



REGISTRATION OF INTERFAITH MARRIAGES FROM MAQASHID AL-SYARI'AH PERSPECTIVE

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Abstract

Interfaith marriage today has become a social reality that cannot be avoided. Around the end of June 2022, there was a phenomenon of the acceptance of interfaith marriages by the Surabaya District Court. It suddenly made the clergy furious. Institutions like the MUI even asked the related court to cancel the decision. Apart from that, this paper wants to look at the problem of registering interfaith marriages from the perspective of Maqashid Al-Shari'ah. After conducting a study through the lens of Maqashid Al-shari'ah, the registration of interfaith marriages in the end, according to the author's conclusion, is *maslahat juziyat hajiyyat*, which has been upgraded to *maslahat juziyat daruriyat*. Therefore, registering interfaith marriages is an important matter that the State must regulate and legalize.

Keyword: Registration, Interfaith Marriage, Maqashid Al-Syariah

A. Introduction

At the end of mid-June 2022, there was a commotion about accepting interfaith marriages at the Surabaya District Court (PN). Through the Stipulation Letter Number 916/Pdt.P/2022/PN.Sby., the Surabaya District Court issued several decrees containing the granting and granting of permission to the Petitioners, namely the couple with the initials RA (Muslim) and EDS (Christian), to enter into different marriages religion, as well as instructing Surabaya City Population and Civil Registry Service Office officials to record interfaith marriages. Cash, the acceptance of interfaith marriages received an oppositional response from the Indonesian Ulema Council (after this referred to as MUI). One of the religious institutions in Indonesia wants the relevant court to cancel the decision while emphasizing that interfaith marriages are illegal and invalid.¹

Chronologically the acceptance of interfaith marriages by the Surabaya District Court, which was mentioned earlier, as reported by BBC Indonesia, began around March 2022 before there were interfaith couples, with a man with the initials RA (Muslim) and a woman with the initials EDS (Christian), already married according to their respective religions in Surabaya, East Java. At first, they had an Islamic wedding, according to the faith adopted by RA, and on the same day, the couple again had a Christian wedding, according to the EDS religion. After that, as part of the administrative mechanism, they recorded their interfaith marriage at

¹ "Pengadilan Surabaya Kabulkan Pernikahan Islam dan Kristen, Preseden bagi Pernikahan Beda Agama di Indonesia?," BBC.com., 21 June 2022.

the local Population and Civil Registry Service (Dukcapil). However, their application was rejected.

The two finally submitted their application to the Surabaya District Court in April 2022. Then in June 2022, the Surabaya District Court granted the request for interfaith marriage and ordered the local Civil Registry Service to register the marriage. It triggers the fuss over the acceptance and registration of interfaith marriages.²

In determining the marriage between RA and EDS, the Surabaya District Court departed from several points of reason. Public Relations of the Surabaya District Court, Suparno, said that single judge Imam Supriyadi had taken several considerations in handling the case. First, marriage or marriage of different religions is not prohibited based on Law Number 1 of 1974 concerning Marriage. He also said that Law No. 1/1974 concerning marriage does not regulate interfaith marriages. Therefore it is considered to grant his request to fill the void in the provisions of the Law of Marriage.³

The next consideration is Article 35 letter a of Law Number 23 of 2006 concerning Population Administration, then related to the issue of interfaith marriages is the district court's authority to examine and decide it.

In Indonesia, marriage between two children of different religions is an event that is still considered taboo and violates norms, especially since religious institutions such as the MUI and large mass organizations such as NU and Muhammadiyah both have decided that interfaith marriage is forbidden. In

² "Pengadilan Surabaya Kabulkan Pernikahan Islam dan Kristen, Preseden bagi Pernikahan Beda Agama di Indonesia?", BBC.com., 21 June 2022.

³ Kronologis Pengabulan Nikah beda Agama, CNNIndonesia.com

the results of the formulation of the 28th Nahtsul Masa'il Mukatamar NU 1989 in Yogyakarta, it was expressly stated that interfaith marriages in Indonesia are illegal.⁴ Likewise, Muhammadiyah, in the decision of the 22nd Tarjih Congress of 1989 in Malang, East Java, declared that marriages between Muslims and members of other religions were invalid.⁵

A detailed description will be found when referring to the classic books of the Syafi'iyah school of thought regarding marriage between adherents of different religions. The details are generally mapped by looking at the gender of the Muslim party getting married, both religions or beliefs of the prospective Muslim spouse. The gender of the Muslim party who is getting married is required to be male. Thus, if the Muslim party who is going to marry a member of another religion is female, the marriage cannot occur. Furthermore, if the first condition has been met, look at the prospective bride's beliefs: that is, it must be from the Ahlul Kitab group (Jews or Christians). So, if the prospective Muslim bride comes from other than the Ahlul Kitab group, the marriage cannot be carried out.

What about the views of state constitutional law regarding interfaith marriages in Indonesia?

Article 2, paragraph (1) of the 1974 Marriage Law states that marriage is legal if it is carried out according to the laws of each religion and belief. According to the findings of Mufti Ahmad Baihaqi, in his writing, the Recording of Interfaith Marriages in Indonesia, the verse contained in Article 2 Law Number 1 of 1974 gave rise to three different

⁴ Mukatamar NU.

⁵ Hukum Nikah Beda Agama, Majelis Tarjih: Haram!, Muhammadiyah.or.id

currents of interpretation: *First*, an arrangement that argues that interfaith marriage is a violation of Article 2 paragraph 1 in conjunction with Article 8 f.2 Law Number 1 of 1974. *Second*, interfaith marriages are legal and can take place because they are included in mixed marriages, with the argumentation in Article 57 of Law Number 1 of 1974 concerning diverse marriages which focuses on two people who in Indonesia subject to different laws, which means that this article regulates marriage between two people of different nationalities also handles two people of other religions. *Third*, interfaith marriages are not held in Law Number 1 of 1974. Therefore, based on Article 66 of Law Number 1 of 1974, the issue of interfaith marriages can refer to mixed marriage regulations because they have yet to be regulated in law. Referring to Article 57 of Law Number 1 of 1974 states that a mixed marriage is a marriage between two people who are subject to different regulations in Indonesia due to differences in nationality, and one of the parties is an Indonesian citizen.⁶

In the Unitary States of the Republic, with its diverse tribes, cultures, religions, and beliefs, in Indonesia, marriages can occur between adherents of different faiths. The phenomenon of granting and granting permission for interfaith marriages stipulated by the Surabaya District Court is sufficient to be used as evidence against this.

For this reason, this article aims explicitly to highlight the registration of interfaith marriages through the perspective of Maqhasid Al-Syari'ah.

⁶ Mufti Ahmad Baihaqi *Pencatatan Perkawinan Beda Agama di Indonesia*, p. 9.

B. Discussion

1. Maqhasid Al-Syariah Theory

a. Definition of Maqashid Al-Syariah

Maqasid al-Shari'ah comes from two words maqasid and al-shari'ah. The word maqasid is the plural form of the phrase maqsid, which means the intended or intended place, or from the origin of the maqsad comments, which means goal or direction.⁷ Maqasid also has various meanings when taken from the root word *قصد - يقصد - قصدا*, defined as a straight⁸ or focused path, holding fast, fair, purpose or goal, intense desire, intentional or intending to do something (*قصد (اليه)*).⁹ While the meaning of Al-Syariah, As Nur al-din mentions in his book:

تعريف الشريعة لغة: الشريعة تُطلق في اللغة على مورد الماء ومنبعه ومصدره، كما تُطلق على الدين والملة والطريقة والمنهاج والسنة، والشريعة والشرع والشرعة بمعنى واحد.¹⁰

Al-shari'ah, etymologically, is religion, millah, method, way, and sunnah. In terminology, the rules prescribed by Allah are related to faith and the laws of

⁷ Ahmad Warson Munawir, *al-Munawwir Kamus Arab-Indonesia* (Surabaya: Pustaka Progressif, 1997), p. 1124.

⁸ Ibn Manzūr, *Lisān al-'Arab* (Kairo: Dār al-Ma'ārif, t.th), p. 3642-3643.

⁹ Mahmud Yunus, *Kamus Arab-Indonesia*, (Jakarta: Hidakarya Agung, 1990), p. 343.

¹⁰ Nur Al-din bin Mukhtar al-khadimi, *Ilmu Al-Maqosid Al-Syari'ah*, (Maktabah Al-Abikan, 2001), p. 14.

deeds (عملية). The word al-shari'ah also means a set of laws or acts contained in Islam.

If the two words above are combined, they will become maqasid al-shari'ah, which has the same relative meaning but only has differences in editorial and development and the relationship between maqasid al-shari'ah and others. Among these meanings, maqasid al-shari'ah is the goal, target, or result of essential benefit by enacting laws on humans. Another meaning of maqasid al-shari'ah is the final and secret goal, even the values, norms, and meanings of establishing law.¹¹

Below are some definitions of maqasid al-shari'ah according to some argument of the Ulama:

أما علم مقاصد الشريعة فهو عبارة عن الوقوف على المعاني والحكم الملحوظة للشارع في جميع أحوال التشريع أو معظمها.¹²

Meaning: "the purposes and wisdom that are the goal of shari'a in most of the laws He has set."

فالشيخ ابن عاشور يعرف المقاصد العامة للشريعة بقوله: «مقاصد الشريعة العامة هي المعاني والحكم الملحوظة للشارع في جميع أحوال التشريع أو معظمها، بحيث لا تختص ملاحظتها بالكون في نوع خاص من أحكام الشريعة. فيدخل في هذا: أوصاف الشريعة، وغايتها العامة، والمعاني التي لا يخلو التشريع

¹¹ Umar ibn ṣaliḥ ibn Umar, *Maqasid al-Shari'ah Inda al-Imam al-Izz al-Din ibn Abd al-Salam* (Yordani: Dar al-Nafa'is, 2003), p. 88.

¹² Muhammad Thahir bin Muhammad bin Muhammad Thahir bin Asyur al-Tunisi, *Maqasid Al-Syari'ah al-Islamiyyah*, (2004), p. 21.

عن ملاحظتها. ويدخل في هذا أيضًا معان من الحكم ليست
ملحوظة في سائر أنواع الأحكام

Meaning: "Ibn Asyur defines maqasid al-shari'ah namely, the definitions and wisdom guarded by the shari'a in each of His decrees, and these meanings and understanding are not only specific to certain laws but also include various legal characteristics, general purposes, definitions, the substance contained in a lawful provision, even meanings that are not considered by a legal requirement."¹³

The understanding put forward by Ibn Ashur is an expansion of the meaning and definition of maqasid al-shari'ah so that the position of this science is decisive in the methodology of determining Islamic law. It can be seen from the word "the nature of the law" mentioned by Ibn Ashur that in *uṣūl al-fiqh*, the nature of the law is none other than the god of law. Among the scholars who paid attention to the study of maqasid al-shariah also understood something similar to the notion put forward by Ibn Ashur; there were even those who studied the relationship between maqasid al-shari'ah and wisdom, Allah, intention, and *maṣlaḥah*.

¹³ Ahmad Ar-Raisuni, *Nadhariyyah Al-Maqasid Inda al-Imam al-syatibi*, (Al-Dar Al-Alamiyyah lil Al-Kitab Al-Islami, 1992), p. 6.

b. Exploration of Maqasid Al-Syari'ah Law

Methods of extracting law or legal arguments such as qiyas, istihsan, and maslahah mursalah are methods of developing law based on maqasid shari'ah.¹⁴

1) Qiyas

Etymologically, qiyas means guessing or equating.¹⁵ In terms of terminology, equating something for which there is no developing argument with something with a budding statement because there is a similarity in the law of the gods. In the same way, as Wahab Khallaf said, qiyas equates a rule from an event that does not have a legal basis with an event that already has a legal basis because there are similarities in the law's illat.¹⁶

2) Istishan

Istihsan comes from the word *استحسن* - *استحسن* etymologically considers or believes in the goodness of something. Imam al-Sarakhsi explained the meaning of istishan as follows:

¹⁷

طلب الأحسن للاتباع الذي هو مأمور به

¹⁴ Satria Efendi, M. Zein, *Ushul Fiqh* (Jakarta: Kencana, 2009), p. 237.

¹⁵ Abu Yahya Zakaria Al-Anshari, *Gayah al-Wuṣul Syarḥ Lubb al-Uṣul* (Surabaya: Al-Hidayah, t.t), p. 110.

¹⁶ Abd Wahab Khallaf, *Ilmu Uṣul al-Fiqh* (Cairo: Dar al-Hadis, 2003), p. 48.

¹⁷ <https://ejournal.inkafa.ac.id/index.php/miyah/article/view/192/158>

Meaning: "Looking for the best to follow something that was ordered."

3) Maslahah Mursalah

According to the language, the word *maslahah* comes from Arabic and has been standardized into Indonesian to become *maslahah*, which means bringing goodness or benefit and rejecting damage. According to the original language, the word *maslahah* comes from the word, *يصلح - صلاح* implies something good, proper, and functional. At the same time, the word *mursalah* means free, not bound by religious arguments (Al-Qur'an and al-Hadith) which allow or prohibit it.¹⁸ The primary purpose of *maslahah mursalah* is a benefit, namely caring for harm and maintaining its benefits.¹⁹

c. Distribution of Maqasid Al-Syari'ah

The division of *maslahat* in *maqasid al-shari'ah* is intended to provide tools for a benefit that can be used as a legitimate and authoritative source of Islamic law. Ulama *ushul fiqh* divides *maslahat* into several types based on several points of view, namely:²⁰

¹⁸ Wahda Firyal, Pemberian Hak Hadiah Kepada Ibu Tiri Dalam Putusan Pengadilan Agama Sidoarjo Nomer: 0763/PDT.G/PA.SDA Perspektif Maslahah Mursalah, (AL-HUKAMA The Indonesian Journal of Islamic Family Law Volume 09, Nomor 01, Juni 2019), p. 249-250.

¹⁹ Rachmat Syafe'i, Ilmu Ushul Fikih (Jakarta: Prenada Media Group, 2010), p. 117.

²⁰ Imam Nahe'I dan Wawan Juwan, Revitalisasi Ushul Fiqh Dalam Proses Istimbhat Hukum Islam (Sukorejo: Ibrahimy Press, 2009/2010), p. 274.

First, in terms of recognition of Shari'a or its rejection, it is divided into three types, namely:

a) Maslahah Mu'tabarah

Maslahah Mu'tabarah is maslahah whose existence is recognized by syari' through legal texts, the Koran, and hadith, where the law of all of them has the same goal: benefit. This kind of benefit is called Maslahah Mu'tabarah. For example, there is a qisas obligation as a protection for the preservation of human life. Thus in qisas, there is a benefit planned

b) Maslahah Mulgha

Maslahah Mulgha is a benefit that is perceived as a benefit by the contemplation of the human mind, but in fact, it is contrary to the texts of the Koran and hadith. All gifts are contrary to the qhat'i text are ignored (mulgha). For example, in modern society, gender discrimination has begun to be sued, household survival issues are no longer only borne by husbands, and women have equal opportunities in all fields of knowledge, so the president does not have to be a man. For some thinkers, decisions like this are claimed as something that contains benefits. However, according to classical scholars, decisions like this are contrary to the texts of the Koran and hadith. So the maslahah contained in the legal conclusion above is maslahah mulgha.

c) Maslahah Mursalah

Maslahah Mursalah is a maslahah that lies between maslahahs that lie between mu'tabarah maslahah and mu'tabarah maslahah. In other words, no Al-Quran and Hadith texts explicitly legitimize their existence and do not ignore their fact. All benefits perceived and decided by human instincts and reason which are not mentioned in the text, nor are they ignored in terms of ushul fiqh, are called maslahah mursalah.

Second, Maslahah, in terms of its influence on humans, is divided into three parts, namely:

a) Daruriyat

Maslahah Daruriyat is a word that means "urgent, fundamental, and needs must be met." Asy-Syatibi thinks that matters belonging to the category of daruriyat are included in obtaining the interest of safeguarding, including religion (*al-din*), soul (*al-nafs*), reason (*al-aql*), property (*al-mal*), and offspring (*al-nasal*).

b) Hajiyat

Maslahah Hajiyat is defined as a secondary need. Suppose the conditions of hajiyat are not met so as not to cause difficulties and damage to human life other words. In that case, maslahah hajiyat is something that humans need to get convenience and ease in carrying taklif burdens and problems that may occur in the course of their life. For example: in the field

of worship, shari'a invites the law of permissibility not prohibited for people who are sick or on a trip. This law and the like are prescribed solely to provide convenience and breadth for humans in carrying out their humanitarian duties. It is what is called rukhsah or dispensation in the Shari'ah.

c) Tahsiniyat

Maslahah Tahsiniyat means perfect things. In this case, Tahsiniyat fulfills the needs of daruriyat and hajiyat. Therefore, this need is often interpreted as a tertiary need to improve the quality of human life, such as a need designed to meet the demands of good and bad values, manners, and noble morals so that humans live naturally in glory and perfection. A need which, if not fulfilled, will not cause difficulties or destruction but will not give value and meaning to perfection in human life.

Third, Maqasid Al-Syari'ah is seen from its scope to the community (congregation) and individuals (individuals). Then it is divided into two parts:

a) Kulliyat

Kulliyat, namely maslahat, is universal in which the scope of goodness and benefits returns to many people. For example, protecting the country from invaders, building a just government, etc

b) Juz'iyah

Juz'iyah, namely maslahat, is partial or individual, namely maslahah, whose impact is only felt by a part of society or specific individuals, such as giving various forms of muamalah.

Fourth, when viewed from the level of the arguments that support it, it is divided into three parts, namely:

a) Qath'i

Maslahat, qath'i, is believed to bring happiness during human life.

b) Danni

Maslahat Dhanni, namely maslahat, which is supposed to bring peace or happiness, maslahat still exists in the perception of the human mind, not maslahah on the actual plane.

c) Wahmiyah

Wahmiyah, namely maslahat, lives in the shadow of all human reason. But in reality, it can cause destruction, such as consuming drugs, watching porn, etc. At first glance, this can bring happiness to the mind's imagination, but the consequences can be dangerous.

The division of benefits as above was also put forward by Wahbah Azzuhaili, which is intended to emphasize which benefits can be taken and which benefits must be prioritized among the many existing

benefits. The Hurriyat maslahat must take precedence over the hajiyat use, and the hajiyat use must take precedence over the tahini at a gift. Likewise, kulliyat benefits must be prioritized over juz'iyat benefits—finally, qath'iyah maslahat must be prioritized over zhanniyah and wahmiyah maslahat.

Taking into account the content and division of maqashid al-shari'ah as stated above, it can be said that maslahah, which is the goal of God in His taser, absolutely must be realized because worldly and ukhrawi safety and welfare will not be possible to achieve without the realization of this benefit, especially dharuriyat maslahah.

2. Registration of Interfaith Marriages in Indonesia

According to the constitutional law in Indonesia, every marriage that residents have held must be registered by statutory provisions. In the 1974 Marriage Law, it is stated in Article 2 paragraph (2): Every marriage is recorded according to the applicable laws and regulations. This marriage law is then explained in Article 2, paragraph 2 of Government Regulation Number 9 of 1975, which reads: "The marriage registration of those who carry out their marriage according to their religion and belief other than the Islamic religion, is carried out by the Marriage Registrar at the civil registry office as referred to in various laws regarding the registration of marriages."

The elucidation of PP No. 9 of 1975 regarding Article 2, paragraph 2 of the Marriage Law above in no way touches on the issue of interfaith marriage. The existing

explanation only provides technical provisions related to the registration of marriages for residents who do not adhere to the Islamic religion, which Marriage Registrars carry out at the Civil Registry Office (after this referred to as KCS). Thus referring to the UUP and the explanation of the UUP, marriages between people of different religions do not have explicit laws, or in other words, there is a legal vacuum.

It's just that, launching from the Legal Online.com page, there is an explanation that the arrangements for recording interfaith marriages in Indonesia are currently alluded to in Article 35 letter a. The Population Administration Law states that the registration regulated in the previous article also applies to marriages determined through a court. As for what is meant by "marriage determined by the court," is a marriage carried out between people of different religions. It means that the only way to register interfaith marriages is through a court decision.²¹ Thus, marriages between adherents of different faiths in Indonesia can finally be recorded at the Population Service after previously going through acknowledgment and stipulation from the Court.

Beyond that, it needs to be asked, what are the problems that can arise from unregistered interfaith marriages? Problems resulting from not registering marriages include:²² 1.) The surrounding community

²¹ Letezia Tobing. Masalah Pencatatan Perkawinan Beda Agama, Hukumonline.com, 17 September 2017.

²² Masrum M. Noor, dalam H. Endang Ali Ma'sum, Pernikahan yang Tidak Dicatatkan dan Problematikanya, p. 210-211.

views them as cohabitants or mistresses; 2.) According to the law, the wedding is considered illegitimate, so the children are illegitimate; 3.) The wife is not entitled to earn a living; 4.) Wives and children who are born do not inherit from their husbands and vice versa; 5.) Between husband and wife are not entitled to joint property; 6.) Children only have legal relations with their mother and their mother's family; 7.) Psychologically, the relationship between children and their father is weak and not strong; 8.) The status of children can be denied as children of their father and vice versa; 9.) Children are not entitled to receive their father's living and educational expenses; 10.) For girls who don't have a family guardian in their marriage, the guardian allowed to marry is a judge's guardian (head of the local KUA); 11.) The father does not have a legal relationship with his daughters, so he is not a mahram, and it is possible to marry his biological child if his wife dies or is separated; 12.) The husband is released from his responsibilities as a husband; 13.) The wife does not get legal protection in her household matters; 14.) His wife and children face difficulties in obtaining immigration documents.

3. Registration of Interfaith Marriages from the Maqashid Al-Syari'ah Perspective

Since the enactment of the Marriage Law, citizens must obey and comply with that rule. Thus, every marriage legally entered into by residents according to religious authorities or through a court order must be registered at the competent agency, namely at the Office

of Religious Affairs for married couples who adhere to Islam and the Civil Registry Office for brides who are not married. Muslim. Likewise, teams of different religions are registered at the KCS.

Regarding interfaith marriages, there has been an indirect agreement between religious institutions, such as NU, Muhammadiyah, and MUI, that these marriages are not valid. It means that marriages between adherents of different religions, namely Muslims and non-Muslims, ultimately cannot be registered at the KUA because marriages that can be registered at the KUA are only valid marriages. Meanwhile, these religious organizations have declared interfaith marriages invalid, which also means that the marriage is invalid according to the religion or belief of its adherents.

However, marriage not registered at an authorized government agency will eventually lead to various problems. It is because the union has no legal force before the state. Among the thorny issues is the child's status, which in civil law can only be attributed to the mother, not the father; maintenance and inheritance for the wife cannot be guaranteed; the child cannot obtain a birth certificate and therefore cannot marry.

In the scientific world of Islam, a science has been established which is called Maqshid Al-shari'ah. The essence of Maqasid Al-Shari'ah is to gain benefits and reject harm. Referring to the maqashid concept put forward by Wahbah al-Zuhaily, the registration of interfaith marriages is a *juziyyat maslahat* at the *hajiyyat* level. It is because the benefits of registering marriages

of different religions will return to individual or partial coverage, not in general. While it is included in the hajiyyat category because the registration of interfaith marriages is not held, it will cause various difficulties for related parties and their offspring. It's just that these difficulties do not threaten the life of the person concerned.

Even though registering interfaith marriages is a benefit for juziyyat hajiyyat, it can be upgraded to juziyyat daruriyyat. Because there is a rule of popular fiqh which says that,

al-hajah tanzilu manzilah al-darurah,

(hajat can be in the same position as an emergency).

As a result, registering interfaith marriages is a must for the state because it contains problems for its citizens.

C. Conclusion

Interfaith marriages have indeed been declared invalid by Islamic religious organizations in Indonesia. As a result, interfaith marriages between Muslims and non-Muslims cannot be registered at the KUA. However, the marriage can be registered at the KCS after facing a trial and ruling in court. Registered interfaith marriages are essential when viewed from the perspective of maqashid al-shari'ah. Because of the dire consequences that can be caused by unregistered marriages and the benefits that exist when they are registered, interfaith marriages must also be written by authorized government agencies. Let it be, in this case, and the state does not need to consider whether marriage is legal according to religion because an administrative law already stipulates that interfaith marriages can be registered.

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