

## Lineage Status and Inheritance Rights of Children from Interfaith Marriages According to the Compilation of Islamic Law (KHI)

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**Abstract.** Marriage, lineage, and inheritance law are three interrelated things in human life, because marriage is one of the causes of obtaining lineage and inheritance. From the marriage, lineage can be created and mutual inheritance between husband and wife as well as children and parents. However, it is different if an interfaith marriage occurs, because religious differences are one of the factors that hinder lineage and inheritance. The purpose of this study is to determine and analyze: 1) The legal status of interfaith marriage according to the Compilation of Islamic Law; 2) The lineage status of children born from interfaith marriages according to the Compilation of Islamic Law; 3) Heirs of children from interfaith marriages according to the Compilation of Islamic Law. The research method in this study uses a statutory approach, thus this study is included in the category of normative legal research. The legal materials used are qualitative, consisting of primary legal materials in the form of laws and court decisions, as well as secondary legal materials in the form of literature, doctrines, and other scientific works. The collection of legal materials was carried out through library research, while the analysis technique used is qualitative descriptive analysis to provide a systematic description of the legal norms being studied. The research results concluded: 1) The legal status of children in interfaith marriages creates legal uncertainty, both according to Indonesian positive law and Islamic law. In the national legal system, the validity of the marriage is the basis for determining whether a child is legitimate or not. Because interfaith marriages are not recognized according to Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage, then legally children born from such marriages cannot be categorized as legitimate children in the context of Islamic law; 2) From the perspective of Islamic law as stipulated in the Compilation of Islamic Law (KHI), children resulting from a marriage between a Muslim man and a non-Muslim woman do not have a lineage relationship with their father. This is based on the principle that interfaith

*marriages are invalid in Islam, so they do not give rise to civil legal consequences in the form of determining lineage. Thus, the child's lineage can only be traced to the mother, as regulated in Article 100 of the KHI which emphasizes that illegitimate children only have a lineage relationship with their mother and their mother's family; 3) The implications for inheritance rights cannot be ignored. Because there is no blood relationship between a child and their father in an interfaith marriage, there is no inheritance relationship between them. This is in line with Article 171 letter c and Article 186 of the Compilation of Islamic Law, which states that inheritance only occurs between Muslims and those related by blood or by a valid marriage. Therefore, children of an interfaith marriage are not entitled to inherit from their Muslim father, and vice versa, except through a grant or mandatory will within certain limits.*

**Keywords:** *Children's Inheritance Rights; Compilation of Islamic Law; Interfaith Marriage; Lineage.*

## **1. Introduction**

Marriage is a crucial aspect of life, a religious obligation, and therefore crucial to adhere to established religious rules. Adults, physically and mentally healthy, need a life partner to achieve peace, tranquility, and prosperity in their married life. Through marriage, individuals can form families, communities, and even nations. The institution of marriage is so important that the world's religions regulate marriage, and even social customs and state institutions play a role in regulating marriage.

The main law regarding marriage in Indonesia is Law Number 1 of 1974 concerning marriage, along with implementing regulations such as PP No. 9 of 1975 and Complications of Islamic Law (KHI) based on Law No. 1 of 1974. This law regulates various aspects of marriage, including the conditions for the validity of marriage, the consequences of marriage, divorce, and the rights in marriage according to Law No. 1 of 1974.

Interfaith marriage is certainly not a new thing for Indonesia's multicultural society. Such marriages have occurred in society (in various social dimensions) and have been going on for a long time. However, this does not mean that the issue of interfaith marriage is not problematic, in fact it tends to always generate controversy in society. There is an assumption that the cause is the existence of Law No. 1 of 1974 which does not accommodate the issue of interfaith marriage. Meanwhile, the existence of Article 2 paragraph (1) of the UUP which states that marriage is valid if it is carried out according to the laws of each religion and

belief,<sup>1</sup>Although it is considered to have closed the door to interfaith marriage in Indonesia, the practice of interfaith marriage still occurs, based on human rights principles. Article 44 of Book I of the Compilation of Islamic Law (KHI) states that marriage between a man and a woman who are both Muslim is conducted according to Islamic law.<sup>2</sup>This article emphasizes that if both prospective bride and groom are Muslim, the marriage process and procedures must comply with Islamic law, including the requirements, pillars, and administrative procedures. This forms the legal basis for marriage according to Islamic law within the jurisdiction of religious courts in Indonesia.

Article 8 letter (f) of Law No. 1 of 1974 explains that a prohibited marriage is a marriage between two people of different religions, in this case between two citizens who are Muslim and non-Muslim.<sup>3</sup>This means that there are prohibitions under each religion's laws regarding marriage. In addition to the laws and regulations governing interfaith marriages in Indonesia, religious teachings also pose a barrier to such marriages. Many couples who wish to enter into interfaith marriages either do so abroad or by having both parties perform the marriage in their respective religions by submitting a petition to the District Court for interfaith marriage registration at the Civil Registry Office.

For the Indonesian Muslim community, the controversy and polemic surrounding interfaith marriages always heats up due to several reasons:

- 1) Since the issuance of Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law, Article 40 letter (c) of Book I of the Compilation of Islamic Law stipulates that a non-Muslim woman is prohibited from marrying a Muslim man. However, classical literature (tafsir and fiqh books) tend to permit the marriage of a Muslim man to a woman from the people of the book.
- 2) The existence of the MUI fatwa Number: 4/MUNAS VII/MUI/8/2005 which reiterates the prohibition of interfaith marriage, both marriage between a Muslim woman and a non-Muslim, and marriage between a Muslim man and a woman from the people of the book.<sup>4</sup>

Another thing that makes the controversy and polemic even more heated is the increasing practice of interfaith marriages carried out by Indonesian society, even among public figures/celebrities who should provide education or positive examples for society, also carrying out interfaith marriages.

There is a case of interfaith marriage that has been legalized by the Central Jakarta District Court in accordance with decision Number

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<sup>1</sup>Law no. 1 of 1974 concerning Marriage (UUP).

<sup>2</sup>Book I Complications of Islamic Law (KHI).

<sup>3</sup>Law no. 1 of 1974

<sup>4</sup>Fatwa of the Indonesian Ulema Council.

155/Pdt.P/2023/PN.Jkt.Pst.<sup>5</sup>The marriage involved a Christian man and a Muslim woman. The applicants stated in their petition that interfaith marriage is not prohibited, in accordance with Law Number 1 of 1974. Establishing a household through marriage is the applicant's basic human right as a citizen. The Central Jakarta District Court granted the petition to conduct an interfaith marriage and granted the applicant permission to register the marriage on human rights grounds.

Legitimate children in article 42 of Law no. 1 of 1974, namely children born in or as a result of a valid marriage.<sup>6</sup>Likewise with the provisions of Article 99 of the KHI, which states that a legitimate child is a child born in or as a result of a legitimate marriage.<sup>7</sup>From these provisions, it can be said that determining whether a child is legitimate or not depends on whether a marriage is legitimate or not.

Child protection is difficult to achieve because the parents' marriage is not valid according to religious or statutory provisions. This results in administrative complications, such as birth registration, determining the child's religion, and inheritance issues. Children are vulnerable because they are born of a marriage that does not meet legal requirements, potentially resulting in their status being recognized only as illegitimate children. Socially, children are also at risk of stigma, identity confusion, and even discrimination from their surroundings. This form of marriage actually opens up legal and social uncertainty for children. Child protection cannot be fully guaranteed if the basis of the marriage itself conflicts with religious and state law.

From an Islamic legal perspective, children born from interfaith marriages are viewed no differently than children born out of wedlock. This is based on the stipulation that a marriage is only valid if it is conducted in accordance with the sharia of each religion. Because in Islam, interfaith marriages, especially between a Muslim and a non-Muslim who are not members of the People of the Book, are considered invalid, the resulting marital relationship is deemed not to fulfill the pillars and requirements of marriage. Therefore, children born from such marriages are positioned as illegitimate children, who only have a civil relationship with their mother and the mother's family, as stipulated in Article 100 of the Compilation of Islamic Law (KHI).

This view is also in line with the Indonesian Ulema Council (MUI) Fatwa Number 11 of 2012 concerning the Status and Treatment of Children Born of Adultery. The fatwa emphasizes that children born of adultery, or children born of a

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<sup>5</sup>Directory of Decisions of the Supreme Court of the Republic of Indonesia, 2023, Decisions of the Central Jakarta District Court Number 155/Pdt.P/2023/PN.Jkt.Pst., url:<https://putusan3.mahkamahagung.go.id> accessed date September 19, 2025

<sup>6</sup>Law no. 1 of 1974

<sup>7</sup>Compilation of Islamic Law.

relationship without a valid marriage contract, have no lineage, guardianship, or inheritance relationship with their biological father. The child's lineage is connected only to their mother and the mother's family.<sup>8</sup>In Islam, children from interfaith marriages are considered the same as illegitimate children because their marriages are invalid according to Islamic law. This status carries serious consequences, particularly regarding lineage, inheritance, and guardianship, which can only be traced to the mother.

In Indonesian society, interfaith marriages still occur, both administratively and secretly through foreign marriage institutions or traditional marriages. Legal issues arise when a child is born from such a marriage. While the child is clearly biologically descended from both parents, under Islamic law, the child's lineage is questionable because it is born from a marriage that is not valid according to Islamic law.

In the context of lineage, Islam places great emphasis on the importance of legitimate descent, as lineage serves not only as a biological identity but also as the basis for legal relationships, including guardianship, childcare, and especially inheritance rights. In the Islamic inheritance law system (*fara'id*), only children who have a legitimate lineage and are Muslim are entitled to inherit from their parents. Therefore, unclear lineage status can result in the loss of the child's legal rights, particularly in receiving a portion of the inheritance from their Muslim parents.

When someone dies, disputes or issues often arise regarding the distribution of inheritance. It's no surprise, then, that inheritance is a sensitive topic in human life. Therefore, Islam offers a solution for managing and distributing inheritance fairly. Islamic laws and regulations govern how inheritance is to be managed and distributed to heirs or beneficiaries.

Various regulations govern the transfer of property rights, which refer to the transfer of assets from a deceased person to their heirs. In other words, inheritance is also known as *fara'id*, meaning a specific portion divided according to Islamic law among all those entitled to receive it, and whose portions have been determined.<sup>9</sup>

Looking at the details of the chapters and articles in the Islamic inheritance law book in the Compilation of Islamic Law, heirs are defined as people who have a marital relationship or lineage relationship with the deceased testator. Of course, these people are also Muslim and are not legally prevented from becoming heirs. Based on Article 174 paragraph (1) letter a and Article 181 and Article 182 of the Compilation of Islamic Law, heirs can be grouped based on lineage relationships and marital relationships.

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<sup>8</sup>Fatwa of the Indonesian Ulema Council (MUI)

<sup>9</sup> Beni Ahmad Saebani, 2012, *Mawaris Fiqh*, Pustaka Setia, Bandung, p. 13.

Based on the background above, the author is interested in conducting research with the title **""Status of Lineage and Inheritance Rights of Children from Interfaith Marriages According to the Compilation of Islamic Law (KHI)""**.

## **2. Research Methods**

The research method in this study uses a statutory approach, thus this study is included in the category of normative legal research. The legal materials used are qualitative, consisting of primary legal materials in the form of laws and court decisions, as well as secondary legal materials in the form of literature, doctrines, and other scientific works. The collection of legal materials was carried out through library research, while the analysis technique used is qualitative descriptive analysis to provide a systematic description of the legal norms being studied.

## **3. Results and Discussion**

### **3.1. The legal status of interfaith marriages according to the Compilation of Islamic Law (KHI)**

In Article 1 of Law Number 1 of 1974 concerning Marriage it is stated that "Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Almighty God". The definition of marriage according to Law Number 1 of 1974 concerning Marriage is not only a legal act, but also a religious act and this is regulated by each religion, so that therefore the validity or otherwise of a marriage depends entirely on the laws of each religion and belief adhered to by the people of Indonesia.

The validity of a marriage is regulated in Article 2 of the Law

Number 1 of 1974 concerning Marriage, which stipulates the following:<sup>10</sup>

1. Marriage is valid if it is carried out according to the laws of each religion and belief.
2. Each marriage is recorded according to applicable laws and regulations.

The explanation further states that there are no marriages outside the laws of each religion and belief. This is in accordance with Article 29 of the 1945 Constitution, which states: "The state is based on the belief in One Almighty God; the state guarantees the freedom of every citizen to practice their respective religion and to worship according to their respective religion and beliefs."<sup>11</sup>

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<sup>10</sup> Abdurrahman and Riduan Syahrani, 1978, Marriage Law, Alumni, Bandung, p. 35.

<sup>11</sup>Article 29 of the 1945 Constitution of the Republic of Indonesia.

From the provisions of Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage, it is clear that Law Number 1 of 1974 concerning Marriage determines the validity of a marriage according to the law of the religion and beliefs of each adherent. After the marriage is carried out according to the procedures of each religion and belief, the bride and groom sign the marriage certificate that has been prepared by the marriage registrar.

In the Compilation of Islamic Law, Article 2 states that marriage according to Islamic law is a very strong contract *ormiitsaaqon gholiidhanto* obey Allah's commands and carry them out is worship.

In the pillars of marriage in Islam, there are several conditions that must be met, namely:<sup>12</sup>

1. Prospective Husband: Muslim, a man who has reached puberty, not a mahram man with the prospective wife, knows the true guardian for the marriage contract, is not in the ihram of Hajj or Umrah, is willing and not forced, does not have four legitimate wives at one time, knows that the woman he wants to marry is a legitimate wife.
2. Prospective Wife: Islamic, not a mahram woman with a future husband, not a khunsa, not in the ihram of Hajj or Umrah, not in the iddah period, not someone else's wife, with her own consent.
3. Marriage Guardian: Muslim, male, mature, of his own accord and not coercion, not in the ihram of Hajj or Umrah, not ungodly, not disabled of mind, crazy, too old and so on, independent, not restrained in his power rather than spending his wealth.
4. Witnesses to the marriage: at least two people, Muslim, rational, mature, male, understand the contents of the pronouncement of the ijab and qobul, can hear, see and speak, fair (not committing major sins and not committing too many minor sins), independent.
5. Ijab: this marriage must be precise, it must not use insinuating words, be spoken by the guardian or his representative, not be tied to a time period such as mutaah (a contract marriage or marriage that is valid within a certain time as promised in the mutaah marriage agreement), not in a taklik manner (there are no prerequisites when the ijab is pronounced).
6. Qobul: the words must be in accordance with the words of consent, no insinuating words, pronounced by the prospective husband or his representative (for certain reasons), not tied to a time frame such as mutaah (like a marriage

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<sup>12</sup>Theadora Rahmawati, 2017, Fiqh Munakahat 1, Duta Media, Pamekasan, p. 21.



contract), not in a taklik (no prerequisites when the qobul is pronounced), mentioning the name of the prospective wife, not added with other words.

7. Dowry: A gift from a man to the woman he marries, as proof of sincerity, responsibility and respect, and is the wife's absolute right.

Of these seven requirements, the requirement for a marriage guardian and witnesses is that a person must be Muslim. If the guardian and witnesses are not Muslim, the marriage is clearly invalid. There are several types of interfaith marriages, such as:

#### 1. Marriage of a Muslim Man to a Non-Muslim Woman

The marriage between a Muslim man and a non-Muslim woman in question is if the non-Muslim woman is from the people of the book, meaning people who believe in the previous books, in this case a Christian woman and a Jewish woman, then this marriage is permissible. Allah SWT says in QS Al-Maidah 5:5

God bless you *وَلَهُمْ أَطْعَامُكُمْ حِلٌّ لَّهُمْ وَالْمُحْصَنَاتُ مِنَ الْمُؤْمِنَاتِ وَلَئِنْ كُنْتُمْ تُحِبُّونَ الْإِيمَانَ فَذِهِ جُنَاحٌ عَلَى الْمُؤْمِنِينَ أَنْ يَتْمِيزُوا بَيْنَ الْمُحْصَنَاتِ وَالْغَيْرِ مُحْصَنِينَ غَيْرَ مُسَفِحِينَ وَلَا مُتَّخِذِي أَخْدَانٍ وَمَنْ يَكْفُرْ بِالْإِيمَانِ فَقَدْ حَبِطَ عَمَلُهُ هُوَ فِي الْأَخْزَةِ مِنَ الْخَسِرِينَ* Allah's blessings

Meaning: On this day all good (food) is permitted to you. The food (sacrifice) of the People of the Book is halal for you and your food is halal (also) for them. (It is permissible for you to marry) women who maintain honor among believing women and women who maintain honor among those who were given the holy book before you, if you pay their dowry to marry them, not with the intention of committing adultery, and not to make (them) illicit partners (concubines). Whoever disbelieves after believing, then his deeds have been in vain and in the afterlife he will be one of the losers.<sup>13</sup>

Some of the Prophet's companions also married women from people of the book (Christians and Jews) such as Uthman bin Affan and Talhah bin Ubaidillah who married Christian women and Hudzaifah who married a Jewish woman.

#### 2. Marriage of a Non-Muslim Man and a Muslim Woman

Marriage between a non-Muslim man and a Muslim woman has been agreed to be legal based on the Qur'an, Hadith, and by Islamic Fiqh experts from all schools of thought, namely haram (invalid). Because Allah SWT says in the Al-Qur'an Surah Al-Mumtahanah 60:10.

*يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا جَاءَ مُؤْمِنٌ مِنَ الْكُفَّارِ لَا هُنَّ حِلٌّ لَّهُمْ* may Allah bless him and give him peace and blessings may Allah bless him and give him peace and blessings

<sup>13</sup>Ministry of Religion of the Republic of Indonesia, 1995, Al-Qur'an and its Translation, Diponegoro, Bandung., p. 86



وَلَا تُنْسِكُوا بِعَصَمٍ ۖ وَلَا هُمْ يَجْلُونَ لَهُمْ وَأَتَوْهُمْ مَّا أَنْفَقُوا وَلَا جُنَاحَ عَلَيْكُمْ أَنْ تَنْكِحُوهُنَّ إِذَا آتَيْنَهُنَّ ۖ or ۖ or يَحْكُمُ بَيْنَكُمْ وَاللَّهُ عَلِيمٌ ۖ God bless you ۖ God bless you ۖ

Meaning: O you who believe, when believing women come emigrating to you, then you should test their (faith). Allah knows better about their faith; So if you know that they (really) believe, then do not return them to (their husbands) who are disbelievers. They are not lawful for those who disbelieve and those who disbelieve are not lawful for them either.<sup>14</sup>

In the Al-Quran Surah Al Baqarah 2:221 Allah SWT also says:

وَلَا تَنْكِحُوا الْمُشْرِكَةَ حَتَّىٰ يُؤْمِنَ بِأَمْرِ اللَّهِ وَمَا آتَىٰ مِنْهُ خَيْرٌ مِّنْ مُّشْرِكَةٍ وَلَوْ أَعْجَبَكُمْ ۚ لَا تَنْكِحُوا الْمُشْرِكِينَ حَتَّىٰ يُؤْمِنُوا بِأَمْرِ اللَّهِ ۚ يُؤْمِنُوا وَلَعَبْدٌ مُّؤْمِنٌ خَيْرٌ مِّنْ مُّشْرِكٍ وَلَوْ أَعْجَبَكُمْ ۚ إِلَى النَّارِ Allah ۚ love ۚ love ۚ

Meaning: And do not marry polytheist women until they believe! Indeed, a believing female servant is better than an idolatrous woman, even if she attracts your heart. Also, do not marry polytheist men (to believing women) until they believe. Indeed, a faithful male servant is better than a polytheist male slave, even if he attracts your heart. They invite them to hell, while Allah invites them to heaven and forgiveness with His permission. (Allah) explains His verses to people so that they learn a lesson.<sup>15</sup>

Because these verses are very clear and explicitly prohibit Muslim women from marrying non-Muslim men, no Islamic scholars have a differing opinion on this matter. Therefore, the option often considered best is to ask the non-Muslim man to become Muslim first to fulfill the requirements for a valid marriage according to Islamic law. If the non-Muslim man is willing, the marriage can take place; however, if he is not willing, the marriage cannot take place. However, if the non-Muslim man later returns to his original beliefs, apostatizing after the marriage has taken place, the marriage is void. There are three opinions regarding the time when a marriage is void due to the husband's apostasy (which causes the husband and wife to have different religions), namely:

a. The marriage becomes annulled immediately, either before or after sexual intercourse. This is the opinion of the Hanafiyah, Malikiyah, and one of the two existing narrations from Ahmad. This opinion was narrated from Al-Hasan Al-Bashri, Umar bin Abdul Aziz, AtsTsauri, Abu Nur and Ibnu Al-Mundzir. The person who apostates is made qiyas to the dead person, because apostasy is a bad cause in him, while the dead person is not an object to marry. Therefore, it is not permissible to marry someone who is an apostate in Islam, and henceforth this provision will remain so.

<sup>14</sup>Ibid., p. 551.

<sup>15</sup>Ministry of Religion of the Republic of Indonesia, 1995, Op cit., p. 27.

b. If he apostates before having sexual intercourse, then the marriage will be annulled immediately. However, if the person apostates after having sexual intercourse, then the annulment of the marriage is postponed until the iddah period ends. If the apostate returns to Islam before his iddah period ends, then he remains in his marital status. And if he converts to Islam after his iddah period has expired, then the two of them have been declared divorced since he apostatized.

This opinion is adhered to by the Shafi'iyah and Hanbaliyah schools in a famous history from them. It is found in the word of God

SWT in the Qur'an Surah Al-Mumtahanah 60:10.

God willing

Meaning: And do not cling to the rope (of marriage) with disbelieving women.<sup>16</sup>

Because apostasy is a religious difference that can prevent a person from finding themselves, thus invalidating the marriage. This is similar to when a wife converts to Islam while still being the wife of an infidel husband.

c. According to Shaikhul Islam Ibn Taymiyah and his student, Ibnul Qayyim, if one of the married couples apostates, then the marriage must be frozen. If he re-converts to Islam, then his marriage is valid again, whether he converted to Islam before having intercourse or after, whether he converted to Islam before his iddah period expired or after his iddah period expired. Shaikhul Islam Ibn Taymiyyah said in order to explain that in Islamic law if one of the husband and wife apostates, then the second marriage must be frozen.

Similarly, regarding apostasy, the view that divorce is necessary immediately contradicts the Sunnah exemplified by the Prophet (peace and blessings of Allaah be upon him). During his time, many apostates arose. Among them, some wives did not apostatize with them. Later, they reconverted to Islam, and their wives returned to them. It is not known that any of them were ordered to renew their marriages. However, it is certain that some of them converted to Islam after a long time, beyond the iddah period. Similarly, it is certain that the majority of their wives did not apostatize, but the Prophet (peace and blessings of Allaah be upon him) never inquired in detail with any of the apostate husbands whether they converted to Islam after their wives' iddah period had expired or before.

If the husband apostatizes, the marriage is legally null and void, which in Islamic jurisprudence is called fasakh (literally, broken). This is the opinion of the majority of sharia scholars, namely the Shafi'i, Hanafi, and Hanbali schools. This

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<sup>16</sup>Ministry of Religion of the Republic of Indonesia, 1995, Op cit., p. 549.

means that there is no longer a marital relationship between husband and wife. Any subsequent intimate relationship is considered adultery. According to the Maliki school, a husband's apostasy automatically results in the wife being divorced three times.

In the Compilation of Islamic Law (KHI) it is stipulated that for prospective husband and wife there are no obstacles to marriage, and among the obstacles to marriage are stated in article 40 where a man is prohibited from marrying a woman who is not Muslim. And in article 44 it is stated that a Muslim woman is prohibited from marrying a man who is not Muslim. Furthermore, in the section on preventing marriage, it is stipulated that preventing marriage can be done if the prospective husband or prospective wife who will marry does not fulfill the requirements for carrying out marriage according to Islamic law and statutory regulations. (KHI article 60 paragraph 2) and not being *sekufu* cannot be used as a reason to prevent marriage, except not being *sekufu* due to differences in religion or *khilaf al-din*. (KHI Article 61).

Another provision of the Compilation of Islamic Law (KHI) provides an opportunity for a marriage to continue for a couple who apostatizes or leaves Islam. This is regulated in Article 116, point H, concerning grounds for divorce. Essentially, divorce can occur for reasons of religious conversion or apostasy that lead to disharmony in the household. The Compilation of Islamic Law explicitly addresses interfaith marriages in four articles.

1) In Article 40 of the KHI;

"It is prohibited to carry out marriage between a man and a woman due to certain circumstances:

- a. Because the woman in question is still bound by a marriage to another man.
- b. a woman who is still in the *iddah* period with another man.
- c. A woman who is not Muslim."

This article prohibits marriage due to certain circumstances, not because of blood relationship (*nasab*) or marriage, but rather the legal and religious status of the prospective partner.

2) Article 44 of the KHI;

"A Muslim woman is prohibited from marrying a man who is not Muslim."

This article emphasizes that interfaith marriage between a Muslim woman and a non-Muslim man is prohibited. This prohibition stems directly from Islamic law, as explained in the Quran and agreed upon by scholars (*ijma'*).

3) Article 61 of the Compilation of Indonesian Hizbullah;

"Nosekufucannot be used as a reason to prevent marriage unless it is not compatible due to religious differences *orikhtilaf al-din*."

KHI wants to emphasize the principle of equality and social justice, that marriage in Islam should not be hindered by worldly factors.

4) Article 116 KHI letter H;

**"Conversion of religion (apostasy) which causes disharmony in the household."**

Changing religions can cause disharmony and make marital relations invalid according to Islamic law.

In interfaith marriages, of course there are legal consequences after the interfaith marriage occurs, such as: *First*, Legitimacy of Children. Based on Article 42 of Law No. 1 of 1974, "A legitimate child is a child born in or as a result of a legitimate marriage." Parents of different religions must also pay attention to Article 42 paragraph (2) of the Child Protection Law which explains that children can determine their chosen religion if the child is of sound mind and responsible, and fulfills the requirements and procedures in accordance with the provisions of the religion they choose, and the provisions of applicable laws and regulations. *Second*, Inheritance Rights. In Islam, inheritance laws are regulated in Surah An-Nisa, verses 7 to 13, and verse 176, which are further explained in the Hadith. The conditions for someone to inherit according to Islam are:

1. The person who truly inherits has died and it can be legally proven that he has died.
2. The person who inherits is alive at the time the person who made the inheritance dies and can be proven in law.
3. There is a relationship between the person who inherits and the person who inherits, namely;
  - a) lineage relationship, namely kinship or descent relationship.
  - b) The marriage relationship is that someone can inherit or be the wife of someone who inherits as the word of Allah SWT.
  - c) slavery relationship.
  - d) because of the relationship between Islam and the religion.<sup>17</sup>

From the perspective of Islamic Inheritance Law, children born from interfaith marriages do not have the right to inherit property if they do not share the same religion as the heir, in this case the heir is Muslim.

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<sup>17</sup>H. Amin Husein Nasution, 2012, Inheritance Law, PT. Raja Grafindo Persada, Jakarta, p. 75.

If the testator is not Muslim and the heirs are also non-Muslim, the heirs still have the right to receive the inheritance. This provision is based on the blood relationship between the testator and the heirs, as stipulated in Article 832 of the Civil Code (KUHPerdata), which states that inheritance occurs through blood relations or marriage.

This principle aligns with Article 171, letter c, of the Compilation of Islamic Law (KHI), which states that a person can become an heir if they are related by blood or marriage to the testator, are Muslim, and are not prevented by law. Therefore, in the context of a testator and heir who are both non-Muslim, civil inheritance law can still be applied based on blood relations, not on religious differences as stipulated in the Compilation of Islamic Law.

### **3.2. The Lineage Status of Children Born from Interfaith Marriages According to the Compilation of Islamic Law (KHI)**

A child's lineage is determined by marital status. A valid marriage is the basis for demonstrating a lineage relationship with their father. Because interfaith marriage is prohibited, as previously explained, the offspring of such a marriage are classified as children of adultery. Scholars agree that children of adultery, or *li'an*, are only related to their mother and their mother's siblings. This differs from the understanding of Shia scholars, who believe that children of adultery do not have a lineage relationship with their adulterous mother and father, and therefore cannot inherit from either of them.<sup>18</sup>

In Indonesia, three laws govern the issue of children's origins: Islamic law, the Civil Code (KUH Perdata), and customary law, the unwritten law. While these laws share similarities, they also have significant differences, particularly regarding children's origins, which relate to ethical and moral aspects. Islamic law naturally emphasizes ethical and moral considerations.

Law Number 1 of 1974 regulates the origin of children in articles 42, 43 and 44.

#### **1. Article 42:**

A legitimate child is a child born in or as a result of a legitimate marriage.

#### **2. Article 43:**

a. Children born outside of marriage only have a civil relationship with their mother and her mother's family.

b. The position of the child referred to in paragraph (1) above will be further regulated in Government Regulation.

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<sup>18</sup>Ahmad Rofiq, 2013, *Islamic Civil Law in Indonesia*, First Edition, Raja Grafindo Persada, Jakarta, p. 177.

3. Article 44:

- a. A husband can deny the legitimacy of a child born to his wife if he can prove that his wife has committed adultery and the child is the result of that adultery.
- b. The court makes a decision on whether or not a child is legitimate at the request of the party concerned.<sup>19</sup>

Considering Article 42, it provides legal tolerance for children born within a valid marriage, even if the interval between the marriage and the child's birth is less than the minimum gestational age limit. Therefore, as long as the unborn child is born while the mother is in a valid marriage, the child is legitimate. The law does not stipulate a minimum gestational age limit, either in its articles or in its explanations.

What has been regulated in Law Number 1 of 1974 is confirmed and detailed in the Compilation of Islamic Law in Article 99.

Article 99: Legitimate children are:

- a. Children born in or as a result of a valid marriage.
- b. The result of a legitimate fertilization of a husband and wife outside the womb and born by the wife.

Article 99 above contains an update to Islamic law to anticipate the possibility of in vitro fertilization, a process where ovulation is engineered outside the uterus through a specially prepared tube, then reinserted into the wife's uterus, and the woman gives birth. Therefore, the procedure remains restricted to a husband and wife who are legally married.

Article 42 of Law No. 1 of 1974 and Article 99 of the Compilation of Islamic Law (KHI) explain that a child's legitimacy is determined by their marriage. If the marriage is valid, then the child born from that marriage is also legitimate. According to the KHI, interfaith marriages are invalid, and therefore, children born from interfaith marriages are also illegitimate and have the same status as children born of adultery. Children born of adultery are only related to their mother, not their father.

### **3.3. Heirs of Children from Interfaith Marriages according to the Compilation of Islamic Law (KHI)**

Inheritance law according to Islam is a legal system regulated in the Al-Quran Surah An-Nisa verses 7-12, 13 and 176. Al-The Qur'an is a guide for Muslims which regulates and explains about inheritance law and who has the right to be

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<sup>19</sup>Sudarsono, 1991, National Marriage Law, First Edition, Rineka Cipta, Jakarta, p. 29.

an heir.<sup>20</sup> There are three things that prevent someone from inheriting in Islamic law: murder, different religions, and slavery. The Compilation of Islamic Law (KHI) aligns more with the views of classical scholars, who assert that religious differences between the heir and the testator hinder the inheritance process.<sup>21</sup>

The opinion of the Ulama regarding Heirs of Different Religions, namely that Muslims do not take rights or inheritance from infidels and vice versa, narrated by Said ibn Musaiyab and an-Nakha'i that people-infidels are not allowed to take the inheritance of Muslims and Muslim women are prohibited from marrying infidel men.<sup>22</sup> The children of the heir are a very important group of heirs, meaning that other relatives do not become heirs if the heir leaves behind children.<sup>23</sup> The conditions for inheritance according to Islamic law are:

- a) The person who inherits has been declared dead and has been legally proven to have died.
- b) The heirs are alive at the time the person who made the testator dies and have been proven in law.
- c) There is a relationship between the person who inherits and the person who inherits or what is usually called Nasab.
- d) Marriages that are carried out according to Islamic law are entitled to receive inheritance.

A married couple can inherit from each other if their relationship is valid according to Islamic law, namely by performing a marriage contract and fulfilling the requirements set out in Islamic law. Lineage is a crucial issue directly related to inheritance rights. Inheritance is the distribution of a parent's inheritance to the heirs, which is linked to the testator's lineage.<sup>24</sup> Viewed from the perspective of Islamic Inheritance Law, children born from interfaith marriages or heirs of a different religion from the testator do not have the right to inherit property, in this case the testator is Muslim. The provisions of the Ulema Council Fatwa Number 5/MUNAS VII/9/2005 regarding interfaith inheritance explain two meanings, namely:

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<sup>20</sup>Susilo, H., Junaidi, M., RS, DS, & Arifin, Z. 2021. Inheritance Rights of Children of Different Religions to Their Parents Based on Islamic Law. *USM Law Review Journal*, Vol. 4 No. 1.

<sup>21</sup>Siti Marlina and Amira Syafina, 2021. *Inheritance Rights of Children Born from Interfaith Marriages Reviewed from Islamic Law and the Indonesian Marriage Law*.

<sup>22</sup>Junaidi, J., & Merta, MM, 2020, Interfaith Marriage and the Consequences of Inheritance Law from an Islamic Law Perspective, *ISID Proceedings*, Vol. 1.

<sup>23</sup>Hanifah, M, 2019, Interfaith Marriage Reviewed from Law Number 1 of 1974 Concerning Marriage, *Soumatra Law Review*, Vol. 2, No. 2.

<sup>24</sup>Suseno, MA, & Kushidayati, L., 2020. Interfaith Families and Legal Implications for Children. *YUDISIA: Journal of Legal Thought and Islamic Law*, Vol. 11, No. 2.



a) Islamic inheritance law does not grant the right of mutual inheritance to people of different religions.

b) Giving property to people of different religions can be done through grants, wills and gifts.

The MUI fatwa explains that relations between religious communities do not have special rights in receiving inheritance, in which case Muslims are the legitimate recipients of the inheritance.<sup>25</sup> Scholars are of the opinion that Muslim heirs will still receive inheritance from non-Muslim heirs. The scholars relied on the opinion of Mu'adz bin Jabal ra, who explained A Muslim may inherit the property of an infidel but is not permitted to bequeath his property to an infidel.

The efforts to resolve the distribution of inheritance rights for children of different religions are as follows:

#### 1. Grant

Article 171 letter g of the KHI explains that a grant is the voluntary giving of an object without compensation to another person who is still alive to own.<sup>26</sup> Islamic law allows a person to give or gift their wealth while still alive to another person, a practice known as *intervivos*. Living parents are permitted to give gifts to children of a different religion. Gifts can be made by anyone, whether to fellow Muslims or non-Muslims.

#### 2. Will

Article 171 letter f KHI will is an object given by the testator to another person which takes effect after the testator dies.<sup>27</sup> A will is a gift of property to another person after the testator dies. The provisions for granting inheritance are regulated in Article 196 KHI which explains that a written or oral will must make it clear who or what institution is receiving the assets that have been willed. Surah Al-Baqarah verse 180 is the legal basis for a will which states that: "It is prescribed for you, if death comes to one of you, if he leaves a lot of wealth, leave a will for his parents and parents his relatives in a virtuous manner, this is an obligation upon a pious person."

### 4. Conclusion

Interfaith marriages violate the national legal system, Islamic legal principles, and public order, as they create uncertainty regarding the status of children, lineage,

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<sup>25</sup>Utami, MMP, & Taun, T., 2023, A Juridical-Sociological Review of Interfaith Marriages in Human Rights and Law in Indonesia and the Status of Children from Interfaith Marriages. *Scientific Journal of Educational Vehicle*, Vol. 9, No. 1.

<sup>26</sup>Susilo, H., Junaidi, M., RS, DS, & Arifin, Z. Op cit.

<sup>27</sup>Ibid.

and inheritance rights. Therefore, affirming the prohibition on interfaith marriages is a crucial step to maintain the purity of marriage law, guarantee legal certainty for children, and protect the social and moral order of Indonesian society. Thus, it is best for the government and all elements of society to work together to create a marriage legal system that is in harmony with the values of the Almighty God, as well as maintaining the social and moral stability of the Indonesian nation.

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