



Criticizing the Verdict of 916/Pdt.P/2022/PN.Sby Surabaya District Court Against Interfaith Marriage from the Perspective of Marriage Law in Indonesia

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Abstract

This article is based on a critical review of the verdict of 916/Pdt.P/2022/PN.Sby, which recognizes the validity of interfaith marriages in Indonesia. This decision is different from the provisions of the marriage law in force in Indonesia. Indonesia has regulated that marriages can be carried out according to their respective religions. This article aims to critically analyze the verdict of 916/Pdt.P/2022/PN.Sby. This research is a normative juridical study with a case approach. The main data sources are obtained from court decisions and marriage laws. This article also uses several important articles and research resulting from empirical studies. Based on the data findings and analysis that have been carried out, this paper argues that: Firstly, interfaith marriages are prohibited in Islamic law because they contain more harm than good; this prohibition merely closes the opportunity for bad impacts to occur after the marriage; and second, the decision issued by the Surabaya District Court Judge was inappropriate because it conflicted with positive law and Islamic law. Legally, the judge may refuse to grant permission based on Article 2 paragraph (1) of the Law on Marriage and the Compilation of Islamic Law (KHI). In this decision, the judge has a different interpretation of the marriage regulations that apply in Indonesia.

Keyword : Verdict, Interfaith Marriage, Surabaya District Court

Abstrak

Artikel ini didasari dari tinjauan kritis terhadap Putusan Pengadilan No. 916/Pdt.P/2022/PN.Sby yang mengakui keabsahan pernikahan beda agama di Indonesia. Putusan ini berbeda dengan ketentuan undang-undang perkawinan yang berlaku di Indonesia. Indonesia telah mengatur bahwa perkawinan dapat dilakukan menurut agamanya masing-masing. Artikel ini bertujuan untuk menganalisis secara kritis Putusan Pengadilan No. 916/Pdt.P/2022/PN.Sby. Penelitian ini merupakan kajian yuridis normatif



dengan pendekatan kasus. Sumber data utama diperoleh dari putusan pengadilan dan undang-undang perkawinan. Artikel ini juga menggunakan beberapa artikel penting dan penelitian yang dihasilkan dari kajian empiris. Berdasarkan temuan data dan analisis yang telah dilakukan, tulisan ini berargumentasi bahwa; *Pertama*, pernikahan beda agama dalam hukum Islam dilarang karena banyak mengandung unsur *mudharat* daripada *maslahat*, larangan ini semata-mata menutup peluang terjadinya dampak buruk setelah pernikahan; *Kedua*, putusan yang dikeluarkan oleh Hakim Pengadilan Negeri Surabaya tidak tepat, karena bertentangan dengan hukum positif dan hukum Islam. Secara hukum, hakim bisa saja menolak untuk memberikan izin berdasarkan Pasal 2 ayat (1) dari Undang-Undang tentang Perkawinan dan Kompilasi Hukum Islam (KHI). Dalam putusan ini hakim memiliki penafsiran lain terhadap peraturan perkawinan yang berlaku di Indonesia.

Kata Kunci: Putusan, Pernikahan Beda Agama, Pengadilan Negeri Surabaya

Introduction

Often with the times and the era of globalization, not a few Indonesian citizens who have the desire to do this interfaith marriage¹. This marriage will certainly become a problem in the future, such as inheritance issues. This marriage problem is a complicated problem that until now has not found a bright spot in the implementation of its prohibition, despite the existence of the Marriage Law which states that a valid marriage is a marriage based on each religion, but until now it still has its own opportunities for interfaith marriages². Even if it is felt that forcing recognition of this type of marriage is quite difficult, even using a *universal* human rights approach, because the framework of human rights itself recognizes the term *cultural relativism* that the prevailing culture in a region can become a moral rule. Of course everyone has the right to maintain the culture and morals that have been deeply rooted in an area, and this includes maintaining human rights themselves.³

Interfaith marriage itself is a marriage that is carried out by couples who have different beliefs and beliefs in the concept of divinity⁴. This marriage is a marriage bond between a man and a woman who embraces different religions and beliefs while remaining maintain their respective beliefs⁵. All religions certainly normatively and in principle do not allow the practice of interfaith marriage. Juridically and the rules also prohibit, based on Law No. 1 of 1974 concerning marriage with a set of implementation⁶. Adhering to the rules of the

¹ Danu Aris Setiyanto, "Larangan Perkawinan Beda Agama Dalam Kompilasi Hukum Islam Perspektif Hak Asasi Manusia," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 7, no. 1 (2017): 87-106.

² Fitrawati Fitrawati, "Diskursus Perkawinan Beda Agama Di Indonesia Dalam Tinjauan Universalisme Ham Dan Relativisme Budaya," *JURIS (Jurnal Ilmiah Syariah)* 20, no. 1 (2021): 131,

³ Fitrawati.

⁴ Zainal Arifin, "Perkawinan Beda Agama," *LENTERA* (2018): 143-58, <https://doi.org/10.46362/jrsc.v4i1.126>.

⁵ Sri Wahyuni, "Kontroversi Perkawinan Beda Agama di Indonesia," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 11, no. 02 (1 Desember 2018): 14-34, <https://doi.org/10.30631/alrisalah.v11i02.466>.

⁶ Nur Asiah, "Kajian Hukum Terhadap Perkawinan Beda Agama Menurut Undang-Undang Perkawinan Dan Hukum Islam," *Jurnal Hukum Samudra Keadilan* Vol. 10 No, no. Perkawinan Beda Agama (2015): 204-14.

Act that marriage is said to be valid if it is carried out according to their respective religions and beliefs⁷.

Based on data quoted from jpnn.com sourced from the Indonesian Conference on Religion and Peace (ICRP) that this interfaith marriage has been 1425 pairs from 2005 until now⁸. Of course, seeing the number of marriages is very ironic, because the rules related to marriage are clearly regulated in law. One of the cases of interfaith marriage that occurred was in Surabaya with case number 916/Pdt.P/2022/PN.Sby. The Surabaya District Court granted the application to obtain permission to marry and the marriage was recorded at the Surabaya City Population and Civil Registry Office. The marriage between Rizal Adikra (husband-to-be) who is a Muslim and Eka Debora Sidauruk (wife-to-be) who is a Christian.

For groups who want to oppose Article 2 paragraph (2) of Law N0. 1 Year 1974 has also conducted a *judicial review* to the Constitutional Court (MK) regarding the legality of performing interfaith marriages. The results of the decision explained that the Constitutional Court declared a complete rejection of all requests related to the judicial review of Article 2 paragraph (2)⁹. The reason the Constitutional Court rejected all requests for judicial review related to Article 2 paragraph (2) was that the Constitutional Court considered t h a t there was no legal reason to accept the request. The Constitutional Court itself considers that marriage cases must have religious, moral, security and public order values for many people. As for Article 2 paragraph (2) of Government Regulation No. 9 of 1975 that there is an authorized institution in registering marriages other than Muslims, namely the civil registry office institution. So that in its implementation this recording institution has the right to refuse if there is a request for the implementation of this marriage which is clearly prohibited by the State.

According to the Compilation of Islamic Law (KHI) in Article 40 letter c and Article 44 clearly states that the prohibition of marriage between Muslim men and non-Muslim women and Muslim women and non-Muslim men¹⁰. Based on Islamic law itself, both the classical scholars and the ulama There is nothing contemporary that allows marriage between different religions and beliefs. However, Muslim men are allowed to marry ahl al-book, whether they are Christians or Magi¹¹. Although a Muslim man has the opportunity to marry an *ahlul kitab*, the problem is that of course the ahlul kitab in the Prophet's time were different from the ahlul kitab that exist today. Ahlul kitab at the time of the prophet still worshiped God and recognized the prophets and apostles as messengers of Allah SWT, different at the time of the Apostle, at this time ahlul kitab even united God with prophets and apostles, even only recognizing prophets who came from their group¹².

⁷ W Laplata, "Pelaksanaan Perkawinan Beda Agama Dalam Perspektif Yuridis (Studi Kasus Di Pengadilan Negeri Surakarta)," *Jurnal Jurisprudence* 4, no. 2 (2014): 75-84.

⁸ Dean Pahrevi, "Sebegini Jumlah Pasangan Melakukan Pernikahan Beda Agama di Indonesia, Jangan Kaget ya," jpnn.com, 2022.

⁹ Danu Aris Setiyanto, "Jurnal-Kawin beda agama setelah putusan MK" 9, no. 1 (2016): 13-30.

¹⁰ Kementerian Agama, "Kompilasi Hukum Islam," Direktorat Kementerian Agama § (2001).

¹¹ Aulil Amri, "Perkawinan Beda Agama Menurut Hukum Positif Dan Hukum Islam," *Media Syari'ah* 22, no. 1 (2020): 48,

¹² Sirman Dahwal, *Hukum Perkawinan Beda Agama dalam Teori dan Prakteknya di Indonesia* (Bandung: Mandar Maju, 2016), 42

Coercion in the use of Article 16 of the Universal Declaration of Human Rights (UDHR) that marriage is not limited by race, color, sex, language, religion, politics or nationality, in order to live together and be recognized for the existence and validity of marriage cannot be a strong reason for legalizing the marriage. This reason is refuted by the existence of the 1945 Constitution in Article 28, especially in Article 28J paragraph (2) which provides answers to the limits of society in exercising human rights, these limits are regulated by legislation in order to maintain honor and freedom matters concerning others.

The status of interfaith marriages in Indonesia became unclear in practice after the Surabaya District Court Judge issued a decision giving legality to interfaith marriages with decision number 916/Pdt.P/2022/PN.Sby. This ambiguous verdict contradicts the written law that prohibits the practice of such marriages. Judges as law enforcers in providing legal certainty to the wider community should carry out the mandate of the rules prohibiting interfaith marriages.

Interfaith marriage is a topic that has been the subject of debate and research among academics. The following are the results of writings and thoughts conducted by academics related to *interfaith* marriage, such as; an article written by Zaidah Nur Rosidah, Lego Karjoko, Mohd Rizal Palil entitled *The Government's Role in Interfaith Marriage Rights Protection: A Case Study of Adjustment and Social Integration*, the findings show that there is still a lack of government role to protect marriage rights, especially in the Sambas area on the border of Indonesia and Malaysia¹³. Muhammad Fath Mashuri and Avin Fadilla Helmi entitled *Tongkonan Social Identity: Families Harmonization on Interfaith Marriage in Toraja*, the results of the study concluded that in maintaining the harmony and harmony of households of different religions by applying the Tongkonan Social Identity dual identity hierarchy, *tongkongan* as a solution vertically as an individual identity, religious identity is positioned horizontally¹⁴

Nur Asiah entitled *Legal Study of Interfaith Marriage According to the Marriage Law and Islamic Law*, the result of her research is that legally the legality of interfaith marriage is not recognized, because there is no legal umbrella that allows the practice of marriage¹⁵. Muhammad Syahrizal Razali Ibrahim entitled *Teungku Muhammad Hasbi Ash-Shiddieqy's Concept Of Marriage: A Maqasidi Approach To Polygamy And Interfaith Marriage Verses In Tafsir An-Nuur*, the results of the study explain that Hasbi Ash-Shiddieqy's view prohibits the practice of polygamy because the husband will find it difficult to apply justice, then prohibits Muslims from marrying non-Muslims, because clearly in the Qur'an and Hadith mention the

¹³ Zaidah Nur Rosidah; Lego Karjoko; Mohd Rizal Palil, "The Government's Role in Interfaith Marriage Rights Protection: A Case Study of Adjustment and Social Integration," *Journal of Human Rights, Culture and Legal System* 3, no. 2 (2 Juni 2023): 265–87, <https://doi.org/10.53955/jhcls.v3i2.105>.

¹⁴ Muhammad Fath Mashuri; Avin Fadilla Helmi, "Tongkonan Social Identity: Families Harmonization on Interfaith Marriage in Toraja," *ETNOSIA : Jurnal Etnografi Indonesia* 4, no. 2 (2019): 115, <https://doi.org/10.31947/etnosia.v4i2.6450>.

¹⁵ Asiah, "Kajian Hukum Terhadap Perkawinan Beda Agama Menurut Undang-Undang Perkawinan Dan Hukum Islam."

prohibition. However, marriage with women of *the book* is allowed¹⁶. Recep Çiğdem (2015) entitled *Interfaith Marriage In Comparative Perspective*, the results present an understanding of interfaith marriage in a complex and broad manner from the perspective of Islamic law¹⁷. Danu Aris Setiyanto (2016) entitled *Interfaith Marriage After the Decision of the Constitutional Court Number 68 / PUU-XII / 2014 in the Perspective of Human Rights*, he describes that the Constitutional Court as a place to submit *judicial reviews* of all laws has rejected all material trials related to interfaith marriage, because it is considered unreasonable according to the law and marriage in Indonesia is based on religion¹⁸.

Sarifudin (2019) in his article titled *Kawin Beda Agama in the Study of Islamic Law and Legislation in Indonesia*, the findings show that there is no firm legal certainty on the prohibition of interfaith marriage even in the context of Islamic law or legislation¹⁹. Muhammad Roni and Muhammad Nasir's article (2022) entitled *Reinterpretation of the Verse of Interfaith Marriage*, in this article explains that there is a verse of the Qur'an about the prohibition of marrying non-Muslims, although there is an opportunity to marry *ahlul kitab*, but the group of *ahlul kitab* women is very difficult to find today, so it cannot be an excuse for marriage legalize the marriage²⁰. Meliyani Sidiqah (2023) entitled *Legal Vacuum In Interfaith Marriage Rules In Indonesia*, she revealed that Indonesian people still perform interfaith marriages from year to year, this is inseparable from the legal vacuum governing these marriages, until now there has been no legal certainty from the act of marriage performed with religious differences²¹. Muhammad Ihsan Firdaus (2023) entitled *The Legalization Of Interfaith Marriage In Indonesia (Between Universalism And Cultural Relativism)*, the result of this discussion is that there are no rules that explicitly explain the permissibility or prohibition of interfaith marriages, although the 1974 Marriage Law Article 2 paragraph (1) can be used, even if it is allowed and the state takes part in providing the validity of this marriage, then a special marriage book should be made by the couple²².

¹⁶ Muhammad Syahrial Razali Ibrahim, "Teungku Muhammad Hasbi Ash-Shiddieqy's Concept Of Marriage: A Maqasidi Approach to Polygamy and Interfaith Marriage Verses in Tafsir An-Nuur," *MIQOT: Jurnal Ilmu-ilmu Keislaman* 47, no. 1 (29 Juni 2023), <https://doi.org/10.30821/miqot.v47i1.1078>.

¹⁷ Recep Çiğdem, "Interfaith marriage in comparative perspective," *Acta Orientalia Academiae Scientiarum Hungaricae* 68, no. 1 (Maret 2015): 59–86, <https://doi.org/10.1556/AOrient.68.2015.1.4>.

¹⁸ Setiyanto, "Larangan Perkawinan Beda Agama Dalam Kompilasi Hukum Islam Perspektif Hak Asasi Manusia."

¹⁹ Sarifudin, "Kawin Beda Agama dalam Kajian Hukum Islam dan Peraturan Perundang-Undangan di Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 4, no. 2 (30 November 2019): 213, <https://doi.org/10.29240/jhi.v4i2.787>.

²⁰ Muhammad Roni; Muhammad Nasir, "Reinterpretasi Ayat Pernikahan Beda Agama," *Al-Qadha: Jurnal Hukum Islam dan Perundang-Undangan* 9, no. 2 (29 Desember 2022): 426–36, <https://doi.org/10.32505/qadha.v9i2.4636>.

²¹ Meliyani Sidiqah, "LEGAL VACUUM IN INTERFAITH MARRIAGE RULES IN INDONESIA," *IBLAM LAW REVIEW* 3, no. 1 (30 Januari 2023): 99–110, <https://doi.org/10.52249/ilr.v3i1.119>.

²² Muhammad Ihsan Firdaus, "The Legalization of Interfaith Marriage in Indonesia (Between Universalism and Cultural Relativism)," *The Easta Journal Law and Human Rights* 1, no. 02 (28 Februari 2023): 64–72, <https://doi.org/10.58812/eslhr.v1i02.52>.

Here are some other studies that have similarities related to the theme of discussion; First: The concept of interfaith marriage: Khairul Hamim (2019)²³; Asy'ari dan Triansyah Fisa (2022)²⁴; Ayse Elmali Karakaya (2022)²⁵. Second: Analysis of the Decision: M.Ya'kub Aiyub Kadir dan Fachrian Rizki (2023)²⁶; Moh. Yusuf Bachtiar, Hanif Nur Widhiyanti dan Herman Suryokumoro (2022)²⁷; Peni Rinda Listiyawati, Indah Setyowati dan Latifah Hanim (2020)²⁸; Diana Farid, Muhammad Husni Abdullah Pakarti, Hendriana Hendriana, Iffah Fathiah (2022)²⁹. Third: Overview sociology of interfaith marriage: Betty Mauli Rosa Bustam, Rika Astari dan Zulkairi Sofyan (2023)³⁰; Khairul Hamim, Muhammad Iskandar, Muhammad Azizurrohman (2022)³¹; Danu Aris Setiyanto(2022)³². Fourth: Legal status: Prahasti Suyaman dan Temmy Fitriah Alfiany (2022)³³; Bayu Dwi Widdy Jatmiko, Nur Putri Hidayah dan Samira Echaib (2022)³⁴, Ayi Zaenal Mutaqin, Badaruzzaman M. Yunus dan Bambang

²³ Khairul Hamim, "Marriage In Different Religions: Between Text And Context," *Al-IHKAM: Jurnal Hukum Keluarga Jurusan Ahwal al-Syakhshiyah Fakultas Syariah IAIN Mataram* 11, no. 1 (17 Juni 2019): 23-39, <https://doi.org/10.20414/alihkam.v11i1.2114>.

²⁴ Asy'ari; Triansyah Fisa, "Interfaith Marriage in Perspectives of Classical and Modern Scholars," *Al-Manahij: Jurnal Kajian Hukum Islam* 16 (25 November 2022): 287-300, <https://doi.org/10.24090/mnh.v16i2.6772>.

²⁵ Ayse Elmali Karakaya, "Interfaith Marriage in Islam: Classical Islamic Resources and Contemporary Debates on Muslim Women's Interfaith Marriages," *Religions* 13, no. 8 (10 Agustus 2022): 726, <https://doi.org/10.3390/rel13080726>.

²⁶ M. Yakub Aiyub Kadir; Fachrian Rizki, "Interfaith Marriage in Indonesia: a Critique of Court Verdicts," *Yuridika* 38, no. 1 (2023): 171-90, <https://doi.org/10.20473/ydk.v38i1.38099>.

²⁷ Moh. Yusuf Bachtiyar; Hanif Nur Widhiyanti; Herman Suryokumoro, "Judge's Decision On Legalization And/Or Licensing Of Interfaith Marriages," *International Journal of Innovative Technologies in Social Science*, no. 4(36) (9 Desember 2022), https://doi.org/10.31435/rsglobal_ijitss/30122022/7889.

²⁸ Peni Rinda Listiyawati; Indah Setyowati; Latifah Hanim, "Legal Analysis Of The Rejection Registration Interfaith Marriages," *International Journal of Law Reconstruction* 4, no. 2 (11 September 2020): 110, <https://doi.org/10.26532/ijlr.v4i2.11265>.

²⁹ Diana Farid; Muhammad Husni Abdullah Pakarti; Hendriana Hendriana; Iffah Fathiah, "Interfaith Marriage: Subjectivity of the Judge in Determination of No. 454/pdt.p/2018 Surakarta District Court," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 (1 Desember 2022): 355, <https://doi.org/10.29240/jhi.v7i2.4574>.

³⁰ Betty Mauli Rosa Bustam; Rika Astari; Zulkairi Sofyan, "The Meaning of Film with the Theme of Interfaith Marriage in Multicultural and Multi-Religious Indonesian Students," *European Journal of Language and Culture Studies* 2, no. 1 (5 Februari 2023): 46-52, <https://doi.org/10.24018/ejlang.2023.2.1.63>.

³¹ Khairul Hamim; Muhammad Iskandar; Muhammad Azizurrohman, "Interfaith Marriage in North Lombok: Sociological Perspective of Islamic Law," *Khazanah Hukum* 4, no. 2 (2022): 129-38, <https://doi.org/10.15575/kh.v4i2.19657>.

³² Danu Aris Setiyanto, "Resilience of Families of Different Religions in Indonesia between Social and Religious Problems," *AL-HUKAMA'* 12, no. 2 (18 Desember 2022): 47-73, <https://doi.org/10.15642/alhukama.2022.12.2.47-73>.

³³ Prahasti Suyaman; Temmy Fitriah Alfiany, "Polemics of Interfaith Marriage Reviewed from the Perspectives of Marriage Law and the Compilations of Islamic Law," *KnE Social Sciences*, 4 Oktober 2022, <https://doi.org/10.18502/kss.v7i15.12129>.

³⁴ Bayu Dwi Widdy Jatmiko; Nur Putri Hidayah; Samira Echaib, "Legal Status of Interfaith Marriage in Indonesia and Its Implications for Registration," *Journal of Human Rights, Culture and Legal System* 2, no. 3 (2022): 167-77, <https://doi.org/10.53955/jhcls.v2i3.43>.

Qomaruzzaman (2022)³⁵; Arianty Anggraeny Mangarengi dan Yuli Adha Hanza (2021)³⁶; Fathol Hedi, Abdul Ghofur dan Harun (2017)³⁷; Fifth: Case review: Putu Ayu Diah, Laksmi Dewi, I Nyoma Sujana dan Putu Ayu Sriasih³⁸; Dian Ramadhan dan Imam Qolyubi (2021)³⁹, Rosdalina, Edi Gunawan, Djamila Usup, dan Hayat (2021)⁴⁰. Although it has a similar theme about interfaith marriage with various objects of study, this research focuses more on critically analyzing the construction of the results of the judge's decision in the Surabaya District Court with decision number 916/Pdt.P/2022/PN.Sby which allows interfaith marriages to occur and the marriage is recorded.

The method in this research uses a type of quantitative research with *library research*, the approach in this research is normative juridical because this research is a study of judges' decisions. The data sources used are secondary data, namely the decision of the Surabaya District Court No. 916/Pdt.P/2022/PN.Sby as well as Law No. 1 of 1974, Law No. 39 of 1999 on Human Rights, Law No. 23 of 2006 on Population Administration. Other secondary sources include books and articles based on OJS (*Open Journal System*). Techniques in analyzing the data obtained using the techniques of reduction, display, verification, and conclusion.

Many academics have studied interfaith marriages, but only to the extent of examining the theory, and describing the judge's decision. This article aims to be an explorative form of the judge's decision in Surabaya District Court as well as constructive criticism as a consideration for every judge who handles cases of applications in legalizing interfaith marriages. The case in the decision of the judge at the Surabaya District Court who granted the application for interfaith marriage should be reconsidered and even rejected firmly, because the rules clearly prohibit it. This discussion is important to be discussed again in depth that the discussion of interfaith marriage is not only limited to studying concepts, but there is a critical analysis of the implementation of the mandate in the 1945 Constitution and other laws and regulations.

³⁵ Ayi Zaenal Mutaqin; Badruzzaman M. Yunus; Bambang Qomaruzzaman, "Interfaith Marriage in the Perspectives of Indonesian Tafsir Ulama: Reviewing the Tafsir of Hamka, Quraish Shihab, and Musdah Mulia," *Hanafiya: Jurnal Studi Agama-Agama* 5 (2022).

³⁶ Arianty Anggraeny Mangarengi; Yuli Adha Hanza, "The Position of the Marriage Law on Interfaith Marriages Abroad," *SIGn Jurnal Hukum* 3, no. 1 (18 September 2021): 65-83, <https://doi.org/10.37276/sjh.v3i1.127>.

³⁷ Fathol Hedi; Abdul Ghofur Anshori; Harun Harun, "Legal Policy of Interfaith Marriage in Indonesia," *Hasanuddin Law Review* 3, no. 3 (26 Desember 2017): 263, <https://doi.org/10.20956/halrev.v3i3.1297>.

³⁸ Putu Ayu Diah; Laksmi Dewi; I Nyoma Sujana; Putu Ayu Sriasih, "Implications Of Interfaith Marriage Divorce On Children's Care Rights In Indonesia," *Journal of Public Administration, Finance & Law* 15, no. 23 (2022): 257-61.

³⁹ Dian Ramadhan; Imam Qolyubi, "Religious Moderation as A Solution of Interfaith Marriages in Multicultural Society," *JASSP* 1, no. 2 (29 Oktober 2021): 127-35, <https://doi.org/10.23960/jassp.v1i2.31>.

⁴⁰ Rosdalina; Edi Gunawan; Djamila; Usup; Hayat, "Negotiating Love and Faith: Interfaith Marriage in Manado, Indonesia," *Wawasan: Jurnal Ilmiah Agama dan Sosial Budaya* 6, no. 1 (20 Agustus 2021): 67-76, <https://doi.org/10.15575/jw.v6i1.11299>.

Islamic Law View of Interfaith Marriage

Basically, every religion that exists in the world, both heavenly and ardi religions, no one wants interfaith marriage, because it will violate the prevailing religious values and norms⁴¹. When viewed from Islamic Law, this marriage also contains elements of *mafsadat*, because there is a possibility for the practice of playing with religion, such as before the contract he changed his religion and after the contract returned to the religion he adhered to, and did not rule out the possibility of "cohabitation"⁴². In terms of *mashlahah*, it is felt that it does not bring goodness between them, because they already have differences in beliefs, so that it is not *mashlahah* or goodness that will be obtained by married couples of different religions, playing will bring *mafsadat* or damage in the future⁴³

The analysis of marriage between a Muslim man and an *ahlul kitab* woman basically starts from the understanding given by the scholars on the concept of *ahlul kitab*⁴⁴. During the time of the Prophet SAW and Companions, the scope of the definition of *ahlul kitab* always leads to women from Jews and Christians who believe in Allah and obey his teachings, then at the time of *tabi'in* experienced a change, namely the *Shabi'in* group of women to iahlul kitab because there are still women in the group who obey the teachings of Zabur brought by Prophet Daud AS⁴⁵. The opinion of the Hanafi and some Hanbali schools of thought is that any woman who believes in one of the Prophets or one of the books that Allah SWT has revealed and she believes and obeys Him, then she is included in the people of *the book*, so there is no distinction between Jews and Christians alone⁴⁶. Imam al-Shafi'i argues that what is meant by the people of *the book* is from the Jews and Christians only (obeying their teachings), apart from these two groups cannot be grouped into the people of *the book*. However, the followers of Imam al-Sayfi'i and some followers of Imam Hanbali made it clear from their opinion that there are three groups of Jews and Christians themselves; *first*, the group that entered and obeyed the teachings of these two religions before the religion underwent deviant changes; *second*, the group that entered this religion after its teachings changed based on the interests of the group and the state; *third*, the group that is not known even included in the group living today after their teachings have changed and especially associating partners with Allah SWT. So according to them, those who are included in the *ahlul kitab* are women who lived when they lived before the teachings of Jews

⁴¹ Mardalena Hanifa, "Perkawinan Beda Agama Ditinjau Dari UU No.1 Tahun 1974 Tentang Perkawinan," *Soumatra Law Review* 2, no. 2 (2019).

⁴² Gustini Listiani Sari, "Studi Kasus Perkawinan Beda Agama Perspektif Saddu Al- Dzari ' ah" 4, no. 3 (2020): 35-42.

⁴³ Ramlan Karim dan Nova Efenty Muhammad, "Penetapan Hukum Nurcholish Majid dan Mustofa Ali Yaqub Tentang Pernikahan Beda Agama," *As-Syams* 1, no. 1 (2020): 127-44, <https://www.e-journal.iaingorontalo.ac.id/index.php/assyams/article/view/58>.

⁴⁴ Muhammad Roni dan Muhammad Nasir, "Reinterpretasi Ayat Pernikahan Beda Agama" 9, no. 2 (2022): 426-36, <https://doi.org/10.32505/qadha.v9i2.4636>.

⁴⁵ Ibn Jarir Al-Thabari, *Tafsir al-Thabari* (Kairo: Musthafa al-Babi al-Halabi, 1954), 391

⁴⁶ M. Quraish Shihab, *Tafsir Mawdhu'i atas Berbagai Persoalan Umat* (Bandung: Mizan, 2015), 198

and Christians were changed by people who were concerned with worldly interests and were still pure from what was taught from the beginning⁴⁷.

Discussions related to marriages between different religions have been regulated in Islam. This explanation has been clearly regulated in the *nash*. So that it can be grouped into 3 forms of religious marriage in Islam, namely *az-Zawaj bi al-kitabiyyat* (marriage with *ahlul kitab*), *azzawaj bi al-musyrikat* (marriage with polytheist women) and *azzawaj bi ghair al-muslimah* (marriage with non-Muslim women). Scholars are more inclined to argue that marriage between Muslim men and women who come from *ahlul kitab* is permissible, this is based on the word of Allah SWT surat al-Maidah (5): 5: *On this day it is lawful for you to eat the food of the People of the Book, and your food is lawful for them. And (it is permissible for you to marry) women who keep honor among the believing women and women who keep honor among those who were given the book before you, if you pay their dowry to marry them, not to commit adultery and not to make women pets*

According to the Hanafi Mazhab that marrying a woman of *ahlul kitab* who contrasts fighting Muslims (*harbiyah*) then this scholar punishes up to *makruh tahrim* for men who marry her, which is *makruh* that is close to *haram*, because it will lead to *mafsadat* and cause various *fitnah* rather than subverting *maslahat*⁴⁸. The Malikis have two opinions regarding marrying a woman from the People of the Book: The first is that it is *absolutely makrooh* if the woman is from the People of the Book, whether she is *dhimmiyah* or *harbiyah*. The second is that it is permissible, because of the verse that allows it⁴⁹. Similar to the previous opinion, Imam al-Shafi'i makes it *makrooh* to marry a woman of the Book who is *dzimmiyah*, while with a woman of the Book who is *harbiyyah*, the degree of *makrooh* is greater⁵⁰. Based on the *qaul mu'tamad* in the madhhab of al-Shafi'i that the women of the *ahlul kitab* to be married must come from the Christian and Jewish religions as the religion of the descendants of the ancestors who adhered to these religions before the Prophet Muhammad was sent as a Messenger, especially before the Qur'an was revealed, so this opinion concludes that the *ahlul kitab* who lived after the Qur'an was revealed are not called *ahlul kitab*.⁵¹

Some of the opinions of scholars who allow *interfaith* marriages such as Imam Qurthubi's opinion that it is permissible to marry women of the *book* who are Jews or Christians and they live in Muslim areas⁵². Imam al-Maraghi also argues that *al-muhshanat* in this verse is free women. So that the permissibility of marrying women who are free and come from *ahlul kitab* is the same as the permissibility to marry believing women as usual⁵³.

⁴⁷ Badran Abu al-Aynayn Badran, *Al-Alāqāh al-Ijtima'iyah bayna al-Muslimīn wa ghair al-Muslimīn fi al-Sharī'ah al-Islāmiyyah wa al-Yahūdiyyah wa al-Nashraniyyah wa al-Qānūn* (Beirut: Dār al-Nahdah, 1984), 491.

⁴⁸ Abs Abdurrahman Al-Jaziri, *Kitab al-Fiqih 'Ala al-Mazahib al-Arba'ah* (Kairo: Maktabah Tijariyah Kubro, 1996), 297

⁴⁹ Al-Jaziri.

⁵⁰ Al-Jaziri.

⁵¹ Bambang Hermawan, "Tinjauan Atas Pemikiran Muhammad Quraish Shihab Tentang Konsep Ahli Kitab Dalam Perkawinan Beda Agama Di Indonesia," *Isti'dal : Jurnal Studi Hukum Islam* 5, no. 1 (2018): 20-34.

⁵² Abu Abdullah Muhammad al-Anshari Al-Qurthubi, *al-Jami' li Ahkam al-Qur'an* (Beirut: Dar al-Fikr, 1991), 476

⁵³ Ahmad Musthafa Al-Maraghi, *Tafsir al-maraghi* (Beirut: Dar al- Fikr, 1974), 326

The definition of *ahlul kitab* is universal and not bound by time and era, so there is no difference between *ahlul kitab* in the era of the Prophet Muhammad SAW and today⁵⁴. Women who come from *ahlul kitab* forbid the act of betrayal, oblige to do trust, believe in the existence of Allah SWT, Prophet, Messenger and the day of retribution. Furthermore, ath-Thabari tries to summarize the meaning of the word *al-Muhshanat*. He argues that the meaning is not women who always keep their chastity, but women who are free and learn and study practicing all the teachings of the ahl al-book. The reason for this interpretation is that if the women in question are women who maintain their honor, then non-Muslim slaves can certainly be part of the women who maintain their honor. He also stipulates that marrying a free woman of the People of the Book is absolutely permissible as marrying a believing woman⁵⁵. The requirement that must be present in every woman who wants to marry must be *muhshanat*, namely a woman who maintains her honor, both Muslim women and *ahlul kitab*⁵⁶. However, Islam still prioritizes women who are *believers* because after all, similarities in religion and outlook on life will have a great opportunity to realize peace and happiness in the household.

The majority of scholars are of the opinion that the prohibition to marry a polytheist woman until she believes in Allah SWT and the Messenger Muhammad SAW does not include the prohibition to marry a woman from the group of *ahlul kitab*. This has been practiced by the Prophet SAW and some of his companions. Rasulullah SAW once married a woman of *ahlul kitab* named Maria al-Qibthiyah, then his companions Usman bin Affan once married a woman of *ahlul kitab* named Nailah bint al-Qarafisah al- Kalabiyah. Then Huzaifah bin al-Yaman once married a woman of the book from the Jewish group, and the other companions did not oppose or prohibit it⁵⁷. Various Islamic Law literature does a lot of disfavor even to makruh tahrim in the practice of interfaith marriage, because it will certainly open up opportunities for elements of mischief that will occur, so based on the *sadd al-zari'ah* method tries to close the opportunity by thinking about the impact that will occur in the future⁵⁸.

Based on KHI, there is no explanation of the legal position of marriage with different religions, but Article 40 point c states that a man is prohibited from marrying a woman who is not Muslim. Even if there is an opportunity to conduct an interfaith marriage that is held abroad, then when he returns to Indonesia, he will not get recognition from religion or the state, until he takes care of registering his marriage in accordance with the rules⁵⁹. All scholars agree that it is prohibited to marry a Muslim man and a polytheist woman (*azzawaj*

⁵⁴ Hermawan, "Tinjauan Atas Pemikiran Muhammad Quraish Shihab Tentang Konsep Ahli Kitab Dalam Perkawinan Beda Agama Di Indonesia."

⁵⁵ Ramlan Karim dan Nova Efenty Muhammad, "Penetapan Hukum Nurcholish Majid Dan Mustofa Ali Yaqub Tentang Pernikahan Beda Agama," *As-Syams* 1, no. 1 (2020): 127-44,

⁵⁶ M. Quraish Shihab, *Tafsir al-Misbah* (Jakarta: Lentera Hati, 2002), 276

⁵⁷ Rashid Ridha, *Tafsir al-Mannar* (Kairo: Dar-al-Mannar, 1992), 409

⁵⁸ Muhammad Zainuddin Sunarto, "Larangan Pernikahan Beda Agama Dalam Perspektif Syad Zari' Ah Imam Al-Syatibi," *Jurnal Islam Nusantara* 2, no. 2 (2018): 174.

⁵⁹ Sri Hariati Fatahullah, Israfil, "Problematisasi Keabsahan Perkawinan Beda Agama Yang Dilakukan Di Luar Wilayah Hukum Indonesia," *Jurnal Kompilasi Hukum* 5, no. 1 (2020): 41-55.

bi al-musyrikat). This opinion is based on the words of Allah SWT *qur'an* letter al-Baqarah (2) : 221: *And do not marry polytheist women before they believe. Indeed The slave of a believing woman is better than a polytheist woman even if she appeals to your heart....*

There are several narrations that tell us about the *asbab an-nuzul* (cause of the revelation) of the above verse. Ibn Munazir and Wahidi state that this verse was revealed because someone asked the Prophet Muhammad for permission to marry a rich and beautiful polytheist woman. That is the reason for the revelation of the verse. Tafsir al-Manar explains that the above verse states that the polytheist women that Muslim men are not allowed to marry are Arab women who have no faith or holy book as a guide to life. All opinions tend towards this understanding. However, any woman who has a holy book does not fall under the category of polytheists⁶⁰. The marriage of a Muslim woman to a non-Muslim man is prohibited, and all fuqaha scholars agree on this. The basis for this is the words of Allah SWT in Surah al-Baqarah (2) verse 221:.. *And do not marry men who are not Muslims A polytheist man (with a believing woman) until they believe. Indeed, the slave of a believing man is better than a polytheist man, even if he appeals to your heart....*

In line with the previous opinion, KHI as one of the sources for considering Islamic law also states in Article 44 that women who are Muslims are prohibited from marrying a man who is not Muslim. All religions that are not from Islam are prohibited from marrying a man or woman (not from *ahlul kitab*) are prohibited from being married, including those who are *watsani* (idolaters), majusi, yahudi, nasrani and religions that associate Allah SWT. The majority of classical and contemporary scholars prohibit this marriage practice, because it will cause more harm than good⁶¹. This is in accordance with the fiqh rule "*eliminating the harm takes precedence over taking a benefit*". The permissibility of marrying a woman of the book also has a negative impact on children, both psychologically and juridically⁶².

Psychologically, there will be disharmony when having offspring, of course inevitably the child will eventually have to choose which belief to choose as a way of life, it could even be that the child does not choose between the two and chooses not to be bound by any religion. Initially it could be that before marriage all problems related to differences can be overcome with love, but this can fade and can become a time bomb to face major problems in the household and the child will be the victim of these problems. Juridically, of course, there will also be problems that in marriage, marriage registration must be carried out, regardless of religion. However, if the marriage is of a different religion, of course the recording party will reject it because it is not in accordance with existing regulations. Although there is an opportunity to carry out this practice, of course, it will undergo a long process by obtaining a permit application from the District Court, even if permission is granted, it will have an adverse impact on the administration of population for children in the future.

⁶⁰ Rasyid Ridha, *Tafsir al-Mannar* (Kairo: Dar-al-Mannar, 1992), 410

⁶¹ Ali Sahban Nasution, "Analisis Yurisprudensi Mahkamah Agung No.46/Pdt.P/2016/Pn.Skt. Tentang Pengabulan Permohonan Nikah Beda Agama Di Tinjau Dari Pendapat Fuqaha Klasik Dan kontemporer," *Angewandte Chemie International Edition*, 6(11), 951-952., no. 46 (2021): 2013-15.

⁶² Jane Malen Makalew, "Akibat Hukum Dari Perkawinan Beda Agama Di Indonesia," *Lex Privatum* 1, no. 2 (2013): 131-44.

All religions in Indonesia, including Islam, Christianity, Protestantism, Hinduism, Buddhism, Confucianism, prohibit the practice of interfaith marriage, because it will cause conflict from each religion of the couple, because religion alone prohibits it, so juridically the marriage will not be valid if each religion rejects it⁶³. Based on the rules that have been agreed upon in the Complete Workers Assembly of the Association of Churches in Indonesia (MPL PGI) that marriage has the aim of uniting two hearts into one, and binding into one belief in order to increase priests to the Lord Jesus⁶⁴. Usually, for Christians who marry someone from another religion, they will be expelled from their group, because they have violated the rules of God⁶⁵.

Analysis of Surabaya District Court Decision No. 916/Pdt.P/2022/PN.Sby

The verdict in granting the application granted permission for a couple of different religions to enter into marriage. The existence of their marriage was further legally recognized when this decision became an order for the Population and Civil Registry Office of Surabaya Municipality to register their marriage and issue a marriage certificate. Clearly, this decision contains four decision points, namely⁶⁶:

- First: Grant the Petition of the petitioners;
- Second: To grant permission to the applicants to enter into a marriage of different religions before an official of the Surabaya Municipality Civil Registration Office;
- Third: Order the Officials of the Surabaya Municipality Office of Civil Registry to record the marriage of the applicants into the Marriage Registration Register used for that purpose and immediately issue a marriage certificate;
- Fourth: Charge the applicants with the costs of the application in the amount of Rp.120,000.00 (one hundred and twenty thousand rupiah).

Based on the results of the decision, the judge relied on Article 21 paragraph (3) of Law No. 1 of 1974 Concerning Marriage that if the marriage is rejected by the Civil Registration Office, an application can be submitted to the court in the applicant's area by submitting a certificate and the reason for the refusal⁶⁷. So that the crucial role is actually in the hands of the Judge of Surabaya District Court itself, considering that the Officials of the Office of Civil Registration and Records have refused to register interfaith marriages based

⁶³ Candra Refan Daus dan Ismail Marzuki, "Al- ' A dalah: Jurnal Syariah dan Hukum Islam Perkawinan Beda Agama di Indonesia ; Perspektif Yuridis , Agama-agama dan Hak Asasi Manusia Interfaith Marriage in Indonesia ; Juridical Perspective , Religions and Human Rights Candra Refan Daus Universitas" 8, no. 1 (2023): 40-64.

⁶⁴ Gisella Gultom, "Hukum Nikah Beda Agama Menurut Kristen," BersamaKristus, 2022.

⁶⁵ Exson Eduaman Pane Dolok Bend Franki Pane, Stimson Hutagalung, "Pentingnya Konseling Pastoral Terhadap Pernikahan Beda Agama di Gereja Masehi Advent Hari Ketujuh," *Jurnal Ilmiah Pendidikan, Wahana* 9, no. 3 (2023): 598-607.

⁶⁶ Pengadilan Negeri Surabaya, "Putusan Pengadilan Negeri Surabaya Nomor 916/Pdt.P/2022/PN.Sby.," Pub. L. No. 916/Pdt.P/2022/PN.Sby (2022).

⁶⁷ Republik Indonesia, "Undang-Undang Republik Indonesia Nomor: 1 Tahun 1974 Tentang Perkawinan," Pub. L. No. Nomor: 1 Tahun 1974 (1974), <https://peraturan.bpk.go.id/Details/47406/uu-no-1-tahun-1974>.

on the above case. Although it has been rejected, with the existence of Law No. 23 Year 2006 Article 35 that interfaith marriages that have been refused to be recorded can apply to the District Court to obtain a marriage verdict application and recognize its validity so as to obtain legal legality such as the recording of interfaith marriages⁶⁸.

Some of the juridical foundations used by the Judge are seen from the verdict letter, such as Jurisprudence No. 421/Pdt.P/2013/PN.Ska dated August 21, 2013 and No.3/Pdt.P/2015/PN Llg dated February 27, 2015 explaining in the 1945 Constitution (UUD) Article 27 that every citizen has the same legal position, this problem includes the equal rights to marry fellow Indonesian citizens despite differences in religious beliefs. Article 29 of the 1945 Constitution only explains that the state provides flexibility for its people to embrace the religion they believe in without any enforcement. The judge also used Article 28 B paragraph (1) of the Constitution in line with Law No. 39 of 1999 concerning Human Rights Article 10 paragraph (1) that every Indonesian citizen has the right to build a family in accordance with the rules of law and continue offspring through marriage⁶⁹.

Initially, the application made by the two couples of different religions was rejected by the Surabaya Disdukcapil because the marriage was contrary to Law No. 1 of 1974 concerning Marriage, especially in article 2 paragraph (2) that the validity of marriage is performed in accordance with each religion. After the Disdukcapil refused to register their marriage, they applied to the District Court to obtain permission to marry and as proof that their marriage was valid so the Disdukcapil had to register their marriage. Based on an excerpt from *Tribunjatim.com*⁷⁰, the head of the Disdukcapil Agus Imam Sonhaji said that the issuance of marriage certificates of different religions was based on the Minister of Home Affairs Regulation No. 108 of 2019. Furthermore, this opportunity is getting wider when there is Article 35 letter a of Law No. 32 of 2006 concerning Population Administration and its explanation that the meaning of marriage stipulated by the court is a marriage of different religions, so that the regulation requires the Disdukcapil to record marriages performed by Indonesians, including recording marriages of different religions if there is a determination from the District Court.

The use of the explanation of Article 35 letter a of the Population Administration Law to be used as a basis is considered materially flawed, because Article 35 letter a and its explanation violate the provisions in the Appendix to Law No.12 of 2011 concerning the Formation of Legislation at Explanation points 176, 177, and 178 ⁷¹. At explanation point 176 that the explanation in the law functions as an official government interpretation tool to explain words, phrases, sentences or equivalent words / terms while in Article 35 letter a and the explanation of the article there is no mention of the problem of different religions. Continued at no. 177 that the explanation cannot be used as a legal basis for making further

⁶⁸ Republik Indonesia, "Undang-Undang Republik Indonesia No: 23 Tahun 2006 Tentang Administrasi Kependudukan," Pub. L. No. 23 (2006), <https://peraturan.bpk.go.id/Details/40202>.

⁶⁹ Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia," Pub. L. No. 39, 43 (1999).

⁷⁰ Firman Rachmanudin, "Ditolak Disdukcapil, Permohonan Pasangan Nikah Beda Agama di Surabaya Dikabulkan Pengadilan," *Tribun Jatim.com*, 2022.

⁷¹ Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan," Pub. L. No. 12, 9 1 (2011).

regulations nor can an explanation have norms, but Article 35 letter of the Population Administration Law is used as a legal basis in the Regulation of the Minister of Home Affairs (Permendagri) No. 108 of 2019 concerning Regulations on the Implementation of Presidential Regulation No. 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration that in Article 50 paragraph (3) explains in detail the requirements for recording marriages of different religions. Then in the Explanation section no.178, the explanation of a statutory regulation cannot contain a disguised formulation of statutory provisions, so it is clear that the explanation of Article 35 letter a of the Population Administration Law adds new norms and formulations in disguise.

Using the human rights approach in enforcing the permissibility of marriage with different religions is quite difficult, despite the existence of UDHR Article 16 paragraph 3 that an adult man or woman has the right to enter into marriage without being limited by nationality, citizenship or religion. So that all have the right to be free to marry who, where, and what country⁷². However, the Law on Population Administration becomes the benchmark in recording marriages that are valid based on the state and recognized as a married couple, this is contrary to what has been stipulated in the Marriage Law that the validity of marriage depends on the laws of each religion⁷³.

Reflecting on the rules of the UDHR, it does allow interfaith marriages, but what must be understood is that the UDHR itself is based on the principles of rationalism and liberalism so as to produce an understanding that is free without rules (*freedom*) and secularism. Although there are no specific rules related to the prohibition or permissibility of practicing interfaith marriage, it is clear in Article 2 paragraph (2) that a valid marriage is in accordance with the rules of each religion, then in terms of human rights, in Article 50 of Law No.39 of 1999 concerning Human Rights, that women who are adults or married have the right to carry out their own legal actions, unless it has been determined by their religious law. Here it is clearly understood that a woman, even though she is an adult and free to carry out legal acts, but as long as there is a special law related to an act, of course she must submit to these special rules, and be ready to accept the risk of consequences for violations committed. Based on the principles of rules in the hierarchy of laws and regulations that the principle of "*lex specialis derogat legi generali*" means that regulations that regulate specifically take precedence and emphasizes regulations that are general in nature. Then the *lex posteriori* principle means that the newly enacted regulations can override the old rules⁷⁴.

In general, the UDHR rules themselves have a *universal* nature, so that they can be a reference in upholding human rights throughout the world, but Indonesia itself has human rights rules that have been passed in 1999 which clearly regulate human rights cases and problems in Indonesia, so that the general UDHR rules can be broken with human rights rules that are specific to Indonesian society in particular. The UDHR itself was ratified in

⁷² Ahmadi Hasanuddin Dardiri, Marzha Tweedo, and Muhammad Irham Roihan, "Pernikahan Beda Agama Ditinjau Dari Perspektif Islam Dan Ham," *Khazanah* 6, no. 1 (2013): 99-117.

⁷³ Ayub Mursalin, "Legalitas Perkawinan Beda Agama : Mengungkap Disparitas Putusan Pengadilan di Indonesia" 6, no. 1 (2023): 113-50, <https://doi.org/10.22437/ujh.6.1.113-150>.

⁷⁴ Tri Jata Ayu Pramesti, "Hierarki Peraturan Perundang-undangan di Indonesia," *Hukum Online.com*, 2022.

1948, of course the distance when the Human Rights Law No.39 of 1999 was inaugurated, so that the rules related to human rights in the UDHR will be set aside and the 1999 Human Rights Law will be used.

Seeing the reasoning of Judge Imam Supriyadi and Deputy Head of Public Relations of the Surabaya District Court Gede Agung in this case is a bit ironic, namely in the Marriage Law there is no mention of prohibiting marriages between religions, then another reason is the permission of each of their religious leaders for the marriage, and revealed that they only allowed the marriage to be registered legally with the Surabaya Dispendukcapil⁷⁵. Although serving as a judge in the District Court that uses a legal basis based on positive law, it should also consider Islamic law as well, considering that one of the couples is Muslim. The judge who decides the case is a single judge, who can use his or her small heart to provide input. With the decision to grant permission, there are certainly consequences that must be faced by the married couple in the long term. It is clear that Islamic law prohibits *i n t e r f a i t h* marriages, although there is still an opportunity to be able to marry women whose records come from *ahlul kitab*, even contemporary scholars continue to narrow the opportunities for this permissibility at this time because of the negative impacts that will be caused after interfaith marriages. Not only that, Article 2 paragraph (1) and Article 8 letter f of the Marriage Law itself actually provide signs that marriage is valid if it is carried out according to the laws of each religion. So it is clear that there is no term for judges to give permission for interfaith marriages.

The assessment of the judge's decision is not correct in granting permission for the interfaith marriage, even though the judge is not in charge of the marriage, but as a judge must have a wise and wise nature, who can understand positive law and also Islam, of course, cannot immediately give permission. In fact, the judge should narrow down in granting permission considering the benefits that will be obtained by the couple. Even though they argued that they had obtained permission from their respective religious leaders to enter into marriage, the judge should still consider granting permission. Because religious leaders do not have legal power over what they say, so that people can accept and reject what is conveyed, it is different if the judge has legal power in determining a problem, because with a legal decision that has been legalized by the court, it applies and inevitably must be applied implemented. Apart from the passing of the case of granting permission for the registration of marriages performed by couples of different religions, the solution that must be addressed is the existence of new rules related to *t h i s* case of interfaith marriage, although there are general rules related to the prohibition of this type of marriage but it can still be multi- interpreted and it is felt that it still needs reaffirmation in the form of written rules, such as in the form of a new law related to marriage that emphasizes the prohibition of interfaith marriage is bad for the administration of population for children later .

Conclusion

Basically, the purpose of marriage is to form for the sake of religious perfection and subdue the view of things that are prohibited by religion, based on Marriage Law Number 1 of 1974

⁷⁵ Bayu Nugraha dan Nur Faishal, "Alasan Hakim PN Surabaya Izinkan Pernikahan Beda Agama," VIVA.co.id, 2022.

in Article 1 is an effort to form a happy and lasting family (household), the underlying foundation is belief in God Almighty. So from Islamic law and the law itself also states that in order to realize a happy and lasting marriage involves religion and God, so that this interfaith marriage is considered to be different from the purpose of marriage. Islamic law still prohibits the practice of interfaith marriage. This is explained in various sources from the Qur'an and Hadith, and uses the *sadd al-dzari'ah* approach even though there is permissibility in marrying women from the *ahl al-book*, but the *ahl al-book* at this time is different from the *ahl al-book at the time of the Prophet and the Companions*. Classical and contemporary scholars prohibit this practice, because it is considered that there are many disadvantages and mafsadat that will be faced rather than goodness and benefits, on the other hand it is very difficult to find *ahlul kitab women* today who are in accordance with the concept of *ahlul kitab* at the time of the Prophet and Companions. Based on the analysis, the results of the Judge's decision No. 916/Pdt.P/2022 Surabaya District Court on interfaith marriage are not correct because the judge as a case decision maker should consider other laws that prohibit interfaith marriage and the religious law of each party, especially Islamic law in this case of interfaith marriage. This article still has many shortcomings, so it can still be explored again regarding the issue of interfaith marriage, such as the position of inheritance, the distribution of inheritance in interfaith marriages, and others.

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