



# Inter-religious marriage between Fragrance Law and Maqasid al-Shari'ah

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| ARTICLE INFO   | ABSTRACT   |
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| <p>Keywords:</p> <p>Interfaith marriage;<br/>Women of the Scripture;<br/>Legal illat;<br/>Maqasid al-shari'ah.</p> <hr/> <p>Article history:</p> <p>Received 2025-07-24<br/>Revised 2025-07-27<br/>Accepted 2025-08-06</p> | <p>Surah Al-Māidah (5:5) permits Muslim men to marry women from among the People of the Book (Ahl al-Kitāb). However, Article 40 (c) of the Compilation of Islamic Law (Kompilasi Hukum Islam, the Compilation) in Indonesia explicitly prohibits marriage with both polytheist and Ahl al-Kitāb women. In Indonesia's positive law, interfaith marriage is not explicitly regulated. Law No. 1 of 1974 on Marriage stipulates in Article 2 (1) that a marriage is valid if it is conducted according to the laws of the respective religions and beliefs of the parties involved. Consequently, interfaith marriages are only considered legally valid if one party converts to the religion of the other. This study aims to analyze interfaith marriage from the perspective of Islamic jurisprudence (fiqh al-munākahāt). It employs a qualitative research method with a descriptive-analytical approach through literature review. The findings indicate that the legal rationale (‘illat al-ḥukm) behind the prohibition of interfaith marriage is based on theological and fundamental religious grounds. The stipulations in the Compilation align with the core objectives of Islamic legal theory (maqāṣid al-sharī‘ah), particularly the objectives of safeguarding religion (ḥifẓ al-dīn) and preserving lineage (ḥifẓ al-nasl). Therefore, the transformation of classical Islamic jurisprudence into the Compilation represents an effort to codify and unify Islamic family law within Indonesia's national legal framework, taking into account the public interest (maṣlaḥah) and the socio-religious context of Indonesian Muslim society.</p> <p>Contribution: This research elucidates the rationale behind the legal prohibitions and demonstrates how the transformation and unification of classical fiqh into Indonesia's statutory legal framework reflect considerations of public interest and local Muslim societal context. Thus, the study offers valuable insights into the harmonization of religious jurisprudence and state law in a pluralistic society.</p> |

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## 1. INTRODUCTION

One of the fundamental characteristics inherent in humans is the drive to live collectively and interact socially. Humans, by their nature as homo socius, cannot live individually without the presence of other people in their lives. This is in accordance with the classical concept in sociology, which states that humans are social beings, as stated by Aristotle, which was later reinforced in modern social studies (Giddens, 2006).

Within this social framework, marriage is one of the most important social institutions that functions to maintain the continuity of human communities and civilization. Marriage is not merely a bond between two individuals, but an institution that has social, legal, moral, and spiritual dimensions. From an Islamic perspective, marriage is part of the sunnatullah, namely God's universal decree that applies to all His creatures, both humans, animals, and plants.

In the Islamic context, marriage is seen not only as a social contract but also as an act of worship and part of religious commandments. Sayyid Sabiq (1980), in his work *Fiqh al-Sunnah*, states that marriage is the way chosen by God as a way for humans to reproduce and maintain offspring legally, sacredly, and with dignity. Marriage also serves as a means to channel biological instincts in an honorable manner, while simultaneously fostering psychological and social peace between partners (Sabiq, 1980). Furthermore, marriage is also a human goal to prosper the earth. Humans cannot live alone, as Allah proclaims in the Qur'an, Surah Ad-Dzariat, verse 49, which reads:

وَمِنْ كُلِّ شَيْءٍ خَلَقْنَا زَوْجَيْنِ لَعَلَّكُمْ تَذَكَّرُونَ

"And everything We created in pairs so that you remember the greatness of God. So quickly return to (obey) Allah" (Al-Qur'an, 2022).

Marriage is also a natural need of every human being that provides very important results, the basis of marriage is based on the Law of the Republic of Indonesia number 1 of 1974 concerning Marriage. Marriage is a physical and spiritual bond between a man and a woman as husband and wife, with the aim of forming a happy and eternal family (household) based on the One Almighty God (Tim Redaksi Nuansa Aulia, 2020). The purpose of marriage is to form a happy and eternal family, besides that marriage is also a social interaction, for that husband and wife need to help and complement each other, so that each can develop their personality to help and achieve spiritual and material well-being because the purpose of marriage is to form a happy, eternal and prosperous family, then this law adheres to the principle to make it difficult for divorce to occur, there must be certain reasons and must be done in front of a court hearing (Tim Redaksi Nuansa Aulia, 2020).

In addition to the marriage law that explains everything about marriage, there are also regulations that serve as a guide for judges in resolving problems, namely the Compilation of Islamic Law (Compilation). In general, KHI can be interpreted as a collection of opinions of Islamic jurists who discuss and answer contemporary issues. In Article 18 of the Compilation of Islamic Law, there is a rule that in order to carry out a marriage, among other things, the husband and wife must not have any obstacles to marriage. This means that a marriage cannot take place if there are certain prohibitions. For example, the prohibition of marriage between a man and a woman due to certain circumstances is prohibited in Article 40(c). In this article, it states "a woman who is not Muslim" means that a Muslim man may not marry a woman who is not Muslim.

In classical Islamic jurisprudence, non-Muslims are divided into two groups: polytheists and people of the book. From the perspective of mushrik fiqh, the four schools of thought agree that it is permissible to marry women from the people of the book (Mughniyah, 2011). In the book of Bidayatul Mujtahid, as well as the jumhur fuqaha, it is permissible to marry independent women of ahlul kitab (Rusyd, 2016). Likewise, with Sayyid Sabiq's opinion in his book of Sunnah jurisprudence regarding the legal status of makruh marrying a woman from an Ahlul Kitab (Sabiq, 1980). Thus, we can understand that, according to Islamic jurisprudence, marriage to a woman from the People of the Book is permissible, whereas in Article 40(c) of the Compilation of Islamic Law, it is not permitted. This is interesting to analyze because there are differing opinions regarding the law of marrying a woman from the People of the Book.

Several previous studies have also shed light on this issue. Najib & Khosiyah (2025) examined interfaith marriages from the perspective of 'illat (laws) and Maqasid al-Shari'ah (the principles of Islamic law). This normative-explanatory study in-depth discusses the causes (illat) and objectives of Islamic law (maqasid), and found that interfaith marriages have the potential to cause social and familial harm if they do not fulfill the objectives of Maqasid al-Shari'ah, such as protecting religion and offspring (Najib & Khosiyah, 2025). Awaliya Safithri & Ash Shiddiqi (2024) examine the impact of registering interfaith marriages on the protection of the civil rights of spouses and children, as well as family integrity, from the perspective of the maqāṣid of sharia. They highlight the importance of official registration to guarantee

civil rights and legitimate offspring, in line with the objectives of the maqāṣid (Safithri & Shiddiqi, 2024).

Lukman Hakim (2023) wrote an article on Hifzh al Din as a legal consideration for interfaith marriage from the perspective of Fiqh al-Maqasid. He highlighted that the prohibition on interfaith marriage was adopted as an effort to maintain the identity of the Muslim faith and minimize the risk of apostasy or identity conflict in children. (Hakim, 2023). Budiarti (2018) in *Justicia Islamica* used the maqāṣid al syārī'ah approach to analyze Indonesian positive law (Marriage Law and Compilation), finding that the norms that stipulate religion as a requirement for the validity of marriage are not discriminatory, but rather serve to maintain the objectives of sharia in the context of the Pancasila state (Budiarti, 2018). Meanwhile, Fauzi et al. (2023) examines the analysis of interfaith marriage through the maqāṣid sharia approach. They concluded that the practice of interfaith marriage usually contradicts the maqāṣid sharia, including the principles of din, nafs, aql, nasl, and mal (Fauzi et al., 2023).

This article presents a novelty by examining interfaith marriage not solely from a textual legal dimension (nas), but also within the framework of uṣūl al-fiqh, namely by analyzing the 'illat al-ḥukm (rational reasons behind a law) and how this relates to the principles of maqāṣid al-sharī'ah. Thus, this research serves not only as a normative study, but also as a hermeneutic of Islamic law in the context of plural Indonesia. Another novelty is a critical analysis of the epistemic tension between classical fiqh law and state law, as well as the possibility of contextual ijtihād based on maqāṣid to respond to the challenges of religious pluralism in modern Indonesian society.

This study aims to analyze the differences in views between classical Islamic jurisprudence (fiqh) and Indonesian positive law, particularly in the Compilation of Islamic Law, regarding the issue of interfaith marriage. In this context, there is a discrepancy between the scholarly authority of classical jurists, who tend to prohibit interfaith marriage, and the reality of positive law in Indonesia, which exists in a contested space between religious norms and the state constitution. This study also aims to identify the 'illat al-hukm' or rationale behind the permissibility or prohibition of interfaith marriage from the perspective of the Islamic jurisprudence schools, by considering the epistemological and methodological aspects of the determination of classical Islamic law.

Furthermore, this study will examine the issue of interfaith marriage within the framework of Maqasid al-Shari'ah, namely the fundamental objectives of Islamic law, such as hifz al-din (protecting religion), hifz al-nasl (protecting offspring), and hifz al-'aql (protecting reason). Using this approach, the author will assess the extent to which legal policies, both permitting and prohibiting, align with or contradict the comprehensive protection of the public interest. Finally, this study also aims to offer a discourse on the reconstruction of Islamic law that maintains its normative authority but is more responsive to the social, political, and cultural dynamics of religiously pluralistic Indonesian society. Therefore, the results of this study are expected to contribute to the development of contemporary Islamic jurisprudence discourse that is relevant, contextual, and firmly rooted in the values of Maqasid al-Shari'ah.

## 2. METHOD

This study uses a qualitative approach with a descriptive-analytical method, namely an approach that aims to describe and analyze legal phenomena in depth based on non-numerical data, particularly through a review of relevant literature. This approach was chosen because it is in accordance with the characteristics of normative Islamic legal studies that emphasize the interpretation of legal texts, both those sourced from texts (the Qur'an and Hadith) and positive legal products, such as the Compilation of Islamic Law. In line with the statement by Lexy & Moleong (2018), a qualitative approach is very effective in exploring meanings, concepts, and social constructions that cannot be explained through statistical data, and is able to explore the depth of meaning from texts and contexts (Lexy J. Moleong, 2018).

The data collection technique was conducted through library research, namely reviewing various relevant literature sources, such as classical fiqh books, legal interpretations, official legal documents (Compilation), academic journals, and contemporary scientific books that discuss the issue of interfaith marriage. Library research allows researchers to systematically construct arguments based on existing authoritative sources (Creswell, 2018). Researchers also conducted a critical review of the KHI articles relating to interfaith marriage and compared them with classical Islamic jurisprudence legal constructions from various schools of thought. The collected data was then analyzed using content analysis and legal hermeneutics to uncover the hidden meanings of the legal texts and reconstruct legal arguments contextually (Krippendorff, 2018). This analysis involves the interpretation of the 'illat al-hukm or legal rationality behind

the prohibition, as well as an assessment of it through the lens of Maqasid al-Shari'ah, in order to determine whether the prohibition is merely textual or has a broader dimension of benefit.

The initial findings of this study indicate that the prohibition on interfaith marriage in the KHI is based on fundamental theological grounds, namely differences in faith that are considered unbridgeable within the framework of the family institution. From the perspective of munakahat fiqh, this prohibition is also strengthened by considerations of maslahah (benefit), especially in terms of protecting religion, offspring, and household stability. The Compilation, as a codification of Islamic law in Indonesia, emphasizes in Article 40 letter (c) that marriage between a man and a woman of different religions is not permitted, without opening up space for ijtihad in light of the pluralistic social conditions of society. Thus, the Compilation is exclusive in this matter and does not tolerate interfaith marriage, in contrast to some contemporary opinions that tend to open up space for more inclusive legal interpretation (Salim, 2008).

### 3. RESULTS AND DISCUSSION

Literally, illat means illness or disease. It is called this because it can change the condition of something from its original state, for example, from strong to weak. It can also mean cause or reason. The scholars of Islam define illat as the attributes inherent in the original. These attributes serve as the basis for establishing the law of the original and for determining the law of far' for which the law has not yet been established. In simple terms, illat is referred to as *ma'nā al-hukm* (Sulami, 2010). 'A law's illat can be valid when several conditions are met, including: first, the illat of a law must be clear and not ambiguous, for example, the intoxicating nature of the prohibition of alcohol, this nature is clear so that all intoxicating drinks are categorized as alcohol. Second, the illat of a law must be permanent, that is, it does not change due to the conditions of the perpetrator, time, or place. Third, the illat of a law is not limited to the place of the law itself. Fourth, the illat of a law must be definite, whether indicated by qat'i or zannī evidence. Finally, the illat of a law must be constant, that is, it shows the existence of the law it contains at the time it is also present (Sulami, 2010).

Viewed from the perspective of the provisions of the creator of law (*shāri'*) regarding whether or not the nature is in accordance with the law, the scholars of *Uṣul al-Fiqh* divide it into four parts, namely (Sulami, 2010) First, *munasib mu'attir*, which is the agreement expressed by the *shar'*, perfectly, or in other words, that the creator of the law (*shari'*) has created the law in accordance with that nature. Second, *munasib mula'im*, which is the agreement expressed by the *shar'* in only one way. This means that the agreement is not expressed by the *shar'* as the legal 'illat' for the problem at hand, but is expressed as the legal 'illat' and mentioned in the nass for other problems of the same type as the law at hand. Third, *munasib mursala*, which is a *munasib* that is neither stated nor revealed by the *shar'*. *Munasib mursala* is something that is apparent to the mujtahid that establishing a law based on its basis brings benefits, but there is no evidence that states that the *shar'* permits or disallows it, such as compiling the Qur'an or a *mushaf*, there is no evidence that permits or prohibits it. However, Caliph 'Uthman ibn 'Affan saw its benefits for all Muslims, namely that the Qur'an would no longer be scattered because it was written in one book and could prevent Muslims from the possibility of disputes regarding the dialect of the Qur'an. Fourth, *munāsib mulghā*, which is a *munasib* that is not revealed by the *shar'* at all, but there are indications that establishing based on its basis is thought to bring benefits. Meanwhile, *Shar'* does not arrange the law according to the nature or 'illat, in fact, *Shar'* gives instructions regarding the cancellation of the nature.

#### Category of Women Who Are Not Muslim

Polytheists and infidels are those who are not Muslims. The first category is polytheism, as stated in Surah Al-Baqarah, verse 221. In Fakhruddin al-Razi's terminology, those who deny the existence of God, do not believe in the prophets, and the Last Day are called polytheists/mushrikah. Meanwhile, in the view of Ibn Jarir al-Tabari, they are idol worshippers and do not have a holy book. The second category of polytheists, according to the Qur'an, is Ahl al-Kitab, as stated in Surah Al-Ma'idah, verse 5. Literally, Ahl al-Kitab means "those who possess the book," a concept that grants certain recognition to adherents of religions other than Islam that possess holy books. This attitude is intended to grant recognition to the limited right of each individual to exist with the freedom to practice their respective religions.

The terminology of people of the book is a term used in the Qur'an to refer to two communities of adherents of the divine religions before Islam, namely Jews and Christians. In the books of fiqh, non-Muslims are divided into two: first, non-Muslims in the sense of polytheists, such as followers of the Zoroastrian faith; second, non-Muslims who adhere to other divine religions, such as Christians and Jews (Mujahid, 2019). In the Compilation of Islamic Law (Compilation), one of the normative sources of reference is the Qur'an, especially in the context of regulations regarding interfaith marriage. One of the verses frequently quoted in this discussion is QS. al-Ma'idah [5]: 5, which reads:

*"(And it is permissible to marry) women who maintain honor among believing women and women who maintain honor among those who were given the book before you, if you have paid their dowry." (QS. Al-Ma'idah [5]: 5) (Al-Qur'an, 2022).*

This verse is the basis for some scholars who permit Muslim men to marry women from the People of the Book (Jews and Christians), provided they are women who maintain their chastity (*muhsanat*). However, this verse does not mention the opposite, namely, the permission for Muslim women to marry men from the People of the Book. This then became a point of distinction in classical legal construction, where the majority of *fuqaha'* forbid marriage between Muslim women and non-Muslim men, including People of the Book. The Compilation of Islamic Law itself takes a firm position by not opening space for interfaith marriage. This is reflected in Article 40 (C) of the Compilation of Islamic Law, which states that one of the prohibitions on marriage is "between a man and a woman of different religions or beliefs." This provision does not distinguish whether the non-Muslim partner is a People of the Book or not, but absolutely closes the possibility of interfaith marriage. Although textually QS. Al-Ma'idah [5]: 5 opens up room for permissibility in certain cases, the Compilation, as a product of positive law, emphasises aspects of social welfare, protection of 'aqidah, and household stability in the context of Indonesian society, which is plural and prone to sectarian conflict. Thus, the Compilation adopts a stricter fiqh approach (*ihtiyat*), with the aim of avoiding greater damage (*mafsadah*).

The opinions of the *fuqaha'* regarding the above verse are very diverse. According to the Hanafi school of thought, marrying a woman from the People of the Book is haram if she is in a country at war with the Muslims (*dar al-harb*), because marrying her will cause harm and be dangerous. In such a state of war, the children of the marriage will tend to favor their mother. The Maliki school, on the other hand, proposes two alternative views: first, marrying a woman from the People of the Book is completely *makruh*, whether the woman is a *dhimmi* infidel or a resident of *dār al-harb*; second, marrying a woman from the People of the Book is not *makruh* because the Qur'an is silent about it, because it is considered as approval, so marrying a woman from the People of the Book is permissible. On the one hand, the diversity of opinions above is an example of the results of the *fuqaha'* regarding the conclusion that marrying a woman from the People of the Book has various legal conclusions (*mukhtalaf fih*). On the other hand, the political will of law in Indonesia is directed towards the development of codified and unified national law (*muttafaq 'alayh*).

### **Maqasid al-Shari'ah**

Linguistically, *maqasid al-shari'ah* consists of two words: *maqasid* and *shari'ah*. *Maqasid* is the plural form of *maqsad*, which means intention or purpose (Khairi, 2009). Meanwhile, according to Sheikh Al-Azhar, Mahmoud Syaltout, *shari'ah* is defined as the rules created by Allah to guide humans in regulating their relationships with God, with other humans, both Muslims and non-Muslims, and with the entire universe. Linguistically, we can say that there is a connection between *shari'ah* and water, in the sense of the attraction between means and ends. Something that is intended to be achieved is certainly something very important. *Shari'ah* is a way or path; water is something that is intended to be achieved (Syaltut, 2001). In explaining the meaning and essence of *maqasid al-shari'ah*, it can be understood that *maqasid al-shari'ah* is benefit. Benefit in the form of God's *taklif* can be manifested in two forms; first, in the form of essence, namely direct benefit in the sense of causality; second, in the form of *majazi*, namely the form that is the cause that leads to benefit (Bakri, 1996). Benefit in al-Shaṭibi's view can be seen from two perspectives: first, *maqasid al-shari'* (God's goal); second, *maqasid al-mukallaf* (the goal of the *mukallaf*).

The concept of *maqasid al-shari'ah* terminologically refers to the primary objectives of the establishment of Islamic law by Allah SWT. Within their theoretical framework, classical and contemporary

scholars of *uṣūl al-fiqh* agree that *maqasid* holds a central position as the philosophical and normative foundation of Islamic *shari'ah* (Kamali, 2008a). Bakri (1996) says that *Maqasid al-shari'ah* includes four main aspects, namely: first, the initial objective of the dispensation of law, namely to realize human welfare in this world and the hereafter; second, *shari'ah* as an object that must be understood; third, *shari'ah* as a form of *taklifi* law that must be implemented by *mukallaf*; and the ultimate goal of *shari'ah* is to bring humans within the corridor of Divine law (Bakri, 1996). Of these four aspects, the first occupies a central position in the study of *maqasid* because it is directly related to the primary essence of implementing *shari'ah*, namely the realization of public interest (*maslahah*). This idea is based on the view that all forms of Islamic legal legislation are aimed at safeguarding and protecting the well-being of humanity as a whole, both in this world and the hereafter (Al-Ghazali, 1993; Al-Shaṭibi, 2003). Within this framework, al-Shaṭibi states that the intended benefit must be realized through the protection of the five basic elements of human life known as *al-daruriyyat al-khamsah*, namely: first, religion (*al-din*), second, soul (*al-nafs*), third, reason (*al-'aql*), fourth, descendants (*al-nasl*), and fifth, wealth (*al-mal*). These five elements are the main pillars that must not be violated, because they function to maintain social order, human survival, and human success in achieving spiritual and material life goals (Auda, 2008).

The *maqasid* approach also continues to be developed in contemporary thought, such as by Jasser Auda (2008), which expands the *maqasid* framework to be more contextual and responsive to modern social realities, including issues of social justice, human rights and religious freedom. Thus, *maqasid* is no longer understood as a mere textual doctrine, but rather as a dynamic ethical-normative instrument in responding to the challenges of the times (Auda, 2008). Within the framework of the *maqasid al-shari'ah*, scholars divide the objectives of Islamic sharia into three hierarchical levels: *al-daruriyyat*, *al-hajiyyat*, and *al-tahsiniyyat*. This division aims to classify human needs based on their level of urgency in life and their relationship to the implementation of Islamic law (Auda, 2008; Kamali, 2008b).

*Maqasid al-Daruriyyat* are primary needs that must be maintained so that human life can proceed normally. If these elements are not maintained, then human existence will be threatened. This *Maqasid* includes five main things (*al-Daruriyyat al-Khamsah*), namely: first, *Hifz al-Din* (maintaining religion): for example, the obligation to engage in jihad or defend religion when under threat (QS. Al-Baqarah [2]: 190). This goal is also the reason why *sharia* prohibits coercion in religion (*la ikraha fi al-din*, QS. Al-Baqarah [2]: 256) (Al-Qur'an, 2022). Second, *Hifz al-Nafs* (protecting the soul): As the basis for the implementation of the law of *qisas* (equivalent retribution), as in QS. Al-Baqarah [2]: 179. This also includes the prohibition of killing without a justifiable reason (Al-Qur'an, 2022). Third, *Hifz al-'Aql* (guarding reason). It is the basis for the prohibition of consuming alcohol, narcotics, or anything that damages common sense, as mentioned in QS. Al-Ma'idah [5]: 90. Fourth, *Hifz al-Mal* (Guarding Wealth): The basis for enforcing the law against thieves (QS. Al-Ma'idah [5]: 38), the prohibition of usury, corruption, fraud, and other forms of economic injustice (see QS. Al-Baqarah [2]: 275–279). Fifth, *Hifz al-Nasl* (Guarding Offspring): It is the legal basis for the prohibition of adultery (QS. Al-Isra' [17]: 32) and the *hadd law on qazhf* (accusing adultery without evidence, QS. An-Nur [24]: 4) (Al-Qur'an, 2022). *Maqasid al-Hajiyyat* is a secondary need which, although not urgent, if ignored, can cause great difficulties for humans. An example is *rukhsah* (dispensation) in the *Shari'a*, such as relief from fasting for travellers or sick people (QS. Al-Baqarah [2]: 184–185), or relief in performing prayers in the middle of a journey (Al-Qur'an, 2022).

*Maqasid al-Tahsiniyyat* is related to the perfection of morals, ethics and moral values in human life. This goal includes things that can beautify life and show the height of Islamic law, such as recommendations for maintaining cleanliness, being fair, polite and dressing neatly. For example, the prohibition on eating with the left hand, etiquette in dressing, and other *adab* teachings. This division is an important contribution from classical *fiqh* scholars, such as Imam al-Ghazali in *al-Mustasfa* (1993) and Imam al-Shaṭibi in *al-Muwafaqat* (2003), and was later expanded by contemporary thinkers such as Jasser Auda (2008), who emphasized a systemic approach in understanding *maqasid*, and Mohammad Hashim Kamali (2008), who integrated *maqasid* with contemporary legal principles.

### Interfaith Marriage from the Perspective of *Maqasid al-Shari'ah*

The Islamic *Shari'a* revealed by Allah has no other purpose except as a blessing for the universe. In the study of *ushul fiqh*, the purpose of Islamic *Shari'a* is referred to as *maslahah*, that the purpose of establishing *Shari'a* is to realize benefits and avoid damage or *mafsadah*. Likewise, Allah sent the apostles

and prophets before Muhammad so that they could convey the message of revelation containing the rules of life for the happiness of human life in this world and the afterlife. Maslahah, as the goal of Islamic law, will be achieved if human life is protected and maintained. The Koran and hadith, with various legal provisions and existing sanctions for violations of these provisions, have the aim of realizing benefits and avoiding disaster. Because the goal of Islamic law is to achieve public welfare, humans are required to strive to seek knowledge so they can understand the intent of Islamic law itself (*maqasid al-shari'ah*). Furthermore, humans are also required to strive to find the right considerations in applying certain laws, so that the benefits achieved from implementing those laws are the true benefits as required by Islamic law (Baderan, 2024).

The Maqasid al-Shari'ah is divided into three levels. This division is based on the priority and importance of the objectives. These divisions are: first, the objectives of a *daruriyyah* nature; second, the objectives of the hajj (pilgrimage); and third, the objectives of a *tahsiniyyah* nature. The following is an explanation of each division of the *maqasid al-Shari'ah* (Aen et al., 2022). These primary goals encompass five things: first, safeguarding religion; second, safeguarding the soul; third, safeguarding reason; fourth, safeguarding descendants; and fifth, safeguarding wealth. The Hajj goal is a secondary goal. By realizing these goals, broadness (*tawassu'*) will be achieved and one will be free from the narrowness, hardship, and difficulties in life.

However, if this goal is not realized, it will not lead to destruction, but will lead to difficulties and hardships as well as narrowness. This goal also applies to issues of worship, customs, *mu'amalat* and *jinayat*. Meanwhile, *tahsiniyyah* goals are tertiary goals, taking something that is in accordance with the sense of beauty of customs and avoiding deceptive situations that are considered with a healthy and straight mind. This *tahsiniyyah* goal applies to matters of worship, such as increasing worship by performing *sunnah* practices (*nawafil*) such as giving *sadaqah*, *sunnah* prayers and others.

Regarding the five aspects of the *maqasid al-shari'ah* (the principles of Islamic law), when related to the issue of interfaith marriage, a review of the purpose of the Islamic law on marriage is something that must be understood correctly and thoroughly. Islam mandates marriage for Muslims for a specific and clear purpose. In addition to regulating human life, the law on marriage is intended to promote good and honorable living. One of the purposes of the law on marriage is to establish a family based on religious values so that the family can achieve happiness, peace, love, and mercy, as stated in the Quranic verse:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ ﴿٢١﴾

"Among His signs is that He created for you mates from yourselves, that you may find comfort in them, and He has placed love and compassion between you. Indeed, in this are signs for a people who give thought." (Qs: Ar-Rum: 21) (Al-Qur'an, 2022).

This verse explicitly indicates that the purpose of marriage is not only to preserve offspring (*nasl*) and avoid deviant sexual behavior, but more than that, to form an emotional and spiritual bond between husband and wife that complements each other. As emphasized by Al-Ghazali in *Ihya' 'Ulum al-Din*, marriage is a path to perfecting religion and a means of worship that brings us closer to Allah (Al-Ghazali, 2005). In classical and contemporary Islamic jurisprudence literature, many scholars have stated that marriage functions as an institution to maintain the *maqasid al-shari'ah*, particularly in the context of *hifz al-nasl* (protecting offspring), *hifz al-din* (protecting religion), and *hifz al-'ird* (protecting honor). For example, Al-Shatibi in *Al-Muwafaqat* explains that marriage is part of the *maqasid al-daruriyyat*, which is included in basic human needs for the survival of society and civilization (Bakri, 1996).

Furthermore, Muhammad Abu Zahrah also emphasized that marriage in Islam is a sacred agreement (*mithaqan ghalizhan*) which contains human values, compassion, moral responsibility, and protection of the rights of women and children (Zahrah, 2003). Thus, the concepts of *sakinah*, *mawaddah*, and *rahmah* are not merely normative rhetoric, but rather fundamental principles in building an ideal Islamic family. Implementing these values is crucial in fostering a household so that it can become a productive, harmonious, and religious social unit.

## Legal Interpretation of Interfaith Marriages

The compilation of Islamic law, as a source of positive law, has long been used as a reference by Religious Court judges in resolving emerging issues in Indonesia. The compilation of Islamic law, as a form of Indonesian jurisprudence, has its own style in resolving communal issues. Of the various articles that have been formulated since ancient times, it turns out that the compilation of Islamic law has many research issues that are discussed. Among these articles is a formulation that stipulates that a Muslim is prohibited from marrying a non-Muslim (Article 40 letter (C)). Thus, the compilation of Islamic law, especially in this article, has eliminated the discourse of differences of opinion on this issue, which will simultaneously be able to maintain religious faith and realize the welfare of the community (Tim Redaksi Nuansa Aulia, 2020).

According to Quraish Shihab in his Tafsir Al-Misbah, there are six main reasons behind the prohibition of interfaith marriage, especially with polytheists, which are summarized based on the interpretation framework of QS. Al-Baqarah verse 221 and QS. Al-Maidah verse 5, namely as follows (Mutaqin et al., 2022). First, Quraish Shihab emphasized that the permissibility of marrying People of the Book from QS. Al-Maidah verse 5 is canceled by the strict prohibition in the QS. Al-Baqarah verse 221, which prohibits marriage with polytheists until they embrace Islam, as the verse says:

وَلَا تَنْكِحُوا الْمُشْرِكِينَ حَتَّى يُؤْمِنُوا وَلَآئِمَةٌ مُؤْمِنَةٌ خَيْرٌ مِّنْ مُّشْرِكَةٍ وَلَوْ أَعْجَبَتْكُمْ وَلَا تُنْكِحُوا الْمُشْرِكِينَ حَتَّى يُؤْمِنُوا وَلَعَبْدٌ مُّؤْمِنٌ خَيْرٌ مِّنْ مُّشْرِكٍ وَلَوْ أَعْجَبَكُمْ أُولَٰئِكَ يَدْعُونَ إِلَى النَّارِ وَاللَّهُ يَدْعُو إِلَى الْجَنَّةِ وَالْمَغْفِرَةِ بِإِذْنِهِ وَيُبَيِّنُ آيَاتِهِ لِلنَّاسِ لَعَلَّهُمْ يَتَذَكَّرُونَ ﴿٢٢١﴾

*"Do not marry polytheist women until they believe! Indeed, a believing female servant is better than an idolatrous woman, even if she attracts your heart. Also, do not marry polytheist men (to believing women) until they believe. Indeed, a faithful male servant is better than a polytheist male slave, even if he attracts your heart. They invite them to hell, while Allah invites them to heaven and forgiveness with His permission. (Allah) explains His verses to people so that they learn the lesson" (Al-Qur'an, 2022).*

Quraish Shihab also emphasized the view that non-Muslim wives are very likely to commit shirk, referring to the hadith from Abdullah bin Umar (10 SH – 73H) that Allah never blessed a woman who called Jesus her Lord, the hadith reads; *"I do not know of any greater polytheism than the belief of a woman who says that her Lord is Jesus or one of the servants of Allah."*

Second, the permissibility is conditional, that is, it is permitted as a way out of urgent needs at that time, when Muslims often traveled far to carry out jihad without being able to return to their families, as well as for the purpose of da'wah. The leniency in QS. Al-Maidah is said to be temporary, possible for urgent needs when marriage is considered an effort to save the souls of the people or support da'wah rather than as a permanent norm. Third, the prohibition is motivated by the desire to create "sakinah" in the family, which is the goal of marriage. A new marriage will be lasting and peaceful if there is a harmony of life views between husband and wife, let alone differences in religion, cultural differences and even educational levels often give rise to misunderstandings and marital failure. Quraish emphasized that a successful marriage requires a common vision and belief, because differences in religion, even differences in culture and education can create serious conflict in the household.

Fourth, the series of editorials in the Qur'an, surah al-Maidah verse five above, has prioritized the mention of Muslim women over women of the People of the Book. This gives a signal that they (Muslim women) are given priority because even though the same religion and outlook on life really helps to create peace, it even determines the longevity of the household. Fifth, QS. al-Maidah verse five above closes with the threat "whoever disbelieves after believing, then his deeds will be erased, and so on, is a warning to everyone who eats, and/or plans marriage with them, to be careful lest this leads to disbelief because the result will be the torment of the afterlife. The closing of QS. torment in the afterlife.

Sixth, the verse above is placed after the statement about the infidels and the perfection of the Islamic religion. This suggests that these things are permitted, among other things, because Muslims have perfect religious guidance and because the infidels are so weak that they have given up hope against Muslims or converted them. Quraish interprets this as an indication that the previous allowance only applies at that time, not in the context of modern religious pluralism. In general, even though QS. Al-Maidah opens up the

scope of marriage permissibility with the People of the Book, Quraish Shihab emphasizes that the law is actually precise and strict, especially after the appearance of QS. Al-Baqarah verse 221. Reconstruction of the interpretation emphasizes efforts to maintain the stability of the Islamic family (*sakinah*), protect faith, and prevent apostasy, and emphasizes that this permissibility only applies in emergency conditions or certain historical contexts.

### The legal prohibition of marrying a woman of the People of the Book

Among the various problems of Interfaith Marriage is the legal status of Interfaith Marriage (IM), which is very crucial and controversial. In the Marriage Law No. 1 of 1974 and the Compilation of Islamic Law (hereinafter Compilation) articles 40, 44 and 61, this marriage is absolutely prohibited. Meanwhile, in the Counter Legal Draft (CLD Compilation), IM is permitted as long as it is within the limits to achieve the objectives of marriage.<sup>14</sup> The difference in the determination of the law on IM cannot be separated from the difference in views on who is meant by non-Muslims. Non-Muslims in the context of IM as contained in the Qur'an are polytheists (QS. al-Baqarah (2): 221), infidels (QS. Al-Mumtahanah (60): 10) and people of the book (QS. al-Maidah (5): 5). Thus, identifying who is categorized as polytheists, infidels and people of the book becomes a necessity. Illat Hukum is defined as the reasons which form the basis of consideration in determining a legal provision.

With the existence of legal grounds, a matter can be legally determined, such as the prohibition of alcoholic beverages, because there is a legal ground, namely the intoxicating nature (*assukr*), which is analogous to the prohibition of khamr. This is as stated in the verse of the Quran, which reads:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رَجَسٌ مِّنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ ﴿٩٠﴾

*O you who believe, indeed drinking alcohol, gambling, (sacrificing to) idols, and drawing lots of fortunes with arrows are abominable acts (and) are among the acts of Satan. So, stay away from those (deeds) so that you will be lucky. (Al-Maidah: 90)(Al-Qur'an, 2022).*

A legal "*illat*" can be a certain nature or condition that, due to that nature or condition, a problem can be determined as a law, or in other words, that the legal provisions can be changed from the original law. In Islamic law there are rules that emphasize that a legal provision for an event or problem does not have to be/must be valid forever in different places and times, meaning that a law for an event that is outwardly/materially the same may only be valid for a certain time, place and condition when the event occurs, but the legal provision must be reconsidered when it will be applied at a different time or place, it is even possible that the legal provision is not suitable so it is not valid and must be changed.

This is in accordance with the legal principle which states: "*It cannot be denied that changes in law occur due to changes in time, place and circumstances.*" (Ibrahim, 2019). In addition to the legal principles mentioned above, in the science of Usul Fiqh there are also other legal principles, namely that a law runs together with its "*illat*". The legal principles mentioned above indicate that the issue of the "reason of law" is a very important issue in the context of determining a law for an event, so that a legal provision is realized that truly has a clear basis for consideration. The issue of illat hukum must receive attention because a legal event, even though it has similarities with other events in dharma, does not necessarily have the same factors, elements and causes (Zahrah, 2003).

The practice of marriage between Muslim men and women from the People of the Book (Jews or Christians) occurred during the time of the companions and tabi'in, scholars of the Ahlus Sunnah wa al-Jama'ah also agreed that marriage with Jewish and Christian women or Ahlul Kitab was permissible because it had been done by the companions, for example Uthman Bin Affan, Thalhah bin Zubair, Ibn Abbas, and Hudzaifah, this had also been done by the Tabi'in such as Said bin al-Musayyab, Said bin Zubair, al-Hasan, Mujahid, Thawus, Ikrimah (Mujahid, 2019). However, some prominent Islamic figures held stricter views on this practice. One of them was Abdullah ibn Umar. He was known to have held a strict prohibition against this type of marriage, based on his understanding of the general prohibition against marrying polytheists as stated in the Quran.

Abdullah bin Umar once said, "Indeed, Allah has forbidden Muslims to marry polytheist women. So I do not know of a greater form of shirk than a woman who says that her Lord is Jesus, even though Jesus

is only Allah's servant and His Messenger" (Hazm, 2024). This statement demonstrates his concern over the faith of a married couple, which he believes could impact the integrity of faith and Islamic values within the family. Abdullah ibn Umar's opinion also aligns with the *sadd al-dhari'ah* (preventing harm) approach within the *maqasid al-syari'ah* (Islamic law). He is concerned that, although classical fiqh provides textual permission to marry women from the People of the Book (QS. Al-Maidah: 5), this practice can have negative consequences for children's education and the stability of family faith in a society that is not religiously homogeneous.

This view is also discussed in Yusuf al-Qaradawi's work (The Lawful and the Prohibited in Islam), where he emphasizes that the permissibility of marrying women from the People of the Book is conditional and not absolute. In the contemporary socio-cultural context, which is predominantly non-Islamic, such marriages can create a religious identity dilemma for offspring and risk the continuity of Islamic values in the household (Al-Qaradawi, 1999). Abdurrahman I Doi states in his book that he has witnessed many problems with food served at interfaith marriages. For example, a non-Muslim mother might serve food forbidden in Islam, and the children would eat it. Similarly, the mother would drink alcohol as part of her religious ceremonies. Thus, these habits would gradually infiltrate the household (Doi, 1996).

Some scholars, such as Yusuf al-Qaradawi, define legal changes based on differences in historical context. According to him, legal changes based on different conditions and situations only apply to laws based on customs and traditions, because customs and traditions are constantly changing according to the needs of human life. With changes in customs and traditions, legal provisions change. Regarding the legal justification for interfaith marriage, there are several opinions: First, that the permissibility of a Muslim man marrying a non-Muslim woman, in this case specifically for Ahl al-Kitab women, is based on the textual meaning of the provision (QS. al-Maidah [4]: 5) which clearly permits the marriage of a Muslim man to a woman of *Ahl al-Kitab*. Second, the permissibility of a Muslim-non-Muslim marriage is based on hermeneutic interpretation (Grondin, 1994).

The historical context of the revelation (*asbab an-nuzul*) of the verse prohibiting Muslims from marrying polytheists is different from the current context. The circumstances under which the verse prohibiting marriage between a Muslim and a non-Muslim (in this case, polytheists) were revealed during a time of conflict and war between Muslims and non-Muslims. Because such conflict, let alone war, no longer exists, the prohibition on marriage has been changed to a law of "permission." The aforementioned prohibition on marriage between a Muslim and a non-Muslim is no longer valid and cannot be applied in the current context, because the context, situation, and conditions have changed and are different from the context in which the verse was revealed (Madjid, 2004). The prohibition of marriage between Muslims and polytheists is based on the *'illat* (reason). The *'illat* mentioned textually in this verse is that they are polytheists and they invite to hell, namely a forbidden act that will cause the perpetrator to enter hell. 27 Thus, the *'illat* of the law prohibiting marriage between Muslims and polytheists is a theological issue, namely a fundamental difference in faith.

### Considerations for marrying women from People of the Book in Fiqh and the Compilation

From various texts of the Qur'an and hadith, the majority of scholars agree that Muslim women are not permitted to marry non-Muslim men, whether they are polytheists or people of the Book. This provision refers to the words of Allah in QS. Al-Baqarah [2]: 221: "*And do not marry your women to polytheists until they believe*" (Al-Qur'an, 2022). This prohibition is absolute, covering all non-Muslim men without exception, including the People of the Book (Jews and Christians). This is different from Muslim men who, according to some scholars, are permitted to marry women from among the People of the Book, based on QS. Al-Ma'idah [5]: 5 which states: "And (permitted) are women who guard their chastity from those who were given the Book before you." However, this permissibility is not without conditions. Scholars such as Ibn Hazm in *Al-Muḥalla* emphasize that the women of the People of the Book in question are those who truly still adhere to the original teachings of the Torah and the Gospel, not those who have deviated or recognized the trinity as part of their beliefs (Hazm, 2024).

The problem that arises in the contemporary context is: are Christians today still included in the category of People of the Book as referred to in the Qur'an? Some contemporary scholars, such as Yusuf al-Qaradawi (1999), are of the view that Christians today have experienced a significant change in their beliefs, especially because of the concept of the Trinity and the recognition of Jesus as the son of God, which is contrary to monotheism. This is emphasized in QS. Al-Bayyinah [98]: 1-6 and QS. At-Taubah [9]:

30, where it is stated that the Jews say Uzair is the son of Allah and the Christians say Al-Masih is the son of Allah, beliefs which in Islam are considered forms of disbelief (Al-Qaradawi, 1999). Furthermore, in the interpretation of Jalalayn by Imam Al-Mahalli and As-Suyuthi (2015), the term "Ahl al-Kitab" in the Koran does refer to Jews and Christians, but their status as people of the Book does not necessarily negate their disbelief after associating partners with Allah with His creatures. Therefore, even though they are called "ahl al-Kitab", they are still categorized as infidels if their beliefs conflict with the principle of monotheism (Al-Mahalli & As-Suyuthi, 2015).

In contemporary Islamic jurisprudence discourse, there are differing views among scholars regarding the status of non-Muslim women, particularly Christian or Jewish women, in the context of marriage to Muslim men. Some scholars categorize women from the People of the Book as a group that Muslim men can still marry based on explicit texts in the Qur'an, such as in Surah Al-Ma'idah verse 5. However, many scholars also argue that Christian women today are no longer included in the category of People of the Book in the sense intended by the Qur'an, so marrying them is considered impermissible. In this context, they are even considered infidels or polytheists, because they have deviated from the pure teachings of monotheism (Nasution, 1995).

In the study of Islamic jurisprudence (*usul fiqh*), the term "*yubahū wa la yajuz*" is used, which literally means permissible but not permissible. This serves as an epistemic framework for considering laws that are externally permissible but, from the perspective of benefits and harms, are deemed inappropriate. Marriage between a Muslim man and a woman from the People of the Book falls into this category. Theologically, there are similarities between Islam, Christianity, and Judaism in their recognition of God, prophethood, and the Last Day, which theoretically opens up the possibility of creating marital harmony. However, in socio-theological reality, many scholars view this type of marriage as more detrimental than beneficial, particularly regarding the potential for deviation from faith, children's education, and household stability (Fadl, 2001; Kau, 2013).

In establishing Islamic law, the *sadd al-dhari'ah* method is used, namely a preventive method that aims to close the path to *mafsadat* (damage). This principle is based on the principle:

درأ المفاسد مقدم على جلب المصالح

"Preventing harm takes priority over attracting harm"

This principle is used by jurists to prioritize preventing harm, even if the act is legally permissible. In this context, although the text of the Quran permits marriage to women of the People of the Book, to avoid potential harm such as poor religious education for children, household disharmony, and the possibility of a religious identity crisis, most scholars choose to prohibit it (Kamali, 2008b; Miswanto, 2019). As explained in the rules of *fiqh*: "When the *halal* and the *haram* come together, the *haram* wins" (*al-haram yaglibu 'ala al-halal*). Thus, legal considerations in the jurisprudence of *munakahat* (marriage law) tend to prioritize the principles of caution (*iḥtiyāt*) and prevention of harm (*mafsadat*). Therefore, although marrying a woman from the People of the Book is textually permissible, in the context of a complex and pluralistic modern society, the majority of scholars are of the opinion that such marriages should be avoided or even prohibited, considering the potential for significant negative impacts (Al-Qaradāwī, 1997; Kamali, 2008a). By referring to the principle of *sadd al-dhari'ah*, it can be concluded that when the potential for damage (*mafsadat*) is greater than the benefit, then the road (*wasilah*) that leads to it must also be closed. Therefore, the original law of marriage, which is permissible, can experience a shift to become *haram* in order to maintain public benefit (*maslahah 'ammah*) and the principle of protecting religion (*ḥifz al-din*) as one of the main objectives of *maqasid al-syari'ah* (Al-Shaṭibi, 2003; Kau, 2013).

#### 4. CONCLUSION

The legal ruling regarding the prohibition of marrying women from the People of the Book is based on theological reasoning, namely the existence of fundamental differences in faith. From the perspective of *fiqh munakahat*, this prohibition is strengthened by the application of the *sadd al-dhari'ah* method, a legal approach that prioritizes preventing the possibility of harm (*mafsadat*) rather than seeking benefits. The *fiqh* principle that states "*dar' al-mafssid muqaddam 'alā jalb al-masaliḥ*" (preventing harm is prioritized over seeking benefits) is the basis that even though there is leniency in the text, in practice the law of marriage

to women from the People of the Book remains prohibited because it is feared to have a greater negative impact on religious life and Muslim families.

The Compilation of Islamic Law (Compilation) expressly prohibits marriage between Muslim men and non-Muslim women, whether they are polytheists or members of the People of the Book. Article 40 (c) of the Compilation is formulated based on the principles of Islamic law, taking into account the welfare of the community and the primary objectives of the *maqasid al-shari'ah* theory, namely safeguarding religion (*hifz al-dīn*) and safeguarding offspring (*hifz al-nasl*). The change in the legal characteristics of *fiqh munakahat* in the Compilation indicates a process of codification and unification of Islamic law within the Indonesian national legal system. The *fiqh* adopted in the Compilation is the result of *ijtihad* that takes into account the socio-cultural conditions of Indonesian Muslims. Therefore, this article emphasizes that the Compilation does not compromise on marriage between Muslims and non-Muslim women, including those belonging to the People of the Book. Thus, the law of marrying a non-Muslim woman is expressly declared haram within the national legal framework through the Compilation of Islamic Law.

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