

The Human Rights and Women in the Context of Interfaith Marriage and Inheritance: A Comparative Analysis of Family Law in Muslim Countries

Nurul Adhha¹

¹*Sekolah Pascasarjana UIN Syarif Hidayatullah, Street Kertamukti No5 West Pisangan Cireundeu Ciputat, Jakarta, Indonesia*

Keywords: Human rights, inheritance, interfaith marriage, women.

Abstract: This study aims to explain in comparative vertical, horizontal, and diagonal how family law in Turkey, Somalia, Egypt, and Indonesia on interfaith marriages and inheritance move out from the fiqh scholars in Islamic law with their legalization relationships with gender and human rights issues in these countries as one of the significant factors affecting the changes of its family law. Descriptive method with qualitative approach used to collect data by library research method. The focus of the analysis is the extent of civil law in Turkey, Somalia, Egypt and Indonesia move out from the fiqh scholars in Islamic law regarding Interfaith Marriage and Inheritance. The results of this study show Turkey, Somalia, and Indonesia are more moderate countries in regulating interfaith marriage by making human rights and gender a subject that significantly affects legal reform. While Turkey is more liberal in regulating the rules of interfaith marriage due to secular ideology. Then Somalia, Egypt and Indonesia constitutionally did not pave the way for their people to do interfaith marriage, although in reality women violence, and forced inter-clan marriage keeps interfaith marriages between religions going on in Somalia, licensing through the dioceses permission also loosening the rules in Egypt, as well as registering marriages abroad also became a middle ground for Indonesians to legalize interfaith marriages.

1 INTRODUCTION

Interfaith marriages can be translated into several meanings, (1) Muslim male marriage with infidel women, (2) Muslim male marriage with polytheistic women, (3) Muslim male marriage with atheist women, (4) Muslim male marriage with apostate women, (5) Muslim male marriages with book recipients other than scriptural experts, (6) Muslim male marriages with female scholars, (7) Muslim woman marriage with infidel men, and (8) Muslim woman marriage with communist men (Qardhawi, 1995). *Jumhur Sunni* clerics argued that the marriage law was changed with several notes. However, this *mubah* is also divided into two absolute *mubah* and *mubah* which are circumscribed if the husband intends or intends to attract his wife to Islam. Meanwhile some Sunni clerics also stated that the law was *makruh*. In contrast to this, *Shia Imamiyah* and *Shia Ismailiyah* scholars punished

the marriage with illicit status (ath-Thaba'thaba'i, 1985).

However Interfaith marriages in terms of terminology are sometimes referred to as mixed marriages. Interfaith marriages cannot be compared to mixed marriages. Because the second may be more common, including marriage where the partner is from a different race or ethnicity, different nationalities are also different beliefs. So that the mention of interfaith marriage is more appropriate to be used as one of the discussions in this verse.

Furthermore, this paper divides the types of interfaith marriages into two types. The first category is marriage between Muslim men and non-Muslim women. The second category is marriage between Muslim women and non-Muslim men. The second type based on *fiqh* is clear that the law is haram. This first type of marriage can be categorized into two types, (1) non-Muslim women are experts in the book (2) non-Muslim women are not experts in the book. Thus, the main problem in this verse is how the law of civil law in four countries, Indonesia,

Turkey, Somalia, and Egypt, has passed from Islamic *fiqh* after experiencing changes from time to time in regulating interfaith marriages among the general public and the existing Muslim community in that country specifically.

Islam introduces the concept of inheritance sharing between men and women with a (2:1) presentation. In the study of *fiqh* scholar law, there are 4 things that abort a person from inheritance rights, namely, (1) slaves, (2) murder, (3) Relationships due to adopted children or adoptive parents, (4) Religious Differences. There are also scholars who add one more thing, namely apostasy because some of them give different definitions between apostates and religious differences from birth (al-Qurthubi, 1989: 56).

2 INTERFAITH MARRIAGE IN TURKEY, SOMALIA, EGYPT, AND INDONESIA

In Indonesia, legally formal, marriage in Indonesia is regulated in the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage and Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning Compilation of Islamic Law. In this formulation it is known that there is no marriage outside the law of each religion and belief. In 2004, some progressive Muslim groups, that is led by Siti Musdah Mulia, proposed, in response to the CIL (Compilation of Islamic law), a counter legal draft which, among other things, permitted Muslim–non-Muslim marriage for male as well as female Muslims. This is one of the most significant dynamics in the discourse on the development of family law in Indonesia. The emergence of KHI Counter Legal Draft. The CLD KHI is a response to the Applied Law on the Religious Courts (RUU HTPA) submitted by the Ministry of Religion to the DPR in 2003. On October 24, 2004, the Indonesian Ministry of Religion's Main Gender Mainstreaming Working Group (MoRA Working Group) launched the Counter Legal draft Draft Compilation of Islamic Law (CLD KHI). The manuscript of the KHI CLD sued and criticized as many as 19 crucial issues related to the articles contained in the KHI, one of which was about the legalization of interfaith marriages. Verse 54 of the CLD states: (1) Muslim–non-Muslim marriage is permitted. (2) Muslim–non-Muslim marriage is carried out based on a principle of appreciation and respect for the rights of religious freedom of each other. Since MUI (the Majelis Ulama Indonesia) and MMI (Indonesian

Mujahidin Council) rejected the motion of CLD, it was not incorporated into the law. He concludes, “the debate on Muslim and non-Muslim marriage is shifting from an interreligious debate between Muslims and Christians in the early 1970s, to a debate within interreligious groups, as well as between conservative and moderate Islamic groups”. But at the fact the Supreme Court of Indonesia endorsed the interfaith marriage on the basis of human rights disregarding the rules of the *shari‘a*. It seems that interfaith marriage disputes will continue to occupy the premises of the law courts for the foreseeable future (Recep Çıgdem, 2015).

This is certainly in accordance with the opinion expressed by Moh. Mahfud MD (2010) that in order to make changes to Islamic law and make it national law, Muslims must fight in the framework of national politics.

Then Turkish Civil Law governing marriage has changed from time to time, Previously the Law promulgated in 1917 prohibited marriage between various sects of Christianity (verse 29) with other different religions. Therefore, even a Catholic may not marry a Protestant (Aydın, 1985). Verse 58 also prohibits marriage between a Muslim woman and a non-Muslim man and thus a Christian lover cannot marry the Muslim woman he loves. But the opposite is allowed. This has changed since the promulgation of the 2001 Turkish civil law which did not regard religious differences as a barrier to marriage. This is particularly found in verses 129, 130 and 145. Verse 129 which regulates the obstacles to carrying out a marriage legally reads “Evlenme engelleri: Aşağıdaki kimseler arasında evlenme yasaktır: (1) Üstsoy ile altsoy arasında; kardeşler arasında; amca, dayı, hala ve teyze ile yeğenleri arasında, (2) Kayın hısımlığı meydana getirmiş olan evlilik sona ermiş olsa bile, eşlerden biri ile diğerinin üstsoyu veya altsoyu arasında, (3) Evlât edinen ile evlâtlığın veya bunlardan biri ile diğerinin altsoyu ve eşi arasında”. This verse clearly does not state that religious differences are included in one of the things which is a barrier for the Turkish people to marry.

After the amendment of the law in 2001 Turkey which was also in line with secular western countries, tended to allow interfaith marriages, because in the west the marriage had been shifted from religious affairs to mere public affairs, so that civil marriage was rampant, and marriages were not must be based on religion. The legality of marriage is not based on religious marriage but is in the regulation of marriage registration by marriage officials by the State. So, whatever religion is embraced by the parties, not even a variety of people, can establish their marriage by fulfilling the

existing procedure by proposing the Turkish Civil Code adopted from Swiss law.

If analyzed in depth, it can also be concluded that changes in family law that occur in Turkey are in accordance with the theory put forward by John L. Esposito (1982). He said that the reforms that occur in the marriage law could be caused by social changes, this social change will bring new demands in accordance with the needs of the situation and conditions of the community.

Different from Indonesia and Turkey, Disclaimer Country Marriage Packs (CMPs) report that related to marriage, there are 3 types of marriages in Somalia. One of them is Traditional/Other Marriages, based on the 2014 European Asylum Support Office report. Mixed marriages between the majority of clans and minority groups often occur in the form of interfaith marriages. This is because the rules that apply in Somalia are tied to the respective laws in their respective regions (Somaliland, Puntland, South-Central Somalia/*al-Shabab*-Islamic Movement) (Abdullahi, 2001).

This is also supported by evidence of LANDINFO (Danish Immigration Service, 2014), which reports back that Somalia does not have a functioning state government since 1991, and most of the territory is not under real administration or government. This means that Somalis cannot obtain official documents such as ID cards, passports or various certificates for the past 17 years. Thus, it will be difficult to detect the administration of religion in each of the prospective husband and wife couples who will marry in the absence of official documents that will inform the religion of the government. In addition, as stated by the Director of RRDR at Carleton University during a telephone interview with IRBDC (May 15 and 18, 1990) that "marriage is a religious matter in Somalia, not civil." These statements were supported by COSTI Manager, Center for Scholastic Organizations and Italian technical located in Toronto, and the Somali affairs authority that resides in Ottawa. So that the action or treatment of whether or not the marriage of a different religion is left to the family or clan of their respective religions.

However Somalia based on its laws governing marriage contains rules in 2000, that the marriage of civil society must be in accordance with the prevailing customs and religious rules. This rule is contained in the marriage rules section 2 of verse 10. In the general terms of the marriage, religious equality is not included as one of the conditions. But the necessity of having the same religion can be understood in section 5 of Somali civil law which specifically regulates religious marriage. This verse reads "Qaybta 5aad: guur diimeedka, Qodobka 33 aad: Shuruudo Dheeri ah Guur diimeedku waa inuu

u dhacaa si waafaqsan nidaamka iyo shuruudaha ku xusan diinta la isku guursanayo". This means that marriage based on religion must follow the terms and procedures of the religion adopted by the bride and groom. In fact, not only that, Somalia's civil law section 7 also stipulates that violations of the terms and procedures of religious rules in marriage include violations of the law (verse 48), "Qodobka 48 aad: Jabinta Shuruudaha Guur Diimeedka Saamaynta ka dhalan karta jabinta mid ama wax ka badan ee shuruudaha guur diimeedka waxay noqonaysaa sida ay xeerinayso diinta la isku guursaday".

In Egypt the Government only recognizes interfaith marriages for Muslim men with non-Muslim women, although there are no clear rules governing the marriage rules of a Muslim man with a Christian woman allowed under Islam. In Verse 22 of the Act which is unofficial code, Qadri Pasha states that stating that Muslim women may only marry with fellow Muslims. Whatever marriage has been done between a Muslim woman and a priest, a Christian, or a Jew, it is void and is no longer valid. The interfaith marriage that applies in Egypt is a marriage between two people in which the male is Muslim and the woman is non-Muslim. So that Egypt does not recognize interfaith marriage between non-Muslim men and Islamic women.

In Egypt there are interfaith marriage records (including mixed marriages) called *Maktab at-Tausiq* (Husnul, 2016). Regarding the marriage of Egyptians of different religions, there are 2 categories; First: If the man is Muslim, and the woman is Christian. In this category, the Egyptian wedding record office will ask Christian women to make a statement from the diocese. A statement that the woman will become a legal wife for her Muslim husband and that there is no religious barrier for her to marry. Usually the diocese does not agree on this, which results in problems which prevent the marriage record office from ratifying it. Second: If the wife is a Muslim, her husband is not Muslim. In this category, the marriage record office obstructs from the beginning of the marriage, with the foundation of this type of marriage violating general rules in Egypt. So it's not the office of the record that made the problem, but the marriage itself is a problem.

Furthermore The Declaration of Human Rights, a declaration of the member states of the Organisation of the Islamic Conference adopted in Cairo in 1990 gives men and women the right to marriage regardless of their race, color or nationality, but not religion. Verse 6 is in contradiction with verse 5 as the former specifies equality between men and women but the latter revokes it by not allowing women to marry non-Muslims. Verse 6 clearly states: "Woman is equal to man in human dignity,

and has her own rights to enjoy as well as duties to perform, and has her own civil entity and financial independence, and the right to retain her name and lineage." Verse 5 is contradiction with this one as it remains silent on interfaith marriage: "The family is the foundation of society, and marriage is the basis of making a family. Men and women have the right to marriage, and no restrictions stemming from race, color or nationality shall prevent them from exercising this right."

It can be understood that in order to carry out interfaith marriages in Egypt, the women of the Book of Experts must first request permission from the diocese. If there is no permit, the marriage records office cannot validate the interfaith marriage. As for the male non-Muslim, the marriage records office from the beginning prevented the marriage, because the Egyptian Marriage Law prohibited interfaith marriages between male People of the Book and Muslim women. When compared with Indonesia, Egypt and Indonesia both apply the concept of mixed marriage based on differences in citizenship. However, the concept of mixed marriage in the perspective of Egyptian marriage law is broader by categorizing interfaith marriages as mixed marriages, while Indonesia does not.

Based on analyzing vertically, it is seen that Somalia, Egypt and Indonesia constitutionally do not open the way for their people to conduct interfaith marriages. So here it is illustrated that the applicable rules and laws contained in the constitution in these three countries are not too far away from the classical *fiqh*. This is due to several reasons. Egypt as a self-proclaimed country as a country with the initials of Islam also constitutionally prohibits Muslim women from marrying non-Muslim men, this illustrates that the influence of the majority of Egyptians who adhere to the *Sunni* school, especially *Shafi'i*, has managed to maintain the rules of immorality. The marriage is in their constitution. So that the indignation of Egyptian family law from classical *fiqh* is not far away, it even seems to be inclined to the rules of Islamic *turats*. Although in some cases as explained there are still efforts which are considered to be an alternative for the marriage to be permitted with several demands such as permission from the religious leaders and others. Indonesia too, clearly stated in the law that marriage only occurs if marriages are carried out by brides with the same religion. There is an element of demand or necessity of religious unity on the part of men and women. The phenomenon in these three countries is certainly very different from Modern Turkey which has now determined that marriage is an act regulated by civil law no longer religious, so that interfaith marriages are legitimate and recognized by Turkish family law. This certainly

confirms that the regulation has gone far from the provisions of Islamic Jurisprudence. The cause is of course the secular values that are embraced by the state and the influence of western culture that has long been in contact with Turkey itself.

Furthermore, if analyzed horizontally, between four countries there are three countries with similar rules regarding interfaith marriages which prohibit or not regulate constitutional interfaith marriages. All three are Somali, Egyptian and Indonesian. Diagonally, it is clear that among the four countries, Turkey has become the most secular country with the rules that apply far away from *fiqh* so that interfaith marriages are not questioned because religion is not a requirement for marriage. Then, if it is reviewed, it seems that Egypt and Indonesia can occupy the second position after Turkey because there are still people who do interfaith marriages, and the marriage is finally recorded in civil records, even though by law, legal material explicitly does not recognize interfaith marriages. Only Somalia occupies the last position, although in Somalia there are still forced marriages, and marries with demands for clan cooperation which can allow interfaith marriages with customary procedures rather than religion, terms of family law material, the Somali Family law stipulates that marriages must be carried out according to religious procedures.

3 INHERITANCE IN TURKEY, SOMALIA, EGYPT, AND INDONESIA

Islam introduces the concept of inheritance sharing between men and women with a (2:1) presentation. In the study of *jumhur fuqaha* inheritance law, there are 4 things that abort a person from inheritance rights, namely, (1) slaves, (2) murder, (3) Relationships due to adopted children or adoptive parents, (4) Religious Differences. There are also scholars who add one more thing, namely apostasy because some of them give different definitions between apostates and religious differences from birth (al-Qurthubi, 1989). Especially for Indonesia, the rules for the inheritance section between men and women are compared with 2 to 1. Legislation used as a guide to family law in Indonesia is the Compilation of Islamic Law (KHI) which is a transformation of Law No. 1 of 1974 concerning marriage with several amendments and additional articles. Indonesian legislation regulates this because Muslims in their formulation are based on *faraid* law (Islamic inheritance law based on classical *fiqh*).

In contrast to Indonesia, Turkey is one of the countries that establishes the same part of

inheritance between men and women as there are other countries such as Somalia. The Turkish Family Law (The Civil Code 1926) stipulates that the share of male and female inheritance is 1 in 1. One of the most important things offered by the Turkish Family Law is the principle of equality between men and women related with inheritance with the same division. This means that the share between men and women in Turkish legislation is 1 in 1. The Turkish legislation used is Civil Code 1926 (Tahir, 1987). In the third book of the Law (Civil Code 1926), Turkey applies the provisions of the same inheritance section between men and women known as "Introduction of equitable rights for men and women in matters of succession" (Julio, 2013). Meaning: Introduction to equality of rights between men and women in terms of inheritance. Book III of the Turkish Civil Code also states that the children left by the heir, they get the same part of each other. But in this law does not explain the status of adopted children. In terms of legal material, family law reform in Turkey is a reinterpretation of texts or extra-doctrinal reforms, namely by giving a new interpretation of the existing texts by including elements from outside including the idea of socialism and secularism in this case equality between men and woman.

In Somalia Ismail Muqodim stated that the first time that the idea of equating the inheritance of men and women was the Turkish state during Musthofa Kamal At Taturk's time, namely by replacing the Shari'a Law with Swedish Law. Then this change moved to Tunis through the hands of the Burqaibah, then to Somalia (Anderson, 2008). The provision for inheritance distribution in Somalia is to equate parts between boys and girls. In Somalia in the law of family law No. 23 of 1975 verse 158 states that men and women have equal rights in the distribution of inheritance. Verse 169 of the Act also stipulates in detail that the wife whose husband is left dead receives half of the inheritance if there is no child or grandchild, and earns a quarter of the property if there is a child or grandchild (Atho, 2003). In addition, verse 161 of the Law states that if the heir consists of only sons and daughters, then the inheritance is divided equally between the two, except to distinguish between sexes, besides that, if the heir is only a woman then he takes all the assets. Likewise, the heirs of the heirs are only a mother, so they will take all the assets.

In terms of legal material, (in this case inheritance law) Somali family law has undergone very drastic changes from inheritance law which is formulated in the school of *fiqh* adopted by it, and is very different from the inheritance law adopted in various other Muslim countries. The renewal of the concept of inheritance is essentially still based on

the concept of inheritance of the Sunni school (especially *Shafi'i*) which he adopted first, such as in the system of distribution according to the heir level and the *Ashabaah* system, but then changes in the distribution of inheritance in all levels of heirs and system changes *Ashabaah*, which is based on the idea of equal rights between men and women. In the Somali inheritance law the surviving spouse, either husband or wife, gets half the portion if there is no child and a quarter if there is a child. While in the system *bi Nafsi Ashabah* in Somalia female heirs can also become *bi Nafsi Ashabah*. Then the reform of material inheritance in Somalia also uses the extradoctrinal reform model or form as in Turkey.

If Turkey and Somalia stipulate the provisions of the inheritance section between men and women that is a ratio of (1:1), then the Inheritance Law Reform in Egypt is by granting the right to the husband or wife to get the rest of the property (*radd*). In 1925, the Egyptian Court issued a Judicial Circular No. 28 of 1925. The contents of this circular letter were about the right of a widow to obtain the remaining inheritance if there were no *ashabah*, *ashabul furudh*, or other heirs by returning the remainder (*radd*). In the development of Egypt's inheritance law, the provisions concerning *radd* for husband / wife are found in verse 30 paragraph (2) of law No. 77 of 1943 concerning waris (*qānūn al-mīrās*) which reads Egypt giving *radd* rights to spouses if there are no other *ashabul furudh* and *dzawil arham*. Provisions regarding *radd* for spouses in the Egyptian law may be just a small change in the Islamic inheritance system. However, this rule has an important influence in the transfer of inheritance (Anderson, 1965). In terms of legal opinion that develops in *fiqh*, rules like this are more inclined to opinions that are not popular among Islamic jurists (*fuqaha*). The majority of scholars (*jumhur*) argue that *radd* is only given to heirs because of blood relations (*nasabiyyah*). Husbands or wives, as heirs due to marriage (*sababiyyah*), are not entitled to receive the remaining property with *radd*. As said by Muhammad Ali Ash-Shabuni, that a husband and wife are heirs of the *ashhabul furudh* who cannot get *radd*. Therefore, they only get a portion in accordance with the part that is the right of each without the addition of one of them which is due to the excess of the remaining assets. Even other opinions referring to Zaid bin Thabit, do not know the concept of *radd*. For this group, the remaining assets go directly into the State treasury for the public interest (Ash-Shabuni, 1995). Whereas according to the *Shia*, the concept of *radd* is only given to the husband (besides heirs who are entitled to get *radd* as the opinion of Sunni) and not given to the wife (Sukris, 1997).

The granting of *radd* rights to husbands and or wives refers to the opinion of Usman bin Affan. Uthman believes that all heirs, including husband and wife, are entitled to get the remaining property by means of *radd*. The reason is, when there is a shortage of inheritance in the event 'aul', the couple will bear the shortage, so that if there is residual property, the couple also has the right to enjoy the remaining property. However, opinions like this become the opinion of *shadz* / periphery which is not popular among *fiqh* scholars. Compared to inheritance law in Indonesia, this Egyptian inheritance rule is similar to that in the Indonesian inheritance rule which in verse 193 of KHI, based on the interpretation of verse 193 occurs when there is no heir of heir, other than that *radd* is also given to husband and wife as the right of experts other inheritance.

Compared to inheritance law in Indonesia, this Egyptian inheritance rule is similar to that in the Indonesian inheritance rule which in verse 193 of KHI, based on the interpretation of verse 193 occurs when there is no heir of heir, other than that *radd* is also given to husband and wife as the right of experts other inheritance. In terms of changing Islamic law, Egypt has formally carried out *takhayyur* (the selection of alternative law) by moving from mainstream opinion to unpopular opinions (Anderson, 1965). Whereas from the perspective of the way the worldview of Muslims towards Islamic inheritance law, the recognition of the legal provisions concerning the right of a spouse to receive *radd* has changed the Islamic view of the sacredness of Islamic inheritance law and rigid character in the provisions contained in the *faraid*. (Ahmad, 2014).

Anthropologically, renewal or reform of inheritance law in Egypt is related to changes that occur in the social system of society, namely the movement of Muslim communities from *extended family* systems to the nuclear family system. The rules in the *faraid* (husband/wife cannot get *radd*) are more suitable to be applied in a society that adheres to a large family clan system (*extended family*), and is not in accordance with the nuclear family system in Egypt.

In addition, if analyzed vertically, the Egyptian and Indonesian family law spells the *jumhur's* opinion about giving *radd* to husband and wife in accordance with the theory proposed by Ahmad Tholabi Kharlie (2013) which concludes that law modernization and social change are two related entities and influence each other. This opinion is also in accordance with Maznah Mohammad (2011) observance which explains that law and legal interpretation undergo changes in accordance with

the structure of changes in state and community authority.

In Turkey the concept of division of parts between men and women which is equated, namely (2:1), besides that it is also seen from the granting of inheritance rights to grandchildren, adopted children, children born from illegal marriages, even to heirs who are religiously different. The second position is Indonesia. Actually Indonesia still maintains the concept of division of parts between men and women which is equated to (2:1). However there are some differences with the Sunni school in terms of group inheritance (*dzawil furud*, *ashobah*, and *dzawil arham*) based on KHI verse 176-193. KHI enforces obligatory *wasiat* by giving part to adopted children or adoptive parents, not only that by arguing to consider the condition of a pluralistic Indonesian society, whether reviewed from religion, race, ethnicity, and language, *wasiat obligah* is also intended for non-Muslim heirs with consideration of sense of justice and humanity (Anshary, 2013). Muhibbin (2013) mentions that the background of the application is the judge's decision in some cases regarding *wasiat* is obligatory for non-Muslims who use *qiyas* with their legal idea, namely the expansion of the interpretation of the giving of obligatory *wasiat* to relatives who do not inherit that adopted children or foster parents extended to relatives non-Muslim.

Next in the third position is Somalia which is the same as Turkey using the concept of division of parts between men and women which is equated, namely (1:1). But there is no inheritance for adopted children, nor do children born to children born from illegal marriages. It seems that they are not included in the category of obtaining inheritance rights, but it is possible to enter in the will category which should not be more than 1/3 part of inheritance. For heirs of different religions or non-Muslims, Somalia does not give inheritance rights to them according to the *Shafi'i* school adopted.

Then Egypt, which was felt to be more conservative when compared to the three previous countries, was generally in accordance with the Egyptian inheritance law adopted by the *Sunni* school. But in some cases there are not too many differences between the laws that apply to the rules of *faraid*, including (1) Egypt imposes the Egyptian Will Law No. 71 of 1946 which granted no more than 1/3 of the mandatory *wasiat* for a grandson whose parents died before or together with their grandparents. (2) giving *radd* to a husband or wife. Egypt's other conservative evidence is that it states explicitly that Muslims and non-Muslims cannot inherit each other (Rusyid, 1985).

From the explanation above, horizontally there are several similarities and also differences between

the four countries. Turkey and Somalia apply the same concept in terms of the division of inheritance between men and women, namely (1 : 1), in contrast to Indonesia and Egypt, which still maintains the concept according to the rules of *faraid* science, namely the share of men and women is 2 to 1. Furthermore, there are equality between Turkey and Indonesia which gives part of inheritance to adopted children and non-Muslim relatives even with different methods, if Turkey through direct distribution of inheritance by equating parts of adopted children or non-Muslim relatives with biological children and Muslim relatives.

So Indonesia gave the part of adopted children and non-Muslim relatives through obligatory wasiat. Sting differences clearly exist between Turkey and the four other countries regarding the rights of grandchildren, if Turkey equates the rights of grandchildren as a child (if there are children and grandchildren then they all allied with inheritance with equal distribution), Unlike Somalia which declares grandchildren immigrated by the existence of a child, furthermore Indonesia gives the grandchild the right through the successor to the substitute only if his parents have or have died with the heir. Whereas Egypt gave the rights of his parent's grandchildren to have died with the heir through *wasiat*. And the last is the Equality between Indonesia and Egypt which both share the portion of radd to a husband or wife.

4 CONCLUSIONS

Diagonally in the Context of Interfaith Marriage, it is clear that among the four countries, Turkey has become the most secular country with the rules that apply far away from *fiqh* so that interfaith marriages are not questioned because religion is not a requirement for marriage. Then, if it is reviewed, Egypt and Indonesia can occupy the second position after Turkey because there are still people who do interfaith marriages, and the marriage is finally recorded in civil records, even though by law, legal material explicitly does not recognize interfaith marriages. Only Somalia occupies the last position, because the Somali Family law still stipulates that marriages must be carried out according to religious procedures.

In terms of family law material, (in this case inheritance law) both in Turkey, Somalia, Egypt and Indonesia in a vertical comparative with what is contained in the books of Jurisprudence, then these laws have gone far, even though this change is appropriate with one of the *fiqh* which states that

legal reasons are an important consideration in the application of the law, *al-hukm yaduru ma'a 'illatih*. If considered diagonally between these four countries Turkey, Somalia, Indonesia and Egypt, Turkish family law can be said to be the most secular and very modern country in the renewal of its inheritance law.

REFERENCES

- Ali Ash-Shabuni, Muhammad, 1995. *al-Mawarits fi al-Syari'ati al-Islamiyah 'ala Dhawal-Kitab wa al-Sunnah*, Beirut: Dar al-Kutub al-Ilmiyah.
- al-Qurthubi, Syamsuddin, 1989. *Tafsir al-Qurtubi*, Kairo: Dar al-Kutub al-Mishriyah.
- an-Na'im, Abdullahi Ahmed. 2008. *Islam and the Secular State: Negotiating the Future of Shari'a*. London: Harvard University Press.
- Anderson, J.N.D., (Ed), 1994. *Hukum Islam di Dunia Islam Moderen*, Yogyakarta: PT. Tiara Wacana Yogya.
- _____, 1965. "Recent Reform in the Islamic Law of Inheritance" *The International & Comparative Law Quarterly*, Vol. 14, No. 2.
- _____, *Islamic Law in Africa*, New York: Routledge, 1978.
- Aulya, Aidil, 2014. *Pengaruh Demokrasi Terhadap Hukum Keluarga: Analisis terhadap Perkembangan Liberalisme Pemikiran dan Legislasi Hukum Keluarga di Indonesia*, Tesis Sekolah Pasacasarjana UIN Syarif Hidayatullah Jakarta.
- Bunyan Wahib, Ahmad, 2014. "Reformasi Hukum Waris di Negara-negara Muslim", *Jurnal Asy-Syar'iah: Ilmu Syari'ah dan Hukum*, Vol. 48, No. 1.
- Dawoud Sudqi al-Alami, 1992. *The Marriage Contract in Islamic Law in the Syari'a and Personal Status Law of Egypt and Marocco*, London: Hartnoll Ltd.
- Departemen Agama Republik Indonesia, 2000. Instruksi Presiden RI No. 1 Tahun 1991 tentang Kompilasi Hukum Islam di Indonesia Jakarta: Direktorat Jenderal Pembinaan Kelembagaan Agama Islam.
- Esposito, John L. 1995. ed. *The Oxford Encyclopedia of the Modern Islamic World*. Vol. 3. New York: Oxford University Press,
- _____, 1982. *Women in Muslim Family Law*. Syracuse: Syracuse University Press.
- Gundel, Joakim, 2009. *Workshop Clans in Somalia*, Austrian Red Cross, Vienna ACCORD.
- Haji Mukhtar, Mohamed, 2003. *Historical Ditionary of Somalia*, (Maryland: The Scarecrow Press.
- Hardianto, Budi, 2003. *Perkawinana Beda Agama*, Jakarta: Khairul Bayan.
- Huda, Miftahul, 2017. "Ragam Bangunan Perundang-Undangan Hukum Keluarga di Negara-Negara Muslim Modern (Kajian Tipologis)", *Jurnal al-Manahij*, vol. 9, no. 1.
- Husain ath-Thaba'thaba'i, Muhammad, 1990. *al-Mizan fi Tafsir al-Qur'an*, Beirut: Dar al-Fikr.
- Isna Noor, Fitria *Perkawina Beda Agama dan Dampaknya dalam Perspektif Hukum Perkawinan Mesir dan Indonesia*, UIN Sunan Ampel Surabaya, accessed on

- 20 Mei 2018 at 22.00 a.m. 2014, by link digilib.uinsby.ac.id/1913/.
- Kharlie, Ahmad Tholabi. 2013. *Hukum Keluarga Indonesia*. Jakarta: Sinar Grafika.
- Khalil, Majdi The Mixed Marriage between Muslims and Christians. Artikel. Published by Ar-Risalah, December 2000, accessed on 16 Mei 2018 at 12.00 a.m. by link <http://www.arabwestreport.info/year-2001/week-2/12-mixed-marriage-between-muslims-and-christians>.
- Khitam, Husnul, 2016. *Perkawinan Beda Agama di Indonesia dan Mesir (Studi Perbandingan)*, UIN Sunan Kalijaga Yogyakarta.
- LANDINFO, 2011. *Somalia: Al-Shabaab and Forced Marriage*, Country of Origin Information Centre.
- Lewis, Ioan, 2008. *Understanding Somalia and Somaliland*, New York: Columbia University Press.
- M.D., Abdullahi, 2001. *Culture and Custom of Somalia*, London: Greenwood.
- Mahfud MD, Moh. 2010. *Membangun Politik Hukum, Menegakkan Konstitusi*, Jakarta: Rajawali Pers.
- _____, 2011. *Politik Hukum di Indonesia*. Jakarta: Rajawali Pers.
- Mahmood, Tahir, 1987. *Personal Law In Islamic Countries* (History, Text, And Comparative Analysis), New Delhi: Academy Of Law And Religion.
- MK, Anshary, 2013. *Hukum Kewarisan Islam Indonesia: Dinamika Pemikiran dari Fikih Klasik ke Fikih Indonesia Modern*, Bandung: Mondar Maju.
- Mudzhar M. Atho dan Khairuddin Nasution, 2003. *Hukum Keluarga di Dunia Islam Modern*, Jakarta: Ciputat Press.
- _____, *Esai-Esai Sejarah Sosial Hukum Islam*, 2014. Yogyakarta: Pustaka Pelajar.
- Mulia, Siti Musdah, 2005. *Compilation of Islamic Law Very Conservative in Liberal Islam's Ijtihad: Efforts to Formulate Dynamic Diversity*, ed. Abd. Moqsiith Ghazali, Jakarta: Liberal Islamic Network.
- Muslimin, J.M. 2005. *Islamic Law and Social Change: The Institutionalization of Islamic Family Law in the Nation State Egypt and Indonesia (1970- 2000)*. Disertasi Doktor, UIN Syarif Hidayatullah Jakarta.
- Nurlaelawati, Euis. Modernization, 2010. *Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesia Religious Courts*. Amsterdam: Amsterdam University Press.
- Nuruddin, Amiur dan Azhari Akmal Tarigan. 2004. *Hukum Perdata Islam di Indonesia: Studi Kritis Perkembangan Hukum Islam dari Fikih, UU No 1/1974 Sampai KHI*. Jakarta: Kencana.
- Otto, Jan Michiel. 2010. Ed. *Sharia Incorporated: a Comprehensive Overview of the Legal Sistem of Twelve Muslim Countries in Past and Present*. Leiden: Leiden University Press.
- Qardhawi, Yusuf, 2001. *Hadyul Islam Fatawi Mu'asirah yang diteremahkan oleh As'ad Yasin menjadi Fatwa-Fatwa Kontemporer*, Jilid 1, Jakarta: Gema Insani Press.
- R. Von der Mehden, Fred, 1980. *Kebangkitan Islam di Malaysia*”, dalam John L. Esposito (Ed), *Kebangkitan Islam pada Perubahan Sosial*, Jakarta: Bulan Bintang.
- Rivera, Julio Cesar, 2013. *The Scope and Structure of Civil Code* (Dordrecht: Springer.
- Rusyd, Ibnu, 1990. *Bidayatu al-Mujtahid*, Beirut: Dar al-Kutub al-Islamiyah.
- Samardi, A. Sukris, 1997. *Transendensi Keadilan Hukum Waris Islam Transformatif*, Jakarta: PT. Raja Grafindo Persada.
- Syahrizal Abbas, 2012. *Ahli Waris Pengganti dalm Sistem Hukum di Indonesia: Suatu Analisis Filsafat*, dalam Muchit A. Karis (ed), *Problematika Hukum Kewarisan Islam Kontemporer di Indonesia*, Jakarta: Puslitbang Kehidupan Keagamaan Badan Litbang dan Diklat Kemenag RI.
- Turkish Civil Code, Official Gazette No. 24607, dated 08.12.2001, accessed on 21 Mei 2018 at 10.55 a.m.
- Wahbah Zuhaily, 1989. *Fikih al-Islam wa Adillatuhu*, Beirut: Dar al-Fikr.
- Wahid, Marzuki, 2013. *Counter Legal Draft Compilation of Islamic Law (CLD KHI) in the Perspective of Legal Politics in Indonesia*, <http://ern.pendis.depag.go.id/DokPdf/ern-vi-03.pdf>, accessed on 1 February 2013.