

## RECONSTRUCTION INTERFAITH MARRIAGE LAW IN INDONESIA: Relevance of Sociology Knowledge and Maqasid Sharia

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**Abstract:** Interfaith marriage is still a controversial issue in Indonesia, legally, socially, and religiously. Article 2, paragraph (1) of the 1974 Marriage Law is the basis for its validity, but its practice gives rise to different interpretations. SEMA No. 2 of 2023 and the Constitutional Court's decision are the latest references. This study aims to analyze the legal settlement of interfaith marriage based on SEMA 2023, examine it from the perspective of Islamic legal sociology, and offer solutions based on Maqashid Syariah. The method used is qualitative with a normative and sociological approach. The primary data sources were obtained from literature studies, including laws, court decisions, scientific journals, as well as various Islamic law and maqashid sharia literature. Data analysis was conducted both descriptively and analytically, employing a legal hermeneutics approach to understand the dynamics of interfaith marriage regulations in Indonesia. This study shows that the absence of clear rules on interfaith marriages has given rise to various interpretations and encouraged alternative practices such as marriage abroad or pseudo-conversion (*fraus legis*). From the perspective of the sociology of Islamic law, this practice has caused social tension in society. The Maqashid Syariah approach emphasizes the protection of religion, lineage, and human rights. This study concludes the need for more adaptive and inclusive legal reform, considering social justice and humanitarian values, in line with the principles of maqashid syariah.

**Keywords:** Interfaith Marriage, Sociology of Islamic Law, Maqashid Sharia, Marriage Law, Human Rights

### Introduction

Marriage is a significant event in human life.<sup>1</sup> This not only affects the individuals

who will become husband and wife, but also impacts the families and communities they are part of. In general, marriage is considered sacred, and therefore, every religion attributes the rules of marriage to the principles of their faith. All religions typically have textually explained marriage

<sup>1</sup> Dwi Ratin Yulistia, Sri Irtawidjanti, dan Jenny Sista Siregar, "Pengaruh Karakteristik Generasi Muda terhadap Pelaksanaan Adat Perkawinan Kabupaten Kepulauan Anambas", *Jurnal Adijaya Multidisplin*, Vol. 1, No. 04 (2023): 678-685

laws that guide them in taking appropriate legal steps.<sup>2</sup>

Interfaith marriage occurs when two individuals from different faiths or religions enter into a marriage.<sup>3</sup> For example, a Muslim man marries a Christian, Buddhist, or follower of another religion.<sup>4</sup> In various societies, including Indonesia, interfaith marriage remains a controversial issue, especially in the Muslim community. Indonesia, a country with a pluralistic society, will naturally encounter many differences. This includes differences in terms of race, ethnicity, culture, language, and even religion.<sup>5</sup>

The high population growth rate, which in turn leads to migration and rapid technological development, makes interfaith marriages difficult to avoid in this country.<sup>6</sup> The Indonesian nation, comprising various tribes, groups, races, cultures, and religions, is an undeniable necessity. The diversity that occurs in Indonesian society. This allows for inter-tribal, group, and even inter-religious marriages. However, cross-marriage is considered a very sensitive issue. According to Nasaruddin Baidan, in the eighties, interfaith marriages were considered

something very worrying for Muslims in Indonesia.<sup>7</sup> Sensitivity arises because religion is often viewed as something absolute, and its truth is regarded as absolute truth. Man is willing to make whatever sacrifices are necessary to defend the truth of his religion, even willing to sacrifice his life.<sup>8</sup>

The legal polemic of interfaith marriages has always been debated between conservative and progressive groups because juridical facts show that such marriages are not strictly regulated in Indonesian legal regulations.<sup>9</sup> This is of particular concern because there are often attempts to deceive the law by manipulating religious status to obtain legal recognition from the government, known as *fraus legis*. As a result, a legal vacuum exists, leading to a reduction in the credibility of both general and specific law.

In the context of marriage law in Indonesia, it relies heavily on internal forums or internal dimensions, which are an ontological part of the marriage legal system in Indonesia. This provision is regulated in Article 2, Paragraph (1) of Law Number 1 of 1974 concerning Marriage, which has undergone changes and updates through Law Number 16 of 2019 (UUP). This article states that "marriage is valid if it is carried out according to the laws of each religion and belief. This principle is firmly adhered to and confirmed in the Constitutional Court (MK) Decision Number 68/PUU-XII/2014. In other words, the validity of a marriage in

<sup>2</sup> Saidus Sahar, *Penjelasan Undang-Undang Dasar Perkawinan dalam Undang-Undang Perkawinan dan Masalah Pelaksanaannya Ditinjau dari Segi Hukum Islam* (Bandung: Alumni, 2018), 137

<sup>3</sup> Dian Amelia, Nanda Utama, dan Fadhillah Zulfa, "Urgensi Putusan Mahkamah Konstitusi terhadap Penolakan Perkawinan Beda Agama Melalui Putusan Mahkamah Konstitusi Nomor 24/PUU-XX/2022", *UNES Law Review*, Vol. 6, No. 1 (2023): 614-625

<sup>4</sup> Mohammad Daud Ali, *Hukum Islam dan Peradilan Agama* (Jakarta: Raja Grafindo Persada, 1997)

<sup>5</sup> Syahri Ramadhan, Elly Warnisyah Harahap, dan Fadillah Is, "Pemaknaan Semboyan Balayar Satujuan Batambat Setangkahan dalam Mempersatukan Agama, Adat dan Budaya di Kecamatan Datuk Bandar Kota Tanjung Balai", *Yasin*, Vol. 3, No. 6 (2023): 1381-1389

<sup>6</sup> Achmad Nurcholish, *Memoar Cinatku: Pengalaman Empiris Pernikahan Beda Agama* (Yogyakarta: LKIS, 2004), 6.

<sup>7</sup> Nasruddin Baidan, *Tafsir Maudhu'i: Solusi Qur'ani atas Masalah Kontemporer* (Yogyakarta: Pustaka Pelajar, 2001), 23.

<sup>8</sup> Ichtijanto, "Perkawinan Campuran dalam Negara Republik Indonesia", (Jakarta: Program Studi Ilmu Hukum Universitas Indonesia, 1993), vii.

<sup>9</sup> Asy'ari, Asy'ari, and Triansyah Fisa. "Interfaith Marriage in Perspectives of Classical and Modern Scholars." *Al-Manahij: Jurnal Kajian Hukum Islam* (2022): 287-300.

Indonesia largely depends on fulfilling the requirements in terms of the religion and beliefs of each individual getting married.<sup>10</sup> This reflects the diversity of faiths and beliefs in Indonesia and respects the right of every individual to practice their religious beliefs within the context of marriage, as legally recognized.

Marriage is a form of legal relationship that regulates civil rights between a man and a woman as husband and wife.<sup>11</sup> This demonstrates that marriage law is an integral part of family law. In a broader context, marriage law is also encompassed within civil law, and even more broadly, it is classified as part of civil or private law.

A legal expert, L.J. Van Apeldoorn explained that family law is a collection of regulations governing legal relationships, or what is known as *rechtbetrekkingen*, which arise from family relationships. Thus, family law covers aspects of law relating to marriage, divorce, the rights and obligations of spouses, and the rights and responsibilities of parents towards their children.<sup>12</sup> This helps in regulating family and marriage dynamics in society.<sup>13</sup>

Interfaith marriages often face rejection,<sup>14</sup> Both from the family carrying out the

marriage.<sup>15</sup> And from the institution responsible for registering the marriage.<sup>16</sup> Examples of marriage cases, such as those involving Nia Zulkarnain with Ari Sihasale, Jamal Mirdad with Lydia Kandaouw, and Yuni Shara with Henry Siahaan, are concrete examples of this problem. To gain formal legal recognition from the state, some couples who engage in interfaith marriages opt to marry abroad or follow one of their partners' religions, sometimes with adjustments to their actual faith. This reflects the challenges faced by individuals who wish to enter into a marriage of their choice, while overcoming various social and legal hurdles that may arise in the process.

Interfaith marriages, when analyzed in depth, can cause doubts and various problems in various aspects of life, especially for individuals who undergo this kind of marriage and may not have a sufficient understanding of the laws governing interfaith marriages. Generally, people tend to think that interfaith marriages are contrary to the norms of Islamic law. However, in the context of legal diversity, people's views can become more tolerant. The majority of people may not want interfaith marriage, but at the same time, they may see this phenomenon as something familiar and acceptable in society.<sup>17</sup>

<sup>10</sup> Santoso, Dri, et al. "Harmony of religion and culture: fiqh munākahat perspective on the Gayo marriage custom." *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 22.2 (2022): 199-218

<sup>11</sup> Yulia Mandasari, "Keabsahan Perkawinan pada Era Pandemi Covid-19 dengan Menggunakan Media Elektronik menurut Hukum Positif Indonesia", *Otentik's: Jurnal Hukum Kenotariatan*, Vol. 5, No. 2 (2023): 249-268.

<sup>12</sup> Hariyanto Hariyanto, Ahmad Rezy Meidina, and Mabarroh Azizah, "Decentralization and the Fulfilments of Children's Rights: Challenges and Opportunities for Local Government in Indonesia," *Lex Scientia Law Review* 8, no. 2 (November 30, 2024): 677-706.

<sup>13</sup> L.J. Van Apeldoorn, *Pengantar Ilmu Hukum*, Terj.Oetarid Sadino (Jakarta: Balai Pustaka, 2015), 221.

<sup>14</sup> Muhammad Husni Abdulah Pakarti, Diana Farid, dan Iffah Fathiah, "Persepsi Masyarakat terhadap

Pernikahan Beda Agama: Studi tentang Stereotip, Prasangka, dan Dukungan Sosial dalam Konteks Multireligius", *el-Bait: Jurnal Hukum Keluarga Islam*, Vol. 2, No. 2 (2023).

<sup>15</sup> Ayub Mursalin, "Legalitas Perkawinan Beda Agama: Mengungkap Disparitas Putusan Pengadilan di Indonesia", *Undang: Jurnal Hukum*, Vol. 6, No. 1 (2023): 113-150.

<sup>16</sup> Patricia Karlina Dimiyati, dan Rosalinda Elsinia Latumahina, "Akibat Hukum terhadap Perkawinan Beda Agama di Indonesia: Studi terhadap Putusan PN Surabaya Nomor 916/PDT. P/2022/PN SBY", *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance*, Vol. 3, No. 1 (2023): 138-153.

<sup>17</sup> Sri Wahyuni, *Nikah Beda Agama Kenapa Keluar Negeri* (Jakarta: PT. Pustaka Alfabet, 2016), 361.

In response to the social problems arising from the implementation of Islamic law in Indonesia, the principles of Pancasila and the 1945 Constitution have played a crucial role in accommodating the diversity of religions and beliefs within this country. One concrete form of this accommodation is through the ratification of Law Number 1 of 1974 concerning Islamic marriage law.

In addition, to provide clear guidelines to judges in the Religious Courts, a Compilation of Islamic Law has been created.<sup>18</sup> This Compilation of Islamic Law serves as a guide for judges in deciding cases related to Islamic law. Thus, this effort aims to maintain justice and equality in the legal system while respecting the diversity of religions and beliefs that exist in Indonesia. Indonesia, a country with a diverse range of faiths and beliefs, is also recognized as a country of laws.<sup>19</sup> In this context, the principle of the Rule of Law is fundamental. To strengthen the order of national and state life, it is necessary to have clear legal rules that apply to all citizens.<sup>20</sup> The importance of the Rule of Law suggests that every action, including government action, must be grounded in existing legal rules and principles of justice.<sup>21</sup> A robust and effective legal system is necessary to regulate and

maintain the balance of power, protect individual rights, and ensure compliance with the law in all aspects of life.<sup>22</sup> This research also attempts to explain the conflict of legal norms by employing arguments by analogy, particularly Article 2, Paragraph (1) of the Marriage Law, which regulates marriages outside Indonesia (Article 56 of the Marriage Law, which relates to Article 37 of the Population Administration Law). Additionally, the a contrario arguments related to Articles 57 to 62 of the Marriage Law, which pertain to mixed marriages, as well as Article 66 of the Marriage Law concerning provisions subject to the husband's law, are included in the analysis of this study.

### Method

This research employs a qualitative method, grounded in the philosophy of post-positivism, with a focus on understanding the meaning behind data or phenomena, as well as providing descriptive insights. In this method, researchers act as a key instrument in investigating the condition of scientific objects, emphasizing data quality through an argumentative approach rather than prioritizing data quantity in the form of numbers.<sup>23</sup> This qualitative method is used to describe and analyze phenomena, events, or social activities that occur in society.<sup>24</sup>

This type of research is literature-based, relying on secondary data as the primary data source through documentation techniques, and is supplemented by primary

<sup>18</sup> Maula, Bani Syarif, and Ilyya Muhsin. "Interfaith Marriage and the Religion-State Relationship: Debates between Human Rights Basis and Religious Precepts." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8.2 (2024): 791-820

<sup>19</sup> Arifin, *Judicial Review di Mahkamah Agung: Tiga Dekade Pengujian Peraturan Perundang-undangan* (Bandung: Rajawali Pers, 2009), 52.

<sup>20</sup> S. Arinanto, *Negara Hukum dalam Perspektif Pancasila, Proceeding Kongres Pancasila: Pancasila dalam Berbagai Perspektif* (Jakarta: Setjen dan Kepanitraan MK, 2009), 206.

<sup>21</sup> Hariyanto Hariyanto, Muhammad Mutawalli Mukhlis, and Daud Risma, "The Role and Authority of the Deputy Regional Head According to Islamic Principles within the Framework of Regional Government Law," *Juris: Jurnal Ilmiah Syariah* 24, no. 1 (2025): 13-27, <https://doi.org/10.31958/juris.v24i1.12678>.

<sup>22</sup> Achmad, *Menguak Teori Hukum dan Teori Peradilan Termasuk Interpretasi Undang-Undang* (Jakarta: Kencana, 2009), 204.

<sup>23</sup> Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif dan R&D* (Bandung: Alfabeta, 2011), 9.

<sup>24</sup> Yusuf Olang, *Metode Kualitatif*, Disajikan Dalam DIKLAT Penulisan Karya Ilmiah STKIP PK Sintang. Selengkapnya dapat dilihat di <https://slideplayer.info/slide/11894684>, Publikasi tanggal 14 Januari 2017, Diakses tanggal 02 Juli 2023, Pukul 18.07.

data obtained through empirical research, particularly through structured interview methods. Literature research can stand alone without the need to be accompanied or complemented by empirical research, although it is more advisable if this literature research is strengthened by empirical research.<sup>25</sup> Apart from that, research in the legal field can be limited to literary analysis using a legislative approach (normative juridical legal research). However, the problems in legal research are essentially related to the protection of human interests, ensuring legal certainty, and maintaining balance in the fabric of society. Therefore, to investigate comprehensively, empirical research is also needed.

This literature review supports empirical research as an evidence-based method, particularly through a case study approach, with a focus on analyzing court decisions. The reason for this selection is based on the research focus, namely the legal paradigm of interfaith marriage in Indonesia, with a sub-focus on positive law in Indonesia and Islamic family law. Therefore, researchers assume that analyzing case studies will make a significant contribution to data collection, answering the research questions in this case, entitled: "Legal Problems of Interfaith Marriage in Indonesia: Sociological Studies and Maqasid Sharia."

## Results and Discussion

### Sociological Relevance to Interfaith Marriage in Indonesia

Guidelines regarding marriage in Indonesian society are regulated in Law No. 16 of 2019, which amends Law No. 1 of 1974 concerning Marriage. Marriage is also a legal act recognized by Article 28 B, paragraph (1) of the 1945 Constitution of the Republic of Indonesia, as a human right for all

Indonesian people. For Indonesian citizens, these regulations have a positive value from a formal juridical point of view. This marriage law not only contains principles but also provides legal guidelines that serve as direction and are enforced for Indonesian citizens.

Marriage phenomena such as interfaith marriages have not been explained directly by the Marriage Law (UUP), such as article 2 paragraph (1) of the UUP, which explains the validity of marriage if it is carried out according to the legal rules of each religion and belief.<sup>26</sup> This phenomenon ultimately emerged in polemics and discussions of pros and cons. Moreover, human rights are a social apparatus recognized by the world. Indonesia has provided a legal basis for this privilege in Law 39 of 1999 concerning Human Rights. There is also Article 29, which mentions freedom for all levels of society in matters of religion and worship, according to their own beliefs.

Since the 1945 Constitution was amended, the position of human rights in Indonesia has become increasingly important in national life. Currently, the prevalence of interfaith marriages in Indonesia is on the rise, and this trend cannot be ignored given the country's diverse, multi-ethnic, multicultural, and multi-religious society.

Pancasila, as the basis of legal norms, provides equal protection for all citizens, as stated in the 5th Principle: "Social justice for all Indonesian people." Likewise, Article 27 of the 1945 Constitution states, "All citizens are equal in law." Article 29 of the 1945 Constitution grants citizens the freedom to practice their respective religions and beliefs.

The Marriage Law determines the validity of marriage in Article 2, Paragraph (1), which

<sup>25</sup> Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar* (Yogyakarta: Maha Karya Pustaka, 2019), 30.

<sup>26</sup> M. Zeinudin, & O. Ariyanto, "Rekonstruksi Hukum Perkawinan Beda Agama Berbasis Hak Asasi Manusia di Indonesia", dalam *Jurnal Jendela Hukum*, 8(2), 2021, 13-24.



states that marriage is valid if it is carried out according to the laws of each religion and belief. The validity of marriage in Indonesia is considered to have strong religious nuances, and as religious elements dominate the conditions for a valid marriage.<sup>27</sup> Consequently, there is a degradation in achieving the goal of unification of the Marriage Law, which refers to the uniform implementation of marriage for every citizen.

The provisions of that article had a dualistic nature, which still felt vague because religion was still used as a yardstick for determining the validity of marriage.<sup>28</sup> The validity of marriage is also contained in Article 2, paragraph (2), which states that each marriage is recorded according to applicable laws and regulations. The provision views the legal validity of marriage for the sake of administrative order, as this would have implications for the provisions of other legal events. Religious considerations also influence marriage registration. If you are Muslim, then the marriage is registered by employees at the religious affairs office, who serve as registrars of marriage, divorce, and reconciliation. Apart from Islam, registration is carried out at the civil registration office.<sup>29</sup>

The arrangements related to human rights and their special categories are presented in a separate chapter. Apart from the 1945 Constitution, previously, there was MPR

Decree No. XVII/MPR/1998 and Law No. 39 of 1999 concerning Human Rights have provided a strong foundation for respecting human rights in Indonesia. Comprehensively examining Human Rights (HAM) about the legal construction of interfaith marriages is not a simple matter.

In general, it will include value dimensions, concept dimensions, and legislative dimensions. Moreover, suppose it is also related to legal certainty, apart from being able to be accounted for epistemologically, especially regarding the meaning of "certainty" itself. In that case, it will also intersect with the balance between justice and expediency as part of legal goals.<sup>30</sup>

The legal objectives pursued can strike a balance among aspects of justice, certainty, and expediency, and must ultimately be implemented with respect for human rights. Meanwhile, for human rights to be both strong and guaranteed, their legitimacy also requires legal instruments in the form of legislation. Human rights provide a basis for legal certainty, and legal certainty in turn guarantees human rights. In the context of entering into marriage, it will confer legal certainty regarding the implementation of rights and obligations based on human rights.<sup>31</sup> The general human rights perspective, which encompasses values, concepts, and legislation, is essentially a concept that should operate consistently, harmoniously, systematically, and in sync.

At this point, the author believes that legal certainty based on human rights, which is primarily grounded in human dignity as the

<sup>27</sup> Setiawan, Iwan, et al. "Reforming Marriage Law in Indonesia: A Critical Examination of Islamic Law on the Ban of Interfaith Marriages." *Al-Manahij: Jurnal Kajian Hukum Islam* (2024): 179-198.

<sup>28</sup> Mustofa, Kholifatun Nur, et al. "Religious Authority and Family Law Reform in Indonesia: The Response and Influence of the Indonesian Ulema Council on Interfaith Marriage." *JURIS (Jurnal Ilmiah Syariah)* 23.2 (2024): 383-393.

<sup>29</sup> M. Zeinudin, & O. Ariyanto, "Rekonstruksi Hukum Perkawinan Beda Agama Berbasis Hak Asasi Manusia di Indonesia:", dalam *Jurnal Jendela Hukum*, 8(2), 2021, 13-24.

<sup>30</sup> W. H. Azhari & F. Lubis, "Pernikahan Beda Agama Dalam Perspektif Kompilasi Hukum Islam Dan Hak Asasi Manusia", *Al-Mashlahah: Jurnal Hukum Islam dan Pranata Sosial Islam*, 10(2), 2022.

<sup>31</sup> Slamet Marta Wardaya, *Hak Asasi Manusia. Hakekat, Konsep, dan Implikasinya Dalam Perspektif Hukum dan Masyarakat*, ed. H. Muladi (Bandung: PT. Rafika Aditama, 2005).

most fundamental norm, must be proportionate to the individual who will enter into marriage. Marriage is established by prioritizing the legal certainty of the rights and obligations of dignified human individuals as the basis for human rights. That every publication of marriage law in the form of legislation in a country, and involving religious elements in it, will first undergo a process of meaning religion itself. Religious values will be given meaning in sociological and ideological contexts. The meaning of religion, with sociological characteristics, will be divided into two categories: functional categories and substantive categories.<sup>32</sup>

With functional categories, religion becomes an interpretive vehicle that helps humans unlock the mysteries of the universe's veil. With substantial categories, religion becomes a vehicle related to the supernatural or transcendent world. Meanwhile, the ideological characteristics of religion mean that it will be used as an element or vehicle to seize and maintain power or authority. The process of attracting religion, which is given sociological and ideological meaning, will continue according to the wishes of a multidimensional supporting community.<sup>33</sup> Thus, it becomes clear that the style of marriage law that involves religious elements tends to face complex problems, depending on the weight given to the meaning of religion itself, whether it leans more towards a functional sociological, substantial sociological, or ideological approach.

The problem with including religion as an element in the formation of state law is that there is no guarantee of fair and non-discriminatory treatment of other religions. In contrast, certain religions are disproportionately used as ideologies and sources of law in the state.<sup>34</sup> The process of establishing Law Number 1 of 1974 concerning Marriage, which was colored by disagreements between members of society, on the one hand, shows the level of community concern or interest in this matter.

In reality, one of the classes considered controversial in the discussion is related to the validity of marriage based on religion, and is registered.<sup>35</sup> The issue of the validity of a marriage based on these two options is becoming increasingly controversial, because it will open up the broadest possible opportunities for the legalization of interfaith marriages.<sup>36</sup>

The increasingly fierce feud regarding the validity of marriage, in the end, was formulated in an "unsatisfactory" way and did not solve the problem. This means that the issue of inter-religious marriages is not strictly regulated, or can be said to have no legal certainty. An article states that a marriage is considered valid according to the laws of each religion. It turns out that, according to another article, the possibility of marriage is only valid according to records, as long as it is not carried out in Indonesian jurisdiction. The contradictions between articles in one form of legislation have revealed a compromise attitude that, in reality, does not truly value the principles of

<sup>32</sup> Abdurrahman, *Hukum Perkawinan Beda Agama (Dalam Perspektif Hukum Dan Agama)*, [https://suduthukum.com/2015/01/hukum-perkawinan-beda-agama- dalam\\_20.html](https://suduthukum.com/2015/01/hukum-perkawinan-beda-agama- dalam_20.html)

<sup>33</sup> M. Zeinudin, & O. Ariyanto, "Rekonstruksi Hukum Perkawinan Beda Agama Berbasis Hak Asasi Manusia di Indonesia:", dalam *Jurnal Jendela Hukum*, 8(2), 2021, 13-24.

<sup>34</sup> M. Zeinudin, & O. Ariyanto, "Rekonstruksi Hukum Perkawinan Beda Agama Berbasis Hak Asasi Manusia di Indonesia:", dalam *Jurnal Jendela Hukum*, 8(2), 2021, 13-24.

<sup>35</sup> Sudarsono, *Hukum Perkawinan Nasional* (Jakarta: Rineka Cipta, 2005).

<sup>36</sup> Abdurrahman, *Hukum Perkawinan Beda Agama (Dalam Perspektif Hukum Dan Agama)*, [https://suduthukum.com/2015/01/hukum-perkawinan-beda-agama- dalam\\_20.html](https://suduthukum.com/2015/01/hukum-perkawinan-beda-agama- dalam_20.html)

correct legislative method, namely consistency, harmonization, systemization, and synchronization.<sup>37</sup>

Another critical issue that requires attention is the interpretation of Article 6, Paragraph 1 of Law Number 1 of 1974 concerning Marriage, which emphasizes that "Marriage must be based on the consent of the bride and groom." The word consent contains a substantial meaning in civil law. Normatively, the requirement for the validity of an agreement has been laid down in article 1320 of the Civil Code, namely the fulfillment of: (1) Agreement; (2) skills; (3) particular objects; (4) and does not conflict with law, morality, and the public interest.

The article can be doctrinally classified into two parts. Conditions number 1 and 2 are referred to as subjective conditions, and conditions number 3 and 4 are referred to as objective conditions. In an agreement, if the subjective conditions are not met, it can be canceled. Meanwhile, if the objective conditions are not met, it means the deal is null and void. This fact implies that there may be parties who are incompetent according to the law or have entered into an agreement in an unconscionable manner.<sup>38</sup>

Reviewed in detail, Law Number 1 of 1974 concerning Marriage, which does not provide adequate legal certainty for parties entering into interfaith marriages, can be categorized as lacking respect for human rights.<sup>39</sup> Individual human rights and obligations should be based on the principle of human dignity as the highest and most crucial norm, providing a basis for human

rights to receive definite protection in the form of legal certainty.

Interfaith marriages that receive religious and moral legitimacy as a gift from God are castrated in the name of legal legitimacy, which ignores human dignity as the primary basis for human rights. Therefore, interfaith marriages should receive attention from the government through the issuance of new legal regulations. Because this case of interfaith marriage is not new, many people have entered into interfaith marriages. Some public figures have even conducted interfaith marriages, either by converting to one of the religions or marrying abroad, which allows such marriages to be recognized as valid in certain jurisdictions. However, the changes to the new marriage law, No. 16 of 2019, do not mention interfaith marriages at all.

So the polemic about interfaith marriages will continue to be a topic of conversation and give rise to various legal interpretations, so that prospective interfaith marriage partners do not gain legal legitimacy, ultimately creating legal uncertainty that occurs in society. So, the hope of creating legal certainty in society regarding interfaith marriage will continue to be a legal ideal for society.

### **Human Rights in the Problems of Interfaith Marriage in Indonesia**

The polemic about interfaith marriages has continued throughout the political history of marriage law in Indonesia. The number of interreligious marriage applications in Indonesia was recorded as 1,425 couples from 2005 onwards. The average percentage of interfaith marriages among each religion in Indonesia in 1980 was 18.3%; in 1990, it increased to 26.7%; and in 2000, it decreased to 19.5%. Even now, interfaith marriages are not clearly and firmly regulated in Law Number 16 of 2019, which concerns amendments to Law Number 1 of 1974

<sup>37</sup> M. Zeinudin, & O. Ariyanto, "Rekonstruksi Hukum Perkawinan Beda Agama Berbasis Hak Asasi Manusia di Indonesia:", dalam *Jurnal Jendela Hukum*, 8(2), 2021, 13-24.

<sup>38</sup> R. Subekti, *Hukum Perjanjian*, cet. Ke-18 (Jakarta, Intermedia, 2001).

<sup>39</sup> Hazairin, *Tinjauan Mengenai Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan* (Jakarta: Tinta Mas, 1986).



regarding Marriage, the latest codification of national marriage law in force in Indonesia.<sup>40</sup>

Such legal arrangements will continue to give rise to various legal interpretations and jurisprudence regarding interfaith marriage law, both those that grant it and those that reject requests for interfaith marriages. In fact, until now, interfaith marriages continue to occur in various forms of practice in Indonesia, utilizing legal loopholes and multiple interpretations of the conditions for a valid marriage according to religious law, as regulated in Article 2, paragraph (1) of the Marriage Law.<sup>41</sup> Inter-religious marriages in the Marriage Law are not expressly and definitively regulated, so it can be said that there is a blurring of laws and freedoms regarding the practice of inter-religious marriages in Indonesia.<sup>42</sup> Even after the decision of the Constitutional Court (MK) Number 68/PUU- XII/2014, which rejected inter-religious applications in their entirety, inter-religious marriages continue to occur in Indonesia.

The Constitutional Court (MK) has again received a request for review of Law Number 1 of 1974 concerning Marriage (Marriage Law), as amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, on Tuesday, 1 November 2022. E. Ramos Petege submitted the hearing on case application Number 24/PUU-XX/2022, a Catholic who wants to marry a Muslim woman.

Then, application Number 24/PUU-XX/2022 in this Marriage Law testing case was submitted by E. Ramos Petege.

However, the marriage had to be annulled because the Marriage Law did not accommodate interfaith marriages. The petitioner believes that his constitutional rights have been compromised because he was unable to enter into a marriage contract. The applicant also feels disadvantaged by losing his freedom to embrace religion and belief, because if he wants to carry out interfaith marriages, there will be coercion for one of them to subdue their beliefs. In addition, the petitioner also lost his freedom to continue his descent by forming a family based on free will. The material Ramos tested was Article 2, paragraphs (1) and (2), as well as Article 8, letter f, of the Marriage Law. According to him, the provisions tested were contrary to Article 28D, paragraph (1), and Article 29, paragraphs (1) and (2), of the 1945 Constitution. Article 2, paragraph (1) of the Marriage Law states, "Marriage is valid if it is carried out according to the laws of each religion and belief." Article 2, paragraph (2) of the Marriage Law states, "Every marriage is recorded according to applicable laws and regulations."

Article 8, letter f of the Marriage Law states, "Marriage is prohibited between two people who have a relationship whose religion or other applicable regulations prohibit marriage." This prohibition on interfaith marriages is also outlined in the Marriage Law and the Compilation of Islamic Law, ensuring that every citizen is obligated to adhere to the applicable legal rules. The highest value in human rights is divinity, so that every person must obey God's commands.<sup>43</sup>

This then emerged in society, and several forms of interfaith marriage occurred:

<sup>40</sup> Sirman Dahwal, *Hukum Perkawinan Beda Agama di Indonesia* (Bandung, Mandar Maju, 2016).

<sup>41</sup> Sri Wahyuni, "Kontroversi Perkawinan Beda Agama di Indonesia", dalam *Jurnal Ar Risalah*, Volume 14, 2014.

<sup>42</sup> Siswadi, I., Supriadi, S., & M. Mario, "Kawin Beda Agama dalam Hukum Perkawinan Indonesia Prespektif HAM", dala, *JlIP-Jurnal Ilmiah Ilmu Pendidikan*, 5(12), 2022, 5823-5829

<sup>43</sup> Sekarbuana, M. W., Widiawati, I. A. P., & Arthanaya, I. W., "Perkawinan Beda Agama dalam Perspektif Hak Asasi Manusia di Indonesia", dalam *Jurnal Preferensi Hukum*, 2(1), 2021, 16-21.

First, one of the prospective spouses changed their religion to comply with the law's provisions prohibiting interfaith marriages. For a marriage to take place and obtain legal status according to both law and religious law, a compromise is often necessary between prospective partners. They agreed that one was willing to enter the religion of his future partner. After their marriage gained legal status, some even returned to their original religion for only a few weeks. This type of marriage typically excludes interfaith marriages, as it occurs when a marriage agreement is formed between parties of the same faith.

Second, the marriage ceremony involves two ritual procedures for religious worship, which are believed in by the prospective partners, and a registration is then submitted at the Civil Registry Office. This type of marriage is arranged because each prospective bride and groom still maintains their respective religions. Or neither candidate wants to change religion and submit themselves to the religious law of one of the parties, so the Civil Registry Office only functions as an agency that formalizes the marriage of the two candidates.

Third, interfaith marriages are carried out abroad. After the marriage takes place according to the laws in force in a particular country, the parties return to Indonesia to register their marriage at the Civil Registry Office. In the context of positive law, the legal certainty of interfaith marriages is still debated, because Law No. 1 of 1974 does not regulate clearly and explicitly. Article 57 of the Marriage Act only applies to marriages between people of different faiths. A mixed marriage is a marriage between two people who, in Indonesia, are subject to other laws due to differences in citizenship, as specified

in the applicable Indonesian citizenship law.<sup>44</sup>

Because interfaith marriages have not been explicitly accommodated in Law no. 1 of 1974 concerning Marriage, giving rise to various interpretations among legal experts, for example, in the formulation of Article 66, it is stated:

"For marriage and everything related to marriage based on this law, with the enactment of this law, the provisions regulated in the Civil Code (*Burgerlijk Wetboek*), the Christian Indonesian Marriage Ordinance (*Huwelijk Ordonantie Christen Indonesier S.1933 No.74*), Mixed Marriage Regulations (*Regeling op de Gemengde Huwelijken S. 1898 No. 158*), and other regulations governing marriage to the extent provided for in this law are declared invalid."<sup>45</sup>

Concerning Article 66 of the Marriage Act No. 1 of 1974, above, inter-religious marriages were declared permissible, as that Article signalled the enactment of a prior regulation. Article 66 of the UUP states that all other rules governing marriage that this law has regulated are declared no longer valid. This provision can be understood if the marriage law does not yet restrict inter-religious marriages, then the previous regulations governing the permissibility of inter-religious marriages can be implemented.<sup>46</sup>

<sup>44</sup> M. Zeinudin, & O. Ariyanto, "Rekonstruksi Hukum Perkawinan Beda Agama Berbasis Hak Asasi Manusia di Indonesia", dalam *Jurnal Jendela Hukum*, 8(2), 2021, 13-24.

<sup>45</sup> S. Cantonia & I.A Majid, "Tinjauan Yuridis terhadap Perkawinan Beda Agama di Indonesia dalam Perspektif Undang-Undang Perkawinan dan Hak Asasi Manusia", dalam *Jurnal Hukum Lex Generalis*, 2(6), 2021, 510-527.

<sup>46</sup> C.R. Daus & I. Marzuki, "Perkawinan Beda Agama di Indonesia; Perspektif Yuridis, Agama-agama dan Hak Asasi Manusia", dalam *Al-'Adalah: Jurnal Syariah dan Hukum Islam*, 8(1), 2023, 40-64.

Another argument is that the marriage law does not contain any provisions stating that the religious differences between prospective spouses are prohibitions or obstacles to marriage. It's just that in the Marriage Law Article 2 paragraph (1) it is stated: "Marriage is valid if it is carried out according to the laws of each religion and belief." If you look closely, philosophically, at Law No. 1 of 1974, the GHR of 1898, and the BW (Burgerlijk Wetboek), there are fundamental differences. Specifically, Law No. 1 of 1974 considers the validity of marriage to be based on religion.<sup>47</sup>

Based on the narrative above, it is necessary to review the law of inter-religious marriages based on a Human Rights (HAM) perspective which is expected to provide a broader understanding of what forms of respect for human dignity and humanity are, which are not discriminatory against religious differences, because all citizens, at the same time, his position before the law has the same right to fulfill his rights as a human being and citizen within the framework of the constitution and human rights. This study was carried out to examine the reconstruction and legal certainty of interfaith marriages from a human rights perspective.

### **Maqashid Sharia Perspective on Interfaith Marriage in Indonesia**

In the Indonesian context, we also take ideas from Prof. Dr. TM Hasbi Asy-Syiddieqy, MA, who called for the development of ushul fiqh, so that the critical idea is to realize Indonesian jurisprudence, not other jurisprudence that is oriented towards the culture of the Middle Eastern or other Eastern Schools and not the Southwestern or Western Schools other. To realize the divine

values of Islamic law in real life, fukaha (Islamic legal philosophers) developed the theory of maqashid sharia (the goals of Islamic law) or other terms, related to God's intention. Furthermore, the primary aim of Islamic law is to guide humans from this world to the hereafter. One aspect of maqashid sharia divides 3 into three complementary priority scales.

First, *al-daruriyyat* (musts or inevitabilities), namely something that must exist for the survival of human life. If something does not exist, then human life will be destroyed. The goals of daruri (*al-masha'ir al-daruriyyat*) are to save religion, life, reason, wealth, offspring, and honor.

Second, *al-hajiiyyat* (needs) refer to something essential for human survival. If something does not exist, then human life will not be destroyed, but difficulties will come our way.

Third, *al-tahsiniyyat* (ornamental decorative processes). This means that the absence of ornamental decorative things will not destroy the purpose of the daruri, but their presence will beautify the achievement of the goal of the daruri.

Usul fiqh rules offer a brilliant academic foundation. The three conditions are divided into three categories, namely: *dharuriyat*, *hajiiyat*, and *tahsiniyat* conditions. These three conditions must be used to protect five things: religion, soul, mind, property, and descendants (*nasab*). In detail, it is illustrated that in looking after offspring (*nasab*), it needs to be explained as follows, to save Islamic offspring, for example, to prescribe marriage and prohibit adultery. To protect offspring, a key goal of the dhari through marriage requires complete documentation, such as written evidence. Without KUA, as the authority to document, marriage could not be carried out. However, the presence of the KUA, with its various complementary tools, will better ensure the rights and obligations of the parties, particularly in the

<sup>47</sup> S. Cantonia & I.A Majid, "Tinjauan Yuridis terhadap Perkawinan Beda Agama di Indonesia dalam Perspektif Undang-Undang Perkawinan dan Hak Asasi Manusia", dalam *Jurnal Hukum Lex Generalis*, 2(6), 2021, 510-527.

event of a dispute. The marriage certificate, which will be used as written evidence, can be beautified according to local interests (tastes), talents, and abilities.<sup>48</sup>

The problem doesn't just stop here, the status of something that was initially just a necessity can be upgraded to a necessity (*al-hajah tanzil manzilat al-darurah*) by the -command to carry out something-, namely, getting married in Indonesia is the same as the command to carry out the means, namely must have a marriage certificate: must get married in front of KUA officials.

On the other hand, *al-hakim* (authority holder) was given the authority by religion to require permissible goods, namely writing the word married on an ID card, because if it were not needed, it would give rise to mafsadat: many women became victims of fraud.<sup>49</sup> By being equipped with the principle of *saddudari'ah* (preventive action), the process of achieving maqashid daruriah child protection through marriage becomes more complete.<sup>50</sup>

To be binding on Indonesian Muslims, this law must be decided through *ijtihad jama'i*

(consensus) in the sense of legislation, whether based on the Qur'an, Sunnah, or ra'yi in consultation with state orders, said Prof. Hasbi Ash Shiddieqy, as the initiator of Indonesian jurisprudence, not *ijtihad fardi*. Thus, Ijtihad Jama'i was chosen because Ijtihad Fardi would give rise to disagreements, as the legitimacy of Ijtihad Fardi is very low.

Draft Material Law on Religious Courts in the Field of Marriage. This law is a manifestation of Indonesian jurisprudence. It is binding on Indonesian Muslims. Its status will be the same as, for example, Law No. 1/1974 concerning marriage, Law No. 7/1989 concerning Religious Courts, and Presidential Instruction No. 1/1991 concerning the Compilation of Islamic Law in Indonesia. Laws that are not labeled Islamic (Bung Hatta: philosophy of salt) should also be manifestations of Indonesian Fiqh such as Law 1945 and Law no. 14/1992 concerning Road Traffic and Transportation, during this law, it was proven that it intended to defend sharia maqasid, not to justify haram goods and not to forbid halal goods, plus its benefits are essential, fundamental and public.

For example, Article 150, Paragraph 1, of the Traffic Law seeks to protect the environment from pollution, even though the maqashid Sharia of the first degree (daruri) intend to preserve life, property, religion, descent, and honor, which cannot be achieved in an unhealthy environment.<sup>51</sup> So here the formula applies that protecting the environment is mandatory for the sake of preserving the soul (*ma la yatimm al-wajib illa bih fahuwa is wajib*). If this environment is not

<sup>48</sup> Farida Ulvi Naimah et al., "Internalization of Local Traditions in Child Marriage from the Perspective of Maqasid Al-Usrah," *El-Mashlahah* 14, no. 2 (October 14, 2024): 237-58, <https://doi.org/10.23971/el-mashlahah.v14i2.7942>; Dwi Aprilianto et al., "The Controversy of Child Marriage Culture in The Perspective of Maqāṣid Al-Usrah: A Case Study of The Authority of Lebe' in Brebes," *Al-Manahij: Jurnal Kajian Hukum Islam*, August 7, 2024, 199-218, <https://doi.org/10.24090/mnh.v18i2.11554>.

<sup>49</sup> Nuruddin Nuruddin, Aisyah Wardatul Jannah, and Dwi Martini, "Evaluating the Effectiveness of Age Restriction on Marriage in Indonesia," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, no. 2 (December 31, 2023): 313-30, <https://doi.org/10.24090/VOLKSGEIST.V6I2.984>.

<sup>50</sup> Muslihun, Maysarah, and Syed Ahmad Ali Shah, "Pekhanjangan Money as a Sanction for Singkil Aceh's Customary Marriage in Review of Maqasid Syariah," *Dirasah International Journal of Islamic Studies* 3, no. 1 (March 7, 2025), <https://doi.org/10.59373/drs.v3i1.36>.

<sup>51</sup> Madkan and Lusiah Mumtahana, "Islam Dan Tradisi Perspektif Al-Qur'an Dan As-Sunnah," *At-Tadzkir: Islamic Education Journal* 1, no. 1 (September 12, 2022): 55-62; Mauhibur Rokhman et al., "Consideration of Parents in Choosing Islamic Schools in the Digital Era," *Nazhruna: Jurnal Pendidikan Islam* 6, no. 3 (December 1, 2023): 403-19, <https://doi.org/10.31538/nzh.v6i3.4026>.

maintained, it will claim victims: wealth will decrease, offspring will be threatened, and this will also make it challenging to implement religious teachings.

Here, it can be seen that this article neither justifies haram goods nor prohibits halal goods. It is truly in line with the maqashid of sharia, which, because *Ahl al-Hall wa al-'Aqd* decided it, is binding on Indonesian Muslims. The manifestation of this maqashid sharia has been preceded by efforts to protect reason and property, as seen in, for example, Article 27(1) and Article 31(1) of the Constitution.

This Traffic Law can be reviewed by another *ijmak* (consensus) from the same institution if the institution wishes to do so for specific reasons. However, if members of the *Ahl al-Hall wa al-'Aqd* do not agree to enact a law, then this law can be declared by the MUI as a fatwa, or the MUI can postpone the implementation of the draft law and then try to submit it back to the DPR/MPR.

If certain regional customs cannot be applied on a national scale, then efforts are made to use them at the level of the province or district concerned. If this interpretation of the concept of Hasbi *ijtihad jama'i* is implemented, it will automatically paralyze the reception theory. Cooperation is undoubtedly better. So, the promulgation of the Draft Material Law on Religious Courts (RUU-HMPA) in the Marriage Sector will complement and strengthen the national legal system.<sup>52</sup>

Including cases raised in dissertation research, namely inter-religious fisheries, as in the Constitutional Court (MK) Decision Number 68/PUU-XII/2014 and the Supreme Court of the Republic of Indonesia (MA)

Number 1400K/Pdt/s1986. In this decision, it was stated that the validity of a marriage in Indonesia largely depends on fulfilling the requirements in terms of the religion and beliefs of each individual getting married.<sup>53</sup> This reflects the diversity of religions and beliefs in Indonesia and respects the right of every individual to practice their religious beliefs within the context of marriage, as permitted by law.

The problem is that the decisions of the Constitutional Court (MK) Number 68/PUU-XII/2014 and the Supreme Court of the Republic of Indonesia (MA) Number 1400K/Pdt/s1986 are still hanging, because they have not been studied in detail from the point of view of sociology and its sharia maqasyid. For this reason, this dissertation uses the sociological basis of knowledge and maqasid sharia, so it is hoped that in determining future law, it will become clearer.

Law continues to evolve in response to human knowledge and advancements, as is the case with Islamic law, where new laws are enacted only when there are changes in reality and shifts in societal needs. This means that, in terms of regulations based on Islamic teachings, the law must also continue to evolve.

الحكم يدور مع علته وجودا وعدما

Meaning: "The law is always changing because of the 'gods the law'".

## Conclusion

The conclusion in this research is 1). Resolving the issue of interfaith marriages in Indonesia, according to Supreme Court Circular Letter No. 2 of 2023, involves

<sup>52</sup> Ismail Firano, "Objectives of Islamic Marriage: A Study of the Primary and Subsidiary Objectives: مقاصد الزواج الشرعية . دراسة لأهم مقاصد الزواج الأصلية والتبعية," *Dirasah International Journal of Islamic Studies* 2, no. 1 (June 12, 2024): 1-35, <https://doi.org/10.59373/drs.v2i1.21>.

<sup>53</sup> Mohammad Omar AL-Momani, "The Degree of Parents' Practice of The Good Role Model Style Included in Islamic Educational Thought from The Point of View of University Students," *At-Tadzkir: Islamic Education Journal* 3, no. 2 (August 4, 2024): 144-56, <https://doi.org/10.59373/attadzkir.v3i2.68>.



conducting a material test and comparing the laws governing interfaith marriages. The Circular of the Supreme Court (SEMA) is strengthened by core legal reasons to provide clear guidelines to judges in the Religious Courts. Thus, this effort aims to maintain justice and equality in the legal system while respecting the diversity of religions and beliefs that exist in Indonesia. In this context, the principle of the Rule of Law is fundamental.

2) The legal problem of inter-religious marriage in Indonesia from a sociological perspective is that when people speak in the context of Islamic studies, it will give rise to various interpretations. So it is necessary to review the law of inter-religious marriage from a Human Rights (HAM) perspective which is expected to provide a broader understanding of what forms of respect for human dignity and humanity, which are non-discriminatory towards religious differences, because all citizens have the exact position of rights as humans and citizens within the framework of the constitution and human rights.

3) The Maqashid Sharia perspective provides solutions to issues in inter-religious marriage in Indonesia. In this case, it is necessary to develop Indonesian *ushul fiqh*, rather than other *fiqhs* that are oriented towards the culture of the Middle Eastern School or Western Schools. *Al-mashalih al-daruriyyat, al-hajiyyat, and al-tahsiniyyat must be used to protect five things: religion, soul, reason, property, and descendants (nasab).*

The results of the study indicate that existing legal regulations continue to give rise to various interpretations, and the absence of clear rules often leads to the practice of interfaith marriages being carried out through alternative channels, such as registration abroad or pseudo-religious conversions (*fraus legis*). From the perspective of the sociology of Islamic law, interfaith marriages not only affect

individuals but also create social dynamics in society that resist this practice. Meanwhile, the Maqashid Syariah approach provides an understanding that protection of religion (*hifz ad-din*), descendants (*hifz an-nasl*), and human rights must be considered in formulating more inclusive legal policies.

This study concludes that more adaptive legal reform is needed to accommodate the reality of interfaith marriages in Indonesia. The state needs to formulate regulations that are not only oriented towards legal certainty, but also consider aspects of social justice and humanitarian values, as outlined in the *maqashid sharia*.

### Recommendations and Suggestions

Recommendations and suggestions that can be given in this research regarding the problem of interfaith marriages in Indonesia include:

1. Efforts are needed to make changes or reformulations in the field of marriage law through modifications to the Law on Marriage, which can create justice and legal certainty for all citizens.
2. There is a need for equality of views in understanding inter-religious marriage, so that its implementation fosters harmony in overcoming the dualism of views on inter-religious marriage in Indonesia.
3. District Court Judges who have the authority to examine and decide cases submitted to them, especially those involving interfaith marriages, are expected to have a strong basis for their consideration so that they can be held accountable.

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