



## The Status of Mixed Marriages in Islamic Law and Its Implications for Child Status and Inheritance

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### ABSTRACT

This study analyzes the position of mixed marriages in Islamic law and its implications for the status of children and inheritance. Using normative/doctrinal research methods through legislative and conceptual approaches, this study examines primary sources such as the Qur'an, Hadith, classical-contemporary fiqh literature, as well as ulama fatwas, and secondary sources in the form of scientific journals and national regulations. The results of the study show that mixed marriage is considered invalid in Islamic law, especially for Muslim women who are married to non-Muslim men, and the majority of contemporary scholars also reject the ability of Muslim men to marry women of the book in the modern context. This invalidity has an impact on the non-existence of a husband-wife relationship, the loss of rights and obligations of maintenance, the severing of inheritance relationships, and the fate of children who only follow the mother because religious differences are barriers to inheritance. These findings affirm the importance of religious conformity in Muslim marriages to maintain faith, family order, and the protection of children's rights from the perspective of Islamic law.

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## **INTRODUCTION**

Marriage is a sacred bond between two people that not only has a social dimension, but also has a deep religious meaning. In the Islamic context, marriage is considered an akad that aims to create the family of Sakinah, mawaddah, and rahmah. However, the problem becomes more complex when marriage occurs between two people of different religions or nationalities, which is often referred to as a mixed marriage. This phenomenon has various legal implications, especially in terms of the status of children and inheritance rights derived from the marriage.

Marriage is one of the social and religious institutions that has a very important position in human life. In the Islamic view, marriage is not only an outward bond between a man and a woman, but also a worship and a means to uphold moral, social and spiritual values. Allah SWT. describes marriage as a firm covenant (*mitsaqan ghalizan*) and aims to create a Sakinah, mawaddah, and Rahmah domestic life. Through marriage, humans are expected to form legitimate offspring, maintain self-respect, and develop a social order based on the values of faith and piety.

However, along with the development of the times and the increase in social mobility and relations between nations, a phenomenon known as mixed marriage has emerged, which is a marriage between two people of different religions, nationalities or cultures. In Indonesia, this phenomenon is increasingly occurring, especially among urban and international communities, where interfaith and national interaction is inevitable. Although socially considered a form of openness and tolerance, from the perspective of Islamic law, mixed marriage raises various complex problems both in terms of the validity of the contract, the legal status of the child, and inheritance rights that arise later.

Islamic law provides strict restrictions related to interfaith marriage. The main principle is that marriage must be based on the same faith. The Qur'an prohibits marriage between a Muslim and a polytheist because differences in beliefs can threaten the integrity of the family and the beliefs of the descendants. However, there are limited exceptions, namely the permissibility of Muslim men to marry women from the *ahlul kitab* (Jews and Christians) under certain conditions. Meanwhile, Muslim women are still prohibited from marrying non-Muslim men under any circumstances.

In the context of Indonesian national law, mixed marriage is regulated in Law Number 1 of 1974 jo Law Number 16 of 2019 concerning Marriage, which affirms that the validity of a marriage is determined by the religious law of each prospective bride. Thus, if a marriage does not meet the religious provisions of each prospective bride. Thus, if a marriage does not meet the religious requirements, it is automatically invalid according to state law. This is where the problematic often arises, especially when one of the parties is not a Muslim, but wants to have a marriage with a Muslim without converting to religion.

This issue not only concerns the validity of the marriage itself, but also has implications for the legal status of the child born from the marriage and inheritance rights that may arise in the future. In Islamic law, the validity of a child's *nasab* depends on the validity of the marriage contract of the parents.

Children born of a legal marriage have a nasab relationship with both parents and are entitled to their inheritance. On the other hand, a child born of an illegitimate marriage does not have a natural relationship with his biological father, so he is not entitled to inheritance from him.

In addition, in the aspect of inheritance, Islam expressly prohibits inheritance between people of different religions. This means that if there is a mixed marriage between a Muslim and a non-Muslim, then both spouses and children of different religions cannot inherit each other. This provision is rooted in the principle of Aqidah which emphasizes that religious relations are the main basis for the distribution of inheritance according to Islamic law.

Therefore, the discussion of the status of mixed marriages in Islamic law and its implications for the status of children and inheritance is very important. This study not only aims to understand how Islamic law regulates and assesses the phenomenon of interfaith marriage, but also to see how the legal consequences are applied in Indonesia which adheres to a dual legal system, namely national law and religious law. By understanding the basics of sharia and applicable national regulations, it is hoped that Muslims can be more careful in determining the steps of marriage so as not to cause prolonged legal and social problems. Therefore, the discussion of the position of mixed marriage in Islamic law and its implications for the status of children and inheritance is very important to be studied in depth.

From the above background description, several problems are formulated as follows:

1. What is the position of mixed marriages in Islamic law?
2. What are the Implications of Mixed Marriage on the Status of Children and Their Inheritance Rights?

## **THEORETICAL REVIEW**

### ***The Concept of Marriage in Islamic Law***

According to al-Zuhaili (2011), marriage in Islam is a contract that legalizes the relationship between husband and wife and aims to create a family life of Sakinah, mawaddah, and rahmah. Fiqh scholars such as al-Shafi'i, al-Nawawi, and Ibn Qudamah agree that faith and the conformity of faith are essential conditions that maintain the continuity and harmony of marriage.

The normative basis regarding the prohibition of interfaith marriage is listed in the QS. Al-Baqarah:221 and is reinforced by various hadiths of the Prophet which emphasize that men should choose a partner based on religion to maintain the offspring and stability of the family.

### ***Mixed Marriage and Legal Recognition***

According to Nasir (2002) and Esposito (2001), interfaith marriage in many Islamic traditions is considered invalid because it is contrary to the principle of kafa'ah (equivalence) in religious aspects. Muslim women are not allowed to marry non-Muslim men, while classical scholars differ on the ability of Muslim men to marry Muslim women.

Contemporary views released by international jurisprudence institutions such as Majma' al-Fiqh al-Islami confirm that in a more complex modern context, marriage with scribes is considered to carry a risk to the family's Islamic identity.

### ***Nasab and the Position of Children in Fiqh***

Musthofa's study (2017) explains that the fate of a child in Islam can only be entrusted to the father if the marriage of the parents is valid according to the sharia. In an invalid mixed marriage, nasab only follows the mother and does not create a civil relationship with the non-Muslim father within the framework of Islamic law. This has implications for marriage guardians, custody, alimony, and inheritance rights.

### ***Barriers to Heirs in Islamic Law***

In fiqh literature (Ibn Qudamah, 1997), religious differences (ikhtilaf al-din) are one of the barriers to inheritance. Thus, interfaith marriage does not create an inheritance relationship, either between husband and wife or between children and non-Muslim fathers.

### ***Indonesian Law and Mixed Marriage***

Law No. 1 of 1974 jo. Law No. 16 of 2019 concerning Marriage and the Compilation of Islamic Law (KHI) expressly requires each marriage to follow their respective religious laws. The MUI through a fatwa in 2005 affirmed the prohibition of interfaith marriage for Muslims. Research by Nadir (2015), Cammack (1989), and Salim (2002) shows that the legal position in Indonesia tends to follow the view of Islamic law that rejects the practice of mixed marriage because it does not meet the standard of legal requirements for marriage.

## **METHODOLOGY**

This research is a normative (doctrinal) research. The approaches used are the statute approach, the conceptual approach. Meanwhile, the analysis of legal materials using descriptive qualitative analysis is by formulating and explaining significantly several legal issues that are the object of study in this study, and is an answer as a result of the findings of the research objectives through a systematic and sequential thinking pattern.

## **RESEARCH RESULTS AND DISCUSSIONS**

### ***The Status of Mixed Marriages in Islamic Law***

In Islamic law, the principle of marriage is the similarity of faith and faith. Islam emphasizes that marriage is part of worship that aims to get closer to Allah SWT. Therefore, any form of marriage that can threaten the purity of the faith is prohibited. The prohibition is contained in Surah Al-Baqarah verse 221 as mentioned earlier.

According to scholars, this prohibition is common for Muslim men and women to marry polytheists. However, in Surah Al-Ma'idah verse 5, Allah gives a limited exception to Muslim men to marry a woman of the ahlul kitab (Jews

and Christians) who maintains her honor. Although it is allowed, many contemporary scholars consider that the practice is not in accordance with the conditions of modern society because it is feared that it will cause conflicts of values and difficulties in educating children in Islam.

Meanwhile, Muslim women are not allowed to marry non-Muslim men under any circumstances. This provision is based on the principle of male leadership in the household (*qawwam*), which can affect the religious direction of the family. If a Muslim woman marries a non-Muslim man, then the contract is considered invalid, and the marital relationship that occurs is included in the category of adultery according to Islamic law.

In the context of Indonesian law, interfaith marriage is not recognized by the state because it is contrary to Article 2 paragraph (1) of the Marriage Law. Although administratively there are efforts to legalize interfaith marriages through civil registration, it is still considered contrary to the basic principles of Islamic law for Muslims.

Interfaith marriage is one of the most controversial contemporary issues in the study of Islamic law. This discussion is not only concerned with the relationship between two individuals of different religious backgrounds, but also concerns the theological, juridical and sociological dimensions that affect the Muslim family order. Therefore, understanding the position of Islamic law on mixed marriage is very important to assess the validity of a marriage bond, as well as to affirm the legal consequences for the status of spouses, children, and various other civil rights.

Islamic law places faith as the main foundation in building family institutions. This is reflected in the verses of the Qur'an and hadith that regulate religious conformity as one of the important conditions for the validity of a marriage. The Qur'an expressly prohibits marriage between a Muslim woman and a non-Muslim man, as stated in the Qur'an. Al-Baqarah:221. As for Muslim men who marry women who are experts of the book, there are differences of opinion (*ikhtilaf*), although the majority of contemporary scholars view it as not recommended and even tends to be prohibited in the modern context, in order to maintain faith, family harmony, and children's education.

Thus, the basic principle of Islamic law requires that marriage be based on religious equality so that the purpose of marriage in the form of peace (*Sakinah*), love saying (*mawaddah wa Rahmah*), and blessings can be achieved optimally.

The position of mixed marriage can also be analyzed through the concept of *kafa'ah*, which is the equivalence between prospective husband and wife in terms of religion, descent, social status, and morality. One of the main elements of *kafa'ah* is religious similarity, because religious differences are considered to hinder the formation of harmonious families and trigger principal conflicts. Hanafiyah and Shafi'iyah scholars emphasized that *kafa'ah* aims to maintain the dignity of women and the honor of the family, so that mismatches in religious aspects have the potential to cause household instability. Thus, mixed marriage is considered contrary to the principle of *kafa'ah* in Islamic law.

Within the framework of *maqashid al-Sharia*, one of the main purposes of sharia is the protection of religion (*hifz al-din*). Mixed marriage has the potential

to threaten the religious integrity of one party, especially women and their descendants. Some aspects that are often emphasized, namely: a). Potential conflicts in childcare, in families of different religions, decisions regarding children's religious education can give rise to fundamental contradictions. Islamic law emphasizes that children must be directed to monotheistic education from an early age, so that mixed marriage has the potential to make it difficult to implement this principle; b). Concerns about worship practices, differences in beliefs can trigger obstacles in the implementation of worship, both in terms of the domestic environment and the pattern of interaction between husband and wife; c). Safeguarding the identity and sustainability of the Muslim generation, Sharia views the family as the main institution in instilling Islamic values, so that marriage with non-Muslim couples is seen as able to reduce the guarantee of the sustainability of the next generation's Islamic identity.

The majority of classical scholars agree that; Muslim women are forbidden to marry non-Muslim men (polytheists or scholars of the book), Muslim men are allowed to marry women who are experts of the book, but with strict conditions and certain conditions. However, most contemporary authoritative scholars such as in the Decree of Majma' al-Fiqh al-Islami as well as the fatwa of Middle Eastern scholars view it as no longer relevant because of the socio-political conditions of the modern era that are different from those of the classics. Concerns about the dominance of non-Muslim cultures and beliefs are stronger than in the early days of Islam.

In Indonesia, national law (Marriage Law No. 1 of 1974 jo Marriage Law No. 16 of 2019 and the Compilation of Islamic Law) affirms that marriage is legal if it is carried out in accordance with the laws of each religion. Since Islam does not legalize interfaith marriage, mixed marriage does not gain religious or state legitimacy for Muslims. The Indonesian Ulema Council (MUI) has also issued a fatwa that affirms the prohibition of interfaith marriage for Muslim men and women.

Based on all these provisions, the position of mixed marriage in Islamic law can be formulated as follows: a). It is not recognized and invalid according to sharia, because it violates the legal conditions of marriage, namely religious conformity; b). Including the category of invalid marriage, especially when it is carried out between Muslim women and non-Muslim men; c). Has serious implications for the status of children, nasab, alimony, and inheritance rights because the marital relationship is considered to have never occurred under sharia law; d). If it is done abroad or recorded civilly, the legal status remains invalid in Islam, so that it does not give rise to a conjugal relationship according to religious law. Islam consistently places mixed marriages in a position that is not recommended or even prohibited, in order to maintain the sanctity of the faith, the independence of the Muslim family, and the educational interests of the next generation.

### ***Implications of Mixed Marriage on Child Status and Inheritance Rights***

The status of children in Islamic law is highly dependent on the validity of the marriage of both parents. If the marriage is valid according to Islamic law,

then the child born has the status of a legitimate child (*walad syar'i*) and is entitled to all inherent rights, including *nasab*, alimony, and inheritance. On the other hand, if the marriage is carried out without fulfilling the religious provisions, then the child who is born does not have a *nasab* relationship with his biological father, but only with his mother. The Prophet PBUH said: "The child (his *nasab*) belongs to the owner of the bed (lawful husband), and for the adulterer there is no right whatsoever". (H.R. Bukhari and Muslim)

Based on this hadith, children resulting from relationships that are not legal according to sharia are not recognized as legitimate children from the perspective of Islamic law. He only had a civil relationship with his mother. Thus, he is not entitled to the maintenance and inheritance of his biological father. However, in the context of national law, there are legal developments through the Constitutional Court Decision Number 46/PUU-VIII/2010 which provides legal protection for children out of wedlock. The ruling states that an out-of-wedlock child has a civil relationship with his biological father if it can be proven and technology and science. Although the ruling provides protection for *haka nak*, from the perspective of Islamic law, the status of *nasab* remains unchanged. Islam continues to distinguish between legal children and out-of-wedlock children in the context of inheritance rights and legal responsibilities.

The issue of inheritance is an important consequence of the validity of marriage and the status of the *nasab*. In Islamic inheritance law, there are two main conditions for a person to have the right to inherit a legal relationship or marriage, and religious similarity. The Prophet PBUH said: "Muslims do not inherit infidels, and infidels do not inherit Muslims". (H.R. Bukhari and Muslim)

From the hadith, it can be concluded that religious differences are the main barrier to inheritance. Therefore, if there is a mixed marriage between Muslims and non-Muslims, then if one party dies, the other party cannot inherit his property. Likewise, children who are different from their parents are not entitled to inheritance from parties of different faiths.

In Indonesian national law, interfaith inheritance can indeed occur based on the Civil Code, but for Muslims, this is contrary to the principles of Islamic inheritance law. As a solution, some scholars and judges in the religious court environment use the concept of mandatory will, namely the giving of part of property (maximum one-third) to non-Muslim heirs or children out of wedlock as a form of social justice without violating sharia principles.

The legal implications of mixed marriage from an Islamic perspective are very broad and touch on various aspects of family life, ranging from the validity of marriage, marital relationships, child status, *nasab*, inheritance rights, to social impacts. Because mixed marriages are in a position that is invalid according to the Shari'a, all the legal consequences that usually arise from a valid marriage become invalid and give rise to a number of legal problems.

In Islamic law, a marriage performed between a Muslim and a non-Muslim partner that is not permissible by sharia is considered null or *fasid* (invalid), as a result: a). In the absence of a shari'i marital relationship, the relationship that is formed is not recognized as a marital relationship, so it does not cause consequences such as maintenance obligations, honor, or obedience

rights. In the fiqh view, this kind of relationship is considered as adultery if it is known that both parties are in the same house and are related like a married couple; b). The non-existence of the rights and obligations of husband and wife, rights such as child support, inheritance, the right of residence, and the protection of husband and wife cannot be enforced because the marriage is considered invalid from the beginning (void ab initio); c). Automatic separation according to shari'i, in Islamic law, marriages that do not meet the legal requirements do not need to be sentenced to talaq or fasakh, the spouse is automatically considered not bound in the legal relationship of marriage.

As for the implications for the status of children, it is the most important point because it concerns the fate, identity, and rights of children in Muslim families. In Islamic law, the child's destiny follows the biological father, but it can only be declared if the parents' marriage is valid. In an invalid mixed marriage, the child still has the nasab to the mother, because the blood relationship cannot be severed, the child's nasab cannot be attributed to the non-Muslim father in the context of Islamic family law because of the invalid marriage, the child can be considered walad syubhat (the child of the syubhat relationship) if there is a mixture that is considered unintentional, but this is rarely used in the context of interfaith marriages that are done consciously and intentionally.

The legal status of children in Indonesian national law, between Islamic law and State law is different. According to the Constitutional Court's Decision No. 46/PUU-VIII/2010, children out of wedlock still have a civil relationship with their biological father if it can be scientifically proven. However, in Islamic law, nasab still depends on the provisions of sharia. Islam obliges Muslim parents to educate their children in the teachings of Islam. In mixed marriages; There is a potential for religious attraction between parents, children's religious education can be a source of conflict, children are at risk of not getting a complete Islamic education. In the maqashid shari'ah, this is contrary to the principle of hifz al-din (protection of religion).

The implications of mixed marriage on inheritance rights are; a). There is no inheritance relationship between husband and wife, in Islam there is a principle of ikhtilaf al-din (religious differences) that prevents inheritance. Even in legitimate family relationships, religious differences become a barrier to inheritance. Since mixed marriage itself is haram and invalid, therefore, Muslim husbands cannot inherit non-Muslim wives, non-Muslim wives cannot inherit Muslim husbands, inherited property cannot be divided according to Islamic inheritance law; b). The relationship of inheritance of children, Children who do not have sharia to non-Muslim fathers cannot inherit from their fathers according to Islamic inheritance law, Children can only inherit from their Muslim mothers, if the mother is Muslim, If the child is Muslim while the father is non-Muslim, the principle of ikhtilaf al-din still applies, religious differences remain an obstacle. Contemporary scholars such as Yusuf al-Qardawi emphasized that religious differences are "man'i min mawani' al-irth" (inheritance barriers), without exception.

## CONCLUSIONS AND RECOMMENDATIONS

Based on the above descriptions, it can be concluded as follows:

1. Mixed marriage in Islamic law has a firm position. Islam prohibits marriage between Muslims and non-Muslims, except for Muslim men and women who are experts of the book, even with strict conditions. This prohibition aims to maintain the purity of the faith and the integrity of the household. Mixed marriage is not valid in Islam, so all the rights and obligations of husband and wife do not apply. The child's inheritance is only to the mother, the non-Muslim father does not have the position of guardian or inheritance.
2. The legal implications of mixed marriage are enormous, especially on the status of children and inheritance rights. A child who is deviated from an illegitimate marriage according to the Shari'ah only has a nasab relationship with his mother and is not entitled to inheritance from his father. Meanwhile, in inheritance, religious differences are an absolute obstacle to inheritance according to Islamic law. There is no inheritance between husband and wife and between children and non-Muslim fathers.

## ADVANCED RESEARCH

Future advanced research should further explore mixed marriage through a comparative analysis of Islamic law, national marriage law, and contemporary global family-law systems to identify potential harmonization models that protect children's civil rights without contradicting fundamental Islamic principles. Empirical socio-legal studies are also needed to examine the lived experiences of families involved in mixed marriages, including challenges in civil registration, guardianship, citizenship status, and inheritance disputes. Additionally, interdisciplinary research integrating fiqh, human rights discourse, and demographic trends could provide deeper insight into how modern social mobility, migration, and digital interaction influence cases of interfaith marriage among Muslims. A comprehensive examination of fatwas, judicial decisions, and regional variations in Islamic legal practice will further contribute to policy development aimed at ensuring legal certainty, social stability, and the protection of children's welfare in the context of mixed marriage.

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