



The Juridical Review of Law Number 1 of Year 1974 on Marriage and the Compilation of Islamic Law Concerning Status of Different Religious Wedding Abroad

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Abstract : The purpose of this study is to determine the legal status of interfaith marriages conducted abroad in terms of Law number 1 of year 1974 concerning Marriage and to determine the legal status of interfaith marriages abroad in terms of the Islamic Law Compilation. The method used in this research is the library research method. This study uses qualitative data. The data source used is the primary data source which comes from Law number 1 of year 1974 concerning Marriage, Compilation of Islamic Law, and related laws concerning the focus of the problem and secondary data sources sourced from books, journal articles, and other sources that support this research data. Data analysis in this research is information review, comparative study, and assessment study. The results of this study indicate that Indonesia's positive law, namely Law Number 1 of year 1974 concerning Marriage which applies nationally does not require interfaith marriages. Meanwhile, the Islamic Law Compilation clearly states that interfaith marriages occur, meaning that interfaith marriages do not get a legality from the Islamic Law Compilation.

Keywords: Law Number 1 of Year 1974 on Marriage, Compilation of Islamic Law, Religious Marriage Law

1. Introduction

At this time, human relations can no longer be limited in a small and narrow environment, such as class, ethnicity, religion and race. Between them there is a relationship or reciprocity and humans are not single in terms of gender, some are male and some are female. It does not rule out a social interaction between one person and another person of different ethnicity to different religions and nationalities. Indonesian people are of various ethnicities, races, customs and even various kinds of religions and beliefs in God Almighty. The religions recognized by the Indonesian government are Islam, Catholicism, Protestantism, Hinduism, Buddhism and Confucianism. From the diversity of Indonesia, it is not impossible that from social interaction in Indonesian society interfaith marriages occur.

The fact in society the regulation and arrangement of regulations on interfaith marriage does not lead to equality or uniformity. The inequality is not only in one

religion with another, even one custom of society with the customs of another community is not the same, even in one religion it is not the same because there is a different understanding and way of thinking because it adheres to different schools or streams. The condition of a place or area may also influence legal arrangements (Marriage). For example, there are still many marriages in Indonesia that are carried out according to religious and cultural customs. In the culture itself cannot be separated from the religion followed by its adherents. Muslims make marriages in Islam, Christianity in Christianity, Buddhism in Buddhism.

This confusion and controversy is addressed by some people who are going to marry different religions with their prospective partners by getting married abroad. The experiences of some people show that interfaith marriages can be carried out without significant obstacles in foreign countries, such as Australia, Singapore, the United States, Hong Kong and the United Kingdom. An example of this case a well-known position, namely the marriage of Christian artist, Christian Sugiono, Titi Kamal, who is Muslim, they were married on February in 2006 in Australia and the marriage of Dimas Anggara, who is Muslim and Nadine Chandrawinata, who is a Catholic who held wedding in Bhutan, Nepal on May in 2018. They performed interfaith marriages abroad because in Indonesia there were no rules governing interfaith marriages.

The controversy over whether or not interfaith marriages are carried out abroad from the perspective of legislation in Indonesia has raised a big question mark, whether there is a legal here or there is a smuggling of laws.

The specific objective of this study is to determine the legal status of interfaith marriages conducted abroad in terms of Law Number 1 of year 1974 and the Compilation of Islamic Law on Marriage. The urgency of this research is that it can provide real benefits to the community, law enforcers in determining whether a marriage is valid according to Indonesian law and the religious law it adheres to. Specific related to this research scheme are discussions to research topics then linked to Law Number 1 of year 1974 concerning Marriage and the Compilation of Islamic Law.

2. Review of Literature

2.1 The Law Number 1 of Year 1974 on Marriage

With the enactment of Law Number 1 of year 1974 concerning Marriage all the marriage laws of the Dutch East Indies were declared null and void. This is expressly stated in Article 66 of the Marriage Law. According to Article 1 of the Marriage Law is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead. From this article it is implied that the applicable marriage in Indonesia is a marriage between a man and a woman only. Furthermore Article 2 of the Law states that a marriage is considered valid if it is carried out according to the law of each religion and belief of the parties. After the marriage is carried out, the marriage must also be registered. In this case it must be registered at the Office of Religious Affairs (KUA) and the Civil Registry. The Marriage Law (Article 8) principle only prohibits the occurrence of marriages in which both of them have a certain relationship whether by blood, conception,

breastfeeding or relationships that are prohibited by their religion or other regulations. The religious aspect determines the legality of a marriage while the formal aspect concerns the administrative aspect namely the registration of the marriage. According to the Marriage Law both of these aspects must be fulfilled. If the marriage is only carried out according to the provisions of the state law without paying attention to religious elements the marriage is considered invalid. Conversely, if a marriage is carried out only by taking into account the elements of religious law without paying attention or ignoring the Law (state law) then the marriage is considered invalid.

2.2 The Compilation of Islamic Laws About Marriage

In the Islamic Law Compilation article 2 states that: marriage according to Islamic law is a marriage that is a very strong contract or *mitsaqan galidzan* to obey Allah's orders and carry out it is worship. It can be explained that marriage according to Islamic Law is an agreement or agreement between a man and a woman who binds himself in a husband and wife relationship in order to legalize sexual relations in order to get offspring and achieve life goals in carrying out worship services to Allah SWT which is accompanied by rights and their respective obligations. Thus, marriage according to Islamic law is principle a form of worship in order to obey the commands of Allah SWT. This implies that marriage is not just a bond between a man and a woman to form a household to meet the instinctive needs of the world but is also intended to meet the needs of *ukhrowi* (the hereafter) in the future.

2.3 The Decree of the Indonesian Ulema Council (MUI) on Marriages with Different Religions

Decree of the Second National Conference of the Indonesian Ulema Council (MUI) No. 05 / Kep / Munas II / MUI / 1980 June 1 in 1980 concerning Fatwa, which stipulates number 2 interfaith marriages for religious people that: marriage of a Muslim woman to a non-Muslim woman is unlawful and a Muslim man is forbidden to marry non-Muslim women. Regarding marriage between Muslim men and women who are experts of the book, there are differences of opinion. After considering that the *mafsadah* is greater than the benefit the MUI claims that marriage is forbidden. With this fatwa the Indonesian Ulama Council hopes that a Muslim man should not marry a non-Muslim woman because the law is forbidden.

2.4 Previous Research

Research conducted by Cahaya, Mawardi Dalimunthe, and Sri Murhayati (2018) entitled "Marriage of Different Religions in the Perspective of Islamic Law" concluded that the prevailing laws and regulations in Indonesia do not provide rules that allow interfaith marriages. The scholars agree that it is *haram* to marry an idolatrous person of different religions. To marry a woman from *Ahl al-Kitab* for Muslim men, there are two views of the *ulama*, first, the law is lawful, if the women of *Ahl al-Kitab* are women who are free and maintain their honor (not adultery). This is based on QS. *Al-Maidah* (5) verse 5; second, it is unlawful if the woman who is *ahl al-Kitab* turns out that her creed has changed, namely acknowledging the trinity or saying that *Uzer* and *Isa* are God's children. In this position, the *Ahl al-Kitab* woman was classified as a polytheist. This is in accordance with the word of Allah, QS. *Al-Baqarah* (2) verse 221 .

Likewise, research conducted by Aulil Amri (2020) entitled "Marriage with Different Religions According to Positive Law and Islamic Law, concludes that first, in its historical journey, the issue of interfaith marriage has always been a controversy among Muslims today and in the future. This is because there are parties who consider interfaith marriage to be something that is final and inviolable, while on the other hand there are parties who wish to rationalize the problem according to the times. Second, to determine the legal status of interfaith marriage, it is necessary to re-read texts that have the potential to strengthen and enrich the decisions to be taken using a comprehensive, contextual and multi-analysis approach. Besides paying attention to the results of research on interfaith couples, this decision can meet the needs of a multicultural society without neglecting existing religious doctrines and truths as well as local wisdom.

3. Research Methodology

The method used in this research is library research method. This study use qualitative data. The approach used to solve the problems under study is a normative approach. In order to achieve the research objectives data collection was carried out to obtain information. Data were collected from primary and secondary sources. The primary sources in this study are Law Number 1 of year 1974 concerning Marriage Compilation of Islamic Laws and related laws concerning the focus of the problem. Then the secondary source is a data source whose content provides an explanation of the primary legal material. Secondary sources in this research are journal articles, books, research proceedings, and other sources related to research.

4. Finding and Discussion

4.1 Comparison of Analysis between Law No. 1 of 1974 on Marriage and Compilation of Islamic Law on Marriages of Different Religions Conducted Abroad

In the results and discussion of this study the author will present an analysis of the similarities and differences obtained from the research that has been conducted on interfaith marriages in juridical terms from Law Number 1 of year 1974 on Marriage and the Compilation of Islamic Law.

a. The Difference

The marriage law still provides opportunities for those who have interfaith marriages abroad to register their marriages in Indonesia. This opinion expressed by Prof. Wahyono Darmabrata that one of the ways interfaith couples can legalize their marriage is to carry out the marriage abroad based on Article 56 of Law Number 1 of year 1974 concerning Marriage states that marriages are carried out outside the territory of the Indonesian state is legal if it is carried out according to the applicable law in the country where the marriage is taking place and for Indonesian citizens it does not violate the provisions of the marriage law then it requires that every marriage is carried out outside the territory of Indonesia must be registered after the couple returns to Indonesia. In Article 56 which states " legal if it is carried out according to the applicable law in the country where the marriage

is carried out " actually that article contains a principle of international civil law namely *lex loci celebrationis*. The principle of *lex loci celebrationis* is a principle which states where the place where the marriage is held or inaugurated. Thus using a legal system where the place of marriage is formalized or held so it is correct that after the interfaith marriage couple returns to Indonesia they register the marriage with the related institution (*lex loci domicilie*) This arrangement is only discussed by Law Number 1 of year 1974 concerning Marriage while the Compilation of Islamic Law does not regulate it because the Compilation of Islamic Law only applies specifically to Muslim communities. Regarding interfaith marriages that are carried out abroad we cannot limit it to Indonesians who are Muslim but must also cover the whole of Indonesian society, therefore regarding interfaith marriage arrangements it is more appropriate to use Law Number 1 of year 1974 concerning Marriage.

It has been mentioned above that one of the ways to legalize interfaith marriages is carry out interfaith marriages abroad. However it should be noted that as has been explained of Law Number 1 of year 1974 on Marriage does not explain the permissibility or prohibition of interfaith marriage. Even interfaith marriages are not mentioned at all by the material contained in Law Number 1 of year 1974 concerning Marriage. In Article 56 concerning Marriage which Prof. Wahyono Darmabrata is actually a marriage arrangement outside the territory of Indonesia because the material regulated there talks about marriages outside the territory of Indonesia not interfaith marriages. If the marriage is carried out outside the territory of Indonesia the *lex celebrationis* principle applies but after returning to Indonesian territory a different principle will apply namely the *lex domicile* principle which applies the law according to the residence of the citizen. With the enactment of the law where the resident's then indirectly the regulations on the marriage law will also apply again. As stated in the principles and Article 2 paragraph (1) of Law Number 1 of year 1974 concerning Marriage that "Marriage is legal if it is carried out according to the law of each religion and belief" according to Prof. H. Hilman Hadikusuma, SH., Although the marriage is legal where the marriage is carried out the marriage is not valid according to Indonesian positive law. According to him the marriage has occurred irregularities or smuggling of the law because it is not in accordance with the principles of marriage law and Article 2 paragraph (1) which is contained in Law Number 1 of year 1974. However, it is different if the marriage is indeed permitted with criteria or conditions. which has been determined by his religion. Like a Muslim man who marries a woman of the book (Jewish and Christian) whose requirements have been determined by a religious expert or scholar even though in Article 40 letter (c) and Article 44 of the Compilation of Islamic Law explicitly prohibits interfaith marriages.

However, The Compilation of Islamic Laws is not a positive law as Attamimi argues the Compilation of Islamic Law may be obeyed or abandoned altogether. For those who in their religion allow interfaith marriages such as Indonesian Muslim men who marry women of the Book (Jewish or Christian) with the criteria of being a

Muslim bride who has been determined by scholars or religious experts outside the territory of Indonesia by means of Islam then the marriage may or is religiously valid.

Regarding the guardian in Article 27 of the Compilation of Islamic Law, the consent of the qabul is carried out between the guardian and the prospective groom and the contract is carried out personally by the guardian concerned but if there is an obstacle such as the closest guardian has died or cannot state his will to carry out qabul consent then the guardian of the judge can act as guardian after a decision is made from the court where the prospective bride is domiciled. In the practice of interfaith marriages that are held overseas the consent qabul or contract is carried out by a minister or clergyman / priest or by a marriage registrar official from a marriage registration office in that country. The process of the consent qabul or contract is usually carried out by means of the prospective groom taking an oath or pledge to be willing to become a husband and wife and will only have one partner.

This is clearly not the same as what is meant in Article 27 of the Compilation of Islamic Law which states that the consent of the qabul is carried out personally by the guardian with the prospective groom, so the criteria for guardian in interfaith marriages carried out abroad do not meet the requirements has been determined based on the Compilation of Islamic Law. Basically, the Islamic Law Compilation strictly prohibits the occurrence of interfaith marriages between Muslim men and non-Muslim women and Muslim women and non-Muslim men. The prohibition on marrying Muslim women to non-Muslim men is clearly seen in Article 44 of the Islamic Law Compilation, while the prohibition on marrying Muslim men to non-Muslim women is in Article 40 letter (c) Compilation of Islamic Law. These two articles clearly prohibit interfaith marriages between Muslim and non-Muslim communities. According to Prof. H. Hilman Hadikusuma the consent qabul is invalid if it is only performed in front of a marriage registrar or a judge without a blessing ceremony at a church, mosque or other religious institution. If the marriage is brought to Indonesia it can be referred to as *samenleven* or cohabitation. In this way their marriage certificate does not have to be accepted and registration will not be accepted at the marriage registration office in Indonesia after they return to Indonesia. Then it is stated in Article 61 of the Compilation of Islamic Law on the prevention of interfaith marriage. This article provides an order that a marriage cannot be carried out due to religious differences, Article 62 to Article 64 also explains who has the right to prevent interfaith marriages from occurring including those who have the right to prevent interfaith marriages from occurring are employees who register marriage or VAT. The three articles explain the prohibition and prevention of interfaith marriages however the consistency of the Compilation of Islamic Law in preventing and prohibiting interfaith marriages is contrary to Article 116 of the Compilation of Islamic Law itself. Because Article 116 states that divorce can occur when one of the husband and wife apostatizes and causes a dissonance in their date home. In other words, if the factor of apostasy accommodated by Article 116 which initially can be used as an excuse to break a

legal relationship between husband and wife does not become a problem that causes dissonance in household then their marriage will continue and remain valid. Here there is an inconsistency in the prohibition of interfaith marriage by the Islamic Law Compilation because the break-up of the marriage is not based on the apostasy of one of the husband and wife, but is based on dissonance. Therefore, the existence of apostates or different religions here is futile.

Talking about the authority of the Islamic Law Compilation in its application to the positive legal system in Indonesia there are differences in opinion of legal experts which can be concluded into two groups. The first group considers that the Compilation of Islamic Law is included in one of the compilation of written laws which is compelling therefore the Compilation of Islamic Law is one of the sources of formal law in Indonesia. So it is mandatory for people who are Muslim to obey it. Thus, the prohibition of interfaith marriage by the Islamic Law Compilation means that marriage is considered an illegal or illegitimate marriage. The second group considers that the Compilation of Islamic Law is not included in one of the sources of formal law in Indonesia. This is because the Compilation of Islamic Law is only regulated by a Presidential Instruction or Presidential Instruction. Meanwhile the Inpres in the hierarchy of the Indonesian legal system is not part of the formal legal source. Therefore Islamic Law Compilation does not have to be obeyed or implemented Islamic Law Compilation is only persuasive in nature. So, if we look at it from a juridical point of view, even though the Compilation of Islamic Law has clearly prohibited interfaith marriage for the Muslim community this should not be seen as a rule that requires obedience but is only seen as a recommendation. Therefore, the relationship of law to the Compilation of Islamic Law is only a moral appeal and does not have strong juridical consequences. It is different from Law Number 1 of year 1974 which clearly has binding legal force because laws are included in the hierarchy of the formal legal order in Indonesia.

The prohibition of interfaith marriage by the Islamic Law Compilation is considered non-functional. In Indonesia there are 2 (two) institutions that are tasked with supervising and recording marriages, namely the Marriage Registration Officer (PPN) from the Office of Religious Affairs (KUA) who has special duties for marriages for people who are Muslim. Then employees from the Civil Registry Office for marriages other than Muslims. From this arises 2 (two) authorities to record a marriage in Indonesia, if the spouse of the prospective wife wants to have a marriage of different religions, then the authority to record the legal event or marriage is the Civil Registry Office under the Ministry of Home Affairs. . From this institution interfaith marriage partners receive marital supervision as well able to be registered and have a marriage certificate. For the Civil Registry religious differences are not a problem because referring to Article 56 of Law No.1 of year 1974 concerning Marriage take place outside the territory of Indonesia are registered at the Civil Registry Office after the couple returns to the Indonesian territory. The purpose of this registration is to obtain their marital legality rights before the law. The Civil Registration Institution does not heed the provisions on

the prohibition of interfaith marriages in the Islamic Law Compilation even though the Islamic Law Compilation explicitly prohibits such marriages. Even though Article 8 of Law Number 1 of year 1974 concerning Marriage prohibits interfaith marriages in practice many of them do not run according to the applicable law.

b. Similarities

Interfaith marriages that are held abroad have several pillars and the same conditions as stipulated in Law Number 1 of year 1974 concerning Marriage and the Compilation of Islamic Law, the first is the prospective groom and the prospective bride or of a different gender, it is with Article 1 of Law Number 1 of year 1974 concerning Marriage which reads "Marriage is a physical and mental bond between a man and a woman ". There is no difference between the prospective bride and the groom because interfaith marriages carried out abroad also require a prospective bride of a different gender. In addition age requirements as a condition attached to the prospective bride and groom are also regulated in the laws and regulations in Singapore, Australia, England and Hong Kong.

The second equation is the determination of 2 (two) adult witnesses as harmonious interfaith marriages in Australia, Singapore, Hong Kong and England. Thus, the pillars of witnesses contained in Law Number 1 of year 1974 on Marriage and the Compilation of Islamic Law have been fulfilled. In addition it is also required that both witnesses must be present at the time of the marriage process as in Indonesia, the two witnesses present must also sign a marriage certificate that exists at that time. Article 26 of the Compilation of Islamic Law states that both witnesses must be present, witness firsthand, and sign a marriage certificate at the time and place of the wedding.

Then the guardian and consent of the qabul in the case of a marriage abroad the guardian needs a statement or wish to give permission to the candidate to get married. This intention in countries where interfaith marriages take place can be stated by signing the marriage permit and coming directly at the time of the marriage process. In exception a qabul consent may be made by the guardian with the bridegroom provided that he / she obtains permission from the place where the consent is done, for example the mosque, church or other places of worship. After obtaining this permission it is reported to the officer who registers the marriage where the marriage took place. In the marriage law and the Compilation of Islamic Laws, the principle of marriage absolutely must be fulfilled because the guardian is the most important part of the principle of marriage. Both the prospective bride and the guardian all pillars of marriage are regulated equally in the marriage law with the implementing regulations and in the Compilation of Islamic Law. With the fulfillment of the principles and conditions for interfaith marriages as described in Law Number 1 of year 1974 concerning Marriage and the Compilation of Islamic Law, this marriage already has several legal consequences that are legally valid in religion. For example the consent of the qabul is carried out by the guardian and the bridegroom if the marriage occurs between a Muslim man and a woman who is a man of the book. Marriage like this may take place in a

country that determines another place of marriage in the sense that it may be outside the place of marriage that has been determined by the government of that country. Examples of countries that allow this are Australia and Singapore. If the marriage is carried out with due observance of the religious law order then the marriage is religiously valid.

5. Conclusion

- a. The results of this study indicate that Indonesia's positive law namely Law Number 1 of year 1974 concerning Marriage which applies nationally does not require interfaith marriages. According to the author interfaith marriages that are held both abroad and domestically constitute a form of legal smuggling. However in practice there are still many officials and task actors who provide little opportunity for those who practice interfaith marriages abroad to register and receive recognition of their marriage from the Indonesian state provided that the marriage is carried out in accordance with the law in the country where the marriage takes place does not contradict the laws and regulations in Indonesia and is carried out according to the religious order. This applies to all religions, whether Muslim, Christian, Catholic, Hindu, Buddhist, Confucian and recognized beliefs in the country of Indonesia. This legal recognition is obtained by recording the marriage certificate or proof that they get from abroad to the civil registry office at the place of domicile of the spouse, and with this registration, the state hereby acknowledges that their marriage has legal force and is recognized by the state.
- b. Meanwhile the Islamic Law Compilation clearly states that interfaith marriages occur meaning that interfaith marriages do not get a legality from the Islamic Law Compilation. In terms of the Islamic Law Compilation it is impossible to recognize the legality of interfaith marriages whether carried out abroad. The Islamic Law Compilation explicitly contains provisions that prohibit marriage between Muslims and non-Muslims regardless of where the marriage takes place. However, the prohibition of interfaith marriage according to the author is not done absolutely because there are certain limits that allow Muslim men to marry women of the Book of Christian and Jewish groups who protect themselves.

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