

## Research Article

# Analysis of Decision of Surabaya State Court Number 916/Pdt.P/2022/PN. Sby on Interreligious Marriage Review of DUHAM Positive Law and Maqashid Shariah

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**Abstract.**

Interfaith marriage is a new phenomenon that has surfaced in Indonesia with the circulation of court decisions that allow interfaith couples to marry, one of the most recent being the Surabaya court decision Number 916/Pdt.P/2022/PN.Sby. In his decision, he ordered the Department of Population and Civil Registry of the City of Surabaya to record interfaith marriages in the register. While the basis used by the plaintiff included, among others, Article 27 of the 1945 Constitution, Article 10 Paragraph 1 of Law Number 39 of 1999 concerning Human Rights, Jurisprudence. The main problem in this writing is the extent to which interfaith marriage arrangements are viewed from the United Nations Declaration of Human Rights (UDHR), Positive Law, and Islamic Law with the Maqasid Syari'ah approach. The writing method used is normative research with descriptive qualitative processing and analysis. The results of this study conclude that interfaith marriages are invalid by looking at the current conditions, referring to the Al-Qur'an Surah Al-Baqarah verse 221, Al-Mumtahanah verse 10, and Al-Maidah verse 5.

**Keywords:** analysis, court decision, interfaith marriage

## 1. Introduction

Marriage in Arabic is known as an-wedding. an-Nikah[1] which means al-wat'u and addammu wa at-tadakhul, sometimes it is also called ad-dammu wa al-jam'u which means intercourse, gathering and contract.[2] Even marriage in fiqh literature is called by the two words marriage and zawaj.[3] These two words are commonly used in everyday life and are widely found in the Koran and hadiths of the Prophet Muhammad. For example, the word na –ka – ha ( نكح ) in the Qur'an which means marriage as contained in the Qur'an Surat an-Nisa' verse 3, means: And if you are afraid you will not be able to do justice to ( the rights of) orphaned women (if you marry them), then marry

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(other) women you like: two, three or four. Then if you are afraid that you will not be able to do justice, then (marry) only one person, or the slaves you have. That is closer to not doing wrong

Likewise the word *zawaj* in the Qur'an which means marriage as found in QS. al-Ahzab verse 37, meaning: And (remember), when you say to the person whom Allah has bestowed favors on him and you (also) have bestowed favors on him: "Hold on to your wife and fear Allah", while you hide it in your heart what Allah will reveal, and you are afraid of people, while Allah is the one who has more right for you to fear. So when Zaid finished the needs of his wife (divorcing her), We married you to him so that there would be no objection for the believers to (marry) the wives of their adopted children, if the adopted children have fulfilled their needs than his wife. And it is God's decree that it must happen.

In the *majaz* sense, marriage is termed a contract, where the contract is the permissibility of intercourse.[4] Since marriage is a contract, marriage is defined as a very strong contract or *mitsaqan ghalidhan* (ميثاقا غليظا) to fulfill Allah's commands and carrying it out is worship.[5] In other words, marriage (marriage) according to the original meaning is sexual relations while according to the *majazi* meaning or legal meaning, marriage (*kawin*) is a contract or agreement that makes sexual relations lawful between a man and a woman as husband and wife.[6]

The term implementation of marriage is defined as a sacred agreement to bind oneself in marriage between a man and a woman in order to form a happy and eternal family. Holy here means having elements of religion or Belief in the One and Only God.[7] Therefore, the meaning based on Belief in One Almighty God means that marriage does not just happen, but as a gift from God to humans as civilized beings, therefore marriages are carried out in a civilized manner in accordance with religious teachings passed down by God to humans.[8]

While the meaning of marriage (marriage) in a sociological perspective that marriage is a process of exchange between rights and obligations as well as awards and losses that occur between a husband and wife. Because marriage is a process of integration of two individuals who have socio-cultural backgrounds, as well as different wants and needs, the process of exchange in this marriage must always be negotiated and mutually agreed upon.[9] So that in the sociological context, that marriage will not occur if there is no mutual agreement, namely to sail the household ark together.

## 2. Methods

The method used is Library Research using qualitative methods for descriptive analysis because this writing is to describe the facts and phenomena that occur in interfaith marriages in Indonesia and provide an overview of the impact on women and children based on the Universal Declaration of Human Rights, Positive Law, and Maqashid Syari'ah.

## 3. Results and Discussion

Interfaith marriages or also known as interreligious marriages are marriages carried out between men and women, each of which has a different religion, for example, a marriage between a Muslim man or woman and a non-Muslim man or woman. Meanwhile, according to experts according to Rusli and R. Tama, stated that interfaith marriage is a physical and spiritual bond between a man and a woman, which because of different religions, causes the binding of two different regulations regarding the terms and procedures for carrying out marriages in accordance with their respective religious laws, with the aim of forming a happy and eternal family based on belief in the One and Only God.

In the provisions of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (Marriage Law), it does not regulate interfaith marriages. In a sense, Article 1 of the Marriage Law states regarding the definition of marriage that: "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 Belief in the One Supreme God."

The meaning of "birth bond", has the meaning that the parties who are bound by formal marriage are husband and wife both for them in relation to each other and to them with the wider community. The definition of "physical and spiritual bond" in marriage means that in the heart of the husband and wife concerned there is a genuine intention to live together as husband and wife with the aim of forming and fostering an eternal happy family. Just be spiritual, but these two elements must be present in every marriage.

In this regard, Article 2 of the Marriage Law regulates the validity of a marriage which states that: a) Marriage is valid if it is carried out according to the laws of each religion and belief." b) Every marriage is registered according to the applicable laws and regulations.

In this formulation it is known that there is no marriage outside the law of each religion and belief. In the provisions of Article 2 Paragraph (1) of the Marriage Law it shows the legal requirements for marriage according to religion, while in Article 2 Paragraph (2) of the Marriage Law it is legal according to the law after fulfilling paragraph (1) first which then records the continuation of the marriage. The act of recording does not determine the validity of a marriage, but states that the event did exist and occurred, so it is purely administrative in nature.

MPR Vice Chairman H. Yandri Susanto, SPt, urged the Supreme Court (MA) to overturn the decision of the Central Jakarta District Court that granted the application for registration of interfaith marriages. Judges within the Supreme Court must refer to the Constitutional Court's decision to refuse to legalize interfaith marriages. In addition, Yandri continued, the decision of the Central Jakarta District Court to grant the application for interfaith marriage is also contrary to the fatwa of the Indonesian Ulema Council (MUI) which has issued a fatwa on the prohibition of interfaith marriage. The MUI fatwa in July 2005, signed by K.H. Ma'ruf Amin, states that interfaith marriages in Indonesia are haram and invalid. Previously, the Jakarta District Court granted an interfaith marriage application requested by the Christian applicant JEA to marry SW, a Muslim woman. The District Court granted the application for interfaith marriage in decision number 155/Pdt.P/2023/PN.Jkt.Pst.[10]

Even the Constitutional Court (MK) through its chairman, Anwar Usman, decided to reject the lawsuit regarding interfaith marriage in a hearing on Tuesday (31/1/2023). In its conclusion, the Constitutional Court emphasized that the main petition regarding interfaith marriage was not legally grounded in its entirety.

The Constitutional Court stated that it still adheres to its stance that interfaith marriages regulated in the Marriage Law are in accordance with and not contrary to the constitution. This means that marriages of different religions in the country are not legally justified. In his consideration, MK judge Wahiduddin Adams stated that the Constitutional Court did not find any changes in circumstances and conditions regarding the issue of the constitutionality of marriage validity and registration. Therefore, there is no urgency for the Constitutional Court to shift from its stance on this matter in accordance with previous decisions.

That the Constitutional Court remains in its stance on the constitutionality of a valid marriage is that which is carried out according to religion and belief and every marriage must be registered in accordance with statutory regulations, after the Constitutional Court has listened to the testimony of the parties, experts, witnesses, and examined

the facts of the trial. Thus, the petitioner's arguments regarding Article 2 paragraph (1) and paragraph (2) and Article 8 letter f of Law 1/1974 are unreasonable according to law.

Therefore, the basis of a claim regarding the norms of Article 2(1) and (2) and Article 8(f) of Law 1/1974 does not contradict, among other things, the principle of guaranteeing the right to embrace religion and worship according to one's religion and beliefs, the right to life and freedom from discriminatory treatment, the right to form a family and continue offspring. As guaranteed by Article 29 paragraph 1 and paragraph 2, Article 28E paragraph 1 and paragraph 2, Article 27 paragraph 1, Article 28I paragraph 1 and paragraph 2, Article 28B paragraph 1, and Article 28D paragraph 1 of the 1945 Constitution,". It was noted that the lawsuit of interfaith marriage was tried at the Constitutional Court in 2014 with a number of student applicants and the Constitutional Court rejected the application, presenting a number of arguments stating the unconstitutionality of Article 2 paragraph (1) and paragraph (2) and Article 8 letter f of Law Number 1 Year 1974 concerning Marriage. According to them, marriage is a human right that is a decree or destiny of God, everyone is considered entitled to marry anyone regardless of religious differences. On that basis, the applicant argues that the state cannot prohibit or not recognize interfaith marriages. The state should also be able to provide a solution for interfaith couples.

Then another reason expressed to challenge the Marriage Law is regarding Article 2 paragraph (1) which is considered to have caused different interpretations of what is meant by the law of each religion and belief and if marriage is only allowed with those of the same religion, it is considered to cause the state to essentially force its citizens.

Meanwhile, according to Constitutional Court Judge Prof. Enny Nurbaningsih, human rights are rights recognized by Indonesia which are then contained in the 1945 Constitution as the constitutional rights of citizens. However, human rights that apply in Indonesia must be in line with Indonesia's ideological philosophy based on Pancasila as the nation's identity.

The Indonesian Ulema Council (MUI) said it was grateful for the Constitutional Court's stance. MUI Deputy Secretary General for Law and Human Rights Ikhsan Abdullah stated that the Constitutional Court's decision was in accordance with Law 1/1974, namely that marriage must be based on religion and belief. Interfaith marriages are invalid because they are not in accordance with the law. MUI has given attention and appreciation to the Constitutional Court for the decision regarding the lawsuit of interfaith marriage. MUI hopes that in the future there will be no citizens who do legal smuggling and religious smuggling to get around interfaith marriages. If that is done, he said, it means that the person has deliberately gone against the law and violated religious law.

Even Coordinating Minister for Human Development and Culture Muhadjir Effendy assessed that the Constitutional Court's decision on the lawsuit regarding interfaith marriage could provide certainty. The decision ends the polemic regarding interfaith marriage, which has been in the gray area, which has become a polemic, a debate, if it has been decided by the Constitutional Court, it will become clear.[11]

### 3.1. Interfaith Marriage Positive Legal Perspective

The discussion of interfaith marriage in Indonesia is a complicated one. Prior to the enactment of Law No. 1 1974 on Marriage (hereinafter abbreviated as the Marriage Law), interfaith marriages were categorized as mixed marriages.

The mixed marriage is regulated in *Regeling op de Gemengde Huwelijk stbl*. Article 1 of the GHR states that a mixed marriage is a marriage between persons who are subject to different laws in Indonesia. According to Sudargo Gautama, the article has the meaning of differences in legal treatment or different laws, which are caused, among others, by differences in citizenship, religious residence, class of people, place of residence or religion.[12]

After the enactment of the Marriage Law, mixed marriage is expressly stated in Article 57, namely mixed marriage in this Law is a marriage between two people who in Indonesia are subject to different laws, due to differences in citizenship and one of the parties has Indonesian citizenship. Thus, interfaith marriages are no longer included in mixed marriages. Interfaith marriage has become a polemic in itself. The Marriage Law, which does not clearly regulate interfaith marriages, makes the implementation of interfaith marriages relatively difficult. Article 2 of the Marriage Law even states that marriage is valid if it is carried out according to each religion and belief.[13]

From this article, it can be stated that marriage in Indonesia is a marriage based on religious law. Thus, marriages that are not based on or violate religious law are considered invalid. From this origin, it is usually understood that interfaith marriages that are not allowed by a religious law are also invalid. On the other hand, there is an understanding that there is a legal vacuum regarding this interfaith marriage, because it is not clearly regulated. Based on Article 66 of the Marriage Law, the old regulations, namely the GHR, are reverted to.

In order to avoid confusion in the understanding of interfaith marriage in Indonesia, it is necessary to study the interpretation of marriage law teleologically, namely the purpose of the law makers in formulating the marriage law, especially in relation to the regulation of interfaith marriage in Indonesia.[14]

Marriage as a way of obtaining offspring and at the same time as a way of maintaining offspring has been regulated in such a way as an effort to maintain human glory. Human beings are noble creatures of Allah and glorified creation, therefore so that he does not fall into humiliation and disgrace, Islam regulates how to obtain offspring. This is so that humans live in order and peace wherever they are. This is because peace and tranquility are basic needs for every human being. It is a universal need without being limited by religion, belief, and ideology. Marriage should be a way for humans to obtain peace and tranquility in their lives.

In addition to maintaining lineage, marriage also aims to preserve and protect religion. Thus, marriage must also consider the protection of religion and faith (Islam). In Islam, marriage which is associated with the maintenance or protection of faith is regulated in such a way that marriage does not destroy one's faith (in this case the Islamic faith).

In today's society, a marriage is considered valid if it has received recognition from the state. In the Republic of Indonesia as a state based on Pancasila, where the first principle is "God Almighty", marriage is considered to have a very close relationship with religion or spirituality so that marriage not only contains physical or physical elements but also contains inner or spiritual elements, besides that, marriage has an important role, especially since the enactment of Law Number 1 of 1974 concerning Marriage in which Article 2 paragraph (1) states that there is no marriage outside the law of each religion and belief.

Law Number 1 of 1974 concerning Marriage in which Article 2 paragraph (1) states that there is no marriage outside the law of each religion and belief. With the existence of article 2 paragraph (1), the implementation according to their respective religions and beliefs has become an absolute requirement to determine whether a marriage is valid or not. There is no problem if marriage is only carried out between people of the same religion or belief. The way to obtain such recognition often varies from one country to another. Given that various religions and beliefs exist and are recognized in our country, it is not surprising that we often encounter or hear of marriages between people of different religions or beliefs.

Indonesian Muslims face a unique and dilemmatic situation. On the one hand, as Indonesian citizens, they are obliged to obey and submit to the prevailing laws and regulations. On the other hand, as Muslims, they are entitled and obliged to follow and submit to Islamic law and sharia. In addition, Indonesian society is a society of multiple religions and beliefs, making it possible for marriages to occur across religions and beliefs. Meanwhile, religion and belief is one of the aspects of human life that

is sensitive to be questioned. The state is obliged to regulate citizens to reduce the resistance to conflict between religious communities.

The issue of interfaith marriage which Muslims cannot accept can be seen in the concept of human rights itself, namely the concept of individualism, collectivism and personalism. The concept of individualism which contains the meaning that every human person has the widest possible freedom and no one can interfere with it. Even the government should not interfere except to protect other individual liberties. In contrast to the concept of collectivism which implies that society is a collectivity that develops and is driven by mechanical forces beyond individual will. The concept of personalism, which tries to bring together the concepts of individualism and collectivism, sees that the human person cannot be seen as a sovereign individual and also cannot be seen as collectivism. Namely those who view the human person as a social person.

In its application the Marriage Law does not regulate the existence of interfaith marriages, the provisions of Article 2 Paragraph (1) of the Marriage Law indicate that religious law is a philosophical basis and legal basis which is an absolute requirement in determining the validity of a marriage. Therefore based on the Marriage Law it is not possible to have interfaith marriages, because each religion already has legal provisions that bind them and contain fundamental differences and it is impossible to unite them.

Wahyono Darmabrata noted that there are four ways that are commonly used by interfaith couples to get married, namely as follows:

1. Ask for a court order first. It is on the basis of this stipulation that the couple gets married at the Civil Registry Office. However, this method can no longer be implemented since the issuance of Presidential Decree No. 12 of 1983.
2. Marriage is carried out according to the laws of each religion. Marriage is first carried out according to the religious law of one of the bride and groom (usually the husband), then followed by a marriage according to the religious law of the next bride. The problem is which marriage is considered valid. If marriage according to the second (last) law becomes an issue again regarding the status of the first marriage.
3. Both spouses determine the choice of law. One view states submission to the laws of his partner. In this way, one partner 'changes religion' as a form of obedience to the law.
4. What is often used later is to get married abroad. Several recorded artists chose this method as an effort to get around the difficulty of interfaith marriage in Indonesia.



If interfaith marriages are carried out by people who are Muslim and Christian, then problems arise regarding the registration of marriages. Is it at the Office of Religious Affairs or at the Office of Population and Civil Registry because the provisions for registering marriages for Muslims and non-Muslims are different. If it turns out that the registration of interfaith marriages will be carried out at the Population and Civil Registry Service, an examination will be carried out in advance whether the interfaith marriages being held fulfill the provisions in Article 2 of the Marriage Law. If the employee of the marriage registrar is of the opinion that there is a prohibition against the marriage according to the Marriage Law, then he can refuse to register the marriage.

In connection with interfaith marriages that take place, they have legal consequences for the following matters:

### **3.1.1. Legal consequences for the status and position of the child**

Whereas a legitimate child in Article 42 of the Marriage Law is a child born in or as a result of a valid marriage. From these provisions it can be said that to determine whether a child is legal or not depends on whether a marriage is legal or not. Thus, children from marriages of different religions are illegitimate children or children out of wedlock.

### **3.1.2. Legal consequences for marital status**

In article 2 paragraph (1) of the Marriage Law, marriages tend to fully surrender to the laws of each religion to determine whether or not marriages of different religions are allowed. In fact, all religions in Indonesia prohibit interfaith marriages. So that marriages of different religions are also prohibited according to the Marriage Law and this results in the marriage being invalid both according to religious law and national law.

Thus, interfaith marriage in the positive law that exists and regulates marriage in Indonesia, that is, the Marriage Law actually does not provide clear arrangements for interfaith marriage. However, the meaning of the provisions of Article 2 Paragraph (1) of the Marriage Law returns to the respective religious laws. In Indonesia itself, which adheres to pluralism in life, the religions in Indonesia do not adhere to interfaith marriages. So that interfaith marriage is a marriage that cannot be allowed according to the Marriage Law. Interfaith marriages also have legal consequences for the status of children and the status of the marriage itself.

### 3.2. Inter-Religious Marriage Perspective of UDHR

Thoughts about human rights or human rights are suspected to have emerged several centuries ago, as contained in Magna Charta (1215), Petition of Rights (1628) and Bill of Rights (1689). The term human rights, among others, appears as a substitute for the terms Rights of Man, Rights of Woman or Natural Rights.[15] As one of the greatest humanitarian achievements after World War II was the conceptualization and dissemination of the Universal Declaration of Human Rights on December 10, 1948. This declaration coincided with the two International Covenants, namely the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, Cultural Right of 1966 is generally known as the International Bill of Human Rights. In general, the Declaration and the two Covenants are a joint effort to create a better, just world and international cooperation that benefits all.[16]

The issue of interfaith marriage which Muslims cannot accept can be seen in the concept of human rights itself, namely the concept of individualism, collectivism and personalism.[17] The concept of individualism which contains the meaning that every human person has the widest possible freedom and no one can interfere with it. Even the government should not interfere except to protect other individual liberties. In contrast to the concept of collectivism which implies that society is a collectivity that develops and is driven by mechanical forces beyond individual will. The concept of personalism, which tries to bring together the concepts of individualism and collectivism, sees that the human person cannot be seen as a sovereign individual and also cannot be seen as collectivism. Namely those who view the human person as a social person.

Apart from that, Islam in essence does not conflict with human rights, and even respects human rights and freedoms. If the principles in the Qur'an are summarized, there are many points that strongly support the universal principles of human rights. These principles were then stated in various Muslim meetings. The first is the Universal Islamic Declaration of Right, held by a group of Islamic scholars and leaders at a Conference in London in 1981 which was officially declared by UNISCO in Paris. The declaration contained 23 articles regarding human rights according to Islam.

The London Declaration was then followed by the Universal Declaration of Islamic Human Rights called the Cairo Declaration of Human Rights in Islam (CDHRI 1990) issued by the Organization of the Islamic Conference (OIC) in 1990.

There are 25 important points regulated in the Cairo Declaration of Human Rights in Islam (CDHRI-1990), namely:

1. Humans are one family, there should be no form of discrimination.

2. The right to life and safety of a person is guaranteed and the responsibility of the authorities determines it.
3. Prohibition of killing non-involved parties, the elderly, women and children during war. Old people must be given care. In addition, it is also prohibited to damage plants or cut down trees.
4. The right to get a good name.
5. The right to marry and found a family.
6. Women's rights are the same as men's and enjoy the rights to enjoy and responsibility. The husband is responsible for his family and virtue.
7. Since birth children have rights. Babies in the womb and their mothers must be protected and given special services.
8. Every human being has the right to enjoy legal protection
9. The right to acquire knowledge is a responsibility and duty of society and the government to provide education.
10. Forbidding anyone to influence Muslims to convert.
11. Prohibit colonization and oppression of anyone
12. The right to freedom of movement
13. The right to get the job you choose and personal safety at work. There should be no discrimination between women and men in matters of work, wages or otherwise
14. The right of every human being to benefit without monopoly or fraud and oppression and prohibit usury.
15. Original ownership rights are obtained legally according to law
16. The right to get a guarantee for every business that produces results or legal ownership is protected.
17. Every human being has the right to live in a clean and safe environment and the state is obliged to provide it.
18. Every human being has the right to live in a safe environment for himself, his religion, his dependents and so on
19. Every individual is equal before the law and has the right to justice.

20. Prohibiting the detention or restriction of the movement of a person without the power of law.
21. Forbidding the taking of ransom for any purpose.
22. Every human being has the right to speak as long as it does not conflict with Sharia principles.
23. Prohibit abuse of power and emphasize that every human being has the right to be involved in managing his country.
24. Every right and freedom as set forth in the declaration is subject to Islamic Sharia.
25. Reminded that only Syari'ah Islam may be used as a reference source to obtain explanations regarding matters in the CDHRI

The birth of the Cairo Declaration of Human Rights in Islam was initially because Muslims and Islamic countries in general could accept the Universal Declaration of Human Rights (UDHC) or the Universal Declaration of Human Rights (DUHAM). However, there are points that are a problem for Muslims, namely article 18, namely the article regarding the right to religion and the right to change religion. Apart from that, Article 16 of the Universal Declaration of Human Rights[18] regarding interfaith marriage is also unacceptable to Muslims.

### 3.3. Interfaith Marriage Perspective of AL-Maqasid As-Syariah

What is the goal of law enforcement is often known as Al-Maqasid As-Syariah. Al-Maqasid is the plural of almaqsid which means goal, Ulama usul fiqh defines Al Maqasid As-Syariah, namely the meaning and purpose desired by the conditions in stipulating a law for the benefit of mankind. Al-Maqasid As-Syariah among Ulama Fiqh scholars is also called asrar ash-shariah, namely the secrets that are behind the law determined by syara' in the form of benefit for humanity both in this world and in the hereafter.[19]

The history of Al-Maqasid As-Syariah has existed or has been considered as a basis for establishing law since the time of the Prophet Muhammad SAW, as it was told that one time the Prophet Muhammad prohibited Muslims from storing sacrificial meat except within certain limits, just provisions for three days. However, several years later the rules set by the Prophet Muhammad were violated by the companions. The problem was conveyed to the Prophet Muhammad. He justified the actions of the friends while explaining that the prohibition on storing sacrificial meat was based on the interests of Al-Daffah (guests consisting of poor people who came from villages around Medina).

After that, the Prophet Muhammad said, “Now keep the sacrificial meat, because there are no more guests who need it.”

From this case it can be seen that with the prohibition on storing sacrificial meat it is hoped that the aim of the shari’a can be achieved, namely to make room for the poor who come from hamlets on the outskirts of Medina. After the reason for the prohibition was no longer there, the prohibition was abolished by the Prophet SAW. And efforts like that, so on are also carried out by friends. Such efforts are clearly seen in several legal provisions made by Umar Ibn al Khattab.[20]

Al Maqasid As Sharia as one of the goals of Islamic law which can be achieved in several ways, one of which is through ijihad. The purpose of Islamic law can be seen from two aspects, namely the first aspect of the maker of Islamic law, namely Allah and His Messenger and the second aspect of the human being who is the actor and implementer of Islamic law.

From the first aspect, the purpose of Islamic law is to meet the needs of human life which are primary, secondary and broadcast, which in Islamic terms are daruriyyat[21], hajjiya[22] and tahsiniyyat[23]. Then the next objective of Islamic law is to be obeyed and carried out by humans in their daily life and the last one is still from the objective of Islamic law from the first point of view, so that it is obeyed by humans, humans must increase their ability to understand Islamic law by studying the *usul al fiqh*, namely the basis for the formation and understanding of Islamic law as the methodology. And from the second point of view, the aim of Islamic law is for humans themselves to achieve a happy and prosperous life by taking advantage and preventing or rejecting harm.[24] Muhammad Thahi bin Asyur (contemporary jurisprudence expert from Tunisia) divides Al Maqasid AsSyariah in terms of its object into three parts, namely:

1. Al Maqasid Al-Ammah (general goals), namely something that is ‘maintained in accordance with the rules and strives to achieve it in various fields of shari’a such as upholding and defending religion from threats from enemies.
2. Al Maqasid Al-Khassah (specific goals), namely goals to be achieved in certain topics such as goals to be achieved by *syarak* in law related to marriage and family issues or goals to be achieved by *syarak* in economics and others
3. Al Maqasid Al-Juz’iyyah, namely the goal to be achieved by the conditions for establishing the law, the conditions for determining the obligatory law, *sunnah*, *haram*, *makruh* and permissible for something or determining something as a cause, condition and obstacle. It is permissible to have a relationship helping each other. For example, praying is obligatory to maintain religion, adultery is forbidden

to maintain lineage and honor and so on. According to Imam Asy-Syatibi (expert of the Maliki school of jurisprudence) in order to realize the benefit of the world and the hereafter there are five points that must be realized and maintained. The five points are:[25]

4. Religion, the maintenance of religion is the most essential thing from the revelation of sharia. Because religion, in this case, the entire creed, sharia, and morals are the first and foremost needs of humans. Upholding religion perfectly is an obligation that must be fulfilled by everyone who has confessed the creed. For this reason, Islamic law is obliged to protect the religion one adheres to and guarantees the freedom of everyone to worship according to their religious beliefs.[26]
5. The soul, protecting and guaranteeing the soul is maintaining the right to live in an honorable manner and guaranteeing that persecution and murder do not occur. Forbidding the loss of one's own soul or that of others without good reason. In Islamic law it prohibits killing as stipulated in Surah Al-Israa Verse 33, namely, Meaning: And do not kill a soul that is forbidden by Allah (kill it), but with a correct (reason). And whoever is killed unjustly, then surely We have given power to his heirs, but let the heirs not transgress in killing. Truly he is the one who gets help. In Islam one of these rules is qisas law.[27]
6. Intellect, damage to reason is damage to humanity as a whole because reason exists as a means of distinguishing good from bad and that is not found in other than humans. In its maintenance, Islam guarantees freedom to work, think and express opinions. And all actions that can lead to the destruction of reason by Islam are expressly prohibited. For example, the prohibition of intoxicating drinks or what is known as khamr which in the Qur'an is regulated in Surah Al Maidah verse 90, meaning: O you who believe, indeed (drinking) intoxicants, gambling, (sacrifice to) idols, raffle fate with arrows, is an act of Satan. So stay away from those actions so that you get good luck.[28]
7. Offspring (honor), maintenance of offspring in Islam has a serious portion of attention. The destruction of the human generation will result in the destruction of the whole human being. Therefore, Islam prescribes the institution of marriage as the only legal means for maintaining human offspring and honor. For example, the prohibition of committing adultery is regulated in Surah Al-Israa verse 32, "And do not approach adultery; Verily adultery is an abominable act. And a bad way." And the prohibitions on marriage which are detailed in the Qur'an Surah An-Nisa verse 23, mean: It is forbidden for you (to marry) your mothers; your daughters; your

sisters, your father's sisters; your mother's sisters; the daughters of your brothers; the daughters of your sisters; your mothers who breastfeed you; suckling sister; your wife's mothers (in-law); the children of your wife who are in your care from the wife you have mixed with, but if you have not mixed with your wife (and have divorced), then you are not sinful to marry her; (and forbidden to you) the wives of your biological children (in-law); and bringing together (in marriage) two women who are sisters, except what has happened in the past; verily Allah is Forgiving, Most Merciful.[29]

8. Wealth, Islamic law regulates and evaluates assets from the time they are acquired to the time they are spent, in addition to protecting the assets that are in a person's self. In guaranteeing wealth, Islam forbids theft, punishes hadd against thieves, forbids fraud, damages other people's property, forbids usury and so on.

The concept of Al Maqosid As Sharia can be used to resolve discourse around interfaith marriages, where the concept of Al Maqosid As Sharia is also used by scholars in solving various problems that arise in accordance with the development of the current era. Every religious problem that arises in the midst of the Muslim community, the expected legal answer is an essential solution.

Al Maqosid As Sharia as the goal of Islamic law. Where to achieve these goals there are several ways, namely the method of ijihad. When applied in cases of interfaith marriage, among others;

1. Contrary to the concept of religious maintenance. Maintenance of religion as one of the most important, because the maintenance of religion is the main goal of Islamic law. It is said that because religion is a way of human life. If a person cannot maintain his own religion then there is nothing else that can be used as a guide in his life. There is no limit to doing good and bad deeds. This means he (human) will be further away from the purpose of life that should be.
2. Contrary to the concept of caring for the soul, it is almost in line with the concept of maintaining religion. Humans are born with a clean soul without being contaminated by anything whatsoever. Marriage in principle is to unite two different souls and merge into one to achieve the same goal. What happens when interfaith marriages are that the existing souls cannot merge because in principle they are different. Different principles will give birth to contradictions in it. What is the purpose of the marriage will not be realized besides that it can make the soul weak and if this happens the relationship with God becomes weak then it will be

easily withdrawn from religion (apostasy). So the harm caused will be more than the benefits it will get.[30]

3. Contrary to the concept of maintenance of reason, reason is what distinguishes humans from other creatures. Allah bestowed reason on man to be used as well as possible. A mind that has been contaminated by the doctrines of lust (love), will not be able to use its mind properly (unable to think clearly). It will be easy to be seduced into error (apostasy) because they do not use their minds and minds properly. So in that case there will be no more benefits to be gained other than greater harm.
4. Contrary to the concept of nurturing offspring, another purpose of a marriage is to produce offspring. Where these descendants are the successors of the previous human race. From these offspring, it is hoped that it will be better. Whether it's a Muslim man with Ahl al-Kitab or not. At the time of the Prophet Muhammad SAW when marriages were carried out with different religions the Prophet required both of them to have the same religious beliefs because this would have an impact on their further lives where marriage was to unite two different souls to subsequently become one in the way of Allah and uphold sharia.
5. Contrary to the concept of maintenance of property, someone who marries with different religions cannot inherit from one another. Thus there is no maintenance of assets. If this happens, it will also have an impact on the offspring because the offspring cannot inherit from each other. Because religious differences abort the right to inherit each other. That way justice will not be achieved when one child gets an inheritance while the other does not because their parents have different religions. Instead of that there is a bigger harm[31]. Against interfaith marriage there is not a single benefit that will be obtained because the harm that is obtained is more. For this reason, Islam prohibits interfaith marriages because there is no goal to be obtained.

Seen in the concept of Islam in relation to freedom which is the most important part of human rights, Islam has clearly positioned humans in a noble place. Humans are creatures that are given priority over other creatures, as mentioned in the Qur'an in the letter At-Tin verse 4, meaning: indeed, We have created humans in the best form.

But in matters of freedom only God is the owner of absolute freedom and will. Humans, although created as the main creature among other creatures, he is given limited freedom, limited to his capacity as a creature that lives on earth which has many limitations. Human limitations are due first of all to the relative or relative existence



of the human being before God, because of the natural surroundings, because of the existence of other humans. The attempt to transcend human limitations is a dangerous illusion. Dangerous is not to the Most Infinite, namely God but to humans themselves.

The basic difference regulated in the Universal Declaration of Human Rights and that regulated in the Cairo Declaration of Human Rights in Islam is regarding the right to marry and found a family. In the Universal Declaration of Human Rights everyone (men and women) has the right to marry regardless of ethnicity, nationality and religion, while in the Cairo Declaration of Human Rights in Islam the right to marry regardless of race and nationality. And religious differences can be a barrier to the bond of a marriage.

The liberal Islamic community sees interfaith marriage as something normal and legitimate because they refer to and make the Universal Declaration of Human Rights their benchmark. In other words, everyone is married without discrimination of ethnicity, nationality, or even religion.

The existence of Islamic law in the world is to regulate human life, both as individuals and as members of society so that they can behave according to the will of the Creator.[32] Which is generally intended to regulate human life as members of society (ordering van het social eleven). Therefore the existence of Islamic law (especially sharia) is related to the existence of humans as servants of Allah who must submit and obey His commands. And for this reason, Islamic law prohibits actions that in principle damage human life even though those actions do not violate the rights of others or harm other people.

## 4. Closing

The problem of interfaith marriage will likely remain a problem as long as everyone does not share the same views. Not that everyone is required to have the same views. At least the views of the scholars who have more knowledge should continue to think and explore so that true justice is obtained and it does not conflict with Shari'ah Law. The writer's conclusion is that interfaith marriages are invalid by looking at current conditions, referring to Al-Qur'an verse 221, Al Mumtahanah verse 10 and Al Maidah verse 5. In various interpretations of the three verses that are often used to discuss interfaith marriages, if a Muslim woman marries a non-Muslim man, the law of the marriage is invalid (haram), if a Muslim man marries a non-Muslim woman (musyrik), then the law of the marriage is invalid (haram).

Finally, marriage between a Muslim man and a Muslim woman (ahl al-Kitab) was initially permissible with the exception that Muslim men have faith that is strong enough

that with this marriage it is possible to attract non-Muslim women to follow the religion of Muslim men. So it is not arbitrary for Muslim men to marry Muslim women. However, because marriages between Muslim men and non-Muslim women (people of the book) are often used as a tool by non-Muslims to carry out conversions, interfaith marriages must be avoided and declared haram. Thus the concept of Al Maqasid As Sharia as a guide to be applied and maintained. In general, according to the author, interfaith marriages have the potential to cause separate legal issues, both for the husband and wife themselves and for outsiders/third parties.

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- [18] ([1]) every man and woman, without discrimination on race, nationality or religion, has the right to marry and establish a household. They have the same rights during and after marriage.( ) Marriage must be carried out freely and with the consent of both parties.
- [19] Encyclopedia of Islamic Law, PT Ichtisar Baru Van Hoeve, Jakarta, p. 1109
- [20] [www.google.com](http://www.google.com). \Maqasid Al Syariah.htm accessed on 07 March 2023
- [21] Daruriyyat (primary needs) are the main needs that must be protected and maintained as well as possible by Islamic law so that the benefit of human life is truly realized.
- [22] Hajjiyyat (secondary needs) are the needs needed to achieve primary needs such as examples of independence, equality and so on
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