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INTERFAITH MARRIAGE IN ISLAMIC FAMILY LAW: THE PERSPECTIVE OF CLASSICAL FIQH AND THE COMPILATION OF ISLAMIC LAW

PERNIKAHAN BEDA AGAMA DALAM HUKUM KELUARGA ISLAM: PERSPEKTIF FIQH KLASIK DAN KOMPILASI HUKUM ISLAM

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Abstract

Interfaith marriage is a classic yet ever-relevant issue in Islamic family law. This study aims to examine the legal status of interfaith marriage in Islamic family law through classical and contemporary fiqh perspectives, as well as its arrangement in the Compilation of Islamic Law (KHI) in Indonesia. The method used is normative legal research with statutory and conceptual approaches, referring to authoritative classical tafsir and fiqh works such as Jami' al-Bayan by al-Tabari, al-Jami' li Ahkam al-Qur'an by al-Qurtubi, Tafsir Ibn Kathir, al-Umm by Imam al-Shafi'i, and al-Mughni by Ibn Qudamah, as well as contemporary works such as Fiqh al-Sunnah by Sayyid Sabiq and the works of Wahbah al-Zuhaili and Yusuf al-Qaradawi. The findings indicate that classical jurists unanimously prohibit the marriage of a Muslim woman to a non-Muslim man and the marriage of a Muslim man to a polytheist (mushrik) woman, but differ regarding the marriage of a Muslim man to a woman of the People of the Book (Ahl al-Kitab). Meanwhile, the KHI takes a stricter stance by prohibiting all forms of interfaith marriage, in line with the principle of preventing harm (sadd al-dhari'ah) and the MUI Fatwa of 2005. This study concludes that the KHI represents a contextualization of fiqh adapted to the conditions of Indonesian society.

Keywords : Interfaith Marriage, Islamic Family Law, Fiqh, Compilation of Islamic Law, Ahl al-Kitab.

Abstrak

Pernikahan beda agama merupakan isu klasik namun tetap relevan dalam hukum keluarga Islam. Penelitian ini bertujuan untuk mengkaji kedudukan hukum pernikahan beda agama dalam hukum keluarga Islam melalui perspektif fiqh klasik dan kontemporer, serta pengaturannya dalam Kompilasi Hukum Islam (KHI) di Indonesia. Metode yang digunakan adalah penelitian hukum normatif dengan pendekatan perundang-undangan (statutory) dan pendekatan konseptual (conceptual), dengan merujuk pada karya-karya tafsir dan fiqh klasik yang otoritatif seperti Jami' al-Bayan karya al-Tabari, al-Jami' li Ahkam al-Qur'an karya al-Qurtubi, Tafsir Ibn Kathir, al-Umm karya Imam al-Syafi'i, dan al-Mughni karya Ibn Qudamah, serta karya-karya kontemporer seperti Fiqh al-Sunnah karya Sayyid Sabiq dan karya-karya Wahbah al-Zuhaili dan Yusuf al-Qaradawi. Temuan penelitian menunjukkan bahwa ulama klasik sepakat melarang pernikahan perempuan Muslim dengan laki-laki non-Muslim dan pernikahan laki-laki Muslim dengan perempuan musyrik, namun berbeda pendapat mengenai

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pernikahan laki-laki Muslim dengan perempuan Ahli Kitab. Sementara itu, KHI mengambil sikap yang lebih ketat dengan melarang seluruh bentuk pernikahan beda agama, sejalan dengan prinsip sadd al-dhari'ah dan Fatwa MUI Tahun 2005. Penelitian ini menyimpulkan bahwa KHI merupakan bentuk kontekstualisasi fiqh yang disesuaikan dengan kondisi masyarakat Indonesia.

Kata Kunci : Pernikahan Beda Agama, Hukum Keluarga Islam, Fiqh, Kompilasi Hukum Islam, Ahl al-Kitab.

1. INTRODUCTION

Marriage in Islam is not merely regarded as a civil contract that renders lawful the relationship between a man and a woman; rather, it constitutes a mithaqan ghalizan (a most solemn covenant) bearing a dimension of worship and spiritual responsibility. Etymologically, the word nikah means to gather, to join, or a contract. Terminologically, jurists define marriage as a contract that renders lawful the conjugal relationship between spouses through a specific formula in accordance with the provisions of the Shari'ah.

One issue that has perennially been debated in the study of Islamic family law is interfaith marriage, namely a marriage between a Muslim and an adherent of another religion. This is not a new issue; rather, it has been thoroughly discussed by classical scholars since the early period of Islam on the basis of Qur'anic texts that explicitly address the matter. Nevertheless, in the context of an increasingly plural and open modern society, the issue of interfaith marriage has re-emerged with new dynamics and challenges.

In Indonesia, as the country with the largest Muslim population in the world, the issue of interfaith marriage has a complex dimension because it intersects with religious law, positive law, and the social reality of a plural society. The Compilation of Islamic Law (KHI), as the guideline of family law for Muslims in Indonesia, takes its own stance on this issue, which in several respects differs from the view of classical fiqh.

This article aims to examine in depth the legal status of interfaith marriage in Islamic family law, by tracing its legal foundations in the Qur'an together with the interpretations of classical and contemporary exegetes, the views of the imams of the schools of law, and its regulation in the Compilation of Islamic Law.

2. RESEARCH METHOD

This study is normative legal research employing two principal approaches. First, the statutory approach, which examines the provisions on interfaith marriage in Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law. Second, the conceptual approach, which examines the concept of interfaith marriage based on the construction of fiqh, by referring directly to authoritative works of tafsir and fiqh.

The primary legal materials comprise the Qur'an, hadith, classical works of tafsir (Jami' al-Bayan by al-Tabari, al-Jami' li Ahkam al-Qur'an by al-Qurtubi, and Tafsir Ibn Kathir), classical works of fiqh (al-Umm by Imam al-Shafi'i, al-Mughni by Ibn Qudamah, Bidayat al-Mujtahid by Ibn Rushd, and al-Mabsut by al-Sarakhsi), as well as relevant legislation. The secondary legal materials comprise contemporary works of fiqh such as Fiqh al-Sunnah by Sayyid Sabiq, al-Fiqh al-Islami wa Adillatuhu by Wahbah al-Zuhaili, and al-Halal wa al-Haram fi al-Islam by Yusuf al-Qaradawi. The analysis is conducted qualitatively using a descriptive-analytical method.

3. RESULT AND DISCCUSSION

1. The Concept and Classification of Interfaith Marriage

Interfaith marriage is generally understood as a marital bond between two persons who profess different religions. In the context of Islamic family law, this issue cannot be discussed as a single category; rather, it must be classified on the basis of two variables: the sex of the Muslim party and

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the religious status of the non-Muslim party. Based on this classification, interfaith marriage in fiqh is divided into three principal categories.

First, the marriage of a Muslim man to a polytheist (mushrik) woman, namely an idolatress or one who possesses no revealed scripture. Second, the marriage of a Muslim man to a woman of the People of the Book (Ahl al-Kitab), namely Jews and Christians. Third, the marriage of a Muslim woman to a non-Muslim man, whether polytheist or of the People of the Book. These three categories hold differing legal statuses in the view of fiqh, as will be explained below.

2. The Legal Foundations in the Qur'an and the Interpretations of the Exegetes

Surah al-Baqarah Verse 221: The Prohibition of Marriage to Polytheists

The verse that constitutes the primary basis for the prohibition of marriage to polytheists is the word of God in Surah al-Baqarah verse 221:

وَلَا تَنكِحُوا الْمُشْرِكَاتِ حَتَّىٰ يُؤْمِنَّ ۚ وَلَأَمَةٌ مُّؤْمِنَةٌ خَيْرٌ مِّن مُّشْرِكَةٍ وَلَوْ أَعْجَبَتْكُمْ ۗ وَلَا تُنكِحُوا الْمُشْرِكِينَ حَتَّىٰ يُؤْمِنُوا

Meaning: "And do not marry polytheistic women until they believe. And a believing slave woman is better than a polytheist, even though she might please you. And do not marry polytheistic men [to your women] until they believe." (Q.S. al-Baqarah/2: 221).

Imam al-Tabari, in Jami' al-Bayan, interprets the prohibition in this verse as general, encompassing all polytheist women from among the idolaters. According to him, God has forbidden a Muslim man to marry a polytheist woman so long as she has not believed, because such a marriage may lead to the corruption of faith and a turning away from the path of God. In agreement with this, Imam al-Qurtubi, in al-Jami' li Ahkam al-Qur'an, affirms that this verse is the basis for the prohibition of marriage to polytheists, and he cites the consensus (ijma') of scholars that a Muslim woman may never be given in marriage to a polytheist man under any circumstances.

Ibn Kathir, in his tafsir, explains that this prohibition contains the wisdom of protecting faith and lineage. Ibn Kathir cites the view that the term "al-mushrikat" in this verse is particularized (takhsis) by another verse permitting marriage to women of the People of the Book, so that the prohibition in this verse of al-Baqarah applies specifically to idolatrous polytheist women, not to the People of the Book.

Surah al-Ma'idah Verse 5: The Permissibility of Marriage to the People of the Book

The verse that constitutes the basis for the permissibility of a Muslim man marrying a woman of the People of the Book is the word of God in Surah al-Ma'idah verse 5:

وَالْمُحْصَنَاتُ مِنَ الْمُؤْمِنَاتِ وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ مِن قَبْلِكُمْ إِذَا آتَيْتُمُوهُنَّ أُجُورَهُنَّ

Meaning: "(And lawful in marriage are) chaste women from among the believers and chaste women from among those who were given the Scripture before you, when you have given them their due dowries." (Q.S. al-Ma'idah/5: 5).

Imam al-Shafi'i, in his work al-Umm, takes this verse as evidence of the permissibility (al-jawaz) of a Muslim man marrying a woman of the People of the Book, namely Jews and Christians. According to him, this verse of al-Ma'idah functions as a particularizer (mukhassis) of the general prohibition in the verse of al-Baqarah. Imam al-Qurtubi reinforces this by explaining that the majority of scholars (jumhur) permit marriage to a free, chaste woman (muhsanat) of the People of the Book, although some Companions such as 'Abdullah ibn 'Umar held the contrary view.

Ibn Kathir records that 'Abdullah ibn 'Umar regarded all non-Muslim women, including those of the People of the Book, as polytheists, so that he deemed marriage to them reprehensible (makruh) or even forbidden. Ibn 'Umar argued that there is no polytheism greater than the belief that Jesus is God. However, this is a minority view that was not followed by the majority of scholars

Surah al-Mumtahanah Verse 10: The Prohibition of a Muslim Woman Marrying a Non-Muslim

The verse that constitutes the basis for the prohibition of a Muslim woman marrying a non-Muslim man is the word of God in Surah al-Mumtahanah verse 10:

فَإِنْ عَلِمْتُمُوهُنَّ مُؤْمِنَاتٍ فَلَا تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ ۖ لَا هُنَّ حِلٌّ لَّهُمْ وَلَا هُمْ يَحِلُّونَ لَهُنَّ

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Meaning: "Then if you know them to be believers, do not return them to the disbelievers. They are not lawful [wives] for them, nor are they lawful [husbands] for them." (Q.S. al-Mumtahanah/60: 10).

Al-Tabari interprets this verse as an explicit (sharih) proof of the prohibition of a Muslim woman marrying a disbelieving man, whether polytheist or of the People of the Book. According to him, the phrase "la hunna hillun lahum" (they are not lawful for the disbelievers) is absolute and without exception, so that all scholars are in agreement upon this prohibition.

3. The Views of the Imams of the Schools of Law (Classical Fiqh)

The Consensus (Ijma') of the Scholars

The scholars of the four schools of law Hanafi, Maliki, Shafi'i, and Hanbali agree on two matters. First, the prohibition of a Muslim man marrying an idolatrous polytheist woman, as affirmed by Ibn Rushd in Bidayat al-Mujtahid. Second, the prohibition of a Muslim woman marrying a non-Muslim man, whatever his religion. Ibn Qudamah, in al-Mughni, states that this prohibition is a consensus over which there is no disagreement, because in such a marriage there is an element of degradation of the Muslim woman and a fear for the faith of her children.

The Difference of Opinion Concerning Marriage to the People of the Book

As for the marriage of a Muslim man to a woman of the People of the Book, there is a difference of opinion. The majority of scholars (the bulk of the Hanafi, Maliki, Shafi'i, and Hanbali schools) permit it on the basis of Surah al-Ma'idah verse 5. Al-Sarakhsi of the Hanafi school, in al-Mabsut, affirms this permissibility, albeit with a note of reprehensibility (makruh) where it is feared to cause temptation (fitnah) to one's religion. Imam Ibn Qudamah of the Hanbali school also permits it, but emphasizes its reprehensibility, especially in a non-Muslim land (dar al-harb), because it is feared that the children will be raised in the religion of their mother.

Nevertheless, the majority of scholars underline that this permissibility is accompanied by various conditions and considerations: the woman of the People of the Book must be chaste (muhsanah), and there must be no fear that she will endanger the faith of her husband or her children. If it is feared that harm will befall one's religion, the permissibility may change to reprehensible (makruh) or even forbidden. As for the marriage of a Muslim woman to a non-Muslim man, all scholars agree upon its prohibition without exception.

4. The Views of Contemporary Scholars

Sayyid Sabiq, in Fiqh al-Sunnah, reaffirms the view of the majority that the marriage of a Muslim man to a woman of the People of the Book is permissible, but he underlines that in the modern era this permissibility needs to be reconsidered on the basis of maslahah (public interest), given the many cases in which such marriages have actually weakened faith and estranged children from Islam. Wahbah al-Zuhaili, in al-Fiqh al-Islami wa Adillatuhu, sets out in detail the views of the four schools and concludes that, although in principle permissible, marriage to a woman of the People of the Book in the modern era should preferably be avoided out of consideration for sadd al-dhari'ah (blocking the means to harm).

Yusuf al-Qaradawi, in al-Halal wa al-Haram fi al-Islam, takes a more cautious stance. He states that the permissibility of marrying a woman of the People of the Book is conditional and contingent: that permissibility applies when dominance and strength lie in the hands of the Muslims, so that there is no fear for the faith. However, under conditions in which Muslims are weak and a minority, al-Qaradawi tends to prohibit it in order to protect the welfare of the religion. This approach shows that contemporary fatwas pay great attention to the social context and to maslahah, rather than adhering solely to the generality of the texts.

As for Muhammad Rashid Rida, in Tafsir al-Manar, he offers a more open interpretation regarding the concept of the People of the Book, yet still emphasizes the importance of safeguarding the faith and welfare of the Muslim family. In Indonesia, M. Quraish Shihab, in Tafsir al-Misbah, explains that although textually there exists a permissibility to marry a woman of the People of the

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Book, in the plural Indonesian context, caution and prohibition become more appropriate in order to safeguard the integrity of the household and the faith of the coming generation.

5. Interfaith Marriage in the Compilation of Islamic Law (KHI)

In the context of Indonesian positive law, interfaith marriage is firmly regulated in the Compilation of Islamic Law (KHI). The KHI takes a stance stricter than classical fiqh, namely prohibiting all forms of interfaith marriage without exception, including the marriage of a Muslim man to a woman of the People of the Book, which classical fiqh permitted according to the majority. This stance is in line with the Fatwa of the Indonesian Council of Ulama (MUI) No. 4/MUNAS VII/MUI/8/2005, which determines that interfaith marriage is forbidden and invalid.

Article 40(c) of the KHI states that it is forbidden to conduct a marriage between a Muslim man and a woman who is not of the Islamic faith. Meanwhile, Article 44 of the KHI states that a Muslim woman is forbidden to conduct a marriage with a man who is not of the Islamic faith. These two articles firmly close every possibility of interfaith marriage for Muslims in Indonesia, whether the Muslim is a man or a woman, and whether the other party is a polytheist or of the People of the Book.

This stance of the KHI rests upon Article 2 paragraph (1) of Law No. 1 of 1974, which states that a marriage is valid if it is performed according to the law of each respective religion. Because Islamic law (as understood in the Indonesian context) does not sanction interfaith marriage, such a marriage cannot be regarded as valid under state law for a couple of whom one party is Muslim.

This tightening undertaken by the KHI may be understood as a form of the contextualization of fiqh (taqnin) adapted to the social conditions of Indonesian society. The drafters of the KHI chose the view that is more beneficial and more protective (al-akhdh bi al-ahwat), namely closing the door to interfaith marriage in its entirety in order to safeguard the integrity of the Muslim family, the clarity of the child's faith, and orderly marriage administration in Indonesia.

6. Analysis: The Contextualization of Fiqh in the KHI

The difference of stance between classical fiqh and the KHI may be understood through the framework of the theory of maqasid al-shari'ah. Imam al-Shatibi explains that the primary objective of the Shari'ah is to realize benefit (maslahah) by safeguarding the five essential elements (al-daruriyyat al-khams), namely religion, life, intellect, lineage, and property. In the context of interfaith marriage, the two most relevant elements are the safeguarding of religion (hifz al-din) and the safeguarding of lineage (hifz al-nasl).

The KHI holds that, under the conditions of a plural Indonesian society, interfaith marriage has a great potential to cause harm to the safeguarding of religion and lineage especially concerning the faith of the children born of such a marriage. Therefore, the principle of sadd al-dhari'ah (blocking the means to harm) is applied by prohibiting all forms of interfaith marriage, even though classical fiqh textually permits some of them.

This approach is consistent with the thought of contemporary scholars such as al-Qaradawi, who states that the permissibility of marrying a woman of the People of the Book is conditional and may be restricted for the sake of a greater benefit. Thus, the KHI is not a deviation from fiqh, but rather a form of collective ijtihad (ijtihad jama'i) that applies the principles of fiqh within the Indonesian context, prioritizing the principle of caution and the welfare of the community.

4. CONCLUSION

Based on the examination of the legal foundations in the Qur'an, the interpretations of classical and contemporary exegetes, the views of the imams of the schools of law, and the regulation in the Compilation of Islamic Law, several conclusions may be drawn. First, classical fiqh classifies interfaith marriage into three categories with differing rulings: forbidden for a Muslim man to marry a polytheist woman; a difference of opinion (with the majority permitting) for a Muslim man to marry a woman of the People of the Book; and forbidden by consensus for a Muslim woman to marry a non-Muslim man, whatever his religion.

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Second, contemporary scholars such as Sayyid Sabiq, Wahbah al-Zuhaili, and Yusuf al-Qaradawi tend to tighten the permissibility of marrying a woman of the People of the Book on the basis of considerations of maslahah and the principle of sadd al-dhari'ah, given the social conditions of Muslims that differ from those of the classical era. Third, the Compilation of Islamic Law in Indonesia takes the firmest stance by prohibiting all forms of interfaith marriage through Article 40(c) and Article 44, in line with the MUI Fatwa of 2005.

Thus, the regulation of interfaith marriage in the KHI is a form of the contextualization of fiqh (taqnin) that applies the principles of maqasid al-shari'ah and sadd al-dhari'ah within the Indonesian context. The KHI chooses the view that is most beneficial and most protective of the integrity of the family and the faith of the coming generation, so that it does not contradict the spirit of fiqh but rather constitutes a development of ijtihad suited to the needs of Indonesia's plural society.

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