

## MARRIAGE BETWEEN MUSLIM AND AHL AL-KITAB: A REVIEW OF MUI FATWA No.4/MUNAS VII/MUI/8/2005

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### **Abstrak**

*Fatwa MUI No. 4/MUNAS VII/MUI/8/2005 secara tegas melarang pernikahan antara laki-laki Muslim dan wanita Ahli Kitab, berbeda dengan beberapa pandangan fiqh klasik yang membolehkannya. Penelitian ini mengkaji landasan hukum fatwa tersebut berdasarkan Al-Qur'an, Hadis, dan Qawaid Fiqhiyyah, dengan menggunakan metode penelitian pustaka. Data diperoleh dari kitab-kitab fiqh, dokumen fatwa, serta literatur akademik yang relevan. Hasil penelitian menunjukkan bahwa MUI mendasarkan larangan ini pada prinsip dar'ul mafasid muqaddamun 'ala jalbil mashalih, dengan tujuan mencegah potensi kemudaratannya bagi umat Muslim. Studi ini juga membahas bagaimana fatwa ini dibandingkan dengan pendapat ulama kontemporer dan dampaknya terhadap regulasi hukum pernikahan di Indonesia. Penelitian ini memberikan perspektif baru dalam memahami kebijakan fatwa terkait pernikahan lintas agama serta implikasinya dalam konteks sosial dan hukum Islam.*

**Kata Kunci:** Fatwa MUI, Pernikahan Beda Agama, Ahl al-Kitab, Qawaid Fiqhiyyah

### **Abstract**

*The MUI Fatwa No. 4/MUNAS VII/MUI/8/2005 strictly prohibits marriage between Muslim men and women from Ahl al-Kitab, differing from some classical fiqh opinions that allow it. This study examines the legal basis of the fatwa based on the Qur'an, Hadith, and Islamic Legal Maxims, using a library research method. Data were obtained from fiqh books, fatwa documents, and relevant academic literature. The findings reveal that the MUI bases this prohibition on the principle of dar'ul mafasid muqaddamun 'ala jalbil mashalih, aiming to prevent potential harm to the Muslim community. This study also explores how this fatwa compares with contemporary scholars' opinions and its impact on marriage regulations in Indonesia. The research provides a new perspective on understanding fatwa policies regarding interfaith marriage and their implications in the socio-legal context of Islamic law.*

**Keywords:** MUI Fatwa, Interfaith Marriage, Ahl al-Kitab, Islamic Legal Maxims

### **A. Introduction**

Indonesia is a country with a high level of religious diversity. Based on data from the Indonesian Information Portal, there are 6 religions

recognized by the Unitary State of the Republic of Indonesia (NKRI), including; Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism. Islam has the largest adherents at around 87.2%, followed by Protestant Christianity at 6.9%.<sup>1</sup> In the midst of the plurality of Indonesian society, the practice of interfaith marriage is one of the crucial issues that continues to emerge in public discourse. As interfaith interactions increase in various sectors of life, the phenomenon of marriage between Muslim and non-Muslim individuals has also increased, both overtly and secretly through various legal loopholes. In practice, data from the Indonesian Conference on Religion and Peace (ICRP) shows that cases of interfaith marriage continue to increase from year to year, from 825 couples in 2017 to 1,655 couples in 2023.<sup>2</sup>

National law through Law No. 1/1974 Article 2 paragraph (1) states that marriage is valid when performed according to the laws of each religion<sup>3</sup>, There is no official mechanism to legalize interfaith marriages without conversion. On the other hand, Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law explicitly stipulates that interfaith marriages, especially between Muslims and non-Muslims, are generally prohibited under Islamic law. This is reflected in Article 44 of the KHI, which states that marriage between a Muslim man and a non-Muslim woman, or vice versa, is haram and invalid. This article illustrates the theological view in Islam regarding the importance of religious equality in a marriage, which is considered a valid requirement in the context of conjugal relations.

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<sup>1</sup> "Agama," Indonesia.go.id Portal Informasi Indonesia, 2023, <https://indonesia.go.id/profil/agama>.

<sup>2</sup> Syahriani Siregar, "ICRP Catat Tren Kenaikan Pasangan Beda Agama Dari Tahun Ke Tahun," Pontianak Post, 2023, <https://pontianakpost.jawapos.com/nasional/1462746656/icrp-catat-tren-kenaikan-pasangan-beda-agama-dari-tahun-ke-tahun>.

<sup>3</sup> Indonesia, *UU No. 1 Tahun 1974 Tentang Perkawinan* (Jakarta: Sekretariat Negara, 1974).

Article 44 of KHI reads as follows<sup>4</sup>:

"Marriage between a Muslim man and a non-Muslim woman or a Muslim woman and a non-Muslim man is forbidden and invalid according to Islamic law."

This prohibition is based on the principle that marriage between Muslims and non-Muslims can lead to conflicts in religious understanding and faith, which can affect family harmony and discredit the religious values that exist in marriage<sup>5</sup>. Although the KHI provides guidelines in regulating marriage according to religious law, it does not explicitly make room for interfaith marriages without certain conditions. Therefore, many couples apply to the District Court.<sup>6</sup> In fact, the Supreme Court has also issued Supreme Court Circular Letter (SEMA) No. 2 of 2023 which prohibits all courts from granting applications for registration of interfaith marriages.<sup>7</sup>

This phenomenon shows a gap between social reality and legal regulations and religious norms, which in turn creates new complexities in religious and state life, leaving legal uncertainty, social polemics, and a religious identity crisis in the family.<sup>8</sup> In the midst of this legal vacuum, people tend to look for references to religious authorities, one of which is the Indonesian Ulema Council (MUI)<sup>9</sup>. Through MUI Fatwa No. 4/2005, it is stated that interfaith marriage is haram and invalid, whether between a Muslim man and a non-Muslim woman or vice versa<sup>10</sup>. However, this fatwa

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<sup>4</sup> Departemen Agama R.I, *Kompilasi Hukum Islam* (Yogyakarta: Pustaka Widyatama, 2006).

<sup>5</sup> MUI, *Perkawinan Campuran* (1974).

<sup>6</sup> Rakhmad Hidayatulloh Permana, "Daftar Pengadilan Yang Izinkan Nikah Beda Agama, Terbaru PN Jakpus," *detikNews*, 2023, <https://news.detik.com/berita/d-6791541/daftar-pengadilan-yang-izinkan-nikah-beda-agama-terbaru-pn-jakpus/2>.

<sup>7</sup> Bintang Ulya Kharisma, "Surat Edaran Mahkamah Agung (Sema) Nomor 2 Tahun 2023, Akhir Dari Polemik Perkawinan Beda Agama?," *Journal of Scientech Research and Development* 5, no. 1 (2023): 477–82, <https://doi.org/10.56670/jsrd.v5i1.164>.

<sup>8</sup> Faisal Afda and Budi Prasetyo, "Membedah Pengaturan Dan Sanksi Pernikahan Beda Agama Dalam Hukum Indonesia" 13 (2024): 393–406, <https://doi.org/10.37893/jbh.v13i2.946>.

<sup>9</sup> Ansori, Mughni Labib, and Marwadi, *Dinamika Pemikiran Hukum Islam Majelis Ulama Indonesia Studi Pembaharuan Fatwa, Sustainability (Switzerland)*, vol. 11 (Semarang: Fatawa publishing, 2020).

<sup>10</sup> Majelis Ulama Indonesia, *Fatwa MUI Perkawinan Beda Agama*, 2 Majelis Ulama Indonesia 472–77 (2005).

does not stand in a vacuum. It was born from a long dialectic between sacred texts, scholarly *ijtihad*, and socio-cultural considerations, which in Islamic legal studies is known through the *maqasid syariah* approach. Therefore, it is important to conduct a study that not only looks at this fatwa normatively, but also traces the epistemic framework and the arguments used, including how this fatwa represents *qaul mu'tamad* or the strongest and most accepted legal opinion in the *mazhab*.

This research uses a qualitative method with a literature approach to describe a number of theoretical discussions and interpret the context of written references<sup>11</sup>. This approach was chosen because it allows the researcher to dig up in-depth information from various written sources, so as to obtain a comprehensive picture of the topic under study. The writing design chosen is a literature review, which involves collecting and analyzing data from various relevant literatures. In this research, content analysis was conducted on MUI Fatwa Number: 4/Munas VII/MUI/8/2005 to understand the decision and the legal basis used. In addition, this research is also complemented by the analysis of a number of scientific journals that discuss the law of marriage between Muslims and ahlu kitab. The main focus of the analysis is on the legal basis used, with a special emphasis on *qaul mu'tamad*, which is the favored opinion in Islamic law. Thus, this research not only describes the existing theory and context, but also interprets and assesses the legal basis that is considered the most relevant and favored in this interfaith marriage issue.

## B. Definition of Fatwa and Interfaith Marriage

The word fatwa is an Arabic word. According to al-Fayumi, fatwa comes from the word *al-fata*, which literally means strong youth<sup>12</sup>. Consequently, when someone asks for an opinion on the law, a mufti is expected to have strong arguments and knowledge. Fatwa itself is a

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<sup>11</sup> Masrukhin, *Metodologi Penelitian Kualitatif* (Kudus: Media Ilmu Press, 2014).

<sup>12</sup> Al-Fayumi, *Al-Misbah Al Munir Fi Gharib Al-Syarh Al-Kabir Li Al-Rafii* (Kairo: Mathbaah al-Amiriyah, 1965).

singular word with the plural form *fatawa* or *fatawi*, which refers to the answer or decision of a mufti on an issue. However, fatwa can also be interpreted more broadly as life lessons, advice, or helpful suggestions<sup>13</sup>.

According to Yusuf Al-Qardhawi, a fatwa is an explanation of sharia law in a particular context in response to a question from a person or group, whether the question is specific or general<sup>14</sup>. However, Wahbah az-Zuhaili's view is that fatwas serve as answers to questions relating to sharia law, but without imposing binding obligations<sup>15</sup>. This indicates that fatwas are not necessarily binding or provide absolute rules, but rather guide or advise in the understanding of sharia law.

Linguistically (*lughawi*), a fatwa can be interpreted as an answer or solution to a problem faced by the community. However, in the context of Islamic legal studies, fatwa has a more specialized meaning. A fatwa is a response given to someone who asks (asks) about the laws of Islamic law, whether it is in a state of doubt or with an explicit purpose, both to individuals and the general public. Thus, a fatwa is not just an answer, but an interpretation and application of Islamic sharia law to a particular situation or problem posed by the party requesting the fatwa<sup>16</sup>.

In an occupation the process of giving advice or fatwa is known as *ifta'*. The one who gives the fatwa is called mufti, while the one who asks for the fatwa is called *Mustafi*.<sup>17</sup> In this context, the Indonesian Ulema Council (MUI) acts as a mufti, an institution authorized to give fatwas. Fatwas are not given individually, but through an official institution or agency established by the government to review and determine Islamic law.

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<sup>13</sup> Departemen Pendidikan Nasional RI, *Kamus Besar Bahasa Indonesia* (Jakarta: Pusat Bahasa Depdiknas, Balai Pustaka, 2007).

<sup>14</sup> Yusuf al-Qaradhawi, *Al-Fatwa Bain Al-Indhibath Wa Al-Tasayyub* (Mesir: Dar al-Qalam, 1988).

<sup>15</sup> Wahbah Az-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu Jikid 1* (Damaskus: Dar al-Fikr, 1986).

<sup>16</sup> Rohadi Abdul Fatah, *Analisis Fatwa Keagamaan Dalam Fikih Islam* (Jakarta: Bumi Aksara, 2006).

<sup>17</sup> Abu Hamid Al-Ghazali, *Al-Mustasfa Min 'Ilm Al-Usul* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1997).

MUI is an official authority in Indonesia tasked with issuing religious regulations or fatwas.<sup>18</sup>

One of the issues that often becomes a serious concern of MUI is the phenomenon of interfaith marriage<sup>19</sup>. Interfaith marriage can be interpreted as a form of marital bond involving two individuals from different belief or religious backgrounds, but both choose to maintain their respective religious identities after marriage<sup>20</sup>. This means that there is no formal or substantive conversion process from either party<sup>21</sup>. Under these conditions, the bond is not only a relationship between two people, but also touches the sensitive area of differences in legal systems, values, and sacred norms that apply in their respective religions<sup>22</sup>.

According to Rusli and R. Tama, religious differences in marriage are not only a spiritual matter, but trigger legal implications due to the existence of two different normative systems that must be accommodated in one marriage bond. This creates complexity in the fulfillment of requirements, the implementation process, and the legal status of marriage before religious and state law<sup>23</sup>.

I Ketut Mandra and I Ketut Artadi emphasize the aspect of continuity of faith. They see that couples in interfaith marriages still maintain their respective faiths, and that differences do not become obstacles in forming households, although normatively and administratively, such marriages often face challenges<sup>24</sup>.

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<sup>18</sup> Rifyal Ka'bah, *Hukum Islam Di Indonesia* (Jakarta: Universitas Yarsi, 1998).

<sup>19</sup> Majelis Ulama Indonesia, *Himpunan Fatwa Majelis Ulama Indonesia: Sejak 1975 Hingga 2011* (Jakarta: Sekretariat Majelis Ulama Indonesia, 2011).

<sup>20</sup> Munir Fuady, *Hukum Perkawinan Di Indonesia Dalam Perspektif Hukum Modern* (Bandung: Citra Aditya Bakti, 2005).

<sup>21</sup> Harun Nasution, *Islam Ditinjau Dari Berbagai Aspeknya* (Jakarta: UI Press, 1985).

<sup>22</sup> M. Amin Abdullah, *Islam Dan Pluralisme: Akhlak Umat Beragama*. (Yogyakarta: Pustaka Pelajar, 2010).

<sup>23</sup> Muhammad Rusli and Rudi Tama, *Hukum Perkawinan Antar Agama Di Indonesia*. (Jakarta: Rineka Cipta, 1994).

<sup>24</sup> I Ketut Mandra and I Ketut Artadi, *Problematisa Perkawinan Antar Agama Dalam Perspektif Hukum* (Denpasar: Pustaka Bali, 1994).

Abdurrahman views interfaith marriage as a social reality that is difficult to avoid in a plural society. He states that this marriage occurs between two people who have different religions or beliefs, and these differences are not hidden or erased in the marriage process, but remain present as part of the dynamics of their relationship<sup>25</sup>.

From these three thoughts, it can be concluded that the essence of interfaith marriage is the persistence of each partner's religious identity in a marriage relationship. This makes it a multidimensional issue that not only concerns the private aspect, but also touches the public dimension: ranging from religious legitimacy, administrative legality, to social and cultural sensitivity in Indonesian society that upholds the principle of Belief in One God.

MUI's fatwa formulation process is based on primary sources such as the Qur'an, Hadith, Ijma, and Qiyas, and includes preliminary research on the opinions of madzhab scholars related to the issue to be fatwa. Unlike court decisions or laws that are legally binding, fatwas do not have binding legal force. Fatwas are given in response to unclear legal issues or new cases (*waqiiyah*) that have never been answered before. In issuing fatwas, MUI and the Fatwa Commission under its auspices always consider the public good (*mashalih al-'ammah*) and are guided by *maqasid al-syari'ah*, the main objectives of Islamic law<sup>26</sup>.

The Indonesian Ulema Council (MUI) and its Fatwa Commission continue to adhere to the fiqh traditions of *Sunni* scholars, although the methods of determining the law continue to evolve. *Istimbath* law, or the process of drawing legal conclusions, can be done through four main ways. First, *Mashadir al-Ahkam*, which refers to textual sources of law such as the Qur'an, Hadith, *atsar al-sahabah* (the footsteps of the companions), and *ijma'* (the agreement of scholars with the same legal context despite different

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<sup>25</sup> Abdurrahman, *Kompendium Hukum Islam* (Jakarta: Akademika Pressindo, 1984).

<sup>26</sup> Ansori, Labib, and Marwadi, *Dinamika Pemikiran Hukum Islam Majelis Ulama Indonesia Studi Pembaharuan Fatwa*.

backgrounds). Second, *Manahij Istimbath al-Ahkam*, which is a methodical tool for making legal conclusions such as *istiqra'* (induction), *ilhaq* (alignment of contemporary problems with the perspectives of classical scholars), and *qiyas* (analogy). Third, *Al-Adawat*, which is a new science used to determine laws such as *Sadd al-Dzari'ah* (prevention of means that lead to evil), *al-maqashid* (sharia objectives), *al-mashalih* (benefit), *hukm al-hakim wa al-qadhi* (government and judicial rules), and *'urf* (customs). Fourth, *Qawaid al-Fiqhiyah*, namely the principles of fiqh and other basic jurisprudence used to determine the law<sup>27</sup>. By utilizing these approaches, MUI and the Fatwa Commission try to ensure that the fatwas issued are not only in accordance with the sacred texts but also relevant to the context and needs of the times<sup>28</sup>.

MUI has made a significant contribution in resolving various legal issues in society, one of which is through MUI Fatwa No. 4/MUNAS VII/MUI/8/2005 which regulates family law, especially marriage between individuals of different religions. In its decision, the MUI Fatwa Council has emphasized two main points regarding interfaith marriage. First, it was decided that such marriages are prohibited and considered invalid according to the view of Islamic law. Secondly, it includes marriages between Muslim men and women of the Ahlu Kitab, which according to the *qaul mu'tamad*, are also considered *haram* and invalid. This decision highlights the importance of upholding religious principles in the context of marriage, and confirms the view of Islamic law in relation to interfaith marriages.

### C. Epistemic and Methodological Foundations of MUI Fatwa

Two verses have conflicting implications regarding marriage between Muslims and women of the Book. The first verse, Surah Al-Baqarah verse 221, emphasizes the prohibition for a Muslim to marry a

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<sup>27</sup> Iffatul Umniati Ismail, "Telaah Kritis Metodologi Istimbath MUI; Studi Kasus Fatwa Tentang Golput," *Media Shariah* XIII (2011).

<sup>28</sup> Ansori, Labib, and Marwadi, *Dinamika Pemikiran Hukum Islam Majelis Ulama Indonesia Studi Pembaharuan Fatwa*.



( أَلْيَوْمَ أُحِلَّ لَكُمْ الطَّيِّبَاتُ وَطَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ حَلْلٌ لَكُمْ وَطَعَامُكُمْ حَلْلٌ لَهُمْ وَالْمُحْصَنَاتُ مِنَ الْمُؤْمِنَاتِ وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ إِذَا آتَيْتُمُوهُنَّ أُجُورَهُنَّ مُحْصِنِينَ غَيْرَ مُسْفِحِينَ وَلَا مُتَّخِذِي أَخْدَانٍ وَمَنْ يَكْفُرْ بِالْإِيمَانِ فَقَدْ حَبِطَ عَمَلُهُ وَهُوَ فِي الْأَخْزَةِ مِنَ الْخَسِرِينَ □ ٥ ) ( المائدة/5:5 )

Ministry of Religious Affairs translation 2019

5. All that is good is lawful for you this day. The food of the people of the Book is lawful for you, and your food is lawful for them. (It is lawful for you to marry) the chaste women among the believing women and the chaste women among those who were given the scriptures before you, if you pay them their dowry in marriage, not with intent to commit adultery, nor to keep (them) as concubines. Whoever disbelieves after believing, then indeed his deeds have been in vain, and he will be among the losers in the Hereafter. (Al-Ma'idah/5:5)

This verse provides leeway for Muslim men to marry women of Ahlu Kitab, albeit with various conditions and considerations of *maslahat* (benefit)<sup>32</sup>. However, there are also reports that show the firmness of some companions in rejecting the practice, such as the attitude of Caliph Umar bin Khattab who prohibited marriage with Ahlu Kitab for fear of social and creedal effects in society. In the narration of Ibn Abi Shaibah, it is mentioned<sup>33</sup>: "Umar bin Khattab wrote to Hudhayfah: You should not marry a Jewish or Christian woman. Hudhayfah replied: Do you consider them haram? Umar said: No, but I hate them because of the fear that Muslim women will turn away from them."

This narration shows that although 'Umar did not absolutely forbid the practice, he strictly prohibited it in order to maintain social stability and prevent the weakening of religious fervor among Muslims. This interpretation is in line with the *maqāṣid al-sharī'ah* approach that prioritizes the public good and prevents harm (*dar' al-mafāsīd*), and it is also confirmed by al-Imam al-Qurṭubī in his tafsir that Umar's prohibition is a valid form of *siyāsah sharī'iyah*<sup>34</sup> in rejecting the practice, as did Caliph Umar ibn

<sup>32</sup> Zainul Mu'ien Husni, "Pernikahan Beda Agama Dalam Perspektif Al-Quran Dan Sunnah Serta Problematikannya," *Jurnal At-Turas* Vol. 2 No. 1, Januari-Juni 2, no. 1 (2015): 91-102.

<sup>33</sup> Ibn Abi Syaibah, *Al Musannaf* Juz 3 (Riyadh: Maktabah Ar-Rusyid, 1989).

<sup>34</sup> Abū 'Abd Allāh Muḥammad ibn Aḥmad al-Anṣārī al-Qurṭubī, *Tafsīr Al-Jāmi' Li Aḥkām Al-Qur'Ān* (Juz 6) (Beirut: Mu'assasah al-Risālah, 2006).

Khatab who forbade marriage to *Ahl al-Baqarah* for fear of the social and creedal effects on society. This shows that although the majority of scholars allow the marriage of Muslim men to women of Ahlu Kitab, the ruling is conditional and contextual, and must take into account the benefit (*maslahah*) and the prevention of damage (*mafsadah*).<sup>35</sup>

The Hanafi school, as-Sarakhsi, explains that there is no problem for a free Muslim man to marry a woman of the Book, whether she is from the Children of Israel or not<sup>36</sup>. According to the Maliki school of thought, marrying a woman of the Book, whether she is free or a slave, is permissible, albeit makrooh. Al-Qarafi stated that although such marriages are permissible, they are considered makrooh because of the potential negative influence on the education of their children. In the Hanbali school, Ibn Qudamah stated that the free women of the People of the Book and their sacrifices are considered permissible for Muslims, with no difference of opinion among the scholars<sup>37</sup>. The Shafi'i Mazhab, marrying women of the People of the Book is also permitted, Imam an-Nawawi explained that according to him it is forbidden to marry women who do not have the book (*samawi*) such as *wastaniyyah* and *majusiyyah*, while the women of the ahlu kitab are halal to marry but with the status of makruh, whether the woman is *harbiy* (fighting Muslims) or *dzimmiy* (guaranteed security by Muslims).

Discussions on the ruling of marriage between a Muslim man and a woman of the Book have been a major concern in the study of Islamic jurisprudence. Various schools of thought, including the Shafi'i School, have provided specific views regarding the conditions of such marriages. In the Shafi'i school, although Imam Shafi'i allows marriage between a Muslim man and a woman of the Book, he stipulates certain conditions. According to him, the woman of the Book must be of the Children of Israel

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<sup>35</sup> al-Qurtubī.

<sup>36</sup> Muhammad bin Ahmad Syamsul Aimmah as-Syarakhsi Al-Hanafi, *Al-Mabsuth Juz 4* (Baerut: Dar al-Ma'rifa, 1994).

<sup>37</sup> Ibnu Qudamah Abu Muhammad Abdullah bin Ahmad Al-Hanbali, *Al-Mughni Juz 7* (Kairo: Maktabah al-Qahirah, 1968).

for the marriage to be considered valid. If not, for example, an Arab woman who embraces Judaism or Christianity, then such a marriage is not allowed according to the view of the Shafi'i Mazhab. Imam Shafi'i's opinion is then further explained by scholars of the Shafi'i madhhab, such as Imam Al-Khathib Ash-Shirbini and Imam Nawawi. They explained that marrying women of the People of the Book from the Children of Israel is permissible because their books are still original and have not undergone changes (*tahrif*). However, if the woman of the Book is not a descendant of the Children of Israel, then such a marriage is considered forbidden because their book is no longer pure or has undergone changes (*tahrif*), unless they abstain from what has been changed from their book<sup>38</sup>.

Although some of the other madhhabs follow Imam Shafi'i's opinion, some scholars have ruled out the absoluteness of the People of the Book regardless of descent, only taking into account their religion as People of the Book, namely Jews and Christians. Their argument is based on the Qur'anic proofs that are absolute without any particular restrictions. In this regard, it is important to understand the diversity of views in the study of Islamic jurisprudence and to take into account different cultural and social contexts<sup>39</sup>. This is what is referred to as *qaul mu'tamad*.

#### D. Qaul Mu'tamad as the Basis for Determining the Law of MUI Fatwa

The term *qaul mu'tamad* in the Shafi'i school of fiqh tradition has a very important position as a guide in determining the law. *Al mu'tamad* is a term used to refer to the opinion that is clearer among two or more opinions from Imam ash-Shafi'i, *al mu'tamad* is the opinion that is favored in determining the law and making a fatwa<sup>40</sup>. *Al Adzhar*, another name for *al Mu'tamad*, is used when Imam ash-Shafi'i's arguments are equally strong between two or more opinions. In this case, *al Adzhar* becomes the main

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<sup>38</sup> Az-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu Jikid 1*.

<sup>39</sup> Ahmad Naufa, "Prof Quraish Shihab Jelaskan Beda Yahudi, Bani Israil, Dan Ahlul Kitab Dalam Al-Qur'an," Nu Online, 2023, <https://nu.or.id/nasional/prof-quraish-shihab-jelaskan-beda-yahudi-bani-israil-dan-ahlul-kitab-dalam-al-qur-an-tNIYf>.

<sup>40</sup> Asy-Syirbinī, *Muhammad Ibn Ahmad. Mughni Al-Muhtāj Ilā Ma'rifat Ma'ānī Alfāz Al-Minhāj* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1997).

reference for issuing a fatwa and ruling. Although there are differences of opinion (*Khilafiyah*), in *al Adzhar* there is an opinion that is favored (*Rojih*) among the opinions of Imam ash-Shafi'i. So, *al Adzhar* is a clear opinion and is considered the best to be used as a guide in determining the law<sup>41</sup>. In this case, *Qaul Mu'tamad* is the opinion agreed upon by Imam An-Nawawi and Imam Rofi'i or favored by one of them<sup>42</sup>.

The Indonesian Ulema Council (MUI), in issuing Fatwa No. 4/2005 on interfaith marriage, explicitly chose the *qaul mu'tamad* opinion of the Shafi'i school of thought. In the fatwa, MUI emphasized that marriage between a Muslim man and a woman of the Book is haram and invalid. This stipulation stems from legal prudence (*iḥtiyāt*) and also for the sake of safeguarding *maqāsid al-syarī'ah*, especially in protecting religion (*ḥifẓ al-dīn*) and offspring (*ḥifẓ al-nasl*). This fatwa was issued not only as a legal-formal form, but as a form of protection of the basic values of marriage in Islam: tranquility (*sakinah*), love (*mawaddah*), and affection (*rahmah*), as affirmed in QS. Ar-Rum verse 21 (MUI, Fatwa No. 4/MUNAS VII/MUI/8/2005).<sup>43</sup>

MUI's argumentative foundation rests on QS. Al-Baqarah verse 221 which states that marriage with polytheist women leads people to destruction and away from the values of faith. This is interpreted as an implicit prohibition against marriage with women of Ahlul Kitab, because in many narrations they are considered to be categorized as polytheists by some scholars. Therefore, interfaith marriage, according to MUI, is not only

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<sup>41</sup> Pustaka Ilmu Sunni Salafiyah-, "Inilah Macam-Macam Qaul (Pendapat) Dalam Madzhab Syafi'i Sumber: <https://www.piss-ktb.com/2012/02/592-Fiqih-Macam-Qaul-Dalam-Madzhab.Html> Terimakasih, Tetap Mencantumkan Sumber Kutipan." Pustaka Ilmu Sunni Salafiyah-KTB, 2023, <https://www.piss-ktb.com/2012/02/592-fiqih-macam-qaul-dalam-madzhab.html>.

<sup>42</sup> Yahya ibn Sharaf Al-Nawawi, *Majmū' Sharḥ Al-Muhadzdzab*, ed. Imam Al-Subkī (Kairo: Kairo: al-Maktabah al-Tijariyyah al-Kubrā, 1925).

<sup>43</sup> Majelis Ulama Indonesia, *Fatwa MUI Perkawinan Beda Agama*, 2 Majelis Ulama Indonesia.

a matter of legality but also has implications for the protection of the Muslim faith<sup>44</sup>.

MUI also refers to the legal basis of the hadith of the Prophet Muhammad SAW, which was narrated by Abu Hurairah: "Women are married for four things: for their wealth, their offspring, their beauty, and their religion. So choose the religious one, and you will be fortunate."<sup>45</sup>. The hadith emphasizes the importance of choosing a partner of the same faith in marriage, reinforcing the principle that religious equality is an ideal requirement in building an Islamic household.

MUI adopts the *mashadir al-ahkam* approach, which refers to substantive legal sources such as the Qur'an and Prophetic Hadith, as the basis for determining *istimbath al-hukm*. In addition, MUI also utilizes *qawaid fiqhiyah*, "Preventing harm takes precedence over benefiting"<sup>46</sup>. This is a basic principle in Islamic law that emphasizes the importance of avoiding harm or damage before seeking benefits.

Marriage is intended to build a family that is *sakinah mawaddah* and *rahmah*, where one's initial intention is to seek goodness in it. However, the practice of interfaith marriage, which often leads to legal imbalances between the family members involved, has serious consequences. Such marriages can give rise to various problems, especially in terms of civil relations, which present their own challenges and complexities. This principle emphasizes that in making decisions or acting, measures to avoid damage or harm should take priority over efforts to obtain benefits or advantages. This reflects a proactive approach to protecting the public interest and safeguarding the welfare of society.

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<sup>44</sup> Rahma Amir, "Perkawinan Beda Agama Di Indonesia Perspektif Hukum Islam," *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam* 6, no. 1 (2019): 99, <https://doi.org/10.24252/al-qadau.v6i1.9482>.

<sup>45</sup> Muḥammad ibn Ismā'īl Bukhārī, "Ṣaḥīḥ Al-Bukhārī," in *Kitāb An-Nikāḥ* (Riyadh: Dār Ṭawq al-Najāh, 2001); Abū al-Ḥusayn Muslim ibn al-Ḥajjāj al-Qushayrī al-Naysābūrī Muslim, "Ṣaḥīḥ Muslim," in *Kitāb An-Nikāḥ* (Riyadh: Dār Iḥyā' at-Turāth al-'Arabī, 1999).

<sup>46</sup> Mif Rohim, *Buku Ajar Qawa'id Fiqhiyyah (Inspirasi Dan Dasar Penetapan Hukum)*, *Buku Ajar Qawa'id Fiqhiyyah* (Jombang: LPPM UNHAS Y Tebuireng Jombang, 2019).

## **E. The Social, Legal and Religious Impact of Interfaith Marriage in Indonesia**

Interfaith marriage not only raises normative debates in the theological and juridical realms, but also creates complex real impacts in social, religious and legal life. This phenomenon shows the clash between the principles of faith, the increasingly plural social reality, and the limitations of positive law in fully regulating interfaith issues.

### **1. Psychosocial Impacts and Family Dynamics**

Interfaith marriage has profound psychological and social consequences for both the couple and the children born of the marriage. In marital relationships, differences in beliefs can be a source of latent tension - although in early marriage this may still be masked by the euphoria of love and personal commitment.

Interfaith couples in Indonesia have expressed dilemmas in determining household governance, ranging from childcare, celebrating religious holidays, to fundamental decisions such as education and relationships. Differences in existential theological principles can lead to feelings of estrangement between couples, especially when each of them continues to adhere to their religious teachings without any common ground<sup>47</sup>.

The children born from such marriages are also not immune to negative impacts. In many cases, they experience a religious identity crisis as they receive different teachings from their mother and father. This can lead to spiritual disorientation, confusion in choosing a social identity, and even ongoing inner turmoil in adolescence and adulthood. In some family psychology studies, unstable religious identity is often one of the triggers of depression and social anxiety, especially when the surrounding environment expects a firm identity<sup>48</sup>. Divorce rates are

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<sup>47</sup> Nur Suryani, "Psikodinamika Pasangan Beda Agama Di Indonesia," *Jurnal Psikologi Sosial* 9, no. 2 (2021): 135-50.

<sup>48</sup> Puspita Dewi, "Identitas Religius Anak Dalam Keluarga Lintas Agama," *Jurnal Psikologi Perkembangan* 5, no. 2 (2021): 221-34.

high if there is no firm agreement on the spiritual governance of the family from the start. Another factor that worsens the situation is pressure from extended families who do not accept differences in beliefs, thus narrowing the space for couples to compromise in dealing with internal conflicts<sup>49</sup>.

The psychosocial impact of interfaith marriage cannot be taken lightly. Interventions are needed in the form of pre-marital education, interfaith counseling, and raising awareness about the spiritual and social consequences of the decision to enter into an interfaith marriage.

## 2. Legal Uncertainty and Population Administration

One of the most crucial issues faced by interfaith couples in Indonesia is the legal status of their marriage. Law No. 1/1974 on Marriage states in Article 2 paragraph (1) that "Marriage is valid if performed according to the laws of each religion and belief." This provision implies that there is no single system of marriage law that is universally binding on all citizens, but rather depends on the rules of each religion<sup>50</sup>.

The majority of religions in Indonesia do not legalize interfaith marriage, especially in the context of Islam, Catholicism and conservative Protestant Christianity. This means that interfaith couples cannot legally register their marriages at the Office of Religious Affairs (KUA) or the Population and Civil Registry Office (Dukcapil). In response, many couples choose two alternative paths: marry abroad and register in Indonesia afterwards, or make an administrative religious conversion without a change in true beliefs to facilitate the process of legalizing the marriage. These practices have ethical and legal consequences. Getting married abroad is costly and may not be socially recognized in Indonesia. Meanwhile, administrative conversion without

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<sup>49</sup> Ahmad, "Stabilitas Rumah Tangga Dalam Pernikahan Lintas Agama," *Jurnal Hukum Keluarga Dan Peradaban* 6, no. 1 (2022): 89-104.

<sup>50</sup> Lembaga Administrasi Negara Republik Indonesia, *Naskah Akademik UU Perkawinan Dan Penjelasannya* (Jakarta: LAN Press, 2020).

a change in true faith raises moral issues because it is considered a form of falsification of religious identity. In Islamic law, honesty is a core value that should not be sacrificed for worldly goals<sup>51</sup>.

Such practices weaken the integrity of the law and open up space for systemic violations of the principles of justice. On the other hand, in the absence of explicit provisions prohibiting or allowing interfaith marriages under positive law, this situation falls into the category of legal vacuum. The absence of technical and procedural regulations makes law enforcement officials ambiguous, depending on their own interpretations<sup>52</sup>. Not only that, the status of children from this kind of marriage is also often a complicated issue. In many cases, the child's religion is not listed on the birth certificate, or is given a religious status that does not match the beliefs of one of the parents. This leads to complications with education, inheritance and other civil rights. The issue of *nasab* and inheritance rights under Islamic law also becomes unclear, because the parents' marital status is not valid according to Sharia law<sup>53</sup>.

### 3. Social Tensions and Religious Stigma

In a religious society like Indonesia, interfaith marriage is considered a form of deviation from religious and social norms. This stigma arises not only from religious circles, but also from the surrounding community and environment. Many couples experience rejection from extended family, ridicule from neighbors, and even ostracism from their respective religious communities<sup>54</sup>.

This stigma is reinforced by the conservative views of various religious organizations. For the Muslim community, for example,

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<sup>51</sup> Anggreini Carolina Palandi, "Analisa Perkawinan Beda Agama Di Indonesia," *Lex Privatum* 1, no. 2 (2013): 196–210.

<sup>52</sup> Syamsul Bahri, "Problematika Hukum Perkawinan Beda Agama: Kajian Dari Perspektif Hukum Islam Dan Undang-Undang Nasional," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, no. 1 (2023): 55–70.

<sup>53</sup> Palandi, "Analisa Perkawinan Beda Agama Di Indonesia."

<sup>54</sup> Aulil Amri, "Perkawinan Beda Agama Menurut Hukum Positif Dan Hukum Islam," *Media Syari'ah* 22, no. 1 (2020): 48, <https://doi.org/10.22373/jms.v22i1.6719>.

interfaith marriages are considered potentially damaging to the purity of faith. In terms of *maqāṣid al-syarī'ah*, safeguarding religion (*ḥifẓ al-dīn*) and offspring (*ḥifẓ al-nasl*) are the main objectives of Islamic law, and interfaith marriage is considered a threat to these two pillars. Al-Syatibi emphasized the importance of maintaining the continuity of religious values in the family as the main foundation of Muslim life<sup>55</sup>. Furthermore, this social tension often translates into severe psychological distress, especially when couples are forced to choose between personal love and loyalty to their religious community. In some cases, young couples even experience pressure to relocate to another city to avoid social pressure from their home neighborhood. Stigma also affects children. They are often ostracized or regarded as religiously “illegitimate” children. In school religious education, for example, these children are often questioned about their religion by teachers or classmates, which creates feelings of inferiority or unacceptability<sup>56</sup>.

## F. Conclusion

The phenomenon of interfaith marriage in Indonesia represents a complex intersection of social reality, religious norms and the state legal system. In a religiously pluralistic society like Indonesia, this issue is not just a personal matter, but concerns family integrity, religious identity and legal legitimacy. The absence of strict regulations and the existence of gray areas in legislation have encouraged people to seek alternative references, one of which is religious fatwas.

Fatwa of the Indonesian Ulema Council (MUI) No. 4/2005 provides a firm response to the practice of interfaith marriage by forbidding and declaring it invalid from the perspective of Islamic law. This fatwa was not born from a vacuum, but was built from a strong epistemic framework

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<sup>55</sup> Al-Syatibi, *Al-Muwafaqat Fi Usul Al-Syari'a* (Kairo: Mustafa Muhammad, 1920).

<sup>56</sup> Safira Nafa Khairina, “Dampak Pernikahan Beda Agama Terhadap Perkembangan Psikologi Anak Di Argomulyo Salatiga,” *Al-Syakhsyiyah: Journal of Law & Family Studies* 5, no. 1 (2023): 167–84, <https://doi.org/10.21154/syakhsyiyah.v5i2.7>.

based on the arguments of the Qur'an, Hadith, and legal *istinbāt* from the scholars of the madhhab, especially *qaul mu'tamad* in the Shafi'i madhhab. In practice, these fatwas play an important role as ethical and moral guidelines for Muslims, as well as a reference in state administrative policies, as reflected in Supreme Court Circular Letter No. 2 of 2023.

Although it has no juridically binding force, this fatwa serves as a normative instrument that preserves the purity of Islamic teachings, protects the Muslim family structure, and prevents the negative social and legal impacts of interfaith marriage. A comparison with other Muslim countries, such as Malaysia and Egypt, shows that the firm position against interfaith marriage is also supported by religious institutions and the state as part of the protection of *maqāṣid al-syarī'ah*.

This study shows that MUI's fatwa does not merely reflect adherence to fiqh principles, but is also a form of adaptation to contemporary social dynamics. Strengthening the function of fatwa, harmonization with the national legal system, and increasing public literacy are strategic steps in dealing with the issue of interfaith marriage wisely. Further research is recommended to explore the sociological and psychological dimensions of interfaith family life, including its implications for the construction of Islamic family law in the future.

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