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Interreligious Marriage In The Kompilasi Hukum Islam: A Human Right Perspective

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ABSTRACT

One of the important rights human beings have is a freedom to marriage as stipulated in the United Nation Declaration of Human Rights. However, in some cases, this right cannot work smoothly mainly within religious traditions that since very beginning seemed to emphasize single religion-based family over family based on pluralistic religions. This is true in Islam due to the fact that Islamic law forbids interreligious marriage, especially a Muslim female with a non-Muslim male. The argument for this prohibition is that the happiness which is the core intention of marriage cannot easily reached by a couple of different religious traditions. This is apparent in the Compilation of Islamic Law in Indonesia (Kompilasi Hukum Islam Indonesia) which serves as an explanation of Marriage Law of 1974. According to Article 2 of Marriage Law, “Marriage is legitimate, if it has performed in accordance with the religion and belief of each party,” while in the compilation it is stated that “Marriage is legitimate, if it has been performed according to Islamic law which is in line with the Article 2 of Marriage Law No. 1 of 1974.” This article discusses the problem of interreligious marriage according to the compilation with human right perspective. By human right perspective it is meant the idea that the protection of certain individual and collective or group rights is a matter of international concern, rather than the exclusive internal affair of state. Meanwhile, the materials used in this article primarily are the Kompilasi Hukum Islam and other materials relevant to this issue. From this perspective this article argues that prohibition of interreligious marriage is contradictory to the universal human rights that maintain that every human being has a right to build a family regardless of religious consideration.

Key words: Interreligious marriage, human rights, Kompilasi Hukum Islam

Introduction

Indonesia is the largest Muslim nation in the world. It is estimated that around 190 million of a total of 217 million of Indonesian population are Muslims (Hooker and Lindsey, 2003: 23) while the rest comprises of Christians, Hindus, Buddhists, Kong Hu Chu and smaller groups of adherents of primal religion known as aliran kepercayaan or aliran kebatinan. However, Indonesia is not a religious or an Islamic state; rather, it is based on Pancasila. As this Sanskrit word indicates, Pancasila (panca: five; sila: principle) consists of five principles, i.e. belief in one God, just and civilized humanism, unity of Indonesia (nationalism), democracy, and social justice for the prosperity of all Indonesian peoples (Madjid, 1994). In other words, Indonesia is neither a secular nor an Islamic state (Sjadzali, 1993; Sukardja, 1995; Boland, 1982).

However, some scholars fail to see this position arguing that Indonesia is in fact a secular state. Dale F. Eickelman and James Piscatori, for example, argue that Indonesian state is secular in nature due to the fact that it “committed to secularism and pluralism” as represented by its ideology, Pancasila (Eickelman and Piscatori, 2004: 33). Even though the belief in one God was put as the first before other four principles, it does not mean that the word God refers exclusively to Muslim creed. Rather, it is a deconfessionalised concept to include other religious concept of God (Smith, 1985: 8). The same opinion is proposed by Ira M. Lapidus who maintains that Indonesian state is secular in nature on the ground that the cultural identities of this state are not Islamic since its independence in 1945. It is these secular identities that in turn became bases for national life and remained unchanged, and even had been maintained by New Order whose ideology and practice are also secular (Lapidus, 1995: 903-904). From ideological point of view, Riaz Hasan opines that Indonesia is secular because it is based on a Javanese concept of ideology, Pancasila. Although Muslims demanded Islam as the basis of state for Indonesia after its independence, Sukarno successfully persuaded them to accept the secular basis of his own, i.e. Pancasila. This is diametrically different from Pakistan, for instance, that claims itself as an Islamic state with Islam as its ideology (Hasan, 2006).
Apart from these untenable assumptions, there is no in fact an ideal secular state that is not concerned with the religious affairs of its citizens. Turkey is a good case in this regard. Although it claims to embark on the secular path, it also pays a serious attention to religious affairs under the Directorate General of Religious Affairs in Ministry of Home Affairs (Sakallıoğlu, 1996: 234). In other words, whereas it is ideologically secular, in practice it should accommodate the important interests of Muslims as the majority of population, especially in terms of religious affairs (Esposito, 1998: 105).

Since Indonesia is neither a secular nor a religious state, its involvement in religious affairs is of course very considerable. It has a specific ministry which deals with religious affairs called Ministry of Religious Affairs (“Kementerian Agama”). Moreover, a number of regulations concerning Islam have been issued by the government under New Order to accommodate Muslim interests, such as Waqf Regulation in 1977, Marriage Law of 1974, Religious Court Act in 1989 and the Compilation of Islamic Law (Kompilasi Hukum Islam) in 1991. In this regard, the Compilation is the main source for solving marital issues today due to some vagueness found in Marriage Law of 1974.

Insofar as the marriage law is concerned, Indonesia has not implemented a unified marriage law since its independence. On the contrary, there were several marriage laws enforced at the time. The Islamic marriage law regulates the marriage among all Indonesian Muslims, the Civil Code regulates the marriage among persons who are subject to Western law, the Ordinance of 1933 for the marriage of Indonesian Christians, and the customary law (hukum adat) for those who are neither Muslims nor Christians (Subekti, 1973: 9-15). This practice had been recognized and implemented by the Dutch colonial, and kept in force by the government of newly Republic of Indonesia more or less three decades later.

This variety of law leads the government to submit a new marriage bill to the Parliament on 31 July 1973 and, after long and heated debate and revision, this bill was then passed by the Parliament on 22 December 1973, and signed by President Soeharto on 2 January 1974 as the Indonesian Marriage Law No. 1 of 1974. In addition, on 1 April 1975, the government also enacted regulations of its implementation by Government Regulation No. 9 of 1975 and was officially enforced on 1 October 1975 (Azra, 2003: 76-95).

Nevertheless, the Marriage Law of 1974, which consists of fourteen chapters and sixty-seven articles, remains vague on some of its articles for Muslims. One of them is the Article 2 of Chapter 1 which stipulates that “Perkawinan adalah sah, apabila dilakukan menurut hukum masing-masing agama dan kepercayaannya itu” (Marriage is legitimate, if it has performed in accordance with the religion and belief of each party) (Suma, 2004: 203-4; Mahmood, 1987: 209). In order to handle this problem, on 21 February 1985, at joint-initiative of Supreme Court and Ministry of Religious Affairs, the project of compilation of Islamic law has been established, and two years later the Kompilasi Hukum Islam (The Compilation of Islamic Law) appeared as a product of the project. It is this compilation that since then has been enforced to the present day in marital issues among Muslim by the President Instruction No. 1 of 1991.

However, some questions remain interesting to ask: what is the position of inter-religious marriage in this compilation? And to what extant does this position contradict the universal human rights? This paper deals with the inter-religious marriage between Muslim and non-Muslim according to the Compilation from a human right perspective. To begin with, this paper will discuss the formation of the compilation including its sources and position on the inter-religious marriage, followed by analysis of the issue from human right framework.

Materials and Methods

To deal with those issues, this article draws greatly upon the primary materials consisting of the Marriage Law of 1974 and the Kompilasi Hukum Islam (Compilation of Islamic Law) that was issued in 1991 by President Soeharto. Whereas the Marriage Law of 1974 applies to all Indonesian citizens regardless of their religious and ethnic backgrounds, the compilation serves as an explanation of the Marriage Law and applies only to Muslims, male or female. Furthermore, this article also uses secondary sources relevant to the issues under discussion, especially those that discuss the background and process of compilation. In terms of method analysis, this article utilizes content analysis. That is to draw a conclusion by identifying the characteristics of concepts contained in the data. Earl Babbie argues, content analysis can be applied, inter alia, to daily news, magazines, speeches, correspondents, laws and constitutions, and even political platforms of certain parties.

Results:

As mentioned before, the vagueness of Article 2 of the Marriage Law of 1974 is a prime cause leading to the compilation of Islamic law. The phrase “in accordance with the religion and belief of each party” in that article for Muslims cannot mean other than Shari’a, which gives rise several problems. In the first instance, Shari’a can be understood to mean as fiqh, which includes a number of schools of thought, and even different opinions of the same school on the one and similar case (Arifin, 1996: 56-7; Harahap, 1999: 52). This is clearly
evident from the availability of many fiqh texts taught in the Islamic learnings and practiced among Indonesian Muslim peoples.

Furthermore, on 29 December 1989, Religious Court Act of 1989 was enacted, which authorizes the religious courts to decide the marital cases, inheritance, and other cases belong to the family law among Muslims in line with the Shari’a (Lubis, 1995: 34). Here lies a serious problem: on which school of fiqh or opinion should the judges give a verdict on the family cases among Muslims? This inevitably brings about the differences of verdict issued by one religious court to another on the relatively or even the absolutely same case. This problem will remain unsolved unless the compilation of Shari’a is available, on which the judges can issue a verdict on certain family cases in a unified manner. To put in another way, it is to facilitate the function of religious courts that the Shari’a should be compiled or codified, rather than to meet the demand of Muslims themselves.

To substantiate such a proposition, the following account of the processes of compilation will obviously reveal. According to Busthanul Arifin, the starting point of the compilation is the joint-decree of the Supreme Court and Ministry of Religious Affairs issued on 21 February 1985 to the effect that the religious courts are in need of the compilation to serve as a guide to judges in particular and society in general. To this end, the project of compilation of Islamic law was formed under directorship of Busthanul Arifin, which began to work in December 1985 and would finish in two years (Arifin, 1996: 59).

Arifin, moreover, suggests that there are four main steps that the project takes to meet its targets. First is a review of the certain influential fiqh texts in Indonesia which so far have been used by the judges in issuing the verdict on certain cases. This review is carried out through presenting several questions prepared by the committee to which their answers have to be found out in these texts. In order to perform this task, the committee leaves it to seven Faculties of Shari’a of the seven State Institutes of Islamic Studies (IAIN) in Indonesia. These institutes include: (1) Ar-Raniry of Banda Aceh, (2) Imam Bonjol of Padang, (3) Syarif Hidayatullah of Jakarta, (4) Sunan Kalijaga of Yogyakarta, (5) Sunan Ampel of Surabaya, (6) Alauddin of Makassar and (7) Antasari of Banjarmasin (Arifin, 1996: 162). As for the books reviewed, they consist of the following 38 books:

1. Hashiyat Kifayat al-Akhyar of Ibrahim ibn Muhammad al-Bajuri
2. Fath al-Mu’in of Zayn al-Din al-Malibari
4. Mughni al-Muhtaj of Muhammad al-Sharbini
5. Nihayat al-Muhtaj of al-Ramli
7. I’anat al-Thalibin of Sayyid Bakri al-Dimyati
8. Tuhfat al-Muhtaj of Shihab al-Din Ahmad ibn Hajar al-Haytami
9. Targhib al-MusytAQ of Syihab al-Din Ahmad ibn Hajar al-Haytami
10. Bulghat al-Salik of Ahmad ibn Muhammad al-Sawi
11. Al-Faraid of Shamsuri
12. Al-Mudawwanah al-Kubra of Sahnum ibn Sa’id al-Tanukhi
13. Kanz al-Raghibin wa Sharhahu of Jalal al-Din Muhammad al-Mahalli
14. Fath al-Wahhab of Abu Yahya Zakariyya al-Ansari
15. Bidayah al-Mujtahid of Ibn Rushd
16. Al-Umm of Muhammad ibn Idris al-Shaf‘i
17. Bughyat al-Mustashidin of ‘Abd al-Rahman ibn Muhammad al-‘Alawi
18. ‘Aqidah wa Shari’ah of Mahmud Shaltut
19. Al-MuQalla of Ibn Hazm
20. Al-Wajiz of al-Ghazali
23. Fiqh al-Sunnah of Sayyid Sabiq
24. Kashf al-Qina’ ‘an Tadmin al-Sanai of Ibn Rahhal al-Ma’dani
25. Majmu’ Fatawa Ibn Taymiyyah of Ahmad Taqi al-Din ibn Taymiyyah
26. Qawanin Shar‘iyyah of al-Sayyid ‘Utsman ibn ‘Aqil ibn Yahya
27. Al-Mughni of Ibn Qudamah
29. Qawanin Shar‘iyyah of Sayyid ‘Abd Allah ibn Sadaqah Dakhlain
30. Mawahib al-Jalil of Muhammad ibn Muhammad Hattab
31. Hashiyah Radd al-Mukhtar of Muhammad Amin ibn ‘Umar ibn ‘Abidin
32. Al-Muwatta’ of Malik ibn Anas
34. Bada’i’ al-Shana’i fi Tartib al-Syara’i’ of Abu Bakr ibn Mas‘ud al-Kasani
Although dominated by Shafi’ite school, this list shows that other three Sunnite schools of Islamic law are accommodated too in this project. For example, al-Mughni of Ibn Qudamah and Fatawa of Ibn Taymiyyah represent Hanbalite school, while al-Muwaththa of Malik ibn Anas and Fath al-Qadir of al-Zaynabi represent the Malikite school. The Hanafite school is represented by Tabyin al-Haqaiq and al-Fatawa al-Hindiyyah, whereas the Zahirite school is implied by al-Muhalla of Ibn Hazm. Unfortunately, reference to the works of Indonesian ulama is neglected. In fact, there are some books on fiqh written by several Indonesian ulama, such as those of Hasbi Ash-Shiddieqy, A. Hasan and Hazirin. Their opinions are, of course, based on Indonesian social phenomena and therefore are of great relevance. However, the project takes the fatwas issued by MUI, Muhammadiyah and Nahdlatul Ulama into account for the composition of the KHI (Mawardi, 2003: 130).

Second is interview with a number of leading scholars of fiqh (‘ulama) in ten provinces throughout Indonesia (Arifin, 1996: 155-61). They are representatives of a number of institutions, such as members of Indonesian Council of Ulama (MUI) as well as of Islamic organizations, mainly Nahdlatul Ulama and Muhammadiyah, in those provinces. Besides, the independent ‘ulama, especially, the leaders of pesantren are also interviewed (Mawardi, 2003: 130). This is intended to invite them to be involved in the process of compilation by responding the same questionnaires raised by the committee. Since a great deal of ulama are involved in this project, K.H. Hasan Basri, the head of MUI, believes that the product of this project will be "responsive, accommodative and credible" (Basri, 1986: 61).

Third is review of the verdicts issued by the religious courts throughout Indonesia. This is conducted due to the fact that certain verdicts of these courts are regarded relevant to the nowadays problems.

Fourth is a comparative study to some countries where Muslims are the majority of the population. This includes Morocco, Turkey, Egypt, and to the neighboring countries such Malaysia and Brunei. The purpose of this comparative study is to know how Islamic laws are applied among Muslims in these countries (Arifin, 1996: 59-60).

All data gained through these four steps are arranged in three systematic drafts: (1) on the marriage law; (2) on the law of inheritance and; (3) on the law of endowment (waqf). These drafts are in turn introduced and socialized to public through workshop and seminar. The first is held three times by the Nahdlatul Ulama of East Java Province, respectively in Jombang, Lumajang and Sidoarjo, while the latter is conducted at Muhammadiyah University of Yogyakarta (Wahid, 1999: 119). After several corrections and revisions, these drafts are finally discussed in a workshop held in Jakarta on 2-5 February 1988, which is attended by Muslim scholars and authorities of Shari’a. Since those attendants agree on these drafts, Soeharto promulgate them through the Instruction of President to Minister of Religious Affairs on 10 June 1991, and since then the Compilation of Islamic Law in Indonesia begins to be in force for Muslims (Wahid, 1999: 20; Bisri, 1999: 8).

The discussion above obviously shows that the compilation is conceptually intended to clarify the Marriage Law of 1974, while practically it is meant to facilitate the functions of religious courts. Since the compilation is a clarification of the Marriage Law of 1974, hierarchically the former must be under the latter. In other words, the Marriage Law of 1974 is the main source of the compilation, in addition to fiqh texts, scholars’ opinions, jurisprudence and comparative study mentioned before. Moreover, the compilation also adopts customary and Western laws which are considered valid sources of law in Indonesia. These sources can be figured in general as follows:
Based on the process of its formation and sources, some scholars consider the compilation a kind "institutionalization of Shari'a" or "an eroded state Shari'a." Azyumardi Azra, for example, refers to the promulgation and implementation of the Marriage Law of 1974 as an institutionalization of Shari’a due to the fact that all articles contained in this law are in line with Shari’a (Azra, 2003: 25). However, such a designation can apply properly to the compilation because of its position to the Marriage Law of 1974 as clarification. Furthermore, the sources of compilation reflect that the characteristics of Shari’a are far greater than that of Marriage Law of 1974. As for an eroded state Shari’a, it is a designation, borrowed from Strawson, applied by M.B. Hooker and Tim Lindsey to the compilation in Indonesia. The argument underlies this designation, in their view, is that Shari’a becomes the “subject of almost total state executive control” (Hooker and Lindsey, 2003: 50). In addition, quoting Strawson, they argue:

Islamic law… was reduced in scope while norms were isolated from jurisprudence and enframed within a colonial legal system and court structure. … During this process the classical structure of Islamic law [Shari’a]—resting on diverse sources and with many differing interpretations—was eroded as it became characterized by norms isolated from Islamic methodology, homogenously and rigidly applied (Hooker and Lindsey, 2003: 50).

However, An-Na’im seems to reject both significations since Shari’a, for him, is the “source of religiously sanctioned normative system” and thus cannot be “enforced as positive legislation” (An-Na’im, 2005: 29). Consequently, both an institutionalization of Shari’a and an eroded state Shari’a, to him, seem a contradiction in terms due to the fact that religious nature of Shari’a allows every Muslim to follow freely the school of jurisprudence out of his or her own choice (An-Na’im, 2005: 29). In other words, the enforcement of Shari’a by legislation is equivalent to “negation of the religious rationale of the binding force of Shari’a” itself (An-Na’im, 2009: 179).

In short, although the compilation of Islamic law in Indonesia, initiated by state and supported by ‘ulama, is helpful for the state to administer and run its functions, at the same time it binds and to certain extent represses not only Muslim freedom to realize their own religious duties, but also the judges to practice their independent reasoning (ijtihad) in issuing a verdict on certain cases.

Discussion:

As alluded to before, book one of the compilation is essentially an explanation of the Marriage Law of 1974 according to Shari’a. This book consists of 19 chapters and 170 articles (Roestandi and Effendi, 1991). Although there is no a specific chapter that is concerned with inter-religious marriage, a closer analysis of its articles will reveal that marriage between Muslim and non-Muslim is impossible or prohibited. For example, if the Marriage Law of 1974 (Article 2) stipulates that “Perkawinan adalah sah, apabila dilakukan menurut hukum masing-masing agamanya dan kepercayaannya itu” (Marriage is legitimate, if it has been performed in accordance with the religion and belief of each party), the Article 2 of the compilation confirms that “Perkawinan adalah sah, apabila dilakukan menurut hukum Islam sesuai dengan Pasal 2 ayat 1 Undang-undang Perkawinan No. 1 of 1974 tentang Perkawinan” (Marriage is legitimate, if it has been performed according to Islamic law which is in line with the Article 2 of Marriage Law No. 1 of 1974) (Roestandi and Effendi, 1991). It is evident here that the main source of the compilation is the Marriage Law of 1974 and neither fiqh texts nor the opinion of ‘ulama, on one hand, and that marriage conducted out of Islamic law is considered invalid, on the other. In other words, the bride or the groom who is not Muslim should subject to Islamic law.

Prohibition of inter-religious marriage between Muslim and non-Muslim in more explicit manner can be found in Article 40 and 44 of the compilation. These articles respectively stipulate that “Dilarang melangsungkan perkawinan antara seorang Muslim dengan seorang wanita yang tidak beragama Islam” (It is prohibited for a Muslim male to get marriage with a non-Muslim female) and that “Seorang wanita Islam dilarang melangsungkan perkawinan dengan seorang pria yang tidak beragama Islam” (A Muslim female is prohibited to get marriage with a non-Muslim male) (Roestandi and Effendi, 1991).

The first question to ask is who by non-Muslim should be understood here. If by non-Muslim in Article 44 is understood to mean “polytheist women” (musyrikat), then the possible reference to this prohibition will be the Quranic verse (al-Baqarah [2]: 221) that states “And do not marry women who ascribe divinity to aught beside God ere they attain to [true] belief” (Asad, 1980: 48). But if by non-Muslim here is understood to mean People of the Book (ahl al-kitab), the the Quran clearly allows a Muslim man to marry a woman of this group as suggested in the Quranic verse (al-Maidah[5]: 5) that reads as follows: “(Lawful unto you in marriage are not (only) chaste women who are believers, but chaste women among the People of the Book” (Asad, 1980: 48). And so, on what ground does the compilation prohibits a Muslim man to marry a woman of People of the Book?

Yahya Harahap maintains that the reason for this prohibition is social factors and public interest (mashlahah) (Harahap, 1999: 52). However, he does not explain further what he means by this phrase. The possible interpretations of this phrase can be theological, political and psychological due to the fact that several legal opinions (fatwa) on the prohibition of inter-religious marriage between a Muslim male and a non-Muslim female have been issued previously by a number of institutions. Nahdlatul Ulama, for example, issued a fatwa
Concerning prohibition of inter-religious marriage on the belief, among other things, that People of the Book no longer exist along the advent of Muhammad, whose main mission is to correct the corrupted message of Moses and ‘Isa as contained in Torah and Bible (Ali, 2002: 12). Therefore, a Muslim male, who is allowed by the Quran, is prohibited to get marriage with a non-Muslim female although she belongs to People of the Book.

The Jakarta Regional Council of Indonesian ‘Ulama (Majlis al-Ulama al-Indunisi), on the other hand, issued a fatwa on prohibition of inter-religious marriage as a response to the idea of Pancasila marriage in the newspapers according to which inter-religious marriage is considered an implementation of this state ideology. According to this fatwa, marriage is legitimate only if it has been performed in line with the Marriage Law of 1974 as discussed above. In addition, this fatwa is based on the allegedly belief that inter-religious marriage can serve one of the means for Christians to convert Muslims into Christians (Ali, 2002: 16; Muzhar, 1996: 137-141). If these fatwas are the bases on which prohibition of inter-religious marriage is issued in the compilation, then the Quranic verse which allows a Muslim male to marry a non-Muslim male to some degree has been interpreted arbitrarily to meet the political and theological ends.

By human right perspective here I mean, as An-Na’im suggests, “the idea that the protection of certain individual and collective or group rights is a matter of international concern, rather than the exclusive internal affair of state” (An-Na’im, 2005: 87). At the heart of this idea is the golden rule that “one should treat other people as he or she wishes to be treated by them” (An-Na’im, 1996: 162). In other words, human right perspective actually has a connotation of “international supervision of domestic human right protection without violating national sovereignty as the expression of the right to self-determination” (An-Na’im, 2005, 89). In more concrete fashion, this “international supervision of domestic human right protection” is universal declaration of human rights (UDHR) which consists of 30 articles (UNO, 1993: 1-28). It is through this understanding that this paper will analyze the problem of inter-religious marriage in the compilation which has been discussed previously.

However, the relation of universal rights to religions, in general, and Islam, in particular, is not easy to build. This is because there is an innate tension between the premise underlying universal human rights and religious foundations for these rights. The same difficulty occurs when we try to separate religion and human rights, because they operate on the same moral plane or justification. Consequently, conflict between the two cannot be avoided when advocates of human rights and adherents of religion exclude each other. Apart from this tension, I argue that commitment to human rights in fact can enhance the quality of religious belief and the relevance and utility of its precepts to live of its adherents (An-Na’im, 1996a: 339). In other words, since universal human rights must be adopted by Muslim they can perform their religious belief and practice in free fashion.

As the earlier discussion has showed, the inter-religious marriage between a Muslim and a non-Muslim is prohibited in the compilation, while a closer consideration of the articles in UDHR reveals that such a prohibition is exactly contradictory to them. Article 16 (1) of UDHR, for example, stipulates that “Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and found a family” and Article 16 (2) maintains further that “Marriage shall be entered into only with the free and full consent of the intending spouses” (UNO, 1993: 5).

One may argue that Islam wills such a prohibition as indicated in Shari’a. However, this prohibition is in fact a product of Muslim interpretation with his or her own vested interest. Taufik Adnan Amal and Rizal Panggabean, for example, argue that the cause of this prohibition is the lack of a sound methodological interpretation of the Quran; instead they believe that a holistic understanding of the Quranic world-view will indicate the otherwise. In their view, the Quran explicitly maintains that all messages brought by the prophets come from God, that is islam, and the standard by which one is discerned from another is belief and righteousness. They believe that the plurality of religion is a mean for religious believers to compete each other in righteousness and not for other purposes. Therefore, inter-religious marriage is not a problem for the Quranic world-view (Amal and Panggabean, 1992: 71-73; Sirry, 2004: 153, 155-164).

This opinion seems in line with An-Na’im’s view suggesting that inter-religious marriage is a kind of inter-marriage among Muslims, with a slight difference that the latter involves more aspects of personal and social identity than the former. Consequently, those who conduct inter-religious marriage necessarily should interact with these various aspects, but at the same time they should maintain different aspects of their own identities. Shortly speaking, inter-religious marriage can lead to negotiation of the identities of spouse, which in turn enable them to know each other in a constructive way (An-Na’im, 2005: 1).

The prohibition of inter-religious marriage also contradicts evidently to other basic rights of human beings, especially that of freedom. As stipulated respectively in Article 1 and 2 of UDHR that “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood” and “Everyone is entitled to all the rights and freedom set forth in this Declaration, without distinction of any kind...” (UNO, 1993: 1). As matter of fact, Shari’a itself placed freedom even “to adopt or reject” Islam (An-Na’im, 1996b: 352). The corollary of this idea is that if in religious matter
Islam leaves to person freely to accept or to reject it, how it is possible that in human relational matters, such as in inter-religious marriage, Islam suppresses their freedom.

Conclusion:

From the whole discussion above there are several points that can be made at the end of this paper. First, any attempt at the application of Shari’a by the state is a reduction of its web of complexity into restricted formula, such as the compilation of Islamic law in Indonesia. Second, prohibition of inter-religious marriage between a Muslim and a non-Muslim in the compilation is a product of such a restriction. Finally, although at glance certain doctrines of Islam seem contradict to universal human rights, in fact they can be understood in line with the latter without betraying the spirit of the former.

Some attempts have been made to revise this compilation into more democratic and pluralistic mode. One of them is what has been conducted by the Mainstreaming Gender Team of the Ministry of Religious Affairs, the product of which is Pembaharuan Hukum Islam: Counter Legal Draft of the Compilation of Islamic Law (2004). However, such an attempt, which is in need of the power of state, will come to the same position as its predecessor did, which deprives Muslims of their freedom of choice to any school of thought or opinion.

References


