

The Perspectives of the Islamic Unity Scholars in Subang and Sumedang on Contemporary Issues in Family Law

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Abstract: *Marriage is a fundamental teaching in Islam, with its commands explicitly stated in the Qur'an and the Sunnah. One hadith of the Prophet Muhammad (peace be upon him) even declares that marriage is part of his Sunnah, and rejecting it is akin to opposing him. Generally, marriage is built on mutual love between the bride and groom, which serves as the foundation for establishing a household. However, in some cases, this love for Islam diminishes, leading one or both spouses to apostasy or conversion to another religion. This phenomenon, especially prevalent among public figures, has significant implications for Islamic law, particularly regarding inheritance rights and guardianship. This study seeks to explore and analyze the perspectives of Persatuan Islam scholars in Subang and Sumedang regarding the dissolution of marriage due to apostasy. The research aims to theoretically strengthen the concept of fasakh nikah (annulment of marriage) in cases of apostasy, which inherently impacts other aspects of Islamic law, leading to automatic divorce. The study employs an empirical juridical approach and a descriptive-analytical method, using data collected from interviews with Persatuan Islam scholars in Subang and Sumedang. The data, primarily qualitative, is analyzed through content analysis. The findings conclude that the apostasy of either spouse results in the annulment of the marriage, thereby severing the marital bond both in terms of Islamic law and spiritual essence. From a legal perspective, marriage must adhere to the principles and conditions established by scholars based on the Qur'an, Sunnah, and the consensus of jurists. On a spiritual level, marriage unites the core beliefs of the spouses, where obedience to Allah and the Prophet (peace be upon him) must align with the Sunnah, including the building of a family. The implications of apostasy include the loss of inheritance rights and the prohibition of a murtad father from serving as a guardian for his daughter's marriage.*

Keywords: *Fasakh Nikah, Apostasy in Marriage, Islamic Family Law*

Introduction

Marriage is perceived as a sacred institution, governed by divine rules originating from holy scriptures. These scriptures regulate various aspects of life, including marriage rites. Each religion prescribes its unique marital practices, which reflect its theological foundations. For instance, Christian marriage ceremonies differ significantly from those of Muslims due to the varying sources of religious teachings, as well as differing interpretations by religious authorities such as scholars, priests, and rabbis.

Non-Muslims marry in accordance with their respective religious traditions, while Muslims follow the guidelines set forth in the Qur'an and Sunnah. Islamic marital regulations are built upon specific pillars and conditions established through scholarly consensus based on these two primary sources. Similarly, non-Muslims adhere to their religious doctrines, traditions, and administrative marriage mechanisms, which are legally formalized.

From an administrative standpoint, the process of marriage is governed by Indonesia's Law Number 1 of 1974, alongside various government and ministerial regulations. These rules require both prospective spouses to register their intent to marry with the Marriage Registration Officer (Pegawai Pencatat Nikah, PPN) at the Office of Religious Affairs (Kantor Urusan Agama, KUA) or with the Assistant PPN in their village. This registration must occur at least one month, or a minimum of ten days, prior to the wedding ceremony.

Under Islamic law, the validity of a marriage hinges on its adherence to the stipulated pillars and conditions. An invalid marriage, lacking one or more essential elements, is categorized as void. To be valid, an Islamic marriage must fulfill the following conditions:

- a. For the groom:
 1. Be a Muslim.

2. Be clearly male.
 3. Act without coercion.
 4. Have fewer than four wives.
 5. Not be a close relative (mahram) of the bride.
 6. Not have a wife whose marriage to the bride would be impermissible.
 7. Be aware that the bride is lawful for him to marry.
 8. Not be in a state of ihram (pilgrimage).
- b. For the bride:
1. Be a Muslim.
 2. Be clearly female.
 3. Consent to the marriage.
 4. Be unmarried and not in a waiting period (iddah).
 5. Not be a close relative (mahram) of the groom.
 6. Not have been subjected to li'an (mutual cursing) by the groom.
 7. Be clearly identifiable.
 8. Not be in a state of ihram (pilgrimage).

The essential pillars of marriage include:

1. The presence of both the groom and the bride.
2. A guardian (wali) for the bride.
3. Two witnesses.
4. An offer of marriage (ijab) by the guardian or representative.
5. Acceptance (kabal) by the groom.

Each religion permits marriage within its community and regulates it according to its own teachings, as seen in marriages between Muslims, Jews, and Christians.

A significant issue arises when, after marriage, one spouse renounces Islam (murtad). According to the Persatuan Islam scholars, such apostasy disrupts the marital bond, aligning with Qur'anic directives that prohibit marriage between Muslims and polytheists (Al-Baqarah 2:221). This principle is also supported by Indonesia's Law Number 1 of 1974, Article 2(1), which states that a marriage is valid only if conducted according to the religious laws and beliefs of the parties involved.

Despite clear legal and religious stipulations, human life and marital circumstances continue to evolve. Changes such as one spouse converting to Islam, both spouses embracing Islam, or one spouse committing apostasy raise complex legal and religious questions. For instance, some argue that Muslim men may marry women of the People of the Book, although differing views exist regarding the contemporary status of such individuals.

Islamic jurists generally hold that a marriage performed under non-Islamic laws remains valid upon the couple's conversion to Islam, provided the marriage adheres to Islamic principles. However, if one spouse becomes an apostate, the marriage is deemed annulled (fasakh). This annulment reflects the incompatibility between the spouses' differing faiths, as stipulated by various Islamic legal schools. For instance, the Hanafis hold that the apostasy of a husband mandates the immediate dissolution of the marriage, while the Malikis extend this principle to include apostate wives, leading to automatic divorce.

Indonesian law does not explicitly address apostasy as grounds for marital annulment, but it recognizes that a marriage may be dissolved due to death, divorce, or court decision (Law No. 1 of 1974, Article 38). In this context, fasakh serves as a remedy for severe marital discord arising from religious differences, enabling the spouses to part ways in accordance with their respective religious principles.

Methods

Several previous works address contemporary issues in family law. One notable article is "The Construction of Islamic Family Law in Indonesia: Analysis of RI Law No. 1 of 1974 on Marriage and KHI," authored by Sirajudi and published in *Istinbath: Jurnal Hukum Islam* in 2015. Another important contribution is "The Islamic Family Law System in Indonesia," written by Riadi and Holan and published in *Minhaj: Jurnal Ilmu Syariah* in 2021. Yasmita and Budi Aristanty Rahayu explored "Legal Thought and Contemporary Divorce Cases" in *Pengadilan Agama Tigaraksa* (2022), while Masyhadi's work, titled "Contemporary Issues in Islamic Family Law in Muslim Countries," appeared in *SCHOLASTICA: Jurnal Pendidikan dan Kebudayaan* in May 2020. This article examines the challenges of modernity, the influence of scientific advancements on family life, and the transformation of traditional household systems into modern ones, with a particular emphasis on the evolving role of women. Another significant study is "The Problematics of Contemporary Islamic Family Law: A Jurisprudential Analysis with an Usuliyah Approach" by Satria Effendi M. Zein et al., published in 2004 by Kencana Prenada Media Group. Finally, Khoiruddin Nasution's article, "Methods of Reforming Contemporary Islamic Family Law," was published in *UNISIA* (December 2007). This work discusses the paradigms of traditional and conventional scholars regarding family law reform, particularly the changes in family law legislation to address contemporary challenges and the shifting roles of women as homemakers.

Despite these studies, the issue of apostasy (*murtad*) within marriage—specifically the implications of one spouse renouncing Islam—is seldom discussed in depth. This research seeks to address this gap by focusing on the perspectives of *Persatuan Islam* scholars concerning the apostasy of either the husband or the wife. Such cases are increasingly reported in society and covered by media outlets, making this topic particularly relevant. This study is novel in that it specifically examines the views of *Persatuan Islam* scholars on this matter to clarify Islamic marital law and prevent misconceptions, particularly in light of contemporary challenges.

The informants interviewed for this study include *Persatuan Islam* scholars and educators from Islamic boarding schools in Subang and Sumedang. Among the scholars are KH. Muhammad Roqib and KH. Endang Miftah from Subang, as well as KH. Hasan Bisri and KH. Saeful Bahri from Sumedang. The following scholars and educators also contributed valuable insights:

Table
Research Informant Table

N0	Name	Position	Date
1	KH. Hasan Bisri	Persatuan Islam Scholar, Sumedang	November 2023
2	KH. Saeful Bahri	Persatuan Islam Scholar, Sumedang	November 2023
3	KH. D. Komarudin	Persatuan Islam Scholar, Sumedang	November 2023
4	Ustaz Abdul Haris	Teacher, Persatuan Islam, Sumedang	November 2023
5	KH. Moh. Rokib	Persatuan Islam Scholar, Subang	November 2023
6	KH. E. Miftah	Persatuan Islam Scholar, Subang	November 2023

7	Ustaz O. Taufiq	Persatuan Islam Scholar, Subang	November 2023
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Results and Discussion

Opinions of the Islamic Unity Scholars on Marriage Dissolution and Its Issues

In Islam, a husband holds the right to pronounce talaq (divorce), while the wife has recourse to fasakh (annulment), thereby granting both parties equal rights to dissolve a marriage when justified by specific, lawful reasons. According to MR, a wife may be returned to her family by her husband if she suffers from five particular conditions: insanity, leprosy, vitiligo, a blocked or deformed genital passage (ratq), or the presence of a bone in the vagina (qarn) that hinders intercourse, along with other chronic ailments. MR further states that Ali ibn Abi Talib and Umar ibn Khattab agreed a wife should not be returned to her family unless she suffers from insanity, leprosy, vitiligo, or a venereal disease; the same applies to the husband.

In a hadith, the Prophet Muhammad (peace be upon him) once married a woman from Bani Ghifar. Upon seeing a white mark (vitiligo) on her side, he returned her to her family. Conversely, women are permitted to reject or seek annulment from their husbands for similar reasons, such as impotence, as these conditions may disrupt marital harmony. Impotence, in particular, could lead to sexual dissatisfaction and difficulty in bearing children.

However, a spouse's illness does not automatically necessitate fasakh. If a husband accepts his wife's condition or vice versa, the marriage may continue peacefully. The institution of fasakh aims to foster harmonious, loving, and prosperous marriages. If this right is not exercised, it does not contravene Islamic law.

SB outlines other causes for fasakh. First, hypersexuality may warrant annulment if excessive sexual activity causes physical harm to a spouse. Second, a husband's poverty, if severe and resulting in an inability to provide basic needs, may allow the wife to seek annulment. Third, fasakh is permissible if a husband goes missing and fails to support his family. Lastly, insanity in either spouse grants the right to seek fasakh.

HB further explains that fasakh can arise from an invalid marriage contract, such as when minors are married off by guardians other than their fathers or grandfathers. Upon reaching maturity, they may either continue the marriage or annul it. If annulled, this is termed fasakh aqad. Additionally, fasakh applies if the spouses are later discovered to be milk-siblings.

Certain post-nuptial conditions also justify annulment. Apostasy (murtad), for instance, nullifies the marriage. If one spouse renounces Islam and refuses to return, the marriage contract is void. Should a husband convert to Islam while his wife remains a polytheist, their marriage is annulled, except when she is a member of the People of the Book. Apostasy entails severe consequences in Islamic law, such as imprisonment or execution, depending on gender and circumstances. Scholars like Hasbi Ash-Shiddieqie cite differing opinions on the punishment for apostasy, emphasizing the need for repentance and return to Islam.

Regarding the annulment process, KH. EM explains that jurists differ on the timing of divorce following apostasy. Hanbali scholars argue that apostasy nullifies a marriage after a waiting period (iddah), allowing time for repentance. Hanafis, Malikis, and some Hanbalis recommend immediate annulment, particularly if the apostate husband might influence the wife. Such annulments are classified as fasakh, akin to divorces due to impotence, as both arise from faults within the husband.

Annulments differ from talaq. While talaq may reduce the count of divorces a husband can issue, fasakh does not. For example, if spouses reunite after a fasakh, the husband retains his full quota of three divorces.

In cases where the grounds for fasakh are indisputable, such as milk-sibling relationships, no judicial ruling is necessary. However, ambiguous cases, like a wife's refusal to embrace Islam, require court intervention. If she later accepts Islam, the marriage need not be annulled. This

legal framework underscores the significance of clear and justifiable reasons for seeking marital annulments in Islam.

Annulment of Marriage Due to Apostasy in Islamic and Indonesian Law

The concept of fasakh in Islamic jurisprudence pertains to the annulment of a marriage contract under specific conditions, rendering the marriage void either from its inception or from the moment the annulment is declared. This principle plays a pivotal role in preserving the sanctity and integrity of marriage by ensuring that marital relationships adhere to religious and legal standards. Within Indonesia's legal framework, the principles of fasakh can be analyzed through the provisions of Law Number 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI). Although the term fasakh is not explicitly mentioned in these legal texts, its application can be inferred from the conditions prescribed for invalidating a marriage that violates legal or religious prohibitions.

Law Number 1 of 1974 addresses marriage prohibitions in Article 8, which outlines the relationships and circumstances under which marriage is forbidden. These include consanguinity, milk kinship, affinity, and situations where the marriage contravenes religious teachings or other applicable legal norms. For instance, Article 8 explicitly prohibits marriages between individuals who share direct or collateral blood ties, those connected by milk kinship, and those where existing marital ties would result in polygamy without meeting the required legal conditions. If these prohibitions are violated, the marriage is deemed invalid and must be annulled. While the statute employs the term "invalid" rather than "annulled," the implication aligns with the concept of fasakh in Islamic jurisprudence, which treats such marriages as void from a religious and legal perspective.

Article 9 of the law further emphasizes that an individual who is legally married cannot enter into another marriage unless the provisions for polygamy, as stipulated in Articles 3(2) and 4, are fulfilled. This legal restriction renders any subsequent marriage conducted in violation of these provisions invalid, necessitating annulment. Articles 13 to 21 elaborate on the mechanisms for preventing unlawful marriages. Article 13 stipulates that a marriage may be impeded if one or both parties fail to meet legal requirements, while Article 14 identifies individuals who have the authority to prevent such marriages, including family members, guardians, and legal representatives. These preventive measures aim to safeguard against the occurrence of invalid marriages, which, if solemnized, would require annulment in accordance with Islamic principles.

The Compilation of Islamic Law (KHI) provides a more comprehensive explanation of marriage prohibitions and their implications for annulment. Articles 39 to 44 of the KHI delineate the circumstances under which marriage is forbidden, encompassing blood relationships, milk kinship, and other prohibitions such as marrying a woman still in her iddah (waiting period) or a non-Muslim. For example, Article 40 prohibits marriage between a Muslim man and a non-Muslim woman, or vice versa. Should such a marriage occur, it is deemed invalid and subject to annulment. This provision aligns with the principle of fasakh, as it ensures compliance with both religious and legal standards.

Article 60 of the KHI underscores the necessity of preventing prohibited marriages, emphasizing that such prevention upholds Islamic law and legal requirements. When a prohibited marriage has already been solemnized, it must be annulled through judicial proceedings. The court is responsible for examining the circumstances of the marriage and, in cases involving apostasy, encouraging the apostate spouse to return to Islam. If the apostate fails to repent within the prescribed iddah period, the marriage is formally annulled. This judicial process highlights the distinct nature of fasakh as an annulment resulting from specific violations, distinguishing it from other forms of marriage dissolution such as talaq.

The distinction between fasakh and talaq (divorce) is fundamental to understanding the legal and religious framework of marriage dissolution. While talaq refers to the termination of a valid marriage based on personal or interpersonal grounds, fasakh arises from external factors that render the marriage void or defective, such as the discovery of a prohibited relationship or the violation of essential marriage conditions. Despite these differences, the iddah period remains

applicable in cases of fasakh, offering an opportunity for reconciliation or rectification, particularly in instances of apostasy where repentance is sought.

The procedural aspects of fasakh require judicial oversight to ensure that the annulment adheres to both religious and legal principles. Articles 21 and 25 of Law Number 1 of 1974 outline the procedural framework for annulment, granting individuals the right to petition the court when legal prohibitions are violated. These provisions ensure that the annulment process is conducted fairly and transparently, safeguarding the rights and responsibilities of both parties involved.

In conclusion, the concept of fasakh serves as a vital mechanism in Islamic jurisprudence for preserving the sanctity of marriage by addressing violations of religious and legal standards. Although the term fasakh is not explicitly mentioned in Indonesia's statutory framework, its principles are intricately embedded within the provisions of Law Number 1 of 1974 and the KHI. These legal instruments provide a robust framework for preventing invalid marriages, annulling defective ones, and upholding the integrity of the marital institution. By reinforcing the importance of adherence to Islamic and legal norms, fasakh functions as a safeguard against the potential harms and complexities that may arise from unlawful marriages, ensuring that marriage remains a cornerstone of justice, equity, and mutual respect.

The Perspective of Persatuan Islam Scholars on Apostasy in the Marriage Law

In Indonesia, Islamic Family Law (Kompilasi Hukum Islam or KHI) governs personal status issues for Muslims, including marriage, divorce, and inheritance. However, KHI does not specifically address apostasy (the abandonment or renunciation of one's faith) as a direct cause for the dissolution of marriage. Despite this, apostasy remains a critical issue within the framework of Islamic law, particularly when one spouse renounces Islam. In such cases, the effects on the marriage are complex and depend largely on how apostasy is understood and interpreted under Islamic jurisprudence.

Apostasy, known as ridda in Arabic, is a contentious subject in Islamic legal tradition. Islamic scholars and jurists from various schools of thought have differing opinions on the legal consequences of apostasy, particularly in relation to marital relationships. In the classical Islamic legal system, apostasy is considered a serious offense, often leading to severe consequences for the individual who renounces their faith, including the dissolution of marriage. This view is rooted in the fundamental understanding in Islamic law that marriage is not merely a legal contract but a spiritual bond, which is inherently tied to the faith of the parties involved.

Under traditional interpretations of Islamic law, if one spouse abandons Islam, the marriage is automatically invalid. The basis for this belief is derived from the Quran, which suggests that a marriage between a Muslim and a non-Muslim is not permissible, particularly when one party has willingly renounced their faith. According to several Islamic scholars, the relationship between a Muslim husband and wife is only valid as long as both parties remain within the fold of Islam. Therefore, if one spouse becomes an apostate, it is seen as a breach of the foundational principles of the marriage contract, thereby rendering the marriage void or subject to dissolution.

In Indonesia, however, the situation is more nuanced. The KHI, which is the governing legal code for Islamic family matters in the country, does not specifically mention apostasy as a direct ground for divorce or annulment of marriage. Nevertheless, the legal system in Indonesia allows for the interpretation of Islamic law by religious courts (Pengadilan Agama), which are authorized to hear cases related to marriage, divorce, inheritance, and other family law matters within the Muslim community. These courts have the discretion to apply Islamic jurisprudence, including the issue of apostasy, when cases arise.

In many instances, the religious courts in Indonesia are tasked with determining the effect of apostasy on a marriage based on the principles of Islamic law. These courts often seek to balance the religious aspects of Islamic law with the need to ensure that any decision made adheres to Indonesian constitutional principles and human rights standards. In the case of apostasy, a religious court may examine the specifics of the situation, including whether the apostate spouse voluntarily left Islam, whether they have converted to another religion, and whether the marriage can still continue in a meaningful and lawful way under Islamic principles.

The religious courts may rule that a marriage between a Muslim and an apostate is no longer valid, in line with traditional Islamic teachings. In these cases, the court may declare the marriage invalid and order the dissolution of the marriage, typically following an established legal process. The dissolution could take the form of a divorce, where the court officially declares the termination of the marital bond, or an annulment, where the marriage is declared void from the start. However, it is important to note that the legal process in Indonesia is influenced by a variety of factors, including the personal rights of the individuals involved and the broader social and political context.

While some scholars argue that apostasy automatically invalidates a marriage, other interpretations propose a more gradual or nuanced approach. In these alternative views, apostasy is not necessarily an immediate cause for the dissolution of marriage, but it may require a legal procedure to examine whether the marriage can continue. For example, a religious court may allow the apostate spouse an opportunity to recant their decision and return to Islam before the marriage is annulled. This approach reflects a more compassionate or rehabilitative perspective, which aims to maintain family unity where possible.

Another factor that influences how apostasy is treated in Indonesian Islamic family law is the constitutional framework of the country. Indonesia, despite its status as a Muslim-majority country, upholds a secular legal system that provides for the protection of individual rights, including freedom of religion. The Indonesian constitution guarantees the right to practice any religion, and this principle can conflict with the strict application of Islamic law on apostasy. This tension often complicates the interpretation and application of religious laws in family matters, including issues like marriage and divorce. As a result, the decisions made by religious courts in cases of apostasy must take into account not only the principles of Islamic law but also the broader legal and human rights context in Indonesia.

In conclusion, while apostasy is not directly addressed in the KHI, its impact on marriage remains an important issue in Islamic family law. The interpretation and consequences of apostasy in relation to marriage depend on a combination of Islamic jurisprudence, the discretion of religious courts, and the broader legal and human rights framework of Indonesia. The approach taken by religious courts in these cases reflects the diversity of legal and religious perspectives within the Muslim community and highlights the complexities of balancing religious traditions with constitutional and human rights considerations. The ongoing debate about the treatment of apostasy in Indonesian Islamic law reflects the dynamic and evolving relationship between religion, law, and individual rights in the country.

Conclusion

Essentially, a legal event will result in legal consequences. Marriage is regulated and legislated by both religion and the government, so its implementation constitutes a legal event that leads to specific legal consequences. With the occurrence of one party's apostasy, according to the scholars of the Islam Unity Organization of Sumedang and Subang, the marriage becomes *fasakh* (null and void), automatically ending or being considered divorced from a theological perspective, or from the standpoint of the pillars and conditions of marriage according to Islamic law, which have been compromised. Therefore, if reconciliation is to occur, the marriage must be renewed with a new marriage contract.

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