



# AL-UKHWAH

JURNAL PENGEMBANGAN MASYARAKAT ISLAM

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(Studi Femenisme Dan Gender Pada Perempuan Gampong Blang Krueng  
Kabupaten Aceh Besar)

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— *Hamdiah Latif*



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## Interfaith Marriage In The Perspective Of Islamic Law And Legislation

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### Abstrak

Ulama salaf tidak membolehkan laki-laki Muslim menikahi wanita non-Muslim secara mutlak, dan yang lain membolehkan menikahi kitabiyah, yaitu perempuan Yahudi dan Nasrani. Seperti masalah kerukunan keluarga dan masa depan religiusitas anak. Terkadang beberapa orang berspekulasi bahwa masalah tersebut dapat diselesaikan dengan memupuk toleransi dan mengembangkan "iklim kebebasan" dalam keluarga. Tapi, sekali lagi, itu hanya keinginan yang ideal saja maka dalam undang-undang tersebut jelas bahwa MK sendiri telah memutuskan untuk menolak perkawinan beda agama.

**Kata kunci:** Perkawinan, beda agama, Islam dan Perundang-undangan

### Abstract

Ulama salaf does not allow Muslim men to marry non-Muslim women absolutely, and others allow marrying kitabiyah (people of the Book), namely Yahudi and Christian women In objective reality, marriage of different religions in Indonesia today has more negative effects than positive effects, such as the problem of family harmony and the future of child religiousness. Sometimes some speculate that the problem can be solved by cultivating tolerance and developing a "climate of freedom" in the family. But, again, it is only an ideal desire then in the legislation it is clear that the constitutional court itself has decided to reject marriages of different religions.

**Keywords:** Marriage, different religions, Islam and Legislation

## INTRODUCTION

The development of modern science and technology has influenced the pattern of interaction of people across the boundaries of tribes, nations, and religions. This cross-border human association gives rise to attraction to one another which causes marriages not only to occur between one tribe but also between nations and those of different religions. In a plural Indonesian society with different values, traditions, beliefs, and religions resulting in marriages between tribes, marriages with foreign nationals, marriages with people of different beliefs and religions are very possible. Marriage is a natural right bestowed by the Creator on man to pass on his offspring.

Kotze (in Hikmat, 2004:6) states that the poor have the ability to relatively good at

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obtaining resources through existing opportunities. Despite the occasional outside help used, but not necessarily guaranteed so that the community depends on outside support. This empowerment approach is considered unsuccessful because no community can live and live thrive when isolated from other community groups. This isolation creates a passive attitude, even the situation is getting poorer.

Furthermore, Supriatna (1997: 90) states that poverty is a very limited situation that appened was not against the will of the person concerned. A population is said to be poor if it is marked by low levels of education, work productivity, income, health and nutrition as well as their welfare, which denotes a circle of helplessness. Poverty can be caused by limited resources existing human beings both through formal and non-formal education which ultimately lead to consequences for the low level of informal education.

Furthermore, Emil Salim (in Supriatna, 1997: 82) suggests five characteristics of the population

poor. The five characteristics of the poor are: 1) Do not have their own factors of roduction, 2) Does not have the possibility to acquire production assets by own strength, 3) Level education is generally low, 4) Many of them do not have facilities, and 5) they are relatively young and do not have adequate skills or education.

For this reason, a future husband or future wife has the right to make his choice in forming a family. The 1945 Constitution stipulates that every Indonesian citizen has the right to form a family, has the right to make a choice to marry or not to marry, the right to choose a partner based on his choice, the right to carry out marriage based on the teachings of their respective religions or beliefs or beliefs, the right to obtain offspring, and guarantee the freedom of each resident to embrace their respective religions and to worship according to their religion and beliefs. However, the right to form a family and choose a life partner guaranteed in the Constitution is hampered by laws and regulations that prohibit interfaith marriages.

One of the problems that arise in the realm of family law (*al-ahwal al-shakhshiyah*) is interfaith marriage. This became a serious problem when the Qur'an allowed Muslim men to marry women<sup>1</sup>, while the Marriage Law in Indonesia affirmed that marriages of Indonesian citizens were carried out according to their respective religions and beliefs. Even in the Compilation of Islamic Law, there will be no tolerance for interfaith marriages. The Qur'an mentions a lot of the term

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<sup>1</sup> Fathul Mu'in, 'Analisis Fatwa Majelis Ulama Indonesia Dan Undang-Undang Tentang Perkawinan Beda Agama', *Nizham*, 7.1 (2019), p. 17.

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scribes. Scribes are a term for communities that believe in and adhere to a religion that has scriptures derived from God other than the Qur'an. Can it be called the marriage of a muslim man to a non-muslim woman is the same as marrying a book expert? Are the Nazarenes and Jews the same as the scribes?

In classical jurisprudence, marriage between a Muslim man and a non-muslim woman cannot be considered "new" given that the Qur'an generally states that an Islamic man or woman is only prohibited from marrying a *musyrik* (paganist, pagan), whereas it is related to marriage between a Muslim man and a *woman of the book* which belongs to the category of non-muslims— i.e. women who are Jewish and Christian, the Qur'an allows it as contained in sura al-Ma'idah (5) verse 5. This study will further bring up the law of interfaith marriage based on the interpretation of several interpreters.

## DISCUSSION

### Research Methodology

In this study, it used a *library research* research method. Literature research aims to obtain information and data with various materials that are arranged in the library room, such as: documents, magazines, books and other records. The data obtained in the research can be used as the main tool or basic basis in the implementation of field research. This research is mentioned as research that discusses important data.

Literature research is data sourced from writings or references related to this research. Data collection is carried out by analyzing, reading and recording various references or study materials that are in accordance with the subject matter of the study. The collected data are analyzed by analyzing and summarizing the problems discussed in the form of a theoretical frame of thought. The resulting conclusions are a substantiation of the research findings that describe the last perceptions based on previous descriptions.

### Verses about marrying a scribe

#### 1. *Al-Maidah (5) verse 5.*

*Means:..... (and it is justified to marry) women who keep honor among women of faith and women who keep honor among those whom the Bible was given before you, if you have paid their dowry with the intention of marrying them, not with the intention of committing adultery and not (nor) making them mistresses. Whoever is an infidel after having faith (does not accept islamic laws) Then abolish his practice and he in the doomsday including the losers.*



## 2. *Surat al-Baqarah 221*

*That is to say: And you shall not marry the women of the creed, before they have faith. Indeed, a slave woman who is a believer is better than a musyrik woman, even though she attracts your heart. and you shall not marry the believers (to the women of the believers) before they have faith. Indeed, a believer slave is better than a believer, even though he attracts your heart. they invited them to hell, while God invited them to heaven and forgiveness with His permission. and God explained His verses (His commandments) to men so that they might learn a lesson.*

### Book Expert

Book experts are the same as those who have books. A term for a community that believes in and adheres to a religion that has scriptures derived from God other than the Qur'an. According to Muhammad Quraish Shihab, the Qur'an uses several kinds of terms to refer to the scribes, namely:

- a. *Ahlul-book*, the same as a community that has a book.
- b. *alladzina uutuu (atainaa) al-kitab*, the same as the community given the book.
- c. *uutuu nashiba min al-kitab*, the same as the community given a book.
- d. *al-yahuud*, same with the jews.
- e. *alladzina haaduu*, the same as those who are instructed.
- f. *The Children of Israel*, the same as the community of descendants of the Prophet Ya'qub  
a.s. whose title was Israel.
- g. *an-Nashara*, the same as the adherents of the christian religion.

While scholars of interpretation and jurisprudence agree that the jewish and christian communities are experts in the book, while the rest of the community has differences of opinion.<sup>2</sup>

### Expert Opinion of Interpretation

#### Rasyid Ridha

According to Muhammad Rasyid Ridha there are differences of opinion in the interpretation of the verse, namely that some salaf scholars do not allow Muslim men to marry non-Muslim women absolutely, and others allow marrying *kitabiyah* (women of the Book), namely Jewish and Christian women.<sup>3</sup> Muhammad Rasyid Ridha said that for political purposes and the spread of Islam it was permissible for Muslim men to marry non-Muslim women absolutely with the aim of making them Muslim women. But on the contrary, on the grounds that *sadd adz-*

<sup>2</sup> Abdul Azis Dahlan, *Ensiklopedi Hukum Islam*, 1st edn (Jakarta: PT. Ihtiar Baru Van Hoeve, 1996).

<sup>3</sup> Muhammad Rasyid Ridha, *Tafsir Al-Manar*, 6 th edn (tt).

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*dzari'ah* weak Muslim men are forbidden to marry non-muslim women, including women of the Book, especially European women today.

### ***Al-Qurthuby***

In his book of *interpretations of Al-Jami' li ahkam al-Quran*, al-Qurthuby says that in the history of Ibn Abbas it is stated that it is permissible to marry a woman of the *kitabiyah*, whereas marrying a muslim woman to a man of the book is haram. The ability to marry a woman in the Book is understood from the Quran surah *al-Maidah* verse 5.<sup>4</sup>

### ***As-Suyuthy***

In the book of tafsir *ad-durr al-mansur fi tafsir al-ma'sur*, as-Suyuthy gives 17 histories to interpret surah *al-Maidah* verse 5. From all these histories, it can be seen that none of them say that Muslim women may marry men in the book. For example, one of the histories that looks more straightforward and emphatic is narrated from Abdullah Ibn Hamid of Qotadah: what is meant by a good believer and a good book expert from the person before you. In that verse Allah justifies for us good Muslim women. Meanwhile, Muslim women are haram for the master of the book and women are experts of the halal book for us.<sup>5</sup>

### ***Ibn Katsir***

Ibn Katsir in the *Tafsir al-Qur'an al-'Adzim* says, that in the history of Ibn Jarir of Mujahid, that muslim men marry women the law is halal. On the contrary, muslim women marrying men in the book of law are haram.<sup>6</sup>

## **Discussion (Researcher Analysis)**

If you look at it at a glance and *zahirly* at the meaning of the Qur'an verse surah *al-Ma'idah* verse 5 above, then the initial understanding that will be obtained is that a Muslim man is allowed to marry a woman who is a book expert, namely one who is Jewish and Christian. Therefore, the prohibition on holding a marriage between a Muslim man and a non-muslim woman can be considered "new" considering that the Qur'an generally states that an Islamic man or woman is only prohibited from marrying a *musyrik* (paganist, paganist), while related to marriage between an

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<sup>4</sup> Muhammad Ibn Ahmad al-Anshori al-Qurthuby, *Al-Jami' Li Ahkam Al-Quran*, 6th edn (Beirut, Dar al-Fikr).

<sup>5</sup> Jalaluddin as-Suyuthi, *Tafsir Ad-Durr Al-Mansur Fi Tafsir Al-Ma'sur*, III (Beirut, Dar al-Fikr, 1983).

<sup>6</sup> Ismail ibn Katsir al-Qursy ad-Dimasqy, *Tafsir Al-Qur'an Al-'Adzim*, 2nd edn (mesir: Dar al-Fikr).



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Islamic man and a woman in the bookiyah which belongs to the category of non-muslims—i.e. women who are Jewish and Christian, the Qur'an allows it as contained in sura al-Ma'idah (5) verse 5.

The study of marriage of different religions has become very important and interesting in the Indonesian context because of the new breakthrough in The Islamic legal thinking (fiqh) of Indonesia which, if viewed at a glance and simply, seems to be contrary to the provisions of the Qur'an nas, surah al-Ma'idah verse 5. The new breakthrough in Indonesian jurisprudence is contained in the Compilation of Islamic Law (KHI) article 40 which reads: "It is forbidden to carry out marriage between a man and a woman due to certain circumstances:

1. Because the woman in question is still tied to one marriage to another man.
2. A woman who is still in a period of 'iddah with another man.
3. A woman who is not Muslim."

The provisions in article 40 of the Compilation of Islamic Law specifically for dictum number 3, according to the author, do not give the understanding that marrying a woman of the Book is substantially haram, because in the above verse of the Qur'an it is clearly affirmed that it is permissible. Similarly, most of the classical jurisprudence texts and Qur'anic interpretations conclude, that in general *the fuqaha* (jurists) and *mufasssirin* (the interpreters) allowed Muslim men to marry women *abl al-kitab* c kitab, namely Yahui and Christians<sup>7</sup>. Caliph 'Umar ibn al-Khatthab also forbade the *amirs* (governors) of Islam at the time to marry a woman of the Book, and for the *amir* who had already married her to divorce her if his wife would not convert to Islam. The basis of 'Umar's *ijtihad* was *first*, because in those days most of the women of the Book were married to the governors of Islam for political purposes, so it was feared that they would leak state secrets to others who were non-muslims, *secondly*, the women of the Scriptures conceived and harbored deceit (*khida*)<sup>8</sup>. As-Sayyid Sabiq himself said that *it is legal for* Muslim men to marry women in *the book (kitabiyah)*, because as husbands it is not necessarily that men are safe and secure not to be inclined to the religion of their wives or even to embrace the religion of their wives<sup>9</sup>.

Although Sabiq says that his law does not reach the level of haram, but if he pays attention

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<sup>7</sup> M. Tahir Azhari, *Kompilasi Hukum Islam Sebagai Alternatif: Suatu Analisis Sumber-Sumber Hukum Islam*," *Dalam Mimbar Hukum*, 1991.

<sup>8</sup> Abd al-Fattah Muhammad Abu- al-'Ainain, *Al-Islam Wa Al-Ushrah: Dirasah Muqaranah Fidhawi Al-Madzahib Al-Fiqhiyyah Wa Qawanin Al-Ahwal Asy-Syakhshiyah* (Univ. al-Manshu-rah).

<sup>9</sup> as-Sayyid Sabiq, *Fiqh As-Sunnah, Fi Zilal Al-Quran*, 2nd edn (beirut: Dar Ihya at-Turas al-'Arabi, 1964), p. 110.

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to the reasons he puts forward, it can be understood that his methodological foundation is *the method of sadd adz-dzari'ah*, although he does not explicitly mention so. Al-Jabri also had a similar opinion to Sayyid Sabiq, that a Muslim man was allowed to marry a woman of the book on the condition that there was no concern in his heart about the danger of slander caused by his wife living in the midst of Islamic society<sup>10</sup>. This means that when there is a fear of slander or slander, such a marriage should be prohibited. Fadhil Lubis also stated that the provisions of article 40 of the KHI which prohibit the marriage of Muslim men to women are an innovation in the discourse of Islamic law, because the Qur'an textually allows it. The reason and basis for this legal innovation according to Fadhil is because the youth is greater than the *maslahat*<sup>11</sup>.

According to the researcher's view, Fadhil's statement is certainly not without facts, because of the reality that occurs a lot in society in Indonesia, that interfaith marriages cause problems and controversies. So the basis for prohibiting marriage of different religions, including marrying women from the book, pursued by the KHI is to apply the method and principle of *sadd adz-dzari'ah*, namely forbidding acts whose original law was *mubah*, caused by the emergence of damage (*mafsadah*). In that connection, according to Umar Shihab, making provisions to legalize inter-religious marriage in Indonesia means allowing acts to damage the integrity of religion and creed. His statement is based on the social reality in Indonesia today which shows that some Muslim men who marry non-Muslim women are actually eventually pulled out of their religion. This fact is very detrimental to the development of Muslims in terms of quantity. So, the KHI rule, according to Umar Shihab, is in no way contrary to the Qur'an, because the provisions of article 40 seek to rule out the possibility of such a case occurring. The provisions of this KHI are in accordance with the situation and conditions in Indonesia.<sup>12</sup>

Before the birth of the Compilation of Islamic Law in Indonesia, in the 1960s Mahmud Syalthuth once forbidden a Muslim man to marry a woman who is an expert of the Book with few requirements, namely that if the Muslim man is weak, so that he will follow the tradition of his future wife, then his marriage with that woman should be banned. About a decade before the birth of the Compilation of Islamic Law in Indonesia, on June 1, 1980 the Indonesian Ulema Council

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<sup>10</sup> Hasnil Basri, 'Lessons Learned from the Implementation of Islamic Shari' Ah Criminal Law in Aceh, Indonesia', *Journal of Law and Religion*, 24.1 (2015), 143-76.

<sup>11</sup> Fadhil Lubis, *Hukum Islam Dalam Kerangka Teori Fikih Dan Tata Hukum Indonesia* (Medan: Pustaka Widyasarana, 1995).

<sup>12</sup> Hasan M. Noer Umar Shihab, *Kontekstualitas Al-Qur'an: Kajian Tematik Atas Ayat-Ayat Hukum Dalam Al-Qur'an*, Ed., ed. by 3, 3rd edn (Jakarta: Penamadani, 2005)

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had also issued a fatwa on Mixed Marriage<sup>13</sup>. in response to the increasing public attention to the increasing number of *inter-religious marriages*. Mohammad Atho Mudzhar said the MUI fatwa contained two clear statements on the issue of interfaith marriage. *First*, that an Islamic woman is not allowed (haram) to be married to a non-Islamic man; and *second*, that a muslim man is not allowed to marry a woman non-Muslim. Atho Mudzhar stated that there was something interesting in the fatwa, namely that the Qur'an clearly allowed a Muslim man to marry a woman from *abl al-kitab*, but the MUI fatwa forbidden it on the basis of the consideration that the loss (the negative impact) outweighed the gain (the positive impact). Indeed, the MUI fatwa is a repetition of a statement or document of the Jakarta Ulema Council issued on August 11, 1975 regarding the prohibition for a Muslim man to marry a non-Islamic woman, even if it is *abl al-kitab*. The statement of the Indonesian Ulema Council and the Jakarta Ulema Council certainly has a strong basis for consideration, so they dare to prohibit the marriage of Muslim men with *Kitabiyah*women which is clearly allowed by the Qur'an.

To strengthen and repeat the fatwa of 1980, the MUI again issued a fatwa in 2005 on Interfaith Marriage which stated, that after considering that interfaith marriages often cause unrest in the midst of society, inviting debate among fellow Muslims, bringing up understandings and thoughts that justify interfaith marriage under the pretext of Human Rights and benefits, then by relying on the Qur'an, hadith of the Prophet SAW, the rules of jurisprudence: *dar'u al-mafasid muqaddam 'ala jalb al-mashalih*, and the rules of *sadd adz-dzari'ah*, then the MUI stipulates that the marriage of a muslim man to a woman of the book is haram and illegitimate<sup>14</sup>. Mui fatwas of 1980 and 2005 on interfaith marriage clearly state that the negative impact (the loss) is more than the *maslahah*(the profit), so based on the rule: "preventing and avoiding losses must take precedence or precedence over taking advantage" and the principle: *sadd adz-dzari'ah* (*preventive legal device*) interfaith marriages in Indonesia should be prohibited and forbidden.

In fact, interfaith marriage in Indonesia, namely kasuistically in this country, is actually a marriage that occurs between Islamic women and Christian men or Islamic men with Christian women, it can be concluded, will and has caused several problems and negative impacts, including:

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<sup>13</sup> Ditjend Bimas Islam dan Penyelenggaraan Haji, *Proyek Sarana Dan Prasarana Produk Halal Ditjend Bimas Islam Dan Penyelenggaraan Haji* (Jakarta, 2003).

<sup>14</sup> Keputusan Fatwa Majelis Ulama Indonesia Nomor 4/MUNAS VII/MUI/8/2005, *Perkawinan Beda Agama. Fatwa Ini Ditetapkan Pada Tanggal 22 Jumadil Akhir 1426 H/29 Juli 2005*, 2005.

- a. The emergence of religious rivalry which is seen by Indonesian scholars has reached a vulnerable point for the interests of the growth of the Islamic community, so that the "door" for the possibility of holding inter-religious marriages must be completely closed. Concern (preoccupation) of the Muslims against the threat of Christianization (threat of Christianization) in Indonesia through the institution of marriage. Disharmonization of families who have different religious backgrounds.
- b. The future of children's religiosity is unclear, even their children tend to follow their mother's religion.
- c. Damaging one of the objectives of Islamic law, namely maintaining the integrity of the faith or maintaining religious integrity (hifz ad-din). Worries about slander are caused by non-Muslim wives living in a society where the majority are Muslim. The emergence of an understanding or sect which states that the substance of all religions on this earth is the same, so that there should be no discrimination in religious practice, including inter-religious marriage. On this basis, the *sadd adz-dzari'ah* approach in the provisions of Article 40 of the Compilation of Islamic Law can be accepted and applied. More specifically, interfaith/interreligious marriages, in this case Muslim men marrying women of the scriptures, or in the case of Indonesia, Muslim men marrying Christian women, have so far caused many negative impacts that are not in accordance with the spirit of the law Islam.

## CONCLUSION

The prohibition of a Muslim man marrying a woman of the scriptures in KHI is methodologically not caused by the prohibition of the *substance* (*haram li lidzatih* or *hurrima li dzatih*), because the text of the Qur'an allows it. However, only as an effort to prevent the emergence of things that are unlawful as a result of these actions. It means that the prohibition is due to something other than the substance (*haram li gairih* or *hurrima li gairih*). In other words, methodologically the prohibition of marrying women of the scriptures should be classified as a prohibition for prevention (*hurrima li sadd adz-dzari'ah*). In the science of *ushu'ul al-fiqh*, Atho Mudzhar quotes Ibrahim Hosen's statement saying that there is a difference in degree between the power of prohibition based on the core (*hurrima li dzatih/forbidden for its essence*) and prohibition for prevention (*li sadd adz-dzari'ah*). What is prohibited or prohibited based on its substance will not be allowed or permitted except in an emergency which can endanger human life (*mahurrima li dzatih ubiha li dharurah*). On the

other hand, what is prohibited or prohibited for prevention, can be permitted or permitted if the need arises without having to be in an emergency (*mahurrima li sadd adz-dzari'ah ubiha li hajah*).

Thus, in terms of the prohibition of interfaith marriages according to article 40 of the KHI, this is not an eternally valid prohibition, because if the negative impacts that have occurred or are feared to arise are not proven or no longer exist, then it may return to the original law, namely may (permissible). In other words, if the facts of the legal impact are not found, then Article 40 of the KHI must be changed again in accordance with the rules: *al-hukm yadu'ru ma'a 'illatifi wuju'dan wa 'adaman* (law that is determined to follow cause and effect or the impact that exists, if there is cause and effect then the law also exists, otherwise if the cause and effect does not exist then the law must change).

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