And Allah is All-Knowing, All-Wise.”*<sup>31</sup>

This verse explains the prohibition on Muslims marrying non-believers.

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<sup>30</sup> Alifiah dkk, 2002. Hadith Science Study Educational Creations, HR. Bukhori and Muslim form Abu Hurairah, R.A

<sup>31</sup> Musthafa Kamal Pasha Dkk, 2009. Islamic Figh. Yogyakarta: Citra Karsa Mandiri, Page 261.

Third, surah Al-Maidah Verse 5, which means:

*“On this day everything that is good is permitted to you. The food (sacrifice) of the People of the Book is halal for you, and your food is halal for them. And (it is permissible for you to marry) women who maintain honor among believing women and women who maintain honor among those who were given the Book before you, if you pay their dowry to marry them, not with the intention of committing adultery and not to make women pets. Whoever disbelieves after believing, then indeed, their deeds were in vain, and in the Here after he will be among the losers”.*

This verse concerns the prohibition of Muslim women from marrying Ahl al-Kitab men and the permissibility of Muslim men marrying Ahl-kitab women. In the three verses mentioned above, it can be seen that there is a strict prohibition in the Qur'an between Muslims and polytheists, infidels and Ahl al-Kitab men and Muslim women, while in the midst of Muslim society it has been found that many having an interfaith marriage. Even though the history above answers two different cases, the principle is the same, namely, when looking for a married life partner, you must prioritize considerations of belief, namely one faith, over other considerations. In the Islamic view, the highest value is the value of belief in the Almighty God, however it cannot be sacrificed because it must be maintained and passed on to children and grandchildren. If this value is not believed by one of the partners, it cannot be passed on to children and grandchildren. On the other hand, if this view of life is not realized in real life, no other values will be realized and practiced.

Based on Hamka, M. Quraish Shihab, Ibnu Katsir and Sayyid Qutb's interpretation of Surah Al-Baqarah (2): 221, it can be seen why Allah SWT forbids Muslims from marrying polytheists because the household must be built on a solid foundation, namely a firm belief. Likewise, it is faith that will be passed on to children and grandchildren, not beauty, good looks and wealth or power, all of which will fade and be destroyed. Interfaith marriages are not permitted, but Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (Marriage Law) does not regulate the issue of interfaith marriages. Indonesian society is a pluralistic society which means that interfaith marriages cannot be avoided and interreligious marriages involve a person's human rights. When a marriage occurs between different religions, which law will apply and this is also not clear in the Marriage Law, because in the Law Marriage in Article 2 states: Marriage is valid if there is trust. Carried out according to the laws of each religion and belief.

Interfaith marriages (men who are Muslim and women who have a religion other than Islam or vice versa) are not regulated in Indonesian laws and regulations, either in Law no. 16 of 2019 concerning amendments to Law no. 16 of 2019 concerning Marriage, Law no. 7 of 1989, as well as in the Compilation of Islamic Law in 1991. The Compilation of Islamic Law expresses the prohibition against Muslims marrying people who are not Muslim as regulated in articles 40 and 44 of the KHI. Article 40 KHI, it is prohibited to carry out a marriage between a man and a woman due to certain circumstances a. Because the woman in question is still married to another man.

Article 44 KHI, a Muslim woman is prohibited from entering into marriage with a man who is not Muslim. Articles 40 and 44 of the KHI regulate the prohibition of marriage between adherents of different religions so that it can be understood that if a marriage occurs between adherents of a different religion it means the marriage is invalid. An invalid marriage has legal consequences if giving birth to a child means an illegitimate child. The Marriage Law itself provides a neutral view of society, as if the law gives people the freedom to choose their own partners and not interfere in these matters and this actually makes family law effective and in line with the interests of society, the majority of which do not agree with intermarriage. religion. Interfaith marriages have occurred a lot in Indonesia, but until now there is still debate between whether or not interfaith marriages can be carried out. The Marriage Law does not yet provide an answer to this problem because the Marriage Law does not clearly regulate interfaith marriages. The Marriage Law leaves it entirely up to the religion of each party to determine whether interfaith marriages are prohibited or permitted, as regulated in Article 2 paragraph (1) in conjunction with Article 8 letter (f) of the Marriage Law.<sup>32</sup>

## V. CONCLUSION

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<sup>32</sup> Sirman Dahwal. Op. Cit. Page 57.



1. Marriage practices in Indonesia have several cases of married couples who choose to adhere to their respective religions, so several ways have been found to carry out interfaith marriages, namely: First, the marriage is first carried out according to the religious laws of the bride and groom (husband), then followed by the marriage according to the bride's religious law. Second, one of the parties pretends to change religion so that the marriage can be carried out and registered, after which they return to their respective religions. Third, carry out the marriage by following one of the couple's religions.
2. The status of interfaith marriages according to Fiqh is that the pillars of marriage consist of consent and consent, with consent giving rise to a legal relationship between the two parties. The fatwa of the Indonesian Ulema Council also issued a ruling that interfaith marriages are haram and invalid. If you look at article 2 paragraphs (1) and (2). This article confirms that marriage can be said to be a valid legal act if it is carried out according to their respective religions and beliefs. Interfaith marriages are considered invalid and null and void by marriage officials because there is a legal vacuum regarding interfaith marriages.

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