

Religious Authority and Family Law Reform in Indonesia: The Response and Influence of the Indonesian Ulema Council on Interfaith Marriage

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Abstract: This paper examines the response and attitude of the Indonesian Ulema Council (MUI) to practice interfaith marriage and study the influence of MUI in the development of the rules of interfaith marriage. Research data is taken through online media accessible in the news online, website and fatwa MUI as well as other supporting sources. This paper argues that MUI keep trying to assert the prohibition of marriage between religions through their fatwas and through responses in the media to the proliferation of interfaith marriages. Other responses are also in presented by the Indonesian Ulema Council through information when asked for opinions in the Judicial Review and when asked for the same opinion on social media. MUI's attitude is also shown through the lawsuit against the Surabaya District Court for granting interfaith marriage. This paper found that the effect of MUI on marriage rules was different from religion can be seen clearly by issuing rules regarding interfaith marriage, through Circular Letter Number 2 of 2023 concerning the prohibition of judges from granting a marriage of different faiths so that the Indonesian Ulema Council seems to provide the influence on law is particularly high in interfaith marriages in Indonesia.

Keywords: Interfaith Marriage, Indonesian Ulema Council, Religious Authority; Islamic Family Law.

Introduction

Studies on interfaith marriage have resurfaced and become one of the most interesting topics to discuss. The theme continues to be debated among academics, both in law and in other fields. Therefore, various policyholders such as family legal experts, family counselors, interfaith marriage counselors, MUI (Indonesian Ulema Council) and other institutions discuss the theme through online media and in offline forums. In fact, Indonesia does not yet have a specific legal regulation. Based on data from the Indonesian Conference on Religion and Peace (ICRP), there have been around 1,425 interfaith couples since 2005 to 2022 (Baihaki, 2024). Various efforts made by couples who have different religions than their spouses, then want to register their marriage doing two ways, namely carrying out a wedding procession using two wedding processions. For example, in the morning, performing a procession of the Islamic faith, then on the same day performing a blessing at the church. The second way is by getting married abroad (Pengadilan Agama Probolinggo, 2022).

Research on the theme of interfaith marriage and the theme of MUI authority have indeed been conducted by many previous researchers. The study is categorized into three, the first category is the study of interfaith marriages that discuss law or social (Maloko et al., 2024; Farid et al., 2022; Nasir, 2022; Tarigan et al., 2024; Setiawan et al., 2024; Gunawan et al., 2024; Rizky et al., 2023; Salam et al., 2024; Elmali-Karakaya, 2022; Hamim et al., 2022; Rosidah et al., 2023; Savitria, 2022; Alam, 2022; Mursalin et al., 2023; Sonafist & Yuningsih, 2023; Jatmiko et al., 2022; Kadriah et al., 2021; Hastuti et al., 2022; Hamim et al., 2022; Asy'ari &

Fisa, 2022; Yahya & Fawzi, 2021 ; Mui'n, 2019; Mustofa, 2022; Basit Misbachul & Badrus Sholeh, 2022). The second category is the study of MUI authority in general (Thahir, 2024; Bisri et al., 2023; Wardhani, 2023; Latif & Sari, 2020; Alfitri, 2020; Hanafi et al., 2020; Mahendra & Junaidi, 2023; Sirry, 2013; Ichwan, 2005). The third category is about the authority of the Indonesian Ulema Council related to interfaith marriage (Ali, 2002; Santoso et al., 2022; Farida, 2016; Mutakin, 2021; Turnip, 2021; Faizah, 2020; Daud et al., 2022; Jauhari, 2020).

The Research of MUI religious authorities in responding to and responding to and influencing rules on interfaith marriage in Indonesia is part of an effort to complete studies related to MUI and interfaith marriage. Previous studies on MUI associated with interfaith marriage are usually more specific considerations of fatwa or legal association only, but do not in detail see the influence of MUI in interfaith marriage rules. This makes this study interesting to take a deeper look at the responses and attitudes of the Indonesian Ulema Council regarding interfaith marriage. Then this study also saw whether the Indonesian Ulema Council played a role in influencing the development of law in Indonesia regarding the rules of interfaith marriage. This research is important because it is not only about attitude and response, but also to explore how strong the MUI has had a significant impact on the rules of interfaith marriage in Indonesia.

Literature Review

Interfaith Marriage Provisions

The rules concerning interfaith marriage are regulated in the Law of Marriage, which is a national law in Indonesia, which is not specifically regulated, and this gives rise to diverse interpretations from academics and authorities. The debate is inseparable from the religious diversity practiced by the people of Indonesia (Kadir & Rizki, 2023). The existence of this legal vacuum makes judges also have diverse interpretations of interfaith marriages (Noormansyah & Sanjaya, 2022). The diversity of arguments can be attributed to different legal reforms and grounds, resulting in varying interpretations of a law. This makes a law mean two or more interpretations. A rule requires a uniformity between one rule and another (Nurlaelawati, 2016). The law of marriage, which states: "Marriage is lawful, if it is done according to the laws of each of its religions and beliefs". The compilation of Islamic Law, which is contained in chapters 40, 44 and 61, regulates the prohibition of Muslim women from marrying a man who is not Muslim. In addition, regulating incompatibility cannot be used as an excuse, unless the incompatibility is due to religious differences (Najib et al., 2024).

Apart from the law, the Supreme Court Decision Number 1400 K/Pdt/1986 and the Constitutional Court Decision Number 68/PUU-XII/2014 are among the judges' references in deciding interfaith marriage cases (Gemilang et al., 2023). Laws are positioned as formal laws, while the rules below serve as material laws (Najib et al., 2024). The Constitutional Court serves as the protector of the state from liberal, secular understanding and supporting the theocratic principles administered by the government (Maula & Muhsin, 2024). The diversity of these rules gave rise to varying interpretations of interfaith marriages. This diversity can be attributed to three things: *first*, a person of religion has different understandings and backgrounds; *second*, institutional perspectives have their respective interpretations and teachings; *third*, institutions with the authority to register marriage. These reasons led to interpretations in understanding interfaith marriages. (Sanjaya, 2023). The Population and Civil Registration Service (Dukcapil) rejected the marriage registration because one of the couples was Muslim, and the judge argued that RGH 158 of 1898 was still the basis for interfaith marriage because the marriage law did not clearly regulate. Based on the judge's decision, the interfaith marriage was recorded by Dukcapil (Nasir, 2020). The issue of interfaith marriage associated with the state of Indonesia is legal, while religious and theological issues are associated with interpretations of rules in each religion (Rizky et al., 2023).

Religious Authority of the Indonesian Ulema Council (MUI)

The Indonesian Ulema Council (MUI) is an organization that has been established since 1975. The purpose of the establishment of the Indonesian Ulema Council is to connect the government and the

Muslim community at the national level. In addition, the Indonesian Ulema Council is also tasked with providing fatwas, both to the government and Muslims in general (Kaptein, 2004). MUI became the umbrella of Muslims because it has an important role in forming religious discourse in Indonesia in the form of fatwa or non-fatwa. Non-fatwa products are *tausiyah*, advice or appeals. Fatwa or non-fatwa is considered morally binding, even sometimes the policies issued by the Indonesian Ulema Council are legally binding. Therefore, MUI is considered to have authority in forming religious authority into public policy (Achmad, 2022). The issuance of a Joint Decree Letter on Ahmadiyah and a Circular Letter of the Ministry of Health regarding the prohibition of doctors serving in government hospitals to circumcise women makes evidence that religious authorities can influence public policy (Hasyim, 2011).

The religious authority of the Indonesian Ulema Council not only influenced public policy, but also influenced the economic sector. It was proven that the Fatwa DSN MUI could provide profit legitimacy in the sector of Islamic financial institutions (Izmuddin et al., 2023). Religious authority is a broad concept because it can be influenced by text, individuals, and media used in spreading a particular religious understanding. The spread of religious understanding not only stops on offline studies, but the spread of understanding can be expanded through the media. The development of religious authorities is evidenced by the study of text spread through digital media such as websites, facebook, youtube, whatsapp, and other media. Through the online media, Muslims are easy to find answers to the religious problems faced in society (Rosidi et al., 2021). The fatwa issued by the Indonesian Ulema Council regarding family law is related to interfaith marriages, *mu'tah* marriages, *sirri* marriages (Ilhami, 2018) and children resulting from adultery (Siswanto, 2021).

Method

This study is a qualitative study with data obtained through online media such as websites, news and other media sources that provide information about the attitude, response and influence of Indonesian Ulema Council on interfaith marriage rules. This research is focused on narratives or news spread on social media about the attitude and response of the Indonesian Ulema Council in responding to interfaith marriage, as well as on social media. And whether the MUI's attitude and response has something to do with the revelation of the Supreme Court Circular Letter Number 2 of 2023 on "Guidelines for Judges in Judgment of Interfaith Marriage Regulations". The attitude and response of the MUI are categorized into several parts, then from this attitude and response, it is seen which one has the most influence in the rules of interfaith marriages in Indonesia. This study was analyzed using authority theory to see which of the dominant authorities was used by the Indonesian Ulema Council in influencing the rules of interfaith marriages.

Results

The Indonesian Ulema Council's (MUI) Response to Regulations on Interfaith Marriage in Indonesia

The practice of interfaith marriage in Indonesia is still sometimes carried out by the public because there is no law that prohibits the practice. Law No. 1 of 1974 contained in article 2 is considered to have more than one meaning, so the practice of interfaith marriage continues to be practiced by the public. For example, Ayu and Gerald performed a wedding procession at the Borobudur Hotel (Islamic procession) and Chatedral Church (Adil & Jamil, 2023). The marriage conducted by Ayu made the debate about the interfaith marriage being discussed again by various parties. The Indonesian Ulema Council (MUI) is one of the institutions that discuss this issue. MUI is a forum that is considered able to accommodate religious differences in Indonesia. Directives or directives issued by the Indonesian Ulema Council are usually referred to as Fatwa. The fatwa issued by the Indonesian Ulema Council is usually an answer to the public's questions about a law that develops in the community (Hamzah, 2018).

The functions of the Indonesian Ulema Council include providing guidance to the community, providing advice through fatwa on religious issues, and realizing religious harmony. In addition, it is also a link between the central government and the community as well as improving good relations between

Islamic institutions and Muslim scholars in providing guidance and guidance to the community (Mushodiq & Imron, 2020), one of which is the regulation related to religious aspects (Mutakabbir & Said, 2022). MUI is one of the institutions that respond to the rules of interfaith marriage in Indonesia. Therefore, this study classifies the MUI's responses into three parts;

1. Response to Denial of Interfaith Marriage through Fatwa

The Indonesian Ulema Council (MUI) issued a fatwa in 1980 which contained the prohibition of marriage of Muslim women to non-Muslim men. Regarding the marriage of Muslim men to non-Muslim women, it is still debated about the prohibition or permission. But after considering that the *mafsadah* (damage) is bigger than the *maslahat* (benefit). The Indonesian Ulema Council (MUI) decided to ban the marriage. The legal basis used by MUI in making this mixed marriage fatwa is to use the Qur'an Surat Al-Baqarah: 221, Al-Maidah: 55 and Al-Mumtahanah: 10. In addition to the Qur'an, MUI also uses the words of the prophet Muhammad SAW. Whoever marries another part of his faith will have a share of his faith. So that he should be wary of Allah. Then another word will say, "Every child born is pure." The father and mother of the child made the child's religion Jewish, Majusi or Christian (Majelis Ulama Indonesia, 1980).

In 2005, the Indonesian Ulema Council (MUI) issued a fatwa through National Conference Number 4/Munas VII/MUI/8/2005. The fatwa is part of the MUI Fatwa in 1980 concerning mixed marriages. This is evidenced by the mention of the Fatwa of National Conference II on Mixed Marriage. The fatwa on the interfaith marriage was held from 26 to 29 July 2005. The background of this fatwa is because MUI stated that at that time there had been many interfaith marriages. The fatwa also emphasized that interfaith marriages not only invite debate among Muslims, but also cause unrest in society. In addition, there is a thought regarding the rights of interfaith marriage using human rights and wrongdoing. Therefore, the Indonesian Ulema Council considered the need to issue this fatwa to realize peace and this fatwa was used as a guideline (Majelis Ulama Indonesia, 2005).

Fatwa as for the legal basis used to strengthen this fatwa, MUI used Al Qur'an A-Nisa: 3, Ar-Rum: 21, At-Tahrim: 6, Al-Maidah: 5, Al-Baqarah: 221, Al-Mumtahanah: 10, An-Nisa: 25. In addition to the Qur'an, the legal foundations used are Hadith Muhammad SAW and Qa'idah Fiqh. The hadith used in this fatwa is about the right to marry a woman for four things, namely; for her wealth, for her origins or for her children; for her beauty; for her religion. So let women hold fast to the religion of Islam. The *Qa'idah Fiqh* "Preventing greed takes precedence over pursuing benefit." was used to strengthen this fatwa (Majelis Ulama Indonesia, 2005). This fatwa asserts that the marriage of a man or woman married to People of the Book is considered forbidden and unlawful (Nisa, 2023). The variety of damage that occurs after interfaith marriage makes the community should make this a measure so that people avoid things that cause damage on a large scale and individual basis (Aulia, 2022).

2. Response to the Denial of Interfaith Marriage through Judicial Review

The rules regarding interfaith marriages have been proposed for judicial review twice, in 2014 and 2022. The 2014 judicial review was submitted by five Indonesian citizens, who felt that the state required citizens who were about to marry to carry out according to their respective religious beliefs. They argue that the existence of this regulation has violated the right of citizens to marry without restrictions (Maula & Muhsin, 2024). MUI is one of the institutions that are asked for opinions on judicial review regarding interfaith marriages. The Indonesian Ulema Council believes that regarding the provisions of article 2 paragraph 1 namely "In exercising the rights and freedoms of each person must be subject to statutory restrictions with the sole intention of ensuring recognition and respect for the rights and freedoms of others, and to meet fair demands according to moral considerations, religious values, security and public order in a democratic society" (*Putusan Mahkamah Konstitusi Nomor 68/PUU-XII/2014*, 2014).

The 2022 judicial review also involved the Indonesian Ulema Council. The statement made by the Indonesian Ulema Council was made as a judge of the Constitutional Court as a legal consideration to reject or grant the request. The Indonesian Ulema Council responded by saying "MUI is consistent with previous information related to testing article 2 paragraph 1" (*Putusan Nomor 24/PUU-XX/2022*, 2022). In this case, the Indonesian Ulema Council consistently stated that interfaith is not prohibited. The request for

a judicial review to the Constitutional Court was rejected because the majority of religions did not allow for an interfaith marriage (Suhasti et al., 2018). In addition to being against religion, interfaith marriage is also against marriage culture in Indonesia, as marriage is closely related to law, religion and sociology (Hedi et al., 2017). In addition, Indonesia does not embrace free human rights like other countries who embrace free human rights (Humas Mahkamah Konstitusi, 2022).

3. Reject Response Through Media Discussions

MUI's attitude in emphasizing the prohibition of interfaith marriages has been carried out by MUI as well as news related to MUI's response to interfaith marriages. KH Muh Amin, for example, stated that when asked about the law of marriage between religions, the answer was definitely not allowed. Because interfaith marriages have a lot of bad effects and influences if the couple have interfaith marriages (Tamika, 2023).

Discovering the legalization of interfaith marriages decided by the Surabaya District Court is not in line by the fatwa. This opinion was expressed by KH Ma'ruf Amin as Chairman of the MUI Advisory Council. He emphasized that legal steps would be taken from the Law and Human Rights Commission of MUI (Al-Ghifari, 2023). Further efforts made by the Indonesian Ulema Council to emphasize the prohibition of interfaith marriage were made in Indonesia, namely by requesting that the Surabaya District Court's decision regarding the granting of interfaith marriage permit be reviewed. As the news uploaded on the MUI website, KH Cholil Nafis as the Chairman of MUI for Da'wah and Ukhuwah stated that the point is for the sake of national dignity and human honor, it is better for the decision regarding the application for interfaith marriage permit to be reviewed or even canceled. He considered that the judges of the Surabaya District Court considered that they tend to be textual in interpreting the validity of couples who want to have interfaith marriage. Then he also added that Law Number 1 of 1974 article 2 of the 1st chapter of the 1st chapter said that marriage is valid in accordance with the teachings of each religion. The truth is through the agenda. Then he also emphasized that it damages human dignity because something is not valid is recorded. Meanwhile, the public understands that if an interfaith marriage is carried out, it is considered valid because the marriage is recorded (MUI, 2022).

Buya Amirsyah Tambuhan (Central MUI Secretary General) regretted the actions of Surabaya District Court judges granting interfaith marriage permits. The judge has the authority to examine and decide. This means that when the judge examines and decides, the application should be dismissed. In addition, the Indonesian Ulema Council also stated that there was a conflict of legal logic in the implementation of interfaith marriages. Because both couples have different religions and beliefs. Therefore, interfaith marriages must be rejected or annulled (Oktaviana & Fakhruddin, 2022). Another narrative in the same source explains that the application for an interfaith marriage permit is handled by a single judge. The single judge granted and ordered the Dukcapil Office to register interfaith marriages proposed by the applicant. Judge I revealed that the marriage performed by the couple had obtained the consent and permission of each couple's parents. In addition, the couple carried out a marriage which will also be recorded in front of officials of the Surabaya City Dukcapil Office (MUI Sulawesi Selatan, 2022).

On Monday, January 10, 2023, the Indonesian Ulema Council made a visit to the Supreme Court to discuss the interfaith marriage. In this case it is represented by KH Asrorun Niam Sholeh and KH Cholil Nafis. The two figures expressed views on the prohibition of interfaith marriage in Islam religion. Interfaith marriages also cause educational conflicts between children and couples' households. Andi Samsan Nganro is a spokesperson from the Supreme Court who said that the Supreme Court would follow up on the issue of interfaith marriage and conduct an in-depth study on this issue (Kompas.com, 2023). KH Asrorun Niam Sholeh emphasized "*We from MUI urge the Supreme Court to issue a regulation prohibiting interfaith marriage*" (Suara.com, 2023). On January 13, 2023, MUI followed up in the form of conducting an in-depth study of interfaith marriage. The study involved several parties, such as legal experts, social experts and religious fences. The purpose of this study is to provide a more comprehensive view of the Indonesian Ulema Council. The Supreme Court also conducted an in-depth study by conducting a study formed through a team from the Supreme Court. The study took several months (Suara.com, 2023).

The Influence of the Indonesian Ulema Council (MUI) on the Development of Interfaith Marriage Law

The development and application of Islamic Law in Indonesia cannot be separated from the role and contribution of MUI. The MUI contribution can be divided into two parts, namely contribution in legal certainty for Muslims individually and in groups. In addition, Fatwa is also an important issue in the rules that are enforced in Indonesia, because the Fatwa MUI is used as a reference in considering a regulation in Indonesia. Evidence of a fatwa that has transformed into a law or other binding regulation in Indonesia. For example, the Sharia Banking Act and the Waqf Act and the Supreme Court Regulations on the Compilation of Sharia Economic Law are commonly known as KHES. Then the fatwa DSN MUI is also part of the binding regulation because the regulation is used as a legal shelter by Bank Indonesia (BI) (Mulyati, 2019). MUI also provides protection to the community in terms of food through halal certification and labeling in food products consumed by the community (Chairunnisyah, 2017). This is one of the evidence that MUI contributes a lot to the community.

The Indonesian Ulema Council is one of the institutions that are asked for opinions when requesting judicial review regarding interfaith marriage at the Constitutional Court. The opinion expressed by MUI in a hearing at the Constitutional Court indicated that MUI could not be dismissed. The MUI's efforts are considered to contribute greatly to the formation of law in Indonesia, due to the fatwa issued by MUI due to public anxiety regarding the rules of interfaith marriage. Other evidence that the MUI's contribution to law in Indonesia is proven that MUI responds to the Constitutional Court's decision on adultery can be facilitated to the father if it can be proven by science and technology as well as other evidence that strengthens the proof. Although the MUI fatwa is not binding, at least the fatwa is able to provide explanations and interpretations about the problems faced by the people in Indonesia (Hakim, 2021).

Helping the government in giving religious-related considerations is one of the backgrounds for the formation of the Indonesian Ulema Council at that time. In addition, MUI is also the highest advisor in the religious field in various countries, including Indonesia (Ibad, 2019). Giving an opinion in the judicial review in the case of the request for a Constitutional Court law test is evidence that the MUI has carried out as is behind the establishment of the MUI. Apart from MUI, it also succeeded in urging the Supreme Court to make rules regarding interfaith marriages as stated in the Circular Letter of the Supreme Court (SEMA) Number 2 of 2023. The SEMA contained "Guidelines for Judges in Judgment of Applications for Registration of Interfaith Marriage". The SEMA ordered the judges under the Supreme Court to reject the application for an interfaith marriage permit submitted by couples who have different religions and beliefs (Mahkamah Agung Republik Indonesia, 2023).

Fatwa does not have the same binding power as other rules, but fatwa actually gains trust from the public. The fatwa can direct the public that fatwa determines a law. Even the public considered that fatwa has divinity and social dimensions at the same time. If there is a court decision that does not comply with Islamic law, then it can be met with a fatwa. Fatwa was also part of the answer to the law's dilemma between religion and state. The fatwa was able to direct the public to the way of thinking, the value of divinity, and the Muslim community living in Indonesia (Aris Setiyanto, 2018). Evidence that the Indonesian Ulema Council's Fatwa is quite influential in Indonesia regarding family law in general. Fatwa Number 11 of 2012 concerning the position of the child resulting from adultery, namely by contributing to the fatwa regarding this matter. Clarify and explain the decision of Constitutional Court Number 46/PUU-VII/2010. This was done to assert that adultery was forbidden. The existence of the fatwa was to break up marriage more broadly. The fatwa can also fill the void of law, as well as guide the judge and as source of material law (Ilhami, 2018). The above evidence shows that the Indonesian Ulema Council has strong authority to exert influence on the rule of law in Indonesia. In the context of interfaith marriages, MUI has a very big concern. This is evidenced by the efforts made by the Indonesian Ulema Council, so that there

is a SEMA No. 2 of 2023 which contains a prohibition on the Court in granting permission for marriage registration of different religions.

Conclusion

This research summarizes two things about the response and influence of the Indonesian Ulema Council. First, this study found that the Indonesian Ulema Council emphasized its rejection of interfaith marriages by strengthening the attitude shown through fatwa. In addition to the fatwa, the rejection was also evident when MUI expressed its opinion through judicial review of interfaith marriage and at the time of the Surabaya District Court which had granted the application for interfaith marriage. The refusal was also shown through the approach to the Supreme Court to discuss the rules of interfaith marriages and urged the Supreme Court to issue rules regarding interfaith marriage. Second that the MUI's attitude was responded positively by the Supreme Court where six months after the effort, the Supreme Court issued a Circular Letter on Directions for Judges in Judgment of Applications for the Registration of Interfaith Marriage. With the issuance of the circular, it is clear that MUI has a significant influence in the establishment and development of Islamic law related to interfaith in Indonesia.

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Conflict of Interest

The authors declared no conflicts of interest.

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