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**Inter-Religious Marriage in Islamic and Indonesian Law Perspective**

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## INTER-RELIGIOUS MARRIAGE IN ISLAMIC AND INDONESIAN LAW PERSPECTIVE

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### **Abstract**

*The phenomenon of inter-religious marriage is problematic, controversial, and resulted debate among Muslim and non-Muslim relationship in Indonesia. It also not only becomes the social conflict among Muslim and non-Muslim couples, but also pro and contra among the others such as family and society. In the classical Islamic marriage law discourse (fiqh al-munakahat), there are two kinds of inter-religious marriage, namely marriage between Muslim men with non-Muslim women and marriage between non-Muslim men with Muslim women. Some Muslim scholars said that Muslim men allowed marrying non-Muslim women and non-Muslim men prohibited marrying Muslim women, which the reason is based on the concept of polytheists and the group of experts (Kitabiyyah). In contrast, some Muslim scholars in Indonesia rejected inter-religious marriage based on the reason that it has been changed and regulated under Marriage Law Number 1 of 1974 and President Regulation Number 1 of 1991 on Islamic Law Compilation. One the one hand, the phenomenon of inter-religious marriage is an interesting phenomenon in the society and on the other hand it will become the legal implication to the inheritance and children care rights in Islamic and Indonesian law perspective. Therefore, the aim of this paper is to examine comprehensively about the legal status of inter-religious marriage in Islamic and Indonesian law perspective, including its legal implication to the inheritance and children care rights.*

**Keywords:** *Inter-Religious Marriage; Islamic Law; Indonesian Law; Inheritance.*



## A. Introduction

During the recent times, the difference of religion is seen as one of the factors that inhibit a person get the inheritance from his or her parents. But that view seems to be abandoned, in which the court has made progressive rulings to protect the rights of individuals without discriminating ethnic, religious, racial, and other social status. But in the pluralistic culture of Indonesian society is found in one family and fellow siblings embracing a different citizenship, not to mention inter-religious marriage.

In the discourse of Islamic law, marriage and religion has very close and inseparable relationship. Almost all religions regulate marital matters, which basically always desire marriage among men and women in one or the same religion. This is understandable, because religion is the main and very important foundation in determining the success of one's household life. There is one of the doctrines of Islamic law which states that ideally legitimate marriages are based on religious similarities.

The expectation that every married couple wants is to live a household without being disturbed by religious beliefs. In practice, however, such harmony is often disrupted by the problem of dividing inheritance, in which religious differences become one of the obstacles to inheritance. According to the doctrine of Islamic law, one of the heirs of inheritance rights is religious difference. A child who professes a different religion outside the religious beliefs of his or her parent who is Muslim, then he will be prevented from obtaining the inheritance.

Moreover after the Marriage Law Number 1 of 1974 and President Regulation Number 1 of 1991 on Islamic Law Compilation, inter-religious marriage is not justified and illegitimate. Nevertheless, in reality there is still this marriage in the middle of a society that is conducted in private or openly by marrying it abroad and then returning to Indonesia and registering it in the Civil Registry Office as if the marriage is similar to a mixed marriage as referred to in Article 57 of the Marriage Law Number 1 of 1974. This is one of the interesting topics for us to examine comprehensively the legal status of inter-religious marriage in Indonesian and Islamic law perspective.

## **B. Literature Review on Inter-Religious Marriage**

The essence of marriage in Islamic law is as worship and to build a lasting family bond (*mitsaqan ghalidha*) filled with rays of peace (*sakinah*), mutual love (*mawaddah*), and mutual affection (*warrahmah*). Therefore, a family of lawful descendants is one of the efforts to continue the baton of relay (its existence on earth) throughout the ages (Purwanto, 2008).

Inter-religious marriage or different religious marriage or also often referred to as inter-religious marriage is the marriage of two people who are different religions, beliefs or understandings (Slamet Abidin and Aminudin, 1999). Meanwhile, inter-religious marriage is determined as a marriage performed by people who embrace different religions and beliefs between one to each other. Inter-religious marriage contains a distinctly different meaning from the term mixed marriage in the Compilation of Islamic Law which means inter-citizenship marriage (Abdurrahman and Syahrani, 1978).

In another opinion it is also explained that inter-religious marriage is a bond of inner birth between a man and a woman of different religion as husband and wife in order to form a happy and eternal household based on the One Godhead (Eoh, 2000). The definition is also supported by other opinions that inter-religious marriage is a marriage of a man and woman of different religions that he holds by maintaining his own religion, even though his religion is the same purpose of worship but they have different in the implementation of religious ceremonies and beliefs (Hadikusuma, 1990).

Referring to the definition of marriage formulated in Article 1 of Marriage Law Number 1 of 1974, inter-religious marriage can be defined as the bond of inner birth between man and a woman, different religion, with two different rules regarding on the terms and procedures of marriage in accordance with their respective religious law with the aim of establishing a happy and eternal family based on the One Godhead (Rusli and Tama, 1986).

Unfortunately the Marriage Law also does not contain provisions that expressly regulate inter-religious marriage, but only regulate mixed marriages that have different meanings from inter-citizenship marriage. Mixed marriage in Article 57 Marriage Law Number 1 of 1974 says that the



meaning of mixed marriage in this law is a marriage between two people in Indonesia subject to different laws because of differences in citizenship and one of the parties of Indonesian citizenship. While in Article 40 point (c) and Article 44 of President Regulation Number 1 of 1991 on Islamic Law Compilation, different religious marriage is a marriage between a non-Muslim believer with a Muslim man and vice versa, and the provision prohibits carrying out his or her life.

Based on the description above, I can say that the notion of inter-religious marriage is essentially inherent with the same concept between one and another opinion. So the term of inter-religious marriage is a marriage that is held between a man who is Muslim with a woman who is non-Muslim or vice versa , with two different rules regarding on terms and procedures of implementation that must be in accordance with law of their respective faiths with the aim of forming a happy family.

### **C. Method**

This research uses historical-normative method and bibliography approach. These methods and approaches are used to explain the legal status of inter-religious marriage in Islamic and Indonesian law perspective, including its legal implication to the inheritance and children care rights. Primary and secondary data sources are derived from the number of literatures that are closely related to the research objective. While the data collection techniques obtained from book review, documentation, and the other sources that relevant with the main topic of this research in line of legal status of inter-religious marriage in Islamic and Indonesian law perspective. Analysis of the data consists of the steps of compilation, classification, and analysis of the data which are done deductively and inductively until the formulation of conclusion.

### **D. Research Finding**

Based on the background and literature review, I found that there is the number of different opinions among Muslim scholars on the legal status of inter-religious marriage in Islamic and Indonesia Law perspective.



## **1. Inter-Religious Marriage in Islamic Law**

In general, inter-religious marriage in Islam can be divided into two parts, namely marriage between Muslim men with non-Muslim women and marriage between non-Muslim men with Muslim women. Before discussing about the legal status of its marriage, we need to know about the notion of non-Muslims in Islam. Non-Muslim group itself can be divided into two, namely the polytheists and the group of experts (*Kitabiyah*).

According to Sheikh Muhammad Ali al-Shubuni (1975), the polytheists are those who have dared to associate Allah with His creatures (worshippers of idols, idols or the like). As an example of this faction is in the days before the advent of Islam it was mentioned that the Magi who worshiped the fire or the sun and those who worshiped idols, idols or the like. While the People of the Book (*Kitabiyyah*) are those who hold fast to the Book of the Law revealed to Prophet Musa a.s. or those who cling to the Gospels revealed to the Prophet Jesus a.s. or many who call it a divine or religious religion derived directly from the sky like the Jews and Christians (Yoeseof, 2018). Then, according to Syamsul Zacharias, the scribe is one who embraces one of the celestial religions given the Torah, the Gospel and the Zabur (Zakaria, 2011).

### **a. Marriage between Muslim Men with Non-Muslim Women**

Inter-religious marriage can be interpreted as marriage between a Muslim man and a non-Muslim woman whether *ahl al-kitab* or a *mushrik*. The Muslim Scholars tend to differ on the so-called polytheists and *ahl al-kitab*. In this case, I will discuss the legal status of inter-religious marriage in the opinion of some scholars of jurisprudence such as Imam Abu Hanifa, Imam Malik, Imam Syafi'i, and Imam Ahmad bin Hambal.

First, according to Iman Abu Hanifah, the marriage between Muslim man and his legal polytheist is absolutely forbidden, but to marry the woman of the *ahl al-kitab* (Jews and Christians), even though the *ahl al-kitab* believes in trinity, because according to them the most important is that the *ahl al-kitab* has the temple of heaven. According to Iman Abu



Hanifa, what is meant by the *ahl al-kitab* is anyone who believes in a Prophet and a book ever revealed by Allah SWT, including those who believe in Prophet Ibrahim and Suhufnya and those who believe in the prophet Moses and his book of Zabur, the woman may be married.

Second, according to Imam Maliki, the legal status of inter-religious marriage has two opinions: firstly, married with *kitabiyah* law *makruh* absolute both *dzimmiyah* and *harbiyah*, but *makruh* married woman *harbiyah* bigger. In specific word, the term of *dzimmiyah* here means the non-Muslim women who stay and living in Islamic region or living in a country under the implementation of Islamic law. However, if it is feared that this wicked wife will affect her children and leave his father's religion, then the law is haram. So the punishment *makruh* or haram is based on how strong the influence of the wife against efforts to influence his son to leave his father's religion. Secondly, no absolute *makruh* because verses of the Quran surah al-Maidah verse 5 does not prohibit marriage between Muslim men and women *kitabiyah* absolutely.

Third, according to Imam Shafi'i may have married the *ahl al-kitab* woman and which belongs to the *ahl al-kitab* women. According to Imam Shafi'i, they are Jewish and Christians women who descendants of the people of Israel (Israelites) and not including other nations, even including Jews and Christians. The reason put forward by Imam Shafi'i is that the Prophet of Moses and Isa were only sent to the Israelites, and not other nations. In addition, the term of *min qoblikum* (people before you) in the Quran Surah al-Maidah verse 5 shows to two groups of Jews and Christians.

Nevertheless, although Imam Shafi'i belongs to the cleric who permits a Muslim man to marry the woman of the People of the Book but on condition (*taqyyid*), that woman of *ahl al-kitab* is to be the female of the Children of Israel. If he is not a Bani Israel woman, for example an Arab woman but a Jews or a Christians, then she do not belong to the people of *ahl al-kitab* so it is unlawful for Muslim men to marry her (Baihaqy, 1975).

Furthermore, the fourth, according to Imam Ahmad bin Hanbali, on different religions between Muslim men and non-Muslim women, prohibits marrying non-Muslim women of polytheists, and they may marry non-



Muslim women of the female class *kitabiyah* in this case are Jewish and Christian women. This opinion is much supporting the opinion of the teacher (Imam Shafi'i). But it is not restricting those who belong to the *ahl al-kitab* are the Jews and Christians of the Israelites only, but declare that women who adhered to the Jews and Christians women since the time of the Prophet Muhammad have not been sent to be Apostles. In other word, according to the four Muslim scholars such as Imam Abu Hanifa, Imam Malik, Imam Shafi'i, and Imam Ahmad bin Hanbal, they have agreed on the possibility of a Muslim man marrying non-Muslim women of the people of *ahl al-kitab* (*kitabiyah*), ie Jewish and Christian women.

#### **b. Marriage between Non-Muslim Man with Muslim Women**

The scholars have explained that Muslim women should not marry non-Muslim men based on the Qur'anic understanding of Surah al-Mumtahanah verse 10, even this has become agreement or *ijma* of the Muslim scholars, like mentioned at the Quran Surah al-Mumtahanah verse 10. One of the examples, Imam al-Syaukani in his commentary says that the Quran Surah al-Mumtahanah verse 10 is a proposition that Muslim women are not lawful for non-Muslims. The woman's Islam requires her to be separated from her husband and not only to migrate (*hijra*). Al-Syaukani's view is reinforced by Shaykh Abdurrahman ibn Nasir al-Sa'di who says that as Muslim women are not lawful for unbeliever men, so are unbiblical women unlawful for Muslim men to keep them in their disbelief, unless permitted by the scribe lady who married to the furthermore (Syaukani, 1975, Sa'di, 1423 H).

Shaykh 'Athiyah Muhammad Salim in the Book of *Adhwaul Bayan* (in which he perfected his master's writing, Shaykh al-Syinqithi), gave the reason why Muslim women are not allowed to marry non-Muslim men, but it is permissible if Muslim men marry scribes. Among the reasons he puts it: Islam is high and cannot be subordinated to other religions. While the family of course led by men. So that husbands can also give the influence of religion to the wife. Similarly, children will have to follow their father in religious matters. Thus, the legal basis for the prohibition of



marriage between non-Muslim men and Muslim women is based on the Quran Surah al-Mumtahanah verse 10.

## 2. Inter-Religious Marriage in Indonesian Law

According to the Article of Indonesia Marriage Law Number 1 of 1974, marriage is lawful, if done according to the law of each religion and belief. There is no article governing the inter-religious marriage. Even in Article 8 Sub-Article f of Law Number 1 Year 1974 it is mentioned that marriage is prohibited between two persons having a relationship which by their religion or other regulations apply, is prohibited from marrying.

Furthermore, Article 57 provides for a mixed marriage between two persons, subject to two different laws. This Article deals with the differences of citizenship and does not expressly state the inter-religious marriage. This is certainly different from the provision of *Regeling op de Gemengde Huwelijken* (GHR) Stbl.1898 Number 158 on Mixed Marriage where under Article 1 where is determined that mixed marriage in this law is marriage between two persons subject to different laws, which is a marriage between the Earth Son population with a European or a Foreign Orient or between a European group with a resident of the Eastern Alien.

The inter-religious marriage that occurred before the establishment of Marriage Law Number 1 of 1974 based on the GHR provisions above, which is no longer suitable to be applied at this time. Colonial Marriage rules, such as GHR and HOCI were formed for Dutch political interests at the time, which applied the population classification. It can be said that the regulation of article 66 of Marriage Law Number 1 of 1974 has been determined that the Dutch Marriage rules shall be declared null and void, and also provided they are governed by this law.

Whatever the reasons presented and however the manner in which it is performed in accordance with Article 2 paragraph (1) of Marriage Law Number 1 of 1974 that the inter-religious marriage is not justified and illegitimate. Therefore, it does not bring legal consequences to any consequences arising from such marriages. Article 43 paragraph (1) of



Law Number 1 of 1974 regulates that a Child born outside of marriage only has a civil relationship with his mother, his mother's family.

The Islamic Law Compilation or KHI is not regulated about the custodial rights of children born from inter-religious marriage because there is not regulated inter-religious marriage. Whereas in the Civil Code and BW it is stipulated that child custody rights are the responsibility of both parents, except in the case of childcare rights can be agreed upon by both parents based on court decision. This is exactly the same as the child's care rights as set forth in Article 43 of Marriage Law Number 1 of 1974 (Mulyadi, 2008).

Similarly, in terms of inheritance rights, according to Islamic teachings, one of the heirs of inheritance rights is a religious distinction. It can be said that a child who professes another religion outside, even though in the view of Christianity, and religious differences do not preclude the right of inheritance. If the child is immature then he follows the religion of his parents. If the child is Christian, then he will follow the prevailing civil law so that the child remains entitled to inheritance.

#### **D. Discussion and Research Result**

The first consequence of the legal implication of inter-religious marriage is to the guardianship of children rights. In the *munakahat* jurisprudence, the term guardianship of the child is closely related to the custody of the child (*hadhanah*). The term of *hadhanah* means guarding, leading, or managing all the affairs of a child which if he cannot do, both about himself and something outside himself. In practice, the child's guardianship covers the fulfillment of the child's right to life, including the right to education, health and hygiene, food and drink, clothing and everything the child needs, until he reaches adulthood. In other words, what is meant by *hadhanah* is to pay attention to all the needs of the child's life, both physical and spiritual for the welfare and the development of various potentials.

Jurisprudence governs a set of Islamic marriage legal principles concerning child care (*hadhanah*) which includes some of the following: first, parents are obliged to affirm the values of *tawhid* to the child to be a



believer and cautious to Allah SWT and follow the teachings of the Prophet Muhammad SAW in the Quran Surah Luqman verses 12-13; secondly, the parent is obliged to provide the highest education to the child with the aim that he becomes a person of noble character in the Quran Surah Luqman verses 14-16; and thirdly, the parent is obliged to provide proper life protection since the child is still in the cradle until he is independent (adult) in the Quran Surah Luqman verse 17-18.

The second consequence of the legal implication of inter-religious marriage is the inheritance right for the children. Referring to the Article 171 Point C of the Compilation of Islamic Law, there is stated that heirs shall be persons who at the time of death have a family relation or marriage relationship with heirs, Muslim, and are not hindered by the law of being an heir. It is also depicted by J. Kamal Farza's statement who has quoted M. Tahir Azhary (Professor of University of Indonesia) that religious differences should prevent a person from getting inheritance rights. At least, that's the principle of Islamic law. There is the Sunnah of the Prophet, does not inherit the believer from an unbeliever, vice versa (Farza, 2018).

Due to the inheritance rights of the heirs are closed, the surviving parent can provide grant because granting can be done to anyone, whether to Muslim or non-Muslim. However, in the award of this grant may not exceed a maximum of 1/3 of the amount of existing the property. In addition, if in Islamic law the right of inheritance has been disqualified, in the case of division of inheritance due to a religious marriage in Indonesia can subordinate to the legal system of Western Civil Inheritance which is still regulated in the Book of Law. Whereas in article 852 of the Civil Code is set out in Book II, in particular the inheritance rights for children and the offspring of the deceased.

In practice, some judges in Religious Court have used judgment of *wasiat wajibah* to give inheritance rights to non-Muslim heirs. The arrangement of *wasiat wajibah* in the Compilation of Islamic Law is provided for in Articles 194 through Article 209 under Chapter V of the *wasiat wajibah*. The articles of Compilation of Islamic Law are regulated

both on the person who is entitled to a *wasiat wajibah* (the subject of *wasiat*), the *wasiat*, the types of *wasiat*, the cancellation and the lifting of the *wasiat*, and other matters concerning the *wasiat*.

There are two terms of cumulative and one additional requirement of a person who has the right to be a part of his property, as contained in the provisions of Article 194 paragraph (1) of the Islamic Law Compilation, which stipulates that a person who is at least 21 years of age, sensible and without coercion may mandate a portion his property to another person or institution. Based on Islamic Law Compilation regulation, the cumulative requirement of the willful person is at least 21 years of age and sensible, while the additional requirement of a person is "without coercion" (Ayu, 2018).

In plain view, the Islamic Law Compilation no longer uses measures that do not contain legal certainty to determine whether a person is competent or incompetent to perform legal acts, but uses an age limit of at least 21 years. This number is also used by the Indonesian Civil Code to determine whether a person is adults or not yet adults. Moreover, in order for a person to express his *wasiat*, he must be sensible. This requirement is logical and must be included; otherwise it will be difficult to know whether someone really wants to pass on his property or not, including someone should be considered healthy.

About the recipient will be known from the provisions of Article 171 point f and Article 194 paragraph (1) Islamic Law Compilation, i.e. other persons or institutions. It is known from the words "to another person or institution". It is also known from the provisions of Article 196 of Islamic Law Compilation of the words "who or who or who or what agency is appointed shall receive the property which is intended". According to M. Tahir Azhary, religious differences should prevent a person from obtaining inheritance rights. At least, that's the principle of Islamic law. There is a *Sunnah* of the Prophet, not inheriting a believer from an unbeliever, vice versa, says the expert of Islamic law. He argues that living parents can provide grants because granting can be done to anyone, both to Muslims and non-Muslims.



This grant is not an heir because the heirs are already closed. The heir means his parents are dead; leaving the treasures distributed to the heirs that there is a limit, if the grant should not exceed a maximum of 1/3 of the amount of existing property (Azahary, 2018).

In this context if it is true there is a judgment of the Supreme Court that grants inheritance to non-Muslim heirs. The Supreme Court Verdict is providing an opportunity for the giving of inheritance rights to the followers of different religions. However, if it returned to the original legal basis, it is clearly very contrary to the *Sunnah* and also prohibited in the Islamic Law Compilation. In such a judgment, the Supreme Court may have special consideration, although it is very weak because the provision of Article 171 of President Regulation Number 1 of 1991 on Islamic Law Compilation is very clear that the heirs should be Muslim.

As a reference, he also quoted the explanation of the Young Chairman of the Religious Courts at the Indonesia Supreme Court, Andi Syamsu Alam, who stated that the Supreme Court now implements contemporary Islamic law. If the religious parent is different with the children, it must be considered to leave the will called the *wasiat wajibah*. The consideration of the mandatory will be based largely on customary and *maslahat al-mursalah* considerations to meet the economic and future rights of religious heirs. And now, the term mandate is defined as such and it has become jurisprudence which the *wasiat wajibah* may be given to the heirs but it may not more than 1/3 of the property. It means that Islamic law in Indonesia is compatible to protect the rights of children in the family, society, and state in accordance with the principles of *maqashid al-sharia* (Anshory, 2006).

The concept of *maqashid al-sharia* refers to the most popular opinion of Muslim thinkers, Imam al-Syatibi, who has defined the signs to achieve the objectives of the sharia or *maqashid al-sharia*, i.e. primary (*dharuriyyah*), secondary (*hajjiyyah*), and tertiary (*tahsiniyyah*) - which contains the five objectives of Islamic law namely: (a) maintaining the religion or *hifzh al-din*; (b) maintaining the soul or *hifzh al-nafs*; (c) maintaining offspring or *hifzh al-nasl*; (d) maintaining the mind or *hifzh al-aql*; and (e) maintaining property or *hifzh al-maal* (Al-Syatibi, 1975).

This is also similar with the ulama ushul fiqh perspective who stated that each law is contained a goodness for servants of Allah SWT both the benefit is worldly and ukhrawi (Editor, 1996). Therefore, the ulama mujtahid concluded that the problem solving of the law cases must be based on the goals of law enforcement in the line of *maqashid al-sharia*, and also must be set in accordance with the benefit of mankind (*mashlahah al-mursalah*) and relevant with universal principle of human rights.

As the consideration, the fulfilment of children rights born in inter-religious marriage through *wasiat wajibah* is compatible with Article 3 of Human Rights Law Number 39 of 1999. Islamic law contains universal principles such as justice (*al-'adalah*), equality (*al-musyawah*), freedom (*al-hurriyyah*), and invites the good, preventing the munkar (*amr ma'ruf nahyi munkar*), the right of Allah and human rights (*haq Allah wa haq al-adami*) and tolerance (*al-tasamuh*). These are also relevant to universal principles of human rights such as human dignity, equality, non-discrimination, indivisibility, interrelated and interdependence, mutual sharing, sharing of benefits, voluntary, agreement, etc. In this context, I can say that this is one of the evidences that the universal principles of Islamic law are practically dynamics and compatible to the universal principles of human rights.

Finally, in relation to how the fulfillment of the fundamental rights of guardianship and inheritance of children can be implemented in the life of society, nation and state, of course he is not only the responsibility of the individual (personal responsibility), but also the state responsibility. Because in principle, responsibility for the fulfillment of children's rights in Islamic law is the elaboration of human rights (individual as *makhluk*) and God's rights (*khaliq*) given to the Government (*ulil amri*). In this context, state responsibility can also contribute to guarantee it under the Marriage Law Number 1 of 1974, President Regulation Number 1 of 1991 on Islamic Law Compilation, the Law Number 39 of 1999 on Human Rights, Law Number 7 of 1989 Jo. Number 3 of 2006 Jo. Number 50 of 2009 on Religious Court, and the Law Number 23 of 2002 Jo Number 35 of 2014 on the Child Protection.



## E. Conclusion

As the conclusion of the paper, the debate on the right of inheritance and children care was born from inter-religious marriages is almost very closely related to the fulfillment of human rights, especially in Islamic and Indonesian law perspective. On the one hand, Islamic law has taught to fulfill the fundamental rights of the children born from inter-religious marriage as an integral part from the concept of *mashlahat al-mursalah* and *maqashid al-sharia* in accordance with the implementation of universal principles of human rights. On the other hand, inter-religious marriage has not fully regulated yet in Indonesian marriage law system unless regulate inter-citizenship marriage. Consequently, it would become debate and controversy not only among the Muslim society, but also among the Judges in Religious Court. In this context, I would like to emphasize that the legal status of inter-religious marriage is clearly finished and regulated under the Marriage Law Number 1 of 1974 and President Regulation Number 1 of 1991 on Islamic Law Compilation. Moreover, the most importance to be underlined here is the concept of *wasiat wajibah* and *hadlanah* in the classical concept of *fiqh al-munakahat* are still relevant to fulfill the rights of the parties within inter-religious marriage cases, and also compatible to the Law Number 39 of 1999 on Human Rights and the Law Number 23 of 2002 Jo Number 35 of 2014 on the Child Protection.

## Bibliography

- Purwanto. (2008). *Hak Mewarisi Anak Yang Lahir Dari Perkawinan Beda Agama*. Research Thesis at Postgraduate Master Program in Legal Studies at Diponegoro University.
- Abidin. Slamet & Aminudin. (1999). *Fikih Munakahat*. Bandung: Pustaka Setia.
- Abdurrahman & Syahrani, Riduan. (1978). *Masalah-Masalah Hukum Perkawinan di Indonesia*. Bandung: Alumni.
- Al-Baihaqy. (1975). *Ahkam al-Quran Li al-mam al-Syafi'i*. Juz 1. Beirut: Dar al-Kutub al-'Ilmiyyah.
- Anshory, Ibnu. (2006). *Perlindungan Anak dalam Agama Islam*. Jakarta: KPAI.



- Ayu, Riana Kesuma. (2018). "Wasiat dalam Perspektif Kompilasi Hukum Islam" article published at <http://websiteayu.com/hukum-Islam/wasiat-dalam-perspektif-kompilasi-hukum-Islam-bag-3>, accessed on 10<sup>th</sup> June 2018.
- Editor. (2018). "Hak Waris Bagi Keluarga Beda Agama Masih Diperdebatkan", see article published in <http://www.hukumonline.com/berita/baca/hol13853/hak-waris-pada-keluarga-beda-agama-masih-diperdebatkan> accessed on 21<sup>th</sup> May 2018.
- Editor. (2018). "Hak Waris Bagi Keluarga Beda Agama Masih Diperdebatkan", article published at <http://www.hukumonline.com/berita/baca/hol13853/hak-waris-pada-keluarga-beda-agama-masih-diperdebatkan> accessed on 10<sup>th</sup> June 2018.
- Editor. (1996). *Ensiklopedi Hukum Islam, al-Mausu'ah al-Fiqhiyyah*. Ed. IV. Jakarta: PT. Ichtiar Baru van Hoeve.
- Eoh, O.S. (2000). *Perkawinan antar Agama dalam Teori dan Praktek*. Jakarta: PT. Raja Grafindo Persada.
- Farza, J. Kamal. (2018). "Hukum Kawin Beda Agama", see article published at <http://www.modusaceh.com/html/konsultasi-hukum-read/3/hukum-kawin-beda-agama.html/> accessed on 10<sup>th</sup> June 2018.
- Hadikusuma, Hilman. (1990). *Hukum Perkawinan Indonesia*. Bandung: CV. Mandar Maju.
- Mulyadi. (2008). *Hukum Perkawinan Indonesia*. Semarang: Badan Penerbit Universitas Diponegoro.
- Rusli & R. Tama. (1986). *Perkawinan antar Agama dan Masalahnya*. Bandung: CV. Pionir Jaya.
- Al-Sa'di. Abdurrahman bin Nashir. (1423 H). *Muassasah al-Risalah: Tafsir al-Karimir al-Rahman*. Beirut: Dar al-Kutub al-Ilmiyah.
- Al-Shubuni, Syaikh Muhammad Ali. (1975). *Rowaa'iu al-Bayyan Tafsir Ayat al-Arkam*. Juz 1. Beirut: Dar al-Fikr.
- Al-Syathibi, Abu Ishaq. (1975). *Al-Muawafaqat fi Ushul al-Syari'ah*. Juz II. Beirut: Dar al-Kutub al-Ilmiyyah.



The Indonesian Human Rights Law Number 39 of 1999.

The Indonesian Marriage Law Number 1 of 1974.

The Compilation of Islamic Law Number 1 of 1991.