

STUDY ANALYSIS OF ISTINBA METHOD 'NAHḌATUL' ULAMA' (NU) IN MARRIAGE A DIFFERENT RELIGION

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Abstract

Baḥsul Masa'il Nahdlatul Ulama (BMNU) is the highest forum of NU which is responsible for making decisions relating to the term 'fiqhiyyah. Even problems of daily life that are not related to fiqh, such as the problem of monotheism, Sufism, tarekat, tradition, culture, and including issues of interfaith marriage can be resolved in this forum.

Nowadays in Indonesia interfaith marriage is a familiar phenomenon among celebrities, ordinary people, even activists of interfaith dialogue and educated religious leaders. The law of interfaith marriage is a complicated and controversial issue among fuqaha '. The pros and cons of interfaith marriage are accompanied by the arguments of each party, starting from psychological, legal, and the most coloring are the issue of belief in religious interpretations.

From the basis of taking the law used by the Bahtsul Masa'il Lajnah is the opinion of the statement of al-Sarqawi in his book Ḥasyiyah al-Sarqawi 'ala Tufah. There, it has been very clearly explained with various reasons and legal considerations regarding interfaith marriages, therefore the Lajnah Ba'ul masa'il can draw conclusions that interfaith marriages in Indonesia are included in prohibited and illegitimate marriages.

Key Word: interfaith marriages, Istinbaḥ Nahḍatul 'ulama' (Nu)

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I. INTRODUCTION

Marriage is built to create prosperity for all humans. In general, the benefit of marriage is everything that is used to achieve maqasyid al-shari'ah from marriage, whether that is asliyah or taḥba'iyah and both are uriaruriyyah, hajjiyyah, and taḥsiniyyah.⁴ Such safeguards are carried out through a legal marriage according to religion, then recognized by law and accepted as part of culture.

From this description, Islam states that marriage is not a biological problem and not also a matter of personal relationship between husband and wife, but also psychological and even sociological and theological issues. Therefore, Islam pays considerable attention to the issue of marriage including inter-religious marriages or different religions.⁵ Thus, everything related to the fulfillment of the marriage must be fulfilled by the parties concerned, especially the conditions and the harmony of the marriage.

Nowadays in Indonesia interfaith marriage is a familiar phenomenon among celebrities, ordinary people, even activists of interfaith dialogue and educated religious leaders.⁶ The law of interfaith marriage is a complicated and controversial issue among fuqaha '. The pros and cons about interfaith marriage are accompanied by the arguments of each party, starting from psychological, legal, and the most coloring are the issue of belief in religious interpretations. In its development, it is increasingly apparent that marriage is not merely within the jurisdiction, but actually enters the gray

⁴Yusuf Hamid, *al-Maqasid al-Ammah li al-Syari'ah al-Islamiyah*, (USA: Internasional Graphics Printing Servise, 1991), hlm. 102.

⁵Amir Syarifuddin, *Hukum Perkawinan di Indonesia*, (Jakarta: Kencana, 2009), hlm. 6-13.

⁶Fuaddin, *Pengasuhan Anak Dalam Keluarga Islam*, (Jakarta: Lemabaga Kajian Agama dan Jender, 1999), hlm. 4.

area and dives into beliefs that are influenced by various aspects (psychic, religious, cultural, economic and so on).⁷

Bahsul Masa'il Nahdlatul Ulama (BMNU) is the highest forum of NU which is responsible for making decisions relating to the term 'fiqhiyyah. Even problems of daily life that are not related to fiqh, such as the problem of monotheism, Sufism, tarekat, tradition, culture, etc. can be resolved in this forum. Through this forum, the problems of actual life (waqi'ah) can be found justification of the law based on the text of the Qur'an and as-Sunnah or through the search for opinions of legal experts in classical books whose validity is recognized (al-polar al-mu 'Tabarah). In the tradition of taking Islamic law, ulama Nahdliyyin uses the search for the opinions of fiqh scholars in their books. The term he uses is not legal istinbat but ittifaq law, namely the legal agreement made by the ulama by understanding like the books of jurisprudence that are recognized as valid (mu'tabar).

There have been many studies examining marriages of different religions, including: Muhammad Harsono in his journal "Different Marriage Interfaith Perspective of Activists of the Liberal Islamic Network (JIL)",⁸ Islamiati in his journal "" Decision of the Constitutional Court No.

⁷Pada Prinsipnya terdapat tiga pokok pandangan Islam terhadap masalah perkawinan antara pemeluk agama Islam dengan orang-orang yang bukan beragama Islam, *Pertama* : melarang perkawinan umat Islam dengan orang-orang yang beragama menyembah berhala, politeisme, agama yang tidak mempunyai kitab suci dan dengan kaum atheis, *Kedua*: melarang perkawinan antara wanita Islam dengan pria bukan Islam, *Ketiga*: mengenai antra laki-laki muslim dengan wanita bukan muslim yang ahli kitab, terdapat tiga pendapat, yaitu:a. melarang secara mutlak, b. memperkenankan secara mutlak, c. memperkenankan dengan syarat yaitu apabila pria muslim itu kuat imannya. (Rusli dan R. Tama, *Perkawinan antar Agama dan Masalahnya* (Bandung : Pionir Jaya, 2000), hlm. 16.)

⁸Muhammad Harsono menjelaskan bahwa larangan nikah beda agama antara perempuan Islam dengan lelaki non-Islam, menurut aktifis JIL sudah tidak relevan lagi. *pertama*, tidak adanya dalil yang secara tegas menyatakan, adalah merupakan dalil diperbolehkannya pernikahan beda agama, *Kedua*, larangan pernikahan wanita muslim dengan non muslim ahl al-kitab, merupakan produk ijtihadi, dan bentuk ijtihadi bukanlah

68 / Puu / Xii / 2014 Relation to Interfaith Marriage According to Islamic Law in Indonesia ",⁹ and Jane Marlen Makalew in her journal " The Legal Impacts of Interfaith Marriage in Indonesia ".¹⁰ Although there are some studies that have studied about interfaith marriages, as well as NU ijtihad, the position of researchers here will strengthen and re-examine if there are several things found different.

This research is a library research (library research), which collects and analyzes data from library materials, whether in the form of books, books, or other library documents.¹¹ This type of library research is focused on analyzing the nature of NU's law on interfaith marriages using a philosophical approach. Sources of data in this study were divided into two, namely primary sources and secondary sources. The primary source

terbentuk berdasarkan konsensus, jadi tidak ada tafsir tunggal pada saat ini. *Ketiga*, larangan pernikahan antara muslimah dengan laki-laki muslim itu, hanya akan mendiskreditkan kaum perempuan, karena diasumsikan sebagai makhluk yang lebih rendah imannya. (Muhamad Harsono, "Nikah Beda Agama Perspektif Aktifis Jaringan Islam Liberal (JIL)", *Al-Ahwal*, Vol. 2, No. 1, 2009, hlm. 108.

⁹Islamiyati menyatakan bahwa putusan MK No. 68/PUU/XII/2014 menjadi dasar yuridis bahwa nikah beda agama tidak diperbolehkan oleh hukum agama (Islam) dan negara. Eksistensi hukum Islam dapat ditegakkan dan dikuatkan kembali oleh penafsiran Pasal 2 Ayat (1) UUP secara benar dan konstitusional. Putusan MK No. 68/PUU/XII/2014 telah mampu mengkorelasikan hubungan hukum antara hukum agama dan Negara yang harmonis, serta dapat mereformulasikan hukum agama (Islam) yang berpijak pada prinsip-prinsip dasar syariah Islam yang menegakkan *maqāsid syarī'ah* (tujuan pembentukan hukum Islam). (Islamiyati, "Analisis Putusan Mahkamah Konstitusi No. 68/Puu/Xii/2014 Kaitannya Dengan Nikah Beda Agama Menurut Hukum Islam Di Indonesia", *Al-Ahkam*, 27 (2), 2017, hlm. 176).

¹⁰Penelitian ini menjelaskan bahwa boleh atau tidaknya Pernikahan beda agama dilangsungkan menurut agama yang ada di Indonesia, semuanya tergantung pada aturan hukum dari masing – masing agama yang mengatur. Karena pada prinsipnya kelima agama tersebut yakni; agama Islam, Kristen Protestan, Katholik, Hindu dan Budha, menentang keras tentang adanya pernikahan beda agama dikecualikan pada suatu hal tertentu dapat diperbolehkan namun dalam hal perbedaan agama tersebut, kedua belah pihak harus tunduk pada aturan hukum dan tata cara agama mana yang akan menjadi pilihan untuk dilangsungkan pernikahannya. (Jane Marlen Makalew, "Akibat Hukum Dari Perkawinan Beda Agama Di Indonesia", *Lex Privatum*, Vol.I/No.2/Apr-Jun/2013, hlm. 143).

¹¹Abdurrahmat Fathoni, *Metodologi Penelitian dan Teknik Penyusunan Skripsi*, (Jakarta: PT. Rineka Cipta, 2006), hlm. 96.

of this research was obtained from the fatwas of NU, both of which were produced through conferences, general meetings, and conbes. While secondary sources are sources that are closely related to primary sources and can help to analyze and understand primary sources. The source of this data can be obtained from the book of proposals of fiqh, compilation of Islamic law, Law No.1 of 1974 regarding marriage, including research results, seminar results, and journals and articles.

II. DISCUSSION

A. Marriage With Different Religion

1. Definition Marriage

Marriage in language means al-waṭ'u (الوطء), al-ḍammu (الضمّ), al-jam'u (عجم ل) al-waṭ'u (ءطول ل) comes from the word waṭ'a'a-yaṭ'a'u-waṭ'an (وطاء و طاء-ء اطو) gnippets ,hguorht ,no klaw ot snaem (وطاء on, stepping on, riding on, intercourse, and intercourse or intercourse. Your al-ḍam rooted in the word ḍamma-yaḍummu ḍamman (ضما و ضم-مض) dloh ,dloh ,dloh ,dloh ,tcelloc ot snaem (ضما on, hold on , uniting, combining, leaning, embracing, hugging, and adding together, and means soft and friendly, while al-jam'u comes from the word jama'a-yajma'u-jam'an (جمعا و جمع-عجم) ot snaem (جمعا gather, gather, unite, combine, add up, add up, and compile.¹²

While terminologically, marriage (zawaj and marriage) is a contract that allows the bride and groom to get pleasure from each partner in accordance with shari'ah.¹³ In line with this understanding, the 'Shafi'iyah scholars formulated the definition of marriage as "a contract or agreement containing the intent to allow

¹²Muhammad Amin Suma, *Hukum Keluarga Islam di Duni Islam*, (Jakarta: PT Raja Grafindo Persada, 2004), hlm. 43.

¹³ Muhammad Abu Zahra, *Al-Ahwal al-Syakhsiyah*, (Mesir: Dar al-Fikr al-Arabi, 1957), hlm. 18

sexual relations using lafaz na-ka-ha or za-wa-ja". Among the scholars of Shafi'iyah provide a definition of "marriage" look at the nature of the contract when it is connected with the life of the husband and wife who apply afterwards, which is allowed to get along. Whereas before the existence of the contract between the two must not get along.¹⁴ Marriage is essentially a contract and in the sense of majaz marriage is waṭ'i (jima').¹⁵

While the definition of marriage or marriage according to the marriage law of the Republic of Indonesia No. I Year Chapter I 1974 chapter 1 "Marriage is an inner and outer 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 Godhead of the Almighty".¹⁶ While article 3 reads, "Marriage aims to realize a domestic life that is sure, mawaddah, and mercy".¹⁷

Marriage law is a law that regulates the relationship between humans and their fellow human beings regarding the distribution of biological needs between types, and the rights and obligations associated with the consequences of marriage.¹⁸ In Islam, marriage is prescribed based on the Qur'an and Hadis.

¹⁴ Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia*, hlm. 37

¹⁵ Syeikh Zainuddin bin Abdul Aziz Al-Malibari, *Fathul Mu'in Bi Al- Syarhi qurrotil 'Ain*, (Indonesia: Maktabah Dar Ihya' Al- Kutub Al- 'Arobiyah), hlm. 98

¹⁶ Undang-Undang pernikahan Republik Indonesia No. I Tahun Bab I 1974 pasal 1.

¹⁷ Undang-Undang pernikahan Republik Indonesia No. I Tahun Bab I 1974 pasal 3.

¹⁸ M. A. Tihami dan Sohari Sahrani, *Fikih MUNAKAHAT Kajian Fikih Nikah Lengkap*, hlm. 8-9.

a. Al- Qur'an

Dan di antara tanda-tanda kekuasaan-Nya ialah Dia menciptakan untukmu isteri-isteri dari jenismu sendiri, supaya kamu cenderung dan merasa tenteram kepadanya, dan dijadikan-Nya diantaramu rasa kasih dan sayang. Sesungguhnya pada yang demikian itu benar-benar terdapat tanda-tanda bagi kaum yang berfikir. (QS. Ar- Ruum: 21)¹⁹

b. Al-Hadis

فَقَالَ لَنَا رَسُولُ اللَّهِ - ﷺ - « يَا مَعْشَرَ الشَّبَابِ مَنْ اسْتَطَاعَ مِنَ الْبَاءَةِ فَلْيَتَزَوَّجْ ، فَإِنَّهُ أَغْضَى لِلْبَصْرِ ، وَأَحْصَنُ لِلْفَرْجِ ، وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ ، فَإِنَّهُ لَهُ وَجَاءٌ (رواه البخاري)

“Nabi Muhammad SAW bersabda: Wahai para generasi muda, barang siapa di antara kalian telah mampu, hendaklah menikah. Dan barang siapa yang tidak mampu maka hendaklah ia berpuasa karena puasa itu dapat menahan nafsu syahwat” (H.R. Al-Bukhari).²⁰

From the arguments of al-Qur ‘an and al-Hadis, the imams of Islamic jurists agree that the legal origin of marriage is "mubah" depending on the level of benefit. This is based on the nature of marriage itself, which is a contract that allows men and women to do things that were previously not allowed. In other words, holding a marriage contract is a religious command, and with the marriage contract taking place, the association between men and women becomes permissible or legal.²¹

However, there are differences in interpreting the word "marriage", because there are two possible meanings of marriage

¹⁹Departemen Agama RI, *Al-Qur'an dan Tajwid*, (Jakarta: SYGMA, 2014), hlm. 406.

²⁰Al-Imam Abi Abdillah Muhammad bin Ismail Al-Bukhari, *Shahih Bukhari*, juz V. (Beirut:Dar al-Fikr, , 1981), hlm. 117

²¹Suyuti Thalib, *Hukum Keluarga Indonesia, Berlaku bagi Umat Islam*, (Universitas Indonesia, 1986), hlm. 49

contained in the Qur'an.²² First, the word marriage in surah al-Baqarah / 02: 230:

Kemudian jika si suami mentalaknya (sesudah Talak yang kedua), Maka perempuan itu tidak lagi halal baginya hingga Dia kawin dengan suami yang lain. kemudian jika suami yang lain itu menceraikannya, Maka tidak ada dosa bagi keduanya (bekas suami pertama dan isteri) untuk kawin kembali jika keduanya berpendapat akan dapat menjalankan hukum-hukum Allah. Itulah hukum-hukum Allah, diterangkan-Nya kepada kaum yang (mau) mengetahui. (Q.S al-Baqarah/02:230).²³

Marriage in the above verse implies sexual relations and is not just a contract. Because there is an indication from the Prophet's hadith, that after the marriage contract with the men the two women must not be married by their ex-husband unless the second husband has felt the pleasure of sexual relations with the woman.

Second, the word "marriage" with the meaning of "contract" contained in Qs. an-Nisa' / 04: 22:

Dan janganlah kamu kawini wanita-wanita yang telah dikawini oleh ayahmu, terkecuali pada masa yang telah lampau. Sesungguhnya perbuatan itu Amat keji dan dibenci Allah dan seburuk-buruk jalan (yang ditempuh). (Q.S an-Nisa' /04: 22).²⁴

The above verse implies that the woman married by a man's father is forbidden to be married by the man, although between the two the sex has not yet taken place.

From the different meanings of the two verses above, there are differences of opinion between scholars' in defining the word "marriage". The Shafi'iyah group argues that the word "nikah" means contract in the true sense (intrinsic), and nikah means sexual relations in an incomplete meaning (majazi). On the contrary, the

²²Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia*, hlm. 36.

²³Departemen Agama RI, *Al-Qur'an dan Tajwid*, hlm. 78

²⁴Departemen Agama RI, *Al-Qur'an dan Tajwid*, hlm. 102

Hanafiyyah class interpreted "marriage" as a sexual relationship with intrinsic meaning. Because, according to them the use of marriage in the sense of intimate relations is included in the category of Tasyrih (expansion of meaning). People who want to express marriage figuratively can use the word mulamasah or mumassah (touching each other). So, according to the Hanafiyyah group, "marriage" is essentially interpreted by the contract. Then the scholars' Hanabilah argue that the designation of the word marriage for these two possibilities is in the true sense.²⁵

While *zawaaj* arises from the meaning of marriage. Because side by side, joining, mixing, and strong ties can lead to intercourse and marriage contract. The meaning of the word marriage in the above definition is found in the Al-Muḥiṭ dictionary quoted by Muhammad bin Salih Al-Uaimin, which is as follows:

النكاح في اللغة: القرآن فكل قران بين شينين يسمى نكاحا

“Nikah (pernikahan) secara bahasa (etimologi) adalah: tali pengikat, maka tiap-tiap pengikat diantara dua perkara dinamakan nikah (pernikahan).²⁶

Marriage is an important event, sacred, sacred, honorable and worthy of worship. Said to be important because marriage is needed. Said to be sacred because the marriage is closely related to the values of God, if the mind (spirituality), and human belief so that marriage will determine the direction of his life. Said to be sacred because marriage contains meaning that touches one's heart and feelings. It is said to be honorable because marriage is

²⁵Wahbah Zuhaili, *Fiqh Imam Syafi'i 2, Edisi Indonesia*, (Jakarta: Almahira, 2010), hlm. 450.

²⁶ Muhammad bin Shaleh Al-Utsaimin, *Ahkamul Al-Nikah*, (Darul Al-Ghadi Al-Jadid, 2008), hlm.

regulated and prescribed by religion. While worth of worship, because basically marriage is the command of Allah and the Sunnah of the Prophet Muhammad.

2. Pillars of Marriage

Pillars is something that must exist and determine whether or not a job (worship) is valid, and something is included in the series of work. The condition is that something must exist and determine whether a job (worship) is valid or not, or something is not included in the series of work, as according to Islam the bride / groom must be Muslim.²⁷

Jumhur Ulama 'agreed that the pillars of marriage consisted of:

- a. The prospective husband and wife who will do the marriage.
- b. The existence of a legal guardian from the bride. A marriage will be considered valid if there is a guardian or representative who will marry her.
- c. There are two witnesses. The implementation of the marriage contract will be valid if two witnesses witness the marriage contract.
- d. Sigot of marriage agreement, *ijab qobul* which is said by the guardian or his representative from the woman, and answered by the prospective bridegroom.

3. Marriage With Different Religion

Compilation of Islamic Law (KHI) which was ratified by Presidential Instruction (Inpres) No. 1 of 1991 also does not accommodate interfaith marriages. Not much different, the

²⁷ Abdur Rahman Ghozali, *Fiqh Munakahat*, (Jakarta: Kencana Prenada Media Group. 2003), hlm. 45-46

Indonesian Ulema Council (MUI) also strictly forbids the practice of marriages of different faiths or different religions, namely with the fatwa issued on June 1, 1980, and MUI Fatwa Decree No. 4 / MUNAS VII / MUI / 8/2005.²⁸ Although in practice interfaith marriages can take place at the Civil Registry Office, but this action is only based on the Civil Registry Office policy in overcoming the legal vacuum regarding it and is actually not in accordance with the provisions of Law No. 1 / 1974.²⁹

Regarding interfaith marriages, Zaidah stated that, firstly, there was an unsynchronization between the Marriage Act and the Population Administration Act. In the Marriage Law Article 2 (1), Article 8 letter f, Article 57 and Article 66 can be interpreted that interfaith marriages are prohibited in Indonesia. While in the Population Administration Law Article 34 and Article 35 letter a, it tends to allow interfaith marriages.³⁰ Second, vertically between the Marriage Law and PP No. 9 of 1975 and KHI were synchronized. Third, vertically between the Marriage Law and Mixed Marriage Law No. 158 of 1898 there was asynchronous. The Marriage Act prohibits marriages of different religions, while according to the

²⁸Keputusan Fatwa MUI: Perkawinan beda agama adalah haram dan tidak sah. Perkawinan laki-laki muslim dengan wanita Ahlu Kitab, menurut qaul mu'tamad, adalah haram dan tidak sah.

²⁹UU perkawinan No. 1/1974 pasal 2 ayat 1 memutuskan bahwa Perkawinan adalah sah, apabila dilakukan menurut hukum masing-masing agamanya dan kepercayaannya itu.

³⁰Pencatatan perkawinan sebagaimana dimaksud dalam Pasal 34 berlaku pula bagi: a. perkawinan yang ditetapkan oleh Pengadilan; dan b. perkawinan Warga Negara Asing yang dilakukan di Indonesia atas permintaan Warga Negara Asing yang bersangkutan.

Mixed Marriage Rules religious differences are not prohibitions on marriage.³¹

In essence, the reasons for interfaith marriages which are varied and layered in nature are more in reference to: Islamic textual arguments, the contextual arguments of reason, cultural morality, and culture. To categorize reasons or motivations for interfaith marriages, they can be grouped according to the laws that apply to them. Makruh or even forbidden because of: blind love, material factors or property, to get social status or profession. The law may be if: in a certain place and / or at a certain time there really are no Muslim men / Muslim women who can be married / married, either because there are no people at all or there, but no one is ready to marry or to be married.³²

B. Marriage With Different Religion according NU

The institution of the *Baḥsul Masa'il lajnah* is an institution belonging to *Nadatul 'Ulama* 'whose job is to provide answers to religious issues that exist in the community, especially *nahḍiyin* residents. In terminating the law, *Nahdlatul ulama* are not directly based on the *Qur'an* and *as-Sunnah*, but instead refer to the four Imams of the *Mazhab*. The *istinbaṭ* law method used by NU is the *qauli*, *ilḥaqi*, and *manhaji* methods. In resolving the issue of interfaith marriages, NU used the *istinbaṭ qauli* method which produced a fatwa at a 1960 NU conference, *Ṭariqah Mu'tabarah* conference in 1968, and the 28th conference in Yogyakarta in late November 1989 which confirmed that

³¹Zaidah Nur Rosidah, *Sinkronisasi Peraturan Perundang-Undangan Mengenai Perkawinan Beda Agama*, Semarang: Jurnal al-Ahkam KSSI & Fakultas Syari'ah IAIN Walisongo, 2013, hlm. 17-18.

³²Hukum online.com, editor: Muhammad Yasin dkk, *Tanya Jawab Nikah Beda Agama Menurut Hukum di Indonesia*, (Jakarta Selatan: PT Justika Siar Publika, 2014), hlm. 310-326.

marriage between two people of different religions in Indonesia is illegal and illegitimate.

According to qaul mu'tamad (opinion which holds) in the Shafi'i school, women who are lawful are married from the People of the Book are women who embrace Christianity or Judaism as a descendant religion of their ancestors who embraced the religion since the time before the Prophet Muhammad was sent as an Apostle. While those who only embraced Judaism or Christianity after the Qur'an was revealed, they are not considered to be the people of the book, because there is a saying "Min Qablikum" from before all of you. These words are as a limitation for the intended ahlul book. In Shafi'i ma'zhab, what is recognized from the Ahlul Kitab is to respect the origin of their offspring, not because of their religion.

If this opinion is applied in Indonesia, then Indonesians who embrace Judaism and Christianity after the Qur'an are revealed are not included in the book, so it is not lawful for a Muslim to marry them, as well as eating food that is cut or slaughtered by them . This opinion is in accordance with the majority of fiqh scholars.

Lajnah Baḥsul Masa'il in solving problems of interfaith marriage using the qauli method, which is to take qaul (the opinion of the Imam of Ma'zhab) or the face (opinion of the followers of the Ma'zhab) by referring directly to the text of the books of the Imam Ma'zhab or the books compiled by the followers of the Ma'zhab four (Maliki, Shafi'i, Ḥanafī, and Ḥambali), which in this case refer to as-Sarqawi information.

ونكاح المسلم كافر غير كتابية خالصة) كان كانت وثنية او مجوسية او احدا بويها
كذلك لقوله تعالى ولا تنكح المشركات حتى يؤمن وتغليبا للتحريم في الاخبار
وخرج بالمسلم الكافر لكن ذكر في الكفاية في حل الوثنية للكتابي وجهين وهل

تحرم الوثنية على الوثني قال السبكي ينبغي التحريم ان قلن انهم مخاطبوننا لفروع والافل حل وواحرمة (فان كانت) كتابية (خالصة وهي اسرائيلية) حلت لن قال تعالى وامحصنات مت الذين اوتوا الكتاب من قبلكم اي حل والمراد من الكتاب توراة والانجل دون سائر الكتاب قبلها كصحف شيث وادريس وابراهيم عليهم الصلاة والسلام لانها لم تتجل بنظم يدرس ويتلى وهنماحي اليهم معانيها وقيل لانها حكام وموغط للاحكام وثرائع هذا (ان لم تدهلاصولهافي ذلك الين بعدنسخة) سواء علمت القبلية اوشكفيها لتمسكهم بذلك الدين حيث كتاحقا والافلا تحل لسقوط فظلتيلة ذالكالدين (او) وهي (غير اسرائيلية حلت) لما مر (ان علمد خولهم في ذالك الدين القبل نسخد ولو بعد تبديله ان تجنب المبدل) والافلاتحل لم مراخدايا لا غلظ فيما اذاشكفي في دخول المذكور وتعبره بما ذكر هو مراد الاصل بماعبربه (فتحل اليهودية والنصرانية بالشرط المذكور) في الاسرائيليةوغيرها (و) كذا (السمراة) والصلنبة ان وافتا اليهود والنصرافي اصل دينهم وات لم توفقا هم في فروعهم فان خالفهم في اصل دينهم حرمتا وهذا التفصيل هو ما تص عليه الشافعي في مختصر المزني وعليه حمل اطلاقه في مي ضع بالحل وفي اخر بعدمه (والوننتقل من دين لآخر) كيهو دي او وثني تنصر فهو اعم من قوله من تهود الي تنصر و عكسه (لايكيبل منه الاالاسلام) لانه اقر ببطلان ماانتقل عنه وكان مقرا ببلان ماانتقل اليه (ولاتحل مسلمة لكافر) حرة كانت اوامة بالاتفق (ولا) تحل (مرتبة لاحد) لالمسلم لانها كافرة لاتقرولالكفر لبقاء علة الاسلام فيها³³.

“Dan pernikahan seorang muslim dengan wanita nonmuslim adalah kitabiyah murni, seperti wanita penyembah berhala, Majusi atau salah satu dari kedua orang tuanya beragama seperti itu karena firman Allah SWT: “Dan janganlah kamu menikahi wanita-wanita musyrik, sebelum mereka beriman...” (QS. al-Baqarah: 221) dan karena memenangkan hukum haram dalam kasus yang terakhir (salah satu dari kedua orang tuanya beragama seperti itu). Dan terkecualikan dengan kata “muslim” orang kafir. Namun dalam kitab al-Kifayah disebutkan tentang keabsahan pernikahan perempuan penyembah berhala untuk laki-laki kitabi itu terdapat dua pendapat. Apakah perempuan penyembah berhala halal dinikah bagi lelaki penyembah berhala? Al-Subki berkata “Semestinya haram bila kita berpendapat mereka dikhitabi dengan furu’ syariah. Bila tidak, maka tidak halal dan tidak haram”. Apabila

³³Ibrahim al-Sharqawi ‘ala al-Tuhfah ju II, (Beirut: Darl al-Fikr, t.th), hlm. 237.

wanita tersebut kitabiyah murni, yaitu wanita Israiliyah, maka wanita itu halal bagi kita muslimin, Allah ta'ala berfirman: “(Dan dihalaikan mengawini wanita-wanita yang menjaga kehormatan di antara orang-orang yang diberi Al Kitab sebelum kamu...” (QS. al-Maidah:4), maksudnya mereka halal. Yang dimaksud dengan al-kitab adalah taurat dan injil, bukan seluruh kitab sebelum keduanya, seperti shuhuf (lembar-lembaran) Nabi Syits, Nabi Idris, Nabi Ibrahim–‘Alaihimussalam-. Sebab, kitab-kitab itu tidak diturunkan dengan urutan yang dapat dipelajari dan dibaca, yang diturunkan dengan urutan yang dapat dipelajari dan dibaca, yang diturunkan kepada para nabi tersebut hanyalah maknanya saja. Menurut pendapat lain, karena kitan-kitab itu hanya berisi hikmah-hikmah dan nasihat-nasihat, bukan hukum dan syari’ah. Hukum tersebut berlaku selama nenek moyangnya tidak memeluk agama Israiliyah itu telah dinaskh (diganti dengan syariah lain), baik sebelum dinaskhnya itu diketahui secara yakin atau diragukan, karena mereka berpegangan dengan agama tersebut semasa agama itu masih benar. Bila tidak, maka perempuan itu tidak halal karena gugurnya keutamaan agama tersebut. Atau perempuan itu bukan Israiliyah maka halal karena ayat yang telah lewat (QS. al-Maidah: 4), bila diketahui nenek moyangnya masuk agama tersebut sebelum penyalinannya, meskipun setelah didistorsi bila mereka terhindar dari agama yang telah didistorsi. Bila tidak, maka tidak halal karena gugurnya kemuliaan keutamaan agama tersebut dan karena mengambil hukum yang terberat dalam kasus ketika mereka diragukan memeluk agama tersebut sebelum disalin dengan syariah lain atau sebelum didistorsi. Ungkapanku (Syaikh Zakaria al-Anshari) itu merupakan maksud ungkapan kitab asal (Tanqih al-lubab karya Abu zar’ah al-Iraqi, 762-826 H/ 1361-1423 M). Maka wanita Yahudi dan Nasrani halal dengan syarat yang telah disebut dalam wanita Israiliyah dan selainnya. Demikian pula wanita pengikut Musa al-Samiri dan wanita Nasrani sekte Sabi’ah, bila ushul al-dinnya, berbeda dengan Yahudi dan Nasran, maka keduanya haram. Perincian hukum inilah yang dijelaskan Imam Syafi’i dalam kitab Mukhtashar al-Muzani. Pada perincian itulah keterangan mutlak beliau, yaitu di satu tempat halal dan di tempat lain tidak halal, diarahkan. Sementara orang yang pindah dari suatu agama ke agama lain, seperti Yahudi atau penyembah berhala memeluk agama Nasrani, redaksi itu lebih umum dari pada redaksi kitab asal: “Orang Yahudi pindah ke Nasrani dan sebaliknya”, maka hanya keislamannya yang diterima. Sebab ia mengakui kebatilan agama yang ditinggalkan dan pernah mengakui kebatilan agama barunya. Dan seorang wanita muslimah tidak halal bagi laki-laki nonmuslim, baik wanita tersebut merdeka atau budak dengan

kesepakatan ulama. Sedangkan wanita murtad tidak halal bagi siapapun. Tidak halal bagi laki-laki muslim karena dia wanita nonmuslim yang tidak dibiarkan (seperti nonmuslim asli) dan tidak halal bagi laki-laki nonmuslim sebab masih adanya hubungan islam padanya.”

There, it has been very clearly explained with various reasons and legal considerations regarding interfaith marriages, therefore the Lajnah Ba'ul masa'il can draw conclusions that interfaith marriages in Indonesia are included in prohibited and illegitimate marriages. When viewed from Islamic law the decision of the Lajnah Baḥsul Masa'il NU in accordance with the word of God in Q.S al-Baqarah / 02: 221:

“Dan janganlah kamu menikahi wanita-wanita musyrik, sebelum mereka beriman. Sesungguhnya wanita budak yang mukmin lebih baik dari wanita musyrik, walaupun Dia menarik hatimu. dan janganlah kamu menikahkan orang-orang musyrik (dengan wanita-wanita mukmin) sebelum mereka beriman. Sesungguhnya budak yang mukmin lebih baik dari orang musyrik, walaupun Dia menarik hatimu. mereka mengajak ke neraka, sedang Allah mengajak ke surga dan ampunan dengan izin-Nya. dan Allah menerangkan ayat-ayat-Nya (perintah-perintah-Nya) kepada manusia supaya mereka mengambil pelajaran”. (Q.S al-Baqarah/02:221).³⁴

The verse expressly forbids marriage between polytheists because it is feared that it will cause more harm than its ma'laḥat. This is in accordance with the considerations of maṣlaḥah 'mamah which aims to protect the religion, reason, soul, progeny, and property. Meanwhile, according to positive Indonesian law, interfaith marriages are prohibited because they refer to the provisions in the Marriage Law and Compilation of Islamic Law that interfaith marriages between Muslims and non-Muslims both polytheists, infidels, and legal scholars are forbidden and illegitimate.

³⁴Departemen Agama RI, *Al-Qur'an dan Tajwid*, hlm. 35.

C. The NU legal istinbat method

The orientation of the NU fiqh is a reflection of the basic principles of the NU's society which are covered in the following universal values: a) Tawasut and Iididal, that is a middle and straight attitude with core life principles that uphold the necessity of being fair and straight. b) Tasamuh, which is a tolerant attitude towards differences in views, both in religious matters (especially regarding matters that are furu '(branches) or issues of khilafiyah (disputed), society, or culture. c) Tawazun, which is a balanced attitude in ber - khidmah (serving), both to God, which is associated with community life. d) Amar ma'ruf nahi munkar, which is to invite goodness and prevent munkar.³⁵

NU adheres to the ideology of ahl al-sunnah wa al-jama'ah, a mindset that takes the middle ground between extreme aqli (rationalists) and extreme naqli (scripturalists). Therefore the source of thought for NU is not only the Qur'an and Sunnah, but also uses the ability of reason coupled with empirical relativity. Such a way of thinking is referred to from previous thinkers such as Abu Ḥasan Al-Asy'ari and Abu Mansur Al-Maturidi in theology, then in the field of fiqh following four schools: ṣanafī, Maliki, Syafi'i, and Hanbali. While in the field of Sufism, developing the method of Al-Gazali and Junaid al-Bagdadi, which integrates Sufism with Shari'ah.³⁶

Baḥsul Masa'il in his ijtihad often uses the istinbat method of law which is applied in stages, namely: a) The Qauliy Method, which is to

³⁵Ahmad Zahro, *Tradisi Intelektual NU: Lajnah Bahtsul Masa'il 1926-1999* (Yogyakarta: LkiS, 2004), hal. 24.

³⁶M. Ali Haidar, *Nahdatul Ulama dan Islam di Indonesia: Pendekatan Fiqh dalam Politik*, (Jakarta: Gramedia Pustaka Utama, 1994), hal. 74-80

quote directly from the text of the reference book. b) *Ilḥaqy* Method, which is analogous to a particular problem law that has no legal basis with a similar case that already exists in a reference book, and c) *Manhajy* Method, which is to trace and follow the *istinbat* method of the fourth law, related to problems that cannot be answered by the method *Qauly* and *Ilḥaqy*.³⁷

The decision of the NU National Conference in Lampung in 1992, that the procedure to answer the problem was arranged in a hierarchical order, namely: a) In the case when the answer could be fulfilled by the book's scripture and there was only one *qaul* or *wajh*, then the *qaul* or *wajh* was used as described in this situation. (*qauly* method), b) in the case when the answer can be fulfilled by as stated in the book there is more than one *qaul* or *wajh*, then the *jama'i taqirir* is done to choose one *qaul* or *wajh* (*taqiriry* method), c) in the case there is no *qaul* or *wajh* at all that gives a solution, then the *ilḥaqul masa'il bi nazairiha* procedure is done by *jama'i* by the experts (*ilḥaqy* method), d) in the case of no *qaul* or *wajh* it is absolutely impossible to hold *ilḥaq*, then it can be done *istinbat* by experts (*ilḥaqy* method), d) in the case of no *qaul* or *wajh* it is absolutely impossible to hold *ilḥaq*, then it can be done *istinbat* *jama'i* with the *istinbat* procedure of pilgrimage, *manhaji*, by the experts (*manhajy* method).³⁸ Furthermore, the Lampung National Conference also gave instructions on how to choose one *qaul* or *wajh* from two or several *qaul* or *wajh* based on one of

³⁷Ahmad Zahro, *Tradisi Intelektual NU: Lajnah Bahtsul Masa'il 1926-199.*, hal. 143

³⁸Imam Ghazali Sa'id dan A Ma'ruf Asrori (eds.), *Ahkamul Fuqoha*, (Surabaya: LTNU-Diantama, 2004), hal. 471

several things, namely by taking a more powerful opinion or a stronger each proposition.³⁹

The method of manhajy which was agreed to be used by Bahtsul Masail through the decision of the NU Ulim NU National Conference in Bandar Lampung in 1992, was a new breakthrough by Imdadun Rahmat in the book "Criticism of NU Jurisprudence" given notes, firstly, reflecting the emergence of awareness of the historicity of fiqh products. the previous scholars. Second, it is the answer to the methodological challenges faced by fiqh, namely the demand to accommodate every development and change in society.⁴⁰

By using the method of manhajy, Baḥsul Masa'il becomes more flexible in translating contemporary problems that arise in the community, which refers to the ijtihad method of the priests of the Maḏhab when deciding legal issues by paying attention to the sociocultural conditions of the surrounding community. The use of this method releases Baḥsul Masa'il's conservative view towards a moderate progressive view of dealing with life's problems that are always developing dynamically. It should be emphasized, that the method of manhajy is done by istinbath jama'i practicing qawa'id uṣuliyah and qawaid fiqhiyyah.

D. Analysis of NU Fatwa Regarding Marriage With Different Religion

From the basis of taking the law used by the Bahtsul Masa'il Lajnah is the opinion of the statement of al-Sarqawi in his book Ḥasyiyah al-Sarqawi 'ala Tufah. On this information, al-Sarqawi bases

³⁹Imam Ghazali Sa'id dan A Ma'ruf Asrori (eds.), *Ahkamul Fuqoha*, hal. 472-473

⁴⁰M. Imdadun Rahmat, *Kritik Nalar Fikih NU: Transformasi Paradigma Bahsul Masail* (Jakarta: Lakpesdam, 2002), hal. vi-vii

his information and opinion on the Qur'Aan Surat al-Baqarah verse 221 which has been explained previously.

In his explanation, al-Sarqawi makes this verse as the basis of the illegitimate marriage of a Muslim to a non-Muslim woman other than pure kitabiyah, such as a pagan woman, Majusi or one of her parents of such a religion. Al-Sarqawi also explained that a pure kitabiyah woman, namely Isra'iliyah is lawful to be married to Muslim men. As for the kitabiyah women who are not Isra'iliyah (women who have recently moved from their religion and embraced Jews or Christians and also women whose grandmothers are Jews or Christians who are illegitimate to marry Muslim men.

Based on the explanation above, it can be understood that the legal basis for interfaith marriage comes from the religious laws adopted in Indonesia, namely the Qur'an and al-Hadis.⁴¹ It is also based on the constitutional basis of the 1945 Constitution, Article 29 Paragraphs (1) and (2) which state that there is a guarantee of legal protection for citizens to implement religious teachings including marriage law in accordance with the religious teachings they believe in, so that the development of religious life can enrich the values ethics and morals in society.⁴²

The application of interfaith marriage law is also in accordance with the decision of the Constitutional Court No. 68 / PUU / XII / 2014 which strengthens religious law to be a barometer in determining whether a marriage is valid or not, including the illegality of interfaith marriages because it violates the state constitution. In addition, the

⁴¹Muhammad Daud Ali, 1997, *Hukum Islam dan Peradilan Agama*, (Jakarta, Raja Grafindo), hlm. 57-58.

⁴²UUD 1945, Pasal 29 Ayat (1) dan (2).

Constitutional Court's decision No. 68 / PUU / XII / 2014 has directed and provided instructions on the interpretation of Article 1 Paragraph (2) of the UUP correctly, fairly and in accordance with the legal knowledge of how to read, understand and interpret articles and paragraphs in a law.⁴³ So it can be concluded that judging from the method of argumentation used by NU in relation to interfaith marriage law, namely the qauli method by taking al-Sarqawi's opinion, in accordance with the legal regulations contained in the Law and Pancasila as the basis of the Republic of Indonesia.

In addition to the analysis of the legal basis used, it is also necessary to analyze in terms of the benefits that are considered by NU in punishing interfaith marriages, including:

a. Aqeedah

The decision of the NU Conference forbidding marriage to Ahlul This book confirms the views of NU scholars who are very strong in theological fields. They anticipate any legal engineering that can undermine the Islamic faith. This decision, as shown by Umar bin Khatab's order, ordered his friend to divorce the Ahlul Kitab woman whom he married, for fear of slander.

According to Wahbah al-Zuhaily in Tafsir al-Munir, because it is forbidden marriage between Muslims with polytheists or Muslim women with infidels whether including the book expert or not, because they are polytheists, both men and women invite to disbelief and do deeds that can bring to hell. This is because God commands to protect themselves and their families from the fires of

⁴³Islamiyati, "Implikasi Yuridis Putusan Mahkamah Konstitusi No.68/PUU/XII/2014 Terhadap Penyelundupan Hukum Nikah Beda Agama dalam Perspektif Hukum Islam", Tesis, MIH UNDIP, Semarang, 2016, hlm. 234.

hell.⁴⁴ If one of the spouses in the family does not believe, then there will be children who will follow their parents who do not believe, and this is tantamount to falling into hell.

b. Shariah

Judging from the sharia, interfaith marriages have many *muḍarat*, including:

1) Marriage with different religion are the same as adultery

From the MUI, NU, and Muhammadiyah fatwas which have the terminology from the *na-na-al-Qur'an* declare the prohibition of interfaith marriages. This means that when a marriage occurs between two brides of different religions, the contract is invalid and the relationship between the bride and groom is haram.

2) Loss of Many Worship Rewards

Many verses or traditions teach that the household is filled with obedience and remind each other between the couple to worship and be devoted to Allah. Therefore, when one partner does not believe, it means that many rewards will be lost and not achieved because they cannot worship together.

3) Children's Law

Children born from interreligious marriages follow the most correct parent's religion, namely Islam. Moreover it is explained in the hadith that a newborn child is born in nature, namely Islam.

4) Inheritance Law

⁴⁴Wahbah al-Zuhaili, *al-Tafsir al-Munir fi al-Aqidah wa al-Syari'ah wa al-Manhaj*, (Damaskus: Darul Fikri, t.t), hlm. 2.

Husbands and wives of different religions, so if one of the two dies, one cannot inherit each other. Because different religions are one of the barriers that prevent someone from obtaining inheritance.

III. CONCLUSION

Taking *istinbath Nahdhatul Ulama* law is not directly based on the Qur'an and *as-Sunnah*, but refers to the four Imams of School. The method of *istinbath* law used by *Nahdhatul Ulama* is the *qauli*, *ilhaqi*, and *manhaji* methods. In resolving cases of interfaith marriages, NU used the *istinbath qauli* method which resulted in a fatwa at the 1960 NU Mukhtamar, the Muariabah Thariqah Conference in 1968, and the 28th Conference in Yogyakarta at the end of November 1989. The results of the conference confirmed that interfaith marriages in Indonesia the law is haram and illegitimate. The decision of the *Bahtsul Masa'il Lajnah* is based on the understanding of the *Tuhfah al-Tullab bin Sharh al-Tahrir* and *Hashiyah al-Sharqawi*.

When viewed from Islamic law, the decision of the *Lajnah Bahtsul Masa'il NU* is in accordance with the word of God in QS *al-Baqarah* verse 221 and *al-Mumtahanah* verse 10 which expressly forbids marriage between Muslims and the polytheists or infidels, because it is feared more *madlaratnya* than the benefits. . This is in accordance with the consideration of the *masahah yag* which aims to protect their religion, reason, soul, progeny, and their property. The decision of the NU Conference forbidding marriage to *Ahlul* This book confirms the views of NU scholars who are very strong in theological fields. They anticipate any legal engineering that can undermine the Islamic faith.

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