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Interfaith Marriage in Islamic Law and Positive Law in Indonesia: A Study of the Conditions and Pillars

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Abstract

Interfaith marriage is one of the controversial legal issues in Indonesia. Islamic Law and Indonesian Positive Law regulate the conditions and pillars of marriage differently, especially concerning the legitimacy of marriage between adherents of different religions. This research aims to compare the provisions of Islamic Law and Indonesian Positive Law regarding the conditions and pillars of interfaith marriage in Indonesia. The two main variables of the research are the valid conditions of marriage and the pillars of marriage. Through a normative juridical approach and comparative law analysis, this research examines primary legal sources such as the Qur'an, Hadith, fiqh books, and legislation, as well as secondary data from literature studies and court decisions related to the issue. The research results show convergence and divergence in these two legal systems. Islamic Law is stricter in limiting interfaith marriage, especially for Muslim women. At the same time, Indonesian Positive Law provides more flexible interpretation through administrative mechanisms such as marriage registration and temporary religious conversion. This research highlights the importance of synergy between religious law and state law in addressing interfaith marriage issues in Indonesia, as well as the social and legal impacts arising from the differences in regulations. Thus, this research contributes to developing more comprehensive marriage regulations in Indonesia.

Keywords: Interfaith marriage, Islamic Law, Positive Law, marriage requirements, pillars of marriage.

Abstrak

Perkawinan beda agama merupakan salah satu isu hukum yang kontroversial di Indonesia. Hukum Islam dan Hukum Positif Indonesia mengatur syarat dan rukun perkawinan secara berbeda, terutama terkait legitimasi perkawinan antar pemeluk agama yang berbeda. Penelitian ini bertujuan untuk membandingkan ketentuan Hukum Islam dan Hukum Positif mengenai syarat dan rukun perkawinan beda agama di Indonesia. Dua variabel utama yang menjadi fokus

penelitian adalah syarat sah perkawinan dan rukun perkawinan. Melalui pendekatan yuridis normatif dan perbandingan hukum, penelitian ini menganalisis sumber hukum primer, seperti Al-Qur'an, Hadis, kitab-kitab fiqh, dan peraturan perundang-undangan, serta data sekunder dari studi literatur dan putusan pengadilan terkait. Hasil penelitian menunjukkan adanya konvergensi dan divergensi dalam kedua sistem hukum ini. Hukum Islam lebih ketat dalam membatasi perkawinan beda agama, khususnya untuk perempuan Muslim, sementara Hukum Positif memberikan ruang bagi interpretasi yang lebih fleksibel melalui mekanisme administratif seperti pencatatan perkawinan dan perpindahan agama sementara. Penelitian ini menyoroti pentingnya sinergi antara hukum agama dan hukum negara dalam menangani isu perkawinan beda agama di Indonesia, serta dampak sosial dan hukum yang muncul dari perbedaan regulasi tersebut. Dengan demikian, penelitian ini memberikan kontribusi bagi pengembangan regulasi perkawinan yang lebih komprehensif di Indonesia.

Kata kunci: Perkawinan beda agama, Hukum Islam, Hukum Positif, syarat perkawinan, rukun perkawinan.

Introduction

Marriage represents a crucial cornerstone in the structure of society, encompassing not merely a personal bond between individuals but also falling within the regulatory frameworks of religious and state authorities. In Indonesia, where the majority of the population adheres to Islam, interfaith marriage often emerges as a contentious issue, sparking debates from both social and legal perspectives. The institution of marriage, while fundamentally a personal commitment between two individuals, is deeply intertwined with broader societal and cultural fabrics. It serves as a reflection of the values, norms, and aspirations a community upholds. In Indonesia, where Islamic principles hold significant sway, the concept of marriage extends beyond a private matter to one that is deeply embedded in religion.

Doctrine and state law. This dual regulation often leads to complex and diverse discussions surrounding interfaith marriage.

From a social perspective, interfaith marriage challenges traditional norms and expectations in a predominantly Muslim society. Such marriages may be perceived as deviations from prevailing religious and cultural practices, resulting in varying degrees of acceptance or rejection within the community. Social discourse frequently revolves around perceived threats to religious purity and cultural identity, which can lead to substantial social pressure and stigmatization for those involved in interfaith unions.

Legally, the issue of interfaith marriage in Indonesia is equally complex. The country's legal framework is influenced by both Islamic law (Sharia) and civil law,

creating a unique set of challenges for interfaith couples. The legal system often imposes restrictions and requirements that are difficult to navigate, such as the need for religious conversion or the obligation to conduct the marriage under specific religious guidelines. These legal hurdles can create significant barriers for couples seeking to formalize their union, resulting in various legal and administrative challenges. Moreover, the controversy surrounding interfaith marriage in Indonesia is not confined to domestic spheres but extends to the international arena. The state's stance on interfaith marriage can influence its relationships with other nations and its reputation on the global stage. The international community often scrutinizes such policies as indicators of a country's commitment to human rights and religious freedom.

Indonesia's Positive Law, on the other hand, provides a relatively more flexible approach. Although no explicit provisions address interfaith marriage in Law No. 1 of 1974 on Marriage, practices on the ground indicate several pathways to legalizing such unions. These include temporary religious conversion or registering the marriage abroad. This socio-legal landscape reflects the intricate interplay of religious, cultural, and legal dimensions that shape the discourse on interfaith

marriage in Indonesia, highlighting both the challenges and opportunities within this dynamic context.¹

In this context, it is crucial to conduct a comparative analysis of how Islamic Law and Positive Law outline the conditions and prerequisites of interfaith marriage. The differences between these two legal frameworks not only influence the legal status of couples but also shape the social and legal rights accorded to them within society. This study seeks to explore the similarities and differences between Islamic Law and Positive Law in regulating interfaith marriage, with a particular focus on its conditions and prerequisites. It is anticipated that this research will offer new perspectives for legal practitioners, scholars, and policymakers in addressing the complexities of interfaith marriage in Indonesia.

A comparative analysis of Islamic Law and Positive Law in the context of interfaith marriage is a multifaceted endeavor requiring a nuanced understanding of both legal systems. Islamic Law, or Sharia, is deeply rooted in religious doctrine and the interpretation of the Quran and Hadith, which can vary across different schools of thought and regions. Positive Law, on the other hand, is the body of law enacted by the state or nation, reflecting the

secular and civil aspects of governance. The interaction between these two systems can lead to a complex legal landscape where individual rights and obligations are negotiated and contested.

The impact of these legal differences on the social and legal rights of couples is substantial. For instance, under Islamic Law, a Muslim woman is generally prohibited from marrying a non-Muslim man, while a Muslim man may marry a woman from the "People of the Book" (Jews and Christians). Conversely, Indonesia's Positive Law, influenced by its civil law system, may not impose such restrictions, potentially creating conflicts between personal religious beliefs and state law. These discrepancies can affect various aspects of a couple's life, including inheritance rights, child custody, and the ability to legally solemnize their marriage.

Moreover, the social implications of these legal differences are significant. Couples in interfaith marriages may face social ostracism, familial disapproval, and societal pressure, compounded by the legal ambiguities and restrictions they encounter. Public perceptions of interfaith marriage can influence the level of acceptance and support these couples receive, affecting their overall well-being and integration into society. From a policy perspective, understanding the nuances of how Islamic

Law and Positive Law regulate interfaith marriage is essential for crafting an effective and equitable legal framework. Policymakers must navigate the delicate balance between respecting religious freedom and ensuring equal rights for all citizens. This requires a comprehensive understanding of the prevailing legal and social dynamics, as well as a commitment to fostering inclusivity and social harmony. By examining the similarities and differences between these two legal systems, this study aims to provide valuable insights for legal practitioners, academics, and policymakers. It is hoped that these insights will contribute to the development of a more inclusive and equitable legal framework that promotes social cohesion and respects individual rights in the context of interfaith marriage.²

Marriage in Islamic Law

Marriage in Islamic Law is deeply rooted in the Quran and Hadith. Generally, marriage is regarded as a sacred bond encompassing not only physical aspects but also spiritual and social dimensions. According to the Quran, in Surah Al-Rum, verse 21, Allah states that He created spouses so they may live together in love and mercy.³ His concept highlights that marriage is a means to achieve inner tranquility and uphold moral values within society.

In the realm of marital contracts, Islamic jurisprudence outlines essential criteria that must be fulfilled for a marriage to be deemed valid. These criteria include mutual consent from both parties, the involvement of a legitimate guardian (wali), and the clear specification of the dowry (mahr). The fundamental elements of marriage are encapsulated in the concepts of ijab (proposal) and qabul (acceptance). These provisions are widely documented in classical Islamic legal texts, including *Al-Mughni* by Ibn Qudamah and *Fath al-Qarib* by Al-Mawardi.⁴

The requirement for mutual consent underscores the importance of personal autonomy and the voluntary nature of marriage in Islamic law. This principle ensures that both parties enter the marriage willingly, free from coercion or undue influence. The presence of a legitimate guardian, often referred to as a wali, acts as a safeguard to protect the interests of the parties involved, particularly the bride. The wali's role is to ensure the marriage contract is fair and just while providing guidance and support throughout the process.

The clear specification of mahr, or dowry, is another crucial element in Islamic marriage. Mahr is a gift from the groom to the bride, symbolizing his commitment and responsibility toward her. It serves as a form

of financial security for the bride and can be negotiated to reflect the couple's cultural and economic context. Clarity and agreement on the amount of mahr are essential to avoid future disputes and to ensure the bride's rights are upheld.

The pillars of marriage, ijab, and qabul, represent the formal exchange of the marriage proposal and its acceptance. This exchange must occur in the presence of witnesses to ensure transparency and the validity of the marriage contract. The ijab is typically initiated by the bride's legitimate guardian, proposing the marriage on her behalf, while the qabul is the acceptance by the groom. This process is meticulously documented in Islamic legal texts to uphold the sanctity and legality of the marital bond.

The documentation of these provisions in fiqh texts such as *Al-Mughni* by Ibn Qudamah and *Fath al-Qarib* by Al-Mawardi serves as comprehensive guidance for Muslims seeking to understand and adhere to the principles of Islamic marriage. These texts offer detailed explanations and interpretations of legal requirements, providing insights into the historical and cultural contexts of these practices. By consulting these authoritative sources, individuals can ensure their marriages are conducted by Islamic teachings, thereby fostering a strong foundation for

harmonious and fulfilling marital relationships.

The provisions regarding interfaith marriage in Islamic Law are notably stringent. Classical scholars, such as Ibn Hazm, asserted that a Muslim is prohibited from marrying a non-Muslim, particularly a Muslim woman marrying a non-Muslim man. This is based on the understanding that marriage should be conducted within the framework of shared faith.⁵ However, contemporary scholars have introduced more flexible perspectives. For instance, Muhammad Syahrur argues that as long as there is no explicit prohibition in the Quran, interfaith marriage may be considered in a modern context.⁶ This viewpoint reflects a shift in how scholars address this issue, influenced by evolving social and cultural contexts. The divergence of opinions demonstrates the dynamic nature of Islamic jurisprudence and its ability to adapt to changing circumstances while striving to uphold the core principles of faith and justice.

Marriage in Indonesia's Positive Law

Indonesia's Positive Law, particularly Law No. 1 of 1974 on Marriage, provides a legal framework for marriage practices in the country. While the law does not explicitly regulate interfaith marriages, its provisions offer a pathway for such

unions. For instance, Article 2(1) of Law No. 1/1974 states that a marriage is valid if conducted according to the laws of each party's religion and belief.⁷ This clause allows interfaith couples to marry, provided they follow applicable legal procedures, such as registering their marriage with government authorities.

Additionally, certain regional regulations and administrative policies address the registration of interfaith marriages. In some regions, interfaith couples are permitted to marry abroad, enabling them to obtain legal recognition for their marriage upon returning to Indonesia. However, these procedures often present challenges, including issues of religious conversion and other administrative requirements.⁸

Positive law's perspective on the conditions and pillars of marriage emphasizes human rights, recognizing every individual's right to marry according to their choice. Compared to Islamic Law, which focuses more on spiritual and moral aspects, Positive Law prioritizes administrative and legal dimensions⁹. This approach provides greater flexibility for interfaith couples to negotiate and find practical solutions within the limits of the law.

Numerous studies have examined interfaith marriage issues from both Islamic

and Positive Law perspectives. For example, research by Nasution¹⁰ Identifies the challenges faced by interfaith couples in obtaining legal recognition for their marriages in Indonesia. Despite supportive policies, practical implementation often encounters bureaucratic obstacles and social norms that hinder the legitimacy of interfaith marriages. Another study by Ahmad¹¹ Explores scholars' views on the legality of interfaith marriages, analyzing various fatwas and opinions. This research reveals a spectrum of perspectives among scholars, ranging from strict prohibitions to more permissive stances in modern contexts. By focusing on the conditions and pillars of marriage, these studies aim to offer new insights that consider evolving social and legal realities, as well as recommendations for policymakers to formulate more inclusive regulations for interfaith couples.

Positive Law in Indonesia seeks to balance individual rights and societal norms. By offering pathways for interfaith marriages, such as registration abroad or administrative adjustments, the law attempts to accommodate the diverse realities of modern society. However, these solutions require further refinement to address the practical and bureaucratic hurdles that couples face.

In light of the social and legal complexities surrounding interfaith marriages, there is a pressing need for collaborative efforts between legal experts, policymakers, and religious authorities. Such efforts can help develop more inclusive regulations that respect individual rights while maintaining societal harmony. Recognizing the dynamic nature of marriage practices and their legal implications is crucial in ensuring that Indonesia's Positive Law continues to evolve in line with contemporary challenges and values.

Method

This study employs a normative juridical and comparative legal approach. Through these methods, the research aims to examine legal provisions governing the requirements and pillars of marriage and their implications for interfaith marriages.¹² The comparative legal approach further allows for the analysis and comparison of Islamic Law and Positive Law, identifying points of convergence and divergence in their regulations.¹³

The data sources for this research are categorized into two main groups: primary legal sources and secondary data. These include the Qur'an, Hadith, and Islamic jurisprudence literature, alongside relevant Indonesian laws and regulations, such as Law No. 1 of 1974 on Marriage.

The primary legal sources provide a foundational framework for the study, offering authoritative insights into the religious and legal dimensions of interfaith marriage.

The Qur'an serves as Islam's holy scripture, offering divine principles and guidance that shape the moral and ethical framework within which Muslims operate. The Hadith, comprising the recorded sayings and actions of Prophet Muhammad, contextualizes and elucidates these principles, providing practical examples and interpretations. Islamic jurisprudence literature, written by Islamic legal scholars, offers a comprehensive understanding of Islamic jurisprudence, including the nuances and complexities of marriage laws. In addition to religious texts, Indonesian laws, such as Law No. 1/1974, play a pivotal role in shaping the legal landscape of interfaith marriages. This law outlines civil requirements and procedures for marriage, reflecting the state's effort to balance religious principles with secular governance and ensure legal recognition of marriages.

Secondary sources complement the primary data by providing contextual and analytical perspectives. These include books, journal articles, and prior research on interfaith marriage. Secondary sources deepen the understanding of broader

implications and challenges associated with interfaith marriages in Indonesia.¹⁴ These sources provide a strong normative foundation for the analysis conducted in this research. Secondary data sources include books, journal articles, and previous research results related to the theme of interfaith marriage, which provide additional perspectives in understanding this problem.¹⁵ The data collection process involves extensive literature exploration and thorough analysis of relevant documents. This includes: A detailed review of primary texts, such as religious scriptures and Indonesian laws. Examination of contemporary academic writings and legal commentaries to understand the evolving discourse on interfaith marriage. A systematic review of court decisions related to interfaith marriages, offering empirical insights into judicial reasoning and the factors influencing court rulings.

Analytical Methods

The study adopts a comparative analysis methodology to juxtapose the provisions of Islamic Law and Positive Law regarding interfaith marriage. This method highlights the similarities and differences between the two legal systems, offering a nuanced understanding of their respective approaches. The comparative analysis identifies points of convergence and

divergence, elucidating the principles and values underpinning each legal framework. It evaluates aspects that facilitate or hinder the implementation of interfaith marriages, exploring the associated social and legal implications.

The literature review is not just a cursory examination, but an in-depth study of the basic texts and contemporary writings that shape the discourse on interfaith marriage. It includes analyses of religious texts, legal commentaries, and scholarly articles that provide a comprehensive understanding of the theoretical underpinnings of the issue. By examining both primary sources, such as religious scriptures and legal codes, and secondary sources, including academic papers and legal analyses, this research aims to capture a holistic view of the topic.

Document analysis, on the other hand, involves a systematic review of court decisions that have addressed interfaith marriage. This process is very important because it provides empirical data about how the legal system operates in practice. By examining these court decisions, researchers can see patterns in court reasoning and factors that influence court decisions. This analysis is critical to understanding the nuances and complexities of applying legal principles to real-world cases.

The comparative analysis method was chosen because of its ability to highlight the similarities and differences between Islamic Law and Positive Law. This approach allows research to identify points of convergence and divergence between the two legal frameworks, providing a clearer picture of the legal landscape governing interfaith marriages. By comparing the terms and conditions set by each legal system, this research aims to uncover the underlying principles and values that guide each legal system's approach.

The comparative analysis method allows researchers to evaluate the similarities and differences in the provisions that apply to the two legal systems. In this way, it is hoped that aspects that support or hinder the implementation of interfaith marriages can be identified, as well as the social and legal implications that arise.¹⁶. It is hoped that the results of this analysis can provide recommendations for the development of regulations that are more inclusive and in line with the values of justice and equality in Indonesian society.

Results and Discussion

Conditions and Pillars of Marriage According to Islamic Law

In Islamic Law, the conditions and pillars of marriage are fundamental to

ensuring the validity of a marriage. These conditions include the consent of both parties, the presence of a guardian (wali), and a clear dowry (mahr). Regarding interfaith marriages, some scholars argue that these conditions cannot be validly fulfilled if one of the partners adheres to a different religion.¹⁷

The issue of whether interfaith marriage is permissible or prohibited in Islamic jurisprudence is a topic of significant debate, dividing scholars into two primary perspectives. The dominant stance held by most traditional scholars is a strict prohibition of interfaith marriage. They argue that such marriages could adversely affect the religious upbringing of children and potentially disrupt harmony within the household.

Traditional scholars emphasize the importance of a unified religious foundation within a household to foster spiritual growth. They contend that the differences in religious beliefs and practices between parents in an interfaith marriage could lead to conflicts of values, thereby confusing or weakening the religious identity of their children. This confusion, in their view, may undermine the children's commitment to religious practices and principles, posing a threat to the continuity and strength of the Muslim community.¹⁸ In this view, marriage

law is part of broader family law, which requires equality of belief.

A family built on shared religious beliefs is considered essential for emotional and psychological well-being. Traditional scholars argue that a divided household, characterized by differing religious convictions, risks experiencing tensions and conflicts that could disrupt family stability and negatively affect child-rearing practices.

The traditionalist stance reflects a religiously conservative approach aimed at safeguarding the Islamic community's religious and social fabric. By advocating a strict prohibition on interfaith marriages, these scholars seek to prevent potential challenges and conflicts, thereby preserving religious identity and family harmony.

In contrast, some contemporary scholars, such as Muhammad Shahrur, argue that interfaith marriages can be permissible under specific conditions. These scholars maintain that unless there is an explicit prohibition in religious texts, interfaith marriages may be considered within the context of modern society.¹⁹ While upholding the fundamental conditions and pillars of marriage, contemporary scholars propose adjustments that account for social and cultural contexts. For example, a marriage between a Muslim and a Christian may be permissible if both parties agree on

the religious upbringing of their children and acknowledge their differences in faith.²⁰

Conditions and Pillars of Marriage According to Positive Law

Indonesian Positive Law, particularly as outlined in Law Number 1 of 1974 on Marriage, specifies the conditions and prerequisites for marriage. Although the law does not explicitly address interfaith marriage, Article 2 Paragraph (1) emphasizes that a valid marriage must be conducted by the teachings of each respective religion and belief system.²¹ This legal framework, while comprehensive, defers the issue of interfaith marriage to the discretion of religious doctrines. The absence of explicit provisions regarding interfaith marriage reflects a deliberate stance by lawmakers to respect the autonomy of religious institutions in governing such unions. Thus, the law acknowledges Indonesia's diverse religious landscape and the distinct doctrines upheld by each religion concerning marriage.

The reliance on religious law to formalize marriages underscores the importance of cultural and religious norms within Indonesia's legal system. This approach not only respects the spiritual and moral convictions of individuals but also fosters a sense of legitimacy and societal acceptance. It ensures that marriages are not only legally recognized but also socially and

religiously sanctioned, thereby strengthening social order and community harmony.

Furthermore, these legal provisions reflect a broader principle of pluralism and religious tolerance, foundational to Indonesian society. By allowing religious institutions to govern interfaith marriages, the law promotes an atmosphere of mutual respect and understanding among diverse religious communities. This, in turn, helps mitigate potential conflicts and fosters a more inclusive and cohesive society. Although Positive Law in Indonesia does not explicitly regulate interfaith marriage, its reliance on religious doctrine to formalize such unions demonstrates the state's commitment to pluralism and religious tolerance. This approach not only honors the diverse religious beliefs of its citizens but also reinforces the social and cultural bonds that unite them.

The administrative practices employed to legalize interfaith marriages in Indonesia often involve registration with government agencies and adherence to prescribed legal procedures. For instance, interfaith couples may be required to register with the Ministry of Religious Affairs and obtain a marriage license.²² However, many regions lack clear guidelines for these practices, leaving couples to face challenges in securing legal recognition for

their marriages. Additionally, some administrative practices involve filing applications with the courts to obtain legal recognition for interfaith marriages. This process may include litigation and presenting legal arguments advocating for the recognition of the couple's rights. These practices highlight that while Positive Law provides space for interfaith marriages, their implementation on the ground often encounters obstacles.²³.

Comparison and Analysis

The comparison between Islamic Law and Positive Law regarding interfaith marriage reveals significant convergences and divergences. From the Convergence's Perspective, Both Islamic Law and Positive Law emphasize the importance of mutual consent from both parties and the presence of a guardian (wali) in marriage. Additionally, both recognize the right to marry as part of fundamental human rights, though their emphasis may differ.²⁴. This shared understanding creates a common ground where both legal systems can complement each other.

However, there are fundamental divergences in the principles and values underlying the conditions and requirements for marriage. Islamic Law tends to be more rigid in prohibiting interfaith marriages, viewing them as inconsistent with religious

teachings. In contrast, Positive Law offers greater flexibility, allowing for the possibility of legalization through administrative procedures. These differences can lead to confusion and uncertainty for interfaith couples, particularly regarding the legal and social legitimacy of their marriage. For instance, a marriage that is legally recognized under Positive Law might still face social stigma if it is deemed invalid under Islamic Law.

Social and Legal Implications

The differences in the application of requirements and principles for interfaith marriages under Islamic Law and Positive Law have profound social and legal implications. Socially, Interfaith couples often face challenges in gaining recognition and legitimacy within their communities. The social stigma surrounding interfaith marriages can lead to discrimination and marginalization of couples and their children. This stigma may disrupt family dynamics and hinder social interactions within the community. Interfaith couples may experience barriers to accessing their rights, further limiting their participation in society.

The divergence between Islamic Law and Positive Law can result in legal uncertainties regarding the status of interfaith couples. Couples legally married

under Positive Law might face challenges in matters such as inheritance rights, child custody, and the recognition of their marriage under Islamic Law. For instance, children from interfaith marriages may not be considered legitimate heirs under Islamic legal principles.²⁵. These challenges raise critical concerns about the protection of children's rights and the fairness of the legal system. This study explores the complex dynamics between Islamic Law and Positive Law and their impact on interfaith marriage practices in Indonesia. It seeks to Highlight the convergences and divergences between the two legal systems. Offer valuable recommendations for public policy and more inclusive regulatory frameworks. These recommendations are intended to address the unique challenges faced by interfaith couples, thereby encouraging the creation of a more just and harmonious society.

The convergence of Islamic Law and Positive Law in Indonesia presents a complex interaction between religious and secular principles. Islamic law, which is rooted in the teachings of the Koran and Hadith, often emphasizes the importance of religious homogeneity in marriage. On the other hand, Positive Law, which is based on the Indonesian Constitution and statutory regulations, upholds the principles of individual rights and freedoms. The

intersection of these two legal systems can create opportunities as well as challenges for couples of different religions. Understanding this convergence is critical to developing policies that respect religious traditions while protecting individual rights. On the other hand, differences between Islamic Law and Positive Law can cause significant legal and social obstacles for interfaith couples. For example, Islamic Law can impose restrictions on marriages between Muslims and non-Muslims, while Positive Law can offer more flexibility. These differences can result in a lack of legal recognition for interfaith marriages, leading to problems such as the inability to register marriages, obtain marriage certificates, or secure legal rights for children born in such unions. By examining these differences, this research aims to highlight the specific challenges faced by interfaith couples and propose solutions that bridge the gap between these legal systems.

It is hoped that the recommendations derived from this research will provide a roadmap for policymakers to create more inclusive and responsive regulations. These recommendations could include the development of an integrated legal framework that accommodates the diverse religious and cultural backgrounds of Indonesian citizens. Additionally, this

research can suggest the implementation of educational programs and public awareness campaigns to foster greater understanding and acceptance of interfaith marriages. By addressing the legal and social challenges faced by interfaith couples, this policy can contribute to a more inclusive and harmonious society.

Comparison and Analysis: Convergence and Divergence of Islamic Law and Positive Law Regarding Interfaith Marriage

Convergence Between Islamic Law and Positive Law

Recognition of Individual Rights

Both Islamic law and positive law, despite their distinct origins and frameworks, converge on one fundamental principle: the irreplaceable role of mutual consent in the sanctity of marriage. In the realm of Islamic law, marriage is considered valid only when both parties—the bride and the groom—freely and voluntarily express their consent, a process encapsulated in the terms "ijab" and "qabul." This requirement underscores the significance of personal agency and voluntary participation, reflecting the broader ethos of justice and fairness in Islam. Similarly, positive law, rooted in statutory regulations, echoes this sentiment by mandating that marriage must

be based on mutual consent between the two parties. This principle is explicitly articulated in Law No. 1 of 1974, which governs marriage in Indonesia, thereby aligning the legal framework with the ethical considerations underpinning both legal systems.

The emphasis on consent in both legal systems serves as evidence of the universal recognition of individual autonomy within the marital bond. In Islamic law, the requirement for voluntary consent is not merely a procedural formality but a reflection of the intrinsic value placed on the dignity and rights of individuals. The process of *ijab* and *qabul*, where both parties declare their acceptance of the marriage proposal, is a solemn and deliberate act that emphasizes the weight of their commitment. This practice ensures that the bond is not only legally binding but also morally sound, fostering a relationship built on mutual respect and understanding.

In the context of positive law, the stipulation that marriage must be based on the consent of both parties forms the cornerstone of modern legal systems. This requirement is designed to protect the rights and interests of individuals, ensuring that they enter marriage voluntarily and without coercion. By codifying this principle in Law No. 1 of 1974, the legal system

acknowledges the importance of personal choice in the formation of marital bonds. The alignment with Islamic principles highlights a shared commitment to upholding the integrity and sanctity of marriage through respect for individual autonomy.

Furthermore, the convergence of these legal systems on the issue of consent underscores the broader societal recognition of the importance of personal agency in marital relationships. By requiring that both the bride and the groom actively participate in the decision to marry, this legal framework promotes a vision of marriage rooted in equality and mutual respect. This approach not only protects individual rights but also contributes to the stability and harmony of marital bonds. In essence, the emphasis on consent in both Islamic law and positive law serves as a powerful reminder of the enduring relevance of personal autonomy in the context of marriage, transcending cultural and legal boundaries to assert the universal principle of human dignity.²⁶ Consent forms a crucial foundation in every marital bond, signifying that both parties act freely and without duress.

Protection of Women and Children

Both Islamic jurisprudence and statutory law emphasize the importance of

safeguarding the rights of women and children within the institution of marriage. Islamic law, in particular, underscores the vital role of mahr (dowry) as a symbol of respect and protection for women. Islamic law, or Sharia, views mahr as more than just a transactional element; it is a profound gesture that signifies the husband's commitment and responsibility toward his wife. Mahr is not only a legal obligation but also a moral duty, reflecting the husband's recognition of the intrinsic value and dignity of his wife. This practice is deeply rooted in the teachings of the Quran, which emphasizes the importance of treating women with kindness and fairness.

Mahr serves multiple purposes within the framework of Islamic marriage. First, it acts as a financial guarantee for the wife, providing her with a sense of independence and security. In the event of divorce or the husband's death, the mahr remains her exclusive property, ensuring her economic stability. Second, mahr symbolizes the respect and esteem the husband has for his wife, reinforcing the notion that marriage is a partnership based on mutual respect and love.²⁷ Mahr is not merely considered an obligation but also a symbol of the husband's commitment and responsibility. On the other hand, positive law in Indonesia regulates the protection of women's rights through various provisions,

including the prohibition of harmful practices such as forced marriage. In this context, the protection of children is also a primary concern, with both legal systems emphasizing the importance of child welfare as an outcome of marriage.

Statutory law complements Islamic law by incorporating provisions that safeguard the rights of women and children. These laws are designed to ensure that women are not subjected to unfair treatment or exploitation within marital relationships. They provide legal avenues for women who may face domestic violence, discrimination, or other forms of abuse. Thus, statutory law strengthens the principles of justice and equality that are central to both Islamic and secular legal systems.

Moreover, the protection of children's rights is a shared priority in both Islamic law and statutory law. Both legal frameworks emphasize the importance of providing a nurturing and supportive environment for children, ensuring their physical, emotional, and educational well-being. This includes the right to care, education, and protection from harm, reflecting a holistic approach to the welfare of the family unit. The convergence of Islamic law and statutory law in the protection of women's and children's rights highlights a shared commitment to justice,

equality, and compassion. The emphasis on mahr in Islamic law as a symbol of respect and protection for women, combined with the comprehensive legal protections provided by statutory law, underscores the importance of fostering healthy and equitable marital relationships. This dual approach not only preserves the dignity and rights of women and children but also strengthens the social fabric of society.

Marriage Dispute Resolution

In the case of marital disputes, both Islamic law and Indonesian positive law provide mechanisms for conflict resolution. Islamic law offers pathways for arbitration and mediation to resolve disputes. Arbitration in Islamic law typically involves a *hakam*, who serves as a mediator or arbitrator to assist the couple in reaching a fair settlement that aligns with Sharia principles.²⁸

Meanwhile, Indonesian positive law regulates the legal process in court to resolve issues arising from marriage, such as divorce and child custody. The court becomes the venue where couples can file claims and substantiate their allegations by the applicable law. This process is more formal and adheres to strict legal procedures, aiming to deliver a fair and legally valid decision. The court also plays a role in protecting children's rights and

ensuring that decisions are made in the best interests of the children involved. Despite differences in methodology, the primary aspiration of both legal frameworks converges on a singular goal: pursuing justice and the well-being of all stakeholders in the marriage bond. Islamic jurisprudence and secular law, each with its *modus operandi*, strive to adjudicate conflicts with impartial fairness, ensuring robust protection for all parties involved, including vulnerable offspring who may bear the burden of marital disputes.

Islamic law, rooted in the divine teachings of the Quran and Hadith, takes a holistic approach to marital disputes. It emphasizes reconciliation and mediation, encouraging couples to resolve their differences peacefully. The Sharia court, guided by principles of justice and compassion, seeks to restore harmony within the family unit. This system not only addresses the direct legal issues but also considers the spiritual and moral dimensions of the conflict, fostering an environment where forgiveness and understanding can flourish.

On the other hand, positive law, based on statutory regulations and judicial precedents, adopts a more structured and procedural approach to marital disputes. The legal framework is designed to ensure

that each party's rights are protected and that the resolution process is transparent and just. The court carefully examines evidence, hears testimony, and applies relevant laws to reach a fair decision. This methodical approach aims to provide a clear and enforceable resolution, minimizing ambiguity and potential conflicts in the future.

Despite these differences, both legal systems share the same ultimate goal: safeguarding the welfare of all parties involved, especially children. In Islamic law, the best interests of the child take precedence, and custody decisions are made with consideration for the child's physical, emotional, and spiritual well-being. Similarly, positive law places a strong emphasis on child welfare, ensuring that custody arrangements are made in the child's best interests, taking into account factors such as stability, emotional bonds, and the parents' ability to provide a supportive environment.

In essence, while Islamic law and positive law may follow different paths, they ultimately converge on the same noble mission: upholding justice and enhancing the well-being of all individuals affected by marital disputes. By acknowledging and respecting the strengths and unique approaches of each system, society can

more effectively ensure that justice is served and that family welfare, particularly that of children, is protected.²⁹

Divergence Between Islamic Law and Positive Law

Permissibility of Interfaith Marriages

A striking difference between Islamic jurisprudence and statutory law regarding interfaith marriage lies in their respective stances on the permissibility or prohibition of such unions. Islamic law generally permits a Muslim man to marry a woman from the People of the Book—namely Christians and Jews—but explicitly forbids a Muslim woman from marrying a non-Muslim man.³⁰ This is based on the principle that a Muslim woman must marry a Muslim man to preserve religious integrity and lineage. In contrast, positive law does not explicitly regulate such a prohibition, although administrative practices often require one party to convert to the other's religion for the marriage to be legally recognized³¹. This difference creates uncertainty for couples seeking to marry across religions, as they face complex legal challenges.

The difference in Islamic law is deeply rooted in theological and historical contexts. The permissibility of a Muslim man to marry a woman from the People of

the Book is based on interpretations of the Quran and Hadith, which are understood to allow such marriages under specific circumstances. This leniency is often linked to the shared monotheistic beliefs and the historical context of coexistence between Muslim and non-Muslim communities. The underlying reasoning is that the husband, as the head of the household, would uphold Islamic beliefs within the family, thereby preserving the religious identity of their offspring.

On the other hand, the prohibition against a Muslim woman marrying a non-Muslim man stems from concerns about the potential influence of the husband's faith on the religious education of their children. Islamic law prioritizes the preservation of the Muslim faith within the family unit, and there are concerns that a non-Muslim husband may not support, or could even undermine, the Islamic beliefs of his wife and children. This prohibition is also seen as a protective measure to preserve the religious and cultural identity of Muslim women. In contrast, positive law often takes a more secular approach to interfaith marriage. In many jurisdictions, the legal framework is designed to be neutral and inclusive, allowing individuals to marry regardless of their religious affiliation. This approach is based on the principles of freedom and individual equality, recognizing

the right of individuals to choose their life partners without undue interference from the state or religious institutions.

The contrasting attitudes between Islamic law and statutory law regarding interfaith marriage highlight the complex interaction between religious doctrine and secular legal principles. While Islamic law seeks to preserve religious identity and communal cohesion, positive law emphasizes individual rights and freedoms. This dichotomy often creates challenges in legal and social contexts, where individuals may find themselves caught between the expectations of their faith and the laws of the state.

The differing perspectives of Islamic law and statutory law on interfaith marriage reflect a broader debate about the balance between religious freedom and individual rights. The allowance in Islamic law for a Muslim man to marry a woman from the People of the Book, coupled with the prohibition for a Muslim woman to marry a non-Muslim man, underscores the importance of preserving religious and communal identity. Statutory law, with its emphasis on equality and individual choice, offers a contrasting view that prioritizes personal autonomy and secular governance. The dynamic tension between religious and secular legal frameworks continues to shape

the discourse surrounding interfaith marriage, highlighting the need for a nuanced and inclusive approach to legal and social issues.

Recognition and Registration of Marriage

Islamic law and Indonesian positive law differ fundamentally in how they regulate the recognition of marriage. Under Islamic law, a marriage is considered valid if it meets the conditions of *ijab and qabul*, which are the statements of the guardian and the bridegroom declaring their intention to marry and the acceptance of the other party. This process places more emphasis on religious and moral aspects, and formal registration is not considered an absolute requirement for the validity of the marriage. However, in the modern context, formal registration is seen as important for providing written evidence and ensuring legal protection for the couple.³²

On the other hand, Indonesian positive law requires marriage registration by an authorized official as a form of legitimization and to protect the rights of the parties involved. This registration aims to provide legal proof of the marriage, so the couple can obtain civil rights such as inheritance rights, child custody, and other rights associated with marital status. Thus, positive law places greater emphasis on the

administrative and formal aspects of marriage regulation.³³

This difference highlights that positive law is more focused on the legal and administrative aspects to ensure that all marriages are recorded and protected by law. Meanwhile, Islamic law places more emphasis on the religious and moral dimensions in recognizing the validity of marriage. Nonetheless, in the modern context, formal registration is also deemed important in Islamic law to provide security and legal certainty for the couple.³⁴

Administrative Process and Requirements

Indonesian positive law requires the fulfillment of strict administrative requirements for marriage, including the announcement of the marriage and the necessary documentation. In the context of interfaith marriages, these requirements can become more complicated and often lead to legal uncertainty, while Islamic law is more flexible in this regard, as long as the basic conditions for a valid marriage are met.³⁵ The stringent provisions embedded in Indonesian positive law can be a significant obstacle for couples seeking to formalize their marriage. This legal attachment often results in unregistered marriages, a situation fraught with potential complications in the future. An unregistered marriage can create

significant challenges in securing civil rights, including but not limited to inheritance rights, child custody, and other privileges related to marital status. Furthermore, the lack of official registration can lead to a state of legal ambiguity, making it difficult for individuals to access the protection provided by the law.

The complexity of Indonesian positive law, with its diverse requirements and strict enforcement, may unintentionally hinder couples from pursuing the formalization of their relationships. This reluctance, driven by the perceived complexity and potential obstacles, often leads to the decision not to register the marriage officially. As a result, the marriage remains in legal uncertainty, without the recognition and protection that accompany a registered marriage. The implications of this decision are far-reaching, affecting not only the individuals involved but also their descendants and extended families.

An unregistered marriage, although initially seen as an easy alternative, can quickly become a source of significant legal and social challenges. The lack of official recognition can hinder the couple's ability to assert their rights in various legal contexts, particularly in matters of inheritance and child custody. Without an official marriage certificate, the legal system may be less likely

to recognize the validity of claims made by an unregistered couple, thus making them vulnerable to exploitation and injustice. This vulnerability is exacerbated by the absence of legal protection, which can worsen the difficulties faced by those in an unregistered union.

Moreover, the legal ambiguity surrounding unregistered marriages can create an unsafe environment for the individuals involved. Without official recognition of their marital status, they may find themselves in a constant state of uncertainty, unsure of their rights and responsibilities. This uncertainty can permeate various aspects of their lives, from financial planning to personal relationships, creating a pervasive sense of insecurity. The inability to obtain legal protection further exacerbates these feelings, as individuals may feel dependent on a legal system that is indifferent or hostile to their situation.

Although the strict regulations of Indonesian positive law are intended to uphold the sanctity and legality of marriage, they can unintentionally result in unintended consequences for those unable or unwilling to navigate the complexities of the system. The decision not to pursue official registration, driven by a desire to avoid perceived obstacles, can lead to a series of legal and social challenges. These challenges,

ranging from difficulties in securing civil rights to a widespread sense of legal uncertainty, underscore the importance of addressing the barriers to the formalization of marriage. Thus, it may be possible to create a more inclusive and equitable legal framework that protects the rights and welfare of all individuals, regardless of their marital status.³⁶.

Points of Convergence and Agreement

Despite the significant differences between Islamic law and Indonesian positive law, there are several points of convergence that can be identified between the two. One of the most fundamental points of convergence is the recognition of human values, justice, and respect for individual dignity. These values serve as the foundational principles underlying both legal systems, even though how they are applied and interpreted may differ.

In Islam, human values are highly prioritized, with an emphasis on treating all individuals with respect and fairness, regardless of their religious, racial, or social background. Indonesian positive law also recognizes the importance of human values, aiming to protect individuals' fundamental rights, including the right to marry and establish a family. Furthermore, justice is a key principle in both of these legal systems.

In Islam, justice is emphasized in the treatment of spouses and children, encompassing emotional, financial, and social aspects. Indonesian positive law also seeks to ensure that all individuals receive fair and equal treatment under the law. Respect for individual dignity is another important principle in both legal systems. Islam values the dignity of individuals and stresses the importance of mutual respect between husband and wife. Indonesian positive law also acknowledges the importance of respecting individual dignity by striving to protect fundamental rights, including the right to marry and form a family by one's beliefs and desires.³⁷

This point of convergence creates a space for dialogue and cooperation between the two legal systems in addressing issues related to interfaith marriage. Such dialogue and cooperation can help identify more inclusive and just solutions and increase awareness and understanding among society and legal authorities about the importance of respecting individual rights in the context of interfaith marriage. Thus, it is hoped that Indonesian positive law can become more inclusive and provide better protection for all citizens, regardless of the religion they follow. This will not only help reduce legal uncertainty and administrative barriers faced by interfaith couples but also strengthen the

principles of justice and equality within society.

Development of Responsive Law

To bridge the differences, both legal systems need to develop rules that are responsive to social realities. For example, there is a need to formulate clearer provisions within positive law regarding interfaith marriages, which take into account religious norms and existing human values. This would help reduce conflicts and provide legal clarity for couples who wish to marry across religions.³⁸ Such more inclusive provisions would assist in addressing the various challenges faced by interfaith couples, such as difficulties in obtaining marriage permits and announcing the marriage at places of worship that are different. With clearer and more detailed guidelines, couples would be able to better understand the procedures and requirements that must be met, allowing them to enter into a marriage that is both legally recognized and socially accepted, without having to compromise their religious beliefs.

Additionally, more inclusive provisions would also help raise awareness and understanding among society and legal authorities regarding the importance of respecting individual rights in the context of interfaith marriage.³⁹ Therefore, it is hoped

that Indonesian positive law can become more inclusive and provide better protection for all citizens, regardless of their religious differences. This will not only help reduce legal uncertainty and administrative barriers faced by interfaith couples but also strengthen the principles of justice and equality within society.

Interfaith Dialogue

Interfaith dialogue is crucial for fostering a better understanding between religious leaders and society. In the diverse context of Indonesia, such dialogue can help strengthen social cohesion, reinforce commitments to tolerance, and reduce the stigma surrounding interfaith marriages.⁴⁰. His dialogue plays a significant role in fostering a deeper and more meaningful understanding among various religious groups.

Firstly, interfaith dialogue can help strengthen social cohesion. Social cohesion is the bond that holds society together, creating a sense of unity and solidarity. In the pluralistic context of Indonesia, where various religions and beliefs coexist, strong social cohesion is vital to maintaining stability and social harmony. Interfaith dialogue can serve as a platform to build and reinforce this bond by allowing religious leaders and society to get to know and understand each other better.⁴¹.

Secondly, interfaith dialogue can reinforce the commitment to tolerance. Tolerance is the ability to accept and appreciate differences, including religious differences. In Indonesia, where various religions and beliefs coexist, tolerance is key to maintaining social harmony. Interfaith dialogue can help strengthen the commitment to tolerance by providing opportunities for religious leaders and society to learn from each other and respect differences.⁴². Through this dialogue, stereotypes and prejudices that often lead to conflict can be addressed, and mutual respect can be enhanced.

Thirdly, interfaith dialogue can help reduce the stigma surrounding interfaith marriages. Interfaith marriage is often a sensitive and controversial topic in many societies, including Indonesia. The stigma and discrimination against couples who marry across religions can create significant social and emotional challenges. Interfaith dialogue can help reduce this stigma by providing a space for religious leaders and society to discuss and understand the issues related to interfaith marriages.⁴³. Through this dialogue, it is hoped that a deeper understanding and empathy for interfaith couples will emerge, ultimately creating a more supportive and inclusive environment.

Outreach and Education

Education about marital rights, both in Islamic Law and positive law, needs to be enhanced. This education can be provided to the public through seminars, workshops, or outreach programs involving various elements, including religious leaders, academics, and civil society.⁴⁴ Effective platforms and methods should be utilized to disseminate this information. Seminars, workshops, and outreach programs are some of the ways to reach the public. Seminars can serve as venues for in-depth discussions about marital rights, where legal experts, religious leaders, and academics can share their knowledge. Workshops, on the other hand, can offer participants opportunities for direct engagement in learning through group discussions and case studies. Outreach programs can be conducted periodically in different communities to ensure that the information reaches all segments of society.

The importance of involving various elements of society cannot be overlooked. Religious leaders, academics, and civil society play crucial roles in this educational process. Religious leaders can offer a profound religious perspective and explain how marital rights are regulated in Islamic Law.⁴⁵ Academics can provide a comprehensive legal analysis and explain the implications of positive law in various marital decisions. Civil society, including

non-governmental organizations and advocacy groups, can help disseminate this information to diverse communities and ensure that individual marital rights are respected and protected.

With better knowledge, couples wishing to marry across religions can make more informed and responsible decisions. They will be able to understand the legal consequences of their choices and prepare themselves for potential challenges. For example, they will better understand their rights and obligations in marriage, as well as how the law governs divorce, child custody, and the division of joint assets.⁴⁶ Additionally, this education can help reduce conflicts and misunderstandings that often arise in interfaith marriages. By understanding each other's rights and duties, couples can avoid disputes that may arise from ignorance or miscommunication. This education can also foster a more harmonious and respectful environment within families and communities.

Conclusion

This study has revealed a striking difference between Islamic Law and Indonesian Positive Law regarding the provisions and requirements for interfaith marriages. Islamic jurisprudence, particularly as understood through classical interpretations, generally does not

encourage marriage between individuals of different faiths, with Islamic scholars' perspectives ranging from outright prohibition to conditional permissibility. In contrast, Indonesian Positive Law, as outlined in Law No. 1 of 1974 and its related regulations, permits interfaith marriages subject to certain administrative conditions that must be met. While both legal frameworks emphasize the importance of legal formalities, they differ significantly in terms of recognition and social legitimacy, with Indonesian Positive Law not fully aligning with the religious norms adhered to by society.

The differences between Islamic Law and Indonesian Positive Law regarding interfaith marriages can be linked to their foundational principles and social contexts. Islamic Law is deeply rooted in religious texts and interpretations, often prioritizing the preservation of religious identity and societal cohesion. This perspective is reflected in the various attitudes of scholars, who interpret religious texts to either prohibit or permit interfaith marriages under certain conditions. On the other hand, Indonesian Positive Law operates within a secular legal framework that seeks to balance individual rights with national legal standards. This framework allows interfaith marriages while imposing administrative

requirements to ensure legal compliance and social order.

The formal legal requirements in both Islamic Law and Indonesian Positive Law underscore the importance of legal recognition in validating a marriage. In Islamic Law, this may involve obtaining a marriage contract (*nikah*) that adheres to religious guidelines, while in Indonesian Positive Law, it requires fulfilling administrative procedures such as obtaining a marriage certificate from the civil registry. Despite this similarity, the social recognition and legitimacy of interfaith marriages remain controversial. Islamic Law's emphasis on religious norms often leads to social disapproval of interfaith unions, while Indonesian Positive Law, despite its legal provisions, has yet to fully integrate these norms, resulting in a gap between legal permissibility and social acceptance.

The implications of these differences are profound, not only affecting individuals involved in interfaith marriages but also the broader social order. For couples facing these legal complexities, the divide between religious law and secular law can create significant challenges, including social stigma and legal obstacles. Additionally, the inability of Indonesian Positive Law to fully accommodate religious norms may lead to feelings of alienation

among communities with strong religious beliefs. Addressing these issues requires a nuanced approach that respects legal standards and religious sensitivities, possibly through legislative reforms that bridge the gap between Islamic Law and Positive Law, thereby fostering greater social harmony and legal clarity.

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