

Interfaith Marriage and Its Legal Implications for Children from the Perspective of Maqashid Sharia

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Abstract

Interfaith marriages have long occurred in Indonesia, both openly and secretly in various circles of society (in various social dimensions). Although it has long occurred in Indonesia, it does not mean that the problem of interfaith marriage is accepted and considered normal, even this problem produces various controversies and rejection among the community. One of the problems arising from interfaith marriage is the issue of offspring or their children. The psychological development of children born to parents who have the same religion will certainly be different from the psychology of children born to parents who have different religions. This research is characterized by library research where all sources of data are taken from written references related to the topics discussed. The research is descriptive analytic, as for the primary sources in this research include: Islamic law, Law No. 1 of 1974 concerning marriage, Compilation of Islamic Law (KHI). The secondary sources in this research are books on Islamic marriage law in Indonesia. Data analysis of this research uses an inductive approach, namely taking general conclusions from specific conclusions. The results of the study explain that children born to parents of different religions will experience many problems, disturbed and threatened by the dharuriyat needs of the child until it leads to the implications that will be borne by children born to parents of different religions, including inheritance rights and guardianship of marriage which will certainly be very detrimental to the child in the future.

Keywords: Children, Different Religions, Legal Implications, Marriage, Maqashid Syariah

Introduction

In building a happy and eternal household, of course, you must first go through a religiously holy agreement as a condition for the relationship to be valid and recognized, which is called marriage. This marriage is also legitimized so that later a couple can live in a household and give birth to their offspring in peace and tranquility (Budiarti, 2018). In Islam, marriage is a very important thing, considering that those who have reached maturity (have reached maturity) and are spiritually healthy must want someone of the opposite sex to be their life partner in building a household, on the other hand marriage is a long worship that will be passed until one of them dies or a divorce occurs

A good marriage is of course based on mutual consent between a man and a woman without any element of coercion or unwillingness. Couples who are ready to continue their relationship to a more serious level certainly also have a goal that they both want, besides that they have also received approval from the families of both parties, and what is even more important is that the couple who will enter into marriage adheres to the same religion or one of the parties whose religion is different is ready to convert to follow their partner's religion.

The issue of marriage has been stirred up and made an uproar in recent times, the Indonesian people were shocked by a social media post uploaded by Ahmad Nurcholish regarding an interfaith marriage that was held in a church in the Semarang area, Central Java. This interfaith marriage was performed by an interfaith couple between a Christian man and a Muslim woman. What is even more shocking is that this couple is the 1,424th couple who have been married in different religions through the help of Ahmad Nurcholish as an intermediary. This incident has led to various debates about interfaith marriages.

As a multicultural country, and not as an Islamic country, of course the diversity it has produces various new phenomena, one of which is interfaith marriage. Interfaith marriages have actually long occurred in Indonesia both openly and secretly in various circles of society (in various social dimensions). Although it has long occurred in Indonesia, it does not mean that the problem of interfaith marriage is accepted and considered normal, even this problem produces various controversies and rejection among the community (Amri, 2020).

One of the problems arising from interfaith marriage is the issue of offspring or their children. The psychological development of children born to parents who have the same religion will certainly be different from the psychology of children born to parents who have different religions. Children born to parents of different religions will feel confused by the different ways of worship between their father and mother, and this confusion will increase when the status of the religion adopted by this child, whether following the religion of his father or following the religion of his mother. And there are many more problems that will be faced by children born to parents who have different religions.



In this research, the author will discuss about interfaith marriage and legal implications for children in the view of Islam, especially the maqashid sharia perspective. The purpose of this research is to provide a wealth of knowledge to the community, especially for couples who will enter into marriage but have religious differences, so that they can find out about the impacts that occur on children born from the marriage of parents who have religious differences.

Analytical Framework

Interfaith Marriage

In the Arabic fiqh book reference, it is explained that the word marriage or marriage comes from the words *nikah* and *zawaj*. while the meaning of *nikah* linguistically consists of gathering, inserting each other and is used for wathi intercourse, and for the word *nikah* itself is more often used for coitus intercourse, as well as to interpret the marriage contract (M.Yunus & Aini, 2020). Marriage is a very sacred worship and should not be considered playful, besides that the word *nikah* is mentioned in the Qur'an 23 times in various suras, even in surah al-nisa' verse 21 calls the marriage a *mitshaqan ghalizan* (a very firm agreement) this explains that so sacred a holy and sturdy marriage because it unites two humans in a marriage bond that is expected to continue together until death separates (Jalil, 2018). This is in line with the definition of marriage according to Law No. 1 of 1974 concerning Marriage which explains "marriage 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 God Almighty".

Meanwhile, the Marriage Law as a whole does not explain about interfaith marriage. However, some experts provide their own definitions of interfaith marriage, including according to Rusli and R. Tama, who explain that interfaith marriage is a physical and mental bond between a man and a woman who, because of different religions, raises problems, namely the entanglement of two different regulations regarding the terms and methods of implementing marriage in accordance with their respective religious laws with the aim of creating a happy and eternal family based on the almighty God (Tama, 2000).

Meanwhile, Hilman Hadikusuma defines interfaith marriage as a mixed marriage between religions that occurs when a man and a woman who adhere to different religions marry while still upholding their respective religions, including in the case that even though the religion is one qibla, it is different in the implementation of religious ceremonies and beliefs (Hadikusuma, 2007). From the definition of the experts above, it can be taken that what is meant by interfaith marriage is a physical and mental bond between a man and a woman who have different religions and continue to marry without one of them changing religions or in other words they get married and stick to their respective religions.

The issue of interfaith marriage in Islam has long been discussed and regulated in the nash (al-Quran and Hadith). There are several suras in the Qur'an that explain interfaith

marriages that become the guidance and guidance of scholars, including in surah al-Baqarah verse 221, which reads:

وَلَا تَنْكِحُوا الْمُشْرِكَاتِ حَتَّى يُؤْمِنَ ۚ وَلَآمَةٌ مُّؤْمِنَةٌ خَيْرٌ مِّنْ مُّشْرِكَةٍ وَلَوْ أَعْجَبَتْكُمْ ۚ وَلَا تُنْكِحُوا الْمُشْرِكِينَ حَتَّى يُؤْمِنُوا ۚ وَلَعَبْدٌ مُّؤْمِنٌ خَيْرٌ مِّنْ مُّشْرِكٍ وَلَوْ أَعْجَبَكُمْ ۚ أُولَٰئِكَ يَدْعُونَ إِلَى النَّارِ ۚ وَاللّٰهُ يَدْعُو إِلَى الْجَنَّةِ وَالْمَغْفِرَةِ بِإِذْنِهِ ۚ وَيُبَيِّنُ آيَاتِهِ لِلنَّاسِ لَعَلَّهُمْ يَتَذَكَّرُونَ

Meaning: And do not marry polytheist women until they believe. Indeed, a believing slave woman is better than a polytheist woman, even if she appeals to you. And do not marry polytheists (to believing women) before they believe. Indeed, the believing slave is better than the polytheist, even if she attracts you. They invite to hell, while Allah invites to paradise and forgiveness with His permission. And Allah explains His verses (His commands) to men that they may learn. (QS. al-Baqarah [2]: 221)

Then it is also explained in surah al-Mumtahanah verse 10 which reads:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا جَاءَكُمُ الْمُؤْمِنَاتُ مُهَاجِرَاتٍ فَامْتَحِنُوهُنَّ ۚ اللَّهُ أَعْلَمُ بِإِيمَانِهِنَّ ۚ فَإِنْ عَلَّمْتُمُوهُنَّ مُؤْمِنَاتٍ فَلَا تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ ۚ لَا هُنَّ حِلٌّ لَّهُمْ وَلَا هُمْ يَحِلُّونَ لِهِنَّ ۚ وَآتُوهُنَّ مَّا أَنْفَقُوا ۚ وَلَا جُنَاحَ عَلَيْكُمْ أَنْ تَنْكِحُوهُنَّ إِذَا آتَيْتُمُوهُنَّ أَجُورَهُنَّ ۚ وَلَا تُمْسِكُوا بِعِصَمِ الْكَوَافِرِ ۚ وَسَأَلُوا مَا أَنْفَقْتُمْ وَلَيْسَ أَلْوَا مَا أَنْفَقُوا ۚ ذَلِكُمْ حُكْمُ اللَّهِ ۚ يَحْكُمُ بَيْنَكُمْ ۚ وَاللّٰهُ عَلِيمٌ حَكِيمٌ

Meaning: O you who believe, when believing women come migrating to you, then test them. If you find out that they are believers, then do not return them to the disbelievers (their husbands). They are not lawful for the disbelievers and the disbelievers are not lawful for them. And give to their (husbands) the dowry which they have given. And there is no sin for you in marrying them if you pay them their dowry. And do not cling to the bonds (of marriage) with disbelieving women, and let you ask back the dowry you have given, and (if the husbands remain disbelievers) let them ask back the dowry they have paid (to their former believing wives). Such is the law of Allah which He has established among you, and Allah is all-knowing and all-wise. (QS. al-Mumtahanah [60]: 10).

The first verse explains that there is a prohibition on marrying a polytheist man or woman and a recommendation to marry a slave. If we look deeply into the content of this verse, it is clear that even though the man or woman is so attractive, even someone really loves him, but Allah forbids us to marry him because he has not believed in Allah, and if compared to a believing slave then it is better for us because he has believed in Allah. According to the author, the essence of this verse is as a reminder to Muslims that in choosing a mate must prioritize religion above all else. While Surah al-Mumtahanah verse 10 is more of a test for those who hijrah or enter Islam, that never enter Islam just because they want to get married not because they really want to embrace Islam kaffah because if this intention, they are afraid that one day if there is a divorce in their household they will return to their previous teachings or apostatize.

Although the two verses discuss the prohibition of interfaith marriage, there are other verses in the Qur'an that provide the permissibility of marrying women of ahl kitab. This is stated in surah al-Maidah verse 5 which reads:

الْيَوْمَ أُحِلَّ لَكُمْ الطَّيِّبَاتُ ۚ وَطَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ حِلٌّ لَكُمْ وَطَعَامُكُمْ حِلٌّ لَهُمْ ۚ
وَالْمُحْصَنَاتُ مِنَ الْمُؤْمِنَاتِ وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ إِذَا آتَيْتُمُوهُنَّ
أُجُورَهُنَّ مُحْصِنِينَ غَيْرَ مُسَافِحِينَ وَلَا مُتَّخِذِي أَخْدَانٍ ۚ وَمَنْ يَكْفُرْ بِالْإِيمَانِ فَقَدْ حَبِطَ عَمَلُهُ
وَهُوَ فِي الْآخِرَةِ مِنَ الْخَاسِرِينَ

All that is good is lawful for you this day. The food of those who are given the Bible is lawful for you, and your food is lawful for them (and it is lawful to marry) the chaste women among the believing women and the chaste women among those who were given the Bible before you, if you have paid them their dowry with the intention of marrying them, not for the purpose of fornication, nor to take them as concubines. Whoever disbelieves after believing (does not accept the laws of Islam), then his deeds will be nullified and he will be among the losers on the Day of Judgment. (Q.S. al-Maidah: [5]: 5).

Based on this verse, it can be concluded that basically Muslim women are not allowed to marry non-Muslim men even if they are people of the book. While Muslim men are also not allowed to marry pagan / polytheist women, but it is permissible to marry women of the ahl kitab, where the ahl kitab in question are adherents of the Jewish and Christian religions (Faridl, 1999).

During the time of the Prophet SAW and the Companions, the term ahl Kitab always referred to the Jewish and Christian religious communities and other than that group was not called ahl Kitab, but the Prophet SAW still ordered to treat them as well as ahl Kitab. There are 125 verses in the Quran that discuss the issue of ahl Kitab and one of them is the 5th verse in Surah al-Maidah. There are differences in scholarly opinion regarding the permissibility of marrying women of the People of the Book, including according to Shi'a Imamiyah scholars Abdullah bin Umar and Ali al Shabuni consider that it is still prohibited to marry women of the People of the Book because they are still included in the category of musyrikah women and it is forbidden to marry them before they convert to Islam, this is based on Surah al-Baqarah verse 221 above, besides that they also hold on to the prophet's hadith "that children are born in a state of fitrah (pure) only their parents make them Jews, Christians, and Zoroastrians" (Azizah, 2018).

In addition, the group that forbids marrying women of the People of the Book considers that in marriage of course what is wanted to be achieved is "sakinah" in the family, and a new marriage will be lasting and peaceful if there is a compatibility of life views between husband and wife, so let alone religious differences, differences in education levels are not uncommon to cause misunderstanding and even lead to failure in the household.

This is what happens and becomes a separate problem in Indonesia, this country lists 6 (six) religions as legal and recognized religions in Indonesia, namely Islam as a religion with the majority of adherents then there are Catholic Christians, Protestant Christians, Hindus,

Buddhists and Konghuchu whose existence has recently been legalized in Indonesia. And from these 6 religions, all of them agree that there is a ban on interfaith marriages for their adherents.

Although in Islam in-depth study there is a glimmer of hope for the implementation of interfaith marriage between Muslim men and women of the Book, this does not mean that it should be utilized and disseminated. In fact, Islam is closing this door because it sees the situation and conditions of Muslims now that are different from Muslims in the past coupled with the complexity of the problems that will arise from this interfaith marriage.

This is supported by the majority of Indonesian scholars who are members of the Indonesian Ulema Council (MUI) in 2005 held a national meeting and ended with the issuance of a Fatwa of the Indonesian Ulema Council Number 4/MUNAS VII/MUI/8/2005 concerning Marriage of Different Religions, MUI explicitly in its fatwa forbids and is invalid if there is a marriage of different religions, this also applies to marriage for Muslim men with women ahl Kitab.

The steps taken by Indonesian scholars in responding to the problem of interfaith marriages that began to occur in Indonesia can be concluded as a precautionary step in dealing with this problem, considering that the problem of interfaith marriage does not lie in the marriage alone, but the problems that will arise in the future are much more complicated.

Research Method

This research is characterized by library research where all sources of data are taken from written references related to the topic discussed. The research is descriptive analytic, as for the primary sources in this study include: Islamic law, Law No. 1 of 1974 concerning marriage, Compilation of Islamic Law (KHI). The secondary sources in this research are books on Islamic marriage law in Indonesia. Data analysis of this research uses an inductive approach, namely taking general conclusions from specific conclusions (Bakri, 1981).

Analysis

Maqashid Syariah

Regarding maqashid sharia, many definitions have been given by scholars, including: Al-Fassi explains that what is meant by maqashid sharia is the purpose of Islamic law, its objectives and the secrets that the legislator places in each of his decisions. While Sheikh Muhammad al-Tahir Ibn Ashur calls maqashid sharia is the meaning and rules observed by the lawgiver in all or most cases of the law, so that his observations are not limited to the universe in a special type of sharia law, his laws are not seen in all other types of law, but they are seen in many of its types (Hambari & Ayuniyyah, 2022).

Meanwhile, according to Wahbah al-Zuhaili, maqashid sharia is the values and objectives of shara' which are implied in all or the largest part of its laws, these values and



objectives are seen as the goals and secrets of sharia, which are determined by al-Syari' in every legal provision (Az-Zuhaili, 1986). Thus it can be concluded that what is meant by maqashid sharia is the goal to be achieved from the application of Islamic law. Al-Syatibi reported the results of the scholars' research on the verses of the Qur'an and the Sunnah of the Prophet that the law that Allah legislated to realize the benefit of mankind both in this world and in the hereafter. Furthermore, al-Syatibi divides the benefit into three levels, namely the level of *dharuriyat* needs, *hajiyyat* needs, and *tahsiniyat* needs.

The first level is *dharuriyat* needs, which is the level of needs that must exist or called primary needs. This primary need must exist and if it is not fulfilled it will threaten the safety of mankind both in this world and in the hereafter. In this primary need, al-Syatibi divides into five things that fall into this category, and it is to maintain these five points that Islamic law was revealed, the five things are maintaining religion (*hifdz din*), protecting the soul (*hifdz nafs*), maintaining reason (*hifdz 'aql*), maintaining offspring (*hifdz nasab*), and maintaining property (*hifdz mal*).

The second level is the needs of *Hajjiyat*, which is a need that if it is not fulfilled, it does not threaten its safety but will result in difficulties experienced. This second level is called secondary needs. And the third level is *Tahsiniyat* needs, which is a need that if it is not fulfilled it will not threaten the needs of *dharuriyat* and *hajiyyat*. This third level is called tertiary needs (Jalili, 2021).

Both *dharuriyat*, *hajiyyat* and *tahsiniyat* needs also apply to a child, even very necessary because children are human beings who do not yet have the same physical, psychological as adult humans in general, so it is very concerned about each of their needs so that children can grow into people who are devoted to Allah SWT and have all their needs met, especially their *dharuriyat* needs.

Legal implications for children of interfaith marriages

As stated in Article 1 of Law Number 1 of 1974 concerning Marriage that marriage 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 or household based on God Almighty. From this explanation, an important point can be taken that the purpose of marriage is to form a happy and eternal family, in order to achieve the purpose of marriage, of course there are several things that become driving factors in order to achieve the purpose of marriage, one of which is the presence of children.

Children are something that is highly expected by married couples, because children are the successors of the offspring of their families who are expected to make their parents happy, become the life support of their parents when they are no longer working due to age, in addition to being an investment in pious children for their parents when they are gone later.

Based on Article 1 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, it is explained that a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. Regarding this article, it

can be concluded that the obligation of parents to provide their children's rights begins when they are still in the mother's womb until they reach adulthood so that children can mature and develop properly. However, in Islam, the obligation of parents to their children continues to be their responsibility until the end of life.

Education is one of the obligations of parents to their children, because the family is the first field of education, and parents are the first teachers for their children because they have been given a gift by God in the form of parental instinct. In addition, parents also act as the first personal builder in a child's life, the personality of parents, attitudes and ways of life of parents are elements of education that will indirectly enter by themselves into the growing child's personality (Fuadi, 2019).

In Islam, the role of both parents for their children is very important, especially for couples who have new offspring. Parents are expected to be able to provide all the attention, affection, and early education for their children, including religious education in this case is akidah and morals as well as interspersed with basic fiqh. This is expected to have been taught to their children as the first provision for children before entering further education at school.

This will be a problem for children born to parents who have different religions, whether the father is Muslim and the mother is non-Muslim or vice versa. It is feared that the child will not get full rights as a child, and what is worse is that the child will be confused and experience inner pressure from his parents who have religious differences and are threatened in terms of maqashid sharia.

In terms of religious maintenance (*hifdz din*), the maintenance of religion for newborn children in the world is fully under the responsibility of their parents. A child's religion directly follows the religion practiced by his or her parents (1996). This is in accordance with the prophet's hadith that "every child is born in a state of fitrah, so it is the two parents who make the child a Jew, Christian or Magi". Likewise, with religious understanding for their children, it must start from an early age and be taught properly by both parents as the first teacher for their children. Of course this will be difficult to implement if both parents have different religions, the child does not get a good religious education, instead the child becomes confused because of the different religious education given by both parents, and in the end there will be jealousy in the parents when the child is more dominant in one of the religious teachings, even worse is the unclear religion of the child at birth.

Likewise, in terms of the maintenance of the mind (*hifdz 'aql*), a child has the right to receive proper education from both parents, this is important for efforts to improve the degree of humanity and the advancement of human civilization (Mulyani, 2021). Education to children today can be provided through formal and non-formal education. However, the fulfillment of the rights of children who have parents of different religions will certainly find problems and even come to a dead end. The father wants his child to get an education at a pesantren, while the mother wants her child to get an education at a Christian school. This is very worrying because there will be a split in the family in addition to the child experiencing deeper confusion.



The maintenance of the soul (*hifdz nas*) is one of the rights of children that is very concerned, even in Human Rights (HAM) the right to life is the most important right for every human being and no human being has the right to take away the right to life of another human being, and this applies since still in the womb. Parents are obliged to take care of their children both physically and psychologically, with the fulfillment of nutrition and health, as well as the attention and affection of parents to children making children will grow into physically and psychologically healthy individuals. Whereas children born to parents of different religions will experience tremendous psychological pressure, due to differences in beliefs between the father and mother, plus the psychological pressure received by children from the surrounding environment, so that it has a negative impact on the growth of children.

Then regarding the maintenance of nasab/offspring (*hifdz al-nasl*), from a good marriage between a pious man and a pious woman is expected to give birth to pious and pious children as well, the child is the successor to the lineage of the parents, so it is very necessary to pay attention and maintain the glory of the lineage so that it is not damaged. This is very different from children born to parents of different religions, although biologically the child is a child born from the relationship between the two parents, but in Islam the child's lineage is cut off, because in Islam interfaith marriage is prohibited, so children from interfaith marriages are included as children of adultery (Herawati, 2017). Of course, this is very detrimental to the child considering that there are many implications of the status of adulterated children.

The last is the right of children in the form of maintenance of property (*hifdz maal*), as a successor to the family lineage, children also carry the mandate as heirs to their parents' property when they are gone, it is hoped that with the inherited property the child can use it as well as possible and can benefit others, including being used so that it becomes amal jariyah for their parents. This will be very difficult to do for children of parents of different religions, because the child does not have the right to inherit the parents' property due to the status of the child in Islam is a child of adultery so that the child's nasab is cut off from his parents. The child can only receive the parents' property through a grant with a level that cannot exceed the inheritance.

From the explanation above, interfaith marriage has a negative impact both in terms of social impact and in the perspective of Islamic law. Of the 5 (five) *dharuriyat* needs, different marriages clearly provide interference and even threats to the existence of the *dharuriyat* needs of the child. In addition, it also raises legal implications for children in terms of (Admiral, 2022):

1. Guardianship of marriage

The child of a non-religious marriage is a child of adultery, so the child's lineage is cut off from his father, he is only related to his mother. If the child is a girl, then the father is not entitled to be the marriage guardian of his child, instead the guardian of the child is the wali hakim.

2. Inheritance rights

The existence of religious differences between parents and children results in the child not being entitled to inheritance from his parents, because religious differences are the first barrier to obtaining inheritance rights in Islam.

Conclusions

Interfaith marriage is a physical and mental bond between a man and a woman who have different religions and still enter into marriage without one of them converting or in other words they get married and still adhere to their respective religions. Although in Islam in an in-depth study there is a glimmer of hope for the implementation of interfaith marriage between Muslim men and women ahl Kitab, this does not mean that it must be utilized and disseminated. In fact, Islam is closing this door because it sees the situation and conditions of Muslims now that are different from Muslims in the past coupled with the complexity of the problems that will arise from this interfaith marriage, one of which is the problem of children. Children born to parents of different religions will experience many problems, disturbed and threatened by the dharuriyat needs of the child until it leads to the implications that will be borne by children born to parents of different religions, including inheritance rights and marriage guardianship which will certainly be very detrimental to the child in the future.

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