



## INTERFAITH MARRIAGE IN INDONESIAN JURISPRUDENCE: STUDY CASE ON STATE COURT DECISION, NUMBER 916/PDT.P/2022/PN.SBY

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**Abstract:** The research entitled "Different-Religious Marriage in Indonesian Jurisprudence: Study of Determination of Number 916/PDT.P/2022/PN.SBY" is research to answer the formulation of the problem: "How are judges' considerations in Determining Number 916/PDT.P/2022/PN. SBY?" and "How is the analysis of the legal opinions of Nahdlatul Ulama, Muhammadiyah and the Indonesian Ulema Council regarding the Decree Number 916/PDT.P/2022/PN.SBY?" This research is Library Research using Normative Islamic Law research methodology. The findings of this study are that the Surabaya District Court granted the request for interfaith marriage by the applicants with several considerations, namely: (1) the fulfillment of the formal requirements, (2) entering the realm of the District Court; (3) the right to defend their religious beliefs; (4) The right to form a household and offspring, (5) the applicants love each other and agree to marry; (6) parents agree; (7) the applicant has married with their respective religions; (8) Interfaith marriage is not prohibited; (9) procedures for interfaith marriages are different from general marriages; and (10) The judge considered that the applicants renounced their religious beliefs which did not allow interfaith marriages. Nahdlatul Ulama, Muhammadiyah and the Indonesian Ulema Council view interfaith marriages as illegal and illegitimate. An important condition for marriage is to build a family that is *sakinah, mawaddah* and full of grace, not just love one another. Parental permission is indeed important, however, if it causes a Muslim to give up his faith, then it should be something that is not followed.

**Key Words:** Marriage; Interfaith Marriage; Community organization; Fatwas; Determination.

### 1. INTRODUCTION

Marriage comes from the word marriage which in the Big Indonesian Online Dictionary means forming a family with the opposite sex, having a husband or wife, and getting married. Marriage is a way for men and women to build a harmonious life (Shihab, 2018, p. 1260. Di In marriage, the relationship that every couple dreams of is a relationship that is *sakinah, mawaddah, wa rahmah*, namely a relationship that is everlasting, happy and brings grace (Sanjaya and Anur, 2017, p. 16). ProsThe marriage contract is generally according to the religion adhered to by both the bride and groom. The marriage contract will be problematic when the bride and groom have different beliefs. This marriage is called interfaith marriage. This interfaith marriage has actually been happening for a long time in the world, even in the Islamic world itself the Prophet Muhammad saw. have carried out interfaith marriages twice. This marriage was carried out by the Prophet SAW. with Mariyatul Qibtiyah and Safiyyah. Mariyatul Qibtiyah is a Christian woman and Safiyyah is a Jewish woman (Al-Tabarī, nd, p. 21).

Interfaith marriages today still exist in society. Countries in the world have different opinions regarding the rules of interfaith marriage. Indonesia is a country that does not clearly regulate interfaith marriages. The legal basis for marriage in Indonesia regulated in Law Number 1 of 1974 concerning Marriage only discusses that marriage must be carried out according to their respective religions. In contrast to Indonesia, there are several countries that explicitly allow interfaith marriage laws. These countries are England, Canada and Singapore (Sastra, 2011, p. 44). The three countries do not require similarity in religion to get married. For countries that prohibit



interfaith marriages, Middle Eastern countries mostly do it. In Indonesia, cases of interfaith marriages were even carried out by several public figures, such as Lydia Kandou and Jamal Mirdad, Marcel Siahaan and Rima Melati Adams, and Rio Febrian and Sabria Sagita Kono. The latest is the licensing of interfaith marriages by the Surabaya District Court in April 2022.

Regarding the law on interfaith marriage, Muslim scholars are actually different opinions. There are those who allow it if it is done by Muslims to non-Muslim women. There are those who only allow marriage to ahlu al-kitāb women (Jews and Christians) and forbid polytheistic women (majusi, idol worshipers, animists). There are those who absolutely allow interfaith marriages and there are also those who forbid the marriage of Muslim women to non-Muslims, both ahlu al-kitāb and polytheists. Indonesian Ulama also did not want to be outdone discussing this issue through their large mass organizations, namely Nahdlatul Ulama, Muhammadiyah, and the Indonesian Ulema Council.

Based on the background above, this research will answer the question: "How the judge's considerations in Determining Number 916/PDT.P/2022/PN.SBY?" and "How is the analysis of the legal opinions of Nahdlatul Ulama, Muhammadiyah and the Indonesian Ulema Council regarding the Determination of Number 916/PDT.P/2022/PN.SBY?"

## **2. RESEARCH METHODS**

This research is Library Research using Normative Islamic Law research methodology, which is the same research as normative legal research in the form of legal research conducted by examining library materials or secondary data however, the domain is law (Arfa and Marpaung, 2016, p. 44).

## **3. ANALYSIS OF STUDY FINDINGS**

### **3.1. Law of Interfaith Marriage According to Nahdlatul Ulama, Muhammadiyah, and Majelis of Indonesian Ulama**

Nahdlatul Ulama was founded in 1926 in Surabaya as an organization that has the goal of "Enforcement of Islamic teachings that adhere to Ahlussunnah Waljamaah and according to one of the Four Schools to create a democratic and just social order for the benefit and welfare of the ummah" Islam (Fadeli and Subhan, 2007, p. 18). The method of extracting NU law can be broadly drawn into three ways, namely qouli, ilḥaq masā'il bi naẓairiha, and manhaji. (Nahdlatul Ulama Executive Board, 2016, p. 153).

Nahdlatul Ulama was noted to have discussed the law of interfaith marriage in three major events, first at the 19th Nahdlatul Ulama Syuriah General Council Conference in 1957, second at the IV Congress of Jam'iyyah Thariqah Mu'tabarrah al-Nahdliyyah in 1968, and third at the 28th Nahdlatul Ulama Congress in 1989 (Said and Ma'ruf, 2004, p. 304). Nahdlatul Ulama (NU) prohibits interfaith marriages whether the marriage occurs between a Muslim and a polytheist woman or a Muslim woman and a non-seasonal man. Muslim marriages with women of the scriptures are still possible according to the opinion at the 19th Nahdlatul Ulama Syuriah General Council Council if the religion adhered to is still in the form of pure teachings. NU uses the qouli method in terms of determining this interfaith marriage law. NU follows the qaul of the Shāfi'i Ulama school which is in the book Fath al-Mu'in,

Muhammadiyah believes that it is forbidden for Muslim women to marry non-Muslims and Muslims are prohibited from marrying polytheistic women (other than people of the book). Regarding Muslims marrying women of the people of the book, they take the al-tarjih opinion that it is not permissible to marry women of the people of the book. Muhammadiyah seems to use two methods in answering this problem. The first method is to take the ijma' of the scholars. The second method is al-tarjih with historical, philosophical, sociological, and sadd al-dhari'ah approaches to interfaith marriages, what are the laws? Retrieved July 19, 2022. From <https://muhammadiyah.or.id/nikah-beda-agama-how-Hukumnya/>; Can You Marry Different Religions? Retrieved July 19, 2022. From <https://muhammadiyah.or.id/may-menikah-beda-agama/> ).



The Indonesian Ulema Council (MUI) has two fatwas dealing with interfaith marriages. In its first fatwa in 1980, the MUI decided that the marriage of Muslim women and non-Muslim men was haram, then marriages between Muslims and women who were experts in the book MUI also decided that it was haram. MUI in 2005 decided that interfaith marriages are invalid and Muslim marriages with people of the book are haram and invalid. MUI in its two fatwas refers to 3 methods to explore its law, namely referring directly to the texts. Second, studying the opinions of the salaf scholars. Third, MUI conducts al-tarjih from the opinions of scholars with a sadd al-dhari'ah approach. (Mixed Marriage. Accessed July 19, 2022. From <https://mui-jateng.or.id/perkawinan-dinding/>; Perkawin different religions. Accessed July 19, 2022. From <https://mui.or.id/perkawinan-beda-agama/>.)

### **3.2. Judge's Considerations in Determining Number 916/PDT.P/2022/PN.SBY**

On April 26, 2022, the Surabaya District Court Judge granted the request for an interfaith marriage in decision number 916/Pdt.P/2022/PN.Sby which was carried out between a Muslim and a Christian woman in the presence of the Surabaya City Population and Civil Registry Office. The consideration of the judge in determining this case is quite a lot. These considerations are:

1. The applicant fulfills the formal requirements of his application;
2. Interfaith marriage is the domain of the District Court;
3. Applicants have the right to defend their religious beliefs;
4. The applicant has the right to form a household and continue the lineage;
5. The petitioners already love each other and agree to proceed to marriage;
6. Applicants are approved by both parents;
7. The applicants have entered into marriages with their respective religions;
8. Interfaith marriage is not a ban;
9. Procedures for interfaith marriages are not like marriages of the same religion; And
10. The judge considered that the applicants renounced their religious beliefs which did not allow interfaith marriages;

### **3.3. Analysis of Indonesian Jurisprudence Determination of Interfaith Marriage by Religious Courts**

#### **Countryi Surabaya**

If seen from the perspective of NU, Muhammadiyah and MUI, the interfaith marriages that the applicants will enter into are marriages that are illegitimate and illegitimate. The interfaith marriage case by the applicant is included in the case in the second Bahtsul Masa'il Nahdlatul Ulama, namely the marriage of a Muslim to a Christian which was carried out in two contracts, in a mosque and a church. NU's opinion is based on the opinion of the Shafi'i school of scholars. Muhammadiyah is of the view that the people of the book today are not the people of the book that were the criteria of the old scholars. Marriage is also seen as not producing a family that is sakinah, mawaddah and full of grace. The number of Muslim women who can be married is also still large. This prohibition is also based on preventing damage (sadd al-Dzari'ah), namely changing faith. MUI bases its opinion on the Qur'an and hadith, the opinion of the ulama', and the principles of fiqh. The MUI prohibits this marriage as a form of realizing and maintaining peace in household life.

Some of the judges' considerations in allowing this marriage are Human Rights Humans, mutually loving supplicants, and parental consent. The right to embrace and worship according to one's religion and beliefs, as well as the right to continue offspring through a legal marriage, is indeed a human right. However, the judge's decision to allow interfaith marriages on the assumption that the applicant renounced his religious beliefs which prohibited interfaith marriages was also inappropriate, even though the applicant himself said he still wanted to stick to his religion. Nahdlatul Ulama, Muhammadiyah and MUI agree that an important condition for marriage is not only about loving each other but also building a family that is sakinah, mawaddah and full of grace in it. A family like this, of course, can only be realized if the compatibility of faith occurs. The judge's opinion that the applicant whose religion forbids this gave up his belief even strengthened that this marriage was not to form a sakinah mawadah and full of grace family but only to fulfill the applicant's personal desires. Parents' permission is indeed a mandatory requirement in a marriage, but if this



permission actually causes a Muslim to renounce his faith, then of course this should be something that is not followed.

#### 4. CONCLUSION

The judge at the Surabaya District Court granted the request for an interfaith marriage with several considerations, namely: (1) the applicant fulfills the Formal requirements, (2) is within the realm of the District Court; (3) paras have the right to defend their religious beliefs; (4) the applicant has the right to form a household and continue the lineage; (5) the applicant loves each other and agrees to proceed with the marriage; (6) the applicant has the approval of both parents; (7) the applicant has married with their respective religions; (8) Interfaith marriage is not prohibited; (9) The procedures for interfaith marriages are not like general marriages; and (10) The judge considered that the applicants renounced their religious beliefs which did not allow interfaith marriages.

Nahdlatul Ulama, Muhammadiyah and the Indonesian Ulema Council view interfaith marriages as illegitimate and illegitimate. Muhammadiyah holds the view of people of the book there are now people who are not the people of the book who were the criteria of the scholars of the past. Marriage is also seen as not producing a family that is sakinah, mawaddah and full of grace. This prohibition is also based on the aim of preventing damage (sad al-Dzari'ah), namely changing the faith of the husband and offspring. The MUI also forbids and forbids this marriage based on the Qur'an and hadith, the opinion of the ulama', and the principles of fiqh. MUI forbids this marriage is also a form of realizing and maintaining peace in household life. Nahdlatul Ulama in its Bahtsul Masa'il decided that the marriage of a Muslim with a Christian that is carried out in two contracts, in a mosque and a church is not valid. This opinion is based on the opinion of the scholars of the Shafi'i school of thought. Some of the judges' considerations in allowing this marriage are human rights, those who love each other, and the consent of the parents. The right to embrace and worship according to one's religion and beliefs, as well as the right to continue offspring through a legal marriage, is indeed a human right. However, the judge's decision to allow interfaith marriages on the assumption that the applicant renounces religious beliefs that prohibit interfaith marriages is also inappropriate. This is because when interfaith marriages occur, applicants whose religion prohibits interfaith marriages are considered to have left their religion even though the applicant himself said he still wants to stick to his religion. Nahdlatul Ulama, Muhammadiyah and MUI agree that an important condition for marriage is not only about loving each other but also building a family that is sakinah, mawaddah and full of grace in it which can only be realized if the compatibility of faith occurs. Permission to marry with different religions with the assumption that the applicant whose religion forbids this gives up his belief actually reinforces that this marriage is only for the fulfillment of personal desires. Parents' permission is indeed an important thing in a marriage, permission that even causes a Muslim to renounce his faith is certainly something that is not followed.

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